

## Rule Self-Certification

November 15, 2012

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

Re: **Rule E11. Customer Margin**  
Reference File SR-NFX-2012-36

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 amending Rule E11, Customer Margin. The amendments to Rule E11 will be effective on December 3, 2012. The text of Rule E11 is set forth in Exhibit A.

The Exchange is proposing to amend Rule E11 to provide that the Clearing Corporation<sup>1</sup> shall establish customer margin requirements. Today, the Clearing Corporation collects initial margin from customers in an amount set by the Clearing Corporation pursuant to Commission Regulation 39.13(g)(8)(iii).<sup>2</sup> The Exchange is amending Rule E11 to further state that the minimum initial and maintenance margin shall be no less than that established by the Clearing Corporation.<sup>3</sup> The Exchange is deleting text which indicates that the Exchange shall determine maintenance margin requirements for any Contract. The Clearing Corporation, as the clearing agent and guarantor of the contracts traded on the Exchange, has sophisticated methods and risk algorithms designed to compute the appropriate Customer Margin. As such, the Exchange will publish those margin requirements, set by the Clearing Corporation, which shall apply to contracts listed on NFX. The Exchange, in connection with these amendments, proposes to delete the current rule text in Rule E(11)(b)(2) related to risk-based portfolio margining systems to calculate the margin rates imposed on a customer. The Exchange believes that this rule text is no longer necessary as all customer margin requirements will be established by the Clearing

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<sup>1</sup> NFX Rule 10 defines the Clearing Corporation as The Options Clearing Corporation (“OCC”).


<sup>2</sup> 17 CFR § 39.13(g)(8)(i).

<sup>3</sup> The Exchange will publish margin requirements by posting a link on its website to the OCC website.

Corporation. The Exchange will add text in Rule E11 to reference the rules of the Clearing Corporation, where applicable, specifically with respect to Clearing Members<sup>4</sup> in accordance with Commission Regulations. The Exchange believes that the amendments to Rule E11 continue to ensure the financial integrity of members and the protection of customer funds.

There were no opposing views among the NFX's Board of Directors, members or market participants. NFX hereby certifies that the amendment complies 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

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<sup>4</sup> NFX Rule 11 defines a Clearing Member as a member organization of the Exchange which is a member of OCC.

## Exhibit A

*New language is underlined; deletions are in brackets.*

### NASDAQ OMX Futures Exchange Rules

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#### Rule E11. Customer Margin

##### (a) General Rules:

- (1) No Member or Member Organization shall effect a transaction or carry a Customer Account without obtaining margin at the times, in the amounts, and in the forms required by the rules of the Clearing Corporation and applicable law.
- (2) If a Member or Member Organization fails to obtain and maintain the required minimum margin deposits for a Customer Account pursuant to this Rule, the Exchange may require that the Member or Member Organization immediately liquidate all or part of the positions in the Customer Account to decrease or eliminate the margin deficiency.
- (3) Nothing in this Rule prevents the Exchange, the Clearing Corporation, a Member, or a Member Organization from imposing margin rates or requirements on a Customer that are higher or more stringent than the rates or requirements imposed by this Rule.
- (4) Terms used in this Rule, but not otherwise defined by these Rules, have the meaning set forth in the Joint Audit Committee's Margins Handbook. In addition, a Member or Member Organization must follow the procedures specified in the Joint Audit Committee's Margins Handbook for the computation, issuance, collection, and offsets for margin calls and corresponding capital charges for the Member or Member Organization unless the Manual is inconsistent with these Rules, in which case these Rules prevail.

##### (b) Rates and Requirements:

- (1) The Clearing Corporation, pursuant to Commission Rule 39.13, shall determine the rates to be used to derive customer initial margin requirements for any Contract. [The Exchange shall determine the rates used to derive maintenance margin requirements for any Contract.]
- (2) The Exchange will publish the minimum initial and maintenance margin [rates and other] requirements for each Contract, which shall be no less than that established by the Clearing Corporation. [on its website or by other appropriate means.]
- (3) Any changes in Contract [imposed by the Exchange or by the Clearing Corporation to initial or maintenance] margin [rates or] requirements will apply to both new and existing Contracts in a customer's account. [positions and] [t]The Exchange may, within its discretion, establish different maintenance margin rates or requirements for different

types of accounts. The term "customer initial margin" has the meaning set forth in Commission Rule 1.3.

[(2) Unless otherwise required by this Rule, a Member must use a risk-based portfolio margining system acceptable to the Exchange to calculate the margin rates imposed on a Customer by this Rule.]

**(c) Account Administration, Classification, and Aggregation:**

(1) **Omnibus Accounts:** A Member or Member Organization must calculate margin requirements for an omnibus account (whether domestic or foreign) on a gross basis and in accordance with the rules of the Clearing Corporation, if a Clearing Member. However, a Member or Member Organization may impose maintenance margin rates for positions in the omnibus account and need not impose the initial margin rates. To use spread or hedge margin rates, a Member must obtain a written representation from the omnibus account identifying the positions within the account that are spreads or bona fide hedges, and if a Clearing Member, comply with the rules of the Clearing Corporation.

(2) **Bona Fide Hedge Accounts:** For bona fide hedging transactions and positions as defined by Commission regulation 1.3(z)(1), a Member or Member Organization may impose maintenance margin rates for the transactions and positions and need not impose the initial margin rates if the Member or Member Organization has a reasonable basis to believe, and the Customer represents in writing that, the transactions or positions are for bona fide hedging.

**(3) Aggregation:**

(i) When determining margin rates, margin calls, and the release of margin deposits, a Member or Member Organization may aggregate identically-owned accounts within the same regulatory account classification of Customer segregated, Customer secured, and non-segregated, provided however a Clearing Member may only aggregate identically-owned accounts for purposes of determining margin requirements, margin calls and releases in compliance with the rules of the Clearing Corporation.

(ii) To satisfy a margin deficiency, a Member or Member Organization may not apply available free funds from an identically-owned account that has a different regulatory account classification. Instead, the Member or Member Organization must transfer the free funds from one identically-owned account in one regulatory account classification to another identically-owned account with a different regulatory account classification that is undermargined, provided however a Clearing Member may not apply free funds in a manner inconsistent with the rules of the Clearing Corporation.

(iii) Except for omnibus accounts, a Member or Member Organization may calculate margin requirements on a net basis for concurrent long and short positions in identically-owned accounts within the same regulatory account classification,

provided however a Clearing Member must calculate margin requirements in compliance with the rules of the Clearing Member.

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

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

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

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

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

(iii) municipal securities,

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

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

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

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

([2]3) If a Member or Member Organization accepts securities identified in this Rule as margin deposits, then the Member or Member Organization must value the securities at no greater than the current market value of the securities less any deductions specified by Securities and Exchange Commission rule 15c3-1.

([3]4) A Member or Member Organization must not consider any guarantee of a Customer Account when determining whether required margin in that account is satisfied.

**(e) Margin Calls and Liquidation:**

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

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