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By E-Mail (submissions@cftc.gov)

Office of the Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
Washington, D.C. 20581

Re: New York Portfolio Clearing, LLC  
Rule Certification – NYPC Rules 101, 102, 301, 302, 310, 311, 504, 601

Ladies and Gentlemen:

New York Portfolio Clearing, LLC (“NYPC”) hereby submits amendments to NYPC Rules 101, 102, 301, 302, 310, 311, 504 and 601 pursuant to the self-certification provisions of Commission Regulation 40.6.

*Removal of Class A. v. Class B Membership Categories (Amendments to NYPC Rules 101, 301 and 302):* In furtherance of the decision of the NYPC Board of Directors to establish a uniform \$3 million minimum Guaranty Fund contribution across all NYPC Clearing Members (subject to a possible grandfathering period for existing NYPC Clearing Members until March 31, 2013), as opposed to the previous \$1 million minimum Guaranty Fund contribution requirement for Class B Members and \$3 million minimum Guaranty Fund contribution requirement for Class A Members,<sup>1</sup> NYPC proposes, in addition to certain technical and conforming changes, to remove the concept of separate Class A and Class B memberships from NYPC’s rules, and instead simply indicate that each NYPC Clearing Member must be either a FICC member or have a securities settlement arrangement with a FICC member acceptable to NYPC in order to facilitate settlement of NYPC-cleared physically settled futures contracts.

*Clearing Member Assessments (Amendments to NYPC Rules 101 and 504):* NYPC also proposes rule amendments that modify NYPC’s Clearing Member assessment cap structure to include the following key elements:

- An assessment cap set at 275% of each non-defaulting NYPC Clearing Member’s Guaranty Fund requirement for each event of default.
- In the event of multiple simultaneous or rapid sequential defaults, NYPC’s total assessment power would be capped during a 5-day “cooling off” period at 550% of each non-defaulting Clearing Member’s Guaranty Fund requirement.
- Non-defaulting Clearing Members wishing to withdraw would be permitted 5 business days to close out positions during which time a withdrawing Clearing Member would not be liable for assessments in excess of the caps described above.
- In the event it becomes necessary to apply all or part of Clearing Members’ Guaranty Fund deposits as a result

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<sup>1</sup> Generally, Class A Members were those NYPC Clearing Members that are also FICC members and Class B Members were those NYPC Clearing Members that are NYPC-only members that have in place securities settlement arrangements with one or more FICC members.



of one or more defaults, Clearing Members would be required, in addition to the assessments described above, to separately restore their Guaranty Fund contributions to the previously required level prior to the close of business on the next banking day.

- Clearing Members would be required to pay assessments prior to the close of the Federal Reserve's wire transfer system (Fedwire) on the day they receive written notice of the assessment, provided that amounts assessed within one hour prior to the close of Fedwire are required to be paid to NYPC within one hour after Fedwire next opens.

*Commission Part 190 Regulation Revisions (Amendments to NYPC Rules 310 and 601):* NYPC also proposes rule amendments that are designed to reflect the requirement under Commission Regulation 190.04(d) that derivatives clearing organizations have rules that describe how Clearing Members' commodity contracts will be liquidated in a manner that results in competitive pricing to the extent feasible under market conditions at the time of liquidation approved by the Commission prior to an event of default, so that permission to effectuate such rules is not needed from the Commission at the time of a default.

*Withdrawal of Clearing Membership (Amendments to NYPC Rules 311 and 504):* NYPC also proposes rule amendments to address comments from certain NYPC Clearing Members requesting clarification that all NYPC Clearing Members seeking to withdraw from membership will be treated in a consistent and equitable manner.

*Risk of Investment Loss in NYPC Guaranty Fund (Amendments to NYPC Rule 504):* NYPC also proposes rule amendments to address comments from certain NYPC Clearing Members requesting clarification that the risk of any investment loss related to the Guaranty Fund would be borne by NYPC and not by the membership.

NYPC hereby certifies that the amended Rules comply with the Commodity Exchange Act and Commission Regulations thereunder. There were no substantive opposing views expressed by any member of the Board of Directors of NYPC, any Committee of the Board, any clearing member or market participant in respect of the proposed Rule amendments. The amended Rules will become effective February 14, 2013.

NYPC hereby certifies that a notice of pending certification with the Commission of the proposed Rule amendments and a copy of this submission have been posted on NYPC's website at <http://www.nypclear.com/rule-amendments>.

The text of the proposed Rule amendments, marked to show all deletions and additions, is enclosed as Annex A, together with the submission cover sheet required by Commission Regulation 40.6(b)(7)(i).

Any questions should be directed to the attention of the undersigned at 212-855-5230 or [laura.klimpel@nypclear.com](mailto:laura.klimpel@nypclear.com).

Very truly yours,

A handwritten signature in cursive script that reads "Laura C. Klimpel".

Laura C. Klimpel  
General Counsel

Encl.

**RULES OF**  
**NEW YORK PORTFOLIO CLEARING, LLC**

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## RULES OF NEW YORK PORTFOLIO CLEARING, LLC

### CHAPTER 1. DEFINED TERMS

#### **Rule 101. Definitions** [*Amended 08/07/2012*]

Unless the context otherwise requires, the terms defined in this Rule have the meanings specified below for all purposes under the Rules:

“Appeal Panel” means a panel comprised of a chairman and two individuals appointed by the Board to consider appeals under Chapter 6 of the Rules.

“Authorized Representative” means an individual designated by a Clearing Member and registered with the Clearinghouse with authority to act on behalf of the Clearing Member.

“Board” means the Board of Directors of the Clearinghouse, as set forth in the Operating Agreement.

“Broker-Dealer” means a broker or dealer as such terms are defined in the Exchange Act and includes a government securities broker and government securities dealer as such terms are defined in the Exchange Act.

“Business Day” means any day on which the Clearinghouse is open for business.

“CEA” means the Commodity Exchange Act.

“CFTC” means the Commodity Futures Trading Commission.

“Chief Executive Officer” means the individual appointed by the Board as the chief executive officer of the Clearinghouse.

“Chairman” means the chairman of the Board.

~~“Class A Member” means any Person that is admitted as a Class A member of the Clearinghouse as provided in Rule 301. The membership of a Class A Member in the Clearinghouse is referred to as a “Class A Membership.”~~

~~“Class B Member” means any Person that is admitted as a Class B member of the Clearinghouse as provided in Rule 301. The membership of a Class B Member in the Clearinghouse is referred to as a “Class B Membership.”~~

“Clearinghouse” means New York Portfolio Clearing, LLC.

“Clearing Bank” means a bank, trust company or other institution designated by the Clearinghouse as a Clearing Bank that acts as a depository for Original Margin and in such other capacities as the Clearinghouse may approve.

~~“Clearing Member” means any Class A Member or any Class B Member. Class A Members and Class B Members are collectively referred to as “Clearing Members.”~~ membership in the Clearinghouse pursuant to Rule 301.

“Clearing Member Cross-Margining Agreement” means, as applicable, the (i) Clearing Member Cross-Margining Agreement (Joint Clearing Member – Proprietary Accounts), (ii) Clearing Member Cross-Margining Agreement (Affiliated Clearing Members – Proprietary

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Accounts), (iii) Clearing Member Cross-Margining Agreement (Joint Clearing Member – Market Professional Accounts), or (iv) Clearing Member Cross-Margining Agreement (Affiliated Clearing Members – Market Professional Accounts), in each case in the form set forth as an appendix to the Cross-Margining Agreement.

“Clearing System” means systems, software, hardware and other technology of any kind used by or on behalf of the Clearinghouse to perform its clearing functions.

“Committee” means a committee established by the Board.

“Contract” means any contract, agreement or transaction approved by the Clearinghouse for clearing under the Rules. Where the Clearinghouse provides clearing services for, or is party to a Cross-Margining Agreement with, more than one Exchange or market, the term “Contract” shall be construed to apply separately to each such Exchange or market.

“Cooling Off Period” means the date of the initial Clearing Member Default until the later of (i) the fifth Business Day thereafter and (ii) if another Clearing Member Defaults during the five Business Days following the initial or any subsequent Default, the fifth Business Day following the last such Default, regardless of the number of Defaults that occur during such period.

“Cross-Guaranty Agreement” means an agreement between the Clearinghouse and one or more DCOs and/or one or more clearing agencies (as such term is defined in the Exchange Act) related to the cross-guaranty by the Clearinghouse and the other party or parties of certain obligations of a suspended Clearing Member to the parties to such agreement.

“Cross-Guaranty Defaulting Member” means a Clearing Member in Default on account of which the Clearinghouse has made or received a Cross-Guaranty Payment.

“Cross-Guaranty Party” means a party (other than the Clearinghouse) to a Cross-Guaranty Agreement.

“Cross-Margining Affiliate” means an affiliate of a Clearing Member that is a member of FICC and that has agreed to have its positions and margin at FICC margined together with Eligible Positions and Margin of the Clearing Member at the Clearinghouse, and to be bound by the Cross-Margining Agreement and by the Rules and the rules of FICC that are applicable to cross-margining arrangements, all in accordance with the Clearing Member Cross-Margining Agreement.

“Cross-Margining Agreement” means the NYPC Cross-Margining Agreement, as it may be amended from time to time, entered into between the Clearinghouse and FICC and providing for participation by the Clearinghouse, FICC, Joint Clearing Members and Cross-Margining Affiliates in an arrangement providing for the cross-margining of Contracts cleared by the Clearinghouse with interest rate instruments cleared by FICC.

“Customer” means any Person, including a Market Professional, that has a beneficial ownership interest in a Customer Account.

“Customer Account” means an account established by a Clearing Member with the Clearinghouse in which the Clearing Member maintains trades, positions and Margin solely for “customers,” as such term is defined in CFTC Regulation 1.3(k), of the Clearing Member. Except as the context otherwise requires, the term “Customer Account” includes an account established by a Clearing Member to maintain trades, positions and Margin for Market Professionals.

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“Insolvent” and “Insolvency” means the occurrence of any of the following events with respect to a Clearing Member:

(1) the Clearing Member is determined to be insolvent by a Government Agency or Self-Regulatory Organization;

(2) if the Clearing Member is a member of the Securities Investor Protection Corporation, a court of competent jurisdiction finds that the Clearing Member meets any one of the conditions set forth in clauses (A), (B), (C), or (D) of Section 5(b)(1) of the Securities Investor Protection Act of 1970;

(3) in the event of the entry or the making of a decree or order by a court, Government Agency or other supervisory authority of competent jurisdiction (i) adjudging the Clearing Member as bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization, arrangement, liquidation, dissolution, adjustment or composition of or in respect of the Clearing Member under the Bankruptcy Code or any other applicable federal, state or other U.S. or non-U.S. law, including any bankruptcy, insolvency, reorganization, liquidation, dissolution, or similar law, (iii) appointing a receiver, custodian, liquidator, provisional liquidator, administrator, provisional administrator, assignee, trustee, sequestrator or other similar official for the Clearing Member or for any substantial part of its property, (iv) ordering the winding up or liquidation of the Clearing Member’s affairs, or (v) consenting to the institution by the Clearing Member of proceedings to be adjudicated as a bankrupt or insolvent;

(4) the filing by the Clearing Member of a petition, or any case or proceeding, seeking reorganization or relief under the Bankruptcy Code or any other applicable federal, state or other U.S. or non-U.S. law, including any bankruptcy, insolvency, reorganization, liquidation, dissolution, or similar law, or the consent by the Clearing Member to the filing of any such petition, case or proceeding or to the appointment of a receiver, custodian, liquidator, provisional liquidator, administrator, provisional administrator, assignee, trustee, sequestrator or other similar official for the Clearing Member or for any substantial part of its property, or the making by the Clearing Member of an assignment for the benefit of its creditors, or the admission by the Clearing Member in writing of its inability to pay its debts generally as they become due, or the taking of corporate or similar action by the Clearing Member in furtherance of the foregoing; or

(5) if a Settlement Bank of a Clearing Member fails timely to make Margin payments on behalf of such Clearing Member.

As used in paragraphs (1) through (5) above, the term “Clearing Member” includes a Cross-Margining Affiliate or 5% Owner of such Clearing Member. Notwithstanding the foregoing, a Clearing Member shall not be deemed to be Insolvent in the event such Clearing Member (without being deemed to have admitted its liability thereunder) provides or posts a bond, indemnity, or guaranty from a third party that the Clearinghouse deems satisfactory to ensure the performance of the Clearing Member’s Obligations.

“Joint Clearing Member” means a ~~Class A~~ Clearing Member that is a FICC member, which has agreed to have its positions and margin at FICC margined together with Eligible Positions and Margin at the Clearinghouse, and to be bound by the Cross-Margining Agreement and by the

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Rules and the rules of FICC that are applicable to cross-margining arrangements, all in accordance with the Clearing Member Cross-Margining Agreement.

“Margin” means any Original Margin and Variation Margin paid or payable by or to a Clearing Member to or by the Clearinghouse.

“Market Professional” has the meaning given that term in the Cross-Margining Agreement.

“Net Settlement Amount” means (i) as to a Settlement Bank, the net Variation Margin payments and collections made by or to such Settlement Bank on behalf of the Clearing Members for which such Settlement Bank is acting and (ii) as to a Clearing Member, the net Variation Margin payments and collections made by or to such Clearing Member effected through such Clearing Member’s Settlement Bank.

“NSS” means the National Settlement Service, a multilateral funds settlement service owned and operated by the Federal Reserve Banks.

“NYSE Guaranty” means the guaranty of payment by NYSE Euronext of Clearing Member Deficiencies in accordance with Rule 503(b), in an amount not to exceed \$50 million in the aggregate, and includes any cash collateral arrangement that secures such guaranty.

“Obligations” means all financial obligations of a Clearing Member arising under the Rules or such Clearing Member’s agreements with the Clearinghouse, however created, arising or evidenced, whether direct or indirect, absolute or contingent, existing, due or to become due.

“Operating Agreement” means the Amended and Restated Limited Liability Company Agreement of the Clearinghouse, as it may be further amended or restated from time to time.

“Original Margin” means, with respect to a Clearing Member, the minimum deposit required from such Clearing Member, in accordance with the Rules, in respect of Contracts in the accounts of such Clearing Member.

“Person” means an individual, sole proprietorship, partnership, limited liability company, association, firm, trust, corporation or other entity, as the context may require.

“Proprietary Account” has the meaning given that term in CFTC Regulation 1.3(y).

References to a “Rule” or “Rules” are references to the rules, interpretations, orders and other directives of the Clearinghouse, all as in effect from time to time.

“Retained Earnings” means the net cash income of the Clearinghouse that has been retained by the Clearinghouse from prior years, plus any cash operating surplus of the Clearinghouse for the current year, in excess of amounts necessary for normal operations.

“Risk Committee” means the Risk Committee of the Board established pursuant to the Operating Agreement.

“SEC” means the Securities and Exchange Commission.

“Self-Regulatory Organization” shall mean any futures or securities exchange, derivatives clearing organization, securities clearing agency, the National Futures Association and FINRA.

“Settlement Bank” means an entity that has been approved to act as a Settlement Bank in accordance with Rule 403.

“Termination Event” means the occurrence of any of the following:

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(1) the termination of the clearing member agreement between the Clearing Member and the Clearinghouse;

(2) with respect to a Joint Clearing Member, the expiration or termination of the clearing member agreement between the Joint Clearing Member and FICC.

(3) a representation or warranty made by the Clearing Member to the Clearinghouse under or in connection with any agreement between the Clearinghouse and the Clearing Member shall be false or misleading in any material respect as of the date on which made or repeated;

(4) the Clearing Member does not meet the qualifications for Clearing Members set forth in ~~Rule 302~~; Rule 301; or

(5) the breach by the Clearing Member of the Rules or any of the terms or provisions of any agreement between the Clearinghouse and the Clearing Member.

“Treasury” means the United States Department of the Treasury.

“Variation Margin” means:

(1) with respect to futures contracts: (i) on the Business Day a Contract has been accepted for clearing by the Clearinghouse, the difference between the price at which such Contract was bought or sold and the Settlement Price for such Contract established by the Clearinghouse; and (ii) thereafter, the difference, as applicable, between (x) the Settlement Price on a given Business Day and the preceding Settlement Price for such Contract, or (y) the price at which such Contract was closed on the books of the Clearinghouse and the preceding Settlement Price for such Contract; and

(2) with respect to option contracts, on the Business Day a Contract has been accepted for clearing by the Clearinghouse, the agreed premium at which such Contract was bought or sold.

“Vice Chairman” means the vice chairman of the Board.

### **Rule 102. Other Defined Terms [*Amended 08/07/2012*]**

Set forth below are certain other terms defined in the Rules and the place in the Rules where such terms are defined:

| <u>Defined Term</u>                       | <u>Rule</u>                            |
|---|--|
| “Appropriate Regulatory Agency” .....     | Rule 306(d)(1)                         |
| “Bankruptcy Event” .....                  | Rule 506(a)                            |
| “Call Report” .....                       | Rule 306(d)(2)                         |
| “Clearing Member Deficiency” .....        | Rule 503(b)                            |
| “Clearinghouse Proceeding” .....          | Rule 205(a)                            |
| “Close-out Amount” .....                  | Rule 506(d)                            |
| “Cross-Guaranty Beneficiary Member” ..... | Rule 505(c)(1)                         |
| “Cross-Guaranty Payment” .....            | Rule 505(f)                            |
| “Cross-Guaranty Repayment” .....          | Rule 505(f)                            |
| “Cross-Guaranty Repayment Deposit” .....  | Rule 505(d)                            |
| “Cross-Margin Beneficiary Member” .....   | <del>0</del> <u>Rule 411(d)(1)(ii)</u> |

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|--|----------------|
| “Cross-Margin Guaranty” .....          | Rule 411(g)(3) |
| “Cross-Margin Payment” .....           | Rule 411(g)(1) |
| “Cross-Margin Repayment” .....         | Rule 411(g)(2) |
| “Cross-Margin Repayment Deposit” ..... | Rule 411(e)    |
| “Emergency” .....                      | Rule 207(c)    |
| “Emergency Rules” .....                | Rule 207(a)    |
| “FDICIA” .....                         | Rule 506(e)    |
| “5% Owner” .....                       | Rule 307(a)    |
| “Interested Person” .....              | Rule 205(a)    |
| “Reimbursement Obligation” .....       | Rule 411(d)    |
| “Respondent” .....                     | Rule 604(a)    |
| “Settlement Price” .....               | Rule 404       |

### **Rule 103. Rules of Construction**

In the Rules, unless the context otherwise requires, (i) words in the singular include the plural and words in the plural include the singular; (ii) references to statutory provisions include those provisions, and any rules or regulations promulgated thereunder, as amended; (iii) any reference to a time means the time in New York, New York; and (iv) all uses of the word “including” should be construed to mean “including, but not limited to.”

CHAPTER 3. CLEARING MEMBERS

**~~Rule 301. Clearing Membership Generally~~**

~~(a) An applicant for Class A membership shall be subject to Rule 302(a), Rule 302(b), and, if applicable, Rule 302(d) during the pendency of its application and during its tenure as a Class A Member.~~

~~(b) An applicant for Class B membership shall be subject to Rule 302(a), Rule 302(c) and, if applicable, Rule 302(d) prior during the pendency of its application and during its tenure as a Class B Member.~~

**Rule 301. Application and Qualification Requirements**

~~(c) Only Persons found by the Clearinghouse to be appropriately qualified shall be permitted to be Clearing Members. For the purpose of determining whether an applicant is appropriately qualified, an applicant shall submit an application in such form as shall be prescribed by the Clearinghouse, which form shall include a certification that the applicant has reviewed and agrees to abide by the Rules and perform the duties and responsibilities of a Clearing Member. An applicant for Clearing Member status shall be conclusively deemed to have agreed to have no recourse against the Clearinghouse in the event that its application to become a Clearing Member is rejected.~~

~~(d)(a)~~ The Clearinghouse may establish minimum capital and other requirements for Clearing Members, examine the books and records of any applicant or Clearing Member, and take such other steps as it may deem necessary to ascertain the facts bearing upon the question of qualification.

**Rule 302. Clearing Member Qualifications**

~~(a)(b)~~ Qualification of Clearing Members. Each applicant for qualification as a Clearing Member shall satisfy the following requirements:

- (1) it shall be a corporation, limited liability company, partnership or other entity approved by the Clearinghouse, in each case, in good standing in its jurisdiction of formation;
- (2) it shall be qualified to conduct business in the State of New York or have an agency agreement in place with an entity qualified in the State of New York that provides an agent for service of process and other communications from the Clearinghouse in connection with the business of the Clearing Member;
- (3) it shall demonstrate such fiscal integrity as would justify the Clearinghouse's assumption of the risks inherent in clearing its Contracts;
- (4) it shall be engaged in or demonstrate its capacity to engage in the conduct of the business of a Clearing Member;
- (5) it shall have received all necessary approvals and consents from all applicable regulatory authorities and Government Agencies to permit it to conduct the business of a Clearing Member;

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(6) if it is clearing Contracts on behalf of Customers, it shall be registered with the CFTC as an FCM;

(7) it shall have established satisfactory relationships with, and have designated to the Clearinghouse, a Clearing Bank and a Settlement Bank for payment of Margin to the Clearinghouse; and

(8) it shall maintain back-office facilities staffed with experienced and competent personnel or have entered into a facilities management agreement in form and substance acceptable to the Clearinghouse.

~~(b)(c)~~ Class A Members. Certain FICC Requirements. In addition to the requirements set forth above, each applicant for qualification as a Class A Clearing Member shall be ~~(i) a FICC member of the netting system of the Government Securities Division of FICC or (ii) upon implementation of central counterparty services by the Mortgage-Backed Securities Division of FICC, shall enter into a clearing member of the Mortgage-Backed Securities Division securities settlement arrangement with one or more FICC members in form and substance acceptable to the Clearinghouse.~~ Notwithstanding the foregoing, none of (x) an Inter-Dealer Broker Netting Member, (y) a Dealer Netting Member with respect to its segregated brokered accounts, or (z) a Sponsored Member (as each such term is defined in ~~FICC's rules~~) ~~shall be eligible to become a Class A Member. In addition, a Bank Netting Member (as such term is defined in FICC's rules) shall not be eligible to become a Class A Member unless it can demonstrate, to the satisfaction of FICC and NYPC that, as a Class A Member, it would be in compliance with regulatory requirements applicable to it.~~ the rules of the Government Securities Division of FICC) shall be eligible to enter into a Clearing Member Cross-Margining Agreement.

~~(e) Class B Members. In addition to the requirements set forth above, each applicant for qualification as a Class B Member shall enter into securities settlement arrangements with one or more FICC members in form and substance acceptable to the Clearinghouse. A Person that is qualified for Class A Membership shall not be admitted as a Class B Member.~~

~~(d) Banks and Trust Companies. A Bank Netting Member (as such term is defined in the rules of the Government Securities Division of FICC) shall not be eligible to become a Clearing Member unless it can demonstrate, to the satisfaction of NYPC that it would be in compliance with the Rules, regulatory requirements applicable to it as a Clearing Member, and, if applicable, the Clearing Member Cross-Margining Agreement.~~

~~(d)(e)~~ Foreign Clearing Members. In addition to the requirements set forth above, an applicant for qualification as a Clearing Member that is organized or established under the laws of a country other than the United States must:

(1) maintain a presence in the United States, either directly or through a suitable agent, that both has available individuals fluent in English who are knowledgeable about the applicant's business and can assist representatives of the Clearinghouse as necessary, and ensure that the applicant will be able to meet its data submission, settlement, and other obligations to the Clearinghouse as a Clearing Member in a timely manner;

(2) represent and certify to the Clearinghouse that it is in compliance with the financial reporting and responsibility standards of its home country and that it is regulated in its home country by a financial regulatory authority in the areas of maintenance of relevant books and

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records, regular inspections and examinations, and minimum capital standards, and make such other representations as the Clearinghouse deems necessary; and

(3) upon request by the Clearinghouse, submit an opinion of outside counsel on home country law and, if applicable, other relevant non-domestic law, in form and substance acceptable to the Clearinghouse.

(f) An applicant for Clearing Member status shall be conclusively deemed to have agreed to have no recourse against the Clearinghouse in the event that its application to become a Clearing Member is rejected.

### **Rule 302. [Reserved]**

### **Rule 303. Duties and Responsibilities of Clearing Members [Amended 05/07/2012]**

Each Clearing Member shall and, as applicable, shall cause its Authorized Representatives and employees to:

- (a) comply with and act in a manner consistent with the Rules;
- (b) guarantee and assume responsibility for all Contracts submitted by it or for which it authorizes another Person to submit in its name for clearing;
- (c) immediately inform the Clearinghouse of any changes to the account information provided by the Clearing Member;
- (d) keep the Clearing Member's Clearing System User IDs and passwords confidential;
- (e) at all times have a Settlement Bank validly appointed and acting on its behalf to pay and receive Variation Margin payments in accordance with Rule 403;
- (f) promptly review and, if necessary, respond to all communications sent by the Clearinghouse;
- (g) be responsible for violations of the Rules committed by it, its Authorized Representative or employees;
- (h) keep, or cause to be kept, complete and accurate books and records, including, without limitation, all books and records required to be maintained by the Clearinghouse or pursuant to the CEA or CFTC Regulations, for at least five years, and make such books and records available for inspection by the Clearinghouse, the CFTC or other Government Agency;
- (i) not knowingly mislead or conceal any material fact or matter in any dealings or filings with the Clearinghouse or in response to any Clearinghouse Proceeding;
- (j) cooperate with the Clearinghouse and any Government Agency in any inquiry, investigation, audit, examination or proceeding;
- (k) provide appropriate staff in their offices during specified hours, on Business Days and otherwise, when such is deemed necessary by the Clearinghouse to ensure the integrity of its systems or as otherwise deemed necessary for the protection of the Clearinghouse; and

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(3) A Clearing Member shall, unless it is impractical to do so (in which case it shall provide written notice to the Clearinghouse as promptly as possible), provide at least ninety days prior written notice to the Clearinghouse of:

(i) any proposed change in the organizational or ownership structure or management of a Clearing Member, including any merger, combination or consolidation between the Clearing Member and another Person;

(ii) the assumption or guaranty by the Clearing Member of all or substantially all of the liabilities of another Person in connection with a direct or indirect acquisition of all or substantially all of that Person's assets;

(iii) the sale of all or a significant portion of the Clearing Member's business or assets to another Person;

(iv) a change in the direct or indirect beneficial ownership of 20% or more of the Clearing Member; or

(v) any change in the Clearing Member's systems provider or facilities manager used by the Clearing Member to process transactions in Contracts.

(c) Large Trader Reports

(1) A Clearing Member shall provide the Clearinghouse copies of all Forms 102 that the Clearing Member files with the CFTC pursuant to Part 17 of the CFTC Regulations. The Clearing Member shall provide such reports to the Clearinghouse no later than the time that it provides such reports to the CFTC.

### **Rule 309. Adequate Assurances**

If the Clearinghouse has reason to believe that a Clearing Member may fail to comply with any of the Rules, it may require the Clearing Member to provide it, within such timeframe, in such detail, and in such manner as the Clearinghouse shall determine, with adequate assurances that the Clearing Member shall not violate any of the Rules.

### **Rule 310. Restrictions on Activity [Amended 08/07/2012]**

(a) If (i) a Clearing Member is in Default, (ii) a Termination Event occurs with respect to such Clearing Member, or (iii) the Clearinghouse determines that the financial or operational condition of a Clearing Member or one of its affiliates is such that to allow that Clearing Member to continue its operation would adversely affect the Clearinghouse or adversely affect the financial markets (whether or not the Clearing Member continues to meet the required minimum financial requirements), the Clearinghouse may:

(1) allow such Clearing Member to submit Contracts solely for its Proprietary Accounts;

(2) limit or restrict the type of Contracts that may be cleared by such Clearing Member in any of its accounts with the Clearinghouse;

(3) limit or restrict the number of Contracts that are permitted to be maintained by such Clearing Member in any of its accounts with the Clearinghouse;

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(4) decline to accept new trades or positions in Contracts for the accounts of the Clearing Member;

(5) increase such Clearing Member's Margin and Guaranty Fund requirements and/or require such Clearing Member to deposit the same in cash or Eligible Securities in proportions different than those that are applicable to Clearing Members generally;

(6) allow such Clearing Member to submit Contracts for liquidation only;

(7) prohibit such Clearing Member from withdrawing excess Original Margin;

(8) cause open Contracts in the Proprietary Accounts or Customer Accounts of the Clearing Member to be transferred to another Clearing Member;

(9) cause open Contracts to be settled in cash or liquidated; in accordance with Rule 601(d);

(10) impose such additional capital, Margin, financial reporting or other requirements as the Clearinghouse shall deem appropriate for the protection of the Clearinghouse and its Clearing Members; and

(11) terminate the Clearing Member's membership in the Clearinghouse.

(b) In addition to the powers conferred by this Rule, the Clearinghouse shall have the authority conferred by Rule 503 when a Clearing Member is in Default.

### **Rule 311. Withdrawal of Clearing Membership [Amended 08/07/2012]**

~~(a) When a Clearing Member withdraws from membership or its membership is terminated, all Obligations of the Clearing Member to the Clearinghouse, of whatever nature or kind, shall be accelerated and become due and payable upon the effective date of such withdrawal or termination. The Clearing Member's Guaranty Fund deposit, and any other deposits required by the Clearinghouse will not be released until the Clearinghouse determines that all such Clearing Member's Obligations have been settled and all sums owing to the Clearinghouse have been paid.~~

A Clearing Member may withdraw from membership upon approval of the Clearinghouse, which approval shall be granted not later than thirty days after (1) the liquidation or, with the approval of the Clearinghouse, transfer to another Clearing Member of all open positions (including Customer positions) in the Clearing Member's accounts at the Clearinghouse; (2) the satisfaction of all Obligations of the withdrawing Clearing Member, including any assessment under Rule 504(b); and (3) if applicable, the payment of all amounts owing to FICC pursuant to a Clearing Member Cross-Margining Agreement. When a Clearing Member withdraws from membership or its membership is terminated, all Obligations of the Clearing Member to the Clearinghouse, of whatever nature or kind, shall be accelerated and become due and payable upon the effective date of such withdrawal or termination. The Clearing Member's Guaranty Fund deposit and any Margin and other deposits required by the Clearinghouse shall be released when the Clearinghouse determines that all such Clearing Member's Obligations have been settled and all sums owing to the Clearinghouse have been paid. Subject to the foregoing, the Clearinghouse will use reasonable efforts to treat all withdrawing Clearing Members in a consistent and equitable manner.

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Clearinghouse's agreements with such Clearing Member. Upon such assignment, NYSE Euronext shall have such rights and remedies, and may bring a claim in its own name, to pursue recovery of any amounts paid by NYSE Euronext under the NYSE Guaranty.

(f) A Clearing Member shall take no action, including but not limited to attempting to obtain a court order, that would interfere with the ability of the Clearinghouse or, as provided in paragraph (e), NYSE Euronext to exercise its rights under the Rules and its agreements with such Clearing Member.

### **Rule 504. Guaranty Fund [Amended 08/07/2012]**

(a) Each Clearing Member shall deposit and maintain a contribution to the Guaranty Fund in such form and in such amount as determined by the Clearinghouse from time to time. The Clearinghouse shall determine the appropriate size of the Guaranty Fund. If at any time the Clearing Member does not have a sufficient deposit in the Guaranty Fund, any such deficiency shall remain a liability of the Clearing Member to the Clearinghouse, which it may collect from any other assets of such Clearing Member or by legal process. Additionally, the Clearinghouse may deposit, or may cause to be deposited, such amount to the Guaranty Fund as it determines, which amount shall not be subject to the restrictions on return set forth in paragraph (4) below.

#### (1) Calculation

The amount required to be deposited by each Clearing Member shall be determined by a formula that reflects certain components of risk and volume and shall be calculated by the Clearinghouse daily. A Clearing Member whose requirement has increased relative to its current contribution shall be required to deposit cash, securities or other property acceptable to the Clearinghouse to remedy such deficiency, subject to certain thresholds established by the Clearinghouse from time to time. A Clearing Member whose Guaranty Fund requirement has decreased relative to its current contribution may withdraw its excess contribution upon request and at intervals established by the Clearinghouse from time to time.

#### (2) Custody

(i) The Guaranty Fund shall be deposited in a special account in the name of the Clearinghouse in such depositories or other acceptable locations as may be designated by the Clearinghouse.

(ii) The Clearinghouse shall be empowered to invest and reinvest all or part of the funds constituting the Guaranty Fund. Such investments and deposits shall be for the account and risk of the Clearinghouse, ~~and including the risk of any investment losses.~~ Any income and gains on such investments and interest on such deposits shall belong to the Clearinghouse and may be withdrawn from the Guaranty Fund and deposited with the general funds of the Clearinghouse. No interest shall be paid to any Clearing Member on any funds deposited in the Guaranty Fund.

#### (3) Impairment

If the Guaranty Fund or any part thereof shall be lost or become unavailable from any cause other than investment loss or the Default of the depositing Clearing Member, the amount so lost or made unavailable shall be forthwith restored by transferring

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thereto such of the surplus funds of the Clearinghouse as may be necessary, except such amount as the Clearinghouse may, in its discretion, decide to retain as surplus for future operating expenses, and if the amount thus transferred from surplus is insufficient to cover the entire loss, the balance of such loss shall be made up by an assessment upon each Clearing Member pursuant to paragraph (b). Such assessment shall be paid by a Clearing Member immediately after the issuance of notice to such Clearing Member.

### (4) Return of Clearing Member Guaranty Fund Deposit

~~After The Clearinghouse shall return a Clearing Member ceases to be a Clearing Member of Member's Guaranty Fund deposit upon the Clearinghouse and after all Obligations withdrawal of such Clearing Member to the Clearinghouse shall have been discharged from membership in full, the amount of the Guaranty Fund to which such Clearing Member is entitled shall be returned the Clearinghouse, as provided in Rule 311.~~ Expenses incurred by the Clearinghouse in connection with a Clearing Member's deposit or the return thereof may be charged to the Clearing Member.

### (5) Certain Borrowings

(i) The Clearinghouse may at any time and from time to time assign, pledge, repledge or otherwise create a lien on or security interest in the Guaranty Fund and/or the cash, securities and other property held in the Guaranty Fund to secure the repayment of funds borrowed by the Clearinghouse and any interest, fees and other amounts payable in connection therewith.

(ii) Any funds so borrowed shall be used and applied by the Clearinghouse solely for the purposes for which cash, securities and other property held in the Guaranty Fund are authorized to be used pursuant to the Rules; provided that the failure of the Clearinghouse to use such funds in accordance with this Rule shall not impair any of the rights or remedies of any assignee, pledgee or holder of any such lien or security interest.

(iii) Any such borrowing shall be on terms and conditions deemed necessary or advisable by the Clearinghouse, and may be in amounts greater, and extend for periods of time longer than the Obligations, if any, of any Clearing Member to the Clearinghouse for which such cash, securities or other property was pledged to or deposited with the Clearinghouse.

(iv) Cash, securities and other property held in the Guaranty Fund shall remain the property of the Clearing Members depositing such cash securities and other property, except that:

(A) such property shall be subject to the rights and powers of the Clearinghouse with respect thereto as set forth in the Rules and the agreements between such Clearing Member and the Clearinghouse, including any Clearing Member Cross-Margining Agreement; and

(B) such property shall be subject to the rights and powers of any Person to which the Guaranty Fund or any of the cash, securities or other property held therein shall have been assigned, pledged, repledged or otherwise subjected to a lien or security interest.

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### (b) Clearing Member Assessment

(1) The balance of the Clearinghouse loss remaining after application of the funds set forth in Rule 503(b)(1) through Rule 503(b)(4) ("Clearinghouse Loss") shall be assessed against all Clearing Members (excluding any Clearing Member that is in Default). Each Clearing Member (excluding any Clearing Member that is in Default) shall be subject to an assessment in an amount, as determined by the Clearinghouse, that is proportional to such Clearing Member's Guaranty Fund requirement compared to the total Guaranty Fund requirement of all Clearing Members (excluding any Clearing Member that is in Default). Such assessment amount shall not exceed the greater of (i) 275 percent of such Clearing Member's Guaranty Fund requirement at the time of the Default with respect to the Clearinghouse Loss attributed to a single defaulting Clearing Member and (ii) 550 percent of such Clearing Member's Guaranty Fund requirement at the commencement of a Cooling Off Period with respect to the Clearinghouse Loss attributed to all defaulting Clearing Members during such Cooling Off Period.

~~(c) Notwithstanding the foregoing and except as provided for below, a Clearing Member will not be liable for Guaranty Fund Contributions to make good more than an additional 100% be Restored. In the event it shall become necessary to apply all or part of the amount of its Clearing Members' Guaranty Fund requirement, as calculated by the Clearinghouse deposits to meet obligations pursuant to paragraph (a) this Rule, Clearing Members shall restore their Guaranty Fund contributions to the previously required level prior to the close of business on the next banking day.~~

~~(d) Multiple Defaults. The provisions set forth in paragraph (b) of this Rule shall apply with respect to each Default by a Clearing Member. If more than one Default occurs at a time or in close sequence, including a Default that gave rise to the occurs by reason of a Clearing Member's failure to satisfy an assessment, if (i) the Clearinghouse shall manage the Defaults separately. Upon any Default, non-defaulting Clearing Members shall be subject to a maximum obligation during the relevant Cooling-Off Period to contribute to the Guaranty Fund and to fund assessments as set forth in paragraph (b) of this Rule. However, such maximum obligation does not limit Clearing Members' obligations to restore their required Guaranty Fund contributions as set forth in paragraph (c) of this Rule, except that if the Clearing Member's Guaranty Fund requirement would exceed such maximum obligation, the Clearing Member's Guaranty Fund requirement shall be reduced accordingly for the remainder of the Cooling Off Period. Following a Cooling Off Period, the Clearinghouse shall notify each Clearing Member of its Guaranty Fund requirement and its assessment exposure.~~

### (e) Withdrawal.

~~(1) If a Clearing Member has (i) made payment of all amounts assessed against it pursuant to this Rule in connection with any single Default or multiple Defaults during a Cooling Off Period, (ii) has replenished any deficiency in its Guaranty Fund contribution in accordance with paragraphs (b) and (c) of this Rule and (iii) within five Business Days following such assessment, the Clearing Member notifies after making such payments, has satisfied the other conditions for withdrawal set forth in Rule 311, it may notify the Clearinghouse in writing that it is terminating its status as a Clearing Member, (ii) no Contracts are submitted for clearing through any of the Clearing Member's accounts after the giving. Upon receipt of such notice other than for, provided that the purpose of~~

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~~liquidating open positions, and (iii) foregoing conditions have been satisfied, the withdrawing Clearing Member closes out or transfers all of its open positions with the shall not be subject to any residual assessment to cover any Clearinghouse as promptly as practicable Loss or Defaults occurring after the giving of such notice; provided, that a Clearing Member which is related Cooling Off Period. Further, the Guaranty Fund contribution that it has restored shall not be used or applied towards meeting any claim or obligation of the Clearinghouse pursuant to this Rule that arises with respect to Defaults occurring after the related Cooling Off Period, and the withdrawing Clearing Member's Guaranty Fund contribution shall be released in accordance with Rule 311.~~

(2) A Clearing Member that terminates its status as a Clearing Member in accordance with subparagraph (1) of this paragraph (e) shall be ineligible to be readmitted to the Clearinghouse unless the Clearing Member agrees to such reimbursement of the persons who were Clearing Members at the time of such termination as the Clearinghouse deems fair and equitable in the circumstances. ~~A Clearing Member that has satisfied the foregoing conditions shall not be subject to assessment under this paragraph (b) for a Default that occurs after the time such Clearing Member has notified the Clearinghouse that it is terminating its status as a Clearing Member.~~

~~(3) The difference, if any, between the amount that would be assessed against any Clearing Member pursuant to subparagraph (1) and subparagraph (2) shall be considered a deficiency and shall be assessed against Clearing Members (other than a Clearing Member that is in Default and any Clearing Member that has paid the maximum amount set forth in subparagraph (2)) in accordance with paragraph (1) of this Rule until the entire deficiency is paid or every Clearing Member (other than a Clearing Member that is in Default or a Clearing Member that has paid the maximum amount set forth in subparagraph (2)) has paid the amount set forth in subparagraph (2).~~

~~(4)~~(3) During the hours in which the Federal Reserve's wire transfer system (Fedwire) is in operation, a Clearing Member shall pay the amount of any assessment made pursuant to this Rule in immediately available funds ~~not later than one Business Day after~~prior to the close of Fedwire on the day written notice of such assessment shall have been delivered to such Clearing Member; provided, however, that all amounts assessed within one hour prior to the close of Fedwire shall be paid to the Clearinghouse within one hour after Fedwire next opens. Any Clearing Member that does not satisfy an assessment timely and in full shall be in Default. ~~Any Clearinghouse loss that remains as a result of such Default shall be assessed to the non-defaulting Clearing Members.~~

### **Rule 505. Cross-Guaranty Agreements**

(a) The Clearinghouse may, from time to time, enter into one or more Cross-Guaranty Agreements.

(b) In addition to a Clearing Member's other obligations to the Clearinghouse under the Rules, a Cross-Guaranty Defaulting Member on whose account the Clearinghouse has made a Cross-Guaranty Payment shall be obligated to the Clearinghouse for the amount of such Cross-Guaranty Payment less the amount of any Cross-Guaranty Repayment received by the Clearinghouse in respect thereof.

(c) The Clearinghouse shall either:

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## CHAPTER 6. SUSPENSION; DISCIPLINARY PROCEEDINGS

### **Rule 601. Suspension** [*Amended 05/07/2012*]

#### (a) General

The Board or the Risk Committee may summarily suspend any Clearing Member if the Clearing Member or its Cross-Margining Affiliate:

(1) is in Default; or

(2) is in such financial or operating difficulty or is not in compliance with the Rules, such that the Board or the Risk Committee determines that suspension is necessary for the protection of the Clearinghouse, other Clearing Members, or the general public.

#### (b) Notice of Suspension to Clearing Members

Upon the suspension of a Clearing Member, the Clearinghouse shall as soon as possible notify all Clearing Members of the suspension. Such notice shall state to the extent practicable in general terms how pending transactions, open positions and other pending matters will be affected and what steps are to be taken in connection therewith.

#### (c) Pending Transactions

Notwithstanding any other provision of the Rules, the Clearinghouse shall have no obligation to accept any transaction of a suspended Clearing Member that was effected after the time at which the Clearing Member was suspended. In the event a transaction of a suspended Clearing Member is rejected by the Clearinghouse, such transaction shall be closed by the other party thereto in accordance with the rules of the Exchange or other market on which the transaction was effected.

#### (d) Open Positions

The Clearinghouse shall have the right to cause open positions in Contracts in any of the accounts of a suspended Clearing Member:

(1) to be closed in the most orderly manner practicable, including through exchanges of futures for physicals or exchanges of futures for swaps;

(2) to be transferred to the account of one or more other Clearing Members;

(3) to be offset against each other and, to the extent of any remaining imbalance, against the Contracts of other Clearing Members; or

(4) to be settled at the Settlement Price for such Contracts, or at such other price or prices as the Clearinghouse may deem fair and reasonable under the circumstances, in which event the Clearinghouse may cause Contracts in the accounts of other Clearing Members to be settled at such price or prices.

In connection with any action undertaken by the Clearinghouse pursuant to subparagraphs (1) through (4) above, the Clearinghouse shall have the right to apply the Margin and Guaranty Fund deposit of the applicable Clearing Member and any other assets of such Clearing Member held by, pledged to or otherwise available to the Clearinghouse, including any guarantee issued pursuant to Rule 307, to discharge the Obligations of such Clearing

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Member to the Clearinghouse (including any amounts owed by the Clearinghouse to FICC under the Cross-Margining Agreement, and costs and expenses associated with the liquidation, transfer or management of Contracts held in or for the accounts of such Clearing Member, and any fees, assessments or fines imposed by the Clearinghouse on such Clearing Member).

Any liquidation of Contracts pursuant to this paragraph (d) shall, to the extent feasible under market conditions at the time of such liquidation, be conducted in a manner that results in competitive pricing. The Clearinghouse may delegate to specified officers or agents of the Clearinghouse the authority to determine, within such guidelines, if any, as the Clearinghouse shall prescribe, the nature and timing of transactions of the type described in subparagraph (1). Notwithstanding the preceding provisions of this paragraph (d), if the Clearinghouse shall determine, taking into account the size and nature of a suspended Clearing Member's positions, market conditions prevailing at the time, the potential market effects of liquidating transactions that might be directed by the Clearinghouse, and such other circumstances as the Clearinghouse deems relevant, that the closing out of some or all of the suspended Clearing Member's positions would not be in the best interests of the Clearinghouse, other Clearing Members, or the general public, such positions need not be closed out.

### (e) Protective Action

If the Clearinghouse (i) is unable, for any reason, to close out in a prompt and orderly manner any positions or to convert to cash any Margin deposits of a suspended Clearing Member, or (ii) elects pursuant to paragraph (d) of this Rule not to close out any such positions, the Clearinghouse may authorize the execution of hedging transactions from time to time for the account of the Clearinghouse, solely for the purpose of reducing the risk to the Clearinghouse resulting from the continued maintenance of such positions or the continued holding of such Margin deposits. The Clearinghouse may delegate to specified officers or agents of the Clearinghouse the authority to determine, within such guidelines, if any, as the Clearinghouse shall prescribe, the nature and timing of such hedging transactions.

### (f) Reimbursement of Costs and Expenses

Any costs or expenses, including losses, sustained by the Clearinghouse in connection with transactions effected for its account pursuant to this Rule shall be charged to the suspended Clearing Member, and any gains realized on such transactions shall be credited to such Clearing Member; provided, however, that costs, expenses, and gains allocable to the hedging of positions in a Customer Account shall be charged or credited, as the case may be, to the Customer Account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Clearing Member. Reasonable allocations of costs, expenses, and gains among accounts made by the Clearinghouse for the purpose of implementing the proviso to the preceding sentence shall be binding on the Clearing Member and any persons claiming through the Clearing Member and their respective successors and assigns.