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Rule Self-Certification

June 1, 2011

OFFICE OF THE
SECRETARIAT

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

Re: Amendment to Rules 409 and 458
Reference File SR-NFX-2011-05

Ladies and Gentlemen:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended ("Act"), and Section 40.6 of the regulations promulgated by the Commodity Futures Trading Commission under the Act, the NASDAQ OMX Futures Exchange, Inc. ("NFX" or "Exchange") hereby submits amendments to Exchange Rules 409 and 458. The amendments serve to clarify that the timeframes listed in Rule 409 are business days and the timeframes in Rule 458 are calendar days. The Exchange has added the word "business" or "calendar", respectively, throughout these Rules in front of the word "days." The Exchange also made several technical amendments to conform the language in the Rules. The new text is attached as Exhibit A.

The amendments to these Rules will become effective on June 6, 2011.

There were no opposing views among NFX's Board of Directors, members or market participants. NFX hereby certifies that this By-Law amendment complies with the Act and regulations thereunder.

Regards,



Daniel Carrigan
Senior Managing Director, Products and Services &
Operations

cc: Mr. Glenn Spann
Mr. J. Goodwin
Mr. Russell Rose

EXHIBIT A

New text is underlined, deleted text is in brackets.

RULES OF THE EXCHANGE

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Rule 409. Review

(a) *Petition by Respondent.* A Respondent shall have ten (10) business days after service of notice and a copy of a decision made by the Hearing Panel to appeal such decision to the Board of Directors in accordance with By-Law Article XI, Section 11-3. Such petition shall be in writing and shall specify the findings and conclusions in such decision, which is the subject of the petition, together with the reasons that Respondent petitions for review of these findings and conclusions. Any objections to a decision not specified in the petition for review shall be thereafter waived. Within fifteen (15) business days after a Respondent's petition for review has been filed with the Secretary of the Exchange pursuant to By-Law Article XI, Section 11-1(a), Enforcement staff may submit to the Secretary a written response to the petition. A copy of the response must be served upon the Respondent. A Respondent has fifteen (15) business days from the service of the response to file a reply with the Secretary and Enforcement staff.

(b) *Conduct of Review.*

- (i) The review shall be conducted by the Board of Directors or an Advisory Committee thereof. If an Advisory Committee is appointed to conduct the review, it shall be composed of three Board members, one of whom shall be a Public Director. Any Board member who participated in a matter before the Business Conduct Committee or Hearing Panel may not participate in any review of that matter by the Board of Directors or an Advisory Committee. Unless the Board of Directors or the Advisory Committee shall decide to hear oral arguments, such review shall be based solely upon the record and written exceptions filed by the parties. The review shall be conducted as soon as is practicable.
- (ii) Should the Board of Directors conduct the review, then based upon such review, the Board of Directors by a majority vote of its members, shall decide to affirm, reverse or modify, in whole or in part the decision of the Hearing Panel. Such modification may include an increase or decrease of the sanction. The Board of Directors may not reverse, or modify, in whole or in part, the findings, conclusions and decision if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The decision of the Board shall be in writing, shall be promptly served on the Respondent in accordance with Rule 411, and shall be final and conclusive subject to Rule 409(c) and (d), as well as the provisions of the Commodity Exchange Act.
- (iii) Should the review be conducted by an Advisory Committee, the Advisory Committee shall submit a written report to the Board of Directors. In such report, the Advisory Committee shall recommend to affirm, reverse or modify, in whole or in part, the

decision of the Hearing Panel. Such modification may include an increase or decrease of the sanction. The Advisory Committee may not reverse, or modify, in whole or in part, the findings, conclusions or decision if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The Board of Directors by a majority vote of its members, shall decide to affirm, reject or modify, in whole or in part the recommendations of the Advisory Committee. Such modification may include an increase or decrease of the sanction. The Board of Directors may not reverse, or modify, in whole or in part, the findings, conclusions and decision of the Advisory Committee if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The decision of the Board shall be in writing, shall be promptly served on the Respondent in accordance with Rule 411, and shall be final and conclusive subject to Rule 409(c) and (d), as well as to the provisions of the Commodity Exchange Act.

(c) *Review on Motion of Board of Directors.* The Board of Directors may on its own initiative order review of a Hearing Panel decision within twenty (20) business days after notice of the decision has been served on the Respondent. Such review shall be conducted in accordance with the procedure set forth in paragraph (b) of this Rule. Should the Board of Directors vote to modify or reverse such decision, the Board shall make its own findings and issue a final decision of the Exchange. An Advisory Committee appointed by the Board of Directors may conduct such a review in accordance with the provisions of Rule 409.

(d) *Petition by Enforcement Staff.* An appeal of a decision made by the Hearing Panel may also be taken by the Enforcement staff by petitioning the Board of Directors, within ten (10) business days after service of notice and a copy of the decision, for permission to proceed with such appeal. Such petition shall be in writing and shall specify the findings and conclusions of such decision, which are the subject of the petition, together with the reasons that Enforcement staff petitions for review of these findings and conclusions. Any objections to a decision not specified in the petition for review shall be thereafter waived. If permission to appeal is granted, staff shall serve a copy of the petition on the Respondent within five (5) business days of permission to appeal being granted. Within fifteen (15) business days Respondent may submit to the Board of Directors a written response to the petition. A copy of the response must be served upon the Exchange's Enforcement staff, who then has fifteen (15) business days from the service of the response to file a reply with the Board of Directors and the Respondent.

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Rule 458. Reinstatement of Suspended Member

(a) When a member or member organization suspended under the provisions of these member responsibility rules applies for reinstatement, notice thereof shall be sent by the designated department of the Exchange to each member or member organization of the Exchange by posting a notice on the Exchange's website at least fourteen (14) calendar days prior to the consideration by the Executive Committee of said application. The applicant shall furnish to said Committee a list of creditors, a statement of the amounts originally owing and the nature of the settlement in

SR-NFX-2011-05

each case. If satisfactory proof of settlement with all creditors is furnished, said Committee may approve his reinstatement.

(b) If the application for reinstatement is denied by the Executive Committee, the applicant may appeal within ten (10) calendar days thereafter to the Board of Directors, which may act on its reinstatement.

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