

SECTION I DEFINITIONS

1.1 Definitions

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

Affected Clearing Member has the meaning set forth in Rule 9.1.2

Affiliate. A Person that directly or indirectly, controls, is controlled by, or is under common control with another Person.

Allowance has the meaning set forth in Rule 9.3.2.

Applicable Law. With respect to any Person, any statute, law, regulation, rule or ordinance of any Governmental Authority or Self-Regulatory Organization applicable to such Person, including the CEA and CFTC Regulations.

Approved Financial Institution. A bank or trust company designated by the Board pursuant to Rule 3.18.

Assessments has the meaning set forth in Rule 3.35(b)(vi).

Authorized User. A natural person who is either employed by or is an agent of a Clearing Member and who is authorized by the Clearing House as an Authorized User in accordance with Rule 3.8.

Base Margin Amount has the meaning set forth in Rule 3.34.1(c).

Board. The Board of Directors of the Clearing House.

Business Day. Any day on which the Clearing House is open for business.

CEA. The Commodity Exchange Act.

CFTC or Commission. The Commodity Futures Trading Commission.

CFTC Regulations. The regulations of the CFTC.

Chairman. The Chairman of the Board of the Clearing House.

Chief Compliance Officer. The individual appointed by the Board to serve as the chief compliance officer of the Clearing House.

Chief Executive Officer. The individual appointed by the Board to serve as the chief executive officer of the Clearing House.

Chief Risk Officer. The individual appointed by the Board to serve as the chief risk officer of the Clearing House.

Clearing Activity. Any clearing business conducted pursuant to the Rules or which is required to be conducted pursuant to the Rules.

Clearing House. Nodal Clear, LLC, a Delaware limited liability company registered with the CFTC as a derivatives clearing organization.

Clearing House Official. Any Officer or employee of the Clearing House and any member of the Board or committee established by the Board.

Clearing Member. An entity meeting the requirements of, and approved for, clearing membership at the Clearing House that is authorized pursuant to Rule 3.3 to clear trades in one or more Nodal Contracts. Except for those Clearing Members that clear solely for one or more House Accounts (each, a “**House-Only Clearing Member**”), all other Clearing Members must be registered with the CFTC as FCMs (each, an “**FCM Clearing Member**”).

Clearing Member Agreement. An agreement between the Clearing House and a Clearing Member, which must be executed in order for a Clearing Member to have access to the Clearing House for the purpose of clearing Nodal Contracts.

Clearing System. The systems, software, equipment, hardware, apparatus, appliances, gateways, application programming interfaces and other components used by or on behalf of the Clearing House to perform its clearing functions.

Collateral. At any time, such property as may be delivered by a Clearing Member to the Clearing House as collateral for the obligations of such Clearing Member to the Clearing House, and all proceeds of the foregoing and all proceeds of any of the foregoing, held in or for the accounts of a Clearing Member in connection with the financial obligations of such Clearing Member, however created, arising or evidenced, whether direct or indirect, absolute or contingent, existing, due or to become due.

Contract Specifications. The descriptions of the contractual items for each Nodal Contract as set forth in the Exchange Rules.

Customer has the meaning set forth in CFTC Regulation 39.2.

Customer Account means an account established by a Clearing Member with the Clearing House in which the Clearing Member maintains trades, positions and Margin solely for Customers of the Clearing Member.

Default. Any event that would constitute a default under Rule 3.29.

Deliverable has the meaning set forth in the Contract Specifications of Physically Settled Nodal Contracts.

Delivery Default means a Clearing Member failing to guaranty Participant delivery obligations in full under or in connection with any Physically Settled

Nodal Contract, unless such failure constitutes a Force Majeure Event affecting the relevant Participant or Clearing Member.

Delivery Facility means any Person or facility used for the delivery of Deliverables, including but not limited to, warehouses appearing on the list of nominated warehouses as published by the Exchange, facilities and systems operated by such Persons, and Registries.

Delivery Margin has the meaning set forth in Rule 3.20.1

Director. An individual serving on the Board.

Disciplinary Action has the meaning set forth in Rule 5.1.

Emergency means any occurrence or circumstances which, in the opinion of the Board, Chief Executive Officer, Chairman or Chief Risk Officer, requires immediate action, and that threatens, or may threaten, the fair and orderly settlement or integrity of any Nodal Contract, including:

(a) any circumstance that may materially affect the performance of a Nodal Contract;

(b) any action taken by a Governmental Authority, Self-Regulatory Organization, state or local governmental body, or foreign or domestic exchange or market that may have an adverse effect on the clearing of Nodal Contracts through the Clearing House or the settlement, legality or enforceability of any Nodal Contract;

(c) any actual, attempted or threatened corner, squeeze, congestion, manipulative activity or undue concentration of positions in a Nodal Contract;

(d) any other circumstance that may have a severe, adverse effect upon the functions and facilities of the Clearing House, including, but not limited to, acts of God, pandemics, fire or other natural disasters, bomb threats, acts of terrorism or war, severely inclement weather, failure or malfunction of all or a portion of the Clearing System, or other system breakdowns or interruptions such as power, computer, communication or transportation systems or the Internet;

(e) the Insolvency of any Clearing Member or the imposition of any injunction or other restraint by any Governmental Authority, court or arbitrator upon a Clearing Member which may affect the ability of a Clearing Member to satisfy its obligations;

(f) any circumstance in which it appears to the Board that a Clearing Member:

(i) has failed to perform on a Nodal Contract;

- (ii) is Insolvent;
- (iii) is otherwise in Default; or
- (iv) is in such financial or operational condition or is conducting business such that the Clearing Member cannot be permitted to continue in business without jeopardizing the safety of funds of Customers, Clearing Members or the Clearing House; or

(g) any other unusual, unforeseeable or adverse circumstance as determined by the Board or the Chief Executive Officer (or, as applicable, the Chairman or Chief Risk Officer).

Exchange. Nodal Exchange, LLC, a Delaware limited liability company designated by the CFTC as a contract market.

Exchange Rules. Any rule, interpretation, stated policy, or instrument corresponding to any of the foregoing as adopted from time to time by the Exchange.

Expiry. A Nodal Contract with a specific date of expiration.

Financial Performance has the meaning set forth in Rule 9.1.2.

Force Majeure Event means, in relation to delivery obligations pursuant to any Physically Settled Nodal Contract, any event that is an event of force majeure (or similar event, howsoever defined) for that Physically Settled Nodal Contract under the Contract Specifications or Exchange Rules.

FCM. A futures commission merchant as defined in CEA §1a(28) and CFTC Regulation 1.3(p) that is registered with the CFTC as such.

General Counsel. The individual appointed by the Board to serve as the general counsel of the Clearing House.

Governmental Authority. Any domestic or foreign government (or political subdivision), governmental or regulatory authority, agency, court, commission or other governmental or regulatory entity.

Guaranty Fund. The fund comprising the monies, securities and instruments deposited by Clearing Members pursuant to Rule 3.12, which fund shall be used as provided in Rule 3.35 to reimburse the Clearing House for losses sustained by the Clearing House as a result of the failure of any Clearing Member to discharge its obligations in accordance with the Rules.

Guaranty Fund Deposit Requirement has the meaning set forth in Rule 3.34.2(c).

House Account has the meaning set forth in CFTC Regulation 39.2.

Initial Margin. The initial amount of Collateral that must be deposited with or paid to the Clearing House by Clearing Members in accordance with the Rules as a performance bond in respect of the Nodal Contracts held in the House Account and Customer Account of such Clearing Members.

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

- (a) the Clearing Member is determined to be insolvent by a Governmental Authority or Self-Regulatory Organization;
- (b) if the Clearing Member is a member of the Securities Investor Protection Corporation, a court of competent jurisdiction finds that the Clearing Member meets any one of the conditions set forth in clauses (A), (B), (C) or (D) of Section 5(b)(1) of the Securities Investor Protection Act of 1970;
- (c) in the event of the entry or the making of a decree or order by a court, Governmental Authority or other supervisory authority of competent jurisdiction: (i) adjudging the Clearing Member as bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization, arrangement, liquidation, dissolution, adjustment or composition of or in respect of the Clearing Member under the Bankruptcy Code or any other applicable federal, state or other U.S. or non-U.S. law, including any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law; (iii) appointing a custodian, liquidator, provisional liquidator, administrator, provisional administrator, assignee, trustee, sequestrator or other similar official for the Clearing Member or for any substantial part of its property; (iv) ordering the winding up or liquidation of the Clearing Member's affairs; or (v) consenting to the institution by the Clearing Member of proceedings to be adjudicated as a bankrupt or insolvent;
- (d) the filing by the Clearing Member of a petition, or any case or proceeding, seeking reorganization or relief under the Bankruptcy Code or any other applicable federal, state or other U.S. or non-U.S. law, including any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law, or the consent by the Clearing Member to the filing of any such petition, case or proceeding or to the appointment of a custodian, liquidator, provisional liquidator, administrator, provisional administrator, assignee, trustee, sequestrator or other similar official for the Clearing Member or for any substantial part of its property, or the making by the Clearing Member of an assignment for the benefit of its creditors, or the

admission by the Clearing Member in writing of its inability to pay its debts generally as they become due, or the taking of corporate or similar action by the Clearing Member in furtherance of the foregoing;

- (e) notwithstanding the above, the appointment of the Federal Deposit Insurance Corporation as receiver for purposes of resolution pursuant to Title II of the Dodd-Frank Act, or the appointment of a foreign government authority as receiver for purposes of resolution under an analogous resolution regime, is excluded from the definition of Insolvency or Insolvent.

LLC Agreement. The Limited Liability Company Agreement of the Clearing House, as it may be amended or restated from time to time.

Liquidity Event. A Liquidity Event means an event that causes the Clearing House to require financial liquidity: (i) to satisfy payment obligations of a Clearing Member that is in Default or has been suspended; (ii) to satisfy payment obligations associated with the transfer of account(s) of a Clearing Member that is in Default or has been suspended; or (iii) as a result of a payment or wire transfer delay, liquidity constraint, or default by an Approved Financial Institution. The decision to declare a Liquidity Event shall be in the sole discretion of the Clearing House.

Margin. Initial Margin and Variation Margin or either of them.

NFA. National Futures Association.

Nodal Contract. Any contract available for trading on the Exchange and for clearing through the Clearing House.

Nodal Deliverable US Environmental Contract has the meaning set forth in Rule 9.3.1.

Officer has the meaning set forth in Rule 2.2.1.

Participant has the meaning set forth in the Exchange Rules.

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

Physically Settled has the meaning set forth in the Exchange Rules.

President. The individual appointed by the Board to serve as the president of the Clearing House.

Public Director. A Director having the qualifications set forth in Rule 2.1.6.

Registry has the meaning set forth in Rule 9.3.2.

Registry Operator has the meaning set forth in Rule 9.3.2.

Replenishment has the meaning set forth in Rule 3.34.7(b).

Rules. Any rule, interpretation, stated policy, or instrument corresponding to any of the foregoing, including these Rules, as adopted from time to time by the Clearing House.

Self-Regulatory Organization has the meaning set forth in CFTC Regulation 1.3(ee) and in section 3(a)(26) of the Securities Exchange Act of 1934 and includes a derivatives clearing organization that is registered as such with the CFTC.

Settlement Price has the meaning set forth in Rule 3.39.

Termination Event means the occurrence of any of the following:

- (a) the expiration or termination of the Clearing Member Agreement between a Clearing Member and the Clearing House;
- (b) a representation or warranty made by the Clearing Member to the Clearing House under or in connection with any agreement between the Clearing House and the Clearing Member shall be false or misleading in any material respect as of the date on which made or repeated;
- (c) the Clearing Member does not meet the qualifications for Clearing Members set forth in Rule 3.2; or
- (d) the breach by the Clearing Member of the Rules or any of the terms or provisions of any agreement between the Clearing House and the Clearing Member.

Tender has the meaning set forth in Rule 9.3.2.

Treasury Securities. United States Treasury bills, Treasury notes and Treasury bonds.

User ID. The unique identifier that is assigned by the Exchange to each Authorized User.

Variation Margin means (i) on the Business Day a Nodal Contract has been accepted for clearing by the Clearing House, the difference between the price at which such Nodal Contract was bought or sold and the Settlement Price for such Nodal Contract; and (ii) thereafter, the difference, as applicable, between (x) the Settlement Price on a given Business Day and the preceding Settlement Price for

such Nodal Contract, or (y) the price at which such Nodal Contract was closed on the books of the Clearing House and the preceding Settlement Price for such Nodal Contract.

Withdrawal Date has the meaning set forth in Rule 3.37.1(b).

Withdrawal Deposit has the meaning set forth in Rule 3.37.7.

SECTION III CLEARING

3.5 Duties and Responsibilities of Clearing Members

Each Clearing Member shall, and where applicable, shall cause all of its Authorized Users and employees to:

- (a) comply with and act in a manner consistent with the Rules and any rules of or agreement with a Delivery Facility, as applicable;
- (b) ensure that all Clearing Activity conducted by the Clearing Member is performed in a manner that is consistent with the Rules;
- (c) ensure that only the Clearing House's facilities are used to conduct Clearing Activity;
- (d) ensure that the Clearing House's facilities are used in a responsible manner and are not used for any improper purpose;
- (e) meet all financial requirements provided by the Rules;
- (f) guarantee and assume complete responsibility for all Nodal Contracts submitted by it or which it has authorized another Person to submit for clearing in its name;
- (g) maintain its deposit in the Guaranty Fund as required by the Rules;
- (h) observe high standards of integrity, market conduct, commercial honor, fair dealing and just and equitable principles of trade while conducting any Clearing Activity, or any aspect of any business connected with or concerning the Clearing House;
- (i) immediately inform the Clearing House of any changes to the account information provided by the Clearing Member;
- (j) keep User IDs and passwords confidential;
- (k) promptly review and, if necessary, respond to all communications sent by the Clearing House;
- (l) keep, or cause to be kept, complete and accurate books and records as required to be maintained pursuant to the CEA and CFTC Regulations for the time and in the manner specified by CFTC Regulations; and make such books and records available for inspection by a representative of the Clearing House, the CFTC or other Governmental Authority of competent jurisdiction;

- (m) not knowingly mislead or conceal any material fact or matter in any dealings or filings with the Clearing House or in connection with a Disciplinary Action;
- (n) be responsible, even after it has withdrawn as a Clearing Member, for any violations of Rules committed by it while it was a Clearing Member;
- (o) cooperate with the Clearing House and any Governmental Authority in any inquiry, investigation, audit, examination or proceeding;
- (p) adopt, adhere to and enforce risk management and other policies and procedures that are designed to address the risks that the Clearing Member poses to the Clearing House and promptly provide, upon request by the Clearing House or the CFTC, information related to the risk management policies, procedures and practices of the Clearing Member; and
- (q) coordinate with the Clearing House to develop and test business continuity and disaster recovery plans that enable effective resumption of daily processing, clearing and settlement following a disruption.

3.13 Notices Required of Clearing Members

3.13.1 Financial Notices.

A Clearing Member must provide immediate notice to the Clearing House, orally and in writing, if the Clearing Member:

- (a) gives notice to the CFTC pursuant to CFTC Regulation 1.12 or to the Securities and Exchange Commission pursuant to Securities Exchange Act Rule 17a-11;
- (b) changes its fiscal year;
- (c) changes its public accountants; or
- (d) fails to comply with additional accounting, reporting, financial and/or operational requirements prescribed by the Clearing House; or Delivery Facility;
- (e) an Initial Margin or Variation Margin call in any account exceeds the Clearing Member's excess adjusted net capital; or

- (f) is subject to any financial or business development that could materially affect the ability of the Clearing Member to comply with its obligations as a Clearing Member.

3.13.2 Operational Notices.

A Clearing Member must provide immediate notice to the Clearing House, orally and in writing of:

- (a) any material damage to, or failure or inadequacy of, the systems, facilities or equipment of the Clearing Member to effect transactions pursuant to the Rules or to timely perform the Clearing Member's financial obligations under or in connection with Nodal Contracts;
- (b) any failure by such Clearing Member, or any guarantor or commonly owned or controlled Clearing Member to perform on any of its material contracts, obligations or agreements;
- (c) any determination that it, or any guarantor, will be unable to perform on any of its material contracts, guarantees, obligations or agreements;
- (d) the Insolvency of such Clearing Member or of any guarantor;
- (e) the institution of any proceeding by or against the Clearing Member, any affiliate of the Clearing Member, or any Person with a beneficial ownership of greater than 5% in the Clearing Member, under any provision of the bankruptcy laws of the United States, or under the Securities Investor Protection Act of 1970, any other statute or equitable power of a court of like nature or purpose, in which such Clearing Member or Person is designated as bankrupt, debtor or equivalent, or if a receiver, trustee or similar official is appointed for the Clearing Member, such Person, or its or their property;
- (f) the receipt by such Clearing Member, or the filing by such Clearing Member with a Self-Regulatory Organization, of a notice of material inadequacy; or
- (g) the receipt by such Clearing Member from its independent auditors of an audit opinion that is qualified.

3.13.3 A Clearing Member must provide prompt written notice to the Clearing House of:

- (a) any change in its name, business address, telephone or facsimile number, electronic mail address, or any number or access code for any electronic communication device used by it to communicate with the Clearing House;

- (b) a change in any of its relevant key personnel;
- (c) any Person directly or indirectly becoming a beneficial owner of 5% or more of any class of its equity securities;
- (d) any refusal of admission to, withdrawal of any application for membership in, any suspension, expulsion, bar, material fine, censure, denial of membership, registration or license, withdrawal of any application for registration, cease and desist order, temporary or permanent injunction, denial of trading privileges, or any other material sanction or discipline through an adverse determination, voluntary settlement or otherwise, by any Governmental Authority, Self-Regulatory Organization, Delivery Facility, or other business or professional association; or
- (e) the imposition of any restriction or limitation on the business conducted by the Clearing Member on or with any Self-Regulatory Organization other than restrictions or limitations imposed generally on all members of or participants in such Self-Regulatory Organization).

3.20 Initial Margin; Additional Margin

3.20.1 Each Clearing Member shall deposit with or pay to the Clearing House Initial Margin for each cleared Nodal Contract in such amounts, in such forms, at such times and in accordance with such systems as may be prescribed by these Rules or by the Board. Initial Margin requirements shall be as determined by the Clearing House from time to time. Initial Margin requirements shall be calculated on a gross basis for each Customer, and Clearing Members are not permitted to net positions of different Customers against one another. Clearing Members shall collect Initial Margin from their Customers, for non-hedge positions, at a level that exceeds the Initial Margin amount determined by the Clearing House by such amount as the Clearing House shall specify from time to time. For Nodal Contracts that are options, the Clearing House will determine option value for each option and the net option value of each portfolio. For a settlement cycle, (i) if the net option value of the portfolio is positive, such amount may be used to satisfy initial margin requirements for the portfolio, (ii) if the net option value of a portfolio is negative, such amount will increase the initial margin requirements for the portfolio. For Physically Settled Nodal Contracts, Delivery Margin is a component of Initial Margin.

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3.29 Defaults

3.29.1 If any of the following events occurs with respect to a Clearing Member (regardless of whether any such event is cured by any guarantor or other third party on behalf of such Clearing Member or otherwise), the Clearing Member shall be in Default:

(a) If such Clearing Member fails to meet any of its obligations under its Nodal Contracts with the Clearing House,

(b) If the Clearing Member is Insolvent,

~~(b)~~(c) If such Clearing Member fails to pay when due any amounts owing to the Clearing House, or

~~(c)~~(d) If such Clearing Member fails to make any required deposit to the Guaranty Fund when and as required by these Rules,

then, and in any such event, such Clearing Member shall automatically and without further action be suspended as a Clearing Member, except that such suspension may be temporarily postponed by the Chief Executive Officer if the Chief Executive Officer determines that such suspension would not be in the best interests of the Clearing House, in which case the Chief Executive Officer shall immediately call a special meeting of the Board as soon as practicable, at which the Board may reinstitute such suspension or take such other action as may be provided for in the Rules.

3.29.2 If any of the following events occurs with respect to a Clearing Member (regardless of whether any such event is cured by any guarantor or other third party on behalf of such Clearing Member or otherwise):

(a) If the Clearing House determines that such Clearing Member is not in compliance with the provisions of Rule 3.2 and that such noncompliance poses an unacceptable risk to the Clearing House, or

(b) If the Clearing House determines that a Delivery Default occurred with respect to such Clearing Member,

~~(b)(a) If the Clearing Member is Insolvent,~~

then, and in any such event, the Clearing House may declare that the Clearing Member is in Default and may determine that such Clearing Member shall be suspended as a Clearing Member.

3.30 Liquidation on Termination or Suspension of Clearing Member

3.30.1 When a Person ceases to be a Clearing Member or is suspended as a Clearing Member, such Person shall be prohibited from establishing new

positions and all open Nodal Contracts carried by the Clearing House for such Clearing Member shall be closed out as expeditiously as practicable such that:

(a) Open Nodal Contracts are transferred by the Clearing Member and accepted by one or more other Clearing Members, with the prior consent of the Clearing House, or transferred by the Clearing House to one or more other Clearing Members pursuant to an auction of the Nodal Contracts or other procedure instituted by the Clearing House;

(b) Nodal Contracts subject to outstanding delivery obligations are Physically Settled or transferred by the Clearing House to one or more other Clearing Members pursuant to an auction of the Nodal Contracts or other procedure instituted by the Clearing House;

~~(b)~~(c) The Chief Executive Officer or Chief Risk Officer, or in the absence of both the Chief Executive Officer and the Chief Risk Officer, any Director may determine that, in his or her opinion, liquidation be deferred for the protection of the financial integrity of the Clearing House; or

~~(c)~~(d) Open Nodal Contracts are liquidated in the manner set forth in Rule 3.31 to the extent that paragraphs (a), (b), or ~~(bc)~~ do not apply.

SECTION VII MISCELLANEOUS

7.9 LIMITATION OF LIABILITY; NO WARRANTIES

7.9.1 EXCEPT AS OTHERWISE PROVIDED IN THIS RULE 7.9, AND EXCEPT IN INSTANCES IN WHICH THE DISCLAIMING PARTY (DEFINED BELOW) HAS BEEN FINALLY ADJUDICATED TO HAVE BEEN GROSSLY NEGLIGENT OR TO HAVE ENGAGED IN FRAUD OR WILLFUL OR WANTON MISCONDUCT, IN WHICH CASE THE DISCLAIMING PARTY FOUND TO HAVE ENGAGED IN SUCH CONDUCT CANNOT AVAIL ITSELF OF THE PROTECTIONS IN THIS RULE 7.9, NEITHER THE CLEARING HOUSE, NOR ANY AFFILIATE OF THE CLEARING HOUSE, NOR ANY OF THEIR RESPECTIVE MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES, EQUITYHOLDERS, AGENTS, CONSULTANTS OR SERVICE PROVIDERS, NOR ANY MEMBER OF ANY COMMITTEE OR OTHER GOVERNING BODY OF ANY AFFILIATE OF THE CLEARING HOUSE (EACH OF THE FOREGOING, AS APPLICABLE, THE “DISCLAIMING PARTY” AND, COLLECTIVELY, “DISCLAIMING PARTIES”), SHALL BE LIABLE TO ANY PERSON FOR ANY LOSSES ARISING OUT OF OR IN CONNECTION WITH:

(a) ANY FAILURE, MALFUNCTION, FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY, INTERRUPTION, TERMINATION,

OR ANY OTHER EVENT, 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 THE CLEARING HOUSE, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS AND SERVICES, AND ANY AND ALL TERMINALS, COMMUNICATIONS NETWORKS, CENTRAL COMPUTERS, SOFTWARE, HARDWARE AND FIRMWARE RELATING THERETO; OR

- (b) ANY FAILURE OR MALFUNCTION, FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY, INTERRUPTION OR TERMINATION, OR ANY OTHER EVENT, OF ANY SYSTEM OR SERVICE OF THE CLEARING HOUSE, 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
- (c) ANY ERRORS OR INACCURACIES IN INFORMATION PROVIDED BY THE CLEARING HOUSE OR ANY OF THE CLEARING HOUSE'S SYSTEMS, SERVICES OR FACILITIES; OR
- (d) ANY UNAUTHORIZED ACCESS TO OR UNAUTHORIZED USE OF ANY OF THE CLEARING HOUSE'S SYSTEMS, SERVICES, EQUIPMENT OR FACILITIES BY ANY PERSON; OR

(e) IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF ANY REGISTRY OR REGISTRY OPERATOR.

THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY WHETHER A CLAIM IS BASED ON BREACH OF CONTRACT, TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE (OTHER THAN GROSS NEGLIGENCE), STRICT LIABILITY, NEGLIGENT MISREPRESENTATION, RESTITUTION, BREACH OF STATUTORY DUTY, BREACH OF WARRANTY OR OTHERWISE AND WHETHER THE CLAIM IS BROUGHT DIRECTLY OR AS A THIRD-PARTY CLAIM.

SECTION IX PHYSICAL SETTLEMENT AND DELIVERY

9.1 Clearing Member Duties to the Clearing House

9.1.1 A Clearing Member carrying an account, House or Customer, that is required to make or accept delivery agrees to guarantee and assume complete responsibility for the performance of all delivery obligations set forth in the Rules and the Nodal Exchange Rulebook.

9.1.2 In the event a Clearing Member fails to guaranty performance of Participant delivery obligations pursuant to Physically Settled Nodal Contracts, such failure may be deemed a Delivery Default pursuant to Rule

3.29. In a Delivery Default, the Clearing House shall ensure financial performance to the Clearing Member whose actions or omissions did not cause or contribute to the Delivery Default (the “Affected Clearing Member”). In this regard, the Clearing House powers will include, but will not be limited to, the right to sell or liquidate the commodity subject to delivery and to distribute the proceeds as appropriate. “Financial Performance” means payment of commercially reasonable costs of the Affected Clearing Member related to replacement of the failed delivery and includes any related fines, penalties and fees and does not include physical performance or legal fees. An Affected Clearing Member seeking Financial Performance from the Clearing House shall provide prompt notice to the Clearing House of the delivery failure and a good faith estimate of any Financial Performance being sought no later than 1 hour after the delivery deadline for the respective Physically Settled Nodal Contract, which may be extended upon request by the Affected Clearing Member by the Chief Executive Officer of the Clearing House or the Chief Executive Officer’s designee due to extenuating circumstances. As soon as reasonably practicable thereafter, the Affected Clearing Member seeking Financial Performance shall provide to the Clearing House a detailed statement, with supporting documentation, of all amounts sought.

9.2 Reports and Notifications

The Clearing House will issue Tenders and invoices via email to relevant Participants and Clearing Members. Unless otherwise specified, the Clearing House will make the reports and confirmations it issues as part of the delivery processes available to the Clearing Members electronically via the Clearing System.

9.3 Delivery Procedures for Nodal Deliverable US Environmental Contracts

9.3.1 These delivery procedures apply to all Physically Settled Nodal Contracts based on environmental products specified in the relevant Contract Specifications (“Nodal Deliverable US Environmental Contracts”).”

9.3.2 The following additional definitions apply to these delivery procedures:

- (a) “Allowance” means an instrument, certificate, permit, asset, security, right, contract or allowance that is designated as a deliverable instrument for a Nodal Deliverable US Environmental Contract in the relevant Contract Specifications.
- (b) “Registry” means a registry, custodian, depository or other system used for physical delivery of Allowances pursuant to the Contract Specifications of a Nodal Deliverable US Environmental Contract.
- (c) “Registry Operator” means the operator of a Registry.

(d) “Tender” means a notice given pursuant to these delivery procedures and/or Rules, of an obligation to make or take delivery of a Deliverable.

9.3.3 Deliveries pursuant to Nodal Deliverable US Environmental Contracts are effected by the transfer of required Allowances directly from a Participant seller to a Participant buyer through a Registry.

9.3.4 Delivery under a Nodal Deliverable US Environmental Contract is based on open positions after expiration of the relevant Physically Settled Nodal Contract. Delivery is a three Business Day process consisting of three Business Days, as provided in the table below:

<u>All times are to U.S. Eastern Prevailing Time</u>			
<u>T</u>	<u>Last Trading Day of the Nodal Contract</u>	<u>COB</u>	<p><u>The Clearing House will make delivery assignments, matching Participant buyers to Participant sellers for the purposes of Physical Settlement, and will issue Tender and invoice notices to the impacted Participants and responsible Clearing Members.</u></p> <p><u>The Clearing House will calculate Initial Margin for Nodal Deliverable US Environmental Contracts for each Participant and include it in the end of day (“EOD”) Margin requirements of their Clearing Members.</u></p>
<u>T+1</u>	<u>Position Day</u>		<u>Initial Margin is collected as part of the EOD Margin run. It is held in each subsequent Margin run (midday and EOD) until Physical Settlement.</u>
<u>T+2</u>	<u>Notice Day</u>	<u>By 13:00</u>	<u>Clearing House receives notice whereby Participant buyer provides Participant seller with information of the account at the Registry to which Allowances are to be transferred.</u>
<u>T+3</u>	<u>Delivery & Payment Day</u>	<u>Delivery by 12:30</u>	<p><u>The Clearing Member shall ensure that the Participant seller has electronically submitted the transfer instructions in respect of all Allowances required to be transferred pursuant to the Nodal Deliverable US Environmental Contract to the relevant Registry.</u></p> <p><u>After fulfilling its delivery obligations, the Clearing Member for the Participant seller must confirm delivery as completed via the Clearing System.</u></p>

		<p><u>Following Delivery</u></p>	<p><u>Following receipt of required Allowances, the Clearing Member for the Participant buyer must confirm delivery as completed via the Clearing System. Such confirmation will constitute a representation and warranty from the Clearing Member to the Clearing House that the Participant buyer has received delivery of all required Allowances pursuant to the Nodal Deliverable US Environmental Contract under delivery, and that the Clearing Member is not aware of any dispute relating to the Allowances that have been delivered.</u></p>
		<p><u>Following Confirmation</u></p>	<p><u>Following confirmation by the respective Clearing Member(s) for the Participant seller and the Participant buyer that delivery has been completed, payments will be processed as part of the midday Margin run on the same day as the delivery confirmation.</u></p> <p><u>If the Clearing House receives delivery confirmation after 12:30 PM on the delivery & payment day or any subsequent day, it will be treated as if it were received on the next Business Day and payments to the Clearing Member for the Participant seller shall be delayed accordingly.</u></p>