

**Cantor Futures Exchange, L.P.**  
**C.F.T.C. Rule 40.6 Submission**  
**Certification of Rule Amendments**  
**January 29, 2015**

1. The text of the rule changes to the Cantor Futures Exchange, L.P. Rulebook is attached. Additions are underlined and deletions are stricken through. This rule has been approved by Cantor Futures Exchange, L.P. Capitalized terms, unless otherwise defined herein shall possess the meaning(s) ascribed in the Cantor Futures Exchange, L.P. Rulebook.
2. The proposed effective date is ten business days after receipt by the Commodity Futures Trading Commission of this submission.
3. No opposing views were expressed with respect to the proposed rule changes by governing board or committee members or market participants.

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**EXPLANATION AND ANALYSIS OF THE OPERATION, PURPOSE AND EFFECT OF  
THE PROPOSED RULE AND ITS COMPLIANCE WITH APPLICABLE PROVISIONS  
OF THE ACT**

Pursuant to the Cantor Futures Exchange, L.P. (“CX” or “the Exchange”) Order of Designation as a Designated Contract Market,<sup>1</sup> each Participant trading on the Exchange trades for its own account and carries such positions in its own name (i.e., “self-clears”). CX is amending Chapters I and III in the Exchange’s Rulebook (also referred to herein as “Exchange Rules”) to address situations wherein a Participant on the Exchange opens an account or trades as a result of a solicitation from another person. This referring relationship may include certain software, technical or other additional services. It is important to note that nothing in this rule amendment modifies the relationship between a Participant and the Exchange—the Exchange permits Participants to trade and clear only for the Participant’s own proprietary account. Accordingly, the functions of a person that refers a Participant to the Exchange do not alter the Exchange’s fundamental nature as a non-intermediated market and, for the reasons detailed below, are in accordance, and consistent, with the Exchange’s Designation Order.

The purpose for these rule amendments is to clarify the functions that such referring persons may perform in connection with the non-intermediated nature of the Exchange and to make clear that the Exchange may exercise jurisdiction over such referring persons in connection with those

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<sup>1</sup> Order of Designation Of Cantor Futures Exchange, L.P. as a Designated Contract Market, (April 20, 2010) , found at <http://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=TradingOrganizationsAD&Key=16669> (“Designation Order”).

limited functions and thereby clarify the circumstances and requirements for such activity consistent with the Exchange's Designation Order.

Rule III-11 defines a new category of Participant, specifically a "Referring Participant." The purpose of this rule amendment is to ensure that CX rules and jurisdiction apply to anyone that solicits another person to become a CX Participant. For the avoidance of doubt, the definition makes clear that the Referring Participant's activities include solicitation of the Referred Participant but not entering orders into the Trading System on behalf of the Referred Participant. Referring Participants also may provide software, technical or other services to the referred Participant. These types of services--customized front-end trading screens, customized display of trading reports, such as risk alerts and enhanced market reports and analytics may be provided to Referred Participants on an on-going basis. These services may be provided as a package of services along with the solicitation to the Referred Participant. Solicitations may include a solicitation initially to become a Referred Participant as well as subsequent solicitations to trade.

To become a Referring Participant a person must complete an application form and provide such additional information as may be required by the Exchange, including any additional information or materials to demonstrate the Person's ability to operate as a Referring Participant. For example, Referring Participants that provide technical services are required to demonstrate technical and operational capabilities that are compatible with the electronic nature of CX.

Rule III-11 establishes the procedure whereby the Exchange may grant permission to an applicant to act as a Referring Participant. Such permission may be denied or conditioned for failure by the Referring Participant to meet any of the conditions or for a variety of other reasons specified in the Exchange Rules. The addition of the Referring Participant category to Exchange Rules is in accordance with Core Principle 2. All CX Participants expressly agree to be bound by the Exchange Rules in the documentation supporting their respective Participant Applications, and such obligation is expressly delineated in the Exchange's Rulebook. Because Referring Participants under the rules of the Exchange will be required to become a Participant of the Exchange, they are subject to Exchange rules, jurisdiction, and discipline and thus all Exchange Rules apply to them.

Furthermore, new Rule III-11 requires a Referring Participant, if so required by applicable law, to be registered in an appropriate registration category. That registration category likely will be "introducing broker." CX expects that most, if not all, Referring Participants will register as an "introducing broker." In this regard, the category of IB is appropriate insofar as the Referring Participant may be conducting solicitation activities, but do not accept any customer funds. *See* Section 1a(31) of the Commodity Exchange Act, 7 U.S.C. §1 *et seq.* However, CX rules do not foreclose persons from applying for Referring Participant status that are not so registered. For

example, a person that only offers technical access services may conclude that it is not required under applicable law to register as an IB to offer such services, but nevertheless may become a Referring Participant under Exchange Rule III-11.<sup>2</sup> Whether or not the Referring Participant is required to be registered in some capacity, its functions in relation to the Exchange are limited by Exchange rule, and do not alter the essential nature of the Exchange as a non-intermediated Exchange.

In order to comply with CX's Order of Designation, the Exchange Rules do not permit a Referring Participant to accept orders on behalf of any Participant, including as the Authorized Trader<sup>3</sup> of a Referred Participant. Only Participants, including Referred Participants, may enter orders into the Exchange.<sup>4</sup> That is, the Exchange retains a direct relationship to each Referred Participant irrespective of whether the Referred Participant, or his or her trade, has been solicited by a Referring Participant.

The direct nature of the relationship between the Exchange and the Referred Participant is built into the Exchange's trading architecture. With respect to a Referred Participant, like any Participant, access to the CX Trading System comes directly from the Referred Participant's device, whether a mobile device, desktop computer or lap-top computer. The connection with CX is through the Referred Participant's internet carrier. The Referring Participant, as a business matter, may provide a number of additional services that are unrelated to its solicitation activities, but which provide the Referred Participant with additional value. These possibly include a customized front-end computer screen, enhanced position and risk reports, additional market reports, data analytics and other services.

Trade confirmations are sent directly from the Exchange to the Referred Participant's device using the internet connection of the Referred Participant. In addition, the Exchange sends end-of-day statements directly to the Referred Participant via email. Just as with the provision of a customized front-end provided by the Referring Participant to the Referred Participant, the presentation or look of confirmation information on the Referred Participant's device may be altered by customized software that the Referring Participant has made available to the Referred Participant's device. But there should be no doubt that the confirmation signals come directly to the Referred Participant's device from the Exchange.

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<sup>2</sup> See, e.g., CFTC Letter No. 08-12 (July 10, 2008). Although the facts of this, and similar letters, do not address the activities of a software company in the context of the Exchange, the Exchange recognizes the possibility that a person offering similar software services to a CX Participant as that discussed in Letter No. 08-12 may be included within Rule III-11.

<sup>3</sup> Under CX Rule III-2, each Participant that is an entity must appoint one or more natural person to act as its Authorized Trader and a natural person may act as his or her own Authorized Trader.

<sup>4</sup> They do so through their Authorized Traders.

In addition, the Referring Participant, with the explicit consent and permission of the Referred Participant, may receive a drop copy of the Confirmation from CX. The Referring Participant is able to use the information from the drop copy to provide enhanced reports or analytics to the Referred Participant. As explained, these additional software and analytic services are in addition to the solicitation activities of the Referring Participant. In no event do any of these services offered by the Referring Participant alter the fact that it is the Referred Participant that enters Orders directly into his or her own device (smart-phone, desk-top or lap-top computer) and that the Referred Participant's order signal travels through the Referred Participant's internet connection directly to CX. Accordingly, the Referring Participant never touches the Order nor does the Referring Participant transmit the Order to CX on behalf of the Referred Participant in any manner.

Because a Referring Participant's activities may involve solicitation of Referred Participants or their Orders, CX has included a requirement that Referring Participants must maintain funds on deposit with the Exchange at a level to be determined in the Exchange's discretion. Such funds shall be available to the Exchange for the payment of any penalties or fines assessed by the Exchange and shall be returnable to the Referring Participant. Such a deposit serves the purpose of ensuring that there will be assets readily available to satisfy Exchange penalties or customer arbitration awards relating to a Referring Participant's activities on the Exchange.

Typically, IBs are compensated by their customer. However, futures exchanges have traditionally provided fee rebates and other incentives to customers that have flowed through third parties such as FCMs. Recognizing that CX is a non-intermediated exchange, Rule III-11 provides that CX may compensate Referring Participants for their referral activities. The written disclosure of such payments is provided by the Exchange to all referred Participants. Consent by a referred Participant to the referral relationship is also duly obtained by the Exchange. Rule III-11 further requires that the Referring Participant identify to the Exchange that it has referred a Participant.

Taken in their entirety, the amended rules above are intended to clarify that no person may be compensated for soliciting accounts or orders unless that person is a Referring Participant of the Exchange and properly registered or exempt from registration with the NFA.

No other change in the Exchange Rules or its operations is implicated by these amendments.

#### *The Role of Referring Participant is In Accordance with CX's Order of Designation*

The inclusion of Referring Participants as a separate class of Participant does not alter the fundamental, non-intermediated nature of the Exchange and is in accordance with CX's Order of Designation, both generally and with respect to each of its specific provisions. The Commission's Order of Designation states that,

IT IS FINALLY ORDERED, in consideration of Cantor's status as a *non-intermediated market*, that this designation as a contract market shall be subject to Cantor's compliance with representations it made to the Commission in its application.<sup>5</sup>

This statement is followed by ten specific undertakings of the Exchange. The Commission's Designation Letter stated similarly that the Exchange "will operate as a *non-intermediated market* and that its members will also be members of the Cantor Clearinghouse."<sup>6</sup>

#### A "Referring Participant" does not intermediate trading

In providing for Referring Participants, CX will continue to operate in accordance with the requirements of the Commission's Designation Order and with the Designation Letter's requirement that the Exchange operate as a "non-intermediated market." Nothing in the rules providing for a Referring Participant alters CX's continuing adherence to the requirements of its Designation Order that it operate as a "non-intermediated market." As prior to the amendments, CX maintains a direct relationship with each Participant and each Participant trades (and clears) on CX as a principal, regardless of whether such Participant has been referred to the Exchange.

"Intermediation" is undefined in the Commodity Exchange Act or Commission rules. However, in common usage, "intermediation" is thought to refer to the carrying of a customer account. This may be a firm acting as an agent of its customer with respect to trade execution or to clearing the customer's position as agent and guarantor. In either case, the intermediated customer does not have a direct relationship with the exchange or the clearinghouse; instead the customer gains access to the exchange or clearinghouse through its intermediary agent. Thus, an intermediated market is one where a customer's position on the exchange and at the clearinghouse is carried by another, its intermediary.

In contrast, no such "intermediated" relationship exists on CX. CX maintains a direct relationship with each and every trader on CX, who, in order to execute and clear transactions, must become a Participant of the Exchange and the clearinghouse. In its application for contract market designation, CX stated that the "Exchange will be a direct access Exchange only, and Participants will therefore not execute or clear transactions as agent for others."<sup>7</sup> Nothing in the amended rules would change this relationship.

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<sup>5</sup> Designation Order at page 4 (emphasis added).

<sup>6</sup> Id. at p. 3 (emphasis added).

<sup>7</sup> Cantor Designated Contract Market Regulatory Compliance Chart at 9, found at: <http://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=TradingOrganizationsAD&Key=16669>

Thus, regardless of the existence and operation of a Referring Participant, each Participant must maintain a proprietary account with CX, trading and clearing for its own account and each such Participant carries its own positions in its own name with both the Exchange and its clearinghouse. Because nothing in the amended rules affects the structure of the Exchange, which does not permit intermediaries to enter orders or carry the accounts of non-member customers, the essential relationship between a Participant and the Exchange is unchanged by the rule amendments.

The Exchange remains in compliance with its Order of Designation

As noted above, the Commission's Order of Designation provides that CX shall be subject to ten specific representations that it made in its application for designation "in consideration of Cantor's status as a non-intermediated market." It is reasonable, in light of the absence of a definition of "non-intermediated market" that these specific requirements describe how CX shall operate as a non-intermediated exchange under its Designation Order. As detailed below, the amended rules in no way affect the Exchange's continued ability to comply with these specific requirements attendant upon a "non-intermediated" market. We assume that it is reasonable to conclude that the Commission included these requirements that a non-intermediated market must undertake either because there is not a traditional intermediary to carry out these responsibilities or they are protections that are necessary because the market is acting in place of an intermediary. Conversely, because Referring Participants have not altered the essential nature of the Exchange as a non-intermediated market, they cannot fulfill any of these requirements for the Exchange or relieve it of any of these obligations. The specific provisions are as follows:<sup>8</sup>

*Cantor will provide Participants on the Cantor Exchange with order confirmations of each executed transaction and with monthly account statements;*

Under the amended rules, CX continues to provide Participants with the official order confirmations of each executed transaction and with monthly account statements. The Exchange issues these statements directly to all of its Participants, regardless of whether the Participant has been referred to the Exchange. Nothing in the Exchange rules or procedures provides that a Referring Participant may provide confirmations or account statements to a Participant on behalf of the Exchange. We note that Referring Participants are not prohibited from using such Exchange confirmations and account statements to provide referred Participants with customized reports.

*Cantor will provide large trader reports to the Commission in accordance with Commission regulation;*

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<sup>8</sup> See Designation Order at p. 4.

The Exchange continues to provide large trader reports to the Commission. There is no intermediary to supply such reports. Accordingly, they are provided by the Exchange. Please note that this undertaking is in accordance with Commission Rule 17.00(i) which provides that “reporting markets that list exclusively self-cleared contracts shall meet the requirements of . . . [the rule] as they apply to trading in such contracts by all clearing members, on behalf of all clearing members.”

*Cantor will maintain funds of Participants in bank accounts that will be segregated at all times in accordance with the Commission’s regulations;*

The Exchange undertakes to segregate funds for its Participants because there is no intermediary to hold segregated customer funds; the Exchange and its clearinghouse fulfills this function. This continues under the amended rules. Moreover, Referring Participants do not have any involvement with CX Participant funds.

*Cantor will not cheat, defraud or deceive, or attempt to cheat, defraud or deceive, any Participant of the Cantor Exchange or Cantor Clearinghouse;*

The duty not to cheat another is a universal duty, and does not raise a particular issue in defining whether the market is non-intermediated.

*Cantor will not bucket a Participant’s order or engage in a business that is of the nature of a bucket shop;*

The prohibition on bucketing is grounded in the prohibition of an intermediary failing to execute its customer’s trades on the exchange. The Exchange, because there is no intermediary, is therefore required to ensure that orders submitted to CX are actually executed on the Trading System and not matched outside of the exchange facility. On the other hand, this provision cannot be applicable to a Referring Participant because each Participant enters its own orders and the Referring Participant is prohibited from entering an order on behalf of a Referred Participant. Accordingly, a Referring Participant never touches an order on behalf of a Referred Participant and therefore would never be in a position to be able to bucket a transaction.

*Cantor will not willfully make or cause to be made to a Participant a false report, or willfully enter or cause to be entered for a Participant a false record, in or in connection with any contract traded on the Cantor Exchange or cleared through Cantor Clearinghouse;*

This undertaking acknowledges that the Exchange is acting in the stead of a market intermediary; accordingly, it is the Exchange—a non-intermediated market—which

makes reports and records on behalf of its Participants. Nothing in the amended rules alters that relationship.

*Cantor will not disseminate, or cause to be disseminated, false or misleading information, or a knowingly inaccurate report, that affects or tends to affect the price of any contract;*

*Cantor will not engage in manipulative acts or practices regarding the price of a contract;*

*Cantor will not willfully submit false or misleading information to the Commission, Cantor regulatory services provider, or their respective agents;*

The foregoing undertakings generally apply to any entity in the market.

*Cantor will not embezzle, steal, purloin or knowingly convert any money, securities or other property received from or accruing to a Participant in connection with contracts traded or cleared by such participant.*

As discussed above, all Participant funds are held by the Exchange and its clearinghouse. Accordingly, they are prohibited from abusing the funds deposited by Participants. Referring Participants are prohibited from having any role with respect to the funds of CX Participants and thus could not be subject to this undertaking.

The foregoing representations place on CX prohibitions normally placed on intermediaries in dealing with customers. Because CX operates as a non-intermediated market and has a direct relationship with each and every Participant, the Exchange undertook, and the Commission placed such prohibitions directly on, the Exchange. Nothing in the amended rules modifies the effectiveness or the requirement that the Exchange abide by these undertakings.

For these reasons, the amended rules are fully consistent with the requirements of a “non-intermediated market” defined by the Commission in CX’s Designation Order and in no way affect the fundamental non-intermediated nature of the Exchange. The direct relationship between a Participant and the Exchange, whereby Exchange members may trade and clear only for a Participant’s own account, is unchanged. Accordingly, the Exchange remains in full compliance with the requirements of a non-intermediated market as described by the Commission in CX’s Designation Order.



**CERTIFICATIONS PURSUANT TO SECTION 5c OF THE COMMODITY  
EXCHANGE ACT, 7 U.S.C. §7a-2 AND COMMODITY FUTURES TRADING  
COMMISSION RULE 40.6, 17 C.F.R. §40.6**

I hereby certify that the foregoing rule amendments comply with the Commodity Exchange Act, 7 U.S.C. §1 *et seq.* and regulations thereunder.



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By: Manavinder S. Bains

Title: Counsel and Chief Regulatory Officer

Dated: January 29, 2015

I hereby certify that a copy of this filing was posted on the Cantor Futures Exchange, L.P. website the day of its submission to the Commission.



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By: Manavinder S. Bains

Title: Counsel and Chief Regulatory Officer

Dated: January 29, 2015

## Cantor Futures Exchange, L.P. Rules

### CHAPTER I DEFINITIONS; INTERPRETATION; AMENDMENTS

#### **Referred Participant**

The term “Referred Participant” means a Person that has been referred or solicited by a Referring Participant to become a Participant of the Exchange or whose Orders have been solicited by a Referring Participant.

#### **Referring Participant**

The term “Referring Participant” means a Participant that has been approved by the Exchange to solicit or refer another Person to become a Participant (the Referred Participant) or to solicit a Referred Participant’s Orders, but not to enter such Referred Participant’s Orders into the Trading System on behalf of that Referred Participant.

### CHAPTER III OWNERSHIP AND TRADING PRIVILEGES

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#### **III-3 Eligibility**

(b) Notwithstanding anything to the contrary in Rule III-3(a), the Exchange shall have the right to establish more than one class of Participants, which shall include Referring Participants as a separate class, in connection with the trading of particular Contracts, subject to and in accordance with the applicable Exchange Contract Rules. All Rules that apply to Participants also apply to Referring Participants except where the context requires otherwise. All rules that refer to Referring Participants shall apply only to such Persons.

(c) \* \* \*

(e) Notwithstanding anything in the foregoing paragraphs (c) or (d) to the contrary:

(i) in considering any applicant for status as a Participant, ~~or as an~~ Authorized Trader of a Participant, or a Referring Participant, the

Exchange may request additional information, or employ such other means that it deems desirable or appropriate, to ascertain relevant facts bearing on the applicant's qualifications; and

(ii) The Exchange may limit trading in particular Contracts to specific Participants based upon financial, regulatory or other criteria established by the Exchange or the Exchange may limit a Referring Participant to acting in the capacity of Referring Participant for specific Contracts based upon regulatory or other criteria established by the Exchange.

(f) \* \* \*

(i) No Participant may refer or solicit another Person to become a Participant of the Exchange or to solicit another Participant to enter an Order on the Exchange, including providing related software, technical or other associated services, except in accordance with the provisions of Rule III-11.

### **III-5. Fees and Payments**

(a) The Board of Directors shall have the sole authority to set the times and amounts of any fees to be paid by Participants or any payments to be paid, by the Exchange to Referring Participants which fees or payments shall be paid when due. The Exchange shall disclose to referred Participants whether it makes payments for referrals to Referring Participants.

(b) If a Participant fails to pay when due any Exchange fees or other amounts due on such Participant, and such payment obligation remains unsatisfied for 30 Business Days after its due date, the Exchange as it deems necessary or appropriate may suspend, revoke, limit, condition, restrict or qualify the Trading Privileges of such Participant and its Authorized Traders.

(c) If a Referring Participant fails to pay when due any Exchange fees or other amounts due on such Referring Participant, and such payment obligation remains unsatisfied for 30 Business Days after its due date, the Exchange as it deems necessary or appropriate may suspend, revoke, limit, condition, restrict or qualify the permission of a Referring Participant to act in the capacity of a Referring Participant.

### III-11.

### Referral and Solicitation of Participants and Orders

(a) Notwithstanding anything to the contrary in these Rules, a Referring Participant may refer or solicit another Person to become a Referred Participant or may solicit a Referred Participant's Orders, and may provide software, technical or other associated services, upon being notified by the Exchange under the procedures specified in paragraph (b) that the Referring Participant satisfies, and remains in compliance with, the following conditions and is being permitted by the Exchange to act in the capacity of Referring Participant. The Referring Participant must:

(i) be a Participant in good standing with the Exchange;

(ii) if applicable, be registered with the National Futures Association in an appropriate registration category, or exempt from registration;

(iii) submit to the Exchange such additional forms and agreements as the Exchange shall require and promptly update any information provided therein that becomes inaccurate or incomplete;

(iv) maintain an amount of funds on deposit (the level of such amount(s) to be determined by the Exchange in the Exchange's sole discretion) for as long as the person remains a Referring Participant of the Exchange. Such amount, minus any financial obligations payable to the Exchange, shall be returned to the Referred Participant upon the Referring Participant's withdrawal from the Exchange or revocation of such Person's status as a Referring Participant; provided however, that in establishing the level of such deposits, the Exchange may implement a tiered structure with the level of deposit corresponding to a particular category of Participant;

(v) provide a means acceptable to the Exchange of identifying to the Exchange those Participants which it refers or solicits, and the referred Participant's acknowledgment that it has been referred;

(vi) demonstrate sufficient technical and operational capabilities to meet Exchange technical specifications and requirements as specified by the Exchange from time to time;

(vii) solicit or refer Persons to become a Participant or solicit their Orders to the Exchange via:

(A) electronic media of the Referring Participant approved by the Exchange;

(B) electronic media made available to the Referring Participant by the Exchange; or

(C) such other method as the Exchange may accept from time to time.

(viii) Satisfy such other requirements or criteria as may from time to time be adopted by the Exchange under these Rules.

(ix) For the avoidance of doubt, a Referring Participant shall not enter Orders into the Cantor Direct System on behalf of a Referred Participant as the Authorized Trader of a Referred Participant or in any other capacity.

(b) Following a request by a Participant for a determination by the Exchange that the Participant meets the conditions of paragraph (a) to act as a Referring Participant, the Exchange shall notify such Participant without unreasonable delay whether such Participant is permitted by the Exchange to refer or solicit Participants or their Orders. *Provided, however,* the Exchange may limit its permission to particular Contracts.

(c) The Exchange in its sole discretion may deny, condition or revoke its permission to a Referring Participant to act as a Referring Participant. Any such action may be appealed by the Referring Participant in accordance with the procedures under the provisions of Chapter VII, provided, however, that such sanction shall continue in effect during the appeal. The Exchange may take such action to deny, condition or revoke its permission, if:

(i) upon request, the Referring Participant is unable satisfactorily to demonstrate a capacity to adhere to all applicable Rules of the Exchange, Rules of the Clearinghouse, CFTC Regulations and Applicable Law;

(ii) at any time the Referring Participant fails to meet any of the conditions in paragraph (a);

(iii) the Referring Participant fails to meet any limitation placed by the Exchange on its permission to the Referring Participant under paragraph (b);

(iv) the Referring Participant violates any agreement with the Exchange;

(v) the actions or activities of the Referring Participant would bring the Exchange into disrepute;

(vi) in the discretion of the Exchange, such action is in the best interests of the Exchange or for such other causes as the Exchange may determine from time to time.

(d) Upon granting permission to a Referring Participant to act in that capacity, the Exchange shall record the referral relationship between a Referred Participant and the Referring Participant in its account records and shall make available daily reports and information about the referred account activity in such form and manner as the Exchange shall from time to time determine.