

Rule Self-Certification

September 24, 2013

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

Re: **Regulatory Services Agreement**
Reference File SR-NFX-2013-19

Ladies and Gentlemen:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and §40.6 of the regulations promulgated by the Commodity Futures Trading Commission under the Act, NASDAQ OMX Futures Exchange, Inc. (“Exchange”) is amending certain schedules which are part of its Amended Regulatory Services Agreement (“RSA”) between the Exchange and the National Futures Association (“NFA”). The effective date of amended Schedules A and B will be October 9, 2013.

On October 12, 2005, the Exchange entered into an RSA with NFA. At this time, the parties are amending Schedule A, entitled “Scope of Regulatory Services,” and Schedule B, entitled, “Fee Schedule for Regulatory Services,” of the RSA. The amendments to Schedules A and B of the RSA update the existing RSA with NFA under which NFA performs various surveillance, investigative and regulatory functions for the Exchange. Consistent with the requirements under Core Principle 2, the RSA includes surveillance and regulatory service provisions as well as provisions that enable the Exchange to supervise and conduct periodic reviews of the quality, adequacy and effectiveness of the regulatory services provided by NFA to the Exchange. The amendments to Schedule A reflect amendments intended to provide more clarity and specificity to the Scope of the Regulatory Services that are provided to the Exchange. Further, the amendments remove certain specific information from Schedule A and relocate those provisions into procedures prepared by NFA and provided to the Exchange. The amendments to Schedule B solely reflect cross-reference amendments to Schedule A. Revised Schedules A and B are attached at Exhibit A.

- *Compliance with Rules:* Trading is subject to the Rules at Chapter III of the Exchange’s Rulebook, which includes prohibitions against fraudulent, noncompetitive, unfair and abusive practices. Additionally, trading is subject to the trading procedures and standards in Chapter V of the Rulebook. Trading activity is subject to extensive monitoring and surveillance by the Exchange’s

regulatory group in conjunction with NFA pursuant to the provisions of a Regulatory Services Agreement. Additionally, the Exchange has the authority to exercise its investigatory and enforcement power where potential rule violations are identified. The Exchange's disciplinary rules are contained in Chapter VI of the Rulebook, which permits the Exchange to discipline, suspend or expel Futures Participants or market participants that violate the rules.

There were no opposing views among the Exchange's Board of Directors, members or market participants. The Exchange hereby certifies that the amendments to Schedules A and B of the RSA comply with the Commodity Exchange Act and regulations thereunder. The Exchange also certifies that notice of pending certification and a copy of this submission have been concurrently posted on the Exchange's website at <http://www.nasdaqtrader.com/Micro.aspx?id=NFX>.

Regards,

A handwritten signature in black ink that reads "Daniel R. Carrigan". The signature is written in a cursive, flowing style.

Daniel R. Carrigan
President

cc: Mr. J. Goodwin
National Futures Association
The Options Clearing Corporation

Exhibit A

Schedule A
Scope of Regulatory Services

Exchange and NFA agree that this Schedule A and Exhibit 1 hereto, effective October 9, 2013, shall supersede any prior Schedule A and exhibits or addenda thereto.

For the purposes of this Schedule A, the term "member" shall include a market participant.

I. Trade Practice Surveillance

- A. To perform trade practice surveillance for Exchange, NFA will utilize an automated surveillance system that complies with the standards for such systems established by the CFTC by regulation, order or otherwise. The surveillance will occur on a T+1 basis. In order to have sufficient time to complete this surveillance, NFA must receive all files for a trading day (as defined by Exchange) from Exchange no later than 9 pm Central Time each night after the end of the trading session. Exchange shall send all files, including files from Exchange's clearinghouse(s) to NFA in a format as determined by NFA, and all files shall contain complete and accurate data. Additionally, Exchange acknowledges that in the event of receiving such files late, NFA may not be able to perform surveillance on a T+1 basis and that if NFA receives such files late on two (2) or more days in a twenty (20)-trading day period, NFA may, in its sole discretion, notify the CFTC that NFA has been and/or will be unable to perform surveillance on a T+1 basis.

NFA shall review Exchange's trades on a routine basis to determine whether suspicious activity relating to Exchange's trading standards exists, including, without limitation, whether any potential violations of Exchange's rules have occurred. The particular trades reviewed shall include trades executed on Exchange's matching system and, if applicable, exchange-for-physicals, exchange-for-swaps, exchange-for-futures, exchange for options, exchange-for-risk products (collectively exchange of derivatives for related position "EDRP"), block and error trades. NFA shall rely solely upon data for orders entered and trades matched and, if applicable, cleared on behalf of Exchange in performing trade practice surveillance for Exchange.

- B. For purposes of identifying certain trade practice surveillance transactions, the following definitions shall apply:

CTI 1- Transactions initiated and executed by an individual member for his own account, for an account he controls or for an account in which he has ownership or financial interest.

CTI 2- Transactions executed for the proprietary account of a clearing member or non-clearing member firm.

CTI 3- Transactions where an individual member or authorized trader executes for the personal account of another individual member, for an account the other individual member controls or for an account in which the other individual member has ownership or financial interest.

CTI 4- Any transaction not meeting the definition of CTI 1, 2 or 3. (These should be non-member customer transactions)

C. NFA's trade practice surveillance system shall monitor for fraudulent trading, e.g., intentionally deceptive trading for personal financial gain, trading practices that Exchange deem to be abusive and any other manipulative or disruptive trading practices prohibited by the Act or CFTC Regulations, as well as the following types of transactions:

(1) Front-Running:

Taking a futures position based upon non-public information regarding an impending transaction by another person in the same or related futures contract.

(2) Wash Trading:

Entering into, or purporting to enter into, transactions to give the appearance that purchases and sales have been made, without incurring market risk or changing the trader's market position.

(3) Pre-Arranged Trading:

Trading between authorized traders in accordance with an expressed or implied agreement or understanding.

(4) Fraudulent Trading:

Intentional deceptive trading for personal financial gain.

(5) Money Pass:

Non-Competitive trading between authorized traders where a profit is passed from one trader to the other.

D. NFA's trade practice surveillance system shall monitor for the following types of transactions on Exchanges that permit intermediation:

(1) Trading Ahead of Customer Orders:

Taking a futures position based upon non-public information regarding an impending transaction by another person in the same or related futures contract.

(2) Trading Against Customer Orders:

Directly or indirectly taking the opposite side of a customer's order into a broker's own account or into an account in which a broker has an interest, without open and competitive execution of the order on an exchange. (Also called Trading Against).

(3) Accommodation Trading:

Non-competitive trading entered into by a trader, usually to assist another with illegal trades.

(4) Improper Cross Trading:

Offsetting or noncompetitive match of the buy order of one customer against the sell order of another, a practice that is permissible only when executed in accordance with the Commodity Exchange Act, CFTC rules, and Exchange rules.

- E. If Exchange provides authorized trader logon/logoff information, NFA will identify all authorized traders that are logged on for an unusual amount of time.
- F. NFA will accept information from anonymous or disclosed parties regarding questionable market activity from market participants. NFA will work closely with Exchange's market supervisory personnel to keep abreast of information received by Exchange or NFA, and NFA will track this information in conjunction with its other surveillance activities and investigate any patterns of questionable activity, including, without limitation, activity that may constitute potential violations of Exchange's rules.
- G. NFA's trade practice surveillance system will utilize Exchange's electronic audit trail data to create profiles at exchange, authorized trader and counterparty levels. The profiles will include, but are not limited to, the following: notional value of futures, number of trades, accounts traded, trade counter-parties, average trade quantity, estimated profit and loss, average order size and trade exception history.

II. Market Surveillance

- A. NFA will utilize an automated system to perform market surveillance for Exchange. The system shall monitor and analyze position holdings.
- (1) The analysis shall include, but is not limited to, the following information:
 - (a) large trader positions, including the net change in large trader positions; and
 - (b) corresponding CFTC Form 102S information for respective large traders.
 - (2) The System will also generate alerts for various situations regarding large trader reported positions. The alerts include, but are not limited to, the following:
 - (a) whenever an account is identified as a large trader for the first time;
 - (b) whenever large trader positions exceeds reportable level;
 - (c) Whenever large trader positions exceeds speculative position limits or accountability levels.
 - (3) In addition to its automated system, NFA utilizes outside quote vendors and market data providers to monitor and review various market situations and relationships. This review includes, but is not limited to, the following:
 - (a) basis relationship between Exchange product and the corresponding cash market;
 - (b) the price relationship between the Exchange product and any related products on different exchanges;
 - (d) Historical price information; and
 - (e) Market news regarding Exchange products and related products being monitored and reviewed by NFA on behalf of the Exchange.

B. Large Traders:

Upon receiving large trader positions from Exchange, NFA's system will aggregate all positions held by related parties. Once compiled, NFA will monitor large trader positions for concentrations of ownership and potential collusive or concerted activity by market participants. NFA will develop a database containing the name and address of the account controller provided on the CFTC Form 102s. NFA will query this database by name and address to determine possible affiliations. The open positions of large traders will be reviewed and, if it appears that account holders or controllers are related, a determination will be made as to whether or not these accounts should be combined for NFA's analysis. If there are speculative position limits and/or accountability levels, on a T+1 basis, NFA will cross-check these limits and/or levels against the large trader positions and accountability levels to determine if any controllers have exceeded the limits. Furthermore, if it appears that any one member or controller has a concentration or has exceeded an accountability level or speculative position limit in a given contract listed for trading on Exchange, NFA will relay this information to Exchange. If Exchange deems it necessary, either Exchange or NFA upon Exchange's request will contact the large trader to determine the reason for the concentration or for exceeding the relevant accountability level or speculative position limit.

C. Expirations:

NFA will maintain data that identifies the last trading day/expiration date for the nearest contract expiration. As these dates approach, large trader open positions will be analyzed in accordance with the NFA-Exchange Procedures Manual and traders may be contacted, if necessary. NFA, in consultation with Exchange, will contact, as an initial step, the clearing firms or the large speculative traders who remain in the market as expiration approaches.

D. Trade Cancellation:

NFA will review busted trades and any trades negotiated outside the trading engine that are subsequently reversed to determine whether they were executed pursuant to Exchange's guidelines.

E. Off-Exchange Large Block Trades:

NFA will review selected block trades to determine whether they were executed in conformity with Exchange's and CFTC guidelines, provided that Exchange provides NFA with the audit trail and other information necessary to perform the review.

F. EDRPs:

NFA will perform a review of selected EDRP trades if such trades are permissible under Exchange's rules and their supporting derivatives and cash documentation to determine whether the EDRP trades were bona fide transactions and were executed within Exchange's prescribed guidelines. At a minimum, the review will identify whether there are two parties to the transaction; the buyer/seller of the derivatives component is the seller/buyer of the underlying risk component; and the derivatives and cash components are reasonably related.

III. Real Time Monitoring

Exchange shall be responsible for monitoring overall activity in each market on a real time basis. Exchange shall provide NFA with a real-time, view-only market monitor screen, and NFA shall act as a "second set of eyes" regarding real time monitoring by viewing trading activity, tracking specific members and authorized traders, monitoring pricing and volume and being alerted to market messages and will contact Exchange in instances that NFA reasonably believes warrant contacting Exchange.

IV. Inquiries, Investigations and Disciplinary Matters

- A. NFA's Market Regulation Department shall be primarily responsible for performing the investigatory work relating to inquiries and investigations resulting from trade practice, market surveillance, enforcement of audit trail requirements and financial surveillance performed in accordance with Sections I, II, III, VII, and VIII, respectively.
- B. If potential irregularities or exceptions are noted relating to the services described in Sections I, II, III, VII or VIII, NFA may conduct an inquiry of Exchange's members or authorized traders to obtain additional factual information regarding the potential irregularities or exceptions. NFA shall inform Exchange's Chief Regulatory Officer of all such inquiries. In performing these inquiries, NFA may conduct certain activities, including but not limited to, the following: (1) review any trades in question in relation to other surrounding trades; (2) gather background information and explanations from Exchange members and authorized traders concerning trading activity, audit trail data and financial information; (3) gather procedural information regarding trade and back office processing; and (4) confer with Exchange's Chief Regulatory Officer about the Exchange's customs and practices.
- C. If, at the conclusion of the inquiry:
 - (1) NFA does not have reason to believe that there is a possible basis for a rule violation having occurred, NFA shall close the inquiry internally and so notify Exchange's Chief Regulatory Officer; or

(2) NFA has a reasonable basis to believe that a rule violation has occurred, NFA shall open an investigation matter, inform Exchange's Chief Regulatory Officer and conduct further investigation. In conducting this investigation, NFA may engage in certain activities, including but not limited to the following: (1) request supporting documentation for specified trade activity; (2) conduct interviews, which at NFA's discretion, may be conducted under oath; (3) review trade activity in relation to other related cash and derivative markets; and (4) gather any additional information from clearing firms, Exchange members and/or their employees and/or authorized traders that NFA deems necessary.

- D. At the conclusion of the investigation, NFA shall prepare a written report, which shall comply with relevant CFTC regulations, summarizing NFA's investigative findings and forward such report to Exchange's Chief Regulatory Officer.
- E. If Exchange initiates a disciplinary proceeding, then NFA staff, upon Exchange's request and on Exchange's behalf, shall administer and litigate the proceeding before a Exchange disciplinary panel. If Exchange does not initiate a disciplinary proceeding, then Exchange's Chief Regulatory Officer shall notify NFA's Market Regulation Department in writing of this decision and the reasons for the decision.
- F. On at least a monthly basis, NFA shall consult with Exchange's Chief Regulatory Officer to discuss new inquiries and investigations and to provide a general update relating to the status of continuing inquiries and investigations.
- G. Particular investigations may reveal conduct that is in alleged violation of both Exchange's disciplinary rules and NFA's Compliance Rules. In these cases, NFA will initially confer with Exchange's Chief Regulatory Officer and determine whether, based upon the particular case's facts, NFA's or the Exchange's disciplinary process provides the most effective means to resolve the alleged disciplinary problem: provided, however, that Exchange and NFA shall each, in its sole discretion, determine whether it will conduct a disciplinary proceeding and nothing herein shall prevent both Exchange and NFA from conducting disciplinary proceedings with respect to the same matter.
- H. NFA shall provide the written report specified in paragraph D. above in sufficient time to enable Exchange to complete the investigation within twelve (12) months from the date that NFA opened the investigation. However, if mitigating factors that the CFTC has specified as reasonable justification for an investigation taking longer than twelve (12) months to complete exist, NFA shall conclude its investigation and provide such written report in a reasonably prompt manner.

V. Reporting and Recordkeeping

- A. Reporting. On a monthly basis, NFA will prepare reports detailing the number and type of exceptions generated and the number of inquiries and investigations opened or closed during the month, along with the specific allegations. Such inquiries and investigations shall be discussed on an on-going basis, including but not limited to, at the monthly meeting between Exchange and NFA.
- B. Recordkeeping. NFA shall maintain for the time period and in the manner specified in CFTC Regulation 1.31 all records created in conjunction with providing Exchange the Regulatory Services described herein. NFA shall provide any records maintained in its possession to Exchange upon request, provided that Exchange shall pay to NFA reasonable costs associated with providing such records. NFA shall maintain audit trail data for Exchange by trade date.

VI. Arbitration Services

NFA shall offer its arbitration forum for the resolution of customer vs. Exchange member disputes and Exchange member vs. member disputes that must or may be arbitrated pursuant to Exchange's rules governing arbitrations.

VII. Enforcement of Audit Trail Requirements.

NFA will enforce Exchange's audit trail and recordkeeping requirements through at least annual reviews of all members and persons and firms subject to Exchange's recordkeeping requirements. Such reviews shall include reviewing randomly selected samples of front-end audit trail data from order routing systems to ensure the presence and accuracy of required audit trail data; reviewing the processes used to assign and maintain records of user identifications; review usage patterns associated with user identifications to monitor for violations of user identification rules, and reviewing account numbers and customer type indicator codes in trade records to test for accuracy and improper use.

VIII. Financial Surveillance.

NFA shall receive and promptly review financial and related information from Exchange's members for compliance with Exchange's minimum financial standards. Exchange shall require its members to submit financial information to NFA in such manner as NFA shall require. NFA shall receive and, consistent with the requirements of CFTC Regulation 1.52, review financial and related information for futures commission merchants, retail foreign exchange dealers, and introducing brokers for compliance of such entities with Exchange's minimum financial standards and CFTC regulations.

NFA's financial surveillance of Exchange's members shall not include continually surveying the obligations of each futures commission merchant created by the positions of its customers; comparing those obligations to the financial resources of the futures commission merchant; or taking steps to use this information to protect customer funds

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Schedule B
Fee Schedule for Regulatory Services

Exchange and NFA agree that this Schedule B, effective October 9, 2013, shall supersede any prior Schedule B and Addenda thereto.

- A. If Exchange trading activity in all Exchange contracts for which NFA provides the Regulatory Services described in Schedule A results in the average daily Exchange number of records contained in all files sent to NFA by Exchange and Exchange's clearing organization ("Activity Records") over any twenty (20)-trading day period, or in the case of the addition of a new product, will result in estimated average daily number of Activity records, exceeding:
1. four (4) million, then Exchange shall, within five business days of invoicing, pay NFA an upfront technology fee of \$450,000;
 2. eight (8) million, then Exchange shall, within five business days of invoicing, pay NFA an additional upfront technology fee of \$50,000; and
 3. eleven (11) million, then Exchange acknowledges that NFA may not be able to continue providing the Regulatory Services on a T+1 basis, provided, that NFA and Exchange will conduct good faith negotiations to determine whether NFA is able to continue providing the Regulatory Services on a T+1 basis and, if so, shall pay the technology fee necessary to compensate NFA for continuing to provide the Regulatory Services on a T+1 basis for the remainder of the term of the Agreement.
- B. Exchange shall pay the following fees to NFA, based upon the billing method specified in Section 3 of the Regulatory Services Agreement:
1. If Exchange's average daily number of Activity Records, or in the case of the addition of a new product the estimated average daily number of Activity Records, exceeds:
 - (a) the four (4) million level set forth in Section A above, then Exchange shall, within five business days of invoicing, pay to NFA a system development fee of \$70,000;
 - (b) the eight (8) million level set forth in Section A above, then Exchange shall, within five business days of invoicing, pay to NFA a system development fee of \$10,000; and
 - (c) the eleven (11) million level set forth in Section A above, then Exchange acknowledges that NFA may not be able to continue providing the Regulatory Services on a T+1 basis, provided,

that NFA and Exchange will conduct good faith negotiations to determine whether NFA is able to continue providing the Regulatory Services on a T+1 basis and, if so, shall pay the system development fee necessary to compensate NFA for continuing to provide the Regulatory Services on a T+1 basis for the remainder of the term of the Agreement.

Additionally, Exchange shall pay NFA all incidental costs associated with pre-launch and subsequent system development work including, but not limited to, travel expenses.

2. With regard to the trade practice surveillance and market surveillance services described in Schedule A, Sections I and II for the market sector(s) in which Exchange conducts business, Exchange shall pay:
 - (a) a monthly fee of \$44,000 until the expiration of the term of the Agreement ("monthly base fee"), whereby any monthly fees for partial months shall be prorated by multiplying the monthly base fee by a fraction defined as the number of calendar days in a partial month that NFA is providing trade practice and market surveillance services to Exchange divided by the total number of calendar days in the partial month.
 - (b) Except as provided in subsection (c) below, this monthly fee will increase as described in this subsection (b) as the rolling average daily contract volume ("rolling ADV") reaches certain volume thresholds. Rolling ADV is calculated by dividing the total Exchange futures and options on futures volume over any three consecutive calendar month period by the number of days that Exchange is open for trading during the same three consecutive calendar month period.) When rolling ADV exceeds 200,000 contracts, the monthly fee will increase by \$10,000 over the monthly base fee for all subsequent calendar months for the remainder of the term of the contract. When rolling ADV exceeds 400,000 contracts, the monthly fee will increase by \$20,000 over the monthly base fee for all subsequent calendar months for the remainder of the term of the contract. When rolling ADV exceeds 700,000 contracts, the monthly fee will increase by \$30,000 over the monthly base fee for all subsequent calendar months for the remainder of the term of the contract. When rolling ADV exceeds 1,000,000 contracts, the monthly fee will increase by \$40,000 over the monthly base fee for all subsequent calendar months for the remainder of the term of the contract.
 - (c) NFA and Exchange agree that when rolling ADV exceeds 1,300,000 contracts, they will conduct good faith negotiations to establish a new monthly fee schedule to compensate NFA for the

services provided to Exchange for the remainder of the term of the Agreement.

3. Exchange shall pay \$200.00/hour for (a) any legal services performed by an NFA attorney with regard to the services described in Schedule A, Section IV, and (b) any Financial Surveillance services described in Schedule A, Section VII. Additionally, Exchange shall pay NFA all incidental costs associated with this service including, but not limited to, travel, court reporter and witness expenses.
4. Exchange shall pay a one-time development fee of \$15,000 and \$200.00/hr thereafter for the Enforcement of Audit Trail Requirements services described in Schedule A, Section VIII.
5. NFA shall charge the filing and hearing fees currently in effect, or hereinafter amended, in NFA's Code of Arbitration and Member Arbitration Rules for Exchange arbitration cases
6. Exchange shall be responsible for the payment of all charges for data communication lines from Exchange or any third party to NFA. These charges include, but may not be limited to, initial installations and monthly maintenance fees. In addition, Exchange shall be responsible for the payment of all charges for disaster recovery equipment, including data communication lines, associated with processing and maintaining Exchange's data.
7. In the event that NFA needs to modify its TPMS system due to changes and requests made by Exchange including, but not limited to, changes to exchange software and hardware, data transmission methods to NFA, or requests for producing special reports to the exchange, then Exchange and NFA will enter into an agreement that (a) sets forth a work schedule agreed upon by the parties; (b) provides for payment by Exchange of not less than \$150.00/person/hour for documented time spent by NFA staff in modifying its TPMS system or for developing and producing special reports and of all incidental costs associated with developing and producing such reports including, but not limited to, travel and equipment.

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