



Next Gen Clearing, LLC Rulebook

DERIVATIVES CLEARING ORGANIZATION RULES

BY ACCESSING THE CLEARING SYSTEM, AND WITHOUT ANY NEED FOR ANY FURTHER ACTION, UNDERTAKING OR AGREEMENT, A CLEARING MEMBER, AND ITS AUTHORIZED USERS AGREE (I) TO BE BOUND BY, AND COMPLY WITH, THE RULES OF THE CLEARINGHOUSE, ANY APPLICABLE CONTRACT RULES AND APPLICABLE LAW, IN EACH CASE TO THE EXTENT APPLICABLE TO IT OR THEM, AND (II) TO BECOME SUBJECT TO THE JURISDICTION OF THE CLEARINGHOUSE WITH RESPECT TO ANY AND ALL MATTERS ARISING FROM, RELATED TO, OR IN CONNECTION WITH, THE STATUS, ACTIONS OR OMISSIONS OF SUCH CLEARING MEMBER AND/OR ITS AUTHORIZED USERS.

DCO Version 1.0

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**DERIVATIVES CLEARING ORGANIZATION
RULES OF NEXT GEN CLEARING, LLC**

Introduction

The Commodity Exchange Act requires that Next Gen Clearing, LLC (“Clearinghouse”) comply with the core principles set forth in the Commodity Exchange Act, as amended, and the regulations, rules and orders of the Commodity Futures Trading Commission (the “CFTC” or the “Commission”), and establish, monitor and enforce its Rules relating to its business as a derivatives clearing organization (“DCO”). The following DCO Rules of the Clearinghouse pertain to the clearing of Contracts as a provider of Clearing Services and the rights and Obligations of Members in connection with such activities. Capitalized terms not defined herein will have the meanings assigned to them in Chapter 1.

Chapter 1 Definitions

Rule 1.1 Definitions

As used in these Rules, the following terms have the following respective meanings:

Account: means a Customer Account or a Member Property Account, as context requires, used in conjunction with the trading or delivery of commodity products, and as described in Rule 3.4.

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

Appeals Committee: A committee of the Board composed of Directors pursuant to Rule 2.7, and that acts in an adjudicative role and fulfills various adjudicative responsibilities and duties as described in Chapter 7.

Applicable Law: With respect to any Person, any statute, law, regulation, rule or ordinance of any government, governmental or self-regulatory authority applicable to such Person, including without limitation the CEA and CFTC Regulations and any laws and regulations relating to economic or trade sanctions.

As Soon As Technologically Practicable: As soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants.

Authorized Representative: With respect to any Member that is an entity, an officer of such entity who is responsible for supervising clearing activities of the Member, including activities of its Authorized User(s) and activities of its employees relating to Transactions, and for providing information regarding the Member to the Clearinghouse upon request of the Clearinghouse.

Authorized User: A natural person who is either employed by or is an agent of a Member and who is authorized by the Member to clear Transactions.

Board: The Board of Directors of the Clearinghouse.

Board Committees: shall have the meaning ascribed to it in Rule 2.2(a).

Business Day: means any day other than a Saturday, Sunday or any other day on which banking institutions in New York, New York are authorized or required by law, regulation or executive order to be closed.

CEA: The Commodity Exchange Act, as amended.

CFTC Regulation: means any rule, regulation, order or directive and any interpretation thereof or guidance thereon issued from time to time by the CFTC.

Chief Compliance Officer: The individual designated to serve as the Clearinghouse's chief compliance officer, who has full responsibility and authority to develop and enforce, in consultation with the Board of Directors, appropriate compliance policies and procedures, to fulfill the duties set forth in the CEA and Commission regulations.

Chief Executive Officer: The individual appointed by the Board to serve as the Clearinghouse's chief executive officer.

Chief Financial Officer: means the individual appointed by the Board of Directors from time to time to serve as chief financial officer of the Clearinghouse.

Chief Risk Officer: The individual appointed by the Board to serve as the Clearinghouse's chief risk officer, who is responsible for implementing the risk management framework and for making appropriate recommendations to the Regulatory Oversight Committee or Board of Directors, as applicable, regarding risk management functions.

Claim: Any dispute which arises out of any Transaction, which dispute does not require for adjudication the presence of essential witnesses or third parties over whom the Clearinghouse does not have jurisdiction or who are otherwise not available. The term "Claim" does not include disputes arising from underlying commodity transactions which are not a part of, or directly connected with, any Transaction.

Cleared Swaps Customer: As set forth in CFTC Regulation 22.1.

Cleared Swaps Customer Account: As set forth in CFTC Regulation 22.1.

Cleared Swaps Customer Collateral: As set forth in CFTC Regulation 22.1.

Clearinghouse: means Next Gen Clearing, LLC, a Delaware limited liability company.

Clearing Member or Member: means an FCM Clearing Member or Self-Clearing Member who has executed a Clearing Member Agreement, and to whom the Clearinghouse has granted the right to clear contracts on the Clearinghouse.

Clearing Member Agreement: means the written agreement (including any schedules, annexes or incorporated documents) between the Clearinghouse and a Member, as amended, supplemented or restated from time to time, governing such Member's access to and use of the Clearinghouse, including its rights and obligations with respect to clearing services, accounts, and related activities.

Clearing Privileges: Any right granted by the Clearinghouse to a Member to clear Contracts.

Clearing Services: The provision by the Clearinghouse to a registered DCM of clearing, settlement and ancillary services in a non-discriminatory manner, subject to the rules of the registered DCM.

Clearing System: means any applications or systems maintained by the Clearinghouse to clear and settle trades on the Clearinghouse, or the collection and transmission of information relating to the clearance and settlement of Contracts; secure portions of the Clearinghouse website; all direct connectivity to the Clearinghouse through API, front-end, GUI, ISV, and third-party systems; and all other systems, modalities, and connectivity for clearing and settlement at the Clearinghouse.

Clearinghouse Official: A Director, Officer, committee member, or such other individual as the Board may designate from time to time.

Clearinghouse Representative: Any Clearinghouse Official, Clearinghouse employee, consultant of the Clearinghouse, contractor of the Clearinghouse, or agent of the Clearinghouse.

Closed Contract Position: shall mean (i) any combination of long and short Open Contract Positions that have been offset against each other or (ii) any Open Contract Position that has been offset by the tendering or receipt (as applicable) of a notice of payment.

Commission or CFTC: The U.S. Commodity Futures Trading Commission.

Compliance Department: The department, reporting to the Chief Compliance Officer, that is responsible for compliance, investigations and disciplinary proceedings.

Contract: Any contract for which the Clearinghouse provides Clearing Services subject to the Rules.

Contract Specifications: The terms and conditions of a Contract as published in the Rules of and posted by a Platform.

Control: means the power to exercise a controlling influence over the management or policies of a Person. Any Person who owns beneficially, directly or indirectly, more than 20% of the voting power in the election of directors of a corporation (or the election or appointment of the governing body of an Entity that is not a corporation), or more than 25% of the voting power in the election of directors of any other corporation (or other governing body) which directly or through one or more Affiliates owns beneficially more than 25% of the voting power in the election of directors of such corporation (or other governing body), shall be presumed to control such corporation or other entity absent a determination that it does not exercise a controlling influence. The terms “controlling” or “controlled” shall have meanings correlative to the foregoing.

Customer: has the meaning set forth in CFTC Regulation 1.3.

Customer Account: An account established and maintained by an FCM Clearing Member for the benefit of its Customers, in which customer funds, positions, and related transactions are held. Customer Accounts are carried by the FCM Clearing Member in accordance with applicable CFTC Regulations, and positions and collateral associated with such accounts are reflected in the Clearinghouse’s books and records through the FCM Clearing Member.

Default and Defaulting Member: For any Member, the Clearinghouse may find (but is not required to find) that the Member is in Default if the Clearinghouse determines any of the following: (i) that the Member fails to comply with the requirements of the Rules 5.1(1) or 5.1(10); (ii) failure to promptly discharge any Obligation owed to the Clearinghouse; (iii) failure to timely pay any dues, fees, fines, assessments, or penalties imposed under the Clearinghouse Rules; (iv) commencement of a voluntary or joint bankruptcy case, or filing a petition seeking liquidation, reorganization, or similar relief under applicable insolvency laws, or consenting to the appointment of a receiver, trustee, or similar official; (v) making an assignment for the benefit of creditors; (vi) becoming or admitting insolvency; (vii) commencement of an involuntary bankruptcy or insolvency proceeding; (viii) appointment of a receiver, trustee, or similar official for all or a substantial portion of the Member’s property; (ix) issuance of a warrant of attachment, execution, or similar process against the Member’s collateral; (x) filing of an application for a protective decree by the Securities Investor Protection Corporation; or (xi) initiation of default or suspension proceedings against the Member by any self-regulatory organization.

Designated Contract Market or DCM: A board of trade designated by the CFTC as a contract market under Section 5 of the CEA and in accordance with the provisions of Part 38 of CFTC Regulations.

Director: A member of the Board.

Disciplinary Action: Any inquiry, investigation, disciplinary proceeding, appeal from a disciplinary proceeding, summary imposition of fines, summary suspension or other summary action.

Disciplinary Panel: A panel appointed by the Regulatory Oversight Committee pursuant to Rule 2.7 to act in an adjudicative role and fulfill various adjudicative responsibilities and duties as described in Chapter 7.

Eligible Contract Participant or ECP: As set forth in Section 1a(18) of the CEA and as further defined in CFTC Regulation 1.3.

Emergency: Any occurrence or circumstance which, in the opinion of the Board, the Chief Executive Officer, the Chief Compliance Officer, or a designee duly authorized to issue such an opinion, requires immediate action, and which threatens, or may threaten, such things as the fair and orderly trading, liquidation, settlement, delivery, or the integrity of any Contract or the timely collection and payment of funds in connection with clearing and settlement by the Clearinghouse, including without limitation:

- 1) Any circumstance that may materially affect the performance of any Contract, including without limitation failure of the payment system, the bankruptcy or insolvency of any Member, or any actual, attempted or threatened theft or forgery of, or other interference with, the collateral or delivery or transfer thereof;
- 2) Any action taken by any United States or foreign regulatory, self-regulatory, judicial, arbitral, or governmental (whether national, state or municipal) or quasi- governmental authority, or any agency, department, instrumentality, or subdivision thereof; or other Person exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or any other entity registered with the Commission, board of trade, market or facility which may have a direct impact on trading, clearing, or settlement of any Contract cleared through the Clearinghouse;
- 3) Any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions in any Contract cleared through the Clearinghouse;
- 4) Any other circumstance that may have a severe, adverse effect upon the functioning of the Clearinghouse; or any manipulative or attempted manipulative activity.

Emergency Action: An action deemed to be necessary or appropriate to respond to an Emergency and taken pursuant to Rule 2.8.

Emergency Rule(s): Procedures or rules adopted in response to an Emergency pursuant to Rule 2.8.

Entity: means on a specified date any Person other than a natural person (e.g., a corporation, partnership, sole proprietorship or trust).

Entity Clearing Member: means any association, partnership, limited liability company, joint venture, trust or corporation that has been granted, and continues to have Clearing Privileges, or otherwise remains subject to the jurisdiction of the Clearinghouse under these Rules. For avoidance of doubt, an Entity Clearing Member shall not include an FCM Clearing Member.

Exchange: means a board of trade designated by the CFTC as a contract market under Section 5 of the CEA and in accordance with the provisions of Part 38 of CFTC Regulations which has contracted with the Clearinghouse to provide Clearing Services.

Expiration Time: means, in the case of a Fully-Collateralized Contract, the specified time on a specified designated date established by the Exchange as the expiration, or termination, of such Fully-Collateralized Contract.

Expiration Value: means the rate, level, amount, measure, or other value of the Underlying at Expiration.

Futures Commission Merchant, FCM, or FCM Clearing Member: A registered Futures Commission Merchant that has entered into a Clearing Member Agreement with the Clearinghouse and may be authorized by a Platform to carry customer accounts.

FCM Customer: A customer of an FCM.

FCM Customer Account: A Member Account established and maintained by the Clearinghouse for an FCM for its FCM Customers.

Fully Collateralized Contract: A Contract for which the Clearinghouse requires all positions to be fully prefunded, such that the Clearinghouse holds, at all times, sufficient funds to cover the maximum possible loss that a party could incur upon liquidation or expiration of the Contract.

ISV: means an independent software vendor.

Legal Entity Identifier or LEI: The identifying code that is required of each counterparty to any swap subject to the CFTC's jurisdiction and that is used in all recordkeeping and all swap data reporting pursuant to Part 45 of CFTC Regulations.

Market Participant Director: A Director who has been found by the Board to be a market participant and suitable to be a Director pursuant to Section 5b(c)(2)(Q) of the CEA.

Material Relationship: As set forth in Rule 2.2(7).

Maximum Downside Exposure: The Total Exposure less the minimum possible settlement value of the positions of a Member.

Member Property Account: An account established and maintained for a Member by the Clearinghouse on its books and records to which a financial asset is or may be credited in accordance with these Rules and such other procedures as the Clearinghouse may implement from time to time.

Member Agreement: The agreement between the Clearinghouse and any Person that the Person must agree to prior to the Person becoming a Member as either an FCM or Self-Clearing Member.

Member Portal: The vehicle through which Members send and receive messages to or from the Clearinghouse and other Members, update account and contact information, and submit deposit and withdrawal notifications. This can include a Platform, if Members send and receive messages via the Platform.

NFA: The National Futures Association.

Notice: A communication sent by or on behalf of the Clearinghouse to all Members in accordance with Rule 2.12.

Notice of Charges: As set forth in Rule 7.4.

Novation: The process whereby a party to a Contract entered into on an Exchange that clears through the Clearinghouse transfers all of its rights, liabilities, duties and obligations under the Contract to a new legal party other than the counterparty to the original Contract. The transferee accepts all of the transferor's rights, liabilities, duties and obligations under the original Contract.

Obligation: Any Rule, order or procedure issued by the Clearinghouse, including a Notice or other requirement implemented by the Clearinghouse under the Rules, as well as any contractual obligations

between, on the one hand, a Person, and on the other hand, the Clearinghouse, and any Transaction entered into by a Member, Authorized User, or FCM Customer.

OFAC: The Office of Foreign Assets Control of the U.S. Department of the Treasury.

Officer: An individual as set forth in Rule 2.3.

Operating Agreement: The Limited Liability Company Operating Agreement of the Clearinghouse, as it may be modified from time to time.

Open Contract Positions: shall mean any Contract submitted by a Participant to the Clearinghouse, and accepted by the Clearinghouse, for clearing that has not been designated as a Closed Contract Position, including (i) any long or short position in such Contract without a matching position that such first position can be offset against, (ii) any long or short position in such Contract with a matching position that such first position can be offset against but that is held open by such Participant under an approved hedge program and (iii) any long or short position in such Contract with a matching position that such first position can be offset against but that is held open under the applicable Contract Rules which defer offset until Contract expiration or another specified date.

Order: Either a bid or an offer for a Contract cleared by the Clearinghouse that is subject to these Rules.

Collateral Requirement: means the amount and type of assets required to be on deposit with the Clearinghouse in order to establish and maintain a position in a Contract, consistent with the Clearinghouse's fully collateralized model.

Participant: A Self-Clearing Member, an FCM, and/or an FCM Customer.

Payout Condition: means that the condition to the obligation of a Seller to pay the Settlement Amount under a Fully-Collateralized Contract has occurred on the Expiration Time.

Payout Criterion: of a Contract means the Expiration Value or set of Expiration Values that will cause that Contract to pay a Settlement Value (or proportion thereof) to position holders. The holder of a position in a Contract that receives a Settlement Value (or proportion thereof) is considered to be "in-the-money" while the holder of a position in a Contract that does not receive a Settlement Value is considered to be "out-of-the-money". For a Binary Contract, the Payout Criterion defines the Expiration Value(s) that will cause a Settlement Value to be paid to the holder of a long position in such Contract, or as specified in the Contract Rules of a Contract.

Person: As defined in Section 1a(38) of the CEA and in CFTC Regulation 1.3.

Clearinghouse Personnel: means Directors, Officers and employees of the Clearinghouse, and its contractors, consultants, secondees or leased employees, temporary employees, interns, and technology service providers.

Platform: The electronic trading facility operated by the Exchange that clears through the Clearinghouse that provides Members with the ability to execute Orders and Transactions from the interaction of multiple bids and multiple offers within a pre-determined, non-discretionary automated trade matching and execution algorithm.

Proprietary Data and Personal Information: Information identifying a natural person (e.g., name, e-mail address) or other data proprietary to any Person that discloses such Person's trade secrets, market positions and/or other business transactions, excluding Transaction Data.

Proprietary Information: As set forth in Rule 9.1.

Public Director: A Director who has been found by the Board to have no Material Relationship with the Clearinghouse in accordance with Rule 2.2(7).

Purchaser: means the Clearing Member that is the purchaser under a Contract. The Purchaser is the holder of a long position in such Contract.

Public Dissemination and Publicly Disseminate: To publish and make available Swap Transaction and Pricing Data in a non-discriminatory manner, through the Internet or other electronic data feed that is widely published (in a manner that is freely available and readily accessible to the public) and in machine-readable electronic format.

Regulatory Agency: Any government body, including the Commission, and any organization, whether domestic or foreign, granted authority under statutory or regulatory provisions to regulate its own activities and the activities of its members, and includes the Clearinghouse, any Exchange that clears through the Clearinghouse, and NFA.

Regulatory Oversight Committee: The committee of the Board constituted in accordance with Rule 2.6.

Reporting Counterparty: As set forth in Part 45 of CFTC Regulations and means the Member that is designated as the Reporting Counterparty for swap data reporting purposes.

Respondent: Any Person subject to a Disciplinary Action and such Person's legal counsel or representative.

Responsible Agent: shall have the meaning ascribed to it in Rule 3.10.

Rulebook: means the Clearinghouse Rulebook.

Rule(s): These rules of the Clearinghouse, as in effect and as may be amended from time to time.
Self-Clearing Member: A Person, other than an FCM, that has entered into the Member Agreement for Self-Clearing Members or an FCM Member clearing for its own proprietary account (as defined by CFTC Regulation 1.3).

Self-Clearing Member Account: A Member Account established and maintained by the Clearinghouse for a Self-Clearing Member, which includes a Member Account for an FCM Member clearing for its proprietary account (as defined by CFTC Regulation 1.3).

Self-Regulatory Organization: Except for purposes of Rule 2.4(1), as set forth in CFTC Regulation 1.3 and includes a DCO and DCM.

Seller: means the Clearing Member that is the seller under a Contract. The Seller is the holder of a short position in such Contract.

Settlement Amount: means, in the case of a Fully-Collateralized Contract, the fixed amount required to be paid by the Seller to the Purchaser on the Settlement Date if the Payout Condition is satisfied.

Settlement Bank: A depository approved by the Clearinghouse as an acceptable location for depositing Member funds.

Settlement Bank Business Day: A day a Settlement Bank is open for business.

Settlement Date: means the date established under the terms of a Contract as the date on which settlement of amounts owed with respect to such Contract must be paid.

Settlement Value: means the amount which the holder of a Contract may receive for a Contract held until the Expiration Time.

Swap: A Contract that is a swap as defined in Section 1a(47) of the CEA and as further defined by CFTC Regulation 1.3, and shall include Contracts that are options as set forth in the Contract Specifications.

Swap Transaction and Pricing Data: Any data required to be reported under Part 43 of CFTC Regulations.

Total Exposure: The aggregate potential payout obligation associated with a Member's cleared positions, calculated based on the maximum potential loss of such positions under the applicable Contract terms.

Trading Day: means any day on which an Exchange is open and available for the trading of Contracts and the Clearinghouse is open and available for the clearing of Contracts.

Trading Hours: The hours during which Orders may be entered according to the rules of a DCM that clears through the Clearinghouse, and as may be revised from time to time by such DCM.

Transaction: Any purchase or sale of any Contract made on or subject to the rules of a Platform or pursuant to the Rules.

Transaction Data: Orders, bids, offers and related information concerning Contracts executed subject to the Rules, together with all information and other content contained in, displayed on, generated by or derived from the Platform.

UCC: The Uniform Commercial Code as in effect in the State of New York.

USD or U.S. dollars: The lawful currency of the United States of America.

User ID: Has the meaning ascribed to it in Rules 3.6 and 3.7.

Underlying: The index, rate, risk, measure, instrument, differential, indicator, value, contingency, commodity, occurrence, or extent of an occurrence that shall determine the amount payable or deliverable under a Contract.

Website: The Clearinghouse home page and related web pages on the Internet, or a website to which the Clearinghouse home page has a link, or the website of a Platform.

Rule 1.2 Rules of Construction

For purposes of these Rules, the following rules of construction shall apply:

- 1) Any word conveying a singular number includes the plural number, where the context permits, and vice versa.
- 2) References to any Regulatory Agency include any successor Regulatory Agency.
- 3) If, for any reason, a Rule is found or determined to be invalid or unenforceable by a court of law, the Commission, or another governmental or quasi-governmental agency with supervisory authority, such Rule shall be considered severed from the Rules and all other Rules shall remain in full force and effect.
- 4) All references to time are to the local time in New York, New York unless expressly provided otherwise.

- 5) All terms defined in the UCC and not otherwise defined herein shall have the respective meanings accorded to them therein.
- 6) The Rules, and the rights and Obligations of the Clearinghouse and Members under the Rules, shall be governed by, and construed in accordance with, the laws of the State of New York without regard to any provisions of New York law that would apply the substantive law of a different jurisdiction. The State of New York is the “securities intermediary’s jurisdiction” within the meaning of Section 8-110(e) of the UCC for all purposes of the UCC.
- 7) In the event of a conflict between these Rules and a non-disclosure agreement between the Clearinghouse, or an Affiliate of the Clearinghouse, and a Member, these Rules shall govern.
- 8) In the event of a conflict between these Rules and the CEA or CFTC Regulations, the applicable provision of the CEA and/or CFTC Regulations shall govern.
- 9) All cross-references to Rules are for convenience only. A Rule’s meaning is not altered because of an out-of-date or erroneous cross-reference.
- 10) All references to CFTC Regulation parts and sections include successor parts and sections.
- 11) All ambiguities are to be resolved in favor of an interpretation that is consistent with Applicable Law.

Rule 1.3 Effect of Titles

The titles of these Rules have been inserted for convenience of reference only and shall not affect the meaning of these Rules.

Rule 1.4 Amendment of Rules

New Rules may be adopted, and existing Rules may be amended or repealed, by the Board of Directors. All such new Rules, amendments or repeals shall become effective on such date (after any required filing with, or approval thereof by, the CFTC) as may be determined by the Clearinghouse.

Rule 1.5 Contract Rules and Voidability

- 1) Notwithstanding any provision of these Rules to the contrary, the Contract Rules with respect to a particular Contract shall govern the applicability of these Rules to trading in such Contract and, in the event of any conflict between these Rules and the Contract Rules, the Contract Rules shall govern with respect to trading in the relevant Contract.
- 2) An agreement, Contract or Transaction will not be void, voidable, subject to rescission, or otherwise invalidated or rendered unenforceable as a result of: (1) a violation by the Clearinghouse or a Platform of the provisions of sections 5 or 5h of the CEA or Parts 37, 38, or 39 of CFTC Regulations; (2) any CFTC proceeding to alter or supplement a rule, term or condition under section 8a(7) of the CEA or to declare an Emergency under section 8a(9) of the CEA; or (3) any other proceeding the effect of which is to: (i) alter or supplement a specific term or condition or trading rule or procedures, or (ii) require the Clearinghouse or a Platform to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.

Chapter 2 Clearinghouse Governance

Rule 2.1 Ownership

The Clearinghouse is a Delaware limited liability company. The management and operation of the Clearinghouse is governed by the Board of Directors of the Clearinghouse and the Rules. Member status does not confer any equity interest or voting right in the Clearinghouse.

Rule 2.2 Board

- 1) The Board's mission is to oversee the Clearinghouse's business activities to ensure that the Clearinghouse continues to provide safe, secure, and efficient Clearing Services for the financial markets.
- 2) The Board shall, subject to applicable provisions in the Operating Agreement:
 - a) Be the governing body of the Clearinghouse;
 - b) Be constituted, and shall constitute its committees or subcommittees, to permit consideration of the views of market participants;
 - c) Have charge and control of all property of the Clearinghouse;
 - d) Provide and maintain infrastructure, facilities, and systems necessary to support its operations;
 - e) Adopt, amend or repeal any Rules, with the input of Officers and committees or subcommittees;
 - f) Have the power to act in Emergencies as detailed in Rule 2.8; and
 - g) Make certain that the Clearinghouse's design, rules, overall strategy, and major decisions appropriately reflect the legitimate interests of Members, customers of Members, and other relevant stakeholders.
- 3) To the extent consistent with other statutory and regulatory requirements on confidentiality and disclosure:
 - a) Major decisions of the Board shall be clearly disclosed to Members and other relevant stakeholders in the manner set forth in this Chapter, and to the Commission; and
 - b) Major decisions of the Board having a broad market impact shall be clearly disclosed to the public via publication on the Website.
- 4) Any authority or discretion by the Rules vested in any Officer or delegated to any committee or subcommittee shall not be construed to deprive the Board of such authority or discretion and, in the event of a conflict, the determination of the matter by the Board shall prevail.
- 5) A majority of the Directors serving on the Board, including at least one Public Director, shall constitute a quorum for the transaction of business of the Board. At all times when the Board is conducting business at a meeting of the Board, a quorum of the Board must be present at such meeting. The Board may act only by the decision of a majority of the Directors constituting a

quorum of the Board by vote at a meeting, by unanimous written consent without a meeting, or as otherwise set forth in the Operating Agreement.

- 6) The Board shall comprise the number of Directors set forth in the Operating Agreement, which shall include Public Directors and Directors in at least the number or percentage required under the CEA or CFTC Regulations, but in any event, (i) no less than two Directors shall be Public Directors, and (ii) no less than one Director shall be a member of the Board as a non-Public Director. Consistent with requirements under the CEA and CFTC Regulations, the Board shall include a market participant Director in at least the number or percentage required under the CEA or CFTC Regulations.
- 7) To qualify as a Public Director, an individual must be found, by the Board and on the record, to have no Material Relationship, as defined below, with the Clearinghouse. The Board must make such finding at the time the Public Director is elected and as often as necessary in light of all circumstances relevant to such Public Director, but in no case less than annually. A Material Relationship is one that reasonably could affect the independent judgment or decision-making of the Director. The Board need not consider previous service as a Director of the Clearinghouse to constitute a Material Relationship. A Director shall be considered to have a Material Relationship with the Clearinghouse if any of the following circumstances exist or have existed within the past year:
 - a) Such Director is or was an Officer or an employee of the Clearinghouse, or an officer or an employee of an Affiliate of the Clearinghouse; or
 - b) Such Director is or was a Member or director, an officer, or an employee of a Member.
- 8) If any of the immediate family of a Director, i.e., spouse, parents, children, and siblings, in each case, whether by blood, marriage, or adoption, or any person residing in the home of the Director or that of his or her immediate family, has a Material Relationship as defined above, then that Material Relationship is deemed to apply to such Director.
- 9) The Board shall have procedures, as may be adopted by the Board from time to time, to remove a Director where the conduct of such Director is likely to be prejudicial to the sound and prudent management of the Clearinghouse.
- 10) The Board shall review its performance and that of its individual Directors annually and shall consider periodically using external facilitators for such review.
- 11) Each Director is entitled to indemnification pursuant to the Operating Agreement with respect to matters relating to the Clearinghouse.

Rule 2.3 Officers

- 1) The Board shall appoint a Chief Executive Officer, Chief Compliance Officer, Chief Risk Officer and such other officers of the Clearinghouse as it may deem necessary or appropriate from time to time.
- 2) The Chief Compliance Officer must:
 - a) Have the background and skills appropriate for fulfilling the responsibilities of the position;

- b) Be an individual who would not be disqualified from registration under Section 8a(2) or 8a(3) of the CEA;
 - c) Report to, and have his or her compensation approved by, the Board or, in the event that the Board delegates its authority to the Chief Executive Officer, the Chief Executive Officer
 - d) Fulfill his or her duties as required pursuant to CFTC Regulations, including, but not limited to, the preparation and submission of an annual compliance report as described in CFTC Regulation 39.10(c)(3), and assist the Regulatory Oversight Committee in its preparation of an annual report; and
 - e) Be responsible for managing the day-to-day regulatory compliance functions of the Clearinghouse.
- 3) The Chief Risk Officer must:
- a) Have the background and skills appropriate for fulfilling the responsibilities of the position;
 - b) Be an individual who would not be disqualified from registration under Section 8a(2) or 8a(3) of the CEA; and
 - c) Fulfill his or her duties as required pursuant to CFTC Regulations, including, but not limited to, implementing the risk management framework, including the procedures, policies and controls described in CFTC Regulation 39.13(b), and for making appropriate recommendations to the derivatives clearing organization's risk management committee or board of directors, as applicable, regarding the derivatives clearing organization's risk management functions.
- 4) Any Officer may also be a director, officer, partner or employee of the Clearinghouse or of any of its Affiliates, subject to disclosure and resolution of conflicts of interest.
- 5) The Officers shall have such powers and duties in the management of the Clearinghouse as the Board may prescribe from time to time, subject to any limitations set forth in the Operating Agreement.
- 6) Each Officer is entitled to indemnification pursuant to the Operating Agreement with respect to matters relating to the Clearinghouse.

Rule 2.4 Eligibility and Fitness

- 1) An individual may not serve as a Director or Officer, or serve on a committee, subcommittee, or panel established by the Board, or as the Chief Compliance Officer, if such Person:
- a) Within the prior three years has been found, by a final decision of a court of competent jurisdiction, an administrative law judge, the CFTC, or any Self-Regulatory Organization, to have committed a disciplinary offense;
 - b) Within the prior three years has entered into a settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense;

- c) Is currently suspended from trading on a Designated Contract Market or a Swap Execution Facility, is suspended or expelled from membership in a Self-Regulatory Organization, is serving any sentence of probation, or owes any portion of a fine or penalty imposed pursuant to either:
 - i) A finding by final decision of a court of competent jurisdiction, an administrative law judge, the CFTC or any Self-Regulatory Organization that such person committed a disciplinary offense; or
 - ii) A settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense;
 - d) Is currently subject to an agreement with the CFTC or Self-Regulatory Organization not to apply for registration with the CFTC or for membership in the applicable Self-Regulatory Organization;
 - e) Is currently, or has had imposed on him or her within the past three years a CFTC revocation or suspension of registration in any capacity for any reason,, or has been convicted within the past three years of any of the felonies listed in Section 8a(2)(D)(ii) through (iv) of the CEA;
 - f) Is currently subject to a denial, suspension or disqualification from serving on a Disciplinary Panel, arbitration panel or governing board of any Self-Regulatory Organization as that term is defined in Section 3(a)(26) of the Securities Exchange Act of 1934; or
 - g) Is subject to a statutory disqualification pursuant to Section 8a(2) and 8a(3) of the CEA.
- 2) For purposes of this Rule 2.4, the terms “disciplinary offense,” “final decision” and “settlement agreement” have the meaning given those terms in CFTC Regulation 1.63(a).
 - 3) A Person who is found to possess any of the foregoing criteria shall be deemed to be subject to an “eligibility disqualification”.
 - 4) An individual may not serve as a Director or Officer, or serve on a committee or subcommittee established by the Board, or hold a 10 percent or more ownership interest in the Clearinghouse, if the individual has been informed by the Clearinghouse in a written notice under Chapter 7 of these Rules that the person has committed a disciplinary offense, for the duration of the time specified in the notice.
 - 5) Any Director, Officer, member of a committee established by the Board, and any individual nominated to serve in any such role, shall immediately notify the Chief Executive Officer if such individual is subject to one or more of the criteria in Rule 2.4(1). Prior to nomination to the Board, each individual shall certify he or she is not disqualified pursuant to Rule 2.4(1). Upon appointment, each Director, Officer, and member of a committee shall provide to the Clearinghouse, where applicable, changes in registration information within 30 days and certification of compliance accordingly. The Clearinghouse shall verify information supporting Board compliance with eligibility criteria.
 - 6) To serve as a Director, an individual must possess the ability to contribute to the effective oversight and management of the Clearinghouse, taking into account the needs of the Clearinghouse and such factors as the individual’s experience, perspective, skills and knowledge of the industry in which the Clearinghouse operates.

- 7) A Director or Officer must meet any qualifications set forth from time to time in the Operating Agreement.
- 8) An individual may not serve on any Disciplinary Panel or the Appeals Committee during any proceeding affecting or concerning such individual, to be determined in a reasonable manner by the Clearinghouse's Chief Compliance Officer.
- 9) If the Clearinghouse determines that an individual subject to this Rule 2.4 no longer meets the criteria set forth in Rule 2.4(1), the Clearinghouse shall inform the CFTC of such determination. The Clearinghouse shall provide to the CFTC, upon request, an individual's certification of compliance with the criteria set forth in Rule 2.4(1).
- 10) The Clearinghouse shall submit to the CFTC within thirty days after each Board election, a list of the Board's Directors, the Member interests they represent (if any), and how the composition of the Board meets the requirements of CFTC Regulation 1.64(b) and the Clearinghouse's Rules and procedures.

Rule 2.5 Committees and Subcommittees

- 1) The Clearinghouse's governance structure, including the roles and responsibilities of the Board, Regulatory Oversight Committee, and other committees, as well as escalation and documentation requirements for overridden decisions, is set forth in the Clearinghouse Rulebook. These frameworks are designed to ensure appropriate oversight, independence, and accountability in accordance with applicable CFTC requirements, including CFTC Regulation 39.10 relating to governance, independence, and oversight.
- 2) Each committee and subcommittee shall assist in the supervision, management and control of the affairs of the Clearinghouse within its particular area of responsibility, subject to the Operating Agreement and the authority of the Board.
- 3) Subject to the authority of the Board, each committee and subcommittee shall determine the manner and form in which its proceedings shall be conducted. A majority of the members serving on a committee or subcommittee, including at least one Public Director, shall constitute a quorum for the transaction of business of a committee or subcommittee. Each committee and subcommittee may act only by the decision of a quorum, by vote at a meeting or by unanimous written consent without a meeting. The Board has the authority to overrule the decisions of any committee or subcommittee.
- 4) In the event the Board rejects a recommendation or supersedes an action of the Regulatory Oversight Committee, the Chief Risk Officer or the Chief Compliance Officer, the Clearinghouse shall maintain documentation detailing: (1) the recommendation or action of the Regulatory Oversight Committee, the Chief Risk Officer or the Chief Compliance Officer, as the case may be; (2) the rationale for such recommendation or action; (3) the rationale of the Board for rejecting such recommendation or superseding such action; and (4) the course of action that the Board decided to take contrary to such recommendation or action.
- 5) In the event that the Regulatory Oversight Committee rejects a recommendation or supersedes an action of any of its subcommittees, the Clearinghouse shall maintain documentation detailing (1) the recommendation or action of the subcommittee; (2) the rationale for such recommendation or action; (3) the rationale of the Regulatory Oversight Committee for rejecting such recommendation or superseding such action; and (4) the course of action that the Regulatory Oversight Committee decided to take contrary to such recommendation or action.

Rule 2.6 Regulatory Oversight Committee

- 1) The Regulatory Oversight Committee shall be a standing committee of the Board consisting of only Public Directors, as appointed by the Board from time to time. No less than two Public Directors shall serve on the Regulatory Oversight Committee.
- 2) Each member of the Regulatory Oversight Committee shall serve for a term of one calendar year from the date of his or her appointment or for the remainder of his or her term as a Public Director, and until the due appointment of his or her successor, or until his or her earlier resignation or removal, with or without cause, as a member of the Regulatory Oversight Committee or as a Public Director. A member of the Regulatory Oversight Committee may serve for multiple terms.
- 3) The mission of the Regulatory Oversight Committee is to ensure that the Clearinghouse performs its function and mission in a manner that is fully compliant with the CEA, CFTC Regulations, and Applicable Law, to oversee the Clearinghouse's risk management program as it relates to clearing risk and the Clearinghouse's default management program, and to ensure that the Clearinghouse adequately controls risk.
- 4) The Regulatory Oversight Committee shall oversee the Clearinghouse's regulatory program on behalf of the Board. The Board shall delegate sufficient authority, dedicate sufficient resources, and allow sufficient time for the Regulatory Oversight Committee to fulfill its mandate. The Regulatory Oversight Committee shall make such recommendations to the Board that will, in its judgment, best promote the interests of the Clearinghouse. The Regulatory Oversight Committee shall also have such other powers and perform such other duties as set forth in the Rules and as the Board may delegate to it from time to time.
- 5) The Regulatory Oversight Committee shall appoint individuals to the Disciplinary Panel in accordance with these Rules, Applicable Law, and the composition requirements of the Disciplinary Panel. The Committee shall appoint at least one person who would not be disqualified from serving as a Public Director to serve as the Chairperson of the Disciplinary Panel.
- 6) The Regulatory Oversight Committee shall supervise the Chief Compliance Officer, who will report directly to the Regulatory Oversight Committee and to the Board or, if the Board delegates such authority, to the Chief Executive Officer.
- 7) Without limiting the generality of the foregoing, the Regulatory Oversight Committee shall have the authority to:
 - a) Monitor the regulatory program of the Clearinghouse for sufficiency, effectiveness, and independence;
 - b) Oversee all facets of the regulatory program, including trade practice and market surveillance, audits, examinations, and other regulatory responsibilities with respect to Members (including ensuring compliance with financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and the conduct of investigations;
 - c) Review the size and allocation of the regulatory budget and resources, and the number, hiring, termination, and compensation of regulatory personnel;
 - d) Recommend changes that would ensure fair, vigorous, and effective regulation;

- e) Review all regulatory proposals prior to implementation to make certain that the proposals appropriately reflect the legitimate interests of Members and other relevant stakeholders and advise the Board as to whether and how such changes may impact regulation; and
- f) Exercise any other functions expressly assigned to it in these Rules or under Applicable Law

Rule 2.7 Disciplinary Panel and Appeals Committee

- 1) The Disciplinary Panel shall be:
 - a) A standing committee consisting of at least five members, including at least one person who would not be disqualified from serving as a Public Director who will serve as the Chairperson, as appointed from time to time. At least one member of the Disciplinary Panel must be a Member or an employee of a Member. The Board may establish more than one Disciplinary Panel. The Regulatory Oversight Committee will appoint individuals for membership on the Disciplinary Panel. Each Disciplinary Panel shall include members with sufficient differing experience and Member interests so as to ensure fairness and to prevent special treatment or preference for any Person.
 - b) Responsible for conducting hearings, rendering decisions, and imposing sanctions with respect to any Disciplinary Action. The Disciplinary Panel shall also have such other powers and perform such other duties as set forth in the Rules and as the Board may determine from time to time.
- 2) Each member of the Disciplinary Panel shall serve for a term of two calendar years from the date of his or her appointment, and until the due appointment of his or her successor, or until his or her earlier resignation or removal, with or without cause, as a member of the Disciplinary Panel. A member of the Disciplinary Panel may serve for multiple terms.
- 3) At all meetings of the Disciplinary Panel, a majority of the members present shall constitute a quorum for the transaction of business.
- 4) The Appeals Committee shall be:
 - a) A standing committee, the members of which shall be appointed by the Chairperson of the Board on an as-needed basis, provided that, at all times the Appeals Committee shall include at least one Public Director who shall serve as the Chairperson of the Appeals Committee.
 - b) Responsible for conducting hearings of appeals of decisions of the Disciplinary Panel, rendering decisions of such appeals, and imposing sanctions with respect to such appeals. The Appeals Committee shall also have such other powers and perform such other duties as set forth in these Rules and as the Board may determine from time to time.
- 5) Each member of the Appeals Committee shall serve for a term of one calendar year from the date of his or her appointment or for the remainder of his or her term as a Public Director, as applicable, and until the due appointment of his or her successor, or until his or her earlier resignation or removal, with or without cause, as a member of the Appeals Committee or as a Public Director. A member of the Appeals Committee may serve for multiple terms.

- 6) At all meetings of the Appeals Committee, a majority of the members present shall constitute a quorum for the transaction of business.

Rule 2.8 Emergency Rules

- 1) During an Emergency, the Clearinghouse may implement temporary emergency procedures and rules pursuant to Rule 2.8, subject to the applicable provisions of the CEA and CFTC Regulations.
- 2) The Chief Compliance Officer or designee or, if the Chief Compliance Officer or designee is unavailable, the Chief Executive Officer or his or her designee, are authorized to determine whether an Emergency exists and whether Emergency Rules or Emergency Actions are warranted. Emergency Rules may require or authorize the Clearinghouse, the Board, any committee of the Board or any Officer to take Emergency Actions. Emergency Actions shall be designed to preserve the integrity of the Clearinghouse's clearing and settlement functions. Such action may include, but are not limited to, the following actions:
 - a) Suspend or curtail clearing of any Contract traded on a DCM that clears through the Clearinghouse, or limit such clearing to Transactions that result in liquidations;
 - b) Provide alternative settlement mechanisms for any Contract cleared by the Clearinghouse (including by altering the settlement terms or conditions or fixing the settlement price);
 - c) Order the transfer or liquidation of open positions in any Contract cleared by the Clearinghouse; provided that if a Contract is fungible with a contract on another Platform in addition to the Clearinghouse, the liquidation or transfer of open interest in such Contract will be ordered only as directed, or agreed to, by CFTC staff or the CFTC;
 - d) Impose or modify position limits, price limits, and intraday market restrictions; or
 - e) Any other action, if so directed by the CFTC.
- 3) Before taking an Emergency Action, the effects of such Emergency Action on markets underlying the Contract(s) affected by such Emergency Action, on markets that are linked or referenced to such Contracts and similar markets on other trading venues, or any potential conflicts of interest shall be considered and documented as required under Rule 2.10.
- 4) Before any Emergency Rule may be adopted and enforced, the Regulatory Oversight Committee shall approve the implementation of such Emergency Rule at a duly convened meeting. If the Chief Compliance Officer, or his or her designee, or if the Chief Compliance Officer or his or her designee is unavailable, the Chief Executive Officer, or his or her designee, determines that Emergency Rules must be implemented with respect to an Emergency before a meeting of the Regulatory Oversight Committee can reasonably be convened, then the Chief Compliance Officer, or his or her designee, or if the Chief Compliance Officer or his or her designee is unavailable, the Chief Executive Officer, or his or her designee, shall have the authority, without Board or committee action, to implement any Emergency Rules with respect to such Emergency that he or she deems necessary or appropriate to respond to such Emergency. In such circumstances, the Chief Compliance Officer, or his or her designee, or if the Chief Compliance Officer or his or her designee is unavailable, the Chief Executive Officer, or his or her designee, must convene a meeting of the Regulatory Oversight Committee to ratify the actions taken by the Chief Compliance Officer, or his or her designee, or the Chief Executive Officer, or his or her designee, as soon as practicable. Whenever the Clearinghouse implements an Emergency Rule or

takes an Emergency Action, a duly Authorized Representative of the Clearinghouse, where possible, will inform Members through a Notice.

- 5) The Clearinghouse will use reasonable efforts to notify the CFTC and the Board prior to implementing, modifying or terminating an Emergency Rule. If such prior notification is not possible or practicable, the Clearinghouse will notify the CFTC and the Board as soon as possible or reasonably practicable, but in any event no longer than 24 hours after implementing, modifying or terminating an Emergency Rule.
- 6) Upon taking any Emergency Action, the Clearinghouse will document the decision-making process related to such Emergency Action, including the process for minimizing conflicts of interest, the extent to which the Clearinghouse considered the effect of its Emergency Action on the Underlying markets and on markets that are linked or referenced to the contract market and similar markets on other trading venues, and reasons for using emergency authority under this Rule 2.8. Such documentation will be maintained in accordance with Rule 2.11.
- 7) The Chief Compliance Officer, or his or her designee, or if the Chief Compliance Officer or his or her designee is unavailable, the Chief Executive Officer, or his or her designee, may determine that an Emergency has been reduced sufficiently to allow the Clearinghouse to resume normal functioning, in which case any Emergency Actions responding to such Emergency may be terminated and a duly Authorized Representative of the Clearinghouse will inform Members through a Notice.
- 8) Members must promptly notify the Clearinghouse of any circumstance that may give rise to a declaration of an Emergency.

Rule 2.9 Restrictions on Certain Persons Who Possess Material Non-Public Information

- 1) No Clearinghouse Personnel and no member of any committee or panel established by the Board of Directors of the Clearinghouse shall use or disclose any material non-public information obtained in connection with the performance of his or her official duties, for any purpose other than the performance of his or her official duties.
- 2) No Clearinghouse Personnel and no member of any committee or panel established by the Board of Directors of the Clearinghouse shall disclose to any other Person, material non-public information, however obtained (including, without limitation, material non-public information obtained by an employee or agent of the Clearinghouse in connection with such employee or agent's employment or agency, as the case may be), if such Person could reasonably expect that such information might assist another Person in trading any Contract or related contract or financial instrument.
 - a) Clearinghouse Personnel are prohibited from disclosing to any other Person any material non-public information which such Clearinghouse Personnel obtains as a result of his or her employment at the Clearinghouse where such employee has or should have a reasonable expectation that the information disclosed may assist another Person in trading any commodity interest; however, this Rule does not prohibit disclosures made in the course of an employee's duties, or disclosures made to another self-regulatory organization, court of competent jurisdiction or representative of any agency or department of the federal or state government acting in his or her official capacity.

- 3) No Clearinghouse Personnel shall trade directly or indirectly in any Contract listed on a Platform or cleared by a designated contract market, swap execution facility, or clearing organization other than the Clearinghouse, either for their own accounts or for the accounts of any other Persons.
- a) With the Chief Executive Officer's written approval, paragraph (2) of this Rule does not prohibit Clearinghouse Personnel from participating in a pooled investment vehicle or other investment vehicle whose investments are directed by a third-party advisor if the Clearinghouse Personnel has no direct or indirect control over transactions executed by the investment vehicles.
 - b) The Chief Executive Officer may exempt, in whole or in part, an Officer and the Clearinghouse employee from the prohibitions of this Rule, if such Officer and Clearinghouse employee applies in writing for an exemption and demonstrates to the satisfaction of the Chief Executive Officer that the Officer and Clearinghouse employee meets all of the following criteria:
 - i) Clearinghouse Personnel do not have access to material non-public information in the course of his or her employment;
 - ii) Clearinghouse Personnel agrees to provide the Clearinghouse with account statements and other documents relevant to the Clearinghouse Official's buying and selling of Contracts directly or indirectly; and
 - iii) Clearinghouse Personnel agrees to inform the Chief Executive Officer in writing of any material change that may affect the Clearinghouse Official's qualification for an exemption within one (1) Business Day of the change.
 - c) No Clearinghouse Personnel, no Clearinghouse Affiliates, and no member of any committee or panel established by the Board of Directors of the Clearinghouse shall trade in any Contract or related contract or financial instrument on the basis of material non-public information of the Clearinghouse. For the avoidance of doubt, any Person who, by virtue of their role with, or as an Affiliate of, the Clearinghouse, acquires material non-public information of the Clearinghouse is prohibited from trading on the basis of such material non-public information, or disclosing such material non-public information except as consistent with their official duties.
 - d) No Participant shall trade for such Participant's own account, or for or on behalf of any account, in any commodity interest, on the basis of any material non-public information that such Participant knows was obtained in violation of CFTC Regulation 1.59.
- 4) For purposes of this Rule 2.9, the term "material non-public information" shall be deemed to mean "material information" that is "non-public information" as such terms are defined in CFTC Regulation 1.59 and the term "commodity interest" shall have the meaning ascribed to it in CFTC Regulation 1.59 and the term "pooled investment vehicle" shall have the meaning set forth in CFTC regulation 1.59(a).

Rule 2.10 Conflicts of Interest

- 5) The Clearinghouse provides Clearing Services for 365Prediction, LLC, and is an affiliate of 365Prediction, LLC. In addition, the Clearinghouse's employees also work for 365Prediction, LLC. This affiliation and the existence of employees who work for both the Clearinghouse and an Exchange may present conflicts of interest. The Clearinghouse maintains policies and procedures

designed to identify, manage, and mitigate potential conflicts of interest arising from these relationships.

6) Named Party in Interest Conflict

- a) No member of the Board, any Board Committee, or the Disciplinary Panel shall participate in such body's deliberations or voting in any matter involving a named party in interest where such member:
 - i) Is the named party in interest in the matter;
 - ii) Is an employer, employee or fellow employee of a named party in interest;
 - iii) Is associated with a named party in interest through a "broker association" as defined in CFTC Regulation 156.1;
 - iv) Has any other significant, ongoing business relationship with a named party in interest, excluding relationships limited to Contracts cleared through the Clearinghouse; or
 - v) Has a family relationship (i.e., the member's spouse, parents, children, and siblings, in each case, whether by blood, marriage, or adoption, or any person residing in the home of the member or that of his or her immediate family) with a named party in interest.
- b) Prior to consideration of any matter involving a named party in interest, each member of the deliberating body shall disclose to the Chief Compliance Officer whether such member has one of the relationships listed above with a named party in interest.
- c) The Chief Compliance Officer shall determine whether any member of the relevant deliberating body is subject to a conflicts restriction under this Rule 2.10. Such determination shall be based upon a review of the following information:
 - i) Information provided by such member pursuant to clause (2) above; and
 - ii) Any other source of information that is held by and reasonably available to the Clearinghouse.

7) Financial Interest in a Significant Action Conflict

- a) No member of the Board, any Board Committee or the Disciplinary Panel shall participate in the body's deliberations or voting on any significant action if such member knowingly has a direct and substantial financial interest in the result of the vote based upon either Clearinghouse or non-Clearinghouse positions that could reasonably be expected to be affected by the action.
- b) Prior to consideration of any significant action, each member of the deliberating body who does not choose to abstain from deliberations and voting shall disclose to the Chief Compliance Officer any information that may be relevant to a determination of whether such member has a direct and substantial financial interest in the result of the vote.
- c) The Chief Compliance Officer shall determine whether any member of the relevant deliberating body who does not choose to abstain from deliberations and voting is subject

to a conflicts restriction under this Rule 2.10 based on a review of the totality of the circumstances.

- d) Any member who would otherwise be required to abstain from deliberations and voting pursuant to clause (1) above may participate in deliberations, but not in voting, if the deliberating body, after considering the factors specified below, determines that such participation would be consistent with the public interest (e.g. if the member has significant expertise and background that provides useful context); provided, however, that before reaching any such determination, the deliberating body will fully consider the information specified in clause (3) above which is the basis for such member's direct and substantial financial interest in the significant action that is being contemplated. In making its determination, the deliberating body shall consider:
 - i) Whether such member's participation could unduly influence the outcome of the deliberations;
 - ii) Whether such member's participation in the deliberations is necessary to achieve a quorum; and
 - iii) Whether such member has unique or special expertise, knowledge, or experience in the matter being considered.
- 8) The minutes of any meeting to which the conflicts determination procedures set forth in this Rule apply shall reflect the following information:
 - a) The names of all members who participated in such meeting;
 - b) The name of any member who voluntarily recused himself or herself or was required to abstain from deliberations or voting on a matter and the reason for the recusal or abstention, if stated;
 - c) The information that was reviewed for each member of the relevant deliberating body; and
 - d) Any determination made in accordance with this Rule 2.10..

Rule 2.11 Recordkeeping

- 1) The Clearinghouse shall keep, or cause to be kept, complete and accurate books and records of accounts and activities of the Clearinghouse, including all books, records and other documentation required to be maintained pursuant to the CEA and CFTC Regulations.
- 2) The Clearinghouse shall retain all such books and records in accordance with the CEA and CFTC Regulations.
- 3) The Clearinghouse will provide information required to be maintained or provided pursuant to the CEA and CFTC Regulations to the Commission, the U.S. Securities and Exchange Commission, the U.S. Department of Justice or any representative of a prudential regulator as authorized by the Commission, upon request, in each case in the form and manner required under these Rules, and/or the CEA and CFTC Regulations.

Rule 2.12 Information-Sharing Agreements

- 1) The Clearinghouse may enter into information-sharing agreements or other arrangements or procedures to coordinate surveillance with other markets on which financial instruments related to the Contracts cleared through the Clearinghouse trade. As part of any information-sharing agreements or other arrangements or procedures adopted pursuant to this Rule, the Clearinghouse may:
 - a) Provide market surveillance reports to other markets;
 - b) Share information and documents concerning current and former Members or their Authorized Users with other markets;
 - c) Share information and documents concerning ongoing and completed investigations with other markets; or
 - d) Require its current or former Members or their Authorized Users to provide information and documents to the Clearinghouse at the request of other markets with which the Clearinghouse has an information-sharing agreement or other arrangements or procedures.
- 2) The Clearinghouse may enter into any information-sharing agreements or other arrangements or procedures, including an information-sharing agreement or other arrangement or procedure similar to that described above in paragraph (A), with any Person or body (including but not limited to a Regulatory Agency or Swap Data Repository) if the Clearinghouse considers such agreement, arrangement or procedures to be in furtherance of the Clearinghouse's purpose or duties under these Rules or Applicable Law.
- 3) The Clearinghouse may provide information to a duly authorized foreign governmental authority, as directed by the CFTC, in accordance with an information-sharing agreement or other arrangements or procedures executed with such foreign governmental authority or the CFTC.

Rule 2.13 Public Information

- 1) The Clearinghouse shall make public on a daily basis the information required to be disclosed under CFTC Regulation 39.21(c)(5), including information on settlement prices, volume, open interest, and opening and closing ranges for actively traded Contracts.
- 2) Except as provided herein, the Clearinghouse shall publish on its Website a Notice with respect to each addition to, modification of, or clarification of, the Rules, and any Contract Specification prior to the earlier of:
 - a) The effective date thereof; and
 - b) The filing of such change with the Commission (or concurrent with such filing).

Chapter 3 Member Rules

Rule 3.1 Jurisdiction, Applicability of Rules

- 1) Any Person, including a Member and/or an Authorized User, directly or indirectly initiating, executing, and/or clearing a Transaction on the Clearinghouse or subject to these Rules, and any

Person for whose benefit such a Transaction has been initiated, executed, and/or cleared, including an Authorized Representative, any Responsible Agent, any employee or agent of a Member, and any other Person accessing the Clearinghouse: (i) agrees to be bound by and comply with these Rules, the Obligations and Applicable Law, in each case to the extent applicable to such Person; (ii) expressly consents and submits to the jurisdiction of the Clearinghouse with respect to any and all matters arising from, related to, or in connection with, the status, actions or omissions of such Person; and (iii) agrees to assist the Clearinghouse in complying with the Clearinghouse's legal and regulatory Obligations, and to cooperate with the Clearinghouse, the CFTC and any Regulatory Agency with jurisdiction over the Clearinghouse in any inquiry, investigation, audit, examination or proceeding. Any amendments to, or the repeal of, or the adoption of a Rule, shall, upon the effective date of such amendment, repeal or adoption, as applicable, be binding on all Persons subject to the jurisdiction of the Clearinghouse, regardless of when such Person became subject to the Clearinghouse's jurisdiction, and on all Contracts as applicable.

- 2) All Clearinghouse Members are also subject to the jurisdiction of the CFTC regardless of location, nationality, citizenship, or place of incorporation.
- 3) For purposes of these Rules, references to an "Authorized Representative" shall be deemed to include the Responsible Agent designated pursuant to Rule 3.10. To the extent of any conflict between the roles of an Authorized Representative and a Responsible Agent, the Responsible Agent shall have the authority and responsibilities set forth in Rule 3.10.

Rule 3.2 Member Agreements, Eligibility Criteria, Classifications and Privileges

The Clearinghouse will provide fair and open access to Members.

- 1) Each Member shall have the right to access electronically its proprietary account, provided that such Member is eligible for and has applied for and received Clearing Privileges.
- 2) To be eligible to clear transactions through the Clearinghouse, Members must: (i) satisfy all requirements generally applicable to Members under these Rules; (ii) satisfy such financial criteria as may be prescribed by the Clearinghouse from time to time; (iii) have sufficient technical and operational capabilities to fulfill any other obligations applicable to Members or their Authorized Users as may from time to time be required by the Clearinghouse; (iv) satisfy such other requirements or criteria as may from time to time be adopted by the Clearinghouse; and (v) execute a Clearing Member Agreement.
- 3) An applicant to be an FCM Clearing Member must satisfy the following criteria and represent that it:
 - a) Is a corporation, limited liability company, partnership or other entity approved by the Clearinghouse, duly organized and in good standing in its state of organization;
 - b) Is registered with the CFTC as a Futures Commission Merchant;
 - c) Maintains back-office facilities staffed with experienced and competent personnel or has entered into a facilities management agreement in form and substance acceptable to the Clearinghouse; and

- d) Maintains minimum regulatory capital in excess of the greater of (1) \$5,000,000 or (2) any applicable capital requirements imposed on applicant by the CFTC, another Government Agency or Self- Regulatory Organization.
- 4) An applicant to be a Self-Clearing Member must satisfy the following criteria and represent that it:
- a) Is at least 18 years of age and has attained the age of majority in their state and/or country of residence;
 - b) Is not subject to a statutory disqualification under sections 8a(2) or 8a(3) of the CEA;
 - c) Has a mechanism that is acceptable for transferring funds to and receiving funds from the Self-Clearing Member's Account; and
 - d) Satisfies such other requirements or criteria as may from time to time be adopted by the Clearinghouse.
- 5) An applicant to be an Entity Clearing Member must satisfy the following criteria, and must represent to the Clearinghouse that it:
- a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and has all licenses necessary to carry on its business as now being conducted;
 - b) It has the legal authority and is duly authorized and empowered to become an Entity Clearing Member and to effect transactions in Contracts on an Exchange, or to effect transactions in any other relevant contracts, agreements or transactions, cleared through the Clearinghouse;
 - c) It is not subject to a statutory disqualification under sections 8a(2) or 8a(3) of the CEA;
 - d) It has a mechanism that is acceptable for transferring funds to and receiving funds from the Entity Clearing Member's Account;
 - e) It has appointed one or more Authorized User(s) pursuant to Rule 3.9; and
 - f) It satisfies such other requirements or criteria as may from time to time be adopted by the Clearinghouse.

Rule 3.3 Applications

- 1) Each application to become a Clearing Member shall be in such form as may from time to time be prescribed by the Clearinghouse. Each applicant to become a Clearing Member shall promptly update the application materials if any of the information provided therein becomes inaccurate or incomplete. the Clearinghouse shall act upon, and approve or disapprove, any such application without unreasonable delay. Each applicant to become a Clearing Member shall:
- a) submit to the Clearinghouse executed forms of the Clearing Member Agreement and all application documents; and
 - b) agree in written or electronic form to abide by these Rules and Applicable Law.

- 2) Applicants for Membership status of the Clearinghouse may withdraw their applications at any time without prejudice or without losing their right to apply at a future time.
- 3) Clearinghouse staff may, in its sole discretion, approve, deny, or condition the Clearing Privileges of any applicant as Clearinghouse staff deems necessary or appropriate.
 - a) In the event that Clearinghouse staff decides to decline or condition the Clearing Privileges of an application for admission as a Member, or to terminate a Person's status as Member, Clearinghouse staff shall notify such Person thereof and the Notice will specify the basis for the Clearinghouse's decision. Such Person may, within 28 Business Days, request that the Compliance Department reconsider the determination.
 - b) Within 28 Business Days of receiving a request for reconsideration, the Compliance Department shall confirm, reverse, or modify the original determination and shall promptly notify such Person accordingly. The Compliance Department may, in its sole discretion, schedule a hearing (in person or by teleconference), request additional information from such Person or establish any other process that it believes is necessary or appropriate to consider the request for reconsideration.
 - c) The Compliance Department's decision is the final action of the Clearinghouse and is not subject to appeal within the Clearinghouse.
- 4) Upon approval by the Clearinghouse of an applicant as a Member, the Member shall continue to comply with all applicable eligibility criteria in this Rule or as the Clearinghouse may require, and shall have Clearing Privileges, which the Clearinghouse may revoke, amend, or expand in accordance with these Rules.
- 5) The Clearinghouse will apply Member access criteria in a fair and non-discriminatory manner that is not anti-competitive.

Rule 3.4 Participant Accounts

- 1) Entity Clearing Members and Self-Clearing Members
 - a) The Clearinghouse will establish an account on its books and records in the name and on behalf of Entity Clearing Members and Self-Clearing Members. The Entity Clearing Member or Self-Clearing Member will be responsible for all clearing activity, transactions and other activity in or through its Account and for all amounts due with respect to any such clearing activity, transactions or other activity, including but not limited to required amounts of collateral and related payment obligations. Each Entity Clearing Member or Self-Clearing Member and its Authorized Users shall have the right to access the Clearing System.
 - b) The Clearinghouse has the authority to establish more than one Account per Entity Clearing Member or Self-Clearing Member, if the Clearinghouse deems it to be appropriate.
 - c) All funds deposited by an Entity Clearing Member or Self-Clearing Member with the Clearinghouse on behalf of the Entity Clearing Member or Self-Clearing Member's own account shall be held in a Member Property Account. Such funds from Self-Clearing Members shall be segregated by the Clearinghouse and treated as belonging to Self-Clearing Members.

- 2) FCM Clearing Members
 - a. All Customer funds deposited by an FCM Clearing Member with the Clearinghouse on behalf of Customers protected by CFTC Regulation 1.20 shall be held in accordance with the CEA and CFTC Regulation 1.20 in an account identified as “Customer Segregated.” Such Customer funds shall be segregated by the Clearinghouse and treated as belonging to the Customers of the FCM Clearing Member.
 - b. Pursuant to this Rule, an FCM Clearing Member shall satisfy the segregation acknowledgment letter requirements of the CEA and CFTC Regulation 1.20 for Customer deposits held at the Clearinghouse.

Rule 3.5 Member Obligations

- 1) Each Member consents to the Clearinghouse providing information related to Know Your Customer, Customer Due Diligence, or Anti-Money Laundering to Settlement Banks or potential Settlement Banks.
- 2) Each Member has an ongoing obligation to notify the Clearinghouse of any material changes or events that may affect its ability to comply with these Rules, its financial condition, or its operational capabilities. Such notification obligations include, but are not limited to, the specific events set forth in this Rule 3.5.
- 3) Each Member must diligently supervise all activities of the Member’s employees and/or agents, including all Authorized Users and Authorized Representatives, and Responsible Agents relating to Orders, Transactions and communications with the Clearinghouse. Any violation of these Rules by any employee, Authorized Representative or Authorized User of a Member may constitute a violation of the Rules by such Member.
- 4) Each Member must provide all reports required by Applicable Law to the Clearinghouse, including, but not limited to, the reports required under CFTC Regulation 39.12(a)(5). Such reports must be made available by the Member to the CFTC when so required, and the Clearinghouse will also make such reports available to the CFTC when so required.
- 5) Each Member must provide to the CFTC all reports required to be so provided under Applicable Law.
- 6) Each Member must have the ability to fulfill collateral, payment, and delivery obligations imposed by the Clearinghouse including reliably funding and receiving payments through verified banking channels in accordance with clearing timelines.
- 7) Each Member must have the capability to receive electronic communication.
- 8) Each Member must have the ability to process expected volumes and values of transactions cleared by such Member within required time frames, including at peak times and on peak days.

Rule 3.6 Member and Authorized User Obligation to Cooperate

- 1) Each Member and Authorized User must comply with these Rules, applicable provisions of the CEA, and relevant CFTC Regulations. Each Member and Authorized User also must cooperate promptly and fully with the Clearinghouse, its agents, and the CFTC in any investigation, call for information, inquiry, audit, examination, or proceeding. Such cooperation shall include providing

the Clearinghouse with access to information on the activities of such Member and/or Authorized User in any referenced market that provides the underlying prices for any market. If any Member or Authorized User fails to satisfy any Obligation, the Member or Authorized User may be subject to discipline under these Rules, and may also be subject to civil or criminal prosecution.

- 2) Each Member and Authorized User consents to allow the Clearinghouse to provide all information the Clearinghouse has about the Member or Authorized User, including the Member's and Authorized User's trading activity, to the CFTC or any other Regulatory Agency, law enforcement authority, or judicial tribunal, including (as may be required by information-sharing agreements or other arrangements or procedures or other contractual, regulatory, or legal provisions) foreign regulatory or self-regulatory bodies, law enforcement authorities, or judicial tribunals, without Notice to the Member and Authorized User.
- 3) Each Member and Authorized User, upon request by the Clearinghouse or any Regulatory Agency, must promptly respond to any requests for information, including by providing any necessary information for the Clearinghouse to perform any of the functions described in the CEA.

Rule 3.7 Notices Required of Entity Clearing Members and Self-Clearing Members

- 1) Each Clearing Member must promptly notify the Clearinghouse in writing upon becoming aware of any of the following specific events:
 - a) that the Clearing Member, any of the Clearing Member's officers, employees, agents or any of the Clearing Member's Authorized Users has had access or trading privileges or clearing privileges suspended, or Clearing Member status is denied, in any commodity, futures, securities, or swaps exchange, or any other trading platform or regulatory self-regulatory agency;
 - b) that the Clearing Member, any of the Clearing Member's officers, employees, agents or any of the Clearing Member's Authorized Users has been convicted of, pled guilty or no contest to, or entered a plea agreement to, any felony in any domestic, foreign or military court;
 - c) that the Clearing Member, any of the Clearing Member's officers, employees, agents or any of the Clearing Member's Authorized Users has been convicted of, plead guilty or no contest to, or entered a plea agreement to a misdemeanor in any domestic, foreign or military court which involves:
 - i) embezzlement, theft, extortion, fraud, fraudulent conversion, forgery, tax evasion, counterfeiting, false pretenses, bribery, gambling, racketeering, or misappropriation of funds, securities or properties; or
 - ii) any transaction in or advice concerning swaps, futures, options on futures, leveraged transactions or securities;
 - d) that the Clearing Member, any of the Clearing Member's officers, employees, agents or any of the Clearing Member's Authorized Users has been subject to, or associated with a firm that was subject to regulatory proceedings before any governmental or regulatory agency;

- e) that the Clearing Member, any of the Clearing Member's officers, employees, agents or any of the Clearing Member's Authorized Users is currently a party to any investigation or proceeding, the resolution of which could result in an event described in paragraphs (a)(i) through (a)(iv) above;
 - f) of any other material change in any information contained in the Clearing Member's application to become a Clearing Member on the Clearinghouse;
 - g) of becoming subject to early warning reporting under CFTC Regulation 1.12;
 - h) of becoming the subject of a bankruptcy petition, receivership proceeding, or the equivalent, or being unable to meet any financial obligation as it becomes due; or
 - i) of information that concerns any financial or business developments that may materially affect the Clearing Members' ability to continue to comply with participation requirements.
- 2) Upon the receipt of such notice(s) in paragraph 1), the Clearinghouse may take any action it determines to be appropriate, in its sole discretion with respect to such Clearing Member, including but not limited to the revocation of such Clearing Member's Clearing Privileges.
 - 3) Upon the receipt of a notice of the type set forth in this Rule, the Clearinghouse shall review the continuing eligibility of the Clearing Member for clearing eligibility and take any or all of the actions as permitted by these Rules.

Rule 3.8 FCM Customer Obligations

- 1) FCM Customers must follow the rules and requirements imposed by the FCM.
- 2) FCM Customers must accept and be bound by these Rules.

Rule 3.9 Authorized Users

- 1) Each Entity Clearing Member shall be required to appoint one or more individuals to act as its Authorized User or Authorized Users, as applicable. Individual Clearing Members may act as their own Authorized User or may appoint a third party as his or her Authorized User, pursuant to a power of attorney or other instrument, in a form prescribed or approved by the Clearinghouse, providing such third party with authority to supervise clearing activities with respect to the Clearing Member's Account. The third party to which an individual Clearing Member grants authority may be a related person of the Clearing Member, or any unaffiliated party.
- 2) Each Authorized User with authority to supervise clearing activities with respect to the Clearing Member's Account (i) must be a natural person; (ii) must be at least 18 years of age; and (iii) must satisfy any other requirements as may be prescribed by the Clearinghouse from time to time.
- 3) Without limiting the foregoing, each Authorized User must consent, in a form satisfactory to the Clearinghouse, to abide by the Rules and Applicable Law prior to accessing the Clearing System, and each Entity Clearing Member will ensure on an ongoing basis that (i) none of its Authorized Users is subject to a disqualification pursuant to any Applicable Law (unless an appropriate exemption has been obtained with respect thereto), (ii) each of its Authorized Users will be technically proficient, (iii) each of its Authorized Users will conduct its business in a fair and

equitable manner, and (iv) each of its Authorized Users will conduct its business in accordance with the Rules.

- 4) The Clearinghouse may withdraw or suspend the registration of any Authorized User if the Clearinghouse determines that:
 - a) an Authorized User has failed, or has caused the Entity Clearing Member to fail, to comply with the Rules of the Clearinghouse;
 - b) an Authorized User is not properly performing the responsibilities assigned under these Rules, including, where applicable, those of a Responsible Agent of a Entity Clearing Member;
 - c) an Authorized User has failed to comply with the conditions set forth in paragraph (c) of this Rule;
 - d) an Authorized User's trading privileges on any Exchange have been revoked; or
 - e) it is in the best interests of maintaining a fair and orderly market to suspend or revoke such Authorized User's access.
- 5) If the Entity Clearing Member withdraws or the Clearinghouse suspends the registration of any Authorized User, the Entity Clearing Member must ensure that such Authorized User does not submit any transactions for clearing into the Clearing System.
- 6) The registration of an Authorized User will be withdrawn upon the written request of either the Authorized User or the Entity Clearing Member for which an Authorized User is registered. Such written request shall be submitted in a manner prescribed by the Clearinghouse. Until such written request is received and processed by the Clearinghouse, or an Authorized User's registration is suspended or withdrawn pursuant to paragraph (d) of this Rule, a Entity Clearing Member will be responsible for all activity of such Authorized User(s) related to the Clearinghouse.

Rule 3.10 Responsible Agents

- 1) Each Member that is an entity shall at all times have at least one employee or agent (each, a "Responsible Agent") designated as its administrator with respect to the clearing of Contracts by the Authorized Users of such Member. Each Member that is a natural person shall serve as its own Responsible Agent. The Clearinghouse may prescribe such qualification standards for Responsible Agents as it may from time to time determine necessary or advisable. Among other things, each Responsible Agent shall have full control over access to the clearing system by the Member (including its Authorized Users) represented by such Responsible Agent. The Responsible Agent(s) of any Member shall also be solely responsible for any and all communications between the Clearinghouse and such Member, and any and all notices or other communications sent to such Responsible Agent(s) by the Clearinghouse shall be binding on such Member. Each Member shall notify the Clearinghouse promptly of any change regarding any of its Responsible Agents.
- 2) Each Member shall (i) be solely responsible for controlling and monitoring the use of all User IDs and passwords to access the clearing system (issued to its Authorized Users and Responsible Agent(s) by the Clearinghouse), (ii) provide such User IDs and passwords only to its Authorized Users and Responsible Agent(s), and (iii) shall notify the Clearinghouse promptly upon becoming aware of any unauthorized disclosure or use of the User IDs or passwords or access to the

Clearinghouse or of any other reason for deactivating User IDs or passwords. Each Member, on behalf of itself and its Authorized Users, shall be bound by any actions taken through the use of its User IDs and passwords (other than any such actions resulting from the fault or negligence of the Clearinghouse), including the execution of transactions, whether or not such actions were authorized by such Member or any of its supervised persons or executed by anyone other than an Authorized User of such Member.

- 3) Notwithstanding any other provisions of these Rules, each Authorized User shall have his or her own unique User IDs and passwords that may be used only by such Authorized User and solely for the purpose of submitting transactions for clearing in respect of the Account for which the Authorized User has Clearing Privileges.

Rule 3.11 Clearing Members and Authorized User Access

- 1) During the Member application process, an applicant, to become a Member, will be required to register a user identification ("User ID") and password for each Authorized Representative and Authorized User.
- 2) The Member, acting through its Responsible Agent(s), will be required to enter the User ID and password to log onto and access clearing system. Each time the Member submits its unique User ID and password to the Clearinghouse in order to log onto the clearing system, the Member affirms that it understands, and agrees to be bound by, these Rules and other policies and procedures of the Clearinghouse, as amended.
- 3) Each Authorized User shall maintain a unique User ID and password, distinct from the User ID and password of the Member but identified as related to the Member with which the Authorized User is associated. The Member will only provide the User IDs to its officers, employees or agents who are designated as, and authorized as, Authorized Users. The Clearinghouse reserves the right to revoke or modify a User ID at any time without prior notice.
- 4) Each Responsible Agent shall control the issuance, use, and revocation of User IDs and passwords for Authorized Users in accordance with Rule 3.10.
- 5) The Member will be responsible for protecting its User IDs and passwords, and with respect to itself, the User ID(s) and password(s) of its Authorized User(s), from improper disclosure. In addition, a Member may not knowingly or negligently permit any Person not authorized by the Clearinghouse and by the Member to use the User ID and password to access the secure portion of the Clearinghouse website, including the clearing system. The Member is required to immediately notify the Clearinghouse if it knows, or has reason to believe, that its User ID or the User ID and/or password of any Authorized User have been disclosed to any Person not authorized by the Clearinghouse and the Member to use such User ID and/or password.
- 6) The Member authorizes the Clearinghouse to rely upon any instruction received through use of its User IDs without further inquiry, and the Clearinghouse shall not be liable to the Member for any actions taken based on instructions received through such User IDs, even if such instructions were not authorized by the Member. The Member will be liable for any and all costs, expenses, losses or other amounts that may result from actions taken, including transactions cleared through the Clearinghouse, by any person, authorized or not, using its User ID and password or the User ID and/or password of any Authorized User. The Clearinghouse will not be responsible in any way for unauthorized transactions in a Member's Account.

- 7) The Member is responsible for contracting with an internet service provider through which it will access the Clearinghouse website and for having a backup service provider if reasonably necessary. The Member is also responsible for maintaining an internet connection speed adequate for its needs. The Clearinghouse will not be responsible in any way for any Transactions submitted for clearing that were delayed because of failure of the Member's internet service provider or slowness of its internet connection speed. No communication from a Member will be deemed to have been received by the Clearinghouse until that communication is logged by the Clearinghouse server.

Rule 3.12 Dues, Fees, Charges, and Payments by Members

- 1) The Clearinghouse shall have the authority to establish, modify, and impose dues, fees, charges, and other amounts payable by Members in connection with Clearing Privileges, clearing services, account activity, and any other services provided by the Clearinghouse. The Clearinghouse does not currently impose membership dues. Such fees and charges may include, without limitation:
 - a) Transaction and clearing fees;
 - b) Settlement-related fees;
 - c) Fees associated with deposits and withdrawals;
 - d) Fees for inactive accounts;
 - e) Charges for non-sufficient funds or failed payments; and
 - f) Any other administrative, operational, or service-related fees deemed appropriate by the Clearinghouse.
- 2) The Clearinghouse will publish a fee schedule, and any revisions thereto, on its Website and/or through Notices. Members are deemed to have notice of and agree to such dues, fees, and charges, and any changes thereto, upon publication.
- 3) All dues, fees, charges, and other amounts payable by a Member shall be due and payable at such times as specified by the Clearinghouse. The Clearinghouse may, in its discretion, establish minimum payment thresholds, withdrawal requirements, or other payment-related conditions.
- 4) Each Member agrees to pay, and authorizes the Clearinghouse to debit from the Member's Account or, where applicable, from accounts maintained with respect to Customer positions in accordance with Applicable Law, any dues, fees, charges, or other amounts owed to the Clearinghouse, including:
 - a) Fees and charges associated with clearing activities;
 - b) Costs or expenses incurred by the Clearinghouse in connection with the Member's activities, including banking or payment processing charges;
 - c) Any fines or penalties imposed pursuant to these Rules; and
 - d) Any other amounts owed by the Member to the Clearinghouse under these Rules or Applicable Law.
- 5) If a Member fails to pay any dues, fees, charges, or other amounts when due, the Clearinghouse may take such actions as it deems necessary or appropriate, including:

- a) Suspending, limiting, conditioning, or revoking Clearing Privileges;
 - b) Offsetting amounts owed against funds held in the Member's Account;
 - c) Imposing additional charges or administrative fees; and
 - d) Pursuing collection of outstanding amounts through third parties or legal action, as permitted by Applicable Law.
- 6) The Clearinghouse will apply all dues, fees, and charges in a fair and non-discriminatory manner consistent with its obligations under Applicable Law.
 - 7) The Clearinghouse will provide Members with at least ten (10) Business Days' notice prior to the implementation of any new category of dues, fees, or charges, or any material increase in existing dues, fees, or charges, unless otherwise required or permitted by Applicable Law.

Rule 3.13 Recording of Communications

The Clearinghouse may record conversations and retain copies of electronic communications between Clearinghouse Officials, on one hand, and Members, Authorized Users, Authorized Representatives or other agents, on the other hand. Members, Authorized Users, Responsible Agents, Authorized Representatives and other agents hereby consent to any such recordings, which recordings may be retained by the Clearinghouse in such manner and for such periods of time as the Clearinghouse may deem necessary or appropriate. The Clearinghouse shall retain such records for the retention periods necessary to comply with CFTC Regulations or such longer period as the Clearinghouse deems appropriate. Nothing in this Rule shall be construed to impose upon the Clearinghouse any obligation to maintain oral recordings pursuant to CFTC Regulation 1.35 or any similar requirement applicable to other categories of registrants.

Rule 3.14 Member Accounts

- 1) The Clearinghouse shall establish and maintain a Member Account (or, if applicable, Member Accounts) for each Member, and the Clearinghouse undertakes to treat the Member for whom each Member Account is maintained as entitled to exercise the rights that comprise each financial asset which is credited to such Member Account. However, the Clearinghouse shall have complete and absolute discretion as to whether any particular financial asset is accepted by it for credit for any Member Account.
- 2) The Clearinghouse shall have only such duties and obligations with respect to each Member Account as are set forth in Article 8 of the UCC or otherwise mandated by Applicable Law. Each Member acknowledges and agrees that the Clearinghouse is not a fiduciary for any Member.

Rule 3.15 Termination of Member Status

- 1) To voluntarily terminate Member status, a Member must deliver to the Clearinghouse a Withdrawal Notice. Such Withdrawal Notice shall be accepted immediately upon receipt and shall be effective upon such Member's fulfillment of its obligations under paragraph (3) below, or at such other time as the Clearinghouse may determine in its reasonable discretion is desirable for the efficient operation of the Clearinghouse. Platforms may offer Members the ability to request termination through the Platform, and the Platform will communicate the request to the Clearinghouse.

- 2) When the Clearinghouse accepts a Withdrawal Notice from a withdrawing Member, all rights and privileges of such Member terminate (including, without limitation, Clearing Privileges) except as set forth in paragraph (3) below. The accepted request to terminate Member status shall not affect the rights of the Clearinghouse under these Rules or relieve the former Member of such Member's Obligations under the Rules before such withdrawal. Notwithstanding the accepted request to terminate Member status, the terminated Member remains subject to the Rules, the Obligations and the jurisdiction of the Clearinghouse for acts done and omissions made while a Member, must comply with paragraph (3) below, must cooperate in any Disciplinary Action under Chapter 7 as if the terminated Member were still a Member, and must comply with requests for information from the Clearinghouse regarding activities and Obligations while a Member for at least five years following its withdrawal.
- 3) A Member that has requested termination of its Member status pursuant to paragraph (1) above (i.e., a withdrawing Member), or whose status as a Member has been terminated by the Clearinghouse pursuant to Chapter 7, is referred to collectively in this Rule 3.15 as a terminated Member and shall be subject to the following requirements, Obligations and provisions:
 - a) A terminated Member must use all reasonable endeavors to close out or transfer all open positions in its Member Account(s), as applicable, prior to the Withdrawal Close-Out Deadline Date;
 - b) After the Withdrawal Notice Date, a terminated Member may only be entitled to submit Transactions for clearing which it can demonstrate have the overall effect of reducing open positions or risks to the Clearinghouse, whether by hedging, transferring, terminating, liquidating or otherwise closing out open Contracts;
- 4) Any request to terminate Member status pursuant to paragraph (1) above shall be irrevocable by the Member and membership may only be reinstated pursuant to a new application for membership following the close-out or transfer of all open Contracts in such Member's Member Account(s).
- 5) Following termination of all open positions to which a withdrawing Member was party to in relation to its Member Account(s), as applicable, and satisfaction in full by such withdrawing Member of all Obligations in respect thereof, the Clearinghouse shall return any funds or assets of the withdrawing Member held by the Clearinghouse, as well as any other assets of the withdrawing Member not previously returned on the date that is sixty (60) days after the withdrawing Member's Withdrawal Date, or such earlier date as is determined by the Clearinghouse.
- 6) Notwithstanding anything in these Rules:
 - a) The Clearinghouse may at its discretion return amounts due to the withdrawing Member by way of transfer or return of U.S. dollars to the withdrawing Member; and
 - b) The Clearinghouse may make partial payment of any amounts due, prior to the time specified in this Rule 3.15.
- 7) This Rule 3.15 shall not apply to a Defaulting Member.

Chapter 4 FCMs and FCM Customers

Rule 4.1 FCMs

- 1) An FCM must execute a Member Agreement with the Clearinghouse, adhere to the terms of that agreement, accept and be bound by these Rules, and at all times act in a manner that is consistent with these Rules.
- 2) An FCM must be a member (or equivalent term) of a Platform.
- 3) FCMs may establish accounts as permitted by the rules of any Platform where they carry customer accounts, including but not limited to a trading account, error account, test account, and an account used for liquidating FCM Customer positions pursuant to this Rule, or an equivalent account with a similar purpose.
- 4) To the extent permitted under the rules of a Platform, if an FCM Customer account reflects a deficit due to operational or processing circumstances, the FCM may take action, including liquidating some or all of the FCM Customer's positions.
- 5) FCMs must, on an annual basis, submit their business continuity and disaster recovery plans to the Clearinghouse's Compliance Department for review. FCMs must ensure that their plans coordinate with the Clearinghouse's business continuity and disaster recovery plan in an adequate manner to enable effective resumption of daily processing, clearing, and settlement of Transactions following a disruption. As part of this requirement, FCMs must coordinate with the Clearinghouse's periodic, synchronized testing of its business continuity and disaster recovery plan. FCMs must also adopt, adhere to, and enforce risk management and other policies and procedures in accordance with CFTC Regulation 1.11. FCMs must promptly provide, upon request by the Clearinghouse or the CFTC, information related to the risk management policies, procedures and practices of the FCM. At a minimum, the FCM's policies and procedures must address the following:
 - a) The FCM's business and products offered for clearing;
 - b) Monitor risks associated with proprietary trading;
 - c) Limit the impact of significant market moves through the use of tools such as stress testing or position limits;
 - d) Maintain the ability to monitor account activity on an intraday and overnight basis;
 - e) Ensure order entry systems, including third party systems connected to any exchange, include the ability to set automated credit controls or position limits or requiring a firm employee to enter orders; and defining sources of liquidity for increased settlement obligations;
 - f) Maintain an adequate accounting system, internal accounting controls, and procedures for safeguarding Customer and firm assets, where applicable. This includes, but is not limited to, the following:
 - i) Preparation and maintenance of complete and accurate reconciliations for all accounts;
 - ii) Resolution of reconciling items in a timely manner; and

- iii) Prevention of a material inadequacy as defined in CFTC Regulation 1.16(d)(2)
 - g) File any information requested by the Clearinghouse within the time period specified in the request and shall, at all times have the ability to provide to the Clearinghouse in an acceptable form a complete set of back-office system reports (including, at a minimum, the equity run, open position listing, day trade listing, cash adjustments listing and debit equity listing, if applicable). Such reports shall be available to the Clearinghouse no later than 8:00 a.m. on the Business Day following the report date;
 - h) At all times, have the ability to provide promptly to the Clearinghouse upon request a listing of each of its Customers' method of access to the Exchange, including front end applications and network connections; and
 - i) Ensure that all trades placed by Customers of the FCM Clearing Member are fully collateralized.
- 6) FCM Clearing Members must participate in coordinated testing of their disaster recovery and business continuity policies and procedures at least annually. An FCM Clearing Member can fulfill this requirement by participating in an industry-wide testing event in which the Clearinghouse or the Exchange also participates.
 - 7) The Clearinghouse may, in its sole discretion, approve, deny, revoke, or condition any application to become an FCM as it deems necessary or appropriate to the discharge of its legal and regulatory obligations. The Clearinghouse may, in its sole discretion and as it deems necessary or appropriate to the discharge of its legal and regulatory obligations or to preserve the integrity of the Clearinghouse's clearing systems, pause or terminate access for an FCM.
 - 8) FCMs must cooperate with the Clearinghouse, the CFTC, and any related governmental authority in any inquiry, investigation, audit, examination or proceeding relating to the FCM's business carrying customer accounts with the Clearinghouse, including disclosing the identity and contact information of FCM Customers as relevant (such information will be walled off by the Clearinghouse solely for the purpose of its compliance with its legal and regulatory obligations, and cannot be utilized for any commercial purpose). FCMs must keep complete and accurate books and records as required to be maintained pursuant to the CEA and CFTC Regulations for the time period, and in the manner, specified by CFTC Regulations. FCMs must make such books and records available for inspection by the Clearinghouse, the CFTC or other governmental authority.
 - 9) FCMs must perform all required know-your-customer, customer due diligence, and anti-money laundering obligations with regard to their FCM Customers.
 - 10) FCMs must not engage in practices that may cause degradation of the clearing systems or the Platform and its systems. FCMs must also not engage in acts or practices contrary to the purposes of the Clearinghouse, nor commit any act or engage in any conduct that is likely to bring the Clearinghouse into disrepute. These prohibited practices include, but are not limited to, (i) engaging in any activity that presents a risk of harm to the Clearinghouse, other FCMs, a Platform, or the public, and (ii) engaging in conduct or practices that are detrimental to the best interests of the Clearinghouse or that adversely affect the integrity of the Clearinghouse or its systems.
 - 11) All FCM Customer funds received by the Clearinghouse from an FCM to purchase, guarantee, secure, or settle positions of FCM Customers, and all money accruing to such FCM Customers as a result thereof, shall be segregated as Cleared Swaps Customer Collateral in accordance with all

relevant provisions of the CEA and CFTC Regulations. This Rule is intended to support compliance with the requirements set forth in CFTC Regulations 1.20(d)(1) and 22.5 that an FCM must obtain a written acknowledgement from the Clearinghouse that such FCM Customer funds are being held in accordance with such provisions.

- 12) Each FCM must require each FCM Customer to accept and be bound by these Rules prior to allowing the FCM Customer to trade on a Platform.
- 13) Each FCM must enforce eligibility criteria on its FCM Customers to ensure that it accepts as FCM Customers only Persons who are permitted under Applicable Law to participate on a Platform and with the Clearinghouse. Each FCM must also require its FCM Customers to inform it of any change to the FCM Customer's eligibility.
- 14) FCMs shall comply with all Applicable Law, including but not limited to CFTC Regulations 1.10, 1.12, and 1.20 - 1.32 and Part 22 of CFTC Regulations.

Rule 4.2 FCM Customers

- 1) FCM Customers accept and agree to be bound by the relevant FCM's rules and these Rules.
- 2) As required in CFTC Regulations 39.15(d), an FCM Customer may request to transfer the FCM Customer's positions from an FCM to an account with a different FCM, or the FCM Customer's own account, but only if the following conditions are met:
 - a) The FCM Customer instructs the FCM to make the transfer;
 - b) The FCM Customer is not currently in Default to the FCM; and
 - c) The other FCM has consented to the transfer.

Rule 4.3 FCM Accounts

- 1) Each FCM must establish with the Clearinghouse the accounts and financial relationships set forth in the Member Agreement.
- 2) All FCM Customer funds deposited by FCM Members with the Clearinghouse are held in a Cleared Swaps Customer Account and are treated as Cleared Swaps Customer Collateral.
- 3) As described in this Rule and Rule 3.4, and as required by CFTC Regulations 1.20 and 22.3, Cleared Swaps Customer Collateral must remain segregated from all other funds.
- 4) Each FCM must monitor funding levels in the FCM's account and ensure that there is sufficient collateral to support predicted future trading volume.
- 5) All FCM Member proprietary funds deposited by an FCM Member with the Clearinghouse are held in the Self-Clearing Member Account of that FCM Member and are treated as member collateral, unless such funds are deposited as a residual interest in an FCM Customer account in which case they are treated as Cleared Swaps Customer Collateral.

Rule 4.4 Segregation of Customer Funds and Assets for FCM Clearing Members

- 1) Customer funds shall be held and segregated in accordance with applicable provisions of the CEA and CFTC Regulations, including, as applicable, Regulations 1.20 and Part 22. Each FCM Clearing Member must comply with the requirements of the CEA and CFTC Regulations regarding segregation of customer funds and Cleared Swaps Customer Collateral, including, but not limited to, CFTC Regulations 1.20 through 1.30, 1.32, and 30.7 and Part 22 of the CFTC Regulations.
- 2) The Clearinghouse shall comply with the applicable segregation requirements of Section 4d of the CEA and CFTC Regulations with respect to customer funds held by the Clearinghouse.
- 3) As used in this Rule 4.4, “customer funds” has the same meaning as in CFTC Regulation 1.3.

Rule 4.5 FCM Omnibus Accounts

- 1) Each FCM Clearing Member shall maintain a complete list of all omnibus and carrying broker accounts maintained on its books. Such list shall be promptly provided to the Clearinghouse upon request. Information for each such account must include account name, number and address, and classification of the account as either Customer or house.
- 2) Each FCM Clearing Member carrying an omnibus account shall at all times reflect in its records the gross long and short positions held in such omnibus account.
- 3) Each FCM Clearing Member that maintains an omnibus account with another FCM Clearing Member shall also bear financial responsibility to the Clearinghouse for that omnibus account.

Rule 4.6 FCM Financial Requirements

- 1) Unless otherwise provided, all FCMs must comply with the requirements set forth in CFTC Regulations 1.10, 1.12, 1.17, and 1.18 (this provision does not exclude the requirement for FCMs, as Members, to comply with all Applicable Law). This includes, but is not limited to, the following:
 - a) Maintenance of minimum regulatory capital in excess of the greater of (i) \$5,000,000, and (ii) the capital requirements imposed by any Government Agency, Self-Regulatory Organization or other examining authority or regulator to which it is subject by statute, regulation or agreement. The Clearinghouse may prescribe additional capital requirements with respect to any FCM Clearing Member.;
 - b) Submission of a timely Form 1-FR, FOCUS Report, and supplementary information schedule, in the form prescribed by the CFTC, including an unaudited monthly Form 1-FR-FCM or FOCUS Report as of the FCM Clearing Member’s fiscal year-end, within the time set forth in CFTC Regulation 1.10. A FCM Clearing Member must include with its Form 1-FR-FCM or FOCUS Report a Statement of Income (Loss) for the period between the date of the most recent 1-FR- FCM or FOCUS or, at the option of the FCM Clearing Member, the most recent certified 1FR- FCM or FOCUS filed with the Clearinghouse and the date for which the report is made;

- c) Submission of a certified Form 1-FR-FCM or FOCUS Report as of the Clearing Member's fiscal year-end within the time requirements set forth in CFTC Regulation 1.10. A FCM Clearing Member must include with its certified Form 1-FR-FCM or FOCUS Report, a reconciliation from the certified Form 1-FR-FCM or FOCUS Report to the monthly Form 1 FR-FCM or FOCUS Report as of the same date or a statement that no material differences were noted;
- 2) The Clearinghouse may prescribe additional accounting, reporting, and other financial and/or operational requirements, and FCM Clearing Members must comply with such requirements.
- 3) Financial statement filing requirements under this Rule must be met through the Clearinghouse-approved electronic transmission, except for certified Form 1-FR-FCMs or FOCUS Reports, which shall be submitted in physical form. FCM Clearing Members must provide any reports or information pertaining to their financial resources to the CFTC upon request.
- 4) The specific requirements in this Rule do not diminish in any way the obligation of FCMs to satisfy the requirements applicable to all Members to provide all required reports set forth in Chapter 4.

Rule 4.7 Notices Required by FCM Clearing Members

- 1) In addition to the notices detailed in Rule 3.5, an FCM Clearing Member must notify the Clearinghouse in writing of:
 - a. Any reduction in adjusted net capital as reported on its Form 1-FR or net capital as reported on its FOCUS Report from the most recent filing of such report;
 - b. Any failure of the Clearing Member to remain in compliance with the minimum capital or "early warning" requirements of any Government Agency or Self-Regulatory Organizations, or such Clearing Member knows or has reason to believe that its adjusted net capital has fallen below the Clearinghouse's minimum capital requirements;
 - c. Any damage to, or failure or inadequacy of, the systems, facilities or equipment of the Clearing Member used to perform the Clearing Member's obligations under or in connection with Contracts or Customer Accounts that is not promptly remedied;
 - d. If such Clearing Member fails to comply with additional accounting, reporting, financial and/or operation requirements prescribed by the Clearinghouse;
 - e. Any failure to maintain funds in any Customer Account sufficient to comply with applicable CFTC Regulations;
 - f. Any planned material reduction in equity capital (and, in all cases, any planned reduction in equity capital that would cause a reduction in excess adjusted net capital, excess net capital or excess liquid capital of 30% or more), including the incurrence of a contingent liability which would materially affect the Clearing Member's capital or other representations contained in the latest financial statement submitted to the Clearinghouse should such liability become fixed; provided that no such notice shall be required in the case of a reduction in capital resulting from (1) the repayment or prepayment of subordinated liabilities for which notice has been given pursuant to applicable CFTC or SEC requirements, or (2) any futures or securities transaction in the ordinary course of business between a Clearing Member and any affiliate where the Clearing Member makes payment to or on behalf of such affiliate for such transaction and then receives payment from such affiliate for such transaction within two Business Days from the date of the transaction;
 - g. Any change in the FCM Clearing Member's fiscal year or its public accountants;

- h. If any Person directly or indirectly becomes a 5% direct owner of the FCM Clearing Member;
 - i. Any changes in its name, business address, its 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 Clearinghouse; or
 - j. Any external audit findings (including reviews by the Clearing Member's designated Self-Regulatory Organization).
- 2) In addition to the notifications, forms, and reports required by CFTC Regulations, an FCM must furnish copies of the notifications, forms, and reports to both the Clearinghouse and the Platform within twenty-four hours of submission to the CFTC.
 - 3) An FCM Clearing Member must provide at least thirty days' prior written notice to the Clearinghouse, unless it is impractical to do so—in which case it shall provide written notice as promptly as possible, where applicable, of:
 - a. Any proposed change in the organizational or ownership structure or management of the FCM Clearing Member, including any merger, combination or consolidation between the FCM Clearing Member and another Person;
 - b. The assumption or guaranty by the FCM Clearing Member of all or substantially all of the liabilities of another Person in connection with a direct or indirect acquisition of all or substantially all of that Person's assets;
 - c. The sale of all or a significant portion of the FCM Clearing Member's business or assets to another Person;
 - d. A change in the direct or indirect beneficial ownership of 20% or more of the FCM Clearing Member;
 - e. Any change in the FCM Clearing Member's systems provider or facilities manager used by the FCM Clearing Member to process transactions in Contracts; or
 - f. Any planned changes to the FCM Clearing Member's risk management processes or systems.
 - 4) Upon the receipt of a notice of the type set forth in this Rule, the Clearinghouse shall review the continuing eligibility of the FCM Clearing Member for clearing eligibility and take any or all of the actions as permitted by these Rules.

Chapter 5 Clearing

Rule 5.1 Clearance and Substitution

- 1) The Clearinghouse only accepts Fully Collateralized Contracts that are funded by U.S. dollars. Each Member, on behalf of itself and its Customers, shall deposit and maintain with the Clearinghouse the USD funds required to fully collateralize Orders pursuant to Contract Specifications, including payment of premiums and payment of settlement obligations, as applicable, prior to submission of such Orders to the Exchange. Collateral transfers made by a Member (on behalf of itself or its Customers) to the Clearinghouse or by the Clearinghouse to a Member are irrevocable and unconditional when effected. A Member (on behalf of itself and its Customers) shall, at all times, maintain with the Clearinghouse sufficient USD funds necessary to fully collateralize each open position in a Contract.
- 2) Clearing Members are required to have sufficient funds on deposit with the Clearinghouse such that any transactions submitted for clearing will be accepted by the Clearinghouse.

- a) Upon submission of a Transaction for a Fully Collateralized Contract, the Clearinghouse will conduct a review of the relevant Member Account to ensure that the Transaction is fully collateralized prior to accepting the Transaction for clearing. If such Member Account does not have the necessary funds and/or collateral to fully collateralize the Transaction, the Clearinghouse will not accept the Transaction. For Self-Clearing Members, this means that the Clearinghouse will review the Self-Clearing Member Account; for FCM Customers, the Clearinghouse will review the FCM Customer account.
- 3) For trades executed subject to the rules of an Exchange;
 - a) The Clearinghouse will coordinate with all Platforms to develop procedures and system integrations that facilitate prompt, efficient, and accurate processing of all Transactions submitted to the Clearinghouse for clearing.
 - i) Additionally, the Clearinghouse will coordinate with each Member that is an FCM, swap dealer, or major swap participant to establish fully automated systems for accepting or rejecting trades that are submitted to the Clearinghouse for clearing by or for the Member or an FCM Customer of the Member.
 - b) The Clearinghouse will accept for clearing all Contracts that satisfy all of the following conditions:
 - i) The Contract is traded on an Exchange;
 - ii) The Contract was certified by an Exchange under Part 40 of the CFTC's Regulations, and the CFTC has not exercised its right to block under CFTC Regulation 40.11; and
 - iii) The Contract satisfies the criteria of the Clearinghouse, including, but not limited to, applicable risk filters, which shall be non-discriminatory across Exchange(s). The Clearinghouse will also coordinate with all Exchanges to integrate and be able to apply such criteria in a fully automated system, and if that is impracticable, the Clearinghouse will apply the criteria as quickly as would be technologically practicable if fully automated systems were used.
- 4) The Clearinghouse will accept all trades:
 - i) That are submitted by the parties to the Clearinghouse in accordance with CFTC Regulation 23.506;
 - ii) For which the executing parties have clearing arrangements in place with Members of the Clearinghouse;
 - iii) For which the executing parties identify the Clearinghouse as the intended clearinghouse; and
 - iv) That satisfy the criteria of the Clearinghouse, including but not limited to applicable risk filters. The Clearinghouse's criteria will be non-discriminatory across trading venues. The Clearinghouse will also coordinate with Platforms and executing parties to integrate and be able to apply the criteria in a fully automated system and if that is impracticable, the Clearinghouse will apply the criteria As Soon As Technologically Practicable if fully automated systems were used.

- b) The Clearinghouse will only accept for clearing trades that satisfy the requirements that are set out in Chapter 5 of these Rules.
- 5) Upon the successful acceptance of Contracts submitted for clearing, the Clearinghouse shall immediately, through the process of Novation, be substituted as and assume the position of Seller and Purchaser. Upon such substitution, the Seller and Purchaser shall have no obligations to each other, and such Clearing Members shall be deemed to have bought the Contract from or sold the Contract to the Clearinghouse, as the case may be, and the Clearinghouse shall have all the rights and be subject to all the liabilities of such Clearing Members with respect to such transactions. The Clearing Members of the Contract are deemed to consent to the Novation by submitting the applicable orders on an Exchange and the Clearinghouse consents to the Novation by accepting the Contracts submitted for clearing. Such substitution shall be effective in law for all purposes.
 - 6) The submission of a Transaction to the Clearinghouse by or on behalf of the buying and selling Members shall constitute a request, by such Members, for the clearing of such Transaction by the Clearinghouse. Upon acceptance thereof, by the Clearinghouse:
 - a) The Transaction, if a Transaction in a swap, shall be extinguished, and replaced with an equal and opposite swap between the Clearinghouse and each Member. Upon extinguishing and replacing the original Contract, the Members shall be released from their obligations to each other, and, along with the Clearinghouse, shall have all rights and obligations under the Contract that replaced the extinguished Contract, in each case as provided in the Rules. Additionally, the Clearinghouse is irrevocably authorized to transfer premiums and/or Settlement Amounts to the appropriate Clearing Members in accordance with the applicable Contract Rules and this Rulebook.
 - b) Where an FCM Member acts to clear a Contract made for the account of an FCM Customer, the FCM Member becomes obligated to the Clearinghouse, and the Clearinghouse becomes obligated to the Member, with respect to such Contract in the same manner and to the same extent as if the Contract were for the proprietary account of the FCM Member.
 - 7) Transactions for Contracts with the same terms and conditions, as defined by the Contract Specifications, submitted to the Clearinghouse for clearing, are economically equivalent within the Clearinghouse and may be offset with each other within the Clearinghouse.
 - 8) All terms of a cleared swap must conform to product specifications established under the Rules. Upon acceptance of a Transaction for clearing, the Clearinghouse will provide a confirmation of the trade to the Members. That confirmation will serve as the definitive written record of the terms of the Transaction which shall legally supersede any previous agreement, serve as a confirmation of the swap and shall be available on the Platform.
 - 9) If a Contract is rejected for clearing by the Clearinghouse for any reason, such Contract is void *ab initio*.
 - 10) Any failure to deposit and maintain USD funds or collateral in accordance with the Rules of the Clearinghouse, or to withdraw USD funds or collateral as required by the Clearinghouse, may be deemed a Default of an Obligation and an act detrimental to the interest or welfare of the Clearinghouse.
 - 11) All positions will be carried on a gross basis by the Clearinghouse until such time as the Clearinghouse, in its sole discretion, determines to provide offset at the earlier of an end-of-day netting process or at position settlement.

Rule 5.2 Settlement of Contracts

- 1) Except as otherwise provided by Commission order, the Clearinghouse shall effect settlement at least once each Business Day, and shall have the authority and operational capacity to effect a settlement with each Member, on an intraday basis, either routinely, when thresholds specified by the Clearinghouse are breached, or in times of extreme market volatility.
- 2) The Clearinghouse shall maintain, in its systems, a record of each Member's Contracts and account balances.
- 3) Upon settlement, including at expiration on the Settlement Date, the Clearinghouse will notify all Members of the applicable Settlement Amount. Such notice may be delivered by the Platform, or for FCM Customers, by the FCM. The Clearinghouse will transfer the amount payable under the Contract's terms to the relevant Member Accounts for Members holding open positions. For Self-Clearing Members, the amount payable will be transferred to the Self-Clearing Member Account; for FCM Customers, the amount payable will be transferred to the FCM Customer account for the FCM to credit the FCM Customer.
- 4) After the notice period on the last Trading Day of expiring Contracts that are options, the Clearinghouse will delete all such Contracts that have not been exercised from each Clearing Member's Account.
- 5) Payment of Settlement Amounts or any other delivery under any Contract shall be made in accordance with the relevant Contract Rules and these Rules, provided that nothing herein shall prevent Clearing Members from entering into arrangements to settle any Contract between each other on terms different from those set forth in the relevant Contract Rules, subject to compliance with the Rules in all respects.
- 6) All payments or transfers of funds to and from the Clearinghouse and within the Clearinghouse are irrevocable and unconditional when, as the case may be, they are debited from or credited to an account of the Clearinghouse, whether such account is held at the Clearinghouse or at a Settlement Bank, provided that adjustments may be made after such time for the correction of errors in the Clearinghouse's sole discretion.
- 7) For a Transaction in a Fully-Collateralized Contract that results in an increase in a Member's Maximum Downside Exposure, the Clearinghouse will designate as committed collateral funds from the appropriate Member Account(s) in the amount necessary to cover the increase. For Self-Clearing Members, the Self-Clearing Member Account will be debited. For FCM Customers, the FCM will debit the funds in the FCM Customer's account held with the FCM and the Clearinghouse will debit the Funds in the FCM Customer account.
- 8) For a Transaction in a Fully-Collateralized Contract that results in a decrease to a Member's Maximum Downside Exposure, the Clearinghouse will un-designate the decreased amount from constituting committed collateral funds within the relevant Member Account(s). For Self-Clearing Members, the Self-Clearing Member Account will be credited; for FCM Customers, the FCM will credit the funds in the FCM Customer's account held with the FCM and the Clearinghouse will credit the funds in the FCM Customer account.

Rule 5.3 Deposit Procedures

- 1) Clearing Members make deposits to the Clearinghouse through a Member Portal which is linked to the applicable payment processor or money transmitter service for the payment type selected,

and by direct bank transfers to the relevant Settlement Bank. Wire transfers must be executed pursuant to the instructions provided by the Clearinghouse.

- a) A Clearing Member must have sufficient funds at its designated financial institution before such Clearing Member submits a deposit notification to the Clearinghouse. Only USD will be accepted in satisfaction of Clearing Members' obligations in connection with Contracts cleared through the Clearinghouse.
- 2) Funds are available for use with respect to Clearing Privileges no later than the next Settlement Bank Business Day after the funds arrive in the Settlement Bank.
- 3) Clearing Members are responsible for all transfers of funds to their Accounts and any reversal of such transfer constitutes a violation of these Rules unless remediated in a manner acceptable to the Clearinghouse in its sole discretion.

Rule 5.4 Withdrawal Procedures

- 1) Clearing Members may only withdraw amounts in excess of any required collateral associated with open positions held by the Clearinghouse.
- 2) Clearing Members make withdrawals through a Member Portal. Only a Clearing Member or its Authorized User(s) may submit a withdrawal notification to the Clearinghouse before the Clearinghouse initiates a transfer of funds to a Clearing Member. Upon receipt of a withdrawal notification, the Clearinghouse will immediately reduce the Clearing Member's Account balance by the amount of the withdrawal notification.
- 3) Clearing Members are responsible for providing accurate account information to allow the Clearinghouse to effect transfers to the Members. Withdrawal notifications to account numbers different from the originating account number are not permitted except as provided by the Clearinghouse in its sole discretion.
- 4) Withdrawals occur no later than the next Settlement Bank Business Day after a Member has submitted a withdrawal request via a Member Portal if the Member submits a withdrawal notification during Trading Hours, subject to verification by the Clearinghouse that the withdrawal will not cause the Member to fall below any applicable collateral requirement, and that no payment, or other Obligation to the Clearinghouse is outstanding or in Default.
- 5) If a Member fails to adhere to the withdrawal procedures set forth herein, the Clearinghouse will take reasonable measures to effect the withdrawal; however, if unable to effect the withdrawal, the Member's collateral may become the sole property of the Clearinghouse, to the extent permitted by Applicable Law and pursuant to the procedures and disclosures posted on the Clearinghouse website. The Clearinghouse may apply the collateral against the Clearing Member's obligations.

Rule 5.5 Reconciliation

The Clearinghouse shall reconcile the positions and cash balances of each Member Account (whether a Self-Clearing Member Account or an FCM Customer account) periodically, including at the end of each Settlement Bank Business Day. The Clearinghouse shall make available to each Member at all times the positions and cash balances of each such Member. All Members shall be responsible, pursuant to Applicable Law for reconciling their records of their positions and cash balances with the records of positions and cash balances that the Clearinghouse makes available to Members.

Rule 5.6 Transfers of Positions and Risk Management Actions

- 1) The Clearinghouse in its sole discretion may permit the transfer of positions between Accounts:
 - a) to correct errors in an existing Contract, provided that the original trade documentation confirms the error;
 - b) bankruptcy;
 - c) to transfer an existing Contract through operation of law from death or as a result of a merger, asset purchase, consolidation, or similar non- recurring transaction for a Person that is an organization;
 - d) for Accounts of Clearing Members that are under the same common beneficial ownership; or
 - e) any other circumstances in which the Clearinghouse determines in its sole discretion that such a transfer is necessary or appropriate for any other reason.
- 2) Any positions transferred pursuant to this Rule 5.6 will be at the original price and date that appears on the books of the Clearinghouse.
- 3) As provided in CFTC Regulation 39.13(h)(6), the Clearinghouse may take the following actions as appropriate, based on the application of objective and prudent risk management standards:
 - a) Imposing position limits;
 - b) Prohibiting an increase in positions;
 - c) Requiring a reduction of positions;
 - d) Liquidating or transferring positions; and
 - e) Suspending or revoking clearing membership.
- 4) The Clearinghouse may take any other action it deems necessary based on the application of objective and prudent risk management standards.

Rule 5.7 Error Trade Policy and Cancelling Cleared Trades

- 3) The Clearinghouse shall not have discretion to cancel, void, or adjust any Transaction submitted for clearing. All determinations regarding trade cancellations or adjustments shall be made exclusively by the applicable linked Platforms in accordance with their rules. The Clearinghouse will honor and process any trade cancellations or adjustments communicated by the linked a Platform and will take all necessary actions to reflect such determinations in cleared positions and related records. The Clearinghouse shall not be liable for any losses arising from trade cancellations or adjustments determined by the any Platform. If the error is the result of an action by the Clearinghouse, the Clearinghouse will appropriately address the error accordingly.
- 4) A Platform may determine in its ordinary course of business to cancel (“bust”) a trade. In the event of a trade cancellation, the Clearinghouse will receive notice of the busted trade(s). The Clearinghouse will immediately update affected Members’ balances to reflect the bust. A Platform may only bust a trade from the current trading session, and all decisions to bust trades

are final. In the event that a Member's balance becomes negative from such an adjustment, the Clearinghouse will ensure that all Member positions remain fully collateralized.

Rule 5.8 Investment of Customer Funds

Subject to compliance with the applicable regulations of the CFTC, all cash and other property in the Clearing Member's Account or otherwise held by the Clearinghouse on the Clearing Member's behalf may, from time to time, without notice to the Clearing Member, be co-mingled with the property of other Clearing Members or be invested by the Clearinghouse, separately or with any other property, consistent with CFTC Regulation 1.25 and 39.15(e). the Clearinghouse shall have no obligation to inform the Clearing Member of any such investments or of the results or performance of such investments and shall be entitled to retain any profits from or return on such investments.

Chapter 6 Business Conduct and Market Integrity

Rule 6.1 Scope

This Chapter 6 applies to all Transactions except as may be provided herein. Members and, where applicable, Authorized Users and Authorized Representatives, shall adhere to and comply fully with this Chapter 6. This Chapter is designed to promote the integrity of the Clearinghouse and its clearing and settlement processes.

Rule 6.2 Prohibited Activities

- 1) No Clearing Member shall engage in conduct in violation of Applicable Law or the Rules. Notwithstanding anything to the contrary in these Rules, no provision of these Rules will supersede any applicable prohibitions on fraud and manipulation, whether such prohibitions are prescribed by law, regulation or the Rules. All such prohibitions on fraud and manipulation, including, but not limited to, the antifraud provisions of the CEA and the antifraud rules promulgated by the CFTC thereunder, will remain in full force and effect with respect to, and will be fully applicable to, the clearing of all Contracts. The Clearinghouse retains the right to take any appropriate disciplinary actions against Clearing Members as permitted by the Rules, as applicable.
- 2) It shall be an offense to violate any Rule regulating the conduct or business of a Clearing Member, or any agreement made with the Clearinghouse, or to engage in fraud, dishonorable or dishonest conduct, or in conduct which is inconsistent with just and equitable principles of conduct in connection with Clearinghouse activities.
- 3) No Member, Authorized Representative, or Authorized User shall engage in any Clearinghouse activity that is detrimental to the Clearinghouse or tends to impair the welfare, reputation, integrity or good name of the Clearinghouse.
 - a) It shall be deemed an act detrimental to the Clearinghouse to permit unauthorized use of the Clearinghouse, to assist any Person in obtaining unauthorized access to the Clearinghouse, to interfere with the operation of the Clearinghouse, to intercept or interfere with information provided thereby, or in any way to use the Clearinghouse in a manner contrary to these Rules.

- 4) No Clearing Member or Authorized User may use its Clearing Privileges or the Clearinghouse in any way which could be expected to bring disrepute upon such Clearing Member or the Clearinghouse.

Rule 6.3 Supervision; Information Sharing

- 1) A Member that has one or more Authorized Users shall be responsible for establishing, maintaining and administering reasonable supervisory procedures to ensure that its Authorized Users comply with these Rules and Applicable Law, and such Member may be held accountable for the actions of such Authorized Users with respect to the Clearinghouse.
- 2) Members and Authorized Users shall cooperate fully with the Clearinghouse or a Regulatory Agency in any investigation, call for information, inquiry, audit, examination or proceeding.
- 3) Members and Authorized Users shall ensure that any information disclosed to the Clearinghouse is accurate, complete and consistent. No existing or prospective Member or Authorized User shall make any false statements or misrepresentations in any application, report or other communication to the Clearinghouse. These obligations are in addition to, and do not limit, the obligations set forth in Chapter 3.

Rule 6.4 Business Conduct

- 1) Conducting clearing activities in an honorable and principled manner consistent with these Rules is the essence of ethical conduct with respect to the Clearinghouse. Members, Authorized Users, Authorized Representatives, and other Persons subject to the Clearinghouse's jurisdiction shall act with ethical integrity with regard to their Clearinghouse activity, and shall adhere to the following ethical standards:
 - a) A Member, Authorized User, Authorized Representative, and any other Person subject to the Clearinghouse's jurisdiction shall abstain from engaging in conduct that is a violation of these Rules or Applicable Law, and will conduct its business in accordance with Applicable Law, and in good faith, with a commitment to honest dealing.
 - b) No Member, Authorized User, Authorized Representative, or other Person subject to the Clearinghouse's jurisdiction shall engage or attempt to engage in any fraudulent act or engage or attempt to engage in any scheme to defraud, deceive, trick or mislead in connection with or related to any Clearinghouse activity.
- 2) No Person shall make any misstatement of a material fact to an Exchange or the Clearinghouse (including the Board of Directors, any committee thereof or any panel of any such committee, or any Officer) or to the CFTC or the NFA (including any members of its staff), including on an application to become a Clearing Member of the Clearinghouse.

Rule 6.5 Compliance

The requirements set forth in this Rule supplement, and do not limit, the obligations of Members under Chapter 3. Each Member shall take appropriate steps to ensure compliance with these Rules and Applicable Law. When relevant, Members shall have a compliance program commensurate with the size and scope of its clearing activities on the Clearinghouse and designed to ensure appropriate, timely and ongoing review of clearing-related activities and compliance with the Rules. Each Member shall act in accordance with these practices for compliance and monitoring with regard to its Clearinghouse activity:

- 1) Provide for proper training of personnel on the provisions of the Rules;

- 2) Maintain internal policies and procedures to promote compliance with the Rules;
- 3) Promptly disclose to the Clearinghouse the details of any violations of the Rules involving a Member's activities on the Clearinghouse, including its own activities or those of another Member, and a Member shall promptly disclose to the Clearinghouse the details of any disciplinary sanctions, fines or other related determinations made by a Regulatory Agency or another market on which such Member trades, including the provision of relevant information to the Clearinghouse or, where applicable, its Affiliates; Provide an environment that encourages employees to engage in safe and confidential discussions and to disclose to senior management any clearing-related activities that might violate the Rules;
- 4) Require any consultant, contractor and subcontractor to disclose all financial affiliations and conflicts of interest. Ensure that consultants, contractors or subcontractors do not cause any disclosure of information in violation of the Rules, including this code of conduct, and that confidentiality agreements are in effect where appropriate; and
- 5) Establish clear lines of accountability for clearing-related activities, including provisions relating to the responsibilities of corporate officers, with appropriate oversight by the board of directors or other senior corporate management committee.

Chapter 7 Discipline and Enforcement

Rule 7.1 General

- 1) Market Monitoring
 - a) The Clearinghouse shall record and store a record of all data entered into a Platform that is provided to the Clearinghouse, including the Members' and Authorized User's identity, information on Transactions and any other information required and in accordance with the Clearinghouse's policies.
 - i) Such information shall be recorded and stored for a period of not less than 5 years in a searchable, read-only database a record of all data entered into the Clearing System. Such records shall be maintained in a readily available manner during the first two years.
 - b) The Compliance Department will conduct investigations when the Compliance Department staff at any time has reason to believe that inappropriate activity of any sort is taking place or about to take place that relates to the Clearinghouse or a Platform.
- 2) Compliance Department
 - a) The Compliance Department shall investigate activity that it determines could constitute a violation of these Rules and Applicable Laws, and shall enforce the Rules and prosecute possible Rule violations within the Clearinghouse's disciplinary jurisdiction.
 - b) The Compliance Department shall conduct periodic reviews of Members to verify compliance with these Rules. Such reviews may include, but are not limited to, reviews of randomly selected samples of audit trail data, and reviews of account numbers.
- 3) The Clearinghouse, through the Compliance Department, Disciplinary Panel, and Appeals Committee, shall conduct inquiries, investigations, disciplinary proceedings, appeals from

disciplinary proceedings, summary impositions of fines, summary suspensions, and other summary actions in accordance with this Chapter 7. Any Person subject to the Clearinghouse's jurisdiction under Rule 3.1 is subject to the Clearinghouse's disciplinary authority set forth in this Chapter 7.

- 4) The Clearinghouse, through the Compliance Department, shall commence an investigation upon (i) the discovery or receipt of information that indicates a reasonable basis for finding that a violation may have occurred or will occur, or (ii) the receipt of a request from Commission staff.
- 5) No Clearinghouse Official shall interfere with or attempt to influence the process or resolution of any Disciplinary Action, except to the extent provided under these Rules with respect to a proceeding in which a Person is a member of the relevant Disciplinary Panel or Appeals Committee.
- 6) Representation by Counsel
 - a) A Respondent, upon being served with a Notice of Charges, has the right to retain and be represented by legal counsel or any other representation of its choosing, except any Director or a member of the Disciplinary Panel or person substantially related to the underlying investigations, such as material witnesses or Respondents during such proceedings.
 - b) In the event of any appeal that requires the Clearinghouse to retain legal counsel, the Respondent shall be responsible for the reasonable attorney's fees incurred by the Clearinghouse if the Respondent does not prevail in the dispute.
- 7) The Clearinghouse may hold a Member liable for, and impose sanctions against such Member, for such Member's own acts and omissions that constitute a violation, and with regard to Members for the acts and omissions of each Authorized User, or other agent or representative of such Member, in each case, that constitute a violation as if such violation were that of the Member.
- 8) Ex Parte Communications
 - a) A Respondent (and any counsel or representative of such Respondent) and the Compliance Department (and any counsel or representative of the Compliance Department) shall not knowingly make or cause to be made an ex parte communication relevant to the merits of a disciplinary proceeding or an appeal from a disciplinary proceeding to any member of the Disciplinary Panel or the Appeals Committee that hears such proceeding.
 - b) Members of a Disciplinary Panel or Appeals Committee shall not knowingly make or cause to be made an ex parte communication relevant to the merits of a disciplinary proceeding or an appeal from a disciplinary proceeding to any Respondent (and any counsel or representative of such Respondent) or the Compliance Department (and any counsel or representative of the Compliance Department).
 - c) Any Person who receives, makes or learns of any communication that is prohibited by this Rule 7.1 shall promptly give notice of such communication and any response thereto to the Compliance Department and all parties to the proceeding to which the communication relates.
 - d) A Person shall not be deemed to have violated this Rule 7.1 if the Person refuses an attempted communication concerning the merits of a proceeding as soon as it becomes

apparent that the communication concerns the merits, and promptly gives notice of such attempt to the Compliance Department.

Rule 7.2 Inquiries and Investigations

- 1) The Compliance Department will investigate any matter within the Clearinghouse's disciplinary jurisdiction that is brought to such department's attention, including but not limited to, possible violations of the Rules or manipulation of a Contract that is cleared through the Clearinghouse. All such investigations must be completed within 12 months of the date when the Compliance Department commenced its investigation unless there are mitigating factors that may reasonably justify an investigation taking longer than 12 months, including the complexity of the investigation, the number of Participants or individuals involved as potential wrongdoers, the number of potential violations to be investigated, and the volume of documents and data to be examined and analyzed by the Compliance Department. The Compliance Department will determine the nature and scope of its inquiries and investigations within its sole discretion and will function independently of any commercial interests of the Clearinghouse.
- 2) The Compliance Department has the authority to:
 - a) initiate and conduct inquiries and investigations;
 - b) prepare investigative reports and make recommendations concerning initiating disciplinary proceedings;
 - c) prosecute alleged violations within the Clearinghouse's disciplinary jurisdiction; and
 - d) represent the Clearinghouse on appeal from any disciplinary proceeding, summary imposition of fines, summary suspension or other summary action.
- 3) Each Participant:
 - a) is obligated to appear and testify and respond in writing to interrogatories within the time period required by the Compliance Department in connection with: (i) any Rule; (ii) any inquiry or investigation; or (iii) any preparation by and presentation during a disciplinary proceeding or appeal from a decision in a disciplinary proceeding, summary imposition of fines, summary suspension or other summary action;
 - b) is obligated to produce books, records, papers, documents or other tangible evidence in its, his or her possession, custody or control within the time period required by the Compliance Department in connection with: (i) any Rule; (ii) any inquiry or investigation; or (iii) any preparation by and presentation during a disciplinary proceeding or appeal from a decision in any disciplinary proceeding, summary imposition of fines, summary suspension or other summary action by the Clearinghouse; and
 - c) may not impede or delay any inquiry, investigation, disciplinary proceeding, or appeal from a disciplinary proceeding, summary imposition of fines, summary suspension or other summary action.
- 4) The Compliance Department will maintain a log of all investigations and their disposition. The Compliance Department will prepare a written report of each investigation, regardless of whether the evidence gathered during any inquiry or investigation forms a reasonable basis to believe that a violation within the Clearinghouse's jurisdiction has occurred or is about to occur or whether the evidence gathered results in closing the matter without further action or through summary

action. Any written report of investigation will include the reasons for initiating the investigation (including a summary of the complaint, if any), all relevant facts and evidence gathered, and the recommendation of the Compliance Department. For each potential respondent, the Compliance Department will recommend either (i) closing the investigation without further action, (ii) summary action, (iii) resolving the investigation through an informal disposition, including the issuance of a warning letter, or (iv) initiating disciplinary proceedings. An informal disposition (including the issuance of a warning letter) will not constitute a finding of a Rule violation or a sanction.

- 5) The Chief Compliance Officer will review promptly each completed investigation report to determine whether a reasonable basis exists to believe that a violation of the Rules within the Clearinghouse's jurisdiction has occurred, is occurring or is about to occur. Such determination will be made by the Chief Compliance Officer within ten (10) Business Days of receipt of the applicable investigation report. If the Chief Compliance Officer determines that additional investigation or evidence is needed to decide whether a reasonable basis exists to believe that a violation of the Rules within the Clearinghouse's jurisdiction has occurred, is occurring or is about to occur, the Chief Compliance Officer will direct the Compliance Department to conduct further investigation.
- 6) After receiving completion of an investigation, the Chief Compliance Officer will determine for each potential respondent whether to authorize:
 - a) the commencement of disciplinary proceedings because a reasonable basis exists to believe that a violation of the Rules within the Clearinghouse's jurisdiction has occurred, is occurring or is about to occur;
 - b) the informal disposition of the investigation (by issuing a warning letter or otherwise) if the Chief Regulatory Officer determines that a violation of the Rules may have occurred but that formal disciplinary proceedings are unwarranted; or
 - c) the closing of the investigation without any action, and without the issuance of a warning letter, because disciplinary proceedings are not warranted and no reasonable basis exists to believe that a violation of the Rules within the Clearinghouse's jurisdiction has occurred, is occurring or is about to occur.

Rule 7.3 Disciplinary Panel

- 1) A disciplinary panel consisting of five individuals selected by the Board of Directors (the "Disciplinary Panel"), will conduct hearings in connection with any disciplinary proceedings, to make findings and impose sanctions pursuant to this Chapter 7. A separate Disciplinary Panel will be established prior to the commencement of each disciplinary matter. No Disciplinary Panel shall be comprised in a manner such that any group or class of industry participants may reasonably be expected to dominate or exercise disproportionate influence on such panel. Each Disciplinary Panel shall consist of at least one individual who qualifies as a Public Director (if the individual is a director of the Clearinghouse). For the avoidance of doubt, members of the Compliance Department shall not be eligible to serve on a Disciplinary Panel.
- 2) Within ten (10) Business Days of being notified of the appointment of the Disciplinary Panel, a respondent may seek to disqualify any individual named to the Disciplinary Panel for any reasonable grounds, by serving written notice on the Chief Compliance Officer. By failing to timely file a request for disqualification, the respondent will be deemed to have waived any objection to the composition of a Disciplinary Panel. The Chief Compliance Officer or an

independent committee will decide the merits of any request for disqualification within his or her sole discretion. Any such decision will be final and not subject to appeal.

- 3) All disciplinary proceedings (except for summary impositions of fines pursuant to Rule 7.12) will be conducted at a hearing before the Disciplinary Panel. A hearing will be conducted privately and confidentially unless the Disciplinary Panel decides that the hearing, or any part of it, should be held in public after giving each respondent the opportunity to present its, his or her views on holding a public hearing. Notwithstanding the confidentiality of hearings, the Disciplinary Panel may appoint an expert to attend any hearing and assist in deliberations if such expert agrees to be subject to an appropriate confidentiality agreement.
- 4) After reasonable notice to each respondent, the Disciplinary Panel will promptly (but in no event later than thirty (30) Business Days following such notice) convene a hearing to conduct the disciplinary proceedings with respect to such respondent. Parties to a disciplinary proceeding include each respondent and the Compliance Department.
- 5) The chairman of the Disciplinary Panel may continue, adjourn or otherwise conduct the hearing, as he or she may deem appropriate. The chairman of the Disciplinary Panel will determine all procedural and evidentiary matters, including the admissibility and relevance of any evidence proffered. In determining procedural and evidentiary matters, the chairman of the Disciplinary Panel will not be bound by any evidentiary or procedural rules or law. Once admitted during the hearing, the Disciplinary Panel may consider, and attach the weight it believes appropriate to, evidence or other materials. The Clearinghouse will provide guidance to the chairman of the Disciplinary Panel on the conduct of the hearing.
- 6) Except for procedural and evidentiary matters decided by the chairman of the Disciplinary Panel pursuant to paragraph (5) above, unless each respondent otherwise consents, the entire Disciplinary Panel must be present during the entire hearing and any related deliberations.

Rule 7.4 Notice of Charges

- 1) If the Chief Compliance Officer authorizes disciplinary proceedings pursuant to Rule 7.2, the Compliance Department will prepare in accordance with this Rule 7.4 and serve in accordance with this Rule 7.4, a notice of charges within twenty (20) Business Days thereafter.
- 2) A notice of charges will:
 - a) state the acts, practices or conduct that the respondent is alleged to have engaged in;
 - b) state the Rule or provision of Applicable Law alleged to have been violated or about to be violated;
 - c) state the proposed sanctions;
 - d) advise the respondent of its right to submit a written statement explaining why a disciplinary proceeding should not be instituted or one or more of the potential charges should not be brought, which statement must be submitted within twenty (20) Business Days after service of the notice of charges;
 - e) advise the respondent of its right to a hearing and its right to have counsel present;

- f) state the period of time within which the respondent can request a hearing on the notice of charges, in lieu of submitting a written statement pursuant to Rule 7.4(2)(d), which will not be less than twenty (20) Business Days after service of the notice of charges;
 - g) advise the respondent that any failure to request a hearing within the period stated, except for good cause, will be deemed to constitute a waiver of the right to a hearing; and
 - h) advise the respondent that any allegation in the notice of charges that is not expressly denied will be deemed to be admitted.
- 3) If the respondent submits a written statement pursuant to Rule 7.4(2)(d), the Chief Compliance Officer shall, within ten (10) Business Days after receipt of the written statement, advise the respondent:
 - a) of the Chief Compliance Officer's decision to drop any or all of the potential charges;
 - b) that the disciplinary proceedings will proceed with respect to all remaining charges in accordance with the notice of charges delivered to the respondent; and/or, as appropriate
 - c) that the respondent shall have twenty (20) Business Days to submit an answer to the notice of charges, as described in this Rule 7.4.
- 4) If the respondent determines to answer a notice of charges, the respondent must file answers within twenty (20) Business Days after being served with such notice, or within such other time period determined appropriate by the Chief Compliance Officer. To answer a notice of charges, the respondent must in writing:
 - a) specify the allegations that the respondent denies or admits;
 - b) specify the allegations that the respondent does not have sufficient information to either deny or admit;
 - c) specify any specific facts that contradict the notice of charges; and 4. specify any affirmative defenses to the notice of charges.
- 5) Any failure by the respondent to timely serve an answer to a notice of charges will be deemed to be an admission to the allegations in such notice. Any failure by the respondent to answer one or more allegations in a notice of charges will be deemed to be an admission of that allegation or those allegations. Any allegation in a notice of charges that the respondent fails to expressly deny will be deemed to be admitted. A general denial by the respondent, without more, will not satisfy the requirements of paragraph (2) above.
- 6) Any notice of charges or other documents contemplated to be served pursuant to this Chapter 7 may be served (and service shall be deemed complete) upon the respondent either personally or by (i) leaving the same at his or her place of business or by deposit in the United States mail, postage prepaid, via registered or certified mail addressed to the respondent at the address as it appears on the books and records of the Clearinghouse, or (ii) sending the same via electronic mail to the e-mail address of the respondent as it appears on the books and records of the Clearinghouse. If the subject of any charge is a Customer of an FCM Clearing Member, the Compliance Department may obtain the Customer's contact information from the applicable intermediary for service of process and notices.

Rule 7.5 Respondent Review of Evidence

- 1) After service of a notice of charges, the respondent shall have the opportunity to review, upon reasonable notice and during normal business hours, the non-privileged documents and materials relied upon by the Compliance Department in bringing the charges.
- 2) The Compliance Department may withhold materials subject to privilege, confidentiality obligations, or other legal restrictions, provided that such withholding does not materially impair the respondent's ability to prepare a defense.
- 3) 3) The Disciplinary Panel may resolve any disputes regarding access to evidence.

Rule 7.6 Settlements

- 1) A respondent or potential respondent may at any time propose in writing an offer of settlement to anticipated or instituted disciplinary proceedings. Any offer of settlement should contain proposed findings and sanctions and be signed by the respondent or potential respondent and submitted to the Compliance Department. A respondent or potential respondent may offer to settle disciplinary proceedings without admitting or denying the findings contained in the order of the disciplinary proceedings but must accept the jurisdiction of the Clearinghouse over it and over the subject matter of the proceedings and consent to the entry of the findings and sanctions imposed.
- 2) If a respondent or potential respondent submits an offer of settlement in accordance with paragraph (a) above, the Compliance Department will forward the offer to the Chief Compliance Officer with a recommendation on whether to accept or reject the offer. If the Chief Compliance Officer conditionally accepts an offer of settlement, the settlement will become final upon the expiration of twenty (20) Business Days after an order of the disciplinary proceedings consistent with the terms of the offer of settlement is served on the respondent.
- 3) If an offer of settlement is accepted and the related order of disciplinary proceedings becomes final, the respondent's submission of the offer will be deemed to constitute a waiver of the right to notice, opportunity for a hearing and review and appeal under these Rules.
- 4) If the offer of settlement of a respondent or potential respondent is not accepted, fails to become final or is withdrawn by the respondent or potential respondent, the matter will proceed as if the offer had not been made and the offer and all documents relating to it will not become part of the record. Neither a respondent or potential respondent nor the Compliance Department may use an unaccepted offer of settlement as an admission or in any other manner at a hearing of, or appeal from, disciplinary proceedings.

Rule 7.7 Hearings

- 1) At a hearing conducted in connection with any disciplinary proceedings, the Compliance Department will present its case supporting the allegations and proposed sanctions in the notice of charges to the Disciplinary Panel. If a respondent has timely filed an answer to the notice of charges in accordance with Rule 7.4, the respondent is entitled to attend and participate in the hearing.
- 2) At a hearing conducted in connection with any disciplinary proceedings, the Disciplinary Panel or the Compliance Department and each respondent may:

- a) present evidence and facts determined relevant and admissible by the chairman of the Disciplinary Panel;
 - b) call and examine witnesses; and
 - c) cross-examine witnesses called by other parties.
- 3) If the respondent fails to file an answer, has filed a general denial, or if any or all of the allegations in the notice of charges are not expressly denied in the respondent's answer, the Disciplinary Panel may limit evidence concerning any allegations not expressly denied in determining the sanctions to impose. If a respondent fails to file an answer but appears at the hearing, the respondent may not participate in the hearing (by calling or cross-examining witnesses, testifying in defense, presenting evidence concerning the notice of charges, or otherwise) unless the Disciplinary Panel determines that the respondent had a compelling reason for failing to timely file an answer. If the Disciplinary Panel determines that the respondent had a compelling reason for failing to timely file an answer, the Disciplinary Panel will adjourn the hearing and direct the respondent to promptly file a written answer in accordance with Rule 7.4.
- 4) Any Person entitled, or required or called upon, to attend a hearing before a Disciplinary Panel pursuant to paragraph (2)(b) above will be given reasonable notice, confirmed in writing, specifying the date, time and place of the hearing, and the caption of the disciplinary proceedings. The Clearinghouse will require all Members or Authorized Users (as applicable) that are called as witnesses to appear at the hearing and produce evidence. the Clearinghouse will make reasonable efforts to secure the presence of all other Persons called as witnesses whose testimony would be relevant.
- 5) If during any disciplinary proceedings the Disciplinary Panel determines that a reasonable basis exists to believe that the respondent violated or is about to violate a Rule or a provision of Applicable Law other than the violations alleged in the notice of charges, the Disciplinary Panel may consider those apparent violations after providing the respondent with an opportunity to answer the additional allegations in accordance with Rule 7.4. In connection with considering apparent violations pursuant to this paragraph (5), the Disciplinary Panel may request that the Compliance Department provide the Disciplinary Panel with any additional information.
- 6) The Disciplinary Panel may summarily impose sanctions on any Member or Authorized User that impede or delay the progress of a hearing.
- 7) The Clearinghouse will arrange for any hearing conducted in connection with disciplinary proceedings to be recorded hearing verbatim, or substantially verbatim, in a manner capable of accurate transcription. If the respondent requests a copy of all or portions of the recording of a hearing, the Disciplinary Panel may order the respondent to pay the costs for transcribing the recording of the hearing.
- 8) No interlocutory appeals of rulings of any Disciplinary Panel are permitted.

Rule 7.8 Notice of Decision

- 1) As promptly as reasonable following a hearing, the Disciplinary Panel will issue an order rendering its decision based on the weight of the evidence contained in the record of the disciplinary proceedings. A decision by a majority of the Disciplinary Panel will constitute the decision of the Disciplinary Panel.

- 2) The Clearinghouse will serve a copy of the order of the disciplinary proceedings on the respondent and the Compliance Department. The order will include:
 - a) the notice of charges or summary of the allegations;
 - b) the answer, if any, or a summary of the answer;
 - c) a brief summary of the evidence introduced at the hearing;
 - d) findings of fact and conclusions concerning each allegation, including each specific Rule and provision of Applicable Law that the respondent is found to have violated;
 - e) the imposition of sanctions, if any, and the effective date of each sanction; and
 - f) notice of the respondent's right to appeal pursuant to Rule 7.11.
- 3) Unless a timely notice of appeal is filed pursuant to Rule 7.11, the order of the disciplinary proceedings will become final upon the expiration of twenty (20) Business Days after the order is served on the respondent and a copy thereof is provided to the Compliance Department

Rule 7.9 Sanctions

- 1) After notice and opportunity for hearing in accordance with these Rules, the Clearinghouse will impose sanctions if a Clearing Member is found to have violated or to have attempted to violate a Rule or provision of Applicable Law for which the Clearinghouse possesses disciplinary jurisdiction. The Clearinghouse may impose one or more of the following sanctions or remedies: (i) censure; (ii) limitation on Clearing Privileges, association with a Clearing Member or other activities, functions or operations; (iii) suspension of Clearing Privileges or association with a Clearing Member; (iv) fine (subject to paragraph (2) below); (v) restitution or disgorgement; (i) termination of Clearing Privileges; or (vii) any other sanction or remedy deemed to be appropriate. All sanctions, including those imposed pursuant to an accepted settlement offer, shall take into account respondent's disciplinary history and remediation efforts.
- 2) The Clearinghouse may impose a fine of up to \$500,000 for each violation. If a fine or other amount is not paid within thirty (30) Business Days of the date that it becomes payable, then interest will accrue on the sum from the date that it became payable at the quoted prime rate plus three percent. The Clearinghouse has sole discretion to select the bank on whose quotations to base the prime rate. Each Clearing Member will be responsible for paying any fine or other amount imposed on, but not paid by, any Authorized User authorized by, or other agent or representative of, such Clearing Member.
- 3) No more than one warning letter may be issued to the same Person found to have committed the same rule violation within a rolling twelve-month period.

Rule 7.10 Costs

- 1) Regardless of the outcome of any disciplinary proceeding, the Disciplinary Panel may order a respondent to pay some or all of the costs associated with the disciplinary proceedings that the Disciplinary Panel believes were unnecessarily caused by the respondent. Costs may include costs associated with the inquiry or investigation, the prosecution by the Compliance Department, legal and professional assistance, the hearing and administrative and other expenses incurred by the Disciplinary Panel.

- 2) The Disciplinary Panel may only award costs against the Clearinghouse if it concludes that the Clearinghouse has behaved in a manifestly unreasonable manner in the commencement or conduct of the disciplinary proceedings in question. The Disciplinary Panel must limit any award of costs against the Clearinghouse to an amount that it concludes is reasonable and appropriate, but does not exceed the respondent's costs for external legal or other external professional assistance.
- 3) The Disciplinary Panel may determine the amounts and allocation of costs in any manner it may deem appropriate. The Clearinghouse or the respondent will pay any costs ordered to be paid by it by the Disciplinary Panel within thirty (30) Business Days of the later of either written notice of (i) the amount imposed by the Disciplinary Panel or (ii) the determination of an appeal by the Appeals Panel against the Disciplinary Panel's determination.

Rule 7.11 Appeals

- 1) Each respondent found by the Disciplinary Panel to have violated a Rule of or a provision of Applicable Law or who is subject to any summary fine imposed pursuant to Rule 7.12 or any summary sanction imposed pursuant to Rule 7.13 may appeal the decision within twenty (20) Business Days of receiving the order of the disciplinary proceedings or the notice of summary action, as the case may be, by filing a notice of appeal with the Chief Compliance Officer. While an appeal is pending, the effect of the order of disciplinary proceedings or the summary action (including any sanctions, remedies or costs imposed thereby) shall be suspended; provided, however, any summary sanction entered under Rule 7.13 shall continue in effect during the appeal.
- 2) The notice of appeal must state in writing the grounds for appeal, including the findings of fact, conclusions or sanctions to which the respondent objects. An appellant may appeal the order of disciplinary proceedings or any summary decision on the grounds that:
 - a) the decision was arbitrary, capricious, an abuse of discretion, or not in accordance with the Rules;
 - b) the decision exceeded the authority or jurisdiction of the Disciplinary Panel, the Chief Compliance Officer or the Clearinghouse;
 - c) the decision failed to observe required procedures; 4. the decision was unsupported by the facts or evidence; or
 - d) the imposed sanctions, remedies or costs are inappropriate or unsupported by the record.
- 3) The Chief Compliance Officer will forward copies of any notice of appeals received by it to all parties to the disciplinary proceeding or summary action, as the case may be, except the appellant. On or before the twentieth (20th) Business Day after filing a notice of appeal, the appellant must file with the Chief Compliance Officer and serve on the Compliance Department a brief supporting the notice of appeal and documents supporting the brief. On or before the twentieth (20th) Business Day after the date on which the appellant serves their supporting brief, the appellee must file and serve its brief in opposition. On or before the tenth (10th) Business Day after the date on which the appellee serves its brief in opposition, the appellant must file and serve a brief in reply.

- 4) In connection with any appeal, the Compliance Department will furnish to the Chief Compliance Officer and to the respondent/appellant a transcript of the hearing, any exhibits introduced at the hearing, the notice of appeal and briefs filed to support and oppose the appeal.
- 5) Within thirty (30) Business Days after the last submission filed pursuant to paragraph (3) above, the Chief Compliance Officer will appoint the Appeals Panel to consider and determine the appeal. If less than 3 individuals from the Regulatory Oversight Committee are eligible to serve on the Appeals Panel, the Appeals Panel shall be a panel solely comprised of those individuals from the Committee that are eligible to serve on the Appeals Panel and such additional individuals meeting the requirements of Public Director who are appointed by the Chief Compliance Officer. Members of the Compliance Department of the Clearinghouse shall not be eligible to serve on the Appeals Panel. Members of a Disciplinary Panel may not serve on an Appeals Panel for the same matter.
- 6) The Appeals Panel may hold a hearing to allow parties to present oral arguments. Any hearing will be conducted privately and confidentially unless the Appeals Panel decides that the hearing, or any part of it, should be held in public after giving each appellant the opportunity to present their views on holding a public hearing. Notwithstanding the confidentiality of hearings, the Appeals Panel may appoint individuals to attend any hearing and assist in the deliberations if such individuals agree to be subject to appropriate confidentiality agreements. In determining procedural and evidentiary matters, the Appeals Panel will be bound by evidentiary or procedural rules or law.
- 7) The Appeals Panel will only consider on appeal the record before the Disciplinary Panel or, in the case of a summary action, the record considered by the Chief Compliance Officer or the Chief Compliance Officer's designee, the notice of appeal, the briefs filed in support and opposition of the appeal, and any oral arguments of the parties. The Appeals Panel may only consider new evidence when the Appeals Panel is satisfied that good cause exists on why the evidence was not introduced during the disciplinary proceeding or when imposing the summary action.
- 8) After completing its review, the Appeals Panel may affirm or, only if it finds that the decision of the Disciplinary Panel or the Chief Compliance Officer that is under review, as the case may be, meets one of the criteria listed in Rule 7.12(9) below, modify or reverse any order of the disciplinary proceedings or summary action under appeal, in whole or in part, including increasing, decreasing or eliminating any sanction or remedy imposed, imposing any other sanction or remedy authorized by the Rules, or remanding the matter to the same or a different Disciplinary Panel for further disciplinary proceedings or for reconsideration by the Chief Compliance Officer. The Appeals Panel may order a new hearing for good cause or if the Appeals Panel determines in its sole discretion that the appellant was not given a full and fair opportunity to make an argument in its favor and present supporting evidence.
- 9) As described in Rule 7.12(8) above, the Appeals Panel may modify or reverse any order of the disciplinary proceedings or summary action under appeal only if it finds that the decision was:
 - a) Arbitrary, capricious, or an abuse of the discretion of the Disciplinary Panel, the Chief Compliance Officer, or the Chief Compliance Officer's designee, as the case may be;
 - b) In excess of the authority or jurisdiction of the Disciplinary Panel or the Chief Compliance Officer, as the case may be; or
 - c) Based on a clearly erroneous application or interpretation of the Rules.

- 10) As promptly as reasonably possible following its review, the Appeals Panel will issue a written decision on appeal rendering its decision based on the weight of the evidence before the Appeals Panel.
- 11) The decision of the Appeals Panel will include a statement of findings of fact and conclusions for each finding, sanction, remedy and cost reviewed on appeal, including each specific Rule and provision of Applicable Law that the respondent is found to have violated, if any, and the imposition of sanctions, remedies and costs, if any, and the effective date of each sanction, remedy or cost.
- 12) The Appeal Panel's written order on appeal (including findings of fact and conclusions and the imposition of sanctions, remedies and costs, and the effective date of any sanction, remedy cost) will be the final action of the Clearinghouse and will not be subject to appeal within the Clearinghouse.
- 13) Within ten (10) Business Days of being notified of the appointment of the Appeals Panel, a respondent may seek to disqualify any individual named to the Appeals Panel for the reasons identified in this Rule 7.11 or for any other reasonable grounds, by serving written notice on the Chief Compliance Officer. By not timely filing a request for disqualification, the respondent will be deemed to have waived any objection to the composition of an Appeals Panel. The Chief Compliance Officer will decide the merits of any request for disqualification within his or her sole discretion. Any such decision will be final and not subject to appeal.

Rule 7.12 Imposition of Fines

- 1) The Chief Compliance Officer may summarily impose a fine against a Clearing Member for failing:
 - a) to make timely payments of required collateral, fees, cost, charges or fines to the Clearinghouse;
 - b) to make timely and accurate submissions to the Clearinghouse of notices, reports or other information required by the Rules; and
 - c) to keep any books and records required by the Rules.
- 2) The Compliance Department, acting on behalf of the Chief Compliance Officer, will give notice of any fine imposed pursuant to this Rule 7.12 to each Clearing Member subject thereto. The notice will specify (i) the violations of the Rules for which the fine is being imposed, (ii) the date of the violation for which the fine is being imposed and (iii) the amount of the fine. Within twenty (20) Business Days of serving the notice of fine, the Clearing Member, as the case may be, must either pay the fine or file notice of an appeal pursuant to Rule 7.11. Unless timely notice of appeal is filed pursuant to Rule 7.11, the fine will become final upon the expiration of twenty (20) Business Days after the notice of fine is served on the Clearing Member, as the case may be.
- 3) The Clearinghouse, in its sole discretion, may deduct the amount of any fine imposed pursuant to Rule 7.12(1) directly from the Clearing Member's Account; provided that the Clearinghouse may not make such a deduction if the result would be to cause an event of default with respect to any Open Contract Positions then held in the Account of such Member or Authorized User.
- 4) The Clearinghouse will set the amount of any fines imposed pursuant to this Rule 7.12, with the maximum fine for each violation not to exceed \$5,000. Summary imposition of fines pursuant to

this Rule 7.12 will not preclude the Clearinghouse from bringing any other action against the Clearing Member, as the case may be.

Rule 7.13 Summary Suspension

- 1) Notwithstanding anything in the Rules to the contrary, the Chief Compliance Officer or the Chief Compliance Officer's designee, upon a good faith determination that there are substantial reasons to believe that such immediate action is necessary to protect the public or the best interests of the Clearinghouse, may order that any party be denied access to the Clearinghouse, or summarily limit, condition, restrict or qualify the Clearing Privileges of a Clearing Member, and may take other summary action against any Clearing Member in accordance with the Rules; provided, however, that the Chief Compliance Officer or the Chief Compliance Officer's designee in issuing an order denying access, may permit such party to submit Contracts for clearing solely for the purpose of liquidating the Open Contract Positions of such Clearing Member while the applicable suspension, limitation, condition, restriction or qualification of access is in effect.
- 2) Promptly after an order is issued pursuant to paragraph (a), the party shall be informed of the action taken, the reasons for the action, the effective date and the duration of the action. The party shall also be informed of his or her right to appeal the action under Rule 7.11. Whenever practicable, the Compliance Department, acting on behalf of the Chief Compliance Officer, shall provide such notice prior to taking the action. For Customers of an FCM Clearing Member, notice to the Customer shall be deemed given by providing notice to the FCM Clearing Member.
- 3) Whenever practicable, the Clearinghouse shall provide prior written notice to the party against whom any action in accordance with paragraph (a) shall be taken. If prior notice is not practicable, the Clearinghouse will give notice at the earliest possible opportunity to the respondent against whom the action is brought.
- 4) Unless timely notice of appeal is filed pursuant to Rule 7.11, the summary action will become final upon the expiration of twenty (20) Business Days after the notice of action is served on the respondent.
- 5) At the request of the Clearinghouse, a respondent against whom a summary action is brought pursuant to this Rule 7.13 must provide books and records over which the respondent has access or control and must furnish information to, or appear or testify before, the Clearinghouse in connection with the enforcement of any Rule.
- 6) A respondent whose Clearing Privileges are suspended, limited, conditioned, restricted or qualified pursuant to this 7.13 may apply for reinstatement by filing with the Compliance Department a written request stating the applicant's reasons for seeking reinstatement. The Clearinghouse will not consider a respondent's request for reinstatement if the respondent (i) persists in the conduct which was the subject of the order denying access; (ii) owes any fines, fees, charges or costs to the Clearinghouse, (iii) continues to fail to appear at disciplinary proceedings without good cause or (iv) continues to impede the progress of disciplinary proceedings.
- 7) Within a reasonable period after the filing of a request for reinstatement, the Appeals Panel will conduct a hearing to consider the request. At the hearing for reinstatement, the respondent will present its, his or her case supporting the reinstatement and the Compliance Department, acting on behalf of the Chief Compliance Officer may, in its discretion, present its case opposing or supporting the reinstatement and each may present relevant and admissible evidence and facts and call, examine and cross-examine witnesses. At the hearing for reinstatement, the Clearinghouse

may require any Clearing Member to appear as witnesses and produce evidence if the Appeals Panel determines that the evidence is relevant.

- 8) As promptly as reasonably possible after a reinstatement hearing, the Appeals Panel will issue an order reinstating, denying the reinstatement, or placing conditions on the reinstatement of the Clearing Privileges, or association with a Clearing Member, of the respondent. The order will include a brief summary of the evidence introduced at the reinstatement hearing; and, if applicable, findings of fact and conclusions not contained in the Appeals Panel's initial order issued pursuant to Rule 7.11(12) above. The Appeals Panel's order may not be appealed.
- 9) Any decision to deny access pursuant to paragraph (1) shall not remain in effect for more than sixty (60) Business Days unless the Chief Compliance Officer or the Chief Compliance Officer's designee, upon further consideration of the circumstances giving rise to the order denying access, issues a separate order denying access for an additional period of time, not to exceed sixty (60) Business Days. The party must be notified thereof prior to issuance of the second order, unless prior notice is impracticable. Such notice must meet the standards provided in paragraph (2). At any time, a party subject to an action under this Rule 7.13, may petition the Chief Compliance Officer or the Chief Compliance Officer's designee to reconsider an access denial pursuant to this Rule based upon materially changed circumstances.
- 10) When the Clearing Privileges of a Clearing Member are, or the association of an Authorized User with a Clearing Member is, suspended for a period of 12 months or less, none of its rights and/or Clearing Privileges (including the right to hold oneself out to the public as a Clearing Member, submit Contracts for clearing, and receive Clearing Member rates for fees, costs, and charges and collateral at Clearing Member levels) will apply during the period of the suspension, except for the right of the Clearing Member in question to assert claims against others as provided in the Rules. Any such suspension will not relieve the Clearing Member in question of its, his or her obligations under the Rules to perform any Contracts entered into before the suspension, or for any Clearinghouse imposed fees, costs, or charges incurred during the suspension. The Clearinghouse may discipline a suspended Clearing Member under this Chapter 7 for any violation of a Rule or provision of Applicable Law committed by the Clearing Member before, during or after the suspension.
- 11) When the Clearing Privileges of a Clearing Member are, or the association of an Authorized User with a Clearing Member is, terminated, all of its rights and Privileges will terminate, except for the right of the Clearing Member in question to assert claims against others, as provided in the Rules. A terminated Clearing Member may only seek to reinstate its Clearing Privileges by applying for Clearing Privileges pursuant to Rule 3.3. The Clearinghouse will not consider the application of a terminated Clearing Member if such Clearing Member, as the case may be, continues to fail to appear at disciplinary proceedings without good cause or continues to impede the progress of disciplinary proceedings.
- 12) A suspended or terminated Clearing Member remains subject to the Rules and the jurisdiction of the Clearinghouse for acts and omissions prior to the suspension or termination, and must cooperate in any inquiry, investigation, disciplinary proceeding, appeal of disciplinary proceedings, summary suspension or other summary action as if the suspended or terminated Clearing Member or an Authorized User still had Clearing Privileges or was still associated with a Clearing Member, as the case may be.

Rule 7.14 Reporting and Publication of Disciplinary Action

- 1) Within two (2) Business Days after a disciplinary action becomes final, notice of any disciplinary action outcome providing that a Member is suspended, expelled, disciplined or denied access to the Exchange and/or the Clearinghouse shall be provided to the NFA for inclusion in its internet accessible database of disciplinary matters.
- 2) The Clearinghouse will make public notice of the disciplinary action by posting on its website, in accordance with CFTC Regulation 9.13, the information required by CFTC Regulation 9.11. The disciplinary action will be considered final on the date the notice of the disciplinary action is published on the Clearinghouse website.
- 3) The Clearinghouse will report all sanctions to the CFTC and/or its designee(s) as required by CFTC Regulation 39.19.

Rule 7.15 Coordination with Platforms

The Compliance Department may coordinate compliance monitoring and enforcement activities with Platforms, as the Chief Compliance Officer deems appropriate. This may include the sharing of information and analyses, subject to Applicable Law and any confidentiality obligations. Such coordination shall be conducted in a manner consistent with the respective regulatory responsibilities of the Clearinghouse and the applicable Platforms.

Chapter 8 Dispute Resolution

Rule 8.1 Arbitration of Disputes Among Participants

- 1) Any dispute, controversy or claim related to transactions executed and cleared through the Clearing System or otherwise related to participation on the Clearing System shall be resolved and settled through binding arbitration in New York, New York.
- 2) If the parties are able to agree on an arbitrator, the arbitration shall be conducted by a single arbitrator. If the parties are unable to agree on an arbitrator, each party shall select an arbitrator and the two arbitrators shall select a third arbitrator. Any arbitrator selected in connection with such arbitration must qualify as a Public Director (if the individual is a director of the Clearinghouse) and must have reasonable prior experience in the operation and regulation of exchanges and clearinghouses providing execution and clearing services in connection with commodity futures contracts, commodity options or swaps, and with respect to the rules of the CFTC and exchanges and clearinghouses generally.
- 3) The arbitrator(s) shall determine the procedures for any arbitration held under this Rule 8.1, and shall, to the extent practicable, rely on applicable provisions of Chapter 7 with respect to such procedures, including but not limited to in connection with discovery by the parties, submission of documents and a hearing, provided that the arbitrator(s) shall have the authority to determine the appropriate procedures, notwithstanding the provisions of Chapter 7. The arbitrator(s) shall have the authority to award any remedy or relief that a court of competent jurisdiction could order or grant, including the issuance of an injunction. The fees and expenses of such arbitration shall be borne by the non-prevailing party, as determined by such arbitration. This provision shall not be construed in any way as creating a cause of action.

- 4) Any failure on the part of any Participant or Authorized User to arbitrate a case subject to arbitration, or the commencement by any such Person of a suit in any court prior to arbitrating a case subject to arbitration, violates the Rules and subjects such Participant or Authorized User to disciplinary proceedings pursuant to Chapter 7, unless the parties mutually agree not to submit their dispute to arbitration.
- 5) The Clearinghouse may summarily suspend, pursuant to Chapter 7, a Participant or Authorized User that fails to satisfy an arbitration award rendered in any arbitration pursuant to this Chapter 8.

Rule 8.2 Arbitration of Claims Against the Clearinghouse

- 1) Any dispute, controversy, or claim against the Clearinghouse by Participants and their Authorized Users, if applicable, related to or arising out of transactions executed by the Clearinghouse, or otherwise related to or arising out of participation on the Clearinghouse shall be resolved through binding arbitration in New York, New York.
- 2) Any claims submitted for arbitration under this Rule 8.2 will follow the procedures for arbitration as set forth in the Clearinghouse Terms of Use, available at on the Clearinghouse's public website. The Clearinghouse reserves the right to modify the Terms of Use from time to time.

Chapter 9 Miscellaneous

Rule 9.1 Property Rights

- 1) Each Member, on behalf of itself and each of its Affiliates, Authorized Users and other Persons affiliated with any of the foregoing, hereby acknowledges and agrees that the Clearinghouse owns and shall retain all right, title and interest in and to the Clearinghouse, all components thereof, including, without limitation, all related applications, all application programming interfaces, user interface designs, software and source code and any and all intellectual property rights therein, including, without limitation, all registered or unregistered, as applicable, (i) copyrights, (ii) trademarks, (iii) service marks, (iv) trade secrets, (v) trade names, (vi) data or database rights, (vii) design rights, (viii) moral rights, (ix) inventions, whether or not capable of protection by patent or registration, (x) rights in commercial information or technical information, including know-how, research and development data and manufacturing methods, (xi) patents, and (xii) other intellectual property and ownership rights, including applications for the grant of any of the same, in or to the Clearinghouse and all other related proprietary rights of the Clearinghouse and/or any of its Affiliates (together, with any and all enhancements, corrections, bug fixes, updates and other modifications to any of the foregoing and any and all data or information of any kind, other than Proprietary Data and Personal Information, transmitted by means of any of the foregoing, including, without limitation, market data, the "Proprietary Information"). Each Member, on behalf of itself and each of its Affiliates, Authorized Users and other Persons affiliated with any of the foregoing, further acknowledges and agrees that the Proprietary Information is the exclusive, valuable and confidential property of the Clearinghouse. Each Member acknowledges and agrees that it shall not, and it shall not permit its Affiliates, Authorized Users and other Persons affiliated with any of the foregoing, to reverse engineer, copy, bug fix, correct, update, transfer, reproduce, republish, broadcast, create derivative works based on or otherwise modify, in any manner, all or any part of the Clearinghouse or the Proprietary Information. Each Member further agrees to, and agrees to cause each of its Affiliates, Authorized Users and other Persons affiliated with any of the foregoing to, keep the

Proprietary Information confidential and not to transfer, rent, lease, copy, loan, sell or distribute, directly or indirectly, all or any portion of the Clearinghouse or any Proprietary Information.

- 2) Subject to the provisions of this Rule, each Member, on behalf of itself and each of its Affiliates, Authorized Users, and other Persons affiliated with any of the foregoing, hereby acknowledges and agrees that the Clearinghouse is the owner of all rights, title and interest in and to all intellectual property and other proprietary rights (including all copyright, patent, trademark or trade secret rights) in market data, and all derivative works based thereon, and further agrees not to distribute, create derivative works based on, or otherwise use or commercially exploit market data and any such derivative works, provided that Members, Affiliates, Authorized Users, and such other Persons may use market data for their own internal business purposes. Without limiting the generality of the foregoing, Members, Affiliates, Authorized Users, and other Persons affiliated with any of the foregoing may not distribute, sell or retransmit market data to any third party.
- 3) Notwithstanding any other provision of this Rule, each Member and Authorized User retains such rights as it may enjoy under Applicable Law with respect to market data solely in the form such market data was submitted to the Clearinghouse by such Member or Authorized User.
- 4) Transaction Data shall not be disclosed publicly other than on an aggregated or anonymous basis, or in a manner that does not directly or indirectly identify any market participant who has submitted such data.
- 5) The Clearinghouse shall not condition access to the Clearinghouse upon a Member's consent for the Clearinghouse to use Proprietary Data and Personal Information for business or marketing purposes. Proprietary Data and Personal Information may not be used by the Clearinghouse for business and marketing purposes unless the market participant has clearly consented to the use of Proprietary Data and Personal Information in such manner. The Clearinghouse, where necessary, for regulatory purposes, may share Proprietary Data and Personal Information with one or more DCMs, or other similar entities, or associations such as the Intermarket Surveillance Group. Further, nothing in this Rule shall preclude the Clearinghouse from disclosing Proprietary Data and Personal Information: (i) as required by Applicable Law or legal process, (ii) as the Clearinghouse may deem necessary or appropriate in connection with any litigation affecting the Clearinghouse, (iii) to any Clearinghouse Representative authorized to receive such information within the scope of his or her duties, (iv) to a third party performing regulatory or operational services for the Clearinghouse, provided that such party has executed a confidentiality and non-disclosure agreement in a form approved by the Clearinghouse, (v) to a duly Authorized Representative of the CFTC lawfully requesting Proprietary Data and Personal Information, (vi) in a manner in which a market participant consents to such disclosure, (vii) pursuant to the terms of an information-sharing agreement, or (viii) as permitted by CFTC Regulations.

Rule 9.2 Signatures

Rather than rely on an original signature, the Clearinghouse may elect to rely on a signature that is transmitted, recorded or stored by any electronic, optical, or similar means (including but not limited to telecopy, imaging, photocopying, electronic mail, electronic data interchange, telegram, or telex) as if it were (and the signature shall be considered and have the same effect as) a valid and binding original.

Rule 9.3 Legal Proceedings

- 1) Any action, suit or proceeding against the Clearinghouse, its Officers, Directors, limited liability company members, employees, agents, or any member of any committee must be brought within one year from the time that a cause of action has accrued. Any such action, suit or proceeding shall be brought in the State or Federal courts located within the City of New York, New York. Each Member, Authorized User, and other Person subject to Clearinghouse jurisdiction expressly consents to the jurisdiction of any such court, waives any objection to venue therein, and waives any right it may have to a trial by jury.
- 2) Other than in disciplinary proceedings governed by Chapter 7, in the event that a Member or Authorized User or an Affiliate of such Person fails to prevail in a lawsuit or other legal proceeding instituted by such Member or such Affiliate against (i) the Clearinghouse; or (ii) any Affiliate of the Clearinghouse or any of its respective Officers, Directors, equity holders, employees, agents, or any member of any committee, related to the business of the Clearinghouse, such Member or Authorized User shall pay to the Clearinghouse all reasonable costs and expenses, including attorneys' fees, incurred by the Clearinghouse in the defense of such proceeding. This Rule 9.3 shall not apply to Clearinghouse Disciplinary Actions, appeals thereof, or an instance in which the Board has granted a waiver of the provisions hereof.
- 3) The Clearinghouse will provide to the Commission copies of documents pertaining to Clearinghouse-related pending legal proceedings

Rule 9.4 Limitation of Liability; No Warranties

- 1) EXCEPT AS OTHERWISE SET FORTH IN THE RULES, OR DUE TO CLEARINGHOUSE OBLIGATIONS ARISING FROM THE CEA OR CFTC REGULATIONS, INCLUDING, WITHOUT LIMITATION, PART 39 OF CFTC REGULATIONS, OR OTHERWISE UNDER APPLICABLE LAW, NEITHER THE CLEARINGHOUSE NOR ANY OF ITS CLEARINGHOUSE REPRESENTATIVES, AFFILIATES OR AFFILIATES' REPRESENTATIVES SHALL BE LIABLE TO ANY PERSON, OR ANY PARTNER, DIRECTOR, OFFICER, AGENT, EMPLOYEE, AUTHORIZED USER OR AUTHORIZED REPRESENTATIVE THEREOF, FOR ANY LOSS, DAMAGE, INJURY, DELAY, COST, EXPENSE, OR OTHER LIABILITY OR CLAIM, WHETHER IN CONTRACT, TORT OR RESTITUTION, OR UNDER ANY OTHER CAUSE OF ACTION, SUFFERED BY OR MADE AGAINST THEM AS A RESULT OF THEIR USE OF SOME OR ALL OF THE CLEARINGHOUSE OR THE WEBSITE AND BY MAKING USE OF THE CLEARINGHOUSE OR THE WEBSITE, SUCH PERSONS EXPRESSLY AGREE TO ACCEPT ALL LIABILITY ARISING FROM THEIR USE OF SAME.
- 2) EXCEPT AS OTHERWISE SET FORTH IN THESE RULES OR DUE TO CLEARINGHOUSE OBLIGATIONS ARISING FROM THE CEA OR CFTC REGULATIONS, INCLUDING, WITHOUT LIMITATION, PART 39 OF CFTC REGULATIONS, OR OTHERWISE UNDER APPLICABLE LAW, NEITHER THE CLEARINGHOUSE NOR ANY OF ITS CLEARINGHOUSE REPRESENTATIVES, AFFILIATES OR AFFILIATES' REPRESENTATIVES SHALL BE LIABLE TO ANY PERSON, OR ANY PARTNER, DIRECTOR, OFFICER, AGENT, EMPLOYEE, AUTHORIZED USER OR AUTHORIZED REPRESENTATIVE THEREOF, FOR ANY LOSS, DAMAGE, INJURY, DELAY, COST, EXPENSE, OR OTHER LIABILITY OR CLAIM, WHETHER IN CONTRACT, TORT OR RESTITUTION, OR UNDER ANY OTHER CAUSE OF ACTION, SUFFERED BY OR MADE AGAINST THEM, ARISING FROM (A) ANY FAILURE OR NON-AVAILABILITY OF THE

CLEARINGHOUSE OR WEBSITE; (B) ANY ACT OR OMISSION ON THE PART OF THE CLEARINGHOUSE, CLEARINGHOUSE REPRESENTATIVES, AFFILIATES OR AFFILIATES' REPRESENTATIVES INCLUDING WITHOUT LIMITATION A DECISION OF THE CLEARINGHOUSE TO VOID, NULLIFY OR CANCEL ORDERS OR TRADES IN WHOLE OR IN PART; (C) ANY ERRORS OR INACCURACIES IN INFORMATION PROVIDED BY THE CLEARINGHOUSE, AFFILIATES, A PLATFORM, OR THE WEBSITE; (D) UNAUTHORIZED ACCESS TO OR UNAUTHORIZED USE OF THE CLEARINGHOUSE, OR THE WEBSITE BY ANY PERSON; (E) ANY FORCE MAJEURE EVENT; OR (F) ANY LOSS TO ANY MEMBER RESULTING FROM A MEMBER'S OWN SECURITY OR THE INTEGRITY OF A MEMBER'S TECHNOLOGY OR TECHNOLOGY SYSTEMS. THIS LIMITATION OF LIABILITY WILL APPLY REGARDLESS OF WHETHER OR NOT THE CLEARINGHOUSE, ANY CLEARINGHOUSE REPRESENTATIVES, ANY CLEARINGHOUSE AFFILIATES OR AFFILIATES' REPRESENTATIVES (OR ANY DESIGNEE THEREOF) WAS ADVISED OF OR OTHERWISE MIGHT HAVE ANTICIPATED THE POSSIBILITY OF SUCH DAMAGES.

- 3) A PERSON'S USE OF THE CLEARINGHOUSE OR THE WEBSITE, CLEARINGHOUSE PROPERTY AND ANY OTHER INFORMATION AND MATERIALS PROVIDED BY THE CLEARINGHOUSE IS AT THE PERSON'S OWN RISK, AND THE CLEARINGHOUSE, THE WEBSITE, THE CLEARINGHOUSE PROPERTY AND ANY OTHER INFORMATION AND MATERIALS PROVIDED BY THE CLEARINGHOUSE HEREUNDER ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, BY STATUTE, COMMON LAW OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. THE CLEARINGHOUSE DOES NOT GUARANTEE THAT (A) THE CLEARINGHOUSE, CLEARINGHOUSE PROPERTY, OR THE WEBSITE WILL OPERATE IN AN ERROR-FREE, SECURE OR UNINTERRUPTED MANNER; (B) ANY INFORMATION OR MATERIALS PROVIDED BY THE CLEARINGHOUSE OR ACCESSIBLE THROUGH THE CLEARINGHOUSE PROPERTY, OR THE WEBSITE WILL BE ACCURATE, COMPLETE, RELIABLE, OR TIMELY; OR (C) THE CLEARINGHOUSE, CLEARINGHOUSE PROPERTY OR ANY ASPECTS OF THE CLEARINGHOUSE OR THE WEBSITE WILL BE FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS. THE CLEARINGHOUSE SHALL HAVE NO LIABILITY FOR THE CREDITWORTHINESS OF ANY PERSON OR FOR THE ACTS OR OMISSIONS OF ANY PERSON UTILIZING THE CLEARINGHOUSE OR THE WEBSITE, OR ANY ASPECT OF THE CLEARINGHOUSE OR WEBSITE. A PERSON ACCESSING THE CLEARINGHOUSE IS SOLELY RESPONSIBLE FOR THE SECURITY AND INTEGRITY OF THE PERSON'S TECHNOLOGY. A PERSON'S ACCESS TO THE CLEARINGHOUSE MAY BE INTERNET-BASED AND THE CLEARINGHOUSE HAS NO CONTROL OVER THE INTERNET OR A PERSON'S CONNECTIONS THERETO. ANY PERSON ACCESSING THE CLEARINGHOUSE ACKNOWLEDGES THAT THE INTERNET, COMPUTER NETWORKS, AND COMMUNICATIONS LINKS AND DEVICES NECESSARY TO ENABLE A PERSON TO ACCESS AND USE THE CLEARINGHOUSE AND THE WEBSITE ARE INHERENTLY INSECURE AND VULNERABLE TO ATTEMPTS AT UNAUTHORIZED ENTRY AND THAT NO FORM OF PROTECTION CAN ENSURE THAT A MEMBER'S DATA, HARDWARE, OR SOFTWARE OR THE CLEARINGHOUSE OR OTHER CLEARINGHOUSE PROPERTY WILL BE FULLY SECURE. FURTHERMORE, THE CLEARINGHOUSE SHALL HAVE NO OBLIGATION TO MONITOR OR VERIFY

ANY INFORMATION DISPLAYED THROUGH THE CLEARINGHOUSE OR THE WEBSITE.

- 4) A MEMBER OR FCM CUSTOMER THAT HAS COLLATERAL DEPOSITED FOR ITS BENEFIT WITH THE CLEARINGHOUSE PURSUANT TO THESE RULES SHALL HOLD THE CLEARINGHOUSE HARMLESS FROM ALL LIABILITY, LOSSES AND DAMAGES WHICH MAY RESULT FROM OR ARISE WITH RESPECT TO THE CARE AND SALE OF SUCH COLLATERAL PROVIDED THAT THE CLEARINGHOUSE HAS ACTED REASONABLY AND IN ACCORDANCE WITH APPLICABLE LAW UNDER THE CIRCUMSTANCES. FURTHERMORE, THE CLEARINGHOUSE HAS NO RESPONSIBILITY FOR ANY ACT OR OMISSION OF ANY THIRD PARTY SERVICE PROVIDER THAT THE CLEARINGHOUSE HAS CHOSEN WITH REASONABLE CARE. THE CLEARINGHOUSE HAS NO RESPONSIBILITY OR LIABILITY FOR ANY LOSS OF COLLATERAL THAT RESULTS, DIRECTLY OR INDIRECTLY, FROM A BREACH TO A MEMBER'S SECURITY OR ELECTRONIC SYSTEMS, INCLUDING BUT NOT LIMITED TO CYBER ATTACKS, OR FROM A MEMBER'S NEGLIGENCE WITH RESPECT TO PAYMENT INSTRUCTIONS OR ACCOUNT DETAILS OR THE RECEIPT OF COLLATERAL UPON THE REQUEST OF A WITHDRAWAL, OR FROM A MEMBER'S DEPOSIT, MISTAKE, ERROR, NEGLIGENCE, OR MISCONDUCT WITH RESPECT TO ANY COLLATERAL TRANSFERS A MEMBER MAKES OR ATTEMPTS TO MAKE TO THE CLEARINGHOUSE.
- 5) No Member, Authorized User, Authorized Representative or any other Person shall be entitled to commence or carry on any proceeding against the Clearinghouse, any of its Clearinghouse Representatives, Affiliates or Affiliates' representatives, in respect of any act, omission, penalty or remedy imposed pursuant to the Rules of the Clearinghouse. This section shall not restrict the right of such Persons to apply for a review of a direction, order or decision of the Clearinghouse by a competent regulatory authority.
- 6) Notwithstanding anything to the contrary herein, in no event shall the Clearinghouse, any Clearinghouse Representatives, its Affiliates or Affiliates' representatives be liable for any indirect, incidental, consequential, punitive or special damages (whether or not the Clearinghouse or any such Person had been informed or notified or was aware of the possibility of such damages).
- 7) Any Claim for redress or damages hereunder shall be filed in a court of competent jurisdiction within one year of the date on which such Claim allegedly arose. Failure to institute litigation within such time period shall be deemed to be a waiver of such Claim and the Claim shall be of no further force or effect. The allocations of liability in this Rule represent the agreed and bargained for understanding of the parties, and each party acknowledges that the other party's rights and obligations hereunder reflect such allocations. The parties agree that they will not allege that this remedy fails its essential purpose.
- 8) The limitations on liability in this Rule shall not protect any party for which there has been a final determination (including exhaustion of any appeals) by a court or arbitrator to have engaged in willful or wanton misconduct or fraud. Additionally, the foregoing limitations on liability of this Rule shall be subject to the CEA and CFTC Regulations, each as in effect from time to time.