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September 7, 2006

Ms. Eileen Donovan
Acting Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, D.C. 20581

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COMMENT

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SUBJECT: Regulatory Governance

Dear Ms. Donovan:

The Minneapolis Grain Exchange ("MGEX" or "Exchange") would like to thank the Commodity Futures Trading Commission ("CFTC" or "Commission") for this opportunity to respond to the Commission's request for comment on the above referenced matter published in the July 7, 2006 Federal Register.

In general, the MGEX opposes the Commission's proposed Acceptable Practices for section 5 (d) (15) of the Commodity Exchange Act ("CEA"). Specifically, the MGEX does not believe the Commission clearly identified a matter that is problematic for non-publicly traded exchanges. If the Commission is attempting to resolve a perceived conflict of interest within publicly traded exchanges' governance structures or increased competition across all exchanges, that should be separately identified and addressed within the Federal Register. Further, the MGEX believes the Commission needs to codify, within the Acceptable Practices, a safe harbor or exemption for non-publicly traded exchanges. This safe harbor should, at a minimum, allow non-publicly traded exchanges to continue to operate as a front line regulator under the same governance structure that has helped build and maintain the integrity and transparency that is constant throughout the domestic futures industry.

The MGEX would like to address each proposed Acceptable Practice individually.

- 1. The Board Composition Acceptable Practice proposes that exchanges minimize potential conflicts of interest by maintaining governing boards composed of at least fifty percent "public" directors.**

The MGEX does not support the Commission's proposal to adopt mandatory board

composition requirements. The number and composition of the board is something that is best determined by each individual exchange. If an exchange believes it is in its best interest to have “public” directors, it will. The MGEX strongly believes there can not be a “one size fits all” approach for board composition in the futures industry. Establishing mandatory board composition requirements creates additional unnecessary regulation and undercuts some of the progress that has been experienced since the implementation of the Commodity Futures Modernization Act (“CFMA”). By codifying “Acceptable Practices” to meet Core Principle 15, the MGEX believes the Commission is regressing to the regulatory philosophy it employed prior to the CFMA of prescriptive oversight. Through rule enforcement reviews the CFMA affords the Commission the authority to examine whether an exchange is meeting all Core Principles. If the Commission believes or questions whether an exchange is deficient in meeting Core Principle 15, the Commission can request an explanation from that individual exchange and if warranted impose more stringent oversight requirements. To have all exchanges subject to increased supervision prior to any concerns being identified is not an efficient oversight philosophy.

The MGEX is aware there are those who fear a possible conflict of interest may exist between futures exchange regulation and the expectations of a for-profit company. The MGEX believes these fears are without foundation. In fact, regulation protects the most important asset of a futures exchange, its marketplace. For-profit exchanges not only have a responsibility to its market participants and members, but also to its shareholders and stakeholders to protect its most important asset. This added responsibility to its shareholders creates an additional incentive in favor of for-profit exchanges investing in market regulation. Additionally, any for-profit publicly traded exchange falls under the regulation of the Sarbanes-Oxley Act (“SOX”). SOX has existing requirements for independent audit committees.

The MGEX board of directors is currently made up of 20% non-member directors. While the MGEX values the contributions of these directors, it also relies heavily on its member directors to provide strategic guidance. The MGEX endeavors to have its board of directors composed of directors representative of its member composition. Through this balance of non-member and representative member directors, the MGEX has been able to ensure market integrity and prudent decision making on behalf of the Exchange.

2. Regulatory Oversight Committee Acceptable Practice calls upon exchanges to establish a board-level Regulatory Oversight Committee, composed solely of public directors, to oversee regulatory functions.

The MGEX does not support the Commission’s proposed Acceptable Practice of adopting Regulatory Oversight Committees (“ROC”). The MGEX believes ROCs, as defined within the Federal Register, are much too intrusive and burdensome and ultimately will not lead to better regulation. The MGEX believes moving the operational decisions from an exchange’s compliance department to a ROC, comprised of non-member board members with minimal, if any, background in regulation, will impair the

exchange, the market integrity and ultimately the customer. As a result of the Commission's own self regulatory organization review, commentators and interviewees indicated "that regulation works best when conducted close to the markets by individuals with market-specific expertise."¹ The MGEX agrees with this conclusion regarding front line self regulation. The MGEX believes its current committee structure (Exhibit A) provides sufficient oversight of its compliance department. Additionally, any public disciplinary action is reviewed by the MGEX board of directors.

The MGEX believes enforcement of its, and the Commission's, rules and regulations is a complex task and is best delegated to people trained in regulation. The MGEX can only assume the Commission believes ROCs will provide an independent review of an exchange's compliance department. It is the MGEX belief that the Commission already does this through its rule enforcement reviews. The MGEX believes the Commission will continue to provide a more independent review of an exchange's compliance department than non-member directors associated with the exchange. As stated earlier, through the CFMA the Commission retained the authority to take action against an exchange not demonstrating compliance with the Core Principles. This action can be up to and including revocation of the exchanges Designated Contract Market ("DCM") status. Revocation of an exchange's DCM status is a much more serious penalty than the enforcement power the MGEX believes will be granted to a ROC.

However, the MGEX is comfortable with the Commission requiring a ROC, made up of representative board members, charged with periodically reviewing an exchange's compliance division and making recommendations as to improvements. The MGEX believes an impartial review by a committee of its board members could be beneficial, provided the exchange's compliance division continues to have the same internal reporting and goal setting structure as any other division within the exchange. This ROC structure will provide another review of an exchange's compliance division, while not be so burdensome as to create an incentive for an exchange to outsource its regulatory functions.

Finally, in its Rulebook the MGEX already addresses any possible conflicts of interests that may arise in its regulatory enforcement. **MGEX Rules 264.01. Business Conduct Committee: Qualifications of Members.** and **265.01. Futures Trading Conduct Committee: Qualifications of Members.** specifically address conflicts of interest arising out of disciplinary committees (Exhibit B). Also, **MGEX Rule 275.00. Conflict of Interest.** specifically tackles other conflicts that may occur (Exhibit C). The MGEX takes these rules very seriously and strictly enforces any potential conflicts of interest.

3. The Disciplinary Panel Acceptable Practice proposes that the disciplinary panel at all exchanges include at least one public participant, and that no panel be dominated by any group or class of exchange members.

The MGEX agrees with the principle within Commission's proposed Acceptable Practice regarding disciplinary panels and already has a rule to address that specific point.

¹ Federal Register Commodity Futures Trading Commission 17 CFR Part 38. Page 38742. II. B. "In general, commentators and interview participants saw continuing vitality in the central premise of self-regulation; that regulation works best when conducted close to the markets by individuals with market-specific expertise. At the same time, though, throughout the course of the SRO Review and in the surrounding public debate on the merits of self-regulation in the financial sector generally, many identified increased competition, evolving business models, and new ownership structures as critical changes capable of adversely impacting exchanges' regulatory behavior." For additional information on the commentators see footnote 17 in the aforementioned release.

MGEX Rule 264.00. Business Conduct Committee: Appointment. and **265.00. Futures Trading Conduct Committee: Appointment.** provide for a member of the board of directors and a non-member to serve on any disciplinary committee (Exhibit B). Additionally, the MGEX strives to ensure its disciplinary committees are representative of the interests of its membership.

4. The proposed Acceptable Practices provide a definition of “public” for exchange directors and for members of disciplinary panels.

The MGEX believes “public” should be defined as a person who is not a member of the exchange. Because the Commission is proposing to define “public” more strictly than this, the MGEX believes the quality of candidates who serve on its board of directors will be severely diminished. A director without a vested interest in the exchange, will likely possess limited knowledge of the futures industry or exchange operations, also that person is less likely to serve as a volunteer. If an exchange is forced to pay its directors a stipend this will create additional financial burdens on the exchanges, especially on the smaller non-profit exchanges. Stipends may also create the possibility of less qualified directors serving. Whereas, currently the non-member directors serve on the MGEX board because they have the best interest of the exchange in mind, paid “public” directors may be serving more for the stipend and less to promote the overall welfare of the exchange and futures industry. The MGEX believes its ownership does an excellent job electing qualified, knowledgeable and autonomous directors, both member and non-member, and believes more narrowly defining “public” directors will lower the overall quality of its board of directors and disciplinary committees.

In closing, the MGEX would like to again state that it has concerns with the Commission not articulating in the Federal Register what it believes the underlying issue to be for non-publicly traded exchanges. The MGEX concluded the Proposed Acceptable Practices do not appear to provide added benefit to the overall marketplace. More specifically, the Proposed Acceptable Practices would be detrimental to non-publicly traded exchanges and limit the quality of front line exchange regulatory oversight. For this reason, the MGEX strongly believes if the Proposed Acceptable Practices are implemented there must be a codified safe harbor or exemption for non-publicly traded exchanges.

As a final recommendation, it appears the Commission’s Proposed Acceptable Practices are attempting to address the changing ownership structure of futures exchanges. The MGEX believes the Commission should authorize a comprehensive study on the specific negative impacts that changing ownership structures have had on individual contract markets, customers of the contract markets and the industry as a whole. Once this study is completed, the Commission can then base any prudent changes to its Acceptable Practices on empirical evidence, not on what the MGEX currently views as speculation.

The MGEX goal has been, and will always be, to maintain the market integrity it has built over the last 125 years and provide a transparent marketplace for all futures and

options contracts executed on its trading platforms. The MGEX current governance structure has been an integral part in growing the exchange and maintaining its market integrity, the MGEX strongly believes any "one size fits all" prescriptive changes to its governance structure are not in its best interest.

The MGEX thanks the Commission again for the opportunity to comment and appreciates the Commission's willingness to consider further comments. If there are any questions regarding these comments, please contact me at (612) 321-7194. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "William L. Grindell". The signature is written in a cursive, slightly slanted style.

William L. Grindell

cc: Mark G. Bagan, President and CEO, Minneapolis Grain Exchange
Sandra S. Sullivan, Director, Market Regulation, Minneapolis Grain Exchange

**MINNEAPOLIS GRAIN EXCHANGE
DISCIPLINARY COMMITTEE ASSIGNMENTS FOR THE YEAR 2005-2006**

BUSINESS CONDUCT

Charles A. Gallup, Chairperson, ex officio
Scott A. Cordes, Chairperson, Clearing House, ex officio
Mark G. Bagan, President, ex officio
David P. Darr
Christine B. Johnson
Michael J. Mullin
Bradford W. Wallin

FUTURES TRADING CONDUCT

Charles A. Gallup, Chairperson, ex officio
Mark G. Bagan, President, ex officio
Ronald D. DeJongh
Scott O. Hedin
Jean M. Niklason
Helen E. Pound
Preston R. Zacharias

ARBITRATION POOL

David J. Christofore
Patrick J. Commerford
R. Edwin Coyle
Thomas J. DeSmet
Mark Drangstveit
Timothy J. Dunn
Richard A. Dusek
April H. Egan
Douglas J. Erickson
Peter John Garratt
Charles J. Green
Mary C. Kennedy
Kevin R. Kjorsvik
Cliff W. Larson, Jr.
Timothy Lee

Michael R. Lemke
Steve N. Lennartson
Timothy R. McWhite
John C. Miller
O. William Mikkelson
Scott D. Nagel
Michael J. Newton
Mark L. Palmquist
Mark A. Ramsland
Kenneth A. Rynda
Steven J. Shoemaker
Bruce R. Sullivan
Hank Thilmony
Nicholas Warren
Erik A. Williams

264.00. BUSINESS CONDUCT COMMITTEE: APPOINTMENT.

There shall be established a Committee to be known as the Business Conduct Committee, which shall be composed of seven (7) members with voting privileges as hereinafter provided:

- A. Four (4) of such members shall be appointed from Members of the Corporation who are not serving as Officers or Directors or as members of the Arbitration Pool, or the Futures Trading Conduct Committee.
- B. Three (3) members of the Committee shall be ex officio, one (1) of whom shall be the Chairperson of the Board of Directors, another the Chairperson of the Clearing House Committee, and the third, the President of the Corporation.

The Chairperson of the Board of Directors may appoint a member of the Board of Directors to serve in his/her stead as a member of the Business Conduct Committee. If no member of the Board of Directors is available for such an appointment, the Chairperson may appoint a Member of the Corporation. The Chairperson of the Clearing House Committee may appoint a member of the Clearing House Committee to serve in his/her stead as a member of the Business Conduct Committee. If no member of the Clearing House Committee is available for such appointment, the Chairperson of the board of Directors shall appoint a Member of the Corporation who is a Clearing Member to fill such vacancy. The President may appoint another person who is not a Member of the Corporation to serve in his/her stead as a member of the Business Conduct Committee.

No member of the Board of Directors or Member of the Corporation who is to serve as a substitute member in the place of the Chairperson of the Board of Directors shall be appointed as a member of the Business Conduct Committee if the member of the Board is a member of the Arbitration Pool or the Futures Trading Conduct Committee.

The members of the Business Conduct Committee shall be as representative as practicable of the various Membership Interests as defined by Regulation 1.64(a) under the Commodity Exchange Act, and in no case shall more than two (2) of its members represent any one of the Interests listed in the first paragraph of **Rule 201.00**. Five (5) members of the Committee shall be required to constitute a quorum.

Whenever the subject of a proceeding is a member of the Board of Directors, the Business Conduct Committee or the Futures Trading Conduct Committee; or whenever the allegations involve manipulation of the price of a commodity or a futures contract; or whenever the allegations involve conduct which results in financial harm to a nonmember, the Committee which hears the case shall have at least one (1) member who is not a Member of the Corporation.

264.01. BUSINESS CONDUCT COMMITTEE: QUALIFICATIONS OF MEMBERS.

No person shall serve as a member of the Business Conduct Committee when the person or firm with which the person is affiliated has a financial, personal or prejudicial

interest or concern in the matter under consideration or action. For the purpose of this Rule, at a minimum, a financial, personal or prejudicial interest shall be defined and determined pursuant to **Rule 275.00.B**. The other members of the Committee with guidance by the Department of Audits and Investigations shall determine whether any member has a financial, personal or prejudicial interest not addressed by **Rule 275.00.B**.

264.02. BUSINESS CONDUCT COMMITTEE: APPOINTMENT OF ALTERNATES.

If the Business Conduct Committee shall determine that it is improper for any or all of its members to serve during the consideration of and action upon any particular matter, or if any or all of the regular members shall be unable to serve during such consideration and action, the Business Conduct Committee may request the President to appoint, and the President shall appoint, an alternate or alternates (from the Members of the Corporation who are not members of the Board of Directors, the Board of Arbitration, or the Futures Trading Conduct Committee) to sit throughout the consideration of and action upon such matter. When so appointed, any alternate shall, with respect to the consideration of and action upon such particular matter, have all the powers and duties of the regular member for whom the alternate is acting; and such Committee, so constituted and consisting of such alternate or alternates and the remaining regular members of the Business Conduct Committee, if any, shall with respect to the consideration of and action upon such particular matter have all the duties and powers of the regular Business Conduct Committee. During the period that such a Business Conduct Committee appointed with respect to a particular matter is functioning, the regular Business Conduct Committee and the regular members thereof shall continue to have all their usual powers and to perform all their usual duties concerning matters other than that before a Business Conduct Committee appointed with respect to a particular matter.

264.03. BUSINESS CONDUCT COMMITTEE: DUTIES AND POWERS.

The Business Conduct Committee shall be charged with the duty and authority:

- A. To prevent manipulation of prices as provided in Section 5d. of the Commodity Exchange Act.
- B. To review all investigation reports submitted to the Committee by the Department of Audits and Investigations in respect to alleged violation of the Charter, Rules, Regulations, customs and usages of the Corporation, except such reports as are required by **Rule 265.03**. of this Chapter to be reviewed by the Futures Trading Conduct Committee.
- C. To direct the Department of Audits and Investigations to conduct such further investigation in respect to any such report as the Committee deems appropriate or advisable.
- D. To dismiss any or all charges included in any investigation report submitted to the Committee that are, in its opinion, without reasonable foundation in fact, or, in the alternative, to conduct a hearing on such matters as are appropriate to be heard by the Business Conduct Committee. In such instances the Business Conduct Committee will function as a Hearing Committee.

- E. To report in writing to the Board of Directors in respect to all matters which result in public disciplinary action.

The Business Conduct Committee, in performing its duties, may review the dealings and transactions of Members or Registered Firms or Corporations, and it may examine their books, papers and records pertinent to such review, pursuant to **Rule 333.00**. The Committee may employ such auditors, counsel or other assistants as it may deem necessary, and all expenses incident thereto shall be payable from the funds of the Corporation.

The Business Conduct Committee may invite a representative of the Commodity Futures Trading Commission to attend any or all of its meetings.

In addition to possible violations of Exchange Rules and Regulations appropriately brought before the Business Conduct Committee pursuant to Paragraph B, above, the Committee also shall review any investigation report concerning a particular course of conduct by a Member, or a Registered Firm or Corporation which has produced or thereafter, in the opinion of the Committee, would produce a manipulation of prices or cornering of any commodity in violation of the Rules of this Corporation. Given an affirmative finding on such investigation report the Committee shall notify such Member or Registered Firm or Corporation in writing of its conclusions, and it shall direct such Member or Registered Firm or Corporation to cease and desist from such conduct. Such notice shall state:

- A. The nature of the action directed to be discontinued.
- B. The Committee's reasons for directing that such conduct be discontinued.
- C. The effective time and date and the duration of the directive.

The findings and conclusions of the Committee, in respect to such matters, shall be final unless the affected Member or Registered Firm or Corporation shall demand, within five (5) business days after the receipt of such directive, a hearing before the Board of Directors. If such hearing is demanded, the Committee shall immediately so notify the Board of Directors. No Member or Registered Firm or Corporation shall violate any order of the Business Conduct Committee after having been duly notified thereof. Nothing, however, herein contained shall in any way be construed as superseding the duties and authority that have been vested in the Futures Trading Conduct Committee or the Board of Directors by the Rules and Regulations of this Corporation. All directives of the Committee pertaining to price manipulations or corners and requiring a market position reduction shall be effective when issued. The effectiveness thereof shall not be stayed pending appeal.

No member of the Business Conduct Committee shall publish, divulge or make known in any manner, except when reporting to the Board of Directors or to a Committee concerned with such information, or when called upon to testify in any judicial or administrative proceeding, any facts regarding the business of any person, firm or corporation, or any other confidential information that may come to the knowledge of such Committee member in the member's official capacity.

265.00. FUTURES TRADING CONDUCT COMMITTEE: APPOINTMENT.

There shall be established a Committee to be known as the Futures Trading Conduct Committee, which shall be composed of seven (7) members with voting privileges as hereinafter provided:

- A. Five (5) of such members, including the Chairperson of the Committee, shall be appointed by the Chairperson of the Board of Directors from Members of the Corporation whose principal business activity is related to futures and options trading.
- B. Two (2) members of the Committee shall be ex officio, one (1) of whom shall be the Chairperson of the Board of Directors and the other, the President of the Corporation.

The Chairperson of the Board of Directors may appoint a member of the Board of Directors to serve in his/her stead as a member of the Futures Trading Conduct Committee. If no member of the Board of Directors is available for such an appointment, the Chairperson may appoint a Member of the Corporation. The President may appoint another person who is not a Member of the Corporation to serve in his/her stead as a member of the Futures Trading Conduct Committee.

No member of the Board of Directors or Member of the Corporation who is to serve as a substitute member in the place of the Chairperson of the Board of Directors shall be appointed as a member of the Futures Trading Conduct Committee if the member of the Board is a member of the Arbitration Pool or the Business Conduct Committee.

The members of the Futures Trading Conduct Committee shall be as representative as practicable of the various Membership Interests as defined by Regulation 1.64(a) under the Commodity Exchange Act, and in no case shall more than three (3) of its members represent any one (1) Membership Interest. Five (5) members of the Committee shall be required to constitute a quorum.

Whenever the subject of a proceeding is a member of the Board of Directors, the Business Conduct Committee or the Futures Trading Conduct Committee; or whenever the allegations involve manipulation of the price of a commodity or a futures contract; or whenever the allegations involve conduct which results in financial harm to a nonmember, the Committee which hears the case shall have at least one (1) member who is not a Member of the Corporation.

265.01. FUTURES TRADING CONDUCT COMMITTEE: QUALIFICATIONS OF MEMBERS.

No person shall serve as a member of the Futures Trading Conduct Committee when the person or firm with which the person is affiliated has a financial, personal or prejudicial interest or concern in the matter under consideration or action. For the purpose of this Rule, at a minimum, a financial, personal or prejudicial interest shall be defined and determined pursuant to **Rule 275.00.B**. The other members of the Committee with guidance by the Department of Audits and Investigations shall determine whether any member has a financial, personal or prejudicial interest not addressed by **Rule 275.00.B**.

265.02. FUTURES TRADING CONDUCT COMMITTEE: APPOINTMENT OF ALTERNATES.

If the Futures Trading Conduct Committee shall determine that it is improper for any or all of its members to serve during the consideration of and action upon any particular matter, or if any or all of the regular members shall be unable to serve during such consideration and action, the Futures Trading Conduct Committee may request the President to appoint, and the President shall appoint, an alternate or alternates (from the Members of the Corporation who are not members of the Board of Directors, the Board of Arbitration or the Business Conduct Committee) to sit throughout the consideration of and action upon such matter. When so appointed, any alternate shall, with respect to the consideration of and action upon such particular matter, have all the powers and duties of the regular member for whom the alternate is acting; and such Committee, so constituted and consisting of such alternate or alternates and the remaining regular members of the Futures Trading Conduct Committee, if any, shall with respect to the consideration of and action upon such particular matter have all the duties and powers of the regular Futures Trading Conduct Committee. During the period that such Futures Trading Conduct Committee appointed with respect to a particular matter is functioning, the regular Futures Trading Conduct Committee and the regular members thereof shall continue to have all their usual powers and to perform all their usual duties concerning matters other than that before a Futures Trading Conduct Committee appointed with respect to a particular matter.

265.03. FUTURES TRADING CONDUCT COMMITTEE: DUTIES AND POWERS.

The Futures Trading Conduct Committee shall be charged with the following duty and authority:

- A. To maintain the highest standards of futures trading conduct by observing and guiding futures and options trading methods in this market, both as regards Exchange Rules and Federal Law.
- B. To review all investigation reports submitted by the Department of Audits and Investigations in respect to all matters relating to futures and options trading conducted under the jurisdiction of the Corporation except such reports as are required by **Rule 264.03.** of this Chapter to be reviewed by the Business Conduct Committee.
- C. To direct the Department of Audits and Investigations to conduct such further investigation in respect to any such report as the Committee deems appropriate or advisable on a timely basis.
- D. To dismiss any or all charges included in any investigation report submitted to the Committee that are, in its opinion, without reasonable foundation in fact, or, in the alternative, to conduct a hearing on such matters as are appropriate to be heard by the Futures Trading Conduct Committee. In such instances the Futures Trading Conduct Committee will become a Hearing Committee.
- E. In hearings conducted by the Futures Trading Conduct Committee, on a finding by the Committee that there has been a violation, to assess a penalty against

those found guilty. The Committee may issue a Letter of Reprimand, a suspension from Membership, a monetary fine, or a recommendation to the Board of Directors for expulsion (singly or in any combination). Any suspension of thirty (30) days or more, or any fine of ten thousand dollars (\$10,000) or more shall be subject to ratification by the Board of Directors. The Board of Directors may, at its discretion, entertain an appeal based on the record of the hearing.

- F. To report in writing to the Board of Directors in respect to all matters which result in public disciplinary action.
- G. To summon any Member to appear before the Committee in its investigation of matters pertaining to futures and options trading.
- H. To demand that futures and options trading cards and other pertinent records be presented in evidence to the Committee at any duly authorized investigation.

No member of the Futures Trading Conduct Committee shall publish, divulge or make known in any manner, except when reporting to the Board of Directors or to a Committee concerned with such information, or when called upon to testify in any judicial or administrative proceeding, any facts regarding the business of any person, firm or corporation, or any other confidential information that may come to the knowledge of such Committee member in the member's official capacity.

275.00. CONFLICTS OF INTEREST.

A member of the Board of Directors and certain other Committees at the Exchange must abstain from deliberating and voting on matters when there is a potential personal or financial conflict of interest. This Rule describes how and when the conflict of interest will be determined. Additional and broader conflicts of interest provisions apply to the Business Conduct Committee and the Futures Trading Conduct Committee. (See **Rules 264.01.** and **265.01.**)

A. Definitions. For purposes of this Rule the following definitions shall apply:

1. The term "family relationship" of a person shall mean the person's spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece, or in-law.
2. The term "governing board" shall mean the Board of Directors, Committees of the Board of Directors and Committees of the Corporation authorized to take action or to recommend the taking of action on behalf of the Exchange.
3. The term "member's affiliated firm" shall mean a firm in which the member is an employee or a "principal," as defined in CFTC Regulation 3.1(a).
4. The term "named party in interest" shall mean a person or entity that is identified by name as a primary subject of any material matter being considered by a governing board.
5. The term "significant action" shall mean any of the following types of actions or rule changes that are implemented without the Commission's prior approval:
 - i. Any actions or rule changes which address an "emergency" as defined in CFTC Regulation 1.41(a)(4)(i) through (iv) and(vi) through (viii); and, b. Any changes in margin levels that are designed to respond to extraordinary market conditions such as an actual or attempted corner, squeeze, congestion or undue concentration of positions, or that otherwise are likely to have a substantial effect on prices in any contract traded at the Exchange; but shall not include any rule not submitted for prior CFTC approval because such rule is unrelated to the terms and conditions of any contract traded at the Exchange.

B. Named Party in Interest Conflict

1. Prohibition. No member of a governing board shall knowingly participate in such body's deliberations or voting in any matter involving a named party in interest where such member: (a) is a named party in interest; (b) is an employer, employee or fellow employee of a named party in interest; (c) is associated with a named party in interest through a broker association; (d) has a family relationship with a named party in interest;

or, (e) has any other significant, ongoing business relationship with a named party in interest, excluding relationships limited to executing futures or option transactions opposite each other or to clearing futures or options transactions through the same Clearing Member.

If the member's only relationship with a named party in interest is through a broker association not established for the purpose of sharing profits and losses as described by **Regulation 2065.00.A.3**, then the prohibition shall not apply. Furthermore, if a named party in interest is one or part of a group of similar persons or entities that is the subject for general deliberation and voting, such as approval for regularity or membership, and there is no material issue of dispute involving a named party in interest, then the prohibition shall not apply.

2. Disclosure. Prior to consideration of any matter involving a named party in interest, each member of the deliberating body who does not choose to abstain from deliberations and voting shall disclose to the Department of Audits and Investigations whether such member has one of the relationships listed in paragraph B.1. of this Rule with a named party in interest.
3. Procedure and Determination. Exchange staff shall determine whether any member of the deliberating body is subject to a conflicts restriction under this paragraph B. Such determination shall be based upon a review of the following information:
 - a. information provided by the member pursuant to paragraph B.2. above, and
 - b. any other source of information that is held by and reasonably available to the Exchange.

C. Financial Interest in a Significant Action Conflict

1. Prohibition. No member of a governing board shall participate in such body's deliberations and voting on any significant action if such member knowingly has a direct and substantial financial interest in the result of the vote based upon either Exchange or non- Exchange positions that could reasonably be expected to be affected by the significant action under consideration, as determined pursuant to this Rule.
2. Disclosure. Prior to consideration of any significant action, each member of the deliberating body who does not choose to abstain from deliberations and voting shall disclose to the Department of Audits and Investigations position information that is known to such member, with respect to any particular month or months that are under consideration, and any other positions which the deliberating body reasonably expects could be affected by the significant action, as follows:

- a. gross positions held at the Exchange in the member's personal accounts or "controlled accounts," as defined in CFTC Regulation 1.3(j);
 - b. gross positions held at the Exchange in proprietary accounts, as defined in CFTC Regulation 1.17(b)(3), at the member's affiliated firm;
 - c. gross positions held at the Exchange in accounts in which the member is a principal, as defined in CFTC Regulation 3.1(a);
 - d. net positions held at the Exchange in "customer" accounts, as defined in CFTC Regulation 1.17(b)(2), at the member's affiliated firm; and
 - e. any other types of positions, whether maintained at the Exchange or elsewhere, held in the member's personal accounts or the proprietary accounts of the member's affiliated firm, that reasonably could be affected by the significant action.
3. Procedure and Determination. Exchange staff shall determine whether any member of the deliberating body is subject to a conflicts restriction under this paragraph C. based upon a review of the most recent large trader reports and clearing records available to the Exchange, information provided by the member with respect to positions pursuant to paragraph C.2. of this Rule, and any other source of information that is held by and reasonably available to the Exchange, taking into consideration the exigency of the significant action being contemplated.

D. Deliberation Exemption.

1. Any member of a governing board who would otherwise be required to abstain from deliberations and voting pursuant to paragraph C. hereof may participate in deliberations, but not voting, if the deliberating body, after considering the factors specified below, determines that such participation would be consistent with the public interest; provided, however, that before reaching any such determination the deliberating body shall fully consider the position information specified in paragraph C.2. and C.3. above, which is the basis for such member's substantial financial interest in the significant action that is being contemplated.
2. In making its determination, the deliberating body shall consider;
 - a. whether the member's participation in deliberations is necessary to achieve a quorum; and
 - b. whether the member has unique or special expertise, knowledge or experience in the matter being considered.

3. Voting Exemption. If at least one-half of the deliberating members cannot participate in voting consistent with this Rule, then every member who has been granted a deliberation exemption pursuant to this paragraph D. may participate in voting.
- E. Documentation. The minutes of any meeting to which the conflicts determination procedures set forth in this Rule apply, shall reflect the following information:
1. the names of all members who attended the meeting in person or who otherwise were present by electronic means;
 2. the name of any member who voluntarily recused himself or herself or was required to abstain from deliberations and/or voting on a matter and the reason for the refusal or abstention, if stated;
 3. information on the position information that was reviewed for each member if applicable and available; and
 4. the name of any member who participated in voting pursuant to paragraph D.3. of this Rule.