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# CANTOR EXCHANGE, LLC

## RULES

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BY ACCESSING, OR ENTERING ANY ORDER INTO, THE eSPEED SYSTEM, AND WITHOUT ANY NEED FOR ANY FURTHER ACTION, UNDERTAKING OR AGREEMENT, AN AUTHORIZED TRADER AGREES (I) TO BE BOUND BY, AND COMPLY WITH, THE RULES OF THE EXCHANGE, THE RULES OF THE CLEARINGHOUSE AND APPLICABLE LAW, IN EACH CASE TO THE EXTENT APPLICABLE TO IT, AND (II) TO BECOME SUBJECT TO THE JURISDICTION OF THE EXCHANGE WITH RESPECT TO ANY AND ALL MATTERS ARISING FROM, RELATED TO, OR IN CONNECTION WITH, THE STATUS, ACTIONS OR OMISSIONS OF SUCH AUTHORIZED TRADER. SEE RULE III-8(A) AND THE RELATED DEFINITIONS IN THIS RULEBOOK.

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**CHAPTER I  
DEFINITIONS; INTERPRETATION;  
AMENDMENTS**

**I-1. Defined Terms**

Unless otherwise specifically provided in the Rules of the Exchange or the context otherwise requires, the terms defined in this Section I-1 shall for all purposes of the Rules of the Exchange have the meanings specified herein.

**Affiliate**

An “Affiliate” of, or a Person “Affiliated” with, another Person is a Person who, directly or indirectly, Controls, is Controlled by, or is under common Control with, such other Person.

**Appeals Panel**

The term “Appeals Panel” means, a panel solely comprised of the Independent Director, which will consider appeals in accordance with Chapter VII. If the Independent Director is not eligible to serve on the Appeals Panel pursuant to Rule II-5, the Appeals Panel shall be a panel solely comprised of an individual meeting the requirements of an Independent Director who is appointed by the Compliance Director pursuant to Rule VII-17.

**Applicable Law**

The term “Applicable Law” means, with respect to any Person, any statute, law, regulation, rule or ordinance of any governmental authority applicable to such Person, including the CEA, CFTC Regulations, NFA Rules, and margin rules adopted by the Board of Governors of the Federal Reserve System.

**APS**

The term “APS” means any proprietary system used by any Class A Authorized Trader that is a registered futures commission merchant to calculate, and confirm to its Customers, an average price for any Contract when multiple execution prices are received on an Order or series of Orders for such Contract, *provided* that such system is structured and applied in accordance with Applicable Law.

**Authorized Trader**

The term “Authorized Trader” means a Class A Authorized Trader or a Class B Authorized Trader, as the case may be.

## Cantor Exchange LLC Rules

### **Authorized Trader Representative**

The term “Authorized Trader Representative” means any natural person who is employed and authorized by a Class A Authorized Trader to place Orders on the eSpeed System.

### **Bankruptcy Code**

The term “Bankruptcy Code” means Title 11 of the United States Code as in effect from time to time.

### **Block Trade**

The term “Block Trade” has the meaning set forth in Rule IV-16(a).

### **Block Trade Contract**

The term “Block Trade Contract” has the meaning set forth in Rule IV-16(a).

### **Board of Directors**

The term “Board of Directors” means the Board of Directors of the Exchange constituted from time to time in accordance with the Operating Agreement.

### **Business Day**

The term “Business Day” means any day on which the Exchange is open for trading.

### **Cancel Order**

The term “Cancel Order” means an order that cancels fully an existing buy or sell order.

### **Cancel Replace Order**

The term “Cancel Replace Order” means an order to cancel fully an existing buy or sell order and replace it with a new order for a different quantity or price.

### **CEA**

The term “CEA” means the Commodity Exchange Act as in effect from time to time.

## Cantor Exchange LLC Rules

### **CFTC**

The term “CFTC” means the Commodity Futures Trading Commission, and includes any successor agency or authority.

### **CFTC Regulation**

The term “CFTC Regulation” means any rule, regulation, order or directive and any interpretation thereof adopted from time to time by the CFTC.

### **Class A Authorized Trader**

The term “Class A Authorized Trader” means (a) any registered futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker or floor trader, each as defined in Section 1a of the CEA, (b) any Person authorized to perform functions similar or equivalent to those of any of the Persons listed in clause (a) above, whether on a proprietary basis or for the account of Customers, in any jurisdiction outside the United States in which the Exchange may be permitted from time to time to place eSpeed Terminals, and (c) any other Person that meets such standards as may be prescribed by the Exchange from time to time, in each case if such Person has been granted, and continues to have, Trading Privileges under these Rules. Class A Authorized Traders shall be deemed to be members of the Exchange for purposes of the CEA.

### **Class B Authorized Trader**

The term “Class B Authorized Trader” means any individual or entity that (a) is not a Class A Authorized Trader, and (b) has been granted, and continues to have, Trading Privileges under these Rules. Class B Authorized Traders shall be deemed to be members of the Exchange for purposes of the CEA.

### **Clearinghouse**

The term “Clearinghouse” means Cantor Clearing LLC (including its successors), or such other clearing organization as the Exchange may designate in the future to provide clearing services with respect to any or all of its Contracts.

### **Clearing Privilege Holder**

The term “Clearing Privilege Holder” means any participant of the Clearinghouse that is authorized pursuant to the Rules of the Clearinghouse to clear trades in any or all of the Contracts.

## Cantor Exchange LLC Rules

### **Compliance Department**

The term “Compliance Department” has the meaning set forth in Rule VII-1.

### **Compliance Director**

The term “Compliance Director” means an individual appointed by the Exchange who (i) does not have a relationship with the Exchange or any parent or subsidiary thereof of a type described in Rule II-9 and (ii) is knowledgeable about futures trading and futures market operations as well as CFTC Regulations.

### **Contract**

The term “Contract” means any Future or any Option on Futures which is traded on or subject to the Rules of the Exchange.

### **Contract Rules**

The term “Contract Rules” means, with respect to any Contract, the rules or other trading protocols containing specifications for such Contract, as adopted, amended, supplemented or otherwise modified from time to time by the Exchange.

### **Control**

The term “Control” means the power to exercise a controlling influence over the management or policies of a Person, unless such power is solely the result of an official position with such Person. Any Person who owns beneficially, directly or indirectly, more than 20% of the voting power in the election of directors of a corporation, or more than 25% of the voting power in the election of directors of any other corporation which directly or through one or more Affiliates owns beneficially more than 25% of the voting power in the election of directors of such corporation, shall be presumed to control such corporation. The terms “controlling” or “controlled” shall have meanings correlative to the foregoing.

### **Customer**

The term “Customer” means any Person for whom a Class A Authorized Trader carries an account (other than such Class A Authorized Trader, any employee of such Class A Authorized Trader, or any of its Affiliates) or from whom a Class A Authorized Trader solicits or accepts an Order.

## Cantor Exchange LLC Rules

### **Director of Hearings**

The term “Director of Hearings” means the individual appointed by the NFA on behalf of the Exchange from time to time to act as its director of hearings.

### **Disciplinary Panel**

The term “Disciplinary Panel” has the meaning set forth in Rule VII-10(a).

### **DPM**

The term “DPM” means any designated primary market maker approved by the Exchange from time to time in accordance with, and with the duties and responsibilities set forth in, Rule V-17.

### **DPM Designee**

The term “DPM Designee” has the meaning set forth in Rule V-17(b)(iii).

### **EFP**

The term “EFP” means any transaction entered into in accordance with Rule IV-15, a component of which is not executed on the Exchange and a component or all of which involves a Contract.

### **EFS**

The term “EFS” has the meaning set forth in Rule IV-17.

### **Emergency**

The term “Emergency” means any occurrence or circumstance that, in the opinion of the Board of Directors, requires immediate action and threatens or may threaten the fair and orderly trading in, or the liquidation of or delivery pursuant to, any Contract. An Emergency may include, without limitation, any of the following:

- (a) Any manipulative activity or attempted manipulative activity;
- (b) Any actual, attempted or threatened corner, squeeze, congestion or undue concentration of positions;
- (c) Any circumstance that may materially adversely affect the performance of Contracts, including any failure of the payment system;

### Cantor Exchange LLC Rules

(d) Any action taken by the Federal or any foreign government, any other governmental body, or any other exchange or trading facility (foreign or domestic), in each case that may have a direct adverse effect on trading on the Exchange;

(e) Any circumstance that may have a severe, adverse effect upon the physical functions of the Exchange, including fire or other casualty, bomb threats, terrorist acts, substantial inclement weather, power failures, communications breakdowns, computer system breakdowns, malfunctions of plumbing, heating, ventilation and air conditioning systems and transportation breakdowns;

(f) The bankruptcy or insolvency of any Authorized Trader or the imposition of any injunction or other restraint by any government agency, court or arbitrator upon an Authorized Trader, that may affect the ability of such Authorized Trader to perform on its Contracts;

(g) Any circumstance in which it appears that any Authorized Trader or any other Person has failed to perform its Contracts, is insolvent, or is in such financial or operational condition or is conducting business in such a manner that such Person cannot be permitted to continue in business without jeopardizing the safety of Customer funds, other Authorized Traders, the Exchange or the Clearinghouse; and

(h) Any other unusual, unforeseeable and adverse circumstance with respect to which it is impracticable for the Exchange to submit in a timely fashion a reviewable rule to the CFTC.

#### **eSpeed**

The term “eSpeed” means eSpeed, Inc., a Delaware corporation (including its successors and assigns).

#### **eSpeed System**

The term “eSpeed System” means the proprietary order entry and execution system operated by eSpeed and used by the Exchange for the placement and execution of Orders or the collection and transmission of information relating to Contracts, and that otherwise performs the functions set forth in the Rules of the Exchange, including controlling, monitoring, and recording trading through eSpeed Terminals.

#### **eSpeed Terminal**

The term “eSpeed Terminal” means any computer connected to the eSpeed System, including by means of eSpeed’s application program interface,

## Cantor Exchange LLC Rules

that provides the Authorized Trader (including its Authorized Trader Representatives, if any) using such computer with the ability to transmit Orders in electronic form directly to the eSpeed System.

### **Exchange**

The term “Exchange” means Cantor Exchange, LLC, a Delaware limited liability company (including its successors), and when used with reference to the administration of any Rule of the Exchange, means either the Board of Directors or the officer, employee, agent, committee or delegatee to whom appropriate authority to administer such provision has been delegated by the Board of Directors.

### **Exchange Official**

The term “Exchange Official” means any officer of, or individual employed directly by, the Exchange.

### **Executive Committee**

The term “Executive Committee” means the committee of the Board of Directors constituted in accordance with Rule II-3.

### **Future**

The term “Future” means any contract for the purchase or sale of any commodity for future delivery from time to time traded subject to the Rules of the Exchange.

### **Good Until Cancelled Order**

The term “Good Until Cancelled Order” has the meaning set forth in Rule IV-4.

### **Hearing Panel Committee**

The term “Hearing Panel Committee” means the Exchange committee whose members are drawn from the NFA’s Hearing Committee.

### **Independent Director**

The term “Independent Director” has the meaning set forth in Rule II-5.

### **Limit Order**

The term “Limit Order” has the meaning set forth in Rule IV-4.

## Cantor Exchange LLC Rules

### **Market Maker**

The term “Market Maker” means any Class A Authorized Trader that has been appointed by the Exchange to perform certain market-making functions with respect to one or more specified Contracts pursuant to an agreement between such Class A Authorized Trader and the Exchange.

### **Market Order**

The term “Market Order” has the meaning set forth in Rule IV-4.

### **Member**

The term “Member” means any Person that has acquired a membership interest in the Exchange in accordance with the Operating Agreement.

### **NFA**

The term “NFA” means the National Futures Association, and includes any successor organization.

### **No Break Range**

The term “No Break Range” has the meaning set forth in Rule IV-10(a)(vi).

### **Operating Agreement**

The term “Operating Agreement” means the Limited Liability Company Agreement of the Exchange, dated as of ●, 2005, as amended, supplemented or otherwise modified from time to time.

### **Option on Futures**

The term “Option on Futures” means any option to buy or sell any Future, from time to time traded subject to the Rules of the Exchange and issued or subject to issuance by the Clearinghouse pursuant to the Rules of the Clearinghouse.

### **Order**

The term “Order” means any order to buy or sell a Contract on or subject to the Rules of the Exchange.

## Cantor Exchange LLC Rules

### **Passwords**

The term “Passwords” has the meaning set forth in Rule V-15(b).

### **Person**

The term “Person” means any natural person, association, partnership, limited liability company, joint venture, trust or corporation.

### **President**

The term “President” means the individual appointed by the Board of Directors from time to time to serve as president of the Exchange.

### **Responsible Trader**

The term “Responsible Trader” has the meaning set forth in Rule V-15(a).

### **Rules of the Clearinghouse**

The term “Rules of the Clearinghouse” means the constitutive documents and any rules, regulations, interpretations, stated policies or instruments corresponding to any of the foregoing, in each case as adopted or amended from time to time by the Clearinghouse relating to the Exchange or any or all of the Contracts for which such Clearinghouse has been designated by the Exchange.

### **Rules of the Exchange**

The term “Rules of the Exchange” means any rule, interpretation, stated policy, or instrument corresponding to any of the foregoing, in each case as adopted or amended from time to time by the Exchange.

### **SEC**

The term “SEC” means the Securities and Exchange Commission, and includes any successor agency or authority.

### **Secretary**

The term “Secretary” means the individual appointed by the Board of Directors from time to time to serve as secretary of the Exchange.

## Cantor Exchange LLC Rules

### **Settlement Price**

The term “Settlement Price” means, with respect to any Contract, the price established at the end of each Business Day, in accordance with procedures from time to time specified by the Exchange, by a committee of the Exchange designated for such purpose

### **Stop Limit Order**

The term “Stop Limit Order” has the meaning set forth in Rule IV-4.

### **Stop Order**

The term “Stop Order” has the meaning set forth in Rule IV-4.

### **Trading Hours**

The term “Trading Hours” means, with respect to any Contract, the hours during which the Exchange is regularly open for the trading of such Contract, as set forth in the relevant Contract Rules.

### **Trading Privileges**

The term “Trading Privileges” means, with (i) respect to Class A Authorized Traders and their respective Authorized Trader Representatives, the right (a) to transmit Orders for certain or all Contracts, for themselves and on behalf of Customers, in electronic form directly to the eSpeed System and (b) to enter into the eSpeed System EFPs and Block Trades involving certain or all Contracts, subject to the specific requirements and conditions applicable thereto, and (ii) with respect to Class B Authorized Traders, the right to transmit Orders for certain or all Contracts, for themselves, in electronic form directly to the eSpeed System.

### **Treasurer**

The term “Treasurer” means the individual appointed by the Board of Directors from time to time to serve as treasurer of the Exchange.

### **Vice President**

The term “Vice President” means any individual appointed by the Board of Directors from time to time to serve as a vice president of the Exchange.

## Cantor Exchange LLC Rules

### **I-2. Rules of Interpretation**

For all purposes of these Rules, except as otherwise expressly provided herein or unless the context otherwise requires:

(a) the terms defined in these Rules include the plural as well as the singular and *vice versa*;

(b) words importing gender include all genders;

(c) any reference to a Chapter, Rule or Appendix refers to a Chapter or Rule of, or Appendix to, these Rules;

(d) any reference to these Rules refers to these Rules, including all Appendices hereto, and the words herein, hereof, thereto, hereto and hereunder and words of similar import refer to these Rules and their appendices as a whole and not to any particular Chapter, Rule, appendix or any other subdivision;

(e) references to days, months and years refer to calendar days, months and years, respectively;

(f) all references herein to “including” shall be deemed to be followed by the words “without limitation”; and

(g) any term used herein that is defined in the CEA or CFTC Regulations shall have the meaning assigned to it therein.

### **I-3. Effect of Titles**

The titles of these Rules have been inserted for convenience of reference only and shall not affect the meaning of these Rules.

### **I-4. Amendment of Rules**

New Rules of the Exchange may be adopted, and existing Rules of the Exchange may be amended or repealed, by the Board of Directors. All such new Rules of the Exchange, amendments or repeals shall become effective on such date (after any required filing with, or approval thereof by, the CFTC) as may be determined by the Exchange.

Cantor Exchange LLC Rules

**CHAPTER II  
GOVERNANCE OF THE EXCHANGE**

**II-1. Board of Directors**

The business and affairs of the Exchange shall be managed by the Board of Directors in accordance with the Operating Agreement and Applicable Law.

**II-2. Standing Committees**

(a) The Board of Directors shall initially have one standing committee: the “Executive Committee”.

(b) Except as otherwise specifically provided in these Rules, the members of standing committees shall be appointed by the chairperson of the Board of Directors, subject to approval by the Board of Directors, as promptly as possible after each annual meeting of the Exchange. Each appointee shall serve for one year or until the due appointment of his or her successor or his or her resignation or removal, with or without cause, by a majority vote of the Board of Directors. Subject to approval by the Board of Directors, the chairperson of the Board of Directors shall designate the chairperson of each standing committee.

(c) Each standing committee shall assist in the supervision, management and control of the affairs of the Exchange within its particular area of responsibility.

(d) Subject to the authority of the Board of Directors, each standing committee shall determine the manner and form in which its proceedings shall be conducted, and may act at a meeting or without a meeting, and through a quorum composed of a majority of all its members then in office, inclusive of *ex officio* members. Except as otherwise specifically provided in these Rules, the decision of a majority of those present at a meeting at which a quorum is present, or the decision of a majority of those participating when at least a quorum participates, shall be the decision of the standing committee. Any or all members of any standing committee may participate in any meeting thereof by telephone conference or similar communications equipment by means of which all members participating in such meeting can hear each other.

(e) In the event of the absence or disqualification of any member of a standing committee from any meeting thereof, each of the following individuals, in the order of their availability, may appoint another qualified individual to act at the relevant meeting in the place of any such absent or disqualified member: (i) the chairperson of the Board of

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Directors, (ii) the President or (iii) the chairperson of the standing committee in question.

### **II-3. Executive Committee**

The Executive Committee of the Board of Directors shall consist of the chairperson of the Board of Directors, the President (as *ex officio* member) and such additional individuals, who shall be members of the Board of Directors, as may be appointed from time to time by the chairperson of, and approved by, the Board of Directors. The Executive Committee shall have general supervision over the property, business and affairs of the Exchange, subject to the authority of the Board of Directors. It shall make such recommendations to the Board of Directors as will, in its judgment, best promote the interests of the Exchange. The Executive Committee shall also have such other powers and perform such other duties as the Board of Directors may delegate to it from time to time.

Without limiting the generality of the foregoing, the Executive Committee shall have authority to: (a) monitor compliance with the Rules of the Exchange or any interpretation thereof and with the rules, regulations, resolutions and stated policies of the Board of Directors or any committee of the Board of Directors or of the Exchange by Authorized Traders or Authorized Trader Representatives; (b) approve any applicant to become a Class A Authorized Trader in accordance with Rule III-5(a); (c) inquire into the business conduct and financial condition of Class A Authorized Traders or Authorized Trader Representatives and require detailed financial reports and such other operational reports as it may deem advisable of any Class A Authorized Trader related to its futures trading or broker activities; (d) suspend, revoke, limit, condition, restrict or qualify an Authorized Traders' Trading Privileges in accordance with Rule III-7; (e) prohibit any trading activities by a Class A Authorized Trader that are excessive in relation to such Class A Authorized Trader's capital; and (f) exercise any other functions expressly assigned to it in this Rulebook.

### **II-4. Additional Committees and Panels**

(a) The Board of Directors may create such additional standing committees of the Board of Directors as it may from time to time deem necessary or advisable. Members of such committees must be members of the Board of Directors, *provided* that the President may be a voting *ex officio* member of any such standing committee.

(b) In addition to the standing committees, the Board of Directors may from time to time constitute and appoint, by rule or resolution, special committees of the Board of Directors and designate their composition, responsibilities and powers. The provisions regarding standing committees in Rule II-2 shall apply *mutatis mutandis* to any such special committees.

Cantor Exchange LLC Rules

(c) The Exchange may create additional committees of the Exchange, or panels, for such purposes as may from time to time be necessary or advisable. Members of each such committee may be members of the Board of Directors, Authorized Traders, Authorized Trader Representatives or such other individuals as may be qualified to serve on such committee.

**II-5. Eligibility**

(a) No Person may serve as a member of the Board of Directors, the Executive Committee or any other disciplinary committee, arbitration panel or oversight panel of the Exchange if such Person:

(i) was found within the past three years by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the CFTC to have committed a disciplinary offense;

(ii) entered into a settlement agreement within the past three years in which any of the findings or, in absence of such findings, any of the acts charged included a disciplinary offense;

(iii) is currently suspended from trading on any contract market, is suspended or expelled from membership from any self-regulatory organization, is serving any sentence of probation or owes any portion of a fine imposed pursuant to either:

(A) a finding by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the CFTC that such person committed a disciplinary offense; or

(B) a settlement agreement in which any of the findings or, in absence of such findings, any of the acts charged included a disciplinary offense;

(iv) is currently subject to an agreement with the CFTC or any self-regulatory organization not to apply for registration with the CFTC or membership in any self-regulatory organization;

(v) is currently subject to or has had imposed on him or her within the past three years a CFTC registration revocation or suspension in any capacity for any reason, or has been convicted within the past three years of any of the felonies listed in section 8a(2)(D)(ii) through (iv) of the CEA; or

### Cantor Exchange LLC Rules

(vi) is currently subject to a denial, suspension or disqualification from serving on the disciplinary committee, arbitration panel or governing board of any self-regulatory organization as that term is defined in section 3(a)(26) of the Securities Exchange Act of 1934.

(b) No person may serve as an independent member of the Board of Directors (the "Independent Director") if such person:

(i) has a material relationship with the Exchange or any parent or subsidiary thereof, either directly or as a partner, shareholder or officer of an organization that has a relationship with the Exchange or any parent or subsidiary thereof;

(ii) within the last three years, has been an employee of the Exchange or any parent or subsidiary thereof, or an immediate family member, within the last three years, has been an executive officer of the Exchange or any parent or subsidiary thereof;

(iii) has received, or an immediately family member has received, during any twelve-month period within the last three years, more than \$100,000 in direct compensation from the exchange or any parent or subsidiary thereof, other than committee fees and pension or other forms of deferred compensation for prior service (*provided* that such compensation is not contingent in any way on continued service);

(iv) is, or an immediate family member is, a current partner of a firm that is the internal or external auditor of the Exchange or any parent or subsidiary thereof; is a current employee of such a firm; has an immediate family member who is a current employee of such a firm and who participates in the firm's audit, assurance or tax compliance (but not tax planning) practice; or was, or an immediately family member was, within the last three years (but is no longer) a partner or employee of such a firm and personally worked on the audit of the Exchange or any parent or subsidiary thereof; or

(v) is a current employee, or an immediate family member is a current executive officer, of a company that has made payments to, or received payments from, the listed company for property or services in an amount which, in any of the last three fiscal years, exceeds the greater of \$1 million, or 2% of such other company's consolidated gross revenues.

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For purposes of this Rule II-5, the terms “self-regulatory organization,” “disciplinary committee,” “arbitration panel,” “oversight panel,” “final decision,” “disciplinary offense,” and “settlement agreement” have the meanings set forth in CFTC Regulation § 1.63(a).

### **II-6. Power of the Board of Directors to Review Decisions**

The Board of Directors has the power and authority to call for review, and to affirm, modify, suspend or overrule, any and all decisions and actions of standing committees, special committees of the Board of Directors formed pursuant to Rule II-4(b) and officers of the Exchange appointed pursuant to Rule II-7.

### **II-7. Officers**

The Board of Directors shall appoint a President, one or more Vice Presidents, a Secretary, a Treasurer, one or more Assistant Secretaries, one or more Assistant Treasurers and such other officers as it may deem necessary or appropriate from time to time, in each case for such term and on such other conditions as it sees fit. Any officer of the Exchange may be a director, officer or employee of Cantor Fitzgerald, L.P.

### **II-8. Confidentiality of Deliberations**

(a) No member of the Board of Directors or any committee established by the Board of Directors or the Exchange shall use or disclose any material, non-public information obtained in connection with such member’s participation in the Board of Directors or such committee, for any purpose other than the performance of his or her official duties as a member of the Board of Directors or such committee.

(b) No employee or agent of the Exchange shall (i) trade in any commodity interest if such employee or agent of the Exchange has access to material non-public information concerning such commodity interest or (ii) disclose to any other Person material, non-public information obtained in connection with such employee or agent’s employment or agency, as the case may be, if such employee or agent of the Exchange could reasonably expect that such information might assist another Person in trading any commodity interest.

(c) For purposes of this Rule II-8, the terms “material information,” “non-public information” and “commodity interest” shall have the meanings ascribed to them in CFTC Regulation 1.59.

(d) Any Director or employee or agent of the Exchange who violates any provision of this Rule II-8 shall indemnify the Exchange for,

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and hold the Exchange harmless against, any losses, damages or costs that the Exchange may incur as a result of such violation.

### **II-9. Conflicts of Interest**

(a) *Definitions.* For purposes of this Rule II-9, the following definitions shall apply:

(i) The term “family relationship of a Person” shall mean such Person’s spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.

(ii) The term “Board” shall mean the Board of Directors, and any committee thereof duly authorized to take action or to recommend the taking of action on behalf of the Exchange.

(iii) The term “member’s affiliated firm” shall mean a firm in which a member of the relevant deliberating body is an employee or a “principal”, as defined in CFTC Regulation 3.1(a).

(iv) The term “named party in interest” shall mean a Person or entity that is identified by name as a subject of any matter being considered by the Board, a disciplinary committee or oversight panel.

(v) The term “significant action” shall mean any of the following types of actions or rule changes that are implemented without the CFTC’s prior approval:

(A) Any actions or rule changes which address an “Emergency”, as defined in Chapter I of these Rules; and

(B) Any changes in margin levels that are designed to respond to extraordinary market conditions or otherwise likely to have a substantial effect on prices in any Contract.

(b) *Named Party in Interest Conflict.*

(i) *Prohibition.* No member of the Board, a “disciplinary committee” or “oversight panel” (both as defined in CFTC Regulation 1.69) 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

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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 Privilege Holders.

(ii) *Disclosure.* Prior to consideration of any matter involving a named party in interest, each member of the deliberating body shall disclose to the President, or his or her designee, whether such member has or may have one of the relationships listed in paragraph (b)(i) of this Rule II-9 with a named party in interest.

(iii) *Procedure and Determination.* The President, or his or her designee, shall determine whether any member of the relevant 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 such member pursuant to clause (ii) 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.*

(i) *Prohibition.* No member of the Board, a “disciplinary committee” or “oversight panel” (both as defined in CFTC Regulation 1.69) 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 paragraph (c).

(ii) *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 President, or his or her designee, position information 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 such member’s personal accounts or “controlled accounts,” as defined in CFTC Regulation 1.3(j);

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- (B) gross positions held at the Exchange in “proprietary accounts”, as defined in CFTC Regulation 1.17(b)(3), at such member’s affiliated firm;
- (C) gross positions held at the Exchange in accounts in which such 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 such member’s affiliated firm; and
- (E) any other types of positions, whether maintained at the Exchange or elsewhere, held in such member’s personal accounts or the proprietary accounts of such member’s affiliated firm, that the Exchange reasonably expects could be affected by the significant action.

(iii) *Procedure and Determination.* The President, or his or her designee, shall determine whether any member of the relevant 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 such member with respect to positions pursuant to clause (ii) above 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. Unless the deliberating body establishes a lower position level, a member thereof shall be subject to the conflicts restriction in clause (i) above if the review by the President, or his or her designee, identifies a position in such member’s personal or controlled accounts or accounts in which such member is a principal as specified in subclauses (ii)(A), (C) and (E) above, in excess of an aggregate number of 10 lots of Futures and Options on Futures converted to Futures equivalents, taken together, or a position in the accounts of such member’s affiliated firm as specified in subclauses (ii)(B), (D) and (E) above, in excess of an aggregate number of 100 lots of Futures and Options on Futures converted to Futures equivalents, taken together.

(iv) *Deliberation Exemption.* Any member of the Board, a “disciplinary committee” or “oversight panel” (both as defined in Commission Regulation 1.69) who would otherwise be required to abstain from deliberations and voting pursuant to this paragraph (c) may participate in deliberations, but not voting, if the deliberating body, after considering the factors specified below, determines that such

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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 clause (ii) above which is the basis for such member's substantial financial interest in the significant action that is being contemplated. In making its determination, the deliberating body shall consider:

- (A) whether such member's participation in deliberations is necessary to achieve a quorum; and
- (B) whether such member has unique or special expertise, knowledge or experience in the matter being considered.

(d) *Documentation.* The minutes of any meeting to which the conflicts determination procedures set forth in this Rule II-9 apply shall reflect the following information:

(i) the names of all members of the relevant deliberating body who attended such meeting in person or who otherwise were present by electronic means;

(ii) the name of any member of the relevant deliberating body who voluntarily recused himself or herself or was required to abstain from deliberations or voting on a matter and the reason for the recusal or abstention, if stated; and

(iii) information on the position information that was reviewed for each member of the relevant deliberating body.

#### **II-10. Regulatory Cooperation**

The Exchange may from time to time enter into such agreements with domestic or foreign self-regulatory organizations, associations, boards of trade and their respective regulators providing for the exchange of information and other forms of mutual assistance for financial surveillance, routine audits, market surveillance, investigative, enforcement and other regulatory purposes as the Exchange may consider necessary or appropriate or as the CFTC may require.

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**CHAPTER III  
MEMBERSHIP AND TRADING PRIVILEGES**

**III-1. Member**

All equity interests in the Exchange are and at all times will be held by Cantor Fitzgerald, L.P., the sole Member of the Exchange, and all voting rights related to such interests shall be exercised by Cantor Fitzgerald, L.P. in accordance with the Operating Agreement.

**III-2. Authorized Traders**

Each Authorized Trader shall have the right to access the eSpeed System, including the right to place Orders for each of its proprietary accounts. Additionally, any Class A Authorized Trader that is otherwise registered in an appropriate capacity and authorized to act on behalf of Customers under the CEA and Commission Regulations thereunder, shall have the right to place Orders for the accounts of such Customers.

Subject to the requirements and procedures set forth in this Chapter III, Trading Privileges shall be offered to all applicants from time to time approved by the Exchange as eligible to be Authorized Traders, subject to any limitations or restrictions from time to time imposed by the Exchange. Trading Privileges are non-transferable, non-assignable and may not be sold or leased.

By virtue of obtaining Trading Privileges, an Authorized Trader shall not obtain any equity or other interest in the Exchange, including voting rights or rights to receive any dividends or other distributions, whether arising from a dissolution, merger, consolidation involving the Exchange or otherwise.

**III-3. Authorized Trader Representatives**

Each Class A Authorized Trader may from time to time appoint one or more individuals to act as its Authorized Trader Representative. Each Authorized Trader Representative must satisfy such requirements as may be prescribed by the Exchange from time to time. Each Class A Authorized Trader may at any time revoke an authorization granted by it to any Authorized Trader Representative by providing written notice of such revocation to the Exchange. Without limiting the foregoing, each Authorized Trader Representative will consent, in a form satisfactory to the Exchange, to abide by the Rules of the Exchange and Applicable Law prior to accessing the eSpeed System, and each Class A Authorized Trader will ensure that (i) none of its Authorized Trader Representatives will be subject to a disqualification pursuant to any Applicable Law (unless an appropriate exemption has been obtained with respect thereto) and (ii) each of its Authorized Trader Representatives will be technically proficient and will conduct its business in a fair and equitable manner.

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### **III-4. Eligibility**

A. Each applicant to become a Class A Authorized Trader must: (a) be of good financial standing and must meet the financial and related reporting requirements of Rules V-2, V-3, and V-6; (b) fall within one of the categories listed in clauses (a), (b) and (c) in the definition of the term “Class A Authorized Trader” in Chapter I of these Rules; (c) be a Clearing Privilege Holder or have in place a financial guarantee by a Clearing Privilege Holder in a form satisfactory to the Exchange; and (d) satisfy such other requirements or criteria as may from time to time be adopted by the Exchange.

The Exchange shall deny the grant of Trading Privileges where an applicant to become a Class A Authorized Trader has failed to meet any requirements for such grant.

The Exchange may deny (or may condition) the grant of Trading Privileges to an applicant to become a Class A Authorized Trader, or may prevent a Person from becoming associated (or may condition an association) with a Class A Authorized Trader for the same reasons for which the NFA may deny or revoke registration of such Person as a futures commission merchant.

B. Each applicant to become a Class B Authorized Trader that is a natural person must: (a) reside in the United States, (b) maintain a United States bank account in his or her own name, (c) have attained the age of majority in the individual’s state of residence, (d) not be a Class A Authorized Trader, and (e) satisfy such other requirements or criteria as may from time to time be adopted by the Exchange.

Each applicant to become a Class B Authorized Trader that is anything other than a natural person (e.g. a corporation, partnership, sole proprietorship or trust), must: (a) be duly organized in the United States, (b) be in good standing, (c) maintain a United States bank account in the name of the entity, (d) have the legal authority and be duly authorized and empowered to become a Class B Authorized Trader and to effect transactions on the Exchange, (e) not be a Class A Authorized Trader, and (f) satisfy such other requirements or criteria as may from time to time be adopted by the Exchange.

The Exchange shall deny the grant of Trading Privileges where an applicant to become a Class B Authorized Trader has failed to meet any requirements for such grant.

C. The Exchange may deny (or may condition) the grant of Trading Privileges, or may prevent a Person from becoming associated (or may condition an association) with an Authorized Trader if such Person:

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- (i) is unable satisfactorily to demonstrate a capacity to adhere to all applicable Rules of the Exchange, Rules of the Clearinghouse and CFTC Regulations, including those concerning record-keeping, reporting, finance and trading procedures;
- (ii) would bring the Exchange into disrepute; or
- (iii) for such other cause as the Exchange reasonably may decide.

The Exchange may determine not to permit an Authorized Trader or any Authorized Trader Representative to keep its Trading Privileges or in the case of an Authorized Trader Representative, maintain its association with an Authorized Trader, or may condition such Trading Privileges or association, as the case may be, if such Authorized Trader or Authorized Trader Representative:

- (i) fails to meet any of the qualification requirements for Trading Privileges or association after such Trading Privileges or association have been approved;
- (ii) fails to meet any condition placed by the Exchange on such Trading Privileges or association; or
- (iii) violates any agreement with the Exchange.

D. Any decision made by the Exchange pursuant to this Rule III-4 must be consistent with both the provisions of this Rule III-4 and the provisions of the CEA.

E. Any applicant to become an Authorized Trader who has been denied Trading Privileges or association with an Authorized Trader or granted only conditional Trading Privileges or association, pursuant to this Rule III-4, and any Authorized Trader or Authorized Trader Representative who is not permitted to keep its Trading Privileges or maintain its association with an Authorized Trader or whose Trading Privileges or association are conditioned pursuant to this Rule III-4, may appeal the Exchange's decision in accordance with the provisions of Chapter VII. No determination of the Exchange to discontinue or condition a Person's Trading Privileges or association with an Authorized Trader pursuant to this Rule III-4 shall take effect until the review procedures under Chapter VII have been exhausted or the time for review has expired.

F. Any applicant to become an Authorized Trader who has been rejected by the Exchange pursuant to these Rules shall not be eligible for re-application during the six months immediately following such rejection.

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**III-5. Application for Trading Privileges**

(a) Each application to become a Class A Authorized Trader shall be in such form as may from time to time be prescribed by the Exchange. Each applicant to become a Class A Authorized Trader shall promptly update the application materials if any of the information provided therein becomes inaccurate or incomplete after the date of submission and prior to any approval of the application. The Exchange shall act upon, and approve or disapprove, any such application without unreasonable delay.

(b) Each applicant approved as a Class A Authorized Trader in accordance with paragraph (a) above shall:

(i) pay to the Exchange such initial fee as may be prescribed by the Exchange from time to time; and

(ii) agree in writing to abide by the Rules of the Exchange and Applicable Law.

Upon satisfaction of the foregoing requirements, each applicant to become a Class A Authorized Trader shall automatically obtain Trading Privileges. If the application process is not completed within six months of its submission and payment of the required fee, the application shall be deemed to be withdrawn.

(c) Each application to become a Class B Authorized Trader shall be in such form as may from time to time be prescribed by the Exchange for such purpose. Each applicant to become a Class B Authorized Trader shall promptly update the application materials if any of the information provided therein becomes inaccurate or incomplete after the date of submission and prior to any approval of the application. The Exchange shall act upon, and approve or disapprove, any such application without unreasonable delay.

(d) Each applicant approved as a Class B Authorized Trader in accordance with paragraph (c) above shall:

(i) Make an initial deposit with the Exchange in an amount as may be prescribed by the Exchange from time to time; and

(ii) agree in writing to abide by the Rules of the Exchange and Applicable Law; and

(iii) certify that the Class B Authorized Trader has read and understands the risk disclosure statement provided by the

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Exchange and the Class B Authorized Trader will trade only for the Class B Authorized Trader and will not trade as an intermediary for any other person or entity.

Upon satisfaction of the foregoing requirements, each applicant to become a Class B Authorized Trader shall automatically obtain Trading Privileges. If the application process is not completed within six months of its submission, the application shall be deemed to be withdrawn.

#### **III-6. Dues, Assessments and Fees**

The Board of Directors shall have the sole authority to set the times and amounts of any dues, assessments or fees to be paid by Authorized Traders, which dues, assessments or fees shall be paid to the Exchange when due. Dues, assessments and fees may differ for Class A Authorized Traders and Class B Authorized Traders.

If an Authorized Trader fails to pay when due any Exchange dues, assessments or fees levied on such Authorized Trader, and such payment obligation remains unsatisfied for six consecutive months after its due date, the Exchange may suspend, revoke, limit, condition, restrict or qualify the Trading Privileges of such Authorized Trader as it deems necessary or appropriate.

#### **III-7. Limitations of Trading Privileges**

(a) Notwithstanding anything in Rule III-4 to the contrary, the Exchange may at any time suspend, revoke, limit, condition, restrict or qualify the Trading Privileges of any Authorized Trader if, in the sole discretion of the Executive Committee, such action is in the best interests of the Exchange. Any such sanction imposed on an Authorized Trader pursuant to this paragraph (a) may be appealed by such Authorized Trader in accordance with the provisions of Chapter VII.

(b) If a Clearing Privilege Holder revokes any authorization granted and guarantee made by it to any Class A Authorized Trader, such Class A Authorized Trader's Trading Privileges shall be automatically terminated, and such Class A Authorized Trader must obtain another guarantee from a Clearing Privilege Holder before its Trading Privileges will be reinstated. If such Class A Authorized Trader fails to obtain such a replacement guarantee within three months from the revocation of the guarantee by its previous Clearing Privilege Holder, its Trading Privileges shall be automatically terminated.

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### **III-8. Application of Rules and Jurisdiction Following Termination**

(a) By accessing, or entering any Order into, the eSpeed System, and without any need for any further action, undertaking or agreement, an Authorized Trader or its Authorized Trader Representative, if any, agrees (i) to be bound by, and comply with, the Rules of the Exchange, the Rules of the Clearinghouse and Applicable Law, in each case to the extent applicable to it, and (ii) to become subject to the jurisdiction of the Exchange with respect to any and all matters arising from, related to, or in connection with, the status, actions or omissions of such Authorized Trader or Authorized Trader Representative.

(b) Any Authorized Trader or Authorized Trader Representative whose Trading Privileges are revoked or terminated, shall remain bound by the Rules of the Exchange, the Rules of the Clearinghouse and Applicable Law, in each case to the extent applicable to it, and subject to the jurisdiction of the Exchange with respect to any and all matters arising from, related to, or in connection with, the status, actions or omissions of such Authorized Trader or Authorized Trader Representative prior to such revocation or termination.

### **III-9. Recording of Communications**

The Exchange may record conversations and retain copies of electronic communications between officers, employees or agents of the Exchange, on one hand, and Authorized Traders or Authorized Trader Representatives, on the other hand. Any such recordings may be retained by the Exchange in such manner and for such periods of time as the Exchange may deem necessary or appropriate.

### **III-10. Notices**

The Exchange shall publish a notice with respect to each addition to, modification of, or clarification of, the Rules of the Exchange or of any action to implement any Rules of the Exchange, in a form and manner that is reasonably designed to enable each Authorized Trader to become aware of and familiar with, and to implement any necessary preparatory measures to be taken by it with respect to, such addition or modification, prior to the effective date thereof; *provided* that any failure of the Exchange to so publish a notice shall not affect the effectiveness of the addition or modification in question. For purposes of publication in accordance with the first sentence of this Rule III-10, it shall be sufficient (without limiting the discretion of the Exchange as to any other reasonable means of communication) if a notice is published on the Exchange's website.

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**CHAPTER IV  
TRADING STANDARDS**

**IV-1. Contracts Traded on the Exchange**

The Exchange shall determine which Contracts are available for trading subject to the Rules of the Exchange from time to time and approve rules containing the specifications for such Contracts, *provided* that certifications or applications with respect to such Contracts shall be submitted to the CFTC as required by the CEA and CFTC Regulations.

**IV-2. Business Days and Trading Hours**

The Exchange shall from time to time determine (a) the Business Days during any particular calendar year and (b) the Trading Hours with respect to any particular Contract. All time references shall be based on local time prevailing in The City of New York, New York, unless otherwise expressly set forth in the relevant Contract Rules. Opening times start on the first second of the minute cited. Closing times end on the last second of the minute cited. Trading Hours may vary among different Contracts. No Authorized Trader may make any bid or offer for, or engage in any transaction in, any Contract before or after such hours.

The Exchange may from time to time adopt procedures for the opening or closing of trading in any Contract.

**IV-3. Order Entry**

(a) Each Authorized Trader (including its Authorized Trader Representatives, if any) shall enter Orders by electronic transmission to the eSpeed System, and the Exchange shall maintain an electronic record of those entries. Each Authorized Trader (including its Authorized Trader Representatives, if any) shall be responsible for any and all Orders to be entered by it. All Orders must contain the following information: (i) whether such Order is a buy or sell Order; (ii) Order type, (iii) commodity; (iv) contract month; (v) price; (vi) quantity; (vii) account type, (viii) account designation (the number assigned by an Authorized Trader to each of its accounts); (ix) in the case of Orders for Options on Futures, strike price, type of option (put or call) and expiration month; and (x) such additional information as may be prescribed from time to time by the Exchange.

(b) With respect to orders received by a Class A Authorized Trader (including its Authorized Trader Representatives, if any) which are immediately entered into the eSpeed System, no record needs to be kept by such Class A Authorized Trader. However, if a Class A Authorized Trader (including its Authorized Trader Representative, if any) receives an

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Order which cannot be immediately entered into the eSpeed System, such as Class A Authorized Trader must prepare an order form in a non-alterable written medium, which shall be time-stamped and include the account designation, date and other required information. Each such form must be retained by the Class A Authorized Trader for at least five years from the time it is prepared. Any such Orders must be entered into the eSpeed System in the order they were received as soon as they can be entered into the eSpeed System.

### **IV-4. Acceptable Orders**

At the discretion of the Exchange, the following types of Orders, as well as any other types that may be approved from time to time, may be entered into the eSpeed System by Authorized Traders (or their Authorized Trader Representatives) with respect to a Contract:

(i) *Limit Orders.* A “Limit Order” is an Order to purchase or sell a Contract at a specified price or better. A Limit Order will be executed when entered to the extent that there are opposite Orders open in the eSpeed System, with any balance to remain as an open Order until it automatically expires at the end of the Trading Hours on the calendar day such order is placed, is executed or is cancelled.

(ii) *Market Orders.* A “Market Order” is an Order to purchase or sell a Contract at the best price available in the eSpeed System at the time the Order is entered. A Market Order will be executed when entered to the extent that there are opposite Orders open in the eSpeed System, with any balance to remain as an open Order until it automatically expires at the end of the Trading Hours on the calendar day such order is placed, is executed or is cancelled. If the eSpeed System does not list or publish a price for a Contract, then before a Market Order can be executed, an Authorized Trader or Authorized Trader Representative must enter a request for quotation for the relevant Contract.

(iii) *Good-Until-Cancelled Order.* A “Good-Until-Cancelled Order” is an Order that, unless executed, remains on the eSpeed System after the Authorized Trader or Authorized Trader Representative has signed off from the eSpeed System and until the close of the Trading Hours on the calendar day such order is placed.

(iv) *Stop Limit Order.* A “Stop Limit Order” is an Order to buy or sell a stated number of Contracts at the best obtainable price as soon as the specified price threshold is reached but only up to a specified limit price level. A buy stop limit order is placed above the

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best available bid or offer, whereas a sell stop limit order is placed below the best available bid or offer.

(v) *Stop Order.* A “Stop Order” is an Order to buy or sell a stated number of Contracts at the best obtainable price as soon as the specified price threshold is reached.

#### **IV-5. Modification and Cancellation of Orders**

Any Order that has been entered into the eSpeed System may be modified or cancelled unless and until it has been executed or has otherwise expired. Any such modification or cancellation requires that a Cancel Replace Order or Cancel Order, as the case may be, with respect to the original order be entered into the eSpeed System. Such modification or cancellation will become effective upon receipt by the eSpeed System of the Cancel Order or Cancel Replace Order, as the case may be.

#### **IV-6. Execution of Orders by the eSpeed System**

Orders to buy or sell any Contract are subject to the minimum trading requirements specified in the relevant Contract Rules. All Orders are matched with each other and executed electronically through the eSpeed System in accordance with an algorithm that gives first priority to Orders at the best price and priority among Orders entered at the same price based on their time of entry into the eSpeed System, with the Order first entered receiving first priority. Without limiting the generality of the foregoing, the algorithm to match Orders entered in the eSpeed System is based upon the following principles:

(a) An Order at a better price will always have priority over Orders at inferior prices. As among Orders at the same price, an Order with time priority will be executed before Orders that have been entered after the Order with time priority. An Order with time priority will not lose such priority if the quantity of the Order is subsequently reduced. However, an Order will be stamped with a new time of receipt by the eSpeed System if the price of the Order is changed.

(b) After the commencement of Trading Hours on a business day for a particular Contract, time priority will be assigned to the first Order at a price that betters the best price prevailing when the Order is received. Only one buy Order and one sell Order can have time priority at any given time. Orders with time priority will be matched first regardless of their respective sizes.

(c) An Order will not lose time priority with respect to Orders at the same price if and when an Order at a better price is entered, but it will lose price priority.

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(d) Once an Order with time priority has been filled, the algorithm described herein will be applied to the remaining Orders at the same price. Thus, the Order received immediately after the Order that initially had time priority will be assigned time priority and be the next Order to be executed at such price.

Notwithstanding anything in these Rules to the contrary, the Exchange may at any time use a different matching algorithm for a particular Contract by giving notice of such algorithm to all Authorized Traders at least 10 days before such algorithm is implemented.

#### **IV-7. Market Crossing**

The Exchange may from time to time adopt procedures for facilitating crossing of orders through the eSpeed System.

#### **IV-8. Information Regarding Orders**

The Exchange will make information regarding Orders (including prices bid or offered), trades and any other matters it may deem appropriate available to Authorized Traders, Authorized Trader Representatives and other Persons at such times and in such manner (whether through the eSpeed System, a ticker, financial information services or otherwise) as it may consider necessary or advisable from time to time.

Each Authorized Trader, Authorized Trader Representative or other Person receiving any such information through the eSpeed System may redistribute such information only to such extent and in such manner as may be permitted by the Board of Directors from time to time. Employees and agents of the Exchange shall have access to the offices of any Authorized Trader or Authorized Trader Representative during regular business hours in order to observe the compliance by such Authorized Trader and Authorized Trader Representative with the immediately preceding sentence.

#### **IV-9. Application and Closing Out of Offsetting Positions**

Any Class A Authorized Trader of the Exchange that is registered with the CFTC as a futures commission merchant must comply with the provisions of CFTC Regulation 1.46.

#### **IV-10. Errors of Authorized Traders**

(a) *Price Errors relating to trades by Authorized Traders.*

(i) Whenever an Authorized Trader believes it executed a trade in a Contract at a price that was in error (including a handle error), it should notify the Exchange immediately. A third party

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(including any Exchange Official) that becomes aware that any trade by an Authorized Trader in a Contract may have been executed at a price that was in error (including a handle error) may also notify the Exchange. In each case, if the Exchange is not so notified within the 10 minutes immediately following the execution of the trade in question, such trade cannot be challenged in accordance with this Rule IV-10.

(ii) A trade challenged pursuant to clause (i) above shall not be broken unless the price at which such trade was executed is outside of the No Break Range for the relevant Contract.

(iii) If the price at which a trade was executed is outside the No Break Range for the relevant Contract:

- (A) The Exchange will use its best efforts to contact the affected parties;
- (B) If there are only two parties to such trade and both parties agree to break such trade and no other Person has objected, the Exchange will declare such trade broken;
- (C) If: (1) there are only two parties to such trade but they do not agree to break such trade, (2) there are more than two parties to such trade, (3) a third Person has objected to breaking such trade or (4) the Exchange has been unable to contact one or more of the parties to such trade, then, in each case, the Exchange will convene an error committee of the Exchange, which will review the circumstances surrounding the alleged error trade to determine whether such trade should be broken. In making such determination, such error committee will consider all factors deemed relevant by it under the circumstances, including, without limitation, the following: market conditions immediately before and after the transaction; prices of any related Contracts; whether any of the parties to the transaction believe the trade in question was executed at a valid price; the extent, if any, to which the transaction appears to have triggered contingency orders and other trades; and any information relayed to the Exchange, or such error committee by third parties. Unless impracticable under the circumstances, such determination will be made within the 15 minutes immediately following the notification of the Exchange. The Exchange will use

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its best effort to promptly notify each of the parties to the transaction and any third party who notified the Exchange, in accordance with clause (i) above of such determination, which determination will be final and not subject to appeal.

(iv) If a trade is broken in accordance with clause (iii) above, it will be identified as such on the eSpeed System and removed by the Exchange from its records.

(v) If a trade is not broken by an error committee convened in accordance with subclause (iii)(C) above, the parties thereto may mutually agree to make an adjustment therefore, which must be promptly reported in writing to the Exchange, *provided* that under no circumstances are the parties permitted to reverse an alleged error by entering into a prearranged transaction.

(vi) For purposes of this Rule IV-10, the term “No Break Range” with respect to any Contract shall mean the range specified in the relevant Contract Rules, *provided* that an Authorized Trader placing a Limit Order cannot claim that the price at which a trade was executed is outside the No Break Range for the relevant Contract as long as such price is within the specified price range for such Limit Order.

#### (b) *Other Errors discovered by Authorized Traders.*

(i) If an Authorized Trader discovers an error in the handling of an Order after the relevant trade is completed, and such Order cannot be executed in the market at a price which is better than or equal to that which such Order should have received, such Authorized Trader will make cash payments or other adjustments as are appropriate to rectify the error.

(ii) A violation of this Rule IV-10(b) for the purpose of taking advantage of an Order or Orders shall be considered to be conduct which is inconsistent with just and equitable principles of trade.

(iii) This Rule IV-10(b) shall not be construed to contravene any instructions received from a Customer respecting any Order prior to its execution, but shall be construed to permit execution of Orders under the conditions described without prior instructions from the Customer.

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**IV-11. Position Limits**

(a) Position limits shall be established by the Exchange from time to time. Such position limits may be specific to a particular Contract or delivery month or may be established on an aggregate basis among Contracts or delivery months. Except as specified in paragraph (b) and (c) below, no Person shall control, or trade in, any number of Contracts (in combination of Futures and Options on Futures (converted to Futures equivalents)) that exceeds any position limits so established by the Exchange. Except as specified in paragraph (b) and (c) below, no Person shall be permitted to enter into any transaction on the Exchange that would cause such Person to exceed any position limits.

(b) Upon application to the Exchange, in accordance with paragraph (d) below, qualified hedge transactions shall automatically be exempt from the position limits that would otherwise apply. For purposes of this Rule IV-11, the term “qualified hedge transaction” shall include any transaction or position in a particular Contract that represents a substitute for transactions to be made or positions to be taken at a later time in the commodity underlying such Contract, *provided* that the transaction entered into or position taken on the Exchange is economically appropriate to reduce risks arising from:

(i) any potential change in the value of assets that a Person owns, produces, manufactures, processes or merchandises or anticipates owning, producing, manufacturing, processing or merchandising;

(ii) any potential change in the value of liabilities that a Person owes or anticipates incurring;

(iii) any potential change in the value of services that a Person provides, purchases or anticipates providing or purchasing; or

(iv) any other good cause shown, as determined by the Exchange, in its sole discretion.

(c) On the basis of an application to the Exchange in accordance with paragraph (d) below, and such supplemental information as the Exchange may request, the Exchange will determine whether to approve a particular transaction as an arbitrage or spread transaction. In granting any such approval, the Exchange may impose such limitations as it may deem necessary or appropriate in light of the liquidity of the markets involved and the Person’s financial condition and business circumstances. Subject to any such limitations, transactions approved in accordance with

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the immediately preceding sentence shall be exempt from the position limits that would otherwise apply.

(d) Any application for an exemption from position limits for a hedging, arbitrage or spread transaction must be made by the relevant Person wishing to enter into the transaction or wishing to take the position at issue to the Exchange in such form, and within such time limits, as the Exchange may from time to time prescribe. Without limiting the foregoing, any such application must include the following:

(i) If a qualified hedge transaction, an arbitrage transaction or a spread transaction, a representation that such transaction or position constitutes a qualified hedge transaction, an arbitrage transaction or a spread transaction, as the case may be, and is not used in an attempt to violate or avoid any Rule of the Exchange;

(ii) If a qualified hedge transaction, a representation that such transaction or position is necessary or advisable as an integral part of the business of such Person, which representation shall also include a description of such business;

(iii) If an arbitrage or spread transaction, an undertaking that the prospective arbitrageur or spreader will specify the extent of the Person's current or planned activity in the cash market underlying the Contract for which such exemption is requested;

(iv) If an arbitrage or spread transaction, a representation that the positions involved are moved in an orderly manner and not initiated or liquidated in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes;

(v) A representation that such Person has complied with any applicable federal requirement relating to hedging, arbitrage or spread transactions, as the case may be, and has obtained any and all necessary approvals from the CFTC;

(vi) A schedule of the maximum number of Contracts, long and short, that such Person intends to enter into for hedging, arbitrage or spread transaction purposes, as the case may be;

(vii) An agreement that such Person will comply with any additional limits on its trading as the Exchange may from time to time impose; and

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(viii) An agreement by such Person to submit promptly a supplemental statement explaining any change in circumstances that may affect the nature of its positions.

Any exemption from the speculative position limits for hedging purposes must be renewed annually, by filing a renewal application in accordance with this paragraph (d).

(e) In determining whether any Person has exceeded the position limits established by the Exchange, all positions in accounts for which such Person, by power of attorney or otherwise, directly or indirectly controls trading (whether on a proprietary basis or on behalf of Customers) shall be included. Position limits shall apply to positions held by two or more Persons acting pursuant to an express or implied agreement or understanding in the same manner as if such positions were held by a single Person.

(f) The Exchange shall have the authority to review and rescind any exemption granted by him or her pursuant to paragraphs (b) and (c) above at any time in its sole discretion.

(g) For purposes of paragraph (e) above, "control" exists when the Person in question makes investment decisions for the account or accounts in question or materially influences, directly or indirectly, the actions of any Person who makes such investment decisions. In addition, "control" will be presumed to exist in the following circumstances:

(i) Among all parties to a joint account who have authority to act on behalf of such account;

(ii) Among all general partners to a partnership account;

(iii) If a Person (A) holds an ownership interest of 10 percent or more in the Person holding the account or accounts in question, or (B) shares in 10 percent or more of the profits or losses related to such account or accounts;

(iv) If the Persons holding the account or accounts in question have common directors or management; or

(v) If a Person has the authority to execute transactions in the account or accounts in question.

Any presumption of control on the basis of the foregoing circumstances can be rebutted by proving that such circumstances do not exist or by showing other circumstances which negate the presumption of control.

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Initial determinations of “control” shall be made by the President or his or her designee.

### **IV-12. Price Limits.**

The rules governing a particular Contract shall contain any price limits that apply to trading in such Contract.

### **IV-13. Reportable Positions**

(a) Each Authorized Trader required to file any report, statement, form or other information with the CFTC pursuant to CFTC Regulations Part 15, 17, 18 or 19 concerning any Contract or commodity underlying a Contract must simultaneously file a copy of such report, statement, form or other information with the Exchange. Each Authorized Trader must submit the report, statement, form or other information to the Exchange in the form and manner designated by the Exchange.

(b) For purposes of filings made or information provided to the Exchange pursuant to CFTC Regulations Part 15, 17 and 18, each Authorized Trader must report such open contract positions at levels as the Exchange establishes from time to time.

### **IV-14. Dual Trading; Crossing Trades**

(a) A Class A Authorized Trader may act both as an agent and as a principal in entering Orders into the eSpeed System in the course of trading on any given day, *provided* that no Class A Authorized Trader (including its Authorized Trader Representatives, if any) shall purchase or sell a Contract for its own account or for proprietary or family accounts while holding an Order for another Person for the same Contract which is executable at the market price or at the price at which such purchase or sale can be made for such Class A Authorized Trader’s own account or for proprietary or family accounts.

(b) A Class A Authorized Trader holding, at the same time, Orders to buy and sell the same Contract (*i.e.*, (i) in the case of a Future, for the same delivery month and (ii) in the case of an Option on Futures, for the same type (put or call), expiration date and strike price) from different Customers must enter each such Order on the eSpeed System such that all such Orders are posted prior to offset.

### **IV-15. EFP Transactions**

(a) A *bona fide* EFP may be entered into by Class A Authorized Traders (or their Authorized Trader Representatives) with respect to any

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Contract in accordance with the applicable trading increments set forth in the relevant Contract Rules, at a price mutually agreed upon by the parties to such transaction. Each EFP must contain the following three essential elements:

(i) A Futures transaction and a cash transaction that are integrally related;

(ii) An exchange of Futures for the underlying commodity where the commodity contract provides for the transfer of ownership of the commodity to the cash buyer upon performance of the terms of such contract, with delivery to take place within a reasonable time thereafter, in accordance with prevailing cash market practice; and

(iii) Separate Persons, such that the accounts involved on each side of the EFP have different beneficial ownership or are under separate control.

(b) In every EFP, one party must be the buyer of the commodity and the seller of the corresponding Futures and the other party must be the seller of the commodity and the buyer of the corresponding Futures. Further, the quantity of the commodity traded in an EFP must be equivalent to the quantity of the commodity represented by the Futures portion of the transaction.

(c) EFP transactions must be reported to the Exchange in a manner prescribed from time to time by the Exchange. EFP transactions executed during Trading Hours must be reported to the Exchange within 30 minutes of agreement by the parties and no later than 15 minutes prior to the Contract's Trading Hours close time.

(d) EFP transactions executed after the Exchange's Trading Hours must be reported within 15 minutes after the opening of the next Business Day.

(e) For EFP transactions between two Class A Authorized Traders or Customers of one or both of the Class A Authorized Traders, the Exchange requires both Class A Authorized Traders to report the transactions.

(f) The Exchange will review the information submitted by the Class A Authorized Traders for the EFP transaction and will post the transaction to the eSpeed System if the transaction details are complete and accurate in accordance with this Rule. The Exchange will immediately publicize information identifying the transaction as an EFP trade and identifying the relevant Contract, contract month, quantity and, if

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applicable, whether the transaction involved a put or a call and the strike price.

(g) Each Clearing Privilege Holder involved in an EFP shall maintain records evidencing compliance with the criteria set forth in this Rule IV-15. Upon request, such Clearing Privilege Holder shall provide documentation evidencing the underlying cash transaction to the Exchange or the NFA.

(h) EFP transactions are not permitted during the last Business Day for a Contract delivery month.

(i) EFP prices will not trigger unexecuted Orders.

#### **IV-16. Block Trading**

(a) Class A Authorized Traders may enter into transactions outside the eSpeed System, at prices mutually agreed, with respect to Contracts that have been designated by the Exchange for such purpose (each, a "Block Trade Contract"), *provided* that all of the following conditions are satisfied (each such transaction, a "Block Trade"):

(i) Each buy or sell Order underlying a Block Trade must (A) state explicitly that it is to be, or may be, executed by means of a Block Trade, (B) be for at least such minimum number of Contracts as may from time to time be specified by the Exchange, and CFTC Regulations and (c) meet any other applicable CFTC Regulations governing block trades, *provided* that only (x) a commodity trading advisor registered under the Act, (y) an investment advisor registered as such with the SEC that is exempt from regulation under the CEA and CFTC Regulations and (z) a Class A Authorized Trader authorized to perform functions similar or equivalent to those of a commodity trading advisor in any jurisdiction outside the United States in which the Exchange may be permitted from time to time to place eSpeed Terminals, in each case with total assets under management exceeding \$25 million, may satisfy this requirement by aggregating orders for different accounts.

(ii) Each party to a Block Trade must qualify as an "Eligible Contract Participant" (as such term is defined in Section 1a(12) of the CEA), *provided* that, if the Block Trade is entered into on behalf of Customers by (A) a commodity trading advisor registered under the CEA, (B) an investment advisor registered as such with the SEC that is exempt from regulation under the CEA and CFTC Regulations or (C) a Class A Authorized Trader authorized to perform functions similar or equivalent to those of a commodity trading advisor in any jurisdiction

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outside the United States in which the Exchange may be permitted from time to time to place eSpeed Terminals, in each case with total assets under management exceeding \$25 million, then only such commodity trading advisor or investment adviser, as the case may be, but not the individual Customers, need to so qualify.

(b) Each party to a Block Trade shall comply with all applicable Rules of the Exchange other than those which by their terms only apply to trading through the eSpeed System.

(c) When negotiating or executing a Block Trade, a Class A Authorized Trader or Authorized Trader Representative must ensure that the price quoted for a Block Trade represents a fair price. When determining a fair price, a Class A Authorized Trader or Authorized Trader should take into account the prevailing bids and offers and volume currently available in the eSpeed System.

(d) Block Trades must be reported to the Exchange in a manner prescribed from time to time by the Exchange. Block Trades must be reported to the Exchange within 15 minutes after the completion of negotiations, but may not be submitted any later than 15 minutes prior to the Contract's Business Day close time.

(e) For Block Trades between two Class A Authorized Traders or Customers of one or both of the Class A Authorized Traders, the Exchange requires both Class A Authorized Traders to report the Block Trade.

(f) The Exchange will review the information submitted by the Class A Authorized Trader(s) for the Block Trade and will post the Block Trade to the eSpeed System if the details are complete and accurate in accordance with this Rule. The Exchange will immediately publicize information identifying the trade as a Block Trade and identifying the relevant Contract, contract month, price or premium, quantity and, if applicable, whether the transaction involved a put or a call and the strike price.

(g) Block Trades are not permitted during the last Business Day for a Contract delivery month.

(h) Block Trade prices will not trigger unexecuted Orders.

(i) Each Class A Authorized Trader that is party to a Block Trade shall record the following details on its order ticket: the Contract (including the delivery or expiry month) to which such Block Trade relates; the number of Contracts traded; the price of execution or premium; the

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time of execution; the identity of the counterparty; and, if applicable, details regarding the Customer for which the Block Trade was executed, the underlying commodity, whether the transaction involved a put or a call and the strike price. Upon request by the Exchange, such Class A Authorized Trader shall produce satisfactory evidence, including the order ticket referred to in the preceding sentence, that the Block Trade meets the requirements set forth in this Rule IV-16.

(j) Any Block Trade in violation of these requirements shall constitute conduct which is inconsistent with just and equitable principles of trade.

#### **IV-17. Exchange of Futures for, or in connection with, Swap Transaction**

(a) An exchange of futures for, or in connection with, a swap transaction ("EFS") consists of two discrete, but related, transactions: a purchase and sale of Futures and a related swap transaction. At the time an EFS is effected, the buyer and seller of the Futures must be the seller and the buyer, respectively, of the swap. The swap component of an EFS shall involve the commodity underlying the Futures, or a derivative, by-product or related product of such commodity. The quantity of such commodity covered by the swap must be approximately equivalent to such quantity covered by the Futures. The swap component of an EFS must comply with the requirements of the CEA and CFTC Regulations thereunder.

(b) Notification of each EFS shall be given to and posted by the Exchange, in the manner from time to time specified by the Exchange, on the day on which such EFS is effected (or, in the case of an EFS entered into after the closing of trading on such day, then on the next succeeding Business Day). Each EFS shall be cleared in accordance with normal procedures, shall be clearly identified and marked in the same manner as an EFP, and shall be recorded by the Exchange and by the Clearing Privilege Holders involved.

(c) In addition to the notification required by paragraph (b) above, a report of each EFS shall be submitted to the Exchange by each Clearing Privilege Holder involved in clearing the Futures component of such EFS. Such report shall identify the EFS as having been effected under this Rule IV-17, and shall contain the following information: a statement that the swap component of the EFS complied with the requirements of the CEA and CFTC Regulations thereunder at the time the EFS was entered into, a statement that the EFS has resulted or will result in a change of payments or other such change, the kind and quantity of the Futures component, the price at which the Futures component is to be cleared, the name of each Clearing Privilege Holder

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and Customer involved in the EFS, and such other information as the Exchange may require. Such report shall be submitted to the Exchange no later than 12:00 p.m. on the date that is two Business Days after the date on which the relevant EFS is effected.

(d) The Exchange has the right to require the parties to an EFS to demonstrate that such EFS is legitimate and satisfies the requirements set forth in paragraph (a) above. Upon request by the Exchange, all documentary evidence relating to an EFS, including a master swap agreement and any schedules and other documents related thereto, shall be obtained by the Clearing Privilege Holders involved in such EFS from the parties thereto, and made available by such Clearing Privilege Holders for examination by the Exchange.

(e) All omnibus accounts and Class A Authorized Traders acting as such in jurisdictions outside the United States shall submit to the Exchange a signed EFS reporting agreement, in the form from time to time specified by the Exchange. Such agreement shall provide that any omnibus account or Class A Authorized Trader identified by a Clearing Privilege Holder (or another omnibus account or Class A Authorized Trader) as the buyer or seller of an EFS pursuant to paragraph (c) above shall supply the name of its Customer and such other information as the Exchange may require. Such information shall be submitted to the Exchange no later than 12:00 p.m. on the date that is two Business Days after the date on which the relevant EFS is effected. Failure by an omnibus account or Class A Authorized Trader to submit either such agreement or such information regarding a particular EFS to the Exchange may result in a hearing by the Disciplinary Committee to limit, condition or deny access of such omnibus account or foreign broker to the market.

#### **IV-18. Transfers of Positions**

(a) A Clearing Privilege Holder may transfer a position on its books to:

(i) correct errors in an existing Contract, provided that the original trade documentation confirms the error;

(ii) transfer an existing Contract from one account to another within the same Authorized Trader where no change in ownership is involved;

(iii) transfer an existing Contract from one Clearing Privilege Holder to another Clearing Privilege Holder where no change in ownership occurs; or

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(iv) transfer an existing Contract through operation of law from death or bankruptcy.

(b) Upon written request, the Exchange may, in its sole discretion, allow the transfer of a position as a result of a merger, asset purchase, consolidation, or similar non-recurring transaction for a Person that is an organization.

(c) Clearing Privilege Holders must transfer positions pursuant to this Rule IV-18 at the same prices that appear on the books of the transferring Clearing Privilege Holder, and the transfer must indicate the date when the original trade was made. Each Clearing Privilege Holder that is a party to a transfer of positions must make and retain records stating the nature of the transaction and the name of the counter-party Clearing Privilege Holder. Each Clearing Privilege Holder that is a party to a transfer of positions must adhere to the Rules of the Clearinghouse related to transfers of positions and must provide any information required by the Clearinghouse related to such transfer.

**IV-19. Emergencies**

(a) *General.* In the event of an Emergency, the President or any individual designated by the President and approved by the Board of Directors, may place into immediate effect a temporary emergency rule, which may remain in effect for up to 30 Business Days and which may provide for, or may authorize the Board of Directors or any committee thereof to undertake, actions necessary or appropriate to respond to the Emergency, including such actions as:

(i) limiting trading to liquidation only, in whole or in part;

(ii) changing the delivery month or extending or shortening the term of any Contract;

(iii) changing delivery points or the means of delivery provided in any relevant Contract Rules;

(iv) imposing or modifying position or price limits with respect to a particular Contract;

(v) ordering the liquidation of Contracts, the fixing of a Settlement Price or any reduction in positions;

(vi) ordering the exercise of Options on Futures;

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(vii) ordering the transfer of Contracts, and the money, securities, and property securing such Contracts, held on behalf of Customers by any Class A Authorized Trader to one or more other Class A Authorized Traders willing to assume such Contracts or obligated to do so;

(viii) extending, limiting or changing the hours of trading;

(ix) suspending or curtailing trading in any or all Contracts or modifying circuit breakers;

(x) requiring Clearing Privilege Holders, Authorized Traders or Customers to meet special margin requirements; or

(xi) modifying or suspending any provision of the Rules of the Exchange or the Rules of the Clearinghouse.

Any such action placed into effect in accordance with the preceding sentence shall be reviewed by the Board of Directors as soon as practicable under the circumstances and may be revoked, suspended or modified by the Board of Directors.

(b) *Physical Emergency.* If, in the judgment of the President, or any individual designated by the President and approved by the Board of Directors, the physical functions of the Exchange are, or are threatened to be, severely and adversely affected by a physical emergency, such Person shall have authority to take such action as he or she may deem necessary or appropriate to respond to such physical emergency, including closing the Exchange, delaying the opening of trading in one or more Contracts or suspending trading in or extending trading hours for one or more Contracts. In the event that any action has been taken pursuant to the immediately preceding sentence, any Person who is authorized to take such action may order the removal of any restriction previously imposed pursuant to such sentence, upon a determination by such Person that the physical emergency that gave rise to such restriction has sufficiently abated to permit the physical functions of the Exchange to continue in an orderly manner. Any order by any Person pursuant to this sentence shall be subject to review, modification or reversal by the Board of Directors. In the event that trading is suspended in any or all Contracts, unexecuted Orders for the suspended Contracts that are currently resting in the eSpeed System will automatically be cancelled and must be resubmitted by the Authorized Traders upon resumption of trading in the affected Contracts.

(c) *Notification and Recording.* The Exchange will notify the CFTC of any action taken, or proposed to be taken, pursuant to this Rule

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IV-19 in accordance with CFTC Regulation § 40.6. The decision-making process with respect to, and the reasons for, any such action will be recorded in writing.

(d) *Conflicts of Interest.* The conflict of interest provisions set forth in Rule II-9 and the related documentation requirements set forth in Rule II-9 shall apply, with any such modifications or adaptations as may be necessary or appropriate under the circumstances, to the taking of any action under this Rule IV-19 by the President, or his or her designee.

#### **IV-20. Information regarding Nominal Prices and Settlement Prices**

Pursuant to CFTC Regulation 16.01(b)(3), the Exchange shall make readily available to the public, in printed form at the office of the Exchange and on its website, the method used by the Exchange in determining nominal prices and settlement prices, and if discretion is used by the Exchange in determining the opening and closing ranges or the settlement prices, an explanation that certain discretion may be employed by the Exchange and a description in which that discretion may be employed.

#### **IV-21. Limitation of Liability**

EXCEPT AS OTHERWISE PROVIDED, AND EXCEPT IN INSTANCES WHERE THERE HAS BEEN A FINDING OF WILLFUL OR WANTON MISCONDUCT, IN WHICH CASE THE PARTY FOUND TO HAVE ENGAGED IN SUCH CONDUCT CANNOT AVAIL ITSELF OF THE PROTECTIONS IN THIS RULE IV-21, NEITHER THE EXCHANGE (INCLUDING ITS AFFILIATES AND ANY CONTRACTORS AND SUB-CONTRACTORS PROVIDING SERVICES TO THE EXCHANGE) NOR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS SHALL BE LIABLE TO ANY OTHER PERSON, INCLUDING ANY CUSTOMER, FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES (INCLUDING LOSS OF PROFITS, LOSS OF USE, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES), ARISING FROM (A) ANY FAILURE OR MALFUNCTION, INCLUDING ANY INABILITY TO ENTER OR CANCEL ORDERS, OF THE ESPEED SYSTEM OR ANY EXCHANGE SERVICES OR FACILITIES USED TO SUPPORT THE ESPEED SYSTEM, OR (B) ANY FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY OR TERMINATION, OR ANY OTHER CAUSE, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF THE ESPEED SYSTEM OR ANY EXCHANGE SERVICES OR FACILITIES USED TO SUPPORT THE ESPEED SYSTEM. THE FOREGOING SHALL APPLY REGARDLESS OF WHETHER A CLAIM ARISES IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. FURTHERMORE, THERE SHALL BE NO LIABILITY BASED UPON, OR IN CONNECTION WITH, ANY QUOTE OR OTHER INFORMATION IF NO

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CORRELATIVE PURCHASE OR SALE OF A CONTRACT IS MADE, AND IF A CORRELATIVE PURCHASE OR SALE OF A CONTRACT IS MADE, ANY LIABILITY SHALL BE LIMITED IN AMOUNT TO THE AGGREGATE PRICE OF THE CONTRACTS PURCHASED OR SOLD.

THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS PROVIDED BY THE EXCHANGE (INCLUDING ITS AFFILIATES AND ANY CONTRACTORS AND SUBCONTRACTORS PROVIDING SERVICES TO THE EXCHANGE), RELATING TO THE ESPEED SYSTEM OR ANY EXCHANGE SERVICES OR FACILITIES USED TO SUPPORT THE ESPEED SYSTEM, INCLUDING WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR USE. THE SERVICES OF THE EXCHANGE ARE BEING PROVIDED ON AN "AS IS" BASIS AT AN AUTHORIZED TRADER'S SOLE RISK. NEITHER THE EXCHANGE (INCLUDING ITS AFFILIATES AND ANY CONTRACTORS AND SUBCONTRACTORS PROVIDING SERVICES TO THE EXCHANGE) NOR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS MAKE ANY WARRANTY WITH RESPECT TO, AND NO SUCH PARTY SHALL HAVE ANY LIABILITY TO ANY AUTHORIZED TRADER OR CUSTOMER FOR, THE ACCURACY, TIMELINESS, COMPLETENESS, RELIABILITY, PERFORMANCE OR CONTINUED AVAILABILITY OF THE ESPEED SYSTEM OR THE EXCHANGE, DELAYS, OMISSIONS OR INTERRUPTIONS IN EXCHANGE SERVICES OR THE CREDITWORTHINESS OF ANY OTHER AUTHORIZED TRADER. THE EXCHANGE SHALL HAVE NO DUTY OR OBLIGATION TO VERIFY ANY INFORMATION DISPLAYED ON THE ESPEED SYSTEM OR OTHERWISE. EACH AUTHORIZED TRADER ACKNOWLEDGES AND AGREES THAT THE EXCHANGE (INCLUDING ITS AFFILIATES AND ANY CONTRACTORS AND SUBCONTRACTORS PROVIDING SERVICES TO THE EXCHANGE) DOES NOT AND SHALL NOT SERVE AS THE PRIMARY BASIS FOR ANY DECISIONS MADE BY SUCH AUTHORIZED TRADER AND IS NOT AN ADVISOR OR FIDUCIARY OF SUCH AUTHORIZED TRADER.

ANY DISPUTE ARISING OUT OF THE USE OF THE ESPEED SYSTEM OR EXCHANGE SERVICES OR FACILITIES USED TO SUPPORT THE ESPEED SYSTEM IN WHICH THE EXCHANGE (INCLUDING ITS AFFILIATES AND ANY CONTRACTORS AND SUBCONTRACTORS PROVIDING SERVICES TO THE EXCHANGE) OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS IS A PARTY SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. ANY ACTIONS, SUITS OR PROCEEDINGS AGAINST ANY OF THE FOREGOING MUST BE BROUGHT WITHIN TWO YEARS FROM THE TIME THEY FIRST ARISE, AND ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY FEDERAL OR STATE COURTS LOCATED IN THE BOROUGH OF MANHATTAN, THE CITY

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OF NEW YORK. THIS PROVISION SHALL IN NO WAY CREATE A CAUSE OF ACTION AND SHALL NOT AUTHORIZE ANY ACTION THAT WOULD OTHERWISE BE PROHIBITED BY RULES OF THE EXCHANGE.

NO AUTHORIZED TRADER OR PERSON ASSOCIATED WITH AN AUTHORIZED TRADER WILL INSTITUTE A LAWSUIT OR OTHER LEGAL PROCEEDING AGAINST THE EXCHANGE OR ANY DIRECTOR, COMMITTEE MEMBER, OFFICER, EMPLOYEE, AGENT OR CONTRACTOR OF THE EXCHANGE (INCLUDING ITS AFFILIATES), FOR ACTIONS TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH THE OFFICIAL BUSINESS OF THE EXCHANGE (INCLUDING ITS AFFILIATES). THIS PROVISION WILL NOT APPLY TO APPEALS OF DISCIPLINARY ACTIONS OR OTHER ACTIONS BY THE EXCHANGE AS PROVIDED FOR IN THESE RULES.

ANY AUTHORIZED TRADER OR PERSON ASSOCIATED WITH AN AUTHORIZED TRADER WHO FAILS TO PREVAIL IN A LAWSUIT OR OTHER LEGAL PROCEEDING INSTITUTED BY SUCH PERSON AGAINST THE EXCHANGE (INCLUDING ITS AFFILIATES) OR ANY OF ITS DIRECTORS, COMMITTEE MEMBERS, OFFICERS, EMPLOYEES, AGENTS OR CONTRACTORS, AND RELATED TO THE BUSINESS OF THE EXCHANGE, WILL PAY TO THE EXCHANGE ALL REASONABLE EXPENSES, INCLUDING ATTORNEYS' FEES, INCURRED BY THE EXCHANGE IN THE DEFENSE OF SUCH PROCEEDING TO THE EXTENT THAT SUCH EXPENSES EXCEED FIFTY THOUSAND DOLLARS (\$50,000.00). THIS PROVISION WILL NOT APPLY TO DISCIPLINARY ACTIONS BY THE EXCHANGE, ADMINISTRATIVE APPEALS OF EXCHANGE ACTIONS OR IN ANY SPECIFIC INSTANCE WHERE THE BOARD OF DIRECTORS HAS GRANTED A WAIVER OF THIS PROVISION.

NOTWITHSTANDING ANY OF THE FOREGOING PROVISIONS, THIS RULE IV-21 SHALL IN NO WAY LIMIT THE LIABILITY OF ANY PERSON ARISING FROM ANY VIOLATION OF SUCH PERSON OF THE CEA OR CFTC REGULATIONS THEREUNDER.

**CHAPTER V  
OBLIGATIONS OF AUTHORIZED TRADERS**

**V-1. Books and Records; Cooperation in Proceedings**

(a) Each Authorized Trader shall prepare and keep current all books, ledgers and other similar records required to be kept by it pursuant to the CEA, CFTC Regulations and the Rules of the Exchange, and shall prepare and keep current such other books and records and adopt such forms as the Exchange may from time to time prescribe. Such books and records shall be made available to the Exchange, the CFTC, the Department of Justice and their respective authorized representatives upon request.

(b) Each Authorized Trader shall keep all books and records required to be kept by it pursuant to these Rules for a period of five years from the date on which they are first prepared, unless otherwise provided in these Rules or required by law. Such books and records shall be readily accessible during the first two years of such five-year period. During such five-year period, all such books and records shall be made available for inspection by, and copies thereof shall be delivered to, the Exchange and its authorized representatives upon request.

**V-2. Minimum Financial and Related Reporting Requirements for Registrants**

Each Class A Authorized Trader that is registered with any self-regulatory association shall comply with the provisions of Applicable Law relating to minimum financial and related reporting and recordkeeping requirements. A copy of any notice or written report that a Class A Authorized Trader is required to file with the CFTC pursuant to CFTC Regulation 1.12 shall be concurrently provided to the Exchange. A Class A Authorized Trader that violates any of the aforementioned CFTC Regulations shall be deemed to have violated this Rule V-2.

**V-3. Minimum Financial and Related Reporting Requirements for Non-Registrants**

(a) A Class A Authorized Trader not registered with a self-regulatory association must:

(i) maintain a net worth (excluding personal assets) of not less than \$250,000; and

(ii) immediately notify the NFA if its net worth (excluding personal assets) declines below \$300,000, and provide the NFA

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with monthly financial statements by the tenth calendar day of each month thereafter until the Class A Authorized Trader's net worth exceeds \$300,000 for two consecutive months.

(b) For purposes of this Rule V-3, net worth means the Class A Authorized Trader's total assets (excluding personal assets) less total liabilities as computed by generally accepted accounting principles applied on a consistent basis.

A Class A Authorized Trader that is an organization but not registered with a self-regulatory association must submit to the NFA annual audited financial statements certified by a certified independent public accountant (or by a Person having similar qualifications if the Class A Authorized Trader's books of account are kept outside the United States) within ninety calendar days of the Class A Authorized Trader's fiscal year-end.

#### **V-4. Authority of the President to Impose Restrictions**

Whenever a Class A Authorized Trader is subject to the early warning requirements set forth in CFTC Regulation 1.12, the President may impose such conditions or restrictions on the business and operations of such Class A Authorized Trader as the President may deem necessary or appropriate for the protection of Customers, other Authorized Traders, or the Exchange.

#### **V-5. Treatment of Customer Funds**

Any Class A Authorized Trader that is required to be registered with any self-regulatory association shall comply with the provisions of Applicable Law relating to the treatment of Customer funds and the maintenance of books and records with respect thereto. An Authorized Trader that violates any of the aforementioned CFTC Regulations shall be deemed to have violated this Rule V-5.

#### **V-6. Additional Minimum Financial Requirements**

(a) In addition to the minimum financial requirements that a Class A Authorized Trader that is registered with the NFA as a futures commission merchant or introducing broker must satisfy, each Class A Authorized Trader shall be required to satisfy such minimum financial requirements as may be established from time to time by the Exchange.

(b) Each Class A Authorized Trader must notify the President immediately upon becoming aware that it fails to satisfy the minimum financial requirements applicable to it.

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(c) Unless and until a Class A Authorized Trader is able to demonstrate to the Board of Directors that it is in compliance with the minimum financial requirements applicable to it, such Class A Authorized Trader may not engage in any transactions subject to the Rules of the Exchange, except for the purpose of closing open positions.

#### **V-7. Registration With the NFA**

(a) No Class A Authorized Trader of the Exchange (including its Authorized Trader Representatives, if any), may solicit or accept from any other Person an Order for the purchase or sale of a Contract, unless such Class A Authorized Trader (including its Authorized Trader Representatives, if any) is registered with the NFA in the appropriate capacity in accordance with the CEA and CFTC Regulations.

(b) Any Class A Authorized Trader that is required to be registered with the NFA as a futures commission merchant or as an introducing broker shall comply with the provisions of CFTC Regulations 155.3 or 155.4, as applicable.

#### **V-8. Trade Confirmations**

(a) Each Class A Authorized Trader that enters into a trade on behalf of a Customer shall promptly furnish, or cause to be furnished, to such Customer, no later than the Business Day immediately following the day on which such trade is entered into, a written confirmation of such trade in such form as the Exchange may from time to time prescribe, indicating the Contract bought or sold, the price, quantity, time of execution and such other information as the Exchange may require. In the case of an Option on Futures trade, such confirmation shall also indicate: (i) the amount of the premium and all other commissions, costs and fees, separately listed; (ii) the Option on Futures series; and (iii) the expiration date of the Option on Futures.

(b) Promptly upon the expiration or exercise of any Option on Futures, each Class A Authorized Trader must furnish to each of its Customers holding such Option on Futures a written confirmation statement, which shall include the date of such occurrence, a description of such Option on Futures, and in the case of exercise, the details of the Future position resulting therefrom.

(c) Notwithstanding paragraphs (a) and (b) above: (i) a trade that is executed for a commodity pool needs to be confirmed only to the operator of such pool; and (ii) a trade that is executed for an account controlled by a Person other than the Customer for whom such account is carried needs to be confirmed only to such other Person.

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### **V-9. Customer Statements**

Each Class A Authorized Trader that enters into trades on behalf of Customers shall furnish, or cause to be furnished, as soon as practicable after the end of each month, a monthly statement of account to each of its Customers. Each such statement shall indicate, at a minimum, the Customer's initial balance, closing balance, commissions and fees incurred, income received and trades made.

### **V-10. Risk Disclosure Statement**

Prior to opening an account for any Customer, a Class A Authorized Trader shall provide such Customer with a written disclosure statement in the form approved by the Exchange for purposes of CFTC Regulation 1.55 and any other disclosure statement from time to time required by the Exchange.

### **V-11. Fraudulent or Misleading Communications**

No Authorized Trader shall make any fraudulent or misleading communications relating to the purchase or sale of any Contract.

### **V-12. Responsibility for Customer Orders**

Class A Authorized Traders handling Orders for Customers shall exercise due diligence in the handling and execution of such Orders. Failure to act with due diligence shall constitute negligence.

Class A Authorized Traders are prohibited from directly or indirectly guaranteeing the execution of an Order or any of its terms such as the quantity or price, *provided* that this sentence shall not be construed to prevent a Class A Authorized Trader from assuming or sharing in any losses resulting from an error or the mishandling of an Order.

A Class A Authorized Trader need not adjust the price at which an Order was executed nor will it be held responsible for executing or failing to execute an Order unless such Class A Authorized Trader was negligent or is settling a *bona fide* dispute regarding negligence.

### **V-13. Use of APS**

#### *(a) Requirements.*

A Class A Authorized Trader that is a registered futures commission merchant receiving multiple execution prices on an Order or a series of Orders for any Contract may use APS to calculate and confirm to its

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Customers an average price for such Contract, provided all of the following requirements are satisfied:

(i) Each such Customer shall have requested such Class A Authorized Trader to use APS;

(ii) Each individual transaction with respect to such Contract shall be submitted to, and cleared by, the Clearinghouse at the price at which it was executed;

(iii) Such Class A Authorized Trader shall compute the weighted mathematical average price in accordance with paragraph (b) below;

(iv) Such Class A Authorized Trader shall:

(A) possess records to support the computations referred to in paragraph (iii) above and the allocations to Customer accounts;

(B) maintain the records referred to in clause (A) above in accordance with CFTC Regulations; and

(C) make the records referred to in clause (A) above available for inspection by affected Customers upon request;

(v) Such Class A Authorized Trader may only compute prices for a series of Orders pursuant to this Rule V-13 if each Order in the series is (A) for the same account or group of accounts and for the same commodity and month, in the case of Futures, or (B) for the same commodity, month, put/call and strike price, in the case of Options on Futures; and

(vi) Such Class A Authorized Trader shall ensure that prices for transactions for any of its proprietary accounts are not averaged with prices for transactions for APS transactions executed for the account of Customers.

(b) *Computation of Average Price.*

(i) The weighted mathematical average price for purposes of APS transactions shall be computed by:

(A) multiplying the number of Contracts purchased or sold at each execution price by that price;

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- (B) adding the results of the multiplication pursuant to clause (A) above together; and
- (C) dividing the sum of clause (B) above by the total number of Contracts purchased or sold at different prices.

(ii) An average price for a series of Orders shall be computed based on the average price of each Order in that series.

(iii) The relevant Class A Authorized Trader shall confirm to its Customers either:

- (A) the actual average price determined in accordance with paragraphs (i) and (ii) above; or
- (B) the average price determined in accordance with paragraphs (i) and (ii) above rounded to the next price increment, by rounding such average price:

(1) up to the next price increment for an Order to buy; or

(2) down to the next price increment for an Order to sell,

*provided* that any residual amount resulting from rounding in accordance with this clause (B) shall be paid to the relevant Customer.

(iv) If and when the application of APS results in prices not conforming to whole cent increments, the relevant Class A Authorized Trader may retain any amount of less than one cent.

(c) *Disclosure of Average Price.*

Each Class A Authorized Trader shall identify each transaction for which the execution price is computed pursuant to APS as having an average price on each confirmation statement and monthly statement on which the transaction is reported to the relevant Customer pursuant to CTFC Regulation 1.33.

**V-14. Handling of Customer Assets**

Class A Authorized Traders who handle Customer assets shall exercise due care when handling such assets.

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**V-15. System Security**

(a) Each Class A Authorized Trader shall at all times have at least one employee or agent (the “Responsible Trader”) designated as its administrator with respect to the use of the eSpeed System by such Class A Authorized Trader (including its Authorized Trader Representatives). Each Class B Authorized Trader shall serve as its own Responsible Trader. The Exchange may prescribe such qualification standards for Responsible Traders as it may from time to time determine necessary or advisable. Among other things, each Responsible Trader shall (i) have full control over access to the eSpeed System by the Authorized Trader (including its Authorized Trader Representatives, if any) represented by such Responsible Trader and (ii) be able to access, and, if required, modify and withdraw, any and all Orders placed, or purported to be placed, by such Authorized Trader (including its Authorized Trader Representatives). The Responsible Trader or Responsible Traders of any Authorized Trader shall also be solely responsible for any and all communications between the Exchange and such Authorized Trader, and any and all notices or other communications sent to such Responsible Trader or Responsible Traders by the Exchange shall be binding on such Authorized Trader. Each Authorized Trader shall notify the Exchange promptly of any change regarding any of its Responsible Traders.

(b) Each Authorized Trader shall be solely responsible for controlling and monitoring the use of all user identification codes and passwords to access the eSpeed System (collectively, “Passwords”) issued to its Responsible Trader or Responsible Traders by the Exchange, shall provide the Passwords only to its Authorized Trader Representatives, if any, and shall notify the Exchange promptly upon becoming aware of any unauthorized disclosure or use of the Passwords or access to the Exchange or of any other reason for deactivating Passwords. Each Authorized Trader shall be bound by any actions taken through the use of its Passwords (other than any such actions resulting from the fault or negligence of the Exchange), including the execution of transactions, whether or not such actions were authorized by such Authorized Trader or any of its directors, officers or employees.

(c) Each Authorized Trader shall be solely responsible for ensuring that the connection point for any eSpeed Terminal is in the United States, except as otherwise expressly permitted by the Exchange. To the extent necessary to ensure the operational integrity of the eSpeed System, the Exchange may at any time limit the locations of any or all eSpeed Terminals to specified locations, and each Authorized Trader shall ensure prompt compliance by itself and its Authorized Trader Representatives with any such limitation.

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**V-16. Market Maker Programs**

The Exchange may from time to time adopt one or more programs under which one or more Authorized Traders or Authorized Trader Representatives may be designated as market makers with respect to one or more Contracts, and may be granted certain benefits in return for assuming obligations in order to provide liquidity and orderliness in the market or markets for such Contract or Contracts. Any such program may provide for any or all of the following:

- (a) qualifications, including any minimum net capital requirements, that any such market maker must satisfy;
- (b) the procedure by which Authorized Traders or Authorized Trader Representatives may seek and receive designation as market makers;
- (c) the obligations of such market makers, including any applicable minimum bid and offer commitments; and
- (d) the benefits accruing to such market makers, including priority in the execution of transactions effected by Authorized Traders or Authorized Trader Representatives in their capacity as market makers, reduced transaction fees or the receipt of compensatory payments from the Exchange.

**V-17. DPMs**

(a) Without limiting the generality of Rule V-16, the Exchange may from time to time approve such number of Authorized Traders as DPMs, and allocate to such DPMs such number and types of Contracts, as it may deem necessary or appropriate. Any and all such approvals or allocations may be reviewed, conditioned or terminated at any time in accordance with this Rule V-17.

(b) An Authorized Trader desiring to act as a DPM shall file an application with the Exchange in such form as the Exchange may from time to time prescribe. DPMs shall be selected by the Exchange from among the applications from time to time on file with the Exchange, based on the Exchange's judgment as to which applicant or applicants is or are most qualified to perform the functions of a DPM. Factors to be considered in making such selection may include, but are not limited to, any one or more of the following:

- (i) the adequacy of each applicant's capital;

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(ii) each applicant's operational capacity;

(iii) the trading experience of, and observance of generally accepted standards of conduct by, each applicant and its affiliates, in particular the individual or individuals who would represent such applicant in its capacity as a DPM (each, a "DPM Designee");

(iv) the number and experience of support personnel of each applicant who will be performing functions related to its DPM business;

(v) if applicable, the regulatory history of, and history of adherence to the Rules of the Exchange, rules of other self-regulatory organizations and Applicable Law by, each applicant and affiliates, in particular its DPM Designees;

(vi) the willingness and ability of each applicant to promote the Exchange as the marketplace of choice;

(vii) the market performance commitments of each applicant;

(viii) if applicable, any performance evaluations conducted pursuant to the Rules of the Exchange or rules of other self-regulatory organizations; and

(ix) in the event that one or more affiliates of any applicant are or were at any time affiliates of any other DPM, adherence by such other DPM to the requirements set forth in the Rules of the Exchange regarding responsibilities and obligations of DPMs during the time period while such affiliate or affiliates held such position or positions with such other DPM.

(c) In approving any applicant as a DPM, the Exchange may place one or more conditions or limitations on the approval, including but not limited to:

(i) conditions concerning the capital, operations or personnel of such applicant, satisfaction of market performance commitments or benchmarks by such applicant, and the number or types of Contracts which may be allocated to such applicant; and

(ii) limitations regarding the time period for which such applicant is approved as a DPM (which time period may be subsequently extended by the Exchange at its sole discretion).

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(d) Each Authorized Trader approved as a DPM shall retain such status until (x) it resigns as a DPM and the Exchange relieves such Authorized Trader of its obligations to act as a DPM, (y) the Exchange suspends or terminates such DPM's status or (z) if applicable, the time period referred to in paragraph (c)(ii) above expires. In any of the foregoing circumstances, the Exchange shall have discretion to do one or both of the following:

(i) approve an interim DPM, pending the final approval of a new DPM pursuant to the regular procedures for DPM approval; and

(ii) allocate on an interim basis to one or more other DPMs the Contracts that were allocated to the DPM whose status is affected by such circumstances, pending a final allocation of such Contracts pursuant to paragraph (e) below.

Neither an interim approval nor an allocation made pursuant to this paragraph (d) shall constitute a prejudgment with respect to the final approval or allocation.

(e) In allocating Contracts to DPMs approved in accordance with paragraphs (b) and (c) above, the Exchange may: (i) consider any relevant information, including but not limited to performance, volume, capacity, market performance commitments, operational factors, efficiency, competitiveness and recommendations of committees of the Board of Directors or of the Exchange; (ii) place one or more conditions or limitations of the type specified in paragraph (c) above on the approval; or (iii) allocate any Contract to more than one DPM, such that the different DPMs serve at the same time but with respect to different contract months or in different time zones, or such that each of the DPMs serves as the DPM for such Contract on a rotating basis.

(f) No DPM may sell, transfer or assign any of its rights or obligations as a DPM (including but not limited to its allocation of any Contracts by virtue of its status as a DPM) without the prior written approval of such sale, transfer or assignment (including but not limited to the approval of the Person to which such rights, obligations or allocation are intended to be sold, transferred or assigned) by the Exchange. Any purported sale, transfer or assignment in violation of the foregoing sentence shall be void from the outset. For purposes of this paragraph (f), the following transactions shall be deemed to constitute a transfer of a DPM's rights or obligations:

(i) any sale, transfer or assignment of a percentage from time to time determined by the Exchange of the equity or profits or losses of a DPM (or any series of smaller changes that in the aggregate amount to a change of at least such percentage); *provided* that any

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sale, transfer or assignment of an interest of less than such percentage may be found by the Exchange to constitute a transfer of a DPM's rights or obligations if the particular facts and circumstances warrant such a determination;

(ii) any change in, or transfer of, Control of a DPM; and

(iii) any merger, sale of assets or other business combination or reorganization involving a DPM.

(g) The Exchange may from time to time evaluate a DPM's performance with respect to, among other things, one or more of the following: quality of markets, market share (taking into account all contracts similar to the relevant Contract or Contracts), administrative factors and observance of ethical standards. In this connection, the Exchange may consider any relevant information, including but not limited to market share and trading data, a DPM's regulatory history and such other factors and data as may be pertinent under the circumstances.

(h) The Exchange may terminate, place conditions upon or otherwise limit an Authorized Trader's approval to act as a DPM or a DPM's allocation of Contracts, under any one or more of the following circumstances:

(i) if the Exchange finds in connection with an evaluation under paragraph (g) above that such Authorized Trader's performance as a DPM has been unsatisfactory;

(ii) if such Authorized Trader becomes subject to a material financial, operational or personnel change;

(iii) if such Authorized Trader fails to (A) comply with any conditions previously placed upon its approval as a DPM or its allocation of Contracts or (B) perform its obligations under paragraph (j) below; or

(iv) if for any reason such Authorized Trader is no longer eligible for approval as a DPM or to be allocated a particular number or type of Contracts.

(i) Each applicant for approval as a DPM pursuant to paragraph (b) above shall be given an opportunity to present any matter which it wishes the Exchange to consider in conjunction with the application. Prior to taking any remedial action against a DPM pursuant to paragraph (h) above, such DPM shall be given notice thereof and an opportunity to present any matter which it wishes the Exchange to consider in

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determining whether to take such action. The Exchange may require that any presentation under this paragraph (i) be made partially or entirely in writing, and may require the submission of additional information from any Person wishing to make a presentation under this paragraph (i). Formal rules of evidence shall not apply to any proceeding involving such a presentation. Notwithstanding the foregoing, the Exchange shall have the authority to immediately terminate, condition or otherwise limit an Authorized Trader's approval to act as a DPM in accordance with subparagraph (h)(ii) above, without prior notice or opportunity to make a presentation under this paragraph (i), if the financial, operational or personnel change in question warrants such action.

(j) DPMs shall have such rights and obligations as the Exchange may specify in connection with their approval or prescribe from time to time in policies or procedures.

#### **V-18. Customer Margin**

(a) A Class A Authorized Trader shall not effect a transaction or carry an account for a Customer without obtaining margin at the times, in the amounts, and in the forms required by the Exchange.

(b) The Exchange will publish the minimum initial and maintenance margin requirements for each Contract or combination of Contracts.

(c) Any changes in Contract margin requirements will apply to both new and existing Contracts in a Customer's account.

(d) Unless otherwise stated in these Rules, a Class A Authorized Trader must use a risk based portfolio margining system acceptable to the Exchange to calculate margin requirements for Customer accounts.

(e) If a Class A Authorized Trader does not obtain and maintain the required minimum margin deposits for a Customer's account pursuant to this Rule V-18, the Exchange may require the Class A Authorized Trader to immediately liquidate Contracts in the Customer account to eliminate the margin requirement shortfall.

(f) The Exchange or a Class A Authorized Trader may impose margin requirements on a Customer that are in excess of the existing margin requirements imposed by this Rule V-18.

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(g) A Class A Authorized Trader must collect at least the minimum margin requirements established by the Exchange for its Contracts in a Customer account.

(h) The full premium value for a long call or put on an Option on Futures must be collected from the Customer.

(i) When additional margin deposits are required pursuant to Exchange Rules, a Class A Authorized Trader must call for the additional margin in a prompt manner not to be any later than one Business Day after the event giving rise to the call. The margin call must be sufficient to ensure the Customer's account will at least meet the minimum initial margin requirement (i) when the margin equity in the account initially falls below the minimum maintenance requirements and (ii) subsequently when the margin equity plus existing margin calls on the account are less than the minimum maintenance margin requirements.

(j) The Class A Authorized Trader must collect the full amount of the margin call from a Customer in a prompt manner and within a reasonable period.

(k) If a margin call is outstanding for an unreasonable time, the Class A Authorized Trader may only accept Orders from the Customer that will reduce the Customer's margin requirements.

(l) If a Customer fails to deposit the required margin deposit within a reasonable time, the Class A Authorized Trader may, but is not required to, liquidate all or a portion of the Customer's Contracts to restore the Customer's account to a properly margined level. However, the inability of the Class A Authorized Trader to liquidate all or a portion of a Customer's Contracts does not affect any liability of the Customer to the Class A Authorized Trader.

(m) A Class A Authorized Trader must make and retain a written record of margin calls to Customers that reflects date, 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.

#### **V-19. Release of Customer Margin**

A Class A Authorized Trader may only release free funds in connection with a Customer's account if after the release the Customer's account has at equity at least equal to the initial margin requirement level.

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### **V-20. Omnibus Accounts**

A Class A Authorized Trader must calculate margin requirements for an omnibus account (whether domestic or foreign) on a gross Contract basis. However, a Class A Authorized Trader may impose maintenance margin rates for Contracts in the omnibus account. A Class A Authorized Trader must obtain written representation of spread or hedge positions from an omnibus account in order to afford any Contracts in the account spread or hedge margin treatment.

### **V-21. Aggregation**

(a) When determining margin requirements, margin calls and release of margin deposits, a Class A Authorized Trader may aggregate identically-owned accounts within the same regulatory account classification of Customer segregated, Customer secured and non-segregated.

(b) In satisfaction of a margin deficiency, a Class A Authorized Trader may not apply available free funds from an identically-owned account that has a different regulatory classification. The Class A Authorized Trader must transfer the free-funds from the identically-owned account to the account having the margin deficiency.

(c) Except for omnibus accounts, a Class A Authorized Trader may calculate margin requirements on a net basis for concurrent long and short Contracts in identically-owned accounts within the same regulatory account classification.

### **V-22. Extension of Credit**

A Class A Authorized Trader shall not extend or maintain credit to or for a Customer to evade or circumvent any requirements of these Rules. A member may extend or maintain (or arrange for the extension or maintenance of) credit or a loan to or for a Customer to meet the margin requirements of these Rules *provided* that the credit or loan is secured as defined by CFTC Regulation § 1.17(c)(3) and the proceeds are treated by the Class A Authorized Trader in accordance with CFTC Regulation § 1.30.

### **V-23. Allowable Margin Deposits**

(a) A Class A Authorized Trader may only accept the following as margin deposits:

- (i) U.S. dollars and foreign currencies,
- (ii) U.S. government treasury and agency securities,

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- (iii) Municipal securities,
  - (iv) Readily marketable securities (which means securities traded on a “ready market” as defined by SEC Rule 15c3-1(c)(11)),
  - (v) Money market mutual funds that meet the requirements of CFTC 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 Clearinghouse (other than letters of credit issued by the Customer or an affiliate of the Customer).
- (b) The assets, securities and instruments accepted by a Class A Authorized Trader to meet a Customer’s margin requirements must be and remain unencumbered by third party claims.
- (c) Securities must be valued at no greater than their current market value less any haircuts specified by SEC Rule 15c3-1.
- (d) No guarantee against a margin deficiency for a Customer account from any party may be considered.

**CHAPTER VI  
BUSINESS CONDUCT**

**VI-1. Rule Violations**

It shall be an offense to violate any Rule of the Exchange or Rule of the Clearinghouse regulating the conduct or business of an Authorized Trader, or any agreement made with the Exchange, or to engage in fraud, dishonorable or dishonest conduct, or in conduct which is inconsistent with just and equitable principles of trade.

**VI-2. Fraudulent Acts**

Neither an Authorized Trader nor any of its directors, officers or employees (including its Authorized Trader Representatives, if any) shall engage in any fraudulent act or engage in any scheme to defraud, deceive or trick in connection with or related to any trade on or other activity related to the Exchange or the Clearinghouse.

**VI-3. Fictitious Transactions**

Neither an Authorized Trader nor any of its directors, officers or employees (including its Authorized Trader Representatives, if any) shall create fictitious transactions or execute any such Order with knowledge of its nature.

**VI-4. Market Demoralization**

Orders entered into the eSpeed System for the purpose of upsetting the equilibrium of the market in any Contract or creating a condition in which prices do not or will not reflect fair market values are prohibited, and any Authorized Trader and any of its directors, officers or employees (including its Authorized Trader Representatives, if any) who makes or assists in entering any such Order with knowledge of the purpose thereof or who, with such knowledge, in any way assists in carrying out any plan or scheme for the entering of any such Order, will be deemed to have engaged in an act detrimental to the Exchange.

**VI-5. Market Manipulation**

Any manipulation of the market in any Contract is prohibited.

**VI-6. Prohibition of Misstatements**

It shall be an offense to make any misstatement of a material fact to the Exchange (including the Board of Directors, any committee thereof or any panel of any such committee, any Exchange Official or any committee of the Exchange) or to the NFA (including any members of its staff).

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### **VI-7. Adherence to Law**

No Authorized Trader nor any of its directors, officers or employees (including its Authorized Trading Representatives, if any) shall engage in conduct in violation of Applicable Law, the Rules of the Exchange or the Rules of the Clearinghouse (insofar as the Rules of the Clearinghouse relate to the reporting or clearance of any transaction in Contracts).

### **VI-8. Sales Practice Rules**

Without limiting the generality of Rule VI-7, each Authorized Trader, its directors, officers and employees (including its Authorized Trading Representatives, if any) shall comply with any and all sales practice rules (including those relating to bunched orders, opening and approval of accounts, suitability, use of discretion, supervision of accounts, risk disclosure document delivery, communications, monthly statements and confirmations, registration, qualification and continuing education, customer complaints and prohibition against guarantees and profit sharing) from time to time promulgated by the NFA, which rules are hereby incorporated by reference into this Rule VI-8.

### **VI-9. Use of Trading Privileges**

Neither an Authorized Trader nor any of its directors, officers or employees (including its Authorized Trader Representatives, if any) may use its Trading Privileges or access the Exchange in any way which could be expected to bring disrepute upon such Authorized Trader or the Exchange.

### **VI-10. Supervision**

Each Authorized Trader shall be responsible for establishing, maintaining and administering reasonably supervisory procedures to ensure that its officers, employees and agents (including its Authorized Trader Representatives, if any) comply with Applicable Law, the Rules of the Exchange and the Rules and the Clearinghouse, and may be held accountable for the actions of such officers, employees and agents. In addition, each Authorized Trader shall be responsible for supervising its officers, employees and agents (including its Authorized Trader Representatives, if any) and may be held accountable for the actions of such officers, employees and agents.

### **VI-11. Priority of Customers' Orders**

(a) No Authorized Trader or its officers, employees and agents (including its Authorized Trader Representatives, if any) shall knowingly buy a Contract for a personal or proprietary account of such Authorized Trader or its officers, employees and agents (including its Authorized Trader Representatives, if any) or for an account in which such Authorized

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Trader or officers, employees and agents (including its Authorized Trader Representatives, if any) has a proprietary interest, when such Authorized Trader or officers, employees and agents (including its Authorized Trader Representatives, if any) has in hand Orders to buy the same Contract for any other Person at the same price or at the market price. No Authorized Trader or officers, employees and agents (including its Authorized Trader Representatives, if any) shall knowingly sell a Contract for a personal or proprietary account of such Authorized Trader or officers, employees and agents (including its Authorized Trader Representatives, if any) or for an account in which such Authorized Trader or officers, employees and agents (including its Authorized Trader Representatives, if any) has a proprietary interest, when such Authorized Trader or officers, employees and agents (including its Authorized Trader Representatives, if any) has in hand Orders to sell the same Contract for any other Person at the same price or at the market price.

(b) No Authorized Trader or officers, employees and agents (including its Authorized Trader Representatives, if any) shall knowingly execute a discretionary Order for any Contract, including, without limitation, an Order allowing such Authorized Trader or officers, employees and agents (including its Authorized Trader Representatives, if any) discretion as to time and price, for an immediate family member or for a personal or proprietary account of any other Authorized Trader or officers, employees and agents (including its Authorized Trader Representatives, if any), when such Authorized Trader or officers, employees and agents (including its Authorized Trader Representatives, if any) has in hand any Customer Market Order for the same Contract open as to time and price.

(c) An Authorized Trader or Authorized Trader Representative entering Orders into the eSpeed System must enter all Customer Orders that the eSpeed System is capable of accepting before entering an Order for a personal or proprietary account of such Authorized Trader or Authorized Trader Representative, an account in which such Authorized Trader or Authorized Trader Representative has a proprietary interest or an Order for a discretionary account, including an Order allowing such Authorized Trader or Authorized Trader Representative discretion as to time and price, for an immediate family member or for a personal or proprietary account of any other Authorized Trader or Authorized Trader Representative.

(d) For purposes of this Rule VI-11, no Authorized Trader that consists of more than one individual, shall be deemed to knowingly buy or sell a Contract or execute a discretionary Order if (i) such Authorized Trader has in place appropriate "firewall" or separation of function procedures and (ii) the individual buying or selling the Contract or

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executing the discretionary Order in question has no knowledge of the Order to buy or sell the same Contract for any other Person at the same price or at the market price or of the Customer Order for the same Contract, as the case may be. Nothing in this Rule VI-11 shall limit the ability of an “eligible account manager” to bunch Orders in accordance with CFTC Regulation § 1.35(a-1)(5).

#### **VI-12. Trading Against Customers’ Orders**

An Authorized Trader that is in possession of a Customer Order shall not knowingly enter into a transaction on behalf of such Customer in which such Authorized Trader, any Person of which such Authorized Trader is a partner or officer, any partner or officer of any Person of which such Authorized Trader is an officer or partner or any Person trading for an account in which the Authorized Trader has a financial interest, intentionally assumes the opposite side of the transaction. The foregoing restriction shall not prohibit pre-execution discussions conducted in accordance with procedures established by the Exchange from time to time, and shall not apply to Block Trades, EFPs or EFSs, or to transactions meeting all of the following criteria:

(a) such Customer has previously consented in writing to such transactions, which consent shall have been given or renewed within 12 months of the transaction at issue and shall not have been revoked prior thereto;

(b) such Authorized Trader has waited for a reasonable period of time (which means a minimum of 15 seconds in the case of a Futures Order and a minimum of 30 seconds in the case of an Option on Futures Order) after first entering the Customer Order into the eSpeed System;

(c) such Authorized Trader shall maintain a record that clearly identifies, by appropriate descriptive words, all such transactions, including the time of execution, commodity, date, price, quantity and delivery month; and

(d) such Authorized Trader shall provide the record referred to in clause (c) above to the Exchange.

#### **VI-13. Withholding Orders**

No Authorized Trader shall withhold or withdraw from the market any Order or any part of an Order for such Authorized Trader’s benefit or for the convenience of any other Authorized Trader.

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**VI-14. Disclosing Orders**

Except in accordance with any policies or procedures for pre-execution discussion from time to time adopted by the Exchange, no Authorized Trader shall disclose to any Person any Order placed by any other Person, except to an Exchange Official or a member of the staff of the CFTC, the NFA, or the Department of Justice respectively.

**VI-15. Pre-Arranged Trades**

No Authorized Trader (including its Authorized Trader Representatives, if any) shall enter any Order into the eSpeed System which has been prearranged, except in accordance with the policies and procedures for pre-execution discussion from time to time adopted by the Exchange.

**VI-16. Simultaneous Buying and Selling Orders**

(a) No Authorized Trader (including its Authorized Trader Representatives, if any) shall accept a simultaneous buying and selling orders from the same Customer for the same delivery month of a Future or for an Option on Futures with the same strike price and expiration month.

(b) An Authorized Trader (including its Authorized Trader Representatives, if any) holding Orders to buy and sell at the same time from different Customers for the same delivery month of a Future or for an Option on Futures with the same strike price and expiration month, may enter both Orders into the eSpeed System.

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**CHAPTER VII  
DISCIPLINE AND ENFORCEMENT**

**VII-1. General**

(a) All Authorized Traders and Authorized Trader Representatives shall be subject to the Exchange's jurisdiction. All Authorized Traders, Authorized Trader Representatives and other Persons within the Exchange's jurisdiction are subject to this Chapter VII if they are alleged to have violated, to have aided and abetted a violation, to be violating, or to be about to violate, any Rule of the Exchange or any provision of Applicable Law for which the Exchange possesses disciplinary jurisdiction.

(b) The Exchange will conduct inquiries, investigations, disciplinary proceedings and appeals from disciplinary proceedings, summary impositions of fines, summary suspensions or other summary actions in accordance with this Chapter VII.

(c) The Exchange may delegate any or all of its powers or responsibilities under this Chapter VII to the NFA (acting in its compliance role, the "Compliance Department") and the Disciplinary Panel, which may take any actions on behalf of the Exchange that the Exchange is permitted to take hereunder. In the event of any such delegation, references to the Exchange in this Chapter VII shall be construed to be references to the Compliance Department or the Disciplinary Panel, as the case may be.

(d) No member of the staff of the Exchange will interfere with or attempt to influence the process or resolution of any inquiry, investigation, disciplinary proceeding, appeal from a disciplinary proceeding, summary imposition of fines, summary suspension or other summary action. No member of the Board will interfere with or attempt to influence the process or resolution of any inquiry, investigation, disciplinary proceeding, appeal from a disciplinary proceeding, summary imposition of fines, summary suspension or other summary action with respect to which the Board member is not a member of the relevant Appeals Panel.

(e) Any Authorized Trader, Authorized Trader Representative, or other Person within the Exchange's jurisdiction may be represented by counsel during any inquiry, investigation, disciplinary proceeding, appeal from a disciplinary proceeding, summary imposition of fines, summary suspension or other summary actions pursuant to this Chapter VII.

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(f) Pursuant to this Chapter VII, the Exchange may hold:

(i) an Authorized Trader liable for, and impose sanctions against such Authorized Trader, for such Authorized Trader's own acts and omissions that constitute a violation;

(ii) an Authorized Trader liable for, and impose sanctions against such Authorized Trader, for the acts and omissions of each Authorized Trader Representative authorized by, and each other agent or representative of, such Authorized Trader that constitute a violation as if such violation were that of the Authorized Trader;

(iii) an Authorized Trader Representative liable for, and impose sanctions against him or her, for such Authorized Trader Representative's own acts and omissions that constitute a violation; and

(iv) an Authorized Trader Representative liable for, and impose sanctions against him or her, for the acts and omissions of each agent or representative of such Authorized Trader Representative that constitute a violation as if such violation were that of the Authorized Trader Representative.

(g) Pursuant to this Chapter VII, the Exchange may review an appeal by any applicant of the Exchange's decision to deny Trading Privileges to such applicant pursuant Rule III-4.

**VII-2. Inquiries and Investigation**

(a) The Compliance Department will investigate any matter within the Exchange's disciplinary jurisdiction that is brought to such department's attention. The Compliance Department will determine the nature and scope of its inquiries and investigations within its sole discretion and will function independently of any commercial interests of the Exchange.

(b) The Compliance Department has the authority to:

(i) initiate and conduct inquiries and investigations;

(ii) prepare investigative reports and make recommendations concerning initiating disciplinary proceedings;

(iii) prosecute alleged violations within the Exchange's disciplinary jurisdiction; and

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(iv) represent the Exchange on appeal from any disciplinary proceeding, summary imposition of fines, summary suspension or other summary action.

(c) Each Authorized Trader, Authorized Trader Representative and other Person subject to the Exchange's jurisdiction:

(i) is obligated to appear and testify and respond in writing to interrogatories within the time period required by the Compliance Department in connection with: (A) any Rule of the Exchange; (B) any inquiry or investigation; or (C) any preparation by and presentation during a disciplinary proceeding or appeal from a decision in a disciplinary proceeding, summary imposition of fines, summary suspension or other summary action by the Exchange;

(ii) is obligated to produce books, records, papers, documents or other tangible evidence in its, his or her possession, custody or control within the time period required by the Compliance Department in connection with: (A) any Rule of the Exchange; (B) any inquiry or investigation; or (C) any preparation by and presentation during a disciplinary proceeding or appeal from a decision in any disciplinary proceeding, summary imposition of fines, summary suspension or other summary action by the Exchange; and

(iii) may not impede or delay any inquiry, investigation, disciplinary proceeding, appeal from a disciplinary proceeding, summary imposition of fines, summary suspension or other summary action.

### **VII-3. Reports of Investigations**

(a) The Compliance Department will maintain a log of all investigations and their disposition. The Compliance Department will prepare a written report of investigation when the evidence gathered during any inquiry or investigation forms a reasonable basis to believe that a violation within the Exchange's jurisdiction has occurred or is about to occur.

(b) Any written report of investigation will include the reasons for initiating the investigation (including a summary of the complaint, if any), all relevant facts and evidence gathered, and the recommendation of the Compliance Department. For each potential respondent, the Compliance Department will recommend either (i) closing the investigation without further action, (ii) resolving the investigation through an informal disposition, including the issuance of a warning letter or (iii) initiating disciplinary proceedings. An informal disposition (including the issuance of a warning letter) will not constitute a finding of a violation or a sanction.

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**VII-4. Opportunity to Respond**

(a) After completing its investigation report, the Compliance Department may, upon approval of the Compliance Director, notify each potential respondent that the Compliance Department has recommended formal disciplinary charges against the potential respondent.

(b) The Compliance Department may allow a potential respondent to propose a settlement of the matter or to submit a written statement explaining why a disciplinary proceeding should not be instituted or one or more of the potential charges should not be brought. The potential respondent shall submit such written statement within the time limit established by the Compliance Department.

**VII-5. Review of Investigative Reports**

(a) The Compliance Director will review promptly each completed investigation report to determine whether a reasonable basis exists to believe that a violation within the Exchange's jurisdiction has occurred or is about to occur.

(b) If the Compliance Director determines that additional investigation or evidence is needed to decide whether a reasonable basis exists to believe that a violation within the Exchange's jurisdiction has occurred or is about to occur, the Compliance Director will direct the Compliance Department to conduct further investigation.

(c) After receiving completion of an investigation, the Compliance Director will determine for each potential respondent whether to authorize:

(i) the commencement of disciplinary proceedings because a reasonable basis exists to believe that a violation within the Exchange's jurisdiction has occurred or is about to occur;

(ii) the informal disposition of the investigation (by issuing a warning letter or otherwise) because disciplinary proceedings are unwarranted or because no reasonable basis exists to believe that a violation within the Exchange's jurisdiction has occurred or is about to occur; or

(iii) the closing of the investigation without any action because disciplinary proceedings are not warranted or no reasonable basis exists to believe that a violation within the Exchange's jurisdiction has occurred or is about to occur.

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(d) In the case of any appeal by an applicant denied Trading Privileges, the Compliance Director will determine either (i) to grant Trading Privileges to such applicant or (ii) to affirm the Exchange's decision to deny Trading Privileges, and such determination shall be a non-appealable, final decision.

#### **VII-6. Notice of Charges**

(a) If the Compliance Director authorizes disciplinary proceedings pursuant to Rule VII-5(c)(i), the Compliance Department will prepare, and serve in accordance with Rule VII-8, a notice of charges.

(b) A notice of charges will:

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

(ii) state the Rule of the Exchange or provision of Applicable Law alleged to have been violated or about to be violated;

(iii) state the proposed sanctions;

(iv) advise the respondent of its right to a hearing;

(v) state the period of time within which the respondent can request a hearing on the notice of charges, which will not be less than 20 days after service of the notice of charges;

(vi) advise the respondent that any failure to request a hearing within the period stated, except for good cause, will be deemed to constitute a waiver of the right to a hearing; and

(vii) advise the respondent that any allegation in the notice of charges that is not expressly denied will be deemed to be admitted.

#### **VII-7. Answer to Notice of Charges**

(a) If the respondent determines to answer a notice of charges, the respondent must file answers within 20 days after being served with such notice, or within such other time period determined appropriate by the Director of Hearings.

(b) To answer a notice of charges, the respondent must in writing:

(i) specify the allegations that the respondent denies or admits;

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(ii) specify the allegations that the respondent does not have sufficient information to either deny or admit;

(iii) specify any specific facts that contradict the notice of charges;

(iv) specify any affirmative defenses to the notice of charges; and

(v) sign and serve the answer on the Director of Hearings.

(c) Any failure by the respondent to timely serve an answer to a notice of charges will be deemed to be an admission to the allegations in such notice. Any failure by the respondent to answer one or more allegations in a notice of charges will be deemed to be an admission of that allegation or those allegations. Any allegation in a notice of charges that the respondent fails to expressly deny will be deemed to be admitted. A general denial by the respondent, without more, will not satisfy the requirements of paragraph (b) above.

#### **VII-8. Service of Notice of Charges**

(a) Any notice of charges or other documents contemplated to be served pursuant to this Chapter VII may be served (and service shall be deemed complete) upon the respondent either personally or by leaving the same at his or her place of business or by deposit in the United States mail, postage prepaid, via registered or certified mail addressed to the respondent at the address as it appears on the books and records of the Exchange.

#### **VII-9. Settlements**

(a) A respondent or potential respondent may at any time propose in writing an offer of settlement to anticipated or instituted disciplinary proceedings. Any offer of settlement should contain proposed findings and sanctions and be signed by the respondent or potential respondent and submitted to the Compliance Department. A respondent or potential respondent may offer to settle disciplinary proceedings without admitting or denying the findings contained in the order of the disciplinary proceedings but must accept the jurisdiction of the Exchange over it and over the subject matter of the proceedings and consent to the entry of the findings and sanctions imposed.

(b) If a respondent or potential respondent submits an offer of settlement in accordance with paragraph (a) above, the Compliance

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Department will forward the offer to the Compliance Director with a recommendation on whether to accept or reject the offer. If the Compliance Director conditionally accepts an offer of settlement, the settlement will become final upon the expiration of 20 days after an order of the disciplinary proceedings consistent with the terms of the offer of settlement is served on the respondent.

(c) If an offer of settlement is accepted and the related order of disciplinary proceedings becomes final, the respondent's submission of the offer will be deemed to constitute a waiver of the right to notice, opportunity for a hearing and review and appeal under these Rules.

(d) If the offer of settlement of a respondent or potential respondent is not accepted, fails to become final or is withdrawn by the respondent or potential respondent, the matter will proceed as if the offer had not been made and the offer and all documents relating to it will not become part of the record. Neither a respondent or potential respondent nor the Compliance Department may use an unaccepted offer of settlement as an admission or in any other manner at a hearing of, or appeal from, disciplinary proceedings.

#### **VII-10. Disciplinary Panel**

(a) A disciplinary panel consisting of five individuals selected from the Exchange's Hearing Panel Committee (with one individual acting as chairman) (the "Disciplinary Panel"), will conduct hearings in connection with any disciplinary proceedings, to make findings and impose sanctions pursuant to this Chapter VII.

(b) Within 10 days of being notified of the appointment of the Disciplinary Panel, a respondent may seek to disqualify any individual named to the Disciplinary Panel for the reasons identified in Rule II-9 or for any other reasonable grounds, by serving written notice on the Compliance Director and providing a copy thereof to the Director of Hearings. By not timely filing a request for disqualification, the respondent will be deemed to have waived any objection to the composition of a Disciplinary Panel. The Compliance Director will decide the merits of any request for disqualification within his or her sole discretion. Any such decision will be final and not subject to appeal.

#### **VII-11. Convening Hearings of Disciplinary Proceedings**

(a) All disciplinary proceedings (except for summary impositions of fines pursuant to Rule VII-18) will be conducted at a hearing before the Disciplinary Panel. A hearing will be conducted privately and confidentially unless the Disciplinary Panel decides that the hearing, or

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any part of it, should be held in public after giving each respondent the opportunity to present its, his or her views on holding a public hearing. Notwithstanding the confidentiality of hearings, the Disciplinary Panel may appoint an expert to attend any hearing and assist in deliberations if such expert agrees to be subject to an appropriate confidentiality agreement.

(b) After reasonable notice to each respondent, the Disciplinary Panel will promptly convene a hearing to conduct the disciplinary proceedings with respect to such respondent. Parties to a disciplinary proceeding include each respondent and the Compliance Department.

(c) The chairman of the Disciplinary Panel may continue, adjourn or otherwise conduct the hearing, as he or she may deem appropriate. The chairman of the Disciplinary Panel will determine all procedural and evidentiary matters, including the admissibility and relevance of any evidence proffered. In determining procedural and evidentiary matters, the chairman of the Disciplinary Panel will not be bound by any evidentiary or procedural rules or law. Once admitted during the hearing, the Disciplinary Panel may consider, and attach the weight it believes appropriate to, evidence or other materials. The Exchange will provide guidance to the chairman of the Disciplinary Panel on the conduct of the hearing.

(d) Except for procedural and evidentiary matters decided by the chairman of the Disciplinary Panel pursuant to paragraph (c) above and Rule VII-12, unless each respondent otherwise consents, the entire Disciplinary Panel must be present during the entire hearing and any related deliberations.

#### **VII-12. Respondent Review of Evidence**

(a) Prior to the commencement of a hearing, each respondent will be given the opportunity to review all books, records, documents, papers, transcripts of testimony and other tangible evidence in the possession or under the control of the Exchange that the Compliance Department will use to support the allegations and proposed sanctions in the notice of charges or which the chairman of the Disciplinary Panel deems relevant to the disciplinary proceedings. Notwithstanding the foregoing, no respondent will have the right to review, and the Exchange will have no obligation to disclose, any information protected by attorney-client privilege.

(b) If any books, records, documents, papers, transcripts of testimony, or other tangible evidence contain information that could adversely affect the competitive position of the Person providing the information or if such information might compromise other investigations

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being conducted by the Compliance Department, the Compliance Department may redact, edit or code such information before furnishing it to the respondent.

(c) Notwithstanding anything in paragraph (b) above to the contrary, the Compliance Department:

(i) will not redact, edit or code competitive or investigative information contained in documents in a manner that would impair the respondent's ability to defend against the allegations or proposed sanctions in the notices of charges, and

(ii) will provide the respondent with access to the information and portions of the documents that the Compliance Department intends to rely on to support the allegations or proposed sanctions in the notice of charges.

(d) For purposes of this Rule VII-12, information that could adversely affect competitive positions include positions in Contracts currently held, trading strategies employed in establishing or liquidating positions, the identity of Customers, and the personal finances of the Person providing the information.

#### **VII-13. Conducting Hearings of Disciplinary Proceedings**

(a) At a hearing conducted in connection with any disciplinary proceedings, the Compliance Department will present its case supporting the allegations and proposed sanctions in the notice of charges to the Disciplinary Panel. If a respondent has timely filed an answer to the notice of charges in accordance with Rule VII-7, the respondent is entitled to attend and participate in the hearing.

(b) At a hearing conducted in connection with any disciplinary proceedings, the Disciplinary Panel or the Compliance Department and each respondent may:

(i) present evidence and facts determined relevant and admissible by the chairman of the Disciplinary Panel;

(ii) call and examine witnesses; and

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

(c) If the respondent fails to file an answer, has filed a general denial, or if any or all of the allegations in the notice of charges are not expressly denied in the respondent's answer, the chairman of the Disciplinary Panel may limit evidence concerning any allegations not

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expressly denied in determining the sanctions to impose. If a respondent fails to file an answer but appears at the hearing, the respondent may not participate in the hearing (by calling or cross-examining witnesses, testifying in defense, presenting evidence concerning the Notice of Charges, or otherwise) unless the Disciplinary Panel determines that the respondent had a compelling reason for failing to timely file an answer. If the Disciplinary Panel determines that the respondent had a compelling reason for failing to timely file an answer, the Disciplinary Panel will adjourn the hearing and direct the respondent to promptly file a written answer in accordance with Rule VII-7.

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

(e) If during any disciplinary proceedings the Disciplinary Panel determines that a reasonable basis exists to believe that the respondent violated or is about to violate a Rule of the Exchange or a provision of Applicable Law other than the violations alleged in the notice of charges, the Disciplinary Panel may consider those apparent violations after providing the respondent with an opportunity to answer the additional allegations in accordance with Rule VII-7. In connection with considering apparent violations pursuant to this paragraph (e), the Disciplinary Panel may request that the Compliance Department provide the Panel with any additional information.

(f) The Disciplinary Panel may summarily impose sanctions on any Authorized Trader, Authorized Trader Representative or other Person within the Exchange's jurisdiction that impede or delay the progress of a hearing.

(g) The Exchange will arrange for any hearing conducted in connection with disciplinary proceedings to be recorded hearing verbatim, or substantially verbatim, in a manner capable of accurate transcription. If the respondent requests a copy of all or portions of the recording of a hearing, the chairman of the Disciplinary Panel may within his or her sole discretion order the respondent to pay the costs for transcribing the recording of the hearing.

(h) No interlocutory appeals of rulings of any Disciplinary Panel or chairman of the Disciplinary Panel are permitted.

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**VII-14. Decision of Disciplinary Panel**

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

(b) The Exchange will serve a copy of the order of the disciplinary proceedings on the respondent and the Compliance Department. The order will include:

- (i) the notice of charges or summary of the allegations;
- (ii) the answer, if any, or a summary of the answer;
- (iii) a brief summary of the evidence introduced at the hearing;
- (iv) findings of fact and conclusions concerning each allegation, including each specific Rule of the Exchange and provision of Applicable Law that the respondent is found to have violated; and
- (v) the imposition of sanctions, if any, and the effective date of each sanction.

(c) Unless a timely notice of appeal is filed pursuant to Rule VII-17, the order of the disciplinary proceedings will become final upon the expiration of 20 days after the order is served on the respondent and a copy thereof is provided to the Compliance Department.

**VII-15. Sanctions**

(a) After notice and opportunity for hearing in accordance with these Rules, the Exchange will impose sanctions if an Authorized Trader, Authorized Trader Representative or other Person within the Exchange's jurisdiction is found to have violated a Rule of the Exchange or provision of Applicable Law for which the Exchange possesses disciplinary jurisdiction. The Exchange may impose one or more of the following sanctions or remedies: (i) censure; (ii) limitation on Trading Privileges, association with an Authorized Trader or other activities, functions or operations; (iii) suspension of Trading Privileges or association with an Authorized Trader for a period not to exceed 12 months; (iv) fine (subject to paragraph (b) below); (v) restitution or disgorgement; (vi) expulsion or termination of an Authorized Trader, Authorized Trader Representative or

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other Person within the Exchange's jurisdiction; or (vii) any other sanction or remedy deemed to be appropriate.

(b) The Exchange may impose a fine of up to \$500,000 for each violation. If a fine or other amount is not paid within 30 days of the date that it becomes payable, then interest will accrue on the sum from the date that it became payable at the quoted prime rate plus three percent. The Exchange has sole discretion to select the bank on whose quotations to base the prime rate. Each Authorized Trader will be responsible for paying any fine or other amount imposed on, but not paid by, any Authorized Trader Representative authorized by, or other agent or representative of, such Authorized Trader.

#### **VII-16. Costs**

(a) Regardless of the outcome of any disciplinary proceeding, the Disciplinary Panel may order a respondent to pay some or all of the costs associated with the disciplinary proceedings that the Disciplinary Panel believes were unnecessarily caused by the respondent. Costs may include costs associated with the inquiry or investigation, the prosecution by the Compliance Department, legal and professional assistance, the hearing and administrative and other expenses incurred by the Disciplinary Panel.

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

(c) The Disciplinary Panel may determine the amounts and allocation of costs in any manner it may deem appropriate. The Exchange or the respondent will pay any costs ordered to be paid by it by the Disciplinary Panel within 30 days of the later of either written notice of (i) the amount imposed by the Disciplinary Panel or (ii) the determination of an appeal by the Appeals Panel against the Disciplinary Panel's determination.

#### **VII-17. Appeal from Disciplinary Panel Decision**

(a) Each respondent found by the Disciplinary Panel to have violated a Rule of the Exchange or a provision of Applicable Law may appeal the decision of the Disciplinary Panel within 20 days of receiving

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the order of the disciplinary proceedings by filing a notice of appeal with the Compliance Director. While an appeal is pending, the effect of the order of disciplinary proceedings (including any sanctions, remedies or costs imposed thereby) is suspended.

(b) In a notice of appeal, the appellant must state in writing the grounds for appeal, including the findings of fact, conclusions or sanctions to which the respondent objects. An appellant may appeal the order of disciplinary proceedings on the grounds that:

(i) the decision was arbitrary, capricious, an abuse of discretion, or not in accordance with the Rules of the Exchange;

(ii) the decision exceeded the authority or jurisdiction of the Disciplinary Panel or the Exchange;

(iii) the decision failed to observe required procedures;

(iv) the decision was unsupported by the facts or evidence; or

(v) the imposed sanctions, remedies or costs are inappropriate or unsupported by the record.

(c) The Compliance Director will forward copies of any notice of appeals received by it to all parties to the disciplinary proceedings in question, except the appellant. On or before the 20th day after filing a notice of appeal, the appellant must file with the Compliance Director and serve on the Compliance Department a brief supporting the notice of appeal and documents supporting the brief. On or before the 20th day after the date on which the appellant served its, his or her brief, the appellee must file and serve its brief in opposition. On or before the 10th day after the date on which the appellee served its, his or her brief in opposition, the appellant must file and serve a brief in reply.

(d) In connection with any appeal, the Compliance Department will furnish to the Compliance Director and to the respondent/appellant a transcript of the hearing, any exhibits introduced at the hearing, the notice of appeal and briefs filed to support and oppose the appeal.

(e) Within 30 days after the last submission filed pursuant to paragraph (c) above, the Compliance Director will appoint the Appeals Panel to consider and determine the appeal.

(f) The Appeals Panel may hold a hearing to allow parties to present oral arguments. Any hearing will be conducted privately and

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confidentially unless the Appeals Panel decides that the hearing, or any part of it, should be held in public after giving each appellant the opportunity to present its, his or her views on holding a public hearing. Notwithstanding the confidentiality of hearings, the Appeals Panel may appoint individuals to attend any hearing and assist in the deliberations if such individuals agree to be subject to appropriate confidentiality agreements. In determining procedural and evidentiary matters, the Appeals Panel will not be bound by any evidentiary or procedural rules or law.

(g) The Appeals Panel will only consider on appeal the record before the Disciplinary Panel, the notice of appeal, the briefs filed in support and opposition of the appeal, and any oral arguments of the parties. The Appeals Panel may only consider new evidence when the Appeals Panel is satisfied that good cause exists on why the evidence was not introduced during the disciplinary proceedings.

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

(i) As promptly as reasonably possible following its review, the Appeals Panel will issue a written decision on appeal rendering its decision based on the weight of the evidence before the Appeals Panel. The decision of the Appeals Panel will include a statement of findings of fact and conclusions for each finding, sanction, remedy and cost reviewed on appeal, including each specific Rule of the Exchange and provision of Applicable Law that the respondent is found to have violated, if any, and the imposition of sanctions, remedies and costs, if any, and the effective date of each sanction, remedy or cost.

(j) The Appeal Panel's written order on appeal (including findings of fact and conclusions and the imposition of sanctions, remedies and costs, and the effective date of any sanction, remedy cost) will be the final action of the Exchange and will not be subject to appeal within the Exchange.

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**VII-18. Summary Imposition of Fines**

(a) The Compliance Director may summarily impose a fine against an Authorized Trader or Authorized Trader Representative for failing:

(i) to make timely payments of original or variation margin, options premiums, fees, cost, charges or fines to the Exchange or the Clearing House;

(ii) to make timely and accurate submissions to the Exchange of notices, reports or other information required by the Rules of the Exchange; and

(iii) to keep any books and records required by the Rules of the Exchange.

(b) The Compliance Department, acting on behalf of the Compliance Director, will give notice of any fine imposed pursuant to this Rule VII-18 to each Authorized Trader or Authorized Trader Representative subject thereto. The notice will specify (i) the violations of the Rules of the Exchange for which the fine is being imposed, (ii) the date of the violation for which the fine is being imposed and (iii) the amount of the fine. Within 10 days of serving the notice of fine, the Authorized Trader or Authorized Trader Representative in question must either pay the fine or submit a written request to the Compliance Department for review of the fine that specifies the basis for the requested review. If the Authorized Trader or Authorized Trader Representative does not request a review within 10 days of service of the notice of fine, the fine becomes final.

(c) Upon a request for review pursuant to paragraph (b) above, the Appeals Panel will promptly hear and consider the request for review. At the hearing, (i) the Authorized Trader or Authorized Trader Representative subject to the fine may appear and present evidence to establish that it did not commit the violation for which the fine was imposed, that the fine imposed is excessive, or both, and (ii) the Compliance Department, acting on behalf of the Compliance Director, may present evidence to establish that the Authorized Trader or Authorized Trader Representative committed the violation for which the fine was imposed, that the fine imposed is not excessive, or both. In connection with the hearing to review the summary imposition of fines, the Appeals Panel will not be bound by any law concerning evidence or procedural matters.

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(d) As promptly as reasonably possible following the hearing, the Appeals Panel will issue a written decision and provide copies of that decision to the Compliance Director and the Authorized Trader or Authorized Trader Representative in question. The written decision shall include

- (i) a description of, and reasons for, the summary action taken;
- (ii) a brief summary of the evidence introduced at the hearing;
- (iii) findings of fact and conclusions;
- (iv) the affirmation, modification or reversal of the summary action; and

The Appeals Panel may affirm, modify, increase or decrease any fine imposed pursuant to this Rule VII-18, subject to the maximum established by the Exchange pursuant to paragraph (e) below. The Appeals Panel's decision on review of the summary imposition of fines will be the final action of the Exchange.

(e) The Exchange will set the amount of any fines imposed pursuant to this Rule VII-18, with the maximum fine for each violation not exceeding \$5,000. Summary imposition of fines pursuant to this Rule VII-18 will not preclude the Exchange from bringing any other action against the Authorized Trader or Authorized Trader Representative in question.

#### **VII-19. Summary Suspensions and Other Summary Actions**

(a) Notwithstanding anything in the Rules of the Exchange to the contrary, the Compliance Director may summarily suspend the Trading Privileges of an Authorized Trader or the association of an Authorized Trader Representative with an Authorized Trader or take other summary action against any Authorized Trader, Authorized Trader Representative or other Person subject to the Exchange's jurisdiction. To summarily suspend or take summary action, the Compliance Director must reasonably believe that the business, conduct or activities of the Authorized Trader, Authorized Trader Representative or other Person in question is not in the best interests of the Exchange or the marketplace, including based on any of the following: (i) statutory disqualification from registration as provided in CEA Section 8a(2) or (3); (ii) non-payment of fees, costs, charges, fines or arbitration awards; or (iii) reasonable belief that immediate action is necessary to protect the public or the best interests of the Exchange.

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(b) Whenever the Compliance Director proposes to take summary action pursuant to paragraph (a) above, the Compliance Department, acting on behalf of the Compliance Director, will, if practicable, provide written notice to the party against whom the action is contemplated. If prior notice is not practicable, the Exchange will give notice at the earliest possible opportunity to the respondent against whom the action is brought. The Compliance Department, acting on behalf of the Compliance Director, will prepare a notice of summary action (which will state the action, the reasons for the action, and the effective time, date, and duration of the action) and serve the notice on the respondent. Promptly but no later than 20 days after service of the notice of summary action, the Appeals Panel will conduct a hearing concerning the summary action.

(c) At the hearing concerning the summary action, the Compliance Department, acting on behalf of the Compliance Director, will present its case supporting the action and the respondent may present its, his or her case opposing the action and each may present evidence and facts that the Compliance Director determines is relevant and admissible and call, examine and cross-examine witnesses. The Exchange will require Persons within its jurisdiction to appear as witnesses and produce evidence if the Appeals Panel determines that evidence is relevant. During the hearing, the Appeals Panel will not be bound by any law concerning evidence or procedural matters.

(d) As promptly as reasonably possible after the hearing concerning a summary action, the Appeals Panel will issue an order rendering its decision based on the weight of the evidence presented at the hearing. The Exchange will serve copies of the order of the Appeals Panel on the respondent and the Compliance Director. The order will include:

- (i) a description of, and reasons for, the summary action taken;
- (ii) a brief summary of the evidence introduced at the hearing;
- (iii) findings of fact and conclusions;
- (iv) the affirmation, modification or reversal of the summary action; and
- (v) any further actions to be taken and the effective date and duration of those actions.

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(e) Any decision of the Appeals Panel will become final and not subject to appeal within the Exchange upon serving the respondent with a copy of the decision.

(f) At the request of the Exchange or the Clearinghouse, a respondent against whom a summary action is brought pursuant to this Rule VII-19 must provide books and records over which the respondent has access or control and must furnish information to, or appear or testify before, the Exchange or the Clearinghouse in connection with the enforcement of any Rule of the Exchange or Rule of the Clearinghouse.

(g) A respondent whose Trading Privileges are, or whose association with an Authorized Trader is, suspended pursuant to this Rule VII-19 may apply for reinstatement by filing with the Compliance Department a written request stating the applicant's reasons for seeking reinstatement. The Exchange will not consider a respondent's request for reinstatement if the respondent (i) owes any fines, fees, charges or costs to the Exchange, (ii) continues to fail to appear at disciplinary proceedings without good cause or (iii) continues to impede the progress of disciplinary proceedings.

(h) Within a reasonable period after the filing of a request for reinstatement, the Appeals Panel will conduct a hearing to consider the request. At the hearing for reinstatement, the respondent will present its, his or her case supporting the reinstatement and the Compliance Department, acting on behalf of the Compliance Director may, in its discretion, present its case opposing or supporting the reinstatement and each may present relevant and admissible evidence and facts and call, examine and cross-examine witnesses. At the hearing for reinstatement, the Exchange may require Persons within its jurisdiction to appear as witnesses and produce evidence if the Appeals Panel determines that the evidence is relevant. During any reinstatement hearing, the Appeals Panel will not be bound by any law concerning evidence or procedural matters.

(i) As promptly as reasonably possible after a reinstatement hearing, the Appeals Panel will issue an order reinstating, denying the reinstatement, or placing conditions on the reinstatement of the Trading Privileges, or association with an Authorized Trader, of the respondent. The order will include a brief summary of the evidence introduced at the reinstatement hearing; and, if applicable, findings of fact and conclusions not contained in the Appeals Panel's initial order issued pursuant to Rule VII-19(d) above. The Appeals Panel's order may not be appealed.

**VII-20. Rights and Responsibilities after Suspension or Termination**

(a) When the Trading Privileges of an Authorized Trader are, or the association of an Authorized Trader Representative with an Authorized Trader is, suspended for a period of 12 months or less, none of its rights and Trading Privileges (including the right to hold oneself out to the public as an Authorized Trader, enter Orders into the eSpeed System and receive Authorized Trader rates for fees, costs, and charges and deposit margin at Authorized Trader levels) will apply during the period of the suspension, except for the right of the Authorized Trader or Authorized Trader Representative in question to assert claims against others as provided in the Rules of the Exchange. Any such suspension will not affect the rights of creditors under the Rules of the Exchange or relieve the Authorized Trader or Authorized Trader Representative in question of its, his or her obligations under the Rules of the Exchange to perform any Contracts entered into before the suspension, or for any Exchange fees, costs, or charges incurred during the suspension. The Exchange may discipline a suspended Authorized Trader or Authorized Trader Representative under this Chapter VII for any violation of a Rule of the Exchange or provision of Applicable Law committed by the Authorized Trader before, during or after the suspension.

(b) When the Trading Privileges of an Authorized Trader are, or the association of an Authorized Trader Representative with an Authorized Trader is, terminated, all of its rights and Trading Privileges will terminate, except for the right of the Authorized Trader or Authorized Trader Representative in question to assert claims against others, as provided in the Rules of the Exchange. Any such termination will not affect the rights of creditors under the Rules of the Exchange. A terminated Authorized Trader or Authorized Trader Representative may only seek to reinstate its Trading Privileges by applying for Trading Privileges pursuant to Rule III-5. The Exchange will not consider the application of a terminated Authorized Trader or Authorized Trader Representative if such Authorized Trader or Authorized Trader Representative continues to fail to appear at disciplinary proceedings without good cause or continues to impede the progress of disciplinary proceedings.

(c) A suspended or terminated Authorized Trader or Authorized Trader Representative remains subject to the Rules of the Exchange and the jurisdiction of the Exchange for acts and omissions prior to the suspension or termination, and must cooperate in any inquiry, investigation, disciplinary proceeding, appeal of disciplinary proceedings, summary suspension or other summary action as if the suspended or terminated Authorized Trader or an Authorized Trader Representative still had Trading Privileges or was still associated with an Authorized Trader, as the case may be.

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**VII-21. Notice to the Respondent, the Commission and the Public**

(a) The Exchange will provide written notice of disciplinary proceedings to the parties and the Commission consistent with Commission Regulations. Whenever the Exchange suspends, expels, fines or otherwise disciplines, or denies any Person access, to the Exchange, the Exchange will make the public disclosures required by Commission Regulations.

**CHAPTER VIII  
ARBITRATION**

**VIII-1. General**

Except as otherwise provided in the Rules of the Exchange, Authorized Traders must arbitrate all controversies arising in connection with their Exchange business between or among themselves, or between themselves and their respective Customers if required by the applicable Customer agreement to which such Customer has provided its prior written consent in accordance with CFTC Regulation § 166.5 or, in the absence of a written agreement, if the relevant Customer otherwise agrees to arbitrate in accordance with CFTC Regulation § 166.5, when applicable. Notwithstanding the foregoing, this Rule VIII-1 does not require arbitration of claims alleging employment discrimination (including sexual harassment) in violation of Applicable Law.

**VIII-2. Forum**

NFA will conduct any and all arbitrations of a type described in Rule VIII-1.

**VIII-3. Applicable Arbitration Rules**

Any and all arbitrations of a type described in Rule VIII-1 that involve Customers will be conducted pursuant to NFA's Code of Arbitration. All other arbitrations of a type described in Rule VIII-1 will be conducted pursuant to NFA's Member Arbitration Rules.

**VIII-4. Penalties**

(a) Any failure on the part of any Authorized Trader, Authorized Trader Representative or other Person subject to the Exchange's jurisdiction to arbitrate a case subject to arbitration, or the commencement by any such Person of a suit in any court prior to arbitrating a case subject to arbitration, violates the Rules of the Exchange and subjects such Authorized Trader, Authorized Trader Representative or other Person to disciplinary proceedings pursuant to Chapter VII.

(b) The Exchange may summarily suspend, pursuant to Chapter VII, an Authorized Trader, Authorized Trader Representative or other Person subject to the Exchange's jurisdiction that fails to satisfy an arbitration award rendered in any arbitration pursuant to this Chapter VIII.

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**CHAPTER IX  
CONTRACTS**

**IX-1. Contract Specifications**

Each Contract will meet such specifications, and all trading in such Contract will be subject to such procedures and requirements, as set forth in the rules governing such Contract.

**IX-2. Contract Modifications**

The specifications for, and the procedures and requirements for trading, any Contract may not be modified in any respect without the prior approval of the Exchange.

**CHAPTER X  
CLEARING**

**X-1. Clearing Privilege Holder Authorization and Guarantee**

(a) Each Class A Authorized Trader that is not a Clearing Privilege Holder and desires to enter into transactions in Contracts must obtain the prior authorization from a Clearing Privilege Holder who will guarantee such transactions, or enter into an appropriate arrangement with a person that has such authorization from a Clearing Privilege Holder. Each such guarantee or other arrangement must be in form and substance satisfactory to, and approved by, the Exchange. A Clearing Privilege Holder shall guarantee and assume financial responsibility for all Contracts of each Class A Authorized Trader guaranteed by it, and shall be liable for all trades made by such Class A Authorized Trader.

(b) A Clearing Privilege Holder may at any time revoke any authorization granted and guarantee made by it to any Class A Authorized Trader in accordance with paragraph (a) above, by providing written notice of such revocation to the Exchange. The revocation of the guarantee will become effective once the non-clearing Class A Authorized Trader has liquidated or transferred all its Customer and proprietary positions and funds to another Clearing Privilege Holder.

**X-2. Responsibility of Authorized Traders**

Each Class A Authorized Trader shall assist the Clearing Privilege Holder or Clearing Privilege Holders and the Clearinghouse in the clearing of its transactions in Contracts. Without limiting the generality of the foregoing, each Class A Authorized Trader shall: (a) provide its Clearing Privilege Holder a telephone number so that such Authorized Trader may be reached at any time during the day in the event that there is a discrepancy in the clearing of its transactions; and (b) be available to resolve out-trades in Contracts in which such Class A Authorized Trader executed trades on the previous day in a manner specified by the Exchange from time to time. Class A Authorized Traders may appoint one or more representatives for the foregoing purposes. If neither the Class A Authorized Trader nor any such representative is present at the time specified above, such Class A Authorized Trader's Clearing Privilege Holder shall be authorized to resolve any out-trade in the manner it deems appropriate, but such resolution shall not be relevant to the determination of the liability of any party to the out-trade.

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**X-3. Clearing Services**

Whenever the Exchange designates a clearing organization other than the Clearinghouse for the purpose of clearing Contracts with respect to which there are open positions, each Clearing Privilege Holder shall, as of the close of business on the second Business Day prior to the effective date of such designation, either become a Clearing Privilege Holder of such new organization, or cause any such open Contracts carried by it either to be transferred to a Clearing Privilege Holder of such new clearing organization, or to be liquidated.

**X-4. Rules of Clearinghouse**

The clearing services provided by the Clearinghouse with respect to any Contract, and the rights and obligations of purchasers and sellers under cleared Contracts (including, without limitation, rights and obligations in respect of clearing and settlement, variation payments and performance at maturity, and in the case of Options on Futures, upon exercise thereof), shall be governed by the Rules of Clearinghouse.

**X-5. Notice of Arbitration**

In any arbitration concerning an alleged failure of any Authorized Trader to honor a trade in any Contract, each party to such arbitration shall promptly provide copies of all documents filed or received in such arbitration by such party to the Clearing Privilege Holder that guaranteed such party's transactions in Contracts when the trade allegedly took place.