



NEX SEF LIMITED

# Facility Rulebook

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## FACILITY RULEBOOK

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## DEFINITIONS

Except where the context requires otherwise, the following terms shall have the following meanings when used in the Rules. Use of the singular shall include the plural and vice versa, unless the context requires otherwise.

**Act** means the U.S. Commodity Exchange Act, as amended from time to time.

**Affiliate** means, with respect to any person, any other person who controls, is controlled by or is under common control with such person.

**Answer** shall have the meaning set forth in Rule 505.

**Applicable Law** means, with respect to any person, any statute, law, regulation, rule or ordinance of any Governmental Authority applicable to such person, including but not limited to the FCA's rules, the Act and Commission Regulations.

**Authorised Trader** means an individual designated as such by, and acting on behalf of, a Trading Privilege Holder or an Authorised Trading Firm to enter Bids/Offers, access a Trading Platform and execute transactions in Contracts.

**Authorised Trading Firm** means an entity designated as such by a Trading Privilege Holder, including an Intermediary, to enter Bids/Offers, access a Trading Platform and execute as a Participant entering Bids/Offers on the EBS Order Book in the name of the Trading Privilege Holder.

**BASIC** shall have the meaning set forth in Rule 205(f).

**Bid/Offer** means a bid or offer entered into a Trading Platform operated by NEX SEF.

**Board** means the Board of Directors of NEX SEF.

**Business Day** means any day on which a Contract is available for trading on the Facility.

**CF10** means the head of Compliance and Oversight (Controlled Function 10), or one duly authorised to act with the authority of the CF10.

**Chairman of the Board** means the chairman of the Board.

**Chief Compliance Officer** means the chief compliance officer of NEX SEF, or one duly authorised to act with the authority of such officer.

**Chief Executive Officer** means the chief executive officer of NEX SEF, or one duly authorised to act with the authority of such officer.

**Class** means, with respect to any Swap, a Contract covering the same Underlying Interest.

**Cleared Contract** means any Contract that is listed for clearing by NEX SEF.

**Commission** means the U.S. Commodity Futures Trading Commission or any successor regulatory body.

**Commission Regulations** means any rule, regulation, order, directive and any interpretation thereof promulgated by the Commission, as amended.

**Commodity** shall have the same meaning as in the Act.

**Commodity Interest** shall have the meaning set forth in Commission Regulation 1.3.



**Compliance Function** means the Chief Compliance Officer and CF10 together.

**Confirmation** shall have the same meaning as in Commission Regulation 45.1.

**Confidential Information** means all non-public information that is stated to be or that can reasonably be expected to be of a confidential or trade secret nature in any form obtained by a Participant from NEX SEF in accessing or using the Systems, including, but not limited to, any processes, or proprietary data, information or documents regarding the Systems, save to the extent that such information: (i) is already in the public domain at the time of disclosure; (ii) enters the public domain other than by a breach of any obligation of confidentiality; (iii) is required to be disclosed by reason of Applicable Law, provided that, where permitted by Applicable Law, prior notice of such disclosure shall be provided to NEX SEF as soon as practicable in order to permit NEX SEF to seek a protective order or take other appropriate action to safeguard the Confidential Information; or (iv) is permitted to be disclosed pursuant to the Rules.

**Contract** means any Swap listed for trading on the Facility.

**Customer** means any Trading Privilege Holder that has designated an Intermediary as its Authorised Trading Firm.

**Customer Type Indicator Codes** shall have the meaning set forth in Rule 208.

**DCO** means, with respect to any Swap, a derivatives clearing organisation authorised to clear such Swap.

**Derived Information** means Information that has been altered, enhanced, modified or from which derivative information has been created.

**Director** means a member of the Board.

**DTCC** means DTCC Data Repository (U.S.) LLC.

**EBS Contract** means a Contract that is a non-deliverable foreign exchange forward contract or other Contract executed through the EBS Order Book.

**EBS Order Book** means the Order Book for the EBS Trading Platform.

**EBS Trading Platform** means a Trading Platform operated pursuant to technology licensed from EBS Dealing Resources Inc., an affiliate of the Facility.

**Eligible Counterparty** has the meaning given in the FCA Handbook.

**Emergency** shall have the meaning set forth in Rule 104.

**Error** shall have the meaning set forth in Rule 315 (h).

**Facility** means the venue provided by NEX SEF for the execution of Contracts, as set out in this Facility Rulebook.

**Facility Subject Person** means any person that has consented to the jurisdiction of the Facility and agreed to be bound by and comply with the Rules pursuant to Rule 206 (a).

**FCA** means the UK Financial Conduct Authority.

**Financial Entity** has the meaning set forth in the Act.

**Governance Policy** means the Governance Policy of NEX SEF available on the Facility's website.



**Governmental Authority** means any domestic or foreign government (or political subdivision), governmental or regulatory authority, agency, court, commission or other governmental or regulatory entity (including any self-regulatory association).

**Hearing Date** shall have the meaning set forth in Rule 506.

**Hearing Panel** shall have the meaning set forth in the Governance Policy.

**Hearing Panel Chairman** shall have the meaning set forth in Rule 506.

**Hearing Record** shall have the meaning set forth in Rule 510.

**ID** shall have the meaning set forth in Rule 302.

**Indemnified Party** shall have the meaning set forth in Rule 108 (f).

**Indemnifying Party** shall have the meaning set forth in Rule 108 (f).

**Information** shall have the meaning set forth in Rule 107.

**Intellectual Property Rights** means all right, title and interest in and to (i) trademarks, service marks, brand names and other indications of origin and the goodwill associated with the foregoing; (ii) inventions, patents, trade secrets, know-how, processes and systems; (iii) copyright and database rights; and (iv) any other intellectual property or similar proprietary rights in any jurisdiction, in each case whether registrable or not.

**Intermediary** means any person that enters Bids/Offers into a Trading Platform as an Authorised Trading Firm on behalf of a Customer that designated the Authorised Trading Firm as such, including without limitation, any futures commission merchant, introducing broker or commodity trading adviser registered with the Commission.

**Intermediated Transaction** means any transaction on the Facility conducted by an Intermediary.

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

**ISDA Reporting Party Rules** means the reporting party rules set forth in the document published by ISDA entitled "Dodd Frank Act – Swap Transaction Reporting Party Requirements" dated July 15, 2013, as set forth in Annex 1.

**Last Trading Day** means, with respect to any Swap, the last day on which trading is permitted for such Swap in accordance with the Rules.

**Legal Entity Identifier** or **LEI** shall have the same meaning as in Commission Regulations.

**Losses** shall have the meaning set forth in Rule 102 (a).

**Major Swap Participant** shall have the same meaning as in the Act and Commission Regulations.

**Market Regulation Staff** means the personnel designated by NEX SEF as members of the Market Regulation Staff, any agents of NEX SEF that assist in the implementation, surveillance, and enforcement of its rules and related obligations, and NEX SEF's Regulatory Services Provider.

**MiFID** means the Markets in Financial Instruments Directive 2004/39/EC.

**MRAN** means a market regulation advisory notice issued by NEX SEF.

**MTF** means multilateral trade facility, as defined in the FCA Handbook.



**NAL** means Commission No-Action Letter.

**NEX SEF** means NEX SEF Limited (Company Number: 6292563).

**NEX SEF Indemnified Party** shall have the meaning set forth in Rule 108 (f).

**NFA** means the National Futures Association.

**Non-Cleared Contract** means a Contract that is not a Cleared Contract.

**Non-Cleared Contract Agreement** means an agreement that governs the performance and settlement of a Non-Cleared Contract including, without limitation, any ISDA master agreements, other master agreements, terms supplements, master confirmation agreements, incorporated industry definitions and any applicable credit support and default provisions.

**Notice** shall have the meaning set forth in Rule 504.

**Order** means an instruction by a Customer to an Intermediary to execute a transaction on behalf of such Customer.

**Order Book** means a Trading Platform in which all Trading Privilege Holders have the ability to enter, observe and transact on multiple Bids/Offers.

**Package Transaction** means a transaction executed on the Facility or subject to the Rules involving two or more instruments: (i) that is executed between two or more parties that are Participants; (ii) that is priced or quoted as one economic transaction with simultaneous or near simultaneous execution of all components; (iii) for which no component is subject to section 2(h)(8) of the Act; and (iv) where the execution of each component is contingent upon the execution of all other components.

**Participant** means any Trading Privilege Holder, Authorised Trader or Authorised Trading Firm.

**Participant Indemnified Party** shall have the meaning set forth in Rule 108 (f).

**Participation Committee** shall have the meaning set forth in the Governance Policy.

**Permitted Transaction** means any transaction involving a Swap that is not subject to the trade execution requirement in section 2(h)(8) of the Act.

**person** means any individual, sole proprietorship, corporation, limited liability company, limited liability partnership, partnership, association, estate, trust, governmental agency, unincorporated organisation or any other legal entity.

**Physical Emergency** shall have the meaning set forth in Rule 104.

**Position Limit** means the maximum position, either net long or net short, in one Series or a combination of various Series of a particular Class that may be held or controlled by one person, or subject to aggregation with such person's position, as prescribed by NEX SEF and/or Commission.

**Prime Broker** means a person that has authorized a Trading Privilege Holder to execute Prime Broker Transactions in the name of and on behalf of such person pursuant to a Prime Broker Agreement. A Prime Broker shall not be a Customer of such authorized Trading Privilege Holder; instead all Prime Broker Transactions shall be executed pursuant to Rule 215.

**Prime Broker Agreement** means an agreement between a Prime Broker and a Trading Privilege Holder that governs the performance and settlement of a Non-Cleared Contract that is a Permitted Transaction, including any applicable credit support and default provisions.





**Prime Broker Limit** shall have the meaning set forth in Rule 215.

**Prime Broker Representation** shall have the meaning set forth in Rule 215.

**Prime Broker Transaction** means a transaction executed pursuant to Rule 215: (i) in a Non-Cleared Contract that is a Permitted Transaction; and (ii) where the Prime Broker has no knowledge of such transaction until after the transaction's execution.

**Proceeding** shall have the meaning set forth in Rule 108 (f).

**Proprietary Data and Personal Information** means [any and all data and \(whether Bids/Offers, quotes, Orders, Confirmations, Trade Communications or otherwise\) and information submitted to the Facility by or through a person with respect to that person, including](#) information that separately discloses business transactions, market positions or trade secrets of a person with respect to that person, but excludes information in a Confirmation or Trade Communication that discloses the identity of another person.

**Public Director** means any person who qualifies as a "public director" within the meaning set forth in the Commission Regulations.

**Regulatory Agency** means any Governmental Authority, including the FCA, the Commission and the SEC, the NFA and any other SRO, and any organisation, whether domestic or foreign, granted authority under statutory or regulatory provisions to regulate its own activities and the activities of its members, not including NEX SEF.

**Regulatory Oversight Committee** shall have the meaning set forth in the Governance Policy.

**Regulatory Services Provider** means an outside organisation which provides regulatory services to NEX SEF pursuant to an agreement.

**Related Parties** shall have the meaning set forth in Rule 107.

**Request for Quote** or **RFQ** means a request by one Participant to at least such minimum number of Participants as may be required by Commission Regulations from time to time for a market quote that shall constitute a Bid/Offer. The SEF does not currently offer RFQ functionality.

**Required Transaction** means any transaction involving a Swap that is subject to the trade execution requirement in section 2(h)(8) of the Act.

**Respondent** shall have the meaning set forth in Rule 504 (a).

**Review Panel** shall have the meaning set forth in the Governance Policy.

**Rule** or **Rules** means the rules, resolutions, interpretations, statements of policy, decisions, directives and orders of the Facility (including this Rulebook).

**Secretary** means the individual appointed by the Board from time to time to serve as secretary of NEX SEF.

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

**SEF** means swap execution facility, as defined in the Act.

**Series** means all Contracts of the same Class having identical terms.

**SRO** means self-regulatory organisation.

**Swap** shall have the same meaning as in the Act and Commission Regulations.



**Swap Data Repository** or SDR shall have the same meaning as in the Act.

**Swap Dealer** shall have the same meaning as in the Act and Commission Regulations.

**Systems** means the Trading Platforms, including various proprietary and third party software, firmware, hardware, keypads and supporting documentation to which Participants are granted access by NEX SEF.

**System Protocol** means the terms from time to time in force upon which a Participant may access a specific Trading Platform, including any supplemental written guidelines provided by NEX SEF to the Participant, as amended from time to time. The System Protocols are set forth in confidential Chapter 9 of this Facility Rulebook. In the event of any inconsistency between the provisions of any System Protocol and the Rules, the terms of the System Protocol shall prevail.

**Terms Incorporated by Reference** shall have the meaning set forth in Rule 312.

**Trade Communication** shall have the meaning set forth in Rule 312.

**Trading Platform** means any of the separate electronic central limit order books and other systems administered by or on behalf of NEX SEF for the trading of Contracts pursuant to specific System Protocols for each such system.

**Trading Privilege Holder** means an individual or entity with Trading Privileges on the Facility granted pursuant to Rule 201, but does not include an Authorised Trading Firm or Authorised Trader.

**Trading Privileges** means permission from NEX SEF given to any Trading Privilege Holder in accordance with Rule 201 to access the Facility, or to any Authorised Trading Firm or Authorised Trader in accordance with Rule 202 to access the Facility.

**Trading Session** means, with respect to any Contract, the period of hours on any Business Day during which such Contract is available for trading, as specified in the Rules governing such Contract.

**Underlying Interest** means the interest which is the subject of a Swap.

**Violation** means a violation of any of the Rules.



## GENERAL

### Regulatory Status

#### *United Kingdom and the EEA*

NEX SEF Limited (FRN 472944) is regulated by the FCA and is authorised, among other things, to:

- arrange (bring about) deals in investments;
- deal in investments as agent;
- make arrangements with a view to transactions in investments; and
- operate a MTF (as set in the relevant System Protocol).

NEX SEF has passporting rights under MiFID in relation to certain of its permissions.

#### *United States of America*

NEX SEF is registered as a SEF with the Commission.

### Compliance Oversight

The Chief Compliance Officer and the Head of Compliance and Oversight (CF10), both appointed by the Board, assist NEX SEF in meeting its regulatory obligations, as set out by the Commission and the FCA respectively.

References in this Facility Rulebook and any other related document to the Compliance Function is intended to mean, for Commission related considerations, the Chief Compliance Officer and, for FCA related considerations, the CF10. To the extent any of the activities concern both the Commission and FCA, the Chief Compliance Officer and the CF10 will cooperate to ensure compliance with the respective regulations.



## CHAPTER 1 MARKET GOVERNANCE

### Rule 101 Board of Directors and Officers

(a) *Management.* The Board manages, operates and sets policies, including the Governance Policy, for NEX SEF and the Facility. The Board has the power to appoint such officers of NEX SEF as it may deem necessary or appropriate from time to time.

(b) *Governance Policy.* The Governance Policy shall be deemed to be part of the 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.

### Rule 102 Limitation of Liability

(a) TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR PRIVATE RIGHTS OF ACTION UNDER SECTION 22(B) OF THE ACT OR IN INSTANCES WHERE A NEX SEF PARTY (AS DEFINED BELOW) HAS BEEN FINALLY ADJUDICATED TO HAVE ENGAGED IN NEGLIGENCE, WILFUL DEFAULT OR FRAUD, NEX SEF (INCLUDING ITS RESPECTIVE SUBSIDIARIES AND AFFILIATES) AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS AND LICENSORS (EACH, A "**NEX SEF PARTY**"), SHALL NOT BE LIABLE TO ANY PERSON FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF USE, AND DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES) IN CONTRACT, TORT, OR OTHERWISE AND WHETHER THE CLAIM IS BROUGHT DIRECTLY OR AS A THIRD PARTY CLAIM, ARISING FROM:

- (1) ANY FAILURE, MALFUNCTION, FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY, INTERRUPTION, TERMINATION, OR ANY OTHER CAUSE, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OPERATION, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF ANY OF THE SYSTEMS AND SERVICES OF NEX SEF OR ANY NEX SEF PARTY, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS AND SERVICES, INCLUDING WITHOUT LIMITATION ELECTRONIC ORDER ENTRY/DELIVERY, TRADING THROUGH ANY ELECTRONIC MEANS, ELECTRONIC COMMUNICATION OF MARKET DATA OR INFORMATION, WORKSTATIONS USED BY PARTICIPANTS, PRICE REPORTING SYSTEMS AND ANY AND ALL TERMINALS, COMMUNICATIONS NETWORKS, CENTRAL COMPUTERS, SOFTWARE, HARDWARE, FIRMWARE AND PRINTERS RELATING THERETO; OR
- (2) ANY FAILURE OR MALFUNCTION, FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY, INTERRUPTION OR TERMINATION, OR ANY OTHER CAUSE, OF ANY SYSTEM OR SERVICE OF NEX SEF OR ANY NEX SEF PARTY, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, CAUSED BY ANY THIRD PARTIES INCLUDING, BUT NOT LIMITED TO, INDEPENDENT SOFTWARE VENDORS AND NETWORK PROVIDERS; OR
- (3) ANY ERRORS OR INACCURACIES IN INFORMATION PROVIDED BY NEX SEF OR ANY NEX SEF PARTY OR ANY OF NEX SEF'S OR NEX SEF PARTY'S SYSTEMS, SERVICES OR FACILITIES; EXCEPT FOR INCORRECT ORDER STATUS; OR
- (4) ANY UNAUTHORISED ACCESS TO OR UNAUTHORISED USE OF ANY OF NEX SEF'S OR NEX SEF PARTY'S SYSTEMS, SERVICES OR FACILITIES BY ANY PERSON.



(b) NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS (INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE) ARE PROVIDED BY NEX SEF OR ANY NEX SEF PARTY, THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, OR LICENSORS RELATING TO ANY SYSTEMS OR SERVICES OF NEX SEF OR NEX SEF PARTY OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, INCLUDING A TRADING PLATFORM, WHICH ARE PROVIDED "AS IS" TO PARTICIPANTS. NEITHER NEX SEF NOR EBS MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED THAT ANY SYSTEMS OR SERVICES OF NEX SEF OR EBS (INCLUDING EACH OF THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES) OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, INCLUDING A TRADING PLATFORM, WILL MEET A PARTICIPANT'S REQUIREMENTS, HAVE UNINTERRUPTED OR ERROR-FREE OPERATION, BE AVAILABLE DURING ANY SPECIFIED BUSINESS HOURS (WHETHER ADVERTISED OR NOT) OR OPERATE IN CONJUNCTION WITH OTHER SOFTWARE.

(c) ANY DISPUTE ARISING OUT OF THE USE OF SYSTEMS OR SERVICES OF NEX SEF OR ANY NEX SEF PARTY OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES IN WHICH NEX SEF OR A NEX SEF PARTY IS A PARTY MUST BE BROUGHT WITHIN ONE YEAR FROM THE TIME THAT A CAUSE OF ACTION HAS ACCRUED. ANY SUCH DISPUTE MAY ONLY BE LITIGATED SUBJECT TO THE RULES OF THIS RULEBOOK AND WILL BE GOVERNED BY THE LAWS SET OUT IN THIS RULEBOOK.

(d) EXCEPT IN INSTANCES WHERE A NEX SEF PARTY HAS BEEN FINALLY ADJUDICATED TO HAVE ENGAGED IN NEGLIGENCE, WILLFUL DEFAULT OR FRAUD, IN NO EVENT SHALL THE EBS PARTIES' TOTAL COMBINED AGGREGATE LIABILITY FOR ALL CLAIMS ARISING OUT OF ANY NEGLIGENCE, FAILURES, MALFUNCTIONS, FAULTS IN DELIVERY, DELAYS, OMISSIONS, SUSPENSIONS, INACCURACIES, INTERRUPTIONS, TERMINATIONS, ORDER STATUS ERRORS OR ANY OTHER CAUSES, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OPERATION, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF ANY OF NEX SEF'S OR A NEX SEF PARTY'S SYSTEMS OR SERVICES, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS AND SERVICES, OR THE NEGLIGENCE OF NEX SEF OR A NEX SEF PARTY STAFF, EXCEED \$50,000 FOR ALL LOSSES FROM ALL CAUSES SUFFERED BY ALL PERSONS ON A SINGLE DAY; \$200,000 FOR ALL LOSSES SUFFERED BY ALL PERSONS FROM ALL CAUSES IN A SINGLE CALENDAR MONTH; AND \$500,000 FOR ALL LOSSES FROM ALL CAUSES SUFFERED BY ALL PERSONS IN A SINGLE CALENDAR YEAR.

(e) A CLAIM AGAINST NEX SEF OR A NEX SEF PARTY ARISING OUT OF ANY FAILURE OR MALFUNCTION SHALL ONLY BE ALLOWED IF SUCH CLAIM IS BROUGHT IN ACCORDANCE WITH THIS RULE.

(f) NOTWITHSTANDING THE FOREGOING, THE LIMITATION OF LIABILITY PURSUANT TO THIS RULE 102 IS LIMITED TO CLAIMS ARISING OUT OF NEX SEF'S AND A NEX SEF PARTY'S OPERATION OF THE FACILITY AND/OR PROVISION OF SERVICES TO NEX SEF.

### **Rule 103 Confidentiality**

(a) NEX SEF shall not, and shall cause its Affiliates not to, use for business or marketing purposes any Proprietary Data or Personal Information it or any of its Affiliates collects or receives, from or on behalf of any person, for the purpose of fulfilling NEX SEF's regulatory obligations, unless the person who provided such data or information provides prior written consent to NEX SEF's use of such data or information for such purposes. In furtherance of Applicable Law, NEX SEF may share such data and information with its Affiliates, the Commission, the FCA, one or more SEFs, SDRs, DCOs or Designated Contract Markets registered with the Commission, and, to the extent permitted by Applicable Law, other Governmental Authorities, including those in countries outside the U.S. and UK. NEX SEF may, upon request of a Trading Privilege Holder, provide a list of current Trading Privilege Holders on a confidential basis. The receiving Trading Privilege Holder shall not disclose the contents of the list without the prior



consent of NEX SEF. Proprietary Data and Personal Information shall not include aggregated price and volume information not identified with a specific Participant, and NEX SEF may use such aggregated information for business and marketing purposes.

- (b) No NEX SEF employee shall trade, directly or indirectly, in any:
- (1) Contract;
  - (2) Commodity Interest related to a Contract;
  - (3) Commodity Interest traded on designated contract markets or SEFs or cleared by DCOs if the employee has access to material, non-public information concerning such Commodity Interest; or
  - (4) Commodity Interest traded on or cleared by a linked exchange if the employee has access to material, non-public information concerning such Commodity Interest.
- (c) No NEX SEF Affiliate, member of the Board or any committee established by the Board or by or pursuant to the Rules of the Facility, or any officer or other employee or consultant of NEX SEF, shall, either during or after service with NEX SEF:
- (1) trade for such person's own account, or for or on behalf of any other account, in any Commodity Interest, on the basis of any material, non-public information obtained through special access related to the performance of such person's official duties; or
  - (2) absent prior written consent of NEX SEF, use, directly or indirectly, information that is deemed to be non-public information, or disclose non-public information to others, except (i) to others within NEX SEF, NEX SEF's Affiliates or to outside advisers thereof or other service providers for NEX SEF, provided that such advisors and service providers are subject to confidentiality obligations, and that, in each case, such disclosure is necessary for the performance of Facility-related duties by the individual or entity, (ii) if required by a Regulatory Agency, or (iii) if compelled to do so by valid legal process, provided that the individual or entity notifies NEX SEF in advance thereof to the extent permitted.
- (d) Subject to Rule 103 (a), NEX SEF shall not, except as reasonably necessary to operate any Trading Platform, to fulfil its obligations under this Rulebook or to comply with Applicable Law or any request of the Commission or the FCA, without the prior written consent of a Trading Privilege Holder in each instance, (i) use in advertising, publicity, marketing or other promotional materials, the name, trade name, trademark, trade device, service mark or symbol of such Trading Privilege Holder or any of its Affiliates, or (ii) represent that any product or any service provided by NEX SEF has been approved or endorsed by such Trading Privilege Holder or any of its Affiliates.
- (e) For purposes of this Rule 103, the terms "**employee**", "**material information**" and "**non-public information**" have the meanings ascribed to them in Commission Regulation § 1.59.

#### **Rule 104 Emergency Action**

- (a) *Definitions.* As used in this section:

The term "**Emergency**" shall mean any occurrence or circumstance which, in the opinion of NEX SEF, requires immediate action and threatens or may threaten such things as the fair and orderly trading in, or the liquidation of, or delivery pursuant to, any Contracts on the Facility, including any manipulative or attempted manipulative activity; any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions; any circumstances which may materially affect the performance of Contracts traded on the Facility, including failure of the payment system or the bankruptcy or insolvency of any Participant; any action taken by any Governmental Authority, or any other board of trade, swap



execution facility, market or facility which may have a direct impact on trading on the Facility and any other circumstance which may have a severe, adverse effect upon the functioning of the Facility.

(b) Emergency action may be taken by the following:

- (1) By the Board in the case of any Emergency;
- (2) By any two members of the Board in the case of any Emergency where it is impracticable in the opinion of the Chairman of the Board or in his or her absence, any two members of the Board, to call a meeting of the Board to deal with the Emergency; or
- (3) By any committee of NEX SEF pursuant to powers conferred on said committee under the Rules or by the Board.

(c) *Vote Required*

The vote required of the Board or committee authorised to take any Emergency action hereunder shall be:

- (1) In the case of action by the Board, the affirmative vote of a majority of the members of the Board present and voting at a meeting at which there is a quorum; or
- (2) In the case of action by a committee, the affirmative vote of two or more persons constituting not less than a majority of the members of said committee present and voting at a meeting at which there is a quorum.

The consent in writing to any Emergency action of all members of the Board or of a committee, as applicable, shall be sufficient to take such Emergency action without a meeting. A member of the Board or of a committee shall be deemed present or in attendance at a meeting if such a person participates in the meeting by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time.

(d) *Action which may be taken*

- (1) In the event of an Emergency, NEX SEF may, subject to Part 40 of the Commission Regulations under the Act, place into immediate effect a Rule which may provide for, or may authorise NEX SEF, or any committee, to undertake actions which, in the opinion of NEX SEF are necessary or appropriate to meet the Emergency, including, but not limited to, such actions as:
  - (i) Extending or shortening the expiration date for trading in Contracts;
  - (ii) Extending the time of delivery under or expiration of Contracts;
  - (iii) Extending, limiting or changing hours of Trading Sessions;
  - (iv) Imposing or modifying price limits;
  - (v) Imposing or modifying Position Limits;
  - (vi) Imposing or modifying intraday market restrictions;
  - (vii) Ordering the liquidation or transfer of open positions in any Contract;
  - (viii) Ordering the establishment of a settlement price;
  - (ix) Suspending trading pursuant to Rule 105 or curtailing trading in any Contract;

- (x) Cancel any Bid/Offer;
  - (xi) Altering any Contract's settlement terms or conditions prior to execution and adjusting or cancelling any executed transaction pursuant to Rule 315; and
  - (xii) Modifying or suspending any provision of the Rules.
- (2) In the event of an Emergency when a quorum of the Board is not available, all trading on the Facility may be suspended by an affirmative vote of a majority of the Directors present, or by action of one Director if only one Director is present, for such period of time as in their or his or her judgment is necessary. In the event of an Emergency which prevents normal attendance at a meeting of the Board, when no Director is present, any authorised officer of NEX SEF shall have authority to order suspension of trading on the Facility for such period of time as in his or her judgment is necessary. Any action taken under this paragraph (b) shall be subject to review and modification by the Board.
- (3) Whenever any action is taken under this Rule pursuant to which trading is suspended or other changes in procedure are made, all matters relating to notices, deliveries and other obligations may be suspended or deferred in such manner as the Board or committee, as the case may be, may determine.
- (4) NEX SEF may be required to take an Emergency action when directed by the FCA or the Commission. If a Contract is traded both on the Facility and on one or more other swap execution facilities, any Emergency action to liquidate or transfer of open positions in any Contract will be made in consultation with the Commission or Commission staff.
- (e) *Physical Emergencies*
- (1) In the event the physical functions of the Facility or NEX SEF are, or are threatened to be, severely and adversely affected by a physical emergency, such as fire or other casualty, bomb threat, substantial inclement weather, power failure, communication or transportation breakdown, computer malfunction, screen-based Trading Platform break-down or malfunction of plumbing, heating, ventilation and air conditioning systems (a "**Physical Emergency**"), the Chairman of the Board, or in his or her absence the Chief Executive Officer, or in both of their absences any other authorised officer may take any action which, in the opinion of such officer is necessary or appropriate to deal with the Physical Emergency, including, but not limited to, suspending trading in any one or more Contracts, delaying the opening of trading in any one or more Contracts, extending the Last Trading Day and/or the time of trading.
- (2) In the event a designated officer has ordered suspension of trading, the Chairman of the Board or the Chief Executive Officer, or in their absence any other authorised officer may order restoration of trading on the Facility, or may remove other restrictions so imposed, if such officer determines that the Physical Emergency has sufficiently abated to permit the physical functions of NEX SEF or the Facility to continue in an orderly manner.
- (f) NEX SEF will promptly submit a written report detailing any action taken hereunder to the Commission and the FCA and such written report shall explain the decision-making process, the reasons for the exercise of emergency authority and how any conflicts of interest were addressed. Any emergency Rule or Rule amendment shall be filed with the Commission in accordance with Part 40 of the Commission Regulations under the Act.
- (g) In exercising its authority under this Rule 104, NEX SEF shall, in its reasonable discretion, and where appropriate, permitted by Applicable Law and not precluded by exigent circumstances, consult and coordinate with DCOs, other swap execution facilities, boards of trade, relevant Participants, and other parties in considering what actions to take hereunder.





### **Rule 105 Suspension of Trading**

The Board may, in its discretion, by an affirmative vote of a majority of the Directors present at a meeting at which there is a quorum (which, in an Emergency other than a Physical Emergency, may be held without previous notice), close the Facility or suspend trading in any one or more Contracts on such days or portions of days as will, in its judgment, serve to promote the best interest of NEX SEF.

### **Rule 106 Risk Controls for Trading**

The Regulatory Oversight Committee may impose controls to reduce the potential risk of market disruption, including, but not limited to, market restrictions that pause or halt trading in specified market conditions.

### **Rule 107 Market Data**

(a) Subject to Rule 103, and each Participant's rights in its own Proprietary Data and Personal Information, NEX SEF owns all rights, title and interest in and to all intellectual property and other proprietary rights (including all copyrights, database rights, trademarks and trade secrets, or similar proprietary rights in any jurisdiction whether or not registrable) in and to any data, analytics, research or other information (including without limitation Bids/Offers, the contents of Confirmations and Trade Communications, such Confirmations and Trade Communications themselves, prices and volumes of transactions) contained in, displayed on, generated by or derived from the Facility and the Trading Platforms (collectively the "**Information**"). NEX SEF shall not decompile or reverse engineer any of a Participant's Proprietary Data and Personal Information for the purpose of ascertaining such Participant's trading strategies, except to the extent reasonably necessary for NEX SEF's operations, to perform its surveillance and monitoring functions or to otherwise comply with Applicable Law. Subject to each Participant's rights in its own Proprietary Data and Personal Information, each Participant (i) agrees to keep the Information confidential and cause each of its employees, Affiliates, Authorised Trading Firms, Customers, agents, consultants, independent software vendors and other persons affiliated with any of the foregoing, as applicable (collectively "**Related Parties**"), to keep the Information confidential, and (ii) agrees not to, and shall cause its applicable Related Parties not to, sell, lease, license, transfer, provide or otherwise make available to any third party any form of access to or use of any of the Information.

(b) Subject to paragraph (c) of this Rule 107, each Participant agrees that it shall not, and shall cause its Related Parties not to, license, sublicense, transfer, redistribute, resell, alter, enhance, make derivative works of, download to computer or reverse engineer all or any part of the Information (other than such Participant's Proprietary Data and Personal Information).

(c) Notwithstanding paragraph (b) of this Rule 107, solely (i) for use in connection with a Trading Privilege Holder's own trading activity (and not, for the avoidance of doubt, for use by a Trading Privilege Holder's sales, risk management (except for use by such Trading Privilege Holder's compliance and other risk departments for regulatory purposes), research, wealth management or asset management departments/functions) or (ii) to the extent necessary for a Trading Privilege Holder's information technology department to perform transaction-related support functions for such Trading Privilege Holder, Trading Privilege Holders that pay the required monthly fees, as described in NEX SEF's Trade Execution Fee Card, as amended from time to time, shall be entitled to (x) download Information to a computer, (y) create Derived Information, and/or (z) redistribute Derived Information (and only Derived Information).

(d) NEX SEF shall bear no liability for any Derived Information, and each Trading Privilege Holder shall defend, indemnify and hold harmless each SEF Indemnified Party (as defined in Rule 108) from and against any Losses to which any SEF Indemnified Party may become subject, insofar as such Losses arise out of or in connection with, or are based upon any Proceeding against a SEF Indemnified Party that arises out of or relates to any Derived Information created by or on behalf of such Trading Privilege Holder or any of its Related Parties.



## Rule 108 Intellectual Property

(a) The Systems are the exclusive Intellectual Property of NEX SEF or its affiliates or licensors. Participants have no access to the Systems and no rights with respect to the Systems, except as expressly granted by NEX SEF. Subject to any required approvals from any applicable Regulatory Agency, NEX SEF shall have the right to modify at any time a System's functionality, configuration, appearance, content and the Swaps made available for trading via a System.

(b) Upon granting Trading Privileges to a Participant, NEX SEF grants to that Participant a revocable, non-exclusive, non-transferable license to access and use the Systems in accordance with the Rules for the sole purpose of (i) entering into Swaps via the Systems, and (ii) receiving and transmitting information generated by or made available through the Systems from time to time. Such license shall terminate when the Participant's Trading Privileges terminate.

### (c) *Intellectual Property Rights*

(1) By becoming a Participant, each Participant acknowledges and agrees that the Intellectual Property Rights in the Systems are a valuable asset of NEX SEF or its affiliates or licensors or their respective successors. Each Participant shall protect and safeguard the Intellectual Property Rights in and to the Systems by using the same degree of care that the Participant generally uses to protect its own Intellectual Property Rights and business assets, but in any event with no less than a reasonable degree of care.

(2) Each Participant shall promptly notify NEX SEF upon becoming aware of any infringement or misappropriation of any Intellectual Property Rights of NEX SEF or its affiliates or licensors. Each Participant shall comply with all reasonable requests made by NEX SEF (at NEX SEF's reasonable expense) to protect and enforce the Intellectual Property Rights of NEX SEF or its affiliates or licensors in the Systems.

### (d) *Restrictions*

(1) Subject to Rule 202, a Participant shall not sell, lease, license, transfer, provide or otherwise make available to any third party (including an affiliate of Participant), any form of access to or use of the System.

(2) A Participant shall not alter, enhance, make derivative works of, download to computer, decompile, disassemble or reverse engineer all or any part of the Systems except solely to the extent (i) expressly required by Applicable Law or permitted by the Rules, or (ii) necessary in direct connection with support functions related to transactions on or subject to the Rules.

(e) Notwithstanding Rule 102, NEX SEF represents and warrants that it owns or is licensed all Intellectual Property Rights in or to the Systems.

### (f) *Indemnities*

(1) NEX SEF shall defend, indemnify and hold harmless each Participant and its officers, directors, employees and agents (each a "**Participant Indemnified Party**") from and against all Losses as a result of any third party claim or proceeding of any nature ("**Proceeding**") against a Participant Indemnified Party determining that the Systems (other than the EBS Trading Platform, which includes but is not limited to the technology known as EBS Dealing Service and Brokernet), or the use thereof by the Participant Indemnified Party as authorized hereunder, violates any Intellectual Property Rights of any third party provided that such Losses do not result from (i) any Participant Indemnified Party's fraud, gross negligence or willful misconduct; (ii) violation of



Applicable Law by the Participant Indemnified Party; or (iii) the Participant's breach of the Rules.

- (2) Each Participant shall defend, indemnify and hold harmless NEX SEF and each NEX SEF Party (each a "**NEX SEF Indemnified Party**") from and against any Losses to which any NEX SEF Indemnified Party may become subject, insofar as such Losses arise out of or in connection with, or are based upon any Proceeding against a NEX SEF Indemnified Party that arises out of or relates to any access, use or misuse of the Systems by the Participant or by any person accessing the Systems using the Participant's ID provided that such Losses do not result from (i) a NEX SEF Indemnified Party's fraud, gross negligence or willful misconduct; (ii) violation of Applicable Law by the NEX SEF Indemnified Party; or (iii) the NEX SEF Indemnified Party's breach of the Rules.
- (3) If a Proceeding is commenced against a party entitled to indemnification under this Rule 108 (the "**Indemnified Party**"), notice shall be given to the party obligated to provide such indemnification (the "**Indemnifying Party**") as soon as reasonably practicable. The Indemnifying Party shall be entitled to take control of the Proceeding and any settlement of it, and the Indemnified Party shall give the Indemnifying Party, at the Indemnifying Party's reasonable cost, all reasonable assistance in relation to the Proceeding.
- (4) Notwithstanding anything to the contrary contained in Rule 102 or a System Protocol, no limitation or exclusion of liability shall apply with respect to any direct losses or claims based on confidentiality, or to NEX SEF's intellectual property infringement indemnification obligations set forth in this Rule 108.

(g) *Confidentiality*

Each Participant shall keep confidential all Confidential Information of NEX SEF or NEX SEF's affiliates or licensors, both during the term and after termination of the license granted by this Rule 108. Each Participant may disclose Confidential Information to its professional advisers but otherwise may only disclose Confidential Information to those of its employees and representatives who need to know such Confidential Information for the purposes of exercising or performing the rights and obligations of Participant under the Rules and have been informed of the confidential nature of the Confidential Information divulged. No Participant will disclose Confidential Information to any third party except as follows: (i) with the consent of NEX SEF; (ii) subject to appropriate confidentiality requirements no less stringent than the confidentiality provisions hereunder, to any person providing services to such party relating to transactions on or subject to the Rules; or (iii) to NEX SEF's Regulatory Services Provider.

(h) Each Participant shall maintain commercially available virus checking software to protect itself and the Systems from viruses, notify NEX SEF immediately of any defect in the System or any unauthorised access or change to the System of which the Participant becomes aware and comply with any security measures and procedures for authentication required by NEX SEF from time to time.

## CHAPTER 2 TRADING PRIVILEGES

### Rule 201 Trading Privilege Holders

#### (a) *Trading Privileges*

- (1) General Privileges. Subject to the requirements and procedures set forth in this Chapter 2, Trading Privileges will be granted on an impartial basis to all applicants from time to time approved by NEX SEF as eligible to be Trading Privilege Holders, subject to any limitations or restrictions from time to time imposed by NEX SEF. Trading Privileges are non-transferable (except under certain limited circumstances which must be approved by NEX SEF), non-assignable and may not be sold or leased. Circumstances under which Trading Privileges may be transferred, subject to NEX SEF approval, include, for example, transfers due to corporate reorganisations. Each Trading Privilege Holder will have the right to access the Facility (including, subject to the applicable System Protocol, any Trading Platform) including:
  - (i) the right to place Bids/Offers for itself as principal; and
  - (ii) appoint other persons to act on its behalf as an Authorised Trader or Authorised Trading Firm pursuant to Rule 202.
- (2) Approved Capacities. As approved by NEX SEF and where permitted under this Rulebook and by Applicable Law, a Trading Privilege Holder may also act either as:
  - (i) a Customer, and in this capacity may appoint one or more other entities to act on its behalf as an Authorised Trading Firm pursuant to Rule 202; or
  - (ii) a Prime Broker, and in this capacity may permit another Trading Privilege Holder to enter into transactions in the name of and on behalf of the Prime Broker pursuant to Rule 215.
- (3) By virtue of obtaining Trading Privileges, a Trading Privilege Holder will not obtain any equity or other interest in NEX SEF or the Facility, including voting rights or rights to receive any dividends or other distributions, whether arising from a dissolution, merger or consolidation involving NEX SEF, the Facility or otherwise.
- (4) In granting Trading Privileges, NEX SEF may impose such restrictions or limitations as it may deem necessary or appropriate, and in accordance with Applicable Law. NEX SEF shall apply such restrictions or limitations to applicants in an impartial, non-discriminatory manner, consistent with the Act, Commission Regulations and FCA rules thereunder. NEX SEF will deny the grant of Trading Privileges where an applicant has failed to meet any requirements for such grant.

#### (b) *Financial Requirements*

- (1) Any person that wishes to have Trading Privileges must have sufficient resources to guarantee the adequate settlement of transactions pursuant to Rule 204, and must meet the other financial and related reporting requirements set forth in this Rule 201.
- (2) Each Trading Privilege Holder must provide a signed written or electronic representation, prior to being granted access to the Facility, that it qualifies as an "eligible contract participant" as defined in the Act upon initial application for Trading Privileges.

- (3) Each Trading Privilege Holder shall, no less frequently than annually, provide NEX SEF either with (i) its annual financial report that it provides to the Commission or (ii) a written or electronic representation providing that such Trading Privilege Holder has been, and continues to be as of such date, an "eligible contract participant" as defined in the Act.
  - (4) Each Trading Privilege Holder must notify NEX SEF's Compliance Function immediately upon becoming aware that it fails to satisfy the minimum financial requirements applicable to it.
  - (5) Unless and until a Trading Privilege Holder is able to demonstrate to NEX SEF that it is in compliance with the minimum financial requirements applicable to it, such Trading Privilege Holder may not engage in any transactions subject to the Rules of the Facility, except for the purpose of closing open positions that were opened on the Facility.
- (c) *Fitness Standards*
- (1) NEX SEF may deny the grant of Trading Privileges if a person:
    - (i) is unable satisfactorily to demonstrate a capacity to adhere to all applicable Rules of the Facility or any Regulatory Agency, Commission Regulations and SRO regulations, including those concerning recordkeeping, reporting, financial requirements and trading procedures;
    - (ii) would bring NEX SEF or the Facility into disrepute; or
    - (iii) is otherwise not fit and proper to be a Trading Privilege Holder.
  - (2) NEX SEF may determine not to permit a Trading Privilege Holder to keep its, his or her Trading Privileges if such Trading Privilege Holder:
    - (i) fails to meet any of the qualification requirements for Trading Privileges after such Trading Privileges has been approved;
    - (ii) fails to comply with any limitation placed by NEX SEF on such Trading Privileges; or
    - (iii) commits a material Violation.
  - (3) NEX SEF may deny the grant of Trading Privileges if a Trading Privilege Holder does not have a sufficient level of trading ability and competence or adequate organisational arrangements.
  - (4) Any decision made by NEX SEF pursuant to this Rule 201 must be consistent with both the provisions of this Rule and the Act and Commission Regulations and FCA rules thereunder.
- (d) NEX SEF may (i) deny the grant of Trading Privileges, and (ii) determine not to permit a Trading Privilege Holder to keep its, his or her Trading Privileges if such Trading Privilege Holder causes or would cause NEX SEF to be in violation of Applicable Law.
- (e) *Intermediation*
- (1) A Trading Privilege Holder may appoint an Authorised Trading Firm to act as an Intermediary upon the approval of NEX SEF.
  - (2) A Trading Privilege Holder may not act as an Intermediary for any other entity or person.



## Rule 202 Authorized Traders and Authorized Trading Firms

(a) Each Trading Privilege Holder may from time to time permit one or more persons to enter Bids/Offers, access a Trading Platform and effect transactions in Contracts on the Facility. Such authority may be granted to one or more Authorized Traders or Authorized Trading Firms.

(1) *Authorized Traders*

- (i) Each Trading Privilege Holder which is trading for its own account as a principal may permit one or more individuals as Authorized Traders to enter Bids/Offers on its behalf. In such case, the Trading Privilege Holder shall be principal to any resulting transactions made on its behalf by such Authorized Traders or to one or more Authorized Trading Firms.
- (ii) An Authorized Trading Firm which is acting as an Intermediary may designate one or more individuals as Authorized Traders.
- (iii) Each Trading Privilege Holder that is authorized by a Prime Broker under a Prime Broker Agreement to enter into transactions in the name of and on behalf of a Prime Broker and for which a Prime Broker Representation has been accepted by the Facility may designate Authorized Traders to enter Bids/Offers on behalf of the Prime Broker.
- (iv) The Trading Privilege Holder shall be responsible to NEX SEF for acting with reasonable care in granting Authorized Trader status.

(2) *Authorized Trading Firms*

- (i) As a Customer. Each Trading Privilege Holder which is a Customer may designate one or more Authorized Trading Firms to enter Bids/Offers on its behalf as an Intermediary. In such cases, the Trading Privilege Holder has responsibility for all actions and failures to act of such Authorized Trading Firm and its Authorized Traders.
- (ii) The Trading Privilege Holder shall be responsible to NEX SEF for acting with reasonable care in granting Authorized Trading Firm status.
- (iii) Each Trading Privilege Holder will obtain a signed written or electronic representation, prior to being granted access to the Facility, that each of its Authorized Trading Firms continues to qualify as an "eligible contract participant" as defined in the Act and provide such representation to NEX SEF and shall notify the SEF if any Authorized Trading Firm no longer qualifies as an "eligible contract participant".

(b) *NEX SEF Approval*

- (1) No person may act as an Authorized Trader or Authorized Trading Firm before being approved to do so by NEX SEF, which NEX SEF will do on an impartial basis.
- (2) Each prospective Authorized Trader and Authorized Trading Firm, or the Trading Privilege Holder on their behalf, will, prior to being permitted by NEX SEF to act as an Authorized Trader or Authorized Trading Firm, as the case may be, submit an application in the form required by NEX SEF and will satisfy such requirements as may be prescribed by NEX SEF from time to time.
- (3) Each prospective Authorized Trading Firm, or the Trading Privilege Holder on its behalf, must provide a written or electronic representation, prior to being granted access to the

Facility, that the Authorised Trading Firm qualifies as (x) an "eligible contract participant" as defined in the Act, and (y) an Eligible Counterparty, and that it has all registrations, licenses and consents required by its constituent documents and Applicable Law to transact in Contracts. The foregoing representation may be provided directly to NEX SEF by the Authorised Trading Firm in a form provided by NEX SEF or, alternatively, the Trading Privilege Holder may provide NEX SEF evidence satisfactory to NEX SEF that the Authorised Trading Firm has provided such consents, agreements and representations to the Trading Privilege Holder.

(c) *Responsibilities to NEX SEF*

- (1) Each Trading Privilege Holder shall notify NEX SEF in writing if its relationship with an Authorised Trader or Authorised Trading Firm has been terminated, and such Trading Privilege Holder may at any time revoke any authorisation granted by it to any Authorised Trader or Authorised Trading Firm by providing written notice of such revocation to NEX SEF.
- (2) By permitting any of its Authorised Traders and/or Authorised Trading Firm to access and use the Facility (including any Trading Platform) from any jurisdiction, each Trading Privilege Holder represents and warrants that each such access to or use of the Facility, does not violate any law applicable to the Trading Privilege Holder, the Authorised Trader, the Authorised Trading Firm or, to such Trading Privilege Holder's knowledge, NEX SEF.

(d) *Fitness Standards*

- (1) NEX SEF may prevent a person from becoming an Authorised Trader or Authorised Trading Firm, if such person:
  - (i) is unable satisfactorily to demonstrate a capacity to adhere to all applicable Rules of the Facility or any Regulatory Agency, Commission Regulations and SRO regulations, including those concerning recordkeeping, reporting, financial requirements and trading procedures;
  - (ii) would bring NEX SEF or the Facility into disrepute; or
  - (iii) is otherwise not fit and proper to be an Authorised Trader or Authorised Trading Firm.
- (2) NEX SEF may determine not to permit an Authorised Trader or Authorised Trading Firm to maintain its, his or her association with a Trading Privilege Holder or Authorised Trading Firm, as the case may be, if such Authorised Trader or Authorised Trading Firm:
  - (i) fails to meet any of the qualification requirements for Authorised Trader or Authorised Trading Firm status after such Authorised Trader or Authorised Trading Firm status has been approved;
  - (ii) fails to comply with any limitation placed by NEX SEF on such Authorised Trader or Authorised Trading Firm status; or
  - (iii) commits a material Violation.
- (3) NEX SEF may prevent a person from becoming an Authorised Trader or Authorised Trading Firm, if they do not have a sufficient level of trading ability and competence or adequate organisational arrangements.





- (4) Any decision made by NEX SEF pursuant to this Rule 202 must be consistent with both the provisions of this Rule and the Act and Commission Regulations and FCA rules thereunder.

(e) NEX SEF may (i) prevent a person from becoming an Authorised Trader or Authorised Trading Firm, and (ii) determine not to permit an Authorised Trader or Authorised Trading Firm to maintain its, his or her association with a Trading Privilege Holder or Authorised Trading Firm, as the case may be, if such Authorised Trader or Authorised Trading Firm causes or would cause NEX SEF to be in violation of Applicable Law.

### **Rule 203 Financial Integrity**

(a) Each Trading Privilege Holder (including in its capacity as a Customer) and Authorised Trading Firm must be an "eligible contract participant" as defined in the Act and an Eligible Counterparty (i) prior to obtaining access to the Facility, and (ii) at the time that such person enters into each transaction on the Facility or subject to the Rules.

(b) For Contracts listed on the Facility as bilateral Contracts, each Participant that enters into such Contracts as a principal must undergo such credit checks and provide such credit information as the Facility may require from time to time.

### **Rule 204 Clearing**

The Facility does not currently offer any Cleared Contracts.

### **Rule 205 Application for and Grant of Trading Privileges**

(a) *Application Requirement.* Each applicant for Trading Privileges will submit an application to NEX SEF in a form and manner prescribed by NEX SEF. Each applicant will promptly update the application materials if any of the information provided therein becomes inaccurate or incomplete after the date of submission and prior to any approval of the application. NEX SEF will act upon, and approve or disapprove, any such application without unreasonable delay.

(b) Upon submission of an application and satisfaction of the requirements and procedures set forth in this Chapter 2, and approval by NEX SEF, a person applying for Trading Privileges will be granted Trading Privileges. If the application process is not completed by the applicant within six months of submission of an application and payment of any applicable fee, the application will be deemed to be withdrawn.

(c) Any applicant who has been denied Trading Privileges or Authorised Trader or Authorised Trading Firm status with a Trading Privilege Holder, and any Trading Privilege Holder or Authorised Trader or Authorised Trading Firm of a Trading Privilege Holder who is not permitted to keep its, his or her Trading Privileges or maintain his, her or its status as an Authorised Trader or Authorised Trading Firm may request an appeal of NEX SEF's decision pursuant to the procedures set forth in Rule 205 (e). No determination of NEX SEF to discontinue a person's Trading Privileges or Authorised Trader or Authorised Trading Firm status will take effect until the review procedures hereunder have been exhausted or the time for review has expired.

(d) Any applicant to become a Trading Privilege Holder who has been denied Trading Privileges pursuant to this Rule 205 will not be eligible for re-application during the six months immediately following such denial.

(e) *Appeal of Denial of Trading Privileges or Suspension or Termination of Access*

- (1) If NEX SEF, pursuant to this Rule, denies an application for Trading Privileges or association with a Trading Privilege Holder as an Authorised Trader or Authorised Trading Firm, or determines not to permit a person to keep its Trading Privileges or



maintain its association as an Authorised Trader or Authorised Trading Firm, or suspends or revokes a Participant's access to the Facility pursuant to Rule 206 (b) or (f), then, in any such case, the affected applicant, Trading Privilege Holder, Authorised Trader, Authorised Trading Firm or Participant, as the case may be, within seven days after receiving written notice of such decision, may request in writing that NEX SEF provide the reasons therefor in writing. Within 14 days of receiving any such written request, NEX SEF will provide the applicant, Trading Privilege Holder, Authorised Trader, Authorised Trading Firm, or Participant, as the case may be, with such reasons in writing. Within 14 days of receiving NEX SEF's written response, the applicant, Trading Privilege Holder, Authorised Trader, Authorised Trading Firm, or Participant, as the case may be, may request, in writing, that the Participation Committee reconsider NEX SEF's initial decision and may provide any written representations or other information that the applicant, Trading Privilege Holder, Authorised Trader, Authorised Trading Firm or Participant, as the case may be, believes is relevant to the reconsideration.

- (2) Within 28 days of receiving either a written request for reconsideration or written representations or information from the applicant, Trading Privilege Holder, Authorised Trader, Authorised Trading Firm or Participant, as the case may be, or a statement from such person that no such representation or information is to be made or supplied, the Participation Committee will either confirm, reverse or modify the initial decision and will promptly notify the applicant, Trading Privilege Holder, Authorised Trader, Authorised Trading Firm or Participant, as the case may be, accordingly. The Participation Committee may in its discretion schedule a hearing or establish any other process that it believes is necessary and appropriate to consider the request for reconsideration. Any decision by the Participation Committee pursuant to this subparagraph (2) constitutes the final action of NEX SEF with respect to the matter in question and is not subject to appeal. Any action that may be taken by the Participation Committee under this Rule 205 (e) or (f) may be taken by the Board if no Participation Committee has been established.

(f) *Effective Date of Denial of Trading Privileges or Suspension or Termination of Access*

- (1) If NEX SEF, pursuant to this Rule, makes a final determination to deny an application for Trading Privileges or association with a Trading Privilege Holder as an Authorised Trader or Authorised Trading Firm, or determines not to permit a person to keep its Trading Privileges or maintain its association as an Authorised Trader or Authorised Trading Firm, or suspends or revokes a Participant's access to NEX SEF pursuant to Rule 206 (b) or (f), then the Participation Committee shall provide written notice within thirty (30) days of its determination to the applicant or Participant, as applicable. The written notice must include:
  - (i) the name of the applicant or Participant;
  - (ii) a statement of the Participation Committee's reasons for the denial of Trading Privileges, suspension or revocation of access to NEX SEF, including a listing of any Rules the Participation Committee determined were Violated and whether the Violation resulted in any financial harm to Customers;
  - (iii) a statement of the conclusions and findings of the Participation Committee with respect to each Violation, or, in the event of a settlement, a statement specifying the alleged Violations;
  - (iv) the terms of the denial of Trading Privileges, suspension or revocation of access to NEX SEF;



- (v) the date on which the determination was made and the effective date of the determination; and
  - (vi) a statement informing the applicant or Participant that the denial of Trading Privileges, suspension or revocation of access to NEX SEF may be appealed to the Commission pursuant to Part 9 of the Commission Regulations.
- (2) NEX SEF shall also provide the written notice to the NFA through the NFA's Background Affiliation Status Information Center ("**BASIC**"), or deliver the written notice to NFA to be input into BASIC.
  - (3) Any decision by NEX SEF to deny Trading Privileges or to suspend or revoke access to NEX SEF pursuant to this Rule shall be the final decision of NEX SEF and shall become effective in accordance with the timeline set forth in Rule 513 (b).
  - (4) If NEX SEF denies Trading Privileges or to suspends or revokes access to the SEF pursuant to this Rule, it must publicly publish the information contained in the written notice pursuant to Rule 205 (f)(1).

#### **Rule 206 Participant Obligations; Suspension or Termination of Access**

(a) *Consent to Facility Rules.* Prior to obtaining access to the Facility and each time a Participant (including in its capacity as a Customer) initiates or executes a transaction on the Facility, directly or through an Intermediary, each Participant shall be deemed to have expressly consented to the jurisdiction of the Facility and agreed to be bound by and comply with the Rules.

(b) Each Participant must comply with these Rules, applicable provisions of the Act, and relevant Commission Regulations and FCA rules. Each Participant must also cooperate promptly and fully with NEX SEF, its agents, its Regulatory Services Provider, and/or a Regulatory Agency in any investigation, call for information, inquiry, audit, examination, or proceeding. Such cooperation shall include a duty to provide supplemental verbal or other information if the Participant learns that a previous response is incomplete or incorrect in any material respect. Additionally, each Trading Privilege Holder must update its email address promptly after any change and update all other material information provided in its application for Trading Privileges within five days after that information has changed. If any Participant fails to satisfy these obligations, NEX SEF may revoke or suspend the Participant's access to the Facility in full or in part.

(c) Each Participant consents to allow NEX SEF to provide all information NEX SEF has about the Participant, including the Participant's trading activity, to the Regulatory Services Provider, the Commission or any other Regulatory Agency, law enforcement authority, or judicial tribunal, including (as may be required by information sharing agreements or other contractual, regulatory, or legal provisions) foreign regulatory or self-regulatory bodies, law enforcement authorities, judicial tribunals and any other service provider to NEX SEF solely in connection with the service provider's performance of services to NEX SEF and subject to the service provider's agreeing to maintain such information as confidential, including that such service provider shall not:

- (1) use such information for any purpose other than in connection with providing services to the Facility (including that it may not otherwise use such information for its own business or marketing purposes), unless specifically required in order to fulfill such service provider's regulatory obligations; or
- (2) disclose such information to any other person, except (i) to its employees or Affiliates, provided that the employees or Affiliates are subject to confidentiality obligations at least as stringent as those applicable to the service provider, and that, in each case, such disclosure is necessary for the performance of services to the Facility by the service



provider, or (ii) if compelled to do so by valid legal or regulatory process, provided that the service provider notifies NEX SEF in advance thereof to the extent permitted.

(d) Each Participant is required to review the "Notices" section of NEX SEF's website to make itself aware of material changes to these Rules or other notices that may affect their rights and obligations as a Participant.

(e) Each Trading Privilege Holder must diligently supervise all activities of the Trading Privilege Holder's employees and/or agents, including all Authorised Traders and Authorised Trading Firms relating to transactions effected on the Facility. Any Violation by any employee of a Trading Privilege Holder, including an Authorised Trader or Authorised Trading Firm, shall constitute a Violation by such Trading Privilege Holder.

(f) NEX SEF may revoke or suspend an Authorised Trading Firm's access to the Facility in full or in part if it causes its Customer to maintain a position in any Contract that, when considered in light of the other positions maintained by the Customer, and any other factors that NEX SEF reasonably deems relevant, NEX SEF reasonably believes could jeopardise the financial safety of such Customer or any of such Authorised Trading Firm's other Customers. In making this determination, NEX SEF may consider any relevant factors, including, as applicable, (i) the positions maintained by such Customer, such Customer's Authorised Traders and other Customers, and (ii) financial information provided by such Customer.

(g) [Reserved]

#### **Rule 207 Customers**

(a) Where a Customer and Intermediary are both Trading Privilege Holders, the Customer shall provide NEX SEF with such notice of the relationship as NEX SEF may require from time to time.

(b) Each Customer shall be the principal to all executed transactions resulting from any Bids/Offers entered on behalf of the Customer. Where a Participant is acting as an Intermediary on behalf of a Customer, the Participant shall have no liability, whether or not the identity of the Customer has been disclosed, in respect of any transactions executed on behalf of a Customer, to any other party, including any other Participant or the Customer of any other Participant.

(c) Except to the extent that NEX SEF sends Confirmations of Contracts directly to the relevant Customer, each such Customer authorises NEX SEF to send Confirmations of Contracts entered into through an Intermediary to the Intermediary and authorises such Intermediary to accept such Confirmations on behalf of the Customer.

#### **Rule 208 Recordkeeping**

(a) Each Participant (including in its capacity as a Customer) must prepare and keep current all books, ledgers and other similar records required to be kept by it pursuant to Applicable Law and the Rules of the Facility.

(b) Each Participant (including in its capacity as a Customer) shall keep records of the Swaps it trades on or subject to the Rules, and of its trading in each index, instrument or commodity underlying such Swaps, as well as of its trading of other derivatives that are based on any such index, instrument or commodity. These records shall include records of purchases, sales, ownership, production, processing and use of such Swaps, indices, instruments, commodities and derivatives, and may be in the form customarily generated in accordance with sound commercial practices in the relevant markets.

(c) Each Participant (including in its capacity as a Customer) must keep all books and records required to be kept by it pursuant to the Rules for a period of five years from the date on which they are first prepared, unless otherwise provided in the Rules or required by Applicable Law. Such books and records must be readily accessible during the first two years of such five-year period. During such five-



year period, all such books and records must, where Applicable Law requires it, be made available for inspection by, and copies thereof must be delivered to NEX SEF, NEX SEF's Regulatory Services Provider, the Commission, the U.S. Department of Justice, the FCA, any other European Union regulatory agency governing a Participant and/or Customer and the authorised representatives of the foregoing, upon request.

(d) The following information must be provided to NEX SEF by each Participant prior to entering a Bid/Offer with respect to any Swap traded on the Facility:

- Authorised Trader ID;
- Trading Privilege Holder ID;
- Swap;
- Series, if applicable;
- Price;
- Quantity;
- Side of the Bid/Offer;
- Customer Type Indicator Code (defined below);
- Trading account and other relevant account information;
- LEI of the Participant placing the Bid/Offer;
- For Intermediated Transactions, the LEI of the Customer;
- Yes/no indication of whether the Participant or Customer is a Swap Dealer for that Swap;
- Yes/no indication of whether the Participant or Customer is a Major Swap Participant;
- Yes/no indication of whether the Participant or Customer is a Financial Entity;
- Yes/no indication of whether the Participant or Customer is a U.S. person as defined by the Commission;
- Yes/no indication of whether the Contract is a Prime Broker Transaction;
- If a Prime Broker Transaction, the identity of the relevant Prime Broker;
- Any information required by the applicable System Protocol; and
- If the Swap will be allocated:
  - an indication that the Swap will be allocated;
  - the LEI of the Account Manager;
  - if the Swap is a pre-execution allocated Swap, the account and LEI for each Customer that will receive allocations;
  - an indication of whether the Swap is a post-execution allocation Swap; and

- o if the Swap is a post-execution allocation Swap, the unique Swap identifier of the original transaction between the reporting counterparty and the agent.

(1) For purposes of this Rule 208, the "**Customer Type Indicator Codes**" are as follows:

- i. **CTI 1** – Bid/Offer for the proprietary account of a Trading Privilege Holder that is a natural person.
- ii. **CTI 2** – Bid/Offer for the proprietary account of a Trading Privilege Holder that is not a natural person.
- iii. **CTI 3** – Bid/Offer which an individual Trading Privilege Holder or Authorised Trader executes for the proprietary account of another Trading Privilege Holder or for an account which the other Trading Privilege Holder controls or has an ownership or financial interest in.

(e) The Rules regarding the recordkeeping obligations set forth in this Rule 208 shall be promulgated to achieve the purposes and requirements of Applicable Law. While NEX SEF will have sole discretion, subject to Applicable Law, to determine such Rules, NEX SEF will take into consideration in doing so comparable requirements applicable to Participants.

#### **Rule 209 Communications of NEX SEF with Participants**

(a) *Written Notices*

NEX SEF will publish a notice with respect to each addition to, modification of, or clarification of the Rules, or of any action taken to implement any Rule, in a form and manner that is reasonably designed to enable each Trading Privilege Holder to become aware of and familiar with, and to implement any necessary preparatory measures to be taken by it with respect to, such addition or modification, prior to the effective date thereof; provided that any failure of NEX SEF to so publish a notice will not affect the effectiveness of the addition or modification in question. Each Trading Privilege Holder will provide its respective Authorised Traders and Authorised Trading Firms with copies of any such notice. For purposes of publication in accordance with the first sentence of this Rule 209 (a), it will be sufficient (without limiting the discretion of NEX SEF as to any other reasonable means of communication) if a notice is (a) sent to each Trading Privilege Holder by mail, recognised courier service, facsimile or electronic mail (including by means of a hyperlink included in an electronic mail message), to the address, facsimile number or electronic mail address (as applicable) provided by such Trading Privilege Holder for such purpose or (b) published on the Facility's website. Each Trading Privilege Holder, on its own behalf, and on behalf of its Authorised Traders and Authorised Trading Firms, as applicable, must monitor the Facility's website for any notices published under this Rule 209 (a).

(b) *Recording of Communications*

NEX SEF and Trading Privilege Holders may record conversations and retain copies of electronic communications between officers, employees or agents of NEX SEF, on the one hand, and Trading Privilege Holders (including their Affiliates), Authorised Traders or Authorised Trading Firms, on the other hand. Any such recordings or other records may be retained by NEX SEF or such Trading Privilege Holder, as the case may be, in such manner and for such periods of time as NEX SEF, or such Trading Privilege Holder, as the case may be, may deem necessary or appropriate.

#### **Rule 210 Required Disclosures to NEX SEF**

Each Trading Privilege Holder (including in its capacity as a Customer) must promptly notify NEX SEF in writing upon becoming aware:

- (a) that the Trading Privilege Holder, any of the Trading Privilege Holder's officers or any of the Trading Privilege Holder's Authorised Traders or Authorised Trading Firms has been the subject of a



material sanction, penalty or other adverse action by any Regulatory Agency which is related to transactions in Swaps, futures, options on futures, securities, commodities, or Swaps-related banking;

(b) that the Trading Privilege Holder, any of the Trading Privilege Holder's officers or any of the Trading Privilege Holder's Authorised Traders or Authorised Trading Firms has been convicted of, pled guilty or no contest to, or entered in a plea agreement of a material nature in any domestic, foreign or military court which involves:

- (1) embezzlement, theft, extortion, fraud, fraudulent conversion, forgery, counterfeiting, false pretences, bribery, gambling, racketeering, or misappropriation of funds, securities or properties; or
- (2) any transaction in or advice concerning Swaps, futures, options on futures, securities, commodities, or Swaps-related banking;

(c) that the Trading Privilege Holder, any of the Trading Privilege Holder's officers or any of the Trading Privilege Holder's Authorised Traders or Authorised Trading Firms is subject to material regulatory proceedings before any Regulatory Agency which are related to transactions in Swaps, futures, options on futures, securities, commodities, or Swaps-related banking;

(d) that the Trading Privilege Holder, any of the Trading Privilege Holder's officers or any of the Trading Privilege Holder's Authorised Traders or Authorised Trading Firms have been denied or withdrawn any application for registration or license submitted to any Regulatory Agency, and of any material revocation, suspension or conditioning of any registration or license granted by any Regulatory Agency, which in each case is related to transactions in Swaps, futures, options on futures, securities, commodities, or Swaps-related banking;

(e) that any of the Trading Privilege Holder's Authorised Traders or Authorised Trading Firms have:

- (1) had their status as an Authorised Trader or Authorised Trading Firm permanently revoked by the Trading Privilege Holder, whether due to employment termination, termination of status as a Customer or otherwise; or
- (2) had their access to the Facility temporarily revoked by the Trading Privilege Holder;

(f) of any material change in any information contained in the Trading Privilege Holder's membership application, or in an Authorised Trader's or Authorised Trading Firm's application pursuant to Rule 202, including a Trading Privilege Holder's or Authorised Trading Firm's status as an "eligible contract participant" or an Eligible Counterparty.

(g) of any withdrawal from membership by the Trading Privilege Holder, any of the Trading Privilege Holder's officers or any of the Trading Privilege Holder's Authorised Traders or Authorised Trading Firms, in any SRO, designated contract market, DCO or swap execution facility;

(h) of any damage to, or failure or inadequacy of, the systems, facilities or equipment used to effect transactions or perform financial obligations under or in connection with Contracts of the Trading Privilege Holder or any of its Authorised Traders or Authorised Trading Firms;

(i) of any change in the location of the principal office of the Trading Privilege Holder or any of the Trading Privilege Holder's Authorised Traders or Authorised Trading Firms;

(j) of any failure to maintain segregated funds as required by the Commission when the Trading Privilege Holder is a futures commission merchant registered with the Commission;

(k) of becoming subject to early warning reporting under Commission Regulation 1.12; and



(l) of becoming the subject of a bankruptcy proceeding or being unable to meet any financial obligation as it becomes due.

#### **Rule 211 Dues, Fees and Expenses**

(a) The Board has the sole power to set the payment dates and amounts of any dues, assessments or fees to be levied on Trading Privilege Holders, which dues, assessments or fees will be paid to NEX SEF when due. Fees will be comparable for Trading Privilege Holders receiving comparable access to, or services from, NEX SEF.

(b) If a Trading Privilege Holder fails to pay when due any NEX SEF dues, assessments or fees levied on such Trading Privilege Holder, and such payment obligation remains unsatisfied thirty (30) days after its due date, NEX SEF may suspend, revoke, limit, condition, restrict or qualify the Trading Privileges of such Trading Privilege Holder as it deems necessary or appropriate.

#### **Rule 212 Market Maker Programs**

NEX SEF may from time to time adopt, pursuant to Part 40 of the Commission Regulations, one or more programs under which one or more Trading Privilege Holders or others may be approved and designated as market makers with respect to one or more Contracts in order to provide liquidity and orderliness in the market or markets for such Contract or Contracts. Any such program may provide for any or all of the following:

(a) qualifications, including any minimum net capital requirements, that any such market maker must satisfy;

(b) the procedure by which Trading Privilege Holders or others may seek and receive designation as market holders;

(c) the obligations of such market makers, including any applicable minimum bid and offer commitments;

(d) the benefits accruing to such market makers, including priority in the execution of transactions effected by Trading Privilege Holders or others as approved by NEX SEF in their capacity as market makers, reduced transaction fees or the receipt of compensatory payments from NEX SEF;

(e) the requirement that such designated market makers agree to abide by the Rules and are subject to the jurisdiction of the Facility; and

(f) any pre-trade transparency requirements that may apply to the best Bid/Offer prices and volumes of any such market makers.

#### **Rule 213 Independent Software Vendors**

NEX SEF shall provide impartial access to independent software vendors who enter into a development and maintenance agreement with NEX SEF (an "**ISV Development and Maintenance Agreement**"). Fees will be comparable for independent software vendors receiving comparable access to, or services from, NEX SEF. Each independent software vendor that enters into an ISV Development and Maintenance Agreement must satisfy the following criteria, which NEX SEF shall apply in a fair and nondiscriminatory manner:

(a) If required to be registered in any capacity under Applicable Law, it has duly registered in such capacity and such registration is in effect and has not lapsed or been revoked, suspended or withdrawn;





- (b) It complies with the applicable technical access standards, system compatibility requirements, security protocols and technical specifications for connection to NEX SEF's electronic systems as may be specified by NEX SEF from time to time;
- (c) It must ensure that each person that uses the independent software vendors to access the Facility is a Participant authorised as such in accordance with these Rules;
- (d) It may provide data obtained from the Facility solely to such Participants in connection with their actual and proposed trading activity in Contracts and similar contracts, and shall not provide such data to any other swap execution facility, security-based swap execution facility, designated contract market, national securities exchange or other trading facility or system without the prior written consent of NEX SEF;
- (e) In the case of any Bid/Offer submitted to NEX SEF through an independent software vendor, the independent software vendor will provide sufficient detail to identify the Participant (and, in the case of an Intermediated Transaction, the Intermediary) as required by NEX SEF; and
- (f) It satisfies such other impartial and transparent criteria as NEX SEF may specify from time to time, subject to Applicable Law.

#### **Rule 214 Withdrawal of Participant**

- (a) To withdraw from the Facility, a Participant must notify NEX SEF in writing, following such procedures as may be established by NEX SEF.
- (b) NEX SEF may, in its reasonable discretion, refuse to accept a Participant's withdrawal request or may postpone the effective date of withdrawal of a Participant if NEX SEF considers it necessary for the protection of the Participant's Customers, other Participants or otherwise in the interests of NEX SEF.
- (c) Based on the information provided to, and other information gathered by, NEX SEF regarding a Participant's withdrawal request, NEX SEF will determine whether to: (i) accept the withdrawal request; (ii) postpone the effective date of the withdrawal; or (iii) impose any terms or conditions before or after the effective date of withdrawal.
- (d) If NEX SEF refuses to accept a Participant's withdrawal request or postpones the effective date of withdrawal of a Participant, NEX SEF may waive the obligation to pay some or all of the fees, costs and charges that NEX SEF would have imposed during the period after the date on which the requested withdrawal would have otherwise taken effect.
- (e) When NEX SEF accepts the withdrawal of a Participant, all rights and privileges of such Participant terminate (including the Trading Privileges and ability to access a Trading Platform). The accepted withdrawal of a Participant shall not affect the rights of NEX SEF under the Rules or relieve the former Participant of its obligations with respect to previously executed transactions (including any contractual obligations relating to any Contracts entered into by such Participant, or the payment of any fees, costs, or charges incurred prior to such withdrawal). Notwithstanding the accepted withdrawal of a Participant, the withdrawn Participant remains subject to the jurisdiction of the Facility for acts done and omissions made while a Participant, and must cooperate in any proceeding under Chapter 5 as if such withdrawal had not taken place.
- (f) Upon delivery of a withdrawal notice:
  - (1) Participant shall promptly notify its Authorised Traders and Authorised Trading Firms that they may no longer access the Facility on behalf of Participant, and Participant shall with reasonable diligence, to the extent practicable, terminate electronic access of its Authorised Traders and Authorised Trading Firms to the Facility; and





- (2) NEX SEF shall suspend Participant's access to the Facility, promptly notify its relevant personnel that Participant and its Authorised Trading Firms may no longer access the Facility on behalf of Participant, and with reasonable diligence, to the extent practicable, terminate electronic access of Participant's Authorised Traders to the Facility.

#### **Rule 215 Prime Broker Transactions**

(a) *General.*

- (1) All Prime Broker Transactions shall be executed pursuant to this Rule 215.
- (2) A Prime Broker must be a Trading Privilege Holder approved to act as a Prime Broker by NEX SEF in accordance with Rule 202(a)(2)(ii).
- (3) Each Trading Privilege Holder that is the subject of a Prime Broker Representation may enter Bids/Offers with respect to Non-Cleared Contracts in the name of and on behalf of the Prime Broker that provided the Prime Broker Representation.
- (4) A Prime Broker is not a Customer of another Trading Privilege Holder with respect to any Prime Broker Transaction.

(b) *Prime Broker Obligations*

- (1) Prime Broker Representation. Each Trading Privilege Holder shall obtain a representation from a Prime Broker, in form and substance satisfactory to, and approved by, the Facility (a "**Prime Broker Representation**") that the Prime Broker:
  - (i) may make its credit available to the Trading Privilege Holder pursuant to a Prime Broker Agreement;
  - (ii) will be financially responsible for any Prime Broker Transactions executed in its name, subject to any Prime Broker Limits that are in effect pursuant to this Rule 215; and
  - (iii) may cancel any Prime Broker Transaction only in accordance with Rule 315 (j).
- (2) Prime Broker Limits. Each Prime Broker that provides a Prime Broker Representation to a Trading Privilege Holder shall notify the Facility of any applicable limits, terms or trading parameters it has established for such Trading Privilege Holder, including credit limits and any categories of permissible Contracts ("**Prime Broker Limits**"), and such Prime Broker Limits shall become effective upon acknowledgment of receipt by the Facility. Any change to such Prime Broker Limits shall become effective only upon acknowledgment of receipt by the Facility.
- (3) Revocation of Prime Broker Representation. A Prime Broker may revoke any Prime Broker Representation at any time by providing prior written notice of such revocation to the Facility. The Prime Broker Representation will remain in effect for all Non-Cleared Contracts for which Bids/Offers were submitted to a Trading Platform prior to the Facility's acknowledgement of the revocation.
- (4) No Supervisory Responsibilities. A Prime Broker has no responsibility to supervise the Trading Privilege Holder to which the Prime Broker provided the Prime Broker Representation.



(c) *Trading Privilege Holder Obligations*

- (1) Each Trading Privilege Holder must notify its Prime Broker as soon as technologically practicable after execution of each Prime Broker Transaction executed on or pursuant to the rules of the Facility to which the Prime Broker is a counterparty, and provide to the Prime Broker the Confirmation or Trade Communication for the Prime Broker Transaction issued by the Facility.
- (2) In advance of submitting each Bid/Offer to the Facility for any Non-Cleared Contract pursuant to this Rule 215, each Trading Privilege Holder shall ensure the Bids/Offers comply with its Prime Broker Limits. In the event that the Bid/Offer does not comply with Prime Broker Limits, the Trading Privilege Holder shall not submit such Bid/Offer to the Facility.
- (3) Upon receiving notice that a Prime Broker has revoked any Prime Broker Representation made with respect to a Trading Privilege Holder, the Trading Privilege Holder shall cancel any unfilled Bids/Offers and shall not submit any additional Bids/Offers with respect to Prime Broker Transactions.



## CHAPTER 3 TRADING PROCEDURES

### **Rule 301 Trading Sessions**

Except as otherwise provided in these Rules or determined by the Board, transactions in any Contract will only be executed during the Trading Session for such Contract. NEX SEF may from time to time modify its regular Trading Session and establish Trading Sessions, in addition to the regular Trading Sessions, as it deems appropriate.

### **Rule 302 Information about, and access to, NEX SEF's Order Book**

(a) Each Authorised Trader and each Trading Privilege Holder that is an individual will receive a user identification ("ID") and password. As a Trading Privilege Holder or Authorised Trader, such person will be able to access NEX SEF's Order Book, which functions as an electronic central limit order book and provides the highest priority to Bids/Offeres with the best price, for trading in the Swap asset classes or sub-products approved for such Trading Privilege Holder or Authorised Trader, enter and accept Bids/Offeres, and otherwise access information regarding, or perform functions for, such person's account using its ID and password.

(b) For account security and audit trail purposes, each Trading Privilege Holder and Authorised Trader agrees that NEX SEF may maintain logs of the IP address used to log on to any Order Book.

(c) Each Trading Privilege Holder will be responsible for protecting from improper disclosure its ID and password, and the IDs and passwords of its Authorised Traders. In addition, a Trading Privilege Holder may not knowingly or negligently permit any person not authorised by NEX SEF and by the Trading Privilege Holder to use the ID and password to access the Order Book. Each Trading Privilege Holder is required to immediately notify NEX SEF if it knows, or has reason to believe, that its ID and/or password, or the ID and/or password of any Authorised Trader have been disclosed to any person not authorised by NEX SEF and the Trading Privilege Holder to use such ID and/or password.

(d) Except as otherwise provided in Rule 102:

- (1) each Trading Privilege Holder will be liable for all costs and any losses that it may incur from transactions executed on the Facility by any person, authorised or not, using its ID and password or the ID and/or password of any of its Authorised Traders; and
- (2) NEX SEF will not be responsible in any way for unauthorised transactions for a Trading Privilege Holder's account.

(e) Each Trading Privilege Holder is responsible for contracting with a network provider through which it will access the Facility and for having a backup service provider if the Trading Privilege Holder deems it necessary. Each Trading Privilege Holder is also responsible for maintaining a network connection speed adequate for its needs. NEX SEF will not be responsible in any way for any Bids/Offeres delayed or transactions missed or not executed in a timely fashion because of failure of the Trading Privilege Holder's Internet service provider or slowness of its network connection speed. No communication from a Trading Privilege Holder will be deemed to have been received by NEX SEF until that communication is logged by the Order Book server.

### **Rule 303 Required Transactions**

The SEF does not currently offer any Contracts that are Required Transactions. Accordingly, the SEF does not currently offer RFQ functionality.



**Rule 304 Permitted Transactions**

- (a) Participants may enter Bids/Offers for Permitted Transactions directly into the Facility's Order Book for that Contract.
- (b) [Reserved]
- (c) [Reserved]
- (d) Upon execution of the Permitted Transaction on the Facility, NEX SEF will report the transaction to the SDR as soon as technologically practicable after execution in accordance with Rule 309.
- (e) [Reserved]

**Rule 305 [Reserved]**

**Rule 306 [Reserved]**

**Rule 307 Acceptable Bids and Offers**

The Bid/Offer types shall be as specified in the appropriate System Protocol.

**Rule 308 [Reserved]**

**Rule 309 Reporting and Data Collection**

- (a) In furtherance of Applicable Law, NEX SEF will capture and retain all transaction data, so as to be able to reconstruct all transactions within a reasonable period of time and to provide evidence of any Violations.
- (b) In furtherance of Applicable Law, NEX SEF will retain records for all transactions executed on the Facility. This includes all Bids/Offers, whether accepted, unaccepted, cancelled or modified, and all acceptances of such transactions.
- (c) In furtherance of Applicable Law, NEX SEF shall maintain an electronic transaction history database, which includes a history of all Bids/Offers transactions, and also includes: (i) all data that are input into the trade entry system; (ii) the categories of Participant or Customer for which each transaction is executed, including whether the Participant executed the transaction for its own account or the transaction was executed by an Intermediary; (iii) timing and sequencing data adequate to reconstruct trading; and (iv) subject to Rule 309 (h), identification of each Participant to which fills are allocated.
- (d) NEX SEF will use the electronic transaction history database to reconstruct trading and identify possible Violations. In furtherance of Applicable Law, NEX SEF will conduct an annual review of compliance by all Participants (including in their capacity as Customers) that are responsible for, or in control of, the creation of audit trail records with its audit trail and recordkeeping requirements and will identify Participants that may have failed to comply with such requirements. Such Participants will be subject to investigation by the Market Regulation Staff for possible disciplinary action. The annual review must include, but is not limited to, reviews of randomly-selected samples of front end audit trail data for order routing systems; a review of the process by which user identifications are assigned and user identification records are maintained; a review of usage patterns associated with user identifications to monitor for violations of user identification Rules; and reviews of account numbers and Customer Type Indicator Codes in transaction records to test for accuracy and improper use.
- (e) All such information will be maintained by NEX SEF in a manner that protects it from unauthorised alteration, as well as from accidental erasure or other loss.
- (f) NEX SEF will publish trading information as required by:



- (1) Core Principle 9, Commission Regulation § 37.901 and Part 16 of the Commission Regulations; and
- (2) FCA rules and MAR 5.8 and 5.9.

(g) *Reporting to SDRs*

- (1) NEX SEF will report all transactions in Contracts executed on the Facility or pursuant to the Rules to an SDR of NEX SEF's choice as soon as technologically practicable after the execution of such transaction. NEX SEF will report such transactions as set forth below:
  - (i) [Reserved]
  - (ii) Non-Cleared Contracts, including all legs of a Package Transaction, in all asset classes: NEX SEF reports to DTCC.
- (2) As soon as technologically practicable after the execution of a Contract, NEX SEF will report to both counterparties: (i) the identity of the SDR to which the Contract was reported; and (ii) the Contract's unique Swap identifier.
- (3) All real-time data required by Part 43 of the Commission Regulations and all creation data, including primary economic terms and confirmation data, required by Part 45 of the Commission Regulations will be reported to the relevant SDR as provided for under Part 43 and Part 45 of the Commission Regulations.
- (4) NEX SEF will disseminate swap transaction and pricing data relating to Contracts to Participants no earlier than the transmittal of such information to the relevant registered SDR.
- (5) After becoming aware of or being notified of any errors or omissions in the transaction or pricing data set forth in a Confirmation by a Participant pursuant to Rule 312, the Facility shall then promptly submit corrected data to the relevant SDR.
- (6) Neither the Facility nor any Participant may submit or agree to submit a cancellation or correction for the purposes 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 the reporting requirements of Part 43 of the CFTC Regulations.

(h) *Post Trade Allocations*

- (1) In reliance on NAL 15-68, expiring November 15, 2017, NEX SEF will not capture post-trade allocations in its audit trail data or conduct associated audit trail reviews of post-trade allocations.
- (2) Each Participant shall provide NEX SEF post-trade allocation information to the SEF upon the request of NEX SEF.
- (3) During the course of any trade practice surveillance or market surveillance investigation into any trading activity involving post-trade allocations, upon the request of the CFTC or otherwise, NEX SEF shall ascertain whether a post-trade allocation was made. Upon determining that such an allocation was made, NEX SEF shall request, obtain and review the post-trade allocation information as part of its investigation.



### Rule 310 Bid/Offer Cancellation

- (a) A Participant can submit instructions to either cancel or modify a Bid/Offer which that Participant has placed on the Facility if that Bid/Offer has not yet been accepted. Upon receipt of instructions to cancel a Bid/Offer that has not been executed, a Trading Platform will withdraw the Bid/Offer and confirm the cancellation of the Bid/Offer. If a Participant modifies a Bid/Offer that has not been executed, NEX SEF will treat the modified Bid/Offer as a new Bid/Offer.
- (b) NEX SEF will attempt to cancel or modify an existing Bid/Offer after a Participant enters a cancellation or modification instruction. However, the Bid/Offer may be executed before NEX SEF is able to cancel or modify it. If a Bid/Offer has been filled in whole or in part, a Participant may modify or cancel only that portion of the Bid/Offer (if any) that has not been executed. Once cancelled by NEX SEF, a Bid/Offer will not be executed.
- (c) Upon suspension or revocation of a Participant's trading privileges by NEX SEF, any unaccepted Bid/Offer on the Facility for such Participant shall be cancelled by NEX SEF.

### Rule 311 [Reserved]

### Rule 312 Enforceability of Transactions

- (a) *Settlement*
- (1) Each Participant is obligated to settle all transactions executed, pursuant to the Rules in this Chapter 3.
  - (2) A transaction executed on the Facility or subject to the Rules shall not be void, voidable, subject to rescission, otherwise invalidated or rendered unenforceable as a result of:
    - (i) a violation by the Facility of Section 5h of the Act or Part 37 of the Commission Regulations;
    - (ii) any Commission proceeding to alter or supplement a rule, term or condition under Section 8a(7) of the Act or to declare an emergency under Section 8a(9) of the Act; or
    - (iii) any other proceeding the effect of which is to: (A) alter or supplement a specific term or condition or trading rule or procedures; or (B) require the Facility to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.
- (b) [Reserved]
- (c) *Issuance of Facility Confirmations for Uncleared Transactions*
- (1) The economic terms specific to the transaction agreed by each Participant on the Facility with respect to an uncleared transaction shall be reflected by the Facility in a written communication (the "**Trade Communication**") issued to each applicable Participant at the time of execution of the uncleared transaction. 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 each Participant are party (the "**Terms Incorporated by Reference**") shall, taken together, for purposes of Commission Regulation 37.6(b), comprise all of the terms of such transaction and serve as the Confirmation of such transaction.



- (2) In satisfaction of the obligations imposed on NEX SEF under Commission Regulation 37.6(b), (i) each Trade Communication is deemed to incorporate the Terms Incorporated by Reference set forth in this Rule 312 (c) upon issuance of the Trade Communication, (ii) each Participant hereby agrees that the provisions of Rule 312 (c)(3) shall govern any conflicting terms, and (iii) the resulting Confirmation takes place at the time of execution of, and contains all the terms of, the transaction.
- (3) In the event of any conflict between (x) the Trade Communication and (y) the Terms Incorporated by Reference, the Trade Communication shall prevail to the extent of any inconsistency and each Trade Communication shall state the same.
- (4) In accordance with NAL 17-17, expiring on the effective date of any changes in Commission Regulation 37.6(b), upon the request of NEX SEF, each Participant shall provide copies of the Terms Incorporated by Reference to NEX SEF.
- (5) In accordance with NAL 17-17, expiring on the effective date of any changes in Commission Regulation 37.6(b), upon the request of the Commission, NEX SEF shall request the Terms Incorporated by Reference from the relevant Participant and shall provide such Terms Incorporated by Reference to the Commission as soon as possible after receipt from the Participant.

(d) *Review of Confirmations.* Each Participant shall review the contents of each Confirmation issued to it pursuant to this Rule 312 and shall promptly report any errors or omissions in the transaction or pricing data therein to the counterparty to the Contract. Each Participant that is the reporting counterparty for such Contract, as determined pursuant to Rule 316, shall report all such errors or omissions to the Facility as soon as technologically practicable after becoming aware of the errors or omissions.

### **Rule 313 Intermediated Transactions**

(a) Participants who are Intermediaries shall immediately submit all Orders to the Facility to be immediately entered into a Trading Platform. If an Order cannot be immediately entered into a Trading Platform, an electronic record which includes the account identifier that relates to the account owner, time of receipt, and terms of the Order must immediately be created, and the Order must be entered into a Trading Platform as soon as practicable.

(b) *Priority of execution.* Non-discretionary executable Customer Orders received by a Participant who is an Intermediary shall be entered into Facility in the sequence received. Non-discretionary Orders that cannot be immediately entered must be entered when the Orders become executable, in the sequence in which the Orders were received.

(c) NEX SEF shall provide all Confirmations of Intermediated Transactions to the Intermediary upon execution of the transaction. Except to the extent that NEX SEF sends Confirmations of Contracts directly to the relevant Customer, any Participant that transacts as an Intermediary for any Customer shall be responsible for ensuring that such Customers receive all Confirmations of Contracts entered into on behalf of such Customers as soon as technologically practicable after receipt of the Confirmation from NEX SEF.

### **Rule 314 Bunched Orders**

Bunched Orders must be allocated and recorded in accordance with Commission Regulation 1.35(b)(5) and the NFA's Interpretive Notice related to Compliance Rule 2-10. Bunched Orders may be entered using a designation for a group of accounts or suspense account number; provided, however that the Bid/Offer is being placed by a Participant who is, or is acting on behalf of, an account manager for multiple accounts eligible for post execution allocation.





## **Rule 315 NEX SEF Authority over Transactions**

### **(a) *NEX SEF Authority Regarding Cancellations, Price Adjustments and Errors***

NEX SEF has authority to cancel any transaction or adjust the price of any transaction executed on the Facility, or to execute or require the execution of a new or offsetting transaction: (i) when NEX SEF determines in its sole discretion such action is necessary to mitigate market disrupting events caused by the improper or erroneous use of a Trading Platform or by system defects; (ii) at any time NEX 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 (iii) in accordance with Rule 204 (h), Rule 315 (c), Rule 315 (d), or Rule 315 (h). All decisions of NEX SEF regarding NEX SEF's cancellation of transactions or the adjustment of transaction prices and the execution of new or offsetting transactions shall be final, subject to Rule 315 (d).

### **(b) *Determination to Review a Transaction's Price***

- (1) NEX SEF may determine to review a transaction's price based on its independent analysis of market activity or upon a Participant's request. A Participant's request for review must be made for any transaction executed on the Facility within 5 minutes of the execution of such transaction. In the absence of a timely request for review, NEX SEF may determine whether or not a transaction will be subject to review in its sole discretion. Notwithstanding the foregoing, subject to Applicable Law, NEX SEF shall amend the terms of, or cancel, any transaction that the parties mutually agree to amend or cancel, in the event that such amendment or cancellation is not submitted to NEX SEF within the applicable review period specified above.
- (2) If NEX SEF determines to review a transaction's price, it will promptly issue an alert to all Participants via a Trading Platform or electronic mail indicating that the transaction is under review.

### **(c) *Review of a Transaction's Price***

- (1) In reviewing a transaction's price, NEX SEF shall determine the fair value price for the Swap at the time the transaction under review occurred. NEX 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.
- (2) If NEX SEF determines that the price of a transaction is a fair value price, NEX SEF will issue an alert indicating that the transaction shall stand as executed.
- (3) If NEX SEF determines that the price of a transaction is not a fair value price, NEX SEF shall have the right, in its sole discretion, to cancel or adjust the price of such transaction.
- (4) [Reserved]

### **(d) *Alternative Resolution by Agreement of Parties for Transactions Reviewed for Price***

- (1) With the approval of NEX SEF, parties to a transaction that is under review for price or that has had its price adjusted may instead mutually agree to cancel or otherwise adjust the price of the transaction.
- (2) With the approval of NEX SEF, parties to a transaction that is cancelled may instead mutually agree to adjust the price of such transaction to a fair value price.



- (3) Subject to sections (d)(1) and (d)(2), parties to a transaction that is cancelled or that has had its price adjusted may mutually agree to a cash adjustment.
  - (4) Any cancellation or adjustment made pursuant to sections (d)(1), (d)(2) or (d)(3) must be reported to the Facility by the parties within one (1) Business Day and the parties must maintain a record of such adjustment.
- (e) *Liability for Losses Resulting from Cancellations or Price Adjustments*
- (1) A party that through error or mistake enters a Bid/Offer that results in a cancellation or price adjustment shall be responsible for demonstrated claims of realised losses incurred by persons whose transaction prices were cancelled or adjusted; provided, however, that a claimant shall not be entitled to compensation for losses incurred as a result of the claimant's failure to take reasonable actions to mitigate the loss.
  - (2) A claim for a loss pursuant to this Rule 315 must be submitted to the Facility within one (1) Business Day of the event giving rise to the claim. NEX SEF will reject any claim that is not filed in a timely manner and such decision shall be final. Eligible claims shall be forwarded by NEX SEF to the party responsible for the Bid/Offer that resulted in a cancellation or a price adjustment of a transaction and the Participant through which the transaction was submitted to the Facility. Such party, or Participant on behalf of such party, shall, within ten (10) Business Days of receipt of the claim, admit or deny responsibility in whole or in part. Failure to respond to the claim within ten (10) Business Days shall be deemed a denial of liability.
  - (3) To the extent that liability is admitted, payment shall be made within ten (10) Business Days. Unless otherwise agreed upon in writing by the parties, failure to make the payment within ten (10) Business Days shall be deemed a denial of liability for the purposes of this Rule 315. A copy of any such written agreement must be provided to NEX SEF.
  - (4) To the extent that liability is denied, the party making the claim may submit the claim for arbitration pursuant to Rule 702. Such claims must be submitted to NEX SEF within ten (10) Business Days of the date the party was issued notification that liability was denied.
- (f) [Reserved]
- (g) *Records of Cancellations and Price Adjustments*
- (1) Cancelled transactions and any prices that have been adjusted shall be cancelled in NEX SEF's official records.
  - (2) Transactions that have had their price adjusted shall be reflected in NEX SEF's official records at the adjusted price.
- (h) *Review of Transactions for Errors*
- (1) If a Participant (including in its capacity as a Customer) believes that any transaction in one or more Contracts was executed as a result of an Error, as defined in Rule 315 (h)(3), such person may request review of the transaction.
  - (2) Upon receipt of a request for review of a transaction, or if NEX SEF determines on its own initiative to conduct such a review, NEX SEF will review its records to determine if an Error occurred.

- (3) NEX SEF may cancel or adjust the transaction, as appropriate, if the review described in this Rule reveals that:
  - (i) a Trading Platform made a material mistake or that a mistake occurred as a result of a malfunction in a Trading Platform or by human error; or
  - (ii) a Bid/Offer was incorrectly displayed and/or executed and/or reported (each of the foregoing, an "Error").
  - (iii) [Reserved]
  - (iv) [Reserved]
- (4) If the review described in this Rule reveals that no Error occurred, NEX SEF will inform any person who requested the review that NEX SEF has determined that the transaction was properly handled, the evidence supporting that determination, and that a cancellation or adjustment will not be made.
- (5) NEX SEF will document in writing all requests for review of transactions received by NEX SEF, or any review on its own initiative, the time and manner in which NEX SEF reviewed its electronic audit trail in response to the request or review on its own initiative, the outcome of that review, and the action or actions taken by NEX SEF in response to that review.
- (6) If a transaction is reviewable for price under Rule 315 (b), the procedures of this Rule 315 (h) shall not apply.
- (i) [Reserved]
- (j) *Prime Broker Transactions*
  - (1) A Prime Broker shall have the right to have the Facility cancel any Prime Broker Transaction within 48 hours after the execution of such transaction if such transaction was executed in excess of a Prime Broker Limit established by the Prime Broker with respect to the Prime Broker Transaction.
  - (2) The Prime Broker shall communicate the cancellation request directly to the Facility and the counterparty and indicate which Prime Broker Limit was exceeded with respect to the Prime Broker Transaction.
  - (3) In the event a Prime Broker Transaction is canceled by the Facility pursuant to this Rule 315(j), the Facility will report such cancellation to the relevant SDR pursuant to Part 43 of the Commission Regulations.
  - (4) In the event the counterparty to the canceled Prime Broker Transaction disputes the right of the Prime Broker to have the Facility cancel such transaction, the dispute will be resolved in accordance with the procedures of Chapter 7.

### **Rule 316 Reporting Counterparty**

- (a) For each Contract executed on or subject to the Rules, NEX SEF shall report all required data to an SDR in accordance with Rule 309, and shall include in such creation data the identification of the reporting counterparty. The reporting counterparty will be determined by NEX SEF, if possible, in accordance with Commission Regulation 45.8 (a) – (f) and in the event the counterparties to the Contract are of the same hierarchy level, the ISDA Reporting Party Rules, the relevant portion of which is attached to this Rulebook as Annex 1, and identify to the counterparties which is the reporting counterparty. If NEX SEF is unable to determine the reporting counterparty in accordance with Commission



Regulation 45.8(a) – (f) and the ISDA Reporting Party Rules, NEX SEF will identify the buyer of the Contract as the reporting counterparty in the creation data. By executing the Contract on the Facility, the counterparties agree to the use of the ISDA Reporting Party Rules and where necessary, the identification of the buyer as reporting counterparty, and waive the opportunity to agree separately upon a reporting counterparty and to receive notice from NEX SEF, as provided in Commission Regulation 45.8(d) and 45.8(f).

(b) For each Contract executed on or subject to the Rules, the reporting counterparty is responsible for reporting continuation data to the SDR to which the creation data for the Contract was first reported in accordance with Commission Regulations 45.4 and 45.10.



## CHAPTER 4 TRADING STANDARDS

### **Rule 401 Fraudulent Statements and Acts**

(a) No Participant or Customer shall make or attempt to make any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading, in connection with or related to any transaction on or other activity related to NEX SEF or the Facility.

(b) No Participant or Customer may engage in or attempt to engage in any fraudulent act, or engage in or attempt to engage in any manipulative device, scheme or artifice to cheat, defraud or deceive, in connection with or related to any transaction on or other activity related to NEX SEF or the Facility.

### **Rule 402 Abusive Trading Practices**

(a) No Participant shall create fictitious or wash transactions on the Facility or execute any Bid/Offer for a fictitious or wash transaction with knowledge of its nature.

(b) No Participant shall engage in trading on the Facility or subject to the Rules for the purpose of passing money or transferring equity from one account to another.

(c) No Participant trading as an Intermediary on behalf of a Customer shall engage in trading ahead of a Customer Order, trading against a Customer Order without the Customer's consent, front running a Customer Order, accommodation trading or improper cross trading.

### **Rule 403 Good Faith Bids/Offers**

(a) A Participant shall not knowingly enter, or cause to be entered, a Bid/Offer into the Facility other than in good faith for the purpose of executing bona fide transactions.

(b) A Participant shall not knowingly enter, or cause to be entered, a Bid/Offer unless such Participant has sufficient funds to provide the required collateral for the related Contract should the Contract be executed.

### **Rule 404 [Reserved]**

### **Rule 405 Manipulation and Price Distortion**

(a) Any manipulation or attempted manipulation of the price of any Contract is prohibited.

(b) Bids/Offers entered into a Trading Platform for the purpose of upsetting the equilibrium of the market in any Contract or creating a condition in which prices do not or will not reflect fair market values are prohibited and it shall also be prohibited for any Participant to make or assist in entering any such Bid/Offer with knowledge of the purpose thereof or, with such knowledge, to assist in carrying out any plan or scheme for the entering of any such Bid/Offer.

(c) Any other manipulative and disruptive behaviour not otherwise prohibited by the Rules is prohibited to the extent prohibited by the Act or Commission Regulations, including but not limited to Sections 6(c)(1) and (3), 9(a)(2), 4c(a)(5)(A) and (C) of the Act and Commission Regulations 180.1(a) and 180.2.



#### **Rule 406 Disruptive Trading Practices**

(a) No Participant or Customer shall enter or cause to be entered any Bid/Offer or other message with the intent to:

- (1) mislead other Participants;
- (2) overload, delay, or disrupt the Order Book or any other systems of the Facility or other Participants; and
- (3) disrupt the orderly conduct of trading or the fair execution of transactions.

(b) No Participant or Customer shall engage in any trading, practice or conduct on the Facility or subject to the Rules that (1) violates Bids/Offers; (2) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; (3) is, is of the character of, or is commonly known to the trade as, "spoofing" (entering a Bid/Offer with the intent to cancel the Bid/Offer before execution); or (4) is any other manipulative or disruptive trading practice prohibited by the Act or Commission Regulations.

#### **Rule 407 General Offences**

It will be an offence for a Participant or Customer to:

- (a) violate any Rule regulating the conduct or business of a Participant or Customer or any agreement made with NEX SEF;
- (b) engage in any act detrimental to NEX SEF's operations or self-regulatory function or NEX SEF's ability to enforce its Rules or is detrimental to the interest or welfare of the Facility;
- (c) fail to observe the proper standards of conduct expected of market participants;
- (d) engage in any conduct which tends to impair the dignity or good name of the Facility;
- (e) engage in conduct inconsistent with just and equitable principles of trade;
- (f) engage in dishonourable or uncommercial conduct;
- (g) aid or abet the commission of any Violation by another person;
- (h) fail to supervise its employees or agents in the conduct of the Participant's or Customer's business related to the Facility; and
- (i) engage in conduct in violation of Applicable Law in connection with or related to any transaction on or other activity related to the Facility.

#### **Rule 408 Position Limits and Position Accountability**

(a) To reduce the potential threat of market manipulation or congestion, the Facility shall adopt for each Contract, as is necessary and appropriate, Position Limits or position accountability levels for speculators.

(b) NEX SEF hereby adopts the Commission's Position Limits for any Contract for which the Commission has adopted a Position Limit. In no event will NEX SEF set its Position Limits at a level higher than the Commission's Position Limits.



- (c) For Permitted Transactions, NEX SEF may set and enforce position accountability levels or send the Commission a list of the Permitted Transactions transacted on the Facility.
- (d) All Participants must comply with all NEX SEF and Commission requirements regarding Position Limits or position accountability levels.
- (e) Each Participant required to file any report, statement, form or other information with the Commission pursuant to Commission Regulations concerning a Position Limit on any Contract or commodity underlying a Contract must simultaneously file a copy of such report, statement, form or other information with NEX SEF. Such information shall include, for Participants who are Intermediaries, information concerning the Customers for which transactions are made on the Facility.
- (f) Any Participant who exceeds a NEX SEF or Commission Position Limit by entering into a transaction on the Facility shall be deemed in Violation. In addition, any Participant entering bids or offers, if accepted, which would cause that Participant to exceed the applicable NEX SEF or Commission Position Limit, shall be in Violation.
- (g) Without limiting any provision of these Rules, NEX SEF shall have the authority to obtain from any Participant, on request, information with respect to all positions of such Participant in Contracts which are equivalent, for purposes of NEX SEF or Commission Position Limits, to those transacted in by the Participant on the Facility.



## CHAPTER 5 RULE ENFORCEMENT

### Rule 501 Jurisdiction

(a) NEX SEF shall have the authority to initiate and conduct investigations, and prosecute Violations committed by Facility Subject Persons, and to impose sanctions for such Violations as provided in these Rules.

(b) Each Participant, upon becoming a Participant and thereafter upon any change of address shall file with NEX SEF a written notice designating an address for receiving service of documents. If a Participant fails to designate such an address, service by mail to its address on file with NEX SEF shall be good service, and delivery thereof shall be deemed to have occurred as of the date of such mailing.

### Rule 502 Facility Market Regulation Staff Powers and Duties

(a) It shall be the duty of the Compliance Function to enforce these Rules, and shall have the authority to inspect the books and records of all Facility Subject Persons and the authority to require any Facility Subject Person to appear before it to answer questions regarding matters being investigated by the Market Regulation Staff. The Compliance Function may also delegate such authority to Market Regulation Staff who shall consist of personnel of NEX SEF, and such other Regulatory Services Providers as NEX SEF may hire on a contract basis. The Compliance Function shall ensure that surveillance systems are established to monitor trading to prevent manipulation and price distortion. Such monitoring may be done by the Market Regulation Staff or a third party provider, and shall include real time monitoring and the ability to conduct comprehensive and accurate transaction reconstructions.

(b) The Market Regulation Staff shall conduct investigations of possible Violations, prepare written reports respecting such investigations, furnish such reports to the Review Panel and conduct the prosecution of such Violations. An investigation must be commenced upon receipt of a request from any Regulatory Agency, its staff or receipt of information (such as data produced by automated surveillance systems) by NEX SEF that in the judgment of the Market Regulation Staff indicates a reasonable basis for finding that a Violation may have occurred or will occur. Absent mitigating factors, each investigation will be completed no later than 12 months after the investigation is opened. Mitigating factors 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 analysed by Market Regulation Staff.

(c) If, in any case, the Compliance Function or another member of the Market Regulation Staff, designated for this purpose by the Compliance Function, concludes that there is a reasonable basis for finding a Violation, he or she shall [\(i\) present an investigation report concerning the matter to the Review Panel or \(ii\), in the case of Violations subject to summary suspension under Rule 514, proceed in accordance with Rule 514.](#) The investigation report must include the reason the investigation was initiated; a summary of the complaint, if any; the relevant facts; Market Regulation Staff's analysis and conclusions; and a recommendation as to whether disciplinary action should be pursued. The report may also include the Facility Subject Person's disciplinary history at the Facility, including copies of any warning letters. The Market Regulation Staff may issue a warning letter, including for minor transgressions. However, no more than one warning letter may be issued to the same person found to have committed the same Violation more than once in a rolling 12-month period.

(d) If, in any case, the Compliance Function or another member of the Market Regulation Staff, designated for this purpose by the Compliance Function, concludes that no reasonable basis exists for finding a Violation, he or she must prepare a written investigation report including the reason the investigation was initiated; a summary of the complaint, if any; the relevant facts; and Market Regulation Staff's analysis and conclusions. The Compliance Function or another member of the Market Regulation



Staff may issue a warning letter in any case where it is concluded that no reasonable basis exists for finding a Violation, without limitation on the number of warning letters issued to a person.

(e) Before presenting an investigation report to the Review Panel, the Market Regulation Staff may, in its sole discretion, inform the prospective Respondent that it intends to submit the matter to the Review Panel, and at such time the proposed Respondent may submit an offer of settlement to the Hearing Panel, in accordance with the procedures of Rule 509, prior to presentation of the investigation report to the Review Panel.

(f) NEX SEF has contracted with NFA to act as Regulatory Services Provider to provide certain regulatory services to NEX SEF, including reviews of the Facility's audit trail information for potential Violations. NEX SEF will retain ultimate decision-making authority with respect to any regulatory services to be provided by NFA.

(g) NEX SEF or its Regulatory Services Provider shall have the right with such prior reasonable advance notice as is practicable under the circumstances (unless in furtherance of regulatory purposes in which case without prior notice to Facility Subject Persons), in connection with determining whether all Rules are being, will be, or have been complied with by the Facility Subject Person, to: (i) inspect systems, equipment and software of any kind operated by the Facility Subject Person in connection with accessing, and the Facility Subject Person's transacting on, the Facility, wherever located; (ii) access, either physically or electronically, the systems, equipment, software, and the premises on which the systems, equipment, and software are located, any data stored in any of the systems or equipment, during the regular business hours; and/or (iii) copy or reproduce any data to which NEX SEF has access under this Rule. Each Facility Subject Person shall provide the Regulatory Services Provider with the same access to its books and records and offices as it is required to provide to NEX SEF under the Rules and Applicable Law.

### **Rule 503 The Review Panel**

(a) The Review Panel shall have the power to direct that an investigation of any suspected Violation be conducted by the Market Regulation Staff, and shall hear any matter referred to it by the Market Regulation Staff regarding a suspected Violation.

(b) The Review Panel shall be appointed by the Board, and shall be comprised of five persons, including at least two Participants and at least two non-Participants. The Board shall appoint as chairman (the "**Review Panel Chairman**") of the Review Panel a person who would not be disqualified from serving as a "Public Director" as defined in Commission Regulations. Three panel members shall constitute a quorum for any action, so long as they are in attendance at the time of the relevant action. The Review Panel may not include any members of the Market Regulation Staff, any person involved in adjudicating any other stage of the same Proceeding, or any person with a history of disciplinary offenses that would be disqualifying under CFTC Regulation § 1.63(c). The Review Panel shall include at least one member that is not a member of NEX SEF whenever the Review Panel is: (i) acting with respect to a disciplinary action in which the Respondent is a member of the Board, the Review Panel or the Hearing Panel; or (ii) when the suspected Violation involves manipulation (or attempted manipulation) of the price of a Contract or conduct which directly results in financial harm to a non-member of NEX SEF. The Review Panel shall include sufficient different membership interests so as to ensure fairness and to prevent special treatment or preference for any person.

(c) All information, records, and documents provided to the Review Panel, and all related records and documents shall be treated as confidential and shall not be disclosed, except as necessary to further a NEX SEF investigation or as required by Applicable Law.





(d) Upon receipt of an investigation report, the Review Panel shall promptly review the report and, within thirty (30) days of receipt, take one of the following actions:

- (1) If the Review Panel determines that additional investigation or evidence is needed, it shall promptly direct the Market Regulation Staff to conduct further investigation;
- (2) If the Review Panel determines that no reasonable basis exists for finding a Violation or that prosecution is otherwise unwarranted, it may direct that no further action be taken. Such determination must be in writing and must include a written statement setting forth the facts and analysis supporting the decision; or
- (3) If the Review Panel determines that a reasonable basis exists for finding a Violation and adjudication is warranted, it must direct that the Facility Subject Person alleged to have committed the Violation be served with a notice of charges as set forth in Rule 504.

(e) If the Review Panel determines that there may have been a Violation but that no adjudication is warranted, the Review Panel may issue a warning letter to the Facility Subject Person informing it that there may have been a Violation and that such continued activity may result in disciplinary sanctions. Where a Violation is determined to have occurred, no more than one warning letter for the same potential Violation may be issued to the same person during a rolling 12 month period.

#### **Rule 504 Notice of Charges**

(a) If the Review Panel determines that a reasonable basis exists for finding a Violation and adjudication is warranted, the Compliance Function shall serve a notice of charges (a "**Notice**") on the Facility Subject Person alleged to have been responsible for the Violation (such Facility Subject Person, the "**Respondent**"). Such Notice shall state:

- (1) the acts, practices or conduct with which the Respondent is charged;
- (2) the Rules allegedly violated and how such acts, practices or conduct constitute a Violation of such Rules;
- (3) that the Respondent is entitled, upon written request filed with NEX SEF, within thirty (30) days of service of the Notice, to a formal hearing on the charges;
- (4) that the failure of the Respondent to request a hearing within thirty (30) days of service of the Notice, except for good cause shown, shall be deemed a waiver of its right to a hearing;
- (5) that the failure of the Respondent to file an Answer (as defined in Rule 505) with the Market Regulation Staff within thirty (30) days of service of the Notice shall be deemed an admission of all of the acts, practices or conduct alleged in the Notice; and
- (6) that the failure of the Respondent to expressly deny a particular charge contained in the Notice shall be deemed an admission of such acts, practices or conduct.

(b) A Respondent shall have the right to be represented by legal counsel or any other representative of its choosing in all succeeding stages of the disciplinary process, except by any member of the Board, Review Panel or Hearing Panel, any employee of NEX SEF or any person substantially related to the underlying investigation, such as a material witness or Respondent.

#### **Rule 505 Answer; Request for Hearing; Failure to Answer or Deny Charges**

(a) The Respondent shall serve on the Compliance Function a written answer (an "**Answer**") to the Notice and a written request for a hearing on the charges within thirty (30) days of the date of service of the Notice. The Answer must include a statement that the Respondent admits, denies, or does not have



and is unable to obtain sufficient information to deny each allegation. A statement of lack of sufficient information shall have the effect of a denial of the allegation.

(b) The Respondent's failure to file an Answer within such thirty (30) day period shall be deemed an admission of all allegations contained in the Notice.

(c) The Respondent's failure to expressly deny a particular charge contained in the Notice shall be deemed an admission of such acts, practices or conduct.

(d) The Respondent's failure to request a hearing within such thirty (30) day period, absent good cause shown, shall be deemed a waiver of Respondent's right to a hearing.

#### **Rule 506 Selection of Hearing Panel**

(a) Formal hearings on any Notice shall be conducted by the Hearing Panel selected by the Board. The Hearing Panel shall include at least two Participants and at least two non-Participants. The Board shall also select, as chairman of the Hearing Panel ("**Hearing Panel Chairman**"), a person who would not be disqualified from serving as a "Public Director" as defined in Commission Regulations. The Hearing Panel Chairman, in his or her sole discretion, shall set a date for the hearing (the "**Hearing Date**"). The Hearing Panel may not include any members of the Market Regulation Staff, any person involved in adjudicating any other stage of the same Proceeding, or any person with a history of disciplinary offenses that would be disqualifying under CFTC Regulation § 1.63(c). The Hearing Panel shall include at least one member that is not a member of NEX SEF whenever the Hearing Panel is: (i) acting with respect to a disciplinary action in which the Respondent is a member of the Board, the Review Panel or the Hearing Panel; or (ii) when the suspected violation involves manipulation (or attempted manipulation) of the price of a Contract or conduct which directly results in financial harm to a non-member of NEX SEF. The Hearing Panel shall include sufficient different membership interests so as to ensure fairness and to prevent special treatment or preference for any person.

(b) The Hearing Panel Chairman shall notify the Market Regulation Staff and the Respondent of the Hearing Date and the names of the members of the Hearing Panel at least fifteen (15) days prior to the Hearing Date.

(c) No member of the Hearing Panel shall hear a case in which that member has a direct financial, personal or other interest in the matter under consideration.

#### **Rule 507 Challenge to Members of the Hearing Panel**

Within ten (10) days after service on the Respondent of notice of the Hearing Date and names of the members of the Hearing Panel, the Respondent may challenge, in writing, the inclusion of any member of the Hearing Panel for cause, including without limitation, if the member has a direct financial, personal or other interest in the matter under consideration. The merits of such challenge shall be finally decided by the Regulatory Oversight Committee. If said written challenge is not received within such ten (10) day period, absent good cause shown, any such right to challenge is deemed waived.

#### **Rule 508 Hearing on Sanctions in the Event of Failure to Deny Charges; Failure to Request Hearing Deemed Acceptance of Sanctions**

In the event the Respondent fails to file an Answer or admits or fails to deny the charge of a Violation contained in the Notice, the Hearing Panel shall find the Respondent guilty of each such Violation and may impose a sanction for each such Violation subject to the limitations set forth in Rule 511 (b) (7). The Hearing Panel shall promptly notify the Respondent of any such sanction and of the Respondent's right to a hearing on the sanction within the period of time which shall be stated in the notice, after the imposition of such sanction. Failure to request a hearing on the sanction in a timely manner, absent good cause shown, shall be deemed to be acceptance of the sanction.



### **Rule 509 Settlement Prior to Commencement of Hearing**

(a) Prior to the commencement of the hearing, the Hearing Panel may accept a written offer of settlement from the Respondent, whereby the Respondent, without either admitting or denying any Violations, may agree to:

- (1) a cease and desist order;
- (2) a fine for each Violation plus the monetary value of any benefit received as a result of the Violation (provided that in no case shall any fine exceed \$100,000 per Violation);
- (3) restitution of any counterparty harm; and/or
- (4) revocation or suspension of Trading Privileges of the Respondent.

(b) If the Hearing Panel accepts an offer of settlement, it must issue a written decision specifying each Violation it has reason to believe was committed, including the basis for the Hearing Panel's conclusions. The sanctions must include full counterparty restitution where counterparty harm is demonstrated, except where the amount of restitution or to whom it should be provided cannot be reasonably determined. If an offer of settlement is accepted without the support of the Market Regulation Staff, the decision must adequately support the Hearing Panel's acceptance of the settlement. Where applicable, the decision must include a statement that the Respondent has accepted the sanctions imposed without either admitting or denying any Violations. Any sanctions imposed pursuant to an offer of settlement must take into account the Respondent's disciplinary history.

(c) The Respondent may withdraw an offer of settlement at any time before final acceptance by the Hearing Panel. If an offer is withdrawn after submission, or is rejected by the Hearing Panel, the Respondent may not be deemed to have made any admissions by reason of the offer of settlement and may not be otherwise prejudiced by having submitted the offer of settlement.

### **Rule 510 Hearing Procedures**

(a) In every instance where a Respondent has requested a hearing on a charge that is denied, or on a sanction set by the Hearing Panel pursuant to Rule 508, the Respondent will have the opportunity for a hearing in accordance with the procedures of this Rule.

(b) The Hearing Panel shall determine the procedures to be followed in any hearing before it, except that the following shall apply in every case:

- (1) The hearing must be fair and must be promptly convened after reasonable notice to the Respondent.
- (2) The prosecution shall be conducted by the Market Regulation Staff.
- (3) The Respondent shall be allowed to appear personally at the hearing, and to be represented by legal counsel or any other representative of its choosing and, either personally or through such representative, to present witnesses and documentary evidence and to cross-examine witnesses.
- (4) The Market Regulation Staff and the Respondent shall deliver to each other a statement listing the witnesses expected to be called and the documents expected to be introduced into evidence, together with copies of such documents, by ten (10) days' prior notice to the hearing or as the Hearing Panel may reasonably specify. Unless the Hearing Panel, in its discretion, waives compliance with this requirement, no witness may testify and no documentary evidence may be introduced into evidence unless listed in and, in the case of documents, furnished with such statement. On written request, the Market Regulation Staff shall provide the Respondent with access to all books, documents or other tangible



evidence in the possession or under the control of NEX SEF which are to be relied upon by the Market Regulation Staff or which are relevant to the charges; provided, however, that protected attorney work product, attorney-client communications and investigative work product, including the investigation report, are neither discoverable by a Respondent nor subject to review by a Respondent as part of the investigation file.

- (5) NEX SEF shall require that persons within its jurisdiction who are called as witnesses participate in the hearing and produce evidence, and will make reasonable efforts to secure the presence of all other persons called as witnesses whose testimony would be relevant. Failure by a Facility Subject Person to so participate and produce evidence when requested by NEX SEF shall be a Violation.
- (6) No formal rules of evidence shall apply, and the Hearing Panel shall be free to accept or reject any and all evidence it considers proper, but the hearing may not be so informal as to deny a fair hearing.
- (7) Neither the Market Regulation Staff, the Respondent, any witnesses testifying before the Hearing Panel nor any other person within the Facility's jurisdiction shall engage in conduct that may impede the progress of a hearing or the fair and just resolution of the subject matter thereof, and any such conduct may itself constitute a Violation.
- (8) Ex parte contacts by any of the parties with members of the Hearing Panel shall not be permitted.
- (9) A substantially verbatim record capable of being accurately transcribed shall be made of the Proceeding, provided, however, that such record need not be transcribed, unless the transcript is requested by the Respondent or an applicable regulator, or unless the decision is appealed to the Commission or reviewed by the Commission on its own motion. In all other instances, a summary record of the hearing is permitted.
- (10) The cost of transcribing the record of the hearing must be borne by a Respondent who requests the transcript, or whose application for Commission review of the disciplinary action has been granted. In all other instances, the cost of transcribing the record will be borne by NEX SEF.
- (11) The Notice, the Answer, any stenographic transcript of the hearing, the documentary evidence and any other material presented to the Hearing Panel by either party with notice to the other shall constitute the record of the hearing (the "**Hearing Record**").
- (12) The burden of proof shall be on the prosecution to prove a Violation by a preponderance of the evidence. A finding of a Violation shall be made by majority vote based on the Hearing Panel's decision as to the weight of the evidence contained in the Hearing Record.
- (13) All sanctions imposed by the Hearing Panel must be commensurate with the Violations committed and must be clearly sufficient to deter additional similar Violations by the Respondent and similar Violations by other Facility Subject Persons. All sanctions must take into account the Respondent's disciplinary history. In the event of demonstrated counterparty harm, any sanctions must include full counterparty restitution, except where the amount of restitution or to whom it should be provided cannot be reasonably determined.



#### **Rule 511 Written Decision of Hearing Panel**

(a) Promptly following a hearing conducted in accordance with Chapter 5 of the Rules, the Hearing Panel shall render a written decision based upon the weight of evidence in the Hearing Record and must provide a copy to the Respondent within thirty (30) days of such decision.

(b) The written decision shall include

- (1) the name of the Respondent;
- (2) a summary of the charges alleged in the Notice;
- (3) 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 the findings and conclusions of the Hearing Panel with respect to each charge, and a complete explanation of the evidentiary and other basis for such findings and conclusions with respect to each charge, or in the event of a settlement, a statement specifying the alleged Violations;
- (6) an indication of each specific Rule that the Respondent was found to have violated and whether the Violation resulted in any financial harm to Customers;
- (7) an order stating any sanctions imposed, including the basis for the sanctions, any terms of the sanctions, the date the determination to impose sanctions was made and the effective date of such sanctions; the sanctions that may be imposed on the Respondent shall be one or more of the following:
  - (i) a cease and desist order;
  - (ii) a fine for each Violation plus the monetary value of any benefit received as a result of the Violation (provided that in no case shall any fine exceed \$100,000 per Violation);
  - (iii) restitution of counterparty harm, except where the amount of restitution or to whom it should be provided cannot be reasonably determined; and/or (iv) the issuance of a suspension or revocation of Trading Privileges or Customer status of the Respondent; and
- (8) a statement informing the respondent that the imposition of sanctions may be appealed to the Commission pursuant to Part 9 of the Commission Regulations.

(c) The Hearing Panel shall take into consideration the Respondent's disciplinary history prior to imposing any disciplinary sanctions.

(d) NEX SEF shall also provide the written decision to the NFA through BASIC, or deliver the written decision to the NFA to be input into BASIC.

(e) If NEX SEF suspends or revokes the Trading Privileges of the Respondent, it must publicly publish the information contained in the written notice pursuant to Rule 511 (b).

#### **Rule 512 Liability for Expenses**

Any Respondent that, after notice and opportunity for hearing, has been found to have committed a Violation may, in the discretion of the Hearing Panel appointed in the matter, be required to pay to NEX SEF an amount equal to any and all reasonable and documented out-of-pocket expenses incurred by



NEX SEF in connection with the prosecution of such Violations, in addition to any fine or other monetary sanction which may be imposed upon such Respondent by virtue of the Violations found by the Hearing Panel.

### **Rule 513 Effective Date of Sanctions**

(a) If a Respondent submits an offer of a settlement to the Hearing Panel, any sanction included as a part of such settlement shall become final and effective on the date that the Hearing Panel approves such settlement, or on such other date as is specified in the decision.

(b) Subject to Rule 513 (c) and (d), any decision (including any sanctions) by a Hearing Panel pursuant to this Chapter 5 or the Participation Committee pursuant to Rule 205 shall be the final decision of NEX SEF and shall become effective fifteen (15) days, or such longer time as the Hearing Panel or Participation Committee may specify, after a copy of the written decision of the Hearing Panel or Participation Committee has been served on the Respondent, applicant or Participant as applicable.

(c) In any case where a Respondent, applicant or Participant has consented to the action taken and to the timing of its effectiveness, the Hearing Panel or Participation Committee may cause the decision involving any disciplinary action (including any sanctions) to become effective prior to the fifteen (15) day period.

(d) Any decision (including any sanctions) by a Hearing Panel or the Participation Committee may become effective prior to the time set forth in Rule 513 (b) if:

- (1) NEX SEF reasonably believes, and so states in its written decision, that immediate action is necessary pursuant to Rule 514(a);
- (2) NEX SEF determines and so states in its written decision, that the actions of a Facility Subject Person have impeded the progress of a disciplinary hearing; or
- (3) NEX SEF determines a Facility Subject Person has violated Rules relating to timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities.

(e) If a decision is to become effective earlier than the time set forth in Rule 513(b) pursuant to Rule 513 (c) or (d), NEX SEF shall notify the Respondent, applicant or Participant in writing stating the reasons for the determination.

(f) Any fine or other monetary sanction imposed by a Hearing Panel shall be due and payable on the effective date of the decision imposing such fine or sanction, or on such later date as the Hearing Panel may specify.

### **Rule 514 Summary Suspension**

(a) General. A Facility Subject Person (as identified by Market Regulation Staff in an investigation or by a Trading Privilege Holder acting as an Intermediary for such Facility Subject Person) may be summarily and immediately suspended from trading on the Facility, upon a written determination based on a reasonable belief, by the Chairman of the Regulatory Oversight Committee that such immediate action is necessary to protect the best interest of the market place.

(b) Violations of Specified Rules. The Market Regulation Staff shall have the authority to impose summary suspensions on Participants and Customers without the need for any formal disciplinary procedures with respect to Violations of any Rule listed in this Rule 514(b). Pursuant to Rule 202(a)(2), a Participant that is an Intermediary may be held responsible for a Violation by its Customer. Investigations of possible Violations of such a Rule shall be conducted in accordance with Rule 502, but otherwise actions taken pursuant to this Rule 514(b) shall be made in accordance with the procedures set forth in Rule 514 rather than the procedures set forth in the remainder of this Chapter 5. The authority to impose

a summary suspension under this Rule 514(b) does not prevent the Market Regulation Staff from submitting a Violation of any rule listed in this Rule 514(b) to the Review Panel in accordance with the formal disciplinary procedures of this Chapter 5. The following schedule lists the permissible actions that the Market Regulation Staff may impose:

<u>Rule Violation</u>	<u>Action Taken Per each Violation in a Rolling 12-month period</u>			
	<u>First Violation</u>	<u>Second Violation</u>	<u>Third Violation</u>	<u>Fourth Violation</u>
<u>Rule 901(i)(4) &amp; Rule 406, as interpreted by a MRAN</u>	<u>Warning Letter</u>	<u>Two Week Suspension of Trading for the relevant Currency Pair</u>	<u>Four Week Suspension of Trading for the relevant Currency Pair</u>	<u>Referral to Review Panel for formal disciplinary procedures.</u>

(c) Notice and Hearings.

- (1) ~~(b)~~ The Facility Subject Person against whom such summary action is taken pursuant to paragraph (a) or (b) of this Rule 514 shall be served with a notice of the action either before the action is taken or at the earliest possible opportunity thereafter. The notice shall state the action taken, the reasons for the action, the effective date and time, and the duration of the action.
- (2) ~~(e)~~ The Facility Subject Person may as soon as practicable, upon written request, have a hearing before the Hearing Panel pursuant to the procedures of Rule 510.
- (3) ~~(d)~~ Promptly following the hearing, the Hearing Panel shall render a written decision based upon the weight of the evidence in the record and shall provide a copy to the Facility Subject Person. The decision shall include a description of the summary action taken, the reasons for the summary action, a summary of the evidence produced at the hearing, a statement of findings and conclusions, a determination that the summary action should be affirmed, modified or reversed, a declaration of any action to be taken pursuant to the determination, and the effective date and duration of the action.

**Rule 515 Extension of Time Limits**

Any time limit provided for in Rule 504, Rule 505, Rule 506, Rule 507, Rule 508, or Rule 510 may be extended by mutual consent of the Respondent and the Market Regulation Staff, or by the Hearing Panel Chairman.



## CHAPTER 6 CONTRACTS TO BE TRADED

### **Rule 601 Listing Procedures**

Any Trading Privilege Holder may propose to NEX SEF the listing of a Swap on the Facility by submitting a listing application to NEX SEF. The Chief Executive Officer shall have authority subject to complying with Rule 602 and to objectively justifiable commercial criteria, to submit the contract to the Commission, either with a request for prior approval, or with a self-certification.

### **Rule 602 Swaps Not Readily Susceptible to Manipulation**

Before the Chief Executive Officer submits a Swap to the Commission for prior approval or with a self-certification, the Chief Compliance Officer shall determine that the Swap is not readily susceptible to manipulation, and shall submit to the Commission the following information required by Appendix C to Part 38 of Commission Regulations to show that the Swap complies with Core Principle 3:

- (a) For cash-settled Swaps, documentation demonstrating that the settlement price index is a reliable indicator of market values and conditions, is highly regarded by industry/market agents, and is publicly available on a timely basis.
- (b) Where an independent, private-sector third party calculates the referenced price index, verification that the third party utilises business practices that minimise the opportunity or incentive to manipulate the cash settlement prices included in the index.
- (c) Where NEX SEF generates the cash settlement prices included in the index, information demonstrating that the calculation procedures safeguard against potential attempts to artificially influence the price, and a description of how the calculation procedures eliminate or reduce the impact of potentially unrepresentative data.
- (d) Appropriate speculative limits to prevent manipulation.
- (e) Procedures for intraday market restrictions that pause or halt trading in the event of extraordinary price moves that may result in distorted prices.





## CHAPTER 7 GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION

### **Rule 701 Choice of Law**

The laws of England and Wales, without regard to its conflict of laws principles, will govern this Rulebook and all disputes arising out of or related to NEX SEF, the Facility or any transaction on the Facility.

### **Rule 702 Disputes Among Trading Privilege Holders, Authorised Traders, Authorised Trading Firms and Customers**

All disputes between and among Facility Subject Persons that arise out of or relate to NEX SEF or the Facility or any transaction that was made or attempted to be made on the Facility shall be resolved exclusively in the courts of England and Wales, save for in the following circumstance:

- (1) if all parties to the dispute are members or associates of the NFA, the dispute will be resolved in NFA Member Arbitration; or
- (2) if all parties separately agree to another forum, the dispute will be resolved in the other forum.

### **Rule 703 Disputes with NEX SEF**

(a) Subject to Rule 102, all disputes between and among NEX SEF on the one hand, and Facility Subject Persons on the other hand, that arise out of or relate to the Facility, or any transaction that was made or attempted to be made on the Facility, shall be resolved exclusively in the courts of England and Wales. Suit on any such dispute must be brought within one year from the time the cause of action has accrued.

(b) Any current or former Facility Subject Person who does not substantially prevail in a lawsuit or any other type of legal proceeding instituted in a court of law or otherwise against NEX SEF or any of its officers, directors, committee members, volunteers, employees or agents, shall pay to NEX SEF any and all reasonable expenses and disbursements, including reasonable attorneys' fees, incurred by NEX SEF to defend such lawsuit or proceeding.

## CHAPTER 8 CONTRACT SPECIFICATIONS

### Rule 801 NDF Product Descriptions

#### *Trading Hours*

The trading hours for all Swaps governed by this Rule 801 are as follows:

- Order Book: 24 Hours, beginning at 3:00 a.m. Sydney Time on Monday and ending at 5:00 p.m. New York Time on Friday.
- Voice RFQ: Not Available.
- All Pre-Arranged Crosses: Not Available.

#### **Products — Rule 801:**

- (1) Non Deliverable Forwards (NDFs)

#### **Product Specifications**

NDF's are synthetic foreign currency forward contracts on non-convertible currencies or are traded on currencies with very little liquidity in the market place. These derivatives allow corporates and other investors to hedge or take positions to local currency movements without actually dealing in the underlying.

A (notional) principle amount, forward exchange rate and forward date are all agreed at the deal's inception. The difference is that there will be no physical transfer of the principle amount in the transaction. The deal is agreed on the basis that net settlement will be made in USD, or another fully convertible currency, to reflect any differential between the agreed forward rate and the actual exchange rate on the agreed forward date. It is a cash-settled outright forward.

The demand for NDF's arises principally out of regulatory and liquidity issues in the underlying currency, where overseas players are essentially barred from access to the domestic market.

When an NDF deal is contracted, a fixing methodology is agreed, which includes the following three methodologies:

1. Outright. Under the standard outright NDF contract a fixing spot rate is determined on the fixing date, which is normally two working days before settlement, to reflect the spot value.
2. Tomorrow's Fixing (TOM). The TOM methodology permits a currency position to be rolled forward one month on the day before the fixing used to price the contract. The contract is a back-to-back trade with a near leg closing out the original currency position (the "Original NDF") and a far leg reestablishing the position the next trading day. The fixing rate applicable to the far leg is the current market rate for the relevant outright NDF contract at the time the contract is entered into. The fixing rate for the near leg is the far leg fixing rate minus a number of basis points agreed upon by the parties (the "Near Leg Rate"). The close out of the Original NDF is then calculated as the difference between the fixing rate applicable to the Original NDF and the Near Leg Rate.

In all cases, the fixing spot rate is based on the reference page on either Reuters or Bloomberg. Settlement is made in the major currency, paid to or by the client, and reflects the differential between the agreed upon non-deliverable forward rate and the fixing spot rate.

The NDF is quoted using foreign exchange forward market convention, with two way prices quoted as bid/offer pips, at a premium or discount to the prevailing spot market. As with a normal forward transaction, the market user either buys or sells the NDF, depending on the position to be hedged or according to the view of the underlying currency of interest rates.

NDF's are a risk management tool used to hedge the risk of forward currency convertibility, which can result from a number of factors, including credit risk, sovereign risk, regulatory restrictions, or lack of settlement procedures. NDF's are typically utilized by banks, multinational corporations, investment managers, and proprietary traders to hedge currency risk. NDF's are also used as a tool to facilitate locking in the enhance yields of emerging market currencies.

Currencies		
CLP	KRW	USD
PEN	INR	PHP
COL	IDR	CNY
ARS	MYR	
BRL	TWD	

#### Holiday Calendar

- USD, KRW, MYR, TWD, IDR, PHP, CNY, INR, CLP, PEN, COP, ARS, BRL
- Value date must be a good USD day
- Fixing date must be a good local day

#### Components

- Notional
  - This is the “face value” of the NDF, which is agreed between the two counterparties\*
- Fixing date
  - This is the day and time whereby the comparison between the NDF rate and the prevailing spot rate is made\*
- Settlement date (or delivery date)
  - This is the day when the difference is paid or received. It is usually one or two business days after the fixing date\*
- Publish Date
  - For CLP only, the mkt refers to the publish date as one day after the fixing date
- Contracted NDF rate
  - The rate agreed on the transaction date, and is essentially the outright forward rate of the currencies dealt
- Effective date
  - The date which the NDF contract takes effect, usually the trade date

#### Clearing

- NDFs traded on NEX SEF are not cleared.



*The following information has been submitted to the Commission subject to a request for confidential treatment in accordance with Commission Regulation 145.9 in order to prevent disclosure of NEX SEF's confidential commercial information upon a request under the Freedom of Information Act. NEX SEF requests that the recipient limit distribution to those individuals with a need to know.*

<b>Summary report:</b>	
<b>Litéra® Change-Pro TDC 10.1.0.200 Document comparison done on 8/14/2017 8:31:50 AM</b>	
<b>Style name:</b> Sidley Default	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> iw://SIDLEYDMS/ACTIVE/213366248/30	
<b>Description:</b> NEX SEF - Exhibit M-1 - Facility Rulebook (v1.2) (Filed 6-8-17) [Amend No.1]	
<b>Modified DMS:</b> iw://SIDLEYDMS/ACTIVE/213366248/39	
<b>Description:</b> NEX SEF - Exhibit M-1 - Facility Rulebook (v1.3) (Filed 8-14-17) [Market DataMRAN]	
<b>Changes:</b>	
Add	31
Delete	19
Move From	0
Move To	0
Table Insert	1
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>51</b>