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November 30, 2015

Via CFTC Portal Submissions

Mr. Christopher Kirkpatrick
Secretary of the Commission
Office of the Secretariat
Commodity Futures Trading Commission
3 Lafayette Centre
1155 21st Street, N.W.
Washington D.C. 20581

**RE: Rule Certification: Nadex Advisory Notice Regarding Third Party
Technology and Signal Providers – Submission Pursuant to Commission
Regulation §40.6(a)**

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (the “Act”), and §40.6(a) of the regulations promulgated by the Commodity Futures Trading Commission (the “Commission”) under the Act, North American Derivatives Exchange, Inc. (“Nadex”) hereby submits to the Commission its intent to adopt Advisory Notice 2015_01 which addresses Nadex’s position with respect to its Members making use of third party services to assist with their Nadex trading experience. The Advisory Notice is attached hereto in Exhibit A, and will be made publicly available on the Nadex website.

Third Party Provider Advisory DCO Core Principles

Nadex has identified the following DCO Core Principles as potentially being impacted by its interpretive Advisory Notice: Core Principle C (Participant and Product Eligibility); Core Principle L (Public Information).

Core Principle C, implemented by Regulation 39.12, requires the DCO to establish appropriate admission and continuing participation requirements. As part of its admission and continuing participation requirements, Nadex requires each of its Members to protect its

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username and password, and to not share the Member's username and password with any individual or entity not authorized by Nadex. This obligation is stated both in the Nadex Membership Agreement and Rule 5.2(d), both of which are publicly available on the Nadex website. Additionally, Rule 5.19(g) prohibits Members from engaging in trading activity for any other individual or entity. The purpose of these obligations is to prevent unauthorized access to the markets, and to prevent trading activity by an unknown end user. The Advisory Notice will not change the requirement, rather it reminds its Members they are required to comply with the Rules at all times. The Rules are fair and impartial, and do not impose unreasonable restrictions on access to its markets. Indeed, the Rules are necessary to ensure all Members have undergone a proper onboarding and review process, and have been approved by Nadex. Therefore, the Advisory Notice will not negatively impact Nadex's ability to comply with this Core Principle.

Core Principle L, implemented by Regulation 39.21, requires the DCO provide market participants with sufficient information to enable the participant to identify and evaluate accurately the risks and costs associated with using the services of the DCO. As previously stated, the Nadex Rules and Membership Agreement are publicly available on the Nadex website. All Member applicants are required to read and agree to the Membership Agreement and Rules when submitting their application for review. Members are therefore aware of the Rules at the time of application. Furthermore, the Advisory Notice which highlights these Rules, will be publicly available on the Nadex website. Accordingly, the Advisory Notice will not negatively impact Nadex's ability to comply with this Core Principle.

Third Party Provider Advisory DCM Core Principles

Nadex has identified the following DCM Core Principles as potentially being impacted by its interpretive Advisory Notice: Core Principle 2 (Compliance with Rules).

Core Principle 2, implemented by Regulations 38.150 and 38.151, require the DCM to establish access criteria that are impartial, transparent, and applied in a non-discriminatory manner. The Rules preventing Members from providing their login credentials to any other individual or entity, and the prohibition on any individual or entity, other than the Member, from trading the Member's account are publicly available in the Rules and Membership Agreement, available on the Nadex website, and therefore are transparent. The Rules apply to all Members, and are therefore impartial and non-discriminatory. This Core Principle also requires the DCM prohibit abusive trading practices on its markets. The Rules Nadex has established further the goal of this Principle by prohibiting access and trading activity by any party who has not been reviewed by Nadex and granted Membership, or who cannot be identified by the Exchange as the end user. The Advisory Notice does not change these Rules, and therefore will not have a negative impact on Nadex's ability to comply with this Core Principle.

Pursuant to the 10-day filing period under Regulation 40.6(a)(3), the Advisory Notice would become effective December 15, 2015.

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No substantive opposing views were expressed to Nadex with respect to this Advisory Notice.

Nadex hereby certifies that the Advisory Notice contained herein complies with the Act, as amended, and the Commission Regulations adopted thereunder.

Nadex certifies that a copy of the Advisory Notice was posted on its website at the time of this filing.

Should you have any questions regarding the above, please do not hesitate to contact me by telephone at (312) 884-0927 or by email at Jaime.walsh@nadex.com.

Sincerely,



Jaime Walsh
Legal Counsel

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EXHIBIT A

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NORTH AMERICAN DERIVATIVES EXCHANGE ADVISORY NOTICE

Subject	Third Party Signal and Technology Providers
Rule Reference	5.2(d); 5.19(g); Membership Agreement
Advisory Date	November 30, 2015
Advisory Number	2015_01
Effective Date	December 15, 2015

Pending the relevant CFTC regulatory review period, effective December 15, 2015, Nadex will adopt the following Advisory Notice with respect to its interpretation of its amended Rules 5.2(d) and 5.19(g).

The purpose of the following interpretation is to address Nadex's position with respect to its Members making use of third party services to assist with their Nadex trading experience.

APPLICABLE RULES

Rule 5.2 TRADING MEMBER ACCESS TO NADEX

(a) - (c) . . .

(d) Each Trading Member will be responsible for protecting its ID and password, and with respect to an entity Trading Member, the ID(s) and password(s) of its Authorized Trader(s), from improper disclosure. In addition, a Trading Member may not knowingly or negligently permit any Person not authorized by Nadex and by the Trading Member to use the ID and password to access the secure portion of the Nadex website. Each Trading Member is required to immediately notify Nadex if it knows, or has reason to believe, that its ID or the ID and/or password of any Authorized Trader have been disclosed to any Person not authorized by Nadex and the Trading Member to use such ID and/or password. Under any circumstances, the Trading Member will be deemed to know that such ID and/or password have been disclosed to an unauthorized person 12 hours after any order is entered by that unauthorized person in your account.

(e) - (g) . . .

Rule 5.19 PROHIBITED TRANSACTIONS AND ACTIVITIES

(a) - (f) . . .

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(g) No individual Trading Member shall trade for a person or entity other than itself and no Authorized Trader of an entity Trading Member shall trade for a person or entity other than the entity Trading Member for whom that Person is an Authorized Trader.

(h) – (v) . . .

NADEX MEMBERSHIP AGREEMENT: . . . You shall maintain the confidentiality of Your Access Materials and prevent the unauthorized use of Your Access Materials at all times. If You become aware of any deliberate or inadvertent disclosure, loss, theft or unauthorized use of Your Access Materials, You must notify Nadex immediately and request a new password. You may not access or attempt to access the Nadex System using the Access Materials of any other Member, or permit any other person or entity to access or attempt to access the Nadex System using Your Access Materials.

INTERPRETATION AND COMPLIANCE

In recent weeks Nadex has received inquiries from various Members regarding the use of third party services such as trade signal providers and third party technology providers to assist their trading activity at Nadex. A trade signal provider is an individual or entity that issues alerts or buy or sell signals for specific markets to followers or “subscribers”. By contrast, a technology provider distributes technology, often technology the provider has developed, to assist the trader with various aspects of trading such as the automatic submission of a buy or sell order to the Exchange based on parameters determined by the trader. The technology may have the capability of receiving trade signals, however, the signal is not determined by the technology provider, rather it is created by the signal provider¹. The technology provided by the technology provider in such a case merely acts as an intermediary to connect the trader to the signal provider and/or to a market.

While both types of services may facilitate and enhance the Member’s trading experience, it is important to remember that use of these, or any, services should not negatively affect the Member’s ability to comply with the Nadex Exchange Rules. Furthermore, there are several activities in the financial industry which may require registration with either the Commodity Futures Trading Commission (“CFTC” or the “Commission”) or the Securities and Exchange Commission (“SEC”) or both. **Nadex does not condone its Members conducting business with any individuals or entities that are not in compliance with such registration requirements.**

A Commodity Trading Advisor (“CTA”) as defined by the Commodity Exchange Act (“CEA”) is “any person who (i) for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in (I) any contract of sale of a commodity for future delivery, security

¹ The technology provider may also act as a signal provider, however, the two aspects of the business are distinct.

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futures product or swap...”² Some CTAs may qualify for an exemption from registration under Commission Regulation 4.14(a)(9) provided the CTA “does not engage in any of the following activities: (i) Directing client accounts; or (ii) Providing commodity trading advice based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients.”³ The Commission stated in its final rulemaking of the exemption that “[a] CTA must meet both of the specified conditions to qualify for the proposed exemption.”⁴

With respect to “directing client accounts”, the CFTC defines “direct” as referring to “agreements whereby a person is authorized to cause transactions to be effected for a client’s commodity interest account without the client’s specific authorization.”⁵ The Commission has further noted that an agreement authorizing another to direct the client’s account need not be a formal agreement.⁶ The second requirement for an exemption refers to advice which “depends on and reflects information concerning its advisee(s),” and the Commission pointed out that “so long as the CTA’s advice is based on or tailored to such information, the CTA remains required to register even if it gives the same advice to groups of similarly situated clients.”⁷

To illustrate the registration requirement, according to the CEA definition of a CTA, a signal provider who provides advice (i.e. the trade signal) either directly to the trader or through a publication, and is compensated for such advice is acting as a CTA⁸. This provider may need to register with the CFTC as a CTA unless it qualifies for an exemption from registration pursuant to CFTC Rule 4.14(a)(9). On the other hand, a technology provider that sells software capable of receiving and aggregating trade signals, and submitting orders to the Exchange based upon those signals and parameters customized by the trader is not likely required to register with the CFTC as the trade advice does not originate from the technology provider.⁹ In such instances, the technology merely facilitates the flow of information between the signal provider, the trader, and the Exchange.

Each applicant for Nadex Membership agrees to comply with and be bound by the Exchange Rules when submitting the Membership application to the Exchange. Additionally,

² 7 U.S.C. 1(a)(12).

³ 17 CFR Section 4.14(a)(9).

⁴ 65 Fed. Reg. 12939 (March 10, 2000).

⁵ 17 CFR Section 4.10(f).

⁶ 65 Fed. Reg. 12941 (March 10, 2000).

⁷ *Id.* at 12940.

⁸ “A person that provides commodity trading advice by means of newsletters, Internet web sites, or similar means falls within the statutory definition of ‘commodity trading advisor’ unless the person is a ‘publisher or producer of print or electronic data of general and regular dissemination’ and the furnishing of commodity trading advice is ‘solely incidental to the conduct of their business or profession’”. 65 Fed. Reg. 12939, (March 10, 2000), footnote 2.

⁹ Note that whether a third party service is required to register with the CFTC or NFA in any capacity depends on the specific characteristics of the service. The examples provided herein are not meant to be definitive or exclusive. See also registration requirements as an Introducing Broker for technology providers who refer customers to a National Futures Association Member and receives compensation for the referral. <https://www.nfa.futures.org/nfamanual/NFAManual.aspx?RuleID=9055&Section=9>

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every time a Member logs onto Nadex, “the applicant affirms that it understands and agrees to be bound by [the Nadex] Rules and other policies of Nadex.”¹⁰ Each Nadex Member is required to protect and control that Member’s own account. Nadex Rules also prohibit Members from providing their login credentials to any other individual or entity, granting account access to any other individual or entity, and authorizing any other individual or entity to engage in trading activity on behalf of that Member.¹¹ Members must keep these Rules in mind when assessing whether to utilize any type of third party service to enhance their trading experience.

Nadex would like to remind its Members that it is not a brokerage, it is a registered Designated Contract Market (“DCM”) and Derivatives Clearing Organization (“DCO”). As a DCM and DCO Nadex is required by CFTC Regulations to have and enforce Rules that protect the markets and its Members.

For additional information regarding signal providers and technology providers and examples, see:

- National Futures Association Interpretive Notice 9055 - NFA Bylaw 1101, Compliance Rules 2-9 and 2-29: Guidelines Relating to the Registration of Third-Party Trading System Developers and the Responsibility of NFA Members for Promotional Material that Promotes Third-Party Trading System Developers and Their Trading Systems
- Commodity Futures Trading Commission; Exemption from Registration as a Commodity Trading Advisor. Federal Register: March 10, 2000 (Volume 65, Number 48, pages 12938-12943).

Nadex is not affiliated with, nor does it sponsor, endorse or promote, any particular third party provider. It is each Member’s responsibility to become familiar with and to comply with the Rules, Membership Agreement, and Terms of Use.

Should you have any questions, please contact the [Compliance Department](#).

¹⁰ Nadex Rule 5.2(a).

¹¹ Nadex Rules 5.2(d) and 5.19(g). Restriction does not include Authorized Traders of Entity Members who have been approved by Nadex.

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