

# **BGC Derivative Markets, L.P.**

## **RULES**

BY ACCESSING, OR ENTERING ANY ORDER INTO, THE BGC DERIVATIVE MARKETS, L.P. FACILITY, AND WITHOUT ANY NEED FOR ANY FURTHER ACTION, UNDERTAKING OR AGREEMENT, A PARTICIPANT, AND ITS CUSTOMERS, INCLUDING ITS AUTHORIZED CUSTOMERS, EACH REPRESENT THAT IT IS AN ELIGIBLE CONTRACT PARTICIPANT AS DEFINED IN SECTION 1A(18) OF THE COMMODITY EXCHANGE ACT AND SUCH PERSONS, AND THEIR AUTHORIZED TRADERS, AGREE:

- (I) TO BE BOUND BY, AND COMPLY WITH, THE RULES OF BGC DERIVATIVE MARKETS, L.P., AND APPLICABLE LAW, IN EACH CASE TO THE EXTENT APPLICABLE TO IT OR THEM, AND
- (II) TO BECOME SUBJECT TO THE JURISDICTION OF BGC DERIVATIVE MARKETS, L.P. WITH RESPECT TO ANY AND ALL MATTERS ARISING FROM, RELATED TO, OR IN CONNECTION WITH, THE STATUS, ACTIONS OR OMISSIONS OF SUCH PARTICIPANT AND THE PARTICIPANT'S AUTHORIZED TRADERS, ITS CUSTOMERS AND THEIR AUTHORIZED TRADERS.

## Table of Contents

PART 1. MEANING OF TERMS.....	4
101. Definitions.....	4
102. Time References.....	12
103. Conflicts with Governing Documents.....	12
PART 2. GOVERNANCE.....	13
201. Board of Directors.....	13
202. Officers.....	14
203. Regulatory Oversight Committee.....	14
204. Disciplinary Committee.....	15
205. Compliance Department.....	15
206. Prohibition on Admission as Participant.....	15
207. Restrictions on Directors, Officers, Committee Members, Employees and Consultants.....	16
208. Reserved.....	20
209. Conflicts of Interest.....	20
210. Chief Compliance Officer.....	24
PART 3. PARTICIPANTS.....	26
301. Status of Participants.....	26
302. Eligibility.....	27
303. Application Procedures.....	27
304. Denial of Admission.....	28
305. Admission as a Participant.....	30
306. Sponsored Participants, Brokers and Customers.....	30
307. Payment of Facility Fees.....	35
308. Surveillance.....	35
309. Market Data.....	35
310. Recording of Conversations.....	36
311. Termination of Participation.....	36
312. Market Maker Program.....	37
313. Independent Software Vendor.....	37
PART 4. OBLIGATIONS OF PARTICIPANTS.....	38
401. Non-U.S. Participants.....	38
402. Notification.....	38
403. Record-keeping and Reporting Requirements.....	40
404. Requirements for Persons Submitting Orders.....	43
405. Cooperation in Investigations.....	44
406. System Security.....	44
407. User IDs and Confidentiality.....	45
408. Front-End User Interface.....	46
409. Responsibility for Orders.....	47
410. Compliance by Participants.....	47
PART 5. TRADING.....	47
501. Required Transactions.....	47

502.	Permitted Transactions.....	48
503.	Trading Hours for Required and Permitted Transactions.....	49
504.	Information Regarding Orders.....	49
505.	Pre-Execution Discussions and Cross Trades.....	50
506.	Allocation and Priority of Orders; No Withholding of Orders.....	51
507.	Prohibited Bids and Offers.....	51
508.	Orders Required to be Cleared.....	52
509.	Limitation of Size of Orders.....	52
510.	Block Trades.....	52
511.	Public Disclosure of Data.....	54
512.	Off-facility Transactions by Brokers.....	55
513.	Package Transactions.....	55
514.	Trade Cancellations and Price Adjustments.....	58
515.	Error Trades.....	64
516.	Trade Affirmation.....	65
517.	Post-Trade Anonymity.....	66
518.	Prime Broker Trade.....	66
PART 6. TRADING VIA ELECTRONIC ORDER BOOK.....		68
601.	Scope.....	68
602.	Trade Execution via Electronic Order Book.....	68
603.	Orders.....	68
604.	Confirmations and Objections.....	72
605.	Trade Invalidation upon Revocation of Clearing Authorization.....	73
606.	Reserved.....	73
607.	Assisted Order Entry.....	73
PART 7. TRADING VIA VOICE FUNCTIONALITY.....		74
701.	Scope.....	74
702.	Trade Execution via Voice Functionality.....	74
703.	Voice Trading Facility.....	74
704.	Confirmation of Voice Transactions and Objections.....	78
705.	Record-keeping and Reporting.....	80
PART 7a TRADING VIA REQUEST FOR QUOTES (“RFQ”) FUNCTIONALITY.....		81
701a.	Scope.....	81
702a.	Trade Execution via RFQ Functionality.....	81
PART 8. CLEARING AND FINANCIAL INTEGRITY OF CONTRACTS.....		83
801.	Scope.....	83
802.	Relation to Clearing Organization.....	83
803.	Clearing Authorization Required.....	84
804.	Financial Integrity for Permitted Transactions.....	85
805.	Trades Not Accepted for Clearing.....	86
806.	Disputes related to Clearing.....	86
807.	Establishment of Daily and Final Settlement Prices.....	86
PART 9. BUSINESS CONDUCT.....		87
901.	Violation of Law.....	87

902.	Rule Violation.....	87
903.	No Transfers. ....	87
904.	False Information. ....	88
905.	Manipulation Prohibited.....	88
906.	Prohibition on Misstatements.....	88
907.	Employees of the Facility.....	88
908.	Abusive Trading Practices Prohibited. ....	88
909.	Detrimental Conduct.....	88
910.	Fraud Prohibited.....	89
PART 10. DISCIPLINARY PROCEEDINGS. ....		89
1001.	Scope.....	89
1002.	Investigations.....	89
1003.	Review of Investigation Report.....	90
1004.	Respondent.....	90
1005.	Notice of Charges. ....	90
1006.	Service.....	91
1007.	Answer from Respondent.....	91
1008.	Right to Representation.....	92
1009.	Hearings.....	92
1010.	Decision. ....	93
1011.	Penalties. ....	94
1012.	Predetermined Penalties. ....	95
1013.	Settlement.....	95
1014.	Minor Penalties. ....	96
1015.	Participant Responsibility Actions.....	96
1016.	Action Against Non-Participants.....	97
1017.	Conflicts of Interest or Bias.....	98
PART 11. CUSTOMER DISPUTES.....		99
1101.	Procedure for Resolution.....	99
PART 12. MISCELLANEOUS.....		99
1201.	Prohibition of Compensation to Facility Employees.....	99
1202.	Rule Adoption, Amendment, and Repeal.....	99
1203.	Confidentiality of Information.....	100
1204.	Emergency Powers.....	101
1205.	Limitation of Liability.....	104
1206.	Dispute Resolution.....	106
1207.	Publication of Information.....	106
1208.	Trading System.....	106
1209.	Enforceability.....	107
1210.	Audit Trail.....	108
PART 13. PRODUCTS.....		108
1301.	Swaps Made Available to Trade.....	108
1302.	Position Limits or Position Accountability.....	108
1306.	Swaps Listed for Trading.....	109

## RULES

### PART 1. MEANING OF TERMS.

#### 101. Definitions.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Any pronoun shall include the corresponding masculine, feminine and neuter forms. The word “will” shall be construed to have the same meaning and effect as the word “shall.” The words “include”, “included”, “includes” or “including” shall be deemed, in each case, to be followed by the phrase “without limitation,” or the phrase “but not limited to”, if not expressly followed by such phrase.

Unless the context otherwise indicates, the following terms have the meanings set forth below:

“**Act**” means the same as Commodity Exchange Act.

“**Affiliate**” means, with respect to a Person, any other Person which directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person.

“**Applicable Law**” means, with respect to any Person, any statute, law, regulation, rule or ordinance of any Regulatory Authority applicable to such Person, including the Commodity Exchange Act, Commission Regulations and, to the extent applicable to such Person, similar foreign laws or regulations which is applicable to such Person’s activities in respect of the Facility.

“**Applicant**” means a Person that has submitted an application to the Facility to be approved as a Participant.

“**Authorized Customer**” means a Person that enjoys Sponsored Access to the Facility

“**Authorized Trader**” means any Person that is issued a User ID to trade for: (i) a Participant, including, but not limited to, an employee of a Participant, an employee of a Participant’s affiliate provided the Participant maintains supervisory authority over such employee, (ii) an employee of an Authorized Customer; (iii) a Broker.

“**Automated Order Generator (“AOG”)**” means a device also known as a “black box” or “automated trading machine” that is preprogrammed in accordance with a single trading strategy to independently initiate activity on the Trading System without active human input.

“**Bespoke Swap**” means a Swap that is customized as to tenor, roll dates, compounding and/or any other material term.

“**Bid**” means an order to buy a Contract or pay fixed payments on a contract at a specified price or spread.

“**Block Trade**” shall have the same meaning as in Commission Rule 43.2, 17 C.F.R. §43.2.

“**Board**” means the Board of Directors of the Facility.

“**Broker**” means a Person that is registered as a Futures Commission Merchant, Introducing Broker, commodity pool operator or commodity trading advisor that is registered as such under the Commodity Exchange Act, or is exempt from registration, that is not a Participant and that is permitted by a Participant to enter Bids, Offers or Orders into the Trading System, to assist in pre-discussion of trades as permitted under Rule 505, to assist in the conduct of Off-facility Transactions as permitted under Rule 512, and to assist in arranging Block Trades on behalf of a Participant. A Broker may enjoy direct access to the Trading System. A Broker is not an employee of the Facility.

“**Business Day**” means any day on which the Facility is open for trading. The Facility will publish the trading days for the Swaps on its website.

“**Chief Compliance Officer**” or “**CCO**” means the person with (i) the authority and resources to develop and enforce policies and procedures necessary to fulfill the duties set forth for chief compliance officers in the Commodity Exchange Act and Commission regulations; and (ii) supervisory authority over all staff acting in further of the Chief Compliance Officer’s statutory, regulatory, and self-regulatory obligations.

“**Clearing Organization**” means a Derivatives Clearing Organization specified by the Facility to clear transactions effected on or subject to the Rules of the Facility.

“**Clearing Participant**” means any Person that has clearing and settlement privileges on a Clearing Organization.

“**Clearing Participant ID**” means the unique identifier code assigned by the Facility to each Clearing Participant.

“**Commodity**” means any commodity within the definition of that term contained in the Commodity Exchange Act.

“**Commodity Exchange Act**” means the Commodity Exchange Act, as it may be amended from time to time.

“**Commission**” means the Commodity Futures Trading Commission.

“**Commission Regulation or Commission Rule**” means any rule, regulation, or order of the Commission, as in effect from time to time, and any interpretation thereof by the Commission or its staff.

**“Compliance Department”** means the Department of the Facility responsible to oversee market activity and that the trading and other activities conducted on the Facility comply with the Applicable Law and Rules of the Facility. The Compliance Department includes the regulatory service provider and the Control Desk.

**“Contract”** means a Swap contract executed on or through the Facility.

**“Control”** means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that company.

**“Control Desk”** means the designated group of employees that is responsible for Facility market operations, real-time market monitoring, customer support and surveillance.

**“Customer”** means any Person who is a “customer” within the meaning set forth in Section 1.3(k) of Commission Regulations.

**“Customer Match Trading Facility”** means a Trading Facility which is an auction operated by the Facility pursuant to Rule 602(e) where prices are determined by the interaction of multiple Participants entering Orders into the Trading System.

**“Delta hedge”** means a trading strategy that aims to reduce (hedge) the risk associated with an option, swaption, variance Swap, tranche or other structured trade from price movements in the underlying asset.

**“Designated Contact”** means the person employed by any Participant that shall have the right to activate or deactivate the User ID of any of such Participant’s Authorized Traders or Authorized Customers.

**“Electronic Order Book”** means all open Orders entered into the Trading System displayed electronically.

**“Electronic Order Book Trading Session”** means a Trading Session that remains open throughout the Business Day and in which the Trading System will receive and execute Orders in accordance with these Rules.

**“Electronic Trading System”** means the means the electronic systems administered by or on behalf of the Facility for execution of Swap transactions.

**“Eligible Contract Participant or ECP”** means any Person who is an “eligible contract participant” within the meaning set forth in section 1a(18) of the Commodity Exchange Act.

**“Emergency”** means those occurrences or events enumerated in Rule 1204 or any other occurrence or circumstance that, in the opinion of the Facility requires immediate action and threatens or may threaten fair and orderly trading in Swaps on the Facility.

**“Entity”** means any Person other than a natural person.

**“Execution Specialist”** means an employee of the Facility using telephonic or other means of electronic communication devices: 1) to assist Participants in the entry or withdrawal of Orders to be matched through the operation of the Trading System and the negotiation and execution of Block Trades provided under Rule 510, and 2) to facilitate Voice Trading. Execution Specialists also act in connection with the operation of various Trading Facility sessions of the Trading System

**“Facility”** means BGC Derivative Markets, L.P., a registered swaps execution facility.

**“FINRA”** means the Financial Industry Regulatory Authority.

**“Futures Commission Merchant or FCM”** shall have the same meaning as defined in section 1a(28) of the Commodity Exchange Act.

**“Governmental Agency”** means the Commission, the Securities and Exchange Commission and any other agency, federal or state, domestic or foreign authority, regulating trading in commodities, securities, futures contracts, options, currencies or other financial instruments.

**“Illiquid Swap”** shall mean any Swap having an Average Daily Trading Volume of fewer than five transactions per week on the Facility over the preceding three month period, calculated on a rolling basis.

**“Indicative Order”** shall mean any Bid or Offer placed into the Trading System that is an Indicative Quote and which is not automatically executable by the Trading System.

**“Indicative Quote”** shall mean a quote which provides pricing information but which is not automatically executable by the Trading System or other trading functionality. If present, Indicative Quotes entered by the Facility do not include quantity information; indicative quotes entered by a Participant include both price and quantity information.

**“Introducing Broker”** shall have the same meaning as defined in section 1a(31) of the Commodity Exchange Act.



**“Last Sale Information”** means, at any given time, the price and quantity data from any and all transactions executed on the Trading System including the times at which such transactions were executed on or submitted to the Trading System.

**“Made Available to Trade”** means the transactions listed or offered for trading on the Facility as defined in Rule 1301.

**“Major Swap Participant”** shall have the meaning in section 1a(33) of the Commodity Exchange Act.

**“Market Data”** means any and all data and other information contained in, displayed on, generated by or derived from the Trading System or reported to the Facility including, without limitation, bids, offers, prices, executions and volumes, Last Sale Information and Quotation Information.

**“Market Data Vendors”** means publishers of electronic information with whom the Facility has a contractual relationship to disseminate Market Data.

**“Named Party in Interest”** means a “named party in interest” as defined in Rule 209(a)(iv).

**“NFA”** means the National Futures Association.

**“Non-U.S. Participant”** means any person located outside the United States, its territories or possessions who is engaged in soliciting or in accepting orders for the purchase or sale of any Swap on or subject to the rules of the Facility from only persons located outside the United States, its territories or possessions.

**“Off-facility Transaction”** means a transaction arranged by a Broker between two Participants, Sponsored Participants or Customers that is to be executed pursuant to the Rules of the Facility. Such a transaction is reported to the Facility and is not considered as having been executed until its acceptance by the Facility.

**“Offer”** means an order to sell a Contract or receive fixed payments on a contract at a specified price or spread.

**“Opening Period”** means the opening period of a specified Trading Session.

**“Order”** means any Bid or Offer placed into the Trading System for purposes of buying or selling a Swap on or subject to the rules of the Facility.

**“Package Transaction”** means any transaction which consists of two or more component transactions executed between two or more counterparties where: 1. execution of each component transaction is contingent upon the execution of all other component transactions, and 2. the component transactions are priced or quoted together as one economic transaction with simultaneous or near-simultaneous execution of all components.

**“Participant”** means any Person granted Trading Privileges by the Facility.

**“Participant Data”** means any and all data and other information submitted to the Trading System by a Participant or on behalf of a Participant by its Sponsored Participants or Brokers.

**“Participant ID”** means the unique identifier code assigned by the Facility to each Participant.

**“Partnership Agreement”** means the corporate organizational document of BGC Derivative Markets, L.P.

**“Permitted Transaction”** means any transaction involving a Swap listed or offered for trading on or subject to the rules of the Facility for trading that is not a Required Transaction.

**“Person”** means an individual, corporation, limited liability company, partnership, trust, or other entity.

**“Pre-execution Communication”** means on or more communications between market participants for the purpose of discerning interest in the execution of a transaction prior to exposure of such market participants’ Orders (*i.e.*, price, size and other terms) to the Facility.

**“Prime Broker Trade”** shall mean any trade where at least one party to the trade is a Prime Broker and the other is a participant with which the Prime Broker has a Non-Cleared Swap Agreement. A Prime Broker Trade can only occur on a Permitted Transaction.

**“Prime Broker”** shall mean an Entity that acts as credit counterparty by extending credit to Participant(s) of the SEF to facilitate transactions occurring on or being introduced to the SEF in the name and on behalf of such Person by its client or an agent of its client that is a SEF Participant and has authorized a Participant to place orders or enter trades in the name and on behalf of such person.

**“Proprietary Account”** means a “proprietary account” as defined in Section 1.3(y) of the Commission Regulations.

**“Proprietary Data or Personal Information”** for the purpose of Rule 309(c) means information that would separately disclose business transactions, market positions, or the trade secrets of a Participant or Authorized Customer or provide non-public information about a natural person.”

**“Quote”** means a Bid or an Offer, or a Bid and an Offer.

**“Quotation Information”** means, at any given time, the price and quantity data and all data derived from all Bids and Offers submitted for entry into the Trading System, including the times at which such Bids and Offers are entered.

**“Regular Voice Trading Facility”** means a Voice Trading Session that remains open throughout the Business Day and in which an Execution Specialist stands ready to facilitate the execution of Orders in accordance with these Rules.

**“Regulatory Authority”** means any domestic or foreign government (or political subdivision), governmental or regulatory authority, agency, court, commission or other governmental or regulatory entity (including any Self-Regulatory Organization).

**“Regulatory Services Agreement”** means the agreement between the Facility and the NFA, pursuant to which the NFA has agreed to perform certain regulatory functions on behalf of the Facility.

**“Request for Quote (RFQ)”** means a solicitation for Bids and Offers for a Swap or combination of Swaps.

**“Required Transaction”** means any transaction involving a Swap Made Available to Trade on the Facility that is subject to the trade execution requirement of section 2(h)(8) of the Act.

**“Respondent”** has the meaning set forth in Rule 1004.

**“Rules”** means, with respect to any Entity, the rules of such Entity and the interpretations, resolutions, orders, directives and procedures of the Entity thereunder as in effect from time to time, and if no other Entity is specified, means the Rules of the Facility and the interpretations, resolutions, orders, directives and procedures of the Facility thereunder as in effect from time to time.

**“SDR”** means “Swap Data Repository” as defined in section 1a(48) of the Act.

**“Securities Exchange Act”** means the Securities Exchange Act of 1934, as it may be amended from time to time.

**“Self-Regulatory Organization”** has the meaning given that term in Commission Regulation 1.3(ee).

**“Settlement Price”** means the price established each day as the basis for settlement of Swaps.

**“Significant Action”** means a “significant action” as defined by Section 1.69(a)(8) of the Commission Regulations.

**“Sponsored Access”** means the practice by a Participant (“Sponsoring Participant”) of providing access to the Facility to another firm or customer (“Authorized Customer”). Sponsored Access takes multiple forms, including but not limited to: (a) direct market access, where the Authorized Customer’s orders pass through the Sponsoring Member’s systems prior to reaching the Trading System, (b) sponsored access, where the Authorized Customer enters orders directly into Trading System via a dedicated port provided by the Sponsoring Participant, and (c) direct access where a service bureau or other third party provides Authorized Customers with technology to access the Trading System under the auspices of and via an arrangement with the Sponsoring Member. Sponsored Access can also include the practice of permitting an Authorized Customer to trade on the Facility through Voice Functionality.

**“Sponsored Participant”** means any Person that accesses the Facility through or under the Trading Privileges of a Participant and includes a Participant’s Authorized Traders, Authorized Customers, or an Authorized Customer’s Authorized Traders. Sponsored Participants may enjoy direct access to the Facility.

**“SRO”** means “Self-Regulatory Organization.”

**“Supervised Persons”** means any directors, officers, agents, or employees (including any Authorized Traders) of any Participant.

**“Swap”** has the meaning set forth in section 1a(47) of the Commodity Exchange Act, and as further defined by the Commission, and includes, among others, options and swaptions, caps and floors, provided that for purposes of these Rules the term “Swap” shall pertain only in respect of activities on or subject to the Rules of the Facility.

**“Swap Dealer”** shall have the same meaning as defined in section 1a(49) of the Commodity Exchange Act.

**“Technology-Assisted Voice Trading Facility”** means a Voice Trading Session in which the Execution Specialist is assisted by an automated functionality.

**“Tenor”** means the time to maturity of the Swap.

**“Third Party Sponsored Access”** means direct access where a service bureau or other third party provides Authorized Customers with technology to access the Trading System under the auspices of and via an arrangement with the Sponsoring Member.

**“Trading Day”** means with respect to any Swap the period of hours during a 24 hour period during which trading in that Swap is permitted to occur through, or subject to the rules of, the Facility.

**“Trading Facility”** shall have the same meaning as defined in section 1a(51) of the Commodity Exchange Act.

**“Trading Hours”** means, with respect to any Swap the hours during which the Facility is regularly open for the trading of such Swap.

**“Trading Participant”** means a Participant of the Facility that is not a Clearing Participant.

**“Trading Privileges”** means the right granted to a Participant, Sponsored Participants or Broker to access directly the Trading System for the purpose of transacting in Swaps subject to the Rules of the Facility. No person may exercise Trading Privileges during any suspension of such Person’s Trading Privileges ordered by the Facility.

**“Trading Session”** means a specified period of time during which a particular trade matching functionality is available to market participants.

**“Trading System”** means the electronic or other systems administered by or on behalf of

the Facility for execution of Swap transactions.

**“User ID”** means a unique identifier code assigned by the Control Desk to each Authorized Trader that trades for such Participant or any Affiliate of such Participant or to any other Person with Trading Privileges.

**“Voice Functionality”** means a physical Trading Facility, which provides a non-automated method for trading facilitated by an Execution Specialist that enables multiple participants to offer Bids or Offers to multiple participants through the use of telephone, electronic messaging or other communications devices.

**“Voice Trading”** is one Voice Functionality whereby an Execution Specialist makes known to Participants the existence of trading interest in a Swap, facilitates the communication of Bids or Offers among Participants, and assists in orderly trading on the Facility.

**“Voice Trading Facility”** means a Trading Session during which a particular structured form of non-automated trade matching functionality is available to market participants.

**“Volume Match Plus Trading Facility”** means a Trading Session that is an auction separate from the Electronic Order Book Trading Session and is held periodically during the Business Day. The auction operates similar to the Volume Match Trading Session; however, as described in Rule 602, during the auction Participants are able, in response to changing market conditions, to submit Bids higher or Offers lower than the initial price originally determined by the Trading System thereby shifting the displayed execution price to another value for the duration of that auction.

**“Volume Match Trading Facility”** means a Trading Session separate and distinct from the Electronic Order Book Trading Session. A Volume Match Trading Session is an auction operated by the Facility pursuant to Rule 602 where all transactions will be executed at a single price and in time order of priority.

**“Whiteboard Trading”** shall mean a form of technology- assisted trading consisting of an electronic screen that can be viewed by Participants in which information is posted upon request.

## **102. Time References.**

Except as may be otherwise expressly provided in these Rules, all references to times in these Rules shall be to the local time prevailing in New York, New York.

## **103. Conflicts with Governing Documents.**

In the event of any conflict between any provision of these Rules and any provision of the governing documents of the Facility, the provision of the governing documents shall govern, except where the governing documents provide otherwise.

## **PART 2. GOVERNANCE.**

### **201. Board of Directors.**

The Board shall have all the powers and authority permitted by law, the Facility's Rules and its formation Partnership Agreement. The Board of Directors shall be appointed by the general partner of BGC Derivative Markets, L.P. The Board shall be composed in accordance with the standards set forth in Commission Rule 1.64(b)(1) and (b)(3), which are incorporated herein by reference.

#### **(a) Composition of the Board of Directors.**

- (i) At least thirty-five percent of the directors of the Facility shall be Public Directors;
- (ii) To qualify as a Public Director of the Facility, an individual must first be found, by the Board of Directors, on the record, to have no material relationship with the Facility. A "material relationship" is one that reasonably could affect the independent judgment or decision making of the director.
- (iii) In addition, a director shall be considered to have a "material relationship" with the Facility if any of the following circumstances exist:
  - (A) The director is an officer or employee of the Facility or an officer or employee of its affiliate. In this context, "affiliate" includes parents or subsidiaries of the Facility or entities that share a common parent with the Facility;
  - (B) The director is a member of the Facility, or an officer or director of a member. "Member" is defined according to section 1a(34) of the Commodity Exchange Act and Commission Regulation 1.3;
  - (C) The director, or a firm with which the director is an officer, director, or partner, receives more than \$100,000 in combined annual payments from the Facility, or any affiliate of the Facility (as defined in subsection (a)(iii)(A)), for legal, accounting, or consulting services. Compensation for services as a director of the Facility or as a director of an affiliate of the Facility does not count toward the \$100,000 payment limit, nor does deferred compensation for services prior to becoming a director, so long as such compensation is in no way contingent, conditioned, or revocable;
  - (D) Any of the relationships above apply to a member of the director's "immediate family," i.e., spouse, parents, children and siblings.
- (iv) All of the disqualifying circumstances described in subsection (a)(iii) shall be subject to a one-year look back.

- (v) The Facility's Public Directors may also serve as directors of the Facility's affiliate (as defined in subsection (a)(iii)(A)) if they otherwise meet the definition of public director in section (a)(ii-iv).
- (vi) The Facility shall disclose to the Commission which members of its board are Public Directors, and the basis for those determinations.

(b) Role of the Board of Directors.

- (i) The Board will approve which Swaps are Available to Trade on the Facility in accordance with the Rules of the Facility;
- (ii) The Board will approve new rules, rule amendments and changes to the contract specifications of the Facility, provided, further, that certifications or applications with respect to such Rules will be submitted to the CFTC as required by Applicable Law and any regulations thereunder.

**202. Officers.**

The officers of the Facility shall have all the powers and authority provided in the formation Partnership Agreement and these Rules and such other additional duties and powers as the Board may confer on them or any of them. The officers of the Facility shall consist of the Chief Executive Officer, Chief Financial Officer, General Counsel, Chief Compliance Officer and such other officers as the Board may appoint.

**203. Regulatory Oversight Committee**

- (a) **Establishment of Regulatory Oversight Committee.** The Regulatory Oversight Committee ("ROC") is a subcommittee of the Board of Directors of the Facility, and shall be composed of Public Directors, as defined in Rule 201(a)(ii-iv) only, those of which would not be disqualified from serving as a Public Director under Commission Rule 1.63(c). In the event of an even number of Public Directors in the ROC, the chair of the ROC shall have the tie breaker vote. The ROC shall be appointed by the Board of Directors.

(b) **Role of the ROC.**

The Regulatory Oversight Committee shall:

- (i) monitor the regulatory program of the Facility for sufficiency, effectiveness, and independence;
- (ii) oversee the regulatory program, including trade practice and market surveillance; audits, examinations, and other regulatory responsibilities with respect to member firms (including ensuring compliance with financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and the conduct of investigations;

- (iii) review the size and allocation of the regulatory budget and the performance of the Chief Compliance Officer;
- (iv) recommend changes that would ensure fair, vigorous, and effective regulation; and
- (v) review all regulatory proposals and recommend changes to the program.

#### **204. Disciplinary Committee.**

- (a) **Establishment of the Disciplinary Committee.** The Disciplinary Committee is a committee of the Facility whose members shall consist of such members appointed by the Board of Directors of the Facility. The members of the Disciplinary Committee shall constitute the Facility's Review Panel(s) and Hearing Panel(s). A member of a Hearing Panel may not serve as a member of the Review Panel in the same matter and each Hearing Panel and each Review Panel must include a member that is not a Participant of the Facility.
- (b) **Composition.** At least one member of the Disciplinary Committee, who shall be chair, must be a Public Participant, a person that would not be disqualified from serving as a Public Director under Commission Rule 1.63(c). The Disciplinary Committee may include as members Facility officers and employees. However, no employee of the Compliance Department of the Facility may serve on the Disciplinary Committee.
- (c) **Role of the Disciplinary Committee.** The Disciplinary Committee is authorized to determine whether violations of these Rules have been committed, to accept offers of settlement, to set and impose appropriate penalties, and to exercise such other powers and duties as provided in Part 10 of these Rules governing disciplinary proceedings.

#### **205. Compliance Department.**

- (a) The Facility has the power and authority to regulate its facilities to ensure that the facilities are not used for any improper purpose and to establish and enforce rules and procedures to ensure fair and equitable trading through its facilities.
- (b) The Facility shall be authorized to conduct and to oversee surveillance, investigation and rule enforcement activities. The Chief Compliance Officer shall be in charge of the Compliance Department. The personnel of the Compliance Department may not operate under the direction or control of a Participant.
- (c) The Facility has contracted with the NFA for the performance of market, trade practice, financial, audit trail surveillance and related investigations and disciplinary proceedings with respect to Participants.

#### **206. Prohibition on Admission as Participant.**

No officer or employee of the Facility shall be admitted as a Participant; *provided however*, nothing in this rule limits or precludes an Execution Specialist from carrying out his or her functions.



**207. Restrictions on Directors, Officers, Committee Members, Employees and Consultants.**

Members of the Board of the Facility, officers of the Facility, members of committees of the Facility, employees of the Facility, members of the Board of Directors, officers, and employees of any corporate affiliate of the Facility performing functions for the Facility, and consultants and contractors to the Facility and their employees shall comply with the following restrictions and obligations:

- (a) **Improper Use or Disclosure of Material Non-Public Information.** No member of the Board of Directors or of any Board committee, no member of any other committee of the Facility, no officer of the Facility, no employee of the Facility, no member of the Board of Directors, officer or any employee of any corporate affiliate of the Facility performing functions for the Facility and no consultant to the Facility shall:
  - (i) trade for such person's own account, or for or on behalf of any other account, in any commodity interest on the basis of any material, non-public information obtained through the performance of such person's official duties; or
  - (ii) use or disclose, for any purpose other than the performance of such person's official duties, any material, non-public information obtained by such person as a result of such person's official duties, provided, however, that this Section shall not prohibit disclosures made by such person in the course of his or her official duties or disclosures made to any other self-regulatory organization, a court of competent jurisdiction or any agency or department of the federal or state government.
- (b) **Restrictions on Trading by Officers and Employees.** No employee or officer of the Facility, or of any corporate affiliate, may trade, directly or indirectly in:
  - (i) Any commodity interest traded on or cleared by the Facility;
  - (ii) Any related commodity interest;
  - (iii) A commodity interest traded on contract markets or swap executions facilities or cleared by derivative clearing organizations other than the Facility if the person has access to material, non-public information concerning such commodity interest; or
  - (iv) A commodity interest traded on or cleared by a linked exchanged if the person has access to material, non-public information concerning such commodity interest.
- (c) **Eligibility for Service on Boards and Committees.**
  - (i) A person shall be ineligible to serve on the Board of Directors, a disciplinary committee, arbitration panel or, oversight panel who:

- (A) Was found within the prior three years by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the Commission to have committed a disciplinary offense;
  - (B) Entered into a settlement agreement within the prior three years in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense;
  - (C) Currently is suspended from trading on any contract market, is suspended or expelled from membership with any self-regulatory organization, is serving any sentence of probation or owes any portion of a fine imposed pursuant to either:
    - (1) A finding by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the Commission that such person committed a disciplinary offense; or,
    - (2) A settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense.
  - (D) Currently is subject to an agreement with the Commission or any self-regulatory organization not to apply for registration with the Commission or membership in any self-regulatory organization;
  - (E) Currently is subject to or has had imposed on him within the prior three years a Commission registration revocation or suspension in any capacity for any reason, or has been convicted within the prior three years of any of the felonies listed in section 8a(2)(D) (ii) through (iv) of the Act;
  - (F) Currently is subject to a denial, suspension or disqualification from serving on the disciplinary committee, arbitration panel or governing board of any self-regulatory organization as that term is defined in section 3(a)(26) of the Securities Exchange Act of 1934.
- (ii) Any person who is a member of the Board of the Facility or any committee of the Facility shall immediately notify the Chief Executive Officer of any information or occurrence which subjects such person to disqualification pursuant to paragraph (i) of this section.

**(d) Restrictions on Participation on Board and Committees.**

- (i) no person shall vote, participate in deliberations or take any action involving the regulatory functions of the Facility as a member of the Board of Directors of the Facility or any committee of the Facility on any matter involving a Named Party in Interest if such member:

- (A) is a Named Party in Interest as defined in Rule 209(a)(iv);
  - (B) is associated with a named party in interest through a “broker association” as defined in Commission Rule 156.1;
  - (C) is an employer, employee, or fellow employee of a Named Party in Interest;
  - (D) has any other significant, ongoing business relationship with a Named Party in Interest; including but not limited to, employment with or acting as a Director of an entity that either:
    - (1) employs, directly or indirectly through ownership or control, the Named Party in Interest, or
    - (2) is owned or controlled, directly or indirectly, by the Named Party in Interest; or
  - (E) has a family relationship as defined in Rule 209(a) with a Named Party in Interest.
- (ii) prior to the consideration of any matter involving a Named Party in Interest, each member of the Board of Directors of the Facility or a committee (as the case may be) must disclose to the Chief Compliance Officer of the Facility, whether he or she has one of the relationships listed in paragraph (d)(i) of this section with a Named Party in Interest. The Chief Compliance Officer shall determine whether any such member of the Board of Directors or the committee is subject to the restrictions set forth in paragraph (d)(i) in any matter involving a Named Party in Interest, which determination, taking into consideration the exigency of the action to be taken, shall be based upon:
- (A) information provided by such member pursuant to this paragraph (d)(ii); and
  - (B) any other source of information that is held by and reasonably available to the Facility.
- (iii) no person shall vote or participate in deliberations on any Significant Action as a member of the Board of Directors of the Facility or any committee of the Facility if such member knowingly has a material conflict of interest, including but not limited to having a direct and substantial financial interest in the result of the vote based upon positions maintained at the Facility or elsewhere that could reasonably be expected to be affected by the action .
- (iv) prior to the consideration of any Significant Action, each member of the Board of Directors of the Facility or a committee of the Facility (as the case may be) must disclose to the Chief Compliance Officer, the following

information that is known to him or her, unless such member chooses to abstain from deliberations and voting on the Significant Action in question:

- (A) gross positions, if any, held at the Facility in such member's personal accounts or "controlled accounts," as defined in Section 1.30(j) of the regulations of the Commission;
  - (B) gross positions, if any, held at the Facility in "proprietary accounts," as defined in Section 1.17(b)(3) of the regulations of the Commodity Futures Trading Commission, at such member's affiliated firm;
  - (C) gross positions, if any, held at the Facility in accounts in which such member is a "principal," as defined in Section 3.1(a) of the regulations of the Commodity Futures Trading Commission;
  - (D) net positions held at the Facility in "customer" accounts, as defined in Section 1.17(b)(2) of the regulations of the Commodity Futures Trading Commission, at such member's affiliated firm; and
  - (E) any other types of positions, whether maintained at the Facility or elsewhere, held in such member's personal accounts or the proprietary accounts of such member's affiliated firm that the Facility reasonably expects could be affected by the Significant Action.
- (v) the Chief Compliance Officer shall determine whether a member of the Board of Directors or a committee is subject to the restrictions contained in this paragraph (d) in any Significant Action after a review of the information described in paragraph (d)(iv) above. Taking into consideration the exigency of the Significant Action, such determination should be based upon:
- (A) the most recent large trader reports and clearing records available to the Facility;
  - (B) information provided by the member pursuant to paragraph (d)(ii) above; and
  - (C) any other source of information that is held by and is reasonably available to the Facility.
- (vi) any member of the Board of Directors of the Facility or any committee who would otherwise be required to abstain from deliberations pursuant to this paragraph (i) of this subsection may participate in deliberations, prior to a vote on a Significant Action for which he or she otherwise would be required to abstain pursuant to paragraph (iii) of this subsection, if in the judgment of

the deliberating body such participation would be consistent with the public interest and if such member recues himself or herself from voting on such action. In making a determination as to whether to permit such member to participate in such deliberations, the deliberating body shall consider whether the member's participation in deliberations is necessary for the deliberating body to achieve a quorum and whether the member has unique or special expertise, knowledge or experience in the matter under consideration. Prior to making any such determination, the deliberating body must fully consider the position information which is the basis for the member's direct and substantial financial interest in the result of a vote on a Significant Action.

- (vii) the Board of Directors of the Facility and each committee of the Facility must reflect in their minutes or otherwise document that the conflicts determination procedures required by paragraphs (ii) and (iv) of this section have been followed. Such records also must include:
  - (A) the names of all members who attended the meeting in person or who otherwise were present by electronic means;
  - (B) the name of any member who voluntarily recused himself or herself or was required to abstain from deliberations and/or voting on a matter and the reason for the recusal or abstention, if stated; and
  - (C) information on the position information that was reviewed for each member.
- (e) **Seconded personnel.** An employee seconded to the Facility shall cooperate with any request for information or documents in any investigation or inquiry by a Governmental Agency relating to the business or operation of the Facility.

**208. Reserved.**

**209. Conflicts of Interest.**

- (a) *Definitions.* For purposes of this Rule 209, the following definitions shall apply:
  - (i) the term "family relationship of a Person" shall mean such Person's spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.
  - (ii) the term "Board" shall mean the Board, and any committee thereof duly authorized to take action or to recommend the taking of action on behalf of the Facility.

- (iii) the term “member’s affiliated firm” shall mean a firm in which a member of the relevant deliberating body is an employee or a “principal”, as defined in Commission Regulation 3.1(a).
- (iv) the term “named party in interest” shall mean a “named party in interest” as defined in Section 1.69 of the Commission Regulations..
- (v) the term “significant action” shall mean any of the following types of actions or rule changes that are implemented without the Commission’s prior approval:
  - (A) Any actions or Rule of the Facility changes which address an “Emergency”, as defined in Rule 1204; and
  - (B) Any changes in margin levels that are (i) designed to respond to extraordinary market conditions, such as an actual or attempted squeeze or corner or congestion due to undue position concentration or (ii) otherwise likely to have a substantial effect on prices in any Swap.

(b) Named Party in Interest Conflict.

- (i) *Prohibition.* No Officer, Chief Compliance Officer or member of the Board or any standing committee shall participate in such body’s deliberations or voting in any matter involving a named party in interest where such person
  - (A) is a named party in interest, (B) is an employer, employee or fellow employee of a named party in interest, (C) is associated with a named party in interest through a broker association, (D) has a family relationship with a named party in interest or (E) has any other significant, ongoing business relationship with a named party in interest, excluding relationships limited to executing Swaps opposite each other or to clearing Swaps through the same Clearing Participant.
- (ii) *Recusal.* Where the Chief Compliance Officer has or believes that he or she may have one of the relationships listed in this Rule with a named party in interest, or where the Chief Compliance Officer has or believes that he or she may have any personal, professional or familial relationships with respect to any person or entity, who is likely to be materially affected by any significant action on which the Chief Compliance Officer would participate in deliberations or decision making, the Chief Compliance Officer shall recuse himself or herself from the matter giving rise to the conflict and the Board shall appoint an individual meeting all the requirements of a Chief Compliance Officer to serve as Chief Compliance Officer for the specific matter giving rise to the conflict.

- (iii) *Disclosure.* Prior to consideration of any matter involving a named party in interest, each member of the deliberating body shall disclose to the Chief Executive Officer, or his or her designee, whether such member has or believes that he or she may have one of the relationships listed in paragraph (b)(i) of this Rule 209 with a named party in interest.
  - (iv) *Procedure and Determination.* The Chief Executive Officer, or his or her designee, shall determine whether any member of the relevant deliberating body is subject to a conflicts restriction under this paragraph (b). Such determination shall be based upon a review of the following information:
    - (A) information provided by such member pursuant to clause (iii) above and any additional information requested by the Chief Executive Officer or his or her designee; and
    - (B) any other source of information that is held by and reasonably available to the self-regulatory organization.
- (c) **Financial Interest in a Significant Action Conflict.**
- (i) *Prohibition.* No Officer, Chief Compliance Officer or member of the Board or any standing committee shall participate in such body's deliberations and voting on any significant action if such person knows or reasonably should know that he or she has a direct or indirect substantial financial interest in the result of the vote based upon either Facility or non-Facility positions that could reasonably be expected to be affected by the significant action under consideration, as determined pursuant to this paragraph (c).
  - (ii) *Procedure for Determination.* The Facility shall follow the following procedure for determining whether any member of its governing board, disciplinary committees or oversight committees is subject to a conflicts restriction under this section in any significant action. Such a member shall seek the review of the Chief Compliance Officer, whose determination must include a review of:
    - (A) Gross positions held at the Facility in the member's personal accounts or "controlled accounts," as defined in Commission Rule 1.3(j);
    - (B) Gross positions held at the Facility in proprietary accounts, as defined in Commission Rule 1.17(b)(3), at the member's affiliated firm;
    - (C) Gross positions held at the Facility in accounts in which the member is a principal, as defined in Commission Rule 3.1(a);

- (D) Net positions held at the Facility in “customer” accounts, as defined in Commission Rule 1.17(b)(2), at the member’s affiliated firm; and,
  - (E) Any other types of positions, whether maintained at the Facility or elsewhere, held in the member’s personal accounts or the proprietary accounts of the member’s affiliated firm that the Facility reasonably expects could be affected by the significant action.
- (iii) *Procedure and Determination.* The Chief Compliance Officer shall determine whether any member of the relevant deliberating body is subject to a conflicts restriction under this paragraph (c) based upon a review of the most recent large trader reports and clearing records available to the Facility, information provided by such member with respect to positions pursuant to clause (ii) above and any other source of information that is held by and reasonably available to the Facility, taking into consideration the exigency of the significant action being contemplated.
- (iv) *Deliberation Exemption.* Any Officer, member of the Board, a “disciplinary committee” or “oversight panel” (both as defined in Commission Regulation 1.69) who would otherwise be required to abstain from deliberations and voting pursuant to this paragraph (c) (excluding the Chief Compliance Officer) may participate in deliberations, but not voting, if the deliberating body, after considering the factors specified below, determines that such participation would be consistent with the public interest, provided, however, that before reaching any such determination, the deliberating body shall fully consider the position information specified in clause (ii) above which is the basis for such member’s substantial financial interest in the significant action that is being contemplated. In making its determination, the deliberating body shall consider:
- (A) whether such member’s participation in deliberations is necessary to achieve a quorum; and
  - (B) whether such member has unique or special expertise, knowledge or experience in the matter being considered.
- (d) *Documentation.* The minutes of any meeting to which the conflicts determination procedures set forth in this Rule apply shall reflect the following information:
- (i) the names of all members of the relevant deliberating body who attended such meeting in person or who otherwise were present by electronic means;



- (ii) the name of any member of the relevant deliberating body who voluntarily recused himself or herself or was required to abstain from deliberations or voting on a matter and the reason for the recusal or abstention, if stated; and
- (iii) information on the position information that was reviewed for each member of the relevant deliberating body.

#### **210. Chief Compliance Officer**

- (a) The Chief Executive Officer shall appoint the Chief Compliance Officer to whom the Chief Compliance Office shall report. The Chief Compliance Officer shall meet with the Board of Directors at least annually and with the Regulatory Oversight Committee at least quarterly. The Chief Compliance Officer may only be removed by the vote of a majority of the Board of Directors.
- (b) The Chief Compliance Officer shall carry out the following duties:
  - (i) Oversee and review the Facility's compliance with section 5h of the Act and Commission Rules thereunder;
  - (ii) resolve any conflicts of interest that may arise, in consultation with the Board of Directors or the Senior Executive Officer, including:
    - (A) conflicts between business considerations and compliance requirements;
    - (B) conflicts between business considerations and the requirement that the Facility provide fair, open, and impartial access as provided in Commission Rule 37.202; and
    - (C) conflicts between the Facility's management and members of the Board of Directors;
  - (iii) establish and administer written policies and procedures reasonably designed to prevent violations of the Act and Commission Rules;
  - (iv) take reasonable steps to ensure compliance with the Act and Commission Rules;
  - (v) establish procedures for the remediation of noncompliance issues identified by the Chief Compliance Officer through a compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint;
  - (vi) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues;

- (vii) establish and administer a compliance manual designed to promote compliance with Applicable Laws, rules, and regulations and a written code of ethics designed to prevent ethical violations and to promote honesty and ethical conduct;
- (viii) supervise the Facility's self-regulatory program with respect to trade practice surveillance, market surveillance, real-time market monitoring, compliance with audit trail requirements, disciplinary proceedings, audits, examinations, and other regulatory responsibilities with respect to Participants (including ensuring compliance with, if applicable, financial integrity, financial reporting, sales practice, recordkeeping, and other requirements), the effectiveness and sufficiency of services provided by the Regulatory Services Provider; and
- (ix) prepare and sign an annual compliance report.
  - (A) Such annual compliance report for the year since the end of the previous review period must contain the following information:
    - (1) description of the swap execution facility's written policies and procedures, including the code of ethics and conflict of interest policies;
    - (2) review of applicable Commission regulations and each subsection and core principle of section 5h of the Act, that, with respect to each identifies the policies and procedures that are designed to ensure compliance, provides a self- assessment as to the effectiveness of these policies and procedures, and discusses areas for improvement and recommends potential or prospective changes or improvements to its compliance program and resources;
    - (3) a list of any material changes to compliance policies and procedures since the last annual compliance report;
    - (4) a description of the financial, managerial, and operational resources set aside for compliance including a description of the Facility's self-regulatory program's staffing and structure, a catalogue of investigations and disciplinary actions taken since the last annual compliance report, and a review of the performance of disciplinary committees and panels; and
    - (5) a description of any material compliance matters, including noncompliance issues identified through a compliance office review, look-back, internal or external audit finding,

self-reported error, or validated complaint, and an explanation of how they were resolved.

- (B) The Chief Compliance Officer shall sign a certification that that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the annual compliance report is accurate and complete.
- (C) The Chief Compliance Officer shall submit the annual compliance report to the Board of Directors for its review and to the Commission within the time and manner specified by the Commission.

### **PART 3. PARTICIPANTS.**

#### **301. Status of Participants.**

- (a) Participants shall have the privileges, rights and obligations set forth in, or established pursuant to, these Rules.
- (b) Subject to the requirements and procedures set forth in this Part 3, Trading Privileges shall be offered to all Applicants from time to time approved by the Facility as eligible to be Participants, subject to any limitation, restriction or revocation from time to time imposed by the Facility. Trading Privileges are non-transferable, non-assignable and may not be sold or leased.
- (c) Any Person that is currently accepted as a customer of, and with trading privileges with, BGC Partners, Inc. or any of its wholly owned subsidiaries is admitted as a Participant of the Facility on the same basis as an Applicant under Rule 303, upon such Person:
  - (i) submitting a completed current customer Application;
  - (ii) representing to the Facility that it is an Eligible Contract Participant,
  - (iii) representing to the Facility that it is a current customer of BGC Partners, Inc. or any of its wholly-owned subsidiaries;
  - (iv) acknowledging to the Facility that it understands that by accessing, or entering any order into the Facility the Applicant agrees,
    - (A) to be bound by, and comply with, the rules of the Facility, and
    - (B) to be subject to the jurisdiction of the Facility with respect to all matters arising from its status, actions or omissions as a Participant of the Facility;

- (v) informing the Facility of any change in the Applicant's traders, which, in the absence of any such notice, shall be deemed to be Authorized Traders under Rule 306; and
- (vi) providing any additional information and documents that the Facility may request.

**302. Eligibility.**

- (a) Unless otherwise prohibited by these Rules, any Person is eligible to become a Participant, provided that such Person meets the following standards:
  - (i) the Applicant satisfies the definition of Eligible Contract Participant;
  - (ii) if a natural person, the Applicant shall have attained the age of majority and shall be of good character;
  - (iii) if an Entity, the Applicant shall be duly organized, existing and in good standing under the laws of its jurisdiction of organization;
  - (iv) the Applicant shall have good commercial standing and business experience;
  - (v) the Applicant shall have adequate financial resources and credit as reasonably determined by the Facility;
  - (vi) the Applicant shall, where relevant, be registered, licensed or otherwise permitted by the appropriate Governmental Agency to conduct business on the Trading System or subject to the rules of the Facility;
  - (vii) the Applicant shall have such operational capabilities (including without limitation such hardware, software, communications systems and staffing) as the Facility may from time to time determine is appropriate in view of such Person's anticipated type and level of activity on the Trading System or subject to the rules of the Facility;
  - (viii) the Applicant shall meet any other criteria that the Facility may from time to time prescribe.

**303. Application Procedures.**

- (a) Except as provided under Rule 301(c), every Person applying to become a Participant shall complete an application on a form prescribed by the Facility and shall file it with the Facility with any documents that the Facility requires.
- (b) An Applicant must name in its application for admission a natural person who will be authorized to represent it. An Applicant must name at least one natural person who, if

approved by the Facility, will be an Authorized Trader. An Applicant who is a natural person shall be considered by the Facility to be both the representative and the Authorized Trader.

- (c) The Applicant must designate at least one senior officer who is responsible for supervising all activities of its employees relating to transactions effected on the Trading System or subject to the Facility's Rules and advise the Facility of the name, title, and address for the senior officer, phone number, fax number and e-mail address of each such officer;
- (d) An Applicant shall:
  - (i) agree to abide by the Rules of the Facility and adhere to Applicable Law; and
  - (ii) consent to the jurisdiction of the Facility in all matters arising under the Rules.
- (e) Every Applicant and all Persons associated with the Applicant may be investigated by the Facility. The Applicant shall file with the Facility any additional information and documents as the Facility, or any individual, corporation, Facility or association authorized by the Facility to act on its behalf, may request.
- (f) Upon completion of the application process, the Facility shall consider and then approve or reject the application for admission, unless there is just cause for delay. Applicants who are natural persons as well as holders of a significant interest in and/or senior management of Applicant Entities may be required to appear in person before the Facility. The Facility may also require any Participant, significant shareholder or manager associated with a Participant who may possess information relevant to the Applicant's suitability for membership to provide additional information.
- (g) The Facility shall approve an application for admission if it finds that the Applicant meets all of the qualifications to become a Participant. The Facility shall reject an application for admission if it does not make such a finding or if it finds that, if the application were approved, the Participant would be subject to suspension or expulsion under the provisions of these Rules or Applicable Law, including, without limitation, the Commodity Exchange Act.
- (h) Written notice of the action of the Facility, specifying in the case of rejection of an application the grounds therefore, shall be given promptly to the Applicant.

#### **304. Denial of Admission.**

- (a) The Facility may deny the application of any Person (or a Person associated with the Applicant) to become a Participant if the Person:

- (i) does not meet one or more of the standards of eligibility set forth in Rule 302 or does not follow the procedures to apply for admission set forth in these Rules or established by the Facility;
  - (ii) has been convicted of any felony or misdemeanor involving, arising from, or related to, the purchase or sale of any Commodity, security, futures contract, option or other financial instrument, or involving or arising from fraud or moral turpitude, or is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction or any Governmental Agency from engaging in or continuing any conduct or practice in connection with the purchase or sale of any Commodity, security, futures contract, option or other financial instrument, or is or has been subject to an order of the Commission denying the Person trading privileges on or subject to the rules of any registered entity;
  - (iii) has had any fine, cease and desist order, denial of trading privileges, censure or other discipline (whether through an adverse determination, voluntary settlement or otherwise) imposed on such Person by any Governmental Agency;
  - (iv) has ever been expelled from, suspended by or subject to any other disciplinary action (whether through an adverse determination, voluntary settlement or otherwise) imposed on such person by any SRO;
  - (v) is subject to any material unsatisfied judgments, the enforcement of which has not been stayed by a court of competent jurisdiction;
  - (vi) has made any false or misleading statement in or in connection with any application filed with the Facility;
  - (vii) is subject to a statutory disqualification as defined in Section 8(a)(2) of the Commodity Exchange Act;
  - (viii) is subject to a statutory disqualification as defined in the Securities Exchange Act; or
  - (ix) if, under all of the circumstances, the Facility in its discretion determines that admitting the Person as a Participant would not be in the best interests of the Facility and the denial is otherwise consistent with the Facility's obligations under the Act.
- (b) In the event that an application for membership is denied by the Facility, the Applicant shall have an opportunity to be heard upon the specific grounds for the denial. An Applicant denied membership may challenge the denial by filing with the Secretary a petition for review of the denial by the Facility's Appeals Committee. The petition shall be filed within thirty calendar days of the date upon which the Facility's decision

was mailed to the Applicant. Hearings shall be conducted in a manner that will give the Person an opportunity to present fully and fairly to the Facility the Person's reasons why the application should be granted.

**305. Admission as a Participant.**

- (a) In the event that the Facility grants the application for admission of any Person to become a Participant (or at any time prior thereto), the Person shall, within such time as the Facility may specify, take the following actions:
  - (i) unless the Applicant is itself a Clearing Participant, declare on a form prescribed by the Facility that it has in effect an agreement with a Clearing Participant to clear the Applicant's transactions;
  - (ii) file such other documents and take such other actions as the Facility may prescribe; and
  - (iii) establish and maintain a working connection with the Trading System in accordance with such procedures and protocols as the Facility may have in effect from time to time.
- (b) Upon completing such actions, such Person shall become a Participant, with all of the rights, privileges and obligations set forth in, or established pursuant to the Rules; and
  - (i) the Facility shall notify the Person of the effective date and time of becoming a Participant and of the Participant ID and, in the case of a Clearing Participant, the Clearing Participant ID;
  - (ii) if the Person does not complete the actions specified in paragraph (a) within the time specified by the Facility, then unless the Facility extends the time, the Person shall be deemed to have withdrawn the application to become a Participant.

**306. Sponsored Participants, Brokers and Customers.**

- (a) Authorized Traders.
  - (i) Each Participant, Authorized Customer or Broker that is not a natural Person shall appoint one or more persons to act as an Authorized Trader, and any such Authorized Trader shall be entitled to exercise Trading Privileges on behalf of the Participant, Authorized Customer or Broker subject to the terms and conditions of these Rules.
  - (ii) A Participant, Authorized Customer or Broker wishing to appoint an Authorized Trader shall notify the Facility and each Authorized Trader will consent to abide by the Rules of the Facility and Applicable Law prior to

accessing the Trading System. Each Authorized Trader must satisfy such requirements as may be prescribed by the Facility from time to time and shall be subject to the disciplinary authority of the Facility, including possible restriction or revocation of Trading Privileges.

- (iii) A Participant admitted under Rule 301(c), unless notifying the Facility otherwise, shall be deemed to appoint as its Authorized Traders on the Facility those Persons that were authorized to exercise Trading Privileges on BGC Broker, Inc. or its wholly-owned subsidiaries on its behalf.

(b) Brokers.

- (i) A Broker may exercise Trading Privileges on the Facility subject to the terms and conditions of these Rules by:
  - (A) completing and filing an application on a form prescribed by the Facility with any documents that the Facility requires;
  - (B) consenting to abide by the Rules of the Facility and Applicable Law prior to accessing the Trading System, and
  - (C) satisfying such requirements as may be prescribed by the Facility from time to time.
  - (D) Trading Privileges shall be offered to all Brokers whose application has been accepted by the Facility, and the Facility shall issue such a Broker a User ID and password or identifiers. A Broker that exercises Trading Privileges shall be subject to the disciplinary authority of the Facility, including possible restriction or revocation of Trading Privileges.
- (ii) A Broker shall not submit Orders, report Off-facility Transactions, or submit Block Trades to the Facility, except with approval from the relevant Participant's Authorized Trader on an Order-by-Order or transaction-by-transaction basis.
- (iii) A Participant may designate one or more Brokers to:
  - (A) conduct Off-facility Transactions;
  - (B) enter Bids, Offers or Orders into the Trading System on the Participant's behalf;
  - (C) assist in pre-discussion of trades as permitted under Rule 505; or
  - (D) assist in arranging Block Trades.



- (iv) A Participant shall designate one or more Brokers as authorized to act on the Participant's behalf by notifying the Facility in writing, or verbally with a writing to follow, that the Participant has authorized the Broker to act on the Participant's behalf. A Participant shall have no supervisory responsibility for the actions of a Broker in connection with the Broker's conduct relating to Off-facility Transactions or trading on or subject to the Rules of the Facility.
  - (v) Notwithstanding subparagraph (b)(iv) of this Rule, a Broker that is a corporate affiliate of the Facility, in each case such affiliated Broker having consented to abide by the Rules of the Facility and Applicable Law, shall be deemed by the Facility to be designated as the Participant's Broker upon the Participant's submission of Bids or Offers to the Facility or, as applicable, an Off-facility Transaction, via such affiliated Broker. A Broker acting as such for a Participant under this subparagraph (b)(v) need not be designated to act on behalf of the Participant through a separate writing as required in subparagraph (b)(iv).
- (c) Authorized Customers.
- (i) Each Participant may from time to time elect to sponsor access to the Facility by a Customer by providing a User ID to one or more of its Customers to enable any such Customer to access the Facility, including the Trading System directly, and any such Customer will become an "Authorized Customer" for purposes of these Rules, and shall be entitled to exercise Trading Privileges and to directly access the Facility, including the Trading System, subject to the following conditions.
  - (ii) Any Participant wishing to designate an Authorized Customer shall notify the Facility (and must satisfy the requirements listed below) and must obtain from each Authorized Customer an agreement, in the form specified by the Facility, pursuant to which, among other things, the Authorized Customer agrees to comply with the Rules of the Facility and Applicable Law. Each Authorized Customer must satisfy such requirements as may be prescribed by the Facility from time to time and shall be subject to the disciplinary authority of the Facility and possible restriction or revocation of Trading Privileges.
  - (iii) An Authorized Customer Account shall be carried in the name of the Participant.
  - (iv) An Authorized Customer must assure the clearing of all trades and positions for that account by providing to the Facility, in a form acceptable to the Facility, a representation that the Authorized Customer is a Clearing Participant or has a relationship with a Clearing Participant.

- (v) The Participant shall provide, or cause the Authorized Customer to provide, to the Control Desk such information as shall be requested pertaining to the Authorized Customer for which Trading System access is sought, including but not limited to, name, address, account number, birth date (or other acceptable identifier) or tax identification number for Persons other than individuals, any give-up information, email address and telephone numbers.
  - (vi) The Control Desk, once it is satisfied that all requested information has been provided, shall issue a User ID and password or identifiers for such Authorized Customer. The User ID shall not be authorized for trading through the Trading System until the Clearing Participant enters in the Facility risk administration terminal all required risk controls for such Authorized Customer or provides the Control desk with such data as required. The Facility will enable the User ID when it is satisfied in its sole discretion that all requirements have been met and risk controls have been utilized. Notwithstanding the foregoing, the Participant shall remain responsible in accordance with these Rules for the acts and omissions of any of its Authorized Customers, regardless of the level of risk controls set by the Clearing Participant and the approval of such risk controls by the Facility.
- (d) Customers.
- (i) Any Participant may enter a Swap under its own Participant ID for a Customer if the Participant:
    - (A) complies with any registration requirement that applies under Applicable Law, including all Customer on-boarding requirements and any applicable Commission Rules relating to the conduct of business by such Participant with a Customer;
    - (B) ensures that its Customer is an Eligible Contract Participant;
    - (C) assures the financial performance of all trades and positions for its account by providing to the Facility, in a form acceptable to the Facility, a representation that the Customer's positions are guaranteed by a Clearing Participant; and
    - (D) provides the Facility with any information necessary for reporting purposes.
- (e) Each Participant may at any time revoke an authorization granted by it to a Sponsored Participant or Broker by providing either written notice of such revocation, or verbal notice with written notice to follow, to the Facility and to the Sponsored Participant's Clearing Participant, if applicable. A Participant after such revocation shall take immediate measures:

- (i) to withdraw all resting Orders of the Sponsored Participant from the Trading System, or to request that the Facility delete such Orders;
  - (ii) to ensure that the revoked Sponsored Participant , where applicable, shall not have access to the Trading System or to Order execution subject to the rules of the Facility; and
  - (iii) to ensure that the revoked Sponsored Participant , where applicable, shall not utilize its User ID.
- (f) All trading-related provisions of these Rules shall apply to each Sponsored Participant (and their Authorized Traders), Brokers (and their Authorized Traders) and other Supervised Persons, and each Participant shall be responsible for the actions and omissions of each of its Authorized Traders, other Supervised Persons and Authorized Customers (who shall be responsible for the actions and omissions of their Authorized Traders). Each Participant will ensure on an ongoing basis that none of its Authorized Traders, other Supervised Persons and Authorized Customers is subject to statutory disqualification as defined by the Commodity Exchange Act (unless an appropriate exemption has been obtained with respect thereto).
- (g) Each Participant will ensure that each of its Authorized Traders, other Supervised Persons (as applicable) and Authorized Customers will be technically proficient in respect of the use of the Trading System. Each Participant shall have procedures for performing day-to-day monitoring of its Authorized Traders, other Supervised Persons and Authorized Customers to ensure that each will conduct its business in a fair and equitable manner and in accordance with the Rules of the Facility.
- (h) For purposes of these Rules, any reference to the Trading Privileges of a Participant shall also be deemed to refer and apply to the exercise of Trading Privileges by any of such Participant's Sponsored Participants and Trading Privileges of a Broker whether designated or deemed designated, shall be deemed to refer and to apply to the exercise of Trading Privileges by a Broker's Authorized Traders.
- (i) For purposes of these Rules, any reference to a Participant submitting or receiving Orders, Bids, Offers or Message Traffic into or from the Trading System or Facility or engaging in transactions in Swaps matched through the Trading System or an Off-facility Transaction reported to the Facility and executed subject to the Rules of the Facility, shall be deemed to also refer and apply to any such actions engaged in by any of such Participant's Sponsored Participants and the knowledge of, or matters known to, any Participant shall be deemed to also refer to and include the knowledge of, or matters known to, its Authorized Traders other Supervised Persons and Authorized Customers.

### **307. Payment of Facility Fees.**

The Facility, in its discretion and with reasonable written notice, may impose fees, charges and assessments upon Participants and Brokers. Participants, or as applicable, a Broker registered with the Commission, trading for a Participant, shall pay any fees, charges and assessments in a manner prescribed by the Facility on a timely basis. The Facility may suspend any Participant or impose other penalties pursuant to Part 10 for failure to pay any such fee, charge, or assessment on a timely basis.

### **308. Surveillance.**

The Facility has contracted with the NFA for the performance of market, trade practice, financial, and audit trail surveillance and related investigations and disciplinary proceedings with respect to Participants. The failure by any Person subject to the Facility's Rules to furnish any information requested by the entity that are related to the performance of these functions, as authorized by the Facility and acting on behalf of the Facility with respect to these functions, shall constitute a violation of these Rules. The Facility retains ultimate responsibility for the oversight of each Participant.

### **309. Market Data**

- (a) Subject to each Participant's rights in its Participant Data, the Facility owns all rights, title and interest in and to all intellectual property and other proprietary rights (including, without limitation, all copyright, patent, trademark or trade secret rights) in Market Data, and all derivative works based thereon. No Person including but not limited to Participants, Sponsored Participants, Brokers, employees, agents, vendors and other Persons affiliated with any of the foregoing may use (except that each Participant, Sponsored Participant and Broker may use solely internally for the purposes of the Participant executing Swap transactions on the Trading System), or distribute, sell or retransmit Market Data to any third party without the consent of the Facility, nor take any action contrary or detrimental to Facility's interest in the Market Data. Facility may at any time further restrict use of or access to or establish utilization fees in respect of Market Data.
- (b) For the avoidance of doubt and notwithstanding any provisions of Rule 309 or Rule 1208: (1) each Participant retains such proprietary interest in its Participant Data and no restrictions herein shall apply to Participant's use of such Participant Data or resulting executions by the Participant; and (2) no restrictions herein shall apply to Facility's use or disclosure either for the purpose of fulfilling the Facility's regulatory obligations or as may be required by Applicable Law of any Participant Data or any data or information that has been collected or received

from any Participant or from its Sponsored Participant s, Broker, employees, agents, vendors or other Persons affiliated with any of the foregoing.

- (c) Unless a Participant provides written, notice to the General Counsel of the Facility, such writing may be electronic, the Facility may not use for business or marketing purposes Proprietary Data or Personal Information that has been collected or received from such Participant or from any of its Sponsored Participant s, Brokers, employees, agents, vendors and their Affiliates and other Persons affiliated with any of the foregoing for the purpose of fulfilling the Facility's regulatory obligations. *Provided however*, the Facility may share such Proprietary Data or Personal Information with one or more registered entities (as such term is defined in Commission Regulations) where necessary for regulatory purposes. Access to the Facility will not be conditioned upon the consent to use such Proprietary Data or Personal Information for business or marketing purposes and no Person shall be denied access to the Facility as a consequence of refusal to submitting such notice to the Facility.
- (d) For the avoidance of doubt, nothing herein restricts use, distribution, sublicense, disclosure or sale, in any manner, media or jurisdiction and each Participant, Sponsored Participant and Broker on behalf of itself and its Affiliates and other Persons affiliated with any of the foregoing hereby grants the Facility a non- exclusive, perpetual, freely transferable, irrevocable, worldwide and royalty-free license to use, distribute, sublicense, disclose and sell, in any manner, media and jurisdiction (in each case, for the benefit of the Facility and/or its Affiliates) Participant Data on an aggregated basis without directly or indirectly identifying any Participant.

### **310. Recording of Conversations.**

Participants, Sponsored Participant s and Brokers acknowledge and consent to the Facility's right and power to record conversations between employees, officers and agents of the Facility and Participants, Sponsored Participant s and Brokers and, their employees, officers and agents, to the extent permitted by Applicable Law. Participants, Sponsored Participant s and Brokers shall inform their employees and agents of the Facility's right and power to record conversations and shall obtain their consent thereto. The Facility shall retain any such recordings under the terms and conditions the Facility may prescribe from time to time.

### **311. Termination of Participation.**

- (a) The participation of any Person may be terminated at any time by the Facility pursuant to Part 10 of the Rules; or the participation of a Participant may be terminated if the Facility shall determine, after reasonable notice and an opportunity to be heard, that

such Participant no longer meets any one or more of the eligibility standards set forth in Rule 302; *provided however*, nothing in this section shall limit the Facility's right to summarily suspend any Person having Trading Privileges under Rule 1015(a).

- (b) A Participant may terminate voluntarily its status upon written notice to the Facility, specifying the effective date of termination, which shall be (A) not less than 30 days following the date of giving of such notice or (B) such other date as may be approved by the Facility. Notwithstanding the 30 day notification period, a Participant may voluntarily suspend its Participant status immediately upon notice to the Facility and cessation of trading activities. The Participant shall incur no new liability during the period of its voluntary suspension.
- (c) Notwithstanding any termination of its membership, a Participant shall remain subject to the jurisdiction of the Facility after the effective date of termination with respect to any investigation or proceeding against the Person pursuant to Part 10 of the Rules or any claim in arbitration filed against the Person pursuant to Part 11 of the Rules that is commenced by the Facility within two years of the effective date of termination.
- (d) Any Participant whose participation has been terminated shall immediately notify the Facility of any change in its address as most recently reported to the Facility for a period of one year following the effective date of termination.

### **312. Market Maker Program.**

The Facility, in order to provide liquidity and orderliness in a market, may adopt a program granting one or more Participants, designated as Liquidity Providers, benefits in return for assuming and adequately performing obligations. Any such program may contain:

- (a) The qualifications to become a Liquidity Provider, including without limitation any minimum net capital requirements;
- (b) The procedure by which a Participant may seek and receive designation as a Liquidity Provider;
- (c) The obligations of a Liquidity Provider, including without limitation, maximum Bid/Offer spread and minimum quote size; and/or
- (d) The benefits accruing to a Liquidity Provider, including without limitation, reduced transaction fees and or the receipt of compensatory payments from the Facility.

### **313. Independent Software Vendor**

- (a) An independent software vendor ("ISV") may apply to connect to the Facility, and shall be permitted to do so by the Facility, provided that the ISV meets the following criteria initially and on a continuing basis:

- (i) the ISV applies for connection privileges on a form prescribed by the Facility and provides such supporting documentation as required by the Facility;
  - (ii) the ISV satisfies the definition of Eligible Contract Participant;
  - (iii) the ISV shall be duly organized, existing and in good standing under the laws of its jurisdiction of organization;
  - (iv) the ISV shall have good commercial standing and business experience;
  - (v) the ISV shall have adequate financial resources and credit as reasonably determined by the Facility;
  - (vi) the ISV shall, where relevant, be registered, licensed or otherwise permitted to do business as an ISV;
  - (vii) the ISV shall have such operational capabilities (including without limitation such hardware, software, communications systems and staffing) as the Facility may from time to time determine is appropriate in view of such ISV's anticipated activities;
  - (viii) the ISV shall meet any other criteria that the Facility may from time to time prescribe.
- (b) An ISV that is connected to the Facility must pay fees as provided under the conditions set forth in Rule 307. Comparable fees shall be set forth for comparable access to, or services from, the Facility.
- (c) For the avoidance of doubt, any Person directly accessing the Facility through an ISV must have been granted Trading Privileges on the Facility under Rule 305 or Rule 306.

## **PART 4. OBLIGATIONS OF PARTICIPANTS.**

### **401. Non-U.S. Participants.**

Any non-U.S. Participant that is not registered with the Commission as a Swap Dealer, Futures Commission Merchant or Introducing Broker must provide the Facility in the form and manner specified the true name, address and occupation of any Customer executing Swaps through the non-U.S. Participant; provided, however, this requirement shall not apply if the positions of the non-U.S. Participant's customers are maintained in or carried by a Broker on a fully-disclosed basis.

### **402. Notification.**

Each Participant shall notify the Facility in writing as soon as reasonably practical (but in no event later than 21 days) after becoming aware of any of the following events:

- (a) Any refusal of admission to, or involuntary withdrawal of any membership or Clearing membership in any SRO;
- (b) Any expulsion, suspension or fine in excess of \$100,000 (whether through an adverse determination, voluntary settlement or otherwise) imposed by any SRO related to trading activities on the Facility or to products listed for trading on the Facility;
- (c) Any denial or withdrawal of any application for any registration or license by or from any Governmental Agency and any revocation, suspension, or conditioning of any registration or license granted by any Governmental Agency which is related to trading activities on the Facility or to products listed for trading on the Facility to trading activities or to products listed for trading on the Facility;
- (d) Any fine, in excess of \$100,000, significant cease and desist order, denial of trading privileges, censure or other significant sanction or discipline (whether through an adverse determination, voluntary settlement or otherwise) imposed by any Governmental Agency or SRO with respect to activity subject to the rules of any swap execution facility;
- (e) Any indictment of the Participant or any of its senior officers for any conviction of the Participant or any of its senior officers of, any confession of guilt or plea of guilty or *nolo contendere* by the Participant or any of its senior officers to any felony or misdemeanor involving, arising from, or related to the purchase or sale of any Commodity, security, futures contract, option or other financial instrument or involving or arising from fraud or moral turpitude;
- (f) Commencement of any judicial or administrative proceeding against the Participant by any Governmental Agency related to trading activities on the Facility or to products listed for trading on the Facility which could reasonably be expected to result in the disqualification of a Participant;
- (g) Commencement by or against the Participant of a case in bankruptcy or of any other action or proceeding to liquidate, reorganize or restructure the Participant pursuant to any applicable provision of law, federal or state, domestic or foreign;
- (h) Any damage to or failure or inadequacy of the systems, facilities or equipment of the Participant which might materially and adversely affect the ability of the Participant to effect transactions on the Facility or subject to the Rules; to comply with the Rules; in the case of a Clearing Participant, to clear transactions effected on the Facility or subject to the Rules; or to timely perform its regulatory or financial obligations under or in connection with transactions effected on the Facility or subject to the Rules;
- (i) Any other material change in any information contained in the application for admission as a Participant, and



- (j) Any failure to maintain segregated funds as required by the Commission where the Participant is a Clearing Participant or a Futures Commission Merchant.

#### **403. Record-keeping and Reporting Requirements.**

Each Participant shall make and file reports relating to the Facility in accordance with (and in the manner and form and at such times as may be prescribed by) Commission Regulations.

- (a) **Commission Reporting Requirement for Swaps.** The Facility will report each Transaction to a swap data repository chosen by the Facility as soon as technologically practicable after execution. The Reporting Party for each Swap executed on or subject to the Rules shall be established pursuant to CFTC Regulation 45.8. If both counterparties to a Swap executed pursuant to the Rules are equal in the hierarchy (for example, both are swap dealers), the Reporting Party for such Swap shall be determined as follows:
  - (i) For Credit Default Swaps, the Floating Rate Payer (the “seller”) and for swaptions, the seller of the underlying Swap;
  - (ii) For Interest Rate Swaps, the Fixed Rate Payer when a single Fixed Rate Payer exists, otherwise the party with the first swap identifier when sorted in reverse ASCII sort order, using the LEI identifier, DTCC ID, AVOX ID, and no identifier, ranked in that order, and for swaptions, the option buyer;
  - (iii) For Equity Swaps and for swaptions, the seller;
  - (iv) For Commodity Swaps the seller and for swaptions, the premium receiver; or
  - (v) For FX Swaps, the seller of the currency that occurs first in the English alphabet; for options, the seller.
- (b) **Reporting of Errors.** Any errors or omissions in swap transaction and pricing data (except for the cancellation of trades and price adjustments made under the provisions of and subject to the procedures of Rule 515) that were publicly disseminated in real-time shall be corrected as follows.
  - (i) If a party to the Swap becomes aware of an error or omission in the Swap transaction and pricing data reported with respect to such swap, such party shall promptly notify the other party of the error and/or correction.
  - (ii) If a Reporting Party to a swap itself becomes aware of an error or omission in the swap transaction or pricing data which the Facility reported to a SDR, or such error is reported to it by the other party, the Reporting Party shall promptly submit corrected data to the Facility in writing, such writing may be electronic, in the form and manner specified by the Facility.

- (iii) The Facility shall promptly submit corrected data to the SDR to which the transaction and pricing data was first reported for those errors of which the Facility becomes aware or that are reported to it.
  - (iv) No Participant shall submit or agree to submit a cancellation or correction to the Facility for the purpose of re-reporting Swap transaction and pricing data in order to gain or extend a delay in public dissemination of accurate swap transaction or pricing data or to otherwise evade this reporting requirement.
- (c) **Commission Record-keeping Requirements.** Each Participant, Sponsored Participant or Customer shall keep all records relating to the Facility that are required by the Commission and Applicable Law to be kept, in such form and manner and for such period, as required by Commission Rule and Applicable Law, including but not limited to records by a Participant, Sponsored Participant or Customer of its trading, including records of its activity in the index or instrument used as a reference price, the underlying commodity, and related derivatives markets, and make such records available, upon request, to the Facility or, if applicable, its Regulatory Services Provider, and the Commission.
- (d) **Facility Reporting Requirements.** Each Participant shall make and file reports with the Facility at the times, in the form, and containing such information relating to the Facility as the Facility may prescribe from time to time.
- (e) **Facility Record-keeping Requirements.** (i) Each Participant and as applicable, Broker, shall make such records relating to orders received, transactions effected and positions carried relating to the Facility, and shall maintain such records in such form and manner and for such time, as required by Commission Rule and Applicable Law. Such records shall at all times be open to inspection by the Facility upon reasonable prior notice and subject to Participant's reasonable security policies. Such reasonable security policies may include a requirement that inspections be conducted by authorized personnel acting within the scope of their authority, that inspection be carried out on premise, that the inspection be on systems provided by the Participant, and that the inspecting personnel keep a record of all documents inspected and provide such record to Participant.
- (ii) **Audit trail Records.** Each Participant and as applicable, Broker, shall make and retain all audit trail records. Such records shall include, but are not be limited to, user IDs, records of customer order information (whether filled, unfilled or cancelled), account identifiers that relate the account to the account owner, time of Order entry, all Orders, indications of interest, or request for quotes and customer-type-indicator codes.
- (f) **Responding to Information Requests.** (i) Each Participant, and as applicable, Broker, shall timely furnish the information relating to the Facility as may from time to time be requested by any representative of the Facility acting within the scope of the jurisdiction of the Facility and in the course of its, his or her duties, including the NFA

acting in its capacity as a regulatory services provider, except to the extent prohibited by Applicable Law. Any representative of the Facility, and the NFA, when engaged in the examination of any subject within the Facility's jurisdiction, has the power to summon and examine any Participant or Broker and any employee, officer, partner, or agent thereof in order to carry out the Facility's functions, except to the extent prohibited by Applicable Law. The representative of the Facility may require such individual to submit a sworn statement of his or her information.

(ii) The NFA, acting in its capacity as regulatory services provider to the Facility, from time-to-time shall review each Participant's and each Broker's compliance with the applicable recordkeeping and audit trail requirements of the Facility, including, but not limited to the requirements of this Rule 403, Rule 407, Rule 510, Rule 512 and Rule 603.

(g) **Employee Supervision and Training.** Each Participant shall reasonably supervise all activities of its employees relating to transactions effected on the Trading System or subject to these Rules. Without limiting the generality of the foregoing:

- (i) each Participant shall continue to have at all times at least one senior officer who is responsible for such supervision and shall promptly advise the Facility of any change in the name, title, address, phone number, fax number or e-mail address of each such officer;
- (ii) each Participant shall be responsible for training its employees regarding the requirements of these Rules, the Commodity Exchange Act, and Commission Regulations;
- (iii) each Participant shall furnish the Facility with the name, location, birth date (or other acceptable identifier) and User ID of each Authorized Trader;
- (iv) each Participant is responsible for ensuring that each of its Authorized Traders receives training regarding these Rules and in the operation and propose use of the Trading System.
- (v) The Facility reserves the right to refuse or revoke access to the Trading System of any Authorized Trader when such action would serve the best interests of the Facility, and to the extent practicable under the circumstances, will provide notice to the Participant prior to taking such action.

(h) **Rules Violations by Employees.** Any violation of the Rules by any employee of a Participant shall constitute a violation of the Rules by such Participant.

(i) **Responsibility for Swaps Entered Under Participant ID.** Each Participant shall be fully responsible for timely performance of all obligations under or in connection with any Swap or contract resulting from the entry of any order into the Trading System with

such Participant's Participant ID and any Swap otherwise resulting and reported to the Trading System with such ID.

- (j) **Order Entry Under Participant ID.** Each Participant shall be responsible for assigning and reporting of any message input mnemonic indicator that may be required by the Facility to be included with orders submitted to the Trading System for the entry of any order into the Trading System under such Participant's Participant ID.
- (k) **Maintenance of Eligibility for Trading.** Each Participant shall at all times continue to meet the standards of eligibility set forth in Rule 302 and not be subject to any of the grounds for denial of an application for admission as a Participant set forth in Rule 304.
- (l) **Maintenance of Financial Requirements.** Participants shall at all times maintain their financial resources at or in excess of the amount reasonably prescribed by the Facility from time to time in respect of the Participant's capacity at the Facility. Any Participant registered with the Commission or with the SEC must comply with the applicable financial requirements set forth by the Commission or SEC, respectively.
- (m) **Due Diligence in Handling Customer Orders.** Each Participant shall use due diligence in receiving and handling orders from their customers, entering such orders into the Trading System, responding to inquiries from customers about their orders and reporting back to customers the execution of such orders.
- (n) **Priority of Customer Order Entry.** Each Participant shall establish and enforce internal rules, procedures and controls to ensure, to the extent possible, that each order received from a customer which is executable at or near the market price is entered into the Trading System before any order having the same Tenor in the same Swap for:
  - (i) any Proprietary Account,
  - (ii) any other account in which any Affiliate of the Participant has an interest, or
  - (iii) any account for which the Participant, Affiliate, or an employee thereof may originate orders without the specific prior consent of the owner of the account, if such Participant, Affiliate or employee has gained knowledge of the customer's order prior to the entry of the orders specified in paragraphs (i)-(iii) above.

#### **404. Requirements for Persons Submitting Orders.**

- (a) Each Order submitted to the Trading System shall be submitted under the applicable User ID, and shall indicate the Clearing Organization to be used upon trading the order as provided under Part 8 of these Rules, along with clearing account numbers for the Futures Commission Merchant that has agreed to clear their trades, along with account numbers for allocation of accounts as permitted by the Trading System.

- (b) To qualify to receive one or more User IDs, the Person must be a Participant, Authorized Trader, Authorized Customer, or Broker and such Person shall meet all Facility mandated eligibility standards of Rule 302 and other requirements under the Rules. Each Participant, Authorized Customer or Broker shall be responsible for granting and/or authorizing the use of any User ID for Orders that are submitted using that Participant's or Authorized Customer's User ID and shall be responsible for all Orders entered, or other actions taken, through the use of its User IDs.
- (c) Each Participant, Authorized Trader, Authorized Customer, or Broker as applicable, shall provide in writing to the Facility, and keep current such information as the Facility may require concerning (i) itself, and (ii) in the case of a Participant, each of its Authorized Traders and Authorized Customers.
- (d) Each Participant or Authorized Customer, as applicable, shall provide in writing to the Facility upon request, such information as the Facility may reasonably require concerning each of its Supervised Persons, including but not limited to the identity of each such Supervised Person.
- (e) Any request that the Facility activate or deactivate a User ID shall be submitted in writing by a Designated Contact or Contacts of the relevant Person in the manner provided for by the Facility; provided that the consent of the Designated Contact of a Participant shall be required for the activation of the User ID of any of such Participant's Authorized Traders and Authorized Customers. The Designated Contact of any Participant shall have the right to activate or deactivate the User ID of any of such Participant's Authorized Traders or Authorized Customers. The Facility shall have no liability for any action or inaction due to its good faith reliance upon a written request or for any communication system failure.
- (f) The Participant, Authorized Customer or Customer will be responsible for each Order that it enters on the Facility for itself or which is entered on its behalf. All Orders that have been entered on the Facility are subject to acceptance by other Participants, Sponsored Participants or Customers.

#### **405. Cooperation in Investigations.**

Each Participant, Clearing Participant, Authorized Trader, Authorized Customer, Customer and Broker shall cooperate with any investigation of the Facility, its designee, the Commission, the NFA or the SEC.

#### **406. System Security.**

Each Participant shall (i) be solely responsible for controlling and monitoring the use of all User IDs issued to it, its Authorized Customers and Authorized Traders by the Facility, (ii) ensure that each Person accessing the Trading System using such User IDs is assigned a unique password and that each password is used only by the Person to whom it is assigned, and (iii) shall notify the Facility promptly upon becoming aware of any

unauthorized disclosure or use of such User IDs or passwords or access to the Facility or of any other reason for deactivating User IDs or passwords. Each Participant shall be bound by any actions taken through the use of such User IDs or passwords (other than any such actions resulting from the fault or negligence of the Facility), including the execution of transactions, whether or not such actions were authorized by such Participant or any of its Supervised Persons or executed by anyone other than an Authorized Trader or Authorized Customer of such Participant.

**407. User IDs and Confidentiality.**

- (a) No Person may use a User ID to place any Order except as permitted by these Rules; nor may any Person knowingly permit or assist the unauthorized use of a User ID. Each Participant and Authorized Customer on behalf of itself and each of its Supervised Persons and Customers shall ensure that no User ID is used by any Person not authorized by these Rules.
- (b) Participants and Authorized Customers must identify to the Facility User IDs that are assigned to an AOG.
- (c) Participants and Authorized Customers, in each case as applicable, that are not individuals, must:
  - (i) restrict access through password protection to any system capable of submitting Orders to the Facility to individual users authorized by the relevant Participant (including its Authorized Traders, Supervised Persons and Customers) or Authorized Customer (including its Supervised Persons);
  - (ii) require creation, maintenance and record keeping of accurate and complete records regarding each individual that is issued or authorized to use a unique User ID;
  - (iii) require, in the case of a Participant, such Participant's Authorized Customers, to create, maintain and record keep accurate and complete records regarding the individuals that are issued or authorized to use a unique User ID; and
  - (iv) require that individuals protect and maintain the security of any User ID and prohibit the use of such User ID, except as permitted in this section, by any other Person, including subsidiaries, affiliates, divisions or business units of Participants or Authorized Customers. Participants and Authorized Customers may be issued, and may utilize, multiple User IDs solely for the purpose of identifying their subsidiaries, affiliates, divisions or business units, which make separate trading decisions. Multiple individuals trading in the name of a single Participant or the Participant's customers under the same User ID are permitted to trade through the use of that User ID.

**(d) Confidentiality of Trading System.**

- (i) Without limiting anything set forth in in these Rules, and in addition thereto, any and all non-public information in any form obtained by a Participant, its Sponsored Participant s or Brokers arising out of or related to the provision or use of the Trading System, including but not limited to trade secrets, processes, computer software and other proprietary data, research, information or documentation related thereto (“Confidential Information”), shall be deemed to be confidential and proprietary information of the Facility. Participant, its Sponsored Participant s and Brokers are required to hold such Confidential Information in strict confidence and the disclosure of such Confidential Information to third parties (other than to its employees, its affiliates and their employees, its agents or professional advisors) or the use of such Confidential Information for any purpose whatsoever other than as contemplated by the Rules shall be a violation of this Rule.
- (ii) Confidential Information shall not include information which is:
  - (A) in or becomes part of the public domain ;
  - (B) known to or obtained by such party previously without an obligation of confidentiality;
  - (C) independently developed by such party outside of this Agreement;
  - (D) required to be disclosed by Applicable Law, or pursuant to a subpoena or order of a court or regulatory, self-regulatory or legislative body of competent jurisdiction, or in connection with any regulatory or self-regulatory request for information, or that the Facility otherwise deems advisable, in its discretion, to disclose to a governmental, self-regulatory or legislative organization.; or
  - (E) information submitted by Participant, Sponsored Participant s or Brokers that is displayed by the Facility on the Trading System or otherwise distributed or sold by the Facility regarding Bids, Offers, or executed transactions, provided that such displays and distributed or resold information shall not identify Participant by name, unless the Facility is explicitly directed to do so by Participant and only then for the express purposes set forth in and under conditions in compliance with the Rules.

**408. Front-End User Interface.**

Each Participant shall be solely responsible for ensuring that any front-end interface or computer program for automated order entry connecting to the Electronic Trading System that is not provided by the Facility, and that is used by the Participant, its

Authorized Traders or Authorized Customers, is in compliance, in design and operation, with Applicable Law and these Rules.

**409. Responsibility for Orders.**

Except as otherwise provided by these Rules, each Participant and Authorized Customer shall be responsible for (i) all Orders placed by it, and by any of its Supervised Persons or customers (in the case of a Participant) and (ii) use of any of the User IDs assigned to it and any of its Authorized Traders or Authorized Customers (in the case of a Participant).

**410. Compliance by Participants.**

Each Participant, Authorized Trader, Authorized Customer, Customer or Broker shall, by making application for a User ID or by placing any Order directly or indirectly, shall have agreed to (i) be bound by the Rules of the Facility, (ii) be subject to the jurisdiction of the Facility, (iii) comply with all applicable Rules of Facility and (iv) comply with Applicable Law.

**PART 5. TRADING.**

**501. Required Transactions.**

- (a) **Execution.** Required Transactions, except for Block Trades which shall be traded in accordance with Rule 510, shall be matched via the Electronic Order Book in accordance with the provisions of Rule 602, through Voice Functionality in accordance with Rule 702, or through the Request for Quote System in accordance with the provisions of Rule 702a. Each Required Transaction may be executed through any of the foregoing functionalities.
- (b) **Clearing.** All Swaps that are Required Transactions shall be settled in accordance with the rules of the Clearing Organization.
- (c) **Mandatory trading.** A Participant that is a Swap Dealer or Major Swap Participant that enters into or facilitates a Swap transaction on the Facility that is subject to mandatory clearing pursuant to Section 2(h) of the Commodity Exchange Act shall be responsible for compliance with the mandatory trading requirement under Section 2(h)(8) of the Commodity Exchange Act.
- (d) **Facilitation of Straight-through Processing of Required Transactions.** Required Transactions are required to be cleared. The following requirements shall facilitate the straight-through-processing of such transactions to the applicable Clearing Organization:
  - (i) No Order for a Required Transaction may be submitted unless a Clearing Participant has been identified in advance for each party to the transaction;



- (ii) Each Clearing Participant as required by Commission Regulation 1.73 shall establish risk-based limits in the proprietary account and in each customer account based on position size, order size, margin requirements, or similar factors, and
  - (A) When an Order is to be matched via the Electronic Order Book in accordance with the provisions of Rule 602 or through the RFQ Functionality in accordance with the provisions of Rule 702a(a)(i), the Clearing Participant shall, as facilitated by the Facility, screen each Order for compliance with the limits established by the Clearing Participant through an automated system; or
  - (B) When an Order is to be matched via Voice Functionality in accordance with Rule 702 or through the RFQ Functionality in accordance with the provisions of Rule 702a(a)(ii), the Clearing Participant shall, as facilitated by the Facility, screen each Order for compliance with the limits established by the Clearing Participant through an automated system or through a non-automated system of risk controls reasonably designed to ensure compliance with the limits established by the Clearing Participant.

## **502. Permitted Transactions.**

### **(a) Execution.**

- (i) Permitted Transactions shall be matched via the Electronic Order Book in accordance with the provisions of Rule 602, through Voice Functionality in accordance with Rule 702, or through the Request for Quote System in accordance with the provisions of Rule 702a. Each cleared Permitted Transaction may be executed through any of the foregoing functionalities.
- (ii) Permitted Transactions that are not matched by the Facility, having been entered into or confirmed and reported to the Facility subject to the provisions of Rule 512, shall be recorded as a transaction executed subject to the rules of the Facility. Each cleared or uncleared Permitted Transaction may be executed under the provisions of Rule 512.

### **(b) Credit Approval for Uncleared Transactions.**

- (i) Permitted Transactions that are not required to be cleared will be subject to the credit approval of each counterparty to the transaction before the matched transaction is confirmed. Swaps that have not been submitted for clearing shall be settled in accordance with the terms agreed to by the parties.
- (ii) Upon notice by Participants that are parties to an executed transaction that they wish voluntarily to submit an executed transaction to a clearinghouse

that offers clearing of the Swap and to which both are a Clearing Member or have established a relationship with a Clearing Member, the Facility, on their behalf, will submit the transaction to the Clearing Organization where designated either directly or via an STP hub. Prior to such designated voluntary submission of such Swaps to a Clearing Organization, the transaction will be subject to the risk-based credit limit screening applicable to an Order as provided in Rule 501(d). Swaps that have been voluntarily submitted for clearing shall be settled in accordance with the rules of the Clearing Organization.

**503. Trading Hours for Required and Permitted Transactions.**

- (a) All time references shall be based on local time prevailing in New York, New York, unless otherwise expressly set forth in the Rules.
- (b) Trading in Required Transactions and Permitted Transactions shall occur on such days and during such hours as the Facility shall determine. The Control Desk will be staffed and operate at all times during the Trading Hours of any Required Transaction Swap.
- (c) Trading hours in Required Transactions and Permitted Transactions may vary according to the Swaps traded. No Person may make any bid or offer for, or engage in any transaction in, any Swap before or after such hour outside of Trading Hours for that Swap.
- (d) The Facility is operational 24 hours a day, Sunday 17:50 to Friday 18:00, except for holidays as notified by the Facility. Trading via the Electronic Trading Order Book under Part 6 of these Rules (including electronic Request for Quotes) and trading under Rule 512 is available during those times. Trading via Voice Functionality shall be available from 6:00 to 18:00 Monday through Friday, 364 days a year. Each Business Day begins at 17:50 Sunday to Thursday and ends at 17:50 Monday to Friday.

**504. Information Regarding Orders.**

- (a) The Facility will make information regarding Orders (including prices bid or offered), trades and any other matters it may deem appropriate available to Participants, Authorized Traders, other Supervised Persons and Authorized Customers at such times and in such manner (whether through the Trading System, a ticker, financial information services or otherwise) as it may consider necessary or advisable from time to time.
- (b) Each Participant, Authorized Trader, other Supervised Person or Authorized Customer receiving any such information through the Trading System may redistribute such information only to such extent and in such manner as may be permitted by the Facility from time to time. Employees and agents of the Facility on reasonable notice under the circumstances shall have access to the offices of any Participant, Authorized Trader, other Supervised Person or Authorized Customer during regular business hours upon

reasonable prior notice to such Person and subject to such Person's reasonable security policies in order to observe the compliance by such Person with the immediately preceding sentence.

**505. Pre-Execution Discussions and Cross Trades.**

- (a) No Person shall enter a pre-discussed Required Transaction through the Electronic Trading System or through Voice Functionality for illegal or improper purposes (including, without limitation, any conduct prohibited by Part 9 of these Rules) or for a Required Transaction knowingly assume on its own behalf or on behalf of a Customer Account the opposite side of its own Order or its Customer's Order (a "Cross Trade"), except where the Person is entering into both sides of a Customer Order on a non-discretionary, pre-arranged basis, unless:
  - (i) Prior written blanket or transaction specific consent has been obtained in respect of any relevant Customer Account;
  - (ii) The Person waits for at least 15 seconds (or such other time as the Facility may publish from time to time for particular contracts based upon liquidity or such other product-specific considerations as may be permitted under Commission Rule 37.9(b)(2)) after the initial Order is submitted to the Trading System or Execution Specialist before submitting the opposite side;
  - (iii) The trade was matched but unable to be executed on a system or venue and was sent to the SEF for execution in accordance with Rule 603, as applicable;
  - (iv) As applicable, the trade is recognized as a qualifying block trade size in accordance with Rule 510.
- (b) Notwithstanding the foregoing, a Participant shall not be in violation of this rule due to Cross Trades executed by two Participants trading for the same account, or for separate accounts of the same Beneficial Ownership, where neither Participant has knowledge of the other's Order and there is no coordination or prearrangement of the Cross Trade, provided that the relevant Participant shall be responsible, upon the request of the Facility, to demonstrate to the reasonable satisfaction of the Facility, that neither Participant had knowledge of the other's Order.
- (c) For the avoidance of doubt, no delay in entering both sides of a pre-discussed Permitted Transaction or of a Cross Trade of a Permitted Transaction through the Electronic Trading System or through Voice Functionality is required. No Person shall enter a pre-discussed Permitted Transaction or Cross Trade in a Permitted Transaction for illegal or improper purposes (including, without limitation, any conduct prohibited by Part 9 of these Rules).

## **506. Allocation and Priority of Orders; No Withholding of Orders**

- (a) Each Participant shall ensure that Orders are allocated to the appropriate accounts. Orders subject to allocation may be submitted through the Facility and allocated by a Participant in a manner permitted under Applicable Law. Notwithstanding anything to the contrary in Rule 506, the Commission provides relief in CFTC Letter No. 20-36 from the audit trail requirements in Commission regulation 37.205 until November 15, 2021, or such earlier date of a Commission action, including without limitation a rulemaking or order, providing a permanent solution for SEF audit trail obligations related to post-execution allocation information.
- (b) A Participant shall not withhold, cancel or withdraw from the Trading System any Order, or any part of an Order, for the benefit of any other Customer.
- (c) No Participant shall enter an Order into the Trading System or submit an Order to an Execution Specialist for its own account, an account in which it has a direct or indirect financial interest or a Discretionary Account, including, without limitation, an Order allowing discretion as to time and price, when such Participant is in possession of any Order for the benefit of a Customer that the Trading System is capable of accepting or which is capable of being traded in a Voice Trading Session, as applicable.
- (d) Post-trade allocations may be permitted under the rules of the applicable Clearing Organization and shall comply with the requirements of Commission Rule 1.35(b)(5). The following persons shall qualify as eligible to allocate trades after execution on the Facility:
  - (i) a commodity trading advisor registered with the Commission pursuant to the Act or excluded or exempt from registration under the Act or the Commission's rules, except for entities exempt under Commission Rule 4.14(a)(3);
  - (ii) an investment adviser registered with the Securities and Exchange Commission pursuant to the Investment Advisers Act of 1940 or with a state pursuant to applicable state law or excluded or exempt from registration under such Act or applicable state law or rule;
  - (iii) a bank, insurance company, trust company, or savings and loan association subject to federal or state regulation;
  - (iv) a foreign adviser that exercises discretionary trading authority solely over the accounts of non-U.S. persons, as defined in Commission Rule 4.7(a)(1)(iv);
  - (v) a registered Futures Commission Merchant; or
  - (vi) a registered Introducing Broker registered with the Commission pursuant to the Act.

## **507. Prohibited Bids and Offers.**

It shall be prohibited for any Participant or Authorized Customer:

- (a) To enter, report or confirm any Bids, Offers or transactions to the Facility when such Participant or Authorized Customer knows or should have known that it is insolvent, within the meaning of any applicable bankruptcy or insolvency laws, federal or state, domestic or foreign, without the prior written approval of the Facility;
- (b) To enter, report or confirm Bids, Offers or transactions to the Facility other than in good faith for the purpose of executing transactions, or to make any Bid or offer that is not for a true and bona fide price or that is for the purpose of establishing a market price which does not reflect the true state of the market, or
- (c) Except in the case of a Block Trade conducted under the procedures of Rule 510 or an RFQ conducted under the procedures of Rule 702a, to buy a Swap at a higher price on the Trading System than the lowest available Offer price on the Trading System or to sell a cleared Swap at a price on the Trading System that is lower than the highest available Bid price on the Trading System for Swaps cleared at the same Clearing Organization, or assist in the execution of such a transaction on behalf of another on the Facility.

#### **508. Orders Required to be Cleared.**

It shall be prohibited for any Participant or Authorized Customer to place any orders for Swaps that are required to be cleared with or execute any transaction in Swaps through any Clearing Participant without the prior written consent of the Participant's Clearing Participant.

#### **509. Limitation of Size of Orders.**

In order to avoid error, the Electronic Trading System will prevent a Participant, an Authorized Customer, and their respective Authorized Traders from trading over a specified size, per side, per transaction and per Swap. Such size controls are not cumulative and may be exceeded through the entry of multiple Orders. No size limitation exists for voice transactions, Requests for Quotes under Part 702a of these Rules, or Block Trades under Rule 510.

#### **510. Block Trades.**

- (a) The Facility may designate any Swap as eligible for privately negotiated transactions, or "Block Trades," under this Rule and has determined the appropriate minimum block size for the Swaps in which Block Trades are permitted to be the same level as provided in 17 C.F.R. Appendix F to Part 43.
- (b) The price at which a Block Trade is executed shall not affect any Order in the Trading System.
- (c) Participants, Authorized Traders and Authorized Customers may elect to trade a Swap that has been designated by the Facility as eligible for Block Trades as a Block Trade

by entering the trade details into the trade entry window or by reporting such transaction to an Execution Specialist for trade entry. Block Trades shall comply with the following conditions:

- (i) each Block Trade transaction must be at least for the minimum transaction size as determined by the Facility for that Swap. Orders may not be aggregated in order to achieve the minimum transaction size.
  - (ii) the mutually agreed price at which a Block Trade is executed must be fair and reasonable in light of:
    - (A) the size of such Block Trade; and
    - (B) the price and size of other trades in the same Swap at the relevant time and other related Swaps, any underlying cash market and/or related futures markets, at the relevant time.
  - (iii) the price must be reasonable based upon market conditions, prices in other tenors or for related Swap contracts or based upon an established model for relating the relative prices between Swaps.
  - (iv) each party to a Block Trade must qualify as an “eligible contract participant,” as that term is defined in Section 1a(18) of the Act.
  - (v) the aggregation of orders for different accounts in order to satisfy the minimum block trade size is prohibited; *provided however*, that such aggregation is permitted for a Block Trade entered into on behalf of Customers by a commodity trading advisor registered (or exempt from registration) under the Commodity Exchange Act, including any investment advisor registered (or exempt from registration) under the Investment Advisors Act of 1940, or a foreign person performing a similar role or function subject as such to foreign regulation, with total assets under management exceeding \$25 million.
- (d) Each Block Trade must be reported by the seller to the Facility as soon as technologically practicable after execution but in no event later than 10 minutes following execution of such Block Trade. The Facility will publicize information identifying the trade as a Block Trade and identifying the relevant Swap immediately after such information has been reported to the Facility or at such time as is deemed appropriate by applicable regulations to that Swap.
- (e) Each party to a Block Trade shall record the following details of the transaction:
- (i) the Swap to which such Block Trade relates;
  - (ii) the nominal size of the Block Trade; and

- (iii) the price and time of execution, and the beneficial owners of the transaction.
- (f) Upon request by the Facility, such party shall produce satisfactory evidence, including the order ticket referred to in the preceding sentence that the Block Trade meets the requirements set forth in this Rule.
- (g) Notwithstanding anything to the contrary in this Rule 510, until December 30, 2022, or such later time as the relief in CFTC Letter No. 20-35 shall be extended, the Facility may facilitate the execution of Block Trades within the scope of this Rule 510 that are intended to be cleared by enabling the applicable Clearing Participants to complete the pre-execution credit check required under Commission Rule 1.73 pursuant to the procedures of Rules 501(d) and Rule 502(b)(ii) at the time a Block Trade is identified to the Facility. Execution of the Block Trade shall not occur until completion of the pre-execution credit check. Block Trades which are rejected on the basis of credit at the time that they are identified to the Facility shall be void *ab initio*.

**511. Public Disclosure of Data.**

- (a) If a registered SDR accepts data for an asset class, the Facility will report or cause to be reported to an SDR, such price and transaction data as required by Commission Regulations for all Swap transactions executed on or subject to the Rules of the Facility. The Facility reports such information to the following SDRs:

Swap	SDR
Credit Default Swap Indices	<u>DTCC</u>
Interest Rate Swaps	<u>DTCC</u>
Other	<u>DTCC</u>

- (b) The Facility shall disclose to all Participants on the Facility data regarding price, size and side of a Swap transaction executed via the Electronic Order Book, and may disclose such information for a transaction executed via Voice Functionality, upon transmittal of, or causing transmittal of, such information to the SDR.
- (c) Nothing in this rule 511 shall prohibit the Facility from disclosing:
  - (i) to all Participants on the Facility Orders, including price and side information, prior to a trade being executed; or,
  - (ii) to the counterparties to an executed trade, price, size or any other material terms of their executed transaction prior to transmittal of the information to an SDR and its public disclosure by the Facility.

## **512. Off-facility Transactions by Brokers**

The Facility may record a Permitted Transaction arranged as an Off-facility Transaction by one or more Broker as being executed subject to the rules of the Facility, if the following conditions are met:

- (a) The Participants have provided blanket or transaction-specific consent to entering into a Permitted Transaction arranged by a Broker(s);
- (b) All of the terms of the Permitted Transactions are agreed by the Participants prior to the Broker reporting the Permitted Transaction to the Facility; *provided however*, the transaction shall not be considered to be executed until accepted by the Facility;
- (c) The Broker reports the terms of the Permitted Transaction in the form and manner specified by the Facility as soon as practicable, but in no event more than 15 minutes, following agreement of the Participants to the terms of the transaction;
- (d) If the transaction is to be cleared, it complies with Part 8 of the rules insofar as applicable to the transaction;
- (e) If the transaction is to be cleared, each applicable Clearing Participant, in accordance with Commission Regulation 1.73, shall establish and apply risk-based limits in respect of such Participant and, as facilitated by the Facility, shall screen such Off-facility Transaction for compliance with the limits through an automated or non-automated system of risk controls reasonably designed to ensure compliance with the limits;
- (f) The transaction may not be entered into for illegal or improper purposes (including, without limitation, any conduct prohibited by Part 9 of these Rules);
- (g) The Broker must keep full, complete and systematic records of the transaction as required by Commission Rule 1.35
- (h) The Broker(s) arranging the transaction shall be responsible, upon the request of the Facility or its Regulatory Services Provider, to demonstrate to the reasonable satisfaction of the Facility that the transaction complies with the conditions of the Act, Commission Rules and the conditions of this Rule 512, including making available to the Facility or the NFA acting in its capacity as a Regulatory Services Provider, upon request access to the Broker's records relating to the transaction.

## **513. Package Transactions.**

A package transaction is a multi-leg transaction priced or quoted as one economic transaction, involving at least one Swap. For all package transactions, the Facility's audit trail records shall identify the Swap transaction(s) as being priced under the procedures of this Rule. The Swap leg or legs of a package transaction may be executed by the Facility subject to the following conditions.



(a) U.S. Dollar Swap Spread.

- (i) A U.S. Dollar Swap Spread is a transaction in a U.S. Dollar Swap traded as a spread price between a U.S. Treasury security transaction and the Swap.  
U.S. Dollar Swaps are available for trading as a spread transaction via:
- (A) the Electronic Order Book under Rule 602(a) of the Rules, including but not limited to Electronic Order Book Trading Session (Rule 602(a)), Volume Clear Trading (Rule 602(b)), Volume Match Trading Facility (Rule 602(c), and Assisted Order Entry (Rule 607);
  - (B) Voice Functionality under Part 7, including but not limited to Regular Voice Trading Facility (Rule 703(a)), Voice Work-up (Rule 703(a)(v), Technology-Assisted Voice Trading Facility (703(b)), Volume Match Voice Trading Facility (Rule 703(c)(ii)) of the Rules;
  - (C) Pre-execution discussed and crossed trades under Rule 505, and
  - (D) Request for Quotes under Part 7a of the Rules.
- (ii) In a U.S. Dollar Swap Spread, a buyer (seller) enter Bids (Offers) for a U.S. Dollar Swap based upon a spread value and transaction size. When entering a Bid (Offer) such Orders shall be subject to the pre-trade credit check under Rule 501(d). Upon a buyer and seller being matched by the Facility, the Facility notifies them of the prevailing cash market price for the indicated Treasury security, identifies each to the other (if not already so identified), and executes a U.S. Dollar Interest Rate Swap between the Participants at a price calculated by the Facility derived from the prevailing cash market price for the Treasury security which has been communicated to the parties and the matched spread value. The parties to the Swap subsequently enter into a separate cash market transaction bilaterally for the Treasury security at the prevailing cash market price.
- (iii) For the avoidance of doubt, the Facility takes no part in facilitating cash market Treasury security transactions. However, nothing in these Rules prohibits parties to the Swap from using the Facility's affiliated broker-dealer to assist in arranging the cash market transaction in Treasury securities related to their U.S. Dollar Swap Spread transaction. In this regard, the Facility's affiliated broker-dealer stands ready to enter into a cash market Treasury security transaction with each of the original parties to the Dollar Swap Spread where the parties do not enter into a transaction for the offer or sale of the Treasury security with each other..

- (b) *MAT/MAT*. A MAT/MAT package consists of two (or more) Required Transaction legs of the same Swap but of different tenors, traded based upon the spread value of the defined relationship of the legs. When entering a Bid (Offer) such Orders shall be subject to the pre-trade credit check under Rule 501(d). A MAT/MAT package can be traded via any of the functionalities or facilities provided in paragraph (a)(i)(A),(B) and (C) of this Rule. Upon being matched based upon the spread value, the Facility executes the two legs of the transaction at a price calculated by the Facility derived from the prevailing price for the shorter tenor leg.
- (c) *MAT/Non-MAT (Cleared)*. A MAT/Non-MAT (Cleared) package consists of at least one Required Transaction and one (or more) cleared Permitted Transaction based upon the spread value of the defined relationship of the legs. When entering a Bid (Offer) such Orders shall be subject to the pre-trade credit check under Rule 501(d). A MAT/Non-MAT (Cleared) package can be traded via any of the functionalities or facilities provided in paragraph (a)(i)(A),(B) and (C) of this Rule. Upon being matched based upon the spread value, the Facility executes the two legs of the transaction at a price calculated by the Facility derived from the prevailing price for the Required Transaction leg.
- (d) *MAT/Non-MAT (Uncleared)*. As permitted under Commission Rules 37.9(d) and 37.9(a)(2) and as pursuant to 37.9(c)(2), a package transaction consisting of one or more Swaps that include both a Required Transaction and an uncleared Permitted Transaction shall be subject to the procedures of Rule 512.
- (e) *MAT/Non-Swap Instruments*. As permitted under Commission Rules 37.9(d) and 37.9(a)(2) and as pursuant to 37.9(c)(2), the Required Transaction leg or legs of a package transaction that consists of one or more Required Transaction and one or more non-Swap instrument, shall be subject to the procedures of Rule 512; *provided however*, this provision shall not apply to U.S. Dollar Spreads which shall be subject to the procedures of paragraph (a).
- (i) The Broker, when reporting the Swap leg of the package to the Facility for execution shall also include the trade details of the non-Swap leg or legs of the package.
- (f) *MAT/Futures*. Until November 15, 2022, or such later time as the relief in CFTC Letter No. 20-31 may be extended, the Required Transaction leg or legs of a package transaction that consists of one or more Required Transaction and one or more contracts for the purchase or sale of a commodity for future delivery, shall be subject to the procedures of Rule 512.
- (g) *MAT/Non-CFTC Swap*. As permitted under Commission Rules 37.9(d) and 37.9(a)(2) and as pursuant to 37.9(c)(2), the Required Transaction leg or legs of a package transaction that consists of one or more Required Transaction and one or more of the components is a swap over which the CFTC does not have exclusive jurisdiction, shall be subject to the procedures of Rule 512.
- (h) *Non-MAT(uncleared)/Non-MAT(uncleared)*. A Non-MAT(uncleared)/Non-

MAT(uncleared) package consists of two or more uncleared Permitted Transactions and shall be subject to the procedures of Rule 512.

- (i) *Non-MAT(uncleared)/Non-MAT(cleared)*. A Non-MAT(uncleared)/Non- MAT(cleared) package consists of two or more Permitted Transactions and shall be subject to the procedures of Rule 512.
- (j) For all package transactions, the Facility's audit trail records shall identify the Swap transaction(s) as being priced under the procedures of this Rule 513.

#### **514. Trade Cancellations and Price Adjustments.**

- (a) **Trade Cancellation, Amendment or Adjustment Authority.** The Facility's trade cancellation policy authorizes the Board, through its designee the Chief Compliance Officer (or the Chief Compliance Officer's delegate) (the "Designee"), to amend trade prices, cancel (bust) trades or to make such other adjustments when such action is necessary to mitigate market disrupting events; to mitigate instances where market integrity has been compromised caused by the improper or erroneous use of the Facility; or to address manifest unfairness caused by a material error of the Execution Specialist in Order handling or other material error by the Facility such as the incorrect display of a Bid or Offer, erroneous execution or erroneous reporting of a Swap transaction.
- (b) Notwithstanding any other provision of this Rule, the Designee may adjust trade prices, cancel any trade executed through the Facility, execute a new or off-setting swap on behalf of the parties to a disputed transaction on the Facility or another SEF, or require the parties to execute a new or off-setting swap transaction on the Facility or another SEF, if the Designee determines that allowing the trade to stand as executed may have a material, adverse effect on the integrity of the market or is otherwise necessary or appropriate to address manifest unfairness caused by a material error of the Execution Specialist or other material error by the Facility; provided, however, that any such determination by the Designee (if other than the Chief Compliance Officer) will be subject to review by the Chief Compliance Officer if the Designee determines such review to be necessary or appropriate. Subject to the immediately preceding sentence, the decision of the Designee shall be final.
- (c) Any trade price amendment, trade cancellation or other trade adjustment shall be made subject to the standards of this Rule 514, such standards being clear, fair, and publicly available. Any determination made under this Rule 514 to adjust any trade price, cancel any trade or make any other adjustment shall be made subject to the procedures of Rule 514(d), (e), (f) and (g) and announced to the market by a message from the Control Desk or such other method as the Facility shall provide.
- (d) **Procedure—Review of Trades Made in Erroneous Use of Facility or Resulting from Error of the Facility.** The Designee's decision on whether to cancel or amend a trade claimed to be made through erroneous use of the Facility or as a result of an error by the Execution Specialist or the Facility shall be made under the following procedure:

- (i) **Review of Trades.** The Designee may review a trade based on its analysis of market conditions or a request for review by a user of the Facility.
- (ii) **Request for Review.** A request for review must be made within 20 minutes from the execution of the trade. The request may be verbal, with a writing (which may be electronic) to follow within one hour from the execution of the trade. The request must specify the trade details, the time of its occurrence, the desired outcome (amend, cancel or other action) and the reason for such a request, including whether due to erroneous trading or a material error by the Execution Specialist in Order handling or other material error by the Facility such as the incorrect display of a Bid or Offer, erroneous execution or erroneous reporting of a Swap transaction.
- (iii) The Designee shall promptly determine whether the trade will be subject to review, and upon deciding to review a trade, the Designee will promptly notify the counterparties and issue an alert to all Participants and Sponsored Participants on the Facility indicating that the trade is under review. The Designee, in his or her discretion, may also notify the Compliance department of the requestor.

In the course of its review of any trade, the Designee may, but is not obligated to, inform any of the parties to the trade of the identity and contact information of any other party to the trade.

- (e) **Procedure—Review of Improper Trades.** The Designee’s decision on whether to cancel or amend a trade claimed to be improper shall be made under the following procedure:

- (i) **Review of Trades.** The Designee may review a trade based on its analysis of market conditions or a request for review by a user of the Facility.
- (ii) **Request for Review.** For trades claimed to be improper, a request for review must be made within 20 minutes from the execution of the trade. The request may be verbal, with a writing (which may be electronic) to follow within one hour from the execution of the trade. The request must specify the trade details, the time of its occurrence, the desired outcome (amend or cancel) and detail the basis on which the trade should be considered improper and the reason supporting the cancellation or amendment of such a trade.  
The written request must be countersigned by the customer desk head or a business individual with supervisory authority for the requestor. The Facility will make its determination based upon the request for review.
- (iii) Upon receiving a written request to cancel or amend an improper trade, the Designee, in the Designee’s discretion, may offer the counterparty an opportunity to respond to the reasons cited in the written request that the trade was improper and to provide an explanation why the trade should not be considered to be improper; *provided however*, the counterparty shall not have a right to view the written request if the Designee shall in his or her

discretion determine that the contents or identity of the requestor should not be disclosed.

- (iv) The Designee, upon reviewing the written request for cancellation or amendment of an improper trade and any statement of the counterparty to the requestor will determine whether the trade on its face violated Applicable Law or these Rules and whether the trade affected the integrity of the market, including but not limited to whether the trade had a material adverse effect on market prices or orderly trading in the market.

**(f) Designee's Determination.**

- (i) The Designee shall communicate his or her determination to the parties whether to cancel the trade, amend or adjust the trade, to order such other actions as within the Facility's authority or to let the trade stand, and shall communicate his determination to the market.
- (ii) Upon a determination by the Designee that a trade shall be cancelled or amended the Facility shall implement the decision including as necessary or appropriate entering into new or off-setting Swap transactions on behalf of the parties or ordering the parties to do so.
- (iii) Issues of liability in cases where reasonable out-of-pocket losses have been incurred by Persons whose trades were cancelled or amended will be determined by the Designee based upon all relevant facts and circumstances, including the conduct of the respective parties. A party whose erroneous, or improper Order handling was the cause of the cancelled, amended or adjusted trade shall be liable for reasonable out-of-pocket losses of the counterparty to the transaction. Parties that know a transaction to be erroneous, improper or executed in error have an obligation to mitigate the loss.
  - (A) A claim for a loss pursuant to this Rule must be submitted to the Facility, on a Facility claim form, within five Business Days of the cancelled, amended or adjusted trade giving rise to the claim. The Facility shall reject any claim that is not permitted by this Rule and such decision shall be final. All claims which are not rejected by the Facility shall be forwarded to the party responsible for the Order(s) that resulted in the cancelled, amended or adjusted trade and that party shall, within ten Business Days of receipt of the claim, admit or deny responsibility in whole or in part.
  - (B) To the extent that liability is admitted, payment shall be made within ten Business Days. To the extent liability is denied, the claim shall be resolved by and pursuant to the arbitration rules of the NFA or such other self-regulatory organization as the parties may agree in accordance with the procedures of Part 11 of the Rules.

- (C) In the event that the error causing the loss was made by, or is the responsibility of, the Facility, the Facility in its sole discretion may take such steps as it deems necessary and appropriate to recompense the party or parties for their out-of-pocket loss.
- (g) **Trade Price Adjustment and Cancellation Process—Other Erroneous Trades.** The Designee will first determine whether the trade price is within the “No Review Range.” During fast market conditions, upon the release of significant news, or in other circumstances in which the Designee determines it is appropriate, and upon consultation with the Chief Compliance Officer, may without prior notice, temporarily increase the published No Review Range, up to an amount that is double the published range.
- (i) *Information considered.* In applying the No Review Range, the Designee shall determine the market price for that Swap immediately before the trade under review (the “Market Price”). The Designee may consider any relevant information, including the existing market conditions, the volatility of the market, the prices of related instruments in other markets, the last trade price on the Facility of the same or a related Swap, a better bid or offer price, a more recent price in a related Swap or related Swap tenor, and any other factors that the Designee deems relevant.
- (ii) *Trade Price Inside the No Review Range.* If the Designee determines that the price of the trade was inside the No Review Range, the Designee will promptly issue an alert to all Participants, Authorized Traders and Authorized Customers on the Electronic Trading System indicating that the trade shall stand.
- (iii) *Trade Price Outside the No Review Range.* If the Designee determines that a trade price is outside the applicable No Review Range, the trade price shall be adjusted to a price agreed upon in a reasonable time by a Person not responsible for an Order that results in a trade price adjustment that is within the No Review Range or in the absence of such agreement to a price that equals the Market Price for that Swap at the time of the questioned trade, plus or minus the standard or adjusted No Review Range, provided, however, that in the event that such adjusted price would be outside the trading range of the day at the time of the questioned trade, then such adjustment shall be limited to the trading range as applicable. In the event there are multiple parties, prices and/or Swaps involved in the transactions at issue, the Designee has the authority, but not the obligation, to bust rather than price adjust such transactions. The Designee will promptly issue an alert to all Participants, Authorized Traders and Authorized Customers on the Electronic Trading System indicating that the prices of the trades outside the No Review Range have been adjusted to the No Review Range limit or have been cancelled.

(h) **No Review Range.** The No Review Range shall be as follows:

Swap Contract	No Review Range (where a % is used, it is expressed as a % from the mid-market price)
CDS Indices CDS Single names	For all Credit Default Swap Index outright, rolls and spreads, a price which is of a certain percentage of mid-market spread price:  <b>CDX</b> High Yield = 5% Investment Grade = 2.50%  <b>iTraxx</b> X-over = 5% HiVol = 5% EUR Main = 2.5%...for a Swap above or below the prevailing mid-market price at the time will generally be considered to be a price within the no review range
EUR Interest Rate Swap outright, spreads and butterfly strategies	A price 1 basis point in yield above or below the prevailing mid-market price
USD Interest Rate Swap outright, spreads and butterfly strategies	A price 1 basis point in yield above or below the prevailing mid-market price
GBP Interest Rate Swap outright	A price 1.5 basis points in yield above or below the prevailing mid-market price
GBP Interest rate Swap basis swaps	A price 1.5 basis points in yield above or below the prevailing mid-market price
GBP Interest Rate Swap spreads and butterfly strategies	A price 1 basis point in yield above or below the prevailing mid-market price

(i) **Liability for Losses Resulting from a Price Adjustment or Cancelled Trade.**

- (i) *Price-Adjusted Trades.* A Person responsible for an Order that results in a trade price adjustment shall generally not be liable for losses, other than the price adjustment, incurred by Persons whose trade prices were adjusted.
- (ii) *Cancelled Trades.* Issues of liability in cases where reasonable out-of-pocket losses have been incurred by Persons whose trades were cancelled will be determined by the Control Desk based upon all relevant facts and circumstances, including the conduct of the respective parties.

- (j) **Claim Process.** A claim for a loss pursuant to this Rule must be submitted to the Facility, on a Facility claim form, within five Business Days of the price-adjusted trade giving rise to the claim. The Facility shall reject any claim that is not permitted by this Rule and such decision shall be final. All claims which are not rejected by the Facility shall be forwarded to the party responsible for the Order(s) that resulted in a price adjustment. Such party shall, within ten Business Days of receipt of the claim, admit or deny responsibility in whole or in part.

To the extent that liability is admitted, payment shall be made within ten Business Days. To the extent liability is denied, the claim shall be resolved by and pursuant to the arbitration rules of the NFA or such other self-regulatory organization as the parties may agree in accordance with the procedures of Part 11 of the Rules.

- (k) **Trade Cancellation or Offset Procedures.** Upon a determination by the Designee that a trade shall be cancelled or that trade prices shall be adjusted, that decision will be implemented. The cancelled trade price and any price quotes that have been adjusted will be reflected as cancelled in the Facility's official record of time and sales.
- (l) **Adjustment Trades.** Positions that result from a trade determined by the Designee to be outside the No Review Range that cannot be cancelled shall be adjusted at the direction of the Facility, by entry of the Facility into new or off-setting trades as appropriate on behalf of the parties to the cancelled or adjusted trade or ordering such parties to enter into new or off-setting trades as directed by the Facility. The adjusting trades must use the original trade price and quantity. Any party may, but is not required to, include a cash adjustment to another party to the trade. Trades determined by the Designee to be inside the No Review Range may not be reversed in this manner.
- (m) **Arbitration of Disputes Regarding Adjustment Trade.** If a party does not agree to transfer a position pursuant to Rule 514(j), any other party to the trade may file an arbitration claim in accordance with the procedures of Part 11 of the Rules against the Person representing the other side of the trade. Written notice of such claim must be provided to the Facility within five Business Days of the execution of the trade. Failure to file the claim within five Business Days shall be deemed a waiver of all claims. The arbitration claim will be conducted in accordance with the procedures of Part 11 of the Rules.
- (n) **Voluntary Adjustment of Trade Price.** When a trade outside of the No Review Range is cancelled in accordance with this Rule, the parties to the trade may agree voluntarily to reestablish the trade but to adjust its price and make a cash adjustment provided that all of the following conditions are met:
- (i) the Designee approves the adjustment.
  - (ii) the trade adjustment must be within the range of the high and low of the previous day's price range.



- (iii) the quantity of the position being reestablished is the same as the quantity of the trade that was cancelled.
- (iv) in the case of a trade below the Market Price, the adjusted price must be the lowest price that traded at or about the time of the trade without being cancelled. In the case of a trade above the Market Price, the adjusted price must be the highest price that traded at or about the time of the trade without being cancelled.
- (v) the parties to the adjusted trade must report it to the Facility using a Transfer Trade not later than the close of business on the Business Day after the trade occurred.

#### **515. Error Trades**

- (a) **Scope.** In accordance with Commission Rules 37.9(e)(1)(ii) and 37.9(e)(2)(i), Rule 515 shall apply where an operational or clerical error omission made by the Facility, one of the counterparties, or an agent of the counterparty, causes a trade to be rejected from clearing, where one leg of a Package Transaction is rejected from clearing due to the sequencing of the submission of the legs (“Rejected Error Trade”), or is identified after the trade has been cleared (“Cleared Error Trade”)(together “Error Trades”). Legs of a Package Transaction that have been accepted for clearing are not within the scope of this Rule.
- (b) **Rejected Error Trades.** Upon an affirmative finding by the Facility that a trade has been rejected due to an error or an erroneous term other than for reasons of credit, the Rejected Error Trade shall be considered to be void *ab initio* and the Facility may execute a new trade with the original terms but for the correction of the erroneous terms and submit the new trade to the applicable DCO as quickly as technologically practicable, but in no event in more than 1 hour from the notice of rejection from clearing. The new trade shall be subject to the procedures of Rule 501(d) or Rule 502(b), as applicable. Any new trade which is also rejected is considered to be *void ab initio* and may not be submitted again.
- (c) **Cleared Error Trades.** Upon an affirmative finding by the Facility that a trade is being carried on the books of a DCO in error, in order to “reverse and resubmit” the trade in error, a trade to offset the Swaps carried in error on the books of the DCO shall be executed by the Facility and a new transaction shall be executed by the Facility with the original terms of the Cleared Error Trade but for the correction of the erroneous terms. Such correcting trades must be executed and submitted for clearing no later than three days from the execution of the Cleared Error Trade, with the exception provided in (d) (i). The new trade shall be subject to the procedures of Rule 501(d) or Rule 502(b), as applicable.
- (d) **Consent to correction of Error Trades.** In the event that an error comes to the attention of the Facility, the Facility may correct obvious errors under the procedures of

paragraph (b) or (c) of this Rule 515 without the consent or knowledge of the counterparties to the transaction. In the event that the Facility is unable to determine how to correct an Error Trade on its face, the Facility shall inform the counterparties to the trade and request their assistance in determining the nature and the substance of the error. The Facility may not correct such non-obvious errors unless the parties shall agree.

- (i) Alternatively, for cleared swaps, the Facility may use an *ex post facto* review process in which the counterparties determine that an error has occurred and correct the error. The offsetting trade and the correct transaction must be executed and submitted for clearing as quickly as technologically practicable, but no later than 24 hours after the erroneous cleared swap was executed.

The Participant must notify the Facility in writing, using the Facility contact email addresses located in [www.bgcsef.com](http://www.bgcsef.com), no later than 24 hours after the error trade was executed. The Facility shall conduct an *ex post facto* review of the error trade, offsetting trade, and correct trade on a T+1 basis. Such review will consider whether a transaction cancellation or price adjustment will adversely impact market integrity, facilitate market manipulation or other illegitimate activity, or otherwise violate the CEA, Commission regulations, or the SEF's rules.

The SEF must make an affirmative finding that there was an error as part of its *ex post facto* review.

- (e) **Reporting.** The Facility shall report the following to an SDR as soon as technologically practicable after the original trade is rejected by the DCO:
  - (i) Cancellation of the original trade under part 43 of the Commission's rules;
  - (ii) A part 45 termination indicating that the original trade is void *ab initio*; and
  - (iii) Swap transaction data pursuant to Parts 43 and 45 for the newly executed trade(s).

#### **516. Trade Affirmation.**

- (a) When the Facility under Rule 802(b) or Rule 804(a) submits a trade to a Straight-Through-Processing (STP) hub following execution and prior to forwarding the trade to a DCO for clearing, each Participant, Sponsored Participant or Customer, as applicable, that is a counterparty to the trade shall affirm, or notify the Facility of an error in, the trade details as soon technologically practicable, but in no event later than 10 minutes from the time of execution of the trade.
- (b) Failure by the Participant, Sponsored Participant or Customer to affirm the trade details no later than 10 minutes from the time of execution shall constitute a violation

of this Rule 516 except:

- (i) When the Participant, Sponsored Participant or Customer has notified the Facility of an error within 10 minutes of execution; or
  - (ii) When the delay in affirming, or reporting an error in the trade details is caused by the Facility, the STP hub, an ISV or any event (such as loss of internet connectivity, power, or other force majeure) beyond the reasonable control of the Participant, Sponsored Participant or Customer used in the post-trade processing of trades.
- (c) Notwithstanding anything to the contrary in these Rules, the Facility in its discretion may initiate an investigation for violations of this rule by a Participant, Sponsored Participant or Customer in accordance with BGC Rulebook Part 10: Disciplinary Proceedings.

#### **517. Post-Trade Anonymity.**

- (a) Pursuant to the Commission issuing final rule § 37.9(d), it is prohibited to disclose, directly or indirectly, including through a third-party service provider, the identity of a counterparty for swaps executed, pre-arranged or pre-negotiated anonymously on or pursuant to the rules of a SEF and intended to be cleared at the time of execution.
- (b) Prohibition on post-trade name give-up shall not apply to components of a package transaction that are uncleared swaps or non-swap instruments. Examples include, but are not limited by, swaps executed with a US Treasury hedge cleared bilaterally between the counterparties, swaps executed as part of a hedge to an Interest Rate Option or Credit Option and swaps executed as part of a package with an uncleared swap.
- (c) The compliance date for swaps subject to the trade execution requirement under section 2(h)(8) of the CEA is November 1, 2020. The compliance date for swaps not subject to the trade execution requirement under section 2(h)(8) of the CEA was July 5, 2021.

#### **518. Prime Broker Trades**

- (a) Prime Broker trades – The Prime Broker becomes a participant of the facility and provides a credit limit for its customer(s). The Prime Broker allows the customer(s) to execute as agent on behalf of the Prime Broker on the SEF. The Prime Broker handles the clearing and settlement with the counterparty to the transactions (primarily Swap Dealers) based on standard ISDA agreements in place with the counterparty.
- (b) Participant Cancellation Requests – With respect to Permitted Transactions, a Participant shall have the right to request the cancellation of any executed Prime Broker Trade. The cancellation request from the Participant must include the reason for the cancellation and the contact information of the Participant and relevant Prime Broker. Upon confirmation and agreement of the cancellation by both parties to the trade, SEF will cancel the trade.
- (c) Prime Broker Cancellation Requests – With respect to Permitted Transactions, a Prime Broker shall have the right to request the cancellation of any Prime Broker Trade (i) that is executed in excess of the limit established by the Prime Broker with respect to such Prime Broker Trade, (ii)

because the Prime Broker Trade was executed by a Person that was not authorized by the Prime Broker, or (iii) because the Prime Broker Trade was executed for an unauthorized product. Both sides of the transaction must agree to the cancellation of the transaction. The Prime Broker shall communicate the cancellation request directly to SEF within 48 hours after the execution of the Prime Broker Trade. The cancellation request and the reason for the cancellation request should be directed to SEF-trade-entry@bgcpartners.com. The cancellation request must contain the UTI of the relevant trade, and the contact information of the requestor. If the SEF determines that the request for cancellation meets the requirements of Rule "518"; the SEF will cancel the trade.

- (d) Confirmation of Prime Broker Trades – Each Participant involved in a Prime Broker Trade must notify the Prime Broker as soon as technologically possible of each Prime Broker Trade executed pursuant to the Rules of the SEF to which the Prime Broker is a counterparty, and the SEF must issue and provide a trade confirmation to the Prime Broker.

## **PART 6. TRADING VIA ELECTRONIC ORDER BOOK.**

### **601. Scope.**

The Facility shall determine the Swaps to be listed or offered for trading through the Electronic Order Book under this Chapter 6 and decide upon changes thereto.

### **602. Trade Execution via Electronic Order Book.**

Transactions executed via the Electronic Order Book may be matched on the Trading System through any of Trading Sessions provided under paragraphs (a), (b), (c), or (d) of this Rule.

- (a) *Electronic Order Book Trading Session.* The Electronic Order Book Trading Session is a trading session that remains open throughout the Business Day. Except as expressly provided for by these Rules, all Orders are matched by the action of one Participant hitting (lifting) a displayed Bid (Offer) or by the Electronic Order Book matching electronically two passive orders that occur at the same price. The Electronic Order Book will display Orders anonymously based upon price/time priority, so that an Order at a better price will always have priority over Orders at inferior prices and resting Orders at the same price will be displayed on a time priority basis. Transactions in the Electronic Order Book Trading Session are based upon executable and indicative Orders.
  - (i) *Executable Orders.* Orders for Bids and Offers entered during Trading Hours shall be displayed by the Electronic Order Book in the priority of best price and earliest time entered. A trade is executed when a Participant electronically directs the Electronic Order Book to hit a Bid or lift an Offer that is not indicative. All Orders for Required Transactions are firm, i.e., executable, Orders.
  - (ii) *Indicative Orders.* Non-executable orders are labeled as Indicative Orders. Where present, Indicative Orders entered by the Facility do not include quantity. Indicative Orders entered by Participants or their Authorized Customers include quantity. An Indicative Order can be executed only following an expression of interest and the subsequent agreement of the Participant or its Authorized Customer to execute the transaction.

### **603. Orders.**

- (a) In General.
  - (i) Orders may be entered into the Electronic Trading System only:
    - (A) in such form and during such times as the Facility shall prescribe;
    - (B) by a Participant, its Sponsored Participants or by a Broker,

- (C) or by an Execution Specialist acting in his or her discretion pursuant to Rule 702(a)(vii) or at the direction of a Participant or a Sponsored Participant .
- (ii) Orders may contain such limitations and shall have such effect as determined and published by the Facility.
- (iii) Each Order entered into the Electronic Trading System must be in the form and contain the information the Facility requires, including, but not limited to, Order type, size, side, price (if applicable), and the applicable Commission Customer Type Indicator (CTI) Code. Any Order not complying with Facility requirements shall not be accepted.
- (iv) All Orders entered into the Electronic Trading System shall remain open in the Electronic Trading System until executed, withdrawn, cancelled or deleted. Such open Orders constitute the Electronic Order Book. Orders entered into the Electronic Trading System may be changed by the Participant, Authorized Customer, Authorized Trader or Execution Specialist entering the Order, but any change in the price or increase in quantity shall be treated as a new Order for the purpose of time priority.
- (v) Once the Facility receives notice from a Clearing Organization that a Clearing Participant has insufficient collateral or credit limit to clear the transaction, any Order or quote in the Electronic Trading System's Electronic Order Book for that Clearing Participant or for a Trading Participant guaranteed by that Clearing Participant and using that Clearing Organization is no longer in compliance with Facility requirements and shall be cancelled by the Facility.
- (vi) All Orders open at the end of the Business Day are cancelled.
- (vii) The Participant or Authorized Customer will be responsible for each Order that it enters on the Facility for itself or a Customer or which is entered on behalf of itself or a Customer . All Orders that have been entered on the Facility are subject to acceptance by other Participants, Sponsored Participants or Customers.

**(b) Type of Orders and Order Attributes.**

- (i) the following orders may be entered by a Participant into the Electronic Order Book:
  - (A) *Good until Bettered Orders. ("GTB").* A good-until-bettered order is an order to buy or sell a stated amount of a Swap or strategy to be executed at the displayed price until bettered by another order (whether from the original participant or another) or until the order is cancelled by the Participant or System.
  - (B) *Limit Orders.* A limit order is an order to buy or sell a stated

amount of a Swap or strategy to be executed at the price stated in the order or better, such that the order will persist and not be removed from the System even if bettered and will remain in the System until executed or cancelled by the System or by the Participant, Authorized Customer, Authorized Trader or Execution Specialist.

- (C) *Fill and Kill (“FAK”) Orders.* A FAK order is a request to buy or sell on the System at a specific price that, if matched by a contra order, will initiate a trade and may be matched immediately in its entirety or partially. If the size of the FAK order exceeds the amount initially executed the order will be worked in the System to the extent other contra orders become available until that transaction is concluded. If there is no contra order at the same price when the FAK is entered into the System the FAK order is withdrawn. This order type is deployed in both the order book and auction events.
- (D) *Time in Force (“TIF”) Orders.* A TIF Order is a Limit Order that remains open for a period of time selected by the Participant, Sponsored Participant or Execution Specialist (at the request of the Participant or Sponsored Participant) when the Order is first entered. Unless the time is extended during the period when the order is firm, the Order is automatically cancelled at the end of that period. Any subsequent Bid or Offer, even at the same price, will be treated as a new Order.
- (E) The Good until Bettered and Limit Order types may also be used with the following order attributes:
  - (1) *One Cancels the Other (“OCO”).* An OCO order provides the Participant with the ability to enter multiple Bids and/or Offers into the System where orders may be linked to each other so that if any one order is executed upon, the Participant’s remaining orders referenced to that instrument within a pre-selected set of instruments will be cancelled. Normally these sets are configured to be in groups of Bids or groups of Offers in specific product sets.
  - (2) *All or None (“AON”).* An AON order provides Participants with the ability to restrict execution to all of the chosen order size, or none at all, such that partial execution is disallowed. Users of AON as an order type may be bypassed in some order matching scenarios where the system cannot match with the AON order where the available volume is less than the minimum size restriction on the order but can match with other participants instead who may show orders in smaller amounts or be willing to accept partial fills.

- (F) *AON Cross*. Following the pre-execution communication, as permitted under Rule 505, an All-Or-None Request for Cross (“AONX”), which contains both the buy and the sell orders, must be entered onto the Electronic Order Book, either by a party to the transaction or by an agent on behalf of the participants. Upon entry of the AONX, the Electronic Order Book will display an indication that a cross will occur in fifteen (15) seconds. If the AONX price improves both the best bid and best offer (or if there is no bid/offer) in the Electronic Order Book, after fifteen (15) seconds following the submission of the AONX, the full quantity will be matched at the AONX price. If the AONX price matches or is outside the best bid or offer in the Electronic Order Book, the applicable side of the AONX order will match against the order in the Electronic Order Book at a price better than or equal to the AONX price, at any point during the fifteen (15) second period, provided the Electronic Order Book quantity is the same or higher than the quantity of the AONX cross request. Immediately thereafter, any unexecuted order remaining in the AONX cross request will be cancelled.
- (G) *Exchange Cross (X- Cross)*. Following the pre-execution communication, as permitted under Rule 505, a Request for Cross (“RFC”) order, which contains both the buy and the sell orders, must be entered onto the Electronic Order Book, either by a party to the transaction or by an agent on behalf of the participants. Upon entry of the RFC, the Electronic Order Book will display an indication that a cross will occur in fifteen (15) seconds. If the RFC price improves both the best bid and best offer (or if there is no bid/offer) in the Electronic Order Book, after fifteen (15) seconds following the submission of the RFC, all of the RFC quantity will match at the RFC price. If the RFC price matches, or is outside the best bid or offer in the Electronic Order Book once the fifteen (15) second period has expired following the submission of the RFC, the applicable side of the RFC order will match against the order in the Electronic Order Book at a price better than or equal to the RFC price. Immediately thereafter, the quantity remaining from the initial RFC order will match against the order on the opposite side of the RFC at the RFC price. Any unmatched balance from the initial RFC order will remain in the Electronic Order Book unless it is cancelled by the user.
- (ii) all orders are removed from the Electronic Order Book at the close of the Business Day.



#### 604. Confirmations and Objections.

The confirmation of all terms of the transaction shall take place at the same time as execution; *provided however*, specific customer identifiers need not be included for accounts included in bunched orders meeting the requirements of Rule 506(d) and Commission Rule 1.35(b)(5). In accordance with Rule 517, confirmations for transactions executed anonymously will not reveal specific customer identifiers or counterparty names on the confirmation unless they contain components of a package transaction that are uncleared swaps or non-swap instruments.

(a) **Confirmation of Cleared Transactions.** Upon execution, the Facility shall notify a Participant of the matching of Bids and Offers through the Electronic Trading System as follows.

(i) Initial notification: Following trade matching, the Facility will send an initial written message, which writing may be electronic, which includes price and side information to both sides of a trade.

(ii) Confirmation: Upon execution of the transaction, the Facility will issue a written confirmation, which writing may be electronic, and which shall legally supersede any previous agreement, shall serve as a confirmation of the transaction, and that the counterparties agree shall confirm execution of the transaction, and which shall include all material economic details of the executed transaction.

(b) **Confirmations for Uncleared Transactions.** The economic terms specific to the transaction agreed by the Participants on the Facility with respect to an uncleared transaction shall be reflected by the Facility in a written communication (the “Trade Communication”) sent to the applicable Participants. The Trade Communication, together with the documents and agreements (including, without limitation, ISDA master agreements, other master agreements, terms supplements, master confirmation agreements, and incorporated industry definitions) governing such transaction existing at the time of such commitment to which the participants are party (the “Terms Incorporated by Reference”) shall, taken together, comprise all of the terms of such transaction and serve as a confirmation of such transaction. Each Trade Communication is deemed to incorporate the Terms Incorporated by Reference and in the event of any conflict between the Trade Communication and the Terms Incorporated by Reference, the Trade Communication shall prevail to the extent of any inconsistency. The Facility shall issue a Trade Communication for uncleared transactions no later than 60 seconds after execution.

(i) Participants must provide to the Facility a copy of the underlying previously- negotiated freestanding agreements (Terms Incorporated by Reference) upon the Facility’s request.

(ii) The Facility must request from one or more Participant the underlying previously- negotiated freestanding agreements upon request from the

Commission and the Facility must furnish such documents to the Commission as soon as such documents are available.

- (c) **Objections.** Objections to the contents of transaction confirmations must be submitted to the Facility, in writing, promptly upon receipt, but no later than the close of that Business Day.

**605. Trade Invalidation upon Revocation of Clearing Authorization.**

Once the Facility has received notice from a Clearing Organization that a Clearing Participant's authorization has been terminated, any trade destined for that Clearing Organization subsequently matched by the Electronic Trading System for that Clearing Participant or for a Trading Participant guaranteed by that Clearing Participant shall be considered to be invalid and shall be cancelled by the Facility.

**606. Reserved**

**607. Assisted Order Entry.**

An Execution Specialist acting on behalf of a Participant or an Authorized Customer using telephonic or other means of electronic communication may, upon request of the Participant or Authorized Customer, assist a Participant or Authorized Customer in the entry or withdrawal of Orders into the Electronic Trading System. Any Execution Specialist entering an Order into the Electronic Trading System shall have a unique User ID paired with the Participant's ID, (and Authorized Customer ID where applicable) for whom the Execution Specialist is acting.

- (a) Upon receipt of a request for assistance in the entry or withdrawal of an immediately executable or indicative Order, the Execution Specialist must enter the executable Order immediately into the Electronic Trading System.
- (b) Any request by a Participant for assistance in the entry of an Order that is not immediately executable shall be entered into the Electronic Trading System as soon as practicable. The Execution Specialist must make a record of the time at which the request for assistance was first made and the time that the Order was entered into the Electronic Trading System.
- (c) Notwithstanding any other provision of these Rules, in the event that a Participant objects under Rule 604(c) to the contents of a the confirmation of a transaction that has taken place through the assistance of an Execution Specialist under the provisions of this Rule, the Board, through its designee the Chief Executive Officer or the Chief Executive Officer's Designee (the "Designee"), is authorized in his or her discretion to adjust trade prices or cancel a trade when such action is necessary to correct a clear clerical error on the part of the Execution Specialist in carrying out the instructions of the Participant that is assisted by the Execution Specialist. Any trade price adjustment or trade cancellation shall be made subject to the standards of this rule. Any

determination made under this rule to adjust any trade price or cancel any trade shall be announced to the market and such adjustment shall be reported by the Facility to the SDR.

## **PART 7. TRADING VIA VOICE FUNCTIONALITY.**

### **701. Scope.**

The Facility shall determine the Swaps to be offered for trading on or subject to the Rules of the Facility through Voice Functionality and decide upon changes thereto.

### **702. Trade Execution via Voice Functionality.**

- (a) Voice Trading is a Trading Facility, as defined by section 1a(51) of the Act, that enables multiple participants to offer Bids or Offers that are open to multiple participants through the use of telephone, electronic messaging or other communications devices acceptable to the Facility. Voice Trading is facilitated by an Execution Specialist who makes known to Participants the existence of trading interest in a Swap, facilitates the communication of Bids or Offers among multiple Participants, and assists in orderly trading on the Facility.
- (b) Technology-assisted Voice Trading on the Facility is a Voice Trading functionality which enables multiple participants to make available Bids or Offers to multiple participants facilitated by an Execution Specialist with the assistance of the automated functionalities provided for in this Rule.

### **703. Voice Trading Facility.**

Transactions executed via Voice Functionality may be matched on the Facility through any of the Voice Trading Sessions provided under paragraphs (a), (b), (c) or (d), of this Rule.

- (a) **Regular Voice Trading Facility.** The Regular Trading Facility is a Trading Session that remains open throughout the Business Day.
  - (i) A Participant initiates the purchase or sale of a Swap by communicating an indication of interest, indicative Bid or Offer or executable Bid or Offer to the Execution Specialist for any Swap listed on, or offered by, the Facility for trading using Voice Functionality. Bids and Offers shall be considered to be firm at the time first communicated to the Execution Specialist and subsequently indicative unless the Participant confirms to the Execution Specialist that the Bid or Offer remains firm. An initiating Participant shall be anonymous unless the Participant authorizes the Execution Specialist to disclose the initiating Participant's identity. In the discretion of the Execution Specialist, where a new Bid or Offer is bid or offered into the market and it does not match a resting Offer or Bid, the Participant with the

resting Offer or Bid that is closest in price and then oldest in time to the new Bid or Offer, generally has priority in hitting the new Bid or lifting the new Offer.

- (ii) In the absence of an initiating Participant, the Execution Specialist has discretion to initiate trading by communicating with Participants to ascertain trading interest.
- (iii) A responding Participant may accept a firm Bid or Offer or counter the Bid or Offer or indication of interest of the initiating Participant or of any other responding Participant. For the avoidance of doubt, an executed transaction may take place between two responding Participants. Responding Participants shall be anonymous unless the responding Participant authorizes the Execution Specialist to disclose the Participant's identity.
- (iv) In order for trading to occur during a Regular Voice Trading Session there must be no fewer than four Participants participating.
- (v) **Voice Work-up.** In order to encourage the provision of liquidity to the Voice Trading Facility, following the execution of an initial transaction (which shall be indicated to the counterparties as having been executed by communication of the Execution Specialist) either of the parties to the executed transaction or any other market participant (following transmittal by the Facility to an SDR of information relating to the initial, executed transaction) may request a work-up trading session. To open a work-up trading session, the Execution Specialist announces the work up session and price. Counterparties to the initial transaction may have a priority for additional amounts at the work-up price. Resting Bids or Offers at the work-up price or better must be included in the work up session. During the work-up session, execution occurs at the time that a buyer and a seller agree on the quantity of their respective transaction (the price being the work-up price), such execution being indicated to the counterparties by communication of the Execution Specialist. Separate transactions entered into during the work-up process will not be confirmed or reported as a single aggregate transaction. The work-up shall end when, to the extent possible, all buying and selling interest at that price have been filled. Any unfilled Bid or Offer at that price at the conclusion of the work-up shall be treated as a resting Bid or Offer depending upon the instruction of the market participant.
- (vi) **Voice Orders for Required Transactions.** Notwithstanding anything to the contrary in these Rules, each Voice Order for a Required Transaction communicated by a Participant or Sponsored Participant (which includes their respective Authorized Trader(s)) to an Execution Specialist shall be subject to the following conditions:

- (A) The Order shall be considered to be firm from the time the Order is first communicated to the Execution Specialist for a period of 60 seconds (or such longer period as communicated to the Execution Specialist). *Provided however*, the Order shall no longer be considered to be firm during the remainder of that period, after:
- (1) The Participant's or Sponsored Participant's Order is filled;
  - (2) The Participant or Sponsored Participant communicates to the Execution Specialist that the Order is cancelled and such communication is received by the Execution Specialist prior to the Order having been filled, *provided however*, if the Order has been filled in part, only that part of the Order remaining unfilled shall be cancelled;
  - (3) The Participant or Sponsored Participant is filled in the same Swap for the same size but at a difference price as the original Order;
  - (4) A new Order at a better price in the same Swap is entered onto the Facility by the same or a different Participant or Sponsored Participant; or
  - (5) A Material Market Event occurs. A Material Market Event shall be determined in the sole discretion of the Facility and shall include, but not be limited to:
    - (i) Economic news releases by the U.S. Department of Labor Bureau of Labor Statistics;
    - (ii) Other recurring material economic news releases;
    - (iii) Announcements of the Board of Governors of the U.S. Federal Reserve System;
    - (iv) A natural or man-made disaster or a Force Majeure.
- (vii) **Hybrid Trading of Required Transactions.** The Execution Specialist, in his or her discretion, may enter any Voice Order communicated to the Execution Specialist into the Electronic Order Book Trading Session under Rule 602(a)(i) whenever there shall appear to be sufficient liquidity in the Electronic Order Book to fill the Order. Such Order shall be entered into the Electronic Order Book as a Time in Force ("TIF") Order where it shall remain a firm Order for a period of 60 seconds.

- (b) **Technology-Assisted Voice Trading Facility (“Whiteboard Trading”).** The Technology-Assisted Voice Trading Facility is a Trading Session that remains open throughout the Business Day. A Participant initiates the purchase or sale of a Swap through the Technology-Assisted Voice Trading Facility by requesting that the Execution Specialist enter an instrument description on the Whiteboard screen as an indication of interest.
- (i) **Bids and Offers.** Depending upon the Swap, which may include Option strategies or a Swap structure, the Execution Specialist, or the Participants themselves, may enter bids and offers. Bids and Offers entered onto a Whiteboard are considered to be indicative because they are subject to subsequent trade parameterization and credit checks.
- (c) **Request for Quote Voice Trading Facility.** A Request for Quote Voice Trading Facility Trading Session may be initiated as described in Rule 702a below.
- (d) **Order Types.** The following Orders may be entered by a Participant verbally to an Execution Specialist. Such Orders shall include the information the Facility requires, including, but not limited to, Order type, size, side, price (if applicable), and the applicable Commission Customer Type Indicator (CTI) Code. Any Order not complying with Facility requirements shall not be accepted by the Execution Specialist. Voice Functionality Orders include:
- (i) *Good until Bettered Orders. (“GTB”).* A good-until-bettered order is an order to buy or sell a stated amount of a Swap or strategy to be executed at the displayed price until bettered by another order (whether from the original participant or another) or until the order is cancelled by the Participant or System.
- (ii) *Limit Orders.* A limit order is an order to buy or sell a stated amount of a Swap or strategy to be executed at the price stated in the order or better, such that the order will persist and not be removed even if bettered and will remain until executed or cancelled by the Participant, Authorized Customer, Authorized Trader or Execution Specialist.
- (iii) *Fill and Kill (“FAK”) Orders.* A FAK order is a request to buy or sell on the System at a specific price that, if matched by a contra order, will initiate a trade and may be matched immediately in its entirety or partially. If the size of the FAK order exceeds the amount initially executed the order will be worked in the System to the extent other contra orders become available until that transaction is concluded. If there is no contra order at the same price when the FAK is entered into the System the FAK order is withdrawn. This order type is deployed in both the order book and auction events.
- (iv) *Time in Force (“TIF”) Orders.* A TIF Order is a Limit Order that remains open for a period of time selected by the Participant, Sponsored Participant or Execution Specialist (at the request of the Participant or Sponsored Participant) when the Order is first entered. Unless the time is extended during the period when the order is firm, the Order is automatically cancelled

at the end of that period. Any subsequent Bid or Offer, even at the same price, will be treated as a new Order.

- (v) the Good until Bettered and Limit Order types may also be used with the following Order attributes:
  - (A) *One Cancels the Other (“OCO”)*. An OCO order provides the Participant with the ability to enter multiple Bids and/or Offers into the System where orders may be linked to each other so that if any one order is executed upon, the Participant’s remaining orders referenced to that instrument within a pre-selected set of instruments will be cancelled. Normally these sets are configured to be in groups of Bids or groups of Offers in specific product sets.
  - (B) *All or None (“AON”)*. An AON order provides Participants with the ability to restrict execution to all of the chosen order size, or none at all, such that partial execution is disallowed. Users of AON as an order type may be bypassed in some order matching scenarios where the system cannot match with the AON order where the available volume is less than the minimum size restriction on the order but can match with other participants instead who may show orders in smaller amounts or be willing to accept partial fills.
- (vi) All Voice Orders shall remain open for such period as provided in Rule 703(a)(i) and (a)(vi). All Orders cease to be active at the close of the Business Day.

#### **704. Confirmation of Voice Transactions and Objections.**

The confirmation of all terms of the transaction shall take place at the same time as execution; *provided however*, specific customer identifiers need not be included for accounts included in bunched orders meeting the requirements of Rule 506(d) and Commission Rule 1.35(b)(5). In accordance with Rule 517, confirmations for transactions executed anonymously will not reveal specific customer identifiers or counterparty names on the confirmation unless they contain components of a package transaction that are uncleared swaps or non-swap instruments.

##### **(a) Confirmation of Uncleared Transactions.**

- (i) Initial notification: Upon initial indication of a match of any Permitted Transaction matched in a Voice Trading Session under Rule 702 or in a Request for Quote under Rule 702a, but prior to confirmation of the execution of the transaction, the matched transaction will be subject to the agreement of the parties as to trade structure parameters and to a manual credit check. The Facility will send an initial written message, which writing may be electronic, which includes price, side and structure parameter information to both sides of a matched trade or of each trade within a series of trades.

- (ii) Confirmation: Execution of a matched Permitted Transaction only takes place after the credit check is satisfactorily completed and the parameters of any structure are agreed to by the matched counterparties. At that time, the matched trade is executed and the Facility will issue a written confirmation of the transaction, which writing may be electronic, and which shall legally supersede any previous agreement, shall serve as a confirmation of the transaction, and that the counterparties agree shall confirm execution of the transaction, and which shall include all material economic details of the executed transaction.
- (iii) **Form and Content of Confirmation for Uncleared Transactions.** The form and content of the confirmation for uncleared Voice Transactions shall be the same as provided under Rule 604(c), the provisions of which are incorporated by reference herein. The Facility shall issue a confirmation of uncleared transactions no later than 60 seconds after execution.

**(b) Confirmation of Cleared Transactions.**

With respect to Cleared Transactions matched in a Voice Trading Session under Rule 702 or in a Request for Quote under Rule 702a, but prior to confirmation of the execution of the transaction, the matched transaction will be subject to the agreement of the parties as to trade structure parameters and to a manual credit check. Upon completion of the transaction, the Execution Specialist will key-in trade details and the Facility will issue a written confirmation of the executed trade, which writing may be electronic, and which shall legally supersede any previous agreement, shall serve as a confirmation of the transaction, and that the counterparties agree shall confirm execution of the transaction, and which shall include all material details, including all primary economic terms.

**(c) Objections.**

Objections to the contents of transaction confirmations must be submitted to the Facility, in writing, promptly upon receipt, but no later than the close of that Business Day. Notwithstanding any other provision of these Rules, in the event that a Participant objects under this section to the contents of the confirmation of a transaction that has taken place through Voice Functionality under Part 7 of these Rules, the Board, through its designee the Chief Executive Officer (or the Chief Executive Officer's delegate) (the "Designee"), is authorized in his or her discretion to adjust trade prices or cancel a trade when such action is necessary to correct a clear clerical error on the part of the Execution Specialist in facilitating trading via Voice Functionality. Any trade price adjustment or trade cancellation shall be made subject to the standards of this rule. Any determination made under this rule to adjust any trade price or cancel any trade shall be announced to the market by a message from the Control Desk or such other method as the Facility shall provide and such adjustment shall be reported by the Facility to the SDR.



**705. Record-keeping and Reporting.**

All Voice-assisted trading shall be recorded in an unalterable format and retained as required under Commission Rule 1.31. All Bids and Offers entered through the Whiteboard functionality will be retained in an unalterable format as required under Commission Rule 1.31. The Execution Specialist shall key-in the trade details of the transaction immediately upon execution. The Facility shall report publicly such transactions as having been executed on or subject to the rules of the Facility, identifying such transactions as Voice assisted transactions and, on behalf of the parties to the transaction, report the transaction to a Swap Data Repository as soon as technologically practicable after execution of the Swap pursuant to Commission Rule 45.3.

## **PART 7a TRADING VIA REQUEST FOR QUOTES ("RFQ") FUNCTIONALITY.**

### **701a. Scope.**

The Facility shall determine the Swaps to be offered for trading on or subject to the Rules of the Facility through RFQ Functionality and decide upon changes thereto.

### **702a. Trade Execution via RFQ Functionality.**

- (a) Participants or Authorized Customers may request that Bids or Offers from particular Participants or Authorized Customers be solicited
  - (i) for Swaps that are supported by the Electronic Trading System, by submitting the request directly into the Electronic Trading System or by requesting that an Execution Specialist, acting as agent, enter the RFQ into the Electronic Trading System on the Participant's behalf; or
  - (ii) by requesting that the RFQ be conducted via Voice Functionality facilitated by an Execution Specialist.
- (b) The Facility will calculate a mid-market price where possible, derived from the average of all executable Bids and Offers.
- (c) Participants will have equal priority in receiving the RFQ and in transmitting and in displaying or communicating their responses. A tradable response to an RFQ on a Required Swap requires, during the Commission-determined phase-in compliance period, that a minimum of two Participants, and thereafter, a minimum of three Participants, not affiliated with or controlled by the requestor or each other, receive the request. A minimum number of requests is not required for an RFQ on a Permitted Transaction. There is no maximum number of Participants that may be requested and an RFQ may be sent to all market participants.
- (d) During the RFQ the Electronic Order Book displays all resting executable Bids or Offers and the best priced Bid or Offer is copied to the RFQ entry window. The best-priced Bid or Offer is anonymous in the same manner as are all resting executable Bids or Offers shown in the Electronic Order Book and displayed during the RFQ. Bids or Offers are also communicated during an RFQ by Voice Functionality, as applicable. The Facility will assist responders by publishing the pre-trade mid-market or calculated mid-market price, where available.
- (e) Responding Bids or Offers to the RFQ will display price and quantity and the identity of the responding Participants only to the requestor and/or the Participant's Authorized Trader. Bids or Offers responding to an RFQ may be either executable or indicative. Responding Bids or Offers conducted via Voice

Functionality facilitated by an Execution Specialist may be communicated anonymously.

- (f) The requestor has the ability to select the Bid or Offer against which to be matched from among the responding and the resting Bids or Offers. The requesting Participant may also show an Offer or Bid to all responders. Any of the responders may lift or hit the requestor's Order. A requesting Participant may also show an Offer or Bid to a further minimum three Participants (which may include one or more of the responders to the initial request) subject to the provisions of paragraph (c)
- (g) Upon execution, the price and quantities of the transactions will be reported by the Facility with an identification that the transaction was executed using the RFQ procedure. RFQ trades exceeding in quantity the Swap's Block Trade size shall be reported in the time provided under Rule 510(d). Confirmations and objections may be made subject to the provisions of Rule 704.
  - (h) The request for RFQ will remain open until:
    - (i) the requestor trades with a responder or with a Bid or Offer from the Order book;
    - (ii) the request is withdrawn where such withdrawal can be made at any time by the requestor or the Execution Specialist;
    - (iii) the request expires within the time specified in the RFQ without trading; or
    - (iv) the end of the Trading Day.
- (i) Duties of Execution Specialists.
  - (i) the Execution Specialist, upon receipt of a request for voice assistance in entering an RFQ into the Trading System, must enter the RFQ immediately into the Trading System. If a Participant requests delayed entry of a voice-assisted RFQ, the Execution Specialist must make a record of the time at which the request for assistance was first made with respect to the request for delayed entry.
  - (ii) the Execution Specialist, upon receipt of a request for voice matching of an RFQ, must make a record of the time at which the request for voice matching was first made and the number of counterparties which were requested to respond to the RFQ.

## **PART 8. CLEARING AND FINANCIAL INTEGRITY OF CONTRACTS**

### **801. Scope.**

Rules 802 and 803 shall apply to Required Transactions. Rule 804 shall apply to Permitted Transactions. Rules 805, 806 and 807 shall apply to both Required and Permitted Transactions.

### **802. Relation to Clearing Organization.**

- (a) **Rules of Clearing Organization.** The Bylaws and Rules of the designated Clearing Organizations shall be applicable to the clearing of Swaps which are Required Transactions traded on or subject to the rules of the Facility.
- (b) **Cleared Swaps.** Every Swap executed on or subject to the rules of the Facility that is a Required Transaction will be forwarded by the Facility to the Clearing Organization selected by the Participant or its Authorized Customer directly to the Clearing Organization or via a Straight-Through-Processing (STP) hub.
- (c) **Choice of Clearing Organization.** If more than one Clearing Organization is available for clearing the Swap, each Participant and Authorized Customer may designate its choice of Clearing Organization for selected transactions by designating a specific Clearing Organization for each Order or RFQ.
  - (i) Participants or Authorized Customers may designate the Clearing Organization by hitting a Bid or lifting an Offer for the displayed price of a product cleared by a specific Clearing Organization. Participants or Authorized Customers may enable a general filter on Facility systems to view only prices for a selected Clearing Organization(s).
  - (ii) Trades executed as transactions to be cleared at a specified Clearing Organization will be subject to the collateral requirements of that Clearing Organization, including the timing of collateral funding requirements of that Clearing Organization.
  - (iii) Subject to the clearing authorization requirement of Rule 803, Participants may choose a Clearing Organization to which the Swap will be forwarded by the Facility. Such Clearing Organization shall be authorized or permitted by the Commission, or otherwise meet Commission requirements, to clear such Swaps. Such Clearing Organizations include but are not limited to the following:

Swap	Clearing Organization
Credit Default Swap Indices	ICE Clear Credit LLC, Ice Clear Europe Ltd., LCH.Clearnet SA
Interest Rate Swaps	LCH. Clearnet Ltd., LCH.Clearnet LLC, CME, Inc., Japan Securities Clearing Corporation

- (d) **Margin.** A Participant must comply with all margin requirements of the relevant Clearing Organization and its Clearing Participant, if applicable, and any applicable margin requirement set forth by Commission Regulation or Applicable Law.

### 803. Clearing Authorization Required.

- (a) Clearing Participant Authorization.
- (i) Every cleared trade executed on the Trading System or subject to the rules of the Facility shall be cleared through a Clearing Participant authorized by the designated Clearing Organization for the given product.
  - (ii) Each Clearing Participant by entering into a relationship to intermediate clearing on behalf of a Trading Participant as provided in subsection (b) of this Rule 803, shall be subject to, and shall be considered to have consented to, the jurisdiction of the Facility, in respect of such transactions, including the jurisdiction of the Facility to impose sanctions for violations under Rule 1016.
- (b) **Trading Participant and Authorized Customer Authorization.** Each Trading Participant must establish and maintain a relationship with a Clearing Participant that will intermediate the clearing of the Trading Participant's Swap transactions and each Authorized Customer must establish and maintain a relationship with a Clearing Participant that will intermediate the Authorized Customer's Swap transactions. Each must:
- (i) identify to the Facility its Clearing Participant;
  - (ii) ensure they do not request quotes, Bid or Offer or generally trade Swaps for a designated Clearing Organization without appropriate authorization; and
  - (iii) notify the Facility of any change in relationship with a Clearing Participant. Such notification must be made prior to executing any trade on the Trading System or any cleared trade subject to the rules of the Facility.
- (c) **Evidence of Agreement with Clearing Participant.** Evidence of an agreement between the Clearing Participant and its Trading Participant or between the Clearing

Participant and an Authorized Customer must be provided to the Facility in the form and manner requested by the Facility, and must be specific with respect to the products covered thereunder.

- (d) **Termination of Clearing Authorization.** A Clearing Participant may terminate at any time its authorization of a Trading Participant or of an Authorized Customer by informing the Facility and as applicable the Trading Participant and the Authorized Customer. Notice shall be given in as promptly a form as possible and shall be provided in writing no more than twenty-four hours after being given by any other means.
- (i) In the event the Clearing Participant notifies the Facility that it will no longer novate a Trading Participant's or Authorized Customer's Swaps, until the Trading Participant or Authorized customer establishes a relationship with another Clearing Participant acceptable to the Facility, the Facility will take immediate steps to:
- (A) withdraw all of the Trading Participant's or Authorized Customer's resting orders from the Trading System,
  - (B) terminate the Trading Participant's or Authorized Customer's access to the Trading System; and
  - (C) terminate the Trading Participant's or Authorized Customer's access to execute trades subject to the rules of the Facility

#### **804. Financial Integrity for Permitted Transactions.**

- (a) Voluntary Clearing of Swaps.

Permitted Transactions executed on or subject to the rules of the Facility that are not required to be cleared will only be cleared if both counterparties agree, prior to or subsequent to execution, to submit the trade to an agreed upon Clearing Organization. If the counterparties elect to clear a transaction prior to execution or at the time of execution, it will be forwarded by the Facility to the agreed upon Clearing Organization directly or via a Straight-Through-Processing (STP) hub. A Participant electing to clear a transaction must comply with all margin requirements of the relevant Clearing Organization and its Clearing Participant, if applicable, and any applicable margin requirement set forth by Commission Regulation or Applicable Law.

- (b) **Credit Arrangements Required.**

Each Participant and Authorized Customer in order to enter an Order for an uncleared Swap transaction on or subject to the rules of the Facility must, upon request, provide evidence to the Facility that:

- (A) it has current Swap transaction documentation, including credit arrangement documentation, which would apply to the transaction;
- (B) it has current arrangements for the exchange of collateral; and
- (C) it meets any credit filter requirements adopted by the Facility, including updating any bilateral credit matrices where provided by the Facility.

**805. Trades Not Accepted for Clearing.**

- (a) **Clearing Certainty.** The Facility shall promote certainty of clearing by identifying to the Participant or the Authorized Customer, as applicable, that an Order for a cleared contract, if executed, would be within the clearing credit or trading limits which are applied by the Clearing Participant to the Person on whose behalf the Order has been entered.
- (b) **Trades Rejected for Clearing.** In the event that a Swap is rejected by the Clearing Organization to which it has been submitted, the Facility will so inform the Participants or Authorized Customers that are the counterparties to the trade. A trade for which the Facility has received a rejection notice from the Clearing Organization is void ab initio; *provided however*, nothing in this Rule shall supersede the procedures of Rule 515 which shall apply to Error Trades.
- (c) **Breakage Agreements Prohibited.** Participants are prohibited from requiring breakage agreements with other Participants as a condition of trading with them.

**806. Disputes related to Clearing.**

Disputes arising from or in connection with the clearance, delivery or settlement of positions shall be resolved pursuant to the Bylaws, Rule and procedures of the designated Clearing Organization.

**807. Establishment of Daily and Final Settlement Prices.**

- (a) The Facility shall calculate a daily settlement price for each Swap listed for trading on the Facility and priced that day via either firm or indicative orders. Such daily settlement prices shall be calculated in the same manner, shall be published to [www.bgcsef.com](http://www.bgcsef.com) and shall be subject to subsequent review and revision by each of the Facility's Clearing Organizations in accordance with each respective Clearing Organization's rules and procedures.
- (b) Calculation. The Facility will calculate daily settlement prices for Swaps receiving Bids or Offers through the Business Day only. Swaps listed for specific Clearing Organization clearing that do not receive any executable or indicative Bids and Offers in the order book on any particular day will not have daily settlement prices calculated.

The settlement price will be established using an algorithm which calculates the settlement price using the following hierarchy of price inputs:

- (i) the mid-price of the best executable bid/offer spread present at the close rounded to the nearest price increment; then
- (ii) the mid-price of an indicative Bid/Offer spread present at the close rounded to the nearest price increment; if none, then
- (iii) the most recent of the following:
  - (A) actual Bid;
  - (B) actual Offer;
  - (C) indicative Bid;
  - (D) indicative Offer; and
  - (E) last trade.

## **PART 9. BUSINESS CONDUCT.**

### **901. Violation of Law.**

It shall be prohibited for any Participant, Authorized Customer or Customer to violate or fail to conform to applicable provisions of the Act, Commission Regulations or any other law applicable to trading on the Facility.

### **902. Rule Violation.**

It shall be prohibited for any Participant, Authorized Customer or Customer to violate or fail to conform to the Rules and procedures of the Facility or with any decision or order of a committee of the Facility or any order of any officer, employee or agent of the Facility when acting within his, her or its jurisdiction.

### **903. No Transfers.**

No Participant shall transfer or assign such Participant's trading privileges. Any purported transfer or assignment shall not be binding on the Facility. Persons who acquire or succeed to the business of any Participant may obtain trading privileges only by application to the Facility pursuant to Part 3 of these Rules, except upon the prior written consent of the Facility if the Participant is succeeding to the business of a Participant solely as a result of the change in the corporate form of the Participant.



**904. False Information.**

It shall be prohibited for any Person to disseminate any false, misleading or knowingly inaccurate information, including reports concerning any Swap or market information or conditions that affect or tend to affect the price of any Swap executed on the Facility.

**905. Manipulation Prohibited.**

No person shall manipulate, or attempt to manipulate, the price of, or to corner, any Swap executed on the Facility, or in connection therewith the Underlying Commodity.

**906. Prohibition on Misstatements.**

No Person shall furnish false or misleading information or fail to furnish information in respect of such Person's activities on or subject to the Rules of the Facility, when requested by the Facility or any committee, officer, employee, or agent of the Facility, acting in the course of his, her or its duties.

**907. Employees of the Facility.**

It shall be prohibited to knowingly carry an account, enter an order or effect any transaction for any employee of the Facility, the Clearing Organization or any other Participant without the prior written consent of the employer (which may be in the form of a blanket consent to all orders and transactions entered or executed after such consent is given).

**908. Abusive Trading Practices Prohibited.**

No Participant, Authorized Customer or Customer shall engage in front-running, wash trading, pre-arranged trading, fraudulent trading, money passes, accommodation trading, any other manipulative activity prohibited by the Act or Commission regulation or disruptive trading practice (which includes any trading practice described in Section 4c(a)(5) of the Act or in applicable interpretive guidance issued by the Commission and in force at the time of the violation), or enter into non-competitive transactions on or subject to the Rules of the Facility except as otherwise authorized by these Rules, or execute any such Order on behalf of another with such knowledge of its nature.

**909. Detrimental Conduct.**

No Person shall engage in conduct or practices inconsistent with just and equitable principles of trade or conduct or practices detrimental to the best interests of the Facility.

## **910. Fraud Prohibited.**

No Person shall use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud, or engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person.

## **PART 10. DISCIPLINARY PROCEEDINGS.**

### **1001. Scope.**

The procedures of this Part 10 shall apply to any Person that is subject to, and that is bound by, the Rules of the Facility.

### **1002. Investigations.**

- (a) **Investigation.** The Enforcement Staff of the Compliance Department and its designees is responsible for investigating possible violations of the Rules upon request from Commission staff or the discovery or receipt of information which, in their judgment, indicates a possible basis for finding that a violation has occurred or will occur. Investigations shall be conducted by the Enforcement staff in accordance with these Rules. The Facility may contract for the performance of specified functions assigned by these Rules to the Enforcement Staff of the Compliance Department. The Facility retains ultimate responsibility of the investigations.
- (b) **Investigation Report.** After conducting an investigation, the Enforcement Staff of the Compliance Department shall prepare a written report including the reason the investigation was initiated, a summary of the complaint, if any, the relevant facts, the Enforcement Staff's conclusions, analysis and recommendation as to whether disciplinary action should be pursued. This written report shall be produced within twelve months following the initiation of the investigation. If the Enforcement Staff has determined that a reasonable basis exists for finding a violation, it shall make a recommendation as to whether the Disciplinary Committee should proceed with the matter. The Enforcement Staff may also issue a warning letter to the Person being investigated or forward to the Review Panel of the Disciplinary Committee a recommendation that it issue a warning letter. A warning letter issued to the Person under investigation under this paragraph is not a penalty or an indication that a finding of a violation has been made.

The investigation report shall become part of the investigation file, which shall be maintained by the Compliance Department for a period of not less than five years after the completion of such report. The Enforcement Staff shall promptly provide the Disciplinary Committee with a copy of each investigation report.

### **1003. Review of Investigation Report.**

The Review Panel shall promptly review each investigation report prepared by the Enforcement Staff. In the event the Review Panel decides that additional investigation or evidence is needed, it shall promptly direct the Enforcement Staff to conduct further investigation. Within a reasonable period of time not to exceed thirty days after the receipt of a completed investigation report, the Review Panel shall take one of the following actions:

- (a) If the Review Panel determines that no reasonable basis exists for finding a violation or that prosecution is otherwise unwarranted, it may direct that no further action be taken. Such determination must be in writing and contain a brief statement setting forth the reasons therefore.
- (b) If the Review Panel determines that a reasonable basis exists for finding a violation which should be adjudicated, it shall direct that any Person alleged to have committed the violation be served by Enforcement Staff with a notice of charges, thus commencing disciplinary proceedings pursuant to these Rules.
- (c) The Review Panel may also determine to issue a warning letter to the Person being investigated. A warning letter issued to Person under investigation under this paragraph is not a penalty or an indication that a finding of a violation has been made.

### **1004. Respondent.**

A Person alleged in a notice of charges to have committed a violation shall be referred to as the Respondent.

### **1005. Notice of Charges.**

A written notice of charges shall be served by Enforcement Staff on any Respondent as directed by the Hearing Panel. The notice of charges shall:

- (a) State the acts, practices or conduct in which the Respondent is alleged to have engaged;
- (b) State the provision of the Rules alleged to have been, or are about to be, violated;
- (c) State the predetermined penalty, if any;
- (d) State that the Respondent is entitled to a hearing on the charges upon written request served upon the Compliance Department within 30 days of service of the notice of charges and filed with the Hearing Panel of the Disciplinary Committee and that failure so to request a hearing within 30 days, except for good cause shown, shall be deemed a waiver of the right to a hearing; and

- (e) State that the Respondent is entitled to serve an answer upon the Compliance Department within 30 days of service of the notice of charges and to file such answer with the Hearing Panel and that failure in an answer to deny expressly any allegation or any charge in the notice of charges shall be deemed to be an admission of such allegation or charge.

**1006. Service.**

Service of a notice of charges or any other document in a disciplinary proceeding on a Respondent shall be made by personal delivery to the Respondent or the Respondent's agent appointed under Rule 303(e) or by first class mail addressed to the Respondent at the last address filed by the Respondent with, or otherwise known to, the Facility. However, if the Respondent is represented by counsel in the disciplinary proceeding, service shall be by personal delivery to counsel or by first class mail addressed to counsel at the last address filed by counsel with the Facility. Service of any document on the Compliance Department shall be made by personal delivery to the Compliance Department or by first class mail addressed to the Compliance Department, in either case at the address specified in the notice of charges. Filing with the Disciplinary Committee may be made by personal delivery to the Disciplinary Committee or by first class mail addressed to the Disciplinary Committee at the address specified in the notice of charges. Service by mail shall be complete when deposited in an official depository of the United States Postal Service. If service is made by mail, any time period in these Rules calculated with respect to the date of service shall be extended by a period of five days. Service may be effected through electronic mail or facsimile upon the agreement of all parties.

**1007. Answer from Respondent.**

- (a) A Respondent receiving a notice of charges may serve a written answer to the notice of charges upon the Compliance Department and file the answer with the Hearing Panel, provided that:
  - (i) the answer must be in writing and include a statement that the Respondent admits, denies or is without knowledge or information sufficient to form a belief as to the truth of each allegation.
  - (ii) failure to serve an answer within 30 days following the service of the notice of charges shall be deemed an admission of all allegations contained in the notice of charges.
  - (iii) failure in an answer to expressly deny any charge or allegation shall be deemed to be an admission of the charge or allegation; provided, however, that a statement of a lack of sufficient knowledge or information to form a belief as to the truth of an allegation shall have the effect of a denial of the allegation.

- (b) If the Respondent admits or fails to deny any of the charges in a notice of charges, the Hearing Panel may find that the violation of the Rules alleged in the charge has been committed and may impose a penalty no greater than the predetermined penalty, if any, stated in the notice of charges for such violation or violations. If no predetermined penalty was so stated, the Hearing Panel shall impose a penalty for each violation found to have been committed.
- (c) If the Hearing Panel imposes a penalty pursuant to paragraph (b) of this Rule, the Respondent and the Compliance Department shall be promptly served with a written notice of any penalty to be imposed and shall advise the Respondent that he or she may request a hearing on the penalty, provided that a written request for a hearing must be served upon the Compliance Department within 30 days following service of the notice and filed with the Hearing Panel. However, no hearing shall be permitted on a penalty that is less than or equal to the predetermined penalty, except for good cause shown. If the Respondent fails to request a hearing within 30 days following service of the notice, the Respondent shall be deemed to have accepted the penalty, and the decision of the Hearing Panel shall be the final action of the Facility.

#### **1008. Right to Representation.**

A Respondent shall be entitled to be represented by legal counsel or any other representative of the Respondent's choosing in any proceedings under this part of the Rule; provided, however, that this Rule does not constitute the basis for any claim that the Facility must furnish an attorney to a Respondent.

#### **1009. Hearings.**

- (a) If the Respondent has, in a timely manner, requested a hearing on a charge which is denied in the Respondent's answer or on a penalty imposed by the Hearing Panel pursuant to Rule 204 and this Part 10 (other than a predetermined penalty stated in the notice of charges), the Respondent shall have an opportunity for a hearing on the matter. Such hearing shall be promptly convened after fair notice to the Respondent.
- (b) Any hearing shall be conducted before a Hearing Panel of three members of the Disciplinary Committee.
- (c) The Respondent shall be entitled in advance of the hearing to examine all books, documents, or other tangible evidence in the possession or under the control of the Facility which are to be relied upon by the Enforcement Staff of the Compliance Department in presenting the charges contained in the notice of charges or which are relevant to those charges or the penalties.
- (d) The formal rules of evidence need not apply; nevertheless, the procedures for the hearing may not be so informal as to deny a fair hearing.

- (e) The Compliance Department shall be a party to the hearing and shall present its case on those charges and penalties which are the subject of the hearing.
- (f) The Respondent shall be entitled to appear personally at the hearing.
- (g) The Respondent shall be entitled to cross-examine any persons appearing as witnesses at the hearing.
- (h) The Respondent shall be entitled to call witnesses and to present such evidence as may be relevant to the charges or the penalties and the Compliance Department shall be entitled to cross-examine any witness called by the Participant.
- (i) The Facility shall require Persons within its jurisdiction called as witnesses to appear at the hearing and to produce evidence. It shall make reasonable efforts to secure the presence of all other Persons called as witnesses whose testimony would be relevant.
- (j) A substantially verbatim record of the hearing shall be made and shall become a part of the record of the proceeding. The record must be one that is capable of being accurately transcribed; however, it need not be transcribed unless the transcript is requested by Commission staff or the Respondent. The record shall be transcribed pursuant to Commission Rule 9.21(a) if the decision is appealed to or reviewed by the Commission. In all other instances, a summary record of the hearing is permitted.
- (k) The cost of transcribing the record of the hearing shall be borne by the Respondent if the Respondent requests the transcript or appeals the decision to the Commission. In all other instances, the cost of transcribing the record shall be borne by the Facility.
- (l) A penalty pursuant to Part 10 may be summarily imposed by the hearing panel of the Disciplinary Committee upon any person within its jurisdiction whose actions impede the progress of a hearing.

#### **1010. Decision.**

- (a) Promptly following the hearing, the Hearing Panel of the Disciplinary Committee shall render a written decision based upon the weight of the evidence contained in the record of the proceeding and shall serve a copy of its decision within 30 days upon the Compliance Department and the Respondent. The decision, shall be the final action of the Facility and shall not be subject to appeal within the Facility. The decision shall become effective at the time set forth therein the decision, which shall be not less than fifteen days after the written decision has been delivered to the Person disciplined or denied access. Where delivery is by U.S. mail, an additional three day period shall be provided prior to the decision becoming effective. *Provided, however,* that a decision may become effective in fewer than fifteen days if, as determined by the Facility and stated in the decision, such an action is necessary to protect the best interests of the Facility, the violation relates to timely submission of accurate records required for

clearing, or the disciplined Person consents to the penalty and the timing of its effectiveness. The decision shall include:

- (i) the notice of charges or a summary of the charges;
  - (ii) the answer, if any, or a summary of the answer;
  - (iii) a brief summary of the evidence produced at the hearing or, where appropriate, incorporation by reference of the investigation report;
  - (iv) a statement of findings and conclusions with respect to each charge, a complete explanation of the evidentiary and other basis for such findings and conclusions with respect to each charge and basis for imposing sanctions, and an indication of each specific Rule which the Respondent is found to have violated; and
  - (v) a declaration of any penalty imposed and the effective date of such penalty.
- (b) When a Decision under Rules 1010, 1015 or 1016 has become final, the Facility shall, within thirty days, provide a copy of such Decision by electronically providing such information to the National Futures Association for entry into its Background Affiliation Status Information Center system.

#### **1011. Penalties.**

- (a) The Hearing Panel of the Disciplinary Committee may impose any one or more of the following penalties for violation of the Rules against any Person that is subject to the jurisdiction of the Facility, including but not limited to, any Participant, Clearing Participant or Customer:
- (i) a censure or reprimand;
  - (ii) suspension of trading privileges;
  - (iii) termination as a Participant or its acceptability as a Clearing Participant;
  - (iv) a fine of up to \$100,000 per violation; or
  - (v) such other penalty as the hearing panel in its discretion shall deem appropriate.
- (b) In the case of any penalty imposed on a Respondent denying access in whole or in part to the Facility's market, the Hearing Panel shall issue an order to all Participants prohibiting them from granting such access, directly or indirectly, and any knowing violation of such an order shall constitute a violation of the Rules.

- (c) Any penalty imposed under Rule 1011, 1012, 1013, 1014, 1015 or 1016 shall be commensurate with the violation committed, shall take into account the respondent's disciplinary history and where applicable, shall include full customer restitution, except where the amount of restitution or to whom it should be provided cannot be reasonably determined.
- (d) Each Participant will be responsible for paying any fine or other amount imposed on but not paid by any of its Supervised Persons, or Customers.

### **1012. Predetermined Penalties.**

The Facility may adopt specific maximum penalties for particular types of violations ("Predetermined Penalties"). If it does so, the Disciplinary Committee or a Hearing Panel of the Disciplinary Committee shall have discretion in each case whether to employ the predetermined penalty. If the predetermined penalty is employed, it shall be stated in the notice of charges. In such a case, after a hearing on a denied charge where a Respondent is found to have committed the violation charged, the hearing panel of the Disciplinary Committee shall impose the predetermined penalty or an appropriate lesser penalty.

### **1013. Settlement.**

- (a) At any time after the issuance of a notice of charges and prior to the issuance of a decision pursuant to Rule 1010, a Respondent may serve upon the Compliance Department and file with the Disciplinary Committee a written proposal to settle the matter in question. The Disciplinary Committee may accept or reject the settlement proposal, but may not alter its terms unless the Respondent agrees. The Disciplinary Committee, in its discretion, may permit the Respondent to accept a penalty without either admitting or denying the violations upon which the penalty is based.
- (b) If the Disciplinary Committee accepts a settlement proposal, it shall issue a written decision specifying the violations it has reason to believe were committed and any penalty to be imposed. If the settlement proposal specifies that the Respondent is agreeing to accept a penalty without either admitting or denying any violations, the decision shall so state.
- (c) If the Disciplinary Committee does not accept a settlement proposal or if the Respondent withdraws the proposal after its submission but before its final acceptance by the Disciplinary Committee, the proceedings shall continue against the Respondent, but the Respondent shall not be deemed to have made any admissions by reason of the settlement proposal and shall not be otherwise prejudiced by having submitted the settlement proposal.



#### **1014. Minor Penalties.**

- (a) The Compliance Department may summarily impose a fine against any Participant, Authorized Customer or Customer, as applicable:
  - (i) for failing to make timely payments of dues, fees, fines, assessments or other charges;
  - (ii) for failing to make timely and accurate submissions to the Facility of notices, reports, or other information required under any provision of the Rules; or
  - (iii) for failing to keep any records required under any provision of the Rules.
- (b) The amounts of the fines for any category of violations which may be imposed pursuant to this Rule shall be set by the Facility from time to time, provided that the minimum fine shall not be less than \$1,000 and the maximum fine for any one violation shall not exceed \$10,000. Nothing contained in this Rule shall preclude any other action against a Participant pursuant to the Rules. The imposition of a fine against a Participant pursuant to this Rule shall be the final action of the Facility if the Participant does not request review as provided in paragraph (c) of this Rule.
- (c) The Compliance Department shall serve a Participant with written notice of a fine imposed pursuant to paragraph (a) of this Rule. Such notice shall specify the date of the occurrence for which the fine is being imposed, the provision or provisions of the Rules giving rise to the fine and the amount of the fine. Within 10 days of the service of such notice, the Participant shall either pay the fine or serve the Facility with a written request specifying the basis for review of the fine by a hearing panel of the Disciplinary Committee.

#### **1015. Participant Responsibility Actions.**

- (a) The Facility may summarily suspend any Participant or Person exercising Trading Privileges or take other summary action against such a Person if the Facility reasonably believes that such immediate action is necessary to protect the best interests of the marketplace.
- (b) Any action taken against any Participant or Person exercising Trading Privileges pursuant to this Rule shall be taken after notice and an opportunity to be heard, unless the Facility determines that giving such notice or opportunity to be heard before taking such action is not practicable under the circumstances. The notice shall state the action, the reasons for the action, and the effective time and date and the duration of the action. In any case in which action is taken without prior notice and opportunity to be heard, the Facility shall give the Participant notice and an opportunity to be heard promptly thereafter.

- (c) Any hearing held pursuant to this Rule shall be held before a Hearing Panel of the Disciplinary Committee and shall be conducted in compliance with Part 10.
- (d) Promptly following the hearing held pursuant to this Rule, the Hearing Panel of the Disciplinary Committee shall render a written decision based upon the weight of the evidence contained in the record of the proceeding and shall serve a copy of such decision on the Participant and the Compliance Department. The decision shall be the final action of the Facility and shall not be subject to appeal within the Facility. The decision shall include:
  - (i) a description of any summary action taken or proposed to be taken;
  - (ii) the reasons for the summary action;
  - (iii) a brief summary of the evidence produced at the hearing;
  - (iv) findings and conclusions;
  - (v) a determination that the summary action should be affirmed, modified, reversed, or imposed; and
  - (vi) a declaration of any summary action to be taken pursuant to the determination specified in subparagraph (v) and the effective date and duration of the action.

**1016. Action Against Non-Participants.**

- (a) If the Enforcement Staff has reason to believe that any non-Participant is conducting his trading activities in violation of the Commodity Exchange Act, Commission Rules or these Rules, it may require the non-Participant and any Participant that handles or clears the non-Participant's trades to appear, produce documents and testify at a Compliance Department interview or investigation, or at a hearing before the Disciplinary Committee.
- (b) If, after hearing, the Disciplinary Committee determines that the actions of the non-Participant violate the Commodity Exchange Act, the Commission Rules or these Rules, the Disciplinary Committee may: 1) issue a censure or reprimand; 2) order any Clearing Participant to liquidate all or any portion of such non-Participant's position; 3) order that no Participant accept new positions on behalf of any such non-Participant; 4) deny or terminate access of such non-Participant to the Trading System and the Facility; 5) impose any Penalty authorized under Rule 1011, or 6) order such other action as is necessary to prevent a threat to the Swap or further violations of the Commodity Exchange Act or these Rules.
- (c) In the case of a penalty imposed on a Respondent that is not a Participant denying access to the Facility, the Hearing Panel shall issue an order to all Participants

prohibiting them from granting such access, directly or indirectly, and any knowing violation of such an order shall constitute a violation of the Rules.

**1017. Conflicts of Interest or Bias.**

- (a) No member of any committee of the Facility shall knowingly participate in the committee's deliberations and voting on any matter involving a named party-in-interest where the member is precluded from doing so pursuant to Part 2.
- (b) Prior to the consideration of any matter involving a named party-in-interest, each member of a committee of the Facility must disclose to the Chief Compliance Officer of the Facility (or to his or her designee) whether he or she has any one of the relationships listed in Rules 207 and 209 with the named party-in-interest.
- (c) Any Respondent which is a named party-in-interest in any proceeding under this Part of the Rules may serve a written request on the Chief Compliance Officer of the Facility for disqualification of any member of any committee of the Facility on the grounds that such member has one of the relationships listed in Rules 207 or 209 or that any other cause exists which might cause the member to have a bias against such Respondent.
- (d) The Chief Compliance Officer (or his or her designee) shall determine whether or not any member of a committee of the Facility will be disqualified from deliberating, voting or otherwise participating in any matter based upon:
  - (i) information provided by such Participant pursuant to paragraph (b) of this Rule;
  - (ii) information provided by a Respondent which is a named party-in-interest pursuant to paragraph (c) of this Rule; and
  - (iii) any other source of information that is reasonably available to the Facility.
- (e) The Chief Compliance Officer (or his or her designee) shall promptly serve written notice of his or her determination on the member of the committee and on the Respondent which is the named party-in-interest, and such determination shall be final and not subject to appeal within the Facility.

No employee of the Compliance Department or any other employee of the Facility may serve in any investigatory, prosecutorial or decision-making capacity relating to any matter involving a named party-in-interest if he or she would be precluded from participating in deliberations and voting on such matters pursuant to Part 2 if he or she were a member of a committee of the Facility. The provisions of paragraphs (b) through (e) of this Rule shall be applicable to such employee of the Facility as though such person were a member of a committee of the Facility.

## **PART 11. CUSTOMER DISPUTES.**

### **1101. Procedure for Resolution.**

Any dispute between a Customer and a Participant or between a Participant and a Broker arising out of or in connection with the solicitation or acceptance of any order for execution of a Swap, or the execution of any Swap, shall be resolved by and pursuant to the arbitration rules of the NFA or such other self-regulatory organization as the parties may agree. The failure by any Participant to comply with any decision issued by the NFA or such other self-regulatory organization in resolving any such dispute shall constitute a violation of these Rules, unless the decision is the subject of pending judicial review.

## **PART 12. MISCELLANEOUS.**

### **1201. Prohibition of Compensation to Facility Employees.**

No Participant, Affiliate of a Participant or employee thereof shall give any compensation or gratuity to any Facility employee, and no Facility employee shall accept any compensation or gratuity from any Participant, Affiliate of a Participant or employee thereof; provided that the foregoing shall not preclude giving or accepting items of nominal value.

### **1202. Rule Adoption, Amendment, and Repeal.**

- (a) Rules may be adopted, amended or repealed by the Facility as provided in these Rules. However, no Rule and no amendment or repeal of a Rule shall apply to any Swap or Swap entered into prior to the adoption thereof if such Rule, amendment or repeal would affect the amount of money to be paid, or would affect the specifications of the Swap or Underlying Commodity to be delivered, under such Swap, unless emergency action has been taken pursuant to Rule 1204.
- (b) Unless a Rule is adopted, amended or repealed as an emergency action pursuant to Rule 1204, or it is otherwise impracticable under the circumstances, the Facility shall:
  - (i) post on its website the submission to the Commission certifying or requesting approval of such Rule, Rule amendment or Rule repeal for a period of not less than five business days prior to filing the submission with the Commission;
  - (ii) notify Participants of the posting of the submission when it is first posted; and
  - (iii) accept comments on the submission from Participants and the public from the time of posting until the conclusion of the Commission's review period.

### **1203. Confidentiality of Information.**

- (a) Except as provided in Rule 309, all information received by the Facility concerning positions, margin or premium payments, or deliveries, financial statements filed with the Facility, or other non-public information submitted to the Facility for regulatory purposes by any Participant (“Participant Information”), shall be held in confidence by the Facility and shall not be made known to any other Person except as follows:
- (i) With the written consent of the Participant providing such information;
  - (ii) To the Commission or the United States Department of Justice pursuant to the requirements of the Commodity Exchange Act or any Regulation of the Commission or of any other Governmental Agency with jurisdiction over the Facility, which would allow the Facility to carry out such information-sharing agreements and international information-sharing agreements as the CFTC may require;
  - (iii) Pursuant to a subpoena issued by or on behalf of any Person or, in the Facility’s discretion, pursuant to a written request from the Congress of the United States, any committee or subcommittee thereof, the General Accounting Office, or any department or agency of the United States, the State of New York or the City of New York;
  - (iv) Pursuant to an order issued by a court having jurisdiction over the Facility;
  - (v) To any SRO or authority acting under contract to the Facility for performance of SRO functions, for audit, compliance, surveillance, or disciplinary purposes;
  - (vi) To any Person in the business of providing data processing or similar services for the purpose of performing computations or analysis, or of preparing reports or records, for the Facility, subject to reasonable confidential safeguards;
  - (vii) To counsel for the Facility; or
  - (viii) To any other Person to the extent and pursuant to such terms and conditions as the Facility, from time to time, may deem appropriate, employing reasonable confidential safeguards.
- (b) Participant Information shall not include information which is:
- (i) in or becomes part of the public domain ;
  - (ii) known to or obtained by such party previously without an obligation of confidentiality;

- (iii) independently developed by such party outside of this Agreement;
  - (iv) required to be disclosed by Applicable Law, or pursuant to a subpoena or order of a court or regulatory, self-regulatory or legislative body of competent jurisdiction, or in connection with any regulatory or self-regulatory request for information, or that the Facility otherwise deems advisable, in its discretion, to disclose to a governmental, self-regulatory or legislative organization.; or
  - (v) information submitted by Participant, its Sponsored Participant s or Brokers that is displayed by the Facility on the Trading System or otherwise distributed or sold by the Facility regarding Bids, Offers, or executed transactions, provided that such displays and distributed or sold information shall not identify Participant by name, unless the Facility is explicitly directed to do so by Participant and only then for the express purposes set forth in and under conditions in compliance with the Rules.
- (c) If information concerning one or more named Participants is requested pursuant to paragraphs (b), (c) or (d) above, the Facility shall notify each such Participant prior to furnishing such information, unless in the judgment of the Facility it would be contrary to the best interests of the Facility to do so.

#### **1204. Emergency Powers.**

- (a) Delegation to Chief Executive Officer.
- (i) The Chief Executive Officer is authorized by the Board of the Facility under this Rule 1204 to issue an opinion on behalf of the Board that any occurrence or circumstance is an Emergency that requires immediate action because it threatens fair and orderly trading in any Swap or the liquidation of or delivery pursuant to any Swap. The Chief Executive Officer is authorized to delegate this authority to an officer of the Facility to act on behalf of the Chief Executive Officer in the absence of the Chief Executive Officer.
  - (ii) To the extent practicable under the circumstances, the Chief Executive Officer shall inform the Board of the occurrence or circumstance prior to issuing such an opinion. If it is not practicable to inform the Board prior to issuing taking such action, the Chief Executive Officer shall inform the Board as soon as practicable after taking such action.
  - (iii) Notwithstanding the provisions of subparagraph (i), if the Chief Executive Officer believes it appropriate, the Chief Executive Officer may submit the matter for consideration to the Board.

- (iv) Nothing in this section prohibits the Board, at its election, from exercising the authority delegated under subsection (i) by it or by the Chief Executive Officer.
- (b) An occurrence or circumstance that is an Emergency that requires immediate action because it threatens fair and orderly trading in any Swap or the liquidation of or delivery pursuant to any Swap includes:
- (i) any manipulative activity or attempted manipulative activity;
  - (ii) any actual, attempted, or threatened corner, squeeze, congestion or undue concentration of positions;
  - (iii) any circumstance which may materially affect the performance of Swaps, including failure of the payment system;
  - (iv) any action taken by the United States, any foreign government, any state or local government body, any other contract market, any board of trade, any exchange or any trade association (foreign or domestic), which may have a direct impact on trading on the Facility;
  - (v) any circumstance which may have a severe, adverse effect upon the physical functions of the Facility, including, for example, fire or other casualty, bomb threat, substantial inclement weather, power failure, communication or transportation breakdown, computer malfunction, breakdown of screen-based trading systems, malfunction of plumbing, heating, ventilation or air conditioning systems, or other similar events;
  - (vi) the bankruptcy or insolvency of any Participant or the imposition of any injunction or other restraint by any Government Agency, court or arbitrator upon any Participant which may affect the ability of any Participant to perform its Swaps;
  - (vii) any circumstance in which it appears that any Participant or any other Person has failed or may fail to perform Swaps, is or may be insolvent, or is in such financial or operational condition or is conducting business in such a manner that the Participant or Person cannot be permitted to continue to trade without jeopardizing the safety of Customer funds, Participants, the Facility, or the Clearing Organization; or
  - (viii) any other unusual, unforeseeable and adverse circumstance with respect to which it is not practicable for the Facility to certify a rule or rule amendment to the Commission prior to its implementation, or, in a timely fashion, to submit to the Commission for its prior approval a reviewable rule.

- (c) If an Emergency is determined under this rule to exist, the person exercising authority under paragraph (a) may take any or all of the following actions or any other action that may be appropriate under the circumstances:
- (i) impose trading and/or modify any existing position limits;
  - (ii) impose or modify any existing price limits;
  - (iii) impose or modify any existing circuit breakers;
  - (iv) order the fixing of a Settlement Price (in coordination with the relevant Clearing Organization);
  - (v) extend or shorten the expiration date or the trading hours;
  - (vi) suspend or curtail trading;
  - (vii) order the liquidation or transfer of open positions in any contract;
  - (viii) transfer customer contracts and the margin; or
  - (ix) alter any contract's settlement terms or conditions.
- (d) If the Chief Executive Officer, (or such other Officer(s) to whom the Chief Executive Officer shall delegate authority to act), in his or her sole discretion, shall determine that there is a malfunction in the system for transmitting orders or other communications from or through any Participant into the Trading System and that such malfunction may impair, delay or otherwise adversely affect the operation of the Trading System, the Chief Executive Officer (or other authorized officer) may instruct such Participant to discontinue transmissions to the Trading System from any source and may cause such steps to be taken as will disconnect such Participant from the Trading System, until such time as such malfunction shall have been resolved in a manner satisfactory to the Chief Executive Officer in his or her sole discretion. In taking any such action, the Chief Executive Officer or other authorized officer shall endeavor to communicate with the Participant in question prior to taking any such action, but the inability or failure of the Chief Executive Officer or other authorized officer to do so shall not prevent, delay or otherwise affect the ability of the Chief Executive Officer to act pursuant to this paragraph.
- (e) As soon as practicable, the Board shall be notified of any exercise of emergency authority pursuant to this Rule and with respect to the Commission, the Facility shall comply with the requirements of Commission Regulation 40.6(a)(6).
- (f) The Person exercising authority to take an emergency action pursuant to this Rule shall document the decision-making process and the reasons for taking such action. Such documentation shall include, but is not limited to the following: the steps taken to



minimize conflict-of- interest, consideration of the impact of the emergency actions on the underlying markets and consideration of the impact of the emergency actions on the markets that are linked to or reference the Swaps traded on the Facility (including other swap execution facilities).

- (g) All Participants and their customers and all Swaps shall be subject to these emergency powers, and the specifications of each Swap shall be deemed subject to this Rule.

#### **1205. Limitation of Liability.**

- (a) Business on the Trading System may from time to time be suspended or restricted or the Facility may from time to time be closed for a temporary period or for such longer period as may be determined in accordance with the Rules including, without limitation, as a result of a decision taken under Rule 1204 on the occurrence of one or more events which require such action to be taken in the interests of maintaining a fair and orderly market. Any such action may result in the inability of one or more Participants and, through such Participants, one or more Customers to enter into Swaps. Furthermore, a Participant and, through such Participant, one or more Customers may from time to time be prevented or hindered from entering into Swaps, or trading Swaps, or errors in orders for Swaps and/or Swaps may arise, or submission of trades to the Clearing Organization or to a confirmation/affirmation platform may be delayed, as a result of a failure or malfunction of communications, equipment, market facilities, the Trading System, or software supplied to a Participant by the Facility or any other Person.
- (b) EXCEPT IN INSTANCES WHERE THERE HAS BEEN A FINDING OF FRAUD OR WILLFUL OR WANTON MISCONDUCT, IN WHICH CASE THE PARTY FOUND TO HAVE ENGAGED IN SUCH CONDUCT CANNOT AVAIL ITSELF OF THE PROTECTIONS OF THIS RULE, THE FACILITY (INCLUDING ITS AFFILIATES), THE CLEARING ORGANIZATION, CLEARING PARTICIPANTS, PARTICIPANTS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, LICENSORS AND SERVICE PROVIDERS AND VENDORS (EACH, A “DISCLAIMING PARTY” AND COLLECTIVELY, “DISCLAIMING PARTIES”) SHALL NOT BE LIABLE TO ANY PERSON, INCLUDING WITHOUT LIMITATION ANY CUSTOMER, FOR ANY LOSS, DAMAGE OR COST (INCLUDING BUT NOT LIMITED TO ATTORNEYS’ FEES AND COURT COSTS), WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, LOST PROFITS OR OTHERWISE OF ANY KIND, REGARDLESS OF WHETHER ANY OF THEM HAS BEEN ADVISED OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF THE USE OR PERFORMANCE OF THE TRADING SYSTEM, ANY COMPONENT(S) THEREOF, OR ANY FAULT, FAILURE, MALFUNCTION OR OTHER ALLEGED DEFECT IN THE TRADING SYSTEM, INCLUDING ANY INABILITY TO ENTER OR CANCEL ORDERS IN THE TRADING SYSTEM, OR ANY FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY

OR TERMINATION, OR ANY OTHER CAUSE IN CONNECTION WITH THE FURNISHING, PERFORMANCE, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF THE TRADING SYSTEM, INCLUDING BUT NOT LIMITED TO (1) ANY OF THE CIRCUMSTANCES OR OCCURRENCES REFERRED TO IN PARAGRAPH (a) OF THIS RULE OR (2) ANY FAILURE OR DELAY IN TRANSMISSION OF ORDERS OR TRADES OR LOSS OF ORDERS OR TRADES RESULTING FROM (A) MALFUNCTION OF THE TRADING SYSTEM, (B) DISRUPTION OF COMMON CARRIER LINES, (C) LOSS OF POWER, (D) ACTS OR FAILURES TO ACT OF ANY THIRD PARTY, (E) NATURAL DISASTERS OR (F) ANY AND ALL OTHER CAUSES. THE FOREGOING SHALL APPLY REGARDLESS OF WHETHER A CLAIM ARISES IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. THE FOREGOING LIMITATIONS ARE CUMULATIVE AND SHALL NOT LIMIT OR RESTRICT THE APPLICABILITY OF ANY OTHER LIMITATION OR RULE, TRADING PROCEDURE OR NOTICE OF THE FACILITY OR RULE OF THE CLEARING ORGANIZATION.

- (c) THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS PROVIDED BY ANY DISCLAIMING PARTY RELATING TO THE TRADING SYSTEM OR ANY FACILITY SERVICE OR FACILITIES USED TO SUPPORT THE TRADING SYSTEM, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR USE.
- (d) IF ANY OF THE FOREGOING LIMITS ON THE LIABILITY OF A DISCLAIMING PARTY SHOULD BE DEEMED TO BE INVALID, INEFFECTIVE, OR UNENFORCEABLE OR IN THE EVENT THE FACILITY ELECTS TO ASSUME RESPONSIBILITY FOR DIRECT, OUT OF POCKET LOSSES DIRECTLY CAUSED BY THE GROSS NEGLIGENCE OF A DISCLAIMING PARTY AND ANY PARTICIPANT OR THIRD PARTY SUSTAINS A LOSS, DAMAGE OR COST RESULTING FROM USE OF THE TRADING SYSTEM, THE ENTIRE LIABILITY OF ALL DISCLAIMING PARTIES SHALL NOT EXCEED \$100,000 FOR ALL LOSSES SUFFERED FROM ALL CAUSES ON A SINGLE CALENDAR DAY; \$200,000 FOR ALL LOSSES SUFFERED FROM ALL CAUSES IN A SINGLE CALENDAR MONTH; AND \$1,000,000 FOR ALL LOSSES SUFFERED FROM ALL CAUSES IN A SINGLE CALENDAR YEAR. IF THE NUMBER OF ALLOWED CLAIMS ARISING OUT OF ANY FAILURE OR MALFUNCTIONS ON A SINGLE DAY OR SINGLE MONTH CANNOT BE FULLY SATISFIED BECAUSE OF THE ABOVE DOLLAR LIMITATIONS, ALL SUCH CLAIMS SHALL BE LIMITED TO A PRO RATA SHARE OF THE MAXIMUM AMOUNT FOR THE RESPECTIVE PERIOD.
- (e) NOTWITHSTANDING ANY OF THE FOREGOING, THIS RULE SHALL IN NO WAY LIMIT THE APPLICABILITY OF ANY PROVISION OF THE ACT OR COMMISSION REGULATIONS.

## **1206. Dispute Resolution.**

### **(a) Choice of Law.**

The law of the State of New York shall govern any dispute arising between the Facility and a Participant without giving effect to the provisions, policies or principles of any state law relating to choice or conflict of laws.

### **(b) Arbitration Required.**

Any dispute arising between the Facility and a Participant must be brought to arbitration within one (1) year from the occurrence of the event giving rise to the dispute. Any such dispute shall be settled by arbitration administered in New York, NY by the American Arbitration Association (the “AAA”) under its Commercial Arbitration Rules. The dispute will be submitted to one arbitrator that has experience with and knowledge of commodities, derivatives and Swaps as listed on the National Roster of Arbitrators , and who is appointed by the AAA. Judgment on the award rendered by the arbitrator will be binding on the parties and may be entered in any state or federal court sitting in New York, New York, and the parties shall be deemed to have consented to the personal jurisdiction of any such court. Each party to the arbitration shall bear its own costs and expenses, as well as an equal share of the administrative and arbitrator fees. However, the arbitrator may reimburse the prevailing party for its costs and expenses in any award. If for any reason this Arbitration provision is unenforceable, the parties hereby consent to the venue and jurisdiction of the federal and state courts located in New York, New York, and waive any objection thereto. Each Party hereby waives its right to trial by jury in any such action.

## **1207. Publication of Information.**

The Facility as provided by Commission Rule 16.01 shall record for each business day and publish on its website, [www.bgcsef.com](http://www.bgcsef.com), in pdf format, market data on swaps.

## **1208. Trading System.**

Each Participant, Sponsored Participant , Broker and other Persons affiliated with any of the foregoing hereby acknowledges and agrees that the Facility owns and shall retain all right, title and interest in and to the Trading System and related, associated and/or supporting systems administered by or on behalf of the Facility (including, without limitation, the ones for order entry, confirmation and reporting of the Swap transactions, whether entered through the Electronic Order Book, Voice Functionality, RFQ Functionality or otherwise) , all components of all of the foregoing, including, without limitation, all related applications, all application programming interfaces, user interface designs, software and source code and any and all intellectual property rights therein, including, without limitation, all registered or unregistered, as applicable copyright, trade

mark, service mark, trade secret, trade name, data or database rights, design rights, moral rights, inventions, whether or not capable or protection by patent or registration, rights in commercial information or technical information, including, without limitation, know-how, research and development data and manufacturing methods, patent, and other intellectual property and ownership rights, including, without limitation, applications for the grant of any of the same, in or to any and all of the foregoing and all other related proprietary rights of the Facility and/or any of its Affiliates (together, with any and all enhancements, corrections, bug fixes, updates and other modifications to any of the foregoing and any and all data or information of any kind transmitted by means of any of the foregoing, "Proprietary Information"). Each Participant, Sponsored Participant and Broker, on behalf of itself and each of its Affiliates, and other Persons affiliated with any of the foregoing, further acknowledges and agrees that the Proprietary Information is the exclusive, valuable and confidential property of the Facility. Each Participant, Sponsored Participant and Broker acknowledges and agrees that it shall not and shall not permit its Affiliates, and other Persons affiliated with any of the foregoing to, reverse engineer, copy, bug fix, correct, update, transfer, reproduce, republish, broadcast, create derivative works based on or otherwise modify, in any manner, all or any part of the Trading System or the Proprietary Information. Each Participant, Sponsored Participant and each Broker further agrees to and shall cause each of its Affiliates, Sponsored Participant s and other Persons affiliated with any of the foregoing to, keep the Proprietary Information confidential and not to use (except that each Participant , Sponsored Participant and Broker may use solely internally for the purposes of the Participant executing Swap transactions on the Trading System),and not to transfer, rent, lease, loan, sell or distribute, directly or indirectly, all or any portion of the Trading System or any Proprietary Information.

### **1209. Enforceability**

A transaction entered into on or pursuant to the rules of the Facility shall not be void, voidable, subject to rescission, otherwise invalidated, or rendered unenforceable as a result of:

- (a) A violation by the swap execution facility of the provisions of section 5h of the Act or the Commission's rules;
- (b) Any Commission proceeding to alter or supplement a rule, term, or condition under section 8a(7) of the Act or to declare an emergency under section 8a(9) of the Act; or
- (c) Any other proceeding the effect of which is to:
  - (i) Alter or supplement a specific term or condition or trading rule or procedure; or
  - (ii) Require the Facility to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.

### **1210. Audit Trail**

The Facility shall make available all audit-trail data and reconstructions to the Commission in a form, manner and time that is acceptable to the Commission.

## **PART 13. PRODUCTS.**

### **1301. Swaps Made Available to Trade.**

Every Swap or an economically equivalent Swap that is required to be cleared under section 2(h)(1) of the Act and which has been made available for trading on a swap execution facility and which is listed for trading on the Facility is Made Available to Trade on the Facility; *Provided however* that the following Swaps listed or offered for trading on or subject to the Rules of the Facility shall not be considered to be Made Available to Trade on the Facility:

- (a) Block trades as provided under Rule 510;
- (b) Bespoke Swaps; and
- (c) Illiquid Swaps.

### **1302. Position Limits or Position Accountability.**

To reduce the potential threat of market manipulation or congestion, the Facility shall adopt for each of the contracts of the Facility, as is deemed necessary and appropriate by the Facility, position limitations or position accountability levels for speculators. The Facility shall on an on-going basis monitor positions established on or through the Facility for unusual activity, including but not limited to, unusual volumes, patterns or concentrations of transactions.

### **1303. Reserved.**

### **1304. Reserved**

### **1305. Risk Controls for Trading.**

- (a) The Facility, in its discretion, may take any action to reduce the potential for market disruption, including, but not limited to restricting or halting trading or other actions determined by the Facility if in the best interest of the swap market.
- (b) The Facility may impose a similar risk control action taken by another market trading a Swap that is fungible with, or a substitute for, a Swap traded on the Facility.

### **1306. Swaps Listed for Trading**

The terms and conditions of the Swaps Listed for trading on the Facility shall be as provided in Attachment A to these Rules. The Facility shall list for trading only Swaps that are not readily susceptible to manipulation, having certified such swaps listed for trading (or in the discretion of the Facility, having submitted such Swaps for voluntary approval under 17 C.F.R. 40.3) and having submitted supporting information as set forth in 17 C.F.R. Part 38, Appendix C.