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April 29, 2016

**By CFTC Portal**

Secretary of the Commission  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

Re: *tpSEF Inc. – Regulation 40.6(a) Rule Certification (tpSEF Submission #16-03R)*

To Whom It May Concern:

Pursuant to Section 5c(c) of the Commodity Exchange Act, as amended (the “Act”), and Section 40.6(a) of the regulations of the Commodity Futures Trading Commission (the “Commission”), tpSEF Inc. (“tpSEF”), a registered swap execution facility, hereby notifies the Commission that it wishes to amend its Rulebook and Risk Mitigation Procedures as provided in Exhibit A. The intended date of implementation of the amended Rulebook and the amended Risk Mitigation Procedures is May 16, 2016.

Pursuant to Commission Regulation 40.6, this submission includes:

- (i) A concise explanation and analysis of the amended rules and their compliance with applicable provisions of the Act, attached as Exhibit A;
- (ii) A clean copy of the amended Rulebook (excluding Appendixes),<sup>1</sup> attached as Exhibit B-1;
- (iii) A copy of the amended Rulebook (excluding Appendixes) marked to show changes to the currently effective version, attached as Exhibit B-2;
- (iv) A clean copy of the amended Risk Mitigation Procedures (included in Appendix C to tpSEF’s Rulebook), attached as Exhibit C-1; and
- (v) A copy of the amended Risk Mitigation Procedures marked to show changes to the currently effective version, attached as Exhibit C-2.

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<sup>1</sup> tpSEF is not including with this submission copies of Appendixes A, B or D to the Rulebook, as no changes were made to those Appendixes.

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tpSEF hereby certifies that the amendments comply with the requirements of the Act and Commission regulations thereunder. tpSEF is not aware of any substantive opposing views expressed with respect to this filing and certifies that, concurrent with this filing, a copy of this submission was posted on tpSEF's website.

Please contact Brian D. Donnelly, Chief Compliance Officer, at (201) 984-6956 or by email at [bddonnelly@tullettprebon.com](mailto:bddonnelly@tullettprebon.com) with any questions regarding this matter.

Very truly yours,

tpSEF Inc.

By: 

Name: Brian D. Donnelly

Title: Chief Compliance Officer

Date: April 29, 2016

Enclosures

cc: CFTC Division of Market Oversight ([dmosubmissions@cftc.gov](mailto:dmosubmissions@cftc.gov))  
Roger Smith, CFTC ([rsmith@cftc.gov](mailto:rsmith@cftc.gov))  
Ken Kopelman, Sidley Austin LLP ([kkopelman@sidley.com](mailto:kkopelman@sidley.com))

**EXHIBIT A**

Explanation of Amended Rules

tpSEF wishes to amend its Rulebook and its Risk Mitigation Procedures as provided below. A clean copy of the amended Rulebook is attached as Exhibit B-1, and a copy marked to show changes to the version effective April 12, 2016 is attached as Exhibit B-2. A clean copy of the amended Risk Mitigation Procedures is attached as Exhibit C-1, and a copy marked to show changes to the version effective December 23, 2015 is attached as Exhibit C-2.

Capitalized terms used but not defined herein have the meanings assigned to them in the Rulebook.

<b>Section/Rule</b>	<b>Description of Revision</b>	<b>Reason and/or Supporting Core Principle</b>
Cover Page to Rulebook	Changed Rulebook effective date.	Conforming change
Table of Contents	Conformed to new page numbers.	Conforming change
Rule 1000	Amended Rule 1000: <ul style="list-style-type: none"> <li>• to clarify the definition of the term “DCO”;</li> <li>• to make non-substantive formatting corrections; and</li> <li>• to add the following new defined terms included in amended Rule 8005(a) “Approved SDR” and “DDR”.</li> </ul>	Conforming and clarifying changes
Rule 2201(a)	Amended Rule 2201(a), in accordance with CFTC Regulation 37.1501(c)(3), to specify that removal of the Chief Compliance Officer requires the approval of a majority of the Board, and to require that the SEF notify the CFTC of the removal of the Chief Compliance Officer and the appointment of any new Chief Compliance Officer within two Business Days of such removal and appointment.	CFTC Regulation 37.1501(c)(3)
Rule 2201(d)	Amended Rule 2201(d) to require that the Chief Compliance Officer report directly to the Board.	CFTC Regulation 37.1500(b)(1)
Rule 4013.A.(a)	Amended Rule 4013.A.(a): <ul style="list-style-type: none"> <li>• to require that Cleared Swaps be cleared through a DCO that has been recognized by the SEF;</li> <li>• to include a list of the currently-recognized DCOs; and</li> <li>• to state that the SEF may recognize additional</li> </ul>	Core Principle 7

Section/Rule	Description of Revision	Reason and/or Supporting Core Principle
	DCOs either through amendment of Rule 4013.A. or by issuance of a Notice to Participants.	
Rules 4013.A.(e)(6) & (f)(6)	Amended subsections (e)(6) and (f)(6) of Rule 4013.A. to add reference to the CFTC's Divisions of Market Oversight and Clearing and Risk, and to specify that Rules 4013.A.(e) and (f) will continue to apply if the no-action relief provided under No-Action Letter 15-24 is extended.	No-Action Letter 15-24
Rule 4013.A.(j)	Added new Rule 4013(j) to provide that clearing services provided by a DCO in respect of a Cleared Swap will be governed by the rules, policies and procedures of that DCO, and to require that the clearing services provided by a DCO exempt from registration as such comply with any terms and conditions imposed on that DCO by the CFTC.	Core Principle 7
Rule 4016(j)	Updated Rule 4016(j) to state that such Rule relies on relief granted by the CFTC's Division of Market Oversight in No-Action Letter 15-60, and to provide that Rule 4016(j) will continue apply if such no-action relief is extended.	No-Action Letter 15-60
Rule 6009(a)	Amended Rule 6009(a), in accordance with CFTC Regulation 37.206(b), to provide that a Disciplinary Panel may not include any members of the SEF's compliance staff.	CFTC Regulation 37.206(b)
Rule 6014(a)	<p>Amended Rule 6014(a), in accordance with CFTC Regulation 37.206(e):</p> <ul style="list-style-type: none"> <li>• to include in the requirement that all sanctions take into account the respondent's disciplinary history specific reference to sanctions imposed pursuant to an accepted settlement offer, and</li> <li>• to carve out from the requirement that sanctions include full customer restitution situations where the amount of restitution or to whom it should be provided cannot be reasonably determined.</li> </ul>	CFTC Regulation 37.206(e)
Rule 8002(g)	Amended Rule 8002(g) to add specific reference to the CFTC's Division of Market Oversight and to provide that Rule 8002(g) will continue apply if the no-action relief granted under No-Action Letter 15-68 is extended.	No-Action Letter 15-68
Rules 8005(a) & (f)	<p>Updated Rules 8005(a) and (f):</p> <ul style="list-style-type: none"> <li>• to add and to utilize the defined terms "Approved</li> </ul>	Clarifying changes

Section/Rule	Description of Revision	Reason and/or Supporting Core Principle
	<p>SDRs” and “DDR”;</p> <ul style="list-style-type: none"> <li>• to utilize the correct legal names of the SDRs to which the SEF may report trades; and</li> <li>• to make certain clarifying changes.</li> </ul>	
<p>Risk Mitigation Procedures</p>	<p>Amended the Risk Mitigation Procedures to make the following changes:</p> <ul style="list-style-type: none"> <li>• Changed effective date;</li> <li>• Updated Risk Mitigation Procedures to allow for the execution of single period swaps through Risk Mitigation Sessions;</li> <li>• Made clean up and conforming changes.</li> </ul>	<p>CFTC Regulations 37.200(c), 37.201(a) &amp; 37.400(a), and conforming changes</p>

Secretary of the Commission  
April 29, 2016

**EXHIBIT B-1**

Amended tpSEF Inc. Rulebook (Clean)

**tpSEF Inc.**  
**Rulebook**

*Effective May 16, 2016*

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## SECTION 1 DEFINITIONS

### **Rule 1000**    **Definitions**

Unless otherwise specifically provided in the SEF Rules or the context otherwise requires, the following terms have the meanings specified herein.

“*Account Manager*” means an investment manager or other Person acting in a similar capacity that (i) is not an individual, and (ii) acts as an agent and attorney-in-fact to transact Swaps via the SEF in the name and on behalf of a Client. An Account Manager may be a Participant, a Sponsored Participant or a Customer.

“*Affected Person*” has the meaning specified in Rule 3103.

“*Affiliate*” means with respect to any Person, any Person who, directly or indirectly, controls, is controlled by or is under common control with, such other Person.

“*Appeals Panel*” means a panel appointed by the Chief Compliance Officer pursuant to Rule 6015.

“*Applicable Law*” means, with respect to any Person, any DCO Rule, statute, law, regulation, rule or ordinance of any governmental or self-regulatory authority or any DCO applicable to that Person’s activities on or in respect of the SEF, including (without limitation) these SEF Rules, the CEA and CFTC Regulations.

“*Appropriate Minimum Block Size*” means the minimum notional or principal amount established from time to time by the CFTC for a category of Swap that qualifies as a block trade pursuant to CFTC Regulation 43.6. The Appropriate Minimum Block Size is published by the CFTC or its designee from time to time in accordance with CFTC Regulations 43.6 and 43.7 and are included in Appendix D hereto.

“*Approved SDR*” has the meaning specified in Rule 8005(a).

“*Authorized Representative*” means any natural Person who is employed and authorized by a Participant to represent the Participant in SEF matters pursuant to Rule 3113.

“*Authorized Trader*” means a Person who is appointed, employed or authorized by a Participant (or by a Sponsored Participant) and who has been assigned a User ID by the SEF. Each Authorized Trader: (i) must be a natural Person; (ii) must have been granted Trading Privileges with respect to the trading activities of a Participant (or Sponsored Participant); and (iii) must satisfy any other requirements as may be prescribed by the SEF from time to time.

“*Block Trade*” means a Swap that: (i) has a notional or principal amount at or above the Appropriate Minimum Block Size applicable to such Swap; (ii) is executed pursuant to the SEF Rules and (x) in the case of an Uncleared Block Trade, occurs away from a SEF trading system or platform or (y) in the case of a Cleared Block Trade, is executed on a non-Order Book trading system or platform of the SEF in accordance with Rule 4016(j); and (iii) is a publicly reportable

swap transaction that is reported subject to the rules and procedures of the SEF and Part 43 of the CFTC Regulations.

“*Board*” means the board of directors of the SEF.

“*Business Day*” means a day on which the SEF is open for trading as provided on the SEF website.

“*By-Laws*” means the by-laws of the SEF.

“*CCO*” means the Chief Compliance Officer of the SEF.

“*CEA*” means the Commodity Exchange Act, as amended.

“*CEO*” means the Chief Executive Officer of the SEF.

“*Chief Executive Officer*” means the chief executive officer of the SEF appointed pursuant to the By-Laws and Rule 2200.

“*CFTC*” means the U.S. Commodity Futures Trading Commission.

“*CFTC Regulations*” means the rules and regulations promulgated by the CFTC, as amended.

“*Cleared Block Trade*” means a Block Trade in a Cleared Swap.

“*Cleared Swap*” means (i) a Swap that is subject to the Clearing Requirement, or (ii) any Swap of a type that is accepted by a DCO for clearing that the parties have elected to submit for clearing, whether or not the particular Swap is accepted or rejected.

“*Clearing Firm*” means a Clearing Member that provides clearing services to one or more Participants, Sponsored Participants, Clients or Customers and has executed a Clearing Firm Agreement.

“*Clearing Firm Agreement*” means the agreement between the SEF and a Clearing Firm. Such Clearing Firm Agreement shall enumerate (i) the DCOs of which the Clearing Firm is a member, (ii) the Persons for whom the Clearing Firm provides clearing services and (iii) if the Clearing Firm does not clear at all such DCOs for all such Persons, a per-Person list of the DCOs at which it does clear for such Person. The Clearing Firm shall be entitled to update this information in its sole discretion by written notice to the SEF and upon receipt of such notice, the SEF shall take such action necessary to effect the Clearing Firm’s modifications as promptly as practicable. For the avoidance of doubt, notwithstanding that such notice has not yet been provided or such modifications made, if the Clearing Firm has ceased to provide clearing services to a Person on any or all DCOs, the Clearing Firm may reject all such Person’s trades during the pre-execution credit check described in Rule 4017.

“*Clearing Member*” means a member of a DCO that is authorized to clear trades in Swaps for itself or others.

“*Clearing Requirement*” means the mandatory clearing requirement set forth in Section 2(h)(1) of the CEA.

“*Client*” means a Person that granted in writing to an Account Manager investment discretion on behalf and in the name of such Person.

“*Confirmation*” means a written record of all the terms of a Transaction as required by Applicable Law.

“*Correcting Transaction*” has the meaning specified in Rule 4013.A.(f).

“*CTP*” means customer type identification code.

“*Customer*” means a Person for whom an Introducing Broker, as agent, (i) enters Orders and/or engages in Transactions on the SEF, and/or (ii) submits Uncleared Block Trades pursuant to the SEF Rules. A Customer may be a Participant.

“*DCM*” means a designated contract market as defined in CFTC Regulation 1.3(h).

“*DCO*” means a derivatives clearing organization as defined in Section 1a(15) of the CEA that is registered with, or has been exempted from registration by, the CFTC and that provides clearing services with respect to any Swaps traded on, or pursuant to the rules of, the SEF.

“*DCO Rules*” means the relevant organizational documents of a DCO and any relevant 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 DCO.

“*DDR*” has the meaning specified in Rule 8005(a).

“*Deal Management System*” or “*DMS*” means the SEF’s back-end system that facilitates post-trade processing and that can be used by Execution Specialists to execute Permitted Transactions. The DMS is not accessible by market participants.

“*Director*” means a Board director.

“*Disclosable Financial Interest*” means the position information contained in CFTC Regulation 1.69(b)(2)(iii)(A)-(E).

“*Disciplinary Action*” means any inquiry, investigation, disciplinary proceeding, appeal from a disciplinary proceeding, summary imposition of fines, summary suspension or other summary action.

“*Disciplinary Offense*” means any of the following violations, which, in each case, arises out of a proceeding or action that is brought by the SEF, a Self-Regulatory Organization, the CFTC or any federal or state agency or other governmental body:

- (1) Any violation of the rules of the SEF or the rules of a Self-Regulatory Organization except those violations related to (i) decorum or attire, (ii) financial

requirements or (iii) reporting or recordkeeping unless resulting in fines aggregating more than \$5,000 within any calendar year;

- (2) Any violation described in paragraph (1)(i) – (iii) immediately above that involves fraud, deceit or conversion or results in a suspension or expulsion;
- (3) Any violation of the CEA or CFTC Regulations; or
- (4) Any failure to exercise supervisory responsibility with respect to acts described in paragraphs (1) – (3) immediately above when such failure is itself a violation of the rules of the SEF, the rules of a Self-Regulatory Organization, the CEA or the CFTC Regulations.

“*Disciplinary Panel*” means the panel appointed by the Chief Compliance Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in Section 6 of the SEF Rules.

“*Displayed Order*” has the meaning specified in Rule 4011(a)(2).

“*ECP*” means an “eligible contract participant” as defined in Section 1a(18) of the CEA and CFTC Regulations thereunder.

“*Emergency*” means any occurrence or circumstance that, in the opinion of the SEF, requires immediate action and threatens, or may threaten, the fair and orderly trading in, or the clearance, settlement or integrity of, any Swap, including, without limitation, the following:

- (1) any circumstance that may materially affect the performance of the parties to a Swap, including failure of a DCO;
- (2) any action taken by (i) any United States or foreign regulatory, self-regulatory, judicial, arbitral or governmental (whether national, state or municipal) or quasi-governmental authority, or any agency, department, instrumentality or subdivision thereof; (ii) other Person exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or (iii) any other swap execution facility, DCO, DCM, board of trade or other exchange or trade association (foreign or domestic) that may have a direct impact on trading on the SEF or the clearing and settlement of, or the legality or enforceability of, any Swap;
- (3) any actual, attempted or threatened corner, squeeze, congestion, manipulative activity or undue concentration of positions in a Swap or any related asset;
- (4) any circumstance that may have a severe, adverse impact upon the functions and facilities of the SEF, including, but not limited to, acts of God, fire, flood or other natural disasters, bomb threats, acts of terrorism or war, severely inclement weather or failure or malfunction of all or a portion of the SEF, or other system breakdowns or interruptions such as power, computer, communication or transportation systems or the Internet;

- (5) the imposition of any injunction or other restraint by any government agency, court or arbitrator upon a DCO which may affect the ability of a DCO to perform on a Swap;
- (6) any circumstance in which it appears to the Board that a DCO or any other Person:
  - (i) has failed to perform on a Swap;
  - (ii) is insolvent; or
  - (iii) is in a financial or operational condition or is conducting business such that the DCO or Person cannot be permitted to continue in business without jeopardizing the safety of Participants, the SEF, any DCO or any other Person;
- (7) any other circumstance that would constitute an “emergency” within the meaning of CFTC Regulation 40.1(h); or
- (8) any other unusual, unforeseeable or adverse circumstance that may have an effect similar to any of the foregoing as determined by the SEF.

“*Emergency Action*” means any action taken by the SEF in its discretion, in consultation with the CFTC and/or relevant DCO as necessary and practicable, in response to an Emergency, including, without limitation, any of the following actions:

- (1) suspending or curtailing trading or limiting trading (in whole or in part);
- (2) ordering the fixing of a settlement price, or the reduction of positions;
- (3) extending, limiting or changing the Trading Hours;
- (4) temporarily modifying or suspending any provision of the SEF Rules or Obligations;
- (5) imposing or modifying price limits;
- (6) altering any contract’s settlement terms or conditions;
- (7) imposing or modifying position limits; and/or
- (8) ordering any other action or undertaking to address or relieve the Emergency.

“*Emergency Rules*” has the meaning specified in Rule 7000.

“*End-User Exempt Transaction*” shall mean a Transaction exempt from the Clearing Requirement due to an election to use the End-User Clearing Exception.



“*End-User Clearing Exception*” means the exception from the Clearing Requirement set forth in Section 2(h)(7) of the CEA and CFTC Regulation 50.50 or any CFTC No-Action Letter or guidance.

“*Error*” has the meaning specified in Rule 5103.C.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*Execution Specialist*” means a SEF employee responsible for assisting Participants and Sponsored Participants (and any of their Supervised Persons) in entering on the SEF Orders and Transactions and receiving reports of Uncleared Block Trades.

“*Family Relationship*” means, with respect to any natural person, such natural person’s spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.

“*FCM*” means futures commission merchant as defined under Section 1a(28) of the CEA.

“*Government Agency*” means any governmental entity, body or agency of any government (including the United States, a state or foreign government).

“*Interested Person*” has the meaning specified in Rule 2500.

“*Introducing Broker*” is a Participant that (i) is a registered or exempt FCM or introducing broker (as defined in Section 1a(31) of the CEA and CFTC Regulation 1.3(mm)), and (ii) enters Orders or engages in Transactions on the SEF, and/or submits Uncleared Block Trades pursuant to the SEF Rules, on behalf of one or more Customers.

“*Instrument Reference Price*” has the meaning specified in Rule 4003.B.(d)(1).

“*Investigation Report*” means any written report of investigation prepared by the Market Regulation Department.

“*ISDA*” means the International Swaps and Derivatives Association, Inc.

“*ISDA Reporting Counterparty Rules*” means the rules identified in Appendix A hereto, as may be amended from time to time, for establishing a Reporting Counterparty under the circumstances where CFTC Regulation 45.8 does not determine a Reporting Counterparty (for example, because both counterparties are Swap Dealers or both counterparties are Major Swap Participants) as published by ISDA under the title “Dodd Frank Act – Swap Transaction Reporting Party Requirements” as such rules may be amended, restated, supplemented or otherwise modified or replaced from time to time.

“*ISV*” means independent software vendor.

“*Legal Entity Identifier*” has the meaning set forth in Part 45 of the CFTC Regulations.

“*Major Swap Participant*” has the meaning set forth in Section 1a(33) of the CEA and CFTC Regulations thereunder.

“*Market Regulation Department*” means the department within the SEF that regulates compliance with the SEF Rules. For purposes of the SEF Rules, Market Regulation Department may, as applicable, also include any Regulatory Services Provider pursuant to a Regulatory Services Agreement.

“*MAT/Agency MBS Package Transaction*” has the meaning set forth in CFTC No-Action Letter 14-137.

“*MAT/Futures Package Transaction*” has the meaning set forth in CFTC No-Action Letter 15-55.

“*MAT/MAT Cleared Package Transaction*” means a Package Transaction, all components of which are made available to trade and which is not an End-User Exempt Transaction.

“*MAT/New Issuance Bond Package Transaction*” has the meaning set forth in CFTC No-Action Letter 15-55.

“*MAT/Non-CFTC Swap Package Transaction*” has the meaning set forth in CFTC No-Action Letter 15-55.

“*MAT/Non-MAT Cleared Package Transaction*” has the meaning set forth in CFTC No-Action Letter 15-55.

“*MAT/Non-MAT Uncleared Package Transaction*” has the meaning set forth in CFTC No-Action Letter 15-55.

“*MAT/Non-Swap Instruments Package Transaction*” has the meaning set forth in CFTC No-Action Letter 15-55, and shall, for the avoidance of doubt, exclude (1) U.S. Dollar Swap Spreads; (2) MAT/Futures Package Transactions; (3) MAT/Agency MBS Package Transactions; and (4) MAT/New Issuance Bond Package Transactions.

“*Material Adverse Change*” means a significant event that negatively affects the subject referenced.

“*Material Conflict of Interest*” means a Director, Officer, panel member or other Person:

- (1) being named as a respondent or potential respondent or a witness or potential witness in a Self-Regulatory Action;
- (2) being an employer, employee, fellow employee or an Affiliate of a respondent or potential respondent or a witness or potential witness in the Self-Regulatory Action;

- (3) having any significant, ongoing business relationship with a respondent or potential respondent or a witness or potential witness in the Self-Regulatory Action;
- (4) having a Family Relationship with a respondent or potential respondent or a witness or potential witness in a Self-Regulatory Action (including the individual's spouse, co-habitator, former spouse, parent, stepparent, child, step child, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece, father-in-law, mother-in-law, brother-in-law or sister-in-law);
- (5) having a direct and substantial financial interest in the result of the deliberations or vote as referenced in CFTC Regulation 1.69, other than a direct or indirect equity or other interest in the SEF's Affiliates, that could reasonably be expected to be affected by the action. A direct and substantial financial interest includes positions in Swaps in accounts of, controlled by, or affiliated with the Director, Officer, panel member or other Person or in any other types of direct and substantial financial positions of the Director, Officer, panel member or other Person that are reasonably expected to be affected by the deliberations or vote; and/or
- (6) any other circumstance that gives rise to a conflict between the Director's, Officer's, panel member's or other Person's exercise of authority concerning any SEF Proceeding and his or her personal interests.

“*Member*” has the meaning specified in Section 1a(34) of the CEA and shall include for purposes of the SEF Rules all Participants (including Sponsoring Participants) and all Sponsored Participants.

“*Membership Interests*” means financial institutions that vary as to their jurisdiction of organization, size, registration and regulatory status, primary business and business model.

“*Named Party in Interest*” has the meaning specified in CFTC Regulation 1.69(a)(6).

“*NFA*” means the National Futures Association.

“*Non-Self-Clearing*” means, with respect to a DCO and any particular Swap, a Participant, Sponsored Participant, Client or Customer that is not a Clearing Member with respect to the related DCO and Swap.

“*Notice to Participants*” has the meaning specified in Rule 3108.

“*Obligation*” means any and all duties and/or responsibilities arising under each SEF Rule, order or procedure issued by the SEF (including Notices to Participants) and other requirements implemented by the SEF under the SEF Rules, including the terms and conditions of each Swap, as well as any contractual obligations between a Participant and the SEF.

“*Off-Book Ticket Functionality*” means the functionality provided within the OMS that allows for the execution of Permitted Cross Transactions away from the Order Book. This functionality

is available to market participants only for Transactions in the Rates asset class and for Transactions that are non-deliverable forwards.

“*Officer*” has the meaning specified in Rule 2200.

“*Offsetting Transaction*” has the meaning specified in Rule 4013.A.(f).

“*Order*” means a firm bid or offer for a Swap.

“*Order Book*” means the trading systems operated by the SEF in which any Participant or any market participant acting through a Participant has the ability to enter multiple bids and offers, observe or receive bids and offers entered by other Participants, and transact on such bids and offers. All bids and offers on the Order Book shall be Orders (*i.e.*, firm bids or offers and not indications of interest or indicative quotes), and all Orders shall be displayed on the Order Book on an anonymous basis. Any market participant who wishes to connect to and use the Order Book may choose to do so, as more fully described in Rule 4003.B. The Order Book is available for all Swaps listed for trading by the SEF.

“*Order Management System*” or “*OMS*” means the SEF’s front-end system that houses the Order Book, as well as the SEF’s Off-Book Ticket Functionality. Market participants may connect to the OMS via a graphical user interface (GUI) or an application program interface (API), which allows third-party trading systems to interact with the OMS. Please contact the SEF for more information regarding the establishment of a connection to the OMS.

“*Package Transaction*” means a transaction involving two or more instruments: (1) that is executed between two or more counterparties; (2) that is priced or quoted as one economic transaction with simultaneous or near simultaneous execution of all components; (3) that has at least one component that is a Swap that is a Required Transaction; and (4) where the execution of each component is contingent upon the execution of all other components. No Swaps are prohibited from being executed on the SEF as part of a Package Transaction. The categories of Package Transactions currently executed on the SEF are: (i) MAT/MAT Cleared Package Transactions; (ii) MAT/Non-MAT Cleared Package Transactions; and (iii) MAT/Non-MAT Uncleared Package Transactions. The categories of Package Transactions currently facilitated by the SEF are: (i) MAT/Non-Swap Instruments Package Transactions (MAT/Bonds only); (ii) US Dollar Swap Spreads; and (iii) MAT/Futures Package Transactions (MAT/Eurodollar Futures only). Such facilitation is done by the SEF’s providing an execution venue for the Swap legs and reference price information regarding the non-Swap legs. The reference price is made available to Participants for informational purpose only. The SEF does not execute the non-Swap legs of Package Transactions; the counterparties to any Package Transaction involving a non-Swap component must bilaterally execute such non-Swap component away from the SEF.

“*Package Transaction (Order Book Exempt)*” is a Package Transaction for which the CFTC has granted currently-effective no-action relief or an exception or exemption from the requirements of Section 2(h)(8) of the CEA and/or CFTC Regulation 37.9. Pursuant to CFTC No-Action Letter 15-55, the following are Package Transactions (Order Book Exempt) until 11:59 p.m. (Eastern Time) on November 15, 2016: (a) MAT/New Issuance Bond Package Transactions; (b) MAT/Futures Package Transactions; (c) MAT/Non-MAT Uncleared Package Transactions; (d)

MAT/Non-Swap Instruments Package Transactions; and (e) MAT/Non-CFTC Swap Package Transactions. If any such no-action relief is extended, upon and to the extent of such extension, the relevant Package Transaction will continue to be a Package Transaction (Order Book Exempt) for purposes of the SEF Rules.

“*Participant*” means any Person, other than an ISV, that has been admitted by the SEF as a “Participant” and that has been granted, and continues to have, Trading Privileges.

“*Participation Criteria*” means the criteria set forth in Rule 3000(a).

“*Permitted Transaction*” shall have the meaning provided in CFTC Regulation 37.9(c)(1).

“*Permitted Cross Transaction*” means a Permitted Transaction submitted to the SEF for execution either directly or via an Execution Specialist following some form of permitted pre-arrangement or pre-negotiation between or among the parties.

“*Person*” means a natural person or an entity.

“*Personal Information*” means personally identifiable information or data concerning or relating to a Person’s employees, customers or prospective customers.

“*Proprietary Data*” means, with respect to any Person, any information that separately discloses business transactions, market positions or trade secrets of such Person.

“*Public Director*” means any Director who qualifies as a “Public Director” within the meaning of the By-Laws.

“*Regulatory Oversight Committee*” means the committee described in Rule 2401.

“*Regulatory Services Agreement*” means the agreement(s) between the SEF and Regulatory Services Provider(s), under which market surveillance and trade practice surveillance functions are delegated to the Regulatory Services Provider.

“*Regulatory Services Provider*” means the organization, if any, which provides regulatory services to the SEF pursuant to a Regulatory Services Agreement. The SEF’s Regulatory Services Provider is currently the NFA.

“*Related Party*” has the meaning given in Rule 6028.

“*Reporting Counterparty*” has the meaning set forth in Part 45 of the CFTC Regulations.

“*Required Transaction*” shall have the meaning provided in CFTC Regulation 37.9(a)(1), as may be amended from time to time.

“*Required Cross Transaction*” means a Required Transaction (other than a Block Trade or Package Transaction (Order Book Exempt)) (x) in which a Participant acting as a broker or dealer seeks to either execute against its customer’s Order or execute two of its customers’ Orders against each other, and (y) that is submitted for execution on the Order Book, either

directly or via an Execution Specialist, following some form of permitted pre-arrangement or pre-negotiation.

“*Resting Quote*” means any firm bid or offer displayed on the Order Book of the SEF.

“*Review Panel*” means a panel responsible for determining whether a reasonable basis exists for finding a violation of the SEF Rules or other provision of Applicable Law for which the SEF has disciplinary jurisdiction, and for authorizing the issuance of notices of charges against Persons alleged to have committed violations if the Review Panel believes that the matter should be adjudicated.

“*Risk Mitigation Sessions*” has the meaning specified in Rule 4018.

“*ROC*” means the Regulatory Oversight Committee of the SEF.

“*RSA*” means a Regulatory Services Agreement.

“*SEC*” means the U.S. Securities and Exchange Commission.

“*SEF*” means the swap execution facility operated by tpSEF Inc. or any successor thereto.

“*SEF Official*” means any Director or Officer of, or individual employed directly by, the SEF, the Regulatory Services Provider or any individual rendering similar services to the SEF under an administrative or similar agreement.

“*SEF Panel*” means any Review Panel, Disciplinary Panel, Appeals Panel or any other disciplinary or oversight panel of the SEF and any subcommittee thereof.

“*SEF Proceeding*” and “*SEF Proceedings*” means any inquiry, investigation, disciplinary proceeding or any appeal from a disciplinary proceeding, summary suspension or other summary actions.

“*SEF Rules*” means the rules of the SEF as set forth herein, as may be amended from time to time by the SEF.

“*Self-Clearing*” means, as to any DCO and Swap, a Participant, Sponsored Participant, Client or Customer that is a Clearing Member of the relevant DCO with respect to such Swap.

“*Self-Regulatory Action*” means an Emergency Action or a SEF Proceeding.

“*Self-Regulatory Organization*” means the Financial Industry Regulatory Authority, the NFA or any other self-regulatory organization under the CFTC Regulations or the rules and regulations of the SEC.

“*Significant Action*” has the meaning specified in CFTC Regulation 1.69(a)(8).

“*Sponsored Participant*” means a third-party ECP that is extended Trading Privileges by a Sponsoring Participant pursuant to Rule 3110.

“*Sponsoring Participant*” means a Participant that extends Trading Privileges to a Sponsored Participant pursuant to Rule 3110.

“*Supervised Persons*” means Authorized Traders, directors, officers, employees or agents of any Participant or Sponsored Participant.

“*Swap*” means any “swap” as defined in CEA Section 1a(47) that has been listed for trading on the SEF.

“*Swap Data Repository*” or “*SDR*” has the meaning set forth in Section 1a(48) of the CEA.

“*Swap Dealer*” has the meaning set forth in Section 1a(49) of the CEA.

“*Swap Specification*” means, with respect to any Swap, the specifications for such Swap as set forth in Appendix B hereto, including any materials incorporated by reference therein.

“*Terms Incorporated by Reference*” has the meaning given in Rule 4012.

“*tpSEF Risk Mitigation Procedures*” means the SEF’s procedures for Risk Mitigation Sessions, which are attached hereto as Appendix C.

“*Trade Communication*” has the meaning given in Rule 4012.

“*Trading Hours*” means, for any Business Day, the hours specified in Rule 4000 below.

“*Trading Privileges*” means the right granted to a Participant by the SEF, or extended to a Sponsored Participant by a Sponsoring Participant, to use the SEF for execution of Swaps, in each case acting through one or more Authorized Traders.

“*Transaction*” means any Swap transacted on the SEF in accordance with the SEF Rules or, in the case of an Uncleared Block Trade, transacted away from a SEF trading system or platform in accordance with the SEF Rules.

“*Uncleared Block Trade*” means a Block Trade other than a Cleared Block Trade.

“*Uncleared Swap*” means a Swap other than a Cleared Swap.

“*User ID*” means a unique identifier issued to each Authorized Trader of a Participant that enables the SEF to identify the individual.

“*U.S. Dollar Swap Spread*” has the meaning set forth in CFTC No-Action Letter 15-55.

“*USF*” means a unique swap identifier created by the SEF pursuant to Part 45 of the CFTC Regulations.

“*Waiting Order*” has the meaning specified in Rule 4011(a)(2).

## **SECTION 2 SEF GOVERNANCE**

### **Rule 2000    The SEF**

The SEF is a corporation organized under the laws of the state of Delaware. The By-Laws of the SEF govern the management and operation of the SEF.

## **BOARD**

### **Rule 2100    Board**

- (a) The Officers shall manage the day-to-day business operations of the SEF. The Board has the power and authority to oversee, and to affirm, modify, suspend or overrule, any and all decisions and actions of any committees of the Board or any panel of Officers related to the day-to-day business operations of the SEF.
- (b) The Board will determine which Swaps are available from time to time for trading subject to the SEF Rules, and will approve specifications for such Swaps; provided that the Board may delegate the authority to approve such rules to a SEF committee or to one or more Officers of the SEF; provided, further, that certifications or applications with respect to such rules will be submitted to the CFTC as required by the CEA and any regulations thereunder.
- (c) The Board may act only by the decision of an absolute majority in number of the Directors by vote at a meeting, by unanimous written consent without a meeting, or as otherwise set forth in the By-Laws. In the event of an Emergency, which in the judgment of the CEO (or, in his absence, the most senior Officer present) requires immediate action, a special meeting of the Board may be convened without notice, consisting of those Directors who are immediately available in person or by telephone and can be joined in the meeting in person or by conference telephone. The actions taken at such a meeting shall be effective if at least a quorum of the Directors participates either personally or by conference telephone.
- (d) At all times, at least 35% of the Directors shall be Public Directors. Each Director (including Public Directors) shall be appointed in accordance with the By-Laws and shall serve until his or her successor is duly appointed or until his or her earlier resignation or removal, with or without cause. The Directors shall include members who have had relevant experience in some capacity (whether as a current or former employee, officer, director, principal, consultant, advisor, service provider or otherwise) working with or for a diversity of Membership Interests.
- (e) Each Director is entitled to indemnification pursuant to the By-Laws with respect to matters relating to the SEF.
- (f) To qualify as a Director, an individual must meet the qualifications for directors set forth in the By-Laws, and to qualify as a Public Director, an individual must meet the qualifications for "Public Directors" set forth in the By-Laws.



- (g) Without limitation of any other provisions of this Rule 2100, the provisions of Article III of the By-Laws shall be deemed to be part of the SEF Rules and shall be deemed to be incorporated herein, to the same extent and with the same force and effect as if set forth herein in their entirety.

## **OFFICERS**

### **Rule 2200    Officers**

- (a) The Board shall appoint a Chief Executive Officer, a Chief Compliance Officer, and such other officers of the SEF (all of the foregoing, collectively, the “Officers”) as it may deem necessary or appropriate from time to time, in accordance with the By-Laws.
- (b) Any Officer may also be a director, officer, partner or employee of the SEF or any of its Affiliates.
- (c) The Officers shall have such powers and duties in the management of the SEF as the Board may prescribe from time to time.
- (d) Each Officer is entitled to indemnification pursuant to the By-Laws with respect to matters relating to the SEF.

### **Rule 2201    Chief Compliance Officer**

- (a) The Board shall designate an individual to serve as the Chief Compliance Officer and shall approve the compensation of the Chief Compliance Officer. Removal of the Chief Compliance Officer shall require the approval of a majority of the Board. The SEF shall notify the CFTC of the removal of the Chief Compliance Officer and the appointment of any new Chief Compliance Officer, whether interim or permanent, within two Business Days of such removal and appointment.
- (b) The Chief Compliance Officer’s duties shall include, but are not limited to, the following:
- (1) overseeing and reviewing the SEF’s compliance with Applicable Law, including, without limitation, Section 5h of the CEA and related CFTC Regulations;
  - (2) in consultation with the CEO and such others, including, without limitation, the Board and/or the Regulatory Oversight Committee, as deemed appropriate and necessary, resolving any conflicts of interest that may arise, including: (i) conflicts between business considerations and compliance requirements; (ii) conflicts between business considerations and the requirement that the SEF provide fair, open and impartial access as set forth in the CFTC Regulations; and (iii) conflicts between the SEF’s management and members of the Board;
  - (3) establishing and administering written policies and procedures reasonably designed to prevent violations of the CEA and CFTC Regulations;

- (4) taking reasonable steps to ensure compliance with the CEA and CFTC Regulations;
  - (5) establishing procedures for the remediation of noncompliance issues identified by the Chief Compliance Officer through compliance office reviews, look-backs, internal or external audit findings, self-reported errors or validated complaints;
  - (6) establishing and following appropriate procedures for the handling, management response, remediation, retesting and closing of noncompliance issues;
  - (7) establishing and administering a compliance manual designed to promote compliance with Applicable Law and a written code of ethics designed to prevent ethical violations and to promote honesty and ethical conduct;
  - (8) supervising the SEF's self-regulatory program with respect to trade practice surveillance, market surveillance, real-time market monitoring, compliance with audit trail requirements, enforcement and disciplinary proceedings, audits, examinations and other regulatory responsibilities with respect to Participants, Customers, Clients, Authorized Traders and other market participants (including seeking to ensure compliance with, if applicable, financial integrity, financial reporting, sales practice, recordkeeping and other requirements);
  - (9) supervising the effectiveness and sufficiency of any regulatory services provided to the SEF by a Regulatory Services Provider; and
  - (10) preparing and filing the annual compliance report as required under the CEA and applicable CFTC Regulations.
- (c) The Chief Compliance Officer shall have available to him or her at all times the authority and the resources of the Market Regulation Department and such other resources as may be necessary to develop and enforce policies and procedures necessary to fulfill the duties set forth for chief compliance officers of swap execution facilities in the CEA and the CFTC Regulations. The Chief Compliance Officer shall have supervisory authority over all staff of the Market Regulation Department and all other compliance staff.
- (d) The Chief Compliance Officer shall report directly to the Board. The Chief Compliance Officer shall have the authority to inspect the books and records of all Participants and the authority to require any Participant to appear before him or her and produce its books and records and answer questions regarding alleged violations of the SEF Rules or other provision of Applicable Law for which the SEF has disciplinary jurisdiction, at the time, place and in the manner it designates. The Chief Compliance Officer may also delegate such authority to staff of the Market Regulation Department and/or the Regulatory Services Provider.

## QUALIFICATIONS

### **Rule 2300 Qualification of Chief Compliance Officer**

- (a) The Chief Compliance Officer shall have the background and skills appropriate for fulfilling the responsibilities of the position.
- (b) The Chief Compliance Officer may not be disqualified from registration pursuant to Section 8a(2) or (3) of the CEA.

### **Rule 2301 Qualifications of Directors, Panel Members, Committee Members and Officers**

- (a) A Director or Officer must meet the qualifications set forth from time to time in the By-Laws.
- (b) An individual may not serve as a Director or an Officer, hold a 10% or more ownership interest in the SEF or serve on a committee established by the Board (including the Regulatory Oversight Committee) or any SEF Panel if the individual:
  - (1) within the prior three (3) years has been found by a final decision of the SEF, a Self-Regulatory Organization, an administrative law judge, a court of competent jurisdiction or a Government Agency to have committed a Disciplinary Offense;
  - (2) within the prior three (3) years has entered into a settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged, included a Disciplinary Offense;
  - (3) is currently suspended from trading on a DCM, is suspended or expelled from membership in a Self-Regulatory Organization, is serving any sentence or probation or owes any portion of a fine or penalty related to either:
    - (i) a finding of a Disciplinary Offense by a final decision of the SEF, a Self-Regulatory Organization, an administrative law judge, a court of competent jurisdiction or a Government Agency; or
    - (ii) a settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a Disciplinary Offense;
  - (4) is currently subject to an agreement with a Government Agency, the SEF or a Self-Regulatory Organization not to apply for registration with the Government Agency or for membership in the SEF or the Self-Regulatory Organization;
  - (5) is currently, or within the past three (3) years has been, subject to a revocation or suspension of registration by the CFTC for any reason;
  - (6) has been convicted of a felony listed in Section 8a(2)(D)(ii) through (iv) of the CEA; or

- (7) is currently subject to a denial, suspension or disqualification from serving on a disciplinary committee, arbitration panel or governing board of any self-regulatory organization as that term is defined in Section 3(a)(26) of the Exchange Act.
- (c) Any Director, Officer, member of a committee established by the Board, any SEF Panel member, any individual nominated to serve in any such role or any individual authorized by the Regulatory Oversight Committee to take summary action shall immediately notify the Chief Executive Officer or the Chief Compliance Officer if such individual meets one or more of the criteria in Rule 2301(b).
- (d) For purposes of Rule 2301(b), the terms “final decision” and “settlement agreement” have the meanings set forth in CFTC Regulation 1.63(a).

## **BOARD COMMITTEES**

### **Rule 2400 [Reserved]**

### **Rule 2401 Regulatory Oversight Committee**

- (a) The Regulatory Oversight Committee of the Board shall be composed entirely of Public Directors appointed by the Board.
- (b) Each member of the Regulatory Oversight Committee shall serve for a term of two (2) calendar years from the date of his or her appointment or until such person ceases to be Public Director or until removed from the ROC by the Board. A member of the Regulatory Oversight Committee may serve for multiple terms.
- (c) The Regulatory Oversight Committee shall oversee the SEF’s regulatory program on behalf of the Board. The Board shall delegate sufficient authority, dedicate sufficient resources, and allow sufficient time for the Regulatory Oversight Committee to fulfill its mandate. It shall make such recommendations to the Board that, in its judgment, will best promote the interests of the SEF. The Regulatory Oversight Committee shall also have such other powers and perform such other duties as set forth in the SEF Rules and as the Board may delegate to it from time to time.
- (d) Without limiting the generality of the foregoing, the Regulatory Oversight Committee shall have authority to:
  - (1) monitor the regulatory program of the SEF for sufficiency, effectiveness, and independence;
  - (2) oversee all facets of the regulatory program, including:
    - (i) trade practice and market surveillance; audits, examinations, and other regulatory responsibilities with respect to Participants (including compliance with, if applicable, financial integrity, financial reporting,

sales practice, recordkeeping, and other requirements); and the conduct of investigations;

- (ii) reviewing the size and allocation of the regulatory budget and resources, and the number, hiring, termination and compensation of regulatory personnel;
  - (iii) reviewing the performance of the Chief Compliance Officer of the SEF and making recommendations regarding such performance to the CEO;
  - (iv) recommending changes that would ensure fair, vigorous, and effective regulation; and
  - (v) reviewing all regulatory proposals prior to implementation and advising the Board as to whether and how such changes may impact regulation.
- (e) The Regulatory Oversight Committee reports to the Board.

## **CONFLICTS OF INTEREST**

### **Rule 2500 Conflicts of Interest and Misuse of Material, Non-Public Information**

- (a) A Director, Officer, SEF Panel member or other Person authorized to exercise the SEF's authority concerning a Self-Regulatory Action who knowingly has a Material Conflict of Interest between (i) his or her position as a Director, Officer or SEF Panel member, or the exercise of authority concerning a Self-Regulatory Action, and (ii) his or her personal interests (each, an "Interested Person") may not participate in any deliberations or vote of the Board (which includes for purposes hereof a Board committee) or SEF Panel, or exercise any authority with respect to the Self-Regulatory Action, involving his or her personal interest, except as described below.
- (b) Before considering any Self-Regulatory Action, an Interested Person must disclose in writing to the Board the material facts concerning his or her relationship or interest in the matter.
- (c) Any Interested Person who would be required otherwise to abstain from deliberations and voting or the exercise of authority pursuant to paragraph (a) above as a result of having Material Conflict of Interest may participate in deliberations, prior to a vote on the matter, if:
  - (1) the material facts about the Interested Person's interest in the matter are disclosed or known to the Board or SEF Panel;
  - (2) the Board determines that the participation by the Interested Person would be consistent with the public interest; and
  - (3) a majority of the Directors (excluding any Interested Persons) vote to allow the Interested Person to participate in deliberations on the matter.

- (d) If a determination is made pursuant to paragraph (c) that an Interested Person may participate in deliberations prior to a vote, then the minutes of the meeting of the Board or committee thereof will reflect the determination and the reasons for the determination.
- (e) If a determination is made that all Directors are Interested Persons with respect to a matter subject to a vote by the Board, the Chief Executive Officer will appoint a panel of individuals who are not Interested Persons with respect to such matter, which will have the same authority and powers over such matter that the Board would have if the Directors were not Interested Persons with respect to such matter.
- (f) No Director, Officer, member of any committee or panel established by the Board or any employee or consultant of the SEF shall use or disclose, either during his or her association with the SEF or thereafter, for any purpose other than the performance of his or her official duties and responsibilities as a Director, Officer, committee or panel member or employee or consultant any confidential information, including any material, non-public information obtained as a result of the individual's duties and responsibilities as a Director, Officer, committee or panel member or employee or consultant. Any Director, Officer, committee or panel member or employee or consultant in possession of confidential information shall take all appropriate steps to safeguard the information and to protect it against disclosure, misuse, espionage, loss and theft.
- (g) Notwithstanding paragraph (f) above, a Director, Officer, member of any committee or panel established by the Board or employee or consultant of the SEF may disclose confidential information in the course of his or her official duties and may also make disclosures in his or her official capacity to the CFTC, any Self-Regulatory Organization, a court of competent jurisdiction or any Government Agency or pursuant to Applicable Law.
- (h) No Director, Officer, or member of any committee or panel established by the Board, no employee of the SEF and no consultant to the SEF shall:
  - (1) trade for such Person's own account, or for or on behalf of any other account, on the basis of any material, non-public information obtained through the performance of such Person's official duties;
  - (2) use or disclose, for any purpose other than the performance of such Person's official duties, any material, non-public information obtained by such Person as a result of such Person's official duties; *provided, however*, that this Rule shall not prohibit disclosures made by such Person in the course of his or her official duties or disclosures made to the CFTC, any Self-Regulatory Organization, a court of competent jurisdiction or any Government Agency or pursuant to Applicable Law; or
  - (3) trade, directly or indirectly, in (i) any Swap traded on the SEF, (ii) any related commodity interest (as defined in CFTC Regulation 1.59(a)), or (iii) any commodity interest traded on any DCM or SEF or cleared by any DCO if such

Person has access to material non-public information concerning such commodity interest.

## **Rule 2501 Voting by Interested Parties**

### **(a) Relationship with Named Party in Interest.**

- (1) A member of the Board, any committee established by the Board (including the Regulatory Oversight Committee) or any SEF Panel must abstain from such body's deliberations and voting on any matter involving a Named Party in Interest where such member:
  - (i) is a Named Party in Interest;
  - (ii) is an employer, employee or fellow employee of a Named Party in Interest;
  - (iii) is associated with a Named Party in Interest through a "broker association" as defined in CFTC Regulation 156.1;
  - (iv) has any other significant, ongoing business relationship with a Named Party in Interest, not including relationships limited to executing futures or option transactions opposite of each other or to clearing futures or option transactions through the same clearing member; or
  - (v) has a Family Relationship with a Named Party in Interest.
- (2) Prior to the consideration of any matter involving a Named Party in Interest, each member of the SEF's Board, any committee established by the Board (including the Regulatory Oversight Committee) or any SEF Panel must disclose to the Chief Compliance Officer whether he or she has one of the relationships listed in Rule 2501(a)(1)-(5) above with a Named Party in Interest.
- (3) The following procedure will apply with respect to Named Parties in Interest under this Rule 2501: In its sole discretion, the Market Regulation Department shall determine whether any member of the Board, any committee established by the Board (including the Regulatory Oversight Committee) or a SEF Panel is required to abstain in any matter.

### **(b) Financial Interest in Significant Action.**

- (1) A member of the SEF's Board, any committee established by the Board (including the Regulatory Oversight Committee) or any SEF Panel must abstain from such body's deliberations and voting on any Significant Action if the 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 action.



- (2) Prior to the consideration of any Significant Action, each member of SEF's Board, any committee established by the Board (including the Regulatory Oversight Committee) or any SEF Panel must disclose to Chief Compliance Officer any Disclosable Financial Interest that is known to such member. This requirement does not apply to members who choose to abstain from deliberations and voting on the subject Significant Action.
  - (3) The SEF's Board, any committee established by the Board (including the Regulatory Oversight Committee) or any SEF Panel may permit a member to participate in deliberations prior to a vote on a Significant Action for which such member otherwise would be required to abstain, pursuant to Rule 2501(b)(1), if such participation would be consistent with the public interest and the member recuses himself or herself from voting on such action.
  - (4) In making a determination as to whether to permit a member to participate in deliberations on a Significant Action for which such member otherwise would be required to abstain, the deliberating body shall consider the following factors:
    - (i) Whether the member's participation in deliberations is necessary for the deliberating body to achieve a quorum in the matter, and
    - (ii) Whether the member has unique or special expertise, knowledge or experience in the matter under consideration.
  - (5) Prior to any determination pursuant to Rule 2501(b)(3), the relevant deliberating body must fully consider the position information that is the basis for the member's direct and substantial financial interest in the result of a vote on a Significant Action.
  - (6) The following procedure will apply with respect to Significant Actions under this Rule 2501: The Market Regulation Department will independently require a member of the Board, any committee established by the Board (including the Regulatory Oversight Committee) or a SEF Panel to abstain from both the deliberations and voting by such Board, committee or SEF Panel on any Significant Action if, based upon the information reviewed pursuant to this Rule 2501, the Market Regulation Department determines that the member has a direct and substantial financial interest in the result of the vote.
- (c) The SEF's Board, Board committees and SEF Panels must reflect in their minutes or otherwise document that the conflicts determination procedures required by this Rule 2501 have been followed. Such records also must include:
- (1) The names of all members who attended the meeting in person or who otherwise were present by electronic means;
  - (2) The name of any member who voluntarily recused himself or herself or was required to abstain from deliberations and/or voting on a matter and the reason for the recusal or abstention, if stated; and



- (3) Information on the position information that was reviewed for each member.

## **SERVICE AGREEMENTS**

### **Rule 2600 Services Agreement with a Regulatory Services Provider**

- (a) The SEF may enter into a Regulatory Services Agreement with a Regulatory Services Provider to perform certain surveillance, investigative, and regulatory functions under the SEF Rules and the SEF may provide information to the Regulatory Services Provider in connection with the performance of those functions.
- (b) The SEF shall retain ultimate decision-making authority with respect to any functions that are contracted to a Regulatory Services Provider and shall remain responsible for the performance of any Regulatory Services received.

### **Rule 2601 Services Agreement with Other Service Providers**

The SEF, in its discretion, may enter into services agreements with service providers of its choosing to perform functions under the SEF Rules, and may provide information to such service providers in connection with the performance of those functions.

### **Rule 2602 Prohibited Use of Data Collected for Regulatory Purposes**

The SEF will not use for business or marketing purposes any Proprietary Data or Personal Information it collects or receives, from or on behalf of any Person, for the purpose of fulfilling its regulatory obligations; *provided, however*, the SEF may use such data or information for business or marketing purposes if the Person from whom it collects or receives such data or information clearly consents to the SEF's use of such data or information by means of an independent, affirmative consent. The SEF will not condition access to its market(s) or market services on a Person's consent to the SEF's use of Proprietary Data or Personal Information for business or marketing purposes. The SEF, where necessary for regulatory purposes and as permitted by Applicable Law, may share such data or information with one or more DCOs, swap execution facilities or DCMs registered with the CFTC. In such an event, the SEF will request the DCO, swap execution facility or DCM to maintain the confidentiality of any such information in the same manner as the DCO, swap execution facility or DCM would protect its own proprietary data.

**SECTION 3  
PARTICIPANT ACCESS RULES**

**QUALIFICATIONS**

**Rule 3000    Qualifications**

- (a) To be eligible for admission as a Participant, an applicant must demonstrate to the satisfaction of the SEF that it:
- (1) is an ECP;
  - (2) is of good reputation and business integrity;
  - (3) maintains adequate financial resources and credit;
  - (4) if it is an entity, is validly organized, in good standing, and authorized by its governing body and, if relevant, documents of organization, to trade Swaps;
  - (5) has not filed for bankruptcy;
  - (6) is not prohibited from using the services of the SEF for any reason whatsoever;
  - (7) holds all registrations required under Applicable Law, including, without limitation, any introducing broker, FCM, and/or Swap Dealer registration (each as defined in the CEA and CFTC Regulations);
  - (8) is not subject to statutory disqualification under Section 8a(2) of the CEA; and
  - (9) satisfies any other criteria that the SEF may require from a Participant to perform its responsibilities as a Self-Regulatory Organization, comply with Applicable Law or provide services, provided such criteria are impartial, transparent and applied in a fair and nondiscriminatory manner.

Once admitted, a Participant shall continue at all times to satisfy all such Participation Criteria and all other applicable eligibility criteria. Admission as a Participant only entitles the Participant to Trading Privileges and does not confer any right of ownership in the SEF, or right to attend or vote at meetings of the SEF, or right to share in the profits of the SEF.

- (b) Each Participant that is an Account Manager must cause its Client(s) on behalf of which it places any Order or Transaction on the SEF or for which it enters into an Uncleared Block Trade pursuant to the SEF's rules, to be subject to the SEF Rules. In addition, each Participant that is an Account Manager must provide the SEF, upon the SEF's request, with written proof of authority to transact on the SEF or pursuant to the SEF Rules on behalf or in the name of each Client.

- (c) Each Participant intending to trade Cleared Swaps for its own account must either be (i) Self-Clearing with respect to the DCO where the Cleared Swaps it will trade are cleared, or (ii) if it is Non-Self-Clearing, have a clearing account with a Clearing Firm and be listed in the Clearing Firm Agreement as being permitted to clear such Swaps at such DCO through such Clearing Firm.
- (d) Each Participant that is an Account Manager, Introducing Broker or Sponsoring Participant must ensure that each of its Clients, Customers and Sponsored Participants intending to trade Cleared Swaps meets the requirements of subsection (c) above.
- (e) Participants that are not, or whose Clients, Customers or Sponsored Participants are not, Self-Clearing or do not have a relationship with a Clearing Firm as set forth in subsection (c) or (d) of this Rule 3000 are prohibited from entering Orders or Transactions in Cleared Swaps on the SEF.
- (f) The SEF shall monitor its Participants to ensure that they continue to qualify as ECPs. If any Client or Customer of an Account Manager or Introducing Broker is not also a Participant, the SEF shall obtain from the applicable Account Manager or Introducing Broker a representation that such Client or Customer will be an ECP each time the applicable Account Manager or Introducing Broker transacts on the SEF on behalf of such Client or Customer.
- (g) Upon request of the SEF or its Regulatory Services Provider, each Participant (and each Authorized Trader) shall promptly provide to the Market Regulation Department or the Regulatory Services Provider (i) the names of its Customers, Client or Sponsored Participants (if applicable) and (ii) such information about Authorized Traders as the SEF requests.
- (h) The SEF may from time to time establish different categories of Participants receiving access to the SEF. Participants receiving comparable access to, or services from, the SEF will be subject to comparable fee structures.
- (i) Consistent with Applicable Law, the SEF will provide access to its trading platform and services on a fair and nondiscriminatory basis to any ECP that complies with the SEF's documentation and eligibility requirements as set forth in the SEF Rules.

## **PARTICIPANT APPLICATION AND ONGOING PARTICIPANT MATTERS**

### **Rule 3100 Application Requirements**

A Person that wishes to become a Participant of the SEF must:

- (a) file with the SEF an accurate and complete application and any applicable agreement as may be required by the SEF from time to time;
- (b) if it is an entity, provide a copy of all formation documents including any amendments thereto if requested by the SEF;

- (c) if it is an applicant organized or located outside of the United States, enter into a written agreement acceptable to the SEF appointing a third party as its U.S. agent for service of process for purposes of CFTC Regulation 15.05, and shall provide the SEF with a copy of the agreement;
- (d) provide such other information as may be requested by the SEF; and
- (e) provide written or electronic confirmation of its status as an ECP.

**Rule 3101 Review of Application**

- (a) The SEF in its discretion may conduct an investigation of any applicant that the SEF believes is appropriate.
- (b) The SEF shall review a prospective Participant's application and may ask for and review any additional information it deems relevant.

**Rule 3102 Acceptance as a SEF Participant**

If the SEF decides to admit an applicant as a Participant, it shall notify the applicant and state in such notice the date on which the applicant shall become a Participant.

**Rule 3103 Conditions for Denial**

- (a) The SEF may deny, condition or terminate Participant status of any Person:
  - (1) if such Person is unable to satisfactorily demonstrate its ability to satisfy the eligibility criteria to become or remain a Participant;
  - (2) if such Person is unable to satisfactorily demonstrate its capacity to adhere to all applicable SEF Rules;
  - (3) if such Person would bring the SEF into disrepute as determined by the SEF in its sole discretion; or
  - (4) for such other cause as the SEF may reasonably determine.
- (b) If the SEF decides to deny or condition an application for admission as a Participant, or terminate a Person's status as a Participant, the SEF shall promptly notify such Person (the "Affected Person") thereof in a writing sent to the address in the SEF application form or maintained in the SEF's records. Such Affected Person may, within seven (7) calendar days of receipt of such notification, request in writing that the SEF reconsider its determination.
- (c) Within thirty (30) calendar days of receiving the request for reconsideration, the SEF shall either confirm, reverse or modify the denial, conditioning or termination of the Affected Person as a Participant, and shall promptly notify the Affected Person

accordingly in a writing sent to the address in the SEF application form or maintained in the SEF's records.

- (d) Any denials, conditionings or terminations implemented by the SEF pursuant to this Rule 3103 will be impartially enforced.
- (e) Any denial, conditioning or termination that represents a suspension, expulsion, disciplinary or access denial action or other adverse action within the meaning of Part 9 of the CFTC's Regulations may (to the extent required thereby) be subject to review by the CFTC pursuant to Part 9 of the CFTC's Regulations.

#### **Rule 3104 Duty to Keep Current**

If any material information in the Participant's application becomes outdated or otherwise is inaccurate or incomplete for any reason, the Participant must promptly update the application. Within thirty (30) calendar days following the end of each calendar year, Participants shall review and revise, as necessary, all information provided in their applications and provide such revisions to the SEF.

#### **Rule 3105 Withdrawal of Participant**

To withdraw from the SEF, a Participant must notify the SEF of its withdrawal. Such withdrawal shall be accepted and effective immediately upon receipt of such notice by the SEF.

Upon the effectiveness of the withdrawal of a Participant, all rights and privileges of such Participant terminate (including, without limitation, Trading Privileges). Notwithstanding the accepted withdrawal of a Participant, the withdrawn Participant remains subject to the SEF Rules and the jurisdiction of the SEF for acts done and omissions made while a Participant, and must cooperate in any SEF Proceeding as if the withdrawn Participant were still a Participant.

#### **Rule 3106 Dissolution of Participants**

All rights and privileges of a Participant terminate upon, and all obligations of a Participant shall survive, the dissolution of the Participant.

#### **Rule 3107 Jurisdiction and Application of SEF Rules**

- (a) Each Clearing Firm, Participant, Supervised Person, Sponsored Participant, Client and Customer and any other Person (i) initiating or executing a transaction on or subject to the rules of the SEF directly or through an intermediary or (ii) for whose benefit such a transaction has been initiated or executed:
  - (1) consents to the jurisdiction of the SEF with respect to any and all matters arising from, related to, or in connection with, the status, actions or omissions of such Person;
  - (2) is bound by, and shall comply with, the SEF Rules and all Obligations, the DCO Rules and Applicable Law, in each case to the extent applicable to it;

- (3) agrees to assist the SEF in complying with its legal and regulatory obligations, cooperate with the SEF, its Regulatory Services Provider(s) and the CFTC in any inquiry, investigation, audit, examination or proceeding, and authorizes the SEF to provide information regarding it to any Regulatory Services Provider, the CFTC or any Self-Regulatory Organization.
- (b) Any Participant or Sponsored Participant whose Trading Privileges and/or ability to otherwise access the SEF are revoked or terminated shall remain bound by the SEF Rules (in addition to any other Applicable Law) and subject to the jurisdiction of the SEF with respect to any and all matters arising from, related to or in connection with, the status, actions or omissions of such Participant or Sponsored Participant prior to such revocation or termination.
- (c) An Authorized Trader who is suspended for any period remains subject to the SEF Rules, the Obligations and the SEF's jurisdiction throughout the period of suspension. After revocation or termination of the designation of an Authorized Trader, the Authorized Trader remains subject to the SEF Rules, the Obligations and the jurisdiction of the SEF for acts done and omissions made while an Authorized Trader. Any SEF Proceeding relating to an Authorized Trader shall occur as if the Authorized Trader were still registered as such.

#### **Rule 3108 Notices to Participants**

- (a) The SEF shall publish a notice with respect to each addition to, modification or clarification of the SEF Rules or of any action to implement any SEF Rules on the SEF's website or via an electronic mail distribution to enable each Participant 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 (each a "Notice to Participants"). The SEF shall use good faith efforts to provide Notices to Participants to each Participant via electronic mail. For purposes of publication in accordance with the first sentence of this Rule 3108, it shall be sufficient (without limiting the discretion of the SEF as to any other reasonable means of communication) if a Notice to Participants is published on the SEF's website.
- (b) Any Notice to Participants shall also be deemed to have been made to all Supervised Persons.

#### **Rule 3109 Authorized Traders**

- (a) Each Participant shall designate one or more Authorized Trader(s) which, in the case of a Sponsoring Participant, may include any Person appointed, employed or authorized by a Sponsored Participant as provided in Rule 3110.
- (b) By agreeing to become an Authorized Trader, an individual agrees to be bound by the duties and responsibilities of an Authorized Trader and to be subject to, and comply with, the SEF Rules and Obligations. Among other duties and responsibilities that the SEF may impose, an Authorized Trader must:

- (1) have the authority, at the SEF's request, to adjust or withdraw any Order or Transaction submitted under any User ID assigned to him or her;
  - (2) conduct activity under any User ID assigned to him or her in compliance with all SEF Rules and Obligations; and
  - (3) ensure he or she has been assigned his or her own User ID.
- (c) To designate an Authorized Trader, a Participant must follow the procedures established by the SEF. The SEF may establish criteria that individuals must fulfill to become an Authorized Trader.
  - (d) The SEF will maintain a list of all designated Authorized Traders for each Participant.
  - (e) The SEF may, in its sole discretion refuse to approve an Authorized Trader or revoke or suspend the designation of an individual as Authorized Trader to protect other Participants and the integrity of the SEF and shall promptly notify the related Participant of such action.
  - (f) To request the termination of the designation of an individual as Authorized Trader, the Participant must follow the procedures established by the SEF.
  - (g) Each Authorized Trader shall be identified to the SEF in the manner prescribed by the SEF and shall be subject to the SEF Rules. It is the duty of the Participant to ensure that each Authorized Trader registration is current and accurate at all times.
  - (h) Without limiting the foregoing, prior to accessing the SEF each Authorized Trader consents to abide by the SEF Rules and Applicable Law and each Participant will ensure on an ongoing basis that: (i) none of its Authorized Traders is subject to a disqualification pursuant to any Applicable Law (unless an appropriate exemption has been obtained with respect thereto); (ii) each of its Authorized Traders will be technically proficient; (iii) each of its Authorized Traders will conduct its business in a fair and equitable manner; and (iv) each of its Authorized Traders will comply with the SEF Rules and Obligations and conduct its business in accordance with Applicable Law.

#### **Rule 3110 Sponsored Access**

- (a) A Sponsoring Participant may extend Trading Privileges to one or more Sponsored Participants. If the Sponsoring Participant is not the Sponsored Participant's Clearing Firm, the Sponsoring Participant will provide all relevant clearing information to the SEF on behalf of the Sponsored Participant. Each Sponsored Participant shall designate one or more Authorized Traders to transact on the SEF.
- (b) The Sponsoring Participant is responsible for all Orders and Transactions placed by any Person acting on behalf of or in the name of the Sponsored Participant on the SEF as if such Orders or Transactions were placed by the Sponsoring Participant (whether or not the Sponsoring Participant was aware of and/or had approved the placing of such Orders

or Transactions). Any execution occurring as a result of an Order or Transaction entered by a Sponsored Participant shall be binding in all respects on the Sponsoring Participant.

- (c) The Sponsoring Participant must monitor the Sponsored Participant's access to the SEF and activity on the SEF, including, but not limited to, the entry, cancellation or other processing of Orders, risk management, trade reporting, clearing and settlement of Transactions.
- (d) The Sponsored Participant is not a Participant of the SEF. The SEF has no liability to, and the SEF owes no duties or obligations to, nor has any responsibility for, the Sponsored Participant. Notwithstanding anything herein to the contrary, the Sponsored Participant and any other Person using a User ID or login credentials linked to a Participant will be subject to, and must comply with, the SEF Rules, and may be subject to Disciplinary Action by the SEF for any violation or attempted violation of the SEF Rules or provisions of Applicable Law for which the SEF has disciplinary jurisdiction. The Sponsored Participant will be deemed to have represented and warranted that it is an ECP and that it has all registrations, licenses and consents required under Applicable Law. The Sponsoring Participant further agrees to cooperate with the SEF, or any other regulator, in connection with any inquiry regarding the Sponsored Participant's access and activities relating to the SEF and, in connection with such inquiry, the Sponsoring Participant shall ensure the cooperation of the Sponsored Participant and procure that the Sponsored Participant is contractually bound to cooperate with the SEF or any other regulator.
- (e) The Sponsoring Participant shall ensure that:
  - (1) the Sponsored Participant, its directors, members, officers, employees and agents comply with Applicable Law and the policies and procedures issued or approved by the SEF and with all of the duties and/or obligations imposed on Participants under the SEF Rules as if the Sponsored Participant were a Participant for such purposes, except with respect to any such duties and/or obligations which manifestly only relate to the Sponsoring Participant;
  - (2) the Sponsored Participant takes reasonable security precautions to prevent unauthorized access to and use of the SEF, including unauthorized entry of information on the SEF and unauthorized use of information and data made available by the SEF; and
  - (3) the Sponsored Participant uses any market data for its own internal purposes only and only in accordance with the SEF Rules.
- (f) The SEF shall obtain from each Sponsoring Participant a representation that each of its Sponsored Participants will be an ECP at the time each such Sponsored Participant transacts on the SEF.
- (g) The SEF will promptly notify a Sponsoring Participant in writing of its approval, or refusal to approve, the designation of a Sponsored Participant. The SEF may, in its sole



discretion, revoke, limit, restrict or suspend the designation of a Sponsored Participant, and shall notify the Participant of such action in accordance with SEF procedures.

- (h) A Sponsoring Participant that seeks to terminate the designation of a Sponsored Participant shall notify the SEF in writing, providing such information as the SEF may require. The SEF shall terminate the Sponsored Participant's access to the SEF in accordance with procedures established by the SEF.

**Rule 3111 [Reserved]**

**Rule 3112 Introducing Brokers**

- (a) An Introducing Broker will be permitted to introduce trades on the SEF on behalf of a Customer (which may include another Participant or an Account Manager acting on behalf of a Client) where such Customer has so authorized the Introducing Broker and notified the SEF in the form and manner specified by the SEF from time to time.
- (b) If authorized, an Introducing Broker may enter any Order, submit a Block Trade, or introduce to the SEF for execution any Transaction otherwise permissible under the Rules on behalf of such Customer.

**Rule 3113 Authorized Representatives**

- (a) Each Participant shall designate an Authorized Representative(s) who will represent the Participant before the SEF and its committees and receive notices on behalf of the Participant.
- (b) The Authorized Representative shall be empowered by the Participant to act on its behalf and the SEF shall be entitled to rely on the actions of the Authorized Representative as binding on the Participant and each of its Authorized Traders.
- (c) Each Participant must provide the SEF with current contact and other requested information for each of its Authorized Representatives so that the SEF is able to immediately contact the Authorized Representatives.

**Rule 3114 Communications between the SEF and Participants**

- (a) Each Participant must provide the SEF with its current electronic mail address and telephone number and the electronic mail address and telephone number of each of its Authorized Traders and immediately (and in any event within 24 hours) update this information whenever it changes.
- (b) All communications between the SEF and the Participant will be transmitted by electronic mail and/or posted on the SEF's website, except as otherwise specified by the SEF.
- (c) The Participant shall be responsible for conveying such communications to all Supervised Persons.

- (d) Each Participant will be responsible for promptly reviewing and, if necessary, responding to all electronic communications from the SEF to the Participant or any of its Supervised Persons.
- (e) All communications made to Participants shall also be deemed to have been made to all Supervised Persons.

### **Rule 3115 Recording of Communications**

The Market Regulation Department and/or Regulatory Services Provider(s) may record conversations and retain copies of electronic communications between the SEF, on one hand, and Participants, Sponsored Participants, Clients or Customers or any of their Supervised Persons or other agents, on the other hand. Any such recordings may be retained by the SEF or the Regulatory Services Provider in such manner and for such periods of time as the SEF may deem necessary or appropriate and in accordance with Applicable Law. The SEF or Regulatory Services Provider will retain such recording in compliance with CFTC Regulations.

## **MATERIAL CHANGES**

### **Rule 3200 Change of Control; Non-Assignment**

- (a) A Participant must provide written notice to the SEF of any of the following changes to its ownership, control or business operations no later than 48 hours after any such changes take effect:
  - (1) a merger of the Participant with another Person;
  - (2) a direct or indirect acquisition by the Participant of another Participant; or
  - (3) direct or indirect acquisitions or transfers of 50% or more in the aggregate of a Participant's assets or any asset, business or line of operation that generates revenues comprising 50% or more in the aggregate of the Participant's earnings measured on a rolling 36-month basis, or a change in ownership that results in one person owning 50% or more of a Participant's voting equity.
- (b) A Participant may not assign its rights as a Participant without the written consent of the SEF, which consent shall not be unreasonably withheld.

## **FEES**

### **Rule 3300 Fees**

- (a) The SEF shall set the times and amounts of any assessments or fees to be paid by Participants.
- (b) Dues and other amounts owed to the SEF are payable upon receipt of the invoice.

- (c) Participants in arrears sixty (60) days after the invoice date will forfeit all participation privileges, including the privilege of accessing the SEF.
- (d) The SEF shall use reasonable efforts to notify the Participant before any privileges are forfeited.

**Rule 3301 Volume Discounts**

The SEF may from time to time establish financial incentives for meeting trading volume, liquidity thresholds and/or other standards as may be established by the SEF.

**INDEPENDENT SOFTWARE VENDORS**

**Rule 3400 ISVs**

- (a) Consistent with Applicable Law, the SEF will provide access to its trading platform, services and data on a fair and nondiscriminatory basis to any ISV that complies with the SEF's documentation and eligibility requirements for ISVs as set forth in the SEF Rules.
- (b) An ISV that wishes to access the SEF must:
  - (1) consent to the jurisdiction of the SEF and agree to be bound by, and comply with, the SEF Rules and all Obligations, the DCO Rules and Applicable Law, in each case to the extent applicable to it;
  - (2) execute an ISV participation agreement in the form supplied by the SEF;
  - (3) pay the monthly access fees that may be established by the SEF from time to time, which fees will be comparable for ISVs receiving comparable access to, or services from, the SEF;
  - (4) comply with the applicable technical access standards, system compatibility requirements, security protocols and technical specifications for connection to the SEF as may be specified by the SEF from time to time;
  - (5) ensure that each person that uses the ISV to access the SEF is either a Participant or a Client or Customer of a Participant;
  - (6) in the case of any Order or Transaction submitted to the SEF through the ISV, provide sufficient detail to identify the Participant (and, if applicable, the Participant's Client or Customer) as required by the SEF; and
  - (7) satisfy any other criteria that the SEF may require to perform its responsibilities as a Self-Regulatory Organization, comply with Applicable Law or provide services, provided such criteria are impartial, transparent and applied in a fair and nondiscriminatory manner.

- (c) An ISV may provide data obtained from the SEF solely to Participants and/or Clients or Customers of a Participant in connection with such Participants' and/or Clients' or Customers' actual and proposed trading activity on the SEF, and will not provide such data to any other swap execution facility, security-based swap execution facility, DCM, national securities exchange or other trading facility or system without the prior written consent of the SEF.

## **BUSINESS CONDUCT REQUIREMENTS**

### **Rule 3500 Customers, Clients and Sponsored Participants**

No Participant shall enter an Order or enter into a Transaction in the name of a Customer or Client, or permit a Sponsored Participant to enter an Order or enter into a Transaction in the name of such Participant unless the Participant has entered into a written agreement with the Customer, Client or Sponsored Participant containing such terms as may from time to time be prescribed by Applicable Law.

### **Rule 3501 Disclosure Requirements; Know Your Counterparty Requirements**

- (a) Participants that are Swap Dealers or Major Swap Participants shall verify through representations or otherwise the status of each Swap counterparty as an ECP as provided in CFTC Regulations applicable to business conduct standards for Swap Dealers and Major Swap Participants in their dealing with counterparties.
- (b) Participants that are Introducing Brokers must verify the status of each of their Customers as an ECP.
- (c) Participants that are Account Managers must verify the status of each of their Clients as an ECP.
- (d) Participants that are Sponsoring Participants must verify the status of each of their Sponsored Participants as an ECP.
- (e) Each Participant and Supervised Person, Client, Customer or Sponsored Participant of a Participant must comply with all disclosure requirements set forth in under Applicable Law including any additional disclosure requirements imposed by the SEF Rules.

## SECTION 4 TRANSACTION EXECUTION

This Section 4 prescribes Rules concerning trade practices and business conduct on the SEF and applies to all Orders and Transactions.

### **Rule 4000.A. Trading Hours**

Except with respect to Emergencies, the SEF shall determine and publish the Business Days of the SEF and the Trading Hours for each Swap. Participants are prohibited from sending any Order or entering into any Transaction or using any other facility of the SEF outside of the designated Trading Hours for the relevant Swap. The Trading Hours for each Swap shall be twenty-three (23) hours per Business Day other than between 5:30 p.m. and 6:30 p.m. (Eastern Time), in each case, subject to any variation as may be published by the SEF in a Notice to Participants or included in the relevant Swap Specification.

### **Rule 4000.B. Swap Specifications**

- (a) Notwithstanding any provision of the SEF Rules to the contrary, the terms and conditions set forth in the Swap Specification with respect to a particular Swap shall govern the trading in such Swap on the SEF and, in the event of any conflict between the general terms of the SEF Rules excluding the Swap Specifications and the particular terms of the SEF Rules set forth in the Swap Specification, the particular terms of the SEF Rules set forth in the Swap Specification shall govern with respect to trading in the relevant Swap on the SEF.
- (b) The Swap Specification for each individual Swap may specify:
  - (1) different classes of Participants eligible to trade such Swaps. Each such class of Participants shall have the rights and obligations specified by the Swap Specification for each such Swap;
  - (2) whether such Swap may be settled via cash settlement, physical delivery of the underlying commodity, or by any other means, as applicable; and
  - (3) the method for determining settlement prices.
- (c) The SEF shall permit trading only in Swaps that are not readily susceptible to manipulation.

### **Rule 4001 Procedures**

- (a) With respect to trading on or through the SEF or subject to the SEF Rules, the SEF may adopt, without limitation, procedures relating to Transactions in Swaps and trading on the SEF or subject to the SEF Rules, including procedures to:
  - (1) disseminate the prices of bids and offers on, and Transactions in, Swaps;

- (2) record, and account for, Swaps and SEF activity and regulate administrative matters affecting Swaps and SEF activity;
  - (3) establish daily limits (or such other frequency as may be determined from time to time by the SEF) on the notional amount and/or risk of Orders or Transactions that may be submitted by a Participant through the SEF or subject to the SEF Rules;
  - (4) establish limits on Swaps that may be held by a Participant;
  - (5) establish a limit on the maximum daily price fluctuations for any Swap and provide for any related restriction or suspension of trading in the Swap;
  - (6) establish minimum price quoting increments for each Swap; and
  - (7) require a suspended or expelled Participant, or a Participant with restricted trading rights, to have Swaps executed for the Participant to reduce or eliminate any open position or exposure to future price changes for the Participant in any Swap.
- (b) The SEF may, in its discretion and at any time, amend any procedures adopted pursuant to Rule 4001(a), and will publish the amendments in a Notice to Participants or in any other manner determined appropriate by the SEF.

#### **Rule 4002 Required Identifications**

- (a) Each Participant and all related Authorized Traders (including those of its Sponsored Participants) must have a User ID assigned in accordance with the procedure adopted by the SEF from time to time in order to access the SEF. The User ID assigned to an Authorized Trader may not be reassigned to another Authorized Trader.
- (b) Orders entered on the SEF must include the User ID assigned to the Authorized Trader. An Authorized Trader is prohibited from allowing any other Person to use such unique identification to enter Orders on the SEF. No Person may enter Orders on the SEF using a User ID that has not been assigned to such Person.
- (c) Each Participant shall be responsible for all Orders or Transactions placed using any of the User IDs assigned to its Authorized Traders or those of any of its Sponsored Participants.
- (d) Participants must terminate an Authorized Trader's access to the SEF upon termination of the Authorized Trader's employment at, or authorization or appointment by, the Participant or Sponsored Participant (as applicable).

#### **Rule 4003.A. Execution of Transactions**

- (a) No Person shall execute a Required Transaction subject to the SEF's jurisdiction other than via the Order Book unless such Transaction is a Block Trade, Package Transaction (Order Book Exempt) or an End-User Exempt Transaction. No Person shall enter into an

End-User Exempt Transaction subject to the SEF's jurisdiction unless it (or, if applicable, its Customer, Client or Sponsored Participant) or the counterparty to the Swap is eligible for and elects to rely on the End-User Clearing Exception. Upon request of the SEF, a Participant, Sponsored Participant, Customer or Client shall submit to the SEF all documentation supporting eligibility for the End-User Clearing Exception.

- (b) Permitted Transactions (including Permitted Cross Transactions) may be executed through the SEF's Order Book as described in Rule 4003.B. In addition, Permitted Cross Transactions may be executed away from the SEF's Order Book as described in Rule 4004. Certain Permitted Transactions may also be executed via Risk Mitigation Sessions as specified in Rule 4018 and the tpSEF Risk Mitigation Procedures.
- (c) Any Package Transaction (Order Book Exempt) may be executed in the same manner as any Permitted Cross Transaction as described in Rule 4004. A Package Transaction (Order Book Exempt) may be executed through the SEF's Order Book provided an Order Book is available.
- (d) Block Trades are required to be executed in accordance with the requirements of Rule 4016.
- (e) No executed Transactions may be submitted to the SEF other than Block Trades that occur away from the SEF and that are executed in accordance with the requirements of Rule 4016.

#### **Rule 4003.B. Order Book**

- (a) All Orders posted to the Order Book are firm (*i.e.*, there are no indications of interest or indicative quotes allowed).
- (b) An acceptable Order must include a specific price and size, as well information meeting the requirements of Rule 8001.
- (c) Order Types.
  - (1) An acceptable Order must indicate the time in force, which may include the following:
    - (i) “Day” Orders are only good for the Business Day and applicable Trading Hours in which they are entered.
    - (ii) “Fill-or-Kill” (“FOK”) Orders must be immediately executed for the entire size of the Order or are cancelled automatically.
    - (iii) “Immediate or Cancel” (“IOC”) Orders must be executed fully or partially and, if partially, the remaining quantity is cancelled automatically.
    - (iv) “Good ‘til Time” (“GTT”) Orders are cancelled after a specified time if no matching Order is placed.

- (v) “*Good ‘til Price*” (“*GTP*”) Orders will be cancelled if the reference price of the specified instrument is moved up or down (depending upon whether the Order is a bid or offer).
  - (vi) “*One Cancels Other*” (“*OCO*”) Orders are paired Orders stipulating that if one of the Orders is executed, the other is automatically cancelled.
- (2) Good ‘til Time, Good ‘til Price and One Cancels Other Orders are all also Day Orders, in that they are only good for the Business Day and applicable Trading Hours in which they are entered, even if the time, price or execution conditions are not otherwise met.
- (3) Not all Orders types are available for all Swaps. The table below shows the Order types available for each asset class:

Asset Class	Day	FOK	IOC	GTT	GTP	OCO
Credit	✓	✓	✓	✓	✓	✓
Commodities	✓	✓	×	✓	×	×
Rates	✓	✓	✓	✓	✓	✓
Non-Deliverable Forwards	✓	✓	✓	✓	✓	✓
Equities	✓	✓	✓	✓	×	×
FX Options	✓	×	✓	✓	✓	✓

(d) Pre-Trade Controls.

- (1) *Order Limits*. The SEF may, within its sole discretion, set Order limits by product and by instrument within a particular asset class. The following types of Order limits may be imposed:
- (i) *Order Size Limit (OSL)*: This is the maximum size allowed for any single Order. Any Order submitted will be checked against the product/asset class’s Order Size Limit, and if the Order exceeds this limit, such Order will be rejected and the Participant will be notified.
  - (ii) *Order Price Limit (OPL)*: This is the maximum price differential allowed for any Order. Any Order submitted will be checked against the product/asset class’s Order Price Limit and if the Order exceeds this limit, it will be rejected and the Participant will be notified. The price differential will be calculated as follows:

$$(\text{Order price entered}) - (\text{Instrument Reference Price}) = |\text{Price Differential}|$$

The “Instrument Reference Price” is an estimated current price for the relevant Swap, based on either current trading data for that instrument on



the SEF and elsewhere, or, in the absence of current trading data for the relevant Swap, implied from current trading data for other instruments.

- (2) Price Tick Deviation. If the price for any Order entered into the Order Book is greater than (i) the top contra-Order price or, if no contra-Orders exist in the Order Book, the Instrument Reference Price, plus (ii) the specified number of tick increments in the Maximum Price Tick Deviation parameter for the Swap, the Order will be rejected. The Maximum Price Tick Deviation parameter for each Swap is determined by the SEF from time to time in its sole discretion.
  - (3) Restriction Against Self-Trading. The Order Book system is configured to prohibit the matching of Orders placed by Authorized Traders of the same Participant.
- (e) Implied Orders. The SEF offers limited implied order functionality. Under this functionality, individual separate Orders, which in aggregate would form the legs of a liquid spread trade, are displayed in the Order Book both as individual outright trades and in aggregate as a spread trade. This functionality is only made available for tenors at which spread trades are customarily transacted as determined by the SEF from time to time and displayed on the Order Book.
- (f) Order Entry.
- (1) Orders, including Orders for Required Cross Transactions and Permitted Cross Transactions, may be entered into the Order Book for execution either (i) directly by any Participant that has established direct connectivity to the SEF's Order Management System, or (ii) by an Execution Specialist acting on the instruction of a Participant. Order information may be communicated by Participants to Execution Specialists via telephone and/or via electronic modes of communication such as email and instant message. Participants that elect not to establish direct connectivity to the OMS may execute a "Terms of Use and SEF Order Book Waiver" in lieu of the "Terms of Use", which is executed by those Participants who have elected to establish such direct connectivity. During the effectiveness of its "Terms of Use and SEF Order Book Waiver," a Participant must access the Order Book via an Execution Specialist both for Transactions that must be executed on Order Book pursuant to Rule 4003.A. and for Transactions voluntarily executed on the Order Book. Any such Participant may elect to establish direct connectivity to the OMS at any time by executing the full "Terms of Use" and terminating its "Terms of Use and SEF Order Book Waiver". For the avoidance of doubt, all Participants, including those that have signed the "Terms of Use and SEF Order Book Waiver", are required to comply with the requirements on Rule 4003.A. relating to the execution of Required Transactions.
  - (2) An Order placed on the Order Book may be cancelled provided such Order has not been executed. The price or size of an Order placed on the SEF that has not fully traded may be revised. If the size is reduced, the time priority originally assigned to the Order does not change. Revising the price or increasing the size

will reset the Order's time priority in the queue to the time the SEF receives the revision.

- (3) When an Authorized Trader logs off, all of its Orders on the Order Book are terminated provided that the Authorized Trader is the owner of the Order and has not entered the Order on behalf of a Customer. If for any reason the connection to the SEF is lost, all Orders entered from that location on the SEF are deactivated.

(g) Order Book Display and Interaction.

- (1) Once an Order is entered into the Order Book, the Order is displayed simultaneously to all Participants that have established direct connectivity to the OMS and may be transacted on as described in Rule 4003.B.(h) below.
- (2) All Orders will be displayed on an anonymous basis and each Order Book platform will show, in real-time, the best price and the depth per product.
- (3) For Participants that have direct connectivity to the OMS, each Order Book platform displays all executions to all Participants, and for each individual Participant, its Order and execution history for the trading day.
- (4) The SEF's Order Book supports the following Order interactions on any active Order, which may be taken only by the Participant who submitted the Order or by an Execution Specialist acting on the Participant's instructions:
  - (i) Amend, and
  - (ii) Cancel (If a partially executed Order is cancelled, only the balance of the Order is cancelled.)
- (5) Information regarding Orders on the Order Book will be provided upon request to any Participant by an Execution Specialist via telephone and/or via electronic modes of communication such as email and instant message.

(h) Matching of Orders on the Order Book.

Orders may be either matched automatically or manually hit or lifted as described in this Rule 4003.B.(h). In each case, Orders will be executed using price and time priority.

- (1) Ability to Trade. In the case of either Manual Matching or Automatic Matching as described in this Rule 4003.B.(h):
  - (i) An Order for a Cleared Swap may only be hit or lifted by, or matched with a contra-Order for, a Participant (or a Participant's Customer or Client) that is, or whose Clearing Firm is, a Clearing Member at the DCO at which the Swap is to be cleared, and

- (ii) An Order for an Uncleared Swap may only be hit or lifted by, or matched with a contra-Order for, a Participant (or a Client or Customer of a Participant) that has swap trading relationship documentation in place with the relevant counterparty and only to the extent that each counterparty has available credit line, both as described in Rule 4013.B.
- (2) Manual Matching. Subject to the requirements of Rule 4003.B.(h)(1) above, a Participant may manually hit or lift, in whole or in part, any resting Order within the Order Book that is (i) at the best price(s) within the market for the relevant product, and (ii) if there are multiple Orders at the same price(s), entered first in the Order Book.
- (3) Automatic Matching. Subject to the requirements of Rule 4003.B.(h)(1) above and depending on Order type (as described in Rule 4003.B.(c)) and the Orders resting on the Order Book, Orders entered into the Order Book will be automatically (i) matched (fully or partially) to one or more Orders within the Order Book based on price and time priority or (ii) cancelled. Certain Order Book platforms do not support Automatic Matching.

#### **Rule 4004 Permitted Cross Transactions**

- (a) Permitted Cross Transactions may either be:
  - (1) Executed through the SEF's Order Book as described in Rule 4003.B., or
  - (2) Submitted to the SEF for execution away from the SEF's Order Book either (x) to an Execution Specialist or (y) for Transactions that are in the Rates asset class or that are non-deliverable forwards, directly by Participants that have established direct electronic connectivity to the OMS.
- (b) Permitted Cross Transactions that are submitted directly to the SEF for execution away from the Order Book are executed via the OMS using Off-Book Ticket Functionality. Permitted Cross Transactions that are submitted to an Execution Specialist for execution away from the Order Book may be executed either via the SEF's Deal Management System or, if available, via the OMS using Off-Book Ticket Functionality. A Participant submitting a Permitted Cross Transaction to an Execution Specialist must provide the information required by Rule 8001. Permitted Cross Transactions may be communicated to an Execution Specialist via telephone and/or via electronic modes of communication such as email and instant message.

#### **Rule 4005 Mishandling of Orders**

Any Person that mishandles any Order is responsible for all remedial actions with respect to such Order.

#### **Rule 4006 Trading Halts**

The SEF, in its sole discretion, may declare a trading halt at any time.

#### **Rule 4007 Termination of the SEF Connection**

The SEF shall have the right to summarily terminate the direct, electronic connection of any Participant to the SEF. Additionally, the SEF shall have the right to direct a Participant to immediately terminate the direct, electronic access to the SEF of any Sponsored Participant. Any such termination shall be impartially enforced and shall be invoked only for technical reasons. Any affected Participant or Sponsored Participant shall continue to have access to the SEF by means of an Execution Specialist, unless such access is denied in accordance with the procedures set forth in Rule 3103 or elsewhere in the SEF Rules.

#### **Rule 4008 Risk Controls**

- (a) The SEF may, in its sole discretion, to protect other Participants and the integrity of the SEF, reject any Order or Transaction placed or reported on the SEF.
- (b) The SEF shall have the right to take any action to reduce the potential of market disruption, including, but not limited to, market restrictions that pause or halt trading if such action is in the best interest of the swap markets and/or the SEF.

#### **Rule 4009 Priority of Execution for Orders Received by a Participant**

Orders received by a Participant must be entered on to the SEF in the sequence received, subject to the following sentence. Participants shall not enter an Order into the SEF for his own account, an account in which he has a direct or indirect financial interest or an account over which he has discretionary trading authority, including, without limitation, an Order allowing discretion as to time and price, when such Person is in possession of any Order for another Person that the SEF is capable of accepting.

#### **Rule 4010 Trading Against Customers' Orders Prohibited; Withholding Orders Prohibited**

- (a) No Participant in possession of a Customer's Order shall knowingly take, directly or indirectly, the opposite side of such Order for its own account, an account in which it has a direct or indirect financial interest or an account over which it has discretionary trading authority.
- (b) The foregoing restriction shall not apply to the following:
  - (1) Block Trades, and
  - (2) Transactions where the Customer has consented to the extent required by Applicable Law.
- (c) Except as otherwise explicitly permitted under this Rule 4010(c) and Rule 5203(b), no Person shall (i) disclose another Person's Order to buy or sell except to a designated SEF Official or the CFTC, (ii) solicit or induce another Person to disclose Order information or (iii) take action or direct another to take action based on non-public Order information, however acquired. The mere statement of opinions or indications of the price at which a

market may open or resume trading does not constitute a violation of this Rule. Nothing contained in this Rule 4010(c) shall prevent a Person from disclosing information as may be required by legal process (including subpoena or demand for productions) or to such Person's agents or advisors (including, but not limited to, accountants and auditors and legal counsel).

- (d) Any Participant entering Orders on the SEF for its Customer or Client shall not withhold or withdraw from the market any Order , or any part of an Order , for the benefit of any Person other than such Customer or Client.
- (e) A Participant must immediately enter into the SEF all Orders received from its Customers that are executable immediately. If a Participant cannot immediately enter into the SEF an Order received from its Customer, the Participant must enter the Order into the SEF as soon as practicable, and must immediately create an electronic record as provided in Rule 8002.

#### **Rule 4011 Simultaneous Buy and Sell Orders For Different Beneficial Owners**

- (a) With respect to Required Cross Transactions, the following conditions must be satisfied:
  - (1) in the case of an execution by a Participant as principal/dealer against a customer Order, enter the customer Order into the Order Book as a firm quote at least 15 seconds before entering its Order into the Order Book, or
  - (2) in the case of an execution by a Participant acting as broker of two customers' Orders against each other, enter one Order (the "Displayed Order") into the Order Book as a firm quote at least 15 seconds before entering the other Order (the "Waiting Order") into the Order Book.
- (b) With respect to a Required Cross Transaction subject to Rule 4011(a)(2) above, any Participant, Sponsored Participant, Customer or Client whose Order is the Waiting Order shall not, directly or indirectly, execute against the Displayed Order prior to the time that entry of the Waiting Order is permitted under Rule 4011(a)(2) above.

#### **Rule 4012 Confirmations and USIs**

- (a) The SEF will generate and send a Confirmation to each counterparty to a Transaction, which Confirmation (including, with respect to Uncleared Swaps, the Terms Incorporated by Reference as defined in Rule 4012(d)(1)) shall legally supersede any previous agreement and shall constitute a confirmation as defined in CFTC Regulation 45.1. The Confirmation shall contain, among other things:
  - (1) the USI for the Transaction; and
  - (2) the identity of the Swap Data Repository to which the Transaction is being reported.

- (b) The SEF will send a Confirmation to each counterparty to a Transaction executed on the SEF at the time of execution. With respect to certain products, Transactions and counterparties, a Confirmation may be provided on the SEF's behalf by MarkitSERV's Organized Trading Venue (OTV) Confirmation Service or other similar confirmation service. Each Participant shall review the Confirmation for a Transaction executed on or pursuant to the rules of the SEF as soon as practicable upon transmission of such Confirmation to the Participant.
- (c) Regardless of the means of delivery, pursuant to these rules, each Participant, Sponsored Participant, Customer and Client agrees that the Confirmation represents legally binding documentation memorializing the agreement of the parties to all the terms of the Transaction.
- (d) Confirmations for Uncleared Swaps.
  - (1) The economic terms specific to an Uncleared Swap agreed by Participants shall be reflected by the SEF in a written communication (the "Trade Communication") sent to the applicable Participants. The Trade Communication, together with the documents and agreements (including, without limitation, ISDA master agreements, other master agreements, terms supplements, master confirmation agreements and incorporated industry definitions) governing such Transaction existing at the time of such commitment to which the Participants are party (the "Terms Incorporated by Reference") shall, taken together, for purposes of CFTC Regulation 37.6(b) comprise all of the terms of such Transaction and serve as a Confirmation of such Transaction. The provisions of this Rule 4012(d) relating to Terms Incorporated by Reference rely on relief granted by the CFTC's Division of Market Oversight in No-Action Letter 16-25, which expires the earlier of 11:59 p.m. (Eastern Time) on March 31, 2017 and the effective date of any changes to the relevant CFTC Regulations. If such no-action relief is extended, upon and to the extent of such extension, the provisions of this Rule 4012(d) relating to Terms Incorporated by Reference will continue to apply.
  - (2) In satisfaction of the obligations imposed on the SEF under CFTC Regulation 37.6(b), (i) each Trade Communication (and thus each Confirmation) is deemed to incorporate the Terms Incorporated by Reference, and (ii) the Participants hereby agree that the provisions of Rule 4012(d)(3) shall govern any conflicting terms. All Confirmations for Uncleared Swaps that are generated and issued directly by the SEF shall state that they incorporate by reference any previously-negotiated freestanding agreement of the counterparties governing such Transaction.
  - (3) In the event of any conflict between (i) the Trade Communication and (ii) the Terms Incorporated by Reference, the Trade Communication shall prevail to the extent of any inconsistency. This requirement shall be included in all Confirmations issued by the SEF.

- (4) For each Uncleared Swap executed on or pursuant to the rules of the SEF, each previously-negotiated freestanding agreement of the counterparties included in the Terms Incorporated by Reference must be available to the SEF and/or the CFTC staff upon request within a reasonable period of time. Any such agreements provided to the SEF in connection with a CFTC request will be furnished to the CFTC as soon as they are available.
- (e) The USI referred to in 4012(a) above shall be created by the SEF and transmitted to each counterparty as soon as technologically practicable in accordance with CFTC Rule 45.5(a)(2).

**Rule 4013.A. Cleared Swaps**

- (a) Each Cleared Swap shall be cleared through the DCO indicated in the Swap Specification or agreed by the parties in accordance with the Applicable Law, provided that the DCO must be one of those recognized by the SEF. The DCOs currently recognized by the SEF are:
  - (1) ASX Clear (Futures) Pty Limited
  - (2) Chicago Mercantile Exchange, Inc.
  - (3) ICE Clear Credit LLC
  - (4) Japan Securities Clearing Corporation
  - (5) LCH.Clearnet LLC
  - (6) LCH.Clearnet Limited

The SEF may recognize additional DCOs either through amendment of this Rule 4013.A. or by issuance of a Notice to Participants.

- (b) For each Cleared Swap a Participant expects to enter into via the SEF or subject to the SEF Rules, the Participant or a Participant's Client or Customer, as applicable, must establish a clearing account with the relevant DCO or with a Clearing Firm that is a Clearing Member of such DCO.
- (c) Promptly upon the execution of each Transaction in a Cleared Swap, the SEF shall submit the Transaction (which may include submission through a middleware provider) to the relevant DCO. A Transaction will be deemed to have been accepted for, or rejected from, clearing upon receipt of appropriate notice, in accordance with Applicable Law, from the DCO or from a third party acting on behalf of the DCO as authorized by the DCO for such purpose. The acceptance of a Transaction for clearing shall not relieve any Participant, Client or Customer of the duty to act in good faith and with reasonable care and diligence.



- (d) If a Transaction in a Cleared Swap (including a Transaction that is a component leg of a Package Transaction) is rejected by the DCO or a third party acting on behalf of the DCO, such Transaction is void *ab initio* and shall be cancelled by the SEF. The SEF Rules do not permit trades that are rejected from clearing to be held in a suspended state and then re-submitted.
- (e) Rejected Transactions in Cleared Swaps.
- (1) If the SEF determines pursuant to the procedures set forth in Rule 5103.C. that a Transaction in a Cleared Swap (including a Transaction that is a component leg of a Package Transaction) is rejected from clearing (i) because of a clerical or operational error or omission made by the SEF or by one of the counterparties to the Transaction or its agent, or (ii) in the case of a component leg of a Package Transaction, due to the sequencing of the submission of the component legs of the Package Transaction, a new trade, with terms and conditions that match the terms and conditions of the original trade, other than any such error or omission and time of execution, may be executed on the SEF and submitted for clearing without having been executed pursuant to the methods set forth in CFTC Regulations 37.9(a)(2) or 38.500.
  - (2) If the SEF is able to identify and determine how to correct the error or omission, it may execute the new trade without obtaining the consent of the counterparties.
  - (3) If the SEF is unable to determine how to correct the error or omission, the SEF, at its election, may either (x) seek guidance from the counterparties (and, if applicable, their agents and/or Clearing Firms) with respect to how to correct the error after which the SEF may then correct the error with the consent of both counterparties, or (y) elect not to fix the Transaction, in which case the Transaction will be treated as void *ab initio* and shall be cancelled by the SEF.
  - (4) Execution of a new trade pursuant to this Rule 4013.A.(e) must comply with the requirements specified in Rule 4017 and must occur as quickly as technologically practicable after receipt of notice of the rejection by the DCO, but, in any event, no later than sixty (60) minutes from issuance of such notice. If the resubmitted Transaction is rejected, such Transaction will be void *ab initio* and shall be cancelled by the SEF. The counterparties may not resubmit a new Transaction a second time.
  - (5) The procedure set forth in this Rule 4013.A.(e) is not available with respect to Transactions that are rejected from clearing for credit reasons.
  - (6) This Rule 4013.A.(e) relies on relief granted by the CFTC's Divisions of Market Oversight and Clearing and Risk in No-Action Letter 15-24, which expires at 11:59 p.m. (Eastern Time) on June 15, 2016. If such no-action relief is extended, upon and to the extent of such extension, the provisions of this Rule 4013.A.(e) will continue to apply.
- (f) Erroneously Cleared Transactions.



- (1) If it is determined pursuant to the procedures set forth in Rule 5103.C. that a Transaction in a Cleared Swap (including a Transaction that is a component leg of a Package Transaction) was incorrectly executed or cleared as the result of a clerical or operational error or omission, the SEF may permit the original counterparties to the Transaction to enter into a prearranged Transaction on the SEF that offsets the Transaction carried on the DCO's books (an "Offsetting Transaction"), without the Offsetting Transaction having to be executed pursuant to the methods required in CFTC Regulations 37.9(a)(2) and 38.500. The SEF may also permit the original counterparties (or, if the wrong legal entity was assigned as a counterparty to the original Transaction, the intended counterparties) to enter into a prearranged Transaction on the SEF that corrects the errors in the original Transaction ("Correcting Transaction"), without the Correcting Transaction having to be executed pursuant to the methods required in CFTC Regulations 37.9(a)(2) and 38.500.
- (2) If the SEF is able to identify and determine how to correct the error or omission, it may execute the Offsetting Transaction and the corresponding Correcting Transaction without obtaining the consent of the counterparties.
- (3) If the SEF is unable to determine how to correct the error or omission, the SEF may either (x) seek guidance from the counterparties to the Transaction and, if applicable, their agents and/or Clearing Firms, after which the SEF may then correct the error by executing an Offsetting Transaction and corresponding Correcting Transaction with the consent of both counterparties, or (y) elect not to correct the error, in which case the original Transaction shall stand as executed.
- (4) Offsetting Transactions and Correcting Transactions executed pursuant to this Rule 4013.A.(f) must comply with the requirements specified in Rule 4017 and must be executed and cleared no later than three (3) days after the original, erroneous Transaction was executed.
- (5) The procedure set forth in this Rule 4013.A.(f) is available only with respect to clerical or operational errors or omissions made by the SEF, a counterparty to a Transaction or an agent of a counterparty to a Transaction.
- (6) This Rule 4013.A.(f) relies on relief granted by the CFTC's Divisions of Market Oversight and Clearing and Risk in No-Action Letter 15-24, which expires at 11:59 p.m. (Eastern Time) on June 15, 2016. If such no-action relief is extended, upon and to the extent of such extension, the provisions of this Rule 4013.A.(f) will continue to apply.
- (g) The SEF shall have the right to (i) suspend Trading Privileges of the Participant(s) or Sponsored Participant(s) that executed one or more rejected Transactions or prohibit further trading on behalf of the Client(s) or Customer(s) on whose behalf any rejected Transaction(s) were executed, or (ii) take any other action permitted by the SEF Rules. The liability for any losses arising out of or in connection with a rejected Transaction will

be determined by the parties to the Transaction. For the avoidance of doubt, the SEF will have no liability for any such losses.

- (h) It shall not be a condition for access to the SEF that any Participant be subject to a breakage agreement. This includes breakage agreements in respect of Package Transactions.
- (i) Each Person that is registered, or required to be registered, with the CFTC as a Swap Dealer or Major Swap Participant is responsible for compliance with the mandatory trading requirement under Section 2(h)(8) of the CEA when such Person enters into, or facilitates entry into, a Swap that is subject to the Clearing Requirement.
- (j) The clearing services provided by a DCO in respect of a Cleared Swap will be governed by the rules, policies and procedures of that DCO. In addition, with respect to any DCO that has been granted an exemption from registration as such, the clearing services provided by such DCO must comply with any terms and conditions imposed on that DCO by the CFTC in connection with the DCO's exemption from registration.

#### **Rule 4013.B. Uncleared Swaps**

A Participant may enter into an Uncleared Swap only with a counterparty with which such Participant has swap trading relationship documentation that meets the requirements of Applicable Law. A Participant may enter into an Uncleared Swap on behalf of a Customer or Client only if such Customer or Client has swap trading relationship documentation with the relevant counterparty that meets the requirements of Applicable Law. The Participant and/or Customer or Client shall provide any information requested by the SEF in the processing and settlement of such Uncleared Swaps. In addition, a Participant, Customer or Client may, from time to time, input onto the SEF's systems, either itself, or by instructing an Execution Specialist, the credit line for any or all parties with which it has such swap trading relationship documentation.

#### **Rule 4014 Information Regarding Orders and Dissemination of Trade Data**

The SEF may make information regarding Orders (including prices and amounts), Transactions and any other matters it may deem appropriate available to Participants and other Persons at such times and in such manner (whether through the SEF, a ticker, financial information services or otherwise) as it may consider necessary from time to time. In accordance with Rule 5702, each Participant or other Person receiving any such information through the SEF may redistribute such information only to such extent and in such manner as may be permitted by the SEF from time to time.

Participants are hereby notified that the SEF discloses swap transaction and pricing data for publicly reportable swap transactions executed on the Order Book prior to the public dissemination of such data by the relevant Swap Data Repository. This data is available to all Participants that have elected to obtain a connection to the Order Book and is disclosed to such Participants contemporaneously with the transmission of the data to the applicable Swap Data Repository for public dissemination.

## **Rule 4015    Enforceability**

A Transaction entered into on or pursuant to the Rules shall not be void, voidable, subject to rescission or otherwise invalidated or rendered unenforceable as a result of (a) a violation by the SEF of the provisions of Section 5h of the CEA or Part 37 of the CFTC Regulations or (b) any CFTC proceeding to alter or supplement a rule, term or condition under Section 8a(7) of the CEA, to declare an emergency under Section 8a(9) of the CEA, or any other proceeding the effect of which is to alter, supplement or otherwise require the SEF to adopt a specific term or condition, trading rule or procedure or to take or refrain from taking a specific action.

Without limiting the generality of the foregoing, failure of the SEF to broadcast any message in respect of a Transaction made on the SEF shall not invalidate any Transaction recorded by the SEF.

## **Rule 4016    Block Trades**

The following shall govern all Block Trades in Swaps:

- (a) All Block Trades, unless otherwise exempted by a SEF Rule, must comply with the requirements set forth in Rule 8003.
- (b) Block Trades that occur away from a trading system or platform of the SEF must be submitted to the SEF in a manner prescribed from time to time by the SEF. Each such submission must include all of the data required by Parts 43 and 45 of the CFTC Regulations, including without limitation (i) a notification to the SEF of the parties' election to have the Transaction treated as a Block Trade, and (ii) the actual notional or principal amount of the Transaction. The parties entering into a Block Trade must agree upon which party shall be responsible for reporting all terms of the Transaction to the SEF, and such designated party must report the Block Trade to the SEF as soon as technologically practicable after execution, but no later than ten (10) minutes after execution. Only Block Trades that are not Cleared Swaps are permitted to occur away from a trading system or platform of the SEF.
- (c) Upon receipt of the submission of a Block Trade as required by Rule 4016(b), the SEF will review the submission, and will report the Transaction as required by Parts 43 and 45 of the CFTC Regulations as soon as technologically practicable after execution. Such report to the SDR will include among other things the actual notional or principal amount of the Transaction and a notification to the Swap Data Repository of the parties' election to have the Transaction treated as a block trade.
- (d) Package Transactions may be executed as Block Trades, provided that each component is for a quantity that is equal to or in excess the Appropriate Minimum Block Size.
- (e) A Participant transacting a Block Trade on behalf of a Client or Customer must receive prior written instruction or consent from the Client or Customer to do so.

- (f) Except as may be permitted by CFTC Regulation 43.6(h)(6), the aggregation of Orders across multiple Customers or Clients in order to meet the Appropriate Minimum Block Size is prohibited.
- (g) Each party to a Block Trade shall comply with all applicable SEF Rules and, without limiting the generality of the foregoing, each such party shall be an ECP.
- (h) Any Block Trade in violation of these requirements may constitute conduct which is inconsistent with just and equitable principles of trade.
- (i) Upon request by the SEF, each party to a Block Trade shall produce satisfactory evidence that the Block Trade meets the requirements set forth in the SEF Rules.
- (j) Cleared Block Trades must be executed on a non-Order Book trading system or platform of the SEF. Each Order underlying such a Cleared Block Trade must comply with the requirements for Order information set forth in Rule 8001 and shall include a notification to the SEF of the party's election to have the resultant publicly reportable swap transaction treated as a Block Trade. In addition, all such Cleared Block Trades must comply with the pre-execution credit check requirements set forth in Rule 4017 and all other applicable SEF Rules and CFTC Regulations. For the avoidance of doubt, all Block Trades in Cleared Swaps must be executed on a non-Order Book trading system or platform of the SEF in accordance with this Rule 4016(j) in order to facilitate compliance with Rule 4017. This Rule 4016(j) relies on relief granted by the CFTC's Division of Market Oversight in No-Action Letter 15-60, which expires at 11:59 p.m. (Eastern Time) on November 15, 2016. If such no-action relief is extended, upon and to the extent of such extension, the provisions of this Rule 4016(j) will continue apply.

#### **Rule 4017 Pre-Execution Credit Checks**

- (a) At the time of submitting an Order for any Cleared Swap (including any Cleared Swap that is a leg of a Package Transaction) or any Cleared Block Trade, a Participant must designate a Clearing Member with regard to the Transaction, which may be either the relevant party to the Transaction if such party is Self-Clearing or a designated Clearing Firm if the relevant party to the Transaction is Non-Self-Clearing.
- (b) Prior to the execution of any Order for a Cleared Swap (including any Cleared Swap that is a leg of a Package Transaction) or any Cleared Block Trade for which the relevant party is Non-Self-Clearing, the SEF will facilitate pre-execution credit screening by or on behalf of the designated Clearing Firm. Upon receiving confirmation that the Order or Cleared Block Trade satisfies the Clearing Firm's pre-execution limits with respect to such party, the SEF will accept the Order or Cleared Block Trade for execution. If the SEF does not promptly receive confirmation or receives confirmation that the Order or Cleared Block Trade does not satisfy the Clearing Firm's pre-execution limits with respect to such party, the SEF will cancel the Order or Cleared Block Trade.
- (c) Any party that is Self-Clearing with respect to a Transaction is deemed to represent, by submitting an Order for its proprietary account, that it has completed pre-execution screening of its internal clearing risk limits for proprietary accounts.

### **Rule 4018 Risk Mitigation Sessions**

The SEF may conduct periodic anonymous risk mitigation sessions in accordance applicable CFTC guidance and no-action positions and the tpSEF Risk Mitigation Procedures (such sessions, “Risk Mitigation Sessions”). Information on upcoming Risk Mitigations Sessions are made available by the SEF on its website. The tpSEF Risk Mitigation Procedures are attached hereto as Appendix C.

## **POSITION LIMITS AND POSITION ACCOUNTABILITY LEVELS**

### **Rule 4100 SEF Rules Do Not Limit Emergency Powers**

Nothing contained in the SEF Rules relating to position limits shall in any way be construed to limit the ability of the SEF to take an Emergency Action as enumerated in the SEF Rules, and, unless the Board in taking an Emergency Action shall state otherwise, any such Emergency Action shall be effective with respect to all Participants, Sponsored Participants, Clients and Customers regardless of whether an exemption from the position limits has previously been granted pursuant to these SEF Rules.

### **Rule 4101 Position Limits**

- (a) To reduce the potential threat of market manipulation or congestion, the SEF shall adopt for each of the contracts of the SEF, as is necessary and appropriate, position limits for speculators.
- (b) Except as otherwise provided by the SEF Rules, no Person, including a Participant, Sponsored Participant, Client or Customer, may hold or control a position in excess of such position limits, and no Person may maintain a position in excess of such position limits for a Client or Customer if such Person knows, or with reasonable care should know, that such position will cause such Client or Customer to exceed the applicable position limits.
- (c) Position limits shall apply to (i) all positions in accounts for which any Person, by power of attorney or otherwise, directly or indirectly holds positions or controls trading, and (ii) positions held by two or more Persons acting pursuant to an expressed or implied agreement or understanding, as if the positions were held by, or the trading of the positions were done by, a single Person.

### **Rule 4102 Exemptions from Position Limits**

Any Person seeking an exemption from the position limits referred to in Rule 4101 must file an application with the SEF in the manner and within the time limits prescribed by the SEF. The SEF shall notify the applicant whether the exemption has been approved and whether the SEF has imposed any limitations or conditions on the exemption. The decision of the SEF shall be final.

### **Rule 4103 Position Accountability**

- (a) To reduce the potential threat of market manipulation or congestion, the SEF shall adopt for each of the contracts of the SEF, as is necessary and appropriate, position accountability levels for speculators. Any Person, including a Participant, Sponsored Participant, Client or Customer, who owns or controls Swaps in excess of the applicable position accountability level shall provide the SEF, at its request, any information regarding the nature of the position, trading strategy or hedging activities, if applicable, and if ordered by the SEF, shall not increase the size of any such position.
- (b) For purposes of this Rule 4103, all positions in accounts for which a Person, by power of attorney or otherwise, directly or indirectly controls trading shall be included with the positions held by such Person. The provisions of this Rule 4103 shall apply to positions held by two or more Persons acting pursuant to an expressed or implied agreement or understanding, as if the positions were held by a single Person.

### **Rule 4104 Enforcement of Position Limits and Position Accountability Levels**

- (a) No Person may for itself or any Customer or Client maintain a combination of Swaps which is, or which when aggregated in accordance with this Rule is, in excess of the limits established pursuant to Rule 4101 (or, to the extent ordered not to increase such positions pursuant to Rule 4103, a position in excess of the relevant level).
- (b) In the event the SEF learns that a Person maintains positions in accounts with more than one (1) Person such that the aggregate position in all such accounts exceeds (i) the position limits established pursuant to Rule 4101 or (ii) to the extent such Person is ordered not to increase such positions pursuant to Rule 4103, the relevant level, the SEF may notify all Persons maintaining or carrying such accounts of the total positions of such accounts. Such notice may also instruct each such Person to reduce the positions in such accounts immediately after receipt of the notice, proportionately or otherwise so that the aggregate positions of such accounts does not exceed the position limits and position accountability levels established pursuant to Rules 4101 and 4103, unless as provided by paragraph (c) below, a request for an exemption is made and granted by the SEF pursuant to this Rule 4104. Any Person receiving such notice shall immediately take such steps as may be necessary to liquidate such number of contracts as shall be determined by the SEF in order to cause the aggregate positions of such accounts to comply with the position limits and position accountability levels established pursuant to Rules 4101 and 4103. Notwithstanding the foregoing, the Persons may reduce the positions of such accounts by a different amounts so long as after all reductions have been accomplished, the positions comply with the position limits and position accountability levels established pursuant to Rules 4101 and 4103.
- (c) In the event a Person exceeds its position limit due to sudden unforeseen increases in its bona fide hedging needs, such Person shall not be considered in violation of the SEF Rules provided that such Person requests a hedge exemption to carry such increased position within five (5) Business Days following the day on which the Person's position limit was exceeded and provided that such exemption is granted by the SEF.

- (d) Subject to the foregoing provisions of this Rule 4104, in the event that a Person's position (whether for such Person's own account or for the account of a Customer or Client) exceeds the position limits established pursuant to Rule 4101 or ordered by the SEF such Person shall liquidate such amount of Swaps as the SEF shall direct in order to eliminate the excess within such time as the SEF may prescribe and shall report to the SEF when such liquidations have been completed. If a Person fails so to liquidate contracts within the time prescribed by the SEF, then, in addition to any other actions the SEF may take, the SEF may take such steps as it may deem necessary or appropriate to liquidate such contracts on behalf and at the expense of such Person to the extent necessary to eliminate such excess. Without limiting the generality of the foregoing, to the extent applicable, the SEF may request the DCO to effect such liquidation in accordance with rules of the DCO. In addition, the SEF in its discretion may require any Person carrying an account for itself or a Customer or Client to obtain and hold additional original margin in such amount and form and by such time as the SEF shall specify until such excess has been eliminated.

**SECTION 5  
PARTICIPANT CONDUCT**

**DUTIES AND OBLIGATIONS**

**Rule 5000 Duties and Responsibilities of Participants, Sponsored Participants, Customers and Clients**

Each Participant and Sponsored Participant shall (and shall cause all of its respective Supervised Persons to) and each Customer and Client shall:

- (a) use the SEF and effect Transactions in a responsible manner and not for any improper purpose;
- (b) use the SEF only to conduct permitted activity as determined by the SEF;
- (c) comply with the SEF Rules and conduct all such activity in a manner consistent with the SEF Rules and Obligations;
- (d) comply with Applicable Law;
- (e) observe high standards of integrity, market conduct, commercial honor, fair dealing and just and equitable principles of trade while conducting or attempting to conduct any activity on or through the SEF or any aspect of any business connected with or concerning the SEF;
- (f) not knowingly mislead or conceal any material fact or matter in any dealings or filings with the SEF or in response to any SEF Proceeding;
- (g) keep any User IDs, account numbers and passwords related to the SEF confidential;
- (h) employ practices to monitor and enforce compliance with risk limits established in conformance with Applicable Law; and
- (i) keep, or cause to be kept, complete and accurate books and records in accordance with Rule 8002.

**Rule 5001 Required Disclosures to the SEF**

- (a) Each Participant, Sponsored Participant, Customer and Client shall immediately notify the Market Regulation Department in writing at such time as it becomes aware of the occurrence of any of the following events:
  - (1) any damage to, or failure or inadequacy of, the systems, facilities or equipment of such Person to effect Transactions pursuant to the SEF Rules;
  - (2) any failure to timely perform such Person's financial obligations under or in connection with Swaps of such Person (or Swaps of any Customer, Client or Sponsored Participant of such Person, as applicable);



- (3) any violation of Applicable Law in connection with such Person's access to, or activities on the SEF, including the requirements of the CFTC and, if applicable, NFA;
- (4) a Material Adverse Change in such Person's financial condition or in the financial condition of an Affiliate of such Person if such change materially impacts such Person's ability to satisfy its obligations under the SEF Rules;
- (5) any refusal of admission of such Person to any other swap execution facility, commodity or securities exchange, DCM, DCO, Self-Regulatory Organization or other business or professional association, or withdrawal by such Person of any application for participation or membership in any swap execution facility, commodity or securities exchange, DCM, DCO, Self-Regulatory Organization or other business or professional association;
- (6) the indictment or conviction of, or any confession of guilt or plea of guilty or *nolo contendere* by such Person (or, if applicable, any of its respective Supervised Persons with access to the SEF) for any felony of any nature or misdemeanor involving, arising from, or related to, the purchase or sale of any Swap or other financial instrument, or involving or arising from moral turpitude, misrepresentation, fraud, deceit, theft, embezzlement, gambling, conversion or abuse of a fiduciary relationship;
- (7) the issuance of a formal order of investigation (or its equivalent), or the commencement, by the issuance or service of a written complaint (or its equivalent), of any judicial, administrative or self-regulatory proceeding, as the case may be, against such Person (or, if applicable, any of its respective Supervised Persons) by the CFTC, the SEC, the securities commission or equivalent authority of any state, territory, the District of Columbia or foreign country, or any swap execution facility, commodity or securities exchange or related clearing organization, DCM, DCO, any Self-Regulatory Organization or other business or professional association;
- (8) the bankruptcy or insolvency of such Person or any of its respective Affiliates; or
- (9) any suspension, expulsion, bar, fine, censure, cease and desist order, temporary or permanent injunction, denial of trading privileges or any other sanction or discipline imposed on such Person (or, if applicable, any of its respective Supervised Persons), whether through an adverse determination, voluntary settlement or otherwise, by:
  - (i) a swap execution facility, commodity or securities exchange, DCM, DCO, Self-Regulatory Organization or other business or professional association;
  - (ii) the SEC, the CFTC or the securities commission or equivalent authority of any state, territory, the District of Columbia or foreign country; or

- (iii) any federal court, state court, Government Agency not mentioned above or quasi-governmental body.
- (b) Each Participant, Sponsored Participant, Customer and Client shall notify the Market Regulation Department in writing within ten (10) days of becoming aware of the occurrence of any of the following events:
  - (1) any denial or withdrawal of any application for any registration or license with respect to such Person (or, if applicable, any of its respective Supervised Persons) by or from the SEC, the CFTC or the securities commission or equivalent authority of any state, territory, the District of Columbia or foreign country, or
  - (2) the issuance of a bar by any agency of the United States from contracting with the United States.

## **TRADING CONDUCT**

### **Rule 5100 Abusive Trading Practices Prohibited**

- (a) No Participant or Sponsored Participant or any of its respective Supervised Persons, nor any Customer or Client, shall engage in any fraudulent act or engage in any scheme to defraud, deceive, trick or mislead in connection with or related to any SEF activity including, without limitation, any of the following trading practices except as otherwise authorized under the SEF Rules:
  - (1) front-running;
  - (2) wash trading;
  - (3) pre-arranged trading (it being understood that pre-arranged trading does not include Transactions resulting from pre-execution communications to the extent permitted by Rule 5203(b));
  - (4) fraudulent trading;
  - (5) money passes;
  - (6) fictitious transactions;
  - (7) non-competitive transactions (unless otherwise exempt or excluded pursuant to the SEF Rules);
  - (8) accommodation trading; or
  - (9) any other trading practices that the SEF deems to be abusive.

Additionally, no Participant or Sponsored Participant or any of its respective Supervised Persons, nor any Customer or Client, shall knowingly execute or accommodate the execution of any such activity by direct or indirect means.

- (b) No Participant, Sponsored Participant, Customer or Client shall trade any Swap that is not authorized to trade on the SEF.

**Rule 5101 Good Faith Bids and Offers**

A Participant or Sponsored Participant shall not knowingly enter, nor shall any Participant, Sponsored Participant, Customer or Client, cause to be entered, bids or offers into the SEF other than in good faith for the purpose of executing *bona fide* Transactions.

**Rule 5102 Invalid Transactions**

- (a) A Transaction made or purported to be made on or pursuant to the rules of the SEF may be declared invalid by the SEF in the following circumstances:

(1) *Unrepresentative Price.* If, taking into consideration current market conditions, the SEF determines that a Transaction has taken place at an unrepresentative price, the SEF, at its absolute discretion, may declare such Transaction invalid. The SEF may take into account such information as it deems appropriate when determining whether to invalidate a Transaction, including, without limitation, the following:

- (i) price movement of other swap contracts with similar terms;
- (ii) current market conditions, including levels of activity and volatility;
- (iii) time period between different quotes and between quoted and traded prices;
- (iv) market or other information regarding price movement in related swap contracts; or
- (v) manifest error.

(2) *Breach of Applicable Law.* If the SEF determines that a Transaction has been made in breach of Applicable Law, the SEF may declare the Transaction invalid.

- (b) When a Transaction is declared invalid by the SEF, the parties to the Transaction will be notified by the SEF of that fact and a message will be broadcast through the SEF announcing the Swap contract and price level of the invalid Transaction, and the invalid Transaction may be displayed on the SEF as a cancelled Transaction.

**Rule 5103 Trade Cancellation, Correction, Offset and Adjustment**

**Rule 5103.A. SEF Authority Regarding Trade Cancellation, Correction, Offset and Adjustment**

The SEF has authority to cancel, or adjust the price of, any Transaction executed on or pursuant to the rules of the SEF, or to execute or require the execution of a new or offsetting Transaction:

- (a) when the SEF determines in its sole discretion such action is necessary to mitigate market disrupting events caused by the improper or erroneous use of the SEF or by system defects;
- (b) at any time the SEF determines in its sole discretion that allowing a Transaction to stand as executed may have a material adverse effect on the integrity of the market; or
- (c) in accordance with Rule 4013.A. and this Rule 5103.

#### **Rule 5103.B. Transaction Price Review**

- (a) Determination to Review a Transaction's Price.
  - (1) The SEF may determine to review a Transaction's price based on its independent analysis of market activity or upon a Participant's request.
  - (2) A Participant's request for review must be made within ten (10) minutes of execution the relevant Transaction and must include the USI for the Transaction and a statement of the grounds for the review. In the absence of a timely request for review, the SEF may determine whether or not a Transaction will be subject to review in its sole discretion. Notwithstanding the foregoing, subject to Applicable Law, the SEF shall amend the terms of, or cancel, any Transaction that the parties, together with the DCO, as applicable, mutually agree to amend or cancel, in the event that such amendment or cancellation is not submitted to the SEF within the applicable review period specified above.
- (b) Review of a Transaction's Price.
  - (1) In reviewing a Transaction's price, the SEF shall determine the fair market value price for the Swap at the time the Transaction was executed. The SEF may consider any relevant information, including, but not limited to, the last transaction price of the Swap or a better bid/offer, a more recent price for a different maturity date, the price of the same or related Swap established in another venue or another market, the market conditions at the time of the Transaction and the theoretical value of an option based on the most recent implied volatility.
  - (2) Following the SEF's determination of a Transaction's fair market value price in accordance with Rule 5103.B.(b)(1) above, the SEF shall have the right, in its sole discretion, to cancel or adjust the price of such Transaction or to require the entry into an offsetting Transaction; *provided, however*, that the SEF shall not make any such cancellation or price adjustment or require the entry of an offsetting Transaction if such action would, in the SEF's sole discretion, (i) adversely impact market integrity, (ii) facilitate market manipulation or other illegitimate activity or (iii) otherwise violate the CEA, CFTC Regulations or the SEF Rules.

- (3) The method of adjustment or cancellation of any Cleared Swap that is adjusted or cancelled shall be the method provided for by the rules and procedures of the relevant DCO.

### **Rule 5103.C. Review of Transactions for Errors**

- (a) If a Participant, Sponsored Participant, Client or Customer believes that any Transaction was incorrectly executed, cleared or rejected from clearing as a result of an Error (as defined in Rule 5103.C.(f) below), such Person may, within ten (10) minutes thereafter, request a review of the Transaction by providing the USI for the Transaction and stating the grounds for the disagreement.
- (b) Upon timely receipt by the SEF of a request for a Transaction review in accordance with Rule 5103.C.(a) above, or if the SEF determines on its own initiative to conduct such a review, the SEF will review its electronic audit trail and other relevant records to determine if an Error occurred. If the request for review is not timely, the SEF may, in its sole discretion, perform a review of the Transaction.
- (c) If the review described in this Rule 5103.C. reveals that the Transaction was incorrectly executed, cleared or rejected from clearing as a result of an Error, the SEF may cancel or adjust the Transaction, or execute or require the execution of a new or offsetting Transaction (in accordance with the procedures specified in Rule 4013.A. for Cleared Swaps), as appropriate; *provided, however*, that the SEF shall not take any action pursuant to this Rule 5103.C.(c) if such action would, in the SEF's sole discretion, (i) adversely impact market integrity, (ii) facilitate market manipulation or other illegitimate activity or (iii) otherwise violate the CEA, CFTC Regulations or the SEF Rules.
- (d) If the review described in this Rule 5103.C. reveals that the Transaction was not incorrectly executed, nor cleared or rejected from clearing as a result of an Error, then no adjustment shall be made.
- (e) If a Transaction is reviewable for price under Rule 5103.B., the procedures of this Rule 5103.C. shall not apply. For the avoidance of doubt, if a Transaction was correctly executed but the reporting to the SDR was in error, Rule 8005 shall apply and this Rule 5103.C. shall not apply.
- (f) An "Error" shall mean the occurrence of any of the following:
  - (1) A mistake made as the result of a malfunction of the SEF or human error, including a mistake made by an Execution Specialist;
  - (2) An Order was incorrectly displayed and/or executed;
  - (3) A clerical or operational error or omission made by the SEF or a Participant, Sponsored Participant, Client or Customer (or any agent of any of the foregoing) that caused a transaction to be rejected from clearing and void *ab initio*; or

- (4) a Clearing Firm or DCO rejected a leg of a Package Transaction for clearing because of the sequencing of submission for clearing of the legs of the applicable Package Transaction.

**Rule 5103.D. Records and Reporting of Cancellations and Price Adjustments**

- (a) Cancelled Transactions and any prices that have been adjusted shall be cancelled in the SEF's official records.
- (b) Transactions that have had their price adjusted shall be reflected in the SEF's official records at the adjusted price.
- (c) If a Transaction is either cancelled or adjusted pursuant to Rule 5103, the SEF shall submit a cancellation or correction of the Transaction to the same SDR to which the Transaction was previously reported.

**Rule 5104 Misuse of the SEF**

Misuse of the SEF is strictly prohibited. It shall be a violation of the SEF Rules for any Person to willfully or negligently engage in unauthorized access to the SEF, to assist any Person in obtaining unauthorized access to the SEF, to trade on the SEF without the authorization of a Participant, to alter the equipment associated with the SEF, to interfere with the operation of the SEF, to use or configure a component of the SEF in a manner that does not conform to the SEF Rules, to intercept or interfere with information provided on or through the SEF, or in any way to use the SEF in a manner contrary to the SEF Rules.

**VIOLATIONS**

**Rule 5200 Rule Violations**

- (a) It shall be a violation for a Participant, Sponsored Participant, Customer or Client or any Supervised Person to violate any Rule regulating the conduct or business of a Participant, to breach any agreement made with the SEF, to violate Applicable Law, or to engage in fraud, dishonorable conduct, or in conduct which is inconsistent with just and equitable principles of trade.
- (b) Participants, Sponsored Participants, Customers and Clients and Supervised Persons shall assist the SEF in any investigation into potential violations of Applicable Law. Such assistance must be timely and may include, but not be limited to, requiring any Participant, Sponsored Participant, Client, Customer or Supervised Person to produce documents, to answer questions from the SEF or its designee, and/or to appear in connection with an investigation.
- (c) If a Participant, Sponsored Participant, Customers or Client has actual or constructive notice of a violation in connection with the use of the SEF by a Participant, Sponsored Participant, Client, Customer or Supervised Person such Person fails to notify the Market Regulation Department within a reasonable time, such Person may be found to have committed an act detrimental to the interest or welfare of the SEF.

### **Rule 5201     Fraudulent Acts Prohibited**

No Participant, Sponsored Participant, Customer or Client (or any Supervised Persons) shall engage in any fraudulent act or engage in any scheme to defraud, deceive, trick or mislead in connection with or related to any SEF activity.

### **Rule 5202     [Reserved]**

### **Rule 5203     Fictitious or Wash Transactions; Permitted Pre-Execution Communications**

- (a) No Participant, Sponsored Participant, Customer or Client (or any Supervised Persons) shall create fictitious transactions or wash transactions. No Person shall place or accept Orders in the same Swap where the Person knows or reasonably should know that the purpose of the Orders is to avoid taking a bona fide market position exposed to market risk (transactions commonly known or referred to as wash sales). Orders for different accounts with common beneficial ownership that are entered with the intent to negate market risk or price competition shall also be deemed to violate the prohibition on wash trades. Additionally, no Person shall knowingly execute or accommodate the execution of such Orders by direct or indirect means.
  
- (b) Participants, Sponsored Participants, Customers and Clients (and any of their Supervised Persons) may engage in pre-execution communications (including communications with respect to Orders) relating to:
  - (1) Permitted Cross Transactions;
  - (2) Block Trades executed pursuant to Rule 4016;
  - (3) Transactions executed pursuant to the procedures specified in Rule 4013.A.(e) and (f);
  - (4) Package Transactions (Order Book Exempt); and
  - (5) Required Cross Transactions;

provided that with respect to any pre-execution communications permitted by (1) through (5) above:

- (i) the parties to the pre-execution communications do not disclose to a non-party the details of such communications or use the information obtained in a manner contrary to Applicable Law, and
- (ii) the requirements of Rule 4011 are satisfied to the extent applicable.

Nothing contained in this Rule 5203(b) shall prevent a Person from disclosing information as may be required by legal process (including subpoena or demand for productions) or to such Person's agents or advisors (including, but not limited to, accountants and auditors and legal counsel).

**Rule 5204 Market Disruptions Prohibited**

Orders entered into the SEF for the purpose of upsetting the equilibrium of the market in any Swap or creating a condition in which prices do not or will not reflect fair market values are prohibited, and any Participant, Sponsored Participant, Customer or Client (or any of its Supervised Persons) 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 SEF in violation of this Rule 5204.

**Rule 5205 Market Manipulation Prohibited**

No Participant, Sponsored Participant, Customer or Client (or any of their respective Supervised Persons) shall attempt to manipulate or manipulate the market in any Swap including, without limitation, “front-running”, “money passes”, trading ahead or against customer Orders, combination or improper cross trading involving, for example and without limitation, a short term riskless transaction taking advantage of an incoming Order or the offset of a prior position to avoid an adverse market move.

**Rule 5206 Disruptive Trading Practices Prohibited**

No Participant, Sponsored Participant, Customer or Client (or any of their respective Supervised Persons) shall engage in any trading, practice or conduct that constitutes a “disruptive trading practice,” as such term is defined by the Section 4c(a)(5) of the CEA (7 U.S.C. § 6c(a)(5)) or the related CFTC Regulations.

**Rule 5207 Prohibition of Misstatements**

No Participant, Sponsored Participant, Customer or Client (or any of their respective Supervised Persons) shall make any knowing misstatement of a material fact to the SEF, any SEF Official, any Board committee or SEF Panel, any agent of the SEF (including the Regulatory Services Provider) or any Participant, Sponsored Participant, Customer, Client or Supervised Person.

**Rule 5208 Acts Detrimental to the SEF Prohibited**

No Participant, Sponsored Participant, Customer or Client (or any of their respective Supervised Persons) shall engage in any act that is detrimental to the SEF.

**Rule 5209 Adherence to Law**

No Participant, Sponsored Participant, Customer or Client (or any of their respective Supervised Persons) shall engage in conduct that is a violation of the Applicable Law.

**Rule 5210 Communications with the Public and Promotional Material**

Promotional material and similar information issued by Participants shall comply with Applicable Law.



## SUPERVISION

### **Rule 5300 Duty to Supervise**

Each Participant shall establish, maintain and administer reasonable supervisory procedures to monitor the compliance of Supervised Persons with the SEF's Rules and any applicable provisions of the CEA or CFTC Regulations and such Participant may be held accountable for the actions of such Supervised Persons.

## INSPECTIONS

### **Rule 5400 Inspections by the SEF**

- (a) The SEF and the Regulatory Services Provider (and their respective authorized representatives), shall have the right, in connection with determining whether all Obligations are being, will be, or have been complied with by a Participant, Sponsored Participant, Customer or Client, in accordance with Applicable Law:
  - (1) inspect books and records, systems, equipment and software operated by such Person in connection with any SEF activity, wherever located;
  - (2) access the systems, equipment, software and the premises on which the systems, equipment and software are located and any data stored in any of the systems or equipment, during the regular business hours and the Trading Hours of the SEF without prior notice to such Person; and/or
  - (3) remove, copy or reproduce any data to which the SEF has access under the SEF Rules.
- (b) Each such Person shall provide the Regulatory Services Provider with the same access to its books and records and offices as it is required to provide the SEF under the SEF Rules and Applicable Law.
- (c) The Market Regulation Department may require a Participant to furnish (periodically or on a particular occasion) information concerning the Participant's activity on the SEF. For a Participant, such information includes but is not limited to, the Participant's open trading positions or Swaps to which the Participant is a party.
- (d) The SEF shall provide prior notice to a Person in the event of an inspection that has been prescheduled by the SEF.

## INFORMATION SHARING

### **Rule 5500 Information-Sharing**

- (a) The SEF may enter into information-sharing agreements or other arrangements or procedures to establish and enforce rules that will allow the SEF to obtain any necessary information to perform any monitoring of trading and trade processing, provide

information to the CFTC upon request and that allow the SEF to carry out such international information-sharing agreements as the CFTC may require. As part of any information-sharing agreements or other arrangements or procedures adopted pursuant to this Rule, the SEF may:

- (1) provide market surveillance reports to other markets;
  - (2) share information and documents concerning current and former Participants with other markets;
  - (3) share information and documents concerning ongoing and completed investigations with other markets; and/or
  - (4) require its current or former Participants, or their Sponsored Participants, Customers or Clients, to provide information and documents to the SEF at the request of other markets with which the SEF has an information-sharing agreement or other arrangements or procedures.
- (b) The SEF may enter into any arrangement with any Person or body (including, without limitation, the CFTC, the NFA, any Self-Regulatory Organization, any exchange, market, Swap Data Repository, reporting services or clearing organization or foreign regulatory authority) if the SEF considers such arrangement to be in furtherance of the SEF's purpose or duties under Applicable Law.
- (c) The SEF may disclose to any Person or entity information concerning or associated with a Participant or other Person where the SEF believes such disclosure is reasonably necessary and appropriate in exercising a legal or regulatory function.
- (d) Participants, Sponsored Participants, Customers and Clients shall provide the SEF any requested information pursuant to the SEF Rules or Applicable Law as necessary for the SEF to perform any of the functions described in these SEF Rules.

## **FINANCIAL REQUIREMENTS**

### **Rule 5600 Minimum Financial and Related Reporting Requirements**

- (a) Each Participant that is registered with any Government Agency, including the CFTC and the SEC, or a Self-Regulatory Organization shall comply with the provisions of Applicable Law, including, but not limited to, the rules and regulations such Government Agency or Self-Regulatory Organization imposes on a Participant relating to minimum financial and related reporting and recordkeeping requirements.
- (b) Each Participant shall qualify as an ECP and undertake to timely update any change to the Participant's status as an ECP.
- (c) A copy of any notice or written report that a Participant is required to file with the CFTC pursuant to CFTC Regulation 1.12 shall be concurrently provided to the SEF.

- (d) A Participant who is subject to and violates CFTC Regulations 1.10, 1.12, 1.17 or 1.18 shall be deemed to have violated this Rule 5600.

**Rule 5601 Confidentiality of Financial and Other Information**

All information and data obtained or received by the Market Regulation Department from inspections of accounting and other records, quarterly balance sheets and declarations or reports on financial condition will be treated as confidential by the SEF; however, this Rule does not supplant Rule 5500 and the SEF Rules in Section 7, Applicable Law, or any other requirement of legal process or law.

**Rule 5602 Authority to Impose Restrictions**

Whenever a Participant is subject to the early warning requirements set forth in CFTC Regulation 1.12, the SEF may impose such conditions or restrictions on the business and operations of such Participant as the SEF may deem necessary or appropriate for the protection of customers, other Participants, or the SEF.

**Rule 5603 Additional Disclosure Requirements**

Each Participant must comply with all disclosure requirements set forth in applicable CFTC and Self-Regulatory Organization rules and regulations. Any such disclosure may be combined with a disclosure regarding the existence of financial interests held by the Participant in the SEF or any other exchange.

**MISCELLANEOUS**

**Rule 5700 Gifts and Gratuities**

Participants shall maintain and enforce gifts policies and procedures to prevent gifts in excess of one hundred dollars (\$100) to Directors, Officers and SEF employees.

**Rule 5701 Anti-Money Laundering and Anti-Terrorism**

It is SEF policy: (1) not to engage in or knowingly assist any money laundering or other illicit business, and (2) not to engage in or knowingly assist, or be a conduit for, terrorist financing. Participants will be required to provide sufficient information for Participants and their Customers or Clients, if applicable, for SEF to conduct restricted list searches, including, but not limited to, searches against the Specially Designated Nationals and Blocked Persons list maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury.

## **Rule 5702    Market Data**

- (a) All Participants, Sponsored Participants, Customers and Clients and all Supervised Persons, agents, vendors, and other Persons affiliated with the foregoing understand and acknowledge that the SEF has a proprietary interest in:
  - (1) the price and quantity data from each and every Transaction executed on the SEF or subject to the SEF Rules, including the time at which the Transaction was executed on, or submitted to, the SEF;
  - (2) the price and quantity data for each and every Order or Block Transaction submitted to the SEF, including the time at which the Order was entered;
  - (3) the yield curves and reference prices prepared by the SEF;
  - (4) any data and information derived from (1), (2) and (3) and the format and presentation thereof (except a Participant's confidential information or data); and
  - (5) the transmissions and dissemination of the data and information to Participants, any publisher of the data or information with whom the SEF has a written agreement, and any other Persons.
- (b) Except with respect to such Person's confidential information or data, Participants, Sponsored Participants, Customers and Clients and Supervised Persons may not distribute, sell or retransmit any other information displayed on the SEF to any third party without the express written consent of the SEF.
- (c) The SEF may at any time restrict or establish utilization fees in respect of data described in Rule 5702(a) with respect to all or any Participants, Sponsored Participants, Customers or Clients in order to safeguard the security or operations of the SEF or to preserve market integrity, fair and orderly trading, or if otherwise in the public interest, *provided, however*, that view-only access is provided free-of-charge.

## **Rule 5703    Extension or Waiver of SEF Rules**

If necessary and expedient, the SEF may, in its sole discretion, waive, or extend the time period for performing, any act or acts designated by the SEF Rules, but only to the extent such waiver or extension is not inconsistent with the CEA or the CFTC Regulations.

**SECTION 6**  
**ENFORCEMENT OF RULES AND**  
**DISCIPLINARY PROCEEDINGS**

**Rule 6000    General**

- (a) All Participants, Sponsored Participants, Account Managers, Authorized Traders, Clients, Customers, Supervised Persons and any other Person using a User ID of a Participant or login credentials linked to a Participant or User ID shall be subject to the SEF's jurisdiction. Any Participant, Sponsored Participant, Account Manager, Authorized Trader, Client, Customer, Supervised Person or other Person using a User ID of a Participant or login credentials linked to a Participant or User ID is subject to this Section 6 if such person is alleged to have violated, to have aided and abetted a violation, to be violating, or to be about to violate, any SEF Rule or any other provision of Applicable Law for which the SEF has disciplinary jurisdiction.
- (b) The SEF, through its Market Regulation Department, Review Panels, Disciplinary Panels and Appeals Panels 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 Section 6.
- (c) The SEF and its Regulatory Services Provider are parties to a Regulatory Service Agreement as referenced in Rule 2600, pursuant to which the Regulatory Services Provider has agreed to perform certain regulatory services described in this Section 6 on behalf of SEF. The SEF Rules that refer to the SEF, SEF staff, the Market Regulation Department and other SEF departments should be understood as also referring to the Regulatory Services Provider, the Regulatory Services Provider staff and the Regulatory Services Provider departments acting on behalf of SEF pursuant to the Regulatory Services Agreement. Notwithstanding the fact that the SEF has entered into the Regulatory Services Agreement with its Regulatory Services Provider to perform some of the SEF's functions, the SEF shall retain ultimate legal responsibility for, and control of, such functions.
- (d) No SEF Official will interfere with or attempt to influence the process or resolution of a Disciplinary Action except to the extent provided under the SEF Rules with respect to a proceeding in which the SEF Official is a member of the relevant panel.
- (e) Any Participant, Sponsored Participant, Account Manager, Authorized Trader, Client, Customer or Supervised Person may be represented by counsel during any Disciplinary Action pursuant to this Section 6.
- (f) The SEF may hold a Participant liable for, and impose sanctions against such Participant, for such Participant's own acts and omissions that constitute a violation as well as for the acts and omissions of each (A) Authorized Trader of such Participant, (B) other Supervised Person of such Participant, (C) other Person using a User ID of such Participant or login credentials linked to the Participant or User ID, (D) agent or representative of such Participant, in each case, that constitute a violation as if such

violation were that of the Participant, or (E) Sponsored Participant, Client or Customer of such Participant.

- (g) The SEF may hold 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 as well as or for the acts and omissions of any agent or representative of such Authorized Trader that constitute a violation as if such violation were that of the Authorized Trader.

#### **Rule 6001     Inquiries and Investigations**

- (a) The SEF, through its Market Regulation Department, will investigate any matter within the SEF's jurisdiction of which it becomes aware. The Market Regulation Department will commence an investigation upon the receipt of a request from CFTC staff or upon the discovery or receipt of information by the SEF, or its trading or market surveillance or review of other information or other SEF data, that, in the judgment of the Market Regulation Department, indicates a possible basis for finding that a violation has occurred or will occur. The Market Regulation Department will determine the nature and scope of its inquiries and investigations in its sole discretion. The Market Regulation Department shall inform the Chief Compliance Officer of all inquiries.
- (b) The Market Regulation Department may:
  - (1) initiate and conduct inquiries and investigations;
  - (2) prepare Investigation Reports and make recommendations concerning initiating disciplinary proceedings;
  - (3) prosecute alleged violations within the SEF's disciplinary jurisdiction; and
  - (4) represent the SEF on summary imposition of fines, summary suspension or other summary action.
- (c) Each Clearing Firm, Participant, Sponsored Participant, Account Manager, Authorized Trader, Customer, Client and Supervised Person and any other Person that is subject to the SEF's jurisdiction:
  - (1) is obligated to appear and testify and respond in writing to interrogatories within the time period required by the SEF in connection with:
    - (i) any SEF Rule or any other provision of Applicable Law for which the SEF has disciplinary jurisdiction;
    - (ii) any Disciplinary Action; or
    - (iii) any preparation for and presentation during a Disciplinary Action;

- (2) 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 SEF in connection with:
  - (i) any SEF Rule or any other provision of Applicable Law for which the SEF has disciplinary jurisdiction;
  - (ii) any situation in which such books, records, papers, documents or other tangible evidence would be useful to the SEF in determining if a violation of a SEF Rule has occurred;
  - (iii) any Disciplinary Action; or
  - (iv) any preparation for and presentation during a Disciplinary Action; and
- (3) may not impede or delay any Disciplinary Action.
- (d) Each investigation will be completed in a timely manner. Absent mitigating factors, a timely manner is no later than twelve (12) months after the date that an investigation is opened. Mitigating factors that may reasonably justify an investigation taking longer than twelve (12) months to complete include the complexity of the investigation, the number of firms or individuals involved as potential wrongdoers, the number of potential violations to be investigated, and the volume of documents and data to be examined and analyzed by the Market Regulation Department.

**Rule 6002    Reports of Investigations**

- (a) The Market Regulation Department will maintain a log of all investigations and their disposition. The Market Regulation Department will prepare an Investigation Report, regardless of whether the evidence gathered during any inquiry or investigation forms a reasonable basis to believe that a violation within the SEF's jurisdiction has occurred or is about to occur or whether the evidence gathered results in closing the matter without further action or through summary action.
- (b) The Investigation Report will include the reasons for initiating the investigation (including a summary of the complaint, if any), all relevant facts and evidence gathered, Market Regulation Department's analysis and conclusions, the potential respondent's disciplinary history at the SEF, and the recommendation of the Market Regulation Department. For each potential respondent, the Market Regulation Department will recommend:
  - (1) closing the investigation without further action;
  - (2) settlement;
  - (3) summary action;
  - (4) initiating disciplinary proceeding; or

- (5) resolving the investigation through an informal disposition, including the issuance of a warning letter. An informal disposition (including the issuance of a warning letter) will not constitute a finding of a violation or a sanction.
- (c) The Market Regulation Department will submit the Investigation Report to the Chief Compliance Officer for review. After reviewing the Investigation Report, the Chief Compliance Officer will:
  - (1) proceed with the Market Regulation Department's recommendation; or
  - (2) forward the Investigation Report to a Review Panel as discussed in Rule 6004.

**Rule 6003 Opportunity to Respond**

- (a) If the Review Panel authorizes disciplinary proceedings or the Chief Compliance Officer determines to proceed with the Market Regulation Department's recommendation to initiate disciplinary proceedings, the Market Regulation Department will notify each potential respondent that the Market Regulation Department or Review Panel has recommended formal disciplinary charges against the potential respondent.
- (b) The SEF 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 Market Regulation Department.

**Rule 6004 Review of Investigation Reports**

- (a) The Chief Compliance Officer may, in his/her discretion, convene a Review Panel to review the Investigation Report.
- (b) The Review Panel shall be appointed by the CCO or the SEF's Regulatory Services Provider and shall be comprised of three individuals, at least two of whom would not be disqualified from serving as Public Directors. Each Review Panel must include members who have had relevant experience in some capacity (whether as a current or former employee, officer, director, principal, consultant, advisor, service provider or otherwise) working with or for sufficient different Membership Interests so as to ensure fairness and to prevent special treatment or preference for any person in the conduct of the Review Panel's responsibilities, and no member of the Review Panel may be involved in the adjudication of any other stage of the same proceeding. If a vacancy occurs on a Review Panel after it has begun a proceeding, the remaining members of the panel shall complete consideration and disposition of the matter. Once the Review Panel has provided its decision, it shall be dissolved automatically.
- (c) The Review Panel will review the Investigation Report and, within thirty (30) days of receiving the Investigation Report, will take one of the following actions:



- (1) If the Review Panel determines that additional investigation or evidence is needed, it will promptly direct the Market Regulation Department to conduct further investigation or obtain additional evidence.
- (2) If the Review Panel determines that no reasonable basis exists for finding a violation of the SEF Rules or any other provision of Applicable Law for which the SEF has disciplinary jurisdiction has occurred or is about to occur or that adjudication is otherwise unwarranted, it may direct that no further action be taken. Such determination will be in writing, and will include the reason the investigation was initiated, a summary of the complaint, a written statement setting forth the facts and analysis supporting the decision and, if applicable, any recommendations. The Review Panel shall also provide the written statement to any applicable Regulatory Services Provider.
- (3) If the Review Panel determines that a reasonable basis exists for finding a violation of the SEF Rules or any other provision of Applicable Law for which the SEF has disciplinary jurisdiction has occurred or is about to occur and adjudication is warranted, the Review Panel will determine for each potential respondent whether to authorize:
  - (i) the informal disposition of the investigation (by issuing a warning letter or otherwise) because disciplinary proceedings are unwarranted, in which case the Review Panel shall provide a written explanation to any Regulatory Services Provider;
  - (ii) the closing of the investigation without any action because no reasonable basis exists to believe that a violation within the SEF's jurisdiction has occurred or is about to occur in which case the Review Panel shall provide a written explanation to any Regulatory Services Provider; or
  - (iii) the commencement of disciplinary proceedings because a reasonable basis exists to believe that a violation within the SEF's jurisdiction has occurred or is about to occur.

**Rule 6005 Notice of Charges**

- (a) If the Review Panel authorizes disciplinary proceedings or the Chief Compliance Officer elects to follow the recommendation of the Market Regulation Department to commence a disciplinary proceeding, the Chief Compliance Officer will appoint a Disciplinary Panel as provided in this Section. In addition, the Market Regulation Department will prepare, and serve in accordance with Rule 6007, a notice of charges.
- (b) A notice of charges will:
  - (1) state the acts, practices or conduct that the respondent is alleged to have engaged in;

- (2) state the SEF Rule or other provision of Applicable Law alleged to have been violated or about to be violated;
- (3) state the proposed sanctions;
- (4) advise the respondent of its right to a hearing;
- (5) advise the respondent of its right to be represented by legal counsel of its choosing in all succeeding stages of the disciplinary process;
- (6) state the period of time within which the respondent can request a hearing on the notice of charges, which will not be less than twenty (20) days after service of the notice of charges;
- (7) 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
- (8) advise the respondent that any allegation in the notice of charges that is not expressly denied or answered will be deemed to be admitted.

**Rule 6006 Answer to Notice of Charges**

- (a) If the respondent determines to answer a notice of charges, the respondent must file answers within twenty (20) days after being served with such notice, or within such longer time period determined by the Disciplinary Panel in accordance with Rule 6012.
- (b) To answer a notice of charges, the respondent must in writing:
  - (1) specify the allegations that the respondent denies or admits;
  - (2) specify the allegations that the respondent does not have sufficient information to either deny or admit;
  - (3) specify any specific facts that contradict the notice of charges;
  - (4) specify any affirmative defenses to the notice of charges; and
  - (5) sign and serve the answer on the Disciplinary Panel.
- (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 foregoing requirements.

### **Rule 6007 Service of Notice of Charges**

- (a) Any notice of charges or other documents to be served pursuant to this Section 6 may be served upon the respondent, and service shall be deemed complete either personally or by leaving the same at his or her place of business; by deposit in the United States mail, addressed to respondent at the address as it appears on the books and records of the SEF.
- (b) Any notice of charges or other documents contemplated to be served pursuant to this Section 6 may also be served upon the respondent and service shall be deemed complete via electronic mail to the electronic mail address as it appears on the books and records of the SEF.

### **Rule 6008 Settlements**

- (a) A respondent or potential respondent may at any time propose in writing an offer of settlement related to anticipated or instituted disciplinary proceedings.
- (b) Any offer of settlement should contain proposed findings and sanctions and be signed by the respondent or potential respondent and submitted to the Market Regulation Department.
- (c) 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 SEF over it and over the subject matter of the proceedings and consent to the entry of the findings and sanctions imposed.
- (d) If a respondent or potential respondent submits an offer of settlement in accordance with paragraph (a) above, the Market Regulation Department will forward the offer to the Chief Compliance Officer with a recommendation on whether to accept or reject the offer. Any preliminary determination by the Chief Compliance Officer to accept the offer shall be submitted for review by the Disciplinary Panel. If the Disciplinary Panel agrees, then the Chief Compliance Officer shall conditionally accept an offer of settlement, and the settlement will become final upon the expiration of twenty (20) days after an order of the disciplinary proceedings consistent with the terms of the offer of settlement is served on the respondent.
- (e) If an offer of settlement is accepted, the Disciplinary Panel will issue a written decision specifying the rule violations it has reason to believe were committed, including the basis or reasons for the panel's conclusions, and any sanction to be imposed, which must include full customer restitution where customer harm is demonstrated. If an offer of settlement is accepted without the agreement of the Market Regulation Department or Chief Compliance Officer, the decision must adequately support the Disciplinary Panel's acceptance of the settlement. If applicable, the decision must also include a statement that the respondent has accepted the sanctions imposed without either admitting or denying the rule violations.
- (f) 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 the SEF Rules.

- (g) The respondent may withdraw his or her offer of settlement at any time before final acceptance by the Disciplinary Panel. If an offer is withdrawn after submission, or is rejected by the Disciplinary Panel, the respondent must not be deemed to have made any admissions by reason of the offer of settlement and must not be otherwise prejudiced by having submitted the offer of settlement.
- (h) If the offer of settlement of a respondent or potential respondent is not accepted by agreement between the Chief Compliance Officer and the Disciplinary Panel, 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 Market Regulation Department may use an unaccepted offer of settlement as an admission or in any other manner at a hearing of disciplinary proceedings.

#### **Rule 6009     Disciplinary Panel**

- (a) The Chief Compliance Officer or the SEF's Regulatory Services Provider will appoint a Disciplinary Panel to conduct hearings in connection with any disciplinary proceedings authorized by the Chief Compliance Officer or a Review Panel to make findings and impose sanctions. The Disciplinary Panel will be comprised of three individuals, at least two of whom would not be disqualified from serving as Public Directors. In addition, each Disciplinary Panel must include members who have had relevant experience in some capacity (whether as a current or former employee, officer, director, principal, consultant, advisor, service provider or otherwise) working with or for sufficient different Membership Interests so as to ensure fairness and to prevent special treatment or preference for any person in the conduct of the Disciplinary Panel's responsibilities. The chairman of the Disciplinary Panel shall be appointed by the Chief Compliance Officer. A Disciplinary Panel may not include any members of the SEF's compliance staff or any person involved in adjudicating any other stage of the same proceeding. If a vacancy shall occur on a Disciplinary Panel after it has begun its proceedings, the remaining members shall complete consideration and disposition of the matter. Once a Disciplinary Panel has made its decision and notified all relevant parties, it shall be dissolved automatically.
- (b) Within ten (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 the SEF Rules or for any other reasonable grounds by serving written notice on the Chief Compliance Officer. 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 Chief Compliance Officer, in consultation with the General Counsel, of the SEF 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.

- (c) No Person shall serve on a Disciplinary Panel unless that Person has agreed in writing that he or she will not publish, divulge, or make known in any manner, any facts or information regarding the business of any Person or any other information which may come to his attention in his official capacity as a member of the Disciplinary Panel, except when reporting to the Board or to a committee concerned with such information or to the Market Regulation Department, when requested by the CFTC or other governmental agency or when compelled to testify in any judicial or administrative proceeding.
- (d) All information, records, materials and documents provided to the Disciplinary Panel and all deliberations, testimony, information, records, materials and documents related thereto shall be treated as non-public and confidential and shall not be disclosed, except as necessary to further a SEF investigation or as required by law.

#### **Rule 6010 Convening Hearings of Disciplinary Proceedings**

- (a) A hearing will be conducted privately and confidentially. 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 Market Regulation Department.
- (c) The chair of the Disciplinary Panel may continue, adjourn or otherwise conduct the hearing, as he or she may deem appropriate. The chair of the Disciplinary Panel will determine all procedural and evidentiary matters, including the admissibility and relevance of any evidence proffered.
- (d) In determining procedural and evidentiary matters, the chair 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 General Counsel of the SEF, or his or her designee, may provide guidance to the chair of the Disciplinary Panel on the conduct of the hearing.
- (e) Except for procedural and evidentiary matters decided by the chair of the Disciplinary Panel pursuant to paragraph (c) above and Rule 6012, unless each respondent otherwise consents, the entire Disciplinary Panel must be present during the entire hearing and any related deliberations.

#### **Rule 6011 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 SEF that the Market Regulation

Department will use to support the allegations and proposed sanctions in the notice of charges or which the chair of the Disciplinary Panel deems relevant to the disciplinary proceedings. Notwithstanding the foregoing, no respondent will have the right to review, and the SEF will have no obligation to disclose, any information protected by work product or 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 being conducted by the Market Regulation Department, the Market Regulation 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 Market Regulation Department:
  - (1) 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
  - (2) will provide the respondent with access to the information and portions of the documents that the Market Regulation Department intends to rely on to support the allegations or proposed sanctions in the notice of charges.
- (d) For purposes of this Rule 6011, information that could adversely affect competitive positions may include positions in Swaps or other positions currently held, trading strategies employed in establishing or liquidating positions, the identity of any Customer, Client, Sponsored Participant, Participant or Authorized Trader and the personal finances of the Person providing the information.

#### **Rule 6012 Conducting Hearings of Disciplinary Proceedings**

- (a) At a hearing conducted in connection with any disciplinary proceedings, the Market Regulation Department will present its case supporting the allegations and proposed sanctions in the notice of charges to the Disciplinary Panel. 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 Market Regulation Department and each respondent may:
  - (1) present evidence and facts determined relevant and admissible by the chair of the Disciplinary Panel;
  - (2) call and examine witnesses; and
  - (3) 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 chair of the Disciplinary Panel may limit evidence concerning any allegations not 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 6006.
- (d) If the respondent has requested a hearing on a charge that the respondent denies, or on a sanction set by the Disciplinary Panel under Rule 6014, the respondent will be given an opportunity for a hearing in accordance with the SEF Rules. Except for good cause, such hearing will be limited to addressing those charges denied by the respondent and/or sanctions set by the Disciplinary Panel under Rule 6014 for which a hearing has been requested.
- (e) Any Person entitled, or required or called upon, to attend a hearing before a Disciplinary Panel pursuant to paragraph (b)(2) 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. All Persons subject to the SEF's jurisdiction that are called as witnesses are required to appear at the hearing and, where applicable, produce evidence. The SEF will make reasonable efforts to secure the presence of all other Persons called as witnesses whose testimony would be relevant.
- (f) 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 SEF or any other provision of Applicable Law for which the SEF has disciplinary jurisdiction 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 6006. In connection with considering apparent violations pursuant to this paragraph (f), the Disciplinary Panel may request that the Market Regulation Department provide the Disciplinary Panel with any additional information related to the violations at issue.
- (g) The Disciplinary Panel may provide that a sanction be summarily imposed upon any Person within its jurisdiction whose actions impede the progress of a hearing.
- (h) If the respondent has requested the hearing, a copy of the hearing must be made and must become a part of the record of the proceedings. The SEF will arrange for any hearing conducted in connection with disciplinary proceedings to be recorded 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 chair of the Disciplinary Panel may within his or her sole discretion require the respondent to pay the costs for transcribing the recording of the hearing.

- (i) No interlocutory appeals of rulings of any Disciplinary Panel or chair of the Disciplinary Panel are permitted.

**Rule 6013 Decision of Disciplinary Panel**

- (a) Promptly following a hearing, the Disciplinary Panel will issue a written order rendering its final 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 final decision of the Disciplinary Panel.
- (b) The Disciplinary Panel will serve a copy of the order of the disciplinary proceedings on the respondent and the Market Regulation Department. The order will include:
  - (1) The name of the respondent;
  - (2) the notice of charges or summary of the charges;
  - (3) the answer, if any, or a summary of the answer;
  - (4) a summary of the evidence produced at the hearing or, where appropriate, incorporation by reference of the Investigation Report;
  - (5) a statement of findings of fact and conclusions with respect to each charge, including a complete explanation of the evidentiary and other basis for such findings and conclusions with respect to each charge;
  - (6) each specific SEF Rule and/or other provision of Applicable Law that the respondent was found to have violated;
  - (7) a declaration of all sanctions imposed against the respondent, if any, including the basis for such sanctions and the effective date of each sanction;
  - (8) notice of respondent's right to appeal; and
  - (9) a statement informing the respondent of the availability of CFTC review of the action pursuant to Part 9 of the CFTC's Regulations.
- (c) The written decision of the Disciplinary Panel will become effective upon the expiration of fifteen (15) days after it is served on the respondent and provided to the Market Regulation Department; *provided, however*, that the SEF may cause the decision to become effective prior to that time to the extent permitted under Part 9 of the CFTC's Regulations.

**Rule 6014 Sanctions**

- (a) After notice and opportunity for hearing in accordance with the SEF Rules, the SEF will impose sanctions on any Person subject to the SEF's jurisdiction, including any Clearing Firm, Customer, Client, Sponsored Participant, Participant, Account Manager,



Authorized Trader or Supervised Person, or any Person using a Participant's User ID or login credentials linked to a Participant or User ID, if such Person is found to have violated or to have attempted to violate a SEF Rule or other provision of Applicable Law for which the SEF has disciplinary jurisdiction. All sanctions, including those imposed pursuant to an accepted settlement offer, must take into account the respondent's disciplinary history. In the event of demonstrated customer harm, any sanction must also include full customer restitution, except where the amount of restitution or to whom it should be provided cannot be reasonably determined. Any such sanction (including any fine) shall be commensurate with the violation committed and clearly sufficient to deter recidivism or similar violations by other market participants.

The SEF may impose one or more of the following sanctions or remedies:

- (1) censure;
  - (2) limitation on Trading Privileges, ability to otherwise access the SEF, and/or other activities, functions or operations;
  - (3) suspension of Trading Privileges and/or ability to otherwise access the SEF;
  - (4) fine (subject to paragraph (b) below);
  - (5) restitution and/or disgorgement;
  - (6) termination of Trading Privileges and/or ability to otherwise access the SEF;
  - (7) limitation, suspension or termination of rights as a Clearing Firm; or
  - (8) any other sanction or remedy deemed to be appropriate.
- (b) The SEF may impose a fine of up to \$100,000, unless aggravating or mitigating circumstances otherwise warrant as determined by the SEF, for each violation of the SEF Rules or other provision of Applicable Law for which the SEF has disciplinary jurisdiction. The minimum fine for any one violation is \$1,000. If a fine or other amount is not paid within thirty (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 SEF has sole discretion to select the bank on whose quotations it will base the prime rate. Participant will be responsible for paying any fine or other amount imposed on, but not paid by, any of its Supervised Persons.

**Rule 6015 Right to Appeal from Disciplinary Panel Decision, Summary Impositions of Fines and Other Summary Actions**

- (a) Each respondent found by the Disciplinary Panel to have violated the SEF Rules or other provision of Applicable Law for which the SEF has disciplinary jurisdiction or who is subject to termination or limitation of Trading Privileges, any summary fine imposed pursuant to Rule 6016 or any other summary action may appeal the decision within twenty (20) days of receiving the order of the Disciplinary Panel or the notice of

summary action, as the case may be, by filing a notice of appeal with the Chief Compliance Officer.

- (b) The SEF may appeal all or any part of a decision of the Disciplinary Panel, including any sanctions that may or may not have been imposed by the Disciplinary Panel, within twenty (20) days of receiving the order of the Disciplinary Panel, by filing a notice of appeal with the Chief Compliance Officer.
- (c) While an appeal is pending, the effect of the order of the Disciplinary Panel or the summary action (including any sanctions, remedies or costs imposed thereby) shall be suspended.
- (d) The notice of appeal must state in writing the grounds for appeal, including the findings of fact, conclusions or sanctions to which the appellant objects. An appellant may appeal the order of the Disciplinary Panel or any summary action on the grounds that:
  - (1) the order or summary action was arbitrary, capricious, an abuse of discretion or not in accordance with the SEF Rules;
  - (2) the order or summary action exceeded the authority or jurisdiction of the Disciplinary Panel, the Chief Compliance Officer or the SEF;
  - (3) the order or summary action failed to observe required procedures;
  - (4) the order or summary action was unsupported by the facts or evidence; or
  - (5) the sanctions, remedies or costs imposed were inappropriate or unsupported by the record.
- (e) The Chief Compliance Officer will forward copies of any notice of appeal received by him or her to all parties to the disciplinary proceeding or summary action, as the case may be, except the appellant. On or before the twentieth (20<sup>th</sup>) day after filing a notice of appeal, the appellant must file with the Chief Compliance Officer and serve on the appellee a brief supporting the notice of appeal and documents supporting the brief. On or before the twentieth (20<sup>th</sup>) day after the date on which the appellant serves its supporting brief, the appellee must file and serve its brief in opposition on the Chief Compliance Officer and the appellant. On or before the tenth (10<sup>th</sup>) day after the date on which the appellee serves its brief in opposition, the appellant may file and serve on the SEF a brief in reply.
- (f) In connection with any appeal, the SEF will furnish to the Chief Compliance Officer and to the appellant and appellee a transcript of the hearing and any exhibits introduced at the hearing.
- (g) No later than thirty (30) days after the last submission filed pursuant to paragraph (e) of this Rule 6015, the Chief Compliance Officer or the SEF's Regulatory Services Provider will appoint an Appeals Panel to consider and determine the appeal. An Appeals Panel shall be comprised of three individuals, none of whom shall be a member of the Market

Regulation Department or have been a member of the Disciplinary Panel involved in the matters on appeal and at least two of whom would not be disqualified from serving as Public Directors. In addition, each Appeals Panel must include members who have had relevant experience in some capacity (whether as a current or former employee, officer, director, principal, consultant, advisor, service provider or otherwise) working with or for sufficient different Membership Interests so as to ensure fairness and to prevent special treatment or preference for any person in the conduct of the Appeals Panel's responsibilities. The chairperson of the Appeals Panel shall be an individual who would not be disqualified from serving as a Public Director.

- (h) Within ten (10) days of being notified of the appointment of the Appeals Panel, an appellant or appellee may seek to disqualify any individual named to the Appeals Panel or any person designated as chairperson thereof for the reasons identified in Rule 2500 or in the definition of Public Director (as the case may be) or on other reasonable grounds, by serving written notice on the Chief Compliance Officer. By not timely filing a request for disqualification, the appellant or appellee will be deemed to have waived any objection to the composition of the Appeals Panel and appointment of its chairperson. The Chief Compliance Officer 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.
- (i) The Appeals Panel may hold a hearing to allow parties to present oral arguments. Any hearing will be conducted privately and confidentially. Notwithstanding the confidentiality of hearings, the Appeals Panel may appoint an expert to attend any hearing and assist in the deliberations if such individual(s) agree to be subject to appropriate confidentiality agreements. In determining procedural and evidentiary matters, the Appeals Panel will not be bound by evidentiary or procedural rules or law.
- (j) The Appeals Panel will only consider on appeal the record before the Disciplinary Panel or, in the case of a summary action, the record considered by the Chief Compliance Officer, 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 for why the evidence was not introduced during the disciplinary proceeding or when imposing the summary action.
- (k) After completing its review, the Appeals Panel may affirm, modify or reverse any order of the Disciplinary Panel or summary action 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 SEF Rules, or remanding the matter to the same or a different Disciplinary Panel for further disciplinary proceedings or for reconsideration by the Chief Compliance Officer in the case of summary action. The Appeals Panel may order a new hearing for good cause or if the Appeals Panel deems it appropriate.
- (l) As promptly as reasonably possible following its review, the Appeals Panel will issue a written decision on appeal rendering its decision based on the preponderance of the evidence before the Appeals Panel and will provide a copy to the Chief Compliance

Officer, the appellant and the appellee. 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 SEF Rule and other provision of Applicable Law for which the SEF has disciplinary jurisdiction 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.

- (m) The Appeals 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 SEF and will not be subject to appeal within the SEF; *provided, however*, that any suspension, expulsion, disciplinary or access denial action or other adverse action by the SEF may (to the extent required thereby) be subject to review by the CFTC pursuant to Part 9 of the CFTC's Regulations.

### **Rule 6016 Summary Imposition of Fines**

- (a) The Chief Compliance Officer may summarily impose a fine against a Participant (or any of its Supervised Persons or other Persons using any of the Participant's User IDs or login credentials linked to the Participant or its User IDs) for failing:
  - (1) to make timely and accurate submissions to the SEF of notices, reports or other information required by the SEF Rules;
  - (2) to make timely payments of fees, cost, charges or fines to the SEF; or
  - (3) to keep any books and records required by the SEF Rules.
- (b) The Market Regulation Department, acting on behalf of the Chief Compliance Officer, will give notice of any fine imposed pursuant to this Rule to each Participant or Supervised Person subject thereto. The notice will specify:
  - (1) the violations of the SEF Rules for which the fine is being imposed;
  - (2) the date of the violation for which the fine is being imposed; and
  - (3) the amount of the fine.
- (c) Within twenty (20) days of serving the notice of fine, the Participant or Authorized Trader, as the case may be, must either pay or cause the payment of the fine. If a fine or other amount is not paid within twenty (20) 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 SEF has sole discretion to select the bank on whose quotations it will base the prime rate. The Participant will be responsible for paying any fine or other amount imposed on, but not paid by, any of its Supervised Persons.
- (d) The SEF will set the amount of any fines imposed pursuant to this Rule 6016 at no less than \$1,000 per violation, with the maximum fine for each violation not to exceed \$5,000. Recurring violations will be subject to progressively larger fines. Summary

imposition of fines pursuant to this Rule 6016 will not preclude the SEF from bringing any other action against the Participant (or any of its Supervised Persons).

#### **Rule 6017     Warning Letters**

The SEF authorizes the Market Regulation Department to issue a warning letter to a Person or entity under investigation or to recommend that a Disciplinary Panel take such an action. A warning letter issued in accordance with this Rule is not a penalty or an indication that a finding of a violation has been made. A copy of a warning letter issued by the Market Regulation Department will be included in the Investigation Report. No more than one warning letter for the same potential violation may be issued to the same Person or entity during a rolling 12-month period.

#### **Rule 6018     Summary Access Denial Actions**

- (a) The Chief Compliance Officer, upon a good faith determination that there is a reasonable belief that such immediate action is necessary to protect the best interests of the SEF, may summarily suspend, revoke, limit, condition, restrict or qualify the Trading Privileges of a Participant, Sponsored Participant or any Supervised Person, including denial of access to the SEF.
- (b) Non-Participants, including Customers and Clients, may be denied access to the SEF by the Chief Compliance Officer upon a good faith determination that there are substantial reasons to believe that such immediate action is necessary to protect the best interests of the SEF.
- (c) If practicable, a respondent must be served with a notice before the action is taken or otherwise at the earliest possible opportunity. The notice must state the action taken, the reasons for the action, and the effective date, time and the duration of the action taken. The party shall be advised of his right to a hearing, as soon as reasonably practicable, before a Disciplinary Panel by filing notice of intent with the Market Regulation Department within ten (10) Business Days of the notice date.
- (d) Any suspension, revocation, limitation, condition, restriction or qualification imposed on any Participant, Supervised Person or non-Participant (including Sponsored Participants, Customers and Clients) pursuant to this Rule 6018 will be impartially enforced.
- (e) Any denial, conditioning or termination that represents a suspension, expulsion, disciplinary or access denial action or other adverse action within the meaning of Part 9 of the CFTC's Regulations may (to the extent required thereby) be subject to review by the CFTC pursuant to Part 9 of the CFTC's Regulations.

#### **Rule 6019     Rights and Responsibilities after Suspension or Termination**

- (a) When a Person's Trading Privileges and/or ability to otherwise access the SEF are suspended for a period of 12 months or less, none of its rights (including the right to hold oneself out to the public as a Participant or Authorized Trader, enter Orders into the SEF, submit Block Trades to the SEF, and receive Participant rates for fees, costs, and charges)

will apply during the period of the suspension, except for the right of the Person in question to assert claims against others as provided in the SEF Rules. Any such suspension will not affect the rights of creditors under the SEF Rules or relieve the Person in question of its, his or her obligations under the SEF Rules to perform any Swaps entered into before the suspension, or for any SEF fees, costs, or charges incurred during the suspension. The SEF may discipline a suspended Person under this Section 6 for any violation of a Rule of the SEF or other provision of Applicable Law committed by such Person before, during or after the suspension.

- (b) When a Person's Trading Privileges and/or ability to otherwise access the SEF are terminated, all of its related rights will terminate, except for the right of the Person in question to assert claims against others, as provided in the SEF Rules. Any such termination will not affect the rights of creditors under the SEF Rules.
- (c) The SEF will not consider the application of a terminated Participant or Authorized Trader if such Participant or Authorized Trader, as the case may be, continues to fail to appear at disciplinary proceedings without good cause or continues to impede the progress of disciplinary proceedings.
- (d) A suspended or terminated Person remains subject to the SEF Rules and the jurisdiction of the SEF for acts and omissions prior to the suspension of 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 Person still had Trading Privileges or ability to otherwise access the SEF.

**Rule 6020 Notice to the Respondent, the Regulatory Services Provider and the Public; Effectiveness of Disciplinary and Access Denial Actions**

- (a) The SEF will provide written notice of disciplinary proceedings and of any access denial actions pursuant to Rule 3103 or 6018 to the relevant parties and the Regulatory Services Provider consistent with applicable CFTC Regulations. Whenever the SEF suspends, expels, fines or otherwise disciplines or denies any Person access to the SEF, the SEF will make the disclosures and notifications required by Part 9 of the CFTC's Regulations (including by any of the alternative methods available thereunder) and any other applicable CFTC Regulations.
- (b) Without limiting the generality of the foregoing, the SEF shall, in accordance with the requirements of CFTC Regulation 9.11, provide written notice of its final decision regarding any disciplinary or access denial action to the person against whom the action was taken within thirty (30) days of rendering such decision. Pursuant to CFTC Regulation 9.12, any disciplinary or access denial action taken will not become effective until at least fifteen (15) days after the written notice is delivered to the person disciplined or denied access; *provided, however*, that the SEF may cause a disciplinary action to become effective prior to that time in accordance with CFTC Regulation 9.12.

## **Rule 6021     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 if the Disciplinary Panel concludes that the respondent has behaved in a manifestly unreasonable manner. Costs may include costs associated with the inquiry or investigation, the prosecution by the Market Regulation 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 SEF if the panel concludes that the SEF 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 SEF 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 SEF or the respondent will pay any costs ordered to be paid by it by the Disciplinary Panel within thirty (30) days of written notice of the amount imposed by the Disciplinary Panel. If costs are not paid within twenty (20) 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 SEF has sole discretion to select the bank on whose quotations it will base the prime rate. Participant will be responsible for paying any costs imposed on, but not paid by, any of its Supervised Persons.

## **Rule 6022     *Ex Parte* Communications**

- (a) A Person subject to a disciplinary proceeding or an appeal from a disciplinary proceeding (and any counsel or representative of such Person) and the Market Regulation Department (and any counsel or representative of the Market Regulation Department) shall not knowingly make or cause to be made an *ex parte* communication relevant to the merits of a disciplinary proceeding or an appeal from a disciplinary proceeding to any member of the Disciplinary Panel or Appeals Panel hearing such proceeding.
- (b) Members of a Disciplinary Panel or an Appeals Panel shall not knowingly make or cause to be made an *ex parte* communication relevant to the merits of a disciplinary proceeding or an appeal from a disciplinary proceeding to any Person subject to such proceeding (and any counsel or representative of such Person) or the Market Regulation Department (and any counsel or representative of the Market Regulation Department).
- (c) Any Person who receives, makes or learns of any communication that is prohibited by this Rule 6022 shall promptly give notice of such communication and any response thereto to the Market Regulation Department and all parties to the proceeding to which the communication relates.

- (d) A Person shall not be deemed to have violated this rule if the Person refuses an attempted communication concerning the merits of a proceeding as soon as it becomes apparent the communication concerns the merits.

**Rule 6023 [Reserved]**

**Rule 6024 Extension or Waiver of the SEF Rules**

If necessary and expedient, the Chief Compliance Officer may, in his or her sole discretion, waive, or extend the time period for performing, any act or acts designated by the SEF Rules, but only to the extent such waiver or extension is not inconsistent with the CEA, CFTC Regulations or other applicable regulations.

**Rule 6025 Effect of Amendment, Repeal or New Rule**

- (a) If an amendment or repeal of a Rule or adoption of a new Rule does not materially change the terms or conditions of a Swap and does not affect the value of open Swaps, then the effective date of any amendment or repeal of a Rule or adoption of a new Rule relating to Swaps is binding on all Swaps entered into before and after the effective date of such amendment, repeal or adoption.
- (b) If an amendment or repeal of a Rule or adoption of a new Rule materially changes the terms or conditions of a Swap or affects the value of open Swaps, then the amendment, repeal or new Rule is binding only on Swaps listed for trading after the effective date of such amendment, repeal or adoption, and Swaps listed as of the effective date of such amendment, repeal or adoption with no open positions then in existence, unless otherwise specifically provided by the Board.

**Rule 6026 [Reserved]**

**Rule 6027 Governing Law, Jurisdiction and Dispute Resolution**

- (a) The law of the State of New York governs the SEF Rules regardless of the laws that would otherwise apply under applicable choice-of-law principles.
- (b) Any dispute between the SEF and a Person arising from or in connection with the SEF Rules or use of the SEF must be brought to arbitration pursuant to subsection (c) of this Rule 6027 within two (2) years from the occurrence of the event giving rise to the dispute. This Rule 6027 shall in no way create a cause of action nor authorize an action that would otherwise be prohibited by the SEF Rules.
- (c) Any dispute between the SEF and a Person arising from or in connection with the SEF Rules will be settled by arbitration administered in New York County, New York by the American Arbitration Association (the "AAA") under its Commercial Arbitration Rules. The dispute will be submitted to one arbitrator who will be appointed by the AAA. Any arbitrator appointed for purposes of this Rule 6027 will have experience with and knowledge of commodities, derivatives and Swaps as listed on the National Roster of Arbitrators kept in the AAA's records. Judgment on the award rendered by the arbitrator



will be binding on the parties and may be entered in any state or federal court sitting in New York County, New York, and the SEF and each Person shall be deemed to have consented to the personal jurisdiction of any such court. Each party to the dispute will bear its own costs and expenses in connection with any arbitration hereunder, as well as an equal share of the administrative fees and the fees of the arbitrator; *provided, however*, that the arbitrator will be entitled to include in any award a full reimbursement for the prevailing party's costs and expenses, such party's share of the administrative fees and the fees of the arbitrator, or any combination of any or all of the above. In the event that this Rule 6027 is held to be unenforceable in connection with any dispute or a claim is deemed by a court of competent jurisdiction to be not arbitrable, (i) exclusive jurisdiction for any such dispute will reside in any state or federal court sitting in New York County, New York, (ii) the SEF and the Person involved in the dispute will be presumed to have submitted to the personal jurisdiction of any such court, and (iii) an action to enforce any judgment or decision of such court may be brought in the same court or in any other court with jurisdiction or venue. Finally, all Persons unconditionally and irrevocably waive any and all right to trial by jury in connection with any such dispute.

**Rule 6028     Limitation of Liability, Indemnity**

- (a) UNLESS ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE SEF, THE SEF, ITS SUBSIDIARIES AND AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS (EACH A "RELATED PARTY" AND COLLECTIVELY "RELATED PARTIES") HAVE NO LIABILITY, CONTINGENT OR OTHERWISE, TO PARTICIPANTS OR TO THIRD PARTIES, FOR THE CORRECTNESS, QUALITY, ACCURACY, SECURITY, COMPLETENESS, RELIABILITY, PERFORMANCE, TIMELINESS, PRICING OR CONTINUED AVAILABILITY OF THE SEF SERVICES OR FOR DELAYS OR OMISSIONS OF THE SEF SERVICES, OR FOR THE FAILURE OF ANY CONNECTION OR COMMUNICATION SERVICE TO PROVIDE OR MAINTAIN PARTICIPANT ACCESS TO THE SEF SERVICES, OR FOR ANY INTERRUPTION IN OR DISRUPTION OF A PARTICIPANT'S ACCESS OR ANY ERRONEOUS COMMUNICATIONS BETWEEN THE SEF AND A PARTICIPANT. THE SEF AND ITS RELATED PARTIES ARE NOT LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHICH A PARTICIPANT OR ANY THIRD PARTY MAY INCUR OR EXPERIENCE BECAUSE THE PARTICIPANT ENTERED INTO THESE TERMS OR RELIED ON THE SEF SERVICES, EVEN IF THE SEF KNOWS OF THE POSSIBILITY OF THOSE DAMAGES. THE SEF AND ITS RELATED PARTIES ARE NOT RESPONSIBLE FOR INFORMING A PARTICIPANT OF ANY DIFFICULTIES THE SEF OR OTHER THIRD PARTIES EXPERIENCE CONCERNING USE OF THE SEF SERVICES OR TO TAKE ANY ACTION IN CONNECTION WITH THOSE DIFFICULTIES. THE SEF AND ITS RELATED PARTIES ALSO HAVE NO DUTY OR OBLIGATION TO VERIFY, CORRECT, COMPLETE OR UPDATE ANY INFORMATION DISPLAYED IN THE SEF SERVICES. EACH PARTICIPANT IS SOLELY RESPONSIBLE FOR ANY LOSSES, DAMAGES OR COSTS RESULTING FROM THE PARTICIPANT'S RELIANCE ON ANY DATA OR INFORMATION

THAT THE SEF MAY PROVIDE IN CONNECTION WITH A PARTICIPANT'S USE OF THE SEF SERVICES.

- (b) THE SEF DOES NOT MAKE ANY RECOMMENDATION AS TO THE SUITABILITY OF ANY INVESTMENT OR PROPOSED TRANSACTION. EACH PARTICIPANT ACKNOWLEDGES THAT THE SEF WILL NOT, AND ARE UNDER NO DUTY TO, PROVIDE ADVICE IN RELATION TO ANY SUCH TRANSACTION OR PROPOSED TRANSACTION THROUGH ANY SEF SERVICE. EACH PARTICIPANT AGREES THAT (I) THE SEF SERVICES ARE NOT AND WILL NOT BE THE BASIS FOR ANY OF INVESTMENT DECISIONS BY A PARTICIPANT AND (II) PARTICIPANTS ARE SOLELY RESPONSIBLE FOR (A) ANY INVESTMENT OR TRADING DECISIONS THAT THE PARTICIPANT MAKES WITH RESPECT TO THE PRODUCTS AVAILABLE VIA ANY SEF SERVICE AND (B) DETERMINING WHETHER ANY TRANSACTION IS SUITABLE, APPROPRIATE OR ADVISABLE FOR THE PARTICIPANT OR SPONSORED PARTICIPANT OR CLIENTS OR CUSTOMERS. PROVISION OF THE SEF SERVICES DOES NOT MAKE THE SEF AN ADVISOR OR FIDUCIARY FOR A PARTICIPANT, SPONSORED PARTICIPANT, CLIENT OR CUSTOMER. THESE TERMS DO NOT CONSTITUTE AN OFFER TO SELL OR SOLICITATION OF AN OFFER TO BUY SECURITIES OR OTHER INSTRUMENTS. IN ADDITION, THE SEF SERVICES DO NOT INCLUDE ANY INVESTMENT, FINANCIAL, LEGAL OR TAX ADVICE WHICH PARTICIPANT MAY DESIRE OR NEED IN CONNECTION WITH ANY TRANSACTION. PARTICIPANTS ARE RESPONSIBLE FOR OBTAINING ANY LEGAL OR TAX ADVICE.
- (c) IF A THIRD PARTY CLAIMS THAT THE SEF SERVICES INFRINGE UPON ITS PATENT COPYRIGHT, OR TRADE SECRET, OR ANY SIMILAR INTELLECTUAL PROPERTY RIGHT, THE SEF WILL DEFEND THE PARTICIPANT AGAINST THAT CLAIM AT THE SEF'S EXPENSE AND PAY ALL DAMAGES THAT A COURT FINALLY AWARDS, PROVIDED THAT THE PARTICIPANT PROMPTLY NOTIFY THE SEF IN WRITING OF THE CLAIM AND COOPERATE WITH THE SEF IN THE DEFENSE OR ANY RELATED SETTLEMENT NEGOTIATIONS. THE SEF SHALL HAVE SOLE CONTROL OVER THE DEFENSE AND ANY NEGOTIATION FOR ITS SETTLEMENT OR COMPROMISE. IF SUCH A CLAIM IS MADE OR IS LIKELY TO BE MADE, THE SEF SHALL, AT THE SEF'S SOLE OPTION, HAVE THE RIGHT TO TAKE ONE OR MORE OF THE FOLLOWING ACTIONS AT NO ADDITIONAL COST TO THE PARTICIPANT: (I) PROCURE THE RIGHT FOR THE PARTICIPANT TO CONTINUE THE USE OF THE SEF SERVICES; (II) REPLACE THE SEF SERVICES WITH NON-INFRINGING SOFTWARE; OR (III) MODIFY THE SEF SERVICES SO AS TO BE NON-INFRINGING. IF THE SEF DETERMINE THAT NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE PARTICIPANT AGREES TO IMMEDIATELY TERMINATE ITS USE OF THE SEF SERVICES ON THE SEF'S WRITTEN REQUEST. HOWEVER, THE SEF HAS NO OBLIGATION FOR ANY CLAIM BASED ON THE SEF'S USE OF THE SEF SERVICES IN ANY MANNER INCONSISTENT WITH THESE TERMS, PARTICIPANT'S MODIFICATION OF THE SEF SERVICES OR PARTICIPANT'S COMBINATION, OPERATION, OR USE

OF THE SEF SERVICES WITH ANY PRODUCT, DATA, OR APPARATUS NOT SPECIFIED OR PROVIDED BY THE SEF, PROVIDED THAT SUCH CLAIM SOLELY AND NECESSARILY IS BASED ON SUCH COMBINATION, OPERATION OR USE, OR FOR CONTINUED ALLEGEDLY INFRINGING ACTIVITY BY THE PARTICIPANT AFTER THE PARTICIPANT HAVE BEEN NOTIFIED OF POSSIBLE INFRINGEMENT, UNLESS APPROVED IN ADVANCE BY THE SEF. THE FOREGOING REPRESENTS THE SOLE AND EXCLUSIVE REMEDY FOR PARTICIPANTS WITH REGARD TO ANY OF THE ABOVE INFRINGEMENTS OR ALLEGED INFRINGEMENTS.

- (d) WITH THE EXCEPTION OF THE PROVISIONS OF RULE 6028(c), THE SEF'S LIABILITY AND THE COLLECTIVE LIABILITY OF THE SEF'S RELATED PARTIES AND THE THIRD PARTY SERVICE PROVIDERS SELECTED BY THE SEF, IF ANY, ARISING OUT OF ANY KIND OF LEGAL CLAIM (WHETHER IN CONTRACT, TORT, OR OTHERWISE) OR IN ANY WAY CONNECTED TO A PARTICIPANT'S USE OF THE SEF SERVICES WILL NOT EXCEED \$500,000 UNLESS CAUSED DIRECTLY BY THE SEF'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
- (e) NONE OF THE ABOVE WILL LIMIT PARTICIPANT'S RIGHTS AND REMEDIES OTHERWISE AVAILABLE UNDER THE STATE OR FEDERAL SECURITIES LAWS, CFTC REGULATIONS OR THE CEA.

## SECTION 7 EMERGENCIES

### **Rule 7000     Emergency Actions**

- (a) During an Emergency, the Board and/or the CEO (or, in his absence, the most senior Officer present), in consultation with the CFTC, as necessary, may implement temporary emergency procedures and rules (“Emergency Rules”), subject to the applicable provisions of the CEA and CFTC Regulations. Emergency Rules may require or authorize the SEF, the Board, any committee of the Board, the CEO, or any other Officer to take Emergency Action necessary or appropriate to respond to the Emergency. If applicable, the SEF may provide for the carrying out of Emergency Actions through its agreements with its Regulatory Services Provider.
- (b) Before any Emergency Rule may be adopted and enforced, a required vote of the Board must approve the enforcement of such Emergency Rule at a duly convened meeting. Directors may attend such a meeting by teleconference and such meeting may, if necessary, be conducted pursuant to Rule 2100(c). Notwithstanding, if the CEO (or, in his absence, the most senior Officer present) determines that Emergency Rules must be implemented with respect to an Emergency before a meeting of the Board can reasonably be convened, then the CEO (or such seniormost Officer) shall have the authority, without Board action, to implement any Emergency Rules with respect to such Emergency that he or she deems necessary or appropriate to respond to such Emergency. In such circumstances, the CEO (or such seniormost Officer) must convene a meeting of the Board (which may, if necessary, be conducted pursuant to Rule 2100(c)) as soon as practicable thereafter. Notwithstanding that the Board does not ratify or approve extending or making permanent any Emergency Rules implemented by the CEO or seniormost Officer pending convening of the Board meeting, all actions previously taken in accordance with such Emergency Rules shall remain binding and valid.
- (c) Whenever the SEF, the Board, any committee of the Board, the CEO or any other Officer takes actions necessary or appropriate to respond to an Emergency, a duly authorized representative of the SEF, where possible, will post an announcement in a Notice to Participants. When the Board, any committee of the Board or the CEO (or, in his absence, the most senior Officer present) determines that the Emergency has been reduced sufficiently to allow the SEF to resume normal functioning, any such actions responding to an Emergency will be terminated.
- (d) The SEF will use reasonable efforts to notify the CFTC prior to implementing, modifying or terminating an Emergency Rule. If such prior notification is not possible or practicable, the SEF will notify the CFTC as soon as possible or reasonably practicable but in all circumstances within twenty-four (24) hours of the implementation, modification or termination of such Emergency Rule.
- (e) Upon taking any action in response to an Emergency, the SEF will document the decision-making process related to such action. Such documentation will be kept for at

least five (5) years following the date on which the Emergency ceases to exist or to affect the SEF, and all such documentation will be provided to the CFTC upon request.

**SECTION 8**  
**RECORDKEEPING AND REPORTING**

**Rule 8000 Maintenance of Books and Records by the SEF**

- (a) The SEF shall keep, or cause to be kept, complete and accurate books and records of all activities relating to its business, including complete audit trails for all Swaps executed on or otherwise subject to the rules of the SEF, investigatory files, disciplinary files and all books and records required to be maintained pursuant to the CEA and CFTC Regulations.
- (b) The SEF shall retain all books and records related to a Swap executed on, or pursuant to the rules of, the SEF throughout the life of the Swap and for a period of at least five (5) years following the final termination of the Swap and shall retain all other books and records for a period of at least five (5) years, in each case, in a form and manner acceptable to the CFTC. All books and records related to a Swap executed on, or pursuant to the rules of, the SEF shall be readily accessible by the SEF via real-time electronic access throughout the life of the Swap and for two (2) years following the final termination, and all other books and records shall be readily accessible via real-time electronic access during the first two (2) years of the five-year period. All books and records shall be thereafter retrievable within three (3) business days through the remainder of the required retention period.
- (c) All books and records required to be maintained by the SEF shall be open to inspection upon request by any representative of the CFTC, the United States Department of Justice or the SEC or by any representative of a prudential regulator as authorized by the CFTC. In addition, all audit trail data and reconstructions shall be made available to the CFTC or the United States Department of Justice in a form, manner and time that is acceptable to the CFTC or the United States Department of Justice, as applicable.

**Rule 8001 Order Information**

- (a) Each Authorized Trader entering an Order with respect to any Swap traded on or subject to the rules of the SEF must include with the Order, all data required to enable the SEF to meet its reporting obligations under Parts 43 and 45 of the CFTC Regulations, including without limitation:
  - (1) the User ID;
  - (2) the Participant ID;
  - (3) the price or yield, quantity, maturity or expiration date;
  - (4) the price and quantity;
  - (5) side of the Order;
  - (6) the CTI code;

- (7) [Reserved];
  - (8) the Legal Entity Identifier of the Participant and, where the Participant is acting as agent, of the Customer or Client, with respect to the Swap for which the Order is placed;
  - (9) a yes/no indication of whether the Participant, Customer or Client is a Swap Dealer;
  - (10) a yes/no indication of whether the Participant, Customer or Client is a Major Swap Participant;
  - (11) a yes/no indication of whether the Participant, Customer or Client is a Financial Entity;
  - (12) a yes/no indication of whether the Participant, Customer or Client is a U.S. person;
  - (13) [Reserved];
  - (14) if the Swap will be allocated:
    - (i) an indication that the Swap will be allocated;
    - (ii) the Legal Entity Identifier of the Account Manager acting as agent;
    - (iii) a yes/no indication of whether the Account Manager acting as agent is a U.S. person;
    - (iv) an indication of whether the Swap is a post-allocation Swap;
    - (v) if the Swap is a post-allocation Swap, the account and Legal Entity Identifier for each Client that received allocations; and
    - (vi) if the Swap is a post-allocation Swap, the USI of the original Transaction between the Reporting Counterparty and the Account Manager acting as agent;
  - (15) if applicable, an indication that the Participant, Customer or Client will elect the End-User Clearing Exception for any Swap resulting from the Order;
  - (16) a yes/no indication of whether the Order is part of a Package Transaction; and
  - (17) if the Order is part of a Package Transaction, a description of the Transaction.
- (b) Participants and ISVs that operate systems that route orders to the SEF are responsible for maintaining or causing to be maintained a routing/front-end audit trail for all Orders, which shall include Order entry, modification and cancellation and any SEF responses to such messages. For executed Orders, such audit trail must record the execution time of

the Transaction, along with all fill information. Participants and ISVs shall maintain audit trail information as required by Applicable Law and must have the ability to produce audit trail data in a reasonably usable format upon request of the SEF. The SEF will enforce these audit trail and recordkeeping requirements by conducting an annual review of all Participants to verify their compliance with the SEF's audit trail and recordkeeping requirements.

## **Rule 8002 Books and Records**

- (a) All Members, Customers and Clients must prepare and keep, or cause to be kept, all books, ledgers and other records relating to its activity on the SEF required to be kept by it pursuant to Applicable Law, and must prepare and keep such other books and records relating to its SEF activity as the SEF may from time to time prescribe. Such books and records must include, without limitation, records of such Person's trading, including records of the Person's activity in the index or instrument used as a reference price, the underlying commodity and related derivatives markets, and records of all non-swap components of Package Transactions. Each such Person shall make such books and records available, upon request, to the SEF, the SEF's Regulatory Services Provider, the CFTC or the United States Department of Justice and as otherwise required by Applicable Law.
- (b) In addition to the information required by subsection (a) of this Rule 8002, each Member must comply with all applicable requirements of CFTC Regulations 1.31 and 1.35.
- (c) If a Participant cannot enter an Order received from its Customer into the SEF, either directly or indirectly through an Execution Specialist, the Participant must immediately create an electronic record that includes the account identifier that relates to the Customer, time of receipt and terms of the Order.
- (d) Each Person required to keep records in accordance with this Rule 8002 shall keep all books and records in accordance with the SEF Rules for a period of five (5) years from the date on which they are first prepared unless otherwise provided in these Rules or other Applicable Law. Such books and records shall be readily accessible during the first two (2) years of such five-year period, unless otherwise provided in the SEF Rules or other Applicable Law. Each such Person that is a counterparty to a Swap on, or pursuant to the rules of, the SEF shall retain all books and records related to such Swap for the life of the Swap and for a period of at least five (5) years following the final termination of the Swap. Each such Person that is a counterparty to an Uncleared Swap on, or pursuant to the rules of, the SEF shall notify the SEF of any extension of the final termination of the Swap beyond the original stated maturity in order to enable the SEF to comply with Rule 8000(b) and the SEF's obligations under Applicable Law.
- (e) The SEF may require a Member, Customer or Client to furnish any information in connection with such Person's activities on the SEF including (i) information relating to Swaps executed on or pursuant to the rules of the SEF, on or pursuant to the rules of other swap execution facilities, DCMs or in related derivatives markets or to transactions or positions in the products underlying, related to or indexed to those Swaps or to which



those Swaps are indexed (in whole or in part), and (ii) information requested by a Government Agency relating to the SEF and/or the SEF's compliance with Applicable Law that the SEF believes is maintained by, or otherwise in the possession or control of, such Person.

- (f) Each Authorized Trader shall prepare and keep, or cause to be kept, all books, ledgers and other records relating to its activity on the SEF as may be required to enable its related Member to comply with such Member's obligations under this Rule 8002. Each Authorized Trader shall not knowingly take any action that would cause its associated Member to fail to comply with Rule 8002(d), and each Authorized Trader shall cooperate as necessary to enable its associated Member to comply with such Member's obligations under Rule 8002(e).
- (g) Without limiting the generality of the foregoing, with respect to any Swap that has been allocated following execution on or pursuant to the rules of the SEF, all Members, Customers and Clients must prepare and keep, or cause to be kept, all books, ledgers and other records as may be necessary to provide relevant information with respect to such post-trade allocation and will furnish such information to the SEF if the SEF, at the request of the CFTC or otherwise, requests such information. This Rule 8002(g) is intended to comply with the conditions of the no-action relief granted by the CFTC's Division of Market Oversight in No-Action Letter 15-68, expiring at 11:59 p.m. (Eastern Time) on November 15, 2017. If such no-action relief is extended, upon and to the extent of such extension, the provisions of this Rule 8002(g) will continue apply.

### **Rule 8003 Recordkeeping Requirements for Block Trades**

Block Trades submitted to the SEF in accordance with Rule 4016(b) must comply with the following recordkeeping requirements:

- (a) Block Trades must be submitted in the form of a written or electronic record and must include information meeting the requirements of Rule 8001, including, without limiting the generality of the foregoing, Legal Entity Identifier information required by Rule 8001(8) with respect to parties and, where required, their agents, and a timestamp reflecting the date and time that the submission was received by the SEF.
- (b) The record shall also include a timestamp reflecting the date and time that the Transaction was executed or cancelled to the nearest millisecond.

### **Rule 8004 Access to Position Information**

Without limiting any provision of these SEF Rules, the SEF and any Regulatory Services Provider, shall have the authority to obtain from any Participant, Sponsored Participant, Account Manager, Customer or Client, or Supervised Person information with respect to positions of such Person or any Sponsored Participant, Customer or Client, or Supervised Person. This authority shall include the authority to obtain information concerning positions maintained at other firms, and it shall be the obligation of a Participant receiving such an inquiry to obtain such information from its Account Manager, Sponsored Participant, Customer, Client, or any Supervised Person. In the event a Participant Sponsored Participant, Customer, Client, or any Supervised Person

fails to provide the requested information the SEF, in addition to any other remedy provided in these SEF Rules, may order that the Participant, Account Managers, Sponsored Participant, Customer, Client, or any Supervised Person liquidate the positions that are related to the inquiry.

#### **Rule 8005 Reporting to a Swap Data Repository**

(a) The SEF will report each Swap executed on, or pursuant to the rules of, the SEF as soon as technologically practicable after execution to a Swap Data Repository in compliance with Parts 43 and 45 of the CFTC Regulations. The SEF may report to following SDRs (such SDRs, “Approved SDRs”):

- DTCC Data Repository (U.S.) LLC (“DDR”) for Swaps in the Rates, Credit, FX and Equities asset classes, and
- DDR, Chicago Mercantile Exchange Inc. and ICE Trade Vault for Swaps in the Commodities asset class.

Without limiting the generality of the foregoing, for each Swap executed on or pursuant to the rules of the SEF, the SEF will report all required swap creation data, as soon as technologically practicable after execution of the Swap. This report will include all required primary economic terms data and confirmation data for each Swap, as such terms are defined in Section 45.1 of the CFTC Regulations.

(b) The Reporting Counterparty for each Swap shall be established pursuant to CFTC Regulation 45.8. If the identity of the Reporting Counterparty cannot be established under CFTC Regulation 45.8, the ISDA Reporting Counterparty Rules shall be applied as provided in Appendix A hereto.

(c) [Reserved]

(d) If at any time the Reporting Counterparty for a Transaction that was executed on, or pursuant to the rules of, the SEF becomes aware of an error or omission in the swap transaction or pricing data that was reported with respect to such Transaction, either through its own initiative or through notice by the other party to the Transaction, such party shall promptly notify the SEF of the error and/or correction. Upon receiving a notification from the Reporting Counterparty or otherwise becoming aware of an error or omission in the swap transaction or pricing data reported with respect to a Transaction executed on, or pursuant to the rules of, the SEF, the SEF shall promptly submit corrected data to the same Swap Data Repository to which the Transaction was previously reported. For the avoidance of doubt, if a Transaction was incorrectly executed, Rule 5103 shall apply.

(e) No Person shall submit or agree to submit a cancellation or correction for the purpose of re-reporting swap transaction and pricing data in order to gain or extend a delay in public dissemination of accurate swap transaction or pricing data or to otherwise evade Applicable Law, including the reporting requirements set forth in Part 43 of the CFTC Regulations.

- (f) All Swaps executed on, or pursuant to the rules of, the SEF are reported to DDR, except that Swaps in the Commodities asset class are reported to the Approved SDR selected by the parties prior to executing the relevant Swap.

**Rule 8006 Timely Publication of Trading Information**

The SEF will publish trading information as required by Core Principle 9 of Part 37 and by Part 16 of the CFTC Regulations.

Secretary of the Commission  
April 29, 2016

**EXHIBIT B-2**

Amended tpSEF Inc. Rulebook (Marked)

# tpSEF Inc.

## Rulebook

Effective ~~April 12~~May 16, 2016

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## SECTION 1 DEFINITIONS

### **Rule 1000    Definitions**

Unless otherwise specifically provided in the SEF Rules or the context otherwise requires, the following terms have the meanings specified herein.

“*Account Manager*” means an investment manager or other Person acting in a similar capacity that (i) is not an individual, and (ii) acts as an agent and attorney-in-fact to transact Swaps via the SEF in the name and on behalf of a Client. An Account Manager may be a Participant, a Sponsored Participant or a Customer.

“*Affected Person*” has the meaning specified in Rule 3103.

“*Affiliate*” means with respect to any Person, any Person who, directly or indirectly, controls, is controlled by or is under common control with, such other Person.

“*Appeals Panel*” means a panel appointed by the Chief Compliance Officer pursuant to Rule 6015.

“*Applicable Law*” means, with respect to any Person, any DCO Rule, statute, law, regulation, rule or ordinance of any governmental or self-regulatory authority or any DCO applicable to that Person’s activities on or in respect of the SEF, including (without limitation) these SEF Rules, the CEA and CFTC Regulations.

“*Appropriate Minimum Block Size*” means the minimum notional or principal amount established from time to time by the CFTC for a category of Swap that qualifies as a block trade pursuant to CFTC Regulation 43.6. The Appropriate Minimum Block Size is published by the CFTC or its designee from time to time in accordance with CFTC Regulations 43.6 and 43.7 and are included in Appendix D hereto.

[“Approved SDR” has the meaning specified in Rule 8005\(a\).](#)

“*Authorized Representative*” means any natural Person who is employed and authorized by a Participant to represent the Participant in SEF matters pursuant to Rule 3113.

“*Authorized Trader*” means a Person who is appointed, employed or authorized by a Participant (or by a Sponsored Participant) and who has been assigned a User ID by the SEF. Each Authorized Trader: (i) must be a natural Person; (ii) must have been granted Trading Privileges with respect to the trading activities of a Participant (or Sponsored Participant); and (iii) must satisfy any other requirements as may be prescribed by the SEF from time to time.

“*Block Trade*” means a Swap that: (i) has a notional or principal amount at or above the Appropriate Minimum Block Size applicable to such Swap; (ii) is executed pursuant to the SEF Rules and (x) in the case of an Uncleared Block Trade, occurs away from a SEF trading system or platform or (y) in the case of a Cleared Block Trade, is executed on a non-Order Book trading system or platform of the SEF in accordance with Rule 4016(j); and (iii) is a

publicly reportable swap transaction that is reported subject to the rules and procedures of the SEF and Part 43 of the CFTC Regulations.

“*Board*” means the board of directors of the SEF.

“*Business Day*” means a day on which the SEF is open for trading as provided on the SEF website.

“*By-Laws*” means the by-laws of the SEF.

“*CCO*” means the Chief Compliance Officer of the SEF.

“*CEA*” means the Commodity Exchange Act, as amended.

“*CEO*” means the Chief Executive Officer of the SEF.

“*Chief Executive Officer*” means the chief executive officer of the SEF appointed pursuant to the By-Laws and Rule 2200.

“*CFTC*” means the U.S. Commodity Futures Trading Commission.

“*CFTC Regulations*” means the rules and regulations promulgated by the CFTC, as amended.

“*Cleared Block Trade*” means a Block Trade in a Cleared Swap.

“*Cleared Swap*” means (i) a Swap that is subject to the Clearing Requirement, or (ii) any Swap of a type that is accepted by a DCO for clearing that the parties have elected to submit for clearing, whether or not the particular Swap is accepted or rejected.

“*Clearing Firm*” means a Clearing Member that provides clearing services to one or more Participants, Sponsored Participants, Clients or Customers and has executed a Clearing Firm Agreement.

“*Clearing Firm Agreement*” means the agreement between the SEF and a Clearing Firm. Such Clearing Firm Agreement shall enumerate (i) the DCOs of which the Clearing Firm is a member, (ii) the Persons for whom the Clearing Firm provides clearing services and (iii) if the Clearing Firm does not clear at all such DCOs for all such Persons, a per-Person list of the DCOs at which it does clear for such Person. The Clearing Firm shall be entitled to update this information in its sole discretion by written notice to the SEF and upon receipt of such notice, the SEF shall take such action necessary to effect the Clearing Firm’s modifications as promptly as practicable. For the avoidance of doubt, notwithstanding that such notice has not yet been provided or such modifications made, if the Clearing Firm has ceased to provide clearing services to a Person on any or all DCOs, the Clearing Firm may reject all such Person’s trades during the pre-execution credit check described in Rule 4017.

“*Clearing Member*” means a member of a DCO that is authorized to clear trades in Swaps for itself or others.

“*Clearing Requirement*” means the mandatory clearing requirement set forth in Section 2(h)(1) of the CEA.

“*Client*” means a Person that granted in writing to an Account Manager investment discretion on behalf and in the name of such Person.

“*Confirmation*” means a written record of all the terms of a Transaction as required by Applicable Law.

“*Correcting Transaction*” has the meaning specified in Rule 4013.A.(f).

“*CTP*” means customer type identification code.

“*Customer*” means a Person for whom an Introducing Broker, as agent, (i) enters Orders and/or engages in Transactions on the SEF, and/or (ii) submits Uncleared Block Trades pursuant to the SEF Rules. A Customer may be a Participant.

“*DCM*” means a designated contract market as defined in CFTC Regulation 1.3(h).

“*DCO*” means a derivatives clearing organization as defined in Section 1a(15) of the CEA, ~~or non-U.S. central clearing counterparty recognized or approved by the CFTC (either through formal CFTC action or through CFTC staff no-action relief);~~ that is registered with, or has been exempted from registration by, the CFTC and that provides clearing services with respect to any Swaps traded on, or pursuant to the rules of, the SEF.

“*DCO Rules*” means the relevant organizational documents of a DCO and any relevant 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 DCO.

“*DDR*” has the meaning specified in Rule 8005(a).

“*Deal Management System*” or “*DMS*” means the SEF’s back-end system that facilitates post-trade processing and that can be used by Execution Specialists to execute Permitted Transactions. The DMS is not accessible by market participants.

“*Director*” means a Board director.

“*Disclosable Financial Interest*” means the position information contained in CFTC Regulation 1.69(b)(2)(iii)(A)-(E).

“*Disciplinary Action*” means any inquiry, investigation, disciplinary proceeding, appeal from a disciplinary proceeding, summary imposition of fines, summary suspension or other summary action.

“*Disciplinary Offense*” means any of the following violations, which, in each case, arises out of a proceeding or action that is brought by the SEF, a Self-Regulatory Organization, the CFTC or any federal or state agency or other governmental body:

- (1) Any violation of the rules of the SEF or the rules of a Self-Regulatory Organization except those violations related to (i) decorum or attire, (ii) financial requirements or (iii) reporting or recordkeeping unless resulting in fines aggregating more than \$5,000 within any calendar year;
- (2) Any violation described in paragraph (1)(i) – (iii) immediately above that involves fraud, deceit or conversion or results in a suspension or expulsion;
- (3) Any violation of the CEA or CFTC Regulations; or
- (4) Any failure to exercise supervisory responsibility with respect to acts described in paragraphs (1) – (3) immediately above when such failure is itself a violation of the rules of the SEF, the rules of a Self-Regulatory Organization, the CEA or the CFTC Regulations.

“*Disciplinary Panel*” means the panel appointed by the Chief Compliance Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in Section 6 of the SEF Rules.

“*Displayed Order*” has the meaning specified in Rule 4011(a)(2).

“*ECP*” means an “eligible contract participant” as defined in Section 1a(18) of the CEA and CFTC Regulations thereunder.

“*Emergency*” means any occurrence or circumstance that, in the opinion of the SEF, requires immediate action and threatens, or may threaten, the fair and orderly trading in, or the clearance, settlement or integrity of, any Swap, including, without limitation, the following:

- (1) any circumstance that may materially affect the performance of the parties to a Swap, including failure of a DCO;
- (2) any action taken by (i) any United States or foreign regulatory, self-regulatory, judicial, arbitral or governmental (whether national, state or municipal) or quasi-governmental authority, or any agency, department, instrumentality or subdivision thereof; (ii) other Person exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or (iii) any other swap execution facility, DCO, DCM, board of trade or other exchange or trade association (foreign or domestic) that may have a direct impact on trading on the SEF or the clearing and settlement of, or the legality or enforceability of, any Swap;
- (3) any actual, attempted or threatened corner, squeeze, congestion, manipulative activity or undue concentration of positions in a Swap or any related asset;
- (4) any circumstance that may have a severe, adverse impact upon the functions and facilities of the SEF, including, but not limited to, acts of God, fire, flood or other natural disasters, bomb threats, acts of terrorism or war, severely inclement weather or failure or malfunction of all or a portion of the SEF, or

other system breakdowns or interruptions such as power, computer, communication or transportation systems or the Internet;

- (5) the imposition of any injunction or other restraint by any government agency, court or arbitrator upon a DCO which may affect the ability of a DCO to perform on a Swap;
- (6) any circumstance in which it appears to the Board that a DCO or any other Person:
  - (i) has failed to perform on a Swap;
  - (ii) is insolvent; or
  - (iii) is in a financial or operational condition or is conducting business such that the DCO or Person cannot be permitted to continue in business without jeopardizing the safety of Participants, the SEF, any DCO or any other Person;
- (7) any other circumstance that would constitute an “emergency” within the meaning of CFTC Regulation 40.1(h); or
- (8) any other unusual, unforeseeable or adverse circumstance that may have an effect similar to any of the foregoing as determined by the SEF.

“*Emergency Action*” means any action taken by the SEF in its discretion, in consultation with the CFTC and/or relevant DCO as necessary and practicable, in response to an Emergency, including, without limitation, any of the following actions:

- (1) suspending or curtailing trading or limiting trading (in whole or in part);
- (2) ordering the fixing of a settlement price, or the reduction of positions;
- (3) extending, limiting or changing the Trading Hours;
- (4) temporarily modifying or suspending any provision of the SEF Rules or Obligations;
- (5) imposing or modifying price limits;
- (6) altering any contract’s settlement terms or conditions;
- (7) imposing or modifying position limits; and/or
- (8) ordering any other action or undertaking to address or relieve the Emergency.

“*Emergency Rules*” has the meaning specified in Rule 7000.

“*End-User Exempt Transaction*” shall mean a Transaction exempt from the Clearing Requirement due to an election to use the End-User Clearing Exception.

“*End-User Clearing Exception*” means the exception from the Clearing Requirement set forth in Section 2(h)(7) of the CEA and CFTC Regulation 50.50 or any CFTC No-Action Letter or guidance.

“*Error*” has the meaning specified in Rule 5103.C.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*Execution Specialist*” means a SEF employee responsible for assisting Participants and Sponsored Participants (and any of their Supervised Persons) in entering on the SEF Orders and Transactions and receiving reports of Uncleared Block Trades.

“*Family Relationship*” means, with respect to any natural person, such natural person’s spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.

“*FCM*” means futures commission merchant as defined under Section 1a(28) of the CEA.

“*Government Agency*” means any governmental entity, body or agency of any government (including the United States, a state or foreign government).

“*Interested Person*” has the meaning specified in Rule 2500.

“*Introducing Broker*” is a Participant that (i) is a registered or exempt FCM or introducing broker (as defined in Section 1a(31) of the CEA and CFTC Regulation 1.3(mm)), and (ii) enters Orders or engages in Transactions on the SEF, and/or submits Uncleared Block Trades pursuant to the SEF Rules, on behalf of one or more Customers.

“*Instrument Reference Price*” has the meaning specified in Rule 4003.B.(d)(1).

“*Investigation Report*” means any written report of investigation prepared by the Market Regulation Department.

“*ISDA*” means the International Swaps and Derivatives Association, Inc.

“*ISDA Reporting Counterparty Rules*” means the rules identified in Appendix A hereto, as may be amended from time to time, for establishing a Reporting Counterparty under the circumstances where CFTC Regulation 45.8 does not determine a Reporting Counterparty (for example, because both counterparties are Swap Dealers or both counterparties are Major Swap Participants) as published by ISDA under the title “Dodd Frank Act – Swap Transaction Reporting Party Requirements” as such rules may be amended, restated, supplemented or otherwise modified or replaced from time to time.

“*ISV*” means independent software vendor.

“*Legal Entity Identifier*” has the meaning set forth in Part 45 of the CFTC Regulations.

“*Major Swap Participant*” has the meaning set forth in Section 1a(33) of the CEA and CFTC Regulations thereunder.

“*Market Regulation Department*” means the department within the SEF that regulates compliance with the SEF Rules. For purposes of the SEF Rules, Market Regulation Department may, as applicable, also include any Regulatory Services Provider pursuant to a Regulatory Services Agreement.

“*MAT/Agency MBS Package Transaction*” has the meaning set forth in CFTC No-Action Letter 14-137.

“*MAT/Futures Package Transaction*” has the meaning set forth in CFTC No-Action Letter 15-55.

“*MAT/MAT Cleared Package Transaction*” means a Package Transaction, all components of which are made available to trade and which is not an End-User Exempt Transaction.

“*MAT/New Issuance Bond Package Transaction*” has the meaning set forth in CFTC No-Action Letter 15-55.

“*MAT/Non-CFTC Swap Package Transaction*” has the meaning set forth in CFTC No-Action Letter 15-55.

“*MAT/Non-MAT Cleared Package Transaction*” has the meaning set forth in CFTC No-Action Letter 15-55.

“*MAT/Non-MAT Uncleared Package Transaction*” has the meaning set forth in CFTC No-Action Letter 15-55.

“*MAT/Non-Swap Instruments Package Transaction*” has the meaning set forth in CFTC No-Action Letter 15-55, and shall, for the avoidance of doubt, exclude (1) U.S. Dollar Swap Spreads; (2) MAT/Futures Package Transactions; (3) MAT/Agency MBS Package Transactions; and (4) MAT/New Issuance Bond Package Transactions.

“*Material Adverse Change*” means a significant event that negatively affects the subject referenced.

“*Material Conflict of Interest*” means a Director, Officer, panel member or other Person:

- (1) being named as a respondent or potential respondent or a witness or potential witness in a Self-Regulatory Action;
- (2) being an employer, employee, fellow employee or an Affiliate of a respondent or potential respondent or a witness or potential witness in the Self-Regulatory Action;



- (3) having any significant, ongoing business relationship with a respondent or potential respondent or a witness or potential witness in the Self-Regulatory Action;
- (4) having a Family Relationship with a respondent or potential respondent or a witness or potential witness in a Self-Regulatory Action (including the individual's spouse, co-habitator, former spouse, parent, stepparent, child, step child, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece, father-in-law, mother-in-law, brother-in-law or sister-in-law);
- (5) having a direct and substantial financial interest in the result of the deliberations or vote as referenced in CFTC Regulation 1.69, other than a direct or indirect equity or other interest in the SEF's Affiliates, that could reasonably be expected to be affected by the action. A direct and substantial financial interest includes positions in Swaps in accounts of, controlled by, or affiliated with the Director, Officer, panel member or other Person or in any other types of direct and substantial financial positions of the Director, Officer, panel member or other Person that are reasonably expected to be affected by the deliberations or vote; and/or
- (6) any other circumstance that gives rise to a conflict between the Director's, Officer's, panel member's or other Person's exercise of authority concerning any SEF Proceeding and his or her personal interests.

“*Member*” has the meaning specified in Section 1a(34) of the CEA and shall include for purposes of the SEF Rules all Participants (including Sponsoring Participants) and all Sponsored Participants.

“*Membership Interests*” means financial institutions that vary as to their jurisdiction of organization, size, registration and regulatory status, primary business and business model.

“*Named Party in Interest*” has the meaning specified in CFTC Regulation 1.69(a)(6).

“*NFA*” means the National Futures Association.

“*Non-Self-Clearing*” means, with respect to a DCO and any particular Swap, a Participant, Sponsored Participant, Client or Customer that is not a Clearing Member with respect to the related DCO and Swap.

“*Notice to Participants*” has the meaning specified in Rule 3108.

“*Obligation*” means any and all duties and/or responsibilities arising under each SEF Rule, order or procedure issued by the SEF (including Notices to Participants) and other requirements implemented by the SEF under the SEF Rules, including the terms and conditions of each Swap, as well as any contractual obligations between a Participant and the SEF.

“*Off-Book Ticket Functionality*” means the functionality provided within the OMS that allows for the execution of Permitted Cross Transactions away from the Order Book. This

functionality is available to market participants only for Transactions in the Rates asset class and for Transactions that are non-deliverable forwards.

“*Officer*” has the meaning specified in Rule 2200.

“*Offsetting Transaction*” has the meaning specified in Rule 4013.A.(f).

“*Order*” means a firm bid or offer for a Swap.

“*Order Book*” means the trading systems operated by the SEF in which any Participant or any market participant acting through a Participant has the ability to enter multiple bids and offers, observe or receive bids and offers entered by other Participants, and transact on such bids and offers. All bids and offers on the Order Book shall be Orders (*i.e.*, firm bids or offers and not indications of interest or indicative quotes), and all Orders shall be displayed on the Order Book on an anonymous basis. Any market participant who wishes to connect to and use the Order Book may choose to do so, as more fully described in Rule 4003.B. The Order Book is available for all Swaps listed for trading by the SEF.

“*Order Management System*” or “*OMS*” means the SEF’s front-end system that houses the Order Book, as well as the SEF’s Off-Book Ticket Functionality. Market participants may connect to the OMS via a graphical user interface (GUI) or an application program interface (API), which allows third-party trading systems to interact with the OMS. Please contact the SEF for more information regarding the establishment of a connection to the OMS.

“*Package Transaction*” means a transaction involving two or more instruments: (1) that is executed between two or more counterparties; (2) that is priced or quoted as one economic transaction with simultaneous or near simultaneous execution of all components; (3) that has at least one component that is a Swap that is a Required Transaction; and (4) where the execution of each component is contingent upon the execution of all other components. No Swaps are prohibited from being executed on the SEF as part of a Package Transaction. The categories of Package Transactions currently executed on the SEF are: (i) MAT/MAT Cleared Package Transactions; (ii) MAT/Non-MAT Cleared Package Transactions; and (iii) MAT/Non-MAT Uncleared Package Transactions. The categories of Package Transactions currently facilitated by the SEF are: (i) MAT/Non-Swap Instruments Package Transactions (MAT/Bonds only); (ii) US Dollar Swap Spreads; and (iii) MAT/Futures Package Transactions (MAT/Eurodollar Futures only). Such facilitation is done by the SEF’s providing an execution venue for the Swap legs and reference price information regarding the non-Swap legs. The reference price is made available to Participants for informational purpose only. The SEF does not execute the non-Swap legs of Package Transactions; the counterparties to any Package Transaction involving a non-Swap component must bilaterally execute such non-Swap component away from the SEF.

“*Package Transaction (Order Book Exempt)*” is a Package Transaction for which the CFTC has granted currently-effective no-action relief or an exception or exemption from the requirements of Section 2(h)(8) of the CEA and/or CFTC Regulation 37.9. Pursuant to CFTC No-Action Letter 15-55, the following are Package Transactions (Order Book Exempt) until 11:59 p.m. (Eastern Time) on November 15, 2016: (a) MAT/New Issuance Bond Package

Transactions; (b) MAT/Futures Package Transactions; (c) MAT/Non-MAT Uncleared Package Transactions; (d) MAT/Non-Swap Instruments Package Transactions; and (e) MAT/Non-CFTC Swap Package Transactions. If any such no-action relief is extended, upon and to the extent of such extension, the relevant Package Transaction will continue to be a Package Transaction (Order Book Exempt) for purposes of the SEF Rules.

“*Participant*” means any Person, other than an ISV, that has been admitted by the SEF as a “Participant” and that has been granted, and continues to have, Trading Privileges.

“*Participation Criteria*” means the criteria set forth in Rule 3000(a).

“*Permitted Transaction*” shall have the meaning provided in CFTC Regulation 37.9(c)(1).

“*Permitted Cross Transaction*” means a Permitted Transaction submitted to the SEF for execution either directly or via an Execution Specialist following some form of permitted pre-arrangement or pre-negotiation between or among the parties.

“*Person*” means a natural person or an entity.

“*Personal Information*” means personally identifiable information or data concerning or relating to a Person’s employees, customers or prospective customers.

“*Proprietary Data*” means, with respect to any Person, any information that separately discloses business transactions, market positions or trade secrets of such Person.

“*Public Director*” means any Director who qualifies as a “Public Director” within the meaning of the By-Laws.

“*Regulatory Oversight Committee*” means the committee described in Rule 2401.

“*Regulatory Services Agreement*” means the agreement(s) between the SEF and Regulatory Services Provider(s), under which market surveillance and trade practice surveillance functions are delegated to the Regulatory Services Provider.

“*Regulatory Services Provider*” means the organization, if any, which provides regulatory services to the SEF pursuant to a Regulatory Services Agreement. The SEF’s Regulatory Services Provider is currently the NFA.

“*Related Party*” has the meaning given in Rule 6028.

“*Reporting Counterparty*” has the meaning set forth in Part 45 of the CFTC Regulations.

“*Required Transaction*” shall have the meaning provided in CFTC Regulation 37.9(a)(1), as may be amended from time to time.

“*Required Cross Transaction*” means a Required Transaction (other than a Block Trade or Package Transaction (Order Book Exempt)) (x) in which a Participant acting as a broker or dealer seeks to either execute against its customer’s Order or execute two of its customers’

Orders against each other, and (y) that is submitted for execution on the Order Book, either directly or via an Execution Specialist, following some form of permitted pre-arrangement or pre-negotiation.

“*Resting Quote*” means any firm bid or offer displayed on the Order Book of the SEF.

“*Review Panel*” means a panel responsible for determining whether a reasonable basis exists for finding a violation of the SEF Rules or other provision of Applicable Law for which the SEF has disciplinary jurisdiction, and for authorizing the issuance of notices of charges against Persons alleged to have committed violations if the Review Panel believes that the matter should be adjudicated.

“*Risk Mitigation Sessions*” has the meaning specified in Rule 4018.

“*ROC*” means the Regulatory Oversight Committee of the SEF.

“*RSA*” means a Regulatory Services Agreement.

“*SEC*” means the U.S. Securities and Exchange Commission.

“*SEF*” means the swap execution facility operated by tpSEF Inc. or any successor thereto.

“*SEF Official*” means any Director or Officer of, or individual employed directly by, the SEF, the Regulatory Services Provider or any individual rendering similar services to the SEF under an administrative or similar agreement.

“*SEF Panel*” means any Review Panel, Disciplinary Panel, Appeals Panel or any other disciplinary or oversight panel of the SEF and any subcommittee thereof.

“*SEF Proceeding*” and “*SEF Proceedings*” means any inquiry, investigation, disciplinary proceeding or any appeal from a disciplinary proceeding, summary suspension or other summary actions.

“*SEF Rules*” means the rules of the SEF as set forth herein, as may be amended from time to time by the SEF.

“*Self-Clearing*” means, as to any DCO and Swap, a Participant, Sponsored Participant, Client or Customer that is a Clearing Member of the relevant DCO with respect to such Swap.

“*Self-Regulatory Action*” means an Emergency Action or a SEF Proceeding.

“*Self-Regulatory Organization*” means the Financial Industry Regulatory Authority, the NFA or any other self-regulatory organization under the CFTC Regulations or the rules and regulations of the SEC.

“*Significant Action*” has the meaning specified in CFTC Regulation 1.69(a)(8).

“*Sponsored Participant*” means a third-party ECP that is extended Trading Privileges by a Sponsoring Participant pursuant to Rule 3110.

“*Sponsoring Participant*” means a Participant that extends Trading Privileges to a Sponsored Participant pursuant to Rule 3110.

“*Supervised Persons*” means Authorized Traders, directors, officers, employees or agents of any Participant or Sponsored Participant.

“*Swap*” means any “swap” as defined in CEA Section 1a(47) that has been listed for trading on the SEF.

“*Swap Data Repository*” or “*SDR*” has the meaning set forth in Section 1a(48) of the CEA.

“*Swap Dealer*” has the meaning set forth in Section 1a(49) of the CEA.

“*Swap Specification*” means, with respect to any Swap, the specifications for such Swap as set forth in Appendix B hereto, including any materials incorporated by reference therein.

“*Terms Incorporated by Reference*” has the meaning given in Rule 4012.

“*tpSEF Risk Mitigation Procedures*” means the SEF’s procedures for Risk Mitigation Sessions, which are attached hereto as Appendix C.

“*Trade Communication*” has the meaning given in Rule 4012.

“*Trading Hours*” means, for any Business Day, the hours specified in Rule 4000 below.

“*Trading Privileges*” means the right granted to a Participant by the SEF, or extended to a Sponsored Participant by a Sponsoring Participant, to use the SEF for execution of Swaps, in each case acting through one or more Authorized Traders.

“*Transaction*” means any Swap transacted on the SEF in accordance with the SEF Rules or, in the case of an Uncleared Block Trade, transacted away from a SEF trading system or platform in accordance with the SEF Rules.

“*Uncleared Block Trade*” means a Block Trade other than a Cleared Block Trade.

“*Uncleared Swap*” means a Swap other than a Cleared Swap.

“*User ID*” means a unique identifier issued to each Authorized Trader of a Participant that enables the SEF to identify the individual.

“*U.S. Dollar Swap Spread*” has the meaning set forth in CFTC No-Action Letter 15-55.

“*USI*” means a unique swap identifier created by the SEF pursuant to Part 45 of the CFTC Regulations.

“*Waiting Order*” has the meaning specified in Rule 4011(a)(2).

## **SECTION 2 SEF GOVERNANCE**

### **Rule 2000    The SEF**

The SEF is a corporation organized under the laws of the state of Delaware. The By-Laws of the SEF govern the management and operation of the SEF.

## **BOARD**

### **Rule 2100    Board**

- (a) The Officers shall manage the day-to-day business operations of the SEF. The Board has the power and authority to oversee, and to affirm, modify, suspend or overrule, any and all decisions and actions of any committees of the Board or any panel of Officers related to the day-to-day business operations of the SEF.
- (b) The Board will determine which Swaps are available from time to time for trading subject to the SEF Rules, and will approve specifications for such Swaps; provided that the Board may delegate the authority to approve such rules to a SEF committee or to one or more Officers of the SEF; provided, further, that certifications or applications with respect to such rules will be submitted to the CFTC as required by the CEA and any regulations thereunder.
- (c) The Board may act only by the decision of an absolute majority in number of the Directors by vote at a meeting, by unanimous written consent without a meeting, or as otherwise set forth in the By-Laws. In the event of an Emergency, which in the judgment of the CEO (or, in his absence, the most senior Officer present) requires immediate action, a special meeting of the Board may be convened without notice, consisting of those Directors who are immediately available in person or by telephone and can be joined in the meeting in person or by conference telephone. The actions taken at such a meeting shall be effective if at least a quorum of the Directors participates either personally or by conference telephone.
- (d) At all times, at least 35% of the Directors shall be Public Directors. Each Director (including Public Directors) shall be appointed in accordance with the By-Laws and shall serve until his or her successor is duly appointed or until his or her earlier resignation or removal, with or without cause. The Directors shall include members who have had relevant experience in some capacity (whether as a current or former employee, officer, director, principal, consultant, advisor, service provider or otherwise) working with or for a diversity of Membership Interests.
- (e) Each Director is entitled to indemnification pursuant to the By-Laws with respect to matters relating to the SEF.

- (f) To qualify as a Director, an individual must meet the qualifications for directors set forth in the By-Laws, and to qualify as a Public Director, an individual must meet the qualifications for “Public Directors” set forth in the By-Laws.
- (g) Without limitation of any other provisions of this Rule 2100, the provisions of Article III of the By-Laws shall be deemed to be part of the SEF Rules and shall be deemed to be incorporated herein, to the same extent and with the same force and effect as if set forth herein in their entirety.

## **OFFICERS**

### **Rule 2200 Officers**

- (a) The Board shall appoint a Chief Executive Officer, a Chief Compliance Officer, and such other officers of the SEF (all of the foregoing, collectively, the “Officers”) as it may deem necessary or appropriate from time to time, in accordance with the By-Laws.
- (b) Any Officer may also be a director, officer, partner or employee of the SEF or any of its Affiliates.
- (c) The Officers shall have such powers and duties in the management of the SEF as the Board may prescribe from time to time.
- (d) Each Officer is entitled to indemnification pursuant to the By-Laws with respect to matters relating to the SEF.

### **Rule 2201 Chief Compliance Officer**

- (a) The Board shall designate an individual to serve as the Chief Compliance Officer and shall approve the compensation of the Chief Compliance Officer. Removal of the Chief Compliance Officer shall require the approval of a majority of the Board. The SEF shall notify the CFTC of the removal of the Chief Compliance Officer and the appointment of any new Chief Compliance Officer, whether interim or permanent, within two Business Days of such removal and appointment.
- (b) The Chief Compliance Officer’s duties shall include, but are not limited to, the following:
  - (1) overseeing and reviewing the SEF’s compliance with Applicable Law, including, without limitation, Section 5h of the CEA and related CFTC Regulations;
  - (2) in consultation with the CEO and such others, including, without limitation, the Board and/or the Regulatory Oversight Committee, as deemed appropriate and necessary, resolving any conflicts of interest that may arise, including: (i) conflicts between business considerations and compliance requirements; (ii) conflicts between business considerations and the requirement that the SEF



provide fair, open and impartial access as set forth in the CFTC Regulations; and (iii) conflicts between the SEF's management and members of the Board;

- (3) establishing and administering written policies and procedures reasonably designed to prevent violations of the CEA and CFTC Regulations;
  - (4) taking reasonable steps to ensure compliance with the CEA and CFTC Regulations;
  - (5) establishing procedures for the remediation of noncompliance issues identified by the Chief Compliance Officer through compliance office reviews, look-backs, internal or external audit findings, self-reported errors or validated complaints;
  - (6) establishing and following appropriate procedures for the handling, management response, remediation, retesting and closing of noncompliance issues;
  - (7) establishing and administering a compliance manual designed to promote compliance with Applicable Law and a written code of ethics designed to prevent ethical violations and to promote honesty and ethical conduct;
  - (8) supervising the SEF's self-regulatory program with respect to trade practice surveillance, market surveillance, real-time market monitoring, compliance with audit trail requirements, enforcement and disciplinary proceedings, audits, examinations and other regulatory responsibilities with respect to Participants, Customers, Clients, Authorized Traders and other market participants (including seeking to ensure compliance with, if applicable, financial integrity, financial reporting, sales practice, recordkeeping and other requirements);
  - (9) supervising the effectiveness and sufficiency of any regulatory services provided to the SEF by a Regulatory Services Provider; and
  - (10) preparing and filing the annual compliance report as required under the CEA and applicable CFTC Regulations.
- (c) The Chief Compliance Officer shall have available to him or her at all times the authority and the resources of the Market Regulation Department and such other resources as may be necessary to develop and enforce policies and procedures necessary to fulfill the duties set forth for chief compliance officers of swap execution facilities in the CEA and the CFTC Regulations. The Chief Compliance Officer shall have supervisory authority over all staff of the Market Regulation Department and all other compliance staff.
- (d) The Chief Compliance Officer shall report directly to the ~~Chief Executive Officer~~ [Board](#). The Chief Compliance Officer shall have the authority to inspect the books and records of all Participants and the authority to require any Participant to appear before him or her and produce its books and records and answer questions regarding alleged violations of the SEF Rules or other provision of Applicable Law for which the SEF

has disciplinary jurisdiction, at the time, place and in the manner it designates. The Chief Compliance Officer may also delegate such authority to staff of the Market Regulation Department and/or the Regulatory Services Provider.

## QUALIFICATIONS

### **Rule 2300 Qualification of Chief Compliance Officer**

- (a) The Chief Compliance Officer shall have the background and skills appropriate for fulfilling the responsibilities of the position.
- (b) The Chief Compliance Officer may not be disqualified from registration pursuant to Section 8a(2) or (3) of the CEA.

### **Rule 2301 Qualifications of Directors, Panel Members, Committee Members and Officers**

- (a) A Director or Officer must meet the qualifications set forth from time to time in the By- Laws.
- (b) An individual may not serve as a Director or an Officer, hold a 10% or more ownership interest in the SEF or serve on a committee established by the Board (including the Regulatory Oversight Committee) or any SEF Panel if the individual:
  - (1) within the prior three (3) years has been found by a final decision of the SEF, a Self-Regulatory Organization, an administrative law judge, a court of competent jurisdiction or a Government Agency to have committed a Disciplinary Offense;
  - (2) within the prior three (3) years has entered into a settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged, included a Disciplinary Offense;
  - (3) is currently suspended from trading on a DCM, is suspended or expelled from membership in a Self-Regulatory Organization, is serving any sentence or probation or owes any portion of a fine or penalty related to either:
    - (i) a finding of a Disciplinary Offense by a final decision of the SEF, a Self-Regulatory Organization, an administrative law judge, a court of competent jurisdiction or a Government Agency; or
    - (ii) a settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a Disciplinary Offense;
  - (4) is currently subject to an agreement with a Government Agency, the SEF or a Self-Regulatory Organization not to apply for registration with the Government Agency or for membership in the SEF or the Self-Regulatory Organization;

- (5) is currently, or within the past three (3) years has been, subject to a revocation or suspension of registration by the CFTC for any reason;
  - (6) has been convicted of a felony listed in Section 8a(2)(D)(ii) through (iv) of the CEA; or
  - (7) is currently subject to a denial, suspension or disqualification from serving on a disciplinary committee, arbitration panel or governing board of any self-regulatory organization as that term is defined in Section 3(a)(26) of the Exchange Act.
- (c) Any Director, Officer, member of a committee established by the Board, any SEF Panel member, any individual nominated to serve in any such role or any individual authorized by the Regulatory Oversight Committee to take summary action shall immediately notify the Chief Executive Officer or the Chief Compliance Officer if such individual meets one or more of the criteria in Rule 2301(b).
- (d) For purposes of Rule 2301(b), the terms “final decision” and “settlement agreement” have the meanings set forth in CFTC Regulation 1.63(a).

## **BOARD COMMITTEES**

### **Rule 2400 [Reserved]**

### **Rule 2401 Regulatory Oversight Committee**

- (a) The Regulatory Oversight Committee of the Board shall be composed entirely of Public Directors appointed by the Board.
- (b) Each member of the Regulatory Oversight Committee shall serve for a term of two (2) calendar years from the date of his or her appointment or until such person ceases to be Public Director or until removed from the ROC by the Board. A member of the Regulatory Oversight Committee may serve for multiple terms.
- (c) The Regulatory Oversight Committee shall oversee the SEF’s regulatory program on behalf of the Board. The Board shall delegate sufficient authority, dedicate sufficient resources, and allow sufficient time for the Regulatory Oversight Committee to fulfill its mandate. It shall make such recommendations to the Board that, in its judgment, will best promote the interests of the SEF. The Regulatory Oversight Committee shall also have such other powers and perform such other duties as set forth in the SEF Rules and as the Board may delegate to it from time to time.
- (d) Without limiting the generality of the foregoing, the Regulatory Oversight Committee shall have authority to:
  - (1) monitor the regulatory program of the SEF for sufficiency, effectiveness, and independence;

- (2) oversee all facets of the regulatory program, including:
  - (i) trade practice and market surveillance; audits, examinations, and other regulatory responsibilities with respect to Participants (including compliance with, if applicable, financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and the conduct of investigations;
  - (ii) reviewing the size and allocation of the regulatory budget and resources, and the number, hiring, termination and compensation of regulatory personnel;
  - (iii) reviewing the performance of the Chief Compliance Officer of the SEF and making recommendations regarding such performance to the CEO;
  - (iv) recommending changes that would ensure fair, vigorous, and effective regulation; and
  - (v) reviewing all regulatory proposals prior to implementation and advising the Board as to whether and how such changes may impact regulation.
- (e) The Regulatory Oversight Committee reports to the Board.

## **CONFLICTS OF INTEREST**

### **Rule 2500 Conflicts of Interest and Misuse of Material, Non-Public Information**

- (a) A Director, Officer, SEF Panel member or other Person authorized to exercise the SEF's authority concerning a Self-Regulatory Action who knowingly has a Material Conflict of Interest between (i) his or her position as a Director, Officer or SEF Panel member, or the exercise of authority concerning a Self-Regulatory Action, and (ii) his or her personal interests (each, an "Interested Person") may not participate in any deliberations or vote of the Board (which includes for purposes hereof a Board committee) or SEF Panel, or exercise any authority with respect to the Self-Regulatory Action, involving his or her personal interest, except as described below.
- (b) Before considering any Self-Regulatory Action, an Interested Person must disclose in writing to the Board the material facts concerning his or her relationship or interest in the matter.
- (c) Any Interested Person who would be required otherwise to abstain from deliberations and voting or the exercise of authority pursuant to paragraph (a) above as a result of having Material Conflict of Interest may participate in deliberations, prior to a vote on the matter, if:
  - (1) the material facts about the Interested Person's interest in the matter are disclosed or known to the Board or SEF Panel;

- (2) the Board determines that the participation by the Interested Person would be consistent with the public interest; and
  - (3) a majority of the Directors (excluding any Interested Persons) vote to allow the Interested Person to participate in deliberations on the matter.
- (d) If a determination is made pursuant to paragraph (c) that an Interested Person may participate in deliberations prior to a vote, then the minutes of the meeting of the Board or committee thereof will reflect the determination and the reasons for the determination.
- (e) If a determination is made that all Directors are Interested Persons with respect to a matter subject to a vote by the Board, the Chief Executive Officer will appoint a panel of individuals who are not Interested Persons with respect to such matter, which will have the same authority and powers over such matter that the Board would have if the Directors were not Interested Persons with respect to such matter.
- (f) No Director, Officer, member of any committee or panel established by the Board or any employee or consultant of the SEF shall use or disclose, either during his or her association with the SEF or thereafter, for any purpose other than the performance of his or her official duties and responsibilities as a Director, Officer, committee or panel member or employee or consultant any confidential information, including any material, non-public information obtained as a result of the individual's duties and responsibilities as a Director, Officer, committee or panel member or employee or consultant. Any Director, Officer, committee or panel member or employee or consultant in possession of confidential information shall take all appropriate steps to safeguard the information and to protect it against disclosure, misuse, espionage, loss and theft.
- (g) Notwithstanding paragraph (f) above, a Director, Officer, member of any committee or panel established by the Board or employee or consultant of the SEF may disclose confidential information in the course of his or her official duties and may also make disclosures in his or her official capacity to the CFTC, any Self-Regulatory Organization, a court of competent jurisdiction or any Government Agency or pursuant to Applicable Law.
- (h) No Director, Officer, or member of any committee or panel established by the Board, no employee of the SEF and no consultant to the SEF shall:
  - (1) trade for such Person's own account, or for or on behalf of any other account, on the basis of any material, non-public information obtained through the performance of such Person's official duties;
  - (2) use or disclose, for any purpose other than the performance of such Person's official duties, any material, non-public information obtained by such Person as a result of such Person's official duties; *provided, however*, that this Rule shall not prohibit disclosures made by such Person in the course of his or her official duties or disclosures made to the CFTC, any Self-Regulatory Organization, a

court of competent jurisdiction or any Government Agency or pursuant to Applicable Law; or

- (3) trade, directly or indirectly, in (i) any Swap traded on the SEF, (ii) any related commodity interest (as defined in CFTC Regulation 1.59(a)), or (iii) any commodity interest traded on any DCM or SEF or cleared by any DCO if such Person has access to material non-public information concerning such commodity interest.

#### **Rule 2501 Voting by Interested Parties**

(a) Relationship with Named Party in Interest.

- (1) A member of the Board, any committee established by the Board (including the Regulatory Oversight Committee) or any SEF Panel must abstain from such body's deliberations and voting on any matter involving a Named Party in Interest where such member:
  - (i) is a Named Party in Interest;
  - (ii) is an employer, employee or fellow employee of a Named Party in Interest;
  - (iii) is associated with a Named Party in Interest through a "broker association" as defined in CFTC Regulation 156.1;
  - (iv) has any other significant, ongoing business relationship with a Named Party in Interest, not including relationships limited to executing futures or option transactions opposite of each other or to clearing futures or option transactions through the same clearing member; or
  - (v) has a Family Relationship with a Named Party in Interest.
- (2) Prior to the consideration of any matter involving a Named Party in Interest, each member of the SEF's Board, any committee established by the Board (including the Regulatory Oversight Committee) or any SEF Panel must disclose to the Chief Compliance Officer whether he or she has one of the relationships listed in Rule 2501(a)(1)-(5) above with a Named Party in Interest.
- (3) The following procedure will apply with respect to Named Parties in Interest under this Rule 2501: In its sole discretion, the Market Regulation Department shall determine whether any member of the Board, any committee established by the Board (including the Regulatory Oversight Committee) or a SEF Panel is required to abstain in any matter.

(b) Financial Interest in Significant Action.

- (1) A member of the SEF's Board, any committee established by the Board (including the Regulatory Oversight Committee) or any SEF Panel must abstain from such body's deliberations and voting on any Significant Action if the 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 action.
- (2) Prior to the consideration of any Significant Action, each member of SEF's Board, any committee established by the Board (including the Regulatory Oversight Committee) or any SEF Panel must disclose to Chief Compliance Officer any Disclosable Financial Interest that is known to such member. This requirement does not apply to members who choose to abstain from deliberations and voting on the subject Significant Action.
- (3) The SEF's Board, any committee established by the Board (including the Regulatory Oversight Committee) or any SEF Panel may permit a member to participate in deliberations prior to a vote on a Significant Action for which such member otherwise would be required to abstain, pursuant to Rule 2501(b)(1), if such participation would be consistent with the public interest and the member recuses himself or herself from voting on such action.
- (4) In making a determination as to whether to permit a member to participate in deliberations on a Significant Action for which such member otherwise would be required to abstain, the deliberating body shall consider the following factors:
  - (i) Whether the member's participation in deliberations is necessary for the deliberating body to achieve a quorum in the matter, and
  - (ii) Whether the member has unique or special expertise, knowledge or experience in the matter under consideration.
- (5) Prior to any determination pursuant to Rule 2501(b)(3), the relevant deliberating body must fully consider the position information that is the basis for the member's direct and substantial financial interest in the result of a vote on a Significant Action.
- (6) The following procedure will apply with respect to Significant Actions under this Rule 2501: The Market Regulation Department will independently require a member of the Board, any committee established by the Board (including the Regulatory Oversight Committee) or a SEF Panel to abstain from both the deliberations and voting by such Board, committee or SEF Panel on any Significant Action if, based upon the information reviewed pursuant to this Rule 2501, the Market Regulation Department determines that the member has a direct and substantial financial interest in the result of the vote.



- (c) The SEF's Board, Board committees and SEF Panels must reflect in their minutes or otherwise document that the conflicts determination procedures required by this Rule 2501 have been followed. Such records also must include:
- (1) The names of all members who attended the meeting in person or who otherwise were present by electronic means;
  - (2) The name of any member who voluntarily recused himself or herself or was required to abstain from deliberations and/or voting on a matter and the reason for the recusal or abstention, if stated; and
  - (3) Information on the position information that was reviewed for each member.

## **SERVICE AGREEMENTS**

### **Rule 2600 Services Agreement with a Regulatory Services Provider**

- (a) The SEF may enter into a Regulatory Services Agreement with a Regulatory Services Provider to perform certain surveillance, investigative, and regulatory functions under the SEF Rules and the SEF may provide information to the Regulatory Services Provider in connection with the performance of those functions.
- (b) The SEF shall retain ultimate decision-making authority with respect to any functions that are contracted to a Regulatory Services Provider and shall remain responsible for the performance of any Regulatory Services received.

### **Rule 2601 Services Agreement with Other Service Providers**

The SEF, in its discretion, may enter into services agreements with service providers of its choosing to perform functions under the SEF Rules, and may provide information to such service providers in connection with the performance of those functions.

### **Rule 2602 Prohibited Use of Data Collected for Regulatory Purposes**

The SEF will not use for business or marketing purposes any Proprietary Data or Personal Information it collects or receives, from or on behalf of any Person, for the purpose of fulfilling its regulatory obligations; *provided, however*, the SEF may use such data or information for business or marketing purposes if the Person from whom it collects or receives such data or information clearly consents to the SEF's use of such data or information by means of an independent, affirmative consent. The SEF will not condition access to its market(s) or market services on a Person's consent to the SEF's use of Proprietary Data or Personal Information for business or marketing purposes. The SEF, where necessary for regulatory purposes and as permitted by Applicable Law, may share such data or information with one or more DCOs, swap execution facilities or DCMs registered with the CFTC. In such an event, the SEF will request the DCO, swap execution facility or DCM to maintain the confidentiality of any such



information in the same manner as the DCO, swap execution facility or DCM would protect its own proprietary data.

**SECTION 3  
PARTICIPANT ACCESS RULES**

**QUALIFICATIONS**

**Rule 3000    Qualifications**

- (a) To be eligible for admission as a Participant, an applicant must demonstrate to the satisfaction of the SEF that it:
- (1) is an ECP;
  - (2) is of good reputation and business integrity;
  - (3) maintains adequate financial resources and credit;
  - (4) if it is an entity, is validly organized, in good standing, and authorized by its governing body and, if relevant, documents of organization, to trade Swaps;
  - (5) has not filed for bankruptcy;
  - (6) is not prohibited from using the services of the SEF for any reason whatsoever;
  - (7) holds all registrations required under Applicable Law, including, without limitation, any introducing broker, FCM, and/or Swap Dealer registration (each as defined in the CEA and CFTC Regulations);
  - (8) is not subject to statutory disqualification under Section 8a(2) of the CEA; and
  - (9) satisfies any other criteria that the SEF may require from a Participant to perform its responsibilities as a Self-Regulatory Organization, comply with Applicable Law or provide services, provided such criteria are impartial, transparent and applied in a fair and nondiscriminatory manner.

Once admitted, a Participant shall continue at all times to satisfy all such Participation Criteria and all other applicable eligibility criteria. Admission as a Participant only entitles the Participant to Trading Privileges and does not confer any right of ownership in the SEF, or right to attend or vote at meetings of the SEF, or right to share in the profits of the SEF.

- (b) Each Participant that is an Account Manager must cause its Client(s) on behalf of which it places any Order or Transaction on the SEF or for which it enters into an Uncleared Block Trade pursuant to the SEF's rules, to be subject to the SEF Rules. In addition, each Participant that is an Account Manager must provide the SEF, upon the SEF's request, with written proof of authority to transact on the SEF or pursuant to the SEF Rules on behalf or in the name of each Client.

- (c) Each Participant intending to trade Cleared Swaps for its own account must either be (i) Self-Clearing with respect to the DCO where the Cleared Swaps it will trade are cleared, or (ii) if it is Non-Self-Clearing, have a clearing account with a Clearing Firm and be listed in the Clearing Firm Agreement as being permitted to clear such Swaps at such DCO through such Clearing Firm.
- (d) Each Participant that is an Account Manager, Introducing Broker or Sponsoring Participant must ensure that each of its Clients, Customers and Sponsored Participants intending to trade Cleared Swaps meets the requirements of subsection (c) above.
- (e) Participants that are not, or whose Clients, Customers or Sponsored Participants are not, Self-Clearing or do not have a relationship with a Clearing Firm as set forth in subsection (c) or (d) of this Rule 3000 are prohibited from entering Orders or Transactions in Cleared Swaps on the SEF.
- (f) The SEF shall monitor its Participants to ensure that they continue to qualify as ECPs. If any Client or Customer of an Account Manager or Introducing Broker is not also a Participant, the SEF shall obtain from the applicable Account Manager or Introducing Broker a representation that such Client or Customer will be an ECP each time the applicable Account Manager or Introducing Broker transacts on the SEF on behalf of such Client or Customer.
- (g) Upon request of the SEF or its Regulatory Services Provider, each Participant (and each Authorized Trader) shall promptly provide to the Market Regulation Department or the Regulatory Services Provider (i) the names of its Customers, Client or Sponsored Participants (if applicable) and (ii) such information about Authorized Traders as the SEF requests.
- (h) The SEF may from time to time establish different categories of Participants receiving access to the SEF. Participants receiving comparable access to, or services from, the SEF will be subject to comparable fee structures.
- (i) Consistent with Applicable Law, the SEF will provide access to its trading platform and services on a fair and nondiscriminatory basis to any ECP that complies with the SEF's documentation and eligibility requirements as set forth in the SEF Rules.

## **PARTICIPANT APPLICATION AND ONGOING PARTICIPANT MATTERS**

### **Rule 3100 Application Requirements**

A Person that wishes to become a Participant of the SEF must:

- (a) file with the SEF an accurate and complete application and any applicable agreement as may be required by the SEF from time to time;
- (b) if it is an entity, provide a copy of all formation documents including any amendments thereto if requested by the SEF;

- (c) if it is an applicant organized or located outside of the United States, enter into a written agreement acceptable to the SEF appointing a third party as its U.S. agent for service of process for purposes of CFTC Regulation 15.05, and shall provide the SEF with a copy of the agreement;
- (d) provide such other information as may be requested by the SEF; and
- (e) provide written or electronic confirmation of its status as an ECP.

#### **Rule 3101 Review of Application**

- (a) The SEF in its discretion may conduct an investigation of any applicant that the SEF believes is appropriate.
- (b) The SEF shall review a prospective Participant's application and may ask for and review any additional information it deems relevant.

#### **Rule 3102 Acceptance as a SEF Participant**

If the SEF decides to admit an applicant as a Participant, it shall notify the applicant and state in such notice the date on which the applicant shall become a Participant.

#### **Rule 3103 Conditions for Denial**

- (a) The SEF may deny, condition or terminate Participant status of any Person:
  - (1) if such Person is unable to satisfactorily demonstrate its ability to satisfy the eligibility criteria to become or remain a Participant;
  - (2) if such Person is unable to satisfactorily demonstrate its capacity to adhere to all applicable SEF Rules;
  - (3) if such Person would bring the SEF into disrepute as determined by the SEF in its sole discretion; or
  - (4) for such other cause as the SEF may reasonably determine.
- (b) If the SEF decides to deny or condition an application for admission as a Participant, or terminate a Person's status as a Participant, the SEF shall promptly notify such Person (the "Affected Person") thereof in a writing sent to the address in the SEF application form or maintained in the SEF's records. Such Affected Person may, within seven (7) calendar days of receipt of such notification, request in writing that the SEF reconsider its determination.
- (c) Within thirty (30) calendar days of receiving the request for reconsideration, the SEF shall either confirm, reverse or modify the denial, conditioning or termination of the Affected Person as a Participant, and shall promptly notify the Affected Person

accordingly in a writing sent to the address in the SEF application form or maintained in the SEF's records.

- (d) Any denials, conditionings or terminations implemented by the SEF pursuant to this Rule 3103 will be impartially enforced.
- (e) Any denial, conditioning or termination that represents a suspension, expulsion, disciplinary or access denial action or other adverse action within the meaning of Part 9 of the CFTC's Regulations may (to the extent required thereby) be subject to review by the CFTC pursuant to Part 9 of the CFTC's Regulations.

#### **Rule 3104 Duty to Keep Current**

If any material information in the Participant's application becomes outdated or otherwise is inaccurate or incomplete for any reason, the Participant must promptly update the application. Within thirty (30) calendar days following the end of each calendar year, Participants shall review and revise, as necessary, all information provided in their applications and provide such revisions to the SEF.

#### **Rule 3105 Withdrawal of Participant**

To withdraw from the SEF, a Participant must notify the SEF of its withdrawal. Such withdrawal shall be accepted and effective immediately upon receipt of such notice by the SEF.

Upon the effectiveness of the withdrawal of a Participant, all rights and privileges of such Participant terminate (including, without limitation, Trading Privileges). Notwithstanding the accepted withdrawal of a Participant, the withdrawn Participant remains subject to the SEF Rules and the jurisdiction of the SEF for acts done and omissions made while a Participant, and must cooperate in any SEF Proceeding as if the withdrawn Participant were still a Participant.

#### **Rule 3106 Dissolution of Participants**

All rights and privileges of a Participant terminate upon, and all obligations of a Participant shall survive, the dissolution of the Participant.

#### **Rule 3107 Jurisdiction and Application of SEF Rules**

- (a) Each Clearing Firm, Participant, Supervised Person, Sponsored Participant, Client and Customer and any other Person (i) initiating or executing a transaction on or subject to the rules of the SEF directly or through an intermediary or (ii) for whose benefit such a transaction has been initiated or executed:
  - (1) consents to the jurisdiction of the SEF with respect to any and all matters arising from, related to, or in connection with, the status, actions or omissions of such Person;

- (2) is bound by, and shall comply with, the SEF Rules and all Obligations, the DCO Rules and Applicable Law, in each case to the extent applicable to it;
  - (3) agrees to assist the SEF in complying with its legal and regulatory obligations, cooperate with the SEF, its Regulatory Services Provider(s) and the CFTC in any inquiry, investigation, audit, examination or proceeding, and authorizes the SEF to provide information regarding it to any Regulatory Services Provider, the CFTC or any Self-Regulatory Organization.
- (b) Any Participant or Sponsored Participant whose Trading Privileges and/or ability to otherwise access the SEF are revoked or terminated shall remain bound by the SEF Rules (in addition to any other Applicable Law) and subject to the jurisdiction of the SEF with respect to any and all matters arising from, related to or in connection with, the status, actions or omissions of such Participant or Sponsored Participant prior to such revocation or termination.
  - (c) An Authorized Trader who is suspended for any period remains subject to the SEF Rules, the Obligations and the SEF's jurisdiction throughout the period of suspension. After revocation or termination of the designation of an Authorized Trader, the Authorized Trader remains subject to the SEF Rules, the Obligations and the jurisdiction of the SEF for acts done and omissions made while an Authorized Trader. Any SEF Proceeding relating to an Authorized Trader shall occur as if the Authorized Trader were still registered as such.

#### **Rule 3108 Notices to Participants**

- (a) The SEF shall publish a notice with respect to each addition to, modification or clarification of the SEF Rules or of any action to implement any SEF Rules on the SEF's website or via an electronic mail distribution to enable each Participant 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 (each a "Notice to Participants"). The SEF shall use good faith efforts to provide Notices to Participants to each Participant via electronic mail. For purposes of publication in accordance with the first sentence of this Rule 3108, it shall be sufficient (without limiting the discretion of the SEF as to any other reasonable means of communication) if a Notice to Participants is published on the SEF's website.
- (b) Any Notice to Participants shall also be deemed to have been made to all Supervised Persons.

#### **Rule 3109 Authorized Traders**

- (a) Each Participant shall designate one or more Authorized Trader(s) which, in the case of a Sponsoring Participant, may include any Person appointed, employed or authorized by a Sponsored Participant as provided in Rule 3110.

- (b) By agreeing to become an Authorized Trader, an individual agrees to be bound by the duties and responsibilities of an Authorized Trader and to be subject to, and comply with, the SEF Rules and Obligations. Among other duties and responsibilities that the SEF may impose, an Authorized Trader must:
  - (1) have the authority, at the SEF's request, to adjust or withdraw any Order or Transaction submitted under any User ID assigned to him or her;
  - (2) conduct activity under any User ID assigned to him or her in compliance with all SEF Rules and Obligations; and
  - (3) ensure he or she has been assigned his or her own User ID.
- (c) To designate an Authorized Trader, a Participant must follow the procedures established by the SEF. The SEF may establish criteria that individuals must fulfill to become an Authorized Trader.
- (d) The SEF will maintain a list of all designated Authorized Traders for each Participant.
- (e) The SEF may, in its sole discretion refuse to approve an Authorized Trader or revoke or suspend the designation of an individual as Authorized Trader to protect other Participants and the integrity of the SEF and shall promptly notify the related Participant of such action.
- (f) To request the termination of the designation of an individual as Authorized Trader, the Participant must follow the procedures established by the SEF.
- (g) Each Authorized Trader shall be identified to the SEF in the manner prescribed by the SEF and shall be subject to the SEF Rules. It is the duty of the Participant to ensure that each Authorized Trader registration is current and accurate at all times.
- (h) Without limiting the foregoing, prior to accessing the SEF each Authorized Trader consents to abide by the SEF Rules and Applicable Law and each Participant will ensure on an ongoing basis that: (i) none of its Authorized Traders is subject to a disqualification pursuant to any Applicable Law (unless an appropriate exemption has been obtained with respect thereto); (ii) each of its Authorized Traders will be technically proficient; (iii) each of its Authorized Traders will conduct its business in a fair and equitable manner; and (iv) each of its Authorized Traders will comply with the SEF Rules and Obligations and conduct its business in accordance with Applicable Law.

#### **Rule 3110 Sponsored Access**

- (a) A Sponsoring Participant may extend Trading Privileges to one or more Sponsored Participants. If the Sponsoring Participant is not the Sponsored Participant's Clearing Firm, the Sponsoring Participant will provide all relevant clearing information to the SEF on behalf of the Sponsored Participant. Each Sponsored Participant shall designate one or more Authorized Traders to transact on the SEF.

- (b) The Sponsoring Participant is responsible for all Orders and Transactions placed by any Person acting on behalf of or in the name of the Sponsored Participant on the SEF as if such Orders or Transactions were placed by the Sponsoring Participant (whether or not the Sponsoring Participant was aware of and/or had approved the placing of such Orders or Transactions). Any execution occurring as a result of an Order or Transaction entered by a Sponsored Participant shall be binding in all respects on the Sponsoring Participant.
- (c) The Sponsoring Participant must monitor the Sponsored Participant's access to the SEF and activity on the SEF, including, but not limited to, the entry, cancellation or other processing of Orders, risk management, trade reporting, clearing and settlement of Transactions.
- (d) The Sponsored Participant is not a Participant of the SEF. The SEF has no liability to, and the SEF owes no duties or obligations to, nor has any responsibility for, the Sponsored Participant. Notwithstanding anything herein to the contrary, the Sponsored Participant and any other Person using a User ID or login credentials linked to a Participant will be subject to, and must comply with, the SEF Rules, and may be subject to Disciplinary Action by the SEF for any violation or attempted violation of the SEF Rules or provisions of Applicable Law for which the SEF has disciplinary jurisdiction. The Sponsored Participant will be deemed to have represented and warranted that it is an ECP and that it has all registrations, licenses and consents required under Applicable Law. The Sponsoring Participant further agrees to cooperate with the SEF, or any other regulator, in connection with any inquiry regarding the Sponsored Participant's access and activities relating to the SEF and, in connection with such inquiry, the Sponsoring Participant shall ensure the cooperation of the Sponsored Participant and procure that the Sponsored Participant is contractually bound to cooperate with the SEF or any other regulator.
- (e) The Sponsoring Participant shall ensure that:
  - (1) the Sponsored Participant, its directors, members, officers, employees and agents comply with Applicable Law and the policies and procedures issued or approved by the SEF and with all of the duties and/or obligations imposed on Participants under the SEF Rules as if the Sponsored Participant were a Participant for such purposes, except with respect to any such duties and/or obligations which manifestly only relate to the Sponsoring Participant;
  - (2) the Sponsored Participant takes reasonable security precautions to prevent unauthorized access to and use of the SEF, including unauthorized entry of information on the SEF and unauthorized use of information and data made available by the SEF; and
  - (3) the Sponsored Participant uses any market data for its own internal purposes only and only in accordance with the SEF Rules.



- (f) The SEF shall obtain from each Sponsoring Participant a representation that each of its Sponsored Participants will be an ECP at the time each such Sponsored Participant transacts on the SEF.
- (g) The SEF will promptly notify a Sponsoring Participant in writing of its approval, or refusal to approve, the designation of a Sponsored Participant. The SEF may, in its sole discretion, revoke, limit, restrict or suspend the designation of a Sponsored Participant, and shall notify the Participant of such action in accordance with SEF procedures.
- (h) A Sponsoring Participant that seeks to terminate the designation of a Sponsored Participant shall notify the SEF in writing, providing such information as the SEF may require. The SEF shall terminate the Sponsored Participant's access to the SEF in accordance with procedures established by the SEF.

**Rule 3111 [Reserved]**

**Rule 3112 Introducing Brokers**

- (a) An Introducing Broker will be permitted to introduce trades on the SEF on behalf of a Customer (which may include another Participant or an Account Manager acting on behalf of a Client) where such Customer has so authorized the Introducing Broker and notified the SEF in the form and manner specified by the SEF from time to time.
- (b) If authorized, an Introducing Broker may enter any Order, submit a Block Trade, or introduce to the SEF for execution any Transaction otherwise permissible under the Rules on behalf of such Customer.

**Rule 3113 Authorized Representatives**

- (a) Each Participant shall designate an Authorized Representative(s) who will represent the Participant before the SEF and its committees and receive notices on behalf of the Participant.
- (b) The Authorized Representative shall be empowered by the Participant to act on its behalf and the SEF shall be entitled to rely on the actions of the Authorized Representative as binding on the Participant and each of its Authorized Traders.
- (c) Each Participant must provide the SEF with current contact and other requested information for each of its Authorized Representatives so that the SEF is able to immediately contact the Authorized Representatives.

**Rule 3114 Communications between the SEF and Participants**

- (a) Each Participant must provide the SEF with its current electronic mail address and telephone number and the electronic mail address and telephone number of each of its Authorized Traders and immediately (and in any event within 24 hours) update this information whenever it changes.

- (b) All communications between the SEF and the Participant will be transmitted by electronic mail and/or posted on the SEF's website, except as otherwise specified by the SEF.
- (c) The Participant shall be responsible for conveying such communications to all Supervised Persons.
- (d) Each Participant will be responsible for promptly reviewing and, if necessary, responding to all electronic communications from the SEF to the Participant or any of its Supervised Persons.
- (e) All communications made to Participants shall also be deemed to have been made to all Supervised Persons.

### **Rule 3115 Recording of Communications**

The Market Regulation Department and/or Regulatory Services Provider(s) may record conversations and retain copies of electronic communications between the SEF, on one hand, and Participants, Sponsored Participants, Clients or Customers or any of their Supervised Persons or other agents, on the other hand. Any such recordings may be retained by the SEF or the Regulatory Services Provider in such manner and for such periods of time as the SEF may deem necessary or appropriate and in accordance with Applicable Law. The SEF or Regulatory Services Provider will retain such recording in compliance with CFTC Regulations.

## **MATERIAL CHANGES**

### **Rule 3200 Change of Control; Non-Assignment**

- (a) A Participant must provide written notice to the SEF of any of the following changes to its ownership, control or business operations no later than 48 hours after any such changes take effect:
  - (1) a merger of the Participant with another Person;
  - (2) a direct or indirect acquisition by the Participant of another Participant; or
  - (3) direct or indirect acquisitions or transfers of 50% or more in the aggregate of a Participant's assets or any asset, business or line of operation that generates revenues comprising 50% or more in the aggregate of the Participant's earnings measured on a rolling 36-month basis, or a change in ownership that results in one person owning 50% or more of a Participant's voting equity.
- (b) A Participant may not assign its rights as a Participant without the written consent of the SEF, which consent shall not be unreasonably withheld.

## **FEES**

### **Rule 3300 Fees**

- (a) The SEF shall set the times and amounts of any assessments or fees to be paid by Participants.
- (b) Dues and other amounts owed to the SEF are payable upon receipt of the invoice.
- (c) Participants in arrears sixty (60) days after the invoice date will forfeit all participation privileges, including the privilege of accessing the SEF.
- (d) The SEF shall use reasonable efforts to notify the Participant before any privileges are forfeited.

### **Rule 3301 Volume Discounts**

The SEF may from time to time establish financial incentives for meeting trading volume, liquidity thresholds and/or other standards as may be established by the SEF.

## **INDEPENDENT SOFTWARE VENDORS**

### **Rule 3400 ISVs**

- (a) Consistent with Applicable Law, the SEF will provide access to its trading platform, services and data on a fair and nondiscriminatory basis to any ISV that complies with the SEF's documentation and eligibility requirements for ISVs as set forth in the SEF Rules.
- (b) An ISV that wishes to access the SEF must:
  - (1) consent to the jurisdiction of the SEF and agree to be bound by, and comply with, the SEF Rules and all Obligations, the DCO Rules and Applicable Law, in each case to the extent applicable to it;
  - (2) execute an ISV participation agreement in the form supplied by the SEF;
  - (3) pay the monthly access fees that may be established by the SEF from time to time, which fees will be comparable for ISVs receiving comparable access to, or services from, the SEF;
  - (4) comply with the applicable technical access standards, system compatibility requirements, security protocols and technical specifications for connection to the SEF as may be specified by the SEF from time to time;

- (5) ensure that each person that uses the ISV to access the SEF is either a Participant or a Client or Customer of a Participant;
  - (6) in the case of any Order or Transaction submitted to the SEF through the ISV, provide sufficient detail to identify the Participant (and, if applicable, the Participant's Client or Customer) as required by the SEF; and
  - (7) satisfy any other criteria that the SEF may require to perform its responsibilities as a Self-Regulatory Organization, comply with Applicable Law or provide services, provided such criteria are impartial, transparent and applied in a fair and nondiscriminatory manner.
- (c) An ISV may provide data obtained from the SEF solely to Participants and/or Clients or Customers of a Participant in connection with such Participants' and/or Clients' or Customers' actual and proposed trading activity on the SEF, and will not provide such data to any other swap execution facility, security-based swap execution facility, DCM, national securities exchange or other trading facility or system without the prior written consent of the SEF.

## **BUSINESS CONDUCT REQUIREMENTS**

### **Rule 3500 Customers, Clients and Sponsored Participants**

No Participant shall enter an Order or enter into a Transaction in the name of a Customer or Client, or permit a Sponsored Participant to enter an Order or enter into a Transaction in the name of such Participant unless the Participant has entered into a written agreement with the Customer, Client or Sponsored Participant containing such terms as may from time to time be prescribed by Applicable Law.

### **Rule 3501 Disclosure Requirements; Know Your Counterparty Requirements**

- (a) Participants that are Swap Dealers or Major Swap Participants shall verify through representations or otherwise the status of each Swap counterparty as an ECP as provided in CFTC Regulations applicable to business conduct standards for Swap Dealers and Major Swap Participants in their dealing with counterparties.
- (b) Participants that are Introducing Brokers must verify the status of each of their Customers as an ECP.
- (c) Participants that are Account Managers must verify the status of each of their Clients as an ECP.
- (d) Participants that are Sponsoring Participants must verify the status of each of their Sponsored Participants as an ECP.

- (e) Each Participant and Supervised Person, Client, Customer or Sponsored Participant of a Participant must comply with all disclosure requirements set forth in under Applicable Law including any additional disclosure requirements imposed by the SEF Rules.

## SECTION 4 TRANSACTION EXECUTION

This Section 4 prescribes Rules concerning trade practices and business conduct on the SEF and applies to all Orders and Transactions.

### **Rule 4000.A. Trading Hours**

Except with respect to Emergencies, the SEF shall determine and publish the Business Days of the SEF and the Trading Hours for each Swap. Participants are prohibited from sending any Order or entering into any Transaction or using any other facility of the SEF outside of the designated Trading Hours for the relevant Swap. The Trading Hours for each Swap shall be twenty-three (23) hours per Business Day other than between 5:30 p.m. and 6:30 p.m. (Eastern Time), in each case, subject to any variation as may be published by the SEF in a Notice to Participants or included in the relevant Swap Specification.

### **Rule 4000.B. Swap Specifications**

- (a) Notwithstanding any provision of the SEF Rules to the contrary, the terms and conditions set forth in the Swap Specification with respect to a particular Swap shall govern the trading in such Swap on the SEF and, in the event of any conflict between the general terms of the SEF Rules excluding the Swap Specifications and the particular terms of the SEF Rules set forth in the Swap Specification, the particular terms of the SEF Rules set forth in the Swap Specification shall govern with respect to trading in the relevant Swap on the SEF.
- (b) The Swap Specification for each individual Swap may specify:
  - (1) different classes of Participants eligible to trade such Swaps. Each such class of Participants shall have the rights and obligations specified by the Swap Specification for each such Swap;
  - (2) whether such Swap may be settled via cash settlement, physical delivery of the underlying commodity, or by any other means, as applicable; and
  - (3) the method for determining settlement prices.
- (c) The SEF shall permit trading only in Swaps that are not readily susceptible to manipulation.

### **Rule 4001 Procedures**

- (a) With respect to trading on or through the SEF or subject to the SEF Rules, the SEF may adopt, without limitation, procedures relating to Transactions in Swaps and trading on the SEF or subject to the SEF Rules, including procedures to:
  - (1) disseminate the prices of bids and offers on, and Transactions in, Swaps;

- (2) record, and account for, Swaps and SEF activity and regulate administrative matters affecting Swaps and SEF activity;
  - (3) establish daily limits (or such other frequency as may be determined from time to time by the SEF) on the notional amount and/or risk of Orders or Transactions that may be submitted by a Participant through the SEF or subject to the SEF Rules;
  - (4) establish limits on Swaps that may be held by a Participant;
  - (5) establish a limit on the maximum daily price fluctuations for any Swap and provide for any related restriction or suspension of trading in the Swap;
  - (6) establish minimum price quoting increments for each Swap; and
  - (7) require a suspended or expelled Participant, or a Participant with restricted trading rights, to have Swaps executed for the Participant to reduce or eliminate any open position or exposure to future price changes for the Participant in any Swap.
- (b) The SEF may, in its discretion and at any time, amend any procedures adopted pursuant to Rule 4001(a), and will publish the amendments in a Notice to Participants or in any other manner determined appropriate by the SEF.

#### **Rule 4002 Required Identifications**

- (a) Each Participant and all related Authorized Traders (including those of its Sponsored Participants) must have a User ID assigned in accordance with the procedure adopted by the SEF from time to time in order to access the SEF. The User ID assigned to an Authorized Trader may not be reassigned to another Authorized Trader.
- (b) Orders entered on the SEF must include the User ID assigned to the Authorized Trader. An Authorized Trader is prohibited from allowing any other Person to use such unique identification to enter Orders on the SEF. No Person may enter Orders on the SEF using a User ID that has not been assigned to such Person.
- (c) Each Participant shall be responsible for all Orders or Transactions placed using any of the User IDs assigned to its Authorized Traders or those of any of its Sponsored Participants.
- (d) Participants must terminate an Authorized Trader's access to the SEF upon termination of the Authorized Trader's employment at, or authorization or appointment by, the Participant or Sponsored Participant (as applicable).

#### **Rule 4003.A. Execution of Transactions**

- (a) No Person shall execute a Required Transaction subject to the SEF's jurisdiction other than via the Order Book unless such Transaction is a Block Trade, Package Transaction

(Order Book Exempt) or an End-User Exempt Transaction. No Person shall enter into an End-User Exempt Transaction subject to the SEF's jurisdiction unless it (or, if applicable, its Customer, Client or Sponsored Participant) or the counterparty to the Swap is eligible for and elects to rely on the End-User Clearing Exception. Upon request of the SEF, a Participant, Sponsored Participant, Customer or Client shall submit to the SEF all documentation supporting eligibility for the End-User Clearing Exception.

- (b) Permitted Transactions (including Permitted Cross Transactions) may be executed through the SEF's Order Book as described in Rule 4003.B. In addition, Permitted Cross Transactions may be executed away from the SEF's Order Book as described in Rule 4004. Certain Permitted Transactions may also be executed via Risk Mitigation Sessions as specified in Rule 4018 and the tpSEF Risk Mitigation Procedures.
- (c) Any Package Transaction (Order Book Exempt) may be executed in the same manner as any Permitted Cross Transaction as described in Rule 4004. A Package Transaction (Order Book Exempt) may be executed through the SEF's Order Book provided an Order Book is available.
- (d) Block Trades are required to be executed in accordance with the requirements of Rule 4016.
- (e) No executed Transactions may be submitted to the SEF other than Block Trades that occur away from the SEF and that are executed in accordance with the requirements of Rule 4016.

**Rule 4003.B. Order Book**

- (a) All Orders posted to the Order Book are firm (*i.e.*, there are no indications of interest or indicative quotes allowed).
- (b) An acceptable Order must include a specific price and size, as well information meeting the requirements of Rule 8001.
- (c) Order Types.
  - (1) An acceptable Order must indicate the time in force, which may include the following:
    - (i) “Day” Orders are only good for the Business Day and applicable Trading Hours in which they are entered.
    - (ii) “Fill-or-Kill” (“FOK”) Orders must be immediately executed for the entire size of the Order or are cancelled automatically.



- (iii) “*Immediate or Cancel*” (“*IOC*”) Orders must be executed fully or partially and, if partially, the remaining quantity is cancelled automatically.
  - (iv) “*Good ‘til Time*” (“*GTT*”) Orders are cancelled after a specified time if no matching Order is placed.
  - (v) “*Good ‘til Price*” (“*GTP*”) Orders will be cancelled if the reference price of the specified instrument is moved up or down (depending upon whether the Order is a bid or offer).
  - (vi) “*One Cancels Other*” (“*OCO*”) Orders are paired Orders stipulating that if one of the Orders is executed, the other is automatically cancelled.
- (2) Good ‘til Time, Good ‘til Price and One Cancels Other Orders are all also Day Orders, in that they are only good for the Business Day and applicable Trading Hours in which they are entered, even if the time, price or execution conditions are not otherwise met.
- (3) Not all Orders types are available for all Swaps. The table below shows the Order types available for each asset class:

Asset Class	Day	FOK	IOC	GTT	GTP	OCO
Credit	✓	✓	✓	✓	✓	✓
Commodities	✓	✓	x	✓	x	x
Rates	✓	✓	✓	✓	✓	✓
Non-Deliverable Forwards	✓	✓	✓	✓	✓	✓
Equities	✓	✓	✓	✓	x	x
FX Options	✓	x	✓	✓	✓	✓

(d) Pre-Trade Controls.

- (1) Order Limits. The SEF may, within its sole discretion, set Order limits by product and by instrument within a particular asset class. The following types of Order limits may be imposed:
- (i) Order Size Limit (OSL): This is the maximum size allowed for any single Order. Any Order submitted will be checked against the

product/asset class's Order Size Limit, and if the Order exceeds this limit, such Order will be rejected and the Participant will be notified.

- (ii) *Order Price Limit (OPL)*: This is the maximum price differential allowed for any Order. Any Order submitted will be checked against the product/asset class's Order Price Limit and if the Order exceeds this limit, it will be rejected and the Participant will be notified. The price differential will be calculated as follows:

$$(\text{Order price entered}) - (\text{Instrument Reference Price}) = |\text{Price Differential}|$$

The "Instrument Reference Price" is an estimated current price for the relevant Swap, based on either current trading data for that instrument on the SEF and elsewhere, or, in the absence of current trading data for the relevant Swap, implied from current trading data for other instruments.

- (2) *Price Tick Deviation*. If the price for any Order entered into the Order Book is greater than (i) the top contra-Order price or, if no contra-Orders exist in the Order Book, the Instrument Reference Price, plus (ii) the specified number of tick increments in the Maximum Price Tick Deviation parameter for the Swap, the Order will be rejected. The Maximum Price Tick Deviation parameter for each Swap is determined by the SEF from time to time in its sole discretion.
- (3) *Restriction Against Self-Trading*. The Order Book system is configured to prohibit the matching of Orders placed by Authorized Traders of the same Participant.
- (e) *Implied Orders*. The SEF offers limited implied order functionality. Under this functionality, individual separate Orders, which in aggregate would form the legs of a liquid spread trade, are displayed in the Order Book both as individual outright trades and in aggregate as a spread trade. This functionality is only made available for tenors at which spread trades are customarily transacted as determined by the SEF from time to time and displayed on the Order Book.
- (f) *Order Entry*.
  - (1) Orders, including Orders for Required Cross Transactions and Permitted Cross Transactions, may be entered into the Order Book for execution either (i) directly by any Participant that has established direct connectivity to the SEF's Order Management System, or (ii) by an Execution Specialist acting on the instruction of a Participant. Order information may be communicated by Participants to Execution Specialists via telephone and/or via electronic modes of communication such as email and instant message. Participants that elect not to establish direct connectivity to the OMS may execute a "Terms of Use and SEF Order Book Waiver" in lieu of the "Terms of Use", which is executed by those Participants who have elected to establish such direct connectivity. During

the effectiveness of its “Terms of Use and SEF Order Book Waiver,” a Participant must access the Order Book via an Execution Specialist both for Transactions that must be executed on Order Book pursuant to Rule 4003.A. and for Transactions voluntarily executed on the Order Book. Any such Participant may elect to establish direct connectivity to the OMS at any time by executing the full “Terms of Use” and terminating its “Terms of Use and SEF Order Book Waiver”. For the avoidance of doubt, all Participants, including those that have signed the “Terms of Use and SEF Order Book Waiver”, are required to comply with the requirements on Rule 4003.A. relating to the execution of Required Transactions.

- (2) An Order placed on the Order Book may be cancelled provided such Order has not been executed. The price or size of an Order placed on the SEF that has not fully traded may be revised. If the size is reduced, the time priority originally assigned to the Order does not change. Revising the price or increasing the size will reset the Order’s time priority in the queue to the time the SEF receives the revision.
  - (3) When an Authorized Trader logs off, all of its Orders on the Order Book are terminated provided that the Authorized Trader is the owner of the Order and has not entered the Order on behalf of a Customer. If for any reason the connection to the SEF is lost, all Orders entered from that location on the SEF are deactivated.
- (g) Order Book Display and Interaction.
- (1) Once an Order is entered into the Order Book, the Order is displayed simultaneously to all Participants that have established direct connectivity to the OMS and may be transacted on as described in Rule 4003.B.(h) below.
  - (2) All Orders will be displayed on an anonymous basis and each Order Book platform will show, in real-time, the best price and the depth per product.
  - (3) For Participants that have direct connectivity to the OMS, each Order Book platform displays all executions to all Participants, and for each individual Participant, its Order and execution history for the trading day.
  - (4) The SEF’s Order Book supports the following Order interactions on any active Order, which may be taken only by the Participant who submitted the Order or by an Execution Specialist acting on the Participant’s instructions:
    - (i) Amend, and
    - (ii) Cancel (If a partially executed Order is cancelled, only the balance of the Order is cancelled.)

- (5) Information regarding Orders on the Order Book will be provided upon request to any Participant by an Execution Specialist via telephone and/or via electronic modes of communication such as email and instant message.
- (h) Matching of Orders on the Order Book.

Orders may be either matched automatically or manually hit or lifted as described in this Rule 4003.B.(h). In each case, Orders will be executed using price and time priority.

- (1) Ability to Trade. In the case of either Manual Matching or Automatic Matching as described in this Rule 4003.B.(h):
- (i) An Order for a Cleared Swap may only be hit or lifted by, or matched with a contra-Order for, a Participant (or a Participant's Customer or Client) that is, or whose Clearing Firm is, a Clearing Member at the DCO at which the Swap is to be cleared, and
- (ii) An Order for an Uncleared Swap may only be hit or lifted by, or matched with a contra-Order for, a Participant (or a Client or Customer of a Participant) that has swap trading relationship documentation in place with the relevant counterparty and only to the extent that each counterparty has available credit line, both as described in Rule 4013.B.
- (2) Manual Matching. Subject to the requirements of Rule 4003.B.(h)(1) above, a Participant may manually hit or lift, in whole or in part, any resting Order within the Order Book that is (i) at the best price(s) within the market for the relevant product, and (ii) if there are multiple Orders at the same price(s), entered first in the Order Book.
- (3) Automatic Matching. Subject to the requirements of Rule 4003.B.(h)(1) above and depending on Order type (as described in Rule 4003.B.(c)) and the Orders resting on the Order Book, Orders entered into the Order Book will be automatically (i) matched (fully or partially) to one or more Orders within the Order Book based on price and time priority or (ii) cancelled. Certain Order Book platforms do not support Automatic Matching.

#### **Rule 4004 Permitted Cross Transactions**

- (a) Permitted Cross Transactions may either be:
- (1) Executed through the SEF's Order Book as described in Rule 4003.B., or
- (2) Submitted to the SEF for execution away from the SEF's Order Book either (x) to an Execution Specialist or (y) for Transactions that are in the Rates asset class or that are non-deliverable forwards, directly by Participants that have established direct electronic connectivity to the OMS.

- (b) Permitted Cross Transactions that are submitted directly to the SEF for execution away from the Order Book are executed via the OMS using Off-Book Ticket Functionality. Permitted Cross Transactions that are submitted to an Execution Specialist for execution away from the Order Book may be executed either via the SEF's Deal Management System or, if available, via the OMS using Off-Book Ticket Functionality. A Participant submitting a Permitted Cross Transaction to an Execution Specialist must provide the information required by Rule 8001. Permitted Cross Transactions may be communicated to an Execution Specialist via telephone and/or via electronic modes of communication such as email and instant message.

**Rule 4005 Mishandling of Orders**

Any Person that mishandles any Order is responsible for all remedial actions with respect to such Order.

**Rule 4006 Trading Halts**

The SEF, in its sole discretion, may declare a trading halt at any time.

**Rule 4007 Termination of the SEF Connection**

The SEF shall have the right to summarily terminate the direct, electronic connection of any Participant to the SEF. Additionally, the SEF shall have the right to direct a Participant to immediately terminate the direct, electronic access to the SEF of any Sponsored Participant. Any such termination shall be impartially enforced and shall be invoked only for technical reasons. Any affected Participant or Sponsored Participant shall continue to have access to the SEF by means of an Execution Specialist, unless such access is denied in accordance with the procedures set forth in Rule 3103 or elsewhere in the SEF Rules.

**Rule 4008 Risk Controls**

- (a) The SEF may, in its sole discretion, to protect other Participants and the integrity of the SEF, reject any Order or Transaction placed or reported on the SEF.
- (b) The SEF shall have the right to take any action to reduce the potential of market disruption, including, but not limited to, market restrictions that pause or halt trading if such action is in the best interest of the swap markets and/or the SEF.

**Rule 4009 Priority of Execution for Orders Received by a Participant**

Orders received by a Participant must be entered on to the SEF in the sequence received, subject to the following sentence. Participants shall not enter an Order into the SEF for his own account, an account in which he has a direct or indirect financial interest or an account over which he has discretionary trading authority, including, without limitation, an Order allowing discretion as to time and price, when such Person is in possession of any Order for another Person that the SEF is capable of accepting.

**Rule 4010 Trading Against Customers' Orders Prohibited; Withholding Orders Prohibited**

- (a) No Participant in possession of a Customer's Order shall knowingly take, directly or indirectly, the opposite side of such Order for its own account, an account in which it has a direct or indirect financial interest or an account over which it has discretionary trading authority.
- (b) The foregoing restriction shall not apply to the following:
  - (1) Block Trades, and
  - (2) Transactions where the Customer has consented to the extent required by Applicable Law.
- (c) Except as otherwise explicitly permitted under this Rule 4010(c) and Rule 5203(b), no Person shall (i) disclose another Person's Order to buy or sell except to a designated SEF Official or the CFTC, (ii) solicit or induce another Person to disclose Order information or (iii) take action or direct another to take action based on non-public Order information, however acquired. The mere statement of opinions or indications of the price at which a market may open or resume trading does not constitute a violation of this Rule. Nothing contained in this Rule 4010(c) shall prevent a Person from disclosing information as may be required by legal process (including subpoena or demand for productions) or to such Person's agents or advisors (including, but not limited to, accountants and auditors and legal counsel).
- (d) Any Participant entering Orders on the SEF for its Customer or Client shall not withhold or withdraw from the market any Order , or any part of an Order , for the benefit of any Person other than such Customer or Client.
- (e) A Participant must immediately enter into the SEF all Orders received from its Customers that are executable immediately. If a Participant cannot immediately enter into the SEF an Order received from its Customer, the Participant must enter the Order into the SEF as soon as practicable, and must immediately create an electronic record as provided in Rule 8002.

**Rule 4011 Simultaneous Buy and Sell Orders For Different Beneficial Owners**

- (a) With respect to Required Cross Transactions, the following conditions must be satisfied:
  - (1) in the case of an execution by a Participant as principal/dealer against a customer Order, enter the customer Order into the Order Book as a firm quote at least 15 seconds before entering its Order into the Order Book, or
  - (2) in the case of an execution by a Participant acting as broker of two customers' Orders against each other, enter one Order (the "Displayed Order") into the

Order Book as a firm quote at least 15 seconds before entering the other Order (the “Waiting Order”) into the Order Book.

- (b) With respect to a Required Cross Transaction subject to Rule 4011(a)(2) above, any Participant, Sponsored Participant, Customer or Client whose Order is the Waiting Order shall not, directly or indirectly, execute against the Displayed Order prior to the time that entry of the Waiting Order is permitted under Rule 4011(a)(2) above.

#### **Rule 4012 Confirmations and USIs**

- (a) The SEF will generate and send a Confirmation to each counterparty to a Transaction, which Confirmation (including, with respect to Uncleared Swaps, the Terms Incorporated by Reference as defined in Rule 4012(d)(1)) shall legally supersede any previous agreement and shall constitute a confirmation as defined in CFTC Regulation 45.1. The Confirmation shall contain, among other things:
  - (1) the USI for the Transaction; and
  - (2) the identity of the Swap Data Repository to which the Transaction is being reported.
- (b) The SEF will send a Confirmation to each counterparty to a Transaction executed on the SEF at the time of execution. With respect to certain products, Transactions and counterparties, a Confirmation may be provided on the SEF’s behalf by MarkitSERV’s Organized Trading Venue (OTV) Confirmation Service or other similar confirmation service. Each Participant shall review the Confirmation for a Transaction executed on or pursuant to the rules of the SEF as soon as practicable upon transmission of such Confirmation to the Participant.
- (c) Regardless of the means of delivery, pursuant to these rules, each Participant, Sponsored Participant, Customer and Client agrees that the Confirmation represents legally binding documentation memorializing the agreement of the parties to all the terms of the Transaction.
- (d) Confirmations for Uncleared Swaps.
  - (1) The economic terms specific to an Uncleared Swap agreed by Participants shall be reflected by the SEF in a written communication (the “Trade Communication”) sent to the applicable Participants. The Trade Communication, together with the documents and agreements (including, without limitation, ISDA master agreements, other master agreements, terms supplements, master confirmation agreements and incorporated industry definitions) governing such Transaction existing at the time of such commitment to which the Participants are party (the “Terms Incorporated by Reference”) shall, taken together, for purposes of CFTC Regulation 37.6(b) comprise all of the terms of such Transaction and serve as a Confirmation of such Transaction. The provisions of this Rule 4012(d) relating to Terms Incorporated by Reference rely on relief

granted by the CFTC's Division of Market Oversight in No-Action Letter 16-25, which expires the earlier of 11:59 p.m. (Eastern Time) on March 31, 2017 and the effective date of any changes to the relevant CFTC Regulations. If such no-action relief is extended, upon and to the extent of such extension, the provisions of this Rule 4012(d) relating to Terms Incorporated by Reference will continue to apply.

- (2) In satisfaction of the obligations imposed on the SEF under CFTC Regulation 37.6(b), (i) each Trade Communication (and thus each Confirmation) is deemed to incorporate the Terms Incorporated by Reference, and (ii) the Participants hereby agree that the provisions of Rule 4012(d)(3) shall govern any conflicting terms. All Confirmations for Uncleared Swaps that are generated and issued directly by the SEF shall state that they incorporate by reference any previously-negotiated freestanding agreement of the counterparties governing such Transaction.
  - (3) In the event of any conflict between (i) the Trade Communication and (ii) the Terms Incorporated by Reference, the Trade Communication shall prevail to the extent of any inconsistency. This requirement shall be included in all Confirmations issued by the SEF.
  - (4) For each Uncleared Swap executed on or pursuant to the rules of the SEF, each previously-negotiated freestanding agreement of the counterparties included in the Terms Incorporated by Reference must be available to the SEF and/or the CFTC staff upon request within a reasonable period of time. Any such agreements provided to the SEF in connection with a CFTC request will be furnished to the CFTC as soon as they are available.
- (e) The USI referred to in 4012(a) above shall be created by the SEF and transmitted to each counterparty as soon as technologically practicable in accordance with CFTC Rule 45.5(a)(2).

#### **Rule 4013.A. Cleared Swaps**

- (a) Each Cleared Swap shall be cleared through the DCO indicated in the Swap Specification or agreed by the parties in accordance with the Applicable Law, provided that the DCO must be one of those recognized by the SEF. The DCOs currently recognized by the SEF are:
- (1) [ASX Clear \(Futures\) Pty Limited](#)
  - (2) [Chicago Mercantile Exchange, Inc.](#)
  - (3) [ICE Clear Credit LLC](#)
  - (4) [Japan Securities Clearing Corporation](#)



(5) [LCH.Clearnet LLC](#)

(6) [LCH.Clearnet Limited](#)

[The SEF may recognize additional DCOs either through amendment of this Rule 4013.A. or by issuance of a Notice to Participants.](#)

- (b) For each Cleared Swap a Participant expects to enter into via the SEF or subject to the SEF Rules, the Participant or a Participant's Client or Customer, as applicable, must establish a clearing account with the relevant DCO or with a Clearing Firm that is a Clearing Member of such DCO.
- (c) Promptly upon the execution of each Transaction in a Cleared Swap, the SEF shall submit the Transaction (which may include submission through a middleware provider) to the relevant DCO. A Transaction will be deemed to have been accepted for, or rejected from, clearing upon receipt of appropriate notice, in accordance with Applicable Law, from the DCO or from a third party acting on behalf of the DCO as authorized by the DCO for such purpose. The acceptance of a Transaction for clearing shall not relieve any Participant, Client or Customer of the duty to act in good faith and with reasonable care and diligence.
- (d) If a Transaction in a Cleared Swap (including a Transaction that is a component leg of a Package Transaction) is rejected by the DCO or a third party acting on behalf of the DCO, such Transaction is void *ab initio* and shall be cancelled by the SEF. The SEF Rules do not permit trades that are rejected from clearing to be held in a suspended state and then re-submitted.
- (e) Rejected Transactions in Cleared Swaps.
  - (1) If the SEF determines pursuant to the procedures set forth in Rule 5103.C. that a Transaction in a Cleared Swap (including a Transaction that is a component leg of a Package Transaction) is rejected from clearing (i) because of a clerical or operational error or omission made by the SEF or by one of the counterparties to the Transaction or its agent, or (ii) in the case of a component leg of a Package Transaction, due to the sequencing of the submission of the component legs of the Package Transaction, a new trade, with terms and conditions that match the terms and conditions of the original trade, other than any such error or omission and time of execution, may be executed on the SEF and submitted for clearing without having been executed pursuant to the methods set forth in CFTC Regulations 37.9(a)(2) or 38.500.
  - (2) If the SEF is able to identify and determine how to correct the error or omission, it may execute the new trade without obtaining the consent of the counterparties.
  - (3) If the SEF is unable to determine how to correct the error or omission, the SEF, at its election, may either (x) seek guidance from the counterparties (and, if

applicable, their agents and/or Clearing Firms) with respect to how to correct the error after which the SEF may then correct the error with the consent of both counterparties, or (y) elect not to fix the Transaction, in which case the Transaction will be treated as void *ab initio* and shall be cancelled by the SEF.

- (4) Execution of a new trade pursuant to this Rule 4013.A.(e) must comply with the requirements specified in Rule 4017 and must occur as quickly as technologically practicable after receipt of notice of the rejection by the DCO, but, in any event, no later than sixty (60) minutes from issuance of such notice. If the resubmitted Transaction is rejected, such Transaction will be void *ab initio* and shall be cancelled by the SEF. The counterparties may not resubmit a new Transaction a second time.
  - (5) The procedure set forth in this Rule 4013.A.(e) is not available with respect to Transactions that are rejected from clearing for credit reasons.
  - (6) This Rule 4013.A.(e) relies on relief granted by the ~~CFTC~~CFTC's Divisions of Market Oversight and Clearing and Risk in No-Action Letter 15-24, which expires at 11:59 p.m. (Eastern Time) on June 15, 2016. ~~Upon the expiry of No-Action Letter 15-24,~~If such no-action relief is extended, upon and to the extent of such extension, the provisions of this Rule 4013.A.(e) will ~~cease~~continue to apply.
- (f) Erroneously Cleared Transactions.
- (1) If it is determined pursuant to the procedures set forth in Rule 5103.C. that a Transaction in a Cleared Swap (including a Transaction that is a component leg of a Package Transaction) was incorrectly executed or cleared as the result of a clerical or operational error or omission, the SEF may permit the original counterparties to the Transaction to enter into a prearranged Transaction on the SEF that offsets the Transaction carried on the DCO's books (an "Offsetting Transaction"), without the Offsetting Transaction having to be executed pursuant to the methods required in CFTC Regulations 37.9(a)(2) and 38.500. The SEF may also permit the original counterparties (or, if the wrong legal entity was assigned as a counterparty to the original Transaction, the intended counterparties) to enter into a prearranged Transaction on the SEF that corrects the errors in the original Transaction ("Correcting Transaction"), without the Correcting Transaction having to be executed pursuant to the methods required in CFTC Regulations 37.9(a)(2) and 38.500.
  - (2) If the SEF is able to identify and determine how to correct the error or omission, it may execute the Offsetting Transaction and the corresponding Correcting Transaction without obtaining the consent of the counterparties.
  - (3) If the SEF is unable to determine how to correct the error or omission, the SEF may either (x) seek guidance from the counterparties to the Transaction and, if applicable, their agents and/or Clearing Firms, after which the SEF may then

correct the error by executing an Offsetting Transaction and corresponding Correcting Transaction with the consent of both counterparties, or (y) elect not to correct the error, in which case the original Transaction shall stand as executed.

- (4) Offsetting Transactions and Correcting Transactions executed pursuant to this Rule 4013.A.(f) must comply with the requirements specified in Rule 4017 and must be executed and cleared no later than three (3) days after the original, erroneous Transaction was executed.
- (5) The procedure set forth in this Rule 4013.A.(f) is available only with respect to clerical or operational errors or omissions made by the SEF, a counterparty to a Transaction or an agent of a counterparty to a Transaction.
- (6) This Rule 4013.A.(f) relies on relief granted by the ~~CFTC~~[CFTC's Divisions of Market Oversight and Clearing and Risk](#) in No-Action Letter 15-24, which expires at 11:59 p.m. (Eastern Time) on June 15, 2016. ~~Upon the expiry of No-Action Letter 15-24,~~[If such no-action relief is extended, upon and to the extent of such extension, the provisions of](#) this Rule 4013.A.(f) will ~~cease~~[continue](#) to apply.
- (g) The SEF shall have the right to (i) suspend Trading Privileges of the Participant(s) or Sponsored Participant(s) that executed one or more rejected Transactions or prohibit further trading on behalf of the Client(s) or Customer(s) on whose behalf any rejected Transaction(s) were executed, or (ii) take any other action permitted by the SEF Rules. The liability for any losses arising out of or in connection with a rejected Transaction will be determined by the parties to the Transaction. For the avoidance of doubt, the SEF will have no liability for any such losses.
- (h) It shall not be a condition for access to the SEF that any Participant be subject to a breakage agreement. This includes breakage agreements in respect of Package Transactions.
- (i) Each Person that is registered, or required to be registered, with the CFTC as a Swap Dealer or Major Swap Participant is responsible for compliance with the mandatory trading requirement under Section 2(h)(8) of the CEA when such Person enters into, or facilitates entry into, a Swap that is subject to the Clearing Requirement.
- (j) [The clearing services provided by a DCO in respect of a Cleared Swap will be governed by the rules, policies and procedures of that DCO. In addition, with respect to any DCO that has been granted an exemption from registration as such, the clearing services provided by such DCO must comply with any terms and conditions imposed on that DCO by the CFTC in connection with the DCO's exemption from registration.](#)

### **Rule 4013.B. Uncleared Swaps**

A Participant may enter into an Uncleared Swap only with a counterparty with which such Participant has swap trading relationship documentation that meets the requirements of Applicable Law. A Participant may enter into an Uncleared Swap on behalf of a Customer or Client only if such Customer or Client has swap trading relationship documentation with the relevant counterparty that meets the requirements of Applicable Law. The Participant and/or Customer or Client shall provide any information requested by the SEF in the processing and settlement of such Uncleared Swaps. In addition, a Participant, Customer or Client may, from time to time, input onto the SEF's systems, either itself, or by instructing an Execution Specialist, the credit line for any or all parties with which it has such swap trading relationship documentation.

### **Rule 4014 Information Regarding Orders and Dissemination of Trade Data**

The SEF may make information regarding Orders (including prices and amounts), Transactions and any other matters it may deem appropriate available to Participants and other Persons at such times and in such manner (whether through the SEF, a ticker, financial information services or otherwise) as it may consider necessary from time to time. In accordance with Rule 5702, each Participant or other Person receiving any such information through the SEF may redistribute such information only to such extent and in such manner as may be permitted by the SEF from time to time.

Participants are hereby notified that the SEF discloses swap transaction and pricing data for publicly reportable swap transactions executed on the Order Book prior to the public dissemination of such data by the relevant Swap Data Repository. This data is available to all Participants that have elected to obtain a connection to the Order Book and is disclosed to such Participants contemporaneously with the transmission of the data to the applicable Swap Data Repository for public dissemination.

### **Rule 4015 Enforceability**

A Transaction entered into on or pursuant to the Rules shall not be void, voidable, subject to rescission or otherwise invalidated or rendered unenforceable as a result of (a) a violation by the SEF of the provisions of Section 5h of the CEA or Part 37 of the CFTC Regulations or (b) any CFTC proceeding to alter or supplement a rule, term or condition under Section 8a(7) of the CEA, to declare an emergency under Section 8a(9) of the CEA, or any other proceeding the effect of which is to alter, supplement or otherwise require the SEF to adopt a specific term or condition, trading rule or procedure or to take or refrain from taking a specific action.

Without limiting the generality of the foregoing, failure of the SEF to broadcast any message in respect of a Transaction made on the SEF shall not invalidate any Transaction recorded by the SEF.

## Rule 4016 Block Trades

The following shall govern all Block Trades in Swaps:

- (a) All Block Trades, unless otherwise exempted by a SEF Rule, must comply with the requirements set forth in Rule 8003.
- (b) Block Trades that occur away from a trading system or platform of the SEF must be submitted to the SEF in a manner prescribed from time to time by the SEF. Each such submission must include all of the data required by Parts 43 and 45 of the CFTC Regulations, including without limitation (i) a notification to the SEF of the parties' election to have the Transaction treated as a Block Trade, and (ii) the actual notional or principal amount of the Transaction. The parties entering into a Block Trade must agree upon which party shall be responsible for reporting all terms of the Transaction to the SEF, and such designated party must report the Block Trade to the SEF as soon as technologically practicable after execution, but no later than ten (10) minutes after execution. Only Block Trades that are not Cleared Swaps are permitted to occur away from a trading system or platform of the SEF.
- (c) Upon receipt of the submission of a Block Trade as required by Rule 4016(b), the SEF will review the submission, and will report the Transaction as required by Parts 43 and 45 of the CFTC Regulations as soon as technologically practicable after execution. Such report to the SDR will include among other things the actual notional or principal amount of the Transaction and a notification to the Swap Data Repository of the parties' election to have the Transaction treated as a block trade.
- (d) Package Transactions may be executed as Block Trades, provided that each component is for a quantity that is equal to or in excess the Appropriate Minimum Block Size.
- (e) A Participant transacting a Block Trade on behalf of a Client or Customer must receive prior written instruction or consent from the Client or Customer to do so.
- (f) Except as may be permitted by CFTC Regulation 43.6(h)(6), the aggregation of Orders across multiple Customers or Clients in order to meet the Appropriate Minimum Block Size is prohibited.
- (g) Each party to a Block Trade shall comply with all applicable SEF Rules and, without limiting the generality of the foregoing, each such party shall be an ECP.
- (h) Any Block Trade in violation of these requirements may constitute conduct which is inconsistent with just and equitable principles of trade.
- (i) Upon request by the SEF, each party to a Block Trade shall produce satisfactory evidence that the Block Trade meets the requirements set forth in the SEF Rules.
- (j) ~~In accordance with CFTC No Action Letter 15-60, expiring November 15, 2016, until 11:59 p.m. (Eastern Time) on November 15, 2016,~~ Cleared Block Trades must be executed on a non-Order Book trading system or platform of the SEF. Each Order

underlying such a Cleared Block Trade must comply with the requirements for Order information set forth in Rule 8001 and shall include a notification to the SEF of the party's election to have the resultant publicly reportable swap transaction treated as a Block Trade. In addition, all such Cleared Block Trades must comply with the pre-execution credit check requirements set forth in Rule 4017 and all other applicable SEF Rules and CFTC Regulations. For the avoidance of doubt, all Block Trades in Cleared Swaps must be executed on a non-Order Book trading system or platform of the SEF in accordance with this Rule 4016(j) in order to facilitate compliance with Rule 4017. [This Rule 4016\(j\) relies on relief granted by the CFTC's Division of Market Oversight in No-Action Letter 15-60, which expires at 11:59 p.m. \(Eastern Time\) on November 15, 2016. If such no-action relief is extended, upon and to the extent of such extension, the provisions of this Rule 4016\(j\) will continue apply.](#)

#### **Rule 4017 Pre-Execution Credit Checks**

- (a) At the time of submitting an Order for any Cleared Swap (including any Cleared Swap that is a leg of a Package Transaction) or any Cleared Block Trade, a Participant must designate a Clearing Member with regard to the Transaction, which may be either the relevant party to the Transaction if such party is Self-Clearing or a designated Clearing Firm if the relevant party to the Transaction is Non-Self-Clearing.
- (b) Prior to the execution of any Order for a Cleared Swap (including any Cleared Swap that is a leg of a Package Transaction) or any Cleared Block Trade for which the relevant party is Non-Self-Clearing, the SEF will facilitate pre-execution credit screening by or on behalf of the designated Clearing Firm. Upon receiving confirmation that the Order or Cleared Block Trade satisfies the Clearing Firm's pre-execution limits with respect to such party, the SEF will accept the Order or Cleared Block Trade for execution. If the SEF does not promptly receive confirmation or receives confirmation that the Order or Cleared Block Trade does not satisfy the Clearing Firm's pre-execution limits with respect to such party, the SEF will cancel the Order or Cleared Block Trade.
- (c) Any party that is Self-Clearing with respect to a Transaction is deemed to represent, by submitting an Order for its proprietary account, that it has completed pre-execution screening of its internal clearing risk limits for proprietary accounts.

#### **Rule 4018 Risk Mitigation Sessions**

The SEF may conduct periodic anonymous risk mitigation sessions in accordance applicable CFTC guidance and no-action positions and the tpSEF Risk Mitigation Procedures (such sessions, "Risk Mitigation Sessions"). Information on upcoming Risk Mitigations Sessions are made available by the SEF on its website. The tpSEF Risk Mitigation Procedures are attached hereto as Appendix C.

## **POSITION LIMITS AND POSITION ACCOUNTABILITY LEVELS**

### **Rule 4100 SEF Rules Do Not Limit Emergency Powers**

Nothing contained in the SEF Rules relating to position limits shall in any way be construed to limit the ability of the SEF to take an Emergency Action as enumerated in the SEF Rules, and, unless the Board in taking an Emergency Action shall state otherwise, any such Emergency Action shall be effective with respect to all Participants, Sponsored Participants, Clients and Customers regardless of whether an exemption from the position limits has previously been granted pursuant to these SEF Rules.

### **Rule 4101 Position Limits**

- (a) To reduce the potential threat of market manipulation or congestion, the SEF shall adopt for each of the contracts of the SEF, as is necessary and appropriate, position limits for speculators.
- (b) Except as otherwise provided by the SEF Rules, no Person, including a Participant, Sponsored Participant, Client or Customer, may hold or control a position in excess of such position limits, and no Person may maintain a position in excess of such position limits for a Client or Customer if such Person knows, or with reasonable care should know, that such position will cause such Client or Customer to exceed the applicable position limits.
- (c) Position limits shall apply to (i) all positions in accounts for which any Person, by power of attorney or otherwise, directly or indirectly holds positions or controls trading, and (ii) positions held by two or more Persons acting pursuant to an expressed or implied agreement or understanding, as if the positions were held by, or the trading of the positions were done by, a single Person.

### **Rule 4102 Exemptions from Position Limits**

Any Person seeking an exemption from the position limits referred to in Rule 4101 must file an application with the SEF in the manner and within the time limits prescribed by the SEF. The SEF shall notify the applicant whether the exemption has been approved and whether the SEF has imposed any limitations or conditions on the exemption. The decision of the SEF shall be final.

### **Rule 4103 Position Accountability**

- (a) To reduce the potential threat of market manipulation or congestion, the SEF shall adopt for each of the contracts of the SEF, as is necessary and appropriate, position accountability levels for speculators. Any Person, including a Participant, Sponsored Participant, Client or Customer, who owns or controls Swaps in excess of the applicable position accountability level shall provide the SEF, at its request, any information regarding the nature of the position, trading strategy or hedging activities, if applicable, and if ordered by the SEF, shall not increase the size of any such position.

- (b) For purposes of this Rule 4103, all positions in accounts for which a Person, by power of attorney or otherwise, directly or indirectly controls trading shall be included with the positions held by such Person. The provisions of this Rule 4103 shall apply to positions held by two or more Persons acting pursuant to an expressed or implied agreement or understanding, as if the positions were held by a single Person.

**Rule 4104 Enforcement of Position Limits and Position Accountability Levels**

- (a) No Person may for itself or any Customer or Client maintain a combination of Swaps which is, or which when aggregated in accordance with this Rule is, in excess of the limits established pursuant to Rule 4101 (or, to the extent ordered not to increase such positions pursuant to Rule 4103, a position in excess of the relevant level).
- (b) In the event the SEF learns that a Person maintains positions in accounts with more than one (1) Person such that the aggregate position in all such accounts exceeds (i) the position limits established pursuant to Rule 4101 or (ii) to the extent such Person is ordered not to increase such positions pursuant to Rule 4103, the relevant level, the SEF may notify all Persons maintaining or carrying such accounts of the total positions of such accounts. Such notice may also instruct each such Person to reduce the positions in such accounts immediately after receipt of the notice, proportionately or otherwise so that the aggregate positions of such accounts does not exceed the position limits and position accountability levels established pursuant to Rules 4101 and 4103, unless as provided by paragraph (c) below, a request for an exemption is made and granted by the SEF pursuant to this Rule 4104. Any Person receiving such notice shall immediately take such steps as may be necessary to liquidate such number of contracts as shall be determined by the SEF in order to cause the aggregate positions of such accounts to comply with the position limits and position accountability levels established pursuant to Rules 4101 and 4103. Notwithstanding the foregoing, the Persons may reduce the positions of such accounts by a different amounts so long as after all reductions have been accomplished, the positions comply with the position limits and position accountability levels established pursuant to Rules 4101 and 4103.
- (c) In the event a Person exceeds its position limit due to sudden unforeseen increases in its bona fide hedging needs, such Person shall not be considered in violation of the SEF Rules provided that such Person requests a hedge exemption to carry such increased position within five (5) Business Days following the day on which the Person's position limit was exceeded and provided that such exemption is granted by the SEF.
- (d) Subject to the foregoing provisions of this Rule 4104, in the event that a Person's position (whether for such Person's own account or for the account of a Customer or Client) exceeds the position limits established pursuant to Rule 4101 or ordered by the SEF such Person shall liquidate such amount of Swaps as the SEF shall direct in order to eliminate the excess within such time as the SEF may prescribe and shall report to the SEF when such liquidations have been completed. If a Person fails so to liquidate contracts within the time prescribed by the SEF, then, in addition to any other actions the SEF may take, the SEF may take such steps as it may deem necessary or appropriate to liquidate such contracts on behalf and at the expense of such Person to



the extent necessary to eliminate such excess. Without limiting the generality of the foregoing, to the extent applicable, the SEF may request the DCO to effect such liquidation in accordance with rules of the DCO. In addition, the SEF in its discretion may require any Person carrying an account for itself or a Customer or Client to obtain and hold additional original margin in such amount and form and by such time as the SEF shall specify until such excess has been eliminated.

**SECTION 5  
PARTICIPANT CONDUCT**

**DUTIES AND OBLIGATIONS**

**Rule 5000 Duties and Responsibilities of Participants, Sponsored Participants, Customers and Clients**

Each Participant and Sponsored Participant shall (and shall cause all of its respective Supervised Persons to) and each Customer and Client shall:

- (a) use the SEF and effect Transactions in a responsible manner and not for any improper purpose;
- (b) use the SEF only to conduct permitted activity as determined by the SEF;
- (c) comply with the SEF Rules and conduct all such activity in a manner consistent with the SEF Rules and Obligations;
- (d) comply with Applicable Law;
- (e) observe high standards of integrity, market conduct, commercial honor, fair dealing and just and equitable principles of trade while conducting or attempting to conduct any activity on or through the SEF or any aspect of any business connected with or concerning the SEF;
- (f) not knowingly mislead or conceal any material fact or matter in any dealings or filings with the SEF or in response to any SEF Proceeding;
- (g) keep any User IDs, account numbers and passwords related to the SEF confidential;
- (h) employ practices to monitor and enforce compliance with risk limits established in conformance with Applicable Law; and
- (i) keep, or cause to be kept, complete and accurate books and records in accordance with Rule 8002.

**Rule 5001 Required Disclosures to the SEF**

- (a) Each Participant, Sponsored Participant, Customer and Client shall immediately notify the Market Regulation Department in writing at such time as it becomes aware of the occurrence of any of the following events:
  - (1) any damage to, or failure or inadequacy of, the systems, facilities or equipment of such Person to effect Transactions pursuant to the SEF Rules;

- (2) any failure to timely perform such Person's financial obligations under or in connection with Swaps of such Person (or Swaps of any Customer, Client or Sponsored Participant of such Person, as applicable);
- (3) any violation of Applicable Law in connection with such Person's access to, or activities on the SEF, including the requirements of the CFTC and, if applicable, NFA;
- (4) a Material Adverse Change in such Person's financial condition or in the financial condition of an Affiliate of such Person if such change materially impacts such Person's ability to satisfy its obligations under the SEF Rules;
- (5) any refusal of admission of such Person to any other swap execution facility, commodity or securities exchange, DCM, DCO, Self-Regulatory Organization or other business or professional association, or withdrawal by such Person of any application for participation or membership in any swap execution facility, commodity or securities exchange, DCM, DCO, Self-Regulatory Organization or other business or professional association;
- (6) the indictment or conviction of, or any confession of guilt or plea of guilty or *nolo contendere* by such Person (or, if applicable, any of its respective Supervised Persons with access to the SEF) for any felony of any nature or misdemeanor involving, arising from, or related to, the purchase or sale of any Swap or other financial instrument, or involving or arising from moral turpitude, misrepresentation, fraud, deceit, theft, embezzlement, gambling, conversion or abuse of a fiduciary relationship;
- (7) the issuance of a formal order of investigation (or its equivalent), or the commencement, by the issuance or service of a written complaint (or its equivalent), of any judicial, administrative or self-regulatory proceeding, as the case may be, against such Person (or, if applicable, any of its respective Supervised Persons) by the CFTC, the SEC, the securities commission or equivalent authority of any state, territory, the District of Columbia or foreign country, or any swap execution facility, commodity or securities exchange or related clearing organization, DCM, DCO, any Self-Regulatory Organization or other business or professional association;
- (8) the bankruptcy or insolvency of such Person or any of its respective Affiliates;  
or
- (9) any suspension, expulsion, bar, fine, censure, cease and desist order, temporary or permanent injunction, denial of trading privileges or any other sanction or discipline imposed on such Person (or, if applicable, any of its respective Supervised Persons), whether through an adverse determination, voluntary settlement or otherwise, by:

- (i) a swap execution facility, commodity or securities exchange, DCM, DCO, Self-Regulatory Organization or other business or professional association;
  - (ii) the SEC, the CFTC or the securities commission or equivalent authority of any state, territory, the District of Columbia or foreign country; or
  - (iii) any federal court, state court, Government Agency not mentioned above or quasi-governmental body.
- (b) Each Participant, Sponsored Participant, Customer and Client shall notify the Market Regulation Department in writing within ten (10) days of becoming aware of the occurrence of any of the following events:
  - (1) any denial or withdrawal of any application for any registration or license with respect to such Person (or, if applicable, any of its respective Supervised Persons) by or from the SEC, the CFTC or the securities commission or equivalent authority of any state, territory, the District of Columbia or foreign country, or
  - (2) the issuance of a bar by any agency of the United States from contracting with the United States.

## **TRADING CONDUCT**

### **Rule 5100 Abusive Trading Practices Prohibited**

- (a) No Participant or Sponsored Participant or any of its respective Supervised Persons, nor any Customer or Client, shall engage in any fraudulent act or engage in any scheme to defraud, deceive, trick or mislead in connection with or related to any SEF activity including, without limitation, any of the following trading practices except as otherwise authorized under the SEF Rules:
  - (1) front-running;
  - (2) wash trading;
  - (3) pre-arranged trading (it being understood that pre-arranged trading does not include Transactions resulting from pre-execution communications to the extent permitted by Rule 5203(b));
  - (4) fraudulent trading;
  - (5) money passes;
  - (6) fictitious transactions;

- (7) non-competitive transactions (unless otherwise exempt or excluded pursuant to the SEF Rules);
- (8) accommodation trading; or
- (9) any other trading practices that the SEF deems to be abusive.

Additionally, no Participant or Sponsored Participant or any of its respective Supervised Persons, nor any Customer or Client, shall knowingly execute or accommodate the execution of any such activity by direct or indirect means.

- (b) No Participant, Sponsored Participant, Customer or Client shall trade any Swap that is not authorized to trade on the SEF.

#### **Rule 5101 Good Faith Bids and Offers**

A Participant or Sponsored Participant shall not knowingly enter, nor shall any Participant, Sponsored Participant, Customer or Client, cause to be entered, bids or offers into the SEF other than in good faith for the purpose of executing *bona fide* Transactions.

#### **Rule 5102 Invalid Transactions**

- (a) A Transaction made or purported to be made on or pursuant to the rules of the SEF may be declared invalid by the SEF in the following circumstances:
  - (1) *Unrepresentative Price.* If, taking into consideration current market conditions, the SEF determines that a Transaction has taken place at an unrepresentative price, the SEF, at its absolute discretion, may declare such Transaction invalid. The SEF may take into account such information as it deems appropriate when determining whether to invalidate a Transaction, including, without limitation, the following:
    - (i) price movement of other swap contracts with similar terms;
    - (ii) current market conditions, including levels of activity and volatility;
    - (iii) time period between different quotes and between quoted and traded prices;
    - (iv) market or other information regarding price movement in related swap contracts; or
    - (v) manifest error.
  - (2) *Breach of Applicable Law.* If the SEF determines that a Transaction has been made in breach of Applicable Law, the SEF may declare the Transaction invalid.

- (b) When a Transaction is declared invalid by the SEF, the parties to the Transaction will be notified by the SEF of that fact and a message will be broadcast through the SEF announcing the Swap contract and price level of the invalid Transaction, and the invalid Transaction may be displayed on the SEF as a cancelled Transaction.

### **Rule 5103 Trade Cancellation, Correction, Offset and Adjustment**

#### **Rule 5103.A. SEF Authority Regarding Trade Cancellation, Correction, Offset and Adjustment**

The SEF has authority to cancel, or adjust the price of, any Transaction executed on or pursuant to the rules of the SEF, or to execute or require the execution of a new or offsetting Transaction:

- (a) when the SEF determines in its sole discretion such action is necessary to mitigate market disrupting events caused by the improper or erroneous use of the SEF or by system defects;
- (b) at any time the SEF determines in its sole discretion that allowing a Transaction to stand as executed may have a material adverse effect on the integrity of the market; or
- (c) in accordance with Rule 4013.A. and this Rule 5103.

#### **Rule 5103.B. Transaction Price Review**

- (a) Determination to Review a Transaction's Price.
  - (1) The SEF may determine to review a Transaction's price based on its independent analysis of market activity or upon a Participant's request.
  - (2) A Participant's request for review must be made within ten (10) minutes of execution the relevant Transaction and must include the USI for the Transaction and a statement of the grounds for the review. In the absence of a timely request for review, the SEF may determine whether or not a Transaction will be subject to review in its sole discretion. Notwithstanding the foregoing, subject to Applicable Law, the SEF shall amend the terms of, or cancel, any Transaction that the parties, together with the DCO, as applicable, mutually agree to amend or cancel, in the event that such amendment or cancellation is not submitted to the SEF within the applicable review period specified above.
- (b) Review of a Transaction's Price.
  - (1) In reviewing a Transaction's price, the SEF shall determine the fair market value price for the Swap at the time the Transaction was executed. The SEF may consider any relevant information, including, but not limited to, the last transaction price of the Swap or a better bid/offer, a more recent price for a different maturity date, the price of the same or related Swap established in another venue or another market, the market conditions at the time of the

Transaction and the theoretical value of an option based on the most recent implied volatility.

- (2) Following the SEF's determination of a Transaction's fair market value price in accordance with Rule 5103.B.(b)(1) above, the SEF shall have the right, in its sole discretion, to cancel or adjust the price of such Transaction or to require the entry into an offsetting Transaction; *provided, however*, that the SEF shall not make any such cancellation or price adjustment or require the entry of an offsetting Transaction if such action would, in the SEF's sole discretion, (i) adversely impact market integrity, (ii) facilitate market manipulation or other illegitimate activity or (iii) otherwise violate the CEA, CFTC Regulations or the SEF Rules.
- (3) The method of adjustment or cancellation of any Cleared Swap that is adjusted or cancelled shall be the method provided for by the rules and procedures of the relevant DCO.

#### **Rule 5103.C. Review of Transactions for Errors**

- (a) If a Participant, Sponsored Participant, Client or Customer believes that any Transaction was incorrectly executed, cleared or rejected from clearing as a result of an Error (as defined in Rule 5103.C.(f) below), such Person may, within ten (10) minutes thereafter, request a review of the Transaction by providing the USI for the Transaction and stating the grounds for the disagreement.
- (b) Upon timely receipt by the SEF of a request for a Transaction review in accordance with Rule 5103.C.(a) above, or if the SEF determines on its own initiative to conduct such a review, the SEF will review its electronic audit trail and other relevant records to determine if an Error occurred. If the request for review is not timely, the SEF may, in its sole discretion, perform a review of the Transaction.
- (c) If the review described in this Rule 5103.C. reveals that the Transaction was incorrectly executed, cleared or rejected from clearing as a result of an Error, the SEF may cancel or adjust the Transaction, or execute or require the execution of a new or offsetting Transaction (in accordance with the procedures specified in Rule 4013.A. for Cleared Swaps), as appropriate; *provided, however*, that the SEF shall not take any action pursuant to this Rule 5103.C.(c) if such action would, in the SEF's sole discretion, (i) adversely impact market integrity, (ii) facilitate market manipulation or other illegitimate activity or (iii) otherwise violate the CEA, CFTC Regulations or the SEF Rules.
- (d) If the review described in this Rule 5103.C. reveals that the Transaction was not incorrectly executed, nor cleared or rejected from clearing as a result of an Error, then no adjustment shall be made.
- (e) If a Transaction is reviewable for price under Rule 5103.B., the procedures of this Rule 5103.C. shall not apply. For the avoidance of doubt, if a Transaction was correctly

executed but the reporting to the SDR was in error, Rule 8005 shall apply and this Rule 5103.C. shall not apply.

- (f) An “Error” shall mean the occurrence of any of the following:
- (1) A mistake made as the result of a malfunction of the SEF or human error, including a mistake made by an Execution Specialist;
  - (2) An Order was incorrectly displayed and/or executed;
  - (3) A clerical or operational error or omission made by the SEF or a Participant, Sponsored Participant, Client or Customer (or any agent of any of the foregoing) that caused a transaction to be rejected from clearing and void *ab initio*; or
  - (4) a Clearing Firm or DCO rejected a leg of a Package Transaction for clearing because of the sequencing of submission for clearing of the legs of the applicable Package Transaction.

#### **Rule 5103.D. Records and Reporting of Cancellations and Price Adjustments**

- (a) Cancelled Transactions and any prices that have been adjusted shall be cancelled in the SEF’s official records.
- (b) Transactions that have had their price adjusted shall be reflected in the SEF’s official records at the adjusted price.
- (c) If a Transaction is either cancelled or adjusted pursuant to Rule 5103, the SEF shall submit a cancellation or correction of the Transaction to the same SDR to which the Transaction was previously reported.

#### **Rule 5104 Misuse of the SEF**

Misuse of the SEF is strictly prohibited. It shall be a violation of the SEF Rules for any Person to willfully or negligently engage in unauthorized access to the SEF, to assist any Person in obtaining unauthorized access to the SEF, to trade on the SEF without the authorization of a Participant, to alter the equipment associated with the SEF, to interfere with the operation of the SEF, to use or configure a component of the SEF in a manner that does not conform to the SEF Rules, to intercept or interfere with information provided on or through the SEF, or in any way to use the SEF in a manner contrary to the SEF Rules.

### **VIOLATIONS**

#### **Rule 5200 Rule Violations**

- (a) It shall be a violation for a Participant, Sponsored Participant, Customer or Client or any Supervised Person to violate any Rule regulating the conduct or business of a Participant, to breach any agreement made with the SEF, to violate Applicable Law, or



to engage in fraud, dishonorable conduct, or in conduct which is inconsistent with just and equitable principles of trade.

- (b) Participants, Sponsored Participants, Customers and Clients and Supervised Persons shall assist the SEF in any investigation into potential violations of Applicable Law. Such assistance must be timely and may include, but not be limited to, requiring any Participant, Sponsored Participant, Client, Customer or Supervised Person to produce documents, to answer questions from the SEF or its designee, and/or to appear in connection with an investigation.
- (c) If a Participant, Sponsored Participant, Customers or Client has actual or constructive notice of a violation in connection with the use of the SEF by a Participant, Sponsored Participant, Client, Customer or Supervised Person such Person fails to notify the Market Regulation Department within a reasonable time, such Person may be found to have committed an act detrimental to the interest or welfare of the SEF.

**Rule 5201 Fraudulent Acts Prohibited**

No Participant, Sponsored Participant, Customer or Client (or any Supervised Persons) shall engage in any fraudulent act or engage in any scheme to defraud, deceive, trick or mislead in connection with or related to any SEF activity.

**Rule 5202 [Reserved]**

**Rule 5203 Fictitious or Wash Transactions; Permitted Pre-Execution Communications**

- (a) No Participant, Sponsored Participant, Customer or Client (or any Supervised Persons) shall create fictitious transactions or wash transactions. No Person shall place or accept Orders in the same Swap where the Person knows or reasonably should know that the purpose of the Orders is to avoid taking a bona fide market position exposed to market risk (transactions commonly known or referred to as wash sales). Orders for different accounts with common beneficial ownership that are entered with the intent to negate market risk or price competition shall also be deemed to violate the prohibition on wash trades. Additionally, no Person shall knowingly execute or accommodate the execution of such Orders by direct or indirect means.
- (b) Participants, Sponsored Participants, Customers and Clients (and any of their Supervised Persons) may engage in pre-execution communications (including communications with respect to Orders) relating to:
  - (1) Permitted Cross Transactions;
  - (2) Block Trades executed pursuant to Rule 4016;
  - (3) Transactions executed pursuant to the procedures specified in Rule 4013.A.(e) and (f);

- (4) Package Transactions (Order Book Exempt); and
- (5) Required Cross Transactions;

provided that with respect to any pre-execution communications permitted by (1) through (5) above:

- (i) the parties to the pre-execution communications do not disclose to a non-party the details of such communications or use the information obtained in a manner contrary to Applicable Law, and
- (ii) the requirements of Rule 4011 are satisfied to the extent applicable.

Nothing contained in this Rule 5203(b) shall prevent a Person from disclosing information as may be required by legal process (including subpoena or demand for productions) or to such Person's agents or advisors (including, but not limited to, accountants and auditors and legal counsel).

#### **Rule 5204 Market Disruptions Prohibited**

Orders entered into the SEF for the purpose of upsetting the equilibrium of the market in any Swap or creating a condition in which prices do not or will not reflect fair market values are prohibited, and any Participant, Sponsored Participant, Customers or Client (or any of its Supervised Persons) 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 SEF in violation of this Rule 5204.

#### **Rule 5205 Market Manipulation Prohibited**

No Participant, Sponsored Participant, Customer or Client (or any of their respective Supervised Persons) shall attempt to manipulate or manipulate the market in any Swap including, without limitation, "front-running", "money passes", trading ahead or against customer Orders, combination or improper cross trading involving, for example and without limitation, a short term riskless transaction taking advantage of an incoming Order or the offset of a prior position to avoid an adverse market move.

#### **Rule 5206 Disruptive Trading Practices Prohibited**

No Participant, Sponsored Participant, Customer or Client (or any of their respective Supervised Persons) shall engage in any trading, practice or conduct that constitutes a "disruptive trading practice," as such term is defined by the Section 4c(a)(5) of the CEA (7 U.S.C. § 6c(a)(5)) or the related CFTC Regulations.

#### **Rule 5207 Prohibition of Misstatements**

No Participant, Sponsored Participant, Customer or Client (or any of their respective Supervised Persons) shall make any knowing misstatement of a material fact to the SEF, any

SEF Official, any Board committee or SEF Panel, any agent of the SEF (including the Regulatory Services Provider) or any Participant, Sponsored Participant, Customer, Client or Supervised Person.

**Rule 5208 Acts Detrimental to the SEF Prohibited**

No Participant, Sponsored Participant, Customer or Client (or any of their respective Supervised Persons) shall engage in any act that is detrimental to the SEF.

**Rule 5209 Adherence to Law**

No Participant, Sponsored Participant, Customer or Client (or any of their respective Supervised Persons) shall engage in conduct that is a violation of the Applicable Law.

**Rule 5210 Communications with the Public and Promotional Material**

Promotional material and similar information issued by Participants shall comply with Applicable Law.

**SUPERVISION**

**Rule 5300 Duty to Supervise**

Each Participant shall establish, maintain and administer reasonable supervisory procedures to monitor the compliance of Supervised Persons with the SEF's Rules and any applicable provisions of the CEA or CFTC Regulations and such Participant may be held accountable for the actions of such Supervised Persons.

**INSPECTIONS**

**Rule 5400 Inspections by the SEF**

- (a) The SEF and the Regulatory Services Provider (and their respective authorized representatives), shall have the right, in connection with determining whether all Obligations are being, will be, or have been complied with by a Participant, Sponsored Participant, Customer or Client, in accordance with Applicable Law:
  - (1) inspect books and records, systems, equipment and software operated by such Person in connection with any SEF activity, wherever located;
  - (2) access the systems, equipment, software and the premises on which the systems, equipment and software are located and any data stored in any of the systems or equipment, during the regular business hours and the Trading Hours of the SEF without prior notice to such Person; and/or
  - (3) remove, copy or reproduce any data to which the SEF has access under the SEF Rules.

- (b) Each such Person shall provide the Regulatory Services Provider with the same access to its books and records and offices as it is required to provide the SEF under the SEF Rules and Applicable Law.
- (c) The Market Regulation Department may require a Participant to furnish (periodically or on a particular occasion) information concerning the Participant's activity on the SEF. For a Participant, such information includes but is not limited to, the Participant's open trading positions or Swaps to which the Participant is a party.
- (d) The SEF shall provide prior notice to a Person in the event of an inspection that has been prescheduled by the SEF.

## **INFORMATION SHARING**

### **Rule 5500 Information-Sharing**

- (a) The SEF may enter into information-sharing agreements or other arrangements or procedures to establish and enforce rules that will allow the SEF to obtain any necessary information to perform any monitoring of trading and trade processing, provide information to the CFTC upon request and that allow the SEF to carry out such international information-sharing agreements as the CFTC may require. As part of any information-sharing agreements or other arrangements or procedures adopted pursuant to this Rule, the SEF may:
  - (1) provide market surveillance reports to other markets;
  - (2) share information and documents concerning current and former Participants with other markets;
  - (3) share information and documents concerning ongoing and completed investigations with other markets; and/or
  - (4) require its current or former Participants, or their Sponsored Participants, Customers or Clients, to provide information and documents to the SEF at the request of other markets with which the SEF has an information-sharing agreement or other arrangements or procedures.
- (b) The SEF may enter into any arrangement with any Person or body (including, without limitation, the CFTC, the NFA, any Self-Regulatory Organization, any exchange, market, Swap Data Repository, reporting services or clearing organization or foreign regulatory authority) if the SEF considers such arrangement to be in furtherance of the SEF's purpose or duties under Applicable Law.
- (c) The SEF may disclose to any Person or entity information concerning or associated with a Participant or other Person where the SEF believes such disclosure is reasonably necessary and appropriate in exercising a legal or regulatory function.

- (d) Participants, Sponsored Participants, Customers and Clients shall provide the SEF any requested information pursuant to the SEF Rules or Applicable Law as necessary for the SEF to perform any of the functions described in these SEF Rules.

## **FINANCIAL REQUIREMENTS**

### **Rule 5600 Minimum Financial and Related Reporting Requirements**

- (a) Each Participant that is registered with any Government Agency, including the CFTC and the SEC, or a Self-Regulatory Organization shall comply with the provisions of Applicable Law, including, but not limited to, the rules and regulations such Government Agency or Self-Regulatory Organization imposes on a Participant relating to minimum financial and related reporting and recordkeeping requirements.
- (b) Each Participant shall qualify as an ECP and undertake to timely update any change to the Participant's status as an ECP.
- (c) A copy of any notice or written report that a Participant is required to file with the CFTC pursuant to CFTC Regulation 1.12 shall be concurrently provided to the SEF.
- (d) A Participant who is subject to and violates CFTC Regulations 1.10, 1.12, 1.17 or 1.18 shall be deemed to have violated this Rule 5600.

### **Rule 5601 Confidentiality of Financial and Other Information**

All information and data obtained or received by the Market Regulation Department from inspections of accounting and other records, quarterly balance sheets and declarations or reports on financial condition will be treated as confidential by the SEF; however, this Rule does not supplant Rule 5500 and the SEF Rules in Section 7, Applicable Law, or any other requirement of legal process or law.

### **Rule 5602 Authority to Impose Restrictions**

Whenever a Participant is subject to the early warning requirements set forth in CFTC Regulation 1.12, the SEF may impose such conditions or restrictions on the business and operations of such Participant as the SEF may deem necessary or appropriate for the protection of customers, other Participants, or the SEF.

### **Rule 5603 Additional Disclosure Requirements**

Each Participant must comply with all disclosure requirements set forth in applicable CFTC and Self-Regulatory Organization rules and regulations. Any such disclosure may be combined with a disclosure regarding the existence of financial interests held by the Participant in the SEF or any other exchange.

## MISCELLANEOUS

### **Rule 5700 Gifts and Gratuities**

Participants shall maintain and enforce gifts policies and procedures to prevent gifts in excess of one hundred dollars (\$100) to Directors, Officers and SEF employees.

### **Rule 5701 Anti-Money Laundering and Anti-Terrorism**

It is SEF policy: (1) not to engage in or knowingly assist any money laundering or other illicit business, and (2) not to engage in or knowingly assist, or be a conduit for, terrorist financing. Participants will be required to provide sufficient information for Participants and their Customers or Clients, if applicable, for SEF to conduct restricted list searches, including, but not limited to, searches against the Specially Designated Nationals and Blocked Persons list maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury.

### **Rule 5702 Market Data**

- (a) All Participants, Sponsored Participants, Customers and Clients and all Supervised Persons, agents, vendors, and other Persons affiliated with the foregoing understand and acknowledge that the SEF has a proprietary interest in:
- (1) the price and quantity data from each and every Transaction executed on the SEF or subject to the SEF Rules, including the time at which the Transaction was executed on, or submitted to, the SEF;
  - (2) the price and quantity data for each and every Order or Block Transaction submitted to the SEF, including the time at which the Order was entered;
  - (3) the yield curves and reference prices prepared by the SEF;
  - (4) any data and information derived from (1), (2) and (3) and the format and presentation thereof (except a Participant's confidential information or data); and
  - (5) the transmissions and dissemination of the data and information to Participants, any publisher of the data or information with whom the SEF has a written agreement, and any other Persons.
- (b) Except with respect to such Person's confidential information or data, Participants, Sponsored Participants, Customers and Clients and Supervised Persons may not distribute, sell or retransmit any other information displayed on the SEF to any third party without the express written consent of the SEF.
- (c) The SEF may at any time restrict or establish utilization fees in respect of data described in Rule 5702(a) with respect to all or any Participants, Sponsored Participants, Customers or Clients in order to safeguard the security or operations of

the SEF or to preserve market integrity, fair and orderly trading, or if otherwise in the public interest, *provided, however*, that view-only access is provided free-of-charge.

**Rule 5703    Extension or Waiver of SEF Rules**

If necessary and expedient, the SEF may, in its sole discretion, waive, or extend the time period for performing, any act or acts designated by the SEF Rules, but only to the extent such waiver or extension is not inconsistent with the CEA or the CFTC Regulations.

**SECTION 6**  
**ENFORCEMENT OF RULES AND**  
**DISCIPLINARY PROCEEDINGS**

**Rule 6000    General**

- (a) All Participants, Sponsored Participants, Account Managers, Authorized Traders, Clients, Customers, Supervised Persons and any other Person using a User ID of a Participant or login credentials linked to a Participant or User ID shall be subject to the SEF's jurisdiction. Any Participant, Sponsored Participant, Account Manager, Authorized Trader, Client, Customer, Supervised Person or other Person using a User ID of a Participant or login credentials linked to a Participant or User ID is subject to this Section 6 if such person is alleged to have violated, to have aided and abetted a violation, to be violating, or to be about to violate, any SEF Rule or any other provision of Applicable Law for which the SEF has disciplinary jurisdiction.
- (b) The SEF, through its Market Regulation Department, Review Panels, Disciplinary Panels and Appeals Panels 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 Section 6.
- (c) The SEF and its Regulatory Services Provider are parties to a Regulatory Service Agreement as referenced in Rule 2600, pursuant to which the Regulatory Services Provider has agreed to perform certain regulatory services described in this Section 6 on behalf of SEF. The SEF Rules that refer to the SEF, SEF staff, the Market Regulation Department and other SEF departments should be understood as also referring to the Regulatory Services Provider, the Regulatory Services Provider staff and the Regulatory Services Provider departments acting on behalf of SEF pursuant to the Regulatory Services Agreement. Notwithstanding the fact that the SEF has entered into the Regulatory Services Agreement with its Regulatory Services Provider to perform some of the SEF's functions, the SEF shall retain ultimate legal responsibility for, and control of, such functions.
- (d) No SEF Official will interfere with or attempt to influence the process or resolution of a Disciplinary Action except to the extent provided under the SEF Rules with respect to a proceeding in which the SEF Official is a member of the relevant panel.
- (e) Any Participant, Sponsored Participant, Account Manager, Authorized Trader, Client, Customer or Supervised Person may be represented by counsel during any Disciplinary Action pursuant to this Section 6.
- (f) The SEF may hold a Participant liable for, and impose sanctions against such Participant, for such Participant's own acts and omissions that constitute a violation as well as for the acts and omissions of each (A) Authorized Trader of such Participant, (B) other Supervised Person of such Participant, (C) other Person using a User ID of such Participant or login credentials linked to the Participant or User ID, (D) agent or representative of such Participant, in each case, that constitute a violation as if such



violation were that of the Participant, or (E) Sponsored Participant, Client or Customer of such Participant.

- (g) The SEF may hold 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 as well as or for the acts and omissions of any agent or representative of such Authorized Trader that constitute a violation as if such violation were that of the Authorized Trader.

#### **Rule 6001     Inquiries and Investigations**

- (a) The SEF, through its Market Regulation Department, will investigate any matter within the SEF's jurisdiction of which it becomes aware. The Market Regulation Department will commence an investigation upon the receipt of a request from CFTC staff or upon the discovery or receipt of information by the SEF, or its trading or market surveillance or review of other information or other SEF data, that, in the judgment of the Market Regulation Department, indicates a possible basis for finding that a violation has occurred or will occur. The Market Regulation Department will determine the nature and scope of its inquiries and investigations in its sole discretion. The Market Regulation Department shall inform the Chief Compliance Officer of all inquiries.
- (b) The Market Regulation Department may:
  - (1) initiate and conduct inquiries and investigations;
  - (2) prepare Investigation Reports and make recommendations concerning initiating disciplinary proceedings;
  - (3) prosecute alleged violations within the SEF's disciplinary jurisdiction; and
  - (4) represent the SEF on summary imposition of fines, summary suspension or other summary action.
- (c) Each Clearing Firm, Participant, Sponsored Participant, Account Manager, Authorized Trader, Customer, Client and Supervised Person and any other Person that is subject to the SEF's jurisdiction:
  - (1) is obligated to appear and testify and respond in writing to interrogatories within the time period required by the SEF in connection with:
    - (i) any SEF Rule or any other provision of Applicable Law for which the SEF has disciplinary jurisdiction;
    - (ii) any Disciplinary Action; or
    - (iii) any preparation for and presentation during a Disciplinary Action;

- (2) 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 SEF in connection with:
  - (i) any SEF Rule or any other provision of Applicable Law for which the SEF has disciplinary jurisdiction;
  - (ii) any situation in which such books, records, papers, documents or other tangible evidence would be useful to the SEF in determining if a violation of a SEF Rule has occurred;
  - (iii) any Disciplinary Action; or
  - (iv) any preparation for and presentation during a Disciplinary Action; and
- (3) may not impede or delay any Disciplinary Action.
- (d) Each investigation will be completed in a timely manner. Absent mitigating factors, a timely manner is no later than twelve (12) months after the date that an investigation is opened. Mitigating factors that may reasonably justify an investigation taking longer than twelve (12) months to complete include the complexity of the investigation, the number of firms or individuals involved as potential wrongdoers, the number of potential violations to be investigated, and the volume of documents and data to be examined and analyzed by the Market Regulation Department.

**Rule 6002 Reports of Investigations**

- (a) The Market Regulation Department will maintain a log of all investigations and their disposition. The Market Regulation Department will prepare an Investigation Report, regardless of whether the evidence gathered during any inquiry or investigation forms a reasonable basis to believe that a violation within the SEF's jurisdiction has occurred or is about to occur or whether the evidence gathered results in closing the matter without further action or through summary action.
- (b) The Investigation Report will include the reasons for initiating the investigation (including a summary of the complaint, if any), all relevant facts and evidence gathered, Market Regulation Department's analysis and conclusions, the potential respondent's disciplinary history at the SEF, and the recommendation of the Market Regulation Department. For each potential respondent, the Market Regulation Department will recommend:
  - (1) closing the investigation without further action;
  - (2) settlement;
  - (3) summary action;

- (4) initiating disciplinary proceeding; or
  - (5) resolving the investigation through an informal disposition, including the issuance of a warning letter. An informal disposition (including the issuance of a warning letter) will not constitute a finding of a violation or a sanction.
- (c) The Market Regulation Department will submit the Investigation Report to the Chief Compliance Officer for review. After reviewing the Investigation Report, the Chief Compliance Officer will:
- (1) proceed with the Market Regulation Department's recommendation; or
  - (2) forward the Investigation Report to a Review Panel as discussed in Rule 6004.

**Rule 6003 Opportunity to Respond**

- (a) If the Review Panel authorizes disciplinary proceedings or the Chief Compliance Officer determines to proceed with the Market Regulation Department's recommendation to initiate disciplinary proceedings, the Market Regulation Department will notify each potential respondent that the Market Regulation Department or Review Panel has recommended formal disciplinary charges against the potential respondent.
- (b) The SEF 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 Market Regulation Department.

**Rule 6004 Review of Investigation Reports**

- (a) The Chief Compliance Officer may, in his/her discretion, convene a Review Panel to review the Investigation Report.
- (b) The Review Panel shall be appointed by the CCO or the SEF's Regulatory Services Provider and shall be comprised of three individuals, at least two of whom would not be disqualified from serving as Public Directors. Each Review Panel must include members who have had relevant experience in some capacity (whether as a current or former employee, officer, director, principal, consultant, advisor, service provider or otherwise) working with or for sufficient different Membership Interests so as to ensure fairness and to prevent special treatment or preference for any person in the conduct of the Review Panel's responsibilities, and no member of the Review Panel may be involved in the adjudication of any other stage of the same proceeding. If a vacancy occurs on a Review Panel after it has begun a proceeding, the remaining members of the panel shall complete consideration and disposition of the matter. Once the Review Panel has provided its decision, it shall be dissolved automatically.

- (c) The Review Panel will review the Investigation Report and, within thirty (30) days of receiving the Investigation Report, will take one of the following actions:
- (1) If the Review Panel determines that additional investigation or evidence is needed, it will promptly direct the Market Regulation Department to conduct further investigation or obtain additional evidence.
  - (2) If the Review Panel determines that no reasonable basis exists for finding a violation of the SEF Rules or any other provision of Applicable Law for which the SEF has disciplinary jurisdiction has occurred or is about to occur or that adjudication is otherwise unwarranted, it may direct that no further action be taken. Such determination will be in writing, and will include the reason the investigation was initiated, a summary of the complaint, a written statement setting forth the facts and analysis supporting the decision and, if applicable, any recommendations. The Review Panel shall also provide the written statement to any applicable Regulatory Services Provider.
  - (3) If the Review Panel determines that a reasonable basis exists for finding a violation of the SEF Rules or any other provision of Applicable Law for which the SEF has disciplinary jurisdiction has occurred or is about to occur and adjudication is warranted, the Review Panel will determine for each potential respondent whether to authorize:
    - (i) the informal disposition of the investigation (by issuing a warning letter or otherwise) because disciplinary proceedings are unwarranted, in which case the Review Panel shall provide a written explanation to any Regulatory Services Provider;
    - (ii) the closing of the investigation without any action because no reasonable basis exists to believe that a violation within the SEF's jurisdiction has occurred or is about to occur in which case the Review Panel shall provide a written explanation to any Regulatory Services Provider; or
    - (iii) the commencement of disciplinary proceedings because a reasonable basis exists to believe that a violation within the SEF's jurisdiction has occurred or is about to occur.

**Rule 6005 Notice of Charges**

- (a) If the Review Panel authorizes disciplinary proceedings or the Chief Compliance Officer elects to follow the recommendation of the Market Regulation Department to commence a disciplinary proceeding, the Chief Compliance Officer will appoint a Disciplinary Panel as provided in this Section. In addition, the Market Regulation Department will prepare, and serve in accordance with Rule 6007, a notice of charges.

- (b) A notice of charges will:
- (1) state the acts, practices or conduct that the respondent is alleged to have engaged in;
  - (2) state the SEF Rule or other provision of Applicable Law alleged to have been violated or about to be violated;
  - (3) state the proposed sanctions;
  - (4) advise the respondent of its right to a hearing;
  - (5) advise the respondent of its right to be represented by legal counsel of its choosing in all succeeding stages of the disciplinary process;
  - (6) state the period of time within which the respondent can request a hearing on the notice of charges, which will not be less than twenty (20) days after service of the notice of charges;
  - (7) 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
  - (8) advise the respondent that any allegation in the notice of charges that is not expressly denied or answered will be deemed to be admitted.

**Rule 6006 Answer to Notice of Charges**

- (a) If the respondent determines to answer a notice of charges, the respondent must file answers within twenty (20) days after being served with such notice, or within such longer time period determined by the Disciplinary Panel in accordance with Rule 6012.
- (b) To answer a notice of charges, the respondent must in writing:
- (1) specify the allegations that the respondent denies or admits;
  - (2) specify the allegations that the respondent does not have sufficient information to either deny or admit;
  - (3) specify any specific facts that contradict the notice of charges;
  - (4) specify any affirmative defenses to the notice of charges; and
  - (5) sign and serve the answer on the Disciplinary Panel.
- (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 foregoing requirements.

#### **Rule 6007 Service of Notice of Charges**

- (a) Any notice of charges or other documents to be served pursuant to this Section 6 may be served upon the respondent, and service shall be deemed complete either personally or by leaving the same at his or her place of business; by deposit in the United States mail, addressed to respondent at the address as it appears on the books and records of the SEF.
- (b) Any notice of charges or other documents contemplated to be served pursuant to this Section 6 may also be served upon the respondent and service shall be deemed complete via electronic mail to the electronic mail address as it appears on the books and records of the SEF.

#### **Rule 6008 Settlements**

- (a) A respondent or potential respondent may at any time propose in writing an offer of settlement related to anticipated or instituted disciplinary proceedings.
- (b) Any offer of settlement should contain proposed findings and sanctions and be signed by the respondent or potential respondent and submitted to the Market Regulation Department.
- (c) 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 SEF over it and over the subject matter of the proceedings and consent to the entry of the findings and sanctions imposed.
- (d) If a respondent or potential respondent submits an offer of settlement in accordance with paragraph (a) above, the Market Regulation Department will forward the offer to the Chief Compliance Officer with a recommendation on whether to accept or reject the offer. Any preliminary determination by the Chief Compliance Officer to accept the offer shall be submitted for review by the Disciplinary Panel. If the Disciplinary Panel agrees, then the Chief Compliance Officer shall conditionally accept an offer of settlement, and the settlement will become final upon the expiration of twenty (20) days after an order of the disciplinary proceedings consistent with the terms of the offer of settlement is served on the respondent.
- (e) If an offer of settlement is accepted, the Disciplinary Panel will issue a written decision specifying the rule violations it has reason to believe were committed, including the basis or reasons for the panel's conclusions, and any sanction to be imposed, which must include full customer restitution where customer harm is demonstrated. If an offer

of settlement is accepted without the agreement of the Market Regulation Department or Chief Compliance Officer, the decision must adequately support the Disciplinary Panel's acceptance of the settlement. If applicable, the decision must also include a statement that the respondent has accepted the sanctions imposed without either admitting or denying the rule violations.

- (f) 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 the SEF Rules.
- (g) The respondent may withdraw his or her offer of settlement at any time before final acceptance by the Disciplinary Panel. If an offer is withdrawn after submission, or is rejected by the Disciplinary Panel, the respondent must not be deemed to have made any admissions by reason of the offer of settlement and must not be otherwise prejudiced by having submitted the offer of settlement.
- (h) If the offer of settlement of a respondent or potential respondent is not accepted by agreement between the Chief Compliance Officer and the Disciplinary Panel, 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 Market Regulation Department may use an unaccepted offer of settlement as an admission or in any other manner at a hearing of disciplinary proceedings.

#### **Rule 6009    Disciplinary Panel**

- (a) The Chief Compliance Officer or the SEF's Regulatory Services Provider will appoint a Disciplinary Panel to conduct hearings in connection with any disciplinary proceedings authorized by the Chief Compliance Officer or a Review Panel to make findings and impose sanctions. The Disciplinary Panel will be comprised of three individuals, at least two of whom would not be disqualified from serving as Public Directors. In addition, each Disciplinary Panel must include members who have had relevant experience in some capacity (whether as a current or former employee, officer, director, principal, consultant, advisor, service provider or otherwise) working with or for sufficient different Membership Interests so as to ensure fairness and to prevent special treatment or preference for any person in the conduct of the Disciplinary Panel's responsibilities. The chairman of the Disciplinary Panel shall be appointed by the Chief Compliance Officer. A Disciplinary Panel may not include any [members of the SEF's compliance staff or any](#) person involved in adjudicating any other stage of the same proceeding. If a vacancy shall occur on a Disciplinary Panel after it has begun its proceedings, the remaining members shall complete consideration and disposition of the matter. Once a Disciplinary Panel has made its decision and notified all relevant parties, it shall be dissolved automatically.
- (b) Within ten (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 the SEF Rules or for any other reasonable grounds by serving written notice on the Chief Compliance Officer. 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 Chief Compliance Officer, in consultation with the General Counsel, of the SEF 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.

- (c) No Person shall serve on a Disciplinary Panel unless that Person has agreed in writing that he or she will not publish, divulge, or make known in any manner, any facts or information regarding the business of any Person or any other information which may come to his attention in his official capacity as a member of the Disciplinary Panel, except when reporting to the Board or to a committee concerned with such information or to the Market Regulation Department, when requested by the CFTC or other governmental agency or when compelled to testify in any judicial or administrative proceeding.
- (d) All information, records, materials and documents provided to the Disciplinary Panel and all deliberations, testimony, information, records, materials and documents related thereto shall be treated as non-public and confidential and shall not be disclosed, except as necessary to further a SEF investigation or as required by law.

#### **Rule 6010 Convening Hearings of Disciplinary Proceedings**

- (a) A hearing will be conducted privately and confidentially. 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 Market Regulation Department.
- (c) The chair of the Disciplinary Panel may continue, adjourn or otherwise conduct the hearing, as he or she may deem appropriate. The chair of the Disciplinary Panel will determine all procedural and evidentiary matters, including the admissibility and relevance of any evidence proffered.
- (d) In determining procedural and evidentiary matters, the chair 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 General Counsel of the SEF, or his or her designee, may provide guidance to the chair of the Disciplinary Panel on the conduct of the hearing.



- (e) Except for procedural and evidentiary matters decided by the chair of the Disciplinary Panel pursuant to paragraph (c) above and Rule 6012, unless each respondent otherwise consents, the entire Disciplinary Panel must be present during the entire hearing and any related deliberations.

#### **Rule 6011 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 SEF that the Market Regulation Department will use to support the allegations and proposed sanctions in the notice of charges or which the chair of the Disciplinary Panel deems relevant to the disciplinary proceedings. Notwithstanding the foregoing, no respondent will have the right to review, and the SEF will have no obligation to disclose, any information protected by work product or 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 being conducted by the Market Regulation Department, the Market Regulation 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 Market Regulation Department:
  - (1) 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
  - (2) will provide the respondent with access to the information and portions of the documents that the Market Regulation Department intends to rely on to support the allegations or proposed sanctions in the notice of charges.
- (d) For purposes of this Rule 6011, information that could adversely affect competitive positions may include positions in Swaps or other positions currently held, trading strategies employed in establishing or liquidating positions, the identity of any Customer, Client, Sponsored Participant, Participant or Authorized Trader and the personal finances of the Person providing the information.

#### **Rule 6012 Conducting Hearings of Disciplinary Proceedings**

- (a) At a hearing conducted in connection with any disciplinary proceedings, the Market Regulation Department will present its case supporting the allegations and proposed sanctions in the notice of charges to the Disciplinary Panel. 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 Market Regulation Department and each respondent may:
- (1) present evidence and facts determined relevant and admissible by the chair of the Disciplinary Panel;
  - (2) call and examine witnesses; and
  - (3) 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 chair of the Disciplinary Panel may limit evidence concerning any allegations not 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 6006.
- (d) If the respondent has requested a hearing on a charge that the respondent denies, or on a sanction set by the Disciplinary Panel under Rule 6014, the respondent will be given an opportunity for a hearing in accordance with the SEF Rules. Except for good cause, such hearing will be limited to addressing those charges denied by the respondent and/or sanctions set by the Disciplinary Panel under Rule 6014 for which a hearing has been requested.
- (e) Any Person entitled, or required or called upon, to attend a hearing before a Disciplinary Panel pursuant to paragraph (b)(2) 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. All Persons subject to the SEF's jurisdiction that are called as witnesses are required to appear at the hearing and, where applicable, produce evidence. The SEF will make reasonable efforts to secure the presence of all other Persons called as witnesses whose testimony would be relevant.
- (f) 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 SEF or any other provision of Applicable Law for which the SEF has disciplinary jurisdiction 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 6006. In connection with considering apparent violations pursuant to this paragraph (f), the Disciplinary Panel may request that the Market Regulation Department provide the Disciplinary Panel with any additional information related to the violations at issue.

- (g) The Disciplinary Panel may provide that a sanction be summarily imposed upon any Person within its jurisdiction whose actions impede the progress of a hearing.
- (h) If the respondent has requested the hearing, a copy of the hearing must be made and must become a part of the record of the proceedings. The SEF will arrange for any hearing conducted in connection with disciplinary proceedings to be recorded 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 chair of the Disciplinary Panel may within his or her sole discretion require the respondent to pay the costs for transcribing the recording of the hearing.
- (i) No interlocutory appeals of rulings of any Disciplinary Panel or chair of the Disciplinary Panel are permitted.

**Rule 6013 Decision of Disciplinary Panel**

- (a) Promptly following a hearing, the Disciplinary Panel will issue a written order rendering its final 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 final decision of the Disciplinary Panel.
- (b) The Disciplinary Panel will serve a copy of the order of the disciplinary proceedings on the respondent and the Market Regulation Department. The order will include:
  - (1) The name of the respondent;
  - (2) the notice of charges or summary of the charges;
  - (3) the answer, if any, or a summary of the answer;
  - (4) a summary of the evidence produced at the hearing or, where appropriate, incorporation by reference of the Investigation Report;
  - (5) a statement of findings of fact and conclusions with respect to each charge, including a complete explanation of the evidentiary and other basis for such findings and conclusions with respect to each charge;
  - (6) each specific SEF Rule and/or other provision of Applicable Law that the respondent was found to have violated;
  - (7) a declaration of all sanctions imposed against the respondent, if any, including the basis for such sanctions and the effective date of each sanction;
  - (8) notice of respondent's right to appeal; and
  - (9) a statement informing the respondent of the availability of CFTC review of the action pursuant to Part 9 of the CFTC's Regulations.

- (c) The written decision of the Disciplinary Panel will become effective upon the expiration of fifteen (15) days after it is served on the respondent and provided to the Market Regulation Department; *provided, however*, that the SEF may cause the decision to become effective prior to that time to the extent permitted under Part 9 of the CFTC's Regulations.

#### **Rule 6014 Sanctions**

- (a) After notice and opportunity for hearing in accordance with the SEF Rules, the SEF will impose sanctions on any Person subject to the SEF's jurisdiction, including any Clearing Firm, Customer, Client, Sponsored Participant, Participant, Account Manager, Authorized Trader or Supervised Person, or any Person using a Participant's User ID or login credentials linked to a Participant or User ID, if such Person is found to have violated or to have attempted to violate a SEF Rule or other provision of Applicable Law for which the SEF has disciplinary jurisdiction. All sanctions, including those imposed pursuant to an accepted settlement offer, must take into account the respondent's disciplinary history. In the event of demonstrated customer harm, any sanction must also include full customer restitution, except where the amount of restitution or to whom it should be provided cannot be reasonably determined. Any such sanction (including any fine) shall be commensurate with the violation committed and clearly sufficient to deter recidivism or similar violations by other market participants.

The SEF may impose one or more of the following sanctions or remedies:

- (1) censure;
  - (2) limitation on Trading Privileges, ability to otherwise access the SEF, and/or other activities, functions or operations;
  - (3) suspension of Trading Privileges and/or ability to otherwise access the SEF;
  - (4) fine (subject to paragraph (b) below);
  - (5) restitution and/or disgorgement;
  - (6) termination of Trading Privileges and/or ability to otherwise access the SEF;
  - (7) limitation, suspension or termination of rights as a Clearing Firm; or
  - (8) any other sanction or remedy deemed to be appropriate.
- (b) The SEF may impose a fine of up to \$100,000, unless aggravating or mitigating circumstances otherwise warrant as determined by the SEF, for each violation of the SEF Rules or other provision of Applicable Law for which the SEF has disciplinary jurisdiction. The minimum fine for any one violation is \$1,000. If a fine or other amount is not paid within thirty (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 SEF has sole discretion to select the bank on whose quotations it will base the prime rate. Participant will be responsible for paying any fine or other amount imposed on, but not paid by, any of its Supervised Persons.

**Rule 6015 Right to Appeal from Disciplinary Panel Decision, Summary Impositions of Fines and Other Summary Actions**

- (a) Each respondent found by the Disciplinary Panel to have violated the SEF Rules or other provision of Applicable Law for which the SEF has disciplinary jurisdiction or who is subject to termination or limitation of Trading Privileges, any summary fine imposed pursuant to Rule 6016 or any other summary action may appeal the decision within twenty (20) days of receiving the order of the Disciplinary Panel or the notice of summary action, as the case may be, by filing a notice of appeal with the Chief Compliance Officer.
- (b) The SEF may appeal all or any part of a decision of the Disciplinary Panel, including any sanctions that may or may not have been imposed by the Disciplinary Panel, within twenty (20) days of receiving the order of the Disciplinary Panel, by filing a notice of appeal with the Chief Compliance Officer.
- (c) While an appeal is pending, the effect of the order of the Disciplinary Panel or the summary action (including any sanctions, remedies or costs imposed thereby) shall be suspended.
- (d) The notice of appeal must state in writing the grounds for appeal, including the findings of fact, conclusions or sanctions to which the appellant objects. An appellant may appeal the order of the Disciplinary Panel or any summary action on the grounds that:
  - (1) the order or summary action was arbitrary, capricious, an abuse of discretion or not in accordance with the SEF Rules;
  - (2) the order or summary action exceeded the authority or jurisdiction of the Disciplinary Panel, the Chief Compliance Officer or the SEF;
  - (3) the order or summary action failed to observe required procedures;
  - (4) the order or summary action was unsupported by the facts or evidence; or
  - (5) the sanctions, remedies or costs imposed were inappropriate or unsupported by the record.
- (e) The Chief Compliance Officer will forward copies of any notice of appeal received by him or her to all parties to the disciplinary proceeding or summary action, as the case may be, except the appellant. On or before the twentieth (20<sup>th</sup>) day after filing a notice of appeal, the appellant must file with the Chief Compliance Officer and serve on the appellee a brief supporting the notice of appeal and documents supporting the brief. On or before the twentieth (20<sup>th</sup>) day after the date on which the appellant serves its supporting brief, the appellee must file and serve its brief in opposition on the Chief

Compliance Officer and the appellant. On or before the tenth (10<sup>th</sup>) day after the date on which the appellee serves its brief in opposition, the appellant may file and serve on the SEF a brief in reply.

- (f) In connection with any appeal, the SEF will furnish to the Chief Compliance Officer and to the appellant and appellee a transcript of the hearing and any exhibits introduced at the hearing.
- (g) No later than thirty (30) days after the last submission filed pursuant to paragraph (e) of this Rule 6015, the Chief Compliance Officer or the SEF's Regulatory Services Provider will appoint an Appeals Panel to consider and determine the appeal. An Appeals Panel shall be comprised of three individuals, none of whom shall be a member of the Market Regulation Department or have been a member of the Disciplinary Panel involved in the matters on appeal and at least two of whom would not be disqualified from serving as Public Directors. In addition, each Appeals Panel must include members who have had relevant experience in some capacity (whether as a current or former employee, officer, director, principal, consultant, advisor, service provider or otherwise) working with or for sufficient different Membership Interests so as to ensure fairness and to prevent special treatment or preference for any person in the conduct of the Appeals Panel's responsibilities. The chairperson of the Appeals Panel shall be an individual who would not be disqualified from serving as a Public Director.
- (h) Within ten (10) days of being notified of the appointment of the Appeals Panel, an appellant or appellee may seek to disqualify any individual named to the Appeals Panel or any person designated as chairperson thereof for the reasons identified in Rule 2500 or in the definition of Public Director (as the case may be) or on other reasonable grounds, by serving written notice on the Chief Compliance Officer. By not timely filing a request for disqualification, the appellant or appellee will be deemed to have waived any objection to the composition of the Appeals Panel and appointment of its chairperson. The Chief Compliance Officer 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.
- (i) The Appeals Panel may hold a hearing to allow parties to present oral arguments. Any hearing will be conducted privately and confidentially. Notwithstanding the confidentiality of hearings, the Appeals Panel may appoint an expert to attend any hearing and assist in the deliberations if such individual(s) agree to be subject to appropriate confidentiality agreements. In determining procedural and evidentiary matters, the Appeals Panel will not be bound by evidentiary or procedural rules or law.
- (j) The Appeals Panel will only consider on appeal the record before the Disciplinary Panel or, in the case of a summary action, the record considered by the Chief Compliance Officer, 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 for why the

evidence was not introduced during the disciplinary proceeding or when imposing the summary action.

- (k) After completing its review, the Appeals Panel may affirm, modify or reverse any order of the Disciplinary Panel or summary action 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 SEF Rules, or remanding the matter to the same or a different Disciplinary Panel for further disciplinary proceedings or for reconsideration by the Chief Compliance Officer in the case of summary action. The Appeals Panel may order a new hearing for good cause or if the Appeals Panel deems it appropriate.
- (l) As promptly as reasonably possible following its review, the Appeals Panel will issue a written decision on appeal rendering its decision based on the preponderance of the evidence before the Appeals Panel and will provide a copy to the Chief Compliance Officer, the appellant and the appellee. 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 SEF Rule and other provision of Applicable Law for which the SEF has disciplinary jurisdiction 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.
- (m) The Appeals 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 SEF and will not be subject to appeal within the SEF; *provided, however*, that any suspension, expulsion, disciplinary or access denial action or other adverse action by the SEF may (to the extent required thereby) be subject to review by the CFTC pursuant to Part 9 of the CFTC's Regulations.

#### **Rule 6016 Summary Imposition of Fines**

- (a) The Chief Compliance Officer may summarily impose a fine against a Participant (or any of its Supervised Persons or other Persons using any of the Participant's User IDs or login credentials linked to the Participant or its User IDs) for failing:
  - (1) to make timely and accurate submissions to the SEF of notices, reports or other information required by the SEF Rules;
  - (2) to make timely payments of fees, cost, charges or fines to the SEF; or
  - (3) to keep any books and records required by the SEF Rules.
- (b) The Market Regulation Department, acting on behalf of the Chief Compliance Officer, will give notice of any fine imposed pursuant to this Rule to each Participant or Supervised Person subject thereto. The notice will specify:



- (1) the violations of the SEF Rules for which the fine is being imposed;
  - (2) the date of the violation for which the fine is being imposed; and
  - (3) the amount of the fine.
- (c) Within twenty (20) days of serving the notice of fine, the Participant or Authorized Trader, as the case may be, must either pay or cause the payment of the fine. If a fine or other amount is not paid within twenty (20) 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 SEF has sole discretion to select the bank on whose quotations it will base the prime rate. The Participant will be responsible for paying any fine or other amount imposed on, but not paid by, any of its Supervised Persons.
- (d) The SEF will set the amount of any fines imposed pursuant to this Rule 6016 at no less than \$1,000 per violation, with the maximum fine for each violation not to exceed \$5,000. Recurring violations will be subject to progressively larger fines. Summary imposition of fines pursuant to this Rule 6016 will not preclude the SEF from bringing any other action against the Participant (or any of its Supervised Persons).

#### **Rule 6017 Warning Letters**

The SEF authorizes the Market Regulation Department to issue a warning letter to a Person or entity under investigation or to recommend that a Disciplinary Panel take such an action. A warning letter issued in accordance with this Rule is not a penalty or an indication that a finding of a violation has been made. A copy of a warning letter issued by the Market Regulation Department will be included in the Investigation Report. No more than one warning letter for the same potential violation may be issued to the same Person or entity during a rolling 12-month period.

#### **Rule 6018 Summary Access Denial Actions**

- (a) The Chief Compliance Officer, upon a good faith determination that there is a reasonable belief that such immediate action is necessary to protect the best interests of the SEF, may summarily suspend, revoke, limit, condition, restrict or qualify the Trading Privileges of a Participant, Sponsored Participant or any Supervised Person, including denial of access to the SEF.
- (b) Non-Participants, including Customers and Clients, may be denied access to the SEF by the Chief Compliance Officer upon a good faith determination that there are substantial reasons to believe that such immediate action is necessary to protect the best interests of the SEF.
- (c) If practicable, a respondent must be served with a notice before the action is taken or otherwise at the earliest possible opportunity. The notice must state the action taken, the reasons for the action, and the effective date, time and the duration of the action



taken. The party shall be advised of his right to a hearing, as soon as reasonably practicable, before a Disciplinary Panel by filing notice of intent with the Market Regulation Department within ten (10) Business Days of the notice date.

- (d) Any suspension, revocation, limitation, condition, restriction or qualification imposed on any Participant, Supervised Person or non-Participant (including Sponsored Participants, Customers and Clients) pursuant to this Rule 6018 will be impartially enforced.
- (e) Any denial, conditioning or termination that represents a suspension, expulsion, disciplinary or access denial action or other adverse action within the meaning of Part 9 of the CFTC's Regulations may (to the extent required thereby) be subject to review by the CFTC pursuant to Part 9 of the CFTC's Regulations.

#### **Rule 6019 Rights and Responsibilities after Suspension or Termination**

- (a) When a Person's Trading Privileges and/or ability to otherwise access the SEF are suspended for a period of 12 months or less, none of its rights (including the right to hold oneself out to the public as a Participant or Authorized Trader, enter Orders into the SEF, submit Block Trades to the SEF, and receive Participant rates for fees, costs, and charges) will apply during the period of the suspension, except for the right of the Person in question to assert claims against others as provided in the SEF Rules. Any such suspension will not affect the rights of creditors under the SEF Rules or relieve the Person in question of its, his or her obligations under the SEF Rules to perform any Swaps entered into before the suspension, or for any SEF fees, costs, or charges incurred during the suspension. The SEF may discipline a suspended Person under this Section 6 for any violation of a Rule of the SEF or other provision of Applicable Law committed by such Person before, during or after the suspension.
- (b) When a Person's Trading Privileges and/or ability to otherwise access the SEF are terminated, all of its related rights will terminate, except for the right of the Person in question to assert claims against others, as provided in the SEF Rules. Any such termination will not affect the rights of creditors under the SEF Rules.
- (c) The SEF will not consider the application of a terminated Participant or Authorized Trader if such Participant or Authorized Trader, as the case may be, continues to fail to appear at disciplinary proceedings without good cause or continues to impede the progress of disciplinary proceedings.
- (d) A suspended or terminated Person remains subject to the SEF Rules and the jurisdiction of the SEF 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 Person still had Trading Privileges or ability to otherwise access the SEF.

**Rule 6020 Notice to the Respondent, the Regulatory Services Provider and the Public; Effectiveness of Disciplinary and Access Denial Actions**

- (a) The SEF will provide written notice of disciplinary proceedings and of any access denial actions pursuant to Rule 3103 or 6018 to the relevant parties and the Regulatory Services Provider consistent with applicable CFTC Regulations. Whenever the SEF suspends, expels, fines or otherwise disciplines or denies any Person access to the SEF, the SEF will make the disclosures and notifications required by Part 9 of the CFTC's Regulations (including by any of the alternative methods available thereunder) and any other applicable CFTC Regulations.
- (b) Without limiting the generality of the foregoing, the SEF shall, in accordance with the requirements of CFTC Regulation 9.11, provide written notice of its final decision regarding any disciplinary or access denial action to the person against whom the action was taken within thirty (30) days of rendering such decision. Pursuant to CFTC Regulation 9.12, any disciplinary or access denial action taken will not become effective until at least fifteen (15) days after the written notice is delivered to the person disciplined or denied access; *provided, however*, that the SEF may cause a disciplinary action to become effective prior to that time in accordance with CFTC Regulation 9.12.

**Rule 6021 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 if the Disciplinary Panel concludes that the respondent has behaved in a manifestly unreasonable manner. Costs may include costs associated with the inquiry or investigation, the prosecution by the Market Regulation 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 SEF if the panel concludes that the SEF 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 SEF 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 SEF or the respondent will pay any costs ordered to be paid by it by the Disciplinary Panel within thirty (30) days of written notice of the amount imposed by the Disciplinary Panel. If costs are not paid within twenty (20) 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 SEF has sole discretion to select the bank on whose quotations it will base the prime rate. Participant will be responsible for paying any costs imposed on, but not paid by, any of its Supervised Persons.

**Rule 6022**    *Ex Parte* Communications

- (a) A Person subject to a disciplinary proceeding or an appeal from a disciplinary proceeding (and any counsel or representative of such Person) and the Market Regulation Department (and any counsel or representative of the Market Regulation Department) shall not knowingly make or cause to be made an *ex parte* communication relevant to the merits of a disciplinary proceeding or an appeal from a disciplinary proceeding to any member of the Disciplinary Panel or Appeals Panel hearing such proceeding.
- (b) Members of a Disciplinary Panel or an Appeals Panel shall not knowingly make or cause to be made an *ex parte* communication relevant to the merits of a disciplinary proceeding or an appeal from a disciplinary proceeding to any Person subject to such proceeding (and any counsel or representative of such Person) or the Market Regulation Department (and any counsel or representative of the Market Regulation Department).
- (c) Any Person who receives, makes or learns of any communication that is prohibited by this Rule 6022 shall promptly give notice of such communication and any response thereto to the Market Regulation Department and all parties to the proceeding to which the communication relates.
- (d) A Person shall not be deemed to have violated this rule if the Person refuses an attempted communication concerning the merits of a proceeding as soon as it becomes apparent the communication concerns the merits.

**Rule 6023**    [Reserved]

**Rule 6024**    Extension or Waiver of the SEF Rules

If necessary and expedient, the Chief Compliance Officer may, in his or her sole discretion, waive, or extend the time period for performing, any act or acts designated by the SEF Rules, but only to the extent such waiver or extension is not inconsistent with the CEA, CFTC Regulations or other applicable regulations.

**Rule 6025**    Effect of Amendment, Repeal or New Rule

- (a) If an amendment or repeal of a Rule or adoption of a new Rule does not materially change the terms or conditions of a Swap and does not affect the value of open Swaps, then the effective date of any amendment or repeal of a Rule or adoption of a new Rule relating to Swaps is binding on all Swaps entered into before and after the effective date of such amendment, repeal or adoption.
- (b) If an amendment or repeal of a Rule or adoption of a new Rule materially changes the terms or conditions of a Swap or affects the value of open Swaps, then the amendment, repeal or new Rule is binding only on Swaps listed for trading after the effective date of such amendment, repeal or adoption, and Swaps listed as of the effective date of such

amendment, repeal or adoption with no open positions then in existence, unless otherwise specifically provided by the Board.

**Rule 6026 [Reserved]**

**Rule 6027 Governing Law, Jurisdiction and Dispute Resolution**

- (a) The law of the State of New York governs the SEF Rules regardless of the laws that would otherwise apply under applicable choice-of-law principles.
- (b) Any dispute between the SEF and a Person arising from or in connection with the SEF Rules or use of the SEF must be brought to arbitration pursuant to subsection (c) of this Rule 6027 within two (2) years from the occurrence of the event giving rise to the dispute. This Rule 6027 shall in no way create a cause of action nor authorize an action that would otherwise be prohibited by the SEF Rules.
- (c) Any dispute between the SEF and a Person arising from or in connection with the SEF Rules will be settled by arbitration administered in New York County, New York by the American Arbitration Association (the “AAA”) under its Commercial Arbitration Rules. The dispute will be submitted to one arbitrator who will be appointed by the AAA. Any arbitrator appointed for purposes of this Rule 6027 will have experience with and knowledge of commodities, derivatives and Swaps as listed on the National Roster of Arbitrators kept in the AAA’s records. Judgment on the award rendered by the arbitrator will be binding on the parties and may be entered in any state or federal court sitting in New York County, New York, and the SEF and each Person shall be deemed to have consented to the personal jurisdiction of any such court. Each party to the dispute will bear its own costs and expenses in connection with any arbitration hereunder, as well as an equal share of the administrative fees and the fees of the arbitrator; *provided, however*, that the arbitrator will be entitled to include in any award a full reimbursement for the prevailing party’s costs and expenses, such party’s share of the administrative fees and the fees of the arbitrator, or any combination of any or all of the above. In the event that this Rule 6027 is held to be unenforceable in connection with any dispute or a claim is deemed by a court of competent jurisdiction to be not arbitrable, (i) exclusive jurisdiction for any such dispute will reside in any state or federal court sitting in New York County, New York, (ii) the SEF and the Person involved in the dispute will be presumed to have submitted to the personal jurisdiction of any such court, and (iii) an action to enforce any judgment or decision of such court may be brought in the same court or in any other court with jurisdiction or venue. Finally, all Persons unconditionally and irrevocably waive any and all right to trial by jury in connection with any such dispute.

**Rule 6028 Limitation of Liability, Indemnity**

- (a) UNLESS ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE SEF, THE SEF, ITS SUBSIDIARIES AND AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS (EACH A “RELATED PARTY” AND COLLECTIVELY “RELATED

PARTIES”) HAVE NO LIABILITY, CONTINGENT OR OTHERWISE, TO PARTICIPANTS OR TO THIRD PARTIES, FOR THE CORRECTNESS, QUALITY, ACCURACY, SECURITY, COMPLETENESS, RELIABILITY, PERFORMANCE, TIMELINESS, PRICING OR CONTINUED AVAILABILITY OF THE SEF SERVICES OR FOR DELAYS OR OMISSIONS OF THE SEF SERVICES, OR FOR THE FAILURE OF ANY CONNECTION OR COMMUNICATION SERVICE TO PROVIDE OR MAINTAIN PARTICIPANT ACCESS TO THE SEF SERVICES, OR FOR ANY INTERRUPTION IN OR DISRUPTION OF A PARTICIPANT’S ACCESS OR ANY ERRONEOUS COMMUNICATIONS BETWEEN THE SEF AND A PARTICIPANT. THE SEF AND ITS RELATED PARTIES ARE NOT LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHICH A PARTICIPANT OR ANY THIRD PARTY MAY INCUR OR EXPERIENCE BECAUSE THE PARTICIPANT ENTERED INTO THESE TERMS OR RELIED ON THE SEF SERVICES, EVEN IF THE SEF KNOWS OF THE POSSIBILITY OF THOSE DAMAGES. THE SEF AND ITS RELATED PARTIES ARE NOT RESPONSIBLE FOR INFORMING A PARTICIPANT OF ANY DIFFICULTIES THE SEF OR OTHER THIRD PARTIES EXPERIENCE CONCERNING USE OF THE SEF SERVICES OR TO TAKE ANY ACTION IN CONNECTION WITH THOSE DIFFICULTIES. THE SEF AND ITS RELATED PARTIES ALSO HAVE NO DUTY OR OBLIGATION TO VERIFY, CORRECT, COMPLETE OR UPDATE ANY INFORMATION DISPLAYED IN THE SEF SERVICES. EACH PARTICIPANT IS SOLELY RESPONSIBLE FOR ANY LOSSES, DAMAGES OR COSTS RESULTING FROM THE PARTICIPANT’S RELIANCE ON ANY DATA OR INFORMATION THAT THE SEF MAY PROVIDE IN CONNECTION WITH A PARTICIPANT’S USE OF THE SEF SERVICES.

- (b) THE SEF DOES NOT MAKE ANY RECOMMENDATION AS TO THE SUITABILITY OF ANY INVESTMENT OR PROPOSED TRANSACTION. EACH PARTICIPANT ACKNOWLEDGES THAT THE SEF WILL NOT, AND ARE UNDER NO DUTY TO, PROVIDE ADVICE IN RELATION TO ANY SUCH TRANSACTION OR PROPOSED TRANSACTION THROUGH ANY SEF SERVICE. EACH PARTICIPANT AGREES THAT (I) THE SEF SERVICES ARE NOT AND WILL NOT BE THE BASIS FOR ANY OF INVESTMENT DECISIONS BY A PARTICIPANT AND (II) PARTICIPANTS ARE SOLELY RESPONSIBLE FOR (A) ANY INVESTMENT OR TRADING DECISIONS THAT THE PARTICIPANT MAKES WITH RESPECT TO THE PRODUCTS AVAILABLE VIA ANY SEF SERVICE AND (B) DETERMINING WHETHER ANY TRANSACTION IS SUITABLE, APPROPRIATE OR ADVISABLE FOR THE PARTICIPANT OR SPONSORED PARTICIPANT OR CLIENTS OR CUSTOMERS. PROVISION OF THE SEF SERVICES DOES NOT MAKE THE SEF AN ADVISOR OR FIDUCIARY FOR A PARTICIPANT, SPONSORED PARTICIPANT, CLIENT OR CUSTOMER. THESE TERMS DO NOT CONSTITUTE AN OFFER TO SELL OR SOLICITATION OF AN OFFER TO BUY SECURITIES OR OTHER INSTRUMENTS. IN ADDITION, THE SEF SERVICES DO NOT INCLUDE ANY INVESTMENT, FINANCIAL, LEGAL OR TAX ADVICE WHICH PARTICIPANT MAY DESIRE OR NEED IN CONNECTION WITH ANY TRANSACTION.

PARTICIPANTS ARE RESPONSIBLE FOR OBTAINING ANY LEGAL OR TAX ADVICE.

- (c) IF A THIRD PARTY CLAIMS THAT THE SEF SERVICES INFRINGE UPON ITS PATENT COPYRIGHT, OR TRADE SECRET, OR ANY SIMILAR INTELLECTUAL PROPERTY RIGHT, THE SEF WILL DEFEND THE PARTICIPANT AGAINST THAT CLAIM AT THE SEF'S EXPENSE AND PAY ALL DAMAGES THAT A COURT FINALLY AWARDS, PROVIDED THAT THE PARTICIPANT PROMPTLY NOTIFY THE SEF IN WRITING OF THE CLAIM AND COOPERATE WITH THE SEF IN THE DEFENSE OR ANY RELATED SETTLEMENT NEGOTIATIONS. THE SEF SHALL HAVE SOLE CONTROL OVER THE DEFENSE AND ANY NEGOTIATION FOR ITS SETTLEMENT OR COMPROMISE. IF SUCH A CLAIM IS MADE OR IS LIKELY TO BE MADE, THE SEF SHALL, AT THE SEF'S SOLE OPTION, HAVE THE RIGHT TO TAKE ONE OR MORE OF THE FOLLOWING ACTIONS AT NO ADDITIONAL COST TO THE PARTICIPANT: (I) PROCURE THE RIGHT FOR THE PARTICIPANT TO CONTINUE THE USE OF THE SEF SERVICES; (II) REPLACE THE SEF SERVICES WITH NON-INFRINGEMENT SOFTWARE; OR (III) MODIFY THE SEF SERVICES SO AS TO BE NON-INFRINGEMENT. IF THE SEF DETERMINE THAT NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE PARTICIPANT AGREES TO IMMEDIATELY TERMINATE ITS USE OF THE SEF SERVICES ON THE SEF'S WRITTEN REQUEST. HOWEVER, THE SEF HAS NO OBLIGATION FOR ANY CLAIM BASED ON THE SEF'S USE OF THE SEF SERVICES IN ANY MANNER INCONSISTENT WITH THESE TERMS, PARTICIPANT'S MODIFICATION OF THE SEF SERVICES OR PARTICIPANT'S COMBINATION, OPERATION, OR USE OF THE SEF SERVICES WITH ANY PRODUCT, DATA, OR APPARATUS NOT SPECIFIED OR PROVIDED BY THE SEF, PROVIDED THAT SUCH CLAIM SOLELY AND NECESSARILY IS BASED ON SUCH COMBINATION, OPERATION OR USE, OR FOR CONTINUED ALLEGEDLY INFRINGING ACTIVITY BY THE PARTICIPANT AFTER THE PARTICIPANT HAVE BEEN NOTIFIED OF POSSIBLE INFRINGEMENT, UNLESS APPROVED IN ADVANCE BY THE SEF. THE FOREGOING REPRESENTS THE SOLE AND EXCLUSIVE REMEDY FOR PARTICIPANTS WITH REGARD TO ANY OF THE ABOVE INFRINGEMENTS OR ALLEGED INFRINGEMENTS.
- (d) WITH THE EXCEPTION OF THE PROVISIONS OF RULE 6028(c), THE SEF'S LIABILITY AND THE COLLECTIVE LIABILITY OF THE SEF'S RELATED PARTIES AND THE THIRD PARTY SERVICE PROVIDERS SELECTED BY THE SEF, IF ANY, ARISING OUT OF ANY KIND OF LEGAL CLAIM (WHETHER IN CONTRACT, TORT, OR OTHERWISE) OR IN ANY WAY CONNECTED TO A PARTICIPANT'S USE OF THE SEF SERVICES WILL NOT EXCEED \$500,000 UNLESS CAUSED DIRECTLY BY THE SEF'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

- (e) NONE OF THE ABOVE WILL LIMIT PARTICIPANT'S RIGHTS AND REMEDIES OTHERWISE AVAILABLE UNDER THE STATE OR FEDERAL SECURITIES LAWS, CFTC REGULATIONS OR THE CEA.

## SECTION 7 EMERGENCIES

### **Rule 7000    Emergency Actions**

- (a) During an Emergency, the Board and/or the CEO (or, in his absence, the most senior Officer present), in consultation with the CFTC, as necessary, may implement temporary emergency procedures and rules (“Emergency Rules”), subject to the applicable provisions of the CEA and CFTC Regulations. Emergency Rules may require or authorize the SEF, the Board, any committee of the Board, the CEO, or any other Officer to take Emergency Action necessary or appropriate to respond to the Emergency. If applicable, the SEF may provide for the carrying out of Emergency Actions through its agreements with its Regulatory Services Provider.
- (b) Before any Emergency Rule may be adopted and enforced, a required vote of the Board must approve the enforcement of such Emergency Rule at a duly convened meeting. Directors may attend such a meeting by teleconference and such meeting may, if necessary, be conducted pursuant to Rule 2100(c). Notwithstanding, if the CEO (or, in his absence, the most senior Officer present) determines that Emergency Rules must be implemented with respect to an Emergency before a meeting of the Board can reasonably be convened, then the CEO (or such seniormost Officer) shall have the authority, without Board action, to implement any Emergency Rules with respect to such Emergency that he or she deems necessary or appropriate to respond to such Emergency. In such circumstances, the CEO (or such seniormost Officer) must convene a meeting of the Board (which may, if necessary, be conducted pursuant to Rule 2100(c)) as soon as practicable thereafter. Notwithstanding that the Board does not ratify or approve extending or making permanent any Emergency Rules implemented by the CEO or seniormost Officer pending convening of the Board meeting, all actions previously taken in accordance with such Emergency Rules shall remain binding and valid.
- (c) Whenever the SEF, the Board, any committee of the Board, the CEO or any other Officer takes actions necessary or appropriate to respond to an Emergency, a duly authorized representative of the SEF, where possible, will post an announcement in a Notice to Participants. When the Board, any committee of the Board or the CEO (or, in his absence, the most senior Officer present) determines that the Emergency has been reduced sufficiently to allow the SEF to resume normal functioning, any such actions responding to an Emergency will be terminated.
- (d) The SEF will use reasonable efforts to notify the CFTC prior to implementing, modifying or terminating an Emergency Rule. If such prior notification is not possible or practicable, the SEF will notify the CFTC as soon as possible or reasonably practicable but in all circumstances within twenty-four (24) hours of the implementation, modification or termination of such Emergency Rule.
- (e) Upon taking any action in response to an Emergency, the SEF will document the decision-making process related to such action. Such documentation will be kept for at



least five (5) years following the date on which the Emergency ceases to exist or to affect the SEF, and all such documentation will be provided to the CFTC upon request.

**SECTION 8**  
**RECORDKEEPING AND REPORTING**

**Rule 8000 Maintenance of Books and Records by the SEF**

- (a) The SEF shall keep, or cause to be kept, complete and accurate books and records of all activities relating to its business, including complete audit trails for all Swaps executed on or otherwise subject to the rules of the SEF, investigatory files, disciplinary files and all books and records required to be maintained pursuant to the CEA and CFTC Regulations.
- (b) The SEF shall retain all books and records related to a Swap executed on, or pursuant to the rules of, the SEF throughout the life of the Swap and for a period of at least five (5) years following the final termination of the Swap and shall retain all other books and records for a period of at least five (5) years, in each case, in a form and manner acceptable to the CFTC. All books and records related to a Swap executed on, or pursuant to the rules of, the SEF shall be readily accessible by the SEF via real-time electronic access throughout the life of the Swap and for two (2) years following the final termination, and all other books and records shall be readily accessible via real-time electronic access during the first two (2) years of the five-year period. All books and records shall be thereafter retrievable within three (3) business days through the remainder of the required retention period.
- (c) All books and records required to be maintained by the SEF shall be open to inspection upon request by any representative of the CFTC, the United States Department of Justice or the SEC or by any representative of a prudential regulator as authorized by the CFTC. In addition, all audit trail data and reconstructions shall be made available to the CFTC or the United States Department of Justice in a form, manner and time that is acceptable to the CFTC or the United States Department of Justice, as applicable.

**Rule 8001 Order Information**

- (a) Each Authorized Trader entering an Order with respect to any Swap traded on or subject to the rules of the SEF must include with the Order, all data required to enable the SEF to meet its reporting obligations under Parts 43 and 45 of the CFTC Regulations, including without limitation:
  - (1) the User ID;
  - (2) the Participant ID;
  - (3) the price or yield, quantity, maturity or expiration date;
  - (4) the price and quantity;
  - (5) side of the Order;

- (6) the CTI code;
- (7) [Reserved];
- (8) the Legal Entity Identifier of the Participant and, where the Participant is acting as agent, of the Customer or Client, with respect to the Swap for which the Order is placed;
- (9) a yes/no indication of whether the Participant, Customer or Client is a Swap Dealer;
- (10) a yes/no indication of whether the Participant, Customer or Client is a Major Swap Participant;
- (11) a yes/no indication of whether the Participant, Customer or Client is a Financial Entity;
- (12) a yes/no indication of whether the Participant, Customer or Client is a U.S. person;
- (13) [Reserved];
- (14) if the Swap will be allocated:
  - (i) an indication that the Swap will be allocated;
  - (ii) the Legal Entity Identifier of the Account Manager acting as agent;
  - (iii) a yes/no indication of whether the Account Manager acting as agent is a U.S. person;
  - (iv) an indication of whether the Swap is a post-allocation Swap;
  - (v) if the Swap is a post-allocation Swap, the account and Legal Entity Identifier for each Client that received allocations; and
  - (vi) if the Swap is a post-allocation Swap, the USI of the original Transaction between the Reporting Counterparty and the Account Manager acting as agent;
- (15) if applicable, an indication that the Participant, Customer or Client will elect the End-User Clearing Exception for any Swap resulting from the Order;
- (16) a yes/no indication of whether the Order is part of a Package Transaction; and
- (17) if the Order is part of a Package Transaction, a description of the Transaction.

- (b) Participants and ISVs that operate systems that route orders to the SEF are responsible for maintaining or causing to be maintained a routing/front-end audit trail for all Orders, which shall include Order entry, modification and cancellation and any SEF responses to such messages. For executed Orders, such audit trail must record the execution time of the Transaction, along with all fill information. Participants and ISVs shall maintain audit trail information as required by Applicable Law and must have the ability to produce audit trail data in a reasonably usable format upon request of the SEF. The SEF will enforce these audit trail and recordkeeping requirements by conducting an annual review of all Participants to verify their compliance with the SEF's audit trail and recordkeeping requirements.

## **Rule 8002 Books and Records**

- (a) All Members, Customers and Clients must prepare and keep, or cause to be kept, all books, ledgers and other records relating to its activity on the SEF required to be kept by it pursuant to Applicable Law, and must prepare and keep such other books and records relating to its SEF activity as the SEF may from time to time prescribe. Such books and records must include, without limitation, records of such Person's trading, including records of the Person's activity in the index or instrument used as a reference price, the underlying commodity and related derivatives markets, and records of all non-swap components of Package Transactions. Each such Person shall make such books and records available, upon request, to the SEF, the SEF's Regulatory Services Provider, the CFTC or the United States Department of Justice and as otherwise required by Applicable Law.
- (b) In addition to the information required by subsection (a) of this Rule 8002, each Member must comply with all applicable requirements of CFTC Regulations 1.31 and 1.35.
- (c) If a Participant cannot enter an Order received from its Customer into the SEF, either directly or indirectly through an Execution Specialist, the Participant must immediately create an electronic record that includes the account identifier that relates to the Customer, time of receipt and terms of the Order.
- (d) Each Person required to keep records in accordance with this Rule 8002 shall keep all books and records in accordance with the SEF Rules for a period of five (5) years from the date on which they are first prepared unless otherwise provided in these Rules or other Applicable Law. Such books and records shall be readily accessible during the first two (2) years of such five-year period, unless otherwise provided in the SEF Rules or other Applicable Law. Each such Person that is a counterparty to a Swap on, or pursuant to the rules of, the SEF shall retain all books and records related to such Swap for the life of the Swap and for a period of at least five (5) years following the final termination of the Swap. Each such Person that is a counterparty to an Uncleared Swap on, or pursuant to the rules of, the SEF shall notify the SEF of any extension of the final termination of the Swap beyond the original stated maturity in order to enable the SEF to comply with Rule 8000(b) and the SEF's obligations under Applicable Law.

- (e) The SEF may require a Member, Customer or Client to furnish any information in connection with such Person's activities on the SEF including (i) information relating to Swaps executed on or pursuant to the rules of the SEF, on or pursuant to the rules of other swap execution facilities, DCMs or in related derivatives markets or to transactions or positions in the products underlying, related to or indexed to those Swaps or to which those Swaps are indexed (in whole or in part), and (ii) information requested by a Government Agency relating to the SEF and/or the SEF's compliance with Applicable Law that the SEF believes is maintained by, or otherwise in the possession or control of, such Person.
- (f) Each Authorized Trader shall prepare and keep, or cause to be kept, all books, ledgers and other records relating to its activity on the SEF as may be required to enable its related Member to comply with such Member's obligations under this Rule 8002. Each Authorized Trader shall not knowingly take any action that would cause its associated Member to fail to comply with Rule 8002(d), and each Authorized Trader shall cooperate as necessary to enable its associated Member to comply with such Member's obligations under Rule 8002(e).
- (g) Without limiting the generality of the foregoing, with respect to any Swap that has been allocated following execution on or pursuant to the rules of the SEF, all Members, Customers and Clients must prepare and keep, or cause to be kept, all books, ledgers and other records as may be necessary to provide relevant information with respect to such post-trade allocation and will furnish such information to the SEF if the SEF, at the request of the CFTC or otherwise, requests such information. ~~The foregoing~~ This Rule 8002(g) is intended to comply with the conditions of the ~~time limited~~ no-action relief granted ~~pursuant to CFTC~~ by the CFTC's Division of Market Oversight in No-Action Letter 15-68 ~~issued on December 22, 2015 and scheduled to expire, expiring~~ at 11:59 p.m. (Eastern Time) on November 15, 2017. If such no-action relief is extended, upon and to the extent of such extension, the provisions of this Rule 8002(g) will continue apply.

### **Rule 8003 Recordkeeping Requirements for Block Trades**

Block Trades submitted to the SEF in accordance with Rule 4016(b) must comply with the following recordkeeping requirements:

- (a) Block Trades must be submitted in the form of a written or electronic record and must include information meeting the requirements of Rule 8001, including, without limiting the generality of the foregoing, Legal Entity Identifier information required by Rule 8001(8) with respect to parties and, where required, their agents, and a timestamp reflecting the date and time that the submission was received by the SEF.
- (b) The record shall also include a timestamp reflecting the date and time that the Transaction was executed or cancelled to the nearest millisecond.

#### **Rule 8004 Access to Position Information**

Without limiting any provision of these SEF Rules, the SEF and any Regulatory Services Provider, shall have the authority to obtain from any Participant, Sponsored Participant, Account Manager, Customer or Client, or Supervised Person information with respect to positions of such Person or any Sponsored Participant, Customer or Client, or Supervised Person. This authority shall include the authority to obtain information concerning positions maintained at other firms, and it shall be the obligation of a Participant receiving such an inquiry to obtain such information from its Account Manager, Sponsored Participant, Customer, Client, or any Supervised Person. In the event a Participant Sponsored Participant, Customer, Client, or any Supervised Person fails to provide the requested information the SEF, in addition to any other remedy provided in these SEF Rules, may order that the Participant, Account Managers, Sponsored Participant, Customer, Client, or any Supervised Person liquidate the positions that are related to the inquiry.

#### **Rule 8005 Reporting to a Swap Data Repository**

(a) The SEF will report each Swap executed on, or pursuant to the rules of, the SEF as soon as technologically practicable after execution to a Swap Data Repository in compliance with Parts 43 and 45 of the CFTC Regulations. The SEF may report to following SDRs (such SDRs, “Approved SDRs”):

- DTCC ~~SDR for~~ Data Repository (U.S.) LLC (“DDR”) for Swaps in the Rates, Credit, FX and Equities asset classes, and
- ~~DTCC SDR, CME SDR~~ DDR, Chicago Mercantile Exchange Inc. and ICE Trade Vault for Swaps in the Commodities asset class.

Without limiting the generality of the foregoing, for each Swap executed on or pursuant to the rules of the SEF, the SEF will report all required swap creation data, as soon as technologically practicable after execution of the Swap. This report will include all required primary economic terms data and confirmation data for each Swap, as such terms are defined in Section 45.1 of the CFTC Regulations.

(b) The Reporting Counterparty for each Swap shall be established pursuant to CFTC Regulation 45.8. If the identity of the Reporting Counterparty cannot be established under CFTC Regulation 45.8, the ISDA Reporting Counterparty Rules shall be applied as provided in Appendix A hereto.

(c) [Reserved]

(d) If at any time the Reporting Counterparty for a Transaction that was executed on, or pursuant to the rules of, the SEF becomes aware of an error or omission in the swap transaction or pricing data that was reported with respect to such Transaction, either through its own initiative or through notice by the other party to the Transaction, such party shall promptly notify the SEF of the error and/or correction. Upon receiving a notification from the Reporting Counterparty or otherwise becoming aware of an error

or omission in the swap transaction or pricing data reported with respect to a Transaction executed on, or pursuant to the rules of, the SEF, the SEF shall promptly submit corrected data to the same Swap Data Repository to which the Transaction was previously reported. For the avoidance of doubt, if a Transaction was incorrectly executed, Rule 5103 shall apply.

- (e) No Person shall submit or agree to submit a cancellation or correction for the purpose of re-reporting swap transaction and pricing data in order to gain or extend a delay in public dissemination of accurate swap transaction or pricing data or to otherwise evade Applicable Law, including the reporting requirements set forth in Part 43 of the CFTC Regulations.
- (f) All Swaps executed on, or pursuant to the rules of, the SEF are reported to ~~the Swap Data Repository of the Depository Trust and Clearing Corporation~~ DDR, except that ~~“other commodity” swaps (as defined under Part 45 of the CFTC Regulations)~~ Swaps in the Commodities asset class are reported to ~~a Swap Data Repository~~ the Approved SDR selected by the parties prior to executing the relevant Swap.

#### **Rule 8006 Timely Publication of Trading Information**

The SEF will publish trading information as required by Core Principle 9 of Part 37 and by Part 16 of the CFTC Regulations.

Secretary of the Commission  
April 29, 2016

**EXHIBIT C-1**

Amended Version of Appendix C to the tpSEF Inc. Rulebook – tpSEF Inc. Risk Mitigation Procedures  
(Clean)



**tpSEF Inc.**  
**Risk Mitigation Procedures**

*Effective May 16, 2016*

**tpSEF Inc.**

**RISK MITIGATION PROCEDURES**

**Purpose:**

This document sets forth the procedures (the “Procedures”) for Risk Mitigation Sessions conducted by tpSEF Inc. (“tpSEF”) in accordance with tpSEF Rule 4018.

**Description of tpSEF Risk Mitigation Sessions:**

tpSEF conducts Risk Mitigation Sessions using an electronic matching program that enables market participants to reduce their floating rate and FX fixing risk. The system is available for FRAs/SPSs denominated in four supermajor and two major currencies and for USD-settled NDFs for seven AEJ currencies.

tpSEF’s Risk Mitigation Sessions allow for an efficient and cost-effective means of offsetting reset/fixing exposures across an entire portfolio. Instead of having to offset individual resets/fixings, which can involve hundreds of individual transactions and the associated market and operational risk, the Risk Mitigation Sessions allow market participants to reduce exposures at transparent midmarket price levels in a single matching run.

For additional information regarding tpSEF Risk Mitigation Sessions, please contact: [tpSEF-tpMatch-Information@tullettprebon.com](mailto:tpSEF-tpMatch-Information@tullettprebon.com).

**Definitions:**

For purposes of these Procedures, the following terms have the meanings specified herein. Capitalized terms used but not defined have the meanings ascribed to them in the tpSEF Inc. Rulebook.

“*Closing Cutoff Time*” has the meaning given in Section (f) of these Procedures.

“*Eligible Participant*” means a Participant that meets the criteria of these Procedures.

“*FRAs*” means Forward Rate Agreements.

“*NDFs*” mean Non-Deliverable Forwards.

“*Order Cutoff Time*” has the meaning given in Section (e) of these Procedures.

“*Pricing Curve Update Cutoff*” has the meaning given in Section (f) of these Procedures.

“*Risk Mitigation Session*” means for any given product type, the announced session at which Eligible Participants can enter into Permitted Transactions in relation to that product type.

“SPS” means a single period swap, a fixed for floating swap with a single calculation period and floating rate fixing.

**Procedures:**

- (a) The SEF shall provide impartial access to each Risk Mitigation Session to all Eligible Participants.
- (b) Risk Mitigation Sessions will be available for Permitted Transactions only.
- (c) Risk Mitigation Sessions will result in the execution of Swaps that meet the SEF’s general criteria for the trade type as described in the applicable Swap Specification. Product types available to be executed through the SEF that result from the Risk Mitigating Session are:

- FRAs and/or SPSs in the following currencies:
  - AUD
  - CAD
  - EUR
  - GBP
  - JPY
  - USD

The SEF will determine, for any currency, whether to offer Risk Mitigation Sessions utilizing FRAs, SPSs or both for such currency.

- NDFs settled in USD on the following reference currencies:
  - CNY
  - IDR
  - INR
  - KRW
  - MYR
  - PHP
  - TWD
- (d) The SEF will post on its website advance notice of each Risk Mitigation Session. The SEF will attempt to give such notice at least one Business Day in advance.
- (e) In order to participate in a particular Risk Mitigation Session, a Participant must submit a completed order sheet in the form specified by the SEF containing its orders for that Risk Mitigating Session prior to the applicable cutoff time (“Order Cutoff Time”). All orders on the order sheet must be firm bids and offers and not indications of interest or indicative quotes. After the Order Cutoff Time, submitted order sheets may not be cancelled, withdrawn or amended and new order sheets will not be accepted. The Order

Cutoff Time for each Risk Mitigation Session will be specified by the SEF on its website. The SEF will typically hold the same Order Cutoff Time for Risk Mitigation Sessions in a particular product type. By submitting an order sheet to the SEF that is not cancelled or withdrawn prior to the Order Cutoff Time, the submitting Participant is deemed to agree to simultaneously execute every Swap that has been determined by a pre-determined risk mitigation algorithm.

- (f) Prices for all potential Swaps in a particular Risk Mitigation Session shall be determined based on a pricing curve established in accordance with CFTC SEF Core Principle 3. The pricing curve will be made available to Participants in a particular Risk Mitigation Session upon request in advance of each Risk Mitigation Session and may be updated until thirty (30) minutes prior to the Order Cutoff Time (the “Pricing Curve Update Cutoff”). Participants may modify, cancel and submit orders after any update to the pricing curve up until the applicable Order Cutoff Time. Absent manifest error, the pricing curve will not be amended after the Pricing Curve Update Cutoff; if the pricing curve is amended thereafter due to manifest error, Participants will have a right to modify, cancel and submit orders until the Session is closed (the “Closing Cutoff Time”). The Closing Cutoff Time for each Risk Mitigation Session will be specified by the SEF on its website. The SEF will typically hold the same Closing Cutoff Time for Risk Mitigation Sessions in a particular product type.
- (g) For each Risk Mitigation Session, the positions of each Participant portfolio and any Participant specified parameters to be applied to each such portfolio are read into a pre-determined risk mitigation algorithm. The algorithm optimizes the total volume traded across all portfolios to maximize the risk reduction across all of the portfolios, while respecting the parameters specified. The main input into the algorithm is potential trades, whereby a portfolio’s position in a particular tenor and fixing date is matched to any opposing positions from all other participating Participants for the same tenor and fixing date. Upon completion of the algorithm, automated and manual checks are performed to ensure that the results are consistent with the parameters specified for each Participant portfolio.
- (h) In order for any Swap to be executed during a particular Risk Mitigation Session, each Participant in that session must have agreed to simultaneously execute every Swap that has been determined by the pre-determined risk mitigation algorithm referenced above. Any Participant’s failure, refusal or inability to execute any Swap proposed by the pre-determined risk mitigation algorithm shall result in the rejection of that Participant’s orders from the Risk Mitigation Session without the execution of any of that Participant’s Swaps and the SEF having the right to suspend or terminate the Participant’s Trading Privileges or take any other action permitted by the SEF Rules.
- (i) All Swaps specified in the pricing curve for that specific Swap shall be at a uniform price for all Participants participating in a particular Risk Mitigation Session. Swaps executed at the uniform price should be the same as specified in the pricing curve for that specific Swap.

- (j) For orders to be executed in the Risk Mitigation Session, any submitting non-self-clearing Participant must designate a Clearing Member to clear the Transaction. Prior to running any Risk Mitigation Session for a Cleared Swap, the SEF will facilitate pre-execution screening by or on behalf of the relevant Clearing Member if applicable. If the SEF does not receive confirmation that the order satisfies the Clearing Member's pre-execution limits or receives confirmation that the order does not satisfy the Clearing Member's pre-execution limits, the SEF will cancel the order.
- (k) Orders resulting from completed Risk Mitigation Sessions are communicated to the SEF and are entered into the SEF's Deal Management System for execution by appropriate personnel.
- (l) All Swaps executed as a result of a Risk Mitigation Session shall be confirmed and reported in accordance with the SEF Rules.
- (m) Introducing Brokers shall be permitted to participate in each Risk Mitigation Session on behalf of one or more Participants (or their respective Authorized Traders or Customers).
- (n) For the avoidance of doubt, the SEF may, in its own discretion, at any time, cancel, suspend or modify any Risk Mitigation Session or Transaction resulting therefrom to the same extent as with any other Transaction or series of Transactions executed on or pursuant to the rules of the SEF as described in the SEF Rules.

Secretary of the Commission  
April 29, 2016

**EXHIBIT C-2**

Amended Version of Appendix C to the tpSEF Inc. Rulebook – tpSEF Inc. Risk Mitigation Procedures  
(Marked)

**tpSEF Inc.**  
**Risk Mitigation Procedures**

*Effective ~~December 23~~May 16, 20152016*

tpSEF Inc.

**RISK MITIGATION PROCEDURES**

**Purpose:**

This document sets forth the procedures (the “Procedures”) for Risk Mitigation Sessions conducted by tpSEF [Inc. \(“tpSEF”\)](#) in accordance with tpSEF Rule 4018.

**Description of tpSEF Risk Mitigation Sessions:**

tpSEF conducts Risk Mitigation Sessions using an electronic ~~FRA and NDF~~-matching program that enables market participants to reduce their ~~LIBOR~~[floating rate](#) and FX fixing risk. The system is available for FRAs/[SPSs](#) denominated in four supermajor and two major currencies and for USD-settled NDFs for seven AEJ currencies.

tpSEF’s Risk Mitigation Sessions allow for an efficient and cost-effective means of offsetting reset/[fixing](#) exposures across an entire portfolio. Instead of having to offset individual resets/[fixings](#), which can involve hundreds of individual transactions and the associated market and operational risk, the Risk Mitigation Sessions allow market participants to reduce exposures at transparent midmarket price levels in a single matching run.

For additional information regarding tpSEF Risk Mitigation Sessions, please contact: tpSEF-tpMatch-Information@tullettprebon.com.

**Definitions:**

For purposes of these Procedures, the following terms have the meanings specified herein. Capitalized terms used but not defined have the meanings ascribed to them in the tpSEF [Inc.](#) Rulebook.

“*Closing Cutoff Time*” has the meaning given in Section (f) of these Procedures.

“*Eligible Participant*” means a Participant that meets the criteria of these Procedures.

“*FRAs*” means Forward Rate Agreements.

“*NDFs*” mean Non-Deliverable Forwards.

“*Order Cutoff Time*” has the meaning given in Section (e) of these Procedures.

“*Pricing Curve Update Cutoff*” has the meaning given in Section (f) of these Procedures.

“*Risk Mitigation Session*” means for any given product type, the announced session at which Eligible Participants can enter into Permitted Transactions in relation to that product type.



“SPS” means a single period swap, a fixed for floating swap with a single calculation period and floating rate fixing.

**Procedures:**

- (a) The SEF shall provide impartial access to each Risk Mitigation Session to all Eligible Participants.
- (b) Risk Mitigation Sessions will be available for Permitted Transactions only.
- (c) Risk Mitigation Sessions will result in the execution of Swaps that meet the SEF’s general criteria for the trade type as described in the applicable Swap Specification. Product types available to be executed through the SEF that result from the Risk Mitigating Session are:

- FRAs and/or SPSs in the following currencies:
  - AUD
  - CAD
  - EUR
  - GBP
  - JPY
  - USD

The SEF will determine, for any currency, whether to offer Risk Mitigation Sessions utilizing FRAs, SPSs or both for such currency.

- NDFs settled in USD on the following reference currencies:
  - CNY
  - IDR
  - INR
  - ~~MYR~~
  - ~~PHP~~
  - KRW
  - MYR
  - PHP
  - TWD

- (d) The SEF will post on its website advance notice of each Risk Mitigation Session. The SEF will attempt to give such notice at least one Business Day in advance.
- (e) In order to participate in a particular Risk Mitigation Session, a Participant must submit a completed order sheet in the form specified by the SEF containing its orders for that Risk Mitigating Session prior to the applicable cutoff time (“Order Cutoff Time”). All orders on the order sheet must be firm bids and offers and not indications

of interest or indicative quotes. After the Order Cutoff Time, submitted order sheets may not be cancelled, withdrawn or amended and new order sheets will not be accepted. The Order Cutoff Time for each Risk Mitigation Session will be specified by the SEF on its website. The SEF will typically hold the same Order Cutoff Time for Risk Mitigation Sessions in a particular product type. By submitting an order sheet to the SEF that is not cancelled or withdrawn prior to the Order Cutoff Time, the submitting Participant is deemed to agree to simultaneously execute every Swap that has been determined by a pre-determined risk mitigation algorithm.

- (f) Prices for all potential Swaps in a particular Risk Mitigation Session shall be determined based on a pricing curve established in accordance with CFTC SEF Core Principle 3. The pricing curve will be made available to Participants in a particular Risk Mitigation Session upon request in advance of each Risk Mitigation Session and may be updated until thirty (30) minutes prior to the Order Cutoff Time (the “Pricing Curve Update Cutoff”). Participants may modify, cancel and submit orders after any update to the pricing curve up until the applicable Order Cutoff Time. Absent manifest error, the pricing curve will not be amended after the Pricing Curve Update Cutoff; if the pricing curve is amended thereafter due to manifest error, Participants will have a right to modify, cancel and submit orders until the Session is closed (the “Closing Cutoff Time”). The Closing Cutoff Time for each Risk Mitigation Session will be specified by the SEF on its website. The SEF will typically hold the same Closing Cutoff Time for Risk Mitigation Sessions in a particular product type.
- (g) For each Risk Mitigation Session, the positions of each Participant portfolio and any Participant specified parameters to be applied to each such portfolio are read into a pre-determined risk mitigation algorithm. The algorithm optimizes the total volume traded across all portfolios to maximize the risk reduction across all of the portfolios, while respecting the parameters specified. The main input into the algorithm is potential trades, whereby a portfolio’s position in a particular tenor and fixing date is matched to any opposing positions from all other participating Participants for the same tenor and fixing date. Upon completion of the algorithm, automated and manual checks are performed to ensure that the results are consistent with the parameters specified for each Participant portfolio.
- (h) In order for any Swap to be executed during a particular Risk Mitigation Session, each Participant in that session must have agreed to simultaneously execute every Swap that has been determined by the pre-determined risk mitigation algorithm referenced above. Any Participant’s failure, refusal or inability to execute any Swap proposed by the pre-determined risk mitigation algorithm shall result in the rejection of that Participant’s orders from the Risk Mitigation Session without the execution of any of that Participant’s Swaps and the SEF having the right to suspend or terminate the Participant’s Trading Privileges or take any other action permitted by the SEF Rules.
- (i) All Swaps specified in the pricing curve for that specific Swap shall be at a uniform price for all Participants participating in a particular Risk Mitigation Session. Swaps

executed at the uniform price should be the same as specified in the pricing curve for that specific Swap.

- (j) For orders to be executed in the Risk Mitigation Session, any submitting non-self-clearing Participant must designate a Clearing Member to clear the Transaction. Prior to running any Risk Mitigation Session for a Cleared Swap, the SEF will facilitate pre-execution screening by or on behalf of the relevant Clearing Member if applicable. If the SEF does not receive confirmation that the order satisfies the Clearing Member's pre-execution limits or receives confirmation that the order does not satisfy the Clearing Member's pre-execution limits, the SEF will cancel the order.
- (k) Orders resulting from completed Risk Mitigation Sessions are communicated to the SEF and are entered into the SEF's Deal Management System for execution by appropriate personnel.
- (l) All Swaps executed as a result of a Risk Mitigation Session shall be confirmed and reported in accordance with the SEF Rules.
- (m) Introducing Brokers shall be permitted to participate in each Risk Mitigation Session on behalf of one or more Participants (or their respective Authorized Traders or Customers).
- (n) For the avoidance of doubt, the SEF may, in its own discretion, at any time, cancel, suspend or modify any Risk Mitigation Session or Transaction resulting therefrom to the same extent as with any other Transaction or series of Transactions executed on or pursuant to the rules of the SEF as described in the SEF Rules.