

RULE SELF-CERTIFICATION

April 20, 2012

Office of the Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st St., N.W.
Washington, D.C. 20581

**CONFIDENTIAL TREATMENT
REQUESTED**

Re: International Derivatives Clearinghouse, LLC
Reference File: IDCH-2012-02

Ladies and Gentlemen:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (the "Act") and Section 40.6 of the regulations promulgated thereunder (the "CFTC Rules"), International Derivatives Clearinghouse, LLC ("IDCH" or the "Clearinghouse"), a derivatives clearing organization registered under the Act, hereby submits this self-certification in connection with the following:

1. To amend the IDCH rules as follows:

1. Rule 101 to update the definition of "Holiday" and update other definitions to remove all language referring to Exchange Contracts, Exchange Clearing Members and related definitions;

2. Rules 301, 302, 304, 305, 307, 309 and 312 to remove references to Exchange Contracts, Exchange Clearing Members and related definitions, which results in the establishment of one class of Clearing Member;

3. Rule 305 to clarify that a Clearing Member shall cause its representatives to execute required membership agreements and will maintain physical security of equipment located on its premises to prevent improper use or access to the Clearinghouse System;

4. Rule 306 to prohibit a Clearing Member or its representatives from knowingly entering into transactions that result in money passing whereby a Clearing Member or its Customer establishes a pattern of offsets with the Clearing Member or other Customers for a profit;

5. Rule 309(c) to clarify that the Clearing Membership Committee may prescribe additional "risk-based" capital requirements for Clearing Members;

6. Chapter 4 to remove "Clearing of Exchange Contracts";

7. the "Clearing of OTC Contracts" rules in Chapter 5 to renumber as Chapter 4 and conform to definitional changes;

8. Rule 403 (as renumbered) to clarify that Contracts may be submitted to IDCH for clearing by a Participating Trading Facility and that, upon acceptance for clearing, IDCH will issue a

written confirmation of the terms of a matched transaction, to be provided directly by or on behalf of IDCH;

9. Rule 404 (as renumbered) to add that Contracts originated on different Participating Trading Facilities may be offset in accordance with the Clearinghouse Rules if they have an identical final settlement date and identical fixed rate payment terms;

10. Rule 410 (as renumbered) to require that Clearing Members carry Contracts cleared for a Customer Account on the books of the Clearing Member on the same terms as in the relevant contract specifications in the IDCH rulebook;

11. Rule 412(c) (as renumbered) to remove Rule 412(c)(iii) permitting any transferred Contract to be held open or offset in accordance with the IDCH Rules;

12. The "Settlement and Performance Bonds" rules in Chapter 5 (as renumbered) to renumber, update cross references, clarify references to the Clearinghouse and remove references to Exchange Contracts, Exchange Clearing Members and related definitions;

13. Rule 503 (as renumbered) to clarify that each Clearing Member will agree that the Clearinghouse has a continuing first lien and security interest in, and right of setoff against, all Performance Bond deposits for the Clearing Member's Proprietary Account;

14. Rule 504 (as renumbered) to add that a Clearing Member that is suspended or expelled by a Participating Trading Facility will be in Default;

15. Rule 514(a) (as renumbered) to clarify that a Clearing Member shall require from all Customers an Original Performance Bond deposit in an amount no less than that specified by the Clearinghouse in a Notice to Members, in each case to be greater than the Original Performance Bond requirement of the Clearing Member holding such Contract with the Clearinghouse;

16. Rule 514(f) (as renumbered) to require that withdrawals of Performance Bond from a Customer Account only be permitted by a Clearing Member carrying such Customer Account if the remaining funds are equal to or in excess of the Original Performance Bond requirement applicable to such Customer for the Contracts at the time of the withdrawal request;

17. Rule 517 (as renumbered) to provide that a Clearing Members shall pay daily variation payments in cash;

18. Chapters 6-9 (as renumbered) to renumber, update cross references and to conform to definitional changes.

IDCH is making these amendments to remove all references to Exchange Contracts, Exchange Clearing Members and related definitions from the Rulebook and to comply with the CFTC Rules applicable to Derivatives Clearing Organizations ("DCOs") that become effective on May 7, 2012.

2. To adopt the Clearinghouse Product Eligibility Procedures. IDCH is adopting Product Eligibility Procedures to comply with the CFTC Rules applicable to DCOs that become effective on May 7, 2012.

3. To amend its Risk Management Procedures to:

1. add language that the Risk Management Department and Clearing Membership Committee will ensure that Clearing Members meet each of the qualification requirements set forth in the IDCH Rulebook;
2. add a daily practice to stress large traders across all Clearing Members;
3. amend Other Daily Practices to add tests that will ensure the sufficiency of Performance Bond, Performance Bond offsets and identify Clearing Members and their Customers which pose elevated risk during periods of significant volatility;
4. include a new procedure to ensure access to market rates should IDCH's automated price feeds fail in order to produce the mid-day and end-of-day revaluation curves;
5. implement a procedure to perform monthly backtesting of Performance Bonds and offsets;
6. implement a procedure to independently validate the Performance Bond methodology on an annual basis;
7. allow Clearing Members to use portfolio compression on a regular and voluntary basis, including services that are offered by a third party and approved by IDCH;
8. provide that Variation Performance Bond may only be satisfied with USD cash.
9. add language explicitly prohibiting acceptance of letters of credit to satisfy a Clearing Member's Guaranty Fund requirement;
10. add language explicitly prohibiting acceptance of letters of credit to satisfy a Clearing Member's Performance Bond requirement; and
11. make general edits to language for clarity and consistency.

IDCH is making these amendments to the Risk Management Procedures in order to comply with the CFTC Rules applicable to DCOs that become effective on May 7, 2012 and to make clarifying changes.

The text of the proposed rule amendments (showing deletions and additions) are attached hereto as Appendix A. The IDCH Product Eligibility Policy is attached as Appendix B. The IDCH Risk Management Procedures (showing deletions and additions) are included separately as Confidential Appendix C hereto. IDCH is separately requesting confidential treatment for Confidential Appendix C.

There were no opposing views among IDCH's Board of Directors, Clearing Members or market participants. IDCH hereby certify that these rules comply with the Act and the CFTC Rules. IDCH further certifies that, concurrent with this filing, a notice of the pending certification (other than Appendix C, for which confidential treatment was requested) was posted on IDCH's website as well as a copy of the submission, which may be accessed at http://www.idcg.com/pdfs/idch_bulletins/SR-IDCH-2012-02.pdf. The effective date of the rule amendments, Product Eligibility Policy and amended Risk Management Procedures is May 7, 2012.

Sincerely,



Michael Dundon
Chief Risk Officer

Attachments

International Derivatives Clearinghouse, LLC
Reference File: IDCH-2012-02

Appendix A

Rules
of
International Derivatives Clearinghouse, LLC

As of ~~January 9~~, May 7 2012

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Chapter 1 Interpretation

Rule 101. Definitions.

“*AAA*” means the American Arbitration Association.

“*Affiliate*” means, with respect to a Person, any other Person, directly or indirectly Controlling, Controlled by or under common Control with such Person. For purposes hereof “Control” means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management of policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; provided that in all instances a Person that is the beneficial owner of forty percent or more of the voting securities of, or equivalent equity interest in, another Person shall be deemed to Control such person.

“*Appeal Panel*” means a panel comprised of a chairman and two individuals appointed by the Board to consider appeals under Chapter ~~7~~6 of the Rules.

“*Authorized Representative*” means an individual designated by a Clearing Member and registered with the Clearinghouse as being responsible for Clearing Activity conducted on behalf of such Clearing Member.

“*Bankruptcy Code*” means title 11 of the United States Code, as amended or superseded from time to time.

“*Board*” means the Board of Directors of the Clearinghouse as set forth in the Operating Agreement and includes any other body acting in lieu of and with the authority of the Board.

“*Board Member*” means any Person appointed to the Board.

“*Broker-Dealer*” means a Broker-Dealer as such term is defined in the Securities Exchange Act of 1934, as amended.

“*Business Day*” means any day, other than Saturdays, Sundays and Holidays on which the Clearinghouse is open for business.

“*CEA*” means the Commodity Exchange Act, as amended.

“*Chief Executive Officer*” means the individual appointed by the Board as the Clearinghouse’s Chief Executive Officer.

“*Clearing Activity*” means any business for which a Clearing Member is subject to the Rules, which is purportedly conducted subject to the Rules, or which should have been conducted subject to the Rules.

“*Clearing Hours*” means, for any Business Day, the hours between 6:30 p.m. and 5:00 p.m. the next calendar day, or any other hours as may be published by the Clearinghouse from time to time.

“*Clearinghouse*” means International Derivatives Clearinghouse, LLC, a wholly-owned subsidiary of IDCG.

“*Clearinghouse Approved Depositories*” has the meaning attributed to such term in Rule ~~609.509~~.

“*Clearinghouse Proceedings*” has the meaning attributed to such term in Rule 203(a).

“*Clearinghouse Risk Filter*” has the meaning attributed to such term in Rule 314.

“*Clearing Member*” means any Person that is approved as a member of the Clearinghouse as an ~~Exchange Clearing Member and/or an OTC~~ Clearing Member in accordance with Rule 304.

“*Clearing Membership Committee*” means the committee of the Clearinghouse established pursuant to Rule 206(a).

“*Clearing Member Statement*” means the Statement delivered by the Clearinghouse to each Clearing Member in accordance with Rule ~~616.516~~.

“*Clearing System*” means the systems, software, equipment, hardware, apparatus, appliances, gateways and application programming interfaces and other components of any kind used by or on behalf of the Clearinghouse to perform its clearing functions.

“*Collateral*” means, at any time, such property, other than Performance Bond, as may be delivered, or in which a security interest may be granted, by a Clearing Member to the Clearinghouse or its custodian, as collateral for the Obligations, and all proceeds of the foregoing.

“*Commission*” means The U.S. Commodity Futures Trading Commission.

~~“*Contract*” means any Exchange Contract or OTC Contract, as the context may require.~~

~~“*Customer*” means any Exchange Customer or OTC Customer, as the context may require.~~

“*Contract*” means any contract, agreement or transaction transacted in the over the counter market or on or through a Participating Trading Facility that conforms to the contract specifications set forth in Chapter 9, approved by the Board for clearing under the Rules.

“*Customer*” means any customer of a Clearing Member with positions in cleared derivatives, as that term is defined in CFTC Regulation 190.01(oo). A customer is only a Customer with respect to its positions in cleared derivatives, as that term is defined in CFTC Regulation 190.01(oo).

“*Customer Account*” means an account carried by a Clearing Member on behalf of a Customer.

“*Customer Segregated Account*” means any account carried by a Clearing Member or the Clearinghouse that holds funds of a Customer relating to Contracts.

“*Default*” means any event that would constitute a default under Rule ~~604.504~~.

“Derivatives Clearing Organization” means a “derivatives clearing organization” as such term is defined in the CEA.

“Director of Hearings” means the individual appointed by the Board to act as the Director of Hearings.

“Director of the Regulatory Oversight Department” means the Clearinghouse’s compliance officer.

“Disciplinary Panel” means the Hearing Officer and two representatives selected by the Director of Hearings to serve on a Disciplinary Panel.

“ECP” means an “eligible contract participant” as such term is defined in the CEA.

“Emergency” has the meaning attributed to such term in Rule 205(c).

“Emergency Rules” has the meaning attributed to such term in Rule 205(a).

“Employee” means any individual employed directly by the Clearinghouse or by IDCG and who provides services to the Clearinghouse, including an Officer of the Clearinghouse.

~~*“Exchange Clearing Member”* means a Clearing Member that the Clearinghouse has approved to clear Exchange Contracts.~~

~~*“Exchange Contract”* means any contract, agreement or transaction that is traded on, or subject to the rules of, a Participating Trading Facility that conforms to the contract specifications set forth in Chapter 10, approved by the Board for clearing under the Rules, and for the avoidance of doubt does not include an OTC Contract.~~

~~*“Exchange Customer”* means any “customer” as such term is defined in Commission Regulation 1.3(k), that trades or maintains a position in Exchange Contracts.~~

~~*“Exchange Customer Segregated Account”* means any account carried by an Exchange Clearing Member or the Clearinghouse that holds funds of an Exchange Customer relating to Exchange Contracts.~~

“FCM” means a “futures commission merchant,” as such term is defined in the CEA.

“FDICIA” means the Federal Deposit Insurance Corporation Improvement Act of 1991, as amended or superseded from time to time, and all regulations thereunder.

“FINRA” means the Financial Industry Regulatory Authority, Inc.

“Government Agency” means the Commission, and/or any other agency, federal or state, domestic or foreign, regulating or with any authority over any activities of the Clearinghouse or the Clearing Members.

“Gross Cleared Contract Basis” means the methodology used to calculate Performance Bond on a gross basis, as determined by the Risk Committee from time to time.

“*Guaranty Fund*” means the fund comprising the cash and other property deposited by the Clearing Members, or by or on behalf of ~~IDCG~~the Clearinghouse, pursuant to Rule ~~610~~510, which fund shall be used as provided in the Rules to reimburse the Clearinghouse for any loss sustained by the Clearinghouse as a result of the failure of any Clearing Member to discharge its Obligations in accordance with the Rules.

“*Guaranty Fund Approved Depositories*” has the meaning attributed to such term in Rule ~~610~~510(b).

“*Hearing Officer*” means an Employee or a Regulatory Services Provider who is an attorney and who is appointed by the Board to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in Chapter ~~76~~ of the Rules.

“*IDCG*” means International Derivatives Clearing Group, LLC.

“*Interested Person*” has the meaning attributed to such term in Rule 203(a).

“*Holiday*” means ~~any day declared to be a holiday by these Rules or observed by the Board Clearinghouse. The following days are declared holidays on which the Clearinghouse shall be closed: New Year’s Day, Martin Luther King Day, President’s Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and Christmas Day.~~Clearinghouse will post a list of declared Holidays on its website and provide notice of any changes through a Notice to Members. “*Material Non-public Information*” means information that is “material information,” and “non-public information,” as such terms are defined in Commission Regulation 1.59(a).

“*Net Cleared Contract Basis*” means the methodology used to calculate Performance Bond on a net basis, as determined by the Risk Committee from time to time.

“*NFA*” means the National Futures Association.

“*Notice of Appeal*” means a notice sent by a respondent to the Secretary pursuant to Rule ~~717~~617.

“*Notice of Charges*” means a notice sent by the Regulatory Oversight Department pursuant to Rule ~~707~~607.

“*Notice to Members*” means any notice delivered by the Clearinghouse to the Clearing Members pursuant to Rule 211.

“*Obligations*” means all financial obligations of a Clearing Member arising under the Rules, however created, arising or evidenced, whether direct or indirect, absolute or contingent, existing, due or to become due.

“*Officer*” means an individual appointed by the Board as an Officer of the Clearinghouse.

“*Operating Agreement*” means the Operating Agreement of the Clearinghouse, as amended from time to time.

“Original Performance Bond” means the minimum deposit required from Customers and Clearing Members in accordance with the Rules.

~~*“OTC Clearing Member”* means a Clearing Member that the Clearinghouse has approved to clear OTC Contracts.~~

~~*“OTC Contract”* means any contract, agreement or transaction transacted in the over the counter market or on or through a registered swap execution facility that conforms to the contract specifications set forth in Chapter 11, approved by the Board for clearing under the Rules, and for the avoidance of doubt, does not include Exchange Contracts.~~

~~*“OTC Customer”* means any customer of an OTC Clearing Member with positions in cleared OTC derivatives, as that term is defined in CFTC Regulation 190.01(oo). A customer is only an OTC Customer with respect to its positions in cleared OTC derivatives, as that term is defined in CFTC Regulation 190.01(oo).~~

~~*“OTC Customer Segregated Account”* means any account carried by an OTC Clearing Member or the Clearinghouse that holds funds of an OTC Customer relating to OTC Contracts.~~

“Participating Trading Facility” means a designated contract market, swap execution facility or foreign board of trade that has entered into an agreement with the Clearinghouse for the clearing of Contracts.

“Performance Bond” means any Original Performance Bond, Variation Performance Bond and/or Variation Settlement paid or payable by or to a Clearing Member to or by the Clearinghouse.

“Person” means an individual, sole proprietorship, partnership, limited liability company, association, firm, trust, corporation or other entity, as the context may require.

“Proprietary Account” has the meaning attributed such term by to it by Commission Regulation 1.3(y).

“Regulatory Oversight Department” means all Employees of the Clearinghouse that assist the Clearinghouse in the implementation, surveillance and enforcement of the Rules.

“Regulatory Services Provider” means any Person other than an Employee or Officer that has been appointed by the Clearinghouse to provide regulatory services to the Clearinghouse.

“Review Officer” means an Officer or other Employee who is not a member of the Regulatory Oversight Department and who reviews completed investigative reports from the Regulatory Oversight Department to determine (i) whether a reasonable basis exists to believe that an alleged violation has occurred within the Clearinghouse’s jurisdiction, and (ii) whether commencing disciplinary proceedings are warranted.

“Risk Committee” means the committee of the Clearinghouse established pursuant to Rule 206(b).

References to a “*Rule*” or “*Rules*” are references to the Certificate of Formation, Operating Agreement, rules, interpretations, orders, resolutions, risk policies and procedures, and similar directives of the Clearinghouse, all as in effect from time to time.

“*SEC*” means the U.S. Securities and Exchange Commission.

“*Secretary*” means the individual appointed by the Board as the Clearinghouse’s Secretary.

“*Self-Regulatory Action*” has the meaning attributed to such term in Rule 203(a).

“*Self-Regulatory Organization*” shall have the meanings attributed to such term in Commission Regulation 1.3(ee) and, in addition, shall include a contract market, derivatives clearing organization, and registered futures association.

“*Settlement Bank*” means a bank, trust company or other institution designated by the Board as a settlement bank pursuant to Rule ~~615~~515.

“*Settlement Price*” means the official daily closing price of Contracts, as determined by the Clearinghouse in accordance with Rule ~~602~~502.

“*Speculative Position Limits*” has the meaning attributed to such term in Rule ~~417~~ and Rule ~~516~~416.

“*Summary Review Panel*” means the board or panel appointed by the board to conduct hearings or reviews of summary suspensions and other summary actions under Rule ~~718~~618, and reconsiderations of the denial of admission as Clearing Member pursuant to Rule ~~701~~601.

“*Termination Event*” means the occurrence of any of the following:

(A) the termination of the Clearing Member Application and Agreement between the Clearing Member and the Clearinghouse;

(B) a representation or warranty made by the Clearing Member to the Clearinghouse under or in connection with any agreement between the Clearinghouse and the Clearing Member shall be false or misleading in any material respect as of the date on which made;

(C) the Clearing Member does not meet the qualifications of Clearing Members set forth in Rule 302;

(D) the Clearing Member does not meet the minimum capital and other financial requirements for Clearing Members established pursuant to Rule 309;

(E) the breach by the Clearing Member of the Rules or any of the terms or provisions of any agreement between the Clearinghouse and the Clearing Member which is not remedied promptly after notice from the Clearinghouse; or

(F) the Clearing Member is in Default.

“Total Risk Value” means a dollar amount that is the total amount of risk exposure that a Clearing Member is willing to accept for a particular account.

“Trade Report” means the reports filed by an ~~Exchange~~ Clearing Member in accordance with Rule 406 and by an OTC Clearing Member in accordance with Rule ~~505.405~~.

“Variation Performance Bond” means the minimum equity that must be maintained for each Contract or Clearing Member’s account subsequent to the deposit of Original Performance Bond.

“Variation Settlements” means the change in value calculated by the Clearinghouse for Clearing Members calculated on the daily Settlement Price of their open Contracts.

“Website” means any website owned and/or operated by the Clearinghouse and made available to Clearing Members to facilitate access to the Clearing System.

Rule 102. Scope and Rules of Construction

(a) The Rules are applicable to Contracts, transactions in Contracts, related Obligations arising out of Contracts, Clearing Activity, and the Clearing System. In the event of a conflict between these Rules and the Operating Agreement, these Rules will prevail.

(b) In these Rules, unless the context otherwise requires, (i) words in the singular include the plural and words in the plural include the singular, (ii) references to statutory provisions include those provisions as amended, and any rules or regulations promulgated thereunder, as amended, (iii) any reference to a number of days means calendar days unless Business Days are specified, and (iv) any reference to a time means the time in New York, New York. Except as otherwise specifically provided in these Rules, an act that otherwise would be required or permitted by these Rules to be performed on a date that is not a Business Day may be performed on the next day that is a Business Day.

Chapter 2
Clearinghouse Governance and Operations

Rule 201. Purpose, Facilities, Powers and Authority

- (a) The Clearinghouse operates to clear Contracts for its Clearing Members.
- (b) As a Derivatives Clearing Organization, the Clearinghouse has the power and authority to regulate its settlement and clearing facilities to ensure that the facilities are not used for any improper purpose, and to establish and enforce rules and procedures to reduce systemic risk and facilitate the orderly clearing of Contracts through its facilities by Clearing Members.
- (c) These Rules specify the process by which a Person may become a Clearing Member and clear Contracts, and the terms and conditions on which the Clearinghouse will offer its services as a Derivatives Clearing Organization. These Rules are binding on all Clearing Members.

Rule 202. Duties and Responsibilities of the Board

- (a) Board Members serve until their resignation, death or removal, or until the election of their successors. The Board is responsible for the supervision and oversight of the Clearinghouse. The Board shall have the power to amend, implement and adopt the Rules, to oversee the business conduct of Clearing Members in their interaction with the Clearinghouse, and to impose penalties or sanctions for any violation of the Rules.
- (b) A Person may not be authorized by the Regulatory Oversight Department to take summary action pursuant to Rule ~~7186~~18 or serve as a Board Member or an Officer or on a committee established by the Board, a Disciplinary Panel, an Appeal Panel or a Summary Review Panel, if the Person:
 - (i) within the prior three years has been found, by a final decision in any action or proceeding brought in a court of competent jurisdiction, any Government Agency, or any Self-Regulatory Organization, to have committed a disciplinary offense;
 - (ii) within the prior three years has entered into a settlement agreement concerning allegations of a disciplinary offense charged (but not withdrawn), whether or not findings were made;
 - (iii) is currently suspended from trading on any regulated market, is suspended or expelled from membership in a Self-Regulatory Organization, is serving any sentence or probation, or owes any portion of a fine or penalty related to either:
 - (A) a finding of a disciplinary offense by a final decision in any action or proceeding brought in a court of competent jurisdiction, any Government Agency, or any Self-Regulatory Organization; or

(B) a settlement agreement concerning allegations of a disciplinary offence charged (but not withdrawn);

(iv) is currently subject to an agreement with any Government Agency or Self-Regulatory Organization not to apply for registration with the Government Agency or for Clearing Membership in the Self-Regulatory Organization;

(v) is currently, or within the past three years has been, subject to a revocation or suspension of registration by a Government Agency;

(vi) has been convicted of a felony listed in section 8a(2)(D)(ii) through (iv) of the CEA; or

(vii) is currently subject to a denial, suspension or disqualification from serving on a disciplinary committee, arbitration panel or governing board of any Self-Regulatory Organization.

The Board, may, however, by a majority vote, specifically exempt a Person from the foregoing restrictions except in the case of clause (b)(vii) above.

(c) Any Board Member, Officer, member of a committee established by the Board, any Clearing Member of a Disciplinary Panel, Appeal Panel or Summary Review Panel, any Person nominated to serve in any such role, or any Person authorized by the Regulatory Oversight Department to take summary action shall immediately notify the Chief Executive Officer if he or she meets one or more of the criteria in Rule 202(b).

(d) For purposes of Rule 202(b), the terms “disciplinary offense,” “final decision,” and “settlement agreement” have the meanings set forth in Commission Regulation 1.63(a).

Rule 203. Conflicts of Interest and Misuse of Material Non-Public Information

(a) A Board Member or an Officer, Clearing Member, Regulatory Services Provider or other Person authorized to exercise the Clearinghouse's authority concerning any inquiry, investigation, disciplinary proceeding or any appeal from a disciplinary proceeding, summary suspension, or other summary actions (any such action, a "*Clearinghouse Proceeding*" and, collectively, "*Clearinghouse Proceedings*"), or Emergency actions taken pursuant to Rule 205 (each such Clearinghouse Proceeding or Emergency action, a "*Self-Regulatory Action*") who knowingly has a material conflict of interest between his or her position as a Board Member or exercise of authority concerning any Self-Regulatory Action and his or her personal interests (each, an "*Interested Person*") may not participate in any deliberations or vote of the Board or in any Self-Regulatory Action involving his or her personal interest, except as described in Rule 203(e).

(b) For purposes of Rule 203(a), a material conflict of interest includes a Board Member's, Officer's, Clearing Member's, Regulatory Services Provider's or other Person's:

(i) being named as a respondent or potential respondent in a Self-Regulatory Action;

(ii) being an employer, employee, fellow employee or an affiliate of a respondent or potential respondent in a Self-Regulatory Action;

(iii) having any significant, ongoing business relationship with a respondent or potential respondent in a Self-Regulatory Action;

(iv) having a family relationship with a respondent or potential respondent in a Self-Regulatory Action (including the Person's spouse, co-habitator, former spouse, parent, step-parent, child, step-child, sibling, step-brother, step-sister, grandparent, grandchild, uncle, aunt, nephew, niece, father-in-law, mother-in-law, brother-in-law or sister-in-law); and/or

(v) having a direct and substantial financial interest in the result of the vote, other than based on a direct or indirect equity or other interest in the Clearinghouse or IDCG, that could reasonably be expected to be affected by the Self-Regulatory Action.

(c) For purposes of Rule 203(b)(v), a direct and substantial financial interest includes positions held in Contracts in the accounts of, controlled by, or affiliated with the Interested Person or any other types of direct and substantial financial positions of the Interested Person that are reasonably expected to be affected by the vote.

(d) Before considering any Self-Regulatory Action, an Interested Person must disclose in writing to the Board the material facts concerning his or her relationship or interest in the matter.

(e) Any Interested Person who would be required otherwise to abstain from deliberations and voting pursuant to Rule 203(a) as a result of having a direct and substantial financial interest in the result of the vote may participate in deliberations, prior to a vote on the matter, if:

(i) the material facts about the Interested Person's financial interest in the matter are disclosed or known to the Board;

(ii) the Board determines that the participation by the Interested Person would be consistent with the public interest; and

(iii) a majority of the Board Members that are not Interested Persons with respect to the matter vote to allow the Interested Person to participate in deliberations on the matter.

(f) If a determination is made pursuant to Rule 203(e) that an Interested Person may participate in deliberations prior to a vote, then the minutes of the meeting of the Board or committee thereof will reflect the determination and the reasons for the determination.

(g) If a determination is made pursuant to Rule 203(b) that all Board Members are Interested Persons with respect to a matter subject to a vote by the Board, the Chief Executive Officer will appoint a panel of individuals who are not Interested Persons with respect to such matter, which will have the same authority and powers over such matter that the Board would have if the Board Members were not Interested Persons with respect to such matter.

(h) No Board Member or member of any committee or panel established by the Board shall use or disclose for any purpose other than the performance of his or her official duties and responsibilities as a Board Member or committee or panel member any Material Non-Public Information obtained as a result of the Person's duties and responsibilities as a Board Member or committee or panel member. No Board Member or committee or panel member shall, directly or indirectly, disclose or use at any time, either during his or her association with the Clearinghouse or thereafter, any confidential information of which the Board Member or committee or panel member becomes aware. Each Board Member or committee or panel member in possession of confidential information shall take all appropriate steps to safeguard the information and to protect it against disclosure, misuse, espionage, loss and theft.

(i) Notwithstanding Rule 203(h), a Board Member or committee or panel member may disclose confidential information if required by law or a court order to be revealed to the United States Department of Justice or a Government Agency with regulatory or oversight jurisdiction over the Clearinghouse, the Board Member or committee or panel Clearing Member.

Rule 204. Duties and Responsibilities of Officers

(a) The Board shall appoint Officers and delegate to the Officers, subject to its oversight, the power and authority to regulate the Clearinghouse's facilities, to ensure

that the facilities are not used for any improper purpose, and to establish and enforce rules and procedures to ensure fair and equitable trading through such facilities. The Officers shall have such powers and duties in the management of the Clearinghouse as set forth in the Operating Agreement or as the Board may prescribe from time to time. To the extent the Board does not prescribe the powers and duties of an Officer, then the Officer shall have the powers and duties that generally pertain to his or her respective office, subject to the oversight and control of the Board. In the performance of his or her duties and responsibilities, each Officer owes the Clearinghouse a duty of loyalty and due care.

(b) All Officers shall be appointed and may be dismissed (with or without cause) by the required vote of the Board as set forth in the Operating Agreement.

(c) Any Person who owns an equity interest of 10% or more in the Clearinghouse or the IDCG shall be disqualified from being a compliance officer of the Clearinghouse.

Rule 205. Emergency Rules

(a) During an Emergency, the Board may implement temporary emergency procedures and rules ("*Emergency Rules*"), subject to the applicable provisions of the CEA and Commission Regulations. Before any Emergency Rule may be adopted and enforced, a required vote of the Board must approve the enforcement of such Emergency Rule at a duly convened meeting. Board Members may attend such a meeting by teleconference. If the Chief Executive Officer determines that Emergency Rules must be implemented with respect to an Emergency before a meeting of the Board (or a panel established by the Chief Executive Officer pursuant to Rule 203(g)) can reasonably be convened, then the Chief Executive Officer shall have the authority, without Board action, to implement any Emergency Rules with respect to such Emergency that he or she deems necessary or appropriate to respond to such Emergency.

(b) Pursuant to this Rule 205, Emergency Rules may require or authorize the Clearinghouse, the Board, any committee of the Board, the Chief Executive Officer, or any other Officer to take actions necessary or appropriate to respond to the Emergency, including, but not limited to, the following actions:

- (i) suspending or curtailing clearing or limiting clearing to liquidation only (in whole or in part), with respect to any or all Clearing Members;
- (ii) extending or shortening the expiration date and/or the last settlement date for Contracts;
- (iii) providing alternative settlement mechanisms;
- (iv) ordering the liquidation of Contracts, the fixing of a Settlement Price, or the reduction of positions;
- (v) extending, limiting or changing the Clearing Hours;

- (vi) temporarily modifying or suspending any provision of the Rules or Obligations;
 - (vii) changing the amount of money to be paid in connection with a Contract, whether previously or thereafter delivered;
 - (viii) requiring Clearing Members to meet special performance bond requirements;
 - (ix) imposing or modifying price limits;
 - (x) imposing or modifying position limits; and/or
 - (xi) solely in respect of an Emergency as defined in paragraphs (c)(vii) and (viii) below, the transfer of the Contracts to another Commission registered derivatives clearing organization.
- (c) For the purposes of this Rule 205, “*Emergency*” is defined as the occurrences or circumstances which, in the opinion of the Board, require immediate action, and which threaten, or may threaten, the fair and orderly settlement or integrity of, any Contract, including, without limitation, the following:
- (i) any circumstance that may materially affect the performance of a Contract, including failure of the payment;
 - (ii) any action taken by the United States government, a foreign government, a Government Agency, a state or local governmental body, another contract market, board of trade, or other exchange or trade association (foreign or domestic) that may have a direct impact on clearing through the Clearinghouse or the settlement legality or enforceability of any Contract;
 - (iii) any actual, attempted or threatened corner, squeeze, congestion, manipulative activity or undue concentration of positions in a Contract;
 - (iv) any circumstance that may have a severe, adverse effect upon the functions and facilities of the Clearinghouse, including, but not limited to, acts of God, fire or other natural disasters, bomb threats, acts of terrorism or war, severely inclement weather, or failure or malfunction of all or a portion of the Clearing System, or other system breakdowns or interruptions such as power, computer, communication or transportation systems or the Internet;
 - (v) the bankruptcy or insolvency of any Clearing Member or the imposition of any injunction or other restraint by any Government Agency, court or arbitrator upon a Clearing Member which may affect the ability of a Clearing Member to satisfy its Obligations;
 - (vi) any circumstance in which it appears to the Board that a Clearing Member:

(A) has failed to perform on a contract;

(B) is insolvent; or

(C) is in a financial or operational condition or is conducting business such that the Clearing Member cannot be permitted to continue in business without jeopardizing the safety of funds of Clearing Members or the Clearinghouse; or

(vii) the bankruptcy or insolvency of the Clearinghouse, the imposition of any injunction or other restraint by any Government Agency, court or arbitrator upon the Clearinghouse which may affect the ability of the Clearinghouse to fulfill its obligations as a Commission registered derivatives clearing organization, or a determination by the Board that the Clearinghouse cease operations as a Commission registered derivatives clearing organization;

(viii) any other unusual, unforeseeable or adverse circumstance as determined by the Board.

(d) Whenever the Clearinghouse, the Board, any committee of the Board, or the Chief Executive Officer take actions necessary or appropriate to respond to an Emergency (including, without limitation, the actions set forth in paragraph (a) above), a duly authorized representative of the Clearinghouse will, where possible, ensure that an announcement is posted in a Notice to Members. When the Board, any committee of the Board, or the Chief Executive Officer determines that the Emergency has been reduced sufficiently to allow the Clearinghouse to resume normal functioning, any such actions responding to an Emergency will be terminated.

(e) The Clearinghouse will use reasonable efforts to notify the Commission prior to implementing, modifying or terminating an Emergency Rule. If such prior notification is not possible or practicable, the Clearinghouse will notify the Commission as soon as possible or reasonably practicable, but in all circumstances within twelve hours of the implementation, modification or termination of such Emergency Rule.

(f) Upon taking any action in response to an Emergency, the Clearinghouse will comprehensively document the decision-making process related to such action. Such documentation will be kept for at least five years following the date on which the Emergency ceases to exist or to affect the Clearinghouse, and all such documentation will be provided to the Commission upon request.

Rule 206. Committees

The Board may create, appoint Board Members or other individuals to serve on, and delegate powers to, committees.

(a) Clearing Membership Committee.

(i) The Clearing Membership Committee shall take such actions required by the Rules or as otherwise delegated to it by the Board.

(ii) The Clearing Membership Committee shall have a chairman who shall be a Board Member, and up to six additional individuals who shall be nominated by the Nominating Committee of the Board and appointed by the Board.

(iii) No Person shall serve on the Clearing Membership Committee unless they have agreed in writing that they will not publish, divulge, or make known in any manner, any facts or information regarding the business of any Person or any other information which may come to their attention in their official capacity as a member of the Clearing Membership Committee, except when reporting to the Board or at the direction of the Board, when requested by the Commission or other governmental agency or when compelled to testify in any judicial or administrative proceeding.

(iv) All information and documents provided to the Clearing Membership Committee and all deliberations and documents related thereto shall be treated as non-public and confidential and shall not be disclosed, except as necessary to further a Clearinghouse investigation or as required by law.

All actions taken pursuant to this subsection shall be by majority vote of the committee members present. Nothing in this section shall in any way limit the authority of the Board, other committees, or other appropriate officials to act in an Emergency.

(b) Risk Committee.

(i) The Risk Committee shall take such actions required by the Rules or as otherwise delegated to it by the Board.

(ii) The Risk Committee shall have a chairman, who shall be the Clearinghouse Chief Risk Officer, and up to nine additional individuals as specified in the charter of the Risk Committee. The members of the Risk Committee shall be nominated by the Nominating Committee of the Board and appointed by the Board.

(iii) No Person shall serve on the Risk Committee unless they have agreed in writing that they will not publish, divulge, or make known in any manner, any facts or information regarding the business of any Person or any other information which may come to their attention in their official capacity as a member of the Risk Committee, except when reporting to the Board or at the direction of the Board, when requested by the Commission or other governmental agency or when compelled to testify in any judicial or administrative proceeding.

(iv) All information and documents provided to the Risk Committee and all deliberations and documents related thereto shall be treated as non-public and

confidential and shall not be disclosed, except as necessary to further a Clearinghouse investigation or as required by law.

All actions taken pursuant to this subsection shall be by majority vote of the committee members present. Nothing in this section shall in any way limit the authority of the Board, other committees, or other appropriate officials to act in an Emergency.

(c) **Nominating Committee.**

(i) The Nominating Committee shall take such actions required by the Rules or as otherwise delegated to it by the Board.

(ii) The Nominating Committee shall have a chairman, who shall be a Board Member, and up to four additional individuals who shall be appointed by the Board.

(iii) No Person shall serve on the Nominating Committee unless they have agreed in writing that they will not publish, divulge, or make known in any manner, any facts or information regarding the business of any Person or any other information which may come to their attention in their official capacity as a member of the Nominating Committee, except when reporting to the Board or at the direction of the Board, when requested by the Commission or other governmental agency or when compelled to testify in any judicial or administrative proceeding.

(iv) All information and documents provided to the Nominating Committee and all deliberations and documents related thereto shall be treated as non-public and confidential and shall not be disclosed, except as necessary to further a Clearinghouse investigation or as required by law.

All actions taken pursuant to this subsection shall be by majority vote of the committee members present. Nothing in this section shall in any way limit the authority of the Board, other committees, or other appropriate officials to act in an Emergency.

Rule 207. Exclusion of Liability

(a) EXCEPT IN INSTANCES WHERE THERE HAS BEEN A FINDING OF FRAUD OR WILLFUL OR WANTON MISCONDUCT (IN WHICH CASE THE PARTY FOUND TO HAVE ENGAGED IN SUCH CONDUCT WILL NOT BE PROTECTED BY THIS RULE), NEITHER THE CLEARINGHOUSE (INCLUDING ITS AFFILIATES) NOR ANY OF ITS BOARD MEMBERS, OFFICERS, MANAGERS, EMPLOYEES, AGENTS, PARTICIPATING TRADING FACILITIES, REGULATORY SERVICES PROVIDERS OR LICENSORS (EACH, A "COVERED PERSON") SHALL BE LIABLE TO ANY PERSON (INCLUDING, BUT NOT LIMITED TO, A CLEARING MEMBER) FOR ANY LOSS, DAMAGE OR COST (INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES AND COURT COSTS)

WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELATED TO LOST PROFITS OR OF ANY OTHER NATURE (REGARDLESS OF WHETHER SUCH COVERED PERSON HAS BEEN ADVISED OR IS OTHERWISE AWARE OF THE POSSIBILITY OF ANY LOSS, DAMAGE OR COST) ARISING OUT OF THE USE OR PERFORMANCE OF THE CLEARING SYSTEM OR ANY OF ITS COMPONENTS, THE WEBSITE OR ANY OF ITS CONTENT, OR ANY FAULT, FAILURE, MALFUNCTION OR OTHER ALLEGED DEFECT IN THE CLEARING SYSTEM OR THE WEBSITE, INCLUDING ANY INABILITY OR RESTRICTED OR IMPEDED ABILITY TO SEND OR RECEIVE DATA TO OR FROM THE CLEARING SYSTEM, OR ANY FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY, TERMINATION OR ANY OTHER CAUSE IN CONNECTION WITH THE FURNISHING, PERFORMANCE, MAINTENANCE, USE OF, OR INABILITY TO USE ALL OR ANY PART OF THE CLEARING SYSTEM OR THE WEBSITE, INCLUDING, BUT NOT LIMITED TO, ANY LOSS, OR FAILURES OR DELAY IN TRANSMISSION OF, TRADE DATA RESULTING FROM (A) MALFUNCTION OF THE CLEARING SYSTEM OR THE WEBSITE, (B) DISRUPTION OF COMMON CARRIER LINES OR THE INTERNET, (C) LOSS OF POWER, (D) ACTS, OR FAILURES TO ACT, BY ANY THIRD PARTY, (E) NATURAL DISASTERS, OR (F) ANY OTHER CAUSES. THESE LIMITATIONS ARE CUMULATIVE AND DO NOT LIMIT OR RESTRICT THE APPLICABILITY OF ANY OTHER LIMITATION OR RULE.

(b) RULE 207(a):

(i) SHALL APPLY REGARDLESS OF WHETHER A CLAIM ARISES IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE; AND

(ii) SHALL NOT LIMIT THE LIABILITY OF ANY CLEARING MEMBER OR ANY OF THE CLEARING MEMBER'S AUTHORIZED REPRESENTATIVES, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS FOR ANY ACT, FAILURE TO ACT, INCIDENT OR OCCURRENCE WITHIN HIS OR HER CONTROL.

(c) THE CLEARING SYSTEM, THE WEBSITE, AND ANY OTHER FACILITIES THE CLEARINGHOUSE MAY UTILIZE TO SUPPORT THE CLEARING SYSTEM OR TO PERFORM ANY CLEARINGHOUSE SERVICES ARE PROVIDED "AS IS." TO THE FULL EXTENT PERMISSIBLE UNDER APPLICABLE LAWS, THE CLEARINGHOUSE, ITS AFFILIATES, AND THEIR RESPECTIVE AGENTS AND LICENSORS MAKE NO, AND HEREBY DISCLAIM ALL, WARRANTIES, EXPRESS OR IMPLIED, REPRESENTATIONS, AND UNDERTAKINGS, RELATING TO THE CLEARING SYSTEM, ALL CLEARINGHOUSE SERVICES, AND ALL FACILITIES USED TO SUPPORT THE CLEARING SYSTEM (INCLUDING, WITHOUT LIMITATION, THE WEBSITE), INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND NON-INFRINGEMENT, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR USE, WARRANTIES THAT THE CLEARING SYSTEM OR THE FACILITIES

USED TO SUPPORT THE CLEARING SYSTEM WILL BE FREE OF ERRORS, VIRUSES OR OTHER HARMFUL COMPONENTS, AND WARRANTIES WITH RESPECT TO THE CORRECTNESS, ACCURACY, COMPLETENESS, RELIABILITY, PERFORMANCE, OPERATION, CAPACITY, SPEED, FUNCTIONALITY, THE CLEARINGHOUSE SERVICES, OR THE FACILITIES USED TO SUPPORT THE CLEARING SYSTEM (INCLUDING, BUT NOT LIMITED TO, THE WEBSITE). IT IS THE SOLE OBLIGATION OF CLEARING MEMBERS AND THEIR AUTHORIZED REPRESENTATIVES TO TAKE PRECAUTIONS AND ENACT SECURITY MEASURES SUFFICIENT TO ENSURE THAT USE OF THE CLEARING SYSTEM, THE WEBSITE, OR OTHER FACILITIES SUPPORTING THE CLEARING SYSTEM, WILL NOT DAMAGE ANY COMPUTER HARDWARE USED TO ACCESS THE WEBSITE OR THE CLEARING SYSTEM, ANY SOFTWARE OR OTHER APPLICATIONS INSTALLED THEREON, OR ANY DATA STORED THEREIN.

(d) IF ANY OF THE FOREGOING LIMITS ON THE LIABILITY OF A COVERED PERSON IS DETERMINED INVALID, INEFFECTIVE OR UNENFORCEABLE, AND ANY THIRD PARTY SUSTAINS A LOSS, DAMAGE OR COST RESULTING FROM THE USE OF THE CLEARING SYSTEM, THE ENTIRE LIABILITY OF ALL COVERED PERSONS SHALL NOT EXCEED THE FEES AND ANY OTHER CHARGES ACTUALLY PAID BY THE THIRD PARTY TO THE CLEARINGHOUSE FOR SERVICES IN CONNECTION WITH THE CLEARING SYSTEM DURING THE PERIOD OF THE LOSS, DAMAGE OR COST RESULTING FROM THE USE OF THE CLEARING SYSTEM.

(e) NOTWITHSTANDING ANY PROVISION IN THIS RULE, THIS RULE SHALL NOT LIMIT THE APPLICABILITY OF ANY PROVISION OF THE CEA AND THE COMMISSION REGULATIONS PROMULGATED THEREUNDER.

Rule 208. Right to Indemnification

Each Board Member, committee member and Officer is entitled to indemnification pursuant to the Operating Agreement with respect to matters relating to the Clearinghouse.

Rule 209. Maintenance of Books and Records by the Clearinghouse

The Clearinghouse shall keep, or cause to be kept, complete and accurate books and records of accounts of the Clearinghouse, including, without limitation, all books and records required to be maintained pursuant to the CEA, Commission Regulations and the Delaware Limited Liability Company Act, and any successor statute, as amended. The Clearinghouse shall retain all such books and records for at least five (5) years, or such longer time as may be required by any applicable law, and shall make such books and records readily accessible for inspection by any Government Agency as may be required by any applicable law.

Rule 210. Information-Sharing Agreements

(a) The Clearinghouse may enter into information-sharing agreements or other arrangements or procedures to coordinate surveillance with other markets or clearing organizations on which contracts or financial instruments related to the Contracts trade or are cleared. As part of any information-sharing agreements or other arrangements or procedures adopted pursuant to this Rule, the Clearinghouse may, in part:

- (i) provide market surveillance reports to other markets or clearing organizations;
- (ii) share information and documents concerning current and former Clearing Members with other markets or clearing organizations;
- (iii) share information and documents concerning ongoing and completed investigations with other markets or clearing organizations; and/or
- (iv) require its current or former Clearing Members to provide information and documents to the Clearinghouse at the request of other markets or clearing organizations with which the Clearinghouse has an information-sharing agreement or other arrangements or procedures.

(b) The Clearinghouse may enter into any arrangement with any Person or body (including, without limitation, the Commission, any Governmental Authority, any Self-Regulatory Organization, any exchange, market or derivatives clearing organization, or foreign regulatory authority) if the Clearinghouse (i) believes that such entity exercises a legal or regulatory function under any law or regulation, or a function comprising or associated with the enforcement of a legal or regulatory function, or (ii) considers such arrangement to be in furtherance of the Clearinghouse's purpose or duties under applicable law. The Clearinghouse may disclose to any Person information concerning or associated with a Clearing Member or other Person that the Clearinghouse believes is necessary and appropriate in exercising a legal or regulatory function (including, without limitation, information concerning any aspect of any Clearing Activity or business concerning the Clearinghouse), whether or not a formal arrangement governing the disclosure exists or a request for information was made.

Rule 211. Notice to Members and Service of Notices

(a) A Notice to Members shall become effective at the time published in the "Notice to Members" section of the Website, or at any later time as determined appropriate by the Clearinghouse and as stated in such Notice to Members. If the Clearinghouse is prevented from publishing a Notice to Members on the Website for any reason, then the Clearinghouse shall provide the Notice to Members by:

- (i) transmitting electronically a copy to the Clearing Member (including through a facsimile or electronic-mail transmission) to the address supplied to the Clearinghouse by the Clearing Member for receipt of Notice to Members or by posting an electronic message in the Clearing Member's account;

(ii) mailing a copy to the Clearing Member or to the address supplied to the Clearinghouse by the Clearing Member for receipt of Notice to Members; or

(iii) other means that the Clearinghouse deems appropriate.

A Notice to Members disseminated through alternative means shall become effective when disseminated and shall have the same force and effect as a regularly published Notice to Members.

(b) Subject to Rule 211(a) and except as otherwise expressly provided in the Rules, the Clearinghouse may provide any notice other than a Notice to Members to a Clearing Member or another Person by:

(i) transmitting electronically a copy to the Clearing Member or such other Person (including, through a facsimile or electronic-mail transmission) to the address supplied to the Clearinghouse by the Clearing Member or such other Person for notice or, with respect to a Clearing Member, by posting an electronic message in the Clearing Member's account;

(ii) mailing a copy to the Clearing Member or such other Person or to the address supplied to the Clearinghouse by the Clearing Member or such other Person for notice; or

(iii) hand-delivery of a copy to the office of an Authorized Representative of the Clearing Member.

(c) Unless otherwise provided by the Rules, service of notices shall be deemed effective:

(i) on the date of transmission or posting if notice is sent through electronic means or posted in a Clearing Member's account;

(ii) three Business Days after depositing in the mail if notice is sent through the mail; or

(iii) upon delivery if notice is hand-delivered.

(d) When a written agreement between the Clearinghouse and a Clearing Member states the terms and procedures for providing notice pursuant to the agreement, those terms and procedures shall govern the providing of notice. Rules 211(b) and (c) apply only to a written agreement between the Clearinghouse and a Clearing Member when the agreement does not state the terms and procedures for providing notice under the agreement.

(e) For Notices of Charges, Notices of Appeal, briefs and memoranda in support of, or in opposition to, briefs or other pleadings, or orders or decisions issued by the Clearinghouse pursuant to Chapter 76 of the Rules, service is effected:

(i) for an individual, by sending the materials by electronic mail to the individual's last known address; or

(ii) for an entity, by sending the materials to an Authorized Representative, officer, general partner or other authorized agent of the entity (or a person holding a similar position or fulfilling similar responsibilities), or to the last known e-mail address of the entity.

Chapter 3 Membership

Rule 301. ~~Categories of Membership~~ Clearing Membership

~~There shall be two categories of Clearing Members, Exchange Clearing Members and OTC Clearing Members, each with the following obligations and clearing privileges. A Clearing Member may be approved as both an Exchange Clearing Member and an OTC Clearing Member.~~

~~(a) — Exchange Clearing Members.~~

~~(i) — Each Exchange Clearing Member shall maintain a minimum deposit in the Guaranty Fund of \$2.5 million relating to its status as an Exchange Clearing Member.~~

~~(ii) — An Exchange Clearing Member shall be entitled to clear Exchange Contracts through the Clearinghouse for its Proprietary Account and/or Exchange Customer Segregated Accounts, subject to the Rules.~~

~~(b) — OTC Clearing Members.~~

~~(i) — Each OTC Clearing Member shall maintain a minimum deposit in the Guaranty Fund of \$25.0 million relating to its status as an OTC Clearing Member.~~

~~(ii) — An OTCA Clearing Member shall be entitled to clear ~~OTC~~ Contracts through the Clearinghouse for its Proprietary Account and/or ~~OTC~~ Customer Segregated Accounts, subject to the Rules.~~

Rule 302. Qualification of Clearing Members

Each applicant for qualification as an ~~Exchange Clearing Member and/or an OTC~~a Clearing Member must satisfy the following requirements:

(a) it shall be a corporation, limited liability company, partnership or other entity approved by the Board, in each case in good standing in its jurisdiction of formation;

(b) it shall be qualified to conduct business in the State of New York, or have an agency agreement in place with an entity qualified in the State of New York, that provides an agent for service of process and other communications from the Clearinghouse in connection with the business of the Clearing Member;

(c) it shall be engaged in or demonstrate its capacity to engage in the conduct of the business of an ~~Exchange~~a Clearing Member and/or an ~~OTC~~ Clearing Member, as applicable, including that it has sufficient systems, experienced personnel, and operational and risk management expertise to clear ~~Exchange Contracts and/or OTC Contracts,~~ as applicable and, if it is conducting Clearing Activities on behalf of a Customer, to manage the default of a Customer in a Contract;

(d) it shall have received all necessary approvals and consents from all applicable regulatory authorities and Government Agencies to permit it to conduct the business of an ~~Exchange Clearing Member and/or an OTC~~a Clearing Member, as applicable;

(e) it shall demonstrate such fiscal and moral integrity as would justify the Clearinghouse's assumption of the risks inherent in clearing its Contracts;

(f) it shall demonstrate financial capitalization commensurate with Clearinghouse requirements as set by the Risk Committee from time to time;

(g) if it is conducting Clearing Activities on behalf of Customers, it shall be registered as an FCM;

(h) it has established satisfactory relationships with, and has designated to the Clearinghouse, a Settlement Bank for confirmation and payment of all Performance Bond and settlements with the Clearinghouse;

(i) it shall maintain back-office facilities staffed with experienced and competent personnel or has entered into a facilities management agreement in form and substance acceptable to the Clearinghouse;

(j) it is an ECP; and

(k) is not statutorily disqualified from acting as a Clearing Member.

Rule 303. Applications for Membership

Only Persons found by the Clearing Membership Committee to be so qualified shall be permitted to be Clearing Members. For the purpose of determining whether any applicant or Clearing Member is thus qualified, the Clearinghouse may establish minimum capital and other financial requirements for Clearing Members, examine the books and records of any applicant or Clearing Member, and may take such other steps as it may deem necessary to ascertain the facts bearing upon the question of qualification. Any Person desiring to become a Clearing Member of the Clearinghouse shall submit an application in such form as shall be prescribed by the Clearinghouse, which form shall include a certification that the applicant has received the Rules, reviewed the Rules and agrees to abide by the Rules and perform the duties and responsibilities of a Clearing Member as set forth in Rule 305. An applicant for Clearing Member status shall be conclusively deemed to have agreed to have no recourse against the Clearinghouse in the event that its application to become a Clearing Member is rejected.

Rule 304. Approval of Clearing Membership

~~(a) An applicant for Clearing Membership receiving a majority vote of the full membership of the Clearing Membership Committee shall be approved effective at such time determined by the Clearing Membership Committee. The Clearing Membership Committee shall designate each approved Clearing Member as an Exchange Clearing Member and/or an OTC Clearing Member.~~

(a) ~~(b)~~ An applicant for Clearing Membership receiving a majority vote of the full membership of the Clearing Membership Committee shall be approved effective at such time determined by the Clearing Membership Committee. An applicant that fails to receive a majority vote shall be informed by the Clearing Membership Committee chairman and shall have seven Business Days thereafter to file an appeal to the Board seeking further consideration. The Board may approve the applicant by a majority vote if it determines that the Clearing Membership Committee's decision was arbitrary, capricious or an abuse of the Clearing Membership Committee's discretion.

Rule 305. Duties and Responsibilities of Clearing Members

Each Clearing Member shall, and where applicable, shall cause all of its Authorized Representatives and employees to:

(a) execute such membership agreements as may be required by the Clearinghouse from time to time;

(b) ~~(a)~~ comply with all Rules and shall act in a manner consistent with the Rules;

(c) maintain a minimum deposit in the Guaranty Fund of \$25.0 million or such greater amount as specified by the Risk Committee from time to time;

(d) ~~(b)~~ ensure that all Clearing Activity conducted by the Clearing Member is performed in a manner consistent with the Rules;

(e) ~~(e)~~ ensure that only the Clearinghouse's facilities are used to conduct Clearing Activity;

(f) ~~(d)~~ ensure that the Clearinghouse's facilities are used in a responsible manner and are not used for any improper purpose;

(g) ~~(e)~~ meet all financial requirements provided by the Rules;

(h) ~~(f)~~ guarantee and assume complete responsibility for all Contracts submitted by it or for which it authorizes another Person to submit in its name for clearing;

(g) ~~maintain its deposit in the Guaranty Fund as provided by the Rules;~~

(i) ~~(h)~~ observe high standards of integrity, market conduct, commercial honor, fair dealing, and just and equitable principles of trade while conducting or attempting to conduct any Clearing Activity, or any aspect of any business connected with or concerning the Clearinghouse;

(j) ~~(i)~~ be responsible for immediately informing the Clearinghouse of any changes to the account information provided by the Clearing Member;

(k) ~~(j)~~ keep the Clearing Member's Clearing System User IDs and passwords confidential;

(l) maintain the physical security of the equipment located on the premises of the Clearing Member to prevent the improper use or access to the Clearinghouse System, including unauthorized entry of information into the Clearinghouse Systems;

(m) ~~(k)~~ promptly review and, if necessary, respond to all communications sent by the Clearinghouse;

(n) ~~(l)~~ keep, or cause to be kept, complete and accurate books and records, including, without limitation, all books and records required to be maintained pursuant to the CEA, the Commission Regulations or the Clearinghouse, for at least five (5) years, and shall make such books and records available for inspection by a representative of the Clearinghouse, the Commission or other Government Agency;

(o) ~~(m)~~ resolve any disputes which arise while a Clearing Member which relate to or arise out of any transaction with the Clearinghouse or status of a Clearing Member in the Clearinghouse in accordance with the Rules, including such Rules related to choice of law and choice of venue;

(p) ~~(n)~~ not knowingly mislead or conceal any material fact or matter in any dealings or filings with the Clearinghouse or in response to any Clearinghouse Proceeding;

(q) ~~(o)~~ be responsible, even after it has withdrawn as a Clearing Member, for any violations of Rules committed by it while it was a Clearing Member; and

(r) ~~(p)~~ cooperate with the Clearinghouse and any Government Agency in any inquiry, investigation, audit, examination or proceeding.

Rule 306. Prohibited Practices

(a) Clearing Members are prohibited from engaging in practices that may cause degradation of the Clearinghouse's service, facilities, or both, ~~or that may cause a disorderly market, including but not limited to, unwarranted canceling and resubmitting of Orders.~~

(b) A Clearing Member, an Authorized Representative or any other Person subject to the Clearinghouse's jurisdiction is prohibited from engaging in acts or practices contrary to the purposes of the Clearinghouse, and from committing any act or engaging in any conduct that is likely to bring the Clearinghouse into disrepute. These prohibited practices include, but are not limited to:

- (i) cheating or defrauding or attempting to cheat or defraud any person;
- (ii) willfully making or causing to be made to any person any false report or statement or causing to be entered for any person any false record;
- (iii) willfully deceiving or attempting to deceive any person by any means whatsoever;

- (iv) effecting a transaction in, or inducing the purchase or sale of, any Contract through any manipulative, deceptive or fraudulent device or contrivance;
- (v) engaging or attempting to engage in price manipulation or cornering of the market;
- (vi) knowingly entering into transactions in Contracts: (1) in which the Clearing Member or its Customer is both the buyer and the seller of the Contract, (2) that do not result in change of beneficial ownership, ~~or (3)(3)~~ that result in money passing whereby Clearing Member or its Customer establishes a pattern of offsets with Clearing Member or other Customers for profit, or (4) that are designed to artificially inflate volume (including to satisfy a Clearing Member's revenue threshold); *provided*, however, if a Clearing Member is unintentionally both the buyer and seller on the same transaction as the result of an automated algorithmic trading program, such inadvertent transactions will not be deemed a violation of this Rule;
- (vii) knowingly entering transactions in Contracts if there are insufficient funds in the Clearing Member's account to satisfy such Orders if they are executed or knowingly submitting orders for Contracts in excess of the credit or risk limits, including the Total Risk Value, established by the Clearinghouse for such Clearing Member, or knowingly permitting a Customer to submit orders for Contracts or to submit Contracts to the Clearinghouse in excess of the Total Risk Value established by the Clearing Member for such Customer;
- (viii) engaging in any activity that presents a risk of harm to the Clearinghouse, its Clearing Members, or the public;
- (ix) engaging in conduct or practices that are detrimental to the best interests of the Clearinghouse or that adversely affect the integrity of the Clearinghouse or the Clearing System;
- (x) failing to abide by an arbitration decision or award handed down under Chapter 98 of the Rules; and
- (xi) engaging in any activity that is intended to or has the effect of violating the CEA or the Commission Regulations.

Rule 307. Termination; Restriction on Activity

(a) Upon the occurrence of a Termination Event, the Board may, in its sole discretion, impose limitations, conditions and restrictions upon a Clearing Member or terminate the status of the Clearing Member. In such circumstances, the Board may, in its sole discretion:

- (i) decline to accept new positions in Contracts;

- (ii) cause open Contracts to be transferred to one or more other ~~Exchange Clearing Members and/or OTC~~ Clearing Members, as appropriate, designated by the Clearinghouse, with such security against claims and liabilities as the Clearinghouse shall deem necessary for its protection;
 - (iii) permit transactions in Contracts to be tendered for liquidation only;
 - (iv) cause open Contracts to be settled in cash or liquidated in the open market; and
 - (v) otherwise take or omit to take such actions, or any combination thereof, as it deems necessary or appropriate in the circumstances.
- (b) The failure to comply with the Rules may also subject a Clearing Member to a suspension or revocation of clearing privileges. In addition, or in the alternative, and in either case in its sole discretion, the Board shall be authorized:
- (i) to impose such additional capital, Performance Bond or other requirements as it shall deem appropriate for the protection of the Clearinghouse and its Clearing Members;
 - (ii) to allow such Clearing Member to submit Contracts solely for its Proprietary Account;
 - (iii) to allow such Clearing Member to submit Contracts for liquidation only;
 - (iv) to limit or restrict the type of Contracts that may be cleared by such Clearing Member in any of its accounts with the Clearinghouse; or
 - (v) to limit or restrict the number of Contracts that are permitted to be maintained by such Clearing Member in any of its accounts with the Clearinghouse.
- (c) If the Board has reasonable cause to believe that a Clearing Member is likely to be subject to a Termination Event or is likely to fail to comply with the Rules, the Board may request such documents and assurances from the Clearing Member as the Board in its sole discretion deems satisfactory to demonstrate that the Clearing Member will not be subject to a Termination Event or will not fail to comply with the Rules. If the Clearing Member fails to deliver such documents and/or adequate assurances within the time set forth by the Board in its request, the Board shall be authorized to take the actions set forth in paragraphs (a) and (b) above.

Rule 308. Authorized Representatives

- (a) Each Clearing Member shall designate one or more Authorized Representatives who will be responsible for all Clearing Activity conducted on behalf of the Clearing Member. Each Clearing Member must provide the Clearinghouse with current contact

and other requested information for each of its Authorized Representatives so that the Clearinghouse is able to immediately contact the Authorized Representatives.

(b) Among other duties and responsibilities that the Clearinghouse may impose, an Authorized Representative must ensure that any Clearing Activity conducted by the Clearing Member complies with all Rules and Obligations.

(c) To designate an Authorized Representative, a Clearing Member must use the form, provide the information requested, and follow the procedures established by the Clearinghouse. The Clearinghouse may establish criteria that individuals must fulfill to become an Authorized Representative. By agreeing to become an Authorized Representative, an individual agrees to be bound by the duties and responsibilities of an Authorized Representative and to be subject to, and comply with, the Rules and Obligations.

(d) The Clearinghouse will promptly notify a Clearing Member of the approval of nominated Authorized Representatives, and will maintain a list of all appointed Authorized Representatives for each Clearing Member.

(e) If the Clearinghouse (i) declines to approve the designation, (ii) revokes the designation, or (iii) suspends the designation for more than seven calendar days, of an Authorized Representative, the Clearinghouse shall promptly notify the Clearing Member.

(f) An Authorized Representative who is suspended for any period remains subject to the Rules and the Clearinghouse's jurisdiction throughout the period of suspension.

(g) To request the termination of the designation of an Authorized Representative, the Clearing Member or the Authorized Representative must notify the Clearinghouse using the form, providing the information, and following the procedures established by the Clearinghouse.

(h) The Clearinghouse may, in its sole discretion, refuse to accept a request to terminate the registration of an Authorized Representative, or may postpone the effective date of the termination of registration if the Clearinghouse considers it necessary for the protection of Clearing Members or determines it is in the Clearinghouse's best interest. The Clearinghouse will not accept the registration as an Authorized Representative of any individual who is an Employee.

(i) Based on the information provided to, and other information gathered by, the Clearinghouse regarding the request to terminate the registration of an Authorized Representative, the Clearinghouse will determine whether to:

- (i) accept the request to terminate the designation;
- (ii) postpone the effective date of termination of the designation; and/or

(iii) impose any terms or conditions before or after the effective date of termination of the designation.

(j) After termination or revocation of the designation of an Authorized Representative, the Authorized Representative remains subject to the Rules and the jurisdiction of the Clearinghouse for acts done and omissions made while registered as an Authorized Representative. Any Clearinghouse Proceeding relating to an Authorized Representative shall occur as if the Authorized Representative were still registered as such.

Rule 309. Capital Requirements

(a) ~~An Exchange~~ A Clearing Member must at all times maintain adjusted net capital in excess of the ~~greater of:~~ \$50,000,000.

~~(i) — \$5,000,000;~~

~~(ii) — Commission minimum regulatory capital requirements to the extent applicable to such Clearing Member; and~~

~~(iii) — SEC minimum regulatory capital requirements to the extent applicable to such Clearing Member.~~

~~(b) — An OTC Clearing Member must at all times maintain adjusted net capital in excess of the greater of:~~

~~(i) — \$50,000,000;~~

~~(ii) — Commission minimum regulatory capital requirements to the extent applicable to such Clearing Member; and~~

~~(b) (iii) —~~ Notwithstanding paragraph (a), a Clearing Member must at all times meet Commission minimum regulatory capital requirements to the extent applicable to such Clearing Member and SEC minimum regulatory capital requirements to the extent applicable to such Clearing Member.

(c) The Clearing Membership Committee may prescribe additional risk-based capital requirements with respect to any Clearing Member.

Rule 310. Financial Reporting Requirements

Each Clearing Member shall submit statements of its financial condition at such times and in such form as may be prescribed by the Clearinghouse from time to time.

(a) Monthly Filings.

All Clearing Members shall submit within seventeen Business Days after the last day of each month:

- (i) monthly Form 1-FR-FCMs or FOCUS Reports, *provided* that if the Clearing Member is not required to submit such reports to the Commission or the SEC, the Clearing Member must nonetheless submit its financial information to the Clearinghouse in such format and calculate its adjusted net capital in accordance with such requirements;
- (ii) information relating to capital to be withdrawn within six months;
- (iii) information relating to subordinated debt maturing within six months;
- (iv) information relating to subordinated debt due to mature within six months that the Clearing Member intends to renew; and
- (v) with respect to Clearing Members that are registered as Broker-Dealers, information relating to additional capital requirements for excess margin on reverse repurchase agreements.

(b) Annual Filings.

Each Clearing Member must submit audited financial statements to the Clearinghouse annually. A Clearing Member that is registered as a Broker-Dealer must submit audited financial statements within 60 days of its fiscal year end. A Clearing Member that is not registered as a Broker-Dealer must submit audited financial statements within 90 days of its fiscal year end. A Clearing Member that is not registered as an FCM or as a Broker-Dealer and does not clear for Customers must submit audited financial statements that include at least the following information:

- (i) an opinion letter of a public accountant;
- (ii) statement of financial conditions;
- (iii) statement of income (loss);
- (iv) statement of cash flows;
- (v) statement of changes in ownership equity;
- (vi) and appropriate footnote disclosures.

A Clearing Member may be required to provide more frequent reports at the discretion of the Clearing Membership Committee, including, without limitation, submission of daily or weekly capital computations and segregated funds statements.

Rule 311. Guaranty Requirement

- (a) Ownership Information and Organization.

Each Clearing Member must provide and maintain with the Clearinghouse a correct roster of every Person (including natural persons) that directly or indirectly is the beneficial owner (determined in accordance with Rule 13d-3 under the Securities Exchange Act of 1934, as amended) of 5% or more of any class of equity security of the Clearing Member. For purposes of this rule, the term “equity security” shall include any stock, partnership interest, membership interest or similar security, or any security convertible into such a security, or carrying any option, warrant or right to subscribe to or purchase such a security, or any other instrument or right that the Clearinghouse deems to be of similar nature and considers necessary or appropriate to treat as an equity security. If such Person owns its interest in the Clearing Member indirectly through one or more intermediaries, all such intermediaries must be disclosed, including:

- (i) if a corporation, all shareholders who own 5% or more of any class of equity security of the Clearing Member;
- (ii) if a partnership, all general and any limited or other partners who have contributed 5% or more of the capital of such Clearing Member; or
- (iii) if a limited liability company, owners of membership interests of 5% or more of such Clearing Member.

(b) **Guaranty Requirement.**

(i) At the discretion of the Clearing Membership Committee, a Clearing Member may be required to provide the Clearinghouse with a written guaranty, in a form reasonably satisfactory to the Clearinghouse, from any Person owning, directly or indirectly, 5% or more of the equity securities of the Clearing Member.

(ii) A Clearing Member must provide a written guaranty of its Obligations to the Clearinghouse when a Clearing Member reorganizes into a different form of legal entity (other than a reorganization arising from a bankruptcy or insolvency proceeding). The guaranty must be in a form reasonably satisfactory to the Clearinghouse and must run from the new Clearing Member to the existing Clearing Member with respect to all Obligations of the existing Clearing Member to the Clearinghouse and all agreements entered into by the existing Clearing Member with the Clearinghouse.

Rule 312. Notices Required of Clearing Members

(a) **Financial Notices.**

(i) A Clearing Member must provide immediate notice to the Clearinghouse, orally and in writing, if the Clearing Member:

- (A) fails to maintain minimum capital requirements;
- (B) fails to maintain early warning capital requirements;

- (C) fails to maintain current books and records;
- (D) determines the existence of a material inadequacy as specified in Commission Regulation 1.16(d)(2);
- (E) changes its fiscal year;
- (F) changes its public accountants; or
- (G) fails to comply with additional accounting, reporting, financial and/or operational requirements prescribed by the Clearinghouse.

(ii) A Clearing Member must provide prompt written notice to the Clearinghouse if:

(A) it fails to maintain sufficient funds in any ~~Exchange Customer Segregated Account or OTC Customer Segregated Account~~;

(B) it experiences a reduction in adjusted net capital as reported on its Form 1-FR-FCM or net capital as reported on the FOCUS report, as applicable, of 20% or more, from the most recent filing of such report;

(C) it has a planned reduction to equity capital that would cause a reduction in net excess capital of 30% or more; or

(D) a Performance Bond call in any account exceeds the Clearing Member's excess net capital and such Performance Bond call remains unsatisfied by the close of business the day following the issuance of the call.

(b) Operational Notices.

(i) A Clearing Member must provide immediate notice to the Clearinghouse, orally and in writing, of:

(A) any damage to, or failure or inadequacy of, the systems, facilities or equipment of the Clearing Member to effect transactions pursuant to the Rules or to timely perform the Clearing Member's financial obligations under or in connection with Contracts;

(B) any refusal of admission to, withdrawal of any application for membership in, any suspension, expulsion, bar, fine, censure, denial of membership, registration or license, withdrawal of any application for registration, cease and desist order, temporary or permanent injunction, denial of trading privileges, or any other sanction or discipline through an adverse determination, voluntary settlement or otherwise, by any Government Agency, any commodity or securities exchange, clearing organization, the NFA, FINRA, any self-regulatory organization or other business or professional association;

(C) the imposition of any restriction or limitation on the business conducted by the Clearing Member on or with any securities or futures clearing organization or exchange (including, without limitation, any contract market, exempt board of trade, swap execution facility, linked exchange, other trading facility, or linked clearinghouse, other than restrictions or limitations imposed generally on all clearing members of or participants in such clearing organization or exchange);

(D) any failure by such Clearing Member, or any guarantor or commonly owned or controlled Clearing Member to perform any of its material contracts, Obligations or agreements;

(E) any determination that it, or any guarantor, will be unable to perform any of its material contracts, guarantees, Obligations or agreements;

(F) the insolvency of such Clearing Member, or of any guarantor;

(G) the institution of any proceeding by or against the Clearing Member, any affiliate of the Clearing Member, or any Person with a beneficial ownership of greater than 5% in the Clearing Member, under any provision of the bankruptcy laws of the United States, or under the Securities Investor Protection Act of 1970, any other statute or equitable power of a court of like nature or purpose, in which such Clearing Member or Person is designated as bankrupt, debtor or equivalent, or if a receiver, trustee or similar official is appointed for the Clearing Member, such Person, or its or their property;

(H) the receipt by such Clearing Member, or the filing by such Clearing Member with a self-regulatory organization, of a notice of material inadequacy; or

(I) the receipt by such Clearing Member from its independent auditors of an audit opinion that is qualified.

(ii) A Clearing Member must provide prompt written notice to the Clearinghouse if:

(A) It changes its name, business address, telephone or facsimile number, electronic mail address, or any number or access code for any electronic communication device used by it to communicate with the Clearinghouse;

(B) It changes any of its key personnel; or

(C) Any Person directly or indirectly becomes a beneficial owner of 5% or more of its equity securities.

(iii) A Clearing Member must provide at least 10 Business Days, written notice to the Clearinghouse of:

(A) any proposed change in the organizational or ownership structure or management of a Clearing Member, including any merger, combination or consolidation between the Clearing Member and another Person;

(B) the assumption or guaranty by the Clearing Member of all or substantially all of the liabilities of another Person in connection with a direct or indirect acquisition of all or substantially all of that Person's assets;

(C) the sale of a significant part of the Clearing Member's business or assets to another Person;

(D) a change in the direct or indirect beneficial ownership of 20% or more of the Clearing Member; or

(E) any change in the Clearing Member's system provider used to process transactions in Contracts.

Rule 313. No Transfer of Membership

No membership in the Clearinghouse may be transferred to another Person except in connection with a merger or other business combination where such transfer of membership is approved by the Clearinghouse.

Rule 314. Clearinghouse Risk Filter

(a) Each Clearing Member must register with the Clearinghouse any Customer authorized by the Clearing Member to submit Contracts to the Clearinghouse and the applicable Customer Account numbers for such Customer. For each such Customer Account, the Clearing Member must also submit to the Clearinghouse the name of any Person that is authorized by the Customer to act on its behalf in the submission of Contracts to the Clearinghouse.

(b) For each Customer Account carried by a Clearing Member, the Clearing Member must provide the Clearinghouse an authorization indicating the Contracts that may be traded by such Customer Account and the Total Risk Value.

(c) For each Proprietary Account carried by such Clearing Member, the Risk Committee will determine the Total Risk Value and set the Clearinghouse Risk Filter.

(d) The Total Risk Value shall be used by the Clearinghouse to conduct a credit check in connection with the entry of active orders or the reallocation of a transaction from one account to another account. The Clearinghouse Risk Filter shall assess: (1) whether the Clearing Member carrying that account has authorized that account to trade the Contract specified by the order or trade allocation, and (2) whether the entry of an order or the allocation of a Contract to an account would fall within the Total Risk Value established for the Clearing Member, in the case of its Proprietary Account, or by the Clearing Member in the case of its Customer Account. If the Clearinghouse Risk Filter is triggered by the acceptance for clearing of a Contract for an account, no additional

Contracts (other than Contracts that would have the effect of reducing the risk in such account) will be accepted by the Clearinghouse for such account unless the Clearing Member carrying such account deposits additional collateral in an amount and form acceptable to the Clearinghouse or otherwise reduces its risk to the Clearinghouse. Additionally, the Clearinghouse may, in its discretion, liquidate the Contracts that triggered or exceeded the Total Risk Value established for the account.

(e) The Clearinghouse shall notify the relevant Clearing Member when a transaction exceeds the Total Risk Value or when a transaction is not accepted for clearing.

(f) A Clearing Member must act promptly to prevent the submission of further transactions for any account that it carries that is in excess of its Total Risk Value.

Chapter 4 —

Chapter 4
Clearing of Exchange Contracts

Rule 401. Rule 401. Submission of Exchange Contracts to the Clearinghouse

This Chapter 4 applies to the clearing of ~~Exchange Contracts~~. The submission of the details of a transaction in an ~~Exchange~~ Contract by or on behalf of an ~~Exchange~~ Clearing Member, as hereinafter provided, shall constitute a request by the ~~Exchange~~ Clearing Member to the Clearinghouse for clearance of the ~~Exchange Contracts~~ pursuant to the details submitted. These Rules shall constitute part of the terms of each ~~Exchange~~ Contract submitted to the Clearinghouse.

Rule 402. Rule 402. Effect of Clearance of Exchange Contracts

Upon the acceptance of an ~~Exchange~~ Contract by the Clearinghouse in accordance with Rule 403, the Clearinghouse shall, through the process of novation, substitute itself as the counterparty to buying and selling ~~Exchange~~ Clearing Members that are party to the ~~Exchange~~ Contract or that are clearing the ~~Exchange~~ Contract for a Customer Account in accordance with Rule 411-~~410~~. Upon such substitution, (i) the buying ~~Exchange~~ Clearing Member shall be released from its obligations to the selling ~~Exchange~~ Clearing Member and the Clearinghouse shall be deemed to have succeeded to all the rights and to have assumed all of the obligations of the buying ~~Exchange~~ Clearing Member with respect to the selling ~~Exchange~~ Clearing Member under the ~~Exchange~~ Contract, and (ii) the selling ~~Exchange~~ Clearing Member shall be released from its obligations to the buying ~~Exchange~~ Clearing Member and the Clearinghouse shall be deemed to have succeeded to all the rights and to have assumed all of the obligations of the selling ~~Exchange~~ Clearing Member with respect to the buying ~~Exchange~~ Clearing Member under the ~~Exchange~~ Contract, to the extent provided in these Rules. After this substitution, the Clearinghouse shall be party to two equal and offsetting ~~Exchange~~ Contracts, one between the Clearinghouse (as seller) and the buying ~~Exchange~~ Clearing Member (as buyer), and one between the Clearinghouse (as buyer) and the selling ~~Exchange~~ Clearing Member (as seller).

Rule 403. Rule 403. Acceptance of Exchange Contracts by the Clearinghouse

- (a) To be eligible for clearance by the Clearinghouse, an ~~Exchange~~ Contract must:
- (i) be submitted to the Clearinghouse for clearance through the ~~electronic order matching engine or~~ Clearinghouse's over-the-counter trade registration facility ~~or~~ for a Participating Trading Facility for the account of an ~~Exchange~~ Clearing Member; and
 - (ii) have passed through the Clearinghouse Risk Filter.
- (b) An ~~Exchange~~ Contract is accepted upon the Clearinghouse's receipt and acknowledgment of a matched transaction. ~~The issuance of a Clearing Member Statement by~~ Upon acceptance for clearing, the Clearinghouse will issue a written confirmation of the terms of a matched transaction which constitutes confirmation that

the ~~Exchange~~ Contracts listed on such statement have been accepted by the Clearinghouse. This written confirmation may be provided directly by the Clearinghouse or on behalf of the Clearinghouse through the systems of a Participating Trading Facility or over the counter trade registration facility.

(c) If the Clearinghouse does not accept an ~~Exchange~~ Contract for clearing, the Clearinghouse shall incur no liability with respect to such ~~Exchange~~ Contract. The Clearinghouse will promptly notify each ~~Exchange~~ Clearing Member party to a transaction if such transaction is not accepted for clearing. Each ~~Exchange~~ Clearing Member party to a transaction that has not been accepted for clearing by the Clearinghouse must take such steps as the ~~Exchange~~ Clearing Members may deem necessary or proper for such ~~Exchange~~ Clearing Members' own protection.

Rule 404. — Adjustment

(a) — ~~Where an Exchange Contract is cleared in accordance with Rule 402 and the price of the Exchange Contract is less than the Settlement Price, the selling Exchange Clearing Member shall pay to the Clearinghouse, and the buying Exchange Clearing Member shall receive from the Clearinghouse, the Variation Settlement, in accordance with the policies and procedures of the Clearinghouse.~~

(b) — ~~When an Exchange Contract is cleared in accordance with Rule 402 and the price of the Exchange Contract is more than the Settlement Price, the buying Exchange Clearing Member shall pay to the Clearinghouse, and the selling Exchange Clearing Member shall receive from the Clearinghouse, the Variation Settlement, in accordance with the policies and procedures of the Clearinghouse.~~

(c) — ~~Such payments shall be at the time and in the manner prescribed by the Clearinghouse. Thereafter, from day to day, to the extent such Exchange Contract remains open, similar Variation Settlement payments shall be made to bring the Exchange Contract to the Settlement Price.~~

Rule 405. Rule 404. Positions Held Open / Offset of Identical Exchange Contracts

(a) Except as set forth below in subparagraph (b), where, as the result of novation under Rule 402, an ~~Exchange~~ Clearing Member has bought from the Clearinghouse any amount of an ~~Exchange~~ Contract, and prior to the final settlement date of such ~~Exchange~~ Contract, such ~~Exchange~~ Clearing Member has sold an ~~Exchange~~ Contract, the long and short ~~Exchange~~ Contracts of such ~~Exchange~~ Clearing Member shall be held open at the Clearinghouse and such positions shall not be offset except by such open position compression procedures as may be adopted by the Clearinghouse and notified to ~~Exchange~~ Clearing Members in a Notice to Members. An ~~Exchange~~ Clearing Member shall remain liable to pay to and eligible to receive from the Clearinghouse the net payment obligations relating to all open ~~Exchange~~ Contracts held by the ~~Exchange~~ Clearing Member at the Clearinghouse.

(b) Where, as the result of novation under Rule 402, an ~~Exchange~~ Clearing Member has bought from the Clearinghouse any amount of an ~~Exchange~~ Contract for a particular

account, and subsequently, and prior to the final settlement date of such ~~Exchange~~ Contract, such ~~Exchange~~ Clearing Member sells to the Clearinghouse any amount of the identical ~~Exchange~~ Contract for the same account with the identical final settlement date and the identical fixed rate payment terms, the second transaction shall be deemed a settlement or adjustment of the quantity of the prior transaction to the extent of the second transaction. Similarly, where, as the result of novation under Rule 402, an ~~Exchange~~ Clearing Member has sold to the Clearinghouse any amount of an ~~Exchange~~ Contract for a particular account, and subsequently, and prior to the final settlement date of such ~~Exchange~~ Contract, such ~~Exchange~~ Clearing Member buys from the Clearinghouse any amount of the identical ~~Exchange~~ Contract for the same account with the identical final settlement date and the identical fixed rate payment terms, the second transaction shall be deemed a settlement or adjustment of the quantity of the prior transaction to the extent of the second transaction. Thereupon, such ~~Exchange~~ Clearing Member shall become liable to pay the loss or be entitled to collect the profit, as the case may be, upon such adjusted transactions, and shall be under no further liability to receive or make payment with respect thereto. For purposes of this Rule, the first ~~Exchange~~ Contracts made shall be deemed the first ~~Exchange~~ Contracts offset. Contracts that originated on different Participating Trading Facilities may be offset in accordance with this Rule 404(b) provided that they have an identical final settlement date and identical fixed rate payment terms.

Rule 406-Rule 405. Trade Reports

Each Business Day, at such time as shall be determined by the Clearinghouse, ~~Exchange~~ Clearing Members shall file reports of transactions in ~~Exchange~~ Contracts (a "*Trade Report*") with the Clearinghouse in the manner prescribed by the Clearinghouse (~~which, in the case of electronic trading systems that submit matched transactions in Exchange Contracts to the Clearinghouse, shall be satisfied by confirming reports automatically generated by such system that contain the information set forth herein~~), with respect to all transactions in ~~Exchange~~ Contracts made during the day showing the essential details of each transaction, including:

- (a) the name of the ~~Exchange~~ Contract;
- (b) the identity of both ~~Exchange~~ Clearing Members;
- (c) whether bought or sold;
- (d) the quantity;
- (e) the final settlement date;
- (f) the price of the ~~Exchange~~ Contract;
- (g) the Settlement Price;
- (h) whether for a Proprietary Account of the ~~Exchange~~ Clearing Member or an ~~Exchange~~ Customer Segregated Account; and

(i) such other information as may be required by the Clearinghouse to effect the matching of ~~Exchange Contracts~~Contract s between the buyer and the seller.

~~Rule 407.~~ Rule 406. Inconsistency in Trade Reports

Each Trade Report submitted by an ~~Exchange~~ Clearing Member must correspond in all material respects with the Trade Report submitted by the other ~~Exchange~~ Clearing Member that is a party to the subject transaction.

~~Rule 408.~~ Rule 407. Fees, Costs and Charges

The Clearinghouse may impose fees, costs and charges on ~~Exchange~~ Clearing Members for business conducted on, through, or in connection with, the Clearinghouse. Before imposing or changing any fees, costs or charges, the Clearinghouse will notify ~~Exchange~~ Clearing Members in a Notice to Members at least seven calendar days prior to the effective date of the amendment.

~~Rule 409.~~ Rule 408. Collecting Clearing Fees

Each time an ~~Exchange~~ Clearing Member's transactions in ~~Exchange~~ Contracts are matched and each time an ~~Exchange~~ Contract held by that ~~Exchange~~ Clearing Member expires a fee will be due to the Clearinghouse from the ~~Exchange~~ Clearing Member. On a periodic basis, the Clearinghouse will provide each ~~Exchange~~ Clearing Member with an electronic invoice of the clearing fees and other expenses due from the ~~Exchange~~ Clearing Member, which the ~~Exchange~~ Clearing Member may pay separately or which the Clearinghouse may debit directly from the ~~Exchange~~ Clearing Member's Proprietary Account.

~~Rule 410.~~ Rule 409. Collecting Fees, Charges and Costs Other Than Clearing Fees

(a) The Clearinghouse will draw fees (other than clearing fees), charges and costs that the ~~Exchange~~ Clearing Member owes to the Clearinghouse from the ~~Exchange~~ Clearing Member's account. Upon request, the Clearinghouse will provide an ~~Exchange~~ Clearing Member with an electronic invoice of the fees (other than transaction fees) to the ~~Exchange~~ Clearing Member.

(b) If an ~~Exchange~~ Clearing Member does not have sufficient funds in its account to pay any amount owed to the Clearinghouse, the Clearinghouse may suspend all rights of the ~~Exchange~~ Clearing Member pursuant to Rule ~~718~~618 until the ~~Exchange~~ Clearing Member pays all amounts currently owed to the Clearinghouse, together with any other unpaid amounts that become due and payable from the ~~Exchange~~ Clearing Member during the period of suspension, as well as any applicable collection fees and interest charges.

~~Rule 411.~~ Rule 410. Clearing ~~Exchange~~ Contracts for Customer Accounts

When an ~~Exchange~~ Clearing Member clears an ~~Exchange~~ Contract for a Customer Account, the ~~Exchange~~ Clearing Member becomes liable to the Clearinghouse and the

Clearinghouse liable to the ~~Exchange~~ Clearing Member on such ~~Exchange~~ Contract in the same manner and to the same extent as if the ~~Exchange~~ Contract were for the account of the ~~Exchange~~ Clearing Member. A Contract cleared by a Clearing Member for Customer Account must be carried in the customer account on the books of the Clearing Member on the same terms as in the contract specifications set forth in Chapter 9.

Rule 412. — Exchange

Rule 411. — Customer Segregated Accounts

~~(a) — An Exchange Clearing Member required by law to segregate Exchange Customer transactions with the Clearinghouse shall maintain an Exchange Customer Segregated Account for that purpose. If the Exchange Clearing Member is also an OTC Clearing Member, it shall maintain a separate OTC Customer Segregated Account for OTC Customer transactions in OTC Contracts.~~

~~(b) — When appropriately so designated by the Exchange Clearing Member, the Exchange Customer Segregated Account shall be treated as to Performance Bonds, Variation Settlements and all other operations separately from the Proprietary Account of the Exchange Clearing Member except that, (i) excess funds in any other Proprietary Account of the Exchange Clearing Member may be allocated by the Clearinghouse to the Exchange Customer Segregated Account to the extent necessary to meet applicable Performance Bond requirements of these Rules, and (ii) if the Exchange Clearing Member is in Default as to any account maintained by the Exchange Clearing Member with the Clearinghouse or for any reason ceases to be an Exchange Clearing Member, the open Exchange Contracts in all such accounts may be closed in the open market, transferred to any other Exchange Clearing Member, or otherwise resolved and the deficit, if any, in the Exchange Customer Segregated Account applied against the balance in any other Proprietary Account of the Exchange Clearing Member.~~

~~(c) — The Exchange Customer Segregated Account will be identified on the books of the Clearinghouse and the books of the Settlement Bank as a “customer segregated account.” All Clearing Member funds in the Exchange Customer Segregated Account will be held by the Clearinghouse in accordance with the CEA and Commission Regulation 1.20. Such funds shall be segregated by the Clearinghouse and treated as belonging to the Clearing Members. The Clearinghouse may invest such funds subject to Commission Regulation 1.25.~~

Rule 413. — Transfers of Exchange Contracts

~~(a) — An Exchange Clearing Member may transfer an Exchange Contract from one account carried by the Clearing Member to another account carried by the Clearing Member or to an account carried by another Clearing Member, upon written notice to the Clearinghouse in a form acceptable to the Clearinghouse, provided:~~

~~(i) — the underlying beneficial ownership in each such account remains the same;~~

~~(ii) — an error has been made in the clearing of an Exchange Contract and the error is discovered and the transfer is completed within two Business Days of the date the Exchange Contract was submitted to the Clearinghouse for clearing;~~

~~(iii) — the Clearinghouse, in its sole discretion, allows such transfer as a result of a merger or other business combination; or~~

~~(iv) — the Clearinghouse, in its sole discretion, determines that such transfer is in the best interest of the Clearinghouse.~~

~~(b) — Any such transferred Exchange Contract shall be:~~

~~(i) — carried by the receiving Clearing Member as of the date the Exchange Contract was submitted to the Clearinghouse for clearing; and~~

~~(ii) — held open, or offset, as the case may be, in accordance with Rule 405.~~

~~(c) — Each Clearing Member must maintain a full and complete record of all such transactions.~~

Rule 414. — Records

~~Exchange Clearing Members shall keep records showing, with respect to each purchase or sale of an Exchange Contract, the name of the Exchange Contract, the names of both Exchange Clearing Members, the Exchange Contract quantity, date, price, settlement date, the name of the beneficial owner of and identifying information for the Proprietary Account of an Exchange Clearing Member or Exchange Customer Segregated Account in which the transaction was made and such other information as may be required by law, regulation, or by the Clearinghouse. Such records shall be retained for at least five years, or such longer period as required by the CEA or the regulations promulgated thereunder, either in original form or in such other form as the Clearinghouse may from time to time authorize, and shall be deemed the joint property of the Clearinghouse and the Exchange Clearing Member keeping such records. The Clearinghouse shall be entitled to inspect or take temporary possession of such records at any time upon demand.~~

Rule 415. — Reporting of Positions

~~Exchange Clearing Members shall file reports of their open positions in Exchange Contracts at the time and in the manner prescribed by the Clearinghouse.~~

Rule 416. — Limitation of Liability

~~(a) — The liability of the Clearinghouse relating to or arising out of Exchange Contracts shall be limited to losses resulting from the novation of the Exchange Contracts in accordance with these Rules.~~

~~(b) — The Clearinghouse shall not be liable for~~

~~(i) — the Obligations of an Exchange Clearing Member to another Exchange Clearing Member;~~

~~(ii) — the Obligations of an Exchange Clearing Member to another Exchange Clearing Member who is acting for such other Exchange Clearing Member as broker; or~~

~~(iii) — the Obligations of an Exchange Clearing Member to an Exchange Customer.~~

Rule 417. — Position Limits

~~(a) — The Clearinghouse may impose speculative position limits on Exchange Contracts. Any Exchange Clearing Member who exceeds a Speculative Position Limit shall be deemed to have violated this Rule 417. In addition, any Exchange Clearing Member entering orders that, if accepted, would cause the Exchange Clearing Member to exceed a Speculative Position Limit, shall be deemed to have violated this Rule 417.~~

~~(b) — If an Exchange Clearing Member fails to reduce any position in a manner and time as directed by the Clearinghouse, the Clearinghouse shall have the authority to liquidate the applicable position to a level below the defined Speculative Position Limit stipulated for the relevant Exchange Contract.~~

~~(c) — In addition to the restrictions and requirements imposed in paragraphs (a) and (b), the first violation of a Speculative Position Limit by an Exchange Clearing Member shall result in a letter of warning to be issued by electronic mail by the Regulatory Oversight Department to the Exchange Clearing Member. Any subsequent violation of a Speculative Position Limit within the succeeding 12 months by an Exchange Clearing Member shall result in the issuance of a second letter of warning by electronic mail to the Exchange Clearing Member, a fine, and the suspension or revocation of Clearing Membership privileges in accordance with Chapter 7 of the Rules.~~

Rule 418. — Swap Agreement Replacement

~~Swap agreements that are traded on a bilateral basis and submitted through the trade registration system of a Participating Trading Facility for clearing by the Clearinghouse will be cleared as futures contracts through a replacement process whereby the original over the counter swap agreement is replaced by an economically equivalent futures contract that complies with the Exchange Contract terms specified by the Participating Trading Facility or the Clearinghouse. A replacement of a futures contract for an over the counter swap agreement shall be comprised of two discrete transactions where the buyer and seller of the futures contract must be, respectively, the seller and buyer of the interest rate swap. The swap agreement component shall involve the same instrument underlying the futures contract. The quantity covered by the swap agreement must be equivalent to the quantity covered by the futures contract. The parties to the transaction shall maintain a record of the transaction together with all pertinent documentation of the over the counter swap agreement. The swap agreement component of a replacement transaction must comply with applicable Commission regulatory requirements, if any.~~

Chapter 5 —

Clearing of OTC Contracts

Rule 501. — Submission of OTC Contracts to the Clearinghouse

~~This Chapter 5 applies to the clearing of OTC Contracts. The submission of the details of a transaction in an OTC Contract by or on behalf of an OTC Clearing Member, as hereinafter provided, shall constitute a request by the OTC Clearing Member to the Clearinghouse for clearance of the OTC Contracts pursuant to the details submitted. These Rules shall constitute part of the terms of each OTC Contract submitted to the Clearinghouse.~~

Rule 502. — Effect of Clearance of OTC Contracts

~~Upon the acceptance of an OTC Contract by the Clearinghouse in accordance with Rule 503, the Clearinghouse shall, through the process of novation, substitute itself as the counterparty to buying and selling OTC Clearing Members that are party to the OTC Contract or that are clearing the OTC Contract for a Customer Account in accordance with Rule 510. Upon such substitution, (i) the buying OTC Clearing Member shall be released from its obligations to the selling OTC Clearing Member and the Clearinghouse shall be deemed to have succeeded to all the rights and to have assumed all of the obligations of the buying OTC Clearing Member with respect to the selling OTC Clearing Member under the OTC Contract, and (ii) the selling OTC Clearing Member shall be released from its obligations to the buying OTC Clearing Member and the Clearinghouse shall be deemed to have succeeded to all the rights and to have assumed all of the obligations of the selling OTC Clearing Member with respect to the buying OTC Clearing Member under the OTC Contract, to the extent provided in these Rules. After this substitution, the Clearinghouse shall be party to two equal and offsetting OTC Contracts, one between the Clearinghouse (as seller) and the buying OTC Clearing Member (as buyer), and one between the Clearinghouse (as buyer) and the selling OTC Clearing Member (as seller).~~

Rule 503. — Acceptance of OTC Contracts by the Clearinghouse

~~(a) — To be eligible for clearance by the Clearinghouse, an OTC Contract must:~~

~~(i) — be submitted to the Clearinghouse for clearance through the Clearinghouse's over the counter trade registration facility for the account of an OTC Clearing Member; and~~

~~(ii) — have passed through the Clearinghouse Risk Filter.~~

~~(b) — An OTC Contract is accepted upon the Clearinghouse's receipt and acknowledgment of a matched transaction. The issuance of a Clearing Member Statement by the Clearinghouse constitutes confirmation that the OTC Contracts listed on such statement have been accepted by the Clearinghouse.~~

~~(c) — If the Clearinghouse does not accept an OTC Contract for clearing, the Clearinghouse shall incur no liability with respect to such OTC Contract. The Clearinghouse will promptly notify each OTC Clearing Member party to a transaction if such transaction is not accepted for clearing. Each OTC Clearing Member party to a transaction that has not been accepted for clearing by the Clearinghouse must take such steps as the OTC Clearing Members may deem necessary or proper for such OTC Clearing Members' own protection.~~

Rule 504. — Positions Held Open / Offset of Identical OTC Contracts

~~(a) — Except as set forth below in subparagraph (b), where, as the result of novation under Rule 502, an OTC Clearing Member has bought from the Clearinghouse any amount of an OTC Contract, and prior to the final settlement date of such OTC Contract, such OTC Clearing Member has sold an OTC Contract, the long and short OTC Contracts of such OTC Clearing Member shall be held open at the Clearinghouse and such positions shall not be offset except by such open position compression procedures as may be adopted by the Clearinghouse and notified to OTC Clearing Members in a Notice to Members. An OTC Clearing Member shall remain liable to pay to and eligible to receive from the Clearinghouse the net payment obligations relating to all open OTC Contracts held by the OTC Clearing Member at the Clearinghouse.~~

~~(b) — Where, as the result of novation under Rule 502, an OTC Clearing Member has bought from the Clearinghouse any amount of an OTC Contract for a particular account, and subsequently, and prior to the final settlement date of such OTC Contract, such OTC Clearing Member sells to the Clearinghouse any amount of the identical OTC Contract for the same account with the identical final settlement date and the identical fixed rate payment terms, the second transaction shall be deemed a settlement or adjustment of the quantity of the prior transaction to the extent of the second transaction. Similarly, where, as the result of novation under Rule 502, an OTC Clearing Member has sold to the Clearinghouse any amount of an OTC Contract for a particular account, and subsequently, and prior to the final settlement date of such OTC Contract, such OTC Clearing Member buys from the Clearinghouse any amount of the identical OTC Contract for the same account with the identical final settlement date and the identical fixed rate payment terms, the second transaction shall be deemed a settlement or adjustment of the quantity of the prior transaction to the extent of the second transaction. Thereupon, such OTC Clearing Member shall become liable to pay the loss or be entitled to collect the profit, as the case may be, upon such adjusted transactions, and shall be under no further liability to receive or make payment with respect thereto. For purposes of this Rule, the first OTC Contracts made shall be deemed the first OTC Contracts offset.~~

Rule 505. — Trade Reports

~~Each Business Day, at such time as shall be determined by the Clearinghouse, OTC Clearing Members shall file reports of transactions in OTC Contracts (a "Trade Report") with the Clearinghouse in the manner prescribed by the Clearinghouse, with respect to all~~

~~transactions in OTC Contracts made during the day showing the essential details of each transaction, including:~~

- ~~(a) — the name of the OTC Contract;~~
- ~~(b) — the identity of both OTC Clearing Members;~~
- ~~(c) — whether bought or sold;~~
- ~~(d) — the quantity;~~
- ~~(e) — the final settlement date;~~
- ~~(f) — the price of the OTC Contract;~~
- ~~(g) — the Settlement Price;~~
- ~~(h) — whether for a Proprietary Account of the OTC Clearing Member or an OTC Customer Segregated Account; and~~
- ~~(i) — such other information as may be required by the Clearinghouse to effect the matching of OTC Contracts between the buyer and the seller.~~

Rule 506. — Inconsistency in Trade Reports

~~Each Trade Report submitted by an OTC Clearing Member must correspond in all material respects with the Trade Report submitted by the other OTC Clearing Member that is a party to the subject transaction.~~

Rule 507. — Fees, Costs and Charges

~~The Clearinghouse may impose fees, costs and charges on OTC Clearing Members for business conducted on, through, or in connection with, the Clearinghouse. Before imposing or changing any fees, costs or charges, the Clearinghouse will notify OTC Clearing Members in a Notice to Members at least seven calendar days prior to the effective date of the amendment.~~

Rule 508. — Collecting Clearing Fees

~~Each time an OTC Clearing Member's transactions in OTC Contracts are matched and each time an OTC Contract held by that OTC Clearing Member expires a fee will be due to the Clearinghouse from the OTC Clearing Member. On a periodic basis, the Clearinghouse will provide each OTC Clearing Member with an electronic invoice of the clearing fees and other expenses due from the OTC Clearing Member, which the OTC Clearing Member may pay separately or which the Clearinghouse may debit directly from the OTC Clearing Member's Proprietary Account.~~

accounted for and segregated as belonging to such ~~OTC~~ Customers, and the Clearinghouse shall not hold, use or dispose of such ~~OTC~~ Customer funds except as belonging to such ~~OTC~~ Customers. Such ~~OTC~~ Customer funds when deposited in a bank or trust company shall be deposited under an account name which clearly shows that they are the ~~OTC~~ Customer funds of the ~~OTC~~ Customers of an ~~OTC~~ Clearing Member, segregated as required by the Rules. The Clearinghouse shall obtain and retain in its files for the period provided by Commission Regulation 1.31 an acknowledgment from such bank or trust company that it was informed that the ~~OTC~~ Customer funds deposited therein are those of ~~OTC~~ Customers of its ~~OTC~~ Clearing Members and are being held in accordance with the provisions of the Act and these regulations.

(iii) Each ~~OTC~~ Clearing Member shall treat and deal with the ~~OTC~~ Customer funds of an ~~OTC~~ Customer as belonging to such ~~OTC~~ Customer. All ~~OTC~~ Customer funds shall be separately accounted for, and shall not be commingled with the money, securities or property of an ~~OTC~~ Clearing Member or of any other person, or be used to secure or guarantee the ~~OTC~~ Contracts, or to secure or extend the credit, of any person other than the one for whom the same are held: provided, however, that ~~OTC~~ Customer funds treated as belonging to the ~~OTC~~ Customers of an ~~OTC~~ Clearing Member may for convenience be commingled and deposited in the same account or accounts with any bank or trust company, with another ~~OTC~~ Clearing Member, or with the Clearinghouse, and that such share thereof as in the normal course of business is necessary to purchase, margin, guarantee, secure, transfer, adjust, or settle the ~~OTC~~ Contracts of such ~~OTC~~ Customer, with the Clearinghouse or with any other ~~OTC~~ Clearing Member, may be withdrawn and applied to such purposes, including commissions, interest, taxes, and other fees and charges, lawfully accruing in connection with such ~~OTC~~ Contracts: provided, further, that ~~OTC~~ Customer funds may be invested in accordance with paragraph (f).

(b) *Care of money and equities accruing to ~~OTC~~ Customer*

All money received directly or indirectly by, and all money and equities accruing to, an ~~OTC~~ Clearing Member from the Clearinghouse or from any Clearing Member or from any other person incident to or resulting from any ~~OTC~~ Contract made by or through such ~~OTC~~ Clearing Member on behalf of any ~~OTC~~ Customer shall be considered as accruing to such ~~OTC~~ Customer within the meaning of the Rules. Such money and equities shall be treated and dealt with as belonging to such ~~OTC~~ Customer in accordance with the provisions of the Rules. Money and equities accruing in connection with ~~OTC~~ Customers' open ~~OTC~~ Contracts need not be separately credited to individual accounts but may be treated and dealt with as belonging undivided to ~~OTC~~ Customers having open ~~OTC~~ Contracts which if closed would result in a credit to such ~~OTC~~ Customers.

(c) *Use of ~~OTC~~ Customer funds restricted*

No-OTC Clearing Member shall use, or permit the use of, the funds of one-OTC Customer to purchase, margin, or settle the trades, contracts or transactions of, or to secure or extend the credit of, any person other than such-OTC Customer. Funds of an-OTC_a Customer shall not be used to carry trades or positions of the same OTC-Customer other than in OTC-derivatives cleared through the facilities of a Derivatives Clearing Organization that has established rules or bylaws which require cleared-OTC derivatives (as that term is defined in CFTC Regulation 190.01(o)), along with the money, securities and/or other property margining, guaranteeing or securing such derivatives, to be held in a separate account.

(d) *Interest of-OTC Clearing Members in segregated funds; additions and withdrawals*

Paragraph (a) of this Rule, which prohibits the commingling of-OTC Customer funds with the funds of an-OTC_a Clearing Member, shall not be construed to prevent an-OTC_a Clearing Member from having a residual financial interest in the OTC-Customer's funds, segregated as required by the Rules and set apart for the benefit of OTC-Customers; nor shall such provisions be construed to prevent an-OTC_a Clearing Member from adding to the segregated-OTC Customer funds such amount or amounts of money, from its own funds or unencumbered securities from its own inventory, of the type permitted under paragraph (f), as it may deem necessary to ensure any and all-OTC Customer Segregated Accounts hold at all times, at a minimum, the amount required by the Rules. The books and records of an-OTC_a Clearing Member shall at all times accurately reflect its interest in the segregated funds of OTC-Customers. An-OTC_a Clearing Member may draw upon such funds of-OTC Customers to its own order, to the extent of its actual interest therein, including the withdrawal of securities held in-OTC Customer Segregated Accounts held by the Clearinghouse, a bank, trust company or other OTC Clearing Member. Such withdrawal shall not result in the funds of one-OTC Customer being used to purchase, margin or carry the trades, contracts or transactions, or extend the credit of any other-OTC Customer or other person.

(e) *Funds held in OTC-Customer Segregated Accounts; exclusions therefrom*

Money held in an-OTC_a Customer Segregated Account by an-OTC_a Clearing Member shall not include: (a) money invested in obligations or stocks of any clearing organization or in memberships in or obligations of any contract market; or (b) money held by any clearing organization which it may use for any purpose other than to purchase, margin, guarantee, secure, transfer, adjust, or settle the contracts, trades, or transactions of the-OTC Customers of such OTC-Clearing Member.

(f) *Investments of OTC-Customer funds*

An-OTC_a Clearing Member or the Clearinghouse may invest funds of-OTC Customers subject to the terms and conditions set forth in CFTC Regulation 1.25, which regulation shall apply to such funds as if such funds were Customer funds

or Customer money subject to Section 4d of the CEA and the regulations thereunder.

(g) *Deposit of Instruments purchased with funds of OTC Customers*

(i) Each OTC-Clearing Member who invests funds of OTC-Customers in instruments permitted under paragraph (f) shall separately account for such instruments and segregate such instruments as belonging to such OTC Customers. Such instruments, when deposited with the Clearinghouse, a bank, trust company or another OTC Clearing Member, shall be deposited under an account name which clearly shows that they belong to OTC-Customers and are segregated as required by the Rules. Each OTC-Clearing Member upon opening an OTC_a Customer Segregated Account shall obtain and retain in its files an acknowledgment from such bank, trust company or other OTC-Clearing Member that it was informed that the instruments belong to OTC Customers and are being held in accordance with the Rules. Such acknowledgment shall be retained in accordance with CFTC Regulation 1.31. Such bank, trust company or other OTC Clearing Member shall allow inspection of such obligations at any reasonable time by representatives of the Clearinghouse.

(ii) When it invests money belonging or accruing to OTC-Customers of its Clearing Members in instruments permitted under paragraph (f), the Clearinghouse shall separately account for such instruments and segregate such instruments as belonging to such OTC Customers. Such instruments, when deposited with a bank or trust company, shall be deposited under an account name which will clearly show that they belong to OTC Customers and are segregated as required by the Rules. Upon opening an OTC_a Customer Segregated Account, the Clearinghouse shall obtain and retain in its files a written acknowledgment from such bank or trust company that it was informed that the instruments belong to OTC Customers of Clearing Members and are being held in accordance with the provisions of the Rules. Such acknowledgment shall be retained in accordance with CFTC Regulation 1.31. Such bank or trust company shall allow inspection of such instruments at any reasonable time by representatives of the Clearinghouse.

(h) *Record of investments*

(i) Each OTC Clearing Member that invests Funds of OTC Customers shall keep a record showing the following:

(A) The date on which such investments were made;

(B) The name of the person through whom such investments were made;

(C) The amount of money or current market value of securities so invested;

(D) A description of the instruments in which such investments were made, including the CUSIP or ISIN numbers;

(E) The identity of the depositories or other places where such instruments are segregated;

(F) The date on which such investments were liquidated or otherwise disposed of and the amount of money or current market value of securities received of such disposition, if any;

(G) The name of the person to or through whom such investments were disposed of; and

(H) Daily valuation for each instrument and readily available documentation supporting the daily valuation for each instrument. Such supporting documentation must be sufficient to enable auditors to verify the valuations and the accuracy of any information from external sources used in those valuations.

(ii) When the Clearinghouse receives documents from ~~OTC~~ Clearing Members representing investment of funds of ~~OTC~~ Customers, the Clearinghouse shall keep a record showing separately for each ~~OTC~~ Clearing Member the following:

(A) The date on which such documents were received from the ~~OTC~~ Clearing Member;

(B) A description of such documents, including the CUSIP or ISIN numbers; and

(C) The date on which such documents were returned to the clearing member or the details of disposition by other means.

(D) Such records shall be retained in accordance with CFTC Regulation 1.31. No such investments shall be made except in instruments permitted under paragraph (f).

(i) *Appraisal of obligations purchased with funds of ~~OTC~~ Customers*

~~OTC~~ Clearing Members who invest funds of ~~OTC~~ Customers in instruments permitted under paragraph (f) shall include such instruments in ~~OTC~~ Customer Segregated Account records and reports at values which at no time exceed current market value, determined as of the close of the market on the date for which such computation is made.

(j) *Increment or interest resulting from investment of funds of ~~OTC~~ Customers*

The investment of funds of ~~OTC~~ Customers in instruments permitted under paragraph (f) shall not prevent the ~~OTC~~ Clearing Member or the Clearinghouse so investing such funds from receiving and retaining as its own any increment or interest resulting therefrom.

(k) *~~OTC~~ Customer Segregated Account; daily computation and record*

(i) Each ~~OTC~~ Clearing Member must compute as of the close of the previous business day:

(A) The total amount of ~~OTC~~ Customer funds on deposit in ~~OTC~~ Customer Segregated Accounts on behalf of ~~OTC~~ Customers;

(B) the amount of such ~~OTC~~ Customer funds required by the Rules to be on deposit in ~~OTC~~ Customer Segregated Accounts on behalf of such ~~OTC~~ Customers; and

(C) the amount of the ~~OTC~~ Clearing Member's residual interest in such ~~OTC~~ Customer funds.

(ii) In computing the amount of funds required to be in ~~OTC~~ Customer Segregated Accounts, an ~~OTC~~ Clearing Member may offset any net deficit in a particular ~~OTC~~ Customer's account against the current market value of readily marketable securities, less applicable percentage deductions (i.e., "securities haircuts") as set forth in Rule 15c3-1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR § 241.15c3-1(c)(2)(vi)), held for the same ~~OTC~~ Customer's account. The ~~OTC~~ Clearing Member must maintain a security interest in the securities, including a written authorization to liquidate the securities at the ~~OTC~~ Clearing Member's discretion, and must segregate the securities in a safekeeping account with the Clearinghouse, a bank, trust company or another ~~OTC~~ Clearing Member. For purposes of this paragraph, a security will be considered readily marketable if it is traded on a "ready market" as defined in Rule 15c3-1(c)(11)(i) of the SEC (17 CFR § 240.15c3-1(c)(11)(i)).

(iii) The daily computations required by this paragraph (k) must be completed by the ~~OTC~~ Clearing Member prior to noon on the next business day and must be kept, together with all supporting data, in accordance with the requirements of CFTC Regulation 1.31.

(l) *Record of securities and property received from ~~OTC~~ Customers*

Each ~~OTC~~ Clearing Member shall maintain, as provided in CFTC Regulation 1.31, a record of all securities and property received from ~~OTC~~ Customers in lieu of money to margin, purchase, guarantee or settle the ~~OTC~~ Contracts of such Customers. Such record shall show separately for each ~~OTC~~ Customer: a description of the securities or property received; the name and address of such ~~OTC~~ Customer; the dates when the securities or property were received; the identity of the depositories or other places where such securities or property are

segregated; the dates of deposits and withdrawals from such depositories; and the dates of return of such securities or property to such ~~OTC~~ Customer, or other disposition thereof, together with the facts and circumstances of such other disposition.

Rule 512. Rule 412. Transfers of OTC Contracts

(a) ~~An OTC~~ Clearing Member may transfer ~~an OTC~~ Contract from one account carried by the Clearing Member to another account carried by the Clearing Member or to an account carried by another Clearing Member, upon written notice to the Clearinghouse in a form acceptable to the Clearinghouse, provided:

- (i) the underlying beneficial ownership in each such account remains the same;
- (ii) an error has been made in the clearing of ~~an OTC~~ Contract and the error is discovered and the transfer is completed within two Business Days of the date the ~~OTC~~ Contract was submitted to the Clearinghouse for clearing;
- (iii) the Clearinghouse, in its sole discretion, allows such transfer as a result of a merger or other business combination; or
- (iv) the Clearinghouse, in its sole discretion, determines that such transfer is in the best interest of the Clearinghouse.

(b) The Clearinghouse shall transfer all or a portion of a Customer's ~~OTC~~ Contracts and related Performance Bond at the same time from one Customer Account carried by the Clearing Member to a Customer Account carried by another Clearing Member, provided:

- (i) The Customer has instructed the carrying Clearing Member to make the transfer;
- (ii) The Customer is not currently in default to the carrying Clearing Member;
- (iii) The transferred ~~OTC~~ Contracts will have appropriate Performance Bond at the receiving Clearing Member;
- (iv) Any remaining ~~OTC~~ Contracts will have appropriate Performance Bond at the carrying Clearing Member; and
- (v) The receiving Clearing Member has consented to the transfer.

(c) Any ~~OTC~~ Contract transferred in accordance with paragraphs (a) or (b) shall be:

- (i) Transferred without close-out and rebooking of the Contracts prior to transfer;

(ii) carried by the receiving Clearing Member as of the date the ~~OTC~~ Contract was submitted to the Clearinghouse for clearing; and

(iii) ~~held open, or offset, as the case may be, in accordance with Rule 405.~~

(d) Each Clearing Member must maintain a full and complete record of all such transactions.

~~Rule 513.~~ Rule 413. Records

~~OTC~~ Clearing Members shall keep records showing, with respect to each purchase or sale of an ~~OTC~~ Contract, the name of the ~~OTC~~ Contract, the names of both ~~OTC~~ Clearing Members, the ~~OTC~~ Contract quantity, date, price, settlement date, the name of the beneficial owner of and identifying information for the Proprietary Account of an ~~OTC~~ Clearing Member or Customer Account in which the transaction was made and such other information as may be required by law, regulation, or by the Clearinghouse. Such records shall be retained for at least five years, or such longer period as required by the CEA or the regulations promulgated thereunder, either in original form or in such other form as the Clearinghouse may from time to time authorize, and shall be deemed the joint property of the Clearinghouse and the ~~OTC~~ Clearing Member keeping such records. The Clearinghouse shall be entitled to inspect or take temporary possession of such records at any time upon demand.

~~Rule 514.~~ Rule 414. Reporting of Positions

~~OTC~~ Clearing Members shall file reports of their open positions in ~~OTC~~ Contracts at the time and in the manner prescribed by the Clearinghouse.

~~Rule 515.~~ Rule 415. Limitation of Liability

(a) The liability of the Clearinghouse relating to or arising out of ~~OTC Contracts~~ Contracts shall be limited to losses resulting from the novation of the ~~OTC~~ Contracts in accordance with these Rules.

(b) The Clearinghouse shall not be liable for

(i) the Obligations of an ~~OTC~~ Clearing Member to another ~~OTC~~ Clearing Member;

(ii) the Obligations of an ~~OTC~~ Clearing Member to another ~~OTC~~ Clearing Member who is acting for such other ~~OTC~~ Clearing Member as broker; or

(iii) the Obligations of an ~~OTC~~ Clearing Member to an ~~OTC~~ Customer.

~~Rule 516.~~ Rule 416. Position Limits

(a) The Clearinghouse may impose speculative position limits on ~~OTC~~ Contracts. Any ~~OTC~~ Clearing Member who exceeds a Speculative Position Limit shall be deemed

to have violated this Rule ~~516.416~~. In addition, any ~~OTC~~ Clearing Member entering orders that, if accepted, would cause the ~~OTC~~ Clearing Member to exceed a Speculative Position Limit, shall be deemed to have violated this Rule ~~516.416~~.

(b) If an ~~OTC~~ Clearing Member fails to reduce any position in a manner and time as directed by the Clearinghouse, the Clearinghouse shall have the authority to liquidate the applicable position to a level below the defined Speculative Position Limit stipulated for the relevant ~~OTC~~ Contract.

(c) In addition to the restrictions and requirements imposed in paragraphs (a) and (b), the first violation of a Speculative Position Limit by an ~~OTC~~ Clearing Member shall result in a letter of warning to be issued by electronic mail by the Regulatory Oversight Department to the ~~OTC~~ Clearing Member. Any subsequent violation of a Speculative Position Limit within the succeeding 12 months by an ~~OTC~~ Clearing Member shall result in the issuance of a second letter of warning by electronic mail to the ~~OTC~~ Clearing Member, a fine, and the suspension or revocation of Clearing Membership privileges in accordance with Chapter ~~76~~ of the Rules.

Chapter 6 —

Chapter 5
Settlement and Performance Bonds

~~Rule 601-~~Rule 501. Cash Settlement

After trading ceases on the last day of trading for a Contract, any open positions in Contracts held by a Clearing Member will be settled in cash at the Settlement Price determined for such Contract on the last day of trading in such Contracts.

~~Rule 602-~~Rule 502. Settlement Price

~~(a)~~ (a) The Settlement Price for each ~~Exchange~~ Contract shall be determined in accordance with the terms of the contract specifications set forth in Chapter ~~10~~ 9 for such ~~Exchange~~ Contract.

~~(b)~~ The Settlement Price for each OTC Contract shall be determined in accordance with the terms of the contract specifications set forth in Chapter ~~11~~ for such OTC Contract.

~~(e)~~ (b) Notwithstanding the foregoing, when deemed necessary by the Clearinghouse to protect the respective interests of the Clearinghouse and Clearing Members, the Clearinghouse may establish the Settlement Price for any Contract at a price deemed appropriate by the Clearinghouse under the circumstances. When the Clearinghouse determines that circumstances necessitate the application of this paragraph, the reasons for that determination and the basis for the establishment of the Settlement Price in such circumstances shall be published in a Notice to Members.

~~Rule 603-~~Rule 503. Clearinghouse Lien

(a) Each Clearing Member agrees that the Clearinghouse shall have a continuing first lien and security interest in, and right of setoff against, all Performance Bond deposits for the Clearing Member's Proprietary Account, Guaranty Fund deposits, equity interests, Contracts, Collateral and other property from time to time held in or for the accounts of such Clearing Member, and proceeds thereof, as security for all Obligations of such Clearing Member to the Clearinghouse. Such lien and security interest in, and right of setoff against, its Guaranty Fund deposits and proceeds also shall secure the Obligations of its Affiliates and other Clearing Members to the Clearinghouse to the extent such deposits and proceeds may be applied thereto in accordance with Rules ~~604~~ 504 and ~~605-~~ 505. Clearing Members shall execute any agreements, documents and instruments requested by the Clearinghouse from time to time as the Clearinghouse deems necessary or appropriate to further evidence and enforce such liens and security interests.

(b) Upon the occurrence of a Default by a Clearing Member, and without limiting all other available rights and remedies of the Clearinghouse under the Rules, the Operating Agreement and applicable law or regulation, the Clearinghouse shall have the rights of a secured party in default with respect to the liens and security interests held by it securing such Clearing Member's Obligations.

~~Rule 604.~~ Rule 504. Clearing Member Default

(a) A Clearing Member (i) that fails to meet any of the Clearing Member's Obligations to the Clearinghouse, (ii) that is suspended or expelled by the Clearinghouse or a Participating Trading Facility, (iii) that is declared in default, suspended or expelled by another Derivatives Clearing Organization, clearing agency (as defined in the Securities Exchange Act of 1934, as amended), or other clearing organization, (iv) whose Settlement Bank notifies the Clearinghouse that it is ceasing to act as Settlement Bank for the Clearing Member or that the Clearing Member will not meet its Obligations, or (iv) is bankrupt or insolvent, is in Default. Upon such Default, the Clearinghouse may cause all Contracts of such Clearing Member (whether or not carried in an ~~Exchange~~ in a Customer Segregated Account as provided in Rule 412 or in an OTC Customer Segregated Account as provided in Rule 511) to be closed, netted or offset, transferred to any other Clearing Member, or otherwise resolved as deemed appropriate by the Clearinghouse and any debit balance owing to the Clearinghouse shall be immediately due and payable.

(b) In closing, netting, offsetting, transferring or otherwise resolving the Contracts of a Clearing Member as provided in paragraph (a) of this Rule, the Clearinghouse shall have the right:

~~(i)~~ (i) With respect to ~~Exchange~~ Exchange Contracts in an ~~Exchange~~ Exchange Customer Segregated Account of such Clearing Member provided for in Rule ~~412, 411~~ 412, 411, to net and set off (A) any proceeds received by the Clearinghouse from the disposition of such ~~Exchange~~ Exchange Contract and any property or proceeds thereof deposited with or held by the Clearinghouse as Performance Bond for such account against (B) any amounts paid by the Clearinghouse in the disposition of such ~~Exchange~~ Exchange Contracts, including any commissions or other losses or expenses incurred in connection therewith or in connection with the liquidation of Performance Bond deposits in such account and any other amounts owed to the Clearinghouse as a result of transactions in the account or otherwise lawfully chargeable against the account;

~~(ii)~~ (ii) With respect to ~~OTC~~ OTC Contracts in an ~~OTC~~ OTC Customer Segregated Account of such Clearing Member provided for in Rule ~~511~~ 511, to net and set off (A) any proceeds received by the Clearinghouse from the disposition of such ~~OTC~~ OTC Contract and any property or proceeds thereof deposited with or held by the Clearinghouse as Performance Bond for such account against (B) any amounts paid by the Clearinghouse in the disposition of such ~~OTC~~ OTC Contracts, including any commissions or other losses or expenses incurred in connection therewith or in connection with the liquidation of Performance Bond deposits in such account and any other amounts owed to the Clearinghouse as a result of transactions in the account or otherwise lawfully chargeable against the account;

~~(iii)~~ (ii) With respect to the Contracts in any other account of such Clearing Member, to net and set off (A) any proceeds by the Clearinghouse from the disposition of such Contracts, any property or proceeds thereof deposited with or held by the Clearinghouse as Performance Bond for such accounts, and any other

property of the Clearing Member within the possession or control of the Clearinghouse other than property which has been identified by such Clearing Member as required to be segregated as provided for in Rule 412 or Rule 511,411, against (B) any amounts paid by the Clearinghouse in the disposition of such Contracts, including any commissions or other losses or expenses incurred in connection therewith or in connection with the liquidation of Performance Bond deposits in such accounts, and any other Obligations of the Clearing Member to the Clearinghouse, including Obligations of the Clearing Member to the Clearinghouse remaining after the netting and setoffs referred to in paragraphs (b)(i) and (ii) of this Rule, and any Obligations arising from any other accounts maintained by the Clearing Member with the Clearinghouse;

~~(iv)~~ (iii) To cause Contracts held in accounts of the Clearing Member that is in Default to be netted and offset against each other and, to the extent of any remaining imbalance, against the Contracts of other Clearing Members;

~~(v)~~ (iv) To cause Contracts held in accounts of the Clearing Member that is in Default and of other Clearing Members to be settled at the Settlement Price for such Contracts, or at such other price or prices as the Clearinghouse may deem fair and reasonable in the circumstances; and

~~(vi)~~ (v) To defer closing or otherwise settling such Contracts if, in its discretion, it determines that the closing out of some or all of the suspended Clearing Member's Contracts would not be in the best interests of the Clearinghouse or other Clearing Members, taking into account the size and nature of the positions in question, market conditions prevailing at the time, the potential market effects of such liquidating transactions as might be directed by Clearinghouse, and such other circumstances as it deems relevant.

(c) Any Obligation of the Clearinghouse to a Clearing Member arising from a Contract or from any provision of these Rules shall be subject to all the terms of the Rules, including the setoff and other rights set forth herein. The rights of the Clearinghouse set forth herein shall be in addition to other rights that the Clearinghouse may have under applicable law and governmental regulations, other provisions of the Rules, additional agreements with the Clearing Member or any other source.

(d) If a Clearing Member remains in Default after the Clearinghouse exercises its rights under paragraphs (a) – (c) above, the following assets and proceeds will be applied to satisfy its Default, in the order of priority listed below. Each source of funds set forth below shall be completely exhausted, to the extent practicable, before the next following source is applied.

(i) First, any Performance Bond deposit of the Clearing Member; and

(ii) Second, any amounts deposited by the defaulting Clearing Member and its Affiliates that are Clearing Members into the Guaranty Fund, ~~provided that if such Clearing Member is both an Exchange Clearing Member and an OTC~~

~~Clearing Member (A) such Clearing Member's and its Affiliates' Guaranty Fund deposits related to its status as an Exchange Clearing Member shall first be applied to satisfy any Default related to its status as an Exchange Clearing Member and then applied to satisfy any Default related to its status as an OTC Clearing Member, and (B) such Clearing Member's and its Affiliates' Guaranty Fund deposits related to its status as an OTC Clearing Member shall first be applied to satisfy any Default related to its status as an OTC Clearing Member and then applied to satisfy any Default related to its status as an Exchange Clearing Member.~~

The Clearing Member shall take no action, including but not limited to, attempting to obtain a court order, that would interfere with the ability of the Clearinghouse to so apply such assets and proceeds.

(e) If the assets and proceeds set forth in paragraph (d) above are insufficient to satisfy all of the defaulting Clearing Member's Obligations to the Clearinghouse, including all claims against the Clearinghouse by reason of novation of the Contract pursuant to Rule 402 ~~or Rule 502,~~ as applicable, the Clearinghouse shall nonetheless pay (including by drawing on the proceeds of any liquidity facility maintained by the Clearinghouse) all such claims, which shall be deemed a loss to it and which shall be a liability of the defaulting Clearing Member to the Clearinghouse, which the Clearinghouse may collect from any other assets of such Clearing Member or by process of law.

(f) For purposes of this Rule, each Default by a Clearing Member will be considered a separate Default event.

Rule 605. ~~Rule 505.~~ Application of Clearinghouse Resources

(a) If the Clearinghouse is unable to immediately satisfy all claims against it, including, but not limited to, costs associated with the liquidation, transfer and managing of positions, arising out of its substitution for a Clearing Member in Default or for any other cause, then such claim or Obligation shall be met and made good promptly by the use and application of funds from the following sources in the order of priority below. Each source of funds set forth below shall be completely exhausted, to the extent practicable, before the next following source is applied.

(i) First, surplus funds of the Clearinghouse in excess of funds necessary for normal operations, including any surplus funds of the Clearinghouse that it has deposited into the Guaranty Fund, shall be applied towards the Default, ~~provided that if the Default relates to a Clearing Member that is an Exchange Clearing Member and an OTC Clearing Member, the surplus funds of the Clearinghouse shall be applied pro rata towards the Default, based on the amount of the Default relating to such Clearing Member's status as an Exchange Clearing Member and such Clearing Member's Status as an OTC Clearing Member;~~

(ii) Second,

~~(A) — if the Default relates to a Clearing Member that is only an Exchange Clearing Member, the required Guaranty Fund deposits of all Exchange Clearing Members and amounts deposited in the Guaranty Fund by or on behalf of IDCG~~the Clearinghouse shall be applied towards the Default, such amount allocated to each such Guaranty Fund depositor proportionally based on the total required Guaranty Fund deposits of all ~~Exchange~~ Clearing Members and all amounts deposited in the Guaranty Fund by or on behalf of IDCG;

~~(B) — if the Default relates to a Clearing Member that is only an OTC Clearing Member, the required Guaranty Fund deposits of all OTC Clearing Members and amounts deposited in the Guaranty Fund by or on behalf of IDCG shall be applied towards the Default, such amount allocated to each such Guaranty Fund depositor proportionally based on the total required Guaranty Fund deposits of all OTC Clearing Members and all amounts deposited in the Guaranty Fund by or on behalf of IDCG; or~~

~~(C) — if the Default relates to a Clearing Member that is an Exchange Clearing Member and an OTC Clearing Member, (1) the required Guaranty Fund deposits of all Exchange Clearing Members shall be applied to any Default relating to the Clearing Member's status as an Exchange Clearing Member, such amount allocated to each Exchange Clearing Member proportionally based on the total required Guaranty Fund deposits of all Exchange Clearing Members, (2) the required Guaranty Fund deposits of all OTC Clearing Members shall be applied to any Default relating to the Clearing Member's status as an OTC Clearing Member, such amount allocated to each OTC Clearing Member proportionally based on the total required Guaranty Fund deposits of all OTC Clearing Members, and (3) the deposit in the Guaranty Fund by or on behalf of IDCG shall be applied towards the Default relating to the Clearing Member's status as an Exchange Clearing Member and/or as an OTC Clearing Member, such amount shall be proportional to the total required Guaranty Fund deposits of all Clearing Members and all amounts deposited in the Guaranty Fund by or on behalf of IDCG and shall be applied pro rata towards the Default, based on the amount of the Default relating to such Clearing Member's status as an Exchange Clearing Member and such Clearing Member's Status as an OTC Clearing Member;~~the Clearinghouse; *provided*, that in each case the Clearinghouse, with the written consent of IDCG, may apply additional amounts deposited in the Guaranty Fund by or on behalf of ~~IDCG~~the Clearinghouse towards the Default, such amount to be allocated in the discretion of the Clearinghouse;

(iii) Third, proceeds from default insurance, if any, maintained by the Clearinghouse to the extent that such proceeds are available in a timely manner to be applied towards the Default. ~~If the Default relates to a Clearing Member that is an Exchange Clearing Member and an OTC Clearing Member, such default insurance proceeds shall be proportionally applied to the Default relating to the Clearing Member's status as an Exchange Clearing Member and as an OTC Clearing Member;~~

(iv) Fourth, an additional equity contribution from IDCG in an amount set forth in a contribution agreement entered into by the Clearinghouse and IDCG, if any such agreement is then in effect. ~~If the Default relates to a Clearing Member that is an Exchange Clearing Member and an OTC Clearing Member, any such additional equity contribution from IDCG shall be proportionally applied to the Default relating to the Clearing Members status as an Exchange Clearing Member and an OTC Member;~~

(v) Fifth, all amounts assessed by the Clearinghouse against Clearing Members pursuant to Rule 513;

~~(A) if the Default relates to a Clearing Member that is only an Exchange Clearing Member, all amounts assessed by the Clearinghouse against Exchange Clearing Members pursuant to Rule 613;~~

~~(B) if the Default relates to a Clearing Member that is only an OTC Clearing Member, all amounts assessed by the Clearinghouse against OTC Clearing Members pursuant to Rule 613; or~~

~~(C) if the Default relates to a Clearing Member that is an Exchange Clearing Member and an OTC Clearing Member, (1) all amounts assessed by the Clearinghouse against Exchange Clearing Members pursuant to Rule 613 shall be applied to any Default relating to the Clearing Member's status as an Exchange Clearing Member and (2) all amounts assessed by the Clearinghouse against OTC Clearing Members pursuant to Rule 613 shall be applied to any Default relating to the Clearing Member's status as an OTC Clearing Member;~~

(vi) Sixth,

~~(A) if the Default relates to a Clearing Member that is only an Exchange Clearing Member, the required Guaranty Fund deposits of all OTC Clearing Members shall be applied towards the Default, such amount allocated to each OTC Clearing Member depositor proportionally based on the total required Guaranty Fund deposits of all OTC Clearing Members;~~

~~(B) if the Default relates to a Clearing Member that is only an OTC Clearing Member, the required Guaranty Fund deposits of all Exchange Clearing Members shall be applied towards the Default, such amount allocated to each Exchange Clearing Member depositor proportionally based on the total required Guaranty Fund deposits of all Exchange Clearing Members; or~~

~~(C) if the Default relates to a Clearing Member that is an Exchange Clearing Member and an OTC Clearing Member, (1) the required Guaranty Fund deposits of all OTC Clearing Members shall be applied to any Default relating to the Clearing Member's status as an Exchange Clearing Member, such amount allocated to each OTC Clearing Member proportionally based on the total required Guaranty Fund deposits of all OTC Clearing Members and (2) the~~

~~required Guaranty Fund deposits of all Exchange Clearing Members shall be applied to any Default relating to the Clearing Member's status as an OTC Clearing Member, such amount allocated to each Exchange Clearing Member proportionally based on the total required Guaranty Fund deposits of all Exchange Clearing Members; and~~

~~(vii) Seventh,~~

~~(A) if the Default relates to a Clearing Member that is only an Exchange Clearing Member, all amounts assessed by the Clearinghouse against OTC Clearing Members pursuant to Rule 613;~~

~~(B) if the Default relates to a Clearing Member that is only an OTC Clearing Member, all amounts assessed by the Clearinghouse against Exchange Clearing Members pursuant to Rule 613; or~~

~~(C) if the Default relates to a Clearing Member that is an Exchange Clearing Member and an OTC Clearing Member, (1) all amounts assessed by the Clearinghouse against OTC Clearing Members pursuant to Rule 613 shall be shall be applied to any Default relating to the Clearing Member's status as an Exchange Clearing Member and (2) all amounts assessed by the Clearinghouse against Exchange Clearing Members pursuant to Rule 613 shall be shall be applied to any Default relating to the Clearing Member's status as an OTC Clearing Member;~~

(b) If a Clearing Member (i) makes payment of all amounts assessed against it pursuant to paragraphs (v) and (vii) above, (ii) replenishes any deficiency in its Performance Bond in accordance with Rule ~~606~~506(c), and (iii) satisfies all other conditions for withdrawal, it may, within five Business Days of such payments, apply to terminate its membership pursuant to the Rules. Upon Board approval of the Clearing Member's termination, such Clearing Member shall not be subject to any other assessment pursuant to this Rule. Notwithstanding the foregoing, any terminating Clearing Member shall remain obligated to the Clearinghouse for the payment of any amounts previously paid by or on its behalf that the Clearinghouse may be required to return pursuant to the order of any court or Government Agency.

~~Rule 606.~~ Rule 506. Original Performance Bond

(a) The Clearinghouse, from time to time, shall set the amount of Original Performance Bond, which shall be deposited by Clearing Members to protect the Clearinghouse on cleared Contracts. The Original Performance Bond requirement for ~~Exchange~~ Contracts shall be calculated on a Net Cleared Contract Basis. ~~The Original Performance Bond requirement for OTC Contracts shall be calculated on a Net Cleared Contract Basis for OTC for~~ Contracts cleared in a Clearing Member's Proprietary Account and on a Gross Cleared Contract Basis for ~~OTC~~ Contracts cleared in the Clearing Member's OTC Customer Segregated Account. There shall be no netting between Proprietary Accounts, ~~Exchange Customer Segregated Accounts and OTC~~and Customer Segregated Accounts.

(b) Original Performance Bond shall be deposited in the manner prescribed in Rules ~~607~~507 and ~~608~~508. Upon performance or closing out of Contracts thus secured, the Original Performance Bond deposits may be withdrawn by the Clearing Member upon the authorization of the Clearinghouse, *provided* that if such Contract had been used in a Net Cleared Contract Basis calculation to determine an Original Performance Bond requirement, the Clearinghouse shall promptly call for, and the Clearing Member shall promptly deposit, the Performance Bond requirement for its remaining open Contracts calculated in accordance with Rule ~~606~~506(a). Performance Bond calls shall ordinarily be uniform, but where particular risks are deemed hazardous, the Clearinghouse may, in its sole discretion, call for additional Performance Bond from a particular Clearing Member.

(c) In the event it shall become necessary to apply all or part of the Original Performance Bond to meet Obligations of the Clearinghouse pursuant to Rule ~~605~~505, Clearing Members shall immediately restore any such deficiency in Original Performance Bond in the period prescribed by the Clearinghouse.

~~Rule 607.~~ Rule 507. Variation Performance Bond Deposits

Variation Performance Bond deposits shall be paid by Clearing Members to the Clearinghouse on demand in the manner prescribed by Rule ~~608~~508. Variation Performance Bond deposits shall be deemed payments on account of Contracts and positions for that Business Day and shall be reflected on statements of transactions and positions for that day. The Clearinghouse may require Clearing Members to make additional Variation Performance Bond deposits at any time, including intra-day, to the extent of market fluctuations.

~~Rule 608.~~ Rule 508. Cash Performance Bond Deposits

If the Clearing Member Statement furnished to a Clearing Member shows a deficit in Performance Bond, such Clearing Member shall, at the time and in the manner prescribed by the Clearinghouse, pay an amount in U.S. Dollars, or foreign currency acceptable to the Risk Committee and subject to applicable haircuts determined by the Risk Committee, sufficient to cover such deficit to the Clearinghouse. Payment will be considered made hereunder only if made in a manner prescribed by the Clearinghouse and if such payment results in immediate credit to the account of the Clearinghouse.

~~Rule 609.~~ Rule 509. Non-Cash Performance Bond Deposits

In lieu of maintaining Original Performance Bond in cash, as provided for in Rule ~~608~~508, Clearing Members may deposit as Original Performance Bond, in each case subject to applicable haircuts determined by the Risk Committee: shares of mutual funds acceptable to the Clearinghouse, and United States Treasury and agency securities, all of which must be and remain free of all other encumbrances of the Clearing Member. The Clearinghouse may include other forms of collateral upon the approval of the Risk Committee and subject to applicable haircuts determined by the Risk Committee. A Clearing Member shall transfer non-cash Original Performance Bond collateral to the

Clearinghouse or to an approved depository ("*Clearinghouse Approved Depositories*") for deposit in or credit to an account in the name of the Clearinghouse (~~an Exchange Customer Segregated Account, an OTC₂ Customer Segregated Account or Proprietary Account, as appropriate~~), and the Clearinghouse shall have and retain with the Clearinghouse Approved Depositories exclusive ownership of its accounts and exclusive control over such Original Performance Bond collateral for the purposes set forth herein until such time as the Clearinghouse releases such Original Performance Bond collateral to the Clearing Member. Clearinghouse Approved Depositories shall act solely on behalf of and as the agent for the Clearinghouse and solely pursuant to its instructions, and shall owe no duties or obligations to, or be deemed to have given a securities entitlement within the meaning of the Uniform Commercial Code or any similar right to, any Clearing Member.

All Original Performance Bond collateral shall be retained by the Clearinghouse in whole or in part, as the Clearinghouse may deem necessary, until the trades for which such Original Performance Bond collateral has been deposited, have been offset, settled, or otherwise closed out as determined by the Clearinghouse. The Clearinghouse shall not have any obligation or responsibility to preserve, protect, collect or realize upon, and under no circumstances shall the Clearinghouse be liable for, any loss or diminution in value or depreciation in the Original Performance Bond collateral maintained pursuant to this rule. A Clearing Member who maintains Original Performance Bond collateral pursuant to this rule shall hold the Clearinghouse harmless from all liability, losses and damages which may result from or arise with respect to the care and sale of such Original Performance Bond collateral. Each Clearing Member shall reimburse the Clearinghouse for all fees, expenses, charges and costs assessed by a depository against the Clearinghouse with respect to all Original Performance Bond collateral maintained in the Clearinghouse account, and shall make deposits as may be required by the Clearinghouse by reason of any depreciation in the market value of such Original Performance Bond collateral. When a Clearing Member is in Default, all non-cash Performance Bond collateral may be converted to cash or otherwise transferred by the Clearinghouse for the Clearing Member's Proprietary Account or a Customer Account.

Rule 610- Rule 510. Guaranty Fund

The Board shall determine the appropriate size of the Guaranty Fund. Each Clearing Member shall deposit and keep deposited with the Clearinghouse such amount as determined by the Risk Committee from time to time as a contribution to the Guaranty Fund, at all times subject to the minimum deposit set forth in Rule 301. The contribution of Clearing Members shall be made in U.S. Dollars or such other instruments as may be permitted from time to time by the Risk Committee. If at any time the Clearing Member does not have a sufficient deposit in the Guaranty Fund, any such deficiency shall remain a liability of the Clearing Member to the Clearinghouse, which it may collect from any other assets of such Clearing Member, its Affiliates that are Clearing Members or by legal process. Additionally, ~~DCG~~the Clearinghouse may deposit, or may cause to be deposited, such amount to the Guaranty Fund as it determines in its sole discretion, which amount shall not be subject to the restrictions on return set forth in Rule ~~610~~510(d).

(a) Calculation.

The amount required to be deposited by each Clearing Member shall be determined by a formula as recommended by the Risk Committee and approved by the Board. Such formula will include certain components of risk, open interest and volume and will be calculated by the Clearinghouse staff on a quarterly basis, or more frequently if deemed appropriate. After any recalculation of the Guaranty Fund requirement, a Clearing Member whose requirement has increased relative to its current contribution will be required to contribute additional resources within one Business Day. Any Clearing Member not meeting this deadline will have its Proprietary Account automatically debited on the second Business Day following the adjustment. A Clearing Member whose requirement has decreased relative to its current contribution may withdraw its excess contribution upon request; *provided* that it shall retain the minimums set forth above. The Clearinghouse will not call for any additional contribution to the Guaranty Fund that would otherwise be required if the amount is less than \$10,000.

(b) Custody.

(i) The Guaranty Fund shall be deposited in a special omnibus account in the name of the Clearinghouse in such depositories in Chicago, IL, New York, NY or other acceptable locations as may be designated by the Board ("*Guaranty Fund Approved Depositories*"). The Clearinghouse shall have and retain with such depositories exclusive ownership of such accounts and exclusive control over the Guaranty Fund for the purposes set forth herein until such time as the Clearinghouse releases to a Clearing Member or ~~IDCG~~the Clearinghouse, as applicable, its deposits in the Guaranty Fund pursuant to the Rules. Guaranty Fund Approved Depositories shall act solely on behalf of and as the agent for the Clearinghouse and solely pursuant to its instructions, and shall owe no duties or obligations to, or be deemed to have given a securities entitlement within the meaning of the Uniform Commercial Code or any similar right to, any Clearing Member or ~~IDCG~~the Clearinghouse.

(ii) The Board shall be empowered to invest and reinvest all or part of the funds constituting the Guaranty Fund. Such investments and deposits shall be at the risk of the Clearinghouse. All net income and gains on such investments and interest on such deposits shall belong to the Clearinghouse and shall be withdrawn from the Guaranty Fund and deposited with the general funds of the Clearinghouse. The Clearinghouse, in its sole discretion, may pay a portion of its interest earned on funds constituting the Guaranty Fund to any Clearing Member, in an amount proportional to such Clearing Member's Guaranty Fund deposit compared to the total Guaranty Fund deposits during the period on which the interest was earned, subject to such administrative fees as the Clearinghouse, in its sole discretion, may deduct.

(c) Impairment.

If the Guaranty Fund or any part thereof is lost or becomes unavailable from any cause other than a Default, the amount so lost or made unavailable shall be forthwith restored by transferring thereto all of the surplus of the Clearinghouse that may be necessary, except such amount as the Board may, in its discretion, decide to retain as surplus for future operating expenses, and if the amount thus transferred from surplus is not sufficient to cover the entire loss, the balance of such loss shall be made up by an assessment in equal shares upon each Clearing Member. Such assessment shall be paid to the Clearinghouse immediately (but in no case to exceed one Business Day) after the issuance of a Notice to Members.

(d) Return of Clearing Member Guaranty Fund Deposit.

After a Clearing Member ceases to be a Clearing Member of the Clearinghouse and after all Obligations of such Clearing Member to the Clearinghouse shall have been irrevocably paid and discharged in full, the amount of the Guaranty Fund to which such Clearing Member is entitled shall be returned. Any expense, including counsel fees, incurred by the Clearinghouse in connection with a Clearing Member's deposit or the return thereof, may be charged to the Clearing Member.

(e) Use of the Guaranty Fund.

(i) The Clearinghouse may at any time and from time to time assign, pledge, repledge or otherwise create a lien on or security interest in the Guaranty Fund and/or the cash and other property held in the Guaranty Fund to secure the repayment of funds borrowed by the Clearinghouse (plus interest, fees and other amounts payable in connection therewith).

(ii) Any such borrowing shall be on terms and conditions deemed necessary or advisable by the Clearinghouse (including the collateralization thereof) in its sole discretion, and may be in amounts greater, and extend for periods of time longer, than the Obligations, if any, of any Clearing Member to the Clearinghouse for which such cash or other property was pledged to or deposited with the Clearinghouse.

(iii) Any funds so borrowed shall be used and applied by the Clearinghouse solely for the purposes for which cash and other property held in the Guaranty Fund are authorized to be used pursuant to the Rules; *provided* that the failure of the Clearinghouse to use such funds in accordance with this Section (iii) shall not impair any of the rights or remedies of any assignee, pledgee or holder of any such lien or security interest.

(iv) Property held in the Guaranty Fund constituting deposits of the Clearing Members or ~~IDCG~~the Clearinghouse shall be held for the beneficial interest of the Clearing Members and ~~IDCG~~the Clearinghouse based on their respective contributions at the time remaining in the Guaranty Fund, except that:

(A) such property shall be subject to the rights and powers of the Clearinghouse with respect thereto as set forth in the Operating Agreement, the Rules, and any agreements between any Clearing Member, IDCG and the Clearinghouse, and

(B) such property shall be subject to the rights and powers of any Person to which the Guaranty Fund or any cash or other property held therein shall have been assigned, pledged, repledged or otherwise subjected to a lien or security interest by the Clearinghouse.

~~Rule 611-~~Rule 511. Liquidity Facility

Assets deposited by a Clearing Member in satisfaction of Performance Bond and Guaranty Fund Deposits may also be used to directly secure the Clearinghouse's Obligations to its lenders under any liquidity facility entered into by the Clearinghouse for the purpose of providing liquidity to the Clearinghouse. By delivering assets to the Clearinghouse in satisfaction of Performance Bond and Guaranty Fund Deposit requirements, each Clearing Member is hereby deemed: (i) to agree that such assets may directly secure the Clearinghouse's Obligations to the Clearinghouse's liquidity lenders and that such assets may become subject to a lien in favor of the Clearinghouse's liquidity lenders or otherwise guarantee the Clearinghouse's Obligations and; (ii) to authorize the Clearinghouse, and appoint the Clearinghouse (such appointment being coupled with an interest) as such Clearing Member's attorney-in-fact, to enter into agreements on its behalf in connection with its Assets serving as security for the Clearinghouse's Obligations to the Clearinghouse's liquidity lenders; and (iii) to acknowledge that the Obligations of the Clearinghouse to its liquidity lenders may be greater, and extend for periods of time longer, than the Obligations, if any, of such Clearing Member to the Clearinghouse. The Clearinghouse, as each Clearing Member's attorney-in-fact, will have authority to enter into agreements on behalf of each Clearing Member and in each Clearing Member's name for the purpose of causing the Clearing Member's Assets to directly secure the Clearinghouse's Obligations to the Clearinghouse's liquidity lenders. Any agreement entered into by the Clearinghouse on behalf of Clearing Members pursuant to this Rule ~~611~~511 shall bind each Clearing Member and will contain provisions, including representations, warranties and covenants required by lenders under any liquidity facility. If there is a default under any such liquidity facility, any assets of the Clearing Members pledged to secure such liquidity facility may be foreclosed upon by the Clearinghouse's liquidity lenders and applied against the Obligations of the Clearinghouse under the related liquidity facility. The Clearing Members shall take no action, including but not limited to attempting to obtain a court order, that would interfere with the ability of such liquidity lenders to receive the benefit of their contractual remedies in connection with any such foreclosure or that would controvert or assert the invalidity of any provision of the Rules. Each Clearing Member agrees to sign any document or agreement requested by the Clearinghouse to further document the power of attorney set forth and established by the Rules.

~~Rule 612.~~ Rule 512. Default Insurance

The Clearinghouse may maintain such default insurance as determined by the Board from time to time.

~~Rule 613.~~ Rule 513. Clearing Member Assessment

(a) The balance of the Clearinghouse loss remaining after application of the funds set forth in Rule ~~605505(a)(i) to 605505(a)(iv)~~ shall be assessed against all ~~Exchange Clearing Members and/or all~~ OTC Clearing Members, as applicable, in each case excluding any insolvent or defaulting Clearing Member. The amount of such assessment shall be determined by the Board and shall be allocated to each such ~~Exchange Clearing Member and/or~~ OTC Clearing Member in an amount proportional to such Clearing Member's average Guaranty Fund requirement over the preceding ten calendar days compared to the total Guaranty Fund requirement of all Clearing Members subject to the assessment during such time period.

(b) The balance of the Clearinghouse loss remaining after application of the funds set forth in Rule ~~605505(a)(vi)~~, if applicable, shall be assessed against all ~~Exchange Clearing Members and/or~~ OTC Clearing Members, as applicable, in each case excluding any insolvent or defaulting Clearing Member. The amount of such assessment shall be determined by the Board and shall be allocated to each such ~~Exchange Clearing Member and/or~~ OTC Clearing Member in an amount proportional to such Clearing Member's average Guaranty Fund requirement over the preceding ten calendar days compared to the total Guaranty Fund requirement of all Clearing Members subject to the assessment during such time period.

(c) Notwithstanding the foregoing, no Clearing Member shall be required to pay, as a total single assessment, any amount in excess of 40% of such Clearing Member's net capital or thirty million dollars (\$30,000,000), whichever is less, during any period of ten consecutive Business Days.

(d) The difference, if any, between the amount that would be assessed against any Clearing Member pursuant to subsections (a) or (b) of this Rule and subsection (c) of this Rule, shall be considered a deficiency and shall be assessed against Clearing Members (excluding the defaulting Clearing Member, any insolvent Clearing Member and any Clearing Member which has paid the amount in subsection (c) of this Rule) in accordance with subsection (a) or (b) of this Rule, as applicable, until the entire deficiency is paid or every Clearing Member (except the defaulting Clearing Member and any insolvent Clearing Member) has paid the amount set forth in subsection (c) of this Rule, and any such assessment shall be considered part of a single assessment, without regard to the times when they are made, for purposes of determining the amount set forth in subsection (c) of this Rule.

(e) Notwithstanding subsections (a) and (b) of this Rule, a Clearing Member that pays an assessment in accordance with subsections (a) or (b) of this Rule and gives the Clearinghouse written notice of withdrawal from membership prior to ten Business Days

after such assessment is made shall not be subject to any further assessment after the date such notice is received by the Clearinghouse, except that such Clearing Member shall continue to be liable for any assessment made pursuant to subsection (a) and (b) of this Rule, up to the maximum assessment as set forth in subsection (c) of this Rule.

(f) Any assessments made pursuant to this Rule shall be paid by each Clearing Member not more than one Business Day after written notice of any such assessment shall have been delivered to such Clearing Member. Any Clearing Member that does not satisfy an assessment shall be in Default. Any Clearinghouse loss that remains as a result of such Default shall be assessed to the non-defaulting Clearing Members in accordance with subsection (a) of this Rule.

(g) After payment of an assessment pursuant to this Rule, a Clearing Member shall charge other Clearing Members for whom it clears contracts or carries positions on its books to recover their proportional share of the assessment. Such other Clearing Members shall promptly pay the charge.

~~Rule 614.~~ Rule 514. Customer Performance Bond Requirements

Clearing Members shall call for and maintain Performance Bond from their Customers as follows:

(a) ~~An Original Performance Bond deposit shall be required of all Customers—~~ in an amount no less than that specified by the Clearinghouse in a Notice to Members. ~~In each case shall a Customer's Original Performance Bond be less than a specified amount per Contract, or a specified percentage of the market value at which any Contract is bought or sold, such Customer's Performance Bond to be determined and announced by the Risk Committee or its designee must be greater than the Original Performance Bond required of the Clearing Members holding such Contract with the Clearinghouse.~~

(b) Once the required Original Performance Bond has been deposited for each individual transaction, such Contract and such Original Performance Bond shall, for the purposes of this Rule, lose their individual identity and be commingled with all other Contracts and Performance Bond deposits in the same Contract for the same Customer Account.

~~(c) When the Performance Bond in an Exchange Customer Segregated Account or OTC Customer Segregated Account declines below the Variation Performance Bond requirement applicable to the open positions carried in such Exchange Customer Segregated Account or OTC Customer Segregated Account, as applicable, the Clearing Member carrying the Exchange Customer Segregated Account or OTC Customer Segregated Account, as applicable, is required to collect from the Customer such funds which, when deposited, will restore it to the then-prevailing Variation Performance Bond requirement. Excess funds in a Customer's Exchange Customer Segregated Account may not be applied to a shortfall in such Customer's OTC Customer Segregated Account and excess funds in a Customer's OTC Customer Segregated Account may not be applied to a shortfall in such Customer's Exchange Customer Segregated Account.~~

~~(c)~~ ~~(d)~~—When the Performance Bond in a Customer Segregated Account declines below the Variation Performance Bond requirement applicable to the open positions carried in such Customer Segregated Account, as applicable, the Clearing Member carrying the Customer Segregated Account, as applicable, is required to collect from the Customer such funds which, when deposited, will restore it to the then-prevailing Variation Performance Bond requirement. A Clearing Member shall not accept orders for new Contracts on behalf of Customer Account with a Performance Bond deficiency, other than those which reduce its Original Performance Bond requirement unless such Clearing Member has been given assurances by such Customer that funds sufficient to restore the account to its then prevailing Variation Performance Bond requirement are forthcoming and will be received in a reasonable amount of time not to exceed one Business Day.

~~(d)~~ ~~(e)~~—All assets deposited by Customers to meet Performance Bond requirements must be and remain unencumbered by third party claims against the Customer. Except to the extent that Clearinghouse staff shall prescribe otherwise, cash currency performance bond deposits shall be valued at market value. All other performance bond deposits shall be valued at an amount not to exceed market value less applicable haircuts as set forth in SEC Rule 240.15c3-1.

~~(e)~~ ~~(f)~~—Withdrawals of Performance Bond from a Customer Account may only be permitted by a Clearing Member carrying such Customer Account if the remaining funds in such account are equal to or in excess of the ~~then-prevailing Variation~~Original Performance Bond ~~required of the requirement~~ applicable to such Customer for the open positions~~Contracts~~ at the time of such withdrawal request.

~~(f)~~ ~~(g)~~—The Customer's response to a Performance Bond call issued by a Clearing Member must be timely and complete. A Clearing Member may call, at any time, for Performance Bonds above and beyond the minimums required by the Clearinghouse. A Clearing Member may liquidate any or all positions maintained by a Customer for failure to meet a Performance Bond call. The Customer will be liable for any loss or deficiency resulting therefrom.

~~(g)~~ ~~(h)~~—The Performance Bond requirements established by the Board or its designee may vary for different Contracts and may be changed from time to time by the Board or its designee, and in the discretion of the Board or its designee, may be made applicable to all open Contracts as well as new Contracts.

~~Rule 615.~~ Rule 515. Settlement Banks

(a) A bank, trust company or other institution may be designated by the Board as a Settlement Bank for any or all of the following purposes: acting as a depository for Performance Bonds and option premiums on behalf of Clearing Members, issuing or confirming letters of credit or acting in such other capacity as the Board may approve. To become designated as a Settlement Bank, a bank, trust company or other institution must submit an application in such form and containing such information as the Clearinghouse from time to time may require and must meet such financial and other requirements as

the Board may establish from time to time. A bank, trust company or other institution which has been designated by the Board as a Settlement Bank for any purpose may act as such until such designation is suspended or terminated in accordance with paragraph (b) of this Rule ~~615~~515.

(b) If a bank, trust company or other institution does not meet all the requirements established by the Clearinghouse pursuant to this Rule ~~615~~515, or if the Board determines, based on such facts or considerations as the Board deems relevant or appropriate, that it would be in the best interests of the Clearinghouse or its Clearing Members, the Board may:

(i) deny the application of such bank, trust company or other institution for designation as a Settlement Bank,

(ii) suspend or terminate the status of such bank, trust company or other institution as a Settlement Bank for any or all purposes, or

(iii) approve the application of or permit such bank, trust company or other institution to continue as a Settlement Bank, subject in either case to such terms, conditions and limitations as the Board, in its judgment, deems appropriate.

(c) The Clearinghouse will maintain ~~three~~two accounts at the Settlement Bank, ~~an Exchange Customer Segregated Account, an OTCa~~ Customer Segregated Account and a Proprietary Account.

(d) All checks or wire transfers by Clearing Members to the order of or to make payments to the Clearinghouse must be drawn on or made by a Settlement Bank or such other financial institutions as may be approved by the Board by time to time or by the Risk Committee during an Emergency.

~~Rule 616~~-Rule 516. Clearing Member Statement

On each Business Day that a Clearing Member has Contracts to be cleared or an open Contract position, the Clearinghouse shall provide such Clearing Member a “*Clearing Member Statement*” containing the following information:

(a) the Performance Bond deposited by the Clearing Member;

(b) the amount of Performance Bond required by the Clearinghouse; and

(c) the Clearing Member’s net surplus of, or deficit in, Performance Bond.

~~Rule 617~~-Rule 517. Daily Variation Settlements

If the Clearing Member Statement shows a net balance in favor of the Clearinghouse, the Clearing Member shall, at the time and in the manner prescribed by the Clearinghouse, pay such net balance to the Clearinghouse in cash. Payment will be considered made hereunder only if made in a manner prescribed by the Clearinghouse that results in

immediate credit to the account of the Clearinghouse. If the Clearing Member Statement shows a net balance in favor of the Clearing Member, the Clearinghouse shall promptly pay, at the time and in the manner prescribed by the Clearinghouse, the amount of such net balance to the Clearing Member. The Clearinghouse shall not be required to pay to the Clearing Member net balances in respect of any intraday settlements.

~~Rule 618.~~ Rule 518. Interpretation in Relation to Insolvency Laws.

It is the intention of the Clearinghouse and Clearing Members that, to the fullest extent permitted by applicable law and regulation, all payments, transfers, security interests and liens with respect to Obligations on Contracts as set forth in the Rules shall not be stayed, avoided or otherwise limited by any bankruptcy, receivership, insolvency or other state or federal law.

Without limiting the foregoing, the Clearinghouse and Clearing Members intend that certain provisions of the Rules be interpreted in relation to certain terms that are defined in FDICIA and the Bankruptcy Code, as follows:

- (a) With respect to FDICIA,
 - (i) the Clearinghouse is a “clearing organization”.
 - (ii) an obligation of a Clearing Member to make a payment to the Clearinghouse, or of the Clearinghouse to make a payment to a Clearing Member, subject to a netting contract, is a “covered clearing obligation” and a “covered contractual payment obligation”.
 - (iii) an entitlement of a Clearing Member to receive a payment from the Clearinghouse, or of the Clearinghouse to receive a payment from a Clearing Member, subject to a netting contract, is a “covered contractual payment entitlement”.
 - (iv) the Clearinghouse is a “member,” and each Clearing Member is a “member”.
 - (v) the amount by which the covered contractual payment entitlements of a Clearing Member or the Clearinghouse exceed the covered contractual payment obligations of such Clearing Member or the Clearinghouse after netting under a netting contract is its “net entitlement”.
 - (vi) the amount by which the covered contractual payment obligations of a Clearing Member or the Clearinghouse exceed the covered contractual payment entitlements of such Clearing Member or the Clearinghouse after netting under a netting contract is its “net obligation”.
 - (vii) the Operating Agreement and Rules of the Clearinghouse are a “netting contract”.

(viii) the liens and security interests described in Rule ~~603,503~~, and the right of the Clearinghouse to apply such liens and security interests pursuant to Rules ~~604504~~ and ~~605505~~ constitute, without limitation, a “security agreement or arrangement or other credit enhancement” within the meaning of §404(h) of FDICIA (12 U.S.C. §4403(h)).

(b) With respect to the Bankruptcy Code,

(i) the Operating Agreement and Rules are a “master netting agreement” within the meaning of §101(38A), and the Clearinghouse is a “master netting participant” within the meaning of §101(38B) of the Bankruptcy Code.

(ii) each of the liens and security interests described in Rule ~~603,503~~, and the right of the Clearinghouse to apply the same pursuant to Rules ~~604504~~ and ~~605505~~ constitutes, without limitation, a “security agreement or arrangement or other credit enhancement” that forms a part of or is related to each Contract within the meaning of §§101(38A), 101(53B)(A)(vi), 362(b)(6), (17) and (27), and 761(4)(J) of the Bankruptcy Code.

(iii) each of the liens and security interests described in Rule ~~603,503~~, and the right of the Clearinghouse to apply the same pursuant to Rules ~~604504~~ and ~~605505~~ constitutes, without limitation, a “transfer made by or to (or for the benefit of)” the Clearinghouse as a commodity broker, swap participant, financial participant or master netting participant “under” “or in connection” with each Contract within the meaning of §§546(e) and (g) of the Bankruptcy Code.

~~Chapter 7~~Chapter 6
Rule Enforcement

~~Rule 701.~~ Rule 601. General

(a) All Clearing Members and their Authorized Representatives are subject to this Chapter ~~7~~6 if they are alleged to have violated, to have aided and abetted in violating, to be violating, or to be about to violate any Rule or Obligation, resolution or order of the Board, any provision of the CEA, or the Commission Regulations, for which the Clearinghouse possesses disciplinary jurisdiction.

(b) Except when the Board reserves for itself responsibility for an inquiry or investigation or delegates its responsibility to a committee of the Board, the Clearinghouse, or a Regulatory Services Provider appointed by the Clearinghouse, shall conduct Clearinghouse Proceedings in accordance with this Chapter ~~7~~6. However, any actions taken by the Clearinghouse pursuant to this Chapter ~~7~~6 in connection with an alleged breach of contract in connection with a Contract are independent of, and without prejudice to, the rights of the parties to a Contract.

(c) No member of the non-regulatory staff of the Clearinghouse shall interfere with, or attempt to influence the process or resolution of, any Clearinghouse Proceeding. No Board Member shall interfere with, or attempt to influence the process or resolution of, any Clearinghouse Proceeding for which the Board Member is not a member of the Appeal Panel or Summary Review Panel.

(d) A Clearing Member or an Authorized Representative may be represented by counsel during any Clearinghouse Proceeding under this Chapter ~~7~~6, and the Clearinghouse will notify the Clearing Member or Authorized Representative of such right.

(e) Pursuant to this Chapter ~~7~~6, the Clearinghouse may hold a Clearing Member liable, and impose sanctions against the Clearing Member, for the Clearing Member's own acts and omissions that constitute a violation, or for the acts or omissions of an Authorized Representative of a Clearing Member that constitute a violation, as if the violation were that of the Clearing Member.

~~Rule 702.~~ Rule 602. Inquiries and Investigations

(a) The Regulatory Oversight Department shall investigate any matter within the Clearinghouse's jurisdiction under Rule ~~701~~601(a) brought to the Regulatory Oversight Department's attention. The Regulatory Oversight Department shall, within its sole discretion, determine the nature and scope of its investigations and will function independently of any commercial interests of the Clearinghouse. The Regulatory Oversight Department may employ a Regulatory Services Provider to assist it in the performance of any of its functions under this Chapter ~~7~~6.

(b) The Regulatory Oversight Department has the authority to:

- (i) initiate and conduct investigations;
- (ii) prepare investigative reports and make recommendations concerning initiating disciplinary proceedings;
- (iii) prosecute alleged violations within the Clearinghouse's disciplinary jurisdiction; and
- (iv) represent the Clearinghouse on appeal from any Clearinghouse Proceeding.

(c) Each Clearing Member, Authorized Representative, or other Person subject to the Clearinghouse's jurisdiction shall: (i) appear and testify at, and respond by electronic mail to, interrogatories within the time period required by the Regulatory Oversight Department, and (ii) produce books, records, papers, documents or other tangible evidence in such Clearing Member's possession, custody or control within the time period required by the Regulatory Oversight Department, in each case in connection with:

- (i) any Clearinghouse Activity or Obligation;
- (ii) an inquiry or investigation conducted pursuant to Rule ~~702~~602(a); or
- (iii) any preparation of and presentation during a Clearinghouse Proceeding.

(d) Each Clearing Member, Authorized Representative, or other Person subject to the Clearinghouse's jurisdiction shall not impede or delay any Clearinghouse Proceeding.

~~Rule 703.~~ Rule 603. Inspections by the Clearinghouse

The Clearinghouse (and/or its Regulatory Services Provider) shall have the right to:

- (a) inspect systems, equipment and software of any kind operated by the Clearing Member in connection with Clearinghouse Activity, wherever located, to determine whether all Rules and Obligations are being, will be, or have been complied with by the Clearing Member;
- (b) access the systems, equipment, software, and the premises on which the systems, equipment, and software are located, any data stored in any of the systems or equipment, during the regular business hours and the Clearing Hours of the Clearinghouse, without prior notice to Clearing Members; and/or
- (c) remove, copy or reproduce any data to which the Clearinghouse has access under this Rule.

~~Rule 704.~~ Rule 604. Investigative Reports

The Regulatory Oversight Department shall maintain a log of all investigations and their disposition. The Regulatory Oversight Department shall prepare an investigative report when the evidence gathered during the inquiry or investigation forms a reasonable basis to believe that a violation within the Clearinghouse's jurisdiction has occurred or is about to occur.

~~Rule 705.~~ Rule 605. Opportunity to Respond

After completing its investigative report, the Regulatory Oversight Department may notify each potential respondent in writing of the general nature of the allegations and the specific Rules, regulations, provisions, interpretations or matters within the Clearinghouse's jurisdiction that the potential respondent is alleged to have violated. The Regulatory Oversight Department may allow a potential respondent to submit a written statement explaining why a disciplinary proceeding should not be instituted, or why one or more of the potential charges should not be brought. Except when the Regulatory Oversight Department determines that expeditious action is required, the potential respondent shall have twenty calendar days from the date of notification to submit a written response to the Regulatory Oversight Department.

~~Rule 706.~~ Rule 606. Review of Investigative Reports

- (a) The Review Officer shall review promptly each completed investigative report and any response from the potential respondent to determine whether a reasonable basis exists to believe that a violation within the Clearinghouse's jurisdiction has occurred or is about to occur.
- (b) If the Review Officer believes that additional investigation or evidence is needed to determine whether a reasonable basis exists to believe that a violation within the Clearinghouse's jurisdiction has occurred or is about to occur, the Review Officer shall direct the Regulatory Oversight Department to conduct further investigation.
- (c) After receiving a completed investigative report and any electronic response from the potential respondent, the Review Officer shall determine for each potential respondent whether to authorize:
 - (i) the commencing of disciplinary proceedings, because a reasonable basis exists to believe that a violation within the Clearinghouse's jurisdiction has occurred or is about to occur;
 - (ii) the disposing of the investigation informally (by issuing a warning letter or otherwise), because disciplinary proceedings are unwarranted or because no reasonable basis exists to believe that a violation within the Clearinghouse's jurisdiction has occurred or is about to occur; or
 - (iii) the closing of the investigation without any action, because disciplinary proceedings are not warranted or no reasonable basis exists to believe that a violation within the Clearinghouse's jurisdiction has occurred or is about to occur.

(d) The Review Officer must promptly recuse himself or herself, and notify the Chief Executive Officer of the recusal, if the Review Officer has a relationship listed in Rule ~~710610~~(b) with a potential respondent in an investigation.

~~Rule 707.~~ Rule 607. Notice of Charges

(a) If the Review Officer authorizes disciplinary proceedings pursuant to Rule ~~706606~~(c)(i), the Regulatory Oversight Department shall prepare and serve, a Notice of Charges signed by the Director of the Regulatory Oversight Department.

(b) The Notice of Charges shall:

(i) state the acts, practices and/or conduct that the respondent is alleged to have engaged in;

(ii) state the Rule or Obligation (or law, regulation, or matter within the Clearinghouse's jurisdiction) alleged to have been violated or about to be violated;

(iii) state the proposed sanctions;

(iv) advise the respondent of his, her or its right to a hearing;

(v) state the period of time within which the respondent can request a hearing on the Notice of Charges, which shall not be less than twenty calendar days after the service of the Notice of Charges;

(vi) advise the respondent that the respondent's failure to request a hearing within the period stated, except for good cause, constitutes a waiver of the right to a hearing; and

(vii) advise the respondent that any allegation not expressly denied shall be deemed an admission of that allegation in the Notice of Charges.

~~Rule 708.~~ Rule 608. Answer to Notice of Charges

(a) If the respondent determines to answer the Notice of Charges, the respondent must send an answer in writing within twenty calendar days after being served with the Notice of Charges, or within the time period determined appropriate by the Director of Hearings.

(b) To answer the Notice of Charges, the respondent must do the following in the answer:

(i) specify the allegations in the Notice of Charges that the respondent denies or admits;

- (ii) specify the allegations that the respondent does not have sufficient information to either deny or admit;
- (iii) list any specific facts that contradict the Notice of Charges;
- (iv) specify any affirmative defenses to the Notice of Charges; and
- (v) send the answer in writing to the Director of Hearings at the address posted in the “Contact Us” section of the Website.

(c) The respondent’s failure to timely serve an answer to the Notice of Charges is deemed an admission to the allegations in the Notice of Charges. A respondent’s failure to answer one or more allegations in the Notice of Charges is deemed an admission of such allegation or allegations. Any allegation in the Notice of Charges that the respondent fails to expressly deny is deemed admitted. A general denial by the respondent, without accompanying facts or defenses, will not satisfy the requirements of Rule ~~708~~608(b).

~~Rule 709.~~ Rule 609. Settlements

(a) A respondent or potential respondent may, at any time, directly or through an Authorized Representative, propose an offer of settlement to anticipated or instituted disciplinary proceedings, or may accept an offer of settlement proposed by the Regulatory Oversight Department. The offer of settlement shall contain proposed findings and sanctions and shall be sent in writing to the Regulatory Oversight Department. A respondent or potential respondent may offer to settle disciplinary proceedings without admitting or denying the findings contained in the Notice of Charges, but must admit to the jurisdiction of the Clearinghouse over the respondent or potential respondent and over the subject matter of the proceedings, and must consent to the entry of the findings and sanctions imposed.

(b) If a respondent or potential respondent sends an offer of settlement consistent with Rule ~~709~~609(a), the Regulatory Oversight Department will submit the offer to the Hearing Officer with a recommendation on whether to accept or reject the offer. If the Hearing Officer conditionally accepts the offer of settlement, the settlement will become final twenty calendar days after the date the offer of settlement was sent, unless the Board calls the matter for review before the end of the twenty-calendar-day period. An offer of settlement may be withdrawn at any time before the offer is accepted.

(c) If an offer of settlement is accepted and the related order of disciplinary proceedings becomes final, then the respondent’s or the Regulatory Oversight Department’s submission of the offer constitutes a waiver of the right to notice, opportunity for a hearing, and review and appeal under the Rules.

(d) If the offer of settlement is not accepted, fails to become final, or is withdrawn by the party who originally sent the offer, the matter shall proceed as if the offer had not been made, and the offer and all documents relating to it will not become part of the record. Neither a respondent or potential respondent nor the Regulatory Oversight

Department may use an unaccepted offer of settlement as an admission or in any other manner at a hearing of, or appeal from, disciplinary proceedings.

(e) A settlement reached under this Rule may be confirmed by electronic mail and must include:

- (i) details of the investigation, including the charges or alleged charges;
- (ii) the answer, if any, or a summary of the answer;
- (iii) a brief summary of all stages of the investigation;
- (iv) findings of fact and conclusions concerning each allegation, including each specific Rule, Obligation, law, regulation, or matter within the Clearinghouse's jurisdiction that the respondent is found to have violated; and
- (v) the imposition of sanctions, if any, and the effective date of each sanction.

~~Rule 710.~~ Rule 610. Disciplinary Panel

(a) Within twenty calendar days after the expiration of the time period in which a respondent may send an answer to the Notice of Charges pursuant to Rule ~~708, 608,~~ the Director of Hearings shall, unless an offer of settlement is then being negotiated, appoint a Disciplinary Panel to conduct a hearing in connection with the disciplinary proceedings to make findings and impose sanctions. The Disciplinary Panel shall consist of three individuals: a Hearing Officer and two other natural persons appointed by the Hearing Officer. Any individual who owns an equity interest of 10% or more in the IDCG shall be disqualified from being the Hearing Officer of the Clearinghouse.

(b) An individual may not serve on a Disciplinary Panel if the individual:

- (i) is a named respondent;
- (ii) is an employer, employee, fellow employee or an affiliate of a respondent;
- (iii) has any significant, ongoing business relationship with a respondent (not including relationships limited solely to executing futures or options transactions opposite each other, or clearing futures or options transactions through the same Clearing Member);
- (iv) has a family relationship with a respondent (including the individual's spouse, co-habitator, former spouse, parent, step-parent, child, step-child, sibling, step-brother, step-sister, grandparent, grandchild, uncle, aunt, nephew, niece, father-in-law, mother-in-law, brother-in-law or sister-in-law);
- (v) was a witness in the inquiry or investigation or may be called as a witness in the hearing; and/or

(vi) has a direct and substantial financial interest that could reasonably be expected to be affected by the outcome of any hearing.

Before considering any matter involving a respondent, each proposed individual on a Disciplinary Panel must disclose to the Chief Executive Officer whether he or she disqualifies from serving on the Disciplinary Panel because he or she falls under any category listed in this Rule ~~710610~~(b).

(c) Within ten calendar days of being notified of the appointment of the Disciplinary Panel, a respondent may seek to disqualify any individual named to the Disciplinary Panel for the reasons listed in Rule ~~710610~~(b), or based on any other reasonable grounds, by sending a written notice to the Director of Hearings. By not timely sending a request for disqualification, the respondent waives any objection to the composition of the Disciplinary Panel. The Director of Hearings shall, within his or her sole discretion, decide the merits of the respondent's objection. The decision of the Director of Hearings regarding a request to disqualify an individual from a Disciplinary Panel is final and not subject to appeal within the Clearinghouse.

~~Rule 711-~~ Rule 611. Convening Hearings of Disciplinary Proceedings

(a) All disciplinary proceedings shall be conducted at a hearing in person or via teleconference before a Disciplinary Panel. The Disciplinary Panel shall conduct the hearing privately and confidentially. However, a Disciplinary Panel may appoint an expert to participate in the hearing and assist in deliberations. Such expert will not have a vote, but will be subject to an appropriate confidentiality agreement.

(b) After reasonable notice to the respondent, the Disciplinary Panel shall promptly convene a hearing to conduct the disciplinary proceedings. Parties to the disciplinary proceedings include the respondent and the Regulatory Oversight Department.

(c) The Hearing Officer shall act as chairman of the Disciplinary Panel and may continue, adjourn and otherwise conduct the hearing as he or she deems appropriate. The Hearing Officer shall determine all procedural and evidentiary matters, including the admissibility and relevance of any evidence proffered. While determining procedural and evidentiary matters, the Hearing Officer is not bound by any evidentiary or procedural rules or law. Once evidence or other materials are admitted during the hearing, the Disciplinary Panel may consider, and attach the weight it believes appropriate to, such evidence or other materials. The Clearinghouse will provide guidance to the Hearing Officer on the conduct of the hearing.

(d) Except for procedural and evidentiary matters decided by the Hearing Officer pursuant to Rules ~~710610~~(c) and ~~711-611~~, unless each respondent otherwise consents, the entire Disciplinary Panel must participate in the entire hearing and any related deliberations.

~~Rule 712.~~ Rule 612. Respondent Review of Evidence

(a) Prior to the commencement of the hearing, each respondent shall be given the opportunity to review, electronically or otherwise, all books, records, documents, papers, transcripts of testimony, and other tangible evidence in the possession or under the control of the Clearinghouse that the Regulatory Oversight Department will use to support the allegations and proposed sanctions in the Notice of Charges, or which the Hearing Officer deems relevant to the disciplinary proceedings. However, the respondent has no right to review, and the Clearinghouse has no obligation to disclose, any information protected by attorney-client privilege.

(b) If any books, records, documents, papers, transcripts of testimony, or other tangible evidence contain information that could adversely affect the competitive position of the Person providing the information, or if the information might compromise other investigations being conducted by the Regulatory Oversight Department, the Regulatory Oversight Department may redact, edit or code the information before furnishing it to the respondent.

(c) Notwithstanding ~~Rule 712~~612(b), the Regulatory Oversight Department:

(i) shall not redact, edit or code competitive or investigative information contained in documents in a manner that impairs the respondent's ability to defend against the allegations or proposed sanctions in the Notice of Charges; and

(ii) shall provide the respondent with access to the information and portions of the documents that the Regulatory Oversight Department intends to rely on to support the allegations or proposed sanctions in the Notice of Charges.

(d) For purposes of this Rule, information that could adversely affect competitive positions includes, without limitation, positions in Contracts currently held, strategies employed in establishing or liquidating positions, identity of Clearing Members, and the personal finances of the Person providing the information.

~~Rule 713.~~ Rule 613. Conducting Hearings of Disciplinary Proceedings

(a) At a hearing conducted in connection with the disciplinary proceedings, the Regulatory Oversight Department shall present to the Disciplinary Panel its case supporting the allegations and proposed sanctions in the Notice of Charges. If a respondent has timely sent an answer to the Notice of Charges in accordance with the requirements of ~~Rule 708, 608,~~ then the respondent is entitled to attend and participate in the hearing.

(b) At a hearing in connection with disciplinary proceedings, the Disciplinary Panel, the Regulatory Oversight Department and each respondent may:

(i) present evidence and facts determined relevant and admissible by the Hearing Officer;

(ii) call and examine witnesses (including Employees from the Regulatory Oversight Department when appropriate); and

(iii) cross-examine witnesses called by other parties.

(c) If the respondent has failed to send an answer, has sent a general denial, or if any or all of the allegations in the Notice of Charges are not expressly denied in the respondent's answer, the Hearing Officer may limit the use of evidence concerning any allegations not expressly denied. If a respondent fails to send an answer but attends the hearing, the respondent shall not participate in the hearing (by calling or cross-examining witnesses, testifying in the respondent's defense, presenting evidence concerning the Notice of Charges, or otherwise), unless the Disciplinary Panel determines that the respondent had a compelling reason for failing to timely send an answer. If the Disciplinary Panel determines that the respondent had a compelling reason for failing to timely send an answer, the Disciplinary Panel shall adjourn the hearing and direct the respondent to promptly send a written answer in accordance with Rule ~~708-608~~.

(d) Any Person entitled, required or called upon to attend the hearing before the Disciplinary Panel under Rule ~~713613~~(b)(ii) shall be given reasonable notice, confirmed in writing, specifying the date, time and place of the hearing, and the caption of the disciplinary proceedings. The Clearinghouse shall require Persons within its jurisdiction who are called as witnesses to appear at the hearing and produce evidence. The Clearinghouse shall make reasonable efforts to secure the presence of all other Persons called as witnesses whose testimony would be relevant.

(e) If during the disciplinary proceedings the Disciplinary Panel determines that a reasonable basis exists to believe that the respondent violated or is about to violate a Rule, Obligation, law, regulation, or matter within the Clearinghouse's jurisdiction other than the violations alleged in the Notice of Charges, then the Disciplinary Panel may consider those apparent violations after providing the respondent with an opportunity to answer the allegations in accordance with Rule ~~708-608~~. In connection with considering apparent violations pursuant to this Rule, the Disciplinary Panel may request that the Regulatory Oversight Department provide the Disciplinary Panel with any additional information.

(f) The Disciplinary Panel may summarily impose sanctions on any Clearing Member, Authorized Representative or other Person subject to the Clearinghouse's jurisdiction that impedes or delays the progress of a hearing.

(g) The Clearinghouse shall arrange to record each hearing verbatim, or substantially verbatim, in a manner capable of accurate transcription. If the respondent requests a copy of all or portions of the hearing, the Hearing Officer may, within his or her sole discretion, order the respondent to pay the costs for transcribing the recording of the hearing.

(h) No interlocutory appeals of rulings of the Disciplinary Panel or the Hearing Officer are permitted.

~~Rule 714.~~ Rule 614. Decision of Disciplinary Panel

(a) As promptly as reasonable following the hearing, the Disciplinary Panel shall issue an order rendering its decision based on the weight of the evidence contained in the record of the disciplinary proceedings. A decision by a majority of the Disciplinary Panel shall constitute the decision of the Disciplinary Panel.

(b) The Clearinghouse shall send a copy of the order of the disciplinary proceedings to the respondent and the Regulatory Oversight Department. The order shall include:

- (i) the Notice of Charges or summary of the allegations;
- (ii) the answer, if any, or a summary of the answer;
- (iii) a brief summary of the evidence introduced at the hearing;
- (iv) findings of fact and conclusions concerning each allegation, including each specific Rule, Obligation, law, regulation, or matter within the Clearinghouse's jurisdiction that the respondent is found to have violated;
- (v) the imposition of sanctions, if any, and the effective date of each sanction; and
- (vi) a statement that the respondent has the right, within twenty calendar days, to appeal the order pursuant to Rule 707-607.

(c) Unless a timely Notice of Appeal is filed pursuant to Rule 717-617. the order of the disciplinary proceedings shall become final twenty calendar days after a copy of the order is sent to the respondent and to the Regulatory Oversight Department.

~~Rule 715.~~ Rule 615. Sanctions

After notice and an opportunity for a hearing in accordance with the Rules, a Disciplinary Panel shall impose sanctions if a Clearing Member or an Authorized Representative is found to have violated a Rule, Obligation, law, regulation, or matter within the Clearinghouse's jurisdiction. The Clearinghouse shall impose one or more of the following sanctions or remedies:

- (a) warning, censure or reprimand;
- (b) limitation on activities, functions or operations;
- (c) complete or partial suspension of a Clearing Member's or an Authorized Representative's status and/or privileges for a period not to exceed twelve months;
- (d) revocation of a Clearing Member's or Authorized Representative's status and/or privileges;
- (e) bar from association with a Clearing Member;

- (f) expulsion;
- (g) fines;
- (h) restitution or disgorgement; and/or
- (i) any other fitting sanction or remedy.

~~Rule 716.~~ Rule 616. Costs

(a) A Disciplinary Panel may order a respondent to pay some or all costs associated with the disciplinary proceedings, including costs that the Disciplinary Panel believes were unnecessarily caused by the respondent. Costs may include, without limitation, costs associated with the inquiry or investigation, the prosecution by the Regulatory Oversight Department, legal and professional assistance, the hearing, and/or administrative and other expenses incurred by the Disciplinary Panel.

(b) The Disciplinary Panel may only award costs against the Clearinghouse if the Panel concludes that the Clearinghouse has behaved manifestly unreasonably in the commencement or conduct of the disciplinary proceedings. The Disciplinary Panel shall limit any award of costs against the Clearinghouse to an amount that the Panel concludes is reasonable and appropriate, but does not exceed the respondent's costs for external legal or other professional assistance.

(c) The Disciplinary Panel may determine the amount of costs in the manner it deems appropriate. The Clearinghouse or the respondent shall pay any costs ordered by the Disciplinary Panel within thirty calendar days of the later of notice by electronic mail of either:

- (i) the amount imposed by the Disciplinary Panel; or
- (ii) the determination of an appeal by an Appeal Panel against the Disciplinary Panel's determination.

~~Rule 717.~~ Rule 617. Appeal from Disciplinary Panel Decision

(a) Each respondent found by a Disciplinary Panel to have violated a Rule, Obligation, law, regulation, or matter within the Clearinghouse's jurisdiction and the Regulatory Oversight Department may appeal the decision of the Disciplinary Panel within twenty calendar days of receiving the order of the disciplinary proceedings by sending a written Notice of Appeal to the Secretary at the address posted in the "Contact Us" section of the Website. While an appeal is pending, the effect of the order of disciplinary proceedings is suspended (including any sanctions, remedies or costs imposed).

(b) In the Notice of Appeal, the appellant shall state the grounds for appeal, including the findings of fact, conclusions or sanctions to which the appellant objects. An appellant may appeal the order of disciplinary proceedings on the grounds that:

- (i) the decision was arbitrary, capricious, an abuse of discretion, or not in accordance with the Rules;
- (ii) the decision exceeded the authority or jurisdiction of the Disciplinary Panel or the Clearinghouse;
- (iii) the decision failed to observe required procedures;
- (iv) the decision was unsupported by the facts or evidence; and/or
- (v) the imposed sanctions, remedies or costs are inappropriate or unsupported by the record.

(c) The Secretary shall forward a copy of the Notice of Appeal to all parties to the disciplinary proceedings, except the appellant. Within twenty calendar days after sending a Notice of Appeal, the appellant shall send to the Secretary and all other parties to the disciplinary proceedings a brief supporting the appellant's Notice of Appeal, and documents supporting the brief. Within twenty calendar days from the date that the appellant sends such brief, the appellee shall send by electronic mail to the Secretary and all other parties to the disciplinary proceedings the appellee's brief in opposition. Within ten calendar days from the date that the appellee sends such brief in opposition, the appellant shall send to the Secretary and all other parties to the disciplinary proceedings a brief in reply.

(d) The Regulatory Oversight Department shall furnish to the Board a transcript of the hearing, any exhibits introduced at the hearing, the Notice of Appeal, and any briefs filed to support and oppose the appeal.

(e) Within thirty calendar days after the last submission filed pursuant to Rule 717617(c), the Board shall appoint an Appeal Panel to consider and determine the appeal. An individual may not serve on an Appeal Panel if the individual has a relationship described in Rule 710610(b) or if the individual served on the Disciplinary Panel related to, or otherwise participated in, any stage of the disciplinary proceedings subject to the appeal. Before considering an appeal, each proposed Clearing Member of an Appeal Panel must disclose to the Chief Executive Officer whether he or she has a relationship listed in Rule 710610(b) with a respondent in the disciplinary proceedings.

(f) Within ten calendar days of being notified of the appointment of the Appeal Panel, the appellant may seek to disqualify any individual named to the Appeal Panel for the reasons listed in Rule 710610(b) or for any other reasonable grounds, by sending by electronic mail a notice to the Chief Executive Officer. By not timely sending a request for disqualification, the appellant waives any objection to the composition of the Appeal Panel. The Chief Executive Officer shall, within his or her sole discretion, decide the merits of the appellant's objection. The decision of the Chief Executive Officer regarding a request to disqualify an individual from an Appeal Panel is final and not subject to appeal within the Clearinghouse.

(g) An Appeal Panel may hold a teleconference hearing to allow parties to present oral arguments. The Appeal Panel shall conduct the hearing privately and confidentially unless the Panel decides that the teleconference, or any part of it, should be open to the public after giving each appellant the opportunity to present his or her views on holding a teleconference hearing that is open to the public. However, an Appeal Panel may appoint individuals to participate in any hearing and to assist in the Appeal Panel's deliberations. Such individuals shall not have a vote. While determining procedural and evidentiary matters, the Appeal Panel is not bound by any evidentiary or procedural rules or law.

(h) The Appeal Panel shall only consider the record before the Disciplinary Panel, the Notice of Appeal, the briefs filed in support and opposition of the appeal, and any oral arguments of the parties. The Appeal Panel may only consider new evidence when the Appeal Panel is satisfied that there is a good reason why the evidence was not introduced during the disciplinary proceedings.

(i) After completing its review, the Appeal Panel may affirm, modify or reverse any order of disciplinary proceedings under appeal in whole or in part, including increasing, decreasing or eliminating any sanction or remedy imposed, imposing any other sanction or remedy authorized by the Rules, or remanding the matter to the same or a different Disciplinary Panel for further disciplinary proceedings. The Appeal Panel may order a new hearing for good cause or if the Panel deems it appropriate.

(j) As promptly as reasonable following its review, the Appeal Panel shall issue a written order on appeal rendering its decision based on the weight of the evidence before the Appeal Panel. A decision by a majority of the Appeal Panel shall constitute the decision of the Appeal Panel. The order of the Appeal Panel shall include:

- (i) a statement of findings of fact and conclusions for each finding;
- (ii) each sanction, remedy and cost reviewed on appeal, including each specific Rule, Obligation, law, regulation, or matter within the Clearinghouse's jurisdiction that the respondent is found to have violated (if any);
- (iii) the imposition of sanctions, remedies and costs (if any), and the effective date of each sanction, remedy or cost; and
- (iv) a statement that any Person aggrieved by the action may have a right to appeal the action within thirty days of the date of the decision, or to petition the Commission for a stay within ten days of the date of the decision, in each case pursuant to Part 9 of the Commission Regulations.

(k) An Appeal Panel's written order on appeal (including the findings of fact and conclusions, the imposition of sanctions, remedies and costs, and the effective date of any sanction, remedy and cost) is the final action of the Clearinghouse and is not subject to appeal within the Clearinghouse.

Rule 718. ~~Rule 618.~~ Summary Suspensions and Other Summary Actions

(a) Notwithstanding the provisions of any other Rules, the Chief Executive Officer, or another member designated by the Regulatory Oversight Department (if the Chief Executive Officer has a financial or other direct interest in the subject matter of the action) may summarily suspend or take summary action against a Clearing Member, an Authorized Representative or other Person subject to the Clearinghouse's jurisdiction. To summarily suspend or take summary action, the Chief Executive Officer or such designee must reasonably believe that the business, conduct or activities of the Clearing Member, the Authorized Representative, or other Person subject to the Clearinghouse's jurisdiction is not in the best interest of the Clearinghouse or the marketplace, for reasons including, but not limited to, the following:

- (i) statutory disqualification from registration of a Clearing Member, an Authorized Representative or other Person subject to the Clearinghouse's jurisdiction, as provided in CEA Section 8a(2) or (3);
- (ii) non-payment of fees, costs, charges, fines or arbitration awards by a Clearing Member, an Authorized Representative or other Person subject to the Clearinghouse's jurisdiction; and
- (iii) any other grounds for reasonable belief that immediate action is necessary to protect the public or the best interests of the Clearinghouse.

(b) Whenever the Chief Executive Officer, or the individual designated by the Regulatory Oversight Department, proposes to take summary action pursuant to Rule ~~718~~618(a), the Regulatory Oversight Department shall, as soon as practicable, provide notice by electronic mail to the party against whom the action is contemplated. The notice shall state:

- (i) the action taken or to be taken;
- (ii) the reasons for the action;
- (iii) the effective time, date and duration of the action; and
- (iv) a statement that any Person aggrieved by the action may have a right to petition the Commission for a stay within ten days of the date of the decision, pursuant to Part 9 of the Commission Regulations.

Promptly, but no later than twenty calendar days after the date such notice of summary action is sent, the Summary Review Panel shall conduct a hearing concerning the summary action.

(c) At the hearing concerning the summary action, the Regulatory Oversight Department shall present its case supporting the action, and the respondent may present the respondent's case opposing the action, both may present evidence and facts that the Summary Review Panel determines to be relevant and admissible, and both may call,

examine and cross-examine witnesses. The Clearinghouse shall require Persons within its jurisdiction to participate in the teleconference as witnesses and produce evidence if the Summary Review Panel determines that evidence is relevant. During the hearing, the Summary Review Panel is not bound by any evidentiary or procedural rules of law.

(d) As promptly as reasonable after the hearing concerning the summary action, the Summary Review Panel shall issue an order rendering its decision based on the weight of the evidence presented at the hearing. The decision of a majority of the Summary Review Panel is the decision of the Summary Review Panel. The Clearinghouse shall send by electronic mail a copy of the order of the Summary Review Panel to the respondent and the Regulatory Oversight Department no later than one Business Day after the order is issued. The order shall include:

- (i) a description of, and reasons for, the summary actions taken;
- (ii) a brief summary of the evidence introduced at the hearing;
- (iii) findings of fact and conclusions;
- (iv) the affirmation, modification or reversal of the summary action;
- (v) any further actions to be taken against the Clearing Member;
- (vi) the effective date and duration of those actions; and
- (vii) a statement that any Person aggrieved by the action may have a right to appeal the action within thirty days of the date of the decision, or to petition the Commission for a stay within ten days of the date of the decision, in each case pursuant to Part 9 of the Commission Regulations.

(e) The decision of the Summary Review Panel becomes final and not subject to appeal within the Clearinghouse when a copy of the decision is sent to the respondent by electronic mail.

(f) At the request of the Clearinghouse, a respondent against whom a summary action is brought pursuant to this Rule ~~718618~~ shall provide books and records to which the respondent has access or over which the respondent has control, and shall furnish information to, or appear or testify via teleconference before, the Clearinghouse in connection with the enforcement of any Rule.

(g) A respondent suspended pursuant to this Rule may apply for reinstatement by sending to the Secretary by electronic mail a request stating the respondent's reasons for seeking reinstatement. The Clearinghouse will not consider a respondent's request for reinstatement if the respondent:

- (i) owes any fees, charges or costs to the Clearinghouse;

(ii) continues to fail to participate in disciplinary proceedings without good cause; or

(iii) continues to impede the progress of disciplinary proceedings.

(h) Within a reasonable period after the request for reinstatement is sent, a Summary Review Panel shall conduct a teleconference hearing to consider the request. At the hearing for reinstatement; the respondent shall present the respondent's case supporting the reinstatement, the Regulatory Oversight Department may, in its discretion, present its case opposing or supporting the reinstatement; both may present relevant and admissible evidence and facts, and both may call, examine and cross-examine witnesses. At the hearing for reinstatement; the Clearinghouse shall require Persons within its jurisdiction to participate via teleconference as witnesses and to produce evidence if the Summary Review Panel determines that the evidence is relevant. During the reinstatement hearing, the Summary Review Panel is not bound by any evidentiary or procedural rules of law.

(i) As promptly as reasonable after the reinstatement hearing, the Summary Review Panel shall issue and send to the respondent by electronic mail an order reinstating the respondent, denying the reinstatement of the respondent, or placing conditions on the reinstatement of the respondent.

(j) An individual may not serve as a Clearing Member of the Summary Review Panel if the individual:

(i) is a named respondent;

(ii) is an employer, employee, fellow employee or an affiliate of a respondent;

(iii) has any significant, ongoing business relationship with a respondent (not including relationships limited solely to executing futures or options transactions opposite each other, or clearing futures or options transactions through the same Clearing Member);

(iv) has a family relationship with a respondent (including the individual's spouse, co-habitator, former spouse, parent, step-parent, child, step-child, sibling, step-brother, step-sister, grandparent, grandchild, uncle, aunt, nephew, niece, father-in-law, mother-in-law, brother-in-law or sister-in-law);

(v) was a witness in the inquiry or investigation or may be called as a witness in the reinstatement hearing; and/or

(vi) has a direct and substantial financial interest that could reasonably be expected to be affected by the outcome of any reinstatement hearing.

Before considering any matter involving a respondent, each proposed individual on the Summary Review Panel must disclose to the Chief Executive Officer whether he or she disqualifies from serving on the Summary Review Panel because he or she falls under any category listed in this Rule ~~718618~~(j).

~~Rule 719.~~ Rule 619. Rights and Responsibilities after Suspension or Expulsion

(a) When a Clearing Member is suspended for a period of twelve months or less, all rights and privileges of the Clearing Member (including, without limitation, the right to hold oneself out to the public as a Clearing Member, enter Orders on the Clearinghouse, and receive Clearing Member rates for fees, costs and charges) terminate during the period of the suspension, except for the right of the Clearing Member to assert claims against others as provided under the Rules. The suspension of a Clearing Member shall not:

- (i) affect the rights of creditors under the Rules;
- (ii) relieve the Clearing Member of any obligations under the Rules to perform all contracts involving any Contracts entered into before the suspension; or
- (iii) exempt the Clearing Member from any Clearinghouse fees, costs or charges incurred during the suspension.

The Clearinghouse may discipline a suspended Clearing Member under this Chapter 7 of the Rules for any violation of a Rule, Obligation, law, regulation, or matter within the Clearinghouse's jurisdiction committed by the Clearing Member before, during or after the suspension.

(b) When a Clearing Member is expelled, all rights and privileges of such Clearing Member terminate, except for the right of the Clearing Member to assert claims against others, as provided under the Rules. The expulsion of a Clearing Member shall not affect the rights of creditors under the Rules. An expelled Clearing Member can only seek to reinstate his, her or its status as a Clearing Member by applying pursuant to Rule 303. The Clearinghouse will not consider an expelled Clearing Member's application if the expelled Clearing Member:

- (i) owes any fees, charges or costs to the Clearinghouse;
- (ii) continues to fail to participate at disciplinary proceedings without good cause; or
- (iii) continues to impede the progress of disciplinary proceedings.

(c) An expelled or suspended Clearing Member remains subject to the Rules and the jurisdiction of the Clearinghouse for acts done and omissions made while a Clearing Member, and must cooperate in any inquiry, investigation, disciplinary proceeding or appeal of a disciplinary proceeding, summary suspension, or other summary actions, as if the expelled or suspended Clearing Member were still an active Clearing Member.

~~Rule 720.~~ Rule 620. Notice to the Respondent, the Commission and the Public

The Clearinghouse shall provide written notice of disciplinary proceedings to the parties and the Commission in accordance with Commission Regulations. Whenever the Clearinghouse suspends, expels, fines or otherwise disciplines any Person, or denies any Person access to the Clearinghouse, the Clearinghouse shall make the public disclosures required by Commission Regulations, including through posting on the Website.

~~Rule 721.~~ Rule 621. Investigations By Other Self-Regulatory Organizations

If a self-regulatory organization that is a party to an information sharing agreement with the Clearinghouse requests assistance in connection with an investigation, the Chief Compliance Officer may direct a Clearing Member to submit to an examination by the requesting self-regulatory organization and to produce information pertinent to that investigation. The request for assistance shall describe the investigation, explain why Clearinghouse assistance is necessary and describe the scope of the assistance sought. An order directing a Clearing Member to submit to an examination shall be issued unless the Chief Compliance Officer determines that such order would not be in the best interests of the Clearinghouse. An examination pursuant to such order shall be conducted according to the Rules and shall be conducted on Clearinghouse premises under the direction of Clearinghouse staff. At the discretion of the Chief Compliance Officer, representatives of the requesting self-regulatory organization may observe and participate in the examination. Failure to comply with an order issued under this Rule shall be an offense against the Clearinghouse.

~~Rule 722.~~ Rule 622. Confidentiality of Financial and Other Information

Except as otherwise set forth herein, or as required by applicable law, all information and data obtained or received by the Regulatory Oversight Department from inspections of accounting and other records, quarterly balance sheets and declarations or reports on financial condition will be treated as confidential by the Clearinghouse.

Chapter 8 —

Chapter 7 Arbitration

~~Rule 801.~~ Rule 701. General

Except as otherwise provided in the Rules, Clearing Members shall arbitrate all controversies arising in connection with their Clearing Activity between or among themselves or a Customer in accordance with Rules ~~802~~702 and ~~803~~703. This Rule does not require arbitration of claims alleging employment discrimination (including, but not limited to, sexual harassment) in violation of a statute, Rule or regulation.

~~Rule 802.~~ Rule 702. Forum

The Regulatory Services Provider shall conduct arbitrations pursuant to Rule ~~801~~701 in proceedings in the New York, NY or Chicago, IL metropolitan area.

~~Rule 803.~~ Rule 703. Applicable Rules

Arbitrations shall be conducted pursuant to the Regulatory Services Provider's Arbitration Rules.

~~Rule 804.~~ Rule 704. Penalties

- (a) If a Clearing Member, an Authorized Representative or other Person subject to the Clearinghouse's jurisdiction fails to arbitrate a case subject to arbitration, or commences a suit in any court prior to arbitrating a case subject to arbitration, such Clearing Member, Authorized Representative or other Person shall be deemed to have violated the Rules and become subject to disciplinary proceedings under Chapter ~~76~~ of the Rules.
- (b) Pursuant to Rule ~~718~~618, the Clearinghouse may summarily suspend a Clearing Member, an Authorized Representative, or other Person subject to the Clearinghouse's jurisdiction who fails to satisfy an arbitration award made pursuant to this Chapter ~~8~~7.

Chapter 9 —

Chapter 8
Miscellaneous

~~Rule 901.~~ Rule 801. Force Majeure

Notwithstanding any other provision of these Rules, the Clearinghouse shall not be obligated to perform its Obligations under these Rules or any agreement with a Clearing Member relating to Contracts, or to compensate any Person for losses occasioned by any delay or failure of performance, to the extent such delay or failure is the result of acts of God, lightning, earthquake, fire, epidemic, landslide, drought, hurricane, tornado, storm, explosion, flood, nuclear radiation, act of a public enemy or blockade, insurrection, riot or civil disturbance, strike or labor disturbance, or any other cause beyond the Clearinghouse's reasonable control (whether or not similar to any of the foregoing).

If the Clearinghouse shall, as a result of any of the above-described events, fail to perform any of its Obligations, such failure shall be excused for a period equal to the period of delay caused by such event. In such an event, the Clearinghouse shall give written notice thereof to such Clearing Member, as soon as it is reasonably practicable and attempt diligently to remove such condition.

~~Rule 902.~~ Rule 802. Misuse of Material Non-Public Information by Employees

(a) Employees, agents and independent contractors of the Clearinghouse and IDCG are prohibited from disclosing Material Non-public Information obtained as a result of his or her employment, agency relationship or engagement with the Clearinghouse or IDCG where the Employee, agent or independent contractor expected or should have reasonably expected that the information disclosed may assist a Person in clearing any Contract, any contract traded on another trading facility, or any related underlying Contract or security.

(b) Rule ~~902~~802(a) shall not prohibit an Employee, agent or independent contractor of the Clearinghouse or IDCG from disclosing Material Non-public Information while discharging his or her official duties and responsibilities, including disclosures to another Self-Regulatory Organization, linked Clearinghouse, court of competent jurisdiction, or a representative of any agency or department of the federal or state government.

~~Rule 903.~~ Rule 803. Gifts and Gratuities to the Clearinghouse

Unless otherwise approved by the Chief Executive Officer, the Chief Operating Officer, or their designee, no Clearing Member or Authorized Representative shall, directly or indirectly, give or permit to be given anything of value, including gratuities, in excess of \$1,000 per individual per year to any Board Member or Employee (or agent thereof) where the payment or gratuity is in relation to the business of the Clearinghouse.

~~Rule 904.~~ Rule 804. Market Data

All Clearing Members, Authorized Representatives, and all employees, agents, vendors, and other Persons affiliated with the foregoing hereby acknowledge and agree that the Clearinghouse is the owner of all right, title and interest in and to all intellectual property and

proprietary rights, including all copyright, patent, trademark or trade secret rights, in the items set forth in subsections (i) through (vi) below and further agree not to use the items set forth in subsection (i) through (vi) below in any way without the prior written consent of the Clearinghouse, such consent to be withheld in the Clearinghouse's sole discretion:

- (i) the price and quantity data from each and every transaction executed by the Clearing System, including the time at which the transaction was executed by, or submitted to, the Clearing System;
- (ii) the price and quantity data for each and every Contract submitted for entry into the Clearing System, including the time at which the Contract was entered into the Clearing System;
- (iii) the daily Settlement Price of each Contract;
- (iv) any data or other information derived from (i), (ii) and (iii), including the format, compilation and presentation thereof;
- (v) all derivative works of the foregoing; and
- (vi) any data or information transmitted, published or disseminated to Clearing Members, Authorized Representatives, any publisher of the data or information with whom the Clearinghouse has a written agreement, and any other Persons.

~~Rule 905.~~ Rule 805. Extension or Waiver of Rules

If necessary and expedient, the Clearinghouse may, in its sole discretion, waive, or extend the time period for performing, any act or acts designated by the Rules, but only to the extent such waiver or extension is not inconsistent with the CEA or the Commission Regulations.

~~Rule 906.~~ Rule 806. Rule Changes

- (a) The Board may, in accordance with the CEA and Commission Regulations, amend or repeal a Rule or adopt a new Rule in its discretion. The Board will issue a Notice to Members that describes the amendment or repeal of a Rule or adoption of a new Rule, and the effective date of such action.
- (b) If an amendment or repeal of a Rule or adoption of a new Rule does not materially change the terms or conditions of a Contract, then the effective date of any amendment or repeal of a Rule or adoption of a new Rule relating to Contracts is binding on all Contracts entered into before and after the effective date of such amendment, repeal or adoption.
- (c) If an amendment or repeal of a Rule or adoption of a new Rule materially changes the terms or conditions of a Contract, then the amended, repealed or new Rule is binding only on Contracts submitted for clearing after the effective date of such amendment, repeal or adoption, and on Contracts listed as of the effective date of such

amendment, repeal or adoption with no open positions then in existence, unless otherwise specifically provided by the Board.

(d) Any determination of a material change pursuant to this Rule shall be made by the Board.

~~Rule 907.~~ Rule 807. Governing Law, Jurisdiction and Dispute Resolution

(a) The law of the State of New York governs the Rules.

(b) Any dispute between the Clearinghouse and a Clearing Member arising from or in connection with the Rules must be brought to arbitration pursuant to Rule ~~907~~807(c) within two years from the occurrence of the event giving rise to the dispute. This Rule 807 shall in no way create a cause of action nor authorize an action that would otherwise be prohibited by the Rules.

(c) Any dispute between the Clearinghouse and a Clearing Member arising from or in connection with the Rules will be settled by arbitration administered in the New York, New York metropolitan area or in Chicago, Illinois by the AAA under its Commercial Arbitration Rules. The dispute will be submitted to one arbitrator who will be appointed by the AAA. Any arbitrator appointed for purposes of this Rule 807(c) will have experience with and knowledge of commodities, as listed on the National Roster of Arbitrators kept in the AAA's records. Judgment on the award rendered by the arbitrator will be binding on the parties and may be entered in any state or federal court sitting in the New York, New York metropolitan area, and the Clearinghouse and each Clearing Member shall be deemed to have consented to the personal jurisdiction of any such court. Each party to the dispute will bear its own costs and expenses in connection with any arbitration hereunder, as well as an equal share of the administrative fees and the fees of the arbitrator; *provided*, however, that the arbitrator will be entitled to include in any award a full reimbursement for the prevailing party's costs and expenses, such party's share of the administrative fees and the fees of the arbitrator, or any combination of any or all of the above. In the event that this Rule ~~907~~807(c) is held to be unenforceable in connection with any dispute, (i) exclusive jurisdiction for any such dispute will reside in any state or federal court sitting in the Borough of Manhattan, New York, NY, (ii) the Clearinghouse and the Clearing Member involved in the dispute will be presumed to have submitted to the personal jurisdiction of any such court, and (iii) an action to enforce any judgment or decision of such court may be brought in the same court or in any other court with jurisdiction or venue. Finally, all Clearing Members unconditionally and irrevocably waive any and all right to trial by jury in connection with any such dispute.

~~Rule 908.~~ Rule 808. Forms; Transmission of Data to the Clearinghouse.

(a) In connection with any transaction or matter handled through, with or by the Clearinghouse under or pursuant to the Rules, the form of any required list, notice or other document shall be as prescribed by the Clearinghouse from time to time, and additions to, changes in and elimination of any such forms may be made by the Clearinghouse at any time in its discretion.

(b) A Clearing Member may execute any document to be delivered to the Clearinghouse or to any other Clearing Member pursuant to these Rules by means of a mechanically or electronically reproduced facsimile signature of a representative of the Clearing Member; *provided*, that the Clearing Member shall have complied with such requirements as may be prescribed by the Clearinghouse in connection with the use of such facsimile signatures.

~~Rule 909.~~ Rule 809. Required Records and Reports

(a) Each Clearing Member shall prepare, maintain and keep current those books and records required by the Rules, the CEA and the Regulations thereunder. Such books and records shall be open to inspection and promptly provided to the Clearinghouse upon request.

(b) Each Clearing Member shall maintain an adequate accounting system, internal accounting controls, and procedures for safeguarding Customer and firm assets as set forth in Commission Regulation 1.16(d)(2). This includes, but is not limited to, the following:

(i) Preparation and maintenance of complete and accurate reconciliations for all accounts; and

(ii) Resolution of reconciling items in a timely manner.

(c) A Clearing Member must file any information requested by the Clearinghouse within the time period specified in the request.

(d) Each Clearing Member shall maintain at all times the ability to provide to the Clearinghouse a listing of each Customer's method of access to the Clearing System, including front-end applications and network connections.

~~Rule 910.~~ Rule 810. Anti-Money Laundering

Each Clearing Member which is a "financial institution" under the Bank Secrecy Act (31 U.S.C. § 5311, et seq.) shall develop and implement a written anti-money laundering program approved in writing by senior management reasonably designed to achieve and monitor the Clearing Member's compliance with the applicable requirements of the Bank Secrecy Act and the implementing regulations promulgated thereunder by the Department of the Treasury and, as applicable, the Commission. That anti-money laundering program shall, at a minimum,

(a) Establish and implement policies, procedures and internal controls reasonably designed to assure compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder;

(b) Provide for independent testing for compliance to be conducted by Clearing Member personnel or by a qualified outside party;

(c) Designate an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program; and

(d) Provide ongoing training for appropriate personnel.

Clearing Members must also supervise and ensure that their guaranteed introducing brokers are in compliance with the anti-money laundering provisions contained in this Rule.

~~Rule 911.~~ Rule 811. Risk Management

All Clearing Members must have written risk management policies and procedures in place to ensure they are able to perform certain basic risk and operational functions at all times. Clearinghouse staff may prescribe additional and/or alternative requirements in order for Clearing Members to comply with this Rule.

~~Rule 912.~~ Rule 812. Disaster Recovery and Business Continuity

All Clearing Members must have written disaster recovery and business continuity policies and procedures in place to ensure they are able to perform certain basic operational functions in the event of a significant internal or external interruption to their operations. At a minimum, the following areas must be considered in the firm's policies and procedures, depending on the firm's size and its business and product mix:

(a) Clearing Members must have procedures in place to allow them to continue to operate during periods of stress or to transfer accounts to another fully operational Clearing Member with minimal disruption to either the Clearinghouse or their Customers. In order to satisfy this requirement, Clearing Members must perform:

- (i) Periodic testing of disaster recovery and business continuity plans.
- (ii) Duplication of critical systems at backup sites.
- (iii) Periodic backup of critical information.

(b) Key Staff Contacts. Clearing Members must maintain and, at the request of the Clearinghouse, provide accurate and complete information for their key personnel. Clearing Members must inform the Clearinghouse in a timely manner whenever a change to their key personnel is made.

(c) Additional and/or Alternative Requirements. Clearinghouse staff may prescribe additional and/or alternative requirements in order for Clearing Members to comply with this Rule.

~~Rule 913.~~ Rule 813. Just and Equitable Principles of Trade; Acts Detrimental to the Interest or Welfare of the Clearinghouse

- (a) The Clearinghouse shall have the power to suspend or revoke clearing privileges or authorize the assessment of fines or charges against Clearing Members for engaging in conduct inconsistent with just and equitable principles of trade.
- (b) The Clearinghouse shall have the power to suspend or revoke clearing privileges or authorize the assessment of fines or charges against Clearing Members for engaging in acts detrimental to the interest or welfare of the Clearinghouse.

~~Chapter 10~~—

Chapter 9
Reserved

Chapter 11—

OTC Contract Specifications

~~Rule 1101.~~ Rule 901. IDEX USD Interest Rate Swaps

(a) **Description:** The IDEX USD Interest Rate Swap Contracts are USD denominated interest rate contracts that IDCH will accept for clearing. They will require the exchange of two interest payment streams that conform to either the Fixed Leg or Floating Leg Definitions set out below, along with an optional Upfront Payment.

Clearing Window: 7:00 AM to 5:00 PM Eastern Time, Monday – Friday, other than Holidays.

Spot Date: Will be 2 Week Days after the current date, adjusted by the Following Business Day Convention for New York.

Effective Date: Will be the start date of the first interest accrual period. It shall not be more than thirty years from the prevailing spot date at any time and must be at least three months prior to the Maturity Date.

Maturity Date: Will be the final payment date, adjusted by Business Day Convention, of the IDEX USD Interest Rate Swap Contract. It shall not be more than thirty years from the prevailing spot date at any time or less than one month from the prevailing spot date at the time that it is accepted for clearing.

Notional Principal: The Notional Principal is used to calculate the individual interest payments; it must be common for both legs of the Contract at all times throughout the life of the transaction. The minimum notional that will be accepted for clearing is \$1,000,000.00, with a minimum incremental restriction of \$1.00.

(b) **Fixed Leg Definition:** A Fixed Leg will be characterized by a predetermined interest rate and shall be defined by the following terms: Fixed Rate, Fixed Payment Frequency, Fixed Payment Holiday Centers, Fixed Payment Holiday Convention, Fixed Accrual Year Fraction, Fixed Accrual Holiday Centers, Fixed Accrual Holiday Convention, Fixed First Roll Date, Fixed Last Roll Date and Notional Principal. If one or more of these terms are not constant over the life of the transaction they may be stipulated piecewise in the Fixed Leg Schedule.

Fixed Rate: Will be expressed as a percentage with no more than five decimal places.

Fixed Payment Frequency: Will be one of: monthly, quarterly, semi-annual, or annual.

Fixed Payment Holiday Centers: Will be New York, or New York and London.

Fixed Payment Holiday Convention: Will be one of: Preceding, Following, Modified Following, End of Month, or Third Wednesday.

Fixed Accrual Year Fraction: Will be one of: 30/360, Actual/Actual, Actual/365 Fixed, or Actual/360.

Fixed Accrual Holiday Centers: Will be either None, or New York and/or London.

Fixed Accrual Holiday Convention: Will be one of: None, Preceding, Following, Modified Following, End of Month, or Third Wednesday.

Fixed First Roll Date: Will be the unadjusted End Date of the first interest accrual period. If not specified, it will be assumed to be one Payment Frequency after the Effective Date. It must be at least two New York Business Days after the date on which the Contract is submitted for clearing, and no more than twice the Fixed Payment Frequency after the effective date of the Contract.

Fixed Last Roll Date: Will be the unadjusted Start Date of the last interest accrual period. If not specified, it will be assumed to be one Payment Frequency before the unadjusted Maturity Date. It can be no more than twice the Fixed Payment Frequency prior to the Maturity Date.

The Start Date of the n th interest accrual period is the First Roll Date for the Contract plus $(n-2)$ * Payment Frequency of the leg. The only exceptions to this are the Start Date of the first interest accrual period, which will be the Effective Date, the Start Date of the second interest accrual period, which will be the First Roll Date, and the Start Date of the last interest accrual period, which will be the Last Roll Date. All Start Dates will be adjusted by the Accrual Holiday Convention and Accrual Holiday Centers of the leg.

The End Date of the n th interest accrual period is the First Roll Date for the Contract plus $(n-1)$ * Payment Frequency of the leg. The only exceptions to this are the End Date of the first interest accrual period, which will be the First Roll Date, the End Date of the penultimate interest accrual period, which will be the Last Roll Date, and the End Date of the last interest accrual period, which will be the Maturity Date. All End Dates will be adjusted by the Accrual Holiday Convention and Accrual Holiday Centers of the leg.

The Interest Payment Date of the n th interest period is the First Roll Date for the Contract plus $(n-1)$ * payment frequency of the leg. The only exceptions to this are the Payment Date of the first interest period, which will be the First Roll Date, the Payment Date of the penultimate interest period, which will be the Last Roll Date, and the Payment Date of the last interest period, which will be the Maturity Date. All Payment Dates will be adjusted by the Accrual Holiday Convention and Accrual Holiday Centers of the leg.

Interest Payment Dates must occur within five Business Days of the corresponding End Date of the interest accrual period taking into account the Payment Holiday Centers.

The fixed rate payment for a given accrual period shall be equal to the notional value multiplied by the Fixed Rate multiplied by the Accrual Year Fraction of the leg.

Fixed Leg Schedule:

Interest Period	Start Date	End Date	Notional Principal	Fixed Rate	Accrual Year Fraction
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(c) **Floating Leg Definition:** A Floating Leg will be characterized by a periodically resetting rate and shall be defined by the following terms: Floating Rate Index, Index Tenor, Reset Lag, Reset Holiday Center, Floating Rate Spread, Floating Payment Frequency, Floating Payment Holiday Centers, Floating Payment Holiday Convention, Floating Accrual Year Fraction, Floating Accrual Holiday Centers, Floating Accrual Holiday Convention, Floating First Roll Date, Floating Last Roll Date and Notional Principal. If one or more of these terms are not constant over the life of the transaction they may be stipulated piecewise in the Floating Leg Schedule.

Floating Rate Index: Will be the USD London Interbank Offered Rate (“USD BBA LIBOR”) expressed as a percentage with no more than five decimal places.

Index Tenor: Will be one of: monthly, quarterly, or semi-annual.

Reset Lag: Will be two Business Days prior to the Start Date of the interest accrual period for which that Floating Rate Index will be reset taking into account the Reset Holiday Center. The only exception to this is the first reset which may be between zero and ten Business Days prior to the Start Date of the first interest accrual period.

Reset Holiday Center: Will be London.

Floating Rate Spread: Will be a spread expressed as a percentage to be added to (with up to seven significant figures for a positive spread and up to six significant figures for a negative spread) the Floating Rate Index prior to multiplying by the Notional Principal or Floating Accrual Year Fraction when determining a Floating Rate Payment.

Floating Payment Frequency: Will be one of: monthly, quarterly, or semi-annual.

Floating Payment Holiday Centers: Will be New York, or New York and London.

Floating Payment Holiday Convention: Will be one of: Preceding, Following, Modified Following, End of Month, or Third Wednesday.

Floating Accrual Year Fraction: Will be one of: 30/360, Actual/Actual, Actual/365 Fixed, or Actual/360.

Floating Accrual Holiday Centers: Will be either None, or New York and/or London.

Floating Accrual Holiday Convention: Will be one of: None, Preceding, Following, Modified Following, End of Month, or Third Wednesday.

Floating First Roll Date: Will be the unadjusted End Date of the first interest accrual period, if not specified it will be assumed to be one Payment Frequency after the Effective Date. It must be at least two New York Business Days after the date on which the contract is submitted for clearing, and no more than twice the Floating Payment Frequency, after the effective date of the Contract.

Floating Last Roll Date: Will be the unadjusted Start Date of the last interest accrual period, if not specified it will be assumed to be one Payment Frequency before the unadjusted Maturity Date. It can be no more than twice the Floating Payment Frequency prior to the Maturity Date.

The Start Date of the nth interest accrual period is the First Roll Date for the Contract plus $(n-2) \times$ Payment Frequency of the leg. The only exceptions to this are the Start Date of the first interest accrual period which will be the Effective Date, the Start Date of the second interest accrual period which will be the First Roll Date, and the Start Date of the last interest accrual period which will be the Last Roll Date. All Start Dates will be adjusted by the Accrual Holiday Convention and Accrual Holiday Centers of the leg.

The End Date of the nth interest accrual period is the First Roll Date for the Contract plus $(n-1) \times$ Payment Frequency of the leg. The only exceptions to this are the End Date of the first interest accrual period which will be the First Roll Date, the End Date of the penultimate interest accrual period which will be the Last Roll Date, and the End Date of the last interest accrual period which will be the Maturity Date. All End Dates will be adjusted by the Accrual Holiday Convention and Accrual Holiday Centers of the leg.

The Interest Payment Date of the nth interest period is the First Roll Date for the Contract plus $(n-1) \times$ payment frequency of the leg. The only exceptions to this are the Payment Date of the first interest period which will be the First Roll Date, the Payment Date of the penultimate interest period which will be the Last Roll Date, and the Payment Date of the last interest period which will be the Maturity Date. All Payment Dates will be adjusted by the Payment Holiday Convention and Payment Holiday Centers of the leg.

For all but two interest accrual periods the Index Tenor must be within five Business Days of the Term of the interest accrual period, for the first and last interest accrual periods the Index Tenor may be a linear interpolation of other available tenors to an equivalent Term.

Floating Rate Payment: The floating rate payment for a given accrual period shall be an amount equal to the Notional Principal multiplied by the Floating Rate Index setting plus the Floating Rate Spread multiplied by the Floating Rate Accrual Year Fraction of the leg.

Floating Leg Schedule

Interest Period	Start Date	End Date	Notional Principal	Accrual Year Fraction
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(d) **Upfront Payment:** A single payment may be included in any IDEX USD Interest Rate Swap Contract provided that it occurs between two and twenty New York Business Days after the date on which the contract is submitted for clearing.

(e) **Last Trading Day.** Trading of any individual IDEX USD Interest Rate Contract terminates at the close of trading on the Business Day preceding that contract's Maturity Date.

(f) **Contract Modifications.** Specifications are fixed as of the first day of trading of a contract. If any U.S. government agency or body with authority issues an order, ruling, directive or law that conflicts with the requirements of these rules, such order, ruling, directive or law shall be construed to take precedence and become part of these rules, and all open and new contracts shall be subject to such government orders.

(g) **Reportable Position.** Pursuant to Commission Regulation Section 15.03 and Part 17 of the Commission's Regulations, the position level that is required to be reported to the Clearinghouse and Commission is any open position in a particular IDEX USD Interest Rate Contract at the close of trading on any trading day equal to or in excess of twenty-five on either side of the market.

(h) **Position Accountability.** A person owning or controlling more than 3,000 contracts net long or net short in all contract maturities combined shall provide, in a

timely fashion, upon request by the Clearinghouse, information regarding the nature of the position, trading strategy, and hedging information, if applicable.

(i) **Daily Settlement Price.** Each open position is valued by the Clearinghouse at the end of each trading day by valuing each leg of the cash flows of the contract (fixed and floating) according to discount factors generated by the IDEX Curve. Each Trading Day, the Daily Settlement Price shall be established by the Clearinghouse based upon the IDEX Curve that corresponds to the fixed rate portion of the swap. A net present value of the position will be determined and set as the Daily Settlement Price. Notwithstanding the preceding sentence, the Clearinghouse may, in its sole discretion, establish a Daily Settlement Price that is a fair and appropriate reflection of the market. The Final Settlement Price shall be the Daily Settlement Price on the Last Trading Day.

(j) **Glossary**

Term means the difference between the Start Date and the End Date of an interest accrual period.

Following Business Day Convention means the date will be adjusted to be the first following day that is a Business Day in the locations listed.

Modified Following Business Day Convention means the date will be adjusted to be the first following day that is a Business Day in the locations listed unless that day falls in the next calendar month, in which case that date will be the first preceding day that is a Business Day in the locations listed.

Preceding Business Day Convention means the date will be adjusted to the first preceding day that is a Business Day in the locations listed.

End of Month Business Day Convention means the date will be adjusted to the last Business Day of the calendar month in the locations listed.

Business Day means a day in which the banking system is open to settle payments in the locations listed.

Week Day means any calendar day which is not a Saturday or Sunday.

30/360 Accrual Year Fraction means the number of days in the interest period in respect of which payment is being made (assuming 30 day months) divided by 360, calculated on a formula basis as follows:

$$\{[360 \times (Y2-Y1)] + [30 \times (M2-M1)] + (D2-D1)\}/360$$

Where:

Y1 is the year, expressed as a number, in which the start date of the interest period falls.

Y2 is the year, expressed as a number, in which the end date of the interest period falls.

M1 is the calendar month, expressed as a number, in which the start date of the interest period falls.

M2 is the calendar month, expressed as a number, in which the end date of the interest period falls.

D1 is the first calendar day expressed as a number, of the interest period, unless such a number would be 31, in which case D1 will be 30.

D2 is the last calendar day, expressed as a number, of the interest period, unless such a number would be 31 and D1 is greater than 29, in which case D2 will be 30.

Actual/Actual Accrual Year Fraction means the actual number of days in the interest period in respect of which payment is being made divided by 365 unless any portion of the interest period falls within a leap year in which case divided by 366.

Actual/365 Fixed Accrual Year Fraction means the actual number of days in the interest period in respect of which payment is being made divided by 365.

Actual/360 Accrual Year Fraction means the actual number of days in the interest period in respect of which payment is being made divided by 360.

~~Rule 1102-~~ Rule 902. IDEX OIS USD Interest Rate Swaps

(a) **Description:** The IDEX OIS USD Interest Rate Swap Contracts are USD denominated interest rate Contracts that IDCH will accept for clearing. They will require the exchange of periodic annual fixed rate payments for annual floating rate payments based on the Fed Funds Effective Rate compounded over the life of the contract.

Clearing Window: 7:00 AM to 5:00 PM Eastern Time, Monday – Friday, other than Holidays.

Spot Date: Will be 2 Week Days after the current date, adjusted by the Following Business Day Convention for New York.

Effective Date: Will be the start date of the first interest accrual period. It shall not be more than thirty years from the prevailing spot date at any time.

Maturity Date: Will be the final payment date, adjusted by Business Day Convention, of the IDEX OIS USD Interest Rate Contract. It shall not be more than two years from the prevailing spot date at any time or less than the prevailing spot date at the time that it is accepted for clearing.

Notional Principal: The Notional Principal is used to calculate the individual interest payments; it must be common for both legs of the Contract at all times throughout the life of the transaction. The minimum notional that will be accepted for clearing is \$1,000,000.00, with a minimum incremental restriction of \$1.00.

Reset Date: Will be each New York Business Day of the floating interest accrual period

Payment Schedule: Periodic payments on the IDEX OIS USD Interest Rate Swap Contracts will be made on an annual basis for the fixed rate and floating rate payments. Each payment date in the IDEX OIS USD Interest Rate Contract will be defined by the Effective Date, the Maturity Date, and the payment frequency, adjusted by the Modified Following Business Day convention for New York and London.

The Start Date of the nth interest accrual period is the Effective Date for the series plus (n-1)* payment frequency of the fixed or floating side as appropriate, adjusted by the Modified Following Business Day convention for New York and London. The only exception to this is the Start Date of the first interest accrual period which will be the Effective Date

The End Date of the nth interest accrual period is the Effective Date for the series plus n* payment frequency of the fixed or floating side as appropriate, adjusted by the Modified Following business day convention for New York and London.

The Interest Payment Date of the nth interest period is the End Date of the same interest accrual period.

Floating Rate Payment: The floating rate payment for a given accrual period shall be an amount equal to the Notional Value multiplied by the compounded Fed Funds Effective Rate multiplied by the Actual/360 Accrual Year Fraction.

Fixed Rate Payment: The fixed rate payment for a given accrual period shall be equal to the notional value multiplied by the fixed rate multiplied by the Actual/360 Accrual Year Fraction.

Last Trading Day: Trading of any individual IDEX OIS USD Interest Rate Contract terminates at the close of trading on the Business Day preceding that contract's Maturity Date.

Contract Modifications: Specifications are fixed as of the first day of trading of a contract. If any U.S. government agency or body with authority issues an order, ruling, directive or law that conflicts with the requirements of these rules, such order, ruling, directive or law shall be construed to take precedence and become part of these rules, and all open and new contracts shall be subject to such government orders.

Reportable Position: Pursuant to Commission Regulation Section 15.03 and Part 17 of the Commission's Regulations, the position level that is required to be reported to the Clearinghouse and Commission is any open position in a particular IDEX OIS USD

Interest Rate Contract at the close of trading on any trading day equal to or in excess of twenty-five on either side of the market.

Position Accountability: A person owning or controlling more than 3,000 contracts net long or net short in all contract maturities combined shall provide, in a timely fashion, upon request by the Clearinghouse, information regarding the nature of the position, trading strategy, and hedging information, if applicable.

Daily Settlement Price: Each open position is valued by the Clearinghouse at the end of each trading day by valuing each leg of the cash flows of the contract (fixed and floating) according to discount factors generated by the IDEX Curve. Each Trading Day, the Daily Settlement Price shall be established by the Clearinghouse based upon the IDEX Curve that corresponds to the fixed rate portion of the swap. A net present value of the position will be determined and set as the Daily Settlement Price. Notwithstanding the preceding sentence, the Clearinghouse may, in its sole discretion, establish a Daily Settlement Price that is a fair and appropriate reflection of the market. The Final Settlement Price shall be the Daily Settlement Price on the Last Trading Day.

(b) **Glossary**

Modified Following Business Day Convention means the date will be adjusted to be the first following day that is a Business Day in the locations listed unless that day falls in the next calendar month, in which case that date will be the first preceding day that is a Business Day in the locations listed.

Business Day means a day in which the banking system is open to settle payments in the locations listed.

Week Day means any calendar day which is not a Saturday or Sunday.

Actual/360 Accrual Year Fraction means the actual number of days in the interest period in respect of which payment is being made divided by 360.

Rule 1103. Rule 903. IDEX USD Forward Rate Agreement

(a) **Description:** The IDEX USD Forward Rate Agreement Contracts are USD denominated forward rate agreement contracts that IDCH will accept for clearing. They will require the exchange of a final payment, which represents the net of fixed and floating interest payments and conforms to the definitions set out below.

Clearing Window: 7:00 AM to 5:00 PM Eastern Time, Monday – Friday, other than Holidays.

Maturity Date: Will be the final payment date, unadjusted by any Business Day Convention, of the IDEX USD Forward Rate Agreement Contract. It shall not be more than two years from the current date.

Notional Principal: The Notional Principal is used to calculate the individual interest payments; it must be common for both legs of the Contract at all times throughout the life of the transaction. The minimum notional that will be accepted for clearing is \$1,000,000.00, with a minimum incremental restriction of \$1.00.

Reset Date: Will be 2 London Business Days preceding the Maturity Date.

Payment Frequency: Will be one of: monthly, quarterly, or semi-annual.

Payment Schedule: The Start Date of the interest accrual period and the Interest Payment Date is the Maturity Date for the agreement. The End Date of the interest accrual period shall be one Payment Frequency after the Maturity Date, adjusted by the Modified Following Business Day Convention for New York and London. The only exception to this is if the Maturity Date for the series falls on the last business day of the month in which case the End Date of the interest accrual period will fall on the last business day of the month one Payment Frequency after the maturity date.

Final Payment: The Final Payment shall be an amount equal to the Notional Value multiplied by the difference between the fixed rate and the USD LIBOR setting multiplied by the Actual/360 Accrual Year Fraction divided by the Accrual Factor. When the USD LIBOR setting is greater than the fixed rate, the final payment will be made to the buyer, and from the seller. Conversely when the USD LIBOR setting is less than the fixed rate, the final payment will be made to the seller, and from the buyer.

Accrual Factor: The Accrual Factor shall be equal to one plus the USD LIBOR setting multiplied by the Actual/360 Accrual Year Fraction.

Last Trading Day: Trading of any individual IDEX USD Forward Rate Agreement Contract terminates at the close of trading on the Business Day preceding that contract's Maturity Date.

Contract Modifications: Specifications are fixed as of the first day of trading of a contract. If any U.S. government agency or body with authority issues an order, ruling, directive or law that conflicts with the requirements of these rules, such order, ruling, directive or law shall be construed to take precedence and become part of these rules, and all open and new contracts shall be subject to such government orders.

Reportable Position: Pursuant to Commission Regulation Section 15.03 and Part 17 of the Commission's Regulations, the position level that is required to be reported to the Clearinghouse and Commission is any open position in a particular IDEX USD Forward Rate Agreement Contract at the close of trading on any trading day equal to or in excess of twenty-five on either side of the market.

Position Accountability: A person owning or controlling more than 3,000 contracts net long or net short in all contract maturities combined shall provide, in a timely fashion, upon request by the Clearinghouse, information regarding the nature of the position, trading strategy, and hedging information, if applicable.

Daily Settlement Price: Each open position is valued by the Clearinghouse at the end of each trading day by valuing each leg of the cash flows of the contract (fixed and floating) according to discount factors generated by the IDEX Curve. Each Trading Day, the Daily Settlement Price shall be established by the Clearinghouse based upon the IDEX Curve that corresponds to the fixed rate portion of the swap. A net present value of the position will be determined and set as the Daily Settlement Price. Notwithstanding the preceding sentence, the Clearinghouse may, in its sole discretion, establish a Daily Settlement Price that is a fair and appropriate reflection of the market. The Final Settlement Price shall be the Daily Settlement Price on the Last Trading Day.

(b) Glossary

Modified Following Business Day Convention means the date will be adjusted to be the first following day that is a Business Day in the locations listed unless that day falls in the next calendar month, in which case that date will be the first preceding day that is a Business Day in the locations listed.

Business Day means a day in which the banking system is open to settle payments in the locations listed.

Actual/360 Accrual Year Fraction means the actual number of days in the interest accrual period in respect of which payment is being made divided by 360.

International Derivatives Clearinghouse, LLC
Reference File: IDCH-2012-02

Appendix B

This sets forth the requirements for determining the eligibility of new products submitted to International Derivatives Clearinghouse LLC (the “Clearinghouse”) for clearing. In accordance with the Clearinghouse’s Order of Registration with the Commodity Futures Trading Commission (“CFTC”), the Clearinghouse may clear futures contracts, options on futures contracts, commodity options, and over-the-counter derivative contracts (i.e., swaps) where interest rates and/or currencies constitute the underlying commodity or reference. As a general guideline the Clearinghouse considers several factors when determining product eligibility. These factors include:

- trading volume;
- liquidity;
- availability of reliable prices;
- number of market participants;
- ability of the Clearinghouse and Clearing Members to gain access to the relevant market for purposes of creating and liquidating positions;
- suitability of the product to use multilateral portfolio compression;
- ability of the Clearinghouse to measure risk for purposes of setting margin requirements;
- the operational capacity of the Clearinghouse and Clearing Members to address any unique risk characteristics of a product; and
- the compliance of the new product with the Commodity Exchange Act and the regulations adopted by the CFTC thereunder.

Trading Volume. Trading volume in the over-the-counter (“OTC”) market must be sufficient to ensure that once accepted for clearing by the Clearinghouse there is sufficient volume in the new product to provide adequate liquidity to Clearing Members. In considering the adequacy of trading volume, the Clearinghouse will consider whether there is a hedging need for the new product.

Liquidity. New products must have product unit sizes and other terms and conditions that maximize liquidity.

Availability of Reliable Prices. There must exist reliable pricing sources for the new product in the OTC market to facilitate transparency in pricing and allow for effective risk management.

Number of Market Participants. There must exist a sufficient number of market participants trading the new product to ensure a liquid market that is not subject to excessive concentration.

Suitability of Portfolio Compression. The Clearinghouse should determine if multilateral portfolio compression methodologies are applicable and determine what basis, either regular or voluntary should be chosen. Third-party services should be identified and evaluated should they be offered.

Ability of the Clearinghouse and Clearing Members to gain access to the relevant market for the purposes of creating and liquidating positions. A new product must have adequate trading volume and liquidity such that in the event of a default of a customer or the Clearing Member, the Clearinghouse

and Clearing Members are able to manage the creation and liquidation of positions in the new product as needed to allow for effective risk management.

Ability of the DCO to measure risk for purposes of setting margin requirements. A new product should have liquidity and price history such that the Clearinghouse and Clearing Members have reliable access to the relevant data for the purpose of establishing and maintaining Performance Bond levels that appropriately reflect the level of risk inherent in these markets.

Operational Capacity of the Clearinghouse and Clearing Members to address any unique risk characteristics of a product. The Clearinghouse must have adequate system capacity to support the trading and risk management of the positions in the new product that it expects will be submitted for clearing. In addition, the Clearinghouse and Clearing Members should have operational capacity such that they are able to evaluate any idiosyncratic risk characteristics unique to the new product. The Risk Management Department may, at its discretion, require that the Clearing Members complete the Risk and Operations Questionnaire before being permitted to clear the new product, which may be followed by an onsite visit.

A new product, including the related contract specifications, must be reviewed internally and require the approval of heads of the Risk Department, Market Operations, Treasury Department and Information Technology. Such approval constitutes formal recognition that each department is capable of processing the product in conformance with the stated policies and procedures of the Clearinghouse. A new product, including the related contract specifications, must be submitted to counsel to the Clearinghouse to confirm that the new product complies with the Commodity Exchange Act and the regulations adopted by the CFTC thereunder.

A new product, including the related contract specifications, must be submitted to the Risk Committee for approval and is subject to final approval by the Chief Executive Officer (or his designee).

Once the Clearinghouse has approved a new product internally, the Clearinghouse will submit the new product, including the related contract specifications, to the Commodity Futures Trading Commission ("CFTC") for a Commission determination on the mandatory clearing requirement (if required) and will self-certify the contract specifications for the new product to the CFTC or submit the contract specifications for the new product to the CFTC for approval.

International Derivatives Clearinghouse, LLC
Reference File: IDCH-2012-02

Confidential Appendix C

CONFIDENTIAL TREATMENT REQUESTED BY
INTERNATIONAL DERIVATIVES CLEARINGHOUSE, LLC

**CONFIDENTIAL TREATMENT
REQUESTED**

Yolanda M. Goettsch
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April 20, 2012

FOIA Confidential Treatment Request

Assistant Secretary of the Commission for FOIA Matters
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: FOIA Confidential Treatment Request and Detailed Written Justification –
International Derivatives Clearinghouse, LLC Rule Certification IDCH-2012-02

Dear Secretary:

I am writing on behalf of International Derivatives Clearinghouse, LLC (the "Clearinghouse") to request confidential treatment in accordance with CFTC Regulations 40.8(c) and 145.9 for certain confidential information contained in the Clearinghouse's Rule Certification IDCH-2012-02 (the "Submission").

Specifically, the Clearinghouse is requesting confidential treatment for Confidential Appendix C to the Submission, which contains the Clearinghouse's proprietary Risk Management Procedures (the "Confidential Information"), which has been segregated and attached as Confidential Appendix C to the Submission in accordance with Commission Regulation 40.8(c)(2). In accordance with Commission Regulation 40.8(c)(3), the Submission also indicates that the Confidential Information has been segregated.

Pursuant to Commission Regulation 145.9(d), the Clearinghouse requests that confidential treatment be maintained for the Confidential Information until further notice. We also request that the Commission notify the undersigned immediately after receiving any FOIA request for the Confidential Information or any other court order, subpoena or summons for same. Finally, we request that we be notified in the event the Commission intends to disclose the Confidential Information to Congress or to any other governmental agency or unit pursuant to Section 8 of the CEA. The Clearinghouse does not waive its notification rights under Section 8(f) of the CEA with respect to any subpoena or summons for the Confidential Information.

The basis for this confidential treatment request is that disclosure of the Confidential Information would reveal confidential commercial information of the Clearinghouse relating to its risk management procedures, performance bond methodology, and curve construction methodology. This information is not made generally available to the public and has only been provided to regulators, clearing members and potential clearing members that sign a confidentiality agreement with respect to such information. The disclosure of the Confidential Information to the public would cause competitive harm to the Clearinghouse as it would allow competitors of the Clearinghouse to replicate its proprietary risk management methodologies.

The Confidential Information is therefore exempt from disclosure pursuant to Section 8 of the CEA, Section (b)(4) of the Freedom of Information Act (5 USC 552(b)(4)) (commonly referred to as "Exemption 4"), which exempts from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential," and Commission Regulation 145.9(d)(ii), which implements Exemption 4.

Exemption 4 is generally viewed to cover two broad categories of information in federal agency records: (1) trade secrets; and (2) information that is (a) commercial or financial, and (b) obtained from a person, and (c) privileged or confidential.

The Court of Appeals for the District of Columbia Circuit has firmly held that the terms "commercial and financial" should be given their "ordinary meanings" and has specifically rejected the argument that the term "commercial" be confined to records that "reveal basic commercial operations," holding instead that records are commercial so long as the submitter has a "commercial interest" in them.¹ As described above, the Clearinghouse has a "commercial interest" in the Confidential Information.

Only information "obtained from a person" is included under Exemption 4. The Clearinghouse is a person, as the term "person" includes entities such as corporations.²

There is a presumption of confidentiality for commercial information that is (1) provided voluntarily and (2) is of a kind the provider would not customarily make available to the public.³ The Clearinghouse provided the Confidential Information to the Commission voluntarily in connection with the Submission in order to demonstrate to the Clearinghouse's compliance with the CEA and relevant Commission Regulations. Further, as discussed above, the Confidential Information is not customarily made available to the public by the Clearinghouse.

Notwithstanding this presumption of confidentiality, the Confidential Information still would be considered "confidential" because it is information that the Clearinghouse would not and have not disclosed to the public and its disclosure would cause substantial harm to the competitive position of the Clearinghouse.⁴ In applying the "competitive harm" test for confidentiality, there is no requirement to demonstrate actual competitive harm.⁵ "Actual competition and the likelihood of substantial competitive injury is all that need to be shown."⁶ Neither the Commission nor the courts must conduct a sophisticated economic analysis to determine the likely effects of disclosure; evidence demonstrating the *potential* for economic harm is sufficient.⁷

¹ Pub. Citizen Health Research Group v. FDA, 704 F.2d 1280, 1290 (D.C. Cir. 1983) (citing Wash. Post Co. v. HHS, 690 F.2d 252, 266 (D.C. Cir. 1982), and Bd. of Trade v. Commodity Futures Trading Comm'n, 627 F.2d 392, 403 (D.C. Cir. 1980)); accord Judicial Watch, Inc. v. United States Dep't of Energy, No. 01-0981, 2004 WL 635180, at *24 (D.D.C. Mar. 31, 2004) (holding that reports that "constitute work done for clients" are "commercial" in nature), stay pending appeal on other grounds granted (May 26, 2004); Brockway v. Dep't of the Air Force, 370 F. Supp. 738, 740 (N.D. Iowa 1974) (concluding that reports generated by commercial enterprise "must generally be considered commercial information"), rev'd on other grounds, 518 F.2d 1184 (8th Cir. 1975).

² Stone v. Export-Import Bank, 552 F.2d 132 (5th Cir. 1977), cert. denied, 434 U.S. 1012 (1978).

³ See Critical Mass Energy Project v. Nuclear Regulatory Commission, 975 F.2d 871, 878 (D.C. Cir. 1992) (en banc); see also Center for Auto Safety v. National Highway Traffic Safety Administration, 244 F.3d 144, 147 (D.C. Cir. 2001) (affirming continuing validity of Critical Mass and applying tests detailed in that case).

⁴ National Parks & Conservation Association v. Morton, 478 F.2d 765 (D.C. Cir. 1974).

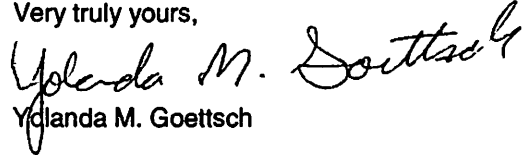
⁵ Gulf & Western Indus., Inc. v. United States, 615 F.2d 527, 530 (D.C. Cir. 1979).

⁶ Id.

⁷ Utah v. Bahe et al. No. 00-4018, 2001 WL 777034, at 2 (10th Cir. July 10, 2001); Pub. Citizen Health Research Group, 704 F.2d at 1291.

For the foregoing reasons, the Clearinghouse respectfully requests that the Commission staff make an initial determination to maintain the confidentiality of the Confidential Information. Please contact me at 301.978.8486 if you have any questions regarding this matter or in the event that the Confidential Information becomes subject to inquiry.

Very truly yours,

A handwritten signature in black ink that reads "Yplanda M. Goettsch". The signature is written in a cursive style with a large, stylized initial "Y".

Yplanda M. Goettsch

cc: Garry O'Connor
Michael Dundon