

## Rule Self-Certification

January 28, 2013

Office of the Secretary  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

Re: Rule Amendments to Eliminate the Seat Structure and Reorganize the Rulebook  
Reference File SR-NFX-2013-02

Ladies and Gentlemen:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and Sections 40.6 of the regulations promulgated by the Commodity Futures Trading Commission under the Act, NASDAQ OMX Futures Exchange, Inc. (“NFX” or “Exchange”) amends certain By-Laws, Rules and its Fee Schedule in order to eliminate references to a “seat” or membership share structure. The Exchange adopts a permit structure in place of a membership structure. The Exchange reorders and reorganizes the Rulebook by creating Chapters and Sections, amending and eliminating definitions and making technical changes. These amendments will be effective on March 1, 2013. The text of the amendments to the Exchange’s By-Laws, Rules and Fee Schedule is set forth in Exhibit A.

In 1984, NFX, formerly known as the Philadelphia Board of Trade, entered into a contractual arrangement with members and member organizations to provide certain rights regarding NFX in exchange for a payment to purchase a “seat” or membership on NFX. The contractual agreement that was entered into was an Offering Circular dated August 1, 1984. The Offering Circular limits the persons that may trade on NFX to those that have purchased memberships in NFX, and limits the total number of authorized memberships to 320. The Offering Circular provides its members with the following rights: (1) the right to have issued to each of them one share of nonvoting preferred stock of NFX with a par value of \$5,000; (2) the right to nominate candidates for five positions on the Board of Directors of NFX ; (3) the right to trade on the Exchange; and (4) the right to share in the assets of NFX in the event of a dissolution or liquidation, in an amount generally equal to the initial purchase price of the associated membership plus up to 25% of such amount. Each membership or seat has a nonvoting preferred membership share conveyed with the membership pursuant to the Offering Circular, and each share is represented by a certificate.

As of the effective date of this filing, all current members and/or member organizations of NFX shall have executed individual Redemption and Release Agreements pursuant to which

each member or member organization assigned and sold to the Exchange its membership share, and surrendered the accompanying non-voting preferred membership share certificate to the Exchange.<sup>1</sup> The member and/or member organization will receive a cash payment of the seat at the NFX Board's current, standing seat bid. Upon the effectiveness of this rule change, the Exchange will also issue permits to all current members and member organizations or "NFX Futures Participants." Until such time as this filing becomes effective, all NFX members and member organizations will continue to hold the rights and privileges with respect to NFX as they exist today. Upon the effectiveness of this filing, all rights and obligations under the Offering Circular shall cease. The rule change provides that permits, rather than ownership of membership shares, shall be the exclusive means to have the right to trade on NFX. The Exchange details the amendments to the By-Laws, Rules and Fee Schedule below.

First, the Exchange amended its By-Laws and adopted certain new provisions related to permits. The amended By-Laws provide for the issuance of permits and specify the rights and privileges of permit holders (new Article XI, Sections 7, 8 and 9). The Exchange also removed references to membership shares throughout the By-Laws and Rules. Amended Article III removes references to the nonvoting preferred membership shares, which accompany the membership share or "seat," as well as references to legal and equitable title, which relate only to the current membership structure. The Exchange relocated current Rule 1300 (Voting By Members of Board and Certain Committees) to Article IV, Section 14. The remaining amendments to the By-Laws utilize the new terms "permit holder" and "Futures Participant" and make other technical amendments to the By-Laws for clarity.

Second, the Exchange amended its current definitions in Rule 1 and throughout its Rules to eliminate the definitions of members and member organizations and instead adopt two new definitions, "Futures Participant" and "Authorized Person," in order to define the entity and individuals that may submit quotes and orders into NFX XL, the Exchange's Trading System. "Futures Participant" is defined as an organization that has been issued a permit in accordance with the By-Laws and Rules of the Exchange and authorized to access NFX XL. "Authorized Trader" is defined as an authorized employee or agent of a Futures Participant who is authorized by that Futures Participant and the Exchange to submit Quotes or Orders into NFX XL. Only a natural person can be an Authorized Trader. Exchange staff believes that these terms will more clearly define the types of entities and persons that may transact business on the Exchange and that would be subject to its Rules and jurisdiction. The Exchange also eliminated other definitions that are no longer necessary and were related to products previously listed on the Exchange such as "Call," "Class of Options," "Expiration Date," "Expiration Month," "Option Contract," "Organization," "PHLX," "Put," "Series of Options" and "Unit of Trading." The Exchange adopted two new definitions for an "Executive Representative" and "Regulatory Services Provider."

Third, the Exchange amended its Rules related to the membership share structure in order to reorganize and reorder the Rules into Chapters and Sections. Exchange staff believes that the

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<sup>1</sup> The Exchange is in the process of completing a pending transaction, whereby the Exchange is purchasing a membership share from an NFX member. This transaction shall be consummated prior to the effective date of this filing. This member has not executed a Redemption and Release Agreement.

new organization will assist users in locating rules. Specifically, the definitions in Chapter I were amended as discussed above and an emergency action provision was relocated from Rule 60. With respect to Chapter II, Membership Rules, the Exchange renamed Rule 101 as Section 1 and eliminated rule text related to membership shares. The application process was relocated to Section 2 and references permits instead of membership shares. A section of Rule 101 concerning denials and conditions of membership was redrafted to apply to permits. The remaining portions of Chapter II were redrafted to remove references to membership shares. A provision for an Executive Representative was adopted in Section 6 of Chapter II. An Executive Representative would represent and act on behalf of or the Futures Participant in all the affairs of the Exchange. The Exchange adopted new rule text in Chapter II to require additional contact information from Futures Participants and disclosure of all Authorized Traders. Section 7 of Chapter II was relocated in the Rulebook from current Rule 651. Chapter III entitled "Obligations of Futures Participants and Authorized Traders" contains current Rules 201-262 redrafted to remove references to membership shares. Chapter IV entitled "Trading Procedures and Standards" includes the current E series Rules that were relocated to this chapter. New definitions were created in Chapter IV such as "Authorized Trader," "Clearing Account Number," "Clearing Account Type," "Clearing Futures Participants," "Futures Participant House Account," "Non-Clearing Futures Participant" and "Trader ID" in order to refer to a new structure associated with permits. The Exchange substituted the words "Futures Participant" and "Authorized Trader" into the E series Rules and amended cross-references. Specifically, the Rules regarding orders and quotes were amended to indicate that the Exchange's trading system requires both a house account and trader identification number to be entered into the system (new Chapter IV, Section 8). Similar amendments were made with respect to CTI codes (Chapter IV, Section 12). Chapter V entitled Disciplinary Rules amended Rules 401-460 to include references to "Futures Participants" and "Authorized Traders." These Rules were updated to refer to the correct Exchange department and make reference to a Regulatory Services Provider which is defined in Chapter I. The Exchange amended its disciplinary rules to make clear that Authorized Traders are considered persons associated with a Futures Participant and subject to various obligations. The Exchange relocated Rule 55, Consent to Jurisdiction, to Section 15 of Chapter IV and included a part (b) to reference the scope of applicable rules that were noted in the initial filing.<sup>2</sup> The Arbitration Rules at Chapter VI, currently Rules 501 and 502, were updated to refer to Futures Participants. Chapter VII entitled "Metals," amended current Rules 1201 through 1213 to utilize the term "NFX Participants," update references to PBOT and amend cross-references. The Exchange removed title references to products previously listed on NFX.

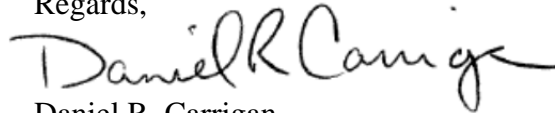
Fourth, the Exchange amends its Fee Schedule to eliminate references to a seat structure and instead reference Permit Fees. The Exchange also eliminates the Application and Seat Transfer Fee and World Currency Futures fees, which are no longer applicable as the Exchange does not list these products. The Exchange is not adding any new fees.

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<sup>2</sup> See SR-NFX-2012-21. These rules are currently located on the website. The rules have been updated in this filing to refer to the new Chapter and Section that correspond to the previous rule numbers.

There were no opposing views among the NFX's Board of Directors, members or market participants. The NFX Board of Directors approved these amendments. NFX hereby certifies that the amendments comply with the Commodity Exchange Act and regulations thereunder. The Exchange also certifies that notice of pending certification and a copy of this submission have been concurrently posted on the Exchange's website at <http://www.nasdaqomxtrader.com/NFX>.

Regards,

A handwritten signature in black ink that reads "Daniel R. Carrigan". The signature is written in a cursive style with a large, sweeping initial "D".

Daniel R. Carrigan  
President

cc: Mr. J. Goodwin  
National Futures Association

## Exhibit A

*New text is underlined; deleted text is in brackets.*

### **NASDAQ OMX Futures Exchange (NFX) BY-LAWS**

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#### **ARTICLE III Shareholders**

##### **Sec. 1. Classes of Shareholders**

The Exchange shall issue [two classes of shares, which are] voting common [and nonvoting preferred membership] shares. [A certificate representing one nonvoting preferred membership share, with a par value of \$5,000, shall be issued for each membership in the Exchange from among the authorized number of such shares. The holders of nonvoting preferred membership shares, shall have no interest in, or any right to share in, any dividends or distributions of the assets of the Exchange, any right to transfer a nonvoting preferred membership share or any right to vote, consent or dissent on any matter involving the governance of the Exchange, except as may be explicitly set forth in the Certificate, By-Laws and Rules of the Exchange. The nonvoting preferred membership shares are not investment vehicles.]

[A holder of both legal title and equitable title to membership of the Exchange shall have the following rights: the right to nominate candidates for director positions set forth in Section 3-6(e); the right to trade on the Exchange, subject to the By-Laws and the Rules of the Exchange; the right to share in the assets of the Exchange in the event of its liquidation, dissolution or winding up as set forth in that certain document entitled "Circular 84-1 Offer of Membership in The Philadelphia Board of Trade"; and the right to a certificate representing a nonvoting preferred membership share. If legal title to a membership is separated from equitable title to the membership, the holder of equitable title to the membership shall have the right to share in the assets of the Exchange in the event of its liquidation, dissolution or winding up and the right to a certificate representing the nonvoting preferred membership shares, and the holder of legal title shall have the right to nominate candidates for director positions, and the right to trade on the Exchange, as described in the immediately preceding sentence.]

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##### **Sec. 6. Nomination of Directors; Nominating Committee**

(a) There shall be a Nominating Committee which shall submit nominations for the directors to be elected by the common shareholders, as described below.

(b) The Nominating Committee shall submit nominations for the directors to be elected by the common shareholders at the annual meeting and election of the Exchange. The Nominating Committee shall nominate ten individuals, five of whom shall be the individuals nominated by the membership in accordance with By-Law Section 3-6(d). In

making nominations, the Nominating Committee shall give due consideration to the various functions and activities of the Exchange and its [members]permit holders.

(c) The Nominating Committee shall report in writing to the Secretary of the Exchange the names of its nominees for directors to be voted upon by the common shareholders at the next annual election of the Exchange. The report shall be delivered to the Secretary no later than the date that is 30 days prior to the date of the annual meeting at which the director nominees will be voted upon. The Secretary of the Exchange, upon receipt of the report of the Nominating Committee, shall notify the common shareholders and the [membership]permit holders of the names of the Nominating Committee's nominees for the directors to be voted by upon the common shareholders at the annual meeting and election of the Exchange.

(d) Nominations for directors by the [membership]permit holders shall be made by a written petition filed with the Nominating Committee within two weeks after the [membership]permit holders ha[s]ve been notified of the Nominating Committee's nominees for the directors to be voted upon by the common shareholders. If fewer than five candidates are nominated by petition by the [membership]permit holders and qualified for election, the Nominating Committee shall submit the names of additional nominees as directors so that the number of nominees is ten. All such candidates who qualify for election to the Board shall be deemed nominees for the position of director to be voted upon by the common shareholders.

(e) The Secretary shall collect from each nominee for Director such information as is reasonably necessary to serve as the basis for a determination as to whether the nominee may be classified as a Public Director or commercial interest representative, and the Secretary shall certify to the Nominating Committee each nominee's classification, if applicable. Throughout their term directors shall update all information submitted by them to the Secretary.

(f) A ballot shall be prepared by the Secretary of the Exchange containing the names of all nominees for the office of director. The ballot shall indicate whether the person is nominated by the Nominating Committee or the [membership]permit holders, and the [membership] interest represented by such nominee.

(g) At the annual meeting of shareholders, the ballot containing the names of all nominees for the office of directors shall be submitted to the common shareholders for a vote.

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## **Sec. 8. Voting and Proxies**

Every shareholder entitled to vote at a meeting of shareholders, or to express consent or dissent to corporate actions in writing without a meeting, may authorize another person or persons to act for him by proxy. Every proxy shall be executed in writing by the shareholder, or by his duly authorized attorney in fact, and filed with the Secretary of the

Exchange. A proxy, unless coupled with an interest shall be revocable at will, notwithstanding any other agreement or any provision in the proxy to the contrary, but the revocation of a proxy shall not be effective until notice thereof has been given to the Secretary of the Exchange. No unrevoked proxy shall be valid after eleven months from the date of its execution, unless a longer time is expressly provided therein, but in no event shall a proxy, unless coupled with an interest, be voted on after three years from the date of its execution. A proxy shall not be revoked by the death or incapacity of the maker unless before the vote is counted or the authority is exercised, written notice of such death or incapacity is given to the Secretary of the Exchange. A shareholder shall not sell his vote or execute a proxy to any person for any sum of money or anything of value. A proxy coupled with an interest shall include an unrevoked proxy in favor of a creditor of a shareholder and such proxy shall be valid so long as the debt owed by him to the creditor remains unpaid. Elections for directors need not be by ballot, except that with respect to the directors to be elected by the voting trustees, elections shall be by ballot upon demand made by a member or a general partner or officer of a [member organization]Futures Participant at the election and before the voting begins.

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## **ARTICLE IV Directors**

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### **Sec. 2. Composition of Board of Directors**

- (a) The number of directors of the Exchange shall be ten, all of whom shall be citizens of the United States.
- (b) The Chief Executive Officer of the Exchange shall be Chairman of the Board of Directors of the Exchange.
- (c) The ten directors shall be elected as provided in the By-Laws at the annual meeting of shareholders of the Exchange and each such director shall be elected for a term of one year and until his successor shall be elected and shall qualify under law and the By-Laws.
- (d) The ten members of the Board of Directors shall consist of the Chairman, the President, four Public Directors and four who shall qualify as commercial interest representatives pursuant to Commodity Futures Trading Commission Regulation 1.64. In total, the Board of Directors shall be comprised of persons from a variety of membership interests who will meaningfully represent the Exchange's diversity of interests, consistent with Commodity Futures Trading Commission Regulation 1.64(b)(3). If the numbers required by the foregoing classification of directors are not maintained at any time due to a vacancy or vacancies on the Board of Directors such requirements shall be suspended until the earlier of such time as the vacancy or vacancies is filled pursuant to the By-Laws or the election of directors at the next succeeding annual meeting of the Exchange and their qualification for office, except as otherwise required by Commodity Futures Trading Commission regulations.

(e) The President shall report to the Chairman of the Board and, in the absence or incapacity of the Chairman, shall perform all the duties of that office.

(f) Members of the Board of Directors shall be ineligible for service if any of the conditions specified in Commodity Futures Trading Commission Regulation 1.63 (b) (1) through (6) are met. If for such reason any director becomes ineligible for continued service, that director shall be removed in a manner permitted by the By-[1]Laws.

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### **Sec. 14 Voting By Members of Board and Certain Committees**

(a) Definitions. For purposes of this Rule:

(1) Committee shall refer to any of the following:

(i) Standing Committee of the Board of Directors as defined in Article V;

(ii) Advisory Committee appointed pursuant to Article V;

(iii) Hearing Panel appointed pursuant to Chapter V; or

(iv) Any other person or committee of persons, or any subcommittee thereof, that is authorized by the Exchange to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions, or to hear appeals thereof in cases involving any violations of Exchange Rules, except those cases where the person or committee is authorized summarily to impose minor penalties for violating Rules regarding decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions or similar activities.

(2) Family relationship shall mean a person's spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.

(3) Governing Board shall refer to either of the following:

(i) Board of Directors

(ii) Executive Committee

(iii) or any subcommittee of the Board of Directors or the Executive Committee

(4) Member's affiliate firm shall mean a firm in which the member is a "principal," as defined in Commission Regulation Section 3.1(a) or an employee.

(5) Named party in interest shall mean a person or entity that is identified by name as a subject of any matter being considered by the Board or Committee.



(6) Significant Action shall mean any actions or rule changes which address an “emergency” as defined in Commission Regulation 40.1(h) (exclusive of physical emergencies), and any changes in margin levels that are designed to respond to extraordinary market conditions or are likely to have a substantial effect on prices in any contract traded at the Exchange.

(b) Relationship with named party in interest.

(1) Nature of relationship. A member of a Governing Board or Committee must abstain from such body's deliberations and voting on any matter involving a named party in interest where such member:

(i) is a named party in interest;

(ii) is an employer, employee, or fellow employee of a named party in interest;

(iii) is associated with a named party in interest through a “broker association” as defined in Commission Regulation on 156.1;

(iv) has any other significant, ongoing business relationship with a named party in interest;  
or

(v) has a family relationship with a named party in interest.

(2) Disclosure of relationship. Prior to the consideration of any matter involving a named party in interest, each member of a Governing Board or Committee must disclose to the Exchange's Corporate Secretary whether he or she has one of the relationships listed in section (b)(1) above with a named party in interest.

(3) Procedure for determination. The Exchange's Secretary shall review items for consideration by the Governing Board or Committee for purposes of determining whether any such member thereof is subject to a conflict restriction in any matter involving a named party in interest. Such determinations shall be based upon information provided by the member pursuant to paragraph (b)(2) above and any other information held by and reasonably available to the Exchange's Secretary.

(c) Financial interest in a significant action.

(1) Nature of relationship. A member of any Governing Board or Committee must abstain from such body's deliberations and voting on any significant action if the member knowingly has a direct and substantial financial interest in the result of the vote based upon either position at the Exchange or other exchange positions that could reasonably be expected to be affected by the action.

(2) Disclosure of interest. Prior to the consideration of any significant action, each member of any Governing Board or Committee must disclose to the Exchange's Secretary information that is known to him or her or any other information that would present a conflict. This

requirement does not apply to members who choose to abstain from deliberations and voting on the subject of the significant action.

(d) Documentation of determination. The Governing Board or Committee must reflect in its minutes or otherwise document that the conflicts determination procedures required by this Rule have been followed. Such records must also include:

(i) the names of all members who attended the meeting in person or who otherwise were present by electronic means;

(ii) 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 information on the position information that was reviewed for each member.

## **ARTICLE V Committees**

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### **Sec. 3. Business Conduct Committee**

The Business Conduct Committee shall have jurisdiction to: (a) monitor compliance with the By-Laws and Rules of the Exchange or any interpretation thereof and the rules, regulations, resolutions and stated policies of the Board of Directors or any committee of the Exchange, by Futures Participants [members, member organizations] or persons associated with or employed by Futures Participants [members or member organizations]; (b) inquire into the business conduct and financial condition of Futures Participants [members, member organizations] or persons associated with or employed by Futures Participants [members or member organizations] and require detailed financial reports and such other operational reports as it may deem advisable of any Futures Participants [member or member organization]; (c) authorize the initiation of any disciplinary action or proceeding brought by the Exchange and render a decision in any such action or proceeding; (d) conduct hearings and render decisions in summary disciplinary actions and proceedings; (e) suspend a Futures Participants [member or member organization] upon its determination that there is a substantial question as to whether a financial emergency exists with respect to such Futures Participants [member or member organization]; (f) prohibit trading by a Futures Participants [member or member organization] which is excessive in view of its capital; and (g) impose appropriate sanctions of expulsion, suspension, fine, censure or any other fitting sanction where the Committee finds that a violation within the disciplinary jurisdiction of the Exchange has been committed.

With respect to the composition of the Business Conduct Committee, no person shall serve on that committee who is subject to any of the conditions specified in Commodity Futures Trading Commission Regulation 1.63(b)(1) through (6). Should any member of the Business Conduct Committee thus become ineligible to serve, the chairman of that committee shall remove such member and fill the resulting vacancy. In addition, when acting as a major disciplinary committee, pursuant to Commission Regulation 1.64, unless

the case is related to decorum or attire, financial requirements or reporting or recordkeeping, and does not involve fraud, deceit or conversion, the Business Conduct Committee shall be comprised at least 50% of persons representing the interest of Futures Participants [a membership interest] other than that of the subject of the disciplinary proceeding and, if the subject of the disciplinary action is a member of the Exchange's Board of Directors or any major disciplinary committee, or whenever any of the rule violations involved pertain to manipulation or attempted manipulation of the price of a commodity, futures contract or option on a futures contract, or to conduct which directly results in financial harm to a non- Futures Participants [member of the Exchange], at least one person who is not a Futures Participants [member] of the Exchange. The committee as a whole shall be comprised of three Public Directors and two other directors who represent [membership interests]the interests of Futures Participants.

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## **Sec. 5. Executive Committee**

(a) The Executive Committee shall consist of the Chairman of the Board of Directors, two Public Directors and two other directors who the Board of Directors may authorize. The Executive Committee shall execute and implement policy previously established by the Board of Directors, shall make recommendations concerning policy previously established by the Board of Directors, shall appoint a panel of disinterested individuals to arbitrate any dispute between [members and member organizations]Futures Participants submitted for arbitration pursuant to the Arbitration Rules of the Exchange and exercise other authority incidental thereto and shall have such other powers and shall perform such other duties as the Board of Directors may delegate to it in writing from time to time.

(b) When the Board of Directors is not in session, the Executive Committee shall have and may exercise all power and authority of the Board, which may lawfully be delegated to it by the Board and which are not in conflict with the limitations created by the Board, the Certificate of Incorporation or By-Laws. All actions of the Executive Committee shall be reported to the Board of Directors.

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## **Sec. 9. Regulatory Oversight Committee**

The Regulatory Oversight Committee shall consist of four Public Directors.

The Regulatory Oversight Committee shall: (A) monitor the Exchange's regulatory program for sufficiency, effectiveness, and independence; (B) oversee all facets of the regulatory program, including trade practice and market surveillance; audits, examinations, and other regulatory responsibilities with respect to [member firms] Futures Participants (insuring compliance with financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and the conduct of investigations; (C) provide oversight over the systems of internal controls established by management and the Board

and the Exchange's legal and compliance process; (D) review the size and allocation of the regulatory budget and resources and the number, hiring and termination, and compensation of regulatory personnel; (E) supervise the Chief Regulatory Officer, who will report directly to the Regulatory Oversight Committee; (F) prepare an annual report assessing the Exchange's self-regulatory program for the Board of Directors and the Commodity Futures Trading Commission, which sets forth the regulatory program's expenses, describes its staffing and structure, catalogues disciplinary actions taken during the year, and reviews the performance of disciplinary committees and panels; (G) recommend changes that would ensure fair, vigorous, and effective regulation; and (H) review regulatory proposals and advise the Board as to whether and how such changes may impact regulation.

The Regulatory Oversight Committee may select and engage its own advisor(s) to assist it in carrying out its duties.

## **ARTICLE VI Vacancies Created By Expulsion, Suspension or Termination of Membership**

### **Sec. 1. Office Vacated by Suspension or Expulsion**

Upon the expulsion or suspension of a [member]Futures Participant [or his suspension], whether for insolvency or otherwise, any office in the Exchange held by [him]that Futures Participant shall thereupon become vacant.

### **Sec. 2. [Ineligibility Upon Transfer of Membership Share]Reserved.**

[Upon a transfer of his membership share, a member shall become ineligible to act as a director of the Exchange and such office, if held by him, shall become vacant unless he continues to be a general partner or officer of a member organization.]

### **Sec. 3. [Changes in Status of General Partner or Officer]Reserved.**

[A general partner or an officer of a member organization who is not himself a member of the Exchange and who is a director of the Exchange shall become ineligible to act as a director if he ceases to be such a general partner or officer, or if his organization ceases to be a member organization upon the suspension of such member organization. Upon the happening of any such event the office of director held by him shall become vacant.]

## **ARTICLE XI Miscellaneous**

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### **Sec. 6. Notices to Futures Participants [Members and Member Organizations]**

- (a) Futures Participants [Members and Member Organizations] shall provide any required notice to the Exchange in the manner set forth in the By-Laws[, and Rules[, Notice to Members (as defined in Sec. 6(c)),] or other Exchange regulatory or operational procedures, as applicable.

(b) The Exchange may provide a [N]notice to Futures Participants [Members] in the following manner:

- (1) handing a copy to Futures Participants [the Member or Member Organization], or
- (2) mailing a copy to Futures Participants [the Member or Member Organization] to the address supplied to the Exchange by the Futures Participant [Member or Member Organization] for notice, or
- (3) transmitting electronically a copy to the Futures Participant [Member or Member Organization] (including electronic-mail transmission) to the address supplied to the Exchange by the Futures Participant [Member or Member Organization] for notice, or
- (4) posting the notice on the Exchange's website.

[(c) For purposes of this Rule, a "Notice to Members" means a written communication titled "Notice to Members" that the Exchange sends to Members and Member Organizations as described in this Rule, which has the force and effect of a Rule.]

### **Sec. 7. Right to Issue Permits and Non-Transferability**

(a) In addition to all other powers granted to the Board of Directors by law, these By-Laws or otherwise, the Board of Directors shall have the power to issue permits to conduct business on the Exchange or on specific facilities of, or operated by, the Exchange, and to adopt by resolution or to set forth in the Rules of the Exchange such Rules with respect to such permits as the Board Directors may from time to time determine in its sole discretion to be advisable, including, without limitation, the Rules governing the terms and conditions of such permits and the number, types and attributes thereof at any time authorized for issuance, the transferability or non-transferability of such permits, the termination and/or suspension of rights and privileges appertaining to permits, the qualifications that must be met for a person to be issued any such permit, and the dues, fees and other charges to be paid to the Exchange in connection with such permits and by persons applying for, using, holding or (if allowed) transferring such permits, and for firms and organizations with which such persons are affiliated or associated in any manner. Such permits do not represent an equity interest in the Exchange and shall confer upon any person only such rights, privileges and obligations as are expressly set forth in these By-Laws, the Rules of the Exchange and any resolution of the Board of Directors. The Board of Directors may authorize any committee thereof or the Chair of the Board of Directors to exercise any powers of the Board of Directors with respect to such permits.

(b) Except as otherwise set forth in the Rules of the Exchange or any resolution of the Board of Directors authorizing a specific class or series of permits, a permit will confer upon and subject the holder thereof to all the privileges and obligations of a Futures Participant pursuant to these By-Laws and the Rules of the Exchange, including, without limitation, the right to vote (exclusively through the Executive Representative of the Futures Participant identified by such holder as its primary affiliation) and to conduct business on the Exchange as provided in these By-Laws and such Rules. Except as otherwise provided in the Rules of the Exchange or any resolution of the Board of Directors authorizing a specific class or series of permits, no permit

may be sold, transferred (by operation of law or otherwise), leased or otherwise encumbered by any person to whom such permit is issued by the Exchange.

### **Sec. 8 Rights and Privileges of Permit Holders**

(a) Upon receipt of a permit, a Futures Participant shall, except as otherwise set forth in the Rules of the Exchange or any resolution of the Board of Directors authorizing a specific class or series of permits, have all the rights and privileges and shall be under all the duties and obligations in accordance with these By-Laws and the Rules of the Exchange, and, if permitted in the Rules of the Exchange or any resolution of the Board of Directors authorizing a specific class or series of permits.

(b) Notwithstanding anything to the contrary contained in these By-Laws or the Rules of the Exchange, the ability of a permit holder to exercise any right or privilege of a Futures Participant is subject to such holder's compliance with applicable registration, testing, capital, fitness, allocation, or other rules, requirements or procedures of the Exchange as may be established from time to time relating to trading on the Exchange, use of given services of, or facilities of or operated by, the Exchange, and to the payment of applicable fees, dues and other charges.

### **Sec. 9 Acceptance of LLC Agreement, By-Laws and Rules**

(a) No permit shall be issued until such Futures Participant has pledged in writing to abide by (to the extent applicable), these By-Laws and all Rules and regulations of the Exchange (which, for all purposes under these By-Laws, shall be deemed to include any dues, fees and other charges imposed by the Exchange), in each case as they have been or shall be from time to time amended.

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## NASDAQ OMX Futures Exchange (NFX)—Rules

### DEFINITIONS [(Rules 1—59)]

#### Chapter I Definitions and Emergency Action

##### [Rule 1]. Section 1 Definitions

Unless otherwise specifically provided in the By-Laws or Rules of the Exchange or the context otherwise requires, the terms defined [ in Rules 2 to 35, inclusive,] herein shall for all purposes of the By-Laws and Rules of the Exchange, have the meanings therein specified.

(a) The term “Act” means the Commodity Exchange Act, 7 U.S.C. §1 et seq., as amended from time to time.

(b) The term “Board of Directors” or “Board” means the Board of Directors of the Exchange.

(c) The term “business day” means any day on which the Exchange is open for business. Unless the Board determines otherwise, the Exchange shall be open for business every day except Saturdays, Sundays and such holidays as may be prescribed by the Board.

(d) The term “By-Laws” means the By-Laws of the Exchange, as from time to time amended.

(e) The term “Certificate” means the Certificate of Incorporation of the Exchange, as from time to time amended.

(f) The term “Clearing Corporation” means The Options Clearing Corporation.

(g) The term “Clearing Member” means an Futures Participant which is a member of The Options Clearing Corporation.

(h) The term “Commission” means the Commodity Futures Trading Commission.

(i) The term “Commission Regulation” means any Rule, regulation or order of the Commission or any interpretation thereof by the Commission.

(j) The term “Commission Regulation” means any Rule, regulation or order of the Commission or any interpretation thereof by the Commission.

(k) The term “commodity interest” means a futures contract or an option contract which is traded on or subject to the Rules of the Exchange.

(l) The term “customer” means a person for whom a member or member organization carries an account (other than such member or member organization) or from whom a member or member organization solicits or accepts an order to effect any transaction in a commodity interest.

(m) The term “**emergency**” means any occurrence or circumstance listed in Commission Regulation 40.1(h) which the Board of Directors determines requires immediate action and threatens or may threaten such things as fair and orderly trading in, or the liquidation of or delivery pursuant to, any commodity interest, which is limited to one of the following:

- (1) Any manipulative activity or attempted manipulative activity;
- (2) Any actual, attempted or threatened corner, squeeze, congestion or undue concentration of positions;
- (3) Any circumstances which may materially affect the performance of commodity interests, including failure of the payment system;
- (4) Any action taken by the United States or any foreign government or any state or local governmental body, any other contract market, board of trade, or any other exchange or trade association (foreign or domestic), which may have a direct impact on trading on the Exchange;
- (5) Any circumstances which may have a severe, adverse effect upon the physical functions of a contract market including, for example, fire or other casualty; bomb threats; substantial inclement weather; power failures; communications breakdowns; computer system breakdowns; screen-based trading system breakdowns; malfunctions of plumbing, heating, ventilation and air conditioning systems; and transportation breakdowns;
- (6) The bankruptcy or insolvency of any member or member organization or the imposition of any injunction or other restraint by any government agency, court or arbitrator upon a member or member organization which may affect the ability of that member or member organization to perform on its contracts;
- (7) Any circumstance in which it appears that a member, member organization or any other person has failed to perform its contracts, is insolvent, or is in such financial or operational condition or is conducting business in such a manner that such person cannot be permitted to continue in business without jeopardizing the safety of customers' funds, members and member organizations of the Exchange, the Exchange or the Clearing Corporation; and
- (8) Any other unusual, unforeseeable and adverse circumstance with respect to which it is not practicable to submit, in a timely fashion, a Rule of the Exchange to the Commission for prior review pursuant to Section 5a(a)(12)(A) of the Act.
- (9) A physical emergency means any circumstance which may have a severe, adverse effect upon the physical functions of the Exchange including, for example, fire or other casualty, bomb threats, substantial inclement weather, power failures, communications breakdowns, computer system breakdowns, screen-based trading system breakdowns, malfunctions of plumbing, heating, ventilation and air conditioning systems; and transportation breakdowns.

(n) The term “**Exchange**” means NASDAQ OMX Futures Exchange, Inc. and when used with reference to the administration of any By-Law or Rule of the Exchange, means either the Board



of Directors or the officer, employee, agent or committee to whom appropriate authority to administer such provision has been delegated by the Board.

(o) The term “**Executive Representative**” means the executive representative who shall represent and act for the Futures Participant in all the affairs of the Exchange; provided, however, that other representatives of a Futures Participant may also serve on the Exchange Board or committees of the Exchange or otherwise take part in the affairs of the Exchange.

(p) The term “**futures contract**” means any contract for the purchase or sale of any commodity for future delivery which is executed on or subject to the Rules of the Exchange.

(q) The term “**Futures Participant**” means an organization that has been issued a permit in accordance with the By-Laws and Rules of the Exchange and authorized to access NFX XL, the Exchange’s Trading System.

(r) The term “**PBOT**” or “**Philadelphia Board of Trade**” means the NASDAQ OMX Futures Exchange, Inc.

(s) The term “**Public Director**” means an individual must first be found by the Board of Directors to have no material relationship with the Exchange. A “material relationship” is one that reasonably could affect the independent judgment or decision making of the director. A director shall be considered to have a “material relationship” with the contract market if any of the following circumstances exist: (A) the director is an officer or employee of the Exchange or an officer or employee of its affiliate. (“Affiliate” includes parents or subsidiaries of the Exchange or entities that share a common parent with the Exchange; (B) the director is a member of the Exchange, or an officer or director of a member (“Member” is defined according to Section 1a(24) of the Commodity Exchange Act and Commission Regulation 1.3(q); (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 Exchange, or any affiliate of the Exchange, (as defined herein), for legal, accounting, or consulting services. Compensation for services as a director of the Exchange or as a director of an affiliate of the contract market 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; and (D) any of the relationships herein apply to a member of the director's “immediate family,” i.e., spouse, parents, children, and siblings. All of the disqualifying circumstances described herein are subject to a one-year look back. Public Directors may also serve as directors of the Exchange's affiliate as defined herein if they otherwise meet the definition of public.

(t) The term “**Rule of the Clearing Corporation**” means any provision of the Certificate of Incorporation or the By-Laws, or any Rule, regulation, interpretation, stated policy, or instrument corresponding thereto, as adopted or amended by the Clearing Corporation.

(u) The term “**Regulatory Services Provider**” means a third party with whom the Exchange has entered into a agreement to provide certain surveillance, investigative and regulatory functions under the Rules of the Exchange.

(v) The term “**Rule of the Exchange**” means any Rule, regulation, interpretation, stated policy, or instrument corresponding thereto, as adopted or amended by the Exchange.

(w) The term “**self-regulatory organization**” shall have the meaning ascribed to it in the Securities Exchange Act of 1934 and, in addition, shall include any contract market, commodity clearing organization and registered futures association.

## **Section 2 Applicability of Definitions in the Act and Commission Regulations**

(a) Unless otherwise specifically provided in the Rules of the Exchange or the context otherwise requires, any term used in the Rules of the Exchange and which is defined in the Act or Commission Regulations shall have the meaning ascribed to it therein.

(b) The headings to the By-Laws and Rules of the Exchange have been inserted for convenience only and shall not affect the meaning of the language contained therein.

### [Rule 2. Act

The term "Act" means the Commodity Exchange Act, 7 U.S.C. §1 et seq., as amended from time to time.]

### [Rule 3. Board of Directors or Board

The term "Board of Directors" or "Board" means the Board of Directors of the Exchange.]

### [Rule 4. Reserved]

### [Rule 5. Business Day

The term "business day" means any day on which the Exchange is open for business. Unless the Board determines otherwise, the Exchange shall be open for business every day except Saturdays, Sundays and such holidays as may be prescribed by the Board.]

### [Rule 6. By-Laws

The term "By-Laws" means the By-Laws of the Exchange, as from time to time amended.]

### [Rule 7. Call

The term "call" means an option contract under which: (a) the holder of the option has the right, but not the obligation, in accordance with the terms of the option, to purchase from the Clearing Corporation the number of units of the commodity or futures contract (or the cash equivalent of such number of units) covered by the option contract, and (b) the Clearing Corporation is obligated, in accordance with the terms of the option, to sell to the holder upon the valid exercise of such option contract the number of units of the commodity or futures contract (or the cash equivalent of such number of units) covered by the option contract.]

[Rule 8. Certificate

The term "Certificate" means the Certificate of Incorporation of the Exchange, as from time to time amended.]

[Rule 9. Class of Options

The term "class of options" means all call option contracts covering the same commodity or futures contract or all put option contracts covering the same commodity or futures contract.

[Rule 10. Clearing Corporation

The term "Clearing Corporation" means the Options Clearing Corporation, in the case of contracts cleared by the Options Clearing Corporations or the International Derivatives Clearinghouse, in the case of contracts cleared by the International Derivatives Clearinghouse.]

[Rule 11. Clearing Member

The term "clearing member" means a member organization of the Exchange which is a member of The Options Clearing Corporation. ]

[Rule 12. Commission

The term "Commission" means the Commodity Futures Trading Commission.]

[Rule 13. Commission Regulation

The term "Commission Regulation" means any Rule, regulation or order of the Commission or any interpretation thereof by the Commission.]

[Rule 14. Commodity Interest

The term "commodity interest" means a futures contract or an option contract which is traded on or subject to the Rules of the Exchange.]

[Rule 15. Customer

The term "customer" means a person for whom a member or member organization carries an account (other than such member or member organization) or from whom a member or member organization solicits or accepts an order to effect any transaction in a commodity interest.]

[Rule 16. Emergency

The term "emergency" means any occurrence or circumstance listed in Commission Regulation 40.1(g) which the Board of Directors determines requires immediate action and threatens or may threaten such things as fair and orderly trading in, or the liquidation of or delivery pursuant to, any commodity interest, which is limited to one of the following:

- (a) Any manipulative activity or attempted manipulative activity;
- (b) Any actual, attempted or threatened corner, squeeze, congestion or undue concentration of positions;
- (c) Any circumstances which may materially affect the performance of commodity interests, including failure of the payment system;
- (d) Any action taken by the United States or any foreign government or any state or local governmental body, any other contract market, board of trade, or any other exchange or trade association (foreign or domestic), which may have a direct impact on trading on the Exchange;
- (e) Any circumstances which may have a severe, adverse effect upon the physical functions of a contract market including, for example, fire or other casualty; bomb threats; substantial inclement weather; power failures; communications breakdowns; computer system breakdowns; screen-based trading system breakdowns; malfunctions of plumbing, heating, ventilation and air conditioning systems; and transportation breakdowns;
- (f) The bankruptcy or insolvency of any member or member organization or the imposition of any injunction or other restraint by any government agency, court or arbitrator upon a member or member organization which may affect the ability of that member or member organization to perform on its contracts;
- (g) Any circumstance in which it appears that a member, member organization or any other person has failed to perform its contracts, is insolvent, or is in such financial or operational condition or is conducting business in such a manner that such person cannot be permitted to continue in business without jeopardizing the safety of customers' funds, members and member organizations of the Exchange, the Exchange or the Clearing Corporation; and
- (h) Any other unusual, unforeseeable and adverse circumstance with respect to which it is not practicable to submit, in a timely fashion, a Rule of the Exchange to the Commission for prior review pursuant to Section 5a(a)(12)(A) of the Act.]

[Rule 17. Equitable Title

The term "equitable title" means the rights and privileges of membership to share in the assets of the Exchange upon any liquidation, dissolution or winding up of the Exchange. Equitable title does not include any other rights and privileges of membership in the Exchange.]

[Rule 18. Reserved]

[Rule 19. Exchange

The term "Exchange" means NASDAQ OMX Futures Exchange, Inc. and when used with reference to the administration of any By-Law or Rule of the Exchange, means either the Board

of Directors or the officer, employee, agent or committee to whom appropriate authority to administer such provision has been delegated by the Board.]

[Rule 20. Expiration Date

The term "expiration date" means in respect of an option contract the day and time fixed by the Rules of the Exchange or the Rules of the Clearing Corporation for the expiration of all option contracts covering the same commodity or futures contract and having the same expiration month as such option contract.]

[Rule 21. Expiration Month

The term "expiration month" in respect of an option contract means the month and year in which such option contract expires.]

[Rules 22-23. Reserved]

[Rule 24. Futures Contract

The term "futures contract" means any contract for the purchase or sale of any commodity for future delivery which is executed on or subject to the Rules of the Exchange.]

[Rule 25. Legal Title

The term "legal title" means the rights and privileges of membership in the Exchange of the natural person holding legal title to a membership share, except that if another person holds "equitable title" to such membership share, the rights and privileges of membership afforded to the holder of legal title do not include the right to share in the assets of the Exchange upon any liquidation, dissolution or winding up of the Exchange.]

[Rule 26. Member

The term "member" means a natural person admitted to membership in the Exchange.]

[Rule 27. Member Organization

The term "member organization" means an organization for which a membership has been registered pursuant to the Rules of the Exchange.]

[Rule 28. Option Contract

The term "option contract" means any option to buy or sell any commodity or any futures contract which is executed on or subject to the Rules of the Exchange and issued or subject to issuance by the Clearing Corporation pursuant to the Rules of the Clearing Corporation.]

[Rule 29. Organization

The term "organization" means an association (including but not limited to a cooperative association), partnership, trust or corporation.]

[Rule 30. PBOT or Philadelphia Board of Trade

The term "PBOT" or "Philadelphia Board of Trade" means NASDAQ OMX Futures Exchange, Inc.]

[Rule 31. Person

The term "person" means an individual or an organization.]

[Rule 32. PHLX

The term "PHLX" means NASDAQ OMX PHLX LLC.]

[Rule 33. Physical Emergency

The term "physical emergency" means any circumstance which may have a severe, adverse effect upon the physical functions of the Exchange including, for example, fire or other casualty, bomb threats, substantial inclement weather, power failures, communications breakdowns, computer system breakdowns, screen-based trading system breakdowns, malfunctions of plumbing, heating, ventilation and air conditioning systems; and transportation breakdowns.]

[Rule 34. Public Director

The term "Public Director" means an individual must first be found by the Board of Directors to have no material relationship with the Exchange. A "material relationship" is one that reasonably could affect the independent judgment or decision making of the director. A director shall be considered to have a "material relationship" with the contract market if any of the following circumstances exist: (A) the director is an officer or employee of the Exchange or an officer or employee of its affiliate. ("Affiliate" includes parents or subsidiaries of the Exchange or entities that share a common parent with the Exchange; (B) the director is a member of the Exchange, or an officer or director of a member ("Member" is defined according to Section 1a(24) of the Commodity Exchange Act and Commission Regulation 1.3(q); (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 Exchange, or any affiliate of the Exchange, (as defined herein), for legal, accounting, or consulting services. Compensation for services as a director of the Exchange or as a director of an affiliate of the contract market 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; and (D) any of the relationships herein apply to a member of the director's "immediate family," i.e., spouse, parents, children, and siblings. All of the disqualifying circumstances described herein are subject to a one-year look back. Public Directors may also serve as directors of the Exchange's affiliate as defined herein if they otherwise meet the definition of public.]

[Rule 35. Put

The term "put" means an option contract under which:

- (a) the holder of the option has the right, but not the obligation, in accordance with the terms of the option, to sell to the Clearing Corporation the number of units of the commodity or futures contract (or the cash equivalent of such number of units) covered by the option contract, and
- (b) the Clearing Corporation is obligated, in accordance with the terms of the option, to purchase from the holder upon the valid exercise of such option contract the number of units of the commodity or futures contract (or the cash equivalent of such number of units) covered by the option contract.]

[Rule 36. Rule of the Clearing Corporation

The term "Rule of the Clearing Corporation" means any provision of the Certificate of Incorporation or the By-Laws, or any Rule, regulation, interpretation, stated policy, or instrument corresponding thereto, as adopted or amended by the Clearing Corporation.]

[Rule 37. Rule of the Exchange

The term "Rule of the Exchange" means any Rule, regulation, interpretation, stated policy, or instrument corresponding thereto, as adopted or amended by the Exchange.]

[Rule 38. Self-Regulatory Organization

The term "self-regulatory organization" shall have the meaning ascribed to it in the Securities Exchange Act of 1934 and, in addition, shall include any contract market, commodity clearing organization and registered futures association.]

[Rule 39. Series of Options

The term "series of options" means all option contracts of the same class of options having the same expiration date, exercise price and unit of trading.]

[Rule 40 Unit of Trading

The term "unit of trading" means in respect of any futures or option contract the number of units of the commodity or, in the case of an option on a futures contract, of the futures contract which are covered by a single option or futures contract.]

[Rule 41. Applicability of Definitions in the Act and Commission Regulations

Unless otherwise specifically provided in the Rules of the Exchange or the context otherwise requires, any term used in the Rules of the Exchange and which is defined in the Act or Commission Regulations shall have the meaning ascribed to it therein.]

[Rules 42—49. Reserved]

[Rule 50. Rule Titles]

The headings to the By-Laws and Rules of the Exchange have been inserted for convenience only and shall not affect the meaning of the language contained therein.]

[Rules 51—54. Reserved]

[Rule 55. Consent to Jurisdiction]

[Any Person initiating or executing a transaction on or subject to the Rules of the Exchange directly or through an intermediary, and any Person for whose benefit such a transaction has been initiated or executed, expressly consents to the jurisdiction of the Exchange and agrees to be bound by and comply with the Rules of the Exchange in relation to such transactions, including, but not limited to, rules requiring cooperation and participation in investigatory and disciplinary processes.]

## **[EMERGENCIES (Rules 60—100)]**

### **[Rule 60.]Section 3 Emergency Action**

(a) General. If the President, or any individual designated by the President, determines that an Emergency exists, the President or such designee, as the case may be, may take or place into immediate effect a temporary emergency action or rule. Any such rule may remain in effect for up to 30 Business Days, after which time it must be approved by the Board or Executive Committee to remain in effect. Any such action or rule may provide for, or may authorize the Exchange to undertake actions necessary or appropriate to respond to the Emergency, including such actions as:

- (i) limiting trading to liquidation only, in whole or in part;
- (ii) extending or shortening the expiration date for trading in contracts;
- (iii) extending the time of delivery;
- (iv) changing delivery points and/or the means of delivery;
- (v) ordering the liquidation of contracts, the fixing of a settlement price or the reduction in positions;
- (vi) ordering the transfer of contracts and the money, securities, and property securing such contracts, held on behalf of customers by a member or member organization to another member or member organization, or other members or member organizations, willing to assume such contracts or obligated to do so;



- (vii) extending, limiting or changing hours of trading;
- (viii) suspending trading; or
- (ix) modifying or suspending any provision of the By-Laws or Rules of the Exchange.

Any such action placed into effect in accordance with the preceding sentence may be reviewed by the Board or Executive Committee at any time and may be revoked, suspended or modified by the Board or Executive Committee, and any such rule placed into effect in accordance with the preceding sentence shall be reviewed by the Board or Executive Committee as soon as practicable under the circumstances, and may be revoked, suspended or modified by the Board or Executive Committee.

(b) Physical Emergency. If, in the judgment of the President, or any individual designated by the President, the physical functions of the Exchange are, or are threatened to be, severely and adversely affected by a physical emergency (such as a fire or other casualty, bomb threats, terrorist acts, substantial inclement weather, power failures, communications breakdowns, computer system breakdowns, screen-based trading system breakdowns, computer system breakdowns, screen-based trading system breakdowns or transportation breakdowns), such Person may take any action that he or she may deem necessary or appropriate to respond to such physical emergency, including closing the Exchange, delaying the opening of trading in one or more Contracts or suspending trading in or extending trading hours for one or more Contracts. In the event that any action has been taken pursuant to the immediately preceding sentence, any Person who is authorized to take such action may order the removal of any restriction previously imposed pursuant to such sentence, upon a determination by such Person that the physical emergency that gave rise to such restriction has sufficiently abated to permit the physical functions of the Exchange to continue in an orderly manner; provided that any order pursuant to this sentence shall be subject to review, modification or reversal by the Board or the Executive Committee.

(c) Modification and Recording. The Exchange will notify the Commission of any action taken, or proposed to be taken, pursuant to this Rule [60] in accordance with Commission Regulation §40.6. The decision-making process with respect to, and the reasons for, any such action will be recorded in writing.

(d) Conflicts of Interest. The conflict of interest provisions set forth in Rule 1300 shall apply to the taking of any action under this Rule [60] by the President, or his or her designee.

[Rules 61—100. Reserved]

## **Chapter II Membership Rules [MEMBERSHIP RULES (Rules 101—200)]**

[Rule 101. Membership Application Procedures]

(a) Every applicant for membership shall file an application in writing with the staff of the Exchange in such form as the Exchange may prescribe, and shall submit such information as the Exchange may direct. The Exchange may deny membership to any applicant who fails to meet

such qualifications as the Exchange may from time to time determine are in the best interests of the Exchange and for such cause as the Exchange reasonably may decide.

(b) The Exchange will notify applicants of acceptance or denial within 30 business days of their application. If the Exchange determines that the applicant not be admitted as a member, he shall be notified in writing of the reasons therefor and may, within fifteen (15) days of the receipt thereof, file a request with the Executive Committee for its consideration of his application, together with a written statement in such form as the Executive Committee may prescribe setting forth his opinion as to why the Exchange's decision is in error or insufficient to preclude his admission to membership.

(c) If the applicant files a request with the Executive Committee pursuant to paragraph (b), the Executive Committee shall review and act upon the application for membership. If the Executive Committee votes favorably upon the applicant, he shall be sent written notice thereof and his admission to membership shall become effective upon his purchase or lease of a membership share in the Exchange in accordance with the By-Laws and Rules of the Exchange, subject to all other requirements for membership as set forth in the By-Laws and Rules of the Exchange.

(d) If the Executive Committee votes unfavorably upon the applicant, he shall be notified in writing of the specific grounds for denial of membership and shall have a right to a hearing before the Executive Committee thereon by filing with the Exchange's designated department a written request therefor within ten (10) days after the serving of such notice. The applicant shall be entitled to appear personally at such hearing. The Exchange shall also be represented at the hearing. The Exchange staff shall identify the specific facts put into issue by the application, and with respect to those facts only, both the applicant and the Exchange staff may produce witnesses and other evidence relevant to the grounds for disapproval of the application and they may examine and cross-examine any witnesses so produced. The applicant shall have the right to be represented by legal counsel or any other representative of his choosing before the Executive Committee.

(e) If the applicant does not timely file a written request (1) with the Executive Committee for its consideration of his application pursuant to paragraph (b) of this Rule or (2) with the Exchange's designated department for a hearing pursuant to paragraph (d) of this Rule, the Exchange staff shall take appropriate action with respect to the application and shall notify the applicant of such action, which action shall be the final action of the Exchange upon the serving of such notice.

(f) The Exchange shall make a record of any proceedings conducted under this Rule. The record need not be transcribed unless a transcript is requested by the Commission staff or the applicant, or the decision of the Executive Committee is reviewed by the Board of Directors or the Commission. If an applicant requests a transcript or applies for and is granted review of his membership denial by the Board of Directors or the Commission, the cost of transcribing the record of the hearing shall be borne by the applicant.

(g) In the event of a favorable vote by the Executive Committee, the applicant shall be sent written notice thereof and his admission to membership shall become effective pursuant to the provisions of paragraph (c) of this Rule.

(h) In the event of a second unfavorable vote by the Executive Committee, the applicant shall be sent written notice of such determination which notice shall specify the grounds therefor. This decision of the Executive Committee shall become the final decision of the Exchange ten (10) days after notice is served on the applicant unless within that time the applicant petitions the Board of Directors for review of the Executive Committee's decision.

(i) If the applicant petitions the Board of Directors for review of the Executive Committee's decision, such petition shall consist of a copy of the record of the hearing before the Executive Committee and a written statement setting forth his opinion as to why the Executive Committee's decision is in error or insufficient to preclude his admission to membership. After service upon it of such petition, the Board may, on its own motion, decide to review the matter. Should the Board decide to review the matter, such review shall be conducted solely on the record of the hearing before the Executive Committee and the Board shall thereafter issue a decision by vote of a majority of its members either affirming or reversing the decision of the Executive Committee which shall be a final decision of the Exchange. If the Board takes no action on a petition for review of a decision of the Executive Committee for ninety (90) days after service upon it of such a petition, the decision of the Executive Committee shall become a final decision of the Exchange.

(j) An applicant for membership must deposit with the Exchange in full all fees required by the Executive Committee prior to consideration of its application.

(k) Any notice required under the Membership Rules may be served upon an applicant, member, or member organization either personally or by deposit in the United States mail, postage prepaid via registered or certified mail or by courier service addressed to the applicant, member, or member organization at its address as it appears on the books and records of the Exchange. Unless otherwise stated herein, all documents required to be filed with the Exchange must be filed and received by the office of the Secretary on or before the day prescribed therefor.

(l) The Exchange shall provide written notice, as prescribed by the Commission, to the applicant and the Commission within thirty (30) days after any Exchange action denying approval of an application becomes the final decision of the Exchange.]

#### [Rule 102. Qualification and Participation of Members and Member Organizations

Notwithstanding the provisions of Rule 103, the Exchange requires compliance with the following:

(a) To be eligible for admission as a member of the Exchange, a person must be a natural person at least twenty-one (21) years of age.

(b) A member or member organization must be actively engaged in a futures business.

(c) A member or member organization must be a member of NFA or another designated contract market.

(d) Participation in the Exchange as a member or member organization requires current registration as such with the Exchange. Such registration shall be conditioned upon the member or member organization's initial and continuing compliance with the following requirements:

- (1) execution of applicable agreements with the Exchange, including but not limited to an agreement to abide by the Certificate, By-Laws and Rules of the Exchange, as they may be amended from time to time;
- (2) maintenance of a clearing account with an Exchange member or member organization, or maintenance of an account directly with The Options Clearing Corporation;
- (3) compliance with Certificate, By-Laws and Rules of the Exchange as well as operating procedures of the Exchange and the Commission in the use of the system including, but not limited to, NFX XL (for purposes of this Rule, NFX XL shall be defined as ("System"));
- (4) maintenance of the physical security of the equipment located on the premises of the member or member organization to prevent the improper use or access to the Exchange's systems, including unauthorized entry of information into the Exchange's System; and
- (5) acceptance and settlement of each trade that the Exchange identifies as having been effected by such member or member organization, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified Exchange trade by the clearing member on the regularly scheduled settlement date; and
- (6) input of accurate information into the System, including, but not limited to, whether the member organization acted in a principal or agent capacity.

(e) A member's and member organization's registration shall become effective upon receipt by the member or member organization of notice of an approval of registration by the Exchange in accordance with Rule 104. The registration required hereunder will apply solely to the qualification of a member or member organization to participate in the System. Registration will qualify a member or member organization to trade all System Securities.

(f) Each member or member organization shall be under a continuing obligation to inform the Exchange of noncompliance with any of the registration requirements set forth above.

(g) If a member or member organization has actual or constructive notice of a violation of Exchange By-Laws, Rules, or the Commodity Exchange Act ("Act") in connection with the use of the Exchange's markets by a non-member Customer of the member or member organization and the member or member organization fails to take appropriate action, the member or member organization may be found to have committed an act detrimental to the interest or welfare of the Exchange.

(h) A member or member organization shall assist the Exchange in any investigation into potential violations of the Rules of the Exchange or the Act which occur through or with respect to access to the Exchange's systems under the member's or member organization's identification. Such assistance must be timely and include, but not be limited to, requiring any non-member

Customer to produce documents, to answer questions from the Exchange, and/or to appear in connection with an investigation.

(i) The Exchange may impose upon any member or member organization such temporary restrictions upon the automated entry or updating of orders or quotes/orders as the Exchange may determine to be necessary to protect the integrity of the Exchange's systems. For example, such temporary restrictions may be necessary to address a system problem at a particular member or member organization or at the Exchange, or an unexpected period of extremely high message traffic. The scope of any such restrictions shall be communicated to the affected member or member organization in writing.

(j) Upon any violation of the terms and conditions of its registration, or if at any time the requirements thereof are not met, the Board of Directors may terminate the registration of a member organization by the affirmative vote of a majority of all Directors.]

### **Section 1 Qualification and Participation of Futures Participants**

(a) Only a Futures Participant may transact business on NFX. A prospective Futures Participant must:

- i. complete an Futures Participant Application in the form prescribed by the Exchange;
- ii. provide such other information as required by the Exchange;

(b) Notwithstanding the provisions of Section 2, the Exchange requires compliance with the following:

(i) A Futures Participant must be actively engaged in a futures business.

(ii) A Futures Participant must be a member of NFA or another designated contract market.

(iii) Participation in the Exchange as a Futures Participant requires current registration as such with the Exchange. Such registration shall be conditioned upon the Futures Participant's initial and continuing compliance with the following requirements:

- (1) execution of applicable agreements with the Exchange, including but not limited to an agreement to abide by the Certificate, By-Laws and Rules of the Exchange, as they may be amended from time to time;
- (2) maintenance of a clearing account with a Futures Participant, or maintenance of an account directly with The Options Clearing Corporation;
- (3) compliance with Certificate, By-Laws and Rules of the Exchange as well as operating procedures of the Exchange and the Commission in the use of the system including, but not limited to, NFX XL (for purposes of this Rule, NFX XL shall be defined as ("System"));

(4) maintenance of the physical security of the equipment located on the premises of the Futures Participant to prevent the improper use or access to the Exchange's systems, including unauthorized entry of information into the Exchange's System; and

(5) acceptance and settlement of each trade that the Exchange identifies as having been effected by such Futures Participant, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified Exchange trade by the clearing member on the regularly scheduled settlement date; and

(6) input of accurate information into the System, including, but not limited to, whether the member organization acted in a principal or agent capacity.

(iv) Futures Participants are required to maintain a current list of all Authorized Traders of the Futures Participant with Exchange's Membership Department. The Exchange's Membership Department must be immediately notified of the addition, termination or resignation of an Authorized Trader.

(v) A Futures Participant's registration shall become effective upon receipt by the Futures Participant of notice of an approval of registration by the Exchange. The registration required hereunder will apply solely to the qualification of a Futures Participant to participate in the System. Registration will qualify a Futures Participant to trade all System Securities.

(v) Each Futures Participant shall be under a continuing obligation to inform the Exchange of noncompliance with any of the registration requirements set forth above.

(vi) If a Futures Participant has actual or constructive notice of a violation of Exchange By-Laws, Rules, or the Commodity Exchange Act ("Act") in connection with the use of the Exchange's markets by a non-member Customer of the Futures Participant and the Futures Participant fails to take appropriate action, the Futures Participant may be found to have committed an act detrimental to the interest or welfare of the Exchange.

(vii) A Futures Participant shall assist the Exchange in any investigation into potential violations of the Rules of the Exchange or the Act which occur through or with respect to access to the Exchange's systems under the Futures Participant's identification. Such assistance must be timely and include, but not be limited to, requiring any non-member Customer to produce documents, to answer questions from the Exchange, and/or to appear in connection with an investigation.

(viii) The Exchange may impose upon any Futures Participant such temporary restrictions upon the automated entry or updating of orders or quotes/orders as the Exchange may determine to be necessary to protect the integrity of the Exchange's systems. For example, such temporary restrictions may be necessary to address a system problem at a particular Futures Participant or at the Exchange, or an unexpected period of extremely high message traffic. The scope of any such restrictions shall be communicated to the affected Futures Participant in writing.

(ix) Upon any violation of the terms and conditions of its registration, or if at any time the requirements thereof are not met, the Board of Directors may terminate the registration of a Futures Participant by the affirmative vote of a majority of all Directors.

## **Section 2 Application Procedures**

(a) Every applicant shall file an application in writing with the staff of the Exchange in such form as the Exchange may prescribe, and shall submit such information as the Exchange may direct. The Exchange may determine an applicant fails to meet such qualifications as the Exchange may from time to time determine are in the best interests of the Exchange and for such cause as the Exchange reasonably may decide.

(b) The Exchange will notify applicants of acceptance or denial within 30 business days of their application. Absent a showing of good cause, an application filed pursuant to this Rule shall lapse after a 90 calendar day period if an applicant fails to provide the requisite documentation provided for in this Rule or any subsequent written request for information or documents pursuant to this Rule within such time period agreed to by the Membership Department. If such time period elapses, an applicant shall be required to file a new application pursuant to this Rule.

## **Section 3 Denials and Condition of Membership**

(a) If the Exchange determines that the applicant not be admitted as a Futures Participant, the applicant shall be notified in writing of the reasons therefor and may, within fifteen (15) days of the receipt thereof, file a request with the Executive Committee for its consideration of his application, together with a written statement in such form as the Executive Committee may prescribe setting forth his opinion as to why the Exchange's decision is in error or insufficient to preclude his admission.

(b) If the applicant files a request with the Executive Committee the Executive Committee shall review and act upon the application. If the Executive Committee votes favorably upon the applicant, the applicant shall be sent written notice thereof and the applicant's admission shall become effective upon the issuance of a permit in accordance with the By-Laws and Rules of the Exchange, subject to all other requirements as set forth in the By-Laws and Rules of the Exchange.

(c) If the Executive Committee votes unfavorably upon the applicant, the applicant shall be notified in writing of the specific grounds for denial and shall have a right to a hearing before the Executive Committee thereon by filing with the Exchange's designated department a written request therefor within ten (10) days after the serving of such notice. The applicant shall be entitled to appear personally at such hearing. The Exchange shall also be represented at the hearing. The Exchange staff shall identify the specific facts put into issue by the application, and with respect to those facts only, both the applicant and the Exchange staff may produce witnesses and other evidence relevant to the grounds for disapproval of the application and they may examine and cross-examine any witnesses so produced. The applicant shall have the right to be represented by legal counsel or any other representative of his choosing before the Executive Committee.

(d) If the applicant does not timely file a written request (1) with the Executive Committee for its consideration of his application or (2) with the Exchange's designated department for a hearing, the Exchange staff shall take appropriate action with respect to the application and shall notify the applicant of such action, which action shall be the final action of the Exchange upon the serving of such notice.

(e) The Exchange shall make a record of any proceedings conducted under this Rule. The record need not be transcribed unless a transcript is requested by the Commission staff or the applicant, or the decision of the Executive Committee is reviewed by the Board of Directors or the Commission. If an applicant requests a transcript or applies for and is granted review of his membership denial by the Board of Directors or the Commission, the cost of transcribing the record of the hearing shall be borne by the applicant.

(f) In the event of a favorable vote by the Executive Committee, the applicant shall be sent written notice thereof and his admission as a Futures Participant shall become effective.

(g) In the event of a second unfavorable vote by the Executive Committee, the applicant shall be sent written notice of such determination which notice shall specify the grounds therefor. This decision of the Executive Committee shall become the final decision of the Exchange ten (10) days after notice is served on the applicant unless within that time the applicant petitions the Board of Directors for review of the Executive Committee's decision.

(h) If the applicant petitions the Board of Directors for review of the Executive Committee's decision, such petition shall consist of a copy of the record of the hearing before the Executive Committee and a written statement setting forth his opinion as to why the Executive Committee's decision is in error or insufficient to preclude his admission as a Futures Participant. After service upon it of such petition, the Board may, on its own motion, decide to review the matter. Should the Board decide to review the matter, such review shall be conducted solely on the record of the hearing before the Executive Committee and the Board shall thereafter issue a decision by vote of a majority of its members either affirming or reversing the decision of the Executive Committee which shall be a final decision of the Exchange. If the Board takes no action on a petition for review of a decision of the Executive Committee for ninety (90) days after service upon it of such a petition, the decision of the Executive Committee shall become a final decision of the Exchange.

(i) An applicant must deposit with the Exchange in full all fees prior to consideration of its application.

(j) Any notice required under these rules may be served upon an applicant or Futures Participant either personally or by deposit in the United States mail, postage prepaid via registered or certified mail or by courier service addressed to the applicant or Futures Participant at the address as it appears on the books and records of the Exchange. Unless otherwise stated herein, all documents required to be filed with the Exchange must be filed and received by the office of the Secretary on or before the day prescribed therefor.



(k) The Exchange shall provide written notice, as prescribed by the Commission, to the applicant and the Commission within thirty (30) days after any Exchange action denying approval of an application becomes the final decision of the Exchange.

**[Rule 103. Acceptability of Members] Section 4 Fitness of Futures Participants**

The Exchange may deny a permit [membership] to any applicant or the registration as a Futures Participant [of a membership for any organization] if the Exchange determines that any of the circumstances contained in Sections 8a(2), (3), (4) and (11) of the Act exists with respect to such applicant or [organization] Futures Participant or any person associated with such applicant or organization. For the purpose of this Rule, the term "person associated with" when applied to any person shall mean, as applicable, any general partner, officer, or director of such person, any holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock of such person, any person who has contributed ten percent or more of the capital of such person or any person directly or indirectly controlling such person.

**[Rule 104.] Section 5 [Member Organizations] Approval and Termination of Permits**

[(a) A member or applicant for membership who is or intends to become affiliated with an organization as a general partner or officer or in another capacity which may be acceptable to the Exchange may apply to register his membership for such organization, provided that no member or applicant may register a membership for more than one organization. Subject to the provisions of the Disciplinary Rules, a member shall be liable to the same discipline and penalties for any act or omission of such organization or any general partner, officer, director or employee thereof, as for his own personal act or omission.]

[(b) Every organization which is not a member organization and for which a member or applicant for membership proposes to register its membership shall apply for approval as a member organization and shall submit such information in such form as may be required by the Exchange in accordance with the procedures set forth in Rule 101.]

[(c)a] No [organization] applicant shall be approved as [a member organization] Futures Participant unless the application [for registration of a membership for such organization] is approved by the Exchange or the Executive Committee pursuant to the procedures set forth in [Rule 101] Sections 2 and 3.

[(d)b] Every Futures Participant [organization which has been] approved [as a member] by the Exchange [organization] must continue to meet the qualifications [of a member organization] contained in the By-Laws and Rules of the Exchange, [and must continue to have affiliated with it, except as otherwise specifically provided in Rule 113, a member of the Exchange in good standing whose membership is registered for such organization.]

(c) Each approved Futures Participant shall be assigned a Futures Participant House Account by the Membership Department.

[(e) A member whose membership has been registered for a member organization pursuant to this Rule shall retain and hold legal title to such membership. A member organization may hold

equitable title thereto pursuant to an ABC Agreement which complies with the requirements of Rule 122.]

([f]d) A Futures Participant [member whose membership has been registered for a member organization pursuant to this Rule] may terminate a permit [such registration] by giving written notice stating the desired date of such termination to the Exchange, [and said member organization not less than thirty (30) days in advance of such date. Subject to the approval of the Exchange, the status of the member or member organization shall terminate on the date of termination stated in the member's notice unless another membership is then registered for the member organization or unless such member organization has been granted continued member organization status pursuant to Rule 113.]

[Rule 105. Purchase, Sale or Transfer of Membership Shares

(a) Membership shares may be purchased when and as made available by the Exchange. The purchaser shall deposit a certified check for the purchase price of any membership share purchased under this paragraph (a) within seven (7) days after such purchaser is notified of his approval pursuant to Rule 101 or such other period of time as may be applicable. The purchase of such a membership share thereafter shall be effected in accordance with paragraphs (e) and (f) of this Rule.

(b) Outstanding membership shares which are transferable may be purchased only through the Exchange's designated department. Bids must be submitted in writing to the Exchange's designated department, which will file all bids according to the highest price and the earliest submission date. All bids remain in effect until written revocation thereof is received by the Exchange's designated department, except that such bids shall not be binding in any transfer of a membership share by the Exchange pursuant to Rule 116.

(c) Outstanding membership shares which are transferable may be transferred only through the Exchange's designated department. All offers for the sale of a membership share must be submitted in writing to the Exchange's designated department. The Exchange's designated department will file all such offers according to the lowest price and the earliest submission date. All offers remain in effect until written revocation thereof is received by the Exchange's designated department.

(d) When an offer filed in accordance with paragraph (c) is matched with a bid filed in accordance with paragraph (b) of this Rule, the purchaser must deposit with the Exchange's designated department a certified check for the purchase price; and the person whose membership share is being transferred or its legal representative must execute and deliver to the Exchange's designated department an agreement to transfer the membership share to the purchaser.

(e) Written notice of a proposed transfer, either voluntary or by the Exchange, including the purchase of a membership share from the Exchange, shall be posted on the Exchange's website for not less than seven (7) consecutive days immediately preceding the effective date of such transfer, which notice shall specify such date.

(f) Written notice of the effective transfer shall be posted on the Exchange's website.

(g) Following the consummation of such transfer, the transferor of such membership share shall cease to have any rights or privileges of membership, except that such transfer shall not affect the rights of the transferor or the member organization for which the transferor's membership was registered, relating to claims pursuant to Rule 107.]

[Rule 106. Contracts on the Exchange by Transferors

A member proposing to transfer its membership share to another person shall not make any contract after the last business day prior to the effective date of such transfer, unless such member shall remain a member in good standing notwithstanding the transfer.]

[Rule 107. Priorities in Disposition of Proceeds of Transfer of Membership Shares

(a) Upon any transfer of a membership share other than the transfer of legal title pursuant to a lease or any reversion thereof or the transfer of legal title only to a membership share subject to an ABC Agreement, whether made voluntarily or pursuant to a transfer of a membership share by the Exchange, the proceeds thereof shall be applied by the Exchange to the following purposes and in the following order of priority:

- (1) Due to Exchange. The payment of such sums as the Exchange shall determine are, or may become, due to the Exchange from the member whose membership share is transferred or from a member organization for which such membership is registered.
- (2) Due to Clearing Corporation. The payment of such sums as the Exchange shall determine are, or may become, due to the Clearing Corporation from such member or such member organization.
- (3) Claims of Members. The payment to creditors who are members or member organizations of the Exchange of all properly filed claims arising in the ordinary course of their commodities businesses.

(b) If the proceeds of the transfer of the membership share are insufficient to pay to creditors who are members or member organizations of the Exchange all filed claims allowed by the Exchange, then such claims shall be paid pro rata, except as provided in Rule 108 and Rule 110.

(c) If a claim based on a contract is contingent or the amount that will be ultimately due thereon cannot for any reason be immediately ascertained and determined, the Exchange may, out of the proceeds of the membership share, reserve and retain such amount as it may deem appropriate, pending determination of the amount due on such claim.

(d) A claim shall be allowed by the Exchange for the amount due thereon only after the proceeds of the sale of all collateral held therefor or the fair value of such collateral as determined by the Exchange has been credited thereon and the Exchange may require that any such collateral be disposed of before release or releases satisfactory to the Exchange, unless the Exchange shall determine that the protection of creditors of the member organization with which said member is

affiliated requires the use of such surplus or any part thereof, or that the member agreed that such surplus shall be paid to such organization. In either such event, such surplus shall be paid over to such organization upon the execution by said member or organization of a release or releases satisfactory to the Exchange.]

[Rule 108. Failure to File Claim

A member or member organization shall forfeit all rights under Rule 107 to share in the proceeds of a membership share which has been transferred, unless such member or member organization files a statement of its claim with the Exchange prior to the transfer; a claim filed subsequent to a transfer, to the extent allowed by the Exchange, may be paid out of any surplus remaining after all other claims allowed by the Exchange have been paid in full and may be paid in preference to claims referred to in Rule 110 not already paid when it is filed.]

[Rule 109. Assignment of Interest in Membership Share

(a) Except as may otherwise specifically be provided in the By-Laws and Rules of the Exchange, no recognition or effect shall be given by the Exchange to any agreement or to any instrument entered into or executed by a member or by its legal representative which purports to transfer or assign such member's interest in its membership share or in the proceeds or any part thereof, or which purports to create any lien or other right with respect thereto, or which purports in any manner to provide for the disposition of such proceeds to a creditor of such member; nor shall payment of such proceeds be made by the Exchange to any agent or attorney-in-fact of a member except as may be explicitly permitted by the By-Laws and Rules of the Exchange in those cases in which such agent or attorney-in-fact is acting solely for and on behalf of such member and is neither directly nor indirectly acting in his own behalf or in behalf of any third person.

(b) The Exchange shall recognize and give effect to a valid instrument entered into, or executed by, a member or his legal representative by which a member, in consideration of a loan or guarantee of a loan by another person for the purpose of purchasing a membership share, has authorized the lender or guarantor to sell the membership share in specified circumstances; provided, however, that such sale shall be effected in accordance with the requirements of Rule 105 and subject to the order of priorities set forth in Rule 107.]

[Rule 110. Claims of Partners, Etc.

Claims arising out of transactions between the member of the Exchange whose membership share is being disposed of and a person associated with such member or out of transactions between such member and the organization for which his membership was registered at the time of such transactions shall not share in the proceeds of the subject membership share until all other claims allowed by the Exchange have been paid in full.]

[Rule 111. Claims by Former or Deceased Members

When a member is in debt to another member, the death of the creditor member or the transfer of its membership share, either by himself voluntarily or by the Exchange, shall not affect the rights of such creditor member, his firm, or estate, to share in the proceeds of the membership share of

the debtor member under Rule 107, in the same manner and to the same extent as if such creditor member had not died or his membership share had not been transferred.]

### **Section 6 Executive Representative**

Each Futures Participant shall appoint and certify to the Membership Department one Executive Representative who shall represent and act for the Futures Participant in all the affairs of the Exchange; provided, however, that other representatives of the Futures Participant may also serve on the NFX Board or NFX committees or otherwise take part in the affairs of the Exchange. A Futures Participant may change its Executive Representative or appoint a substitute for its Executive Representative upon giving notice thereof to the Membership Department via electronic process or such other process as the Exchange may prescribe. An Executive Representative of NFX shall be authorized to act on behalf of the Futures Participant. Each Executive Representative shall maintain an Internet electronic mail account for communication with the Exchange and shall update contact information as prescribed by the Exchange. Each Futures Participant shall review and, if necessary, update its Executive Representative designation and contact information in the manner prescribed by the Exchange.

[Rule 112. Membership Share of Deceased Member

(a) When a member dies, all rights and privileges of membership in the Exchange shall terminate, except as otherwise expressly provided in the By-Laws and Rules of the Exchange and if he is holding his membership share otherwise than by lease or subject to an ABC Agreement, his membership share may be transferred by the Exchange, upon ten (10) days' written notice to such member's executor or administrator if such member's executor or administrator does not transfer the membership share within ninety (90) days from the later of:

(1) the member's date of death, or

(2) the date on which another member of the Exchange who is a general partner or officer of the organization for which such membership share was registered or affiliated with such member organization in another capacity which is acceptable to the Exchange registers his membership for it, or on which such member organization ceases to be a member organization.

(b) The death of a member shall not affect the rights of creditors under the Rules of the Exchange.

(c) The death of a member shall not affect the rights or obligations of such member, the member organization for which his membership was registered or the member's estate relating to any claims under Rule 107 and shall not affect the right of his executor or administrator to sell such membership share except as provided in this Rule.

(d) The Exchange may direct the sale of any membership share of a deceased member for value if legal title to such membership share has not been transferred within two (2) years of the date of death of such member.]

[Rule 113. Death or Disaffiliation of Sole Member

(a) A member organization whose sole member, the membership of whom is registered for such organization pursuant to Rule 104, has died or, except where such member has notified the Exchange of his desire to terminate such registration under paragraph (f) of Rule 104, has ceased to be affiliated with such member organization, shall immediately notify the Exchange of such event and shall continue to have the status of a member organization in the Exchange for a period of thirty (30) business days from the member's date of death or cessation of affiliation with the member organization.

(b) The Exchange in its discretion and on application of such member organization, may permit such organization to continue to have the status of a member organization for up to an additional sixty (60) days to enable another member of the Exchange who is a general partner or officer of the organization or who is affiliated with the organization in another capacity which is acceptable to the Exchange to register his membership for the organization.

(c) Any partnership which is permitted to continue to have the status of a member organization pursuant to paragraph (b) of this Rule must meet the following requirements if the deceased or disaffiliated member was a general partner in the member organization:

- (1) the partnership articles of such firm must provide for the continuance of the firm as a partnership by the surviving partners, and
- (2) the deceased or disaffiliated member shall have agreed in the partnership articles of such firm that such continuing firm, if permitted by the Exchange to continue to have the status of a member organization, shall be entitled to the use of his membership from the date of his death or disaffiliation from the partnership until the termination of such status of such continuing firm or until another member of the Exchange who is a general partner of the firm or who is affiliated with the firm in another capacity which is acceptable to the Exchange registers his membership for such firm; and that, insofar as may be necessary for the protection of creditors of the continuing firm and subject to the By-Laws and Rules of the Exchange, the proceeds of his membership share shall be an asset of the continuing partnership during such period.

(d) Any corporation which is permitted to continue to have the status of a member organization pursuant to paragraph (b) of this Rule must meet the following requirements if the deceased or disaffiliated member was an officer in the member organization:

- (1) the member organization must continue in business and
- (2) the deceased or disaffiliated member shall have agreed with the corporation that said corporation, if permitted by the Exchange to continue to have the status of a member organization, shall be entitled to the use of his membership from the date of his death or disaffiliation from the corporation until the termination of such status of such corporation or until another member of the Exchange who is an officer of the corporation or who is affiliated with the corporation in another capacity which is acceptable to the Exchange registers his membership for the corporation; and that, insofar as may be necessary for the

protection of the creditors of the corporation and subject to the By-Laws and Rules of the Exchange, the proceeds of his membership share shall be an asset of the corporation during such period.

(e) Any partnership or corporation which is permitted to continue to have the status of a member organization pursuant to paragraph (b) of this Rule must meet the following requirements if the deceased or disaffiliated member was affiliated with the partnership or corporation in a capacity acceptable to the Exchange other than as a general partner or officer, respectively:

(1) the member organization must continue in business and

(2) the deceased or disaffiliated member shall have agreed with the partnership or the corporation that said partnership or corporation, if permitted by the Exchange to continue to have the status of a member organization, shall be entitled to the use of his membership from the date of his death or disaffiliation from the partnership or the corporation until the termination of such status of such partnership or corporation, or until another member of the Exchange who is a general partner of the partnership or who is an officer of the corporation, or who is affiliated with the partnership or the corporation in another capacity which is acceptable to the Exchange registers his membership for the partnership or the corporation; and that, insofar as may be necessary for the protection of the creditors of the partnership or the corporation and subject to the By-Laws and Rules of the Exchange, the proceeds of his membership share shall be an asset of the partnership or the corporation during such period.

(f) Upon the transfer of the membership share of such deceased or disaffiliated member, the proceeds thereof shall be applied to the same purposes and in the same order of priority as if such member had continued to be a member of the Exchange and a general partner, or an officer, or affiliated with said organization in a capacity acceptable to the Exchange until the date of termination of the status of said organization as a member organization or until another member of the Exchange who is a general partner or an officer of said organization, or who is affiliated with said organization in another capacity which is acceptable to the Exchange registers his membership for said organization, whichever event occurs first.

(g) In the event the Exchange does not permit an organization to continue to have the status of a member organization under paragraph (b) of this Rule, the Exchange shall notify such organization forthwith and give the reasons for such denial.

(h) As used herein, the cessation of affiliation of a member with a member organization shall include the suspension or expulsion of such member from the Exchange.]

[Rule 114. Rights of Members or Member Organizations Following Suspension or Expulsion

(a) When a member is expelled or when the approval of a member organization is terminated, all membership rights and privileges of such member or member organization shall terminate, except the right of such member to share in the assets of the Exchange upon any liquidation, dissolution or winding up of the Exchange, the right of such member to the proceeds of the transfer of its membership share and the right of such member or member organization to assert

claims against others, all as provided under the By-Laws and Rules of the Exchange. The expulsion of a member shall not affect the rights of creditors under the Rules of the Exchange.

(b) When a member is expelled or is suspended and becomes ineligible for reinstatement, his membership share may be transferred by the Exchange on at least fifteen (15) days' written notice mailed to such member at such member's address registered with the Exchange.

(c) When a member or member organization is suspended, all membership rights and privileges shall be suspended during the term of the suspension, except the right of such member to share in the assets of the Exchange upon any liquidation, dissolution or winding up of the Exchange, the right of such member to the proceeds of the transfer of its membership share, and the right of such member or member organization to assert claims against others, all as provided under the By-Laws and Rules of the Exchange. The suspension of a member or member organization shall not affect the rights of creditors under the Rules of the Exchange nor shall it in any way relieve such member or member organization of its obligations under the Rules of the Exchange to perform all commodity futures or option contracts entered into on the Exchange.

(d) If the Exchange determines that the protection of those persons entitled to make claims against the proceeds of a transfer of the membership share of a suspended member requires the transfer of such membership share, such membership share may be transferred by the Exchange, on at least fifteen (15) days' written notice mailed to such member at such member's address registered with the Exchange, unless within such time the member requests a hearing pursuant to such procedures as the Exchange shall prescribe which shall be set forth in such notice.]

#### [Rule 115. Membership Shares Purchased by the Exchange

Membership shares may be purchased by the Exchange, at such time or times and at such price or prices as the Board of Directors may from time to time determine, and such membership shares may be sold by the Exchange, at such time or times and at such price or prices as the Board of Directors may determine. Such membership shares, while held by the Exchange, shall not be chargeable with dues.

Upon the purchase by the Exchange of any membership share, such membership share shall be transferred into the name of the Secretary of the Exchange. Upon the sale of any membership share held by the Exchange, such membership share shall be transferred by the Secretary into the name of the purchaser.

Upon the transfer of a membership share into the name of the Secretary, the proceeds thereof shall be applied to the purposes and in the order of priority set forth in Rule 107.]

#### [Rule 116. Transfer of Membership Share by the Exchange

(a) Whenever the transfer of a membership share is directed by the Exchange, any bid for a membership share then on file with the Exchange's designated department or any bid received by the Exchange's designated department within thirty (30) days thereafter, may be accepted for such membership share by the Exchange's designated department, subject to the provisions of the By-Laws and Rules of the Exchange, and if at the time such sale is directed, offers of sale of



other membership shares shall have been filed with the Exchange's designated department and are still open, such bid for a membership share shall be available for the sale of the membership share whose sale has been directed by the Exchange in priority over the sale of such other membership shares. The proceeds of such transfer shall be distributed in the manner provided in Rule 107.

(b) The person who is the highest bidder shall, on the day of such auction, deposit with the Exchange's designated department a certified check for the purchase price.

(c) The consummation of the transfer shall occur on the day following the last day of posting as required by Rule 105(e).

(d) If within thirty (30) days after the Exchange shall have directed the transfer of such membership share, no bids in writing for a membership share shall have been filed with the Exchange's designated department, such membership share may be purchased by the Exchange for such sum as the Board of Directors shall, in its sole discretion, deem proper.]

[Rule 117. Ownership of Membership; Liability for Exchange Debts

(a) The Exchange shall treat the person in whose name any membership share is registered on the books of the Exchange as the sole owner thereof, for all purposes, and shall not recognize any equitable or other claim to, or interest in, such membership share on the part of any other person, except as may be otherwise provided in the Membership Rules.

(b) A member or member organization shall not have any liability for debts or obligations of the Exchange and shall not, by virtue of being a member or member organization, have any authority to bind the Exchange or act as its agent.]

[Rule 118. Leasing of Membership Shares

(a) A person may lease legal title to its membership share to a person who has applied for approval and has been approved as a member by the Exchange in accordance with the Rules of the Exchange.

(b) A person shall notify the Exchange in writing prior to any leasing of his membership share and shall register with the Exchange as an approved lessor in accordance with the provisions of Rule 119. A fully executed copy of the lease agreement and any amendment thereto shall be filed with and approved by the Exchange prior to the effectiveness of the lease agreement or any amendment thereto.

(c) In order to be approved by the Exchange, a lease agreement shall include provisions stating:

(1) that the lease agreement shall not be effective until the transfer of the membership share is approved pursuant to the Rules of the Exchange;

(2) that the lease agreement shall be subject to cancellation by the lessor or the lessee upon at least thirty (30) days' prior written notice to the Exchange and to the other party and subject

to the lessee's death or incompetency in which case the lessee's legal representative shall give prompt notice thereof to the Exchange and the lessor;

- (3) all financial arrangements between the lessor and lessee regarding the leasing of the membership share and requiring the lessee to pay the Exchange or any of its affiliates all applicable dues, fees, charges or other assessments arising from the use of the membership share;
  - (4) that the lessee shall not be permitted to transfer, to pledge or otherwise to encumber legal title to the membership share during the term of the lease;
  - (5) that upon the death or incompetency of the lessee, the expiration of the term stated in the lease agreement, or the occurrence of any other event specified in such agreement, the lease agreement shall terminate and legal title to the membership share shall revert to the lessor in accordance with the By-Laws and Rules of the Exchange;
  - (6) that upon any event specified in subparagraph (c)(5) of this Rule, the lessee or his legal representative shall not use the membership share for any purpose without the written consent of the lessor;
  - (7) that during the term of the lease, the lessee shall be deemed to be a member of the Exchange for all purposes of the Certificate, By-Laws and Rules of the Exchange, except as set forth in subparagraph (c)(4) of this Rule and that the lessee shall not share in the assets of the Exchange upon any liquidation, dissolution or winding up of the Exchange;
  - (8) that any controversy arising between the lessor and the lessee relating to the lessee's membership share or the lease agreement shall be submitted for arbitration as a dispute between members in accordance with the Arbitration Rules of the Exchange; and
  - (9) that the Exchange may dispose of a membership share subject to a lease agreement in accordance with the By-Laws and Rules of the Exchange.
- (d) Upon termination of the lease agreement for any reason, the legal title to the membership share subject to the lease agreement shall not be considered for transfer to any person, including reversion to the lessor, unless and until the lessor, or his legal representative, has provided the Exchange with written notice of the name of the person applying to hold legal title to the membership share and such person has made application therefor. Such written notice shall be provided to the Exchange within sixty (60) days after the date of termination of the lease agreement or at any time prior to the termination of the lease agreement. Failure to provide such notice or for such person to make application within thirty (30) days after such notice shall authorize the Exchange to dispose of the membership share formerly subject to the lease agreement, including the lessor's interest therein.
- (e) As used herein, the following terms shall have the following meanings:
- (1) the term "lessor" means a holder of equitable title to a membership share in the Exchange, including a former member of the Exchange, who has leased legal title to his membership

share to a lessee and has retained equitable title to such membership share, pursuant to the By-Laws and Rules of the Exchange; and

(2) the term "lessee" means a natural person who has leased legal title to his membership share from a lessor, pursuant to the By-Laws and Rules of the Exchange.

(f) The Exchange shall not lease membership shares.]

[Rule 119. Approved Lessor

(a) A person proposing to lease its membership share shall register with the Exchange as an approved lessor.

(b) A person shall not be registered as an approved lessor:

(1) unless a standard form subordination and sale agreement meeting the requirements of Rule 120 is executed and filed by such person with the Exchange; or

(2) if the person is the subject of, or a party to, a disciplinary proceeding by the Exchange or another self-regulatory organization or an adjudicatory proceeding brought by the Commission or the Securities and Exchange Commission, or has not paid any dues, fees, charges, fines or other assessments to the Exchange or any of its affiliates, or for other good and sufficient reason as the Exchange may determine. The Exchange may waive any of the conditions specified in this subparagraph (b)(2) under appropriate circumstances.

(c) A person applying to register with the Exchange as an approved lessor shall submit such information in such form as may be required by the Exchange.]

[Rule 120. Subordination and Sale Agreement

(a) The subordination and sale agreement shall be in a form acceptable to the Exchange. It shall be executed by the lessor and filed with the Exchange with the accompanying executed lease agreement pursuant to Rule 118.

(b) The subordination and sale agreement shall authorize the Exchange to sell the membership share (1) in the event it becomes necessary to satisfy the claims of creditors of the lessee or of any member organization with which the lessee is affiliated arising out of the business transacted by the lessee during the term of the lease agreement or (2) pursuant to the provisions of the By-Laws and Rules of the Exchange for nonpayment by the lessee of dues, fees, charges, fines or other assessments or other debts. Such agreement shall further state that the proceeds of such sale shall be an asset of the lessee.

(c) The subordination and sale agreement shall state that the lessor agrees that his interest in the membership share shall be subordinate to the claims of creditors of the lessee or of any member organization with which the lessee is affiliated arising out of the business transacted by the lessee during the term of the lease agreement.]

[Rule 121. ABC Agreement

(a) Every applicant who is financing part or all of the cost of his membership share through an ABC Agreement shall file the ABC Agreement along with his application for membership for review by the Exchange.

(b) As used herein, an ABC Agreement is a contract between a member and the member organization with which the member is affiliated pursuant to which a portion of the risk of fluctuations in the value of the membership share shall rest with the member organization rather than with the member. The ABC Agreement shall be consistent with the requirements of Rule 122 and with such other requirements as the Exchange may prescribe.]

[Rule 122. Standard Terms of ABC Agreement

An ABC Agreement shall comply with the following terms:

(a) The parties to an ABC Agreement shall be (1) a general partner or officer of a member organization, or an individual who is affiliated with the member organization in another capacity which is acceptable to the Exchange and (2) the member organization with which such person is affiliated;

(b) the member organization shall provide all or part of the funds for the purchase of a membership share of which the legal title thereof shall be placed in the member and the equitable title thereof shall be placed in the member organization;

(c) the member shall contribute the use of the membership share to the member organization and shall subject the membership share to the claims of the creditors of the member organization in accordance with the By-Laws and Rules of the Exchange;

(d) upon notice of the member organization's termination as a member organization of the Exchange, notice of the member's termination of his affiliation with the member organization, or the member's death or incompetency, the member or his legal representative shall, upon written consent of the membership organization,

- (1) retain the membership share and pay an amount necessary to the member organization for the purchase of another membership share,
- (2) sell the membership share and pay the proceeds thereof to the member organization,
- (3) transfer legal title to a person affiliated with the member organization in accordance with the By-Laws and Rules of the Exchange, or
- (4) transfer legal title to the membership share to a lessee in accordance with the By-Laws and Rules of the Exchange;

(e) upon notice of any event specified in paragraph (d) of this Rule, the member or his legal representative shall not use the membership share for any purpose without the written consent of the member organization;

(f) any controversy between the member and the member organization relating to the use of the membership share or the ABC Agreement shall, at the instance of either party, be submitted for arbitration as a dispute between members in accordance with the Arbitration Rules of the Exchange; and

(g) the ABC Agreement shall provide for appropriate procedures with respect to the exercise of rights thereunder.]

[Rule 123. Sale and Subordination of Membership Share Subject to an ABC Agreement

(a) A member holding legal title to its membership share subject to an ABC Agreement and the member organization with which he is affiliated shall execute a sale and subordination agreement meeting the requirements of paragraph (b) of this Rule.

(b) The sale and subordination agreement under this Rule shall authorize the Exchange to sell the membership share (1) in the event it becomes necessary to satisfy the claims of creditors of the member or of any member organization with which the member is affiliated arising out of the business transacted by the member during the term of the agreement or (2) pursuant to the provisions of the By-Laws or Rules of the Exchange for nonpayment by the member or member organization of dues, fees, charges, fines or other assessments or other debts. The agreement shall further state that the proceeds of such sale shall be an asset of the member and the member organization with which he is affiliated.]

[Rule 124. Lease of Membership Share Subject to ABC Agreement

A member may lease legal title to a membership share subject to an ABC Agreement under the following conditions:

(a) the written consent of the organization that is the party to the ABC Agreement shall be required;

(b) the leasing of the membership share shall be effected in accordance with the By-Laws and Rules of the Exchange;

(c) in addition to meeting the requirements of Rule 118, the lease agreement shall address the termination of the status of the organization as a member organization, the lessor's termination as a person affiliated with the organization, or the lessor's death or incompetency in a manner satisfactory to the Exchange; and

(d) the lessor and the organization with which he is affiliated shall each qualify as an approved lessor under Rule 119 and shall comply with Rule 120.]

[Rule 125. Transfer of Membership Share Subject to Leasing Agreement or ABC Agreement by the Exchange

The Exchange is authorized to direct the transfer of a membership share subject to a leasing agreement or a membership share subject to an ABC Agreement, including the equitable interest therein, at the time legal title to the membership share is transferred voluntarily or in accordance with the By-Laws and Rules of the Exchange. Such transfer shall take place pursuant to the procedures set forth in Rule 116, except that the transfer shall not take place until a reasonable time has elapsed during which the Exchange may consider any claims against the lessee. Absent special circumstances, such period of time shall be presumed to be the posting period required under paragraph (e) of Rule 105. The lessor shall not have any right to such proceeds during this time period.]

[Rule 126. Transfer of Equitable Title

A transfer of equitable title to a membership share may be made upon submission of the name of the candidate to the Exchange and notice thereof to the membership of the Exchange by posting such notice on the Exchange's website in accordance with the provisions of paragraph (e) of Rule 105. Such a transfer may not be effected pursuant to a leasing agreement. The Exchange may disapprove any such transfer if it determines that such transfer would be contrary to the Act or the Commission's Regulations or to the By-Laws and Rules of the Exchange, or for other good cause.]

### **Section 7 Exchange's Costs of Defending Legal Proceedings**

Any Futures Participant or person associated with any of the foregoing who fails to prevail in a lawsuit or other legal proceeding instituted by such person or entity against the Exchange or any of its board members, officers, committee members, employees, or agents, and related to the business of the Exchange, shall pay to the Exchange all reasonable expenses, including attorneys' fees, incurred by the Exchange in the defense of such proceeding, but only in the event that such expenses exceed \$50,000.00. This provision shall not apply to disciplinary actions by the Exchange, to administrative appeals of Exchange actions or in any specific instance where the Board has granted a waiver of this provision

### **Section 8 [Rule 127.] Limitation of Exchange Liability and Reimbursement of Certain Expenses**

(a) The Exchange shall not be liable for any damages sustained by a Futures Participant [member or member organization] arising out of the use or enjoyment by such Futures Participant [member or member organization] of the facilities afforded by the Exchange to [members] Futures Participants for the conduct of their business.

(b) The cost to the Exchange of producing, pursuant to court order or other legal process, records relating to the business or affairs of a Futures Participant [member or member organization] may, in the discretion of the Exchange, be required to be paid to the Exchange by such Futures Participant [member or member organization], whether such production is required at the

instance of such Futures Participant [member or member organization] or at the instance of any other party.

(c) In the event any action or proceeding is brought to impose liability on the Exchange for an alleged failure on its part to prevent or to require action by a Futures Participant [member or member organization], said Futures Participant [member or member organization] may, in the discretion of the Exchange, be required to reimburse the Exchange for:

- (1) all expenses and counsel fees incurred by the Exchange in connection with said action or proceeding, (2) the recovery, if any, adjudged against the Exchange upon a final determination that the Exchange was liable for the damage sustained, and (3) any payment made by the Exchange with the approval of the Futures Participant [member or member organization] in connection with any settlement of any such action or proceeding; provided, however, that no Futures Participant [member or member organization] shall be required to reimburse the Exchange for any fine or any other civil penalty imposed on the Exchange by the Commission or any other governmental entity for a violation by the Exchange of any provision of the Act or of any Commission Regulation, or where indemnification would otherwise be prohibited by law.

**[Rule 128.]Section 9 Dues, Fees and Charges**

(a) The Board of Directors may fix and impose assessments, initiation, leasing and transfer fees, and other fees, dues and charges to be paid by Futures Participants [members and member organizations] for applications, registrations, approvals, use of Exchange facilities or other services or privileges granted, and such assessments, fees, dues and charges may be imposed in different amounts or proportions for different classes of Futures Participants [members or member organizations]. All such assessments, fees, dues and charges shall be payable under such terms and conditions as the Board may prescribe.

(b) Each member and member organization, and all applicants for registration as such shall be required to provide a clearing account number for an account at The Options Clearing Corporation (“OCC”) for purposes of permitting the Exchange to debit any undisputed or final fees, fines, charges and/or other monetary sanctions or other monies due and owing to the Exchange pursuant to this Rule[ or Rule 129]. In the event that a member or member organization successfully disputes a fee, fine or charge that has been debited, the Exchange would either reflect a credit in a future invoice or refund the amount in the form of a check.

[Rule 129. Transaction Charges]

(c) The Board of Directors may fix and impose a charge upon each Futures Participant [member and member organization] measured by the number of transactions or contracts effected by such Futures Participant [member and member organization] through the facilities of the Exchange. In fixing the amount of such charge, the Board may establish different rates for transactions or contracts involving different commodity interests or for transactions or contracts effected for non-Futures Participants [members or non-member organizations], or for various classes of Futures Participant [member and member organization], or may omit such charge for any class

or classes of Futures Participant [member and member organization]. Such charges shall be payable under such terms and conditions as the Board may prescribe.

**[Rule 130.] Section 10 Failure to Pay Dues, Etc.**

A Futures Participant [member and member organization] which fails to pay its dues, fees, charges, fines or other assessments within ninety (90) days after the same become payable shall be notified in writing of such arrearages. If such arrearages have not been paid within twenty (20) days after such notice, the Board of Directors may suspend the delinquent Futures Participant [member and member organization], which suspension shall continue until the monies owed the Exchange, together with any other sums which accrued and remain unpaid since the suspension became effective, are paid. Should payment of dues, fees, charges, fines or other assessments not be paid within sixty days (60) after notice of arrearages, the permit [membership share] may be disposed of by the Exchange upon at least ten (10) days' written notice mailed to him at his address registered with the Exchange.

**[Rule 131.] Section 11 Liability for Dues and Other Fees or Charges Until Transfer of Membership**

Notwithstanding the death, suspension or expulsion of a [member] Futures Participant, the Futures Participant [member] or in the event of his death his estate shall continue liable for the payment of dues, fees, charges or other assessments to the Exchange. [as the same becomes due and payable until such membership share is transferred.]

**[Rule 132. Dues on Transfer of Membership Share**

When a membership share is transferred, the transferee shall pay to the transferor on the date of transfer the unexpired portion of the dues for the current half year.]

**[Rule 133.] Section 12 Notice of Changes [Within Member or Member Organization]**

(a) Each Futures Participant [member and member organization], as applicable, shall give prompt written notice to the Exchange on such form as may be required by the Exchange: (1) of the death, [retirement,] termination, resignation or any change in status of a Executive Representative or [member (including both legal and equitable title holders),] Authorized Trader [or officer or partner] of the Futures Participant [of the member organization]; (2) of the sale of substantially all of the assets, merger, consolidation, liquidation, or dissolution of the Futures Participant [member organization]; and (3) of any material change in the ownership interests of the Futures Participant [such member organization by any member affiliated with the member organization].

[(b) Each member affiliated with a member organization shall promptly notify such member organization of its acquisition or disposition of a material ownership interest in the member organization.]

[(c) Any amendments to the partnership articles, in the case of a member organization which is a partnership; any amendments to the charter or certificate of incorporation or by-laws, in the case



of a member organization which is a corporation; and any amendments to instruments corresponding thereto, in the case of a member organization which is a trust or association, must be submitted to the Exchange prior to becoming effective. If such member organization is a futures commission merchant, any amendments to the forms of stock certificates or instruments corresponding thereto, or any agreements or other documents relating to the business or affairs of such organization between it and any of its shareholders, partners, officers, directors, trustees or associates, other than agreements relating to ordinary securities or commodities transactions, must also be submitted to the Exchange prior to becoming effective.]

[(d)b] Any Futures Participant [member or member organization which] that files an application for registration with the Commission to become a futures commission merchant, introducing broker or floor broker shall concurrently deliver a copy of such application to the Exchange, and shall promptly notify the Exchange of any action taken by the Commission with respect to such application.

[(e) Each member organization shall submit to the Exchange, at such times as the Exchange may require, a list which, to the best of its knowledge and belief, states the name of each person directly or indirectly beneficially owning one percent (1%) or more of the ownership interest of such member organization, and shows the percentage of such ownership and the person's affiliation, if any, with such member organization.]

### **Section 13 [Rule 134.] Addresses [of Members and Member Organizations]**

Every Futures Participant [member and member organization] shall register with the Exchange's Membership Department an address and subsequent changes thereof where notices may be served.

#### [Rule 135. Disapproval of Business Connections

Whenever it shall appear to the Board of Directors that a member or member organization has formed a partnership, or established an office or headquarters, or is individually or through any participant of its firm interested in a partnership or business, or has formed any business connection whereby the interest or good repute of the Exchange may suffer, the Board may require the dissolution of any such partnership or the discontinuance of such business, office or headquarters or business connection, as the case may be.]

[Rules 136—200. Reserved]

### **Chapter III Obligations of Futures Participants and Authorized Traders** **[RECORDS; REPORTS; RESPONSIBILITY (Rules 201—219)]**

#### **[Rule 201.]Section 1 Books and Records**

(a) Each Futures Participant [member and member organization] shall prepare and keep current all books, ledgers and other similar records required to be kept by the Commission and shall prepare and keep current such other books and records and adopt such forms as the Exchange may from time to time prescribe.

(b) Each Futures Participant [member and member organization] shall keep all books and records required to be kept pursuant to paragraph (a) for a period of five years from the date thereof unless otherwise provided in the By-Laws and Rules of the Exchange or required by law. Such books and records shall be readily accessible during the first two years of such period as they are required to be maintained. Reproductions of any such records may be substituted in a manner consistent with Commission Regulations.

(c) During such period as they are required to be maintained by the Futures Participant [member and member organization], all such books and records shall be made available for inspection by, and copies shall be delivered to, the Exchange or its authorized representatives upon request.

**[Rule 202.]Section 2 Financial Requirements**

(a) Each Futures Participant [member and member organization] which is a futures commission merchant or an introducing broker shall comply with the requirements prescribed in Commission Regulations 1.10, 1.12, 1.17 and 1.18 and with the additional requirements of this Rule.

(b) Each Futures Participant [member and member organization] which is not subject to the requirements prescribed in Commission Regulations 1.10, 1.12, 1.17 and 1.18 shall at the time of application for a permit [admission to membership or for approval as a member organization], and upon admission [to membership] or approval as a Futures Participant [member organization] have net liquid assets in the amount of \$100,000 or more.

(c) Each Futures Participant [member and member organization] shall file with the Exchange two signed copies of any proposed subordination agreement at least ten (10) days prior to the proposed effective date of the agreement or at such other time as the Exchange for good cause shall accept such filing. Any proposed subordination agreement shall comply with the requirements of Commission Regulation 1.17 applicable to such agreements. No proposed agreement shall become effective unless and until the Exchange has found the agreement acceptable. This provision shall apply to Futures Participants [members] for whom the Exchange is their designated self-regulatory organization (“DSRO”).

(d) Each Futures Participant [member and member organization] shall file with the Exchange a copy of any notice required to be filed with the Commission pursuant to Commission Regulations 1.12 and 1.17 concurrently with the same being filed with the Commission.

(e) The Exchange may at any time or from time to time, with respect to a particular Futures Participant [member and member organization] or all Futures Participant [member and member organization] or a new Futures Participant [member and member organization], prescribe net capital or net worth requirements greater than or in addition to those prescribed under this Rule, including more stringent treatment of items in computing net capital or net worth.

(f) For the purposes of this Rule, the term “net liquid assets” shall mean current assets less current liabilities.

**[Rule 203.]Section 3 Audit and Financial Filings**

(a) Each Futures Participant [member and member organization] which is a futures commission merchant or an introducing broker shall prepare and file with the Exchange periodic financial reports in accordance with the requirements prescribed in Commission Regulation 1.10. Each such Futures Participant [member and member organization] shall file with the Exchange a copy of any other financial or operational reports required by the Commission concurrently with the same being filed with the Commission.

(b) Each Futures Participant [member and member organization] which is not a futures commission merchant or an introducing broker shall file with the Exchange a copy of its annual financial statement promptly after the same is completed, but in no event later than thirty (30) days after the end of the reporting period, and a copy of any other financial or operational report required by the Commission concurrently with the same being filed with the Commission.

(c) The Exchange may at any time or from time to time require any Futures Participant [member and member organization] to—

- (1) file financial and operational reports in a form and for a time period prescribed by the Exchange, and
- (2) cause an audit to be made by an independent public accountant of its accounts in accordance with Commission requirements and the requirements of the Exchange.

(d) Unless a specific temporary extension of time has been granted, there shall be imposed upon any Futures Participant [member and member organization] required to file reports pursuant to this Rule, a fee of \$100 for each week or part thereof that such report is not filed within the prescribed time, provided that the imposition of such fee shall not preclude the Exchange from taking any other action that it may deem necessary or appropriate. Requests for such extension of time must be submitted to the Exchange in writing no later than the day before the due date of such report.

(e) A copy of any audit or financial or operational report required pursuant to this Rule and all related statements, schedules, work papers and memoranda must be retained in accordance with the provisions of [Rule 201]Section 1.

**[Rule 204.]Section 4 Statements Available to Customers**

Each Futures Participant [member and member organization] shall make available to any customer at his request a statement of its financial condition as of the date of its most recent annual audit report or as of a date subsequent thereto. The financial statement shall fairly present the financial condition of such person.

**[Rule 205.]Section 5 Failure to Segregate or Meet Financial Requirements**

Each Futures Participant [member and member organization] which is a futures commission merchant or an introducing broker shall forthwith notify the Exchange whenever it is required to

notify the Commission of any failure to maintain segregated funds or to meet financial requirements under the Commission's Regulations.

**[Rule 206.]Section 6 Issuance of Securities**

Whenever a Futures Participant [member and member organization] which is a futures commission merchant shall offer or sell any security, as defined under the Securities Act of 1933, as amended, or the rules and regulations thereunder (the "1933 Act"), or under the "blue sky" law or the regulations thereunder of any state in which it is proposed that the security be offered, which security is issued by such Futures Participant [member and member organization] for the purpose of raising capital, such Futures Participant [member and member organization] must furnish the Exchange with an opinion of counsel satisfactory to the Exchange as to whether or not the securities being offered or sold need be registered under the 1933 Act and a survey of the type customarily prepared in respect of the underwriting of securities, but not an opinion, as to what action, if any, need be taken with respect to such offer or sale under any applicable state "blue sky" law. Prior to the consummation of the sale of any such security, counsel shall furnish a statement to the Exchange as to the action taken in order to comply with the state "blue sky" law of any state in which the security is offered or sold.

**[Rule 207.]Section 7 Disciplinary Action By Other Organizations**

A Futures Participant [member and member organization] shall immediately notify the Exchange in writing of any disciplinary action, including the basis therefor, taken against the Futures Participant [member and member organization] or any person associated with such Futures Participant [member and member organization] by the Commission or by another self-regulatory organization.

**[Rule 208.]Section 8 Disclosure and Trading by Exchange Employees, Consultants, Directors and Committee Members**

(a) Disclosure of Information.

- (i) Employees. An employee of the Exchange shall not disclose to any other person any material, non-public information which such employee obtains as a result of his or her employment at the Exchange if such employee has or should have a reasonable expectation that such information disclosed may assist another person in trading any commodity interest; however, such provision does not prohibit disclosures made in the course of an employee's duties or disclosure 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.
- (ii) Directors and Committee Members. No member of the Exchange's Board of Directors or any standing committee shall use or disclose, for any purpose other than the performance of such person's official duties as a Director or member of a standing committee, material, non-public information obtained as a result of such person's participation on any committee or governing board of the Exchange.

(b) [.]Member Transactions. No Futures Participant [member and member organization] shall effect a transaction in a commodity interest for an account in which an employee of the Exchange or any affiliate of the Exchange is directly or indirectly interested, or any other commodity interest traded on or cleared by another contract market, linked exchange or clearing organization where such employee has access to material non-public information concerning such commodity interest.

(c) Employee Transactions. No employee of the Exchange or any affiliate of the Exchange may purchase or sell for his own account or for the account of others any commodity interest where the employee has access to material nonpublic information concerning such commodity interest.

(d) For purposes of this Rule [208] the term "employee" shall include any consultant hired by the Exchange.

••• Commentary: -----

.01 With respect to the above-referenced Rule [208] the Exchange has determined that the terms "material non-public information" and "commodity interest" shall be defined pursuant to CFTC regulation 1.59(a).

[Rule 209. Reserved]

**[Rule 210.]Section 9 Reporting of Joint Accounts or Financing Agreements**

(a) No Futures Participant [member and member organization], partner, officer, or ten (10) percent or more stockholder therein, shall, directly or indirectly, hold any interest or participate in any joint account for buying or selling any commodity interest, unless such joint account is reported to and not disapproved by the Exchange.

(b) Any report required pursuant to paragraph (a) of this Rule shall be filed with the Exchange by the Futures Participant, [member, member organization,] partner, officer, or stockholder therein participating in such joint account before any transaction is effected on the Exchange for such joint account and shall include the following:

- (1) the name of each person participating in such account and its respective interest therein;
- (2) the purpose of such account;
- (3) the amount of commitments in such account; and
- (4) a copy of any written agreement or instrument in writing relating to such account.

(c) Each Futures Participant [member and member organization] shall notify the Exchange of any amendment, cancellation or expiration of any financing agreement entered into with any creditor for the purpose of complying with an Exchange financial requirement or for financing any Exchange transaction at least seventy-two (72) hours in advance or such shorter period as is

reasonable in the circumstances if the financial condition of the Futures Participant [member and member organization] would otherwise be substantially impaired.

**[Rule 211.]Section 10 Just and Equitable Principles of Trade**

A Futures Participant or Authorized Trader [member, member organization,] or person associated with or employed by a [member or member organization] Futures Participant shall not engage in conduct inconsistent with just and equitable principles of trade.

**[Rule 212.]Section 11 Information Requests**

Each Futures Participant or Authorized Trader [Member and Member Organization] shall timely furnish such information as may from time to time be requested by the Board, any committee of the Board or the Exchange, or any employee of the Exchange, acting in the course of its, their, his or her duties.

**[Rule 213.]Section 12 Information Sharing Agreements**

The Exchange shall have the ability and authority to obtain any necessary information to perform any function described in Section 5 of the Commodity Exchange Act, including the capacity to carry out such international information-sharing agreements as the Commission may require.

**[Rule 214.]Section 13 Open Interest Reporting**

Clearing members are required to accurately report open interest on a daily basis to The Options Clearing Corporation ("OCC") in the form required by OCC and pursuant to OCC Rules.

[Rules 215—219. Reserved]

**[CUSTOMER PROTECTION RULES (Rules 250—300)]**

**Section 14 [Rule 250.] Confirmations**

Each Futures Participant [member and member organization] which is a futures commission merchant shall promptly furnish the written confirmations required by Commission Regulation 1.33 to its customers in accordance with the provisions of such Regulation.

**[Rule 251.]Section 15 Statements of Account**

Each Futures Participant [member and member organization] which is a futures commission merchant shall promptly furnish the written monthly statements of account required by Commission Regulation 1.33 to its customers in accordance with the provisions of such Regulation.

**[Rule 252.]Section 16 Statements to Be Sent to Customers**

No Futures Participant [member and member organization] shall address confirmations, statements or other communications to a customer in care of any employee of such Futures

Participant [member and member organization], or address such confirmations, statements or other communications to such a customer in its own care or in care of any other Futures Participant [member and member organization], unless (1) such Futures Participant [member and member organization] shall have been so directed in writing by such customer, and (2) duplicate copies of such confirmations, statements, and other communications are addressed to such customer (except when this requirement is waived by the Exchange when permitted under Commission Regulation) at his place of business or residence or at some other address designated in writing by such customer.

**[Rule 253.]Section 17 Discretionary Accounts**

(a) No Futures Participant or Authorized Trader [member and member organization] which is a futures commission merchant or an introducing broker or an associated person thereof may directly or indirectly effect a transaction in a commodity interest for the account of any customer unless, prior to the transaction being effected, the customer or person designated by the customer (by use of a power of attorney or other authorization) to control the account:

(1) specifically authorized the Futures Participant [member and member organization] or associated person thereof to effect the transaction (a transaction is "specifically authorized" if the customer or person designated by the customer to control the account specifies:

(i) the precise commodity interest to be purchased or sold and

(ii) the exact amount of the commodity interest to be purchased or sold, or

(2) authorized (by use of a power of attorney or other written authorization) the Futures Participant [member and member organization] or associated person thereof to effect transactions in commodity interests for the account without the customer's specific authorization. Where discretionary trading has been authorized pursuant to this subparagraph (a)(2) with respect to an option customer account, the following additional requirements shall be complied with by a Futures Participant [member and member organization] which is a futures commission merchant or an introducing broker:

(i) the Futures Participant [member and member organization] or associated person thereof must ensure that the option customer is provided with an explanation of the nature and risks of the strategy or strategies to be used in connection with the option customer's account;

(ii) an officer, general partner, sole proprietor, or branch office manager of the Futures Participant [member and member organization] (other than an individual authorized to exercise discretion in trading the account) must approve, in writing, the discretionary authority prior to any trading for the account involved;

(iii) the Futures Participant [member and member organization] or associated person thereof must identify as discretionary each order for a discretionary account on the order at time of entry and an officer, general partner, sole proprietor or branch office manager of the Futures Participant [member and member organization] (other than an individual

authorized to exercise discretion in trading the account) must approve, initial and date all orders for a discretionary account; and

(iv) the Futures Participant [member and member organization] must frequently review discretionary accounts; provided, however, that the provisions of subparagraphs (a)(2)(i)-(iv) shall not apply to any customer account:

(A) of a commodity pool, the operator of which is registered with the Commission as a commodity pool operator;

(B) where the person who has discretionary authority is the spouse, parent or child of the option customer; or

(C) which is an omnibus account of another futures commission merchant.

(b) All authorizations made pursuant to subparagraph (a)(2) must precisely define the terms of the discretionary power or authority.

**[Rule 254.]Section 18 Transfer of Accounts**

Upon written request from a customer of his intention to transfer his account(s) from one Futures Participant [member and member organization] to another, both Futures Participants [members and/or member organizations] shall expedite the transfer, provided that the transfer does not result in a change of ownership, in which case the transfer shall not be effected.

**[Rule 255.]Section 19 Adjustment of a Customer Order**

(a) No Futures Participant or Authorized Trader [member and member organization] shall make any adjustment of a customer's order after the execution of such order except to correct an error. Any loss resulting from an error or mishandling of an order for a customer must be borne by the Futures Participant [member and member organization] which made the error, and any profits resulting from the error or mishandling of an order shall ensure to the benefit of the customer.

(b) Each Futures Participant [member and member organization] shall maintain a separate file of adjustments, transfers and liquidations that were made pursuant to this Rule which shall be kept in accordance with the provisions of Section 1 [Rule 201].

**[Rule 256.]Section 20 Option Risk Disclosure**

(a) No Futures Participant or Authorized Trader [member and member organization] which is a futures commission merchant or, in the case of an introduced account, an introducing broker may open or cause the opening of an option customer account unless such Futures Participant [member and member organization] furnishes the option customer with the separate written disclosure statement required by Commission Regulation 33.7 and receives from the customer an acknowledgement signed and dated by the customer that he received and understood such disclosure statement.



(b) Each [member, member organization]Futures Participant, Authorized Trader or associated person thereof soliciting or accepting an order for a commodity option transaction, prior to entering into the first such transaction, shall provide the customer with all of the information required under the disclosure statement specified in Commission Regulation 33.7; provided that the [member, member organization]Futures Participant, Authorized Trader or associated person thereof shall provide current information to the customer if the information provided previously has become inaccurate and provided further that the [member, member organization]Futures Participant, Authorized Trader or associated person thereof also shall inform the customer in writing of the limitations, if any, on the transfer of a customer's account to a futures commission merchant other than the one through whom the commodity option transaction is to be executed.

(c) Each [member, member organization]Futures Participant, Authorized Trader or associated person thereof soliciting or accepting an order for a commodity option transaction, prior to entering into such transaction, shall inform the customer or prospective customer, to the extent that the following amounts are known or can reasonably be approximated, of:

- (1) the premium and any mark-ups thereon, if applicable;
- (2) commissions, costs, fees and other charges to be incurred in connection with the commodity option transaction; and
- (3) the strike price and all costs to be incurred by the customer if the option contract is exercised.

(d) Each Futures Participant [member and member organization] which is a futures commission merchant or an introducing broker shall establish the procedures and supervision necessary to ensure compliance with the requirements of this Rule.

(e) This Rule shall not relieve a Futures Participant or Authorized Trader [member and member organization] from any obligation under the Act or Commission Regulations, including the obligation to disclose all material information to existing or prospective option customers even if the information is not specifically required by this Rule.

(f) For the purposes of this Rule, neither a futures commission merchant nor an introducing broker shall be deemed to be a customer.

**[Rule 257.]Section 21 Supervision of Option Customer Accounts**

Each Futures Participant [member and member organization] which is a futures commission merchant or an introducing broker which engages in the offer or sale of option contracts shall adopt and enforce written procedures pursuant to which it will be able to supervise adequately each option customer's account, including but not limited to, the solicitation of any such account. As used in this Rule, the term "option customer" does not include another futures commission merchant.

**[Rule 258.]Section 22 Submission of Option Promotional Material**

Each Futures Participant or Authorized Trader [member and member organization] which is a futures commission merchant or an introducing broker engaged in the offer and sale of option contracts shall submit to the Exchange for review all promotional material pertaining to the trading of option contracts on the Exchange at the time such promotional material is first utilized. For the purpose of this Rule, the term "promotional material" means any text of a standardized oral presentation, or any communication for publication in any newspaper, magazine or similar medium, or for broadcast over television, radio, or other electronic medium, which is disseminated or directed to an option customer or prospective option customer concerning an option contract; any standardized form of report, letter, circular, memorandum, or publication which is disseminated or directed to an option customer or prospective option customer; and any other written material disseminated or directed to an option customer or prospective option customer for the purpose of soliciting an option contract transaction, including the disclosure statement required by Commission Regulation 33.7.

**[Rule 259.]Section 23 Prohibition of Certain Sales Communications**

No Futures Participant or Authorized Trader [member and member organization] which is a futures commission merchant or an introducing broker shall make any fraudulent or high pressure sales communications relating to the offer or sale of option contracts.

**[Rule 260.]Section 24 Option Customer Complaints**

(a) Each Futures Participant or Authorized Trader [member and member organization] which is a futures commission merchant or an introducing broker engaging in the offer or sale of option contracts shall, with respect to each written option customer complaint and each oral option customer complaint which results in or would result in an adjustment to the customer's account in an amount in excess of \$1,000:

- (1) retain all such written complaints;
- (2) make and retain a written record of all such oral complaints;
- (3) make and retain a record of:
  - (i) the date the complaint was received;
  - (ii) the name of the associated person who serviced, or the introducing broker who introduced, the account;
  - (iii) a general description of the matter complained of; and
  - (iv) a general description of what, if any, action was taken by the member or member organization in regard to the complaint; and

(b) Immediately send a copy of any such complaint to the Exchange and, upon final disposition thereof, immediately send a copy of the record of such disposition to the Exchange.

(c) Any statement or record required pursuant to this Rule must be retained and made available in accordance with the provisions of [Rule 20]Section 1.

**[Rule 261.]Section 25 Prohibited Option Transactions**

No Futures Participant or Authorized Trader [member and member organization] shall solicit or accept any option contract order unless it has a reasonable basis to believe that the solicitation or acceptance of such order is consistent with the provisions of Commission Rule 33.3(b).

**[Rule 262.]Section 26 Segregation and Secured Requirements**

(A) All clearing members must comply with the requirements set forth in CFTC Regulations 1.20 through 1.30, 1.32, and 30.7. This includes, but is not limited to, the following:

- (1) Maintaining sufficient funds in segregation or set aside in separate accounts;
- (2) Computing, recording and reporting completely and accurately the balances in the:
  - (a) Statement of Segregation Requirements and Funds in Segregation; and
  - (b) Statement of Secured Amounts and Funds Held in Separate Accounts;
- (3) Obtaining satisfactory segregation and separate account acknowledgement letters and identifying segregated and separate accounts as such; and
- (4) Preparing complete and materially accurate daily segregation and secured amount computations in a timely manner.

(B) Exchange staff may prescribe additional segregation and secured amount requirements.

(C) All clearing members must provide written notice to [the Examinations Department] the Exchange's Regulatory Service Provider of a failure to maintain sufficient funds in segregation or set aside in separate accounts. The [Examinations Department] Exchange's Regulatory Service Provider must receive immediate written notification when a clearing member knows or should know of such a failure.

[Rules 263—300. Reserved]

**Chapter IV Trading Procedures and Standards**  
**[GENERAL TRADING RULES (Rules 301—400)]**

**[Rule 301.]Section 1 Options Clearing Corporation Rules**

(a) The rights and obligations of purchasers and sellers of futures, options thereon and commodity options cleared by the Options Clearing Corporation, including but not limited to rights and obligations in respect of clearing and settlement, variation payments and performance at maturity, and in the case of futures options and commodity options upon exercise thereof, shall be as set forth in the By-Laws and Rules of [t]The Options Clearing Corporation.

[Rule 302. Clearing of Transactions]

(b) All transactions executed on or subject to the rules of the Exchange must be cleared through [t]The Options Clearing Corporation. A market participant may access clearing through a trading account with a futures commission merchant or, in the case of a non-U.S. market participant, with a foreign broker or futures commission merchant, as those terms are defined in the rules of the CFTC, or, if applicable, as a clearing member.

**Section 2 Electronic Trading Generally**

NFX XL related activity is governed by Section 2 through and including Section 39, which prevail in the event of any conflict with any other Exchange Rule. All other Rules and By-Laws of the Exchange apply to NFX XL related activity unless expressly excluded from application.

**Section 3 Definitions and Rules of Construction**

(a) When used in these Rules, these terms have the following meanings:

**Authorized Trader.** The term “Authorized Trader” means an authorized employee or agent of a Futures Participant who is authorized by that Futures Participant and the Exchange to submit Quotes or Orders into NFX XL. Only a natural person can be an Authorized Trader. An Authorized Trader is considered a person associated with a Futures Participant for purposes of the By-Laws and Rules.

**Block Trade.** The term “Block Trade” shall mean a transaction in Contracts negotiated outside the NFX XL but executed through the Exchange that complies with the requirements of Section 23.

**Bunched Order.** The term “Bunched Order” means a single Order for two or more Customer Accounts entered into NFX XL pursuant to Section 13.

**Clearing Account Number.** The term “Clearing Account Number” means the unique identification code assigned by the Clearing Corporation which identifies a particular Clearing Futures Participant and an account maintained by that Clearing Futures Participant with the Clearing Corporation.

**Clearing Account Type.** The term “Clearing Account Type” means one of three indicators assigned to an Order or Quote designating the applicable clearing account type for any subsequent transaction as defined by Article VI, Section 3 of the by-laws of the Clearing Corporation. These indicators are: "C" for Orders to be cleared through a "segregated futures account"; "F" for Orders to be cleared through a "firm account"; and "M" for Orders or Quotes to be cleared through a "segregated futures professional account" or a "proprietary futures professional account."

**Clearing Futures Participant.** The term “Clearing Futures Participant” means a Futures Participant designated by the Exchange under Section 9 to clear Contracts on behalf of itself, its Customers, and Non-Clearing Futures Participants.

**Contract.** The term “Contract” means any Commodity Interest that trades or is reported through NFX XL or subject to the Rules of the Exchange.

**Contract Month.** The term “Contract Month” means the calendar month in which the Last Trading Day for a Contract occurs, provided that with respect to Daily Expiry<sup>TM</sup> US Dollar 3-Month BBA LIBOR<sup>TM</sup> Futures the term "Contract Month" means the maturity date for a contract.

**Cross Transaction.** The term “Cross Transaction” means a transaction in which a Futures Participant knowingly represents both the buyer and seller by simultaneously selling and buying pursuant to Section 22.

**Customer.** The term “Customer” has the meaning attributed to it by Commission Regulation 1.3(k).

**Customer Account.** The term “Customer Account” means an account carried by a Futures Participant on behalf of a Customer, which may be another Futures Participant.

**Customer Order.** The term “Customer Order” means an Order submitted on behalf of a Customer Account.

**Daily Settlement Price.** The term “Daily Settlement Price” means the price at which a Contract settles at the conclusion of any Trading Day as described in Section 27.

**Discretionary Order.** The term “Discretionary Order” means an Order for a Customer Account for which the Futures Participant has discretion as to the Contract, the price, or the amount purchased or sold.

**Final Settlement Price.** The term “Final Settlement Price” means the price at which a Contract settles at the conclusion of the Last Trading Day for that Contract as described in Section 27.

**Futures Participant House Account.** The term “Futures Participant House Account” means a unique identification code assigned by the Exchange to each Futures Participant.

**Last Trading Day.** The term “Last Trading Day” means the day specified by the Exchange for the conclusion of trading for the Contract.

**Limit Order.** The term “Limit Order” means an Order to buy or sell a stated number of Contracts at a stated price or better.

**Market Data.** The term “Market Data” means any and all price, quantity, and time data from any and all bids and offers submitted to, and trades executed by or through, NFX XL, any data derived from the foregoing, the format and presentation of any such data or information, and the transmissions of such data or information to Futures Participants, any party that has entered into an agreement with the Exchange to distribute the above-described data or information or other Person.

**Market Maker.** The term “Market Maker” means a Futures Participant approved by the Exchange to undertake rights and obligations to facilitate an orderly and liquid market as a Market Maker for one or more Contracts pursuant to Section 10.

**NFX Best Bid and Offer.** The term “NFX Best Bid and Offer” means for each Contract then listed and trading through NFX XL the current disseminated highest bid and lowest offer in the Order Book and/or available by Quote excluding those Orders that at the time of receipt are matchable and are due execution pursuant to the procedures described in Section 18.

**NFX XL.** The term “NFX XL” means the electronic trading system maintained by the Exchange for the receipt, entry, cancellation, storage, display, matching, and reporting of Orders and Quotes.

**Non-Clearing Futures Participant.** The term “Non-Clearing Futures Participant” means a Futures Participant that is not a Clearing Futures Participant.

**Order.** The term “Order” means an instruction to buy or sell a Contract.

**Order Book.** The term “Order Book” means all Orders received by NFX XL for a particular Contract that are not immediately filled or cancelled upon entry pursuant to an Immediate or Cancel Order instruction under Section 14.

**Proprietary Account.** The term “Proprietary Account” shall have the meaning ascribed to it by Commission regulation 1.3(y).

**Quote.** The term “Quote” means a bid or offer submitted by a Market Maker to transact through NFX XL in a certain quantity of a Contract at a specified price or better.

**Rule.** The term “Rule” means any rule, interpretation, stated policy, or instrument corresponding to any of the foregoing, in each case as adopted or amended from time to time by the Exchange.

**Trading Day.** The term “Trading Day” means a day that the Exchange is open for trading in a particular Contract.

(b) For all purposes of the Rules, unless otherwise expressly provided:

- (1) any time period which expires on a day which is not a Trading Day as defined in Section 5 will expire on the next succeeding Trading Day;
- (2) all references to the Act or the Commission's regulations or Rules of the Exchange or Rules of the Clearing Corporation include such provisions as amended, modified, supplemented, restated, or replaced from time to time;
- (3) all references to the Commission includes any successor to the Commission;
- (4) as permitted by the context any gender specific reference also include the other gender; and
- (5) as permitted by the context any reference in the singular includes the plural and vice versa.

**Trader ID.** The term “Trader ID” means a unique personal identification code provided by the Futures Participant to the Exchange to identify the Authorized Trader submitting an order or a quote by or through a Futures Participant that is in a form and provided in a manner acceptable to the Exchange.

#### **Section 4 Listed Contracts**

The Exchange shall determine and publish through new rules or rule amendments the Contracts listed for trading through NFX XL.

#### **Section 5 Trading Days and Hours**

Except as provided in Sections 32 and 33 in this Chapter, the Exchange shall determine and post on its website the days on which the Exchange is open for business, the opening and closing hours of the market, and the opening and closing trading times for each Contract.

#### **Section 6 Market Opening**

(a) The Exchange shall post on its website a period prior to the market opening during which NFX XL will accept Orders and Quotes for execution upon market open or for execution during the Trading Day.

(b) If the Exchange halts or suspends trading in a Contract prior to the scheduled closing, then before resuming trading in that Contract the Exchange will have a pre-opening period during which NFX XL will accept Orders and Quotes into NFX XL, as described in Section 6(a) above.

#### **Section 7 General Trading Standards and Prohibited Practices**

(a) No Futures Participant may accept a Customer Order for submission to NFX XL unless the Futures Participant has provided the Customer with the Uniform Electronic Trading and Order

Routing Systems Disclosure Statement or any successor disclosure published by the National Futures Association.

(b) No Futures Participant shall disclose the existence or terms of an Order not yet disseminated by the Exchange, except to representatives of the Exchange or Commission or otherwise for the sole, necessary, and appropriate purpose of executing the Order.

(c) No Futures Participant shall aggregate two or more Customer Orders, allocate trades, or provide for average price transactions among Customer Accounts except as provided for Sections 13, 20, and 23.

(d) No Futures Participant shall knowingly submit to NFX XL a Quote or Order for any Contract for the account of that Futures Participant or any account in which that Futures Participant has an interest while holding an Order of another Person for the same Contract on the same side of the market that is executable at the then current market price or at the price at which the Quote or Order is executable for the account of the Futures Participant or an account in which that Futures Participant has an interest.

(e) No Futures Participant shall exercise discretion and submit an Order to or through NFX XL for an account of another Person without the prior specific consent of that Person; provided, however, that prior specific consent required by this Rule does not apply to an Order for a Proprietary Account of the Futures Participant.

(f) No Futures Participant shall accept or submit any Order to or through the NFX XL for an employee, agent, or other Person acting on behalf of another Futures Participant, or its associated Authorized Traders without the prior written consent of that other Futures Participant, which is filed with the Exchange. If an Order for another Futures Participant results in a transaction, then the Futures Participant through which the Order is submitted to the NFX XL must promptly send a duplicate confirmation of the transaction to the Person providing the prior written consent of the other Futures Participant.

(g) Futures Participants and Authorized Traders shall not:

(1) Engage in practices that may cause degradation of the Exchange's services or facilities, or that may cause a disorderly market, including but not limited to, unwarranted use of cancelling and resubmitting Orders or Quotes;

(2) Engage in pre-arranged transactions other than transactions executed in compliance with Section 22 and 23; or

(3) Engage in acts, practices, or conduct contrary to the purposes of the Exchange or likely to bring the Exchange into disrepute. These prohibited practices include, but are not limited to:

(i) effecting a transaction in, or inducing the purchase or sale of, any Contract through any manipulative, deceptive, or fraudulent device or contrivance;

(ii) engaging in price manipulation or cornering of the market;



(iii) engaging in wash transactions (or other activities that may or may not involve the making of a Contract) that creates a misleading appearance of activity occurring on NFX XL and/or causes the reporting of a misleading price level;

(iv) engaging in accommodation transactions, by which one party enters into a Contract with another party knowing or having reason to know that such transaction was an attempt to conceal a trading abuse;

(v) engaging in "front-running" or "trading-ahead," where a party knowingly places an Order or a Quote or executes a trade for a Contract while in possession of material non-public information concerning an imminent Block Trade or Customer Order;

(vi) engaging in "cherry picking," where a party assigns a trade for a Customer to the account of another Customer or party (for any reason, even if only temporarily, where the situation is not remedied) and the trade assigned to the other Customer or party is at a superior price than the trade price received by the Customer;

(vii) withdrawing, withholding, disclosing, or taking advantage of a Customer Order in whole or in part for the benefit of any other Person;

(viii) engaging in compensation trades, where one or more parties executes non-competitive trades to transfer money between accounts; and

(ix) engaging in conduct or practices detrimental to the best interests of the Exchange.

(x) engaging in any other manipulative or disruptive trade practices prohibited by the Commodity Exchange Act, as amended, or Commission regulations, including but not limited to, "spoofing," "improper cross trading," "money passes," and trading against a customer order.

## **Section 8 Responsibility for Orders and Quotes**

(a) Each Futures Participant is responsible for all Orders and Quotes submitted through its Futures Participant House Account by any Persons associated with that Futures Participant. Each Futures Participant must reasonably ensure that all Orders and Quotes submitted through its Futures Participant House Account are submitted in good faith to execute bona fide trades and that the Orders and Quotes comply with all applicable provisions of the Act, Commission regulations and related requirements, all Rules, and all Exchange regulatory and operational orders and procedures.

(b) Each Futures Participant must provide to the Exchange the name, title, telephone number and other contact information for its Authorized Traders and other emergency contacts in the manner, format, and following the procedures established by the Exchange.

(c) An Authorized Trader is responsible for all business conducted by or through the Futures Participant's House Account. Each Authorized Trader must sign a written statement provided by the Exchange whereby the Authorized Trader consents to the jurisdiction of the Exchange and

the Commission and agrees to observe and be bound by the By-laws and Rules of the Exchange, the Act, Commission regulations and related requirements, and all Exchange regulatory and operational orders and procedures. Among other duties and responsibilities that the Exchange may impose, a Authorized Trader must:

- (1) Have the authority to modify or withdraw any Order or Quote entered under the Future Participant's House Account and the Authorized Trader's Trader ID;
- (2) Have the ability to identify immediately for the Exchange the sources of all Orders or Quotes submitted under the Future Participant's House Account and the Authorized Trader's Trader ID;
- (3) Ensure that all activity conducted under the Future Participant's House Account and the Authorized Trader's Trader ID complies with all applicable provisions of the Act, Commission regulations and related requirements, all Rules, and all Exchange regulatory and operational orders and procedures; and
- (4) Ensure that any Person conducting business under the Future Participant's House Account and the Authorized Trader's Trader ID is competent and appropriately trained.

(d) No Futures Participant, Authorized Trader or Person associated with a Future Participant shall submit an Order or a Quote to NFX XL unless the Order or Quote is submitted with a Future Participant's House Account and a Trader ID attached in the manner, format, and following the procedures established by the Exchange. Each Futures Participant and Authorized Trader of a Futures Participant must reasonably ensure that no Future Participant's House Account or Trader ID is used by any Person not so authorized by the Futures Participant pursuant to these Rules.

(e) The Futures Participant must identify the Person submitting each Order or Quote by also attaching to the Order or Quote a Trader ID, a unique identifier, in the manner, format, and following the procedures established by the Exchange and posted on the Exchange's website.

(f) In the manner, format, and following the procedures established by the Exchange each Futures Participant must provide to, and keep current with, the Exchange the contact information for its Authorized Traders so that the Exchange can immediately reach the Authorized Trader when Orders or Quotes are resting in, being submitted to, or being executed by NFX XL through the Authorized Trader's Trader ID.

### **Section 9 Clearing Arrangements**

(a) No Futures Participant shall submit an Order or a Quote to NFX XL or accept the transfer of a Contract unless the Futures Participant is either a Clearing Futures Participant or a Non-Clearing Futures Participant guaranteed by a Clearing Futures Participant pursuant to this Rule for that Contract.

(b) A designated Clearing Futures Participant is authorized by the Exchange to clear, carry, and guarantee specified Contracts for itself, its Customers, and Non-Clearing Futures Participants.

To become a Clearing Futures Participant a Futures Participant must (1) apply to a Clearing Corporation and the Exchange, (2) satisfy the criteria established by the Clearing Corporation and the Exchange for Clearing Futures Participants, and (3) submit to the Exchange confirmation from the Clearing Corporation that the Futures Participant is a member of the Clearing Corporation.

(c) To maintain its Clearing Futures Participant designation under Section 9(b), the Clearing Futures Participant must at all times continue to satisfy all criteria established by the Clearing Corporation and the Exchange for designation as a Clearing Futures Participant for specified Contracts.

(d) A Clearing Futures Participant must provide the Exchange with a copy of each written agreement guaranteeing the performance of the Non-Clearing Futures Participant with respect to a Contract (referred to in Section 9(d), (e), and (f) as a "Guarantee"). For purposes of this Rule Section 9(d), a Guarantee (1) guarantees and indemnifies the performance for the Contracts governed by the Guarantee; (2) remains in effect until terminated pursuant to Section 9(e) notwithstanding any change to the Rules, the terms of any Contract, or the composition of any partnership (including, but not limited to, the death, retirement, admission or withdrawal of a partner); (3) applies to defaults by the Non-Clearing Futures Participant on any obligation related to a Contract or other claims governed by the Guarantee; and (4) supplements, but does not substitute, any other agreement whereby the Clearing Futures Participant guarantees or indemnifies the Non-Clearing Futures Participant.

(e) To terminate a Guarantee, either party to the Guarantee (the Clearing Futures Participant or Non-Clearing Futures Participant) must immediately notify the Exchange of the termination of the Guarantee using the form, providing the information, and following the procedures established by the Exchange. Upon receipt of a request for termination of a Guarantee, the Exchange will act as promptly as required by the circumstances. A Guarantee remains in effect until the Exchange authorizes its termination and notifies both parties. Notwithstanding the termination of the Guarantee, the Clearing Futures Participant remains bound by the Guarantee for all Contracts governed by the Guarantee entered into by the Non-Clearing Futures Participant before termination of the Guarantee, but is not bound for any Contract made by, or transferred to, the Non-Clearing Futures Participant after termination of the Guarantee.

(f) If a dispute arises between the Clearing Futures Participant and the Non-Clearing Futures Participant concerning whether a Contract was entered into or transferred before or after the termination of a Guarantee: (1) the Clearing Futures Participant has the burden to demonstrate that the Non-Clearing Futures Participant entered into the Contract after termination of the Guarantee and (2) the Exchange may, within its discretion, provide the Clearing Futures Participant and Non-Clearing Futures Participant with information regarding the time at which the Non-Clearing Futures Participant entered into or transferred a Contract.

## **Section 10 Market Makers and Liquidity Providers**

(a) The Exchange may from time to time approve such number of Futures Participant as Market Makers and allocate to such Market Makers such number and types of Contracts, as it may deem

necessary or appropriate. Any and all such approvals or allocations may be reviewed, conditioned or terminated at any time in accordance with this Rule.

(b) A Futures Participant desiring to act as a Market Maker shall file an application with the Exchange in such form as the Exchange may from time to time prescribe. Market Makers shall be selected by the Exchange from among the applications from time to time on file with the Exchange, based on the Exchange's judgment as to which applicant or applicants is or are most qualified to perform the functions of a Market Maker. Factors to be considered in making such selection may include, but are not limited to, any one or more of the following:

(i) the adequacy of each applicant's capital;

(ii) each applicant's operational capacity;

(iii) the trading experience of, and observance of generally accepted standards of conduct by, each applicant, in particular the individual or individuals who would represent such applicant in its capacity as a Market Maker (each, a "Market Maker Designee");

(iv) the number and experience of support personnel of each applicant who will be performing functions related to its Market Maker business;

(v) if applicable, the regulatory history of, and history of adherence to the Rules of the Exchange, rules of other self-regulatory organizations and applicable law by, each applicant, in particular its Market Maker Designees;

(vi) the willingness and ability of each applicant to promote the Exchange as the marketplace of choice;

(vii) the market performance commitments of each applicant; and

(viii) if applicable, any performance evaluations conducted pursuant to the Rules of the Exchange or rules of other self-regulatory organizations.

(c) In approving any applicant as a Market Maker, the Exchange may place one or more conditions or limitations on the approval, including but not limited to conditions concerning the capital, operations or personnel of such applicant, satisfaction of market performance commitments or benchmarks by such applicant, and the number or types of Contracts which may be allocated to such applicant. Unless earlier terminated pursuant to subsection (d) below, approval to act as a Market Maker shall be for a one year period, after which the Futures Participant may once again request approval to be a Market Maker pursuant to this rule for another year. There shall be no limit to the number of one year periods for which a Futures Participant may request approval to act as a Market Maker.

(d) Each Futures Participant approved as a Market Maker shall retain such status for a one year period or until it resigns as a Market Maker and the Exchange relieves such Market Maker of its obligations to act as Market Maker, or the Exchange suspends or terminates such Market Maker's status.

(e) In allocating Contracts to Market Makers approved in accordance with the above, the Exchange may: (i) consider any relevant information, including but not limited to performance, volume, capacity, market performance commitments, operational factors, efficiency, competitiveness and recommendations of committees of the Board or of the Exchange; (ii) place one or more conditions or limitations of the type specified in paragraph (c) above on the approval; or (iii) allocate any Contract to more than one Market Maker, such that the different Market Makers serve at the same time but with respect to different contract months or in different time zones, or such that each of the Market Makers serves as the Market Maker for such Contract on a rotating basis.

(f) No Market Maker may sell, transfer or assign any of its rights or obligations as a Market Maker (including but not limited to its allocation of any Contracts by virtue of its status as a Market Maker) without the prior written approval of such sale, transfer or assignment (including but not limited to the approval of the Person to which such rights, obligations or allocation are intended to be sold, transferred or assigned) by the Exchange. Any purported sale, transfer or assignment in violation of the foregoing sentence shall be void from the outset. For purposes of this paragraph (f), the following transactions shall be deemed to constitute a transfer of a Market Maker's rights or obligations:

(i) Any sale, transfer or assignment of five percent of the equity or profits or losses of a Market Maker (or any series of smaller changes that in the aggregate amount to a change of at least such percentage); provided that any sale, transfer or assignment of an interest of less than such percentage may be found by the Exchange to constitute a transfer of a Market Maker's rights or obligations if the particular facts and circumstances warrant such a determination;

(ii) Any change in, or transfer of, control of a Market Maker; and

(iii) Any merger, sale of assets or other business combination or reorganization involving a Market Maker.

(g) The Exchange may from time to time evaluate a Market Maker's performance with respect to, among other things, one or more of the following: quality of markets, market share (taking into account all contracts similar to the relevant Contract or Contracts), administrative factors and observance of ethical standards. In this connection, the Exchange may consider any relevant information, including but not limited to market share and trading data, a Market Maker's regulatory history and such other factors and data as may be pertinent under the circumstances.

(h) The Exchange may terminate, place conditions upon or otherwise limit a M Futures Participant approval to act as a Market Maker or a Market Maker's allocation of Contracts, under any one or more of the following circumstances:

(i) if the Exchange finds in connection with an evaluation under paragraph (g) above that such Futures Participant's performance as a Market Maker has been unsatisfactory;

(ii) if such Futures Participant becomes subject to a material financial, operational or personnel change;

(iii) if such Futures Participant fails to comply with any conditions previously placed upon its approval as a Market Maker or its allocation of Contracts or perform its obligations; or

(iv) if for any reason such Futures Participant is no longer eligible for approval as a Market Maker or to be allocated a particular number or type of Contracts.

(i) Each applicant for approval as a Market Maker pursuant to the above shall be given an opportunity to present any matter which it wishes the Exchange to consider in conjunction with the application. Prior to taking any remedial action against a Market Maker pursuant to the above, such Market Maker shall be given notice thereof and an opportunity to present any matter which it wishes the Exchange to consider in determining whether to take such action. The Exchange may require that any presentation under this paragraph be made partially or entirely in writing, and may require the submission of additional information from any Person wishing to make a presentation under this paragraph. Formal rules of evidence shall not apply to any proceeding involving such a presentation. Notwithstanding the foregoing, the Exchange shall have the authority to immediately terminate, condition or otherwise limit a Futures Participant approval to act as a Market Maker in accordance with the above, without prior notice or opportunity to make a presentation under this paragraph, if the financial, operational or personnel change in question warrants such action.

(j) Market Makers shall have no obligation to quote. However, when and if they are quoting gold futures contracts for which they are approved Market Makers they are required to submit a two-sided market.

### **Section 11 Customer Margin**

#### **(a) General Rules:**

(1) No Futures Participant shall effect a transaction or carry a Customer Account without obtaining margin at the times, in the amounts, and in the forms required by this Rule.

(2) If a Futures Participant fails to obtain and maintain the required minimum margin deposits for a Customer Account pursuant to this Rule, the Exchange may require that the Futures Participant immediately liquidate all or part of the positions in the Customer Account to decrease or eliminate the margin deficiency.

(3) Nothing in this Rule prevents the Exchange, the Clearing Corporation, a Futures Participant from imposing margin rates or requirements on a Customer that are higher or more stringent than the rates or requirements imposed by this Rule.

(4) Terms used in this Rule, but not otherwise defined by these Rules, have the meaning set forth in the Joint Audit Committee's Margins Handbook. In addition, a Futures Participant must follow the procedures specified in the Joint Audit Committee's Margins Handbook for the computation, issuance, collection, and offsets for margin calls and corresponding capital charges for the Futures Participant unless the Manual is inconsistent with these Rules, in which case these Rules prevail.

(b) Rates and Requirements:

- (1) The Clearing Corporation, pursuant to Commission Rule 39.13, shall determine the rates to be used to derive customer initial margin requirements for any Contract.
- (2) The Exchange will publish the minimum initial and maintenance margin requirements for each Contract, which shall be no less than that established by the Clearing Corporation.
- (3) Any changes in Contract margin requirements will apply to both new and existing Contracts in a customer's account. The Exchange may, within its discretion, establish different maintenance margin rates or requirements for different types of accounts. The term "customer initial margin" has the meaning set forth in Commission Rule 1.3.

(c) Account Administration, Classification, and Aggregation:

- (1) Omnibus Accounts: A Futures Participant must calculate margin requirements for an omnibus account (whether domestic or foreign) on a gross basis and in accordance with the rules of the Clearing Corporation, if a Clearing Member. However, a Futures Participant may impose maintenance margin rates for positions in the omnibus account and need not impose the initial margin rates. To use spread or hedge margin rates, a Futures Participant must obtain a written representation from the omnibus account identifying the positions within the account that are spreads or bona fide hedges, and if a Clearing Member, comply with the rules of the Clearing Corporation.
- (2) Bona Fide Hedge Accounts: For bona fide hedging transactions and positions as defined by Commission regulation 1.3(z)(1), a Futures Participant may impose maintenance margin rates for the transactions and positions and need not impose the initial margin rates if the Futures Participant has a reasonable basis to believe, and the Customer represents in writing that, the transactions or positions are for bona fide hedging.
- (3) Aggregation:
  - (i) When determining margin rates, margin calls, and the release of margin deposits, a Futures Participant may aggregate identically-owned accounts within the same regulatory account classification of Customer segregated, Customer secured, and non-segregated, provided however a Clearing Member may only aggregate identically-owned accounts for purposes of determining margin requirements, margin calls and releases in compliance with the rules of the Clearing Corporation.
  - (ii) To satisfy a margin deficiency, a Futures Participant may not apply available free funds from an identically-owned account that has a different regulatory account classification. Instead, the Futures Participant must transfer the free funds from one identically-owned account in one regulatory account classification to another identically-owned account with a different regulatory account classification that is undermargined, provided however a Clearing Member may not apply free funds in a manner inconsistent with the rules of the Clearing Corporation.

(iii) Except for omnibus accounts, a Futures Participant may calculate margin requirements on a net basis for concurrent long and short positions in identically-owned accounts within the same regulatory account classification, , provided however a Clearing Member must calculate margin requirements in compliance with the rules of the Clearing Member.

(4) Extension of Credit: No Futures Participant shall extend or maintain credit to or for a Customer to evade or circumvent any requirements of this Rule. A Futures Participant may extend or maintain (or arrange for the extension or maintenance of) credit to or for a Customer to meet the margin requirements of this Rule only if the credit or loan is secured as defined by Commission regulation 1.17(c)(3) and the proceeds are treated by the Futures Participant in accordance with Commission regulation 1.30.

(d) Type, Form, and Value of Margin Deposits:

(1) A Futures Participant must only accept the following assets, securities, or instruments as margin deposits, which must be and remain unencumbered by third party claims:

(i) U.S. dollars and foreign currencies,

(ii) U.S. government treasury and agency securities,

(iii) municipal securities,

(iv) readily marketable securities (which means securities traded on a "ready market" as defined by Securities and Exchange Commission rule 15c3-1(c)(11)),

(v) money market mutual funds that meet the requirements of Commission regulation 1.25 (other than securities issued by the Customer or an affiliate of the Customer), and/or

(vi) irrevocable letters of credit in a form, and issued by banks or trust companies, approved by the Clearing Corporation (other than letters of credit issued by the Customer or an affiliate of the Customer).

(2) Notwithstanding paragraph (1), the rules of the Clearing Corporation may limit acceptable margin deposits.

(3) If a Futures Participant accepts securities identified in this Rule as margin deposits, then the Futures Participant must value the securities at no greater than the current market value of the securities less any deductions specified by Securities and Exchange Commission rule 15c3-1.

(4) A Futures Participant must not consider any guarantee of a Customer Account when determining whether required margin in that account is satisfied.

(e) Margin Calls and Liquidation:



- (1) Once additional margin deposits are required pursuant to this Rule or a Rule of the Clearing Corporation, as applicable, a Futures Participant must call for the additional margin as promptly as possible and in any event not more than one business day after the event giving rise to the call. Once the Futures Participant calls for the additional margin, the Futures Participant must collect the full amount of the required additional margin from a Customer as promptly as possible and in any event within a reasonable time. In a margin call, a Futures Participant must require that a Customer deposit additional margin so that the Customer's account at least meets the minimum initial margin requirement (i) when the margin equity in the account initially falls below the minimum maintenance margin requirements and (ii) subsequently when the margin equity plus existing margin calls on the account are less than the minimum maintenance margin requirements.
- (2) After a margin call is made by a Futures Participant but before the Customer makes the required additional margin deposit, the Futures Participant may only accept an Order from the Customer to establish a new position if the Futures Participant reasonably believes that the Customer will meet the outstanding margin call within a reasonable time. If a margin call to a Customer is outstanding for an unreasonable time, a Futures Participant may only accept Orders from the Customer that will reduce the Customer's margin requirements.
- (3) After a margin call is made by a Futures Participant, if the Customer fails to deposit the required additional margin deposit within a reasonable time, the Futures Participant may, but is not required to, liquidate all or a portion of the Customer's positions to restore the Customer's account to a properly margined level. However, the inability of a Futures Participant to liquidate all or a portion of the Customer's positions before the account equity results in a debit or deficit balance does not affect any liability of the Customer to the Futures Participant.
- (4) A Futures Participant must make and retain a written record of the date, time, amount, and other relevant information for all margin calls made (whether made by telephone, in writing, or by other means) as well as margin calls reduced, satisfied, or relieved.
- (5) A Futures Participant that liquidates all or a portion of the Customer's positions pursuant to this Rule is not deemed to have extended credit or made a loan to the Customer in violation of this Rule.

  - (f) Release of Margin: A Futures Participant may only release free funds in connection with a Customer Account if after release the Customer Account has at least free funds at the initial margin requirement level, provided however that a Clearing Member may not release free funds except in compliance with the Rules of the Clearing Corporation.

## **Section 12 Submission of Orders**

- (a) Futures Participants, and other Persons through Futures Participants may submit Orders and Market Makers may submit Quotes to NFX XL during the pre-open period and until the end of the Trading Day, but NFX XL only matches Orders and Quotes during the Trading Day.

(b) A Futures Participant must ensure that each Order (including an Order submitted through an electronic or automated order routing system pursuant to Section 19) is recorded and time-stamped immediately upon receipt, execution, and any modification or cancellation.

(c) Each Order entered into NFX XL shall include the following information:

- (1) Futures Participant ID;
- (2) Trader ID for the person submitting the Order;
- (3) Contract and Contract Month;
- (4) buy or sell;
- (5) price;
- (6) Order instruction from Section 14 (if applicable);
- (7) quantity;
- (8) open or close position indicator as appropriate;
- (9) Customer Type Indicator (or "CTI" code) as specified in Section 12(f);
- (10) Customer Account number, unless a Bunched Order submitted in compliance with Section 13;
- (11) Clearing Account Number; and
- (12) Clearing Account Type.

(d) A Futures Participant shall retain all memoranda reflecting Orders for a Customer Account in accordance with Chapter III, Section 1 and shall retain those memoranda for the period required in Chapter III, Section 1. A Futures Participant receiving a Customer Order other than in the form of an electronic or written record must comply with the requirements of Commission regulation 1.35(a-1)(1).

(e) Until such time as the Exchange permits otherwise, direct access to NFX XL is limited to Futures Participants that are futures commission merchants or clearing members that are self-clearing their trades. Such Futures Participants are not permitted to provide direct access to NFX XL to any third person.

(f) Until such time as the Exchange permits otherwise, direct access to NFX XL is limited to Futures Participants that are futures commission merchants or Clearing Members that are self-clearing their trades. Such Futures Participants are not permitted to provide direct access to NFX XL to any third person.

(g) CTI code 1 shall be used for transactions initiated and executed by an individual Authorized Trader for its own account, for an account it controls, or for an account in which it has ownership or financial interest. CTI code 2 shall be used for transactions executed for the proprietary account of an NFX Authorized Trader. CTI code 3 shall be used for transactions where an individual Authorized Trader executes for the personal account of another individual Authorized Trader, for an account the other individual Authorized Trader controls or for an account in which the other individual Authorized Trader has ownership or financial interest. CTI code 4 shall be used for any transaction not meeting the definition of CTI 1, 2 or 3. (These should be non-Futures Participant customer transactions.)

### **Section 13 Bunched Orders**

(a) For post-execution allocation of a Bunched Order, a Futures Participant acting as an Eligible Account Manager (as defined by Commission regulation 1.35(a-1)(5)(i)(A-D), need not provide, at the time of either Order entry or report of Order execution, specific Customer Account identifiers for accounts included in a Bunched Order, if the Futures Participant complies with the requirements of Commission regulation 1.35(a-1)(5)(i)-(iv), as applicable.

(b) A Futures Participant that executes Bunched Orders or carries accounts eligible for post-execution allocation of Bunched Orders must maintain records that, as applicable, identify each Bunched Order subject to post-execution allocation and the accounts to which Contracts executed for the Bunched Order were allocated, as required by Commission regulation 1.35(a-1)(5)(iv)(C).

### **Section 14 Order Instructions**

Types of Order instructions accepted by NFX XL are the following:

(a) Cancel Leave Order, which is an instruction to cancel a portion, but not all, of the quantity of a Limit Order and leave the remaining quantity for execution without changing the price or duration parameters of the Order then on the Order Book;

(b) Cancel Order, which is an instruction to cancel an Order;

(c) Cancel Replace Order, which is an instruction to cancel a Limit Order and replace it with a new Limit Order that has a different quantity, price, and/or instruction;

(d) Day Order, which is an instruction that a Limit Order, if not executed, expires at the end of the Trading Day for which it was entered. Unless otherwise specified, an Order for the purchase or sale of a Contract has a Day Order instruction;

(e) Good 'Til Cancelled Order, which is an instruction that a Limit Order to buy or sell remains in effect until it is either executed or cancelled; and

(f) Immediate or Cancel Order, which is an instruction to execute a Limit Order as soon as the Order is entered into NFX XL; any part of an Immediate or Cancel Order executed is reported immediately and any portion not immediately executed is cancelled.

### **Section 15 Timely Order Entry**

Unless a Customer instructs otherwise, a Futures Participant that receives an Order for the account of another Person shall submit the Order to NFX XL immediately through an Authorized Trader, or as soon as practicable, and in the sequence received. Unless a Customer instructs otherwise, if the Futures Participant cannot enter Orders received immediately into NFX XL, then the Futures Participant must (a) make a written record in non-erasable form of the Orders received and (b) submit the Orders received into the NFX XL in the sequence received once able to do so.

### **Section 16 Order Status, Change, or Cancellation**

(a) All Orders submitted to NFX XL are firm and remain open until executed, changed, or cancelled. Except for Good 'Til Cancelled Orders, all open Orders in NFX XL automatically cancel at the close of each Trading Day.

(b) A Futures Participant may edit an Order's price, change its quantity, or change its Order instruction in accordance with Section 14, once the Order Book holds the Order. If the volume is reduced for an Order held in the Order Book, then the Order's position in the time-priority queue remains unchanged. Any other change to an Order is treated as a new Order for purposes of the time-priority queue. To increase the quantity of an Order, the Futures Participant may either submit to NFX XL a new Order for the incremental quantity increase or may enter a Cancel Replace Order for the greater amount.

### **Section 17 Quote Status, Change, or Cancellation and Submission**

(a) Only Market Makers can submit Quotes and all Quotes submitted to NFX XL are firm and remain open until executed, changed, or cancelled. At the close of each Trading Day all Quotes automatically cancel.

(b) A Market Maker may change or cancel a Quote at any time prior to a match with another Quote or Order through the NFX XL.

(c) Each Quote entered into NFX XL shall include the following information:

- (1) Futures Participant ID;
- (2) Contract and Contract Month;
- (3) buy or sell;
- (4) price; and
- (5) quantity.

(d) A Futures Participant submitting Quotes must comply with the requirements of Commission rule 1.35(a).

### **Section 18 Order and Quote Matching**

(a) Except as described in Section 18(d), NFX XL matches Orders and Quotes in price priority with the highest bid or lowest offer for a Contract having priority over all other Orders and Quotes for the same Contract. When NFX XL has multiple Orders or Quotes for a contract at the highest bid or lowest offer, then

(1) Orders for Clearing Account Type "C" receive priority over Orders for any other Clearing Account Type; and among Orders for Clearing Account Type "C", the first such Order in time at a price has priority over all other such Orders at the same price; and

(2) Orders for Clearing Account Types "F" and "M" and Quotes at the same price participate in proportion to the Order or Quote quantity relative to the total quantity of all such Orders and Quotes at the same price.

(b) When NFX XL receives a Quote that locks (i.e., the highest bid equals the lowest offer) or crosses (i.e., the highest bid exceeds the lowest offer) the NFX XL Best Bid and Offer, NFX XL will first disseminate a new NFX XL Best Bid and Offer at either the locked price or the resting price crossed by the Quote, a counting period of one second will begin during which Market Makers whose quotations are locked or crossed may eliminate the locked or crossed market. If at the end of the one second counting period the quote remains locked or crossed, the locked or crossed quotations will be executed. Notwithstanding the counting period, Market Makers shall be obligated to execute orders at their disseminated quotation. The quote that is locked or crossed may be executed by an order during the one second counting period.

(c) When NFX XL receives an Order that locks or crosses the NFX XL Best Bid and Offer, NFX XL will first execute the Order at either the locked price or the resting price crossed by the Order, then calculate and disseminate a new NFX Best Bid and Offer.

(d) An electronic auction occurs on NFX XL when two or more Orders or Quotes for a Contract are submitted, modified, or cancelled virtually simultaneously that would lock or cross market. During an electronic auction, NFX XL determines the price at which the most Contracts will trade based on all Orders in the Order Book and Quotes in NFX XL, with each Order or Quote filled receiving its stated price or better. During an electronic auction, a trade may occur outside the last disseminated NFX Best Bid and Offer.

### **Section 19 Automated Order-Routing Systems**

(a) If any Futures Participant provides any Customer, other Futures Participant, or any other Person access to an electronic or automated order-routing system that enables the submitting of Orders to the NFX XL through the Futures Participant's system, then the Futures Participant must:

(1) adopt and enforce written procedures reasonably designed to protect the reliability and confidentiality of Customer Orders and Customer Account information at all points during the order-routing process, and assign responsibility for overseeing the process to individuals

who understand how the order-routing process works and who are capable of evaluating whether the process complies with relevant procedures;

(2) adopt and enforce written procedures reasonably designed to maintain adequate personnel and facilities for the timely and efficient delivery of Customer Orders and reporting of executions, and to timely handle Customer complaints about Order delivery and reporting;

(3) adopt and enforce written procedures reasonably designed to prevent the order-routing system from being used to create undue financial risks for Futures Participant or its other Customers, including the Futures Participant's use of pre-trade risk limits or controls;

(4) reasonably ensure that the order-routing system has adequate operational capacity and that the operational capacity is consistent with the representations made by the Futures Participant to Customers, other Futures Participants, and other Persons; and

(5) ensure that the order-routing system complies with all applicable Rules of the Exchange, provisions of the Act, Commission regulations and registration requirements, and rules of the National Futures Association, including, without limitation, maintenance of an audit trail of all Order information in compliance with the requirements of Commission regulation 1.35.

(b) A Futures Participant is fully responsible for all Orders submitted directly to NFX XL through its electronic or automated order-routing system as if the Futures Participant had placed each Order itself.

### **Section 20 Average Price Transactions**

A Futures Participant that is a registered as a futures commission merchant may confirm for a Customer Account an average price when multiple execution prices are received on an Order or series of Orders if all the following requirements are met:

(a) The Customer has requested average price reporting and has received appropriate disclosure of the method used to calculate the average price.

(b) Each Order is, or series of Orders are, for the same Customer Account or group of Customer Accounts.

(c) Each Order is, or series of Orders are, for the same Contract, Contract Month, market direction (i.e., purchase or sale), and Order instructions pursuant to Section 14.

(d) Each individual trade is submitted to, and cleared by, the Clearing Corporation at the price executed.

(e) The Futures Participant calculates and confirms the weighted average mathematical price by (1) multiplying the number of contracts purchased or sold at each execution price by that price; (2) adding the results together; and (3) dividing the sum by the total number of contracts. For a series of Orders, the Futures Participant may compute the average price based on each Order in

the series. The Futures Participant may confirm to the Customer either the actual average price or an average price rounded up for a buy Order, or rounded down for a sell Order, to the nearest price increment.

(f) The applicable confirmation and monthly account statement provided to each relevant Customer indicates that the price represents an average price.

(g) The Futures Participant does not average its proprietary trades with Customer trades that are subject to average price calculations.

(h) The Futures Participant creates and maintains records (in accordance to Commission regulation 1.31) to support its average price calculations pursuant to this Rule and the allocations into Customer Accounts and makes those records available for inspection by the relevant Customers upon request.

### **Section 21 Trade Confirmations and Objections**

The Exchange will promptly confirm each trade resulting from the electronic matching of bids and offers through NFX XL. If appropriate, upon receipt of a trade confirmation, the relevant Futures Participant must promptly object in writing to the Exchange; and under no circumstances will the Futures Participant object to any trade later than one hour after the close of trading for the relevant Contract on the applicable Trading Day.

### **Section 22 Pre-Negotiated Business and Cross Transactions**

(a) Except as otherwise provided for in Section 23, a Futures Participant may only execute Cross Transactions or seek to match an Order through pre-negotiation with itself or with its other Customers in accordance with this Rule.

(b) When pre-negotiating and executing a Cross Transaction for a Customer, a Futures Participant must (1) obtain a prior written consent from the Customer which is either a generic or transaction specific consent and (2) act with due skill, care, and diligence, and ensure that the Customer's interests are not prejudiced.

(c) When submitting a Cross Transaction to the NFX XL through this Rule, if only one side of the transaction is a Customer Order, then the Futures Participant must submit the Customer Order first to NFX XL.

(d) A Futures Participant may enter Orders matched through pre-negotiation immediately into the NFX XL if, at the time of entry, a bid and an offer exists for the relevant Contract Month in the NFX XL. Because both Orders submitted pursuant to this Rule are exposed to the market, NFX XL may not necessarily match the two Orders.

(e) If a bid and an offer for a Contract Month does not exist in the NFX XL, then before submitting Orders in the relevant Contract Month that have been pre-negotiated, a Futures Participant must (1) submit one Order (in compliance with Section 22(c), if applicable), (2) wait four seconds, and (3) submit the second Order for the relevant Contract Month. Because both

Orders submitted pursuant to this Rule are exposed to the market, NFX XL may not necessarily match the two Orders.

(f) A Person must not enter a bid and/or an offer into NFX XL in an attempt to circumvent the requirements of Section 22.

### **Section 23 Block Trades**

(a) A Futures Participant may only negotiate and execute Block Trades in Contracts on the Exchange but outside the NFX XL if all the requirements are met related to (1) hours of trading (Section 23(b)), (2) minimum quantity (Section 23(c)), (3) eligible parties (Section 23(d)), (4) fair pricing (Section 23(e)), and (5) timely recording and submission of information (Rule Section 23(f)).

(b) Subject to Sections 32 and 33, a Block Trade may be negotiated and reported to the Exchange at any time during the trading hours on a Trading Day for the applicable Contract except for the last 15 minutes before the close of trading.

(c) A Block Trade may only be executed in a Contract designated as eligible for block trading in the relevant Contract specifications and must meet or exceed the minimum quantity threshold set forth in the Contract specifications. For purposes of meeting the minimum quantity thresholds, a Futures Participant must not aggregate separate Customer Orders, except that an adviser (as defined in Section 23(h)) with discretion over multiple Customer Accounts may aggregate multiple Customer Orders to meet the minimum quantity threshold for a Block Trade.

(d) Each party to a Block Trade must qualify as an "Eligible Contract Participant" (as defined in Section 1a(12) of the Act). An adviser (as defined in Section 23(h)) with discretion over multiple Customer Accounts may enter into a Block Trade on behalf of its Customers but only if each of those Customers is an Eligible Contract Participant. For Block Trades negotiated or executed on behalf of a Customer Account, the Futures Participant must obtain from the Customer prior written approval to execute Block Trades, which either provides general or Order specific consent.

(e) When negotiating or executing a Block Trade, a Futures Participant must ensure that the price quoted represents a fair price for the Block Trade (i.e., the price that the Futures Participant considers the best available for a transaction of that size and type). When determining a fair price for a Block Trade, a Futures Participant should consider the prevailing price and volume currently available through the NFX XL, the prices and sizes of transactions in other relevant markets at the relevant time, and general market conditions.

(f) In addition to the requirements of Sections 12(b) and 12(c), for a Block Trade each Futures Participant shall record on an Order ticket the identity of the individual arranging the Block Trade and time stamp the Order when negotiation ends. Unless a different time period is designated by the Exchange and posted on the Exchange's website:

(1) for Block Trades negotiated during the trading hours of a Trading Day promptly but no later than 15 minutes after negotiations end for the Block Trade (i) the Futures Participant



on the selling side of the Block Trade must obtain from the Exchange a trade authorization identification number and provide that trade authorization identification number to the Futures Participant on the buying side of the Block Trade and (ii) each Futures Participant must submit to the Exchange a completed Block Trade request form.

(2) for Block Trades negotiated at times other than the trading hours of a Trading Day, promptly but no later than 45 minutes before the next open of trading on a Trading Day (i) the Futures Participant on the selling side of the Block Trade must obtain from the Exchange a trade authorization identification number and provide that trade authorization identification number to the Futures Participant on the buying side of the Block Trade and (ii) each Futures Participant must submit to the Exchange a completed Block Trade request form.

(g) Upon receipt of the applicable Block Trading request forms, the Exchange will review the information received for the proposed Block Trade. If the market for the relevant Contract is open when the Exchange receives the Block Trade request forms and the Block Trade appears to satisfy the requirements of Section 23, then the Exchange will immediately disseminate information concerning the Block Trade through the NFX XL. If the market for the relevant Contract is closed when the Exchange receives the Block Trade request forms and the Block Trade appears to satisfy the requirements of Section 23, then the Exchange will disseminate information concerning the Block Trade through the NFX XL prior to the market open on the next Trading Day for the relevant Contract. The Exchange will disseminate the following information concerning Block Trades through NFX XL: the Contract with a designation denoting that the transaction was a Block Trade, the Contract Month, price, and quantity. The Exchange will not consider Block Trades in calculating either the relevant Daily Settlement Prices or the range of daily prices and the Exchange will report Block Trades separately for purposes of calculating trading volume.

(h) For purposes of Sections 23(c) and 23(d) an adviser means any of the following:

(1) a commodity trading adviser registered under the Act (or exempt from registration),

(2) an investment adviser registered as such with the Securities and Exchange Commission (or exempt from registration under the Investment Advisers Act of 1940) that is exempt from regulation under the Act and Commission regulations thereunder, or

(3) any Person authorized to perform functions similar or equivalent to those of a commodity trading adviser in any jurisdiction outside the United States that has total assets under management exceeding \$25 million.

#### **Section 24 Price Improvement**

(a) A Futures Participant that obtains a better price executing a Customer Order must offer the entire price improvement to the Customer, subject to Section 24(b).

(b) A Futures Participant that executes a Customer Order for the wrong Contract Month or price, but otherwise executes the trade consistent with the Customer's instructions (1) may offset any

loss suffered from the erroneous trade against any improvement achieved for the Customer on a properly executed Order and (2) must offer any net improvement received to the Customer.

(c) If a Futures Participant fails to timely submit a Customer Order, then upon discovery of the error the Futures Participant (1) may promptly seek to execute the Customer Order at the best obtainable price without obtaining new instructions from the Customer, but (2) must report any resulting trade to the Customer at the price actually executed and provide any price benefit to the Customer. If a Futures Participant fails to timely submit a Customer Order and does not upon discovery promptly seek to and execute the Customer Order, then the Futures Participant must (1) notify the Exchange and Customer of the error and (2) provide the Customer with a monetary adjustment equivalent to the price at which the Customer Order should have been executed.

(d) If provisions of this Section 24 conflicts with any instructions of the Customer related to the Customer Order, then the instructions of the Customer prevail.

### **Section 25 Customer Order Error Correction Procedures**

(a) Upon the request of a Futures Participant that failed to execute or made an error in executing or reporting a Customer Order ("Erring Futures Participant"), the Exchange may, in its sole discretion, permit the correction of the error to protect the interest of the Customer, as provided for in this Rule.

(b) To use the provisions of this Rule to correct an error in a Customer Order, the Erring Futures Participant must provide the Exchange with (1) a completed and signed error correction request form, (2) evidence that the Order reported to the Customer could have been reasonably executed on NFX XL, (3) the relevant completed Order ticket or similar record, and (4) any other evidence that the Exchange reasonably requests.

(c) If an Erring Futures Participant discovers an error in a transaction for a Customer in a Contract when the market is open, then the Erring Futures Participant may request the use of the provisions of this Rule if:

(1) the price reported to the Customer was worse than the actual transaction execution price, but the Customer declined the price improvement in whole or part,

(2) the price reported to the Customer was better than the actual transaction execution price, or

(3) the Customer Order was executed in the wrong Contract, Contract Month, or direction (i.e., a buy rather than a sell or vice versa) and if the Erring Futures Participant executed the original Customer Order at the current market price the Customer would receive a worse price than the price reported to the Customer.

(d) An Erring Futures Participant that discovers an error after the market has closed for the relevant Contract must comply with the price improvement provisions of Section 24(b) except that the Daily Settlement Price for the Contract serves as the reference price to determine whether the price reported to the Customer was better or worse than the current market price.

(e) If the Erring Futures Participant traded in the wrong Contract, Contract Month, or direction (i.e., a buy rather than a sell or vice versa), then the Erring Futures Participant need only offer the net improvement, if any, to the Customer as described in Section 24(b).

(f) If the Erring Futures Participant has not executed a trade or executed a trade in the wrong Contract, Contract Month, or direction (i.e., a buy rather than a sell or vice versa) and the current market price for the Order at the time the error is discovered is better than the price erroneously reported to the Customer, then the Erring Futures Participant must execute the Customer Order on NFX XL and may not use the provisions of this Rule.

### **Section 26 Transaction Nullifications or Modifications**

(a) The Exchange, in its sole discretion, may either nullify a transaction or adjust the execution price of a transaction in a Contract that (1) has taken place outside the nonreviewable range as defined in the relevant Contract specifications and (2) which the Exchange determines has taken place at an unrepresentative price or when necessary to mitigate market disrupting events caused by malfunctions in its electronic trading platform or errors in orders submitted by Futures Participants.

(b) When determining whether to nullify a transaction the Exchange may consider one or more of the following factors:

- (1) the opening price levels of the Contract on the NFX XL;
- (2) the price movements in other Contract Months of the same Contract;
- (3) the current market conditions, including levels of activity and volatility;
- (4) the last trade price for the Contract;
- (5) the speed of execution;
- (6) the information regarding price movements in related markets, the release of economic data, or other relevant news immediately before or during the trading session;
- (7) an obvious error;
- (8) the proximity of the trade to the close of the market; and
- (9) the impact of the error transactions on other transactions.

(c) When nullifying a transaction pursuant to Rule E26(a), the Exchange will act as soon as practicable and will promptly notify the Authorized Trader Contacts for the Futures Participants submitting each side of the transaction of any nullification pursuant to this Rule by telephone or any other means that the Exchange deems appropriate.

(d) A Futures Participant that executes a transaction in a Contract in error, at an unrepresentative price which is outside the non-reviewable range specified in the relevant Contract specifications, may, within 10 minutes of the Order execution, contact the Exchange to seek to modify or nullify the transaction pursuant to Rule E26(a).

(e) Mutual Agreement. The determination as to whether a trade was automatically executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction within ten (10) minutes of the order execution. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree. In the absence of mutual agreement by the parties, a particular trade may only be nullified or adjusted when the transaction results from an obvious error as provided in this Rule.

(f) The Exchange may, within its sole discretion, nullify or modify a transaction in a Contract if an error occurs as a result of a verifiable disruption or malfunction of NFX XL or its related communication or other systems.

(g) The Exchange will notify all Authorized Trader Contacts as soon as practicable (through means deemed appropriate by the Exchange) of (1) trades that the Exchange is investigating pursuant to this Rule and (2) trades that the Exchange has modified or nullified pursuant to this Rule.

(h) The Exchange's nullification or modification of transactions in Contracts pursuant to this Rule is final.

### **Section 27 Establishment of Settlement Prices**

The Exchange shall establish Daily and Final Settlement Prices at the times and using the methodology established by the Exchange as described in the Contract specifications. Such Daily Settlement Prices are subject to subsequent review and revision by the Clearing Corporation. The time set for determining the Daily Settlement Price or the Final Settlement Price need not coincide with the end of a Trading Day.

### **Section 28 Position Limits and Position Accountability**

(a) Unless otherwise provided by this Section 28, no Person shall own or control, separately or in combination, a net long position or a net short position in a Contract in excess of any position limit established by Commission regulations or the Exchange and set forth in the Contract specifications for that Contract. No Futures Participant shall effect a transaction in a Contract that the Futures Participant knows or has reason to believe would result in the Futures Participant, a Customer, or any other Person holding or controlling, separately or in combination, a net long position or net short position in excess of a position limit established by Commission regulations or the Exchange.

(b) To determine whether a Person is complying with any position limit or accountability reporting requirement established by the Exchange or Commission regulations (1) all positions in accounts for which a Person, by power of attorney or otherwise, directly or indirectly holds positions or controls trading shall be aggregated and (2) positions held by two or more Persons

acting pursuant to an expressed or implied agreement or understanding shall be aggregated as if the positions were held by a single Person.

(c) The position limits in this Rule do not apply to bona fide hedging positions meeting the requirements of Commission regulation 1.3(z)(1). However, the Exchange may limit bona fide hedging positions or any other positions that have been exempted pursuant to Commission regulation 150.5(e) if the Exchange determines that the positions are not in accordance with sound commercial practices or exceed an amount which may be established and liquidated in an orderly manner.

(d) To request an exemption from Sections 28(a) through and including 28(c), a Person must apply to the Exchange pursuant to this Section 29(d) by providing the information requested and following the procedures established by the Exchange. When considering whether to grant an exemption, the Exchange will take into account the factors contained in Commission regulation 150.5(d)(1).

(e) (i) The Exchange may, at any time, require a person who owns or controls positions in contracts traded on or cleared by the Exchange and which are subject to position accountability rules to provide information relating to such person's position. Upon request by the Exchange, such person shall provide information relating to the positions owned or controlled by that person including, but not limited to, the nature and size of the position, the trading strategy employed with respect to the position, and hedging information, if applicable. If the person from whom such information is requested fails to provide the information as directed, the Exchange may order the reduction of such position.

(ii) An order to reduce an open position may also be issued by the Chief Regulatory Officer or his designee, if he determines in his sole discretion, that such action is necessary to maintain an orderly market.

(iii) A Clearing Futures Participant that carries positions for another person shall be responsible for taking reasonable and diligent actions to effect the timely compliance with any order issued pursuant to this rule upon notification of such order by the Exchange. All positions must be initiated and liquidated in an orderly manner.

(iv) A person who holds or controls aggregate positions in excess of specified position accountability levels pursuant to an approved exemption shall be deemed to have consented, when so ordered by the Exchange, not to further increase the positions, to comply with any prospective limit which exceeds the size of the position owned or controlled, or to reduce any open position which exceeds position accountability or levels.

### **Section 29 Reportable Positions**

Each Futures Participant required to file any report, statement, form, or other information with the Commission pursuant to Commission regulations Part 15, 17, or 18 concerning any Contract(s) must simultaneously file a copy thereof with the Exchange. Each Futures Participant must submit the report, statement, form, or other information to the Exchange in the form and manner designated by the Exchange.

•• Interpretations and Policies: -----

.01 Large Trader Reports. Each Futures Participant shall submit to the Exchange a daily report of all Large Trader Reporting Levels as set forth by the Exchange. Positions at or above the reportable level in a particular expiration month of a futures contract trigger reportable status. For a person in reportable status in a particular contract, all positions, regardless of size, in any futures contract month must be reported.

Additionally, the daily Large Trader Reporting submission to the Exchange must include for each reportable account the EFRP volume bought and sold in the reportable instrument, by contract month.

Failure by an omnibus account or foreign broker to submit required information may result in a disciplinary proceeding and result in limitations, conditions or denial of access of such omnibus account or foreign broker to any Exchange market. Notwithstanding the above, clearing members carrying such accounts remain responsible for obtaining and providing to the Exchange information regarding the ownership and control of positions in circumstances where an omnibus account or foreign broker has failed to provide the information to the Exchange.

All large trader reports shall be submitted in a form acceptable to the Exchange, which may require that more than one large trader report be submitted daily.

Clearing members, omnibus accounts and foreign brokers must provide the Exchange with the required CFTC Form 102 ("Identification of Special Accounts") accurately identifying the owners, controllers, controlled accounts and any additional information required for each reportable account within three Business Days of the first day that the account in question becomes reportable. Notwithstanding the three Business Day requirement, on the first day that an account becomes reportable, clearing members, omnibus accounts and foreign brokers must, at the direction of the Exchange, submit the following information: account type, reportable account number and names and addresses of the owners and controllers of the account.

Any material changes to the information previously provided to the Exchange will require the submission of a revised form within three Business Days of such changes becoming effective. Additionally, in the absence of any material changes, the Exchange may require the submission of a new form on a biennial basis for the maintenance of accurate records.

### **Section 30 Transfers of Positions**

(a) A Clearing Futures Participant may transfer a position on its books to:

- (1) correct errors in an existing Contract, provided that the original trade documentation confirms the error;
- (2) transfer an existing Contract from one account to another within the same Futures Participant where no change in ownership is involved;
- (3) transfer an existing Contract from one Clearing Futures Participant to another Clearing Futures Participant where no change in ownership occurs; or
- (4) transfer an existing Contract through operation of law from death or bankruptcy.

(b) Upon written request, the Exchange may, in its sole discretion, allow the transfer of a position as a result of a merger, asset purchase, consolidation, or similar non-recurring transaction for an association, limited liability company, partnership, trust, corporation, or other entity.

(c) Clearing Futures Participants must transfer positions pursuant to this Rule at the same prices that appear on the books of the transferring Clearing Futures Participant, and the transfer must indicate the date when the original trade was made. Each Clearing Futures Participant that is a party to a transfer of positions must make and retain records stating the nature of the transaction, the name of the counter-party Clearing Futures Participant, and any other information required by the Clearing Corporation.

### **Section 31 Daily Trading Information**

Each Futures Participant must file with the Exchange a report or reports concerning the Proprietary Account, Customer Accounts, or portions thereof of the Futures Participant as the Exchange may require to facilitate the Exchange's compliance with Commission regulation Part 16 or which the Exchange may otherwise deem necessary or appropriate.

### **Section 32 Trading Restrictions and Suspensions**

(a) The President or his delegate is authorized at any time to restrict or suspend trading in any Contract if he believes that the restriction or suspension is necessary or appropriate to preserve market integrity, maintain fair and orderly trading, or otherwise further the public interest or for the protection of investors.

(b) Any trading restrictions or suspensions imposed pursuant to Section 32(a) may include without limitation:

- (1) a change in the closing time and/or the time for determining the Daily Settlement Prices for that Trading Day; and/or

(2) a setting of Daily Settlement Prices by the President or his delegate based on the following:

(i) the mid-point of PBOT Best Bid and Offer for the Contract Month immediately before the restriction or suspension;

(ii) if the mid-point of the PBOT Best Bid and Offer appears unrepresentative of fair market value, then the PBOT Best Bid and Offer will be adjusted by the last representative basis differential; or

(iii) any other methodology deemed appropriate by the President or his delegate under the circumstances.

(c) The President or his delegate may lift a trading restriction or suspension imposed by this Rule if the President or his delegate believes that trading can resume on a fair and orderly basis and the public interest is served.

(d) No trading restriction or suspension imposed under this Rule shall continue for more than two business days (or as soon thereafter as a quorum of the Board can be assembled) unless the Board approves of the continuation of the restriction or suspension.

(e) Any trading restrictions or suspensions imposed under this Rule will be posted on the Exchange's website. The Exchange will document its decision-making process and the reasons for using its authority under this Rule, and consult with Commission staff as necessary and appropriate.

### **Section 33 Regulatory Trading Halts**

The Exchange shall halt trading of broad-based index futures Contracts at any time that circuit breaker procedures are in place to halt or suspend trading in all equity securities trading on a national securities exchange or national securities association. After the triggering of circuit breaker procedures, the Exchange will resume trading of broad-based index futures Contracts only after trading has resumed in equity securities traded on a national securities exchange or national securities association.

### **Section 34 Restrictions on Message Traffic**

At any time, the Exchange may, in its sole discretion, restrict the electronic transmissions or submissions to the NFX XL by Futures Participants of Quotes, Orders, modifications or cancellations of Quotes or Orders, trade reports, and other messages or vice versa ("Message Traffic") to safeguard the operations or integrity of NFX XL or to preserve market integrity, fair and orderly trading, or the public interest or for the protection of investors.

### **Section 35 Proprietary Nature of Market Data**

All Futures Participants, Authorized Traders and all employees, agents, vendors, and other Persons affiliated with the foregoing:



(a) understand and acknowledge that the Exchange has a proprietary interest in Market Data, the PBOT Best Bid and Offer, and all related trade data and settlement prices relating to all Contracts traded through NFX XL and the Exchange;

(b) agree not to take any action contrary or detrimental to the Exchange's interest and to take reasonable measures to ensure that no such action is taken by any Person affiliated with them.

### **Section 36 Notices**

(a) Futures Participants shall provide any required notice to the Exchange in the manner set forth in these Rules, or in other Exchange regulatory or operational orders or procedures, as applicable.

(b) Except as may be otherwise expressly provided in the Rules, the Exchange may provide any notice to a Futures Participant, Executive Representative, or Authorized Trader by:

(1) handing a copy to the Futures Participant, Executive Representative, or Authorized Trader, or

(2) mailing a copy to the Futures Participant, Executive Representative, or Authorized Trader to the address supplied to the Exchange by the Futures Participant, Executive Representative, or Authorized Trader for notice, or

(3) transmitting electronically a copy to the Futures Participant, Executive Representative, or Authorized Trader (including, through a facsimile or electronic-mail transmission) to the address supplied to the Exchange by the Futures Participant, Executive Representative, or Authorized Trader for notice, or

(4) posting the notice on the Exchange's website.

### **Section 37 Limitation of Liability For NFX XL**

(a) Except for any party found to have engaged in willful or wanton misconduct, neither the Exchange (which for purposes of this Section 37 includes its parents, subsidiaries and affiliates), its Futures Participants or Clearing Futures Participants, nor any of its or their respective officers, directors, employees, or agents shall be liable to any Person (including, but not limited to, a Customer) for any losses, damages, costs or expenses (including, but not limited to, loss of profits, loss of use, direct, indirect, incidental or consequential damages) arising from (1) any failure or malfunction of NFX XL or the Clearing Corporation or any Exchange services or facilities used to support NFX XL including but not limited to any user interface or any inability to enter or cancel Orders (the "NFX XL Complex"), or (2) 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 NFX XL Complex. The foregoing shall apply regardless of whether a claim arises in contract, tort, negligence, strict liability or otherwise. The foregoing shall not limit the liability of any Futures Participant, Clearing Futures Participant, or any of their respective officers, directors or employees for any act, incident, or occurrence within their control. For purposes of this Section 37, the "NFX XL

Complex" shall include any exchange facilities or services used to support block trades and exchange of futures for related positions pursuant to Sections 23 and 38.

(b) No express or implied warranties or representations regarding the NFX XL Complex are provided by the Exchange, including, but not limited to, warranties of merchantability and warranties of fitness for a particular purpose or use.

(c) Any dispute arising from the use of NFX XL or the Clearing Corporation in which the Exchange or any of its or their respective officers, directors, employees or agents is a party shall be construed and enforced in accordance with the laws of the State of Pennsylvania, without reference to that State's choice of law principles. Any actions, suits, or proceedings against any of the above must be brought within two years from the time that a cause of action has accrued, and any party bringing such action consents to the exclusive jurisdiction of the U.S. District Court for the Eastern District of Pennsylvania and the Court of Common Pleas of Philadelphia County, Pennsylvania, and waives any objection to venue and any right to trial by jury.

(d) This provision shall in no way create a cause of action and shall not authorize an action that would otherwise be prohibited by the Rules of the Exchange.

### **Section 38 Exchange for Related Positions**

The following transactions shall be permitted by arrangement between parties in accordance with the requirements of this rule:

Exchange for Physical ("EFP") - A privately negotiated and simultaneous exchange of an Exchange futures position for a corresponding cash position.

Exchange for Risk ("EFR") - A privately negotiated and simultaneous exchange of an Exchange futures position for a corresponding OTC swap or other OTC instrument.

Exchange of Options for Options ("EOO") - A privately negotiated and simultaneous exchange of an Exchange option position for a corresponding OTC option position or other OTC instrument with similar characteristics.

For purposes of this rule, an EFP, EFR or EOO shall be referred to as an Limitation of Liability for NFX CL Position ("EFRP"). All contracts listed on the Exchange shall be eligible for EFRP transactions.

#### **(a) Nature of an EFRP**

An EFRP consists of two discrete but related simultaneous transactions. One party to the EFRP must be the buyer of (or the holder of the long market exposure associated with) the related position and the seller of the corresponding Exchange contract. The other party to the EFRP must be the seller of (or the holder of the short market exposure associated with) the related position and the buyer of the corresponding Exchange contract.

However, a Futures Participant may facilitate, as principal, the related position on behalf of a customer, provided that the Futures Participant can demonstrate that the related position was passed through to the customer who received the Exchange contract position as part of the EFRP.

(b) Related Positions

The related position (cash, OTC swap, OTC option, or other OTC derivative) must involve the commodity underlying the Exchange contract, or must be a derivative, by-product, or related product of such commodity that has a reasonable degree of price correlation to the commodity underlying the Exchange contract.

(c) Quantity

The quantity covered by the related position must be approximately equivalent to the quantity covered by the Exchange contracts.

(d) Prices and Price Increments

An EFRP transaction may be entered into in accordance with the applicable price increments or option premium increments set forth in the rules governing the pertinent Exchange contracts, at such prices as are mutually agreed upon by the two parties to the transaction.

(e) Date and Time of Transaction

The date and the time of execution of all EFP transactions must be denoted on the record of the transaction.

(f) Termination of Trading in Exchange Contracts

EFRP transactions may be permitted after termination of trading in expiring Exchange contracts, as prescribed in the applicable rules governing such Exchange contracts. Such transactions shall not establish new positions.

(g) Identification and Submission to the Clearing House

Each EFRP transaction shall be designated as such and shall be cleared through the Clearinghouse. Each such transaction shall be submitted to the Exchange within the time period and in the manner specified by the Exchange. Futures Participants are responsible for exercising due diligence as to the bona fide nature of EFRP transactions submitted on behalf of customers.

(h) Documentation

Parties to any EFRP transaction must maintain all documents relevant to the Exchange contract and the cash, OTC swap, OTC option, or other OTC derivatives, including all documents customarily generated in accordance with relevant market practices and any documents reflecting payment and transfer of title. Any such documents must be provided to the Exchange

upon request, and it shall be the responsibility of the carrying Clearing Futures Participant to provide such requested documentation on a timely basis.

(i) Account Requirements

The accounts involved in the execution of an EFRP transaction must be (i) independently controlled accounts with different beneficial ownership; or (ii) independently controlled accounts of separate legal entities with the same beneficial ownership, provided that the account controllers operate in separate business units; or (iii) independently controlled accounts within the same legal entity, provided that the account controllers operate in separate business units; or (iv) commonly controlled accounts of separate legal entities, provided that the separate legal entities have different beneficial ownership.

(j) However, on or after the first day on which delivery notices can be tendered in a physically delivered Exchange futures contract, an EFRP transaction may not be executed for the purpose of offsetting concurrent long and short positions in the expiring Exchange futures contract when the accounts involved in such transaction are owned by the same legal entity and when the date of the Exchange futures position being offset is not the same as the date of the offsetting transaction.

**Section 39 Risk Controls**

(a) The Exchange shall not accept orders to buy into its trading system with a limit price more than 10% above the current exchange best offer of the relevant product. The Exchange shall not accept orders to sell into its trading system with a limit price less than 10% below the current exchange best bid of the relevant product.

(b) The Exchange shall not accept orders into the system that are greater than 1,000 contracts.

(c) Orders that are outside the parameters set forth in this rule will be rejected.

**Section 40. Limitation of Liability For IDEX XT**

(a) Except for any party found to have engaged in willful or wanton misconduct, neither the Exchange (which for purposes of this Rule includes its parents, subsidiaries and affiliates), its Members or Clearing Members, the Clearinghouse, International Derivatives Clearing Group LLC, NASDAQ OMX, nor any of its or their respective officers, directors, employees, or agents shall be liable to any Person (including, but not limited to, a Customer) for any losses, damages, costs or expenses (including, but not limited to, loss of profits, loss of use, direct, indirect, incidental or consequential damages) arising from (1) any failure or malfunction of IDEX XT, the IDEX SwapDrop Portal or the Clearinghouse or any Exchange services or facilities used to support IDEX XT or the IDEX SwapDrop Portal including but not limited to any user interface or any inability to enter or cancel Orders or report transactions (the "IDEX XT Complex"), or (2) 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 IDEX XT Complex. The foregoing shall apply regardless of whether a claim arises in contract, tort, negligence, strict liability or otherwise. The foregoing shall not limit the liability of any Member, Member Organization, Clearing

Member, or any of their respective officers, directors or employees for any act, incident, or occurrence within their control. For purposes of this Rule, the "IDEX XT Complex" shall include any exchange facilities or services used to support exchange of futures for swaps transactions pursuant to former Rule F23 and Rule F7.

(b) No express or implied warranties or representations regarding the IDEX XT Complex are provided by the Exchange or the IDCG, including, but not limited to, warranties of merchantability and warranties of fitness for a particular purpose or use.

(c) Any dispute arising from the use of IDEX XT Complex or the Clearinghouse in which the Exchange, the Clearinghouse or any of its or their respective officers, directors, employees or agents is a party shall be construed and enforced in accordance with the laws of the State of Pennsylvania, without reference to that State's choice of law principles. Any actions, suits, or proceedings against any of the above must be brought within two years from the time that a cause of action has accrued, and any party bringing such action consents to the exclusive jurisdiction of the U.S. District Court for the Eastern District of Pennsylvania and the Court of Common Pleas of Philadelphia County, Pennsylvania, and waives any objection to venue and any right to trial by jury.

(d) This provision shall in no way create a cause of action and shall not authorize an action that would otherwise be prohibited by the Rules of the Exchange.

## **Chapter V Disciplinary Rules**

**[Rules 302—367. Reserved]**

### **[DISCIPLINARY RULES (Rules 401—414)]**

#### **[Rule 401.]Section 1 Disciplinary Rules**

(a) Any Futures Participant or Authorized Trader [member, member organization], or any person associated with any Futures Participant [member, member organization] (the "Respondent") who is alleged to have violated or aided and abetted a violation of the By-Laws and Rules of the Exchange or any interpretation thereof, or the rules, regulations, resolutions and stated policies of the Board of Directors or any Committee of the Exchange, shall be subject to the disciplinary jurisdiction of the Exchange, and after notice and opportunity for a hearing may be appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations, or association with a Futures Participant [member, member organization], or any other fitting sanction in accordance with the provisions of these disciplinary rules.

(b) A Futures Participant [member] or a general partner, officer, director (or a person occupying a similar status or performing similar functions) of a Futures Participant [member organization] or an Authorized Trader may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by any person under his supervision or control or by the Futures Participant [member organization] with which he is affiliated, as though such violation were its own. A Futures Participant [member organization] may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by its general partners, officers, directors, persons occupying a similar status or performing similar functions, or employees or by a Futures Participant, Authorized Trader [member] or other person who is associated with such Futures Participant [member organization], as though such violation were its own.

(c) Any Futures Participant [member, member organization], Authorized Trader, or any person associated with a Futures Participant [member or member organization], shall continue to be subject to the disciplinary jurisdiction of the Exchange following the termination of such Futures Participant [person's membership] or the termination of the employment by or the association with a Futures Participant [member or member organization] of such person, or the deregistration of a Futures Participant [member organization] from the Exchange; provided that the Exchange serves written notice to such party within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to such termination or deregistration.

(d) For the purpose of the Disciplinary Rules, the term "person associated with a Futures Participant" [member or member organization] or "associated person of a Futures Participant [member or member organization]" shall mean "an Authorized Trader or any general partner, officer, or director of such Futures Participant [member organization] (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such Futures Participant [member or member organization], or any employee of such Futures Participant [member or member organization]."

**[Rule 402.]Section 2 Investigation and Authorization of Complaint**

(a) Initiation of Investigation. The Exchange shall investigate possible violations within the disciplinary jurisdiction of the Exchange upon instruction of either the Board, the Business Conduct Committee, or other Exchange officials or upon receipt by the Exchange of a written accusation from a Futures Participant [member, member organization] or from any person which specifies in reasonable detail the facts which are the subject of the accusation.

(b) Cooperation with Investigation or Examination. Each Futures Participant [member, member organization], or person associated with a Futures Participant [member] shall promptly comply with any request of the Exchange's regulatory staff or the Exchange's Regulatory Services Provider, including the Enforcement Department, or any officer of the Exchange for information, documents or testimony; each Futures Participant [member, member organization] or person associated with a Futures Participant [member or member organization] shall not otherwise impede or delay an Exchange investigation into matters within its disciplinary jurisdiction.

(c) Right to Counsel. A Futures Participant [member, member organization] or person associated with a Futures Participant [member] shall have the right to be represented by counsel or any other representative of its choosing in connection with requests for information, documents or testimony and throughout the course of any disciplinary proceeding and the review thereof or any hearing concerning a summary action. A member may not be represented by a member of the Exchange's Board of Directors or Hearing Panel, any employee of the Exchange or any person substantially related to the underlying investigations, such as a material witness or Respondent.

(d) Report. Whenever the staff of the Exchange has a reasonable basis to believe that a violation within the disciplinary jurisdiction of the Exchange has occurred, a written report shall be submitted to the Business Conduct Committee specifying the violations which are believed to have occurred and those facts which gave rise to these violations.

(e) Notice and Statement. Prior to submitting its report, the staff shall notify the person(s) who is the subject of the report ("Subject") of the general nature of the allegations and of the specific provisions of the Commodity Exchange Act, rules and regulations promulgated thereunder, or the Certificate of Incorporation, [b]By-[l]Laws or [r]Rules of the Exchange or any interpretation thereof or any resolution of the Board regulating the conduct of business on the Exchange, that appear to have been violated. The staff shall also inform the Subject that the report will be reviewed by the Committee. The Subject may then submit a written statement to the Committee concerning why no disciplinary action should be taken. To assist a Subject in preparing such a written statement, he shall have access to any documents and other materials in the investigative file of the Exchange that were furnished by him or his agents.

(f)(i) Determination to Initiate Charges. Whenever it shall appear to the Business Conduct Committee that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange and that disciplinary action is warranted, the Business Conduct Committee shall direct the staff of the Exchange to prepare a statement of charges. Whenever the Business Conduct Committee determines that violations within the disciplinary jurisdiction of the Exchange have not occurred or that disciplinary action is not warranted it shall so instruct the staff and its instruction not to initiate disciplinary action along with the reasons for not initiating such action shall be recorded in the minutes of the Business Conduct Committee.

**[Rule 403.]Section 3 Statement of Charges**

(a) The Statement of Charges shall set forth the specific provisions within the disciplinary jurisdiction of the Exchange alleged to have been violated, the persons or organization alleged to have committed each of the violations ("Respondents") and the specific acts which give rise to the alleged violations.

(b) A copy of the Statement of Charges shall be served upon each of the respondents in accordance with [Rule 411]Section 11 and shall reflect the timeframe to answer prescribed in Rule 404 and the procedures to request a hearing specified in [Rule 405]Section 5. The Statement of Charges shall state that a failure to request a hearing within the period of time prescribed in the notice, except for good cause, may be deemed a waiver of the right to a hearing and that a failure to answer or to deny expressly a charge may be deemed to be an admission of such charge.

**[Rule 404.]Section 4 Answer**

(a) A Respondent shall have fifteen (15) business days after service of the Statement of Charges to file a written answer thereto. The Answer shall specifically admit or deny each allegation contained in the Statement of Charges, and a Respondent shall be deemed to have admitted any allegation contained not specifically denied. The Answer may also contain any defense which a Respondent wishes to submit and may be accompanied by documents in support of his Answer or defense. A Respondent must state in his Answer whether he requests a hearing concerning the Statement of Charges. In lieu of requesting a hearing, a Respondent may request that the matter be decided upon written submissions, whereupon the Hearing Panel shall decide whether to grant such request and determine a schedule for each party to make their respective submissions. A Respondent who does not request a hearing or that the matter be decided upon written submissions, shall be deemed to have waived his right to request a hearing or have his written submissions, other than the Answer and any documents in support of his Answer or defense, be

considered by a Hearing Panel (as defined in [Rule 405]Section 5). The Hearing Panel may thereafter prepare its decision in accordance with [Rule 408]Section 8. A respondent who does not so request a hearing shall be deemed to have waived his right to request a hearing and the Business Conduct Committee may thereafter prepare its decision in accordance with [Rule 408]Section 8.

(b) In the event a Respondent admits a charge, fails to deny a charge or fails to file an Answer within the specified time, or has not within the specified time, requested and obtained from the Business Conduct Committee an extension of time to answer, the charges shall be considered to be admitted and the Business Conduct Committee may prepare its decision in accordance with [Rule 408]Section 8. A hearing panel should impose a sanction for each violation found to have been admitted pursuant to [Rule 410]Section 10. Any sanction imposed by the Hearing Panel must be communicated to the Respondent in writing in accordance with [Rule 408]Section 8. The decision shall state that Respondent may request a hearing solely on the sanctions as prescribed in [Rule 405]Section 5. If Respondent does not request a hearing within the time stated in the notice, the Respondent will be deemed to have accepted the sanction.

#### **[Rule 405.]Section 5 Hearing**

##### **(a) Hearing Panels.**

1. Request for a Hearing—A hearing on the Statement of Charges shall, at the request of Respondent in his Answer, or upon motion of the Business Conduct Committee or Enforcement Staff, be held before a Hearing Panel composed of three persons, one of whom shall be public and qualify as a Public Director. Should the hearing be at the request of the Respondent, Exchange staff must provide written notice to the Chair of the Business Conduct Committee or the Chair's designee which requests the naming of a Hearing Panel within 5 business days of receiving Respondent's request for a hearing.
2. Selection of Hearing Panel—The Chair of the Business Conduct Committee or the Chair's designee shall name a Hearing Panel within 10 business days of (i) receipt of notice from Exchange staff that Respondent has requested a hearing; or (ii) upon motion of the Business Conduct Committee for naming of a Hearing Panel, or (iii) upon Respondent's request that the matter be decided upon written submissions (as set forth in [Rule 404]Section 4). In selecting a Hearing Panel, consideration will be given to the composition of the Hearing Panel to insure that any group or class of industry participants does not dominate or exercise a disproportionate influence on the panel. Hearing Panelists shall not consist of individuals who are employed by the Exchange, serve on the Business Conduct Committee or otherwise have a conflict with respect to a particular matter. The Chair of the Business Conduct Committee or the Chair's designee shall then promptly notify Exchange staff and Respondent of the names of the members of the Hearing Panel.
3. Hearing Panel— The responsibilities of the Hearing Panel include, but are not limited to: presiding over hearings in contested disciplinary cases authorized by the Business Conduct Committee; conducting pre-hearing conferences; ruling on procedural or discovery matters; making all necessary evidentiary or other rulings; regulating the conduct of the hearing; imposing appropriate sanctions for improper conduct by a party



or a party's representative; issuing decisions; and rendering decisions in connection with Summary Disposition Proceedings.

The Hearing Panelists will not be permitted to be involved in any manner in the investigation of possible misconduct, to participate in the consideration by the Business Conduct Committee of whether to institute a disciplinary action, to render a decision following a hearing without the concurrence of a majority of the Hearing Panel or rule upon requests to disqualify any member of the Hearing Panel.

The Hearing Panel shall be Futures Participant [members] of the Exchange, or general partners or officers of Futures Participants [member organizations], or such other persons whom the Chair of the Business Conduct Committee or the Chair's designee considers to be qualified. The Chair of the Committee or the Chair's designee shall select these three persons from individuals who have been deemed qualified to serve as a Hearing Panelist. In making such selections the Chair or the Chair's designee shall, to the extent practicable, choose individuals whose background, experience and training qualify them to consider and make determinations regarding the subject matter to be presented to the Hearing Panel. The Chair shall also consider such factors as the availability of the individual Hearing Panelists, the extent of their prior service on Hearing Panels and any relationship between such persons and a Respondent which might make it inappropriate for such persons to serve on the Hearing Panel.

After being designated as a qualified Hearing Panelist, each prospective Hearing Panelist shall complete a mandatory training session to be conducted by the Hearing Attorney. Qualified Hearing Panelists serve for three-year terms. If a Hearing Panelist wishes to continue serving after expiration of the term, the Hearing Panelist must submit an updated application for review and approval by the Business Conduct Committee.

4. Hearing Attorney - A Hearing Attorney shall assist the Hearing Panel in the discharge of its duties. The Hearing Attorney shall not have a vote in the Panel's disposition of the matter, but will advise the Panel on the application of the Disciplinary Rules, Guidelines for Sanctions, and relevant precedent. The Hearing Attorney will not be permitted to be involved in any manner in the investigation of possible misconduct, to participate in the consideration by the Business Conduct Committee of whether to institute a disciplinary action, to render a decision following a hearing without the concurrence of a majority of the Hearing Panel, rule upon requests to disqualify the Hearing Attorney or any member of the Hearing Panel, or issue citations for violations of Exchange rules.
5. Notice—Promptly after the selection of the Hearing Panelists, the Chair of the Business Conduct Committee or the Chair's designee shall cause written notice thereof to be given to the Respondent. If any person involved in the disciplinary proceeding shall have knowledge of a relationship between himself and any person selected for service on the Hearing Panel which might result in such Panelist being unable to render a fair and impartial decision, he shall give prompt written notice thereof to the Chair of the Business Conduct Committee or the Chair's designee, specifying the nature of such relationship and the grounds for contesting the qualification of such person to serve on the Hearing Panel. The decision of the Chair of the Business Conduct Committee or the

Chair's designee shall be final and conclusive with respect to the qualification of any person to serve on the Hearing Panel.

6. Compensation of Hearing Panelists—Hearing Panelists appointed by the Chair of the Business Conduct Committee will be compensated for any hearing sessions, including pre-hearing conferences, and for one deliberation session per disciplinary proceeding for which a Hearing Panel renders a decision. The fixed and non-negotiable rate to be paid to the Hearing Panelists shall be the same for each hearing session that lasts four hours or less and for one deliberation session. A hearing session is defined as any meeting between the parties and the Hearing Panel. Hearing Panelists may be paid additional compensation in extraordinary cases, as determined by the Chair of the Business Conduct Committee in consultation with the Business Conduct Committee. Factors to be considered in determining whether a case is extraordinary include, but are not limited to, the anticipated and actual length of time of the hearing; the complexity and nature of the matter; and the magnitude of the potential penalty.
7. Hearing Panelist Availability—If a Hearing Panelist is unable to participate in the hearing for any reason, the Chair of the Business Conduct Committee shall appoint a qualified replacement Hearing Panelist for that hearing. The replacement Hearing Panelist will be selected from a pre-screened pool of qualified candidates.

(b) Notice of Hearing and Pre-Hearing Procedures.

1. Hearing Date—A hearing on the Statement of Charges shall commence no later than 120 days after the earlier of the date of filing of a written Answer by the Respondent wherein a hearing is requested or the date the Business Conduct Committee requests a hearing date. The 120 day deadline for the commencement of a hearing may be extended by the Hearing Panel for good cause.
2. Notice—The Respondent shall be given at least 15 business days notice of the time and place of the hearing and may appear personally at the hearing.
3. Requests for Adjournments—A request by the Respondent or Exchange staff for an adjournment of the hearing date shall be in writing and will be considered by the Hearing Panel for just cause. The Hearing Panel shall promptly consider the request for an adjournment for just cause, rule on the request and inform the parties, in writing if time permits, as to whether the request was, or was not, granted. In the event that the request for an adjournment for just cause is granted, the Hearing Attorney shall, at that time, schedule a new hearing date and so inform the parties of the new date.
4. Exchange of Evidence—Exchange staff and the Respondent shall furnish to the Hearing Panelists and to each other (i) copies of all documentary evidence each intends to present at the hearing, and (ii) a list of witnesses, including names, addresses and telephone numbers, that each intends to call at the hearing on such date as prescribed by the Hearing Panel, but in any event, not less than 8 business days in advance of the scheduled hearing date. Respondent shall be entitled to examine all books, documents, or other evidence in the possession or control of the Exchange, except the Exchange

shall not be required to disclose: (i) documents that are privileged or constitute attorney work product; (ii) documents that were prepared by an employee of the Exchange but will not be offered in evidence at the hearing; (iii) documents that may disclose a technique or guideline used in examinations, investigations, or enforcement proceedings; and (iv) documents that disclose the identity of a confidential source. Exchange staff shall make all witnesses within its jurisdiction available to participate in the hearing and the Exchange shall produce evidence within its control.

5. Pre-Hearing Conferences—Where appropriate, the Hearing Panel shall schedule one or more pre-hearing conference(s) to be held not less than 8 business days in advance of the scheduled hearing date, to be attended by Exchange staff, each of the Respondents and the Hearing Panel. The pre-hearing conference shall be held for the purpose of clarifying and simplifying issues and otherwise expediting the proceeding. At such conference, and if they have not done so previously, Exchange staff and the Respondents shall furnish to the Hearing Panel and to each other (i) copies of all documentary evidence each intends to present at the hearing, and (ii) a list of witnesses, including names, addresses and telephone numbers, that each intends to call at the hearing. Exchange staff and Respondents shall also attempt to stipulate to the authenticity of documents and to facts and issues not in dispute, and any other items which will serve to expedite the hearing of the matter.

(c) Conduct of Hearing. The Hearing Panelists shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The charges shall be presented by the Exchange staff who shall be parties to the hearing and, along with Respondent, may present evidence and produce witnesses who shall testify under oath, cross-examine witnesses relevant to the Statement of Charges and shall be subject to cross examination and questioning by the Hearing Panel with respect to the charges that are the subject of the hearing. The Hearing Panel may, on its own motion, request the production of documentary evidence and witnesses and may also question witnesses. A transcript of the hearing shall be made and shall become a part of the record. The costs of the making of such a transcript, including, but not limited to, the costs for the court reporter, reproduction of the transcript and producing copies thereof, shall be equally borne by the Exchange and by Respondent. Exchange staff shall provide a copy of the transcript of the hearing to the Hearing Panel within 5 business days of receiving the transcript.

•• Interpretations and Policies: -----

.01 Intervention. Any person not otherwise a party may intervene as a party to the hearing upon demonstrating to the satisfaction of the Hearing Panel that he has an interest in the subject of the hearing and that the disposition of the matter, may, as a practical matter, impair or impede his ability to protect that interest. Also, the Hearing Panel may in its discretion permit a person to intervene as a party to the hearing when the person's claim or defense and the main action have questions of law or fact in common. Any person wishing to intervene as a party to a hearing shall file with the Hearing Panel a notice requesting the right

to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought.

.02 The Hearing Panel, in exercising its discretion concerning intervention, shall take into consideration whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

.03 Attendance. Any person not otherwise a party, counsel or a representative of a party may not attend a hearing unless specifically allowed by the Hearing Panel.

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**[Rule 406.]Section 6 Summary Disciplinary Proceedings**

(a) In lieu of commencing a "disciplinary proceeding" as that term is used in [Exchange Rules 401-414]Sections 1-14., the Exchange may, subject to requirements set forth in this Rule, issue a warning for first-time violations or violators or impose a fine, not to exceed \$5,000, on any [member]Futures Participant for any violation of a certain rules which are specified herein. In issuing a warning or imposing a fine, the Exchange shall have determined such a violation is minor in nature. Notwithstanding the foregoing, the Exchange may determine to consider any violation the subject of a disciplinary proceeding.

(b) In issuing a warning, no more than one warning letter may be issued per rolling 12-month period for the same violation.

(c) In imposing a fine, the person against whom a fine is imposed shall be served with a written statement, signed by an authorized official of the Exchange on behalf of the Business Conduct Committee, setting forth (i) the alleged violation; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each violation; and (iv) the date by which such determination becomes final and such fine becomes due and payable to the Exchange or when such determination must be contested, as provided in paragraph (d) hereunder, such date to be not less than seven business days after the date of service of the written statement.

(d) If the person against whom a fine is imposed pursuant to this Rule pays the fine, such payment shall be deemed to be a waiver by such person of his right to a disciplinary proceeding under [Exchange Rules 401-414]Sections 1-14 and any review of the matter by the Business Conduct Committee, an Exchange Hearing Panel, the Disciplinary Review Committee, or the Exchange Board of Directors.

(e) Any person against whom a fine is imposed pursuant to this Rule may contest the Exchange's determination by filing with the Department of the Exchange taking the action not later than the date by which such determination must be contested a written response meeting the requirements of an "Answer" as provided in [Rule 404]Section 4, at which point the matter shall be referred to the Business Conduct Committee for its consideration and determination.

(f) The Committee may then (a) decide that the matter be dismissed and the notice of alleged violation be rescinded; (b) decide that the notice, as issued, is valid, whereupon the alleged violator could either pay the fine or contest the matter before a Hearing Panel; (c) decide that the notice, as issued, should be modified to specify either a higher or lower fine than the one on the notice as issued, whereupon the alleged violator could either pay the new fine or contest the matter before a Hearing Panel; or (d) decide that the matter merits formal disciplinary action and authorize issuance of a Complaint, pursuant to [Exchange Rule 402]Section 2.

(g) If a disciplinary proceeding thereafter results, and the Hearing Panel determines that the person has violated the rule as alleged, the Hearing Panel shall (a) be free to impose any disciplinary sanction provided for in [Exchange Rules 401-414]Section 1-14 and (b) determine whether the violation is minor in nature.

(h) The following violations are subject to the provisions set forth in [Rule 406:]Section 6.

#### Failure to Comply with an Exchange Inquiry

Each Futures Participant [Member, member organization or associated person] or Authorized Person is required to promptly comply with any request of information made by the Exchange, or any other regulatory authority acting on behalf of the Exchange, in connection with any regulatory inquiry, investigation or examination relating to the Exchange's disciplinary jurisdiction or regulatory obligations.

For the purpose of this rule, information received within ten (10) business days from the date of the original request shall be deemed to meet the requirement of prompt compliance, except for purposes of Examinations Department requests, information received within two business days from the date of the original request shall be deemed to meet the requirement of prompt compliance.

The Exchange may under extenuating circumstances grant extensions to allow for responses beyond the allotted requirement. Requests for extensions must be submitted in writing to the appropriate department, prior to the due date of the outstanding request. Each additional request for information not furnished within the allotted time periods may be considered a separate occurrence for purposes of the fine schedule below.

#### FINE SCHEDULE (Implemented on a three year running calendar basis.)

1st Occurrence	\$1,000.00
2nd Occurrence	\$2,500.00
3rd and Thereafter	Sanction is discretionary with Business Conduct Committee

#### **[Rule 407]Section 7. Offers of Settlement**

(a) At any time during a period not to exceed 120 days immediately following the issuance of a Statement of Charges, a Respondent may submit to the Business Conduct Committee a written offer of settlement which shall contain a proposed stipulation of facts and shall consent to

specified sanctions. Where the Business Conduct Committee accepts an offer of settlement, it shall issue a written decision and impose sanctions consistent with the terms of such offer and may not alter such offer without the consent of the Respondent. An Offer of Settlement may be approved with language which permits the Respondent to accept a sanction without either admitting or denying the rule violations upon which the sanction is based. The decision shall specify the rule violations the Business Conduct Committee has reason to believe were committed, the basis or reasons for the conclusions and any sanction to be imposed. If an Offer of Settlement is accepted without the agreement of the Enforcement Staff, the decision should adequately support the Hearing Panel's acceptance of the settlement. A Respondent may withdraw an Offer of Settlement at any time before final acceptance by the Business Conduct Committee. If an Offer of Settlement is withdrawn after submission, or is rejected by a Hearing Panel, the Respondent should not be deemed to have made any admissions by reason of the Offer of Settlement and should not be otherwise prejudiced by having submitted the Offer of Settlement. Sanctions shall be considered by the Business Conduct Committee in accordance with the considerations stated in [Rule 410]Section 10.

(b) Where the Business Conduct Committee rejects an offer of settlement, it shall notify the Respondent in accordance with [Rule 411]Section 11 and the matter shall proceed as if such offer had not been made, and the offer and all documents relating thereto shall not become part of the record.

(c) A decision of the Business Conduct Committee issued upon acceptance of an offer of settlement as well as its determination whether to accept or reject such an offer shall be final, and the Respondent may not seek review thereof. A copy of the decision shall be promptly served on the Respondents in accordance with [Rule 411]Section 11.

•• Interpretation and Policies: -----

.01 If a Respondent submits an offer of settlement after the 120 day period, the Business Conduct Committee may consider such offer and determine appropriate sanctions as long as its consideration does not delay the hearing in the matter. If a Respondent submits an offer of settlement after the hearing has commenced, the Exchange staff shall promptly submit its position with respect to such offer of settlement. The Hearing Panel shall then determine whether to consider the offer of settlement and, if considered, whether to accept or reject such offer.

**[Rule 408.]Section 8 Decision**

(a) Except as provided in [Rule 407]Section 7, the Hearing Panel shall review the entire record of the disciplinary proceeding or, if appropriate, the written submissions if the Hearing Panel granted the Respondent's request to decide the matter upon such written submissions. After this Review, the Hearing Panel, by a majority vote, shall determine based on the weight of the evidence contained in the record of the proceeding whether Respondents have committed violations and the appropriate sanctions, if any, therefor.

(b) The Hearing Panel shall thereafter issue a written decision in conformity with its determination, including in its decision: (i) a notice of the charges or a summary of the charges; (ii) the answer, if any, or a summary of the answer; (iii) a 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, and a complete explanation of the evidentiary and other basis for such findings and conclusions with respect to each charge; (v) an indication of each specific rule that the Respondent was found to have violated; and (vi) a declaration of all sanctions imposed against the Respondent, including the basis for such sanctions and the effective date of such sanctions. The decision shall be prepared, absent extraordinary circumstances, within 60 days after Exchange staff has served the Hearing Panel with a copy of the transcript of the hearing. A copy of the decision shall be promptly served on the Respondents in accordance with [Rule 411]Section 11. The decision will become the final decision of the Exchange unless that decision is appealed pursuant to [Rule 409]Section 9.

**[Rule 409.]Section 9 Review**

(a) **Petition by Respondent.** A Respondent or Enforcement staff shall have ten (10) business days after service of notice and a copy of a decision made by the Hearing Panel to appeal such decision to the Board of Directors in accordance with [By-Law Article XI, Section 11-3]Section 9. Such petition shall be in writing and shall specify the findings, conclusions or sanctions to which objection is taken in such decision, which is the subject of the petition, together with the reasons that Respondent petitions for review of these findings, conclusions or sanctions. Any objections to a decision not specified in the petition for review shall be thereafter waived. Within fifteen (15) business days after a Respondent's petition for review has been filed with the Secretary of the Exchange pursuant to [By-Law Article XI, Section 11-1(a)]Section 9, Enforcement staff may submit to the Secretary a written response to the petition. A copy of the response must be served upon the Respondent. A Respondent has fifteen (15) business days from the service of the response to file a reply with the Secretary and Enforcement staff.

**(b) Conduct of Review.**

- (i) The review shall be conducted by the Board of Directors or an Advisory Committee thereof. If an Advisory Committee is appointed to conduct the review, it shall be composed of three Board members, one of whom shall be a Public Director. Any Board member who participated in a matter before the Business Conduct Committee or Hearing Panel may not participate in any review of that matter by the Board of Directors or an Advisory Committee. Unless the Board of Directors or the Advisory Committee shall decide to hear oral arguments, such review shall be based solely upon the record and written exceptions filed by the parties. The review shall be conducted as soon as is practicable. Except for good cause shown, the review shall be conducted solely on the record before the Hearing Panel, the written exceptions filed by the parties, and the oral or written arguments of the parties.
- (ii) Should the Board of Directors conduct the review, then based upon such review, the Board of Directors by a majority vote of its members, shall decide to affirm, reverse or modify, in whole or in part the decision of the Hearing Panel. Such modification may include an increase or decrease of the sanction. The Board of Directors may not reverse, or modify, in whole or in part, the findings, conclusions and decision if the factual

conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The decision of the Board shall be in writing and pursuant to the provisions of [Rule 408]Section 8(b) if the decision was reversed, or modified, in whole or in part from the decision of the Hearing Panel, shall be promptly served on the Respondent in accordance with [Rule 411]Section 11, and shall be final and conclusive subject to [Rule 409]Section 9(c) and (d), as well as the provisions of the Commodity Exchange Act.

(iii) Should the review be conducted by an Advisory Committee, the Advisory Committee shall submit a written report to the Board of Directors. In such report, the Advisory Committee shall recommend to affirm, reverse or modify, in whole or in part, the decision of the Hearing Panel. Such modification may include an increase or decrease of the sanction. The Advisory Committee may not reverse, or modify, in whole or in part, the findings, conclusions or decision if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The Board of Directors by a majority vote of its members, shall decide to affirm, reject or modify, in whole or in part the recommendations of the Advisory Committee. Such modification may include an increase or decrease of the sanction. The Board of Directors may not reverse, or modify, in whole or in part, the findings, conclusions and decision of the Advisory Committee if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The decision of the Board shall be in writing, shall be promptly served on the Respondent in accordance with Section 11[Rule 411], and shall be final and conclusive subject to Section [Rule 409]9(c) and (d), as well as the provisions of the Commodity Exchange Act.

(c) Review on Motion of Board of Directors. The Board of Directors may on its own initiative order review of a Hearing Panel decision within twenty (20) business days after notice of the decision has been served on the Respondent. Such review shall be conducted in accordance with the procedure set forth in paragraph (b) of this Rule. Should the Board of Directors vote to modify or reverse such decision, the Board shall make its own findings and issue a final decision of the Exchange. An Advisory Committee appointed by the Board of Directors may conduct such a review in accordance with the provisions of Section 9[Rule 409].

(d) Petition by Enforcement Staff. An appeal of a decision made by the Hearing Panel may also be taken by the Enforcement staff by petitioning the Board of Directors, within ten (10) business days after service of notice and a copy of the decision, for permission to proceed with such appeal. Such petition shall be in writing and shall specify the findings and conclusions of such decision, which are the subject of the petition, together with the reasons that Enforcement staff petitions for review of these findings and conclusions. Any objections to a decision not specified in the petition for review shall be thereafter waived. If permission to appeal is granted, staff shall serve a copy of the petition on the Respondent within five (5) business days of permission to appeal being granted. Within fifteen (15) business days Respondent may submit to the Board of Directors a written response to the petition. A copy of the response must be served upon the Exchange's Enforcement staff, who then has fifteen (15) business days from the service of the response to file a reply with the Board of Directors and the Respondent.



**[Rule 410.]Section 10 Judgment and Sanctions**

([1]a) Futures Participants [Members, member organizations] and persons associated with or employed by Futures Participants [members or member organizations] shall (subject to any rules or order of the Commodity Futures Trading Commission) be appropriately disciplined for violations under these disciplinary rules by expulsion, suspension, fine, censure, limitations or termination as to activities, functions, operations, or association with a Futures Participant [member or member organization], or any other fitting that are the subject of the Statement of Charges and commensurate with the violations the Respondent was found to have committed. Disciplinary sanctions must be sufficient to deter recidivism or similar violations by other members and member organizations. Disciplinary sanctions, including sanctions imposed pursuant to an accepted settlement offer, must take into account the Respondent's disciplinary history. In the event of demonstrated customer harm, any disciplinary sanction must also include full customer restitution, except where the amount of the restitution, or to whom it should be provided, cannot be reasonably determined.

([2]b) Effective Date of Judgment. Sanctions imposed under these disciplinary rules shall not become effective until the Exchange review process is completed or the decision otherwise becomes final. Pending effectiveness of a decision imposing sanctions on a Respondent, the Hearing Panel may impose such conditions and restrictions on the activities on such Respondent which it finds to be necessary or appropriate for the protection of the investing public, Futures Participants [members, member organizations] and the Exchange and its subsidiaries.

**Section 11 [Rule 411.] Service of Notice and Extension of Time Limits**

(a) Service of Notice. Any charges, notices, or other documents may be served upon a Respondent either personally or by deposit in the United States mail, postage pre-paid via registered or certified mail or by courier service addressed to the Respondent at his address at it appears on the books and records of the Exchange. Unless otherwise stated in this Section, all documents required to be filed with the Exchange, the Board of Directors, the Regulatory Department[Market Surveillance Department, the Examination Department, the Enforcement Department], or an Exchange committee by a Respondent pursuant to this [s]Section must be received by the Exchange on or before the day prescribed.

(b) Extension of Time Limits. Any time limits imposed under this [s]Section for the submission of answers, petitions, requests for a hearing, or other materials may be extended by the Exchange body before which the matter is currently pending.

**Section 12 [Rule 412.] Fairness and Impartiality of Board or Committee Members**

(a) Disqualification on Own Motion. No Board member or committee member shall in any manner participate in any disciplinary proceeding if such person cannot render a fair and impartial decision in the matter. In such case, that person shall remove himself from any consideration of the matter.

(b) Disqualification On Order of Chairman. Whenever any person has any reason to believe that a particular Board member or committee member cannot render a fair and impartial decision in a disciplinary proceeding, such person shall give prompt written notice thereof to the appropriate Chairman, specifying the grounds for contesting the qualification of such Board member or

committee member. In such case, the decision of the Chairman shall be final and conclusive with respect to whether a Board member or committee member participates in the determination of such matters.

**Section 13 [Rule 413. Surveillance]**

The Exchange has contracted for the performance of market and trade practice surveillance and related investigations with respect to Futures Participants [Members and Member Organizations]. The failure by any Futures Participant [Member or Member Organization] to comply with any applicable requirement, rule or procedure of or to furnish any information requested by the entity authorized by the Exchange to act on its behalf with respect to those functions shall constitute a violation of these Rules.

**[Rule 414.]Section 14 Actions against Non-Futures Participants [Members]**

If the Exchange has reason to believe or suspect that any non-Futures Participant [member] is conducting trading activities in violation of the Commodity Exchange Act or Exchange rules or in a manner that threatens the integrity or liquidity of any contract, the Exchange may request such non-[member]Futures Participant and require any Futures Participants [Members or Member Organizations] to appear, produce documents and testify, or participate in a hearing to be conducted by the Business Conduct Committee.

If, after the hearing, the Business Conduct Committee determines that the actions of such non-[member]Futures Participant threaten the integrity or liquidity of any contract or threaten to violate or violate the Commodity Exchange Act or Exchange rules, the Business Conduct Committee may:

1. Order any Clearing [Member] Futures Participant to liquidate all or any portion of such non-[member's] Futures Participant's position;
2. Order that no Clearing [Member] Futures Participant accept new positions on behalf of any such non-[member]Futures Participant;
3. Order such action as is necessary to prevent a threat to the contract or violation of the Commodity Exchange Act or Exchange rules.

**Section 15 Consent to Jurisdiction**

(a) Any Person initiating or executing a transaction on or subject to the Rules of the Exchange directly or through an intermediary, and any Person for whose benefit such a transaction has been initiated or executed, expressly consents to the jurisdiction of the Exchange and agrees to be bound by and comply with the Rules of the Exchange in relation to such transactions, including, but not limited to, rules requiring cooperation and participation in investigatory and disciplinary processes.

(b) The scope of applicable Rules include Chapter I, Chapter II, Section I (vi) and (vii), Chapter III, Section 11, Chapter V, Sections 1 -14 and Chapter IV, Section 7.

**[MEMBER AND MEMBER ORGANIZATION RESPONSIBILITY ACTIONS (Rules 450—500)]**

**[Rule 450.]Section 16 Duty to Report**

(a) If an emergency event shall occur with respect to any [member or member organization]Futures Participant, such [member or member organization]Futures Participant promptly shall advise the Membership Department of the Exchange of the occurrence thereof by the fastest available means of communication and immediately thereafter shall deliver written notice to the Exchange specifying

- (1) the nature of such emergency event,
- (2) the time when such emergency event occurred, and
- (3) whether such Futures Participant [member or member organization] consents to a summary suspension pursuant to this [Rule and Rule 451]Section and Section 17 and, if so, whether such Futures Participant [member or member organization] waives a hearing with respect thereto.

(b) For purposes of this Rule, the term "emergency event" shall mean with respect to any Futures Participant [member or member organization]:

- (1) the filing of a petition, answer or other document, or the taking of any other action, by a Futures Participant [member or member organization] with respect to itself, or against such Futures Participant [member or member organization] seeking a liquidation, arrangement, reorganization or other or similar relief under the provisions of the Federal Bankruptcy Act or of any other state or federal law for the relief of insolvent debtors;
- (2) the dissolution of such Futures Participant [member or member organization];
- (3) the insolvency (as defined under any applicable state or federal law) of such Futures Participant [member or member organization];
- (4) the failure of such Futures Participant [member or member organization] to meet the applicable financial requirements of the Exchange, the Clearing Corporation or any governmental agency or self-regulatory body;
- (5) the failure of such Futures Participant [member or member organization] to meet when due any margin call issued by any clearing organization or other person or to pay any option premium when due to any person, the default by such Futures Participant [member or member organization] under any commodity interest on this or any other contract market, or the failure or inability for financial reasons of such Futures Participant [member or member organization] to fulfill any of its contracts; or

- (6) the imposition of any injunction or other restraint by any government agency, court or arbitrator which may affect the ability of such Futures Participant [member or member organization] to perform its contracts or otherwise to engage in business.

**[Rule 451.]Section 17 Summary Suspension**

In the event that a Futures Participant [member or member organization] advises the Exchange as provided in Section 16 [Rule 450] and consents to a summary suspension, either orally or in writing, the Exchange shall immediately suspend such Futures Participant [member or member organization] in accordance with the terms of such consent.

**[Rule 452.]Section 18 Action of Business Conduct Committee<sup>1</sup>**

(a) If at any time, the Business Conduct Committee, in its sole discretion, determines that there is a substantial question as to whether a financial emergency exists with respect to any Futures Participant [member or member organization], the Business Conduct Committee may suspend such Futures Participant [member or member organization]. For purposes of this Rule, the term "financial emergency" shall mean, with respect to any Futures Participant [member or member organization], any situation in which, in the sole discretion of the Business Conduct Committee, the financial condition of such Futures Participant [member or member organization] is not adequate for such Futures Participant [member or member organization] to meet its financial obligations as they become due or to engage in business, or is such that it would not be in the best interests of the marketplace for such Futures Participant [member or member organization] to continue in business, including, without limitation, any event specified in paragraph (b) of [Rule 450]Section 16.

(b) Any action taken pursuant to paragraph (a) of this [Rule]Section shall be taken after notice to the Futures Participant [member or member organization] against which the action is taken and an opportunity for such Futures Participant [member or member organization] to be heard, unless

- (1) such Futures Participant [member or member organization] shall have waived such notice and/or hearing, or
- (2) the Business Conduct Committee in its sole discretion shall determine that the furnishing of notice and/or an opportunity to be heard before taking such action is not practicable under the circumstances.

(c) In any case in which action is taken against a Futures Participant [member or member organization] without prior notice and/or an opportunity to be heard pursuant to subparagraph (b)(2) of this Section [Rule], the Exchange shall give such Futures Participant [member or member organization] notice and an opportunity to be heard promptly.

<sup>1</sup> This provision deals with financial requirements such that the Business Conduct Committee is not acting as a "major disciplinary committee" pursuant to Regulation 1.64(a)(2)(i)(B), such that the composition requirements of Regulation 1.64(c) do not apply.

**[Rule 453.]Section 19 Notice to Futures Participant [Member or Member Organization]**

(a) Any notice given to a Futures Participant [member or member organization] before action is taken against him pursuant to [Rule 452]Section 18 shall state:

- (1) the financial emergency or other situation which it is believed may give rise to the need for action by the Business Conduct Committee; and
- (2) the date, time and place of the hearing to be held before the Business Conduct Committee.

(b) Any notice given to a Futures Participant [member or member organization] after action has been taken against him pursuant to [Rule 452]Section 18 shall:

- (1) state the action taken;
- (2) briefly state the reasons for the action;
- (3) state the effective time, date and duration of the action; and
- (4) state that the Futures Participant [member or member organization] has an opportunity for a prompt hearing and specify the manner for requesting such a hearing.

**[Rule 454.]Section 20 Hearing**

At any hearing conducted under [Rule 452]Section 18, the Business Conduct Committee shall determine the procedures to be followed, except that the following shall apply in every case:

- (a) The case in support of the summary action shall be presented by a representative of the Enforcement Department.
- (b) The Futures Participant [member or member organization] shall be allowed to be represented by counsel or any other representative of his choosing other than a person who is a subject of the same or a related investigation or disciplinary proceeding and, either personally or through such representative, to present witnesses and documentary evidence and to cross-examine witnesses.
- (c) No formal rules of evidence shall apply and the Business Conduct Committee shall be free to accept or reject any and all evidence it considers proper.
- (d) A stenographic transcript shall be made of the proceedings.
- (e) The Exchange shall require persons within its jurisdiction who are 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.

- (f) The notice of the hearing, the stenographic transcript, the documentary evidence and any other material presented to the Business Conduct Committee by either party with notice to the other shall constitute the record of the hearing.

**[Rule 455.]Section 21 Decision**

(a) Promptly following any hearing pursuant to [Rule 454]Section 20, the Business Conduct Committee shall render a written decision based on the preponderance of the evidence contained in the record of the hearing and shall provide a copy of the decision to the Futures Participant [member or member organization]. The decision shall include:

- (1) a description of any action taken without a hearing;
- (2) the reasons for any action taken without a hearing;
- (3) a brief summary of the evidence produced at the hearing;
- (4) the findings and conclusions of the Business Conduct Committee;
- (5) a determination that any action previously taken should be affirmed, modified or reversed;  
and
- (6) a declaration of any action to be taken pursuant to the determination made in subparagraph (a)(5) of this Rule, the effective date and duration of such action and the date upon which such decision becomes final. Notwithstanding the foregoing, the Business Conduct Committee may take action pursuant to [Rule 452]Section 18 prior to rendering the written decision, if the Business Conduct Committee in its sole discretion deems it necessary or appropriate to do so.

(b) The decision of the Business Conduct Committee shall not be subject to appeal.

**[Rule 456.]Section 22 Investigation of Financial Condition**

Every Futures Participant [member and member organization] suspended under the provisions of these [member] responsibility rules shall immediately afford every facility required by the Business Conduct Committee for the investigation of its affairs and shall, after the announcement of its suspension pursuant to [Rule 410]Section 10(c), file with the Secretary of the Exchange a written statement covering all information required by said Committee, including a complete list of its creditors and the amount owing to each.

**[Rule 457.]Section 23 Time for Settlement of Suspended [Member] Futures Participant**

(a) If a Futures Participant [member or member organization] suspended under the provisions of these [member] responsibility rules fails to settle with its creditors and apply for reinstatement within six months from the time of its suspension, or within such further time as the Board of Directors may grant, or fails to obtain reinstatement as hereinafter provided, its [membership share may be sold]permit may be terminated by the Exchange.

(b) The Board of Directors may, by the affirmative vote of two-thirds of the Directors present at a regular or special meeting of the Board, extend the time of settlement for periods not exceeding one year each.

**[Rule 458.]Section 24 Reinstatement of Suspended Futures Participant [Member]**

(a) When a Futures Participant [member or member organization] suspended under the provisions of these [member] responsibility rules applies for reinstatement, notice thereof shall be sent by the designated department of the Exchange to each Futures Participant [member or member organization] of the Exchange by posting a notice on the Exchange's website at least fourteen (14) calendar days prior to the consideration by the Executive Committee of said application. The applicant shall furnish to said Committee a list of creditors, a statement of the amounts originally owing and the nature of the settlement in each case. If satisfactory proof of settlement with all creditors is furnished, said Committee may approve his reinstatement.

(b) If the application for reinstatement is denied by the Executive Committee, the applicant may appeal within ten (10) calendar days thereafter to the Board of Directors, which may act on its reinstatement.

**[Rule 459.]Section 25 Disciplinary Measures During Suspension in [Member]Futures Participant Responsibility Actions**

A Futures Participant [member or member organization] suspended under the provisions of these [member] responsibility rules may be proceeded against by the Exchange for any offense committed by it either before or after the announcement of its suspension in all respects as if it were not under suspension.

**[Rule 460.]Section 26 Rights of Suspended Futures Participant [Member]**

A Futures Participant [member or member organization] suspended under the provisions of these [member] responsibility rules shall be deprived during the term of its suspension of all rights and privileges of a Futures Participant [membership], except such rights as it may have under the [Membership] Rules.

[Rules 461—500. Reserved]

**Chapter VI Arbitration Rules  
[ARBITRATION RULES (Rules 501—1112)]**

**[Rule 501.]Section 1 Arbitration**

Matters Subject to Arbitration; Incorporation by References

(a) Any dispute, claim or controversy between a customer, on one hand, and a Futures Participant [member or member organization] (including the Related Parties of such Futures Participant [member or member organization]), on the other hand, in each case in connection with, or otherwise related to, the Exchange business of such parties, shall, at the request of any

such party, be arbitrated before an arbitration committee or panel constituted in accordance with, and subject to NFA's Code of Arbitration as in effect from time to time, which code is hereby incorporated by reference into this Chapter 5; provided, however, that a Customer shall not be subject to arbitration pursuant to this Chapter 5 without written consent by such Customer given in accordance with Commission Regulation § 166.5.

(b) Any dispute, claim or controversy between or among Futures Participants [members and member organizations] (including their respective Related Parties), in each case in connection with, or otherwise related to, the Exchange business of such parties, shall, at the request of any such party and upon the approval of the President of the Exchange, or his or her designee, be arbitrated before an arbitration committee or panel constituted in accordance with, and subject to, NFA's Member Arbitration Rules as in effect from time to time, which rules are hereby incorporated by reference into this Chapter 5. This paragraph does not apply if NFA otherwise has jurisdiction over the dispute, claim or controversy.

(c) Copies of any Arbitration Claim or notice of intent to arbitrate filed with the NFA by or against any Futures Participant [member or member organization] (including their respective Related Parties) pursuant to the NFA Code of Arbitration and Member Arbitration Rules must be filed simultaneously with the President of the Exchange. Notwithstanding references to the President of NFA in [R]rule 2(b) of the NFA Code of Arbitration, any determinations as to arbitrability shall be made by the President of the Exchange, or his or her designee. If a party to a dispute, in an answer, reply or other written response to a request for arbitration, challenges the appropriateness of submitting a matter to arbitration under Chapter 5, the President of the Exchange, or his or her designee, shall serve upon the parties written notice of his or her decision to accept or reject the matter for arbitration. The decision by the President of the Exchange, or his or her designee, to accept or reject a matter for arbitration shall, at the request of any party to the dispute, be subject to review by the Board of the Exchange or a panel of the Board of the Exchange composed of at least three directors. Requests for review must be submitted to the President of the Exchange, or his or her designee, within 10 calendar days from receipt of notice of the decision by the President of the Exchange, or his or her designee. This paragraph does not apply if NFA otherwise has jurisdiction over the dispute, claim or controversy.

(d) For purposes of this rule, the term "Customer" means any person for or on behalf of whom a Futures Participant [member] of the Exchange effects a transaction on or subject to the By-Laws and Rules of the Exchange, except another Futures Participant [member or member organization].

(e) For purposes of this Rule [501], the term "Related Parties" means, with respect to any Futures Participant [member or member organization], as applicable, any partner, director, officer, branch manager or employee of such Futures Participant [member or member organization] (or any person occupying a similar status or performing similar functions) or any person directly or indirectly controlling, controlled by or under common control with, such Futures Participant [member or member organization].

(f) For purposes of this Rule [501], the term "NFA" means the National Futures Association, and includes any successor organization fulfilling similar functions under the Commodity Exchange Act.



(g) References in NFA's Arbitration Code or Member Arbitration Rules to "Members" and "Associates" shall be deemed to be references to the Exchange's members and associated persons. References in NFA's Arbitration Code or Member Arbitration Rules to "customers" shall be deemed to be references to "Customers" as defined in [Exchange Rule 50]Section 1(d) above. Exchange members shall cooperate with NFA in all arbitration proceedings. NFA shall have the same power to compel production of evidence by Exchange members, employees and associated persons that it has with NFA "Members", employees and "Associates".

**[Rule 502.]Section 2 Failure to Honor Award or Settlement**

(a) Any member, member organization or associated person or Related Party who fails to honor an arbitral award or settlement rendered under this Chapter 5 shall be subject to disciplinary proceedings in accordance with Rules 401 - 412.

(b) In addition to commencing a disciplinary proceeding against a member, member organization, or Related Party for failure to honor an Award, the President of the Exchange may, on 30 days written notice, summarily suspend a member, member organization, or Related Party which:

- (1) fails to comply with an award within 30 days from the date of service of the award by NFA or such other period as specified in the Award unless there is pending a request to modify the Award pursuant to NFA rules or an application to vacate, modify or correct the Award in a court of competent jurisdiction; or
- (2) fails to comply with a settlement agreement within 30 days after NFA terminates the arbitration proceeding pursuant to NFA rules or such other period as specified in the settlement agreement; or
- (3) fails to comply with a settlement agreement executed in connection with an NFA-sponsored pre-arbitration mediation proceeding within 30 days after the time stated in the settlement agreement; or
- (4) fails to pay any fee assessed within the time so ordered by the panel.

The suspension shall remain in effect until such award, settlement agreement, or order of the panel has been satisfied.

[Rules 503—650. Reserved]

**[Rule 651. Exchange's Costs of Defending Legal Proceedings**

Any member or member organization or person associated with any of the foregoing who fails to prevail in a lawsuit or other legal proceeding instituted by such person or entity against the Exchange or any of its board members, officers, committee members, employees, or agents, and related to the business of the Exchange, shall pay to the Exchange all reasonable expenses, including attorneys' fees, incurred by the Exchange in the defense of such proceeding, but only in the event that such expenses exceed \$50,000.00. This provision shall not apply to disciplinary

actions by the Exchange, to administrative appeals of Exchange actions or in any specific instance where the Board has granted a waiver of this provision.]

[Rules 652—1112. Reserved]

[Rules 1201—1213 (Reserved)]

**[VOTING BY MEMBERS OF BOARD AND CERTAIN COMMITTEES (Rule 1300)]**

[Rule 1300. Voting By Members of Board and Certain Committees

(a) Definitions. For purposes of this Rule:

(1) Committee shall refer to any of the following:

(i) Standing Committee of the Board of Directors as defined in Article IV, Section 1;

(ii) Advisory Committee appointed pursuant to Rule 409;

(iii) Hearing Panel appointed pursuant to Rule 405; or

(iv) Any other person or committee of persons, or any subcommittee thereof, that is authorized by the Exchange to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions, or to hear appeals thereof in cases involving any violations of Exchange rules, except those cases where the person or committee is authorized summarily to impose minor penalties for violating rules regarding decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions or similar activities.

(2) Family relationship shall mean a person's spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.

(3) Governing Board shall refer to either of the following:

(i) Board of Directors

(ii) Executive Committee

(iii) or any subcommittee of the Board of Directors or the Executive Committee

(4) Member's affiliate firm shall mean a firm in which the member is a "principal," as defined in Commission Regulation Section 3.1(a) or an employee.

(5) Named party in interest shall mean a person or entity that is identified by name as a subject of any matter being considered by the Board or Committee.

(6) Significant Action shall mean any actions or rule changes which address an "emergency" as defined in Commission Regulation 40.1(h) (exclusive of physical emergencies), and any changes in margin levels that are designed to respond to extraordinary market conditions or are likely to have a substantial effect on prices in any contract traded at the Exchange.

(b) Relationship with named party in interest.

(1) Nature of relationship. A member of a Governing Board or Committee must abstain from such body's deliberations and voting on any matter involving a named party in interest where such member:

(i) is a named party in interest;

(ii) is an employer, employee, or fellow employee of a named party in interest;

(iii) is associated with a named party in interest through a "broker association" as defined in Commission Regulation on 156.1;

(iv) has any other significant, ongoing business relationship with a named party in interest;  
or

(v) has a family relationship with a named party in interest.

(2) Disclosure of relationship. Prior to the consideration of any matter involving a named party in interest, each member of a Governing Board or Committee must disclose to the Exchange's compliance department whether he or she has one of the relationships listed in section (b)(1) above with a named party in interest.

(3) Procedure for determination. The Exchange's Secretary shall review items for consideration by the Governing Board or Committee for purposes of determining whether any such member thereof is subject to a conflict restriction in any matter involving a named party in interest. Such determinations shall be based upon information provided by the member pursuant to paragraph (b)(2) above and any other information held by and reasonably available to the Exchange's Secretary.

(c) Financial interest in a significant action.

(1) Nature of relationship. A member of any Governing Board or Committee must abstain from such body's deliberations and voting on any significant action if the member knowingly has a direct and substantial financial interest in the result of the vote based upon either position at the Exchange or other exchange positions that could reasonably be expected to be affected by the action.

(2) Disclosure of interest. Prior to the consideration of any significant action, each member of any Governing Board or Committee must disclose to the Exchange's Secretary information that is known to him or her or any other information that would present a conflict. This

requirement does not apply to members who choose to abstain from deliberations and voting on the subject of the significant action.

(d) Documentation of determination. The Governing Board or Committee must reflect in its minutes or otherwise document that the conflicts determination procedures required by this Rule have been followed. Such records must also include:

- (i) the names of all members who attended the meeting in person or who otherwise were present by electronic means;
- (ii) 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 information on the position information that was reviewed for each member.]

**[NASDAQ OMX PHLX LLC STOCK INDEX FUTURES CONTRACTS (Rule 1400)]**

[Rule 1400. Reserved.]

**[LIMITATION OF LIABILITY FOR IDEX XT (Rule 1501)]**

[Rule 1501. Limitation of Liability For IDEX XT

- (a) Except for any party found to have engaged in willful or wanton misconduct, neither the Exchange (which for purposes of this Rule includes its parents, subsidiaries and affiliates), its Members or Clearing Members, the Clearinghouse, International Derivatives Clearing Group LLC, NASDAQ OMX, nor any of its or their respective officers, directors, employees, or agents shall be liable to any Person (including, but not limited to, a Customer) for any losses, damages, costs or expenses (including, but not limited to, loss of profits, loss of use, direct, indirect, incidental or consequential damages) arising from (1) any failure or malfunction of IDEX XT, the IDEX SwapDrop Portal or the Clearinghouse or any Exchange services or facilities used to support IDEX XT or the IDEX SwapDrop Portal including but not limited to any user interface or any inability to enter or cancel Orders or report transactions (the "IDEX XT Complex"), or (2) 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 IDEX XT Complex. The foregoing shall apply regardless of whether a claim arises in contract, tort, negligence, strict liability or otherwise. The foregoing shall not limit the liability of any Member, Member Organization, Clearing Member, or any of their respective officers, directors or employees for any act, incident, or occurrence within their control. For purposes of this Rule, the "IDEX XT Complex" shall include any exchange facilities or services used to support exchange of futures for swaps transactions pursuant to former Rule F23 and Rule F7.
- (b) No express or implied warranties or representations regarding the IDEX XT Complex are provided by the Exchange or the IDCG, including, but not limited to, warranties of merchantability and warranties of fitness for a particular purpose or use.

(c) Any dispute arising from the use of IDEX XT Complex or the Clearinghouse in which the Exchange, the Clearinghouse or any of its or their respective officers, directors, employees or agents is a party shall be construed and enforced in accordance with the laws of the State of Pennsylvania, without reference to that State's choice of law principles. Any actions, suits, or proceedings against any of the above must be brought within two years from the time that a cause of action has accrued, and any party bringing such action consents to the exclusive jurisdiction of the U.S. District Court for the Eastern District of Pennsylvania and the Court of Common Pleas of Philadelphia County, Pennsylvania, and waives any objection to venue and any right to trial by jury.

(d) This provision shall in no way create a cause of action and shall not authorize an action that would otherwise be prohibited by the Rules of the Exchange.]

**[Rules 1502-1914 (Reserved)]**

**[METALS FUTURES CONTRACTS (Rules 2001)]**

**Chapter VII Metals**

**[Rules 2001]Section 1 XAU/USD Spot Gold Futures™ (patent pending)**

**[Rule 2001A.]Section 2 Product Description**

(a) U.S. dollar-settled XAU/USD Spot Gold futures are quoted in terms of U.S. dollars per Troy ounce out to two decimal places. Each futures contract simulates the spot market convention of rolling the value date to the next business day by using an interest rate pay/collect feature reflecting the difference in the overnight lease rate for gold and the overnight Interest Rate for the US Dollar.

(b) The contract size for XAU/USD Spot Gold futures will be 10 Troy ounces.

(c) The Exchange shall initially list a December 2012 contract. The Exchange shall also list a December 2013 contract.

(d) The minimum price interval/dollar value per tick shall be \$.10 per Troy ounce.

(e) The ticker symbol for XAU/USD Spot Gold futures shall be "NAU".

(f) The XAU/USD Spot Gold future shall be traded on NFX XL and subject to the NFX XL electronic trading [r]Rules at Chapter IV, Sections 1 -38 [Rules E1-E38].

(g) XAU/USD Spot Gold futures will clear at The Options Clearing Corporation.

**[Rule 2001B]Section 3. Trading Hours**

The trading hours for XAU/USD Spot Gold futures shall be from 8:00 a.m. to 5:00 p.m. E.T.

**[Rule 2001C.]Section 4 Daily Settlement Price**

Pursuant to Chapter IV, Section 27 [Rule E27], the Daily Settlement Price for XAU/USD Spot Gold futures will be determined each business day as provided herein. The Daily Settlement Price for XAU/USD Spot Gold futures shall be calculated by obtaining the midpoint of the last seven (7) bids/asks quoted prior to end of the trading day, excluding the highest and lowest midpoints and then averaging the remaining five (5) midpoints. In the event there are no valid quotes during the day, the Daily Settlement Price will be the prior day's settlement price. The Daily Settlement Price shall be a price consistent with the minimum tick increment for the product; if the calculated settlement price is not a standard tick increment, the calculated Daily Settlement Price will be rounded up to the nearest tick. Notwithstanding the above, if a Daily Settlement Price derived by methodology set forth above is not an accurate representation of the relevant market, two Exchange officers, one of which must be the Chief Regulatory Officer and/or his designee, may establish a Daily Settlement Price that best reflects the true market valuation at the time of the close based on other market prices, including settlement prices for similar contracts trading on other exchanges.

**[Rule 2001D.]Section 5 Daily Swap Point Settlement**

The XAU/USD Spot Gold future has an interest rate pay/collect feature which is called "Swap Points". The Swap Points are calculated by IKON Global Markets, Inc. ("IKON") and they are expressed in terms of fractional parts of minimum price increments as positive or negative numbers. A positive Swap Point reflects a credit for the short futures position and a debit for the long futures position. A negative swap point reflects a debit for the short futures position and a credit for the long futures position. IKON obtains the rate used to calculate the Swap Points by separately polling a minimum of four independent resources, which may include banks, market makers, and liquidity providers that are not necessarily [members] Futures Participants of NFX, no later than 5:30 E.T. each business day. The rate consists of a two-sided bid and offer which are aggregated to calculate the market rate. The interest rate is utilized in determining the Swap Point credits/debits for each open position. The Swap Point represents cents per ounce as a positive or negative amount.

**[Rule 2001E.]Section 6 Last Trading Day**

The Last Trading Day for XAU/USD Spot Gold futures shall be the third last business day of the contract month.

**[Rule 2001F.]Section 7 Settlement**

Pursuant to Chapter IV, Section 27 [Rule E27], XAU/USD Spot Gold futures shall be cash-settled in U.S. Dollars. Settlement of XAU/USD Spot Gold futures will result in the delivery of a cash settlement at the end of the Final Settlement Date (see [Rule 2001G]Section 8). The cash settlement amount on the Final Settlement Date shall be the final mark to market amount against the final settlement price multiplied by ten (10).

**[Rule 2001G.] Section 8 Final Settlement Date**

The Final Settlement Date for XAU/USD Spot Gold futures shall be the first day on which The Options Clearing Corporation is open for settlement following the last day of trading.

**[Rule 2001H.] Section 9 Final Settlement Price**

Pursuant to [Rule E27] Chapter IV, Section 27, the Final Settlement Price for XAU/USD Spot Gold futures shall be the final settlement price for COMEX Gold futures. The price shall be determined by each contract's respective contract maturity as published by The New York Mercantile Exchange (NYMEX).

**[Rule 2001I.] Section 10 Large Trader Reporting Level**

Pursuant to [Rule E29] Chapter IV, Section 29, the Large Trader Reporting level for XAU/USD Spot Gold futures shall be two hundred (200) contracts.

**[Rule 2001J.] Section 11 Block Trade Threshold**

Pursuant to [Rule E23] Chapter IV, Section 23, the Block Trade Threshold level for XAU/USD Spot Gold futures shall be one hundred (100) contracts.

**[Rule 2001K.] Section 12 Position Limits**

Pursuant to [Rule E28] Chapter IV, Section 28 regarding position limits, a person shall not own or control an aggregate of more than 3,000 contracts in an expiration month. The spot month shall be defined as the current delivery month for physically-delivered COMEX Gold futures.

**[Rule 2001L.] Section 13 Position Accountability**

Pursuant to [Rule E28] Chapter IV, Section 28 regarding position accountability, a person shall not aggregate more than 6,000 contracts in all months combined or 6,000 contracts in any one month of XAU/USD Spot Gold futures.

**[Rule 2001M.] Section 14 Margin**

Pursuant to [Rule E11] Chapter IV, Section 11, the initial and maintenance margin levels for XAU/USD Spot Gold futures shall be eight hundred and fifty dollars (\$850).

**[Rule 2001N.] Section 15 Price Adjustments and Cancellations**

The non-reviewable trading range for XAU/USD Spot Gold futures for purposes of [Rule E26] Chapter IV, Section 26 shall be \$10.00 per troy ounce (\$5.00 greater than the immediately preceding offer or \$5.00 lower than the immediately preceding bid) as long as either the preceding bid and/or offer occurred within one minute prior to the trade in question. If there is no preceding bid or offer within one minute prior to the trade in question, then the spot gold market will be referenced for determination.

**[Rule 2001O.]Section 16 Limitation of Liability For NFX XL**

The limitation of liability provisions in [Rule E37]Chapter IV, Section 37 shall apply to XAU/USD Spot Gold futures.

**[Rule 2001O.]Section 17 Audit**

The Exchange shall have the right to audit any [Member's or Member Organization's] Futures Participant's calculation of the cash interest adjustment ("swap point") associated with XAU/USD Spot Gold futures.

**[NFX XL ELECTRONIC TRADING RULES (Rules E1-E38)]**

[Rule E1. Electronic Trading Generally]

NFX XL related activity is governed by Rules E1 through and including E38, which prevail in the event of any conflict with any other Exchange Rule. All other Rules and By-Laws of the Exchange apply to NFX XL related activity unless expressly excluded from application.]

[Rule E2. Definitions and Rules of Construction]

(a) When used in these Rules, these terms have the following meanings:

**Block Trade.** The term "Block Trade" shall mean a transaction in Contracts negotiated outside the NFX XL but executed through the Exchange that complies with the requirements of Rule E23.

**Bunched Order.** The term "Bunched Order" means a single Order for two or more Customer Accounts entered into NFX XL pursuant to Rule E13.

**Clearing Account Number.** The term "Clearing Account Number" means the unique identification code assigned by the Clearing Corporation which identifies a particular Clearing Member and an account maintained by that Clearing Member with the Clearing Corporation.

**Clearing Account Type.** The term "Clearing Account Type" means one of three indicators assigned to an Order or Quote designating the applicable clearing account type for any subsequent transaction as defined by Article VI, Section 3 of the By-Laws of the Clearing Corporation. These indicators are: "C" for Orders to be cleared through a "segregated futures account"; "F" for Orders to be cleared through a "firm account"; and "M" for Orders or Quotes to be cleared through a "segregated futures professional account" or a "proprietary futures professional account."

**Clearing Member.** The term "Clearing Member" means a Member or Member Organization designated by the Exchange under Rule E9 to clear Contracts on behalf of itself, its Customers, and Non-Clearing Members.



**Contract.** The term "Contract" means any Commodity Interest that trades or is reported through NFX XL or subject to the Rules of the Exchange.

**Contract Month.** The term "Contract Month" means the calendar month in which the Last Trading Day for a Contract occurs, provided that with respect to Daily Expiry<sup>TM</sup> US Dollar 3-Month BBA LIBOR<sup>TM</sup> Futures the term "Contract Month" means the maturity date for a contract.

**Cross Transaction.** The term "Cross Transaction" means a transaction in which a Member or Member Organization knowingly represents both the buyer and seller by simultaneously selling and buying pursuant to Rules E22.

**Customer.** The term "Customer" has the meaning attributed to it by Commission Regulation 1.3(k).

**Customer Account.** The term "Customer Account" means an account carried by a Member or Member Organization on behalf of a Customer, which may be another Member or Member Organization.

**Customer Order.** The term "Customer Order" means an Order submitted on behalf of a Customer Account.

**Daily Settlement Price.** The term "Daily Settlement Price" means the price at which a Contract settles at the conclusion of any Trading Day as described in Rule E27.

**Designated Person.** The term "Designated Person" means an employee or other individual associated with a Member or Member Organization who is authorized by that Member or Member Organization and the Exchange to submit Quotes or Orders into NFX XL. Only a natural person can be a Designated Person.

**Discretionary Order.** The term "Discretionary Order" means an Order for a Customer Account for which the Member or Member Organization has discretion as to the Contract, the price, or the amount purchased or sold.

**Final Settlement Price.** The term "Final Settlement Price" means the price at which a Contract settles at the conclusion of the Last Trading Day for that Contract as described in Rule E27.

**Last Trading Day.** The term "Last Trading Day" means the day specified by the Exchange for the conclusion of trading for the Contract.

**Limit Order.** The term "Limit Order" means an Order to buy or sell a stated number of Contracts at a stated price or better.

**Market Data.** The term "Market Data" means any and all price, quantity, and time data from any and all bids and offers submitted to, and trades executed by or through, NFX XL, any data derived from the foregoing, the format and presentation of any such data or information, and the transmissions of such data or information to Members, Member Organizations, any party that

has entered into an agreement with the Exchange to distribute the above-described data or information or other Person.

**Market Maker.** The term "Market Maker" means a Member or Member Organization approved by the Exchange to undertake rights and obligations to facilitate an orderly and liquid market as a Market Maker for one or more Contracts pursuant to Rule E10.

**Member ID.** The term "Member ID" means a unique identification code assigned by the Exchange to each Member or Member Organization.

**NFX Best Bid and Offer.** The term "NFX Best Bid and Offer" means for each Contract then listed and trading through NFX XL the current disseminated highest bid and lowest offer in the Order Book and/or available by Quote excluding those Orders that at the time of receipt are matchable and are due execution pursuant to the procedures described in Rule E18.

**NFX XL.** The term "NFX XL" means the electronic trading system maintained by the Exchange for the receipt, entry, cancellation, storage, display, matching, and reporting of Orders and Quotes.

**Non-Clearing Member.** The term "Non-Clearing Member" means a Member or Member Organization that is not a Clearing Member.

**Order.** The term "Order" means an instruction to buy or sell a Contract.

**Order Book.** The term "Order Book" means all Orders received by NFX XL for a particular Contract that are not immediately filled or cancelled upon entry pursuant to an Immediate or Cancel Order instruction under Rule E14.

**Proprietary Account.** The term "Proprietary Account" shall have the meaning ascribed to it by Commission regulation 1.3(y).

**Quote.** The term "Quote" means a bid or offer submitted by a Market Maker to transact through NFX XL in a certain quantity of a Contract at a specified price or better.

**Rule.** The term "Rule" means any rule, interpretation, stated policy, or instrument corresponding to any of the foregoing, in each case as adopted or amended from time to time by the Exchange.

**Trading Day.** The term "Trading Day" means a day that the Exchange is open for trading in a particular Contract.

(b) For all purposes of the Rules, unless otherwise expressly provided:

- (1) any time period which expires on a day which is not a Trading Day as defined in Rule E4 will expire on the next succeeding Trading Day;

- (2) all references to the Act or the Commission's regulations or Rules of the Exchange or Rules of the Clearing Corporation include such provisions as amended, modified, supplemented, restated, or replaced from time to time;
- (3) all references to the Commission includes any successor to the Commission;
- (4) as permitted by the context any gender specific reference also include the other gender;  
and
- (5) as permitted by the context any reference in the singular includes the plural and vice versa.

**Trader ID.** The term "Trader ID" means a unique personal identification code assigned to a person submitting an order or a quote by or through a Member or Member Organization that is in a form and provided in a manner acceptable to the Exchange.]

[Rule E3. Listed Contracts

The Exchange shall determine and publish through new rules or rule amendments the Contracts listed for trading through NFX XL.]

[Rule E4. Trading Days and Hours

Except as provided in Rule E32 and Rule E33, the Exchange shall determine and post on its website the days on which the Exchange is open for business, the opening and closing hours of the market, and the opening and closing trading times for each Contract.]

[Rule E5. Market Opening

(a) The Exchange shall post on its website a period prior to the market opening during which NFX XL will accept Orders and Quotes for execution upon market open or for execution during the Trading Day.

(b) If the Exchange halts or suspends trading in a Contract prior to the scheduled closing, then before resuming trading in that Contract the Exchange will have a pre-opening period during which NFX XL will accept Orders and Quotes into NFX XL, as described in Rule E5(a) above.]

[Rule E6. General Trading Standards and Prohibited Practices

(a) No Member or Member Organization may accept a Customer Order for submission to NFX XL unless the Member or Member Organization has provided the Customer with the Uniform Electronic Trading and Order Routing Systems Disclosure Statement or any successor disclosure published by the National Futures Association.

(b) No Member or Member Organization shall disclose the existence or terms of an Order not yet disseminated by the Exchange, except to representatives of the Exchange or Commission or otherwise for the sole, necessary, and appropriate purpose of executing the Order.

(c) No Member or Member Organization shall aggregate two or more Customer Orders, allocate trades, or provide for average price transactions among Customer Accounts except as provided for in Rules E13, E20, and E23.

(d) No Member or Member Organization shall knowingly submit to NFX XL a Quote or Order for any Contract for the account of that Member or Member Organization or any account in which that Member or Member Organization has an interest while holding an Order of another Person for the same Contract on the same side of the market that is executable at the then current market price or at the price at which the Quote or Order is executable for the account of the Member or Member Organization or an account in which that Member or Member Organization has an interest.

(e) No Member or Member Organization shall exercise discretion and submit an Order to or through NFX XL for an account of another Person without the prior specific consent of that Person; provided, however, that prior specific consent required by this Rule does not apply to an Order for a Proprietary Account of the Member or Member Organization.

(f) No Member or Member Organization shall accept or submit any Order to or through the NFX XL for an employee, agent, or other Person acting on behalf of another Member, Member Organization, or its associated Authorized Traders without the prior written consent of that other Member or Member Organization, which is filed with the Exchange. If an Order for another Member or Member Organization results in a transaction, then the Member or Member Organization through which the Order is submitted to the NFX XL must promptly send a duplicate confirmation of the transaction to the Person providing the prior written consent of the other Member or Member Organization.

(g) Members, Member Organizations, and Authorized Traders Contacts shall not:

- (1) Engage in practices that may cause degradation of the Exchange's services or facilities, or that may cause a disorderly market, including but not limited to, unwarranted use of cancelling and resubmitting Orders or Quotes;
- (2) Engage in pre-arranged transactions other than transactions executed in compliance with Rule E22 and Rule E23; or
- (3) Engage in acts, practices, or conduct contrary to the purposes of the Exchange or likely to bring the Exchange into disrepute. These prohibited practices include, but are not limited to:
  - (i) effecting a transaction in, or inducing the purchase or sale of, any Contract through any manipulative, deceptive, or fraudulent device or contrivance;
  - (ii) engaging in price manipulation or cornering of the market;
  - (iii) engaging in wash transactions (or other activities that may or may not involve the making of a Contract) that creates a misleading appearance of activity occurring on NFX XL and/or causes the reporting of a misleading price level;

- (iv) engaging in accommodation transactions, by which one party enters into a Contract with another party knowing or having reason to know that such transaction was an attempt to conceal a trading abuse;
- (v) engaging in "front-running" or "trading-ahead," where a party knowingly places an Order or a Quote or executes a trade for a Contract while in possession of material non-public information concerning an imminent Block Trade or Customer Order;
- (vi) engaging in "cherry picking," where a party assigns a trade for a Customer to the account of another Customer or party (for any reason, even if only temporarily, where the situation is not remedied) and the trade assigned to the other Customer or party is at a superior price than the trade price received by the Customer;
- (vii) withdrawing, withholding, disclosing, or taking advantage of a Customer Order in whole or in part for the benefit of any other Person;
- (viii) engaging in compensation trades, where one or more parties executes non-competitive trades to transfer money between accounts; and
- (ix) engaging in conduct or practices detrimental to the best interests of the Exchange.
- (x) engaging in any other manipulative or disruptive trade practices prohibited by the Commodity Exchange Act, as amended, or Commission regulations, including but not limited to, "spoofing," "improper cross trading," "money passes," and trading against a customer order.]

[Rule E7. Responsibility for Orders and Quotes

- (a) Each Member and Member Organization is responsible for all Orders and Quotes submitted through its Member ID by any Persons associated with that Member or Member Organization. Each Member and Member Organization must reasonably ensure that all Orders and Quotes submitted through its Member ID are submitted in good faith to execute bona fide trades and that the Orders and Quotes comply with all applicable provisions of the Act, Commission regulations and related requirements, all Rules, and all Exchange regulatory and operational orders and procedures.
- (b) Each Member and Member Organization must have one Designated Person. Each Member and Member Organization must provide to the Exchange the name, title, telephone number and other contact information for its Designated Person in the manner, format, and following the procedures established by the Exchange and posted on its website.
- (c) A Designated Person is responsible for all business conducted by or through the Member or Member Organization's Member ID. Each Designated Person must sign a written statement provided by the Exchange whereby the Designated Person consents to the jurisdiction of the Exchange and the Commission and agrees to observe and be bound by the By-laws and Rules of the Exchange, the Act, Commission regulations and related requirements, and all Exchange

regulatory and operational orders and procedures. Among other duties and responsibilities that the Exchange may impose, a Designated Person must:

- (1) Have the authority to modify or withdraw any Order or Quote entered under his or her Member Organization's Member ID;
- (2) Have the ability to identify immediately for the Exchange the sources of all Orders or Quotes submitted under his or her Member Organization's Member ID;
- (3) Ensure that all activity conducted under his or her Member Organization's Member ID complies with all applicable provisions of the Act, Commission regulations and related requirements, all Rules, and all Exchange regulatory and operational orders and procedures; and
- (4) Ensure that any Person conducting business under his or her Member Organization's Member ID is competent and appropriately trained.

(d) No Member, Member Organization, or Person associated with a Member Organization shall submit an Order or a Quote to NFX XL unless the Order or Quote is submitted with Member ID attached in the manner, format, and following the procedures established by the Exchange. Each Member, Member Organization, Designated Person, and Person associated with a Member Organization must reasonably ensure that no Member ID is used by any Person not so authorized by the Member, Member Organization, Designated Person, or these Rules.

(e) The Member Organization must identify the Person submitting each Order or Quote by also attaching to the Order or Quote a Trader ID, a unique identifier, in the manner, format, and following the procedures established by the Exchange and posted on the Exchange's website.

(f) In the manner, format, and following the procedures established by the Exchange and posted on the Exchange's website, each Member and Member Organization must provide to, and keep current with, the Exchange the contact information for its Designated Person so that the Exchange can immediately reach the Designated Person when Orders or Quotes are resting in, being submitted to, or being executed by NFX XL through the Designated Person's Member Organization's Member ID.]

[Rule E8. RESERVED]

[Rule E9. Clearing Arrangements

(a) No Member or Member Organization shall submit an Order or a Quote to NFX XL or accept the transfer of a Contract unless the Member or Member Organization is either a Clearing Member or a Non-Clearing Member guaranteed by a Clearing Member pursuant to this Rule for that Contract.

(b) A designated Clearing Member is authorized by the Exchange to clear, carry, and guarantee specified Contracts for itself, its Customers, and Non-Clearing Members. To become a Clearing Member, a Member or Member Organization must (1) apply to a Clearing Corporation and the

Exchange, (2) satisfy the criteria established by the Clearing Corporation and the Exchange for Clearing Members, and (3) submit to the Exchange confirmation from the Clearing Corporation that the Member or Member Organization is a member of the Clearing Corporation.

(c) To maintain its Clearing Member designation under Rule E9(b), the Clearing Member must at all times continue to satisfy all criteria established by the Clearing Corporation and the Exchange for designation as a Clearing Member for specified Contracts.

(d) A Clearing Member must provide the Exchange with a copy of each written agreement guaranteeing the performance of the Non-Clearing Member with respect to a Contract (referred to in Rules E9(d), (e), and (f) as a "Guarantee"). For purposes of this Rule E9(d), a Guarantee (1) guarantees and indemnifies the performance for the Contracts governed by the Guarantee; (2) remains in effect until terminated pursuant to Rule E9(e) notwithstanding any change to the Rules, the terms of any Contract, or the composition of any partnership (including, but not limited to, the death, retirement, admission or withdrawal of a partner); (3) applies to defaults by the Non-Clearing Member on any obligation related to a Contract or other claims governed by the Guarantee; and (4) supplements, but does not substitute, any other agreement whereby the Clearing Member guarantees or indemnifies the Non-Clearing Member.

(e) To terminate a Guarantee, either party to the Guarantee (the Clearing Member or Non-Clearing Member) must immediately notify the Exchange of the termination of the Guarantee using the form, providing the information, and following the procedures established by the Exchange. Upon receipt of a request for termination of a Guarantee, the Exchange will act as promptly as required by the circumstances. A Guarantee remains in effect until the Exchange authorizes its termination and notifies both parties. Notwithstanding the termination of the Guarantee, the Clearing Member remains bound by the Guarantee for all Contracts governed by the Guarantee entered into by the Non-Clearing Member before termination of the Guarantee, but is not bound for any Contract made by, or transferred to, the Non-Clearing Member after termination of the Guarantee.

(f) If a dispute arises between the Clearing Member and the Non-Clearing Member concerning whether a Contract was entered into or transferred before or after the termination of a Guarantee: (1) the Clearing Member has the burden to demonstrate that the Non-Clearing Member entered into the Contract after termination of the Guarantee and (2) the Exchange may, within its discretion, provide the Clearing Member and Non-Clearing Member with information regarding the time at which the Non-Clearing Member entered into or transferred a Contract.]

#### [Rule E10. Market Makers and Liquidity Providers

(a) The Exchange may from time to time approve such number of Members or Member Organizations as Market Makers and allocate to such Market Makers such number and types of Contracts, as it may deem necessary or appropriate. Any and all such approvals or allocations may be reviewed, conditioned or terminated at any time in accordance with this Rule.

(b) A Member or Member Organization desiring to act as a Market Maker shall file an application with the Exchange in such form as the Exchange may from time to time prescribe. Market Makers shall be selected by the Exchange from among the applications from time to time

on file with the Exchange, based on the Exchange's judgment as to which applicant or applicants is or are most qualified to perform the functions of a Market Maker. Factors to be considered in making such selection may include, but are not limited to, any one or more of the following:

- (i) the adequacy of each applicant's capital;
  - (ii) each applicant's operational capacity;
  - (iii) the trading experience of, and observance of generally accepted standards of conduct by, each applicant, in particular the individual or individuals who would represent such applicant in its capacity as a Market Maker (each, a "Market Maker Designee");
  - (iv) the number and experience of support personnel of each applicant who will be performing functions related to its Market Maker business;
  - (v) if applicable, the regulatory history of, and history of adherence to the Rules of the Exchange, rules of other self-regulatory organizations and applicable law by, each applicant, in particular its Market Maker Designees;
  - (vi) the willingness and ability of each applicant to promote the Exchange as the marketplace of choice;
  - (vii) the market performance commitments of each applicant; and
  - (viii) if applicable, any performance evaluations conducted pursuant to the Rules of the Exchange or rules of other self-regulatory organizations.
- (c) In approving any applicant as a Market Maker, the Exchange may place one or more conditions or limitations on the approval, including but not limited to conditions concerning the capital, operations or personnel of such applicant, satisfaction of market performance commitments or benchmarks by such applicant, and the number or types of Contracts which may be allocated to such applicant. Unless earlier terminated pursuant to subsection (d) below, approval to act as a Market Maker shall be for a one year period, after which the Member or Member Organization may once again request approval to be a Market Maker pursuant to this rule for another year. There shall be no limit to the number of one year periods for which a Member or Member Organization may request approval to act as a Market Maker.
- (d) Each Member or Member Organization approved as a Market Maker shall retain such status for a one year period or until it resigns as a Market Maker and the Exchange relieves such Market Maker of its obligations to act as Market Maker, or the Exchange suspends or terminates such Market Maker's status.
- (e) In allocating Contracts to Market Makers approved in accordance with the above, the Exchange may: (i) consider any relevant information, including but not limited to performance, volume, capacity, market performance commitments, operational factors, efficiency, competitiveness and recommendations of committees of the Board or of the Exchange; (ii) place one or more conditions or limitations of the type specified in paragraph (c) above on the



approval; or (iii) allocate any Contract to more than one Market Maker, such that the different Market Makers serve at the same time but with respect to different contract months or in different time zones, or such that each of the Market Makers serves as the Market Maker for such Contract on a rotating basis.

(f) No Market Maker may sell, transfer or assign any of its rights or obligations as a Market Maker (including but not limited to its allocation of any Contracts by virtue of its status as a Market Maker) without the prior written approval of such sale, transfer or assignment (including but not limited to the approval of the Person to which such rights, obligations or allocation are intended to be sold, transferred or assigned) by the Exchange. Any purported sale, transfer or assignment in violation of the foregoing sentence shall be void from the outset. For purposes of this paragraph (f), the following transactions shall be deemed to constitute a transfer of a Market Maker's rights or obligations:

- (i) Any sale, transfer or assignment of five percent of the equity or profits or losses of a Market Maker (or any series of smaller changes that in the aggregate amount to a change of at least such percentage); provided that any sale, transfer or assignment of an interest of less than such percentage may be found by the Exchange to constitute a transfer of a Market Maker's rights or obligations if the particular facts and circumstances warrant such a determination;
- (ii) Any change in, or transfer of, control of a Market Maker; and
- (iii) Any merger, sale of assets or other business combination or reorganization involving a Market Maker.

(g) The Exchange may from time to time evaluate a Market Maker's performance with respect to, among other things, one or more of the following: quality of markets, market share (taking into account all contracts similar to the relevant Contract or Contracts), administrative factors and observance of ethical standards. In this connection, the Exchange may consider any relevant information, including but not limited to market share and trading data, a Market Maker's regulatory history and such other factors and data as may be pertinent under the circumstances.

(h) The Exchange may terminate, place conditions upon or otherwise limit a Member or Member Organization approval to act as a Market Maker or a Market Maker's allocation of Contracts, under any one or more of the following circumstances:

- (i) if the Exchange finds in connection with an evaluation under paragraph (g) above that such Member or Member Organization's performance as a Market Maker has been unsatisfactory;
- (ii) if such Member or Member Organization becomes subject to a material financial, operational or personnel change;
- (iii) if such Member or Member Organization fails to comply with any conditions previously placed upon its approval as a Market Maker or its allocation of Contracts or perform its obligations; or

(iv) if for any reason such Member or Member Organization is no longer eligible for approval as a Market Maker or to be allocated a particular number or type of Contracts.

(i) Each applicant for approval as a Market Maker pursuant to the above shall be given an opportunity to present any matter which it wishes the Exchange to consider in conjunction with the application. Prior to taking any remedial action against a Market Maker pursuant to the above, such Market Maker shall be given notice thereof and an opportunity to present any matter which it wishes the Exchange to consider in determining whether to take such action. The Exchange may require that any presentation under this paragraph be made partially or entirely in writing, and may require the submission of additional information from any Person wishing to make a presentation under this paragraph. Formal rules of evidence shall not apply to any proceeding involving such a presentation. Notwithstanding the foregoing, the Exchange shall have the authority to immediately terminate, condition or otherwise limit a Member or Member Organization approval to act as a Market Maker in accordance with the above, without prior notice or opportunity to make a presentation under this paragraph, if the financial, operational or personnel change in question warrants such action.

(j) Market Makers shall have no obligation to quote. However, when and if they are quoting foreign currency futures contracts for which they are approved Market Makers they are required to submit a two-sided market.

[Rule E11. Customer Margin

(a) **General Rules:**

- (1) No Member or Member Organization shall effect a transaction or carry a Customer Account without obtaining margin at the times, in the amounts, and in the forms required by the rules of the Clearing Corporation and applicable law.
- (2) If a Member or Member Organization fails to obtain and maintain the required minimum margin deposits for a Customer Account pursuant to this Rule, the Exchange may require that the Member or Member Organization immediately liquidate all or part of the positions in the Customer Account to decrease or eliminate the margin deficiency.
- (3) Nothing in this Rule prevents the Exchange, the Clearing Corporation, a Member, or a Member Organization from imposing margin rates or requirements on a Customer that are higher or more stringent than the rates or requirements imposed by this Rule.
- (4) Terms used in this Rule, but not otherwise defined by these Rules, have the meaning set forth in the Joint Audit Committee's Margins Handbook. In addition, a Member or Member Organization must follow the procedures specified in the Joint Audit Committee's Margins Handbook for the computation, issuance, collection, and offsets for margin calls and corresponding capital charges for the Member or Member Organization unless the Manual is inconsistent with these Rules, in which case these Rules prevail.

(b) Rates and Requirements:

- (1) The Clearing Corporation, pursuant to Commission Rule 39.13, shall determine the rates to be used to derive customer initial margin requirements for any Contract.
- (2) The Exchange will publish the minimum initial and maintenance margin requirements for each Contract, which shall be no less than that established by the Clearing Corporation.
- (3) Any changes in Contract margin requirements will apply to both new and existing Contracts in a customer's account. The Exchange may, within its discretion, establish different maintenance margin rates or requirements for different types of accounts. The term "customer initial margin" has the meaning set forth in Commission Rule 1.3.

(c) Account Administration, Classification, and Aggregation:

- (1) Omnibus Accounts: A Member or Member Organization must calculate margin requirements for an omnibus account (whether domestic or foreign) on a gross basis and in accordance with the rules of the Clearing Corporation, if a Clearing Member. However, a Member or Member Organization may impose maintenance margin rates for positions in the omnibus account and need not impose the initial margin rates. To use spread or hedge margin rates, a Member must obtain a written representation from the omnibus account identifying the positions within the account that are spreads or bona fide hedges, and if a Clearing Member, comply with the rules of the Clearing Corporation.
- (2) Bona Fide Hedge Accounts: For bona fide hedging transactions and positions as defined by Commission regulation 1.3(z)(1), a Member or Member Organization may impose maintenance margin rates for the transactions and positions and need not impose the initial margin rates if the Member or Member Organization has a reasonable basis to believe, and the Customer represents in writing that, the transactions or positions are for bona fide hedging.
- (3) Aggregation:
  - (i) When determining margin rates, margin calls, and the release of margin deposits, a Member or Member Organization may aggregate identically-owned accounts within the same regulatory account classification of Customer segregated, Customer secured, and non-segregated, provided however a Clearing Member may only aggregate identically-owned accounts for purposes of determining margin requirements, margin calls and releases in compliance with the rules of the Clearing Corporation.
  - (ii) To satisfy a margin deficiency, a Member or Member Organization may not apply available free funds from an identically-owned account that has a different regulatory account classification. Instead, the Member or Member Organization must transfer the free funds from one identically-owned account in one regulatory account classification to another identically-owned account with a different regulatory account classification that is undermargined, provided however a Clearing Member may not apply free funds in a manner inconsistent with the rules of the Clearing Corporation.

(iii) Except for omnibus accounts, a Member or Member Organization may calculate margin requirements on a net basis for concurrent long and short positions in identically-owned accounts within the same regulatory account classification, provided however a Clearing Member must calculate margin requirements in compliance with the rules of the Clearing Member.

(4) Extension of Credit: No Member or Member Organization shall extend or maintain credit to or for a Customer to evade or circumvent any requirements of this Rule. A Member or Member Organization may extend or maintain (or arrange for the extension or maintenance of) credit to or for a Customer to meet the margin requirements of this Rule only if the credit or loan is secured as defined by Commission regulation 1.17(c)(3) and the proceeds are treated by the Member or Member Organization in accordance with Commission regulation 1.30.

(d) Type, Form, and Value of Margin Deposits:

(1) A Member or Member Organization must only accept the following assets, securities, or instruments as margin deposits, which must be and remain unencumbered by third party claims:

(i) U.S. dollars and foreign currencies,

(ii) U.S. government treasury and agency securities,

(iii) municipal securities,

(iv) readily marketable securities (which means securities traded on a "ready market" as defined by Securities and Exchange Commission rule 15c3-1(c)(11)),

(v) money market mutual funds that meet the requirements of Commission regulation 1.25 (other than securities issued by the Customer or an affiliate of the Customer), and/or

(vi) irrevocable letters of credit in a form, and issued by banks or trust companies, approved by the Clearing Corporation (other than letters of credit issued by the Customer or an affiliate of the Customer).

(2) Notwithstanding paragraph (1), the rules of the Clearing Corporation may limit acceptable margin deposits.

(3) If a Member or Member Organization accepts securities identified in this Rule as margin deposits, then the Member or Member Organization must value the securities at no greater than the current market value of the securities less any deductions specified by Securities and Exchange Commission rule 15c3-1.

(4) A Member or Member Organization must not consider any guarantee of a Customer Account when determining whether required margin in that account is satisfied.

(e) Margin Calls and Liquidation:

- (1) Once additional margin deposits are required pursuant to this Rule or a Rule of the Clearing Corporation, as applicable, a Member or Member Organization must call for the additional margin as promptly as possible and in any event not more than one business day after the event giving rise to the call. Once the Member or Member Organization calls for the additional margin, the Member or Member Organization must collect the full amount of the required additional margin from a Customer as promptly as possible and in any event within a reasonable time. In a margin call, a Member or Member Organization must require that a Customer deposit additional margin so that the Customer's account at least meets the minimum initial margin requirement (i) when the margin equity in the account initially falls below the minimum maintenance margin requirements and (ii) subsequently when the margin equity plus existing margin calls on the account are less than the minimum maintenance margin requirements.
- (2) After a margin call is made by a Member or Member Organization but before the Customer makes the required additional margin deposit, the Member or Member Organization may only accept an Order from the Customer to establish a new position if the Member or Member Organization reasonably believes that the Customer will meet the outstanding margin call within a reasonable time. If a margin call to a Customer is outstanding for an unreasonable time, a Member or Member Organization may only accept Orders from the Customer that will reduce the Customer's margin requirements.
- (3) After a margin call is made by a Member or Member Organization, if the Customer fails to deposit the required additional margin deposit within a reasonable time, the Member or Member Organization may, but is not required to, liquidate all or a portion of the Customer's positions to restore the Customer's account to a properly margined level. However, the inability of a Member or Member Organization to liquidate all or a portion of the Customer's positions before the account equity results in a debit or deficit balance does not affect any liability of the Customer to the Member or Member Organization.
- (4) A Member or Member Organization must make and retain a written record of the date, time, amount, and other relevant information for all margin calls made (whether made by telephone, in writing, or by other means) as well as margin calls reduced, satisfied, or relieved.
- (5) A Member or Member Organization that liquidates all or a portion of the Customer's positions pursuant to this Rule is not deemed to have extended credit or made a loan to the Customer in violation of this Rule.

(f) Release of Margin: A Member or Member Organization may only release free funds in connection with a Customer Account if after release the Customer Account has at least free funds at the initial margin requirement level, provided however that a Clearing Member may not release free funds except in compliance with the Rules of the Clearing Corporation.

[Rule E12. Submission of Orders

(a) Members, Member Organizations, and other Persons through Members and Member Organizations may submit Orders and Market Makers may submit Quotes to NFX XL during the pre-open period and until the end of the Trading Day, but NFX XL only matches Orders and Quotes during the Trading Day.

(b) A Member or Member Organization must ensure that each Order (including an Order submitted through an electronic or automated order routing system pursuant to Rule E19) is recorded and time-stamped immediately upon receipt, execution, and any modification or cancellation.

(c) Each Order entered into NFX XL shall include the following information:

- (1) Member ID;
- (2) Trader ID for the person submitting the Order;
- (3) Contract and Contract Month;
- (4) buy or sell;
- (5) price;
- (6) Order instruction from Rule E14 (if applicable);
- (7) quantity;
- (8) open or close position indicator as appropriate;
- (9) Customer Type Indicator (or "CTI" code) as specified in Rule E12(f);
- (10) Customer Account number, unless a Bunched Order submitted in compliance with Rule E13;
- (11) Clearing Account Number; and
- (12) Clearing Account Type.

(d) A Member or Member Organization shall retain all memoranda reflecting Orders for a Customer Account in accordance with Rule 201 and shall retain those memoranda for the period required in Rule 201. A Member or Member Organization receiving a Customer Order other than in the form of an electronic or written record must comply with the requirements of Commission regulation 1.35(a-1)(1).

(e) Until such time as the Exchange permits otherwise, direct access to NFX XL is limited to Member Organizations that are futures commission merchants or clearing members that are self-

clearing their trades. Such Member Organizations are not permitted to provide direct access to NFX XL to any third person.

(f) CTI code 1 shall be used for transactions initiated and executed by an individual Member for his own account, for an account he controls, or for an account in which he has ownership or financial interest. CTI code 2 shall be used for transactions executed for the proprietary account of an NFX Member Organization. CTI code 3 shall be used for transactions where an individual Member executes for the personal account of another individual Member, for an account the other individual Member controls or for an account in which the other individual Member has ownership or financial interest. CTI code 4 shall be used for any transaction not meeting the definition of CTI 1, 2 or 3. (These should be non-Member customer transactions.)]

[Rule E13. Bunched Orders

(a) For post-execution allocation of a Bunched Order, a Member or Member Organization acting as an Eligible Account Manager (as defined by Commission regulation 1.35(a-1)(5)(i)(A-D), need not provide, at the time of either Order entry or report of Order execution, specific Customer Account identifiers for accounts included in a Bunched Order, if the Member or Member Organization complies with the requirements of Commission regulation 1.35(a-1)(5)(i)-(iv), as applicable.

(b) A Member or Member Organization that executes Bunched Orders or carries accounts eligible for post-execution allocation of Bunched Orders must maintain records that, as applicable, identify each Bunched Order subject to post-execution allocation and the accounts to which Contracts executed for the Bunched Order were allocated, as required by Commission regulation 1.35(a-1)(5)(iv)(C).]

[Rule E14. Order Instructions

Types of Order instructions accepted by NFX XL are the following:

(a) **Cancel Leave Order**, which is an instruction to cancel a portion, but not all, of the quantity of a Limit Order and leave the remaining quantity for execution without changing the price or duration parameters of the Order then on the Order Book;

(b) **Cancel Order**, which is an instruction to cancel an Order;

(c) **Cancel Replace Order**, which is an instruction to cancel a Limit Order and replace it with a new Limit Order that has a different quantity, price, and/or instruction;

(d) **Day Order**, which is an instruction that a Limit Order, if not executed, expires at the end of the Trading Day for which it was entered. Unless otherwise specified, an Order for the purchase or sale of a Contract has a Day Order instruction;

(e) **Good 'Til Cancelled Order**, which is an instruction that a Limit Order to buy or sell remains in effect until it is either executed or cancelled; and

(f) **Immediate or Cancel Order**, which is an instruction to execute a Limit Order as soon as the Order is entered into NFX XL; any part of an Immediate or Cancel Order executed is reported immediately and any portion not immediately executed is cancelled.]

[Rule E15. Timely Order Entry

Unless a Customer instructs otherwise, a Member or Member Organization that receives an Order for the account of another Person shall submit the Order to NFX XL immediately through an Authorized Trader Contact, or as soon as practicable, and in the sequence received. Unless a Customer instructs otherwise, if the Member or Member Organization cannot enter Orders received immediately into NFX XL, then the Member or Member Organization must (a) make a written record in non-erasable form of the Orders received and (b) submit the Orders received into the NFX XL in the sequence received once able to do so.]

[Rule E16. Order Status, Change, or Cancellation

(a) All Orders submitted to NFX XL are firm and remain open until executed, changed, or cancelled. Except for Good 'Til Cancelled Orders, all open Orders in NFX XL automatically cancel at the close of each Trading Day.

(b) A Member or Member Organization may edit an Order's price, change its quantity, or change its Order instruction in accordance with Rule E14, once the Order Book holds the Order. If the volume is reduced for an Order held in the Order Book, then the Order's position in the time-priority queue remains unchanged. Any other change to an Order is treated as a new Order for purposes of the time-priority queue. To increase the quantity of an Order, the Member or Member Organization may either submit to NFX XL a new Order for the incremental quantity increase or may enter a Cancel Replace Order for the greater amount.]

[Rule E17. Quote Status, Change, or Cancellation and Submission

(a) Only Market Makers can submit Quotes and all Quotes submitted to NFX XL are firm and remain open until executed, changed, or cancelled. At the close of each Trading Day all Quotes automatically cancel.

(b) A Market Maker may change or cancel a Quote at any time prior to a match with another Quote or Order through the NFX XL.

(c) Each Quote entered into NFX XL shall include the following information:

- (1) Member ID;
- (2) Contract and Contract Month;
- (3) buy or sell;
- (4) price; and



(5) quantity.

(d) A Member or Member Organization submitting Quotes must comply with the requirements of Commission Rule 1.35(a).]

[Rule E18. Order and Quote Matching

(a) Except as described in Rule E18(d), NFX XL matches Orders and Quotes in price priority with the highest bid or lowest offer for a Contract having priority over all other Orders and Quotes for the same Contract. When NFX XL has multiple Orders or Quotes for a contract at the highest bid or lowest offer, then

- (1) Orders for Clearing Account Type "C" receive priority over Orders for any other Clearing Account Type; and among Orders for Clearing Account Type "C", the first such Order in time at a price has priority over all other such Orders at the same price; and
- (2) Orders for Clearing Account Types "F" and "M" and Quotes at the same price participate in proportion to the Order or Quote quantity relative to the total quantity of all such Orders and Quotes at the same price.

(b) When NFX XL receives a Quote that locks (i.e., the highest bid equals the lowest offer) or crosses (i.e., the highest bid exceeds the lowest offer) the NFX XL Best Bid and Offer, NFX XL will first disseminate a new NFX XL Best Bid and Offer at either the locked price or the resting price crossed by the Quote, a counting period of one second will begin during which Market Makers whose quotations are locked or crossed may eliminate the locked or crossed market. If at the end of the one second counting period the quote remains locked or crossed, the locked or crossed quotations will be executed. Notwithstanding the counting period, Market Makers shall be obligated to execute orders at their disseminated quotation. The quote that is locked or crossed may be executed by an order during the one second counting period.

(c) When NFX XL receives an Order that locks or crosses the NFX XL Best Bid and Offer, NFX XL will first execute the Order at either the locked price or the resting price crossed by the Order, then calculate and disseminate a new NFX Best Bid and Offer.

(d) An electronic auction occurs on NFX XL when two or more Orders or Quotes for a Contract are submitted, modified, or cancelled virtually simultaneously that would lock or cross market. During an electronic auction, NFX XL determines the price at which the most Contracts will trade based on all Orders in the Order Book and Quotes in NFX XL, with each Order or Quote filled receiving its stated price or better. During an electronic auction, a trade may occur outside the last disseminated NFX Best Bid and Offer.

[Rule E19. Automated Order-Routing Systems

(a) If any Member Organization provides any Customer, other Members or Member Organizations, or any other Person access to an electronic or automated order-routing system that enables the submitting of Orders to the NFX XL through the Member Organization's system, then that Member Organization must:

- (1) adopt and enforce written procedures reasonably designed to protect the reliability and confidentiality of Customer Orders and Customer Account information at all points during the order-routing process, and assign responsibility for overseeing the process to individuals who understand how the order-routing process works and who are capable of evaluating whether the process complies with relevant procedures;
- (2) adopt and enforce written procedures reasonably designed to maintain adequate personnel and facilities for the timely and efficient delivery of Customer Orders and reporting of executions, and to timely handle Customer complaints about Order delivery and reporting;
- (3) adopt and enforce written procedures reasonably designed to prevent the order-routing system from being used to create undue financial risks for the Member or the Member Organization or its other Customers, including the Member Organization's use of pre-trade risk limits or controls;
- (4) reasonably ensure that the order-routing system has adequate operational capacity and that the operational capacity is consistent with the representations made by the Member or Member Organization to Customers, other Members or Member Organizations, and other Persons; and
- (5) ensure that the order-routing system complies with all applicable Rules of the Exchange, provisions of the Act, Commission regulations and registration requirements, and rules of the National Futures Association, including, without limitation, maintenance of an audit trail of all Order information in compliance with the requirements of Commission regulation 1.35.

(b) A Member Organization is fully responsible for all Orders submitted directly to NFX XL through its electronic or automated order-routing system as if the Member Organization had placed each Order itself.]

[Rule E20. Average Price Transactions

A Member or Member Organization that is a registered futures commission merchant may confirm for a Customer Account an average price when multiple execution prices are received on an Order or series of Orders if all the following requirements are met:

- (a) The Customer has requested average price reporting and has received appropriate disclosure of the method used to calculate the average price.
- (b) Each Order is, or series of Orders are, for the same Customer Account or group of Customer Accounts.
- (c) Each Order is, or series of Orders are, for the same Contract, Contract Month, market direction (i.e., purchase or sale), and Order instructions pursuant to Rule E14.
- (d) Each individual trade is submitted to, and cleared by, the Clearing Corporation at the price executed.

(e) The Member or Member Organization calculates and confirms the weighted average mathematical price by (1) multiplying the number of contracts purchased or sold at each execution price by that price; (2) adding the results together; and (3) dividing the sum by the total number of contracts. For a series of Orders, the Member or Member Organization may compute the average price based on each Order in the series. The Member or Member Organization may confirm to the Customer either the actual average price or an average price rounded up for a buy Order, or rounded down for a sell Order, to the nearest price increment.

(f) The applicable confirmation and monthly account statement provided to each relevant Customer indicates that the price represents an average price.

(g) The Member or Member Organization does not average its proprietary trades with Customer trades that are subject to average price calculations.

(h) The Member or Member Organization creates and maintains records (in accordance to Commission regulation 1.31) to support its average price calculations pursuant to this Rule and the allocations into Customer Accounts and makes those records available for inspection by the relevant Customers upon request.]

#### [Rule E21. Trade Confirmations and Objections

The Exchange will promptly confirm each trade resulting from the electronic matching of bids and offers through NFX XL. If appropriate, upon receipt of a trade confirmation, the relevant Member or Member Organization must promptly object in writing to the Exchange; and under no circumstances will the Member or Member Organization object to any trade later than one hour after the close of trading for the relevant Contract on the applicable Trading Day.]

#### [Rule E22. Pre-Negotiated Business and Cross Transactions

(a) Except as otherwise provided for in Rule E23, a Member or Member Organization may only execute Cross Transactions or seek to match an Order through pre-negotiation with itself or with its other Customers in accordance with this Rule.

(b) When pre-negotiating and executing a Cross Transaction for a Customer, a Member or Member Organization must (1) obtain a prior written consent from the Customer which is either a generic or transaction specific consent and (2) act with due skill, care, and diligence, and ensure that the Customer's interests are not prejudiced.

(c) When submitting a Cross Transaction to the NFX XL through this Rule, if only one side of the transaction is a Customer Order, then the Member or Member Organization must submit the Customer Order first to NFX XL.

(d) A Member or Member Organization may enter Orders matched through pre-negotiation immediately into the NFX XL if, at the time of entry, a bid and an offer exists for the relevant Contract Month in the NFX XL. Because both Orders submitted pursuant to this Rule are exposed to the market, NFX XL may not necessarily match the two Orders.

(e) If a bid and an offer for a Contract Month does not exist in the NFX XL, then before submitting Orders in the relevant Contract Month that have been pre-negotiated, a Member or Member Organization must (1) submit one Order (in compliance with Rule E22(c), if applicable), (2) wait four seconds, and (3) submit the second Order for the relevant Contract Month. Because both Orders submitted pursuant to this Rule are exposed to the market, NFX XL may not necessarily match the two Orders.

(f) A Person must not enter a bid and/or an offer into NFX XL in an attempt to circumvent the requirements of Rule E22.]

[Rule E23. Block Trades

(a) A Member or Member Organization may only negotiate and execute Block Trades in Contracts on the Exchange but outside the NFX XL if all the requirements are met related to (1) hours of trading (Rule E23(b)), (2) minimum quantity (Rule E23(c)), (3) eligible parties (Rule E23(d)), (4) fair pricing (Rule E23(e)), and (5) timely recording and submission of information (Rule E23(f)).

(b) Subject to Rule E32 and Rule E33, a Block Trade may be negotiated and reported to the Exchange at any time during the trading hours on a Trading Day for the applicable Contract except for the last 15 minutes before the close of trading.

(c) A Block Trade may only be executed in a Contract designated as eligible for block trading in the relevant Contract specifications and must meet or exceed the minimum quantity threshold set forth in the Contract specifications. For purposes of meeting the minimum quantity thresholds, a Member or Member Organization must not aggregate separate Customer Orders, except that an adviser (as defined in Rule E23(h)) with discretion over multiple Customer Accounts may aggregate multiple Customer Orders to meet the minimum quantity threshold for a Block Trade.

(d) Each party to a Block Trade must qualify as an "Eligible Contract Participant" (as defined in Section 1a(12) of the Act). An adviser (as defined in Rule E23(h)) with discretion over multiple Customer Accounts may enter into a Block Trade on behalf of its Customers but only if each of those Customers is an Eligible Contract Participant. For Block Trades negotiated or executed on behalf of a Customer Account, the Member or Member Organization must obtain from the Customer prior written approval to execute Block Trades, which either provides general or Order specific consent.

(e) When negotiating or executing a Block Trade, a Member or Member Organization must ensure that the price quoted represents a fair price for the Block Trade (i.e., the price that the Member or Member Organization considers the best available for a transaction of that size and type). When determining a fair price for a Block Trade, a Member or Member Organization should consider the prevailing price and volume currently available through the NFX XL, the prices and sizes of transactions in other relevant markets at the relevant time, and general market conditions.

(f) In addition to the requirements of Rule E12(b) and Rule E12(c), for a Block Trade each Member or Member Organization shall record on an Order ticket the identity of the individual

arranging the Block Trade and time stamp the Order when negotiation ends. Unless a different time period is designated by the Exchange and posted on the Exchange's website:

- (1) for Block Trades negotiated during the trading hours of a Trading Day promptly but no later than 15 minutes after negotiations end for the Block Trade (i) the Member or Member Organization on the selling side of the Block Trade must obtain from the Exchange a trade authorization identification number and provide that trade authorization identification number to the Member or Member Organization on the buying side of the Block Trade and (ii) each Member or Member Organization must submit to the Exchange a completed Block Trade request form.
  - (2) for Block Trades negotiated at times other than the trading hours of a Trading Day, promptly but no later than 45 minutes before the next open of trading on a Trading Day (i) the Member or Member Organization on the selling side of the Block Trade must obtain from the Exchange a trade authorization identification number and provide that trade authorization identification number to the Member or Member Organization on the buying side of the Block Trade and (ii) each Member or Member Organization must submit to the Exchange a completed Block Trade request form.
- (g) Upon receipt of the applicable Block Trading request forms, the Exchange will review the information received for the proposed Block Trade. If the market for the relevant Contract is open when the Exchange receives the Block Trade request forms and the Block Trade appears to satisfy the requirements of Rule E23, then the Exchange will immediately disseminate information concerning the Block Trade through the NFX XL. If the market for the relevant Contract is closed when the Exchange receives the Block Trade request forms and the Block Trade appears to satisfy the requirements of Rule E23, then the Exchange will disseminate information concerning the Block Trade through the NFX XL prior to the market open on the next Trading Day for the relevant Contract. The Exchange will disseminate the following information concerning Block Trades through NFX XL: the Contract with a designation denoting that the transaction was a Block Trade, the Contract Month, price, and quantity. The Exchange will not consider Block Trades in calculating either the relevant Daily Settlement Prices or the range of daily prices and the Exchange will report Block Trades separately for purposes of calculating trading volume.
- (h) For purposes of Rules E23(c) and Rule E23(d) an adviser means any of the following:
- (1) a commodity trading adviser registered under the Act (or exempt from registration),
  - (2) an investment adviser registered as such with the Securities and Exchange Commission (or exempt from registration under the Investment Advisers Act of 1940) that is exempt from regulation under the Act and Commission regulations thereunder, or
  - (3) any Person authorized to perform functions similar or equivalent to those of a commodity trading adviser in any jurisdiction outside the United States that has total assets under management exceeding \$25 million.]

[Rule E24. Price Improvement

(a) A Member or Member Organization that obtains a better price executing a Customer Order must offer the entire price improvement to the Customer, subject to Rule E24(b).

(b) A Member or Member Organization that executes a Customer Order for the wrong Contract Month or price, but otherwise executes the trade consistent with the Customer's instructions (1) may offset any loss suffered from the erroneous trade against any improvement achieved for the Customer on a properly executed Order and (2) must offer any net improvement received to the Customer.

(c) If a Member or Member Organization fails to timely submit a Customer Order, then upon discovery of the error the Member or Member Organization (1) may promptly seek to execute the Customer Order at the best obtainable price without obtaining new instructions from the Customer, but (2) must report any resulting trade to the Customer at the price actually executed and provide any price benefit to the Customer. If a Member or Member Organization fails to timely submit a Customer Order and does not upon discovery promptly seek to and execute the Customer Order, then the Member or Member Organization must (1) notify the Exchange and Customer of the error and (2) provide the Customer with a monetary adjustment equivalent to the price at which the Customer Order should have been executed.

(d) If provisions of this Rule E24 conflicts with any instructions of the Customer related to the Customer Order, then the instructions of the Customer prevail.]

[Rule E25. Customer Order Error Correction Procedures

(a) Upon the request of a Member or Member Organization that failed to execute or made an error in executing or reporting a Customer Order ("Erring Member"), the Exchange may, in its sole discretion, permit the correction of the error to protect the interest of the Customer, as provided for in this Rule.

(b) To use the provisions of this Rule to correct an error in a Customer Order, the Erring Member must provide the Exchange with (1) a completed and signed error correction request form, (2) evidence that the Order reported to the Customer could have been reasonably executed on NFX XL, (3) the relevant completed Order ticket or similar record, and (4) any other evidence that the Exchange reasonably requests.

(c) If an Erring Member discovers an error in a transaction for a Customer in a Contract when the market is open, then the Erring Member may request the use of the provisions of this Rule if:

(1) the price reported to the Customer was worse than the actual transaction execution price, but the Customer declined the price improvement in whole or part,

(2) the price reported to the Customer was better than the actual transaction execution price, or

(3) the Customer Order was executed in the wrong Contract, Contract Month, or direction (i.e., a buy rather than a sell or vice versa) and if the Erring Member executed the original

Customer Order at the current market price the Customer would receive a worse price than the price reported to the Customer.

(d) An Erring Member that discovers an error after the market has closed for the relevant Contract must comply with the price improvement provisions of Rule E24(b) except that the Daily Settlement Price for the Contract serves as the reference price to determine whether the price reported to the Customer was better or worse than the current market price.

(e) If the Erring Member traded in the wrong Contract, Contract Month, or direction (i.e., a buy rather than a sell or vice versa), then the Erring Member need only offer the net improvement, if any, to the Customer as described in Rule E24(b).

(f) If the Erring Member has not executed a trade or executed a trade in the wrong Contract, Contract Month, or direction (i.e., a buy rather than a sell or vice versa) and the current market price for the Order at the time the error is discovered is better than the price erroneously reported to the Customer, then the Erring Member must execute the Customer Order on NFX XL and may not use the provisions of this Rule.]

[Rule E26. Transaction Nullifications or Modifications

(a) The Exchange, in its sole discretion, may either nullify a transaction or adjust the execution price of a transaction in a Contract that (1) has taken place outside the nonreviewable range as defined in the relevant Contract specifications and (2) which the Exchange determines has taken place at an unrepresentative price or when necessary to mitigate market disrupting events caused by malfunctions in its electronic trading platform or errors in orders submitted by Members and Member Organizations.

(b) When determining whether to nullify a transaction the Exchange may consider one or more of the following factors:

- (1) the opening price levels of the Contract on the NFX XL;
- (2) the price movements in other Contract Months of the same Contract;
- (3) the current market conditions, including levels of activity and volatility;
- (4) the last trade price for the Contract;
- (5) the speed of execution;
- (6) the information regarding price movements in related markets, the release of economic data, or other relevant news immediately before or during the trading session;
- (7) an obvious error;
- (8) the proximity of the trade to the close of the market; and

(9) the impact of the error transactions on other transactions.

(c) When nullifying a transaction pursuant to Rule E26(a), the Exchange will act as soon as practicable and will promptly notify the Authorized Trader Contacts for the Member Organizations submitting each side of the transaction of any nullification pursuant to this Rule by telephone or any other means that the Exchange deems appropriate.

(d) A Member or Member Organization that executes a transaction in a Contract in error, at an unrepresentative price which is outside the non-reviewable range specified in the relevant Contract specifications, may, within 10 minutes of the Order execution, contact the Exchange to seek to modify or nullify the transaction pursuant to Rule E26(a).

(e) Mutual Agreement. The determination as to whether a trade was automatically executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction within ten (10) minutes of the order execution. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree. In the absence of mutual agreement by the parties, a particular trade may only be nullified or adjusted when the transaction results from an obvious error as provided in this Rule.

(f) The Exchange may, within its sole discretion, nullify or modify a transaction in a Contract if an error occurs as a result of a verifiable disruption or malfunction of NFX XL or its related communication or other systems.

(g) The Exchange will notify all Authorized Trader Contacts as soon as practicable (through means deemed appropriate by the Exchange) of (1) trades that the Exchange is investigating pursuant to this Rule and (2) trades that the Exchange has modified or nullified pursuant to this Rule.

(h) The Exchange's nullification or modification of transactions in Contracts pursuant to this Rule is final.]

#### [Rule E27. Establishment of Settlement Prices

The Exchange shall establish Daily and Final Settlement Prices at the times and using the methodology established by the Exchange as described in the Contract specifications. Such Daily Settlement Prices are subject to subsequent review and revision by the Clearing Corporation. The time set for determining the Daily Settlement Price or the Final Settlement Price need not coincide with the end of a Trading Day.]

#### [Rule E28. Position Limits and Position Accountability

(a) Unless otherwise provided by this Rule E28, no Person shall own or control, separately or in combination, a net long position or a net short position in a Contract in excess of any position limit established by Commission regulations or the Exchange and set forth in the Contract specifications for that Contract. No Member or Member Organization shall effect a transaction in a Contract that the Member or Member Organization knows or has reason to believe would result in the Member, the Member Organization, a Customer, or any other Person holding or



controlling, separately or in combination, a net long position or net short position in excess of a position limit established by Commission regulations or the Exchange.

(b) To determine whether a Person is complying with any position limit or accountability reporting requirement established by the Exchange or Commission regulations (1) all positions in accounts for which a Person, by power of attorney or otherwise, directly or indirectly holds positions or controls trading shall be aggregated and (2) positions held by two or more Persons acting pursuant to an expressed or implied agreement or understanding shall be aggregated as if the positions were held by a single Person.

(c) The position limits in this Rule do not apply to bona fide hedging positions meeting the requirements of Commission regulation 1.3(z)(1). However, the Exchange may limit bona fide hedging positions or any other positions that have been exempted pursuant to Commission regulation 150.5(e) if the Exchange determines that the positions are not in accordance with sound commercial practices or exceed an amount which may be established and liquidated in an orderly manner.

(d) To request an exemption from Rules E28(a) through and including E28(c), a Person must apply to the Exchange pursuant to this Rule E29(d) by providing the information requested and following the procedures established by the Exchange. When considering whether to grant an exemption, the Exchange will take into account the factors contained in Commission regulation 150.5(d)(1).

(e) (i) The Exchange may, at any time, require a person who owns or controls positions in contracts traded on or cleared by the Exchange and which are subject to position accountability rules to provide information relating to such person's position. Upon request by the Exchange, such person shall provide information relating to the positions owned or controlled by that person including, but not limited to, the nature and size of the position, the trading strategy employed with respect to the position, and hedging information, if applicable. If the person from whom such information is requested fails to provide the information as directed, the Exchange may order the reduction of such position.

(ii) An order to reduce an open position may also be issued by the Chief Regulatory Officer or his designee, if he determines in his sole discretion, that such action is necessary to maintain an orderly market.

(iii) A clearing member that carries positions for another person shall be responsible for taking reasonable and diligent actions to effect the timely compliance with any order issued pursuant to this rule upon notification of such order by the Exchange. All positions must be initiated and liquidated in an orderly manner.

(iv) A person who holds or controls aggregate positions in excess of specified position accountability levels pursuant to an approved exemption shall be deemed to have consented, when so ordered by the Exchange, not to further increase the positions, to comply with any prospective limit which exceeds the size of the position owned or controlled, or to reduce any open position which exceeds position accountability or levels.

[Rule E29. Reportable Positions

Each Member or Member Organization required to file any report, statement, form, or other information with the Commission pursuant to Commission regulations Part 15, 17, or 18 concerning any Contract(s) must simultaneously file a copy thereof with the Exchange. Each Member or Member Organization must submit the report, statement, form, or other information to the Exchange in the form and manner designated by the Exchange.

•• Interpretations and Policies: -----

.01 Large Trader Reports. Each Member or Member Organization shall submit to the Exchange a daily report of all Large Trader Reporting Levels as set forth by the Exchange. Positions at or above the reportable level in a particular expiration month of a futures contract trigger reportable status. For a person in reportable status in a particular contract, all positions, regardless of size, in any futures contract month must be reported.

Additionally, the daily Large Trader Reporting submission to the Exchange must include for each reportable account the EFRP volume bought and sold in the reportable instrument, by contract month.

Failure by an omnibus account or foreign broker to submit required information may result in a disciplinary proceeding and result in limitations, conditions or denial of access of such omnibus account or foreign broker to any Exchange market. Notwithstanding the above, clearing members carrying such accounts remain responsible for obtaining and providing to the Exchange information regarding the ownership and control of positions in circumstances where an omnibus account or foreign broker has failed to provide the information to the Exchange.

All large trader reports shall be submitted in a form acceptable to the Exchange, which may require that more than one large trader report be submitted daily.

Clearing members, omnibus accounts and foreign brokers must provide the Exchange with the required CFTC Form 102 ("Identification of Special Accounts") accurately identifying the owners, controllers, controlled accounts and any additional information required for each reportable account within three Business Days of the first day that the account in question becomes reportable. Notwithstanding the three Business Day requirement, on the first day that an account becomes reportable, clearing members, omnibus accounts and foreign brokers must, at the direction of the Exchange, submit the following information: account type, reportable account number and names and addresses of the owners and controllers of the account.

Any material changes to the information previously provided to the Exchange will require the submission of a revised form within three Business Days of such changes becoming effective. Additionally, in the absence of any material changes, the Exchange may require the submission of a new form on a biennial basis for the maintenance of accurate records.]

[Rule E30. Transfers of Positions

(a) A Clearing Member may transfer a position on its books to:

- (1) correct errors in an existing Contract, provided that the original trade documentation confirms the error;
- (2) transfer an existing Contract from one account to another within the same Member or Member Organization where no change in ownership is involved;
- (3) transfer an existing Contract from one Clearing Member to another Clearing Member where no change in ownership occurs; or
- (4) transfer an existing Contract through operation of law from death or bankruptcy.

(b) Upon written request, the Exchange may, in its sole discretion, allow the transfer of a position as a result of a merger, asset purchase, consolidation, or similar non-recurring transaction for an association, limited liability company, partnership, trust, corporation, or other entity.

(c) Clearing Members must transfer positions pursuant to this Rule at the same prices that appear on the books of the transferring Clearing Member, and the transfer must indicate the date when the original trade was made. Each Clearing Member that is a party to a transfer of positions must make and retain records stating the nature of the transaction, the name of the counter-party Clearing Member, and any other information required by the Clearing Corporation.]

[Rule E31. Daily Trading Information

Each Member or Member Organization must file with the Exchange a report or reports concerning the Proprietary Account, Customer Accounts, or portions thereof of the Member or Member Organization as the Exchange may require to facilitate the Exchange's compliance with Commission regulation Part 16 or which the Exchange may otherwise deem necessary or appropriate.]

[Rule E32. Trading Restrictions and Suspensions

(a) The President or his delegate is authorized at any time to restrict or suspend trading in any Contract if he believes that the restriction or suspension is necessary or appropriate to preserve market integrity, maintain fair and orderly trading, or otherwise further the public interest or for the protection of investors.

(b) Any trading restrictions or suspensions imposed pursuant to Rule E32(a) may include without limitation:

- (1) a change in the closing time and/or the time for determining the Daily Settlement Prices for that Trading Day; and/or
- (2) a setting of Daily Settlement Prices by the President or his delegate based on the following:
  - (i) the mid-point of PBOT Best Bid and Offer for the Contract Month immediately before the restriction or suspension;
  - (ii) if the mid-point of the PBOT Best Bid and Offer appears unrepresentative of fair market value, then the PBOT Best Bid and Offer will be adjusted by the last representative basis differential; or
  - (iii) any other methodology deemed appropriate by the President or his delegate under the circumstances.

(c) The President or his delegate may lift a trading restriction or suspension imposed by this Rule if the President or his delegate believes that trading can resume on a fair and orderly basis and the public interest is served.

(d) No trading restriction or suspension imposed under this Rule shall continue for more than two business days (or as soon thereafter as a quorum of the Board can be assembled) unless the Board approves of the continuation of the restriction or suspension.

(e) Any trading restrictions or suspensions imposed under this Rule will be posted on the Exchange's website. The Exchange will document its decision-making process and the reasons for using its authority under this Rule, and consult with Commission staff as necessary and appropriate.

#### [Rule E33. Regulatory Trading Halts

The Exchange shall halt trading of broad-based index futures Contracts at any time that circuit breaker procedures are in place to halt or suspend trading in all equity securities trading on a national securities exchange or national securities association. After the triggering of circuit breaker procedures, the Exchange will resume trading of broad-based index futures Contracts only after trading has resumed in equity securities traded on a national securities exchange or national securities association.

#### [Rule E34. Restrictions on Message Traffic

At any time, the Exchange may, in its sole discretion, restrict the electronic transmissions or submissions to the NFX XL by Members or Member Organizations of Quotes, Orders, modifications or cancellations of Quotes or Orders, trade reports, and other messages or vice

versa ("Message Traffic") to safeguard the operations or integrity of NFX XL or to preserve market integrity, fair and orderly trading, or the public interest or for the protection of investors.]

[Rule E35. Proprietary Nature of Market Data

All Members, Member Organizations, Authorized Traders Contacts, and all employees, agents, vendors, and other Persons affiliated with the foregoing:

(a) understand and acknowledge that the Exchange has a proprietary interest in Market Data, the PBOT Best Bid and Offer, and all related trade data and settlement prices relating to all Contracts traded through NFX XL and the Exchange;

(b) agree not to take any action contrary or detrimental to the Exchange's interest and to take reasonable measures to ensure that no such action is taken by any Person affiliated with them.]

[Rule E36. Notices to the Exchange, Members, and Member Organizations.

(a) Members and Member Organizations shall provide any required notice to the Exchange in the manner set forth in these Rules, or in other Exchange regulatory or operational orders or procedures, as applicable.

(b) Except as may be otherwise expressly provided in the Rules, the Exchange may provide any notice to a Member, Member Organization, or Designated Person by:

- (1) handing a copy to the Member, Member Organization, or Designated Person, or
- (2) mailing a copy to the Member, Member Organization, or Designated Person to the address supplied to the Exchange by the Member, Member Organization, or Designated Person for notice, or
- (3) transmitting electronically a copy to the Member, Member Organization, or Designated Person (including, through a facsimile or electronic-mail transmission) to the address supplied to the Exchange by the Member, Member Organization, or Designated Person for notice, or
- (4) posting the notice on the Exchange's website.]

[Rule E37. Limitation of Liability For NFX XL

(a) Except for any party found to have engaged in willful or wanton misconduct, neither the Exchange (which for purposes of this Rule E37 includes its parents, subsidiaries and affiliates), its Members or Clearing Members, nor any of its or their respective officers, directors, employees, or agents shall be liable to any Person (including, but not limited to, a Customer) for any losses, damages, costs or expenses (including, but not limited to, loss of profits, loss of use, direct, indirect, incidental or consequential damages) arising from (1) any failure or malfunction of NFX XL or the Clearing Corporation or any Exchange services or facilities used to support NFX XL including but not limited to any user interface or any inability to enter or cancel Orders

(the "NFX XL Complex"), or (2) 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 NFX XL Complex. The foregoing shall apply regardless of whether a claim arises in contract, tort, negligence, strict liability or otherwise. The foregoing shall not limit the liability of any Member, Member Organization, Clearing Member, or any of their respective officers, directors or employees for any act, incident, or occurrence within their control. For purposes of this Rule E37, the "NFX XL Complex" shall include any exchange facilities or services used to support block trades and exchange of futures for related positions pursuant to Rules E23 and E38.

(b) No express or implied warranties or representations regarding the NFX XL Complex are provided by the Exchange, including, but not limited to, warranties of merchantability and warranties of fitness for a particular purpose or use.

(c) Any dispute arising from the use of NFX XL or the Clearing Corporation in which the Exchange or any of its or their respective officers, directors, employees or agents is a party shall be construed and enforced in accordance with the laws of the State of Pennsylvania, without reference to that State's choice of law principles. Any actions, suits, or proceedings against any of the above must be brought within two years from the time that a cause of action has accrued, and any party bringing such action consents to the exclusive jurisdiction of the U.S. District Court for the Eastern District of Pennsylvania and the Court of Common Pleas of Philadelphia County, Pennsylvania, and waives any objection to venue and any right to trial by jury.

(d) This provision shall in no way create a cause of action and shall not authorize an action that would otherwise be prohibited by the Rules of the Exchange.]

#### [Rule E38. Exchange for Related Positions

The following transactions shall be permitted by arrangement between parties in accordance with the requirements of this rule:

Exchange for Physical ("EFP") - A privately negotiated and simultaneous exchange of an Exchange futures position for a corresponding cash position.

Exchange for Risk ("EFR") - A privately negotiated and simultaneous exchange of an Exchange futures position for a corresponding OTC swap or other OTC instrument.

Exchange of Options for Options ("EOO") - A privately negotiated and simultaneous exchange of an Exchange option position for a corresponding OTC option position or other OTC instrument with similar characteristics.

For purposes of this rule, an EFP, EFR or EOO shall be referred to as an Exchange for Related Position ("EFRP"). All contracts listed on the Exchange shall be eligible for EFRP transactions.

(a) Nature of an EFRP

An EFRP consists of two discrete but related simultaneous transactions. One party to the EFRP must be the buyer of (or the holder of the long market exposure associated with) the related position and the seller of the corresponding Exchange contract. The other party to the EFRP must be the seller of (or the holder of the short market exposure associated with) the related position and the buyer of the corresponding Exchange contract.

However, a member firm may facilitate, as principal, the related position on behalf of a customer, provided that the member firm can demonstrate that the related position was passed through to the customer who received the Exchange contract position as part of the EFRP.

(b) Related Positions

The related position (cash, OTC swap, OTC option, or other OTC derivative) must involve the commodity underlying the Exchange contract, or must be a derivative, by-product, or related product of such commodity that has a reasonable degree of price correlation to the commodity underlying the Exchange contract.

(c) Quantity

The quantity covered by the related position must be approximately equivalent to the quantity covered by the Exchange contracts.

(d) Prices and Price Increments

An EFRP transaction may be entered into in accordance with the applicable price increments or option premium increments set forth in the rules governing the pertinent Exchange contracts, at such prices as are mutually agreed upon by the two parties to the transaction.

(e) Date and Time of Transaction

The date and the time of execution of all EFP transactions must be denoted on the record of the transaction.

(f) Termination of Trading in Exchange Contracts

EFRP transactions may be permitted after termination of trading in expiring Exchange contracts, as prescribed in the applicable rules governing such Exchange contracts. Such transactions shall not establish new positions.

(g) Identification and Submission to the Clearing House

Each EFRP transaction shall be designated as such and shall be cleared through the Clearinghouse. Each such transaction shall be submitted to the Exchange within the time period and in the manner specified by the Exchange. Exchange members are responsible for exercising due diligence as to the bona fide nature of EFRP transactions submitted on behalf of customers.

(h) Documentation

Parties to any EFRP transaction must maintain all documents relevant to the Exchange contract and the cash, OTC swap, OTC option, or other OTC derivatives, including all documents customarily generated in accordance with relevant market practices and any documents reflecting payment and transfer of title. Any such documents must be provided to the Exchange upon request, and it shall be the responsibility of the carrying clearing member firm to provide such requested documentation on a timely basis.

(i) Account Requirements

The accounts involved in the execution of an EFRP transaction must be (i) independently controlled accounts with different beneficial ownership; or (ii) independently controlled accounts of separate legal entities with the same beneficial ownership, provided that the account controllers operate in separate business units; or (iii) independently controlled accounts within the same legal entity, provided that the account controllers operate in separate business units; or (iv) commonly controlled accounts of separate legal entities, provided that the separate legal entities have different beneficial ownership.

(j) However, on or after the first day on which delivery notices can be tendered in a physically delivered Exchange futures contract, an EFRP transaction may not be executed for the purpose of offsetting concurrent long and short positions in the expiring Exchange futures contract when the accounts involved in such transaction are owned by the same legal entity and when the date of the Exchange futures position being offset is not the same as the date of the offsetting transaction.]

[Rule E39. Risk Controls

(a) The Exchange shall not accept orders to buy into its trading system with a limit price more than 10% above the current exchange best offer of the relevant product. The Exchange shall not accept orders to sell into its trading system with a limit price less than 10% below the current exchange best bid of the relevant product.

(b) The Exchange shall not accept orders into the system that are greater than 1,000 contracts.

(c) Orders that are outside the parameters set forth in this rule will be rejected.]

**[Rules F-1-F37 Reserved]**

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## NASDAQ OMX FUTURES EXCHANGE, INC. (“NFX”) FEE SCHEDULE

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II. [Membership-  
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### PREFACE

For purposes of assessing fees, the following references should serve as guidance.

The term “**Customer**” applies to any transaction that is identified by an an [member or member organization] NFX Futures Participant with a Customer Type Indicator (“CTI”) code 4.

The term “**Market Maker**” means an an [member or member organization] Futures Participant, approved by the Exchange to undertake rights and obligations to facilitate an orderly and liquid market, as a Market Maker, and quote continuous two-sided markets for its own account pursuant to Chapter IV, Section 10 [Rule E10]. The term “Market Maker” applies to any transaction which occurs in an account assigned by the Exchange for the purpose of transacting orders as a Market Maker.

The term “**Firm**” applies to any transaction that is identified by an an [member or member organization] NFX Futures Participant with a CTI code of 1, 2 or 3 and not in an account designated as market maker or liquidity provider.

#### Billing Disputes:

All billing disputes must be submitted to the exchange in writing and must be accompanied by supporting documentation. All disputes must be submitted no later than sixty (60) days after receipt of a billing invoice.

## **Section I – Transaction Charges**

[A. World Currency Futures Contract Transaction Charges: ]

[a. Customer: \$0.40 per contract side]

[b. Firm: \$0.40 per contract side ]

[c. Market Marker: \$0.00 per contract side ]

[B.]XAU/USD Spot Gold Futures Transaction Charges:

a. Customer: \$0.18 per contract side

b. Firm: \$0.18 per contract side

c. Market Marker: \$0.18 per contract side

## **Section II – [Membership-Related]Permit Fee[s]**

[A. **Application and Seat Transfer Fees:**]

[a. Application Fee: \$350.00 ]

[b. Seat Transfer Fee: \$250.00 ]

[B. **Membership Fee:**]

\$100 per annum to be effective on the first of July each year

## **Section III – Regulatory Fee**

[C. **Regulatory Fee** ]

\$175 per month\*

\* This Regulatory Fee would be waived for NFX Participants [members] who incur a minimum of \$175 in transaction fees in a billing month. Market Makers are exempt from the Regulatory Fee.