



Via Portal Submission

June 14, 2024
MGEXDCO Submission No. 24-13 (Modified)

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

RE: Rule Certification Submission Pursuant to Regulation 40.6(a): Amendment to MGEX Bylaws and Charters

Dear Mr. Kirkpatrick:

Pursuant to Commodity Exchange Act (“CEAct”) Section 5c and Commodity Futures Trading Commission (“CFTC” or “Commission”) Regulation 40.6(a), the Minneapolis Grain Exchange, LLC (“MGEX” or “Company”) hereby certifies that the proposed amendments to the MGEX Bylaws, attached hereto as Exhibit A, and certain Board Committee Charters, attached as Exhibit B, comply with the CEAct and CFTC Regulations. MGEX respectfully requests confidential treatment of Exhibit B in accordance with CFTC Regulations §§ 40.8 and 145.9. MGEX certifies that notice of pending changes to the Bylaws and Charters and a copy of this submission (other than the Exhibits for which confidential treatment has been requested) have been posted on the Company’s website at the following link: <https://www.miaxglobal.com/markets/us-futures/mgex/rule-filings>. The modifications to this submission can be found in Bylaw 7.4. and the Executive Committee Charter.

Overview of Bylaw and Charter Amendments

MGEX proposes the following amendments to the MGEX Bylaws and applicable Board Committee Charters to update the Committees’ composition requirements. Additionally, the proposed Bylaw amendments clarify the roles of President and Chief Executive Officer, replace “Exchange” with “Company” where applicable, and remove certain Bylaws applicable to MGEX and the Board due to the Company’s transfer of real estate.

DCO Core Principles

In connection with adding the following Bylaw and Charter amendments, the Company has reviewed the core principles for DCOs (“DCO Core Principles”) and has determined that the amendments comply with the requirements of such principles. During the review, MGEX identified the following DCO Core Principles as potentially being impacted:

- *DCO Core Principle O – Governance Fitness Standards:* Core Principle O requires DCOs to establish transparent governance arrangements. The proposed amendments to the Bylaws and Charters provide updated Board Committee composition requirements. Additionally, the proposed Bylaws clearly define the roles of President and CEO and remove certain powers of MGEX and the

Board due to MGEX's transfer of real estate. Finally, former references to the "Exchange" have been updated to reference the "Company" to more accurately depict MGEX's corporate structure.

- *DCO Core Principle L – Public Information*: Core Principle L requires DCOs to provide market participants with sufficient information and to have clear and comprehensive rules and procedures. The amendment to these Bylaws will be incorporated into the Exchange's Bylaws, which are posted publicly on the MGEX website in satisfaction of this core principle.

Pursuant to MGEX Bylaw 3.1., the MGEX Board of Directors unanimously approved the attached amendments to the MGEX Bylaws and Charters. There were no substantive opposing views expressed by the Board of Directors, nor is the Company aware of any substantive opposing views with respect to this filing. The attached amendments are to be effective when incorporated into MGEX's Bylaws on its website, which will be at least 10 business days following the date of this submission. The Charters will be effective at least 10 business days following the date of this submission.

If there are any questions regarding this submission, please contact me at (612) 321-7159 or apilon@miaxglobal.com. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Amanda R. Pilon". The signature is written in black ink and is positioned above the typed name.

Amanda R. Pilon
Associate Corporate Counsel, DCO & Int'l

EXHIBIT A

The following MGEX Bylaws are to be amended. Additions are underlined while deletions are ~~strikethrough~~.

1.1. DEFINITIONS.

The following are Bylaws of the ~~Exchange Company~~. Bylaws incorporate all defined terms of Chapter 1 of the MGEX Rules. MGEX Rules are separate from the Bylaws and codify Exchange rules.

2.1. COMPOSITION OF THE BOARD.

Miami International Holdings, Inc. ("MIH") is the sole member of M 402 Holdings, LLC which in turn is the sole member of the ~~Exchange Company~~ (the "LLC Member"). The LLC Member has vested the power to manage, operate, and set policies for the ~~Exchange Company~~ exclusively in the Board of Directors. The number of Directors constituting the entire Board of Directors shall be a minimum of five (5) Directors elected by the LLC Member, consisting of not less than thirty-five percent (35%) individuals who qualify as Public Directors, and not less than one (1) individual who is a Market Participant. The LLC Member shall designate one of the Directors to serve as Chairperson of the Board and may also designate one (1) or more Vice Chairpersons.

The number of Directors may be fixed from time to time by the LLC Member at any time in its sole and absolute discretion, upon notice to all Directors subject to the minimum number provided for in this Bylaw. No decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director.

The LLC Member, in its sole discretion, may add, remove, or substitute Board members at any time, provided such action is in accordance with these Bylaws and Rules, including preserving the minimum Public Director threshold stated in this Bylaw 2.1. The LLC Member, in its sole discretion, may remove or substitute the Chairperson and any Vice Chairpersons at any time, provided such action is in accordance with these Bylaws and Rules.

2.3. POWERS OF THE BOARD.

The Board of Directors is the governing body of the ~~Exchange Company~~ and has the power to:

- A. Manage the business, affairs, and property of the ~~Exchange Company~~;
- B. Provide, acquire and maintain suitable ~~Exchange Company~~ quarters and facilities;
- C. Review and approve the creation of and all appointments to standing and special committees recommended by the Chairperson;
- D. Review and approve the appointment of a President and Chief Executive Officer;

- E. Review and approve the appointment, titles and responsibilities of all Exchange employees above the level of department head;
- F. Designate and authorize specific appointed officers to act on behalf of the Board to execute contracts within specified limits;
- G. Appoint Counsel to the Board;
- H. Determine the commodities traded, the delivery months, Hours of Trading, the days of the contract month in which delivery may be made, and margin requirements;
- I. Declare any day to be a holiday, during which the Exchange shall not be open for business;
- J. Adopt, amend, or repeal the MGEX Charter, Bylaws, and Rules;
- K. Act in emergencies (See **Bylaw 2.4.**);
- L. Delegate any of its powers under these Bylaws to a Committee of the Board, Committee of the Exchange, or to any officer or employees of the Exchange Company, provided the delegation is not inconsistent with the Company's Charter, Bylaws, Rules, customs, or usages of the Exchange.

Any authority or discretion by these Bylaws vested in the Chairperson, President, Chief Executive Officer, or other officers or any committee shall not be construed to deprive the Board of such authority or discretion and, in the event of a conflict, the determination of the matter by the Board shall prevail.

2.5. BOARD DELEGATION TO OFFICERS OF THE EXCHANGE COMPANY.

Each of the officers of the Company shall, unless otherwise ordered by the Board, have such powers and duties as customarily pertain to the respective office, and such further powers and duties as from time to time may be conferred by the Board, or by an officer delegated such authority by the Board. The Board may delegate the duties and powers of any officer of the Company to any other officer or to any Director for a specified period of time and for any reason that the Board may deem sufficient.

2.8. SPECIAL MEETINGS.

Special meetings of the Board may be called on a minimum of two (2) days' notice to each Director by the Chairperson, ~~or the~~ President, or Chief Executive Officer, and shall be called by the ~~Corporate~~ Secretary upon the written request of three (3) Directors then in office.

2.16. APPOINTMENT OF EXCHANGE OFFICERS, OTHER OFFICERS, AND EMPLOYEES.

The Board of Directors shall from time to time elect or appoint Exchange Officers, including a President, Secretary, and Treasurer, as well as other officers, including a Chief Regulatory Officer, Chief Compliance Officer, Chief Risk Officer, and such other officers or employees as in its judgment may be necessary. ~~The offices of Secretary and Treasurer may be held by the same person.~~ The Board of Directors may assign any title to any of such other officers or employees as

it deems advisable. The Board of Directors may prescribe the duties and fix the compensation of all such officers and employees, and all such officers and employees shall hold office or be employed during the will of the Board of Directors.

2.18. AFFIRMATIVE OBLIGATION TO NOTIFY EXCHANGE COMPANY OF CHANGE IN ELIGIBILITY TO SERVE ON BOARD OF DIRECTORS.

Applicants for and members of the Board of Directors have an affirmative obligation to promptly notify the Exchange Company if at any time there is a change in his or her eligibility to serve.

3.1. ADOPTION OR AMENDMENT OF BYLAWS AND RULES: PROCEDURE.

The Board of Directors shall have the authority to adopt, amend, or repeal any MGEX Bylaw or Rule. The Board may delegate its authority to adopt, amend, or repeal any MGEX Bylaw or Rule to a Committee of the Board or to one or more officers or employees of the Exchange Company.

3.2. ADOPTION OR AMENDMENT OF BYLAWS AND RULES: DATE EFFECTIVE.

Unless specifically provided otherwise by the Board of Directors or its designee, MGEX Bylaws and Rules shall become effective as of the first business day following the date that the Exchange Company publishes the amendment on its website.

4.2. SPECIAL MEETINGS.

Special meetings of the LLC Member, for any purpose or purposes, may be called by the Chairperson, the Board, ~~or the President,~~ or the Chief Executive Officer, and shall be called by the ~~Corporate~~ Secretary at the request in writing of the LLC Member. Written notice of a special meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given to the LLC Member not less than ten (10) nor more than sixty (60) days before the date of the meeting. Business transacted at any special meeting of the LLC Member shall be limited to the purpose(s) stated in the notice of the meeting.

5.1. PRESIDENT.

The Board may elect a President of the Exchange Company. The President shall ~~be the Chief Executive Officer of the Exchange~~ perform the duties usually incident to the office and such other and special duties as are prescribed by the Board of Directors, or by the Bylaws and Rules, responsible to the Board for the management and administration of its business affairs. The President shall execute all contracts as authorized by the Board. All employees of the Exchange shall be under the President's supervision who shall establish the qualifications, duties and responsibilities of all subordinate administrative personnel. By acceptance of the office of President, the President shall be deemed to have agreed to uphold the Certificate of Formation and MGEX Bylaws and Rules. The Board may confer upon the President other responsibilities as warranted.

5.2. CHIEF EXECUTIVE OFFICER.

The Board may elect a Chief Executive Officer ("CEO") of the Company. The CEO shall perform the duties usually incident to the office and such other and special duties as are prescribed by the Board of Directors, or by the Bylaws and Rules. The Board may confer upon the CEO other responsibilities as warranted.

5.23. SECRETARY.

The Secretary shall perform the duties usually incident to the office and such other and special duties as are prescribed by the Board of Directors, President, CEO, or by the Bylaws and Rules.

5.3. RESERVED.

5.5. TREASURER.

The Treasurer shall perform such duties as prescribed by the Board of Directors, President, CEO, or by the Bylaws and ~~MGEX~~ Rules.

5.6. ANNUAL FINANCIAL STATEMENT.

The Board of Directors, as soon as possible after the close of the fiscal year of the Exchange Company, shall cause to be prepared a full and complete statement of the financial condition of the Exchange Company and of its operations for the previous fiscal year.

5.7. FINANCING.

The Exchange Company shall have the authority to establish fees and charges necessary to meet the financial obligations of the Exchange Company. Fees and charges shall be remitted at such times and in such manner as the Exchange Company may prescribe.

5.8. FUNDS AND SECURITIES OF THE EXCHANGE COMPANY.

The funds of the Exchange Company shall be deposited in the name of the Exchange in a bank or banks, as designated from time to time by the Board of Directors. Securities and other valuable papers belonging to the Exchange Company shall be secured as designated from time to time by the Board of Directors.

5.9. EXPENDITURE OF THE FUNDS OF THE EXCHANGE COMPANY.

The funds of MGEX shall be under the management and control of the Exchange Company, and no funds belonging to MGEX shall be expended unless such expenditure has been authorized by the Exchange Officers or the Board of Directors.

5.10. INVESTMENT OF FUNDS.

The Board of Directors shall monitor the investment of funds belonging to the Exchange Company.

5.11. BORROWING OF MONEY.

The Board of Directors, on the affirmative vote of at least one half (1/2) of the total number of Directors of the Exchange, permitted under **Bylaw 2.1.**, may borrow money for and on behalf of the Exchange Company, for any period of time and on such terms and with such security or mortgage, all as the Board may determine necessary for business purposes.

5.12. EXECUTION OF CONTRACTS, SIGNATURES ON PAPERS, CHECKS, ETC.

Except as otherwise specifically provided in this Bylaw, all deeds, mortgages, satisfactions of mortgages, contracts for the conveyance of land, leases, bills payable, promissory notes and other written promises to pay money, corporate contracts of all kinds, checks and drafts drawn on bank accounts standing in the name of the Exchange Company shall be executed or signed in the name of the Exchange Company by the President, CEO, or ~~and~~ such other officer, director or employee as the Board of Directors shall from time to time designate.

PROVIDED, however, that a check or checks, signed as provided above, to cover the total payroll of the Exchange Company for any specified period of time may be deposited to the credit of the Exchange Company in a special bank account, which shall be designated as a Payroll Account; checks or drafts drawn on such Payroll Account to cover salaries or wages due to individual officers or employees of the Exchange Company may be signed in such manner as the Board of Directors may from time to time direct; and

PROVIDED FURTHER, that contracts for the purchase of supplies and equipment necessary and incident to the usual and ordinary operations of the ~~buildings or~~ business of the Exchange Company may be executed in the name of the Exchange Company in such manner as the Board of Directors may from time to time direct.

Except as otherwise provided by the Bylaws, all other papers and documents of all kinds, including certificates, cards, licenses, etc., shall be executed or signed in the name of the Exchange Company in such manner as the Board of Directors shall from time to time direct.

6.2. CHIEF COMPLIANCE OFFICER.

The Chief Compliance Officer shall report to the President and CEO and execute the duties and responsibilities required by CFTC Regulation 17 CFR Part 39, as amended.

7.4. EXECUTIVE COMMITTEE.

There shall be established a Committee of the Board of Directors to be known as the Executive Committee which shall be composed of ~~five (5)~~ at least three (3) Directors, ~~consisting of not less than thirty-five percent Public Directors, including the Chairperson of the Board and no less than two (2) Public Directors elected by the Board.~~ Meetings of the Executive Committee shall be held at such time and place as may be designated by the Executive Committee. The Chairperson of the Board shall be the Chairperson of the Executive Committee and shall have voting privileges.

The Committee shall have the duty and power to act on behalf of the Board of Directors when an emergency exists or when the Board is otherwise unable to reach quorum or convene in a timely manner.

7.5. AUDIT COMMITTEE.

There shall be established a Committee of the Board of Directors to be known as the Audit Committee which shall be composed of ~~five (5)~~ at least three (3) Directors ~~including the Chairperson of the Board and three (3) Public Directors~~ elected by the Board of Directors. A majority of the members of the Committee shall be Public Directors.

The Audit Committee shall perform the following primary functions, as well as such other functions as may be specified by the Board: (i) provide oversight over the ~~Exchange Company's~~ financial reporting process and the financial information that is provided to the LLC Member and others; (ii) provide oversight over the systems of internal controls established by management and the Board and the ~~Exchange Company's~~ legal and compliance process; and (iii) direct and oversee all the activities of the ~~Exchange Company's~~ internal audit function, including but not limited to management's responsiveness to internal audit recommendations.

7.9. NOMINATIONS COMMITTEE.

There shall be established a Committee of the Board of Directors to be known as the Nominations Committee which shall be composed of ~~five (5)~~ at least three (3) Directors, including the Chairperson of the Board, ~~and three (3)~~ A majority of the members of the Committee shall be Public Directors. The Nominations Committee shall each be elected on an annual basis by vote of the LLC Member. The chair of the Nominations Committee shall be a Public Director. The Nominations Committee shall identify individuals qualified to serve on the Board. The Nominations Committee shall nominate candidates for election to the Board and all other vacant or new Director positions on the Board, and the LLC Member shall elect Directors from such nominated candidates. The Nominations Committee, in making such nominations, is responsible for ensuring that candidates meet the compositional requirements of these Bylaws. The Nominations Committee shall meet in advance of the LLC Member's election of Directors, unless stated otherwise.

7.10. HARD RED SPRING WHEAT COMMITTEE.

There shall be established a Committee of the Exchange to be known as the Hard Red Spring Wheat ("HRSW") Committee. It shall be composed of ~~a minimum of~~ at least seven (7) Market Participants of the Exchange.

The Committee shall have the duty and power to review and recommend MGEX Rules governing HRSW and other agricultural markets, including but not limited to contract specifications and delivery procedures.

7.11. CASH MARKETS COMMITTEE.

There shall be established a Committee of the Exchange to be known as the Cash Markets Committee. It shall be composed of ~~a minimum of~~ at least seven (7) Market Participants that are employed by entities having cash trading privileges pursuant to MGEX Rules.

The Committee shall have the duties and powers to:

- A. Review and recommend MGEX Rules governing the cash markets.
- B. Monitor cash market activity to ensure orderly trading and efficient price discovery.
- C. Approve guidelines for reporting of cash market activity to appropriate agencies.

12.3. RESERVED CONTROL OF THE USE OF THE BUILDINGS.

~~The Exchange shall have power to prescribe the purposes for which all offices, halls, rooms, corridors, entrances and other parts of the buildings belonging to or leased by MGEX shall be used, and to make all necessary Regulations governing the use of and admittance to the same, and shall have full power to enforce such Regulations and to inflict penalties for the violation thereof. The Exchange shall have the power to let space in the buildings belonging to or leased by MGEX to such tenants, for such purposes, at such rentals, and on such terms and conditions as it deems desirable.~~

12.4. RESERVED REAL ESTATE.

~~The Board of Directors shall have the power from time to time to purchase real estate PROVIDED, however, that any borrowing of money to finance such purchases is subject to the provisions of **Bylaw 5.11.**~~

~~The Exchange shall have the power to make changes, alterations, repairs, replacements or additions to the fixtures, equipment and machinery of the buildings of the Exchange, and to make such enlargements or additions to the present buildings to maintain said buildings, equipment or machinery in proper and suitable condition for the uses and purposes of MGEX and its tenants.~~

12.5. FISCAL YEAR.

The fiscal year of the Exchange Company shall be as determined from time to time by the Board.

12.6. INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS.

The Exchange Company shall indemnify its directors, officers and committee members against such expenses and liabilities, in such manner, under such circumstances, and to such extent, as required or permitted by Delaware Limited Liability Company Act § 18-108 or as required by other provisions of law.

The Exchange Company shall advance expenses in such manner, under such circumstances, and to such extent, as required or permitted Delaware Limited Liability Company Act § 18-108. The provisions of this Section are not intended to limit the ability of any person to receive advances as an insured under any insurance policy maintained by the Exchange Company.

The Exchange Company may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member or employee against any liability asserted against and incurred by such person in or arising from such capacity, whether or not the Exchange Company would otherwise be required to indemnify the person against the liability.

The Exchange Company shall also abide by all other controlling provisions of Delaware Limited Liability Company Act § 145.

12.7. MEMBERSHIP IN OTHER ASSOCIATIONS: DELEGATES TO MEETINGS.

At the discretion of the Board of Directors, the Exchange may become a member of other associations or organizations, membership in which in the opinion of said Board will be beneficial to the Exchange. The Board of Directors may appoint delegates or representatives to commercial or deliberative meetings at which it may desire to have the Exchange represented. The Board

may, at its discretion, authorize the payment (from the general funds of the ~~Exchange Company~~) of the dues payable to such associations and of the expenses incurred by such delegates or representatives in attending such meetings.

12.8. CONFLICTS OF INTEREST.

A member of the Board of Directors and certain other committees ~~at the Exchange~~ must abstain from deliberating and voting on matters when there is a potential personal or financial conflict of interest. This Bylaw describes how and when the conflict of interest will be determined. Additional and broader conflicts of interest provisions apply to the Disciplinary Committee and the Hearing Committee. (See **Bylaws 8.2.** and **9.2.**)

A. Definitions. For purposes of this Bylaw the following definitions shall apply:

1. The term “family relationship” of a person shall mean the person’s spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece, or in-law.
2. The term “governing board” shall mean the Board of Directors, Committees of the Board of Directors and Committees of the Exchange authorized to take action or to recommend the taking of action on behalf of the ~~Exchange Company~~.
3. The term “member’s affiliated firm” shall mean a firm in which the member is an employee or a “principal,” as defined in CFTC Regulation 3.1(a).
4. The term “named party in interest” shall mean a person or entity that is identified by name as a primary subject of any material matter being considered by a governing board.
5. The term “significant action” shall mean any of the following types of actions or changes that are implemented without the Commission’s prior approval:
 - a. Any actions or changes which address an “emergency” as defined in CFTC Regulation 1.41(a)(4)(i) through (iv) and (vi) through (viii); and,
 - b. Any changes in margin levels that are designed to respond to extraordinary market conditions such as an actual or attempted corner, squeeze, congestion or undue concentration of positions, or that otherwise are likely to have a substantial effect on prices in any contract traded at the Exchange; but shall not include any Bylaw or MGEX Rule not submitted for prior CFTC approval because such Bylaw or MGEX Rule is unrelated to the terms and conditions of any contract traded at the Exchange.

B. Named Party in Interest Conflict.

1. Prohibition. No member of a governing board shall knowingly participate in such body’s deliberations or voting in any matter involving a named party

in interest where such member: (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 futures or option transactions opposite each other or to clearing futures or options transactions through the same Clearing Member.

If the member's only relationship with a named party in interest is through a broker association not established for the purpose of sharing profits and losses, then the prohibition shall not apply. Furthermore, if a named party in interest is one or part of a group of similar persons or entities that is the subject for general deliberation and voting, such as approval for regularity or membership, and there is no material issue of dispute involving a named party in interest, then the prohibition shall not apply.

2. Disclosure. Prior to consideration of any matter involving a named party in interest, each member of the deliberating body who does not choose to abstain from deliberations and voting shall disclose to the Department of Audits and Investigations whether such member has one of the relationships listed in paragraph B.1. of this Section 12.8 of the Bylaws with a named party in interest.
3. Procedure and Determination. ~~Exchange Company~~ Staff shall determine whether any member of the 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 the member pursuant to paragraph B.2. above, and
 - b. any other source of information that is held by and reasonably available to the ~~Exchange Company~~.

C. Financial Interest in a Significant Action Conflict.

1. Prohibition. No member of a governing board shall participate in such body's deliberations and voting on any significant action if such member knowingly has a direct and substantial financial interest in the result of the vote based upon either Exchange or non-Exchange positions that could reasonably be expected to be affected by the significant action under consideration, as determined pursuant to this Bylaw.
2. Disclosure. Prior to consideration of any significant action, each member of the deliberating body who does not choose to abstain from deliberations and voting shall disclose to the Department of Audits and Investigations position information that is known to such member, with respect to any particular month or months that are under consideration, and any other positions which the deliberating body reasonably expects could be affected by the significant action, as follows:

- a. gross positions held at the Exchange in the member's personal accounts or "controlled accounts," as defined in CFTC Regulation 1.3(j);
 - b. gross positions held at the Exchange in proprietary accounts, as defined in CFTC Regulation 1.17(b)(3), at the member's affiliated firm;
 - c. gross positions held at the Exchange in accounts in which the member is a principal, as defined in CFTC Regulation 3.1(a);
 - d. net positions held at the Exchange in "customer" accounts, as defined in CFTC Regulation 1.17(b)(2), at the member's affiliated firm; and
 - e. any other types of positions, whether maintained at the Exchange or elsewhere, held in the member's personal accounts or the proprietary accounts of the member's affiliated firm, that reasonably could be affected by the significant action.
3. Procedure and Determination. ~~Exchange Company~~ Staff shall determine whether any member of the 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 ~~Exchange Company~~, information provided by the member with respect to positions pursuant to paragraph C.2. of this Bylaw, and any other source of information that is held by and reasonably available to the ~~Exchange Company~~, taking into consideration the exigency of the significant action being contemplated.

D. Deliberation Exemption.

1. Any member of a governing board who would otherwise be required to abstain from deliberations and voting pursuant to paragraph C of this Section 12.8 of the Bylaws 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 paragraph C.2. and C.3. of this Section 12.8 of the Bylaws, which is the basis for such member's substantial financial interest in the significant action that is being contemplated.
2. In making its determination, the deliberating body shall consider;
 - a. whether the member's participation in deliberations is necessary to achieve a quorum; and
 - b. whether the member has unique or special expertise, knowledge or experience in the matter being considered.

E. Documentation. The minutes of any meeting to which the conflicts determination procedures set forth in this Bylaw apply, shall reflect the following information:

1. the names of all members who attended the meeting in person or who otherwise were present by electronic means;
2. 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 refusal or abstention, if stated; and
3. information on the position information that was reviewed for each member if applicable and available.

12.9. NONPUBLIC INFORMATION, EMPLOYEE TRADING PROHIBITION, AND IMPROPER USE OR DISCLOSURE.

For purposes of this Bylaw, "material" and "non-public information" shall be defined by CFTC Regulation 1.59(a).

Employees of the Exchange, as defined by CFTC Regulation 1.59(a), are prohibited from:

- A. Trading, directly or indirectly, in any commodity interest traded on or cleared by the Exchange.
- B. Trading, directly or indirectly, in any commodity interest traded on or cleared by a contract market, swap execution facility, or clearing organization other than the Exchange and in any commodity interest traded on or cleared by a linked exchange if the employee has access to material non-public information concerning such commodity interest.
- C. Disclosing to any other person any material, non-public information which such employee obtains as a result of his or her employment at the Exchange where such employee has or should have a reasonable expectation that the information disclosed may assist another person in trading any commodity interest; provided, however, that this Rule does not prohibit disclosures made in the course of any employee's duties, or disclosures made to another self-regulatory organization, linked exchange, court of competent jurisdiction or representative of any agency or department of the federal or state government acting in his or her official capacity.

No ~~Exchange~~ officer, member of the Board of Directors or member of any committee shall use or disclose, for any purpose other than the performance of such person's official duties, material, non-public information obtained as a result of such person's office or participation on the Board of Directors or any committee.