

Rule Self-Certification

September 20, 2012

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

Re: Amendment to Disciplinary Rules
Reference File SR-NFX-2012-23A

Ladies and Gentlemen:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and Sections 40.6 of the regulations promulgated by the Commodity Futures Trading Commission under the Act, the NASDAQ OMX Futures Exchange, Inc. (“NFX” or “Exchange”) is filing this amendment to a previous rule change amending Rules 401-411, the Exchange’s Disciplinary Rules. The amendment will be effective on September 25, 2012, which is eleven business days from the date of the original filing of this proposal.¹ The text of the amendments is set forth in Exhibit A.²

NFX previously filed to amend Rules 401 - 411 to comply with the requirements of the Commodity Futures Trading Commission’s (“CFTC”) new Core Principles and Other Requirements for Designated Contract Markets, which was published in the Federal Register on June 19, 2012 (“Final Rules”).³ In this rulemaking, the CFTC adopted new and amended rules, guidance, and acceptable practices in its Part 38 rules to implement certain statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). This CFTC rulemaking establishes extensive new requirements applicable to the operation of designated contract markets (“DCMs”) including NFX.

¹ See SR-NFX-2012-23.

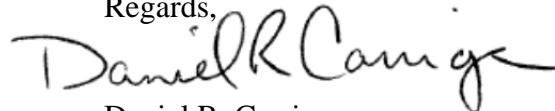
² Exhibit A includes all amendments to Rules 401-411 which will become effective on September 25, 2012.

³ See 77 FR 36612 (June 19, 2012), available at:
<http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-12746a.pdf>.

Specifically, §38.701 – §38.712 under Core Principle 13 (Disciplinary Procedures) requires that the board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties. The Exchange is filing this amendment to further amend its disciplinary rules to comply with the Final Rules. Specifically, the Exchange has included rule text to state that a member shall have the right to be represented by counsel or any other representative of its choosing in connection with requests for information, documents or testimony and throughout the course of any disciplinary proceeding and the review thereof or any hearing concerning a summary action.⁴ Also, a member may not be represented by a member of the Exchange’s Board of Directors or Hearing Panel, any employee of the Exchange or any person substantially related to the underlying investigations, such as a material witness or Respondent.⁵ The Exchange also made minor technical changes to conform the text of the rules.⁶

The NFX Board of Directors approved these amendments on September 10, 2012. There were no opposing views among the NFX’s Board of Directors, members or market participants. NFX hereby certifies that the amendments comply with the Commodity Exchange Act and regulations thereunder. The Exchange also certifies that notice of pending certification and a copy of this submission have been concurrently posted on the Exchange’s website at <http://www.nasdaqomxtrader.com/Micro.aspx?id=PBOToverview>.

Regards,



Daniel R. Carrigan
President

cc: Mr. J. Goodwin
National Futures Association

⁴ See Rule 402.

⁵ *Id.*

⁶ The Exchange amended inadvertent references to a “disciplinary panel” to now state “Hearing Panel” and amended Interpretation and Policy .03 of Rule 405 to permit a representative of a party to attend a hearing.

Exhibit A

New text is underlined; deleted text is in brackets.

NASDAQ OMX Futures Exchange Rules

* * * * *

DISCIPLINARY RULES (Rules 401—414)

Rule 401. Disciplinary Rules

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

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

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

(d) For the purpose of the Disciplinary Rules, the term "person associated with a member or member organization" or "associated person of a member or member organization" shall mean "any general partner, officer, or director of such member organization (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member or member organization, or any employee of such member or member organization."

Rule 402. Investigation and Authorization of Complaint

(a) Initiation of Investigation. The Exchange shall investigate possible violations within the disciplinary jurisdiction of the Exchange upon instruction of either the Board, the Business Conduct Committee, or other Exchange officials or upon receipt by the Exchange of a written accusation from a member, member organization or from any person which specifies in reasonable detail the facts which are the subject of the accusation.

(b) Cooperation with Investigation or Examination. Each member, member organization, or person associated with a member shall promptly comply with any request of the Exchange's regulatory staff, including the Enforcement Department, or any officer of the Exchange for information, documents or testimony; each member, member organization or person associated with a member or member organization shall not otherwise impede or delay an Exchange investigation into matters within its disciplinary jurisdiction.

(c) Right to Counsel. A member, member organization or person associated with a member shall have the right to be represented by counsel or any other representative of its choosing in connection with requests for information, documents or testimony and throughout the course of any disciplinary proceeding and the review thereof or any hearing concerning a summary action. A member may not be represented by a member of the Exchange's Board of Directors or Hearing Panel, any employee of the Exchange or any person substantially related to the underlying investigations, such as a material witness or Respondent.

(d) Report. Whenever the staff of the Exchange has a reasonable basis to believe that a violation within the disciplinary jurisdiction of the Exchange has occurred, a written report shall be submitted to the Business Conduct Committee specifying the violations which are believed to have occurred and those facts which gave rise to these violations.

(e) Notice and Statement. Prior to submitting its report, the staff shall notify the person(s) who is the subject of the report ("Subject") of the general nature of the allegations and of the specific provisions of the Commodity Exchange Act, rules and regulations promulgated thereunder, or the Certificate of Incorporation, by-laws or rules of the Exchange or any interpretation thereof or any resolution of the Board regulating the conduct of business on the Exchange, that appear to have been violated. The staff shall also inform the Subject that the report will be reviewed by the Committee. The Subject may then submit a written statement to the Committee concerning why no disciplinary action should be taken. To assist a Subject in preparing such a written statement, he shall have access to any documents and other materials in the investigative file of the Exchange that were furnished by him or his agents.

(f)(i) Determination to Initiate Charges. Whenever it shall appear to the Business Conduct Committee that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange and that disciplinary action is warranted, the Business Conduct Committee shall direct the staff of the Exchange to prepare a statement of charges. Whenever the Business Conduct Committee determines that violations within the disciplinary jurisdiction of the Exchange have not occurred or that disciplinary action is not warranted it shall so instruct the staff and its instruction not to initiate disciplinary action along with the reasons for not initiating such action shall be recorded in the minutes of the Business Conduct Committee.

Rule 403. Statement of Charges

(a) The Statement of Charges shall set forth the specific provisions within the disciplinary jurisdiction of the Exchange alleged to have been violated, the persons or organization alleged to have committed each of the violations ("Respondents") and the specific acts which give rise to the alleged violations.

(b) A copy of the Statement of Charges shall be served upon each of the [r]Respondents in accordance with Rule 411 and shall reflect the timeframe to answer prescribed in Rule 404 and the procedures to request a hearing specified in Rule 405. The Statement of Charges shall state that a failure to request a hearing within the period of time prescribed in the notice, except for good cause, may be deemed a waiver of the right to a hearing and that a failure to answer or to deny expressly a charge may be deemed to be an admission of such charge.

Rule 404. Answer

(a) A [r]Respondent shall have fifteen (15) business days after service of the Statement of Charges to file a written answer thereto. The Answer shall specifically admit or deny each allegation contained in the Statement of Charges, and a [r]Respondent shall be deemed to have admitted any allegation contained not specifically denied. The Answer may also contain any defense which a [r]Respondent wishes to submit and may be accompanied by documents in support of his Answer or defense. A [r]Respondent must state in his Answer whether he requests a hearing concerning the Statement of Charges. In lieu of requesting a hearing, a Respondent may request that the matter be decided upon written submissions, whereupon the Hearing Panel shall decide whether to grant such request and determine a schedule for each party to make their respective submissions. A Respondent who does not request a hearing or that the matter be decided upon written submissions, shall be deemed to have waived his right to request a hearing or have his written submissions, other than the Answer and any documents in support of his Answer or defense, be considered by a Hearing Panel (as defined in Rule 405). The Hearing Panel may thereafter prepare its decision in accordance with Rule 408. A [r]Respondent who does not so request a hearing shall be deemed to have waived his right to request a hearing and the Business Conduct Committee may thereafter prepare its decision in accordance with Rule 408.

(b) In the event a [r]Respondent admits a charge, fails to deny a charge or fails to file an Answer within the specified time, or has not within the specified time, requested and obtained from the Business Conduct Committee an extension of time to answer, the charges shall be considered to be admitted and the Business Conduct Committee may prepare its decision in accordance with Rule 408. A hearing panel should impose a sanction for each violation found to have been admitted pursuant to Rule 410. Any sanction imposed by the Hearing Panel must be communicated to the Respondent in writing in accordance with Rule 408. The decision shall state that Respondent may request a hearing solely on the sanctions as prescribed in Rule 405. If Respondent does not request a hearing within the time stated in the notice, the Respondent will be deemed to have accepted the sanction.

Rule 405. Hearing

(a) *Hearing Panels.*

1. Request for a Hearing—A hearing on the Statement of Charges shall, at the request of Respondent in his Answer, or upon motion of the Business Conduct Committee or Enforcement Staff, be held before a Hearing Panel composed of three persons, one of whom shall be public and qualify as a Public Director. Should the hearing be at the request of the Respondent, Exchange staff must provide written notice to the Chair of the Business Conduct Committee or the Chair's designee which requests the naming of a Hearing Panel within 5 business days of receiving Respondent's request for a hearing.
2. Selection of Hearing Panel—The Chair of the Business Conduct Committee or the Chair's designee shall name a Hearing Panel within 10 business days of (i) receipt of notice from Exchange staff that Respondent has requested a hearing; or (ii) upon motion of the Business Conduct Committee for naming of a Hearing Panel, or (iii) upon Respondent's request that the matter be decided upon written submissions (as set forth in Rule 404). In selecting a Hearing Panel, consideration will be given to the composition of the Hearing Panel to insure that any group or class of industry participants does not dominate or exercise a disproportionate influence on the panel. Hearing Panelists shall not consist of individuals who are employed by the Exchange, serve on the Business Conduct Committee or otherwise have a conflict with respect to a particular matter. The Chair of the Business Conduct Committee or the Chair's designee shall then promptly notify Exchange staff and Respondent of the names of the members of the Hearing Panel.
3. Hearing Panel— The responsibilities of the Hearing Panel include, but are not limited to: presiding over hearings in contested disciplinary cases authorized by the Business Conduct Committee; conducting pre-hearing conferences; ruling on procedural or discovery matters; making all necessary evidentiary or other rulings; regulating the conduct of the hearing; imposing appropriate sanctions for improper conduct by a party or a party's representative; issuing decisions; and rendering decisions in connection with Summary Disposition Proceedings.

The Hearing Panelists will not be permitted to be involved in any manner in the investigation of possible misconduct, to participate in the consideration by the Business Conduct Committee of whether to institute a disciplinary action, to render a decision following a hearing without the concurrence of a majority of the Hearing Panel or rule upon requests to disqualify any member of the Hearing Panel.

The Hearing Panel shall be members of the Exchange, or general partners or officers of member organizations, or such other persons whom the Chair of the Business Conduct Committee or the Chair's designee considers to be qualified. The Chair of the Committee or the Chair's designee shall select these three persons from individuals who have been deemed qualified to serve as a Hearing Panelist. In making such selections the Chair or the Chair's designee shall, to the extent practicable, choose individuals whose background, experience and training qualify them to consider and make determinations regarding the subject matter to be presented to the Hearing Panel. The Chair shall also

consider such factors as the availability of the individual Hearing Panelists, the extent of their prior service on Hearing Panels and any relationship between such persons and a Respondent which might make it inappropriate for such persons to serve on the Hearing Panel.

After being designated as a qualified Hearing Panelist, each prospective Hearing Panelist shall complete a mandatory training session to be conducted by the Hearing Attorney. Qualified Hearing Panelists serve for three-year terms. If a Hearing Panelist wishes to continue serving after expiration of the term, the Hearing Panelist must submit an updated application for review and approval by the Business Conduct Committee.

4. Hearing Attorney - A Hearing Attorney shall assist the Hearing Panel in the discharge of its duties. The Hearing Attorney shall not have a vote in the Panel's disposition of the matter, but will advise the Panel on the application of the Disciplinary Rules, Guidelines for Sanctions, and relevant precedent. The Hearing Attorney will not be permitted to be involved in any manner in the investigation of possible misconduct, to participate in the consideration by the Business Conduct Committee of whether to institute a disciplinary action, to render a decision following a hearing without the concurrence of a majority of the Hearing Panel, rule upon requests to disqualify the Hearing Attorney or any member of the Hearing Panel, or issue citations for violations of Exchange rules.
5. Notice—Promptly after the selection of the Hearing Panelists, the Chair of the Business Conduct Committee or the Chair's designee shall cause written notice thereof to be given to the Respondent. If any person involved in the disciplinary proceeding shall have knowledge of a relationship between himself and any person selected for service on the Hearing Panel which might result in such Panelist being unable to render a fair and impartial decision, he shall give prompt written notice thereof to the Chair of the Business Conduct Committee or the Chair's designee, specifying the nature of such relationship and the grounds for contesting the qualification of such person to serve on the Hearing Panel. The decision of the Chair of the Business Conduct Committee or the Chair's designee shall be final and conclusive with respect to the qualification of any person to serve on the Hearing Panel.
6. Compensation of Hearing Panelists—Hearing Panelists appointed by the Chair of the Business Conduct Committee will be compensated for any hearing sessions, including pre-hearing conferences, and for one deliberation session per disciplinary proceeding for which a Hearing Panel renders a decision. The fixed and non-negotiable rate to be paid to the Hearing Panelists shall be the same for each hearing session that lasts four hours or less and for one deliberation session. A hearing session is defined as any meeting between the parties and the Hearing Panel. [If a Hearing Panelist is also a member of the Board of Directors, any Board of Directors or Standing Committee meetings that are held on the same day as the hearing would be considered a single meeting for the purposes of compensation.] Hearing Panelists may be paid additional compensation in extraordinary cases, as determined by the Chair of the Business Conduct Committee in consultation with the Business Conduct Committee. Factors to be considered in determining whether a case is extraordinary include, but are not limited to, the anticipated and actual length of time of the hearing; the complexity and nature of the matter; and the magnitude of the potential penalty.

7. Hearing Panelist Availability—If a Hearing Panelist is unable to participate in the hearing for any reason, the Chair of the Business Conduct Committee shall appoint a qualified replacement Hearing Panelist for that hearing. The replacement Hearing Panelist will be selected from a pre-screened pool of qualified candidates.

(b) *Notice of Hearing and Pre-Hearing Procedures.*

1. Hearing Date—A hearing on the Statement of Charges shall commence no later than 120 days after the earlier of the date of filing of a written Answer by the Respondent wherein a hearing is requested or the date the Business Conduct Committee requests a hearing date. The 120 day deadline for the commencement of a hearing may be extended by the Hearing Panel for good cause.
2. Notice—The Respondent shall be given at least 15 business days notice of the time and place of the hearing and may appear personally at the hearing.
3. Requests for Adjournments—A request by the Respondent or Exchange staff for an adjournment of the hearing date shall be in writing and will be considered by the Hearing Panel for just cause. The Hearing Panel shall promptly consider the request for an adjournment for just cause, rule on the request and inform the parties, in writing if time permits, as to whether the request was, or was not, granted. In the event that the request for an adjournment for just cause is granted, the Hearing Attorney shall, at that time, schedule a new hearing date and so inform the parties of the new date.
4. Exchange of Evidence—Exchange staff and the Respondent shall furnish to the Hearing Panelists and to each other (i) copies of all documentary evidence each intends to present at the hearing, and (ii) a list of witnesses, including names, addresses and telephone numbers, that each intends to call at the hearing on such date as prescribed by the Hearing Panel, but in any event, not less than 8 business days in advance of the scheduled hearing date. Respondent shall be entitled to examine all books, documents, or other evidence in the possession or control of the Exchange, except the Exchange shall not be required to disclose: (i) documents that are privileged or constitute attorney work product; (ii) documents that were prepared by an employee of the Exchange but will not be offered in evidence at the hearing; (iii) documents that may disclose a technique or guideline used in examinations, investigations, or enforcement proceedings; and (iv) documents that disclose the identity of a confidential source. Exchange staff shall make all witnesses within its jurisdiction available to participate in the hearing and the Exchange shall produce evidence within its control.
5. Pre-Hearing Conferences—Where appropriate, the Hearing Panel shall schedule one or more pre-hearing conference(s) to be held not less than 8 business days in advance of the scheduled hearing date, to be attended by Exchange staff, each of the Respondents and the Hearing Panel. The pre-hearing conference shall be held for the purpose of clarifying and simplifying issues and otherwise expediting the proceeding. At such conference, and if they have not done so previously, Exchange staff and the Respondents shall furnish to the Hearing Panel and to each other (i) copies of all documentary evidence each intends to present at the hearing, and (ii) a list of witnesses, including names, addresses and

telephone numbers, that each intends to call at the hearing. Exchange staff and Respondents shall also attempt to stipulate to the authenticity of documents and to facts and issues not in dispute, and any other items which will serve to expedite the hearing of the matter.

(c) *Conduct of Hearing.* The Hearing Panelists shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The charges shall be presented by the Exchange staff who shall be parties to the hearing and, along with Respondent, may present evidence and produce witnesses who shall testify under oath, cross-examine witnesses relevant to the Statement of Charges and shall be subject to cross examination and questioning by the Hearing Panel with respect to the charges that are the subject of the hearing. The Hearing Panel may, on its own motion, request the production of documentary evidence and witnesses and may also question witnesses. A transcript of the hearing shall be made and shall become a part of the record. The costs of the making of such a transcript, including, but not limited to, the costs for the court reporter, reproduction of the transcript and producing copies thereof, shall be equally borne by the Exchange and by Respondent. Exchange staff shall provide a copy of the transcript of the hearing to the Hearing Panel within 5 business days of receiving the transcript.

•• *Interpretations and Policies:* -----

.01 Intervention. Any person not otherwise a party may intervene as a party to the hearing upon demonstrating to the satisfaction of the Hearing Panel that he has an interest in the subject of the hearing and that the disposition of the matter, may, as a practical matter, impair or impede his ability to protect that interest. Also, the Hearing Panel may in its discretion permit a person to intervene as a party to the hearing when the person's claim or defense and the main action have questions of law or fact in common. Any person wishing to intervene as a party to a hearing shall file with the Hearing Panel a notice requesting the right to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought.

.02 The Hearing Panel, in exercising its discretion concerning intervention, shall take into consideration whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

.03 Attendance. Any person not otherwise a party, [or licensed] counsel or a representative of [representing] a party may not attend a hearing unless specifically allowed by the Hearing Panel.

Rule 406. Summary Disciplinary Proceedings

(a) In lieu of commencing a “disciplinary proceeding” as that term is used in Exchange Rules 401-414, the Exchange may, subject to requirements set forth in this Rule, issue a warning for

first-time violations or violators or impose a fine, not to exceed \$5,000, on any member for any violation of a certain rules which are specified herein. In issuing a warning or imposing a fine, [T]the Exchange shall have determined such a violation is minor in nature. Notwithstanding the foregoing, the Exchange may determine to consider any violation the subject of a disciplinary proceeding.

(b) In issuing a warning, no more than one warning letter may be issued per rolling 12-month period for the same violation.

[(b)c] In imposing a fine [any action taken by the Exchange pursuant to this Rule], the person against whom a fine is imposed shall be served with a written statement, signed by an authorized official of the Exchange on behalf of the Business Conduct Committee, setting forth (i) the alleged violation; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each violation; and (iv) the date by which such determination becomes final and such fine becomes due and payable to the Exchange or when such determination must be contested, as provided in paragraph (d) hereunder, such date to be not less than seven business days after the date of service of the written statement.

[(c)d] If the person against whom a fine is imposed pursuant to this Rule pays the fine, such payment shall be deemed to be a waiver by such person of his right to a disciplinary proceeding under Exchange Rules 401-414 and any review of the matter by the Business Conduct Committee, an Exchange Hearing Panel, the Disciplinary Review Committee, or the Exchange Board of Directors.

[(d)e] Any person against whom a fine is imposed pursuant to this Rule may contest the Exchange's determination by filing with the Department of the Exchange taking the action not later than the date by which such determination must be contested a written response meeting the requirements of an "Answer" as provided in Rule 404, at which point the matter shall be referred to the Business Conduct Committee for its consideration and determination.

[(e)f] The Committee may then (a) decide that the matter be dismissed and the notice of alleged violation be rescinded; (b) decide that the notice, as issued, is valid, whereupon the alleged violator could either pay the fine or contest the matter before a Hearing Panel; (c) decide that the notice, as issued, should be modified to specify either a higher or lower fine than the one on the notice as issued, whereupon the alleged violator could either pay the new fine or contest the matter before a Hearing Panel; or (d) decide that the matter merits formal disciplinary action and authorize issuance of a Complaint, pursuant to Exchange Rule 402.

[(f)g] If a disciplinary proceeding thereafter results, and the Hearing Panel determines that the person has violated the rule as alleged, the Hearing Panel shall (a) be free to impose any disciplinary sanction provided for in Exchange Rules 401-414 and (b) determine whether the violation is minor in nature.

[(g)h] The following violations are subject to the provisions set forth in Rule 406:

Failure to Comply with an Exchange Inquiry

Each Member, member organization or associated person is required to promptly comply with any request of information made by the Exchange, or any other regulatory authority acting on behalf of the Exchange, in connection with any regulatory inquiry, investigation or examination relating to the Exchange's disciplinary jurisdiction or regulatory obligations.

For the purpose of this rule, information received within ten (10) business days from the date of the original request shall be deemed to meet the requirement of prompt compliance, except for purposes of Examinations Department requests, information received within two business days from the date of the original request shall be deemed to meet the requirement of prompt compliance.

The Exchange may under extenuating circumstances grant extensions to allow for responses beyond the allotted requirement. Requests for extensions must be submitted in writing to the appropriate department, prior to the due date of the outstanding request. Each additional request for information not furnished within the allotted time periods may be considered a separate occurrence for purposes of the fine schedule below.

FINE SCHEDULE (Implemented on a three year running calendar basis.)

1st Occurrence	\$1,000.00
2nd Occurrence	\$2,500.00
3rd and Thereafter	Sanction is discretionary with Business Conduct Committee

Rule 407. Offers of Settlement

(a) At any time during a period not to exceed 120 days immediately following the [date of filing of Respondent's written Answer]issuance of a Statement of Charges, a Respondent may submit to the Business Conduct Committee a written offer of settlement which shall contain a proposed stipulation of facts and shall consent to specified sanctions. Where the Business Conduct Committee accepts an offer of settlement, it shall issue a written decision and impose sanctions consistent with the terms of such offer and may not alter such offer without the consent of the Respondent. An Offer of Settlement may be approved with language which permits the Respondent to accept a sanction without either admitting or denying the rule violations upon which the sanction is based. The decision shall specify the rule violations the Business Conduct Committee has reason to believe were committed, the basis or reasons for the conclusions and any sanction to be imposed. If an Offer of Settlement is accepted without the agreement of the Enforcement Staff, the decision should adequately support the Hearing Panel's acceptance of the settlement. A Respondent may withdraw an Offer of Settlement at any time before final acceptance by the Business Conduct Committee. If an Offer of Settlement is withdrawn after submission, or is rejected by a Hearing Panel, the Respondent should not be deemed to have made any admissions by reason of the Offer of Settlement and should not be otherwise prejudiced by having submitted the Offer of Settlement. Sanctions shall be considered by the Business Conduct Committee in accordance with the considerations stated in Rule 410.

(b) Where the Business Conduct Committee rejects an offer of settlement, it shall notify the Respondent in accordance with Rule 411 and the matter shall proceed as if such offer had not been made, and the offer and all documents relating thereto shall not become part of the record.

(c) A decision of the Business Conduct Committee issued upon acceptance of an offer of settlement as well as its determination whether to accept or reject such an offer shall be final, and the Respondent may not seek review thereof. A copy of the decision shall be promptly served on the Respondents in accordance with Rule 411.

•• *Interpretation and Policies:* -----

.01 If a Respondent submits an offer of settlement after the 120 day period, the Business Conduct Committee may consider such offer and determine appropriate sanctions as long as its consideration does not delay the hearing in the matter. If a Respondent submits an offer of settlement after the hearing has commenced, the Exchange staff shall promptly submit its position with respect to such offer of settlement. The Hearing Panel shall then determine whether to consider the offer of settlement and, if considered, whether to accept or reject such offer.

Rule 408. Decision

(a) Except as provided in Rule 407, the Hearing Panel shall review the entire record of the disciplinary proceeding or, if appropriate, the written submissions if the Hearing Panel granted the Respondent's request to decide the matter upon such written submissions. After this Review, the Hearing Panel, by a majority vote, shall determine based on the weight of the evidence contained in the record of the proceeding whether Respondents have committed violations and the appropriate sanctions, if any, therefor.

(b) The Hearing Panel shall thereafter issue a written decision in conformity with its determination, including in its decision: (i) a notice of the charges or a summary of the charges; (ii) the answer, if any, or a summary of the answer; (iii) a summary of the evidence produced at the hearing, or where appropriate, incorporation by reference of the investigation report; (iv) a statement of findings and conclusions with respect to each charge, and a complete explanation of the evidentiary and other basis for such findings and conclusions with respect to each charge; (v) an indication of each specific rule that the Respondent was found to have violated; and (vi) a declaration of all sanctions imposed against the Respondent, including the basis for such sanctions and the effective date of such sanctions. [with the reasons therefor, upon all material issues presented in the record, and whether each violation within the disciplinary jurisdiction of the Exchange alleged in the statement of charges has occurred.] The decision shall be prepared, absent extraordinary circumstances, within 60 days after Exchange staff has served the Hearing Panel with a copy of the transcript of the hearing. A copy of the decision shall be promptly served on the Respondents in accordance with Rule 411. The decision will become the final decision of the Exchange unless that decision is appealed pursuant to Rule 409.

Rule 409. Review

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

(b) *Conduct of Review.*

- (i) The review shall be conducted by the Board of Directors or an Advisory Committee thereof. If an Advisory Committee is appointed to conduct the review, it shall be composed of three Board members, one of whom shall be a Public Director. Any Board member who participated in a matter before the Business Conduct Committee [or Hearing Panel] may not participate in any review of that matter by the Board of Directors or an Advisory Committee. Unless the Board of Directors or the Advisory Committee shall decide to hear oral arguments, such review shall be based solely upon the record and written exceptions filed by the parties. The review shall be conducted as soon as is practicable. Except for good cause shown, the review shall be conducted solely on the record before the Hearing Panel, the written exceptions filed by the parties, and the oral or written arguments of the parties.
- (ii) Should the Board of Directors conduct the review, then based upon such review, the Board of Directors by a majority vote of its members, shall decide to affirm, reverse or modify, in whole or in part the decision of the Hearing Panel. Such modification may include an increase or decrease of the sanction. The Board of Directors may not reverse, or modify, in whole or in part, the findings, conclusions and decision if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The decision of the Board shall be in writing and pursuant to the provisions of Rule 408(b) if the decision was reversed, or modified, in whole or in part from the decision of the Hearing Panel, shall be promptly served on the Respondent in accordance with Rule 411, 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.

Rule 410. Judgment and Sanctions

(1) Members, member organizations and persons associated with or employed by members or member organizations shall (subject to any rules or order of the Commodity Futures Trading Commission) be appropriately disciplined for violations under these disciplinary rules by expulsion, suspension, fine, censure, limitations or termination as to activities, functions, operations, or association with a member or member organization, or any other fitting sanction that are the subject of the Statement of Charges and commensurate with the violations the Respondent was found to have committed. Disciplinary sanctions must be sufficient to deter recidivism or similar violations by other members and member organizations. Disciplinary sanctions, including sanctions imposed pursuant to an accepted settlement offer, must take into account the Respondent's disciplinary history. In the event of demonstrated customer harm, any disciplinary sanction must also include full customer restitution, except where the amount of the restitution, or to whom it should be provided, cannot be reasonably determined.

(2) *Effective Date of Judgment.* Sanctions imposed under these disciplinary rules shall not become effective until the Exchange review process is completed or the decision otherwise becomes final. Pending effectiveness of a decision imposing sanctions on a Respondent, the Hearing Panel may impose such conditions and restrictions on the activities on such Respondent which it finds to be necessary or appropriate for the protection of the investing public, members, member organizations and the Exchange and its subsidiaries.

Rule 411. Service of Notice and Extension of Time Limits

(a) Service of Notice. Any charges, notices, or other documents may be served upon a [r]Respondent either personally or by deposit in the United States mail, postage pre-paid via registered or certified mail or by courier service addressed to the [r]Respondent at his address at it appears on the books and records of the Exchange. Unless otherwise stated in this Section, all documents required to be filed with the Exchange, the Board of Directors, the Market Surveillance Department, the Examination Department, the Enforcement Department, or an Exchange committee by a [r]Respondent pursuant to this section must be received by the Exchange on or before the day prescribed.

(b) Extension of Time Limits. Any time limits imposed under this section for the submission of answers, petitions, requests for a hearing, or other materials may be extended by the Exchange body before which the matter is currently pending.

Rule 412. No Change

Rule 413. No Change

Rule 414. No Change

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