

EOX Swap Execution Facility

Rulebook

BY ACCESSING, OR ENTERING ANY ORDER OR TRANSACTION INTO, THE PLATFORM, AND WITHOUT ANY NEED FOR ANY FURTHER ACTION, UNDERTAKING OR AGREEMENT, A PARTICIPANT, AUTHORIZED USER, OR BROKER FIRM AGREES (I) TO BE BOUND BY, AND COMPLY WITH, THE RULES AND APPLICABLE LAW, IN EACH CASE TO THE EXTENT APPLICABLE TO IT, HIM OR HER, (II) TO BECOME SUBJECT TO THE JURISDICTION OF THE SEF WITH RESPECT TO ANY AND ALL MATTERS ARISING FROM, RELATED TO, OR IN CONNECTION WITH, THE STATUS, ACTIONS OR OMISSIONS OF SUCH PARTICIPANT, AUTHORIZED USER OR BROKER FIRM AND (III) TO ASSIST THE SEF IN COMPLYING WITH ITS LEGAL AND REGULATORY OBLIGATIONS, COOPERATE WITH THE SEF AND THE CFTC IN ANY INQUIRY, INVESTIGATION, AUDIT, EXAMINATION OR PROCEEDING, AND AUTHORIZES THE SEF TO PROVIDE INFORMATION REGARDING IT, HIM, OR HER TO THE REGULATORY SERVICES PROVIDER, THE CFTC OR ANY SELF-REGULATORY ORGANIZATION.

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SECTION I DEFINITIONS

- 1.1 *Account Administrator.*** Has the meaning set forth in Rule 3.10.1.
- 1.2 *Affiliate.*** A Person who directly or indirectly, controls, is controlled by, or is under common control with another Person.
- 1.3 *All-or-None Order.*** Has the meaning given to it in Rule 4.4.2(c).
- 1.4 *Appeal Panel.*** A panel comprised of a chair and two individuals appointed by the Board to consider appeals under Section VII.
- 1.5 *Applicable Law.*** With respect to any Person, any statute, law, regulation, rule or ordinance of any governmental or self-regulatory authority applicable to such Person, including the CEA and CFTC Regulations.
- 1.6 *Audit Trail.*** Has the meaning set forth in Rule 4.9.1.
- 1.7 *Authorized User.*** A natural person who is either employed by or is an agent of a Participant or Broker Firm and who is authorized by the SEF as an Authorized User in accordance with Rule 3.6.
- 1.8 *Block Trade.*** A privately-negotiated transaction in a SEF Contract that is permitted to be executed off of the SEF and reported in accordance with Rule 4.5.
- 1.9 *Board.*** The Board of Directors of the SEF.
- 1.10 *Broker Firm.*** An Introducing Broker, Interdealer Broker, or FCM that has signed the Broker Firm Agreement and is authorized to act as a broker or perform agency functions on behalf of one or more Participants.
- 1.11 *Business Day.*** Any day on which the SEF is open for trading.
- 1.12 *CEA.*** The Commodity SEF Act, as it may be amended from time to time.
- 1.13 *CFTC or Commission.*** The Commodity Futures Trading Commission.
- 1.14 *CFTC Regulations.*** The regulations of the CFTC, as they may be amended from time to time.
- 1.15 *President.*** The individual appointed to serve as the SEF's President.
- 1.16 *Chief Compliance Officer.*** The individual appointed by the President to serve as the SEF's chief compliance officer.

- 1.17** *Commodity SEF Act* or *CEA*. The Commodity SEF Act, as amended from time to time.
- 1.18** *Commodity Type*. The category of asset class for a SEF Contract.
- 1.19** *Contract Market*. Has the meaning set forth in CFTC Regulation 1.3(h).
- 1.20** *Swap Specifications*. The descriptions of the contractual items for each SEF Contract as set forth in the document available on the SEF website. Items described in the Contract Specifications referenced in this Rulebook include the Last Trading Day, and the Daily Settlement Price.
- 1.21** *Contract Term*. The length of the settling period for the SEF Contract, including, but not limited to, monthly, weekly and daily SEF Contracts.
- 1.22** *Control*. The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of securities, by contract, or otherwise. The terms “controlling” or “controlled” shall have meanings correlative to the foregoing.
- 1.23** *Customer*. A Participant that is a customer of a Broker Firm
- 1.24** *Customer Account*. An account carried by a Participant or Customer.
- 1.25** *CTI* or *Customer Type Indicator*. Has the meaning set forth in Rule 4.9.3 and CFTC Regulation 1.35(e).
- 1.26** *Daily Settlement Price*. The official daily closing price for a SEF Contract calculated each Business Day, as determined in accordance with Rule 4.8.
- 1.27** *Derivatives Clearing Organization*. Has the meaning attributed to such term by Section 1a(9) of the CEA.
- 1.28** *Director*. An individual serving on the Board.
- 1.29** *Disciplinary Proceedings*. Any inquiry, investigation, disciplinary proceeding, summary imposition of fines, summary suspension or other summary action conducted pursuant to Section VII of the Rules.
- 1.30** *Disciplinary Offense*. Has the meaning set forth in CFTC Regulation 1.63(a)(6).
- 1.31** *Disciplinary Panel*. Either or both of a Review Panel and a Hearing Panel, as required by the context.
- 1.32** *Eligible Contract Participant*. Has the meaning set forth in Section 1a(18) of the CEA and in the CFTC Regulations.

1.33 **Emergency.** The occurrences or circumstances which, in the opinion of the Board, require immediate action to be taken in accordance with Rule 4.1.3, and which threaten, or may threaten, the fair and orderly trading in, or the settlement or integrity of, any SEF Contract, including, without limitation, the following:

- (1) any circumstance that may materially affect the performance of a SEF Contract;
- (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 sub-division thereof; or other Person exercising, or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or any other SEF, contract market, clearing house, board of trade, or other exchange or trade association (foreign or domestic) that may have a direct impact on trading on the SEF or the settlement legality or enforceability of any SEF Contract;
- (3) any actual, attempted or threatened corner, squeeze, congestion, manipulative activity or undue concentration of positions in a SEF Contract;
- (4) any circumstance that may have a severe, adverse effect upon the functions and facilities of the SEF, including, but not limited to, acts of God, fire, flood or other natural disasters, bomb threats, acts of terrorism or war, severely inclement weather, or failure or malfunction of all or a portion of the Platform, or other system breakdowns or interruptions such as power, computer, communication or transportation systems or the internet;
- (5) the bankruptcy or insolvency of any Participant or the imposition of any injunction or other restraint by any government agency, court or arbitrator upon a Participant which may affect the ability of a Participant to trade in or perform on a SEF Contract;
- (6) any circumstance in which it appears to the Board that any Person:
 - (a) has failed to perform on a SEF Contract;
 - (b) is insolvent; or
 - (c) is in a financial or operational condition or is conducting business such that the Person cannot be permitted to continue in business without jeopardizing the safety of Participants or the SEF; or
- (7) any other unusual, unforeseeable or adverse circumstance as determined by the SEF.

1.34 **Emergency Rules.** Has the meaning set forth in Rule 4.1.3.

- 1.35** ***EOX.*** EOX Exchange LLC, a Delaware limited liability company.
- 1.36** ***EOX SEF.*** The SEF operated by EOX Exchange LLC ('EOX').
- 1.37** ***Expiry.*** A SEF Contract with a specific date of expiration.
- 1.38** ***FCM.*** A futures commission merchant as defined in the CEA and CFTC Regulations and registered with the CFTC as such.
- 1.39** ***Final Settlement Price.*** The price for each SEF Contract based on relevant settlement prices from reference sources for SEF Contracts.
- 1.40** ***Governmental Authority.*** Any domestic or foreign government (or political subdivision), governmental or regulatory authority, agency, court, commission or other governmental or regulatory entity (including any Self-Regulatory Organization).
- 1.41** ***Hearing Panel.*** Means a Disciplinary Panel that will, pursuant to the procedures set forth in Section VII, adjudicate disciplinary cases following the issuance of a notice of charges authorized by the Review Panel and execute other duties as provided for in Section VII. The members of the Hearing Panel will be appointed in accordance with Rule 7.9.
- 1.42** ***Independent Systems Operator or ISO.*** The organization that manages the power grid and sets the pricing against which SEF Contracts in power markets settle. As used in these Rules, the term ISO also applies to regional transmission organizations ("**RTOS**"), such as PJM Interconnection, and state reliability councils, such as the Electric Reliability Council of Texas ("**ERCOT**").
- 1.43** ***Insolvency*** and ***Insolvent.*** The occurrence of any of the following events with respect to a Person:
- (a) the Person is determined to be insolvent by a Governmental Authority or Self-Regulatory Organization;
 - (b) if the Person is a member of the Securities Investor Protection Corporation, a court of competent jurisdiction finds that the Person meets any one of the conditions set forth in clauses (A), (B), (C) or (D) of Section 5(b)(1) of the Securities Investor Protection Act of 1970;
 - (c) in the event of the entry or the making of a decree or order by a court, Governmental Authority or other supervisory authority of competent jurisdiction (a) adjudging the Person as bankrupt or insolvent, (b) approving as properly filed a petition seeking reorganization, arrangement, liquidation, dissolution, adjustment or composition of or in respect of the Person under the Bankruptcy Code or any other applicable federal, state or other U.S. or non-U.S. law, including any bankruptcy, insolvency, reorganization,

liquidation, dissolution or similar law, (c) appointing a receiver, custodian, liquidator, provisional liquidator, administrator, provisional administrator, assignee, trustee, sequestrator or other similar official for the Person or for any substantial part of its property, ordering the winding up or liquidation of the Person's affairs or (e) consenting to the institution by the Person of proceedings to be adjudicated as bankrupt or insolvent;

- (d) the filing by the Person of a petition, or any case or proceeding, seeking reorganization or relief under the Bankruptcy Code or any other applicable federal, state or other U.S. or non-U.S. law, including any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law, or the consent by the Person to the filing of any such petition, case or proceeding or to the appointment of a receiver, custodian, liquidator, provisional liquidator, administrator, provisional administrator, assignee, trustee, sequestrator or other similar official for the Person or for any substantial part of its property, or the making by the Person of an assignment for the benefit of its creditors, or the admission by the Person in writing of its inability to pay its debts generally as they become due, or the taking of corporate or similar action by the Person in furtherance of the foregoing.

- 1.44** *Introducing Broker* or *IB*. Has the meaning set forth in Section 1a(23) of the CEA and includes a Broker Firm.
- 1.45** *Last Trading Day*. The last day an Expiry may be traded as set forth in the Contract Specifications.
- 1.46** *Limit Order*. Has the meaning given to it in Rule 4.4.2(b).
- 1.47** *Liquidity Provider*. A Participant that has entered into a Liquidity Provider Agreement, which provides Participant with certain incentives as a liquidity provider.
- 1.48** *Market Order*. Has the meaning given to it in Rule 4.4.2(a).
- 1.49** *Market Regulation Department*. EOX staff responsible for functions including market operations, trade surveillance and compliance.
- 1.50** *Matching Engine*. The set of algorithms through which orders are matched.
- 1.51** *Nominating Committee*. The committee of the Board constituted in accordance with Rule 2.4.2.
- 1.52** *Officer*. Has the meaning given to it in Rule 2.2.1.
- 1.53** *Order*. Either a bid or an offer for a Swap on or subject to the Rules of the SEF.

- 1.54** *Operating Agreement.* The Limited Liability Company Agreement of the SEF, as it may be amended or restated from time to time.
- 1.55** *Participant.* An entity that has signed the Participant Agreement and is authorized to enter into Transactions for its own account.
- 1.56** *Participant Agreement.* An agreement between the SEF and a Participant that must be signed in order for a Participant to have access to the SEF for the execution or entry of transactions.
- 1.57** *Permitted Transaction.* Any transaction *not* involving a swap subject to the trade execution requirement in section 2(h)(8) of the Act.
- 1.58** *Person.* Has the meaning set forth in Section 1a(38) of the CEA and in the CFTC Regulations.
- 1.59** *Platform.* The electronic trading facility operated by the SEF to provide Participants with the ability to execute Transactions from the interaction of multiple bids and multiple offers within a predetermined, nondiscretionary automated trade matching and execution algorithm, and/or enter Block Trades.
- 1.60** *Position Transfer.* A transaction in a SEF Contract that is executed by SEF personnel for administrative purposes outlined in Rule 4.6.
- 1.61** *Proprietary Account.* Has the meaning set forth in CFTC Regulation 1.3(y).
- 1.62** *Proprietary Information.* Has the meaning set forth in Rule 9.2.1.
- 1.63** *Regulatory Oversight Committee.* The committee of the Board constituted in accordance with Rule 2.4.4.
- 1.64** *Regulatory Services Agreement.* The agreement(s) between the SEF and any Regulatory Service Provider(s) whereby certain functions mandated under the CEA, such as market monitoring and trade practice surveillance, are delegated to the Regulatory Services Provider(s).
- 1.65** *Regulatory Services Provider.* The National Futures Association and such other organizations, if any, that provide regulatory services to the SEF, together with any such organization's employees and agents.
- 1.66** *Required Transaction.* Any transaction involving a swap that is subject to the trade execution requirement in section 2(h)(8) of the Act.
- 1.67** *Respondent.* A Participant under investigation for alleged Rule violation(s) or against which charges have been filed.
- 1.68** *Review Panel.* Means a Disciplinary Panel that will, pursuant to the procedures set forth in Section VII, review investigation reports submitted to it by the Market Regulation

Department to determine (a) whether a reasonable basis exists to believe that a violation of a Rule of the SEF has occurred and (b) whether commencing Disciplinary Proceedings in respect of such potential violation is warranted. The members of the Review Panel will be appointed in accordance with Rule 7.4.

- 1.69** *Rules.* Any rule, interpretation, stated policy, or instrument corresponding to any of the foregoing, including these Rules, in each case as adopted from time to time by the SEF.
- 1.70** *Screen Transaction.* A SEF Contract executed through the Matching Engine.
- 1.71** *SEF Contract.* Any contract available on the SEF for the sale or purchase of a Commodity Type, including Screen Transactions and Block Trades.
- 1.72** *SEF Official.* Any Officer or employee of the SEF and any member of the Board, a committee established by the Board, a Disciplinary Panel or Appeal Panel.
- 1.73** *SEF Participant Committee.* The committee of the Board constituted in accordance with Rule 2.4.3.
- 1.74** *SEF Requirements.* The Rules; other requirements implemented by the SEF pursuant to the Rules; each term of a SEF Contract; and the participant documentation and other contractual obligations between a Participant (including its Authorized Users) and the SEF.
- 1.75** *Self-Regulatory Organization.* Has the meaning set forth in CFTC Regulation 1.3(ee) and includes a Derivatives Clearing Organization that is registered as such with the CFTC.
- 1.76** *Stop Limit Order.* Has the meaning given to it in Rule 4.4.2(e).
- 1.77** *Stop Order.* Has the meaning given to it in Rule 4.4.2(d).
- 1.78** *Supervised Persons.* Any directors, officers, employees or agents of any Participant, including but not limited to Authorized Users.
- 1.79** *Trading Privileges.* The right granted to a Participant to transmit Orders for certain or all Contracts through the Platform.
- 1.80** *Trade Risk Limit.* A risk-based limit established for a Participant.
- 1.81** *Trading Hours.* For any Business Day, the hours specified on the trading calendar on the SEF website.
- 1.82** *Transaction.* Any purchase or sale of any SEF Contract made on or pursuant to the Rules of the SEF.
- 1.83** *User ID.* The unique identifier included on each Order that enables the SEF to identify the Person entering such Orders.

1.84 Rules of Construction. The following rules of construction shall apply to the SEF Rules:

- (a) the headings are for convenience only and do not affect the construction of the SEF Rules;
- (b) all references to time are to local time in Houston, Texas except where expressly provided otherwise;
- (c) words denoting a singular number include the plural number where the context permits and vice versa;
- (d) where the context permits or requires, any pronoun shall include the corresponding masculine, feminine and neuter forms; and
- (e) references to statutory provisions include those provisions as amended, and any rules or regulations promulgated thereunder.

SECTION II GOVERNANCE & OWNERSHIP

2.1 Composition of the Board; Board Powers

- 2.1.1 The Board is authorized to manage the day-to-day business operations of the SEF in accordance with the Operating Agreement.
- 2.1.2 The Board has the power to call for review, and to affirm, modify, suspend or overrule, any and all decisions and actions of standing committees or special committees of the Board or any panel of the Officers related to the day-to-day business operations of the SEF.
- 2.1.3 The Board may act only by the decision of an absolute majority in number of the Directors by vote at a meeting, by unanimous written consent without a meeting, or as otherwise set forth in the Operating Agreement.
- 2.1.4 Each Director shall be appointed in accordance with the Operating Agreement, and shall serve until his or her successor is duly appointed, or until his or her earlier resignation or removal, with or without cause.
- 2.1.5 Each Director is entitled to indemnification pursuant to the Operating Agreement with respect to matters relating to the SEF.
- .
- 2.1.6 The Board shall have procedures, as may be further set forth in policies that the SEF may adopt, to remove a member from the Board where the conduct of such member is likely to be prejudicial to the sound and prudent management of the SEF.
- 2.1.7 The Board shall review its performance and that of its individual members annually and shall consider periodically using external facilitators for such review.

2.2 Officers

- 2.2.1 The Board shall appoint a President and such other officers of the SEF (each, an “**Officer**”) as it may deem necessary or appropriate from time to time. The President shall appoint a Chief Compliance Officer.
- 2.2.2 Any Officer may also be a director, officer, partner or employee of the SEF or of any of its Affiliates.
- 2.2.3 The Officers shall have such powers and duties in the management of the SEF as the Board may prescribe from time to time, subject to any limitations

set forth in the Operating Agreement.

2.3 Eligibility/Fitness

- 2.3.1 An individual may not serve as a Chief Compliance Officer , if the individual would be disqualified from registration pursuant to sections 8a(2) or 8a(3) of the Act.
- 2.3.2 The Chief Compliance Officer shall immediately notify the President if such individual meets one or more of the criteria in Rule 2.3.1. The CCO shall provide to the SEF, where applicable, changes in registration information within 30 days and certification of compliance accordingly. The SEF shall verify information supporting compliance with eligibility criteria.
- 2.3.3 To serve as a member of the Board, an individual must possess the ability to contribute to the effective oversight and management of the SEF, taking into account the needs of the SEF and such factors as the individual's experience, perspective, skills and knowledge of the industry in which the SEF operates. This shall include sufficient expertise, where applicable, in financial services, risk management, and execution services.
- 2.3.4 A Director or Officer must meet any qualifications set forth from time to time in the Operating Agreement.

2.4 Standing Committees

- 2.4.1 The Board shall initially have the following three standing committees: the Nominating Committee, the SEF Participant Committee, and the Regulatory Oversight Committee. The Board may from time to time constitute and appoint in accordance with the Operating Agreement, such additional standing committees of the Board as it may from time to time deem necessary or advisable.

Each member of such standing committees must be a Director, one of whom the Board shall designate as the chairperson of each standing committee. Each standing committee shall assist in the supervision, management and control of the affairs of the SEF within its particular area of responsibility, subject to the authority of the Board. Subject to the authority of the Board, each standing committee shall determine the manner and form in which its proceedings shall be conducted. Each standing committee may act only by the decision of an absolute majority in number of the members of such committee, by vote at a meeting or by unanimous written consent without a meeting. The Board has the authority to overrule the decisions of a standing committee.

- 2.4.2 Nominating Committee. The Nominating Committee of the Board reports to

the Board and shall consist of at least two Directors appointed from time to time by the Board. The Nominating Committee shall have the authority to (i) identify individuals qualified to serve on the Board, consistent with the criteria that the Board require and any composition requirement that the Commission promulgates; and (ii) administer a process for the nomination of individuals to the Board.

- 2.4.3 SEF Participant Committee. The SEF Participant Committee of the Board reports to the Board and shall consist of at least two Directors appointed from time to time by the Board. The SEF Participant Committee shall (i) determine the standards and requirements for initial and continuing Participant eligibility, (ii) review appeals of staff denials of Participant applications, and (iii) approve Rules that would result in different categories or classes of Participants receiving disparate access to the SEF. The SEF Participant Committee shall not, and shall not permit the SEF to, restrict access or impose burdens on access in a discriminatory manner, within each category or class of Participants or between similarly-situated categories or classes of Participants.
- 2.4.4 Regulatory Oversight Committee. The Regulatory Oversight Committee of the Board shall report to the Board and consist of at least two Directors.

Each member of the Regulatory Oversight Committee shall serve for a term of one calendar year from the date of their appointment or for the remainder of their term as a 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 Director. A member of the Regulatory Oversight Committee may serve for multiple terms.

The Regulatory Oversight committee shall meet with the Chief Compliance Officer at least quarterly. The Board shall dedicate sufficient resources to 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 SEF. 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.

- 2.4.5 In addition to the standing committees, the Board shall have the power and authority to create and terminate, in accordance with the Operating Agreement, special committees of the Board and designate their composition, responsibilities and powers.

2.5 Confidentiality

- 2.5.1 No member of the Board or any committee established by the Board or by

or pursuant to the Rules will use or disclose any material non-public information obtained in connection with such member's participation in the Board or such committee for any purpose other than the performance of his or her official duties as a member of the Board or such committee.

- 2.5.2 No Officer, employee or agent of the SEF will (i) trade in any commodity interest if such Officer, employee or agent obtained material non-public information concerning such financial instrument in connection with such employee's, Officer's or agent's employment or (ii) disclose to any other Person material non-public information obtained in connection with such employee's, Officer's or agent's employment, if such employee, Officer or agent could reasonably expect that such information might assist another Person in trading any commodity interest.

2.6 Conflicts of Interest

2.6.1 Named Party In Interest Conflict

- (a) No member of the Board, any Disciplinary Panel or any Appeal Panel will knowingly 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) has any other significant, ongoing business relationship with a named party in interest, excluding relationships limited to SEF Contracts, or (iv) has a family relationship 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 who does not choose to abstain from deliberations and voting will disclose to the Chief Compliance Officer whether such member has one of the relationships listed in clause (a) above with a named party in interest.
- (c) The Chief Compliance Officer will 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 paragraph (c). Such determination will be based upon a review of the following information: (i) information provided by such member pursuant to clause (b) above; and (ii) any other source of information that is held by and reasonably available to the SEF.

2.6.2 Financial Interest In A Significant Action Conflict

- (a) No member of the Board, any Disciplinary Panel or any Appeal Panel will participate in such body's deliberations and voting on any significant action if such member has a direct and substantial financial interest in the result of the vote, as determined pursuant

to clause (c) below.

- (b) Prior to consideration of any significant action, each member of the deliberating body who does not choose to abstain from deliberations and voting will 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 will 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 paragraph (c). Such determination will be based upon a review of the following information: (i) information provided by such member pursuant to clause (b) above; and (ii) any other information reasonably available to the SEF, taking into consideration the exigency of the significant action being contemplated.
- (d) Any member of the Board, any Disciplinary Panel or any Appeal Panel who would otherwise be required to abstain from deliberations and voting pursuant to clause (a) above may participate in deliberations, but not voting, if the deliberating body, after considering the factors specified below, determines that such participation would be consistent with the public interest; provided, however, that before reaching any such determination, the deliberating body will fully consider the information specified in clause (c) above which is the basis for such member's substantial financial interest in the significant action that is being contemplated. In making its determination, the deliberating body will consider: (i) whether such member's participation in the deliberations is necessary to achieve a quorum; and (ii) whether such member has unique or special expertise, knowledge or experience in the matter being considered.

2.6.3 The minutes of any meeting to which the conflicts determination procedures set forth in this Rule apply will reflect the following information:

- (a) the names of all members of the relevant deliberating body who attended such meeting in person or who otherwise participated in such meeting;
- (b) the name of any member of the relevant deliberating body 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 clause (d) of Rule 2.6.2 above.

2.7 Maintenance of Books and Records by the SEF

- 2.7.1 The SEF shall keep, or cause to be kept, complete and accurate books and records of accounts of the SEF, including all books and records required to be maintained pursuant to the CEA, and the CFTC Regulations.
- 2.7.2 The SEF shall retain all such books and records for at least five (5) years, and shall make such books and records readily accessible for inspection by the CFTC and the U.S. Department of Justice during the first two (2) years of such five-year period.

2.8 Information-Sharing Arrangements

- 2.8.1 The SEF may enter into information-sharing agreements or other arrangements or procedures to coordinate surveillance with other markets on which financial instruments related to the SEF Contracts trade. As part of any information-sharing agreements or other arrangements or procedures adopted pursuant to this Rule, the SEF may:
 - (a) provide market surveillance reports to other markets;
 - (b) share information and documents concerning current and former Participants, Authorized Users, or Broker Firms with other markets;
 - (c) share information and documents concerning ongoing and completed investigations with other markets; or
 - (d) require its current or former Participants, Authorized Users, or Broker Firms to provide information and documents to the SEF at the request of other markets with which the SEF has an information-sharing agreement or other arrangements or procedures.
- 2.8.2 The SEF may enter into any arrangement with any Person or body (including the CFTC, the NFA, any Self-Regulatory Organization, any exchange, market, clearing organization or foreign regulatory authority) if the SEF considers such arrangement to be in furtherance of the SEF's purpose or duties under the Rules or any law or regulation.
- 2.8.3 The SEF may provide information to a duly authorized foreign Governmental Authority, as directed by the CFTC, in accordance with an information-sharing agreement executed with the CFTC.

2.9 Regulatory Services and Technology Services Providers

- 2.9.1 The SEF may contract with a Regulatory Services Provider to provide certain regulatory services to the SEF pursuant to a Regulatory Services Agreement. In accordance with the relevant Regulatory Services Agreement, a Regulatory Services Provider may perform certain surveillance, investigative, or regulatory functions under the Rules and the SEF may provide information to such Regulatory Services Provider in connection with the performance by such Regulatory Services Provider of those functions. The SEF will at all times remain responsible for the performance of any Regulatory Services Provider.
- 2.9.2 Any of the powers or functions of the SEF under the Rules may be delegated to a Regulatory Services Provider pursuant to the relevant Regulatory Services Agreement in such manner and on such terms as the SEF and such Regulatory Services Provider may mutually agree; provided, however, that the SEF shall retain ultimate decision-making authority with respect to any powers or functions that are delegated to such Regulatory Services Provider.
- 2.9.3 The SEF may contract with a technology services provider to provide certain technology services to the SEF pursuant to a technology services agreement. In accordance with a technology services agreement, a technology services provider may perform certain functions under the Rules and the SEF may provide information to the technology services provider in connection with the performance by the technology services provider of those functions.
- 2.9.4 The SEF shall retain ultimate decision-making authority with respect to any functions that are contracted to a technology services provider.

2.10 Use of Proprietary Data and Personal Information

- 2.10.1 The SEF may not use for business or marketing purposes any proprietary data or personal information collected or received, from or on behalf of any Person, for the purpose of fulfilling its regulatory obligations; provided, however, that the SEF may use such data or information for such purposes with the consent of the Person from whom such data or information is collected or received.
- 2.10.2 Notwithstanding the provisions of Rule 2.10.1, the SEF may share such proprietary data or personal information with one or more registered entities (as such term is defined in CFTC Regulations).
- 2.10.3 Access to the SEF may not be conditioned upon the use of proprietary data or personal information for business or marketing purposes.

2.11 Chief Compliance Officer

2.11.1 The Chief Compliance Officer (“**CCO**”) shall be appointed by The President. The SEF will notify the Commission within two business days of appointing any new CCO, whether interim or permanent. The Chief Compliance Officer (“**CCO**”) shall be appointed by The Board. The SEF will notify the Commission within two business days of appointing any new CCO, whether interim or permanent. The CCO is responsible for monitoring the design, implementation and effectiveness of the SEF’s programs to promote and enforce compliance with applicable law and regulations and SEF Rules. Further, the CCO has the authority to monitor the sufficiency, effectiveness and independence of the SEF’s regulatory program and to oversee all facets of the SEF’s regulatory program, including:

- a) trade practice and market surveillance, audits, examinations and other regulatory responsibilities with respect to Participants (including ensuring compliance with, if applicable, financial integrity, financial reporting, sales practice, recordkeeping and other requirements), and the conduct of investigations;
- b) reviewing the size and allocation of the regulatory budget and resources and the number, hiring, termination and compensation of regulatory personnel;
- c) reviewing the performance of the compliance staff;
- d) recommending changes that would ensure fair, vigorous and effective regulation;
- e) reviewing all regulatory proposals prior to implementation and advising the Board as to whether and how such changes may impact regulation; and
- f) preparing an annual report assessing, for the Board and the CFTC, the regulatory program of the SEF.

2.11.2 Any individual nominated to serve as CCO that has been disqualified from registration pursuant to sections 8a(2) or 8a(3) of the Act may not hold the position

2.11.3 Removal of the CCO shall require the approval of a majority of the SEF’s Board.

SECTION III MEMBERSHIP

3.1 Jurisdiction

3.1.1 By accessing, or entering any Order into, the SEF, or submitting any Contract into the Platform, and without any need for any further action, undertaking or agreement, a Participant, Authorized User, or Broker Firm agrees (i) to be bound by, and comply with, the Rules and obligations and Applicable Law, in each case to the extent applicable to it, him or her, (ii) to become subject to the jurisdiction of the SEF with respect to any and all matters arising from,

related to, or in connection with, the status, actions or omissions of such Participant, Authorized User, or Broker Firm and (iii) to assist the SEF in complying with its legal and regulatory obligations, cooperate with the SEF and the CFTC in any inquiry, investigation, audit, examination or proceeding, and authorizes the SEF to provide information regarding it to the Regulatory Services Provider, the CFTC or any Self-Regulatory Organization.

- 3.1.2 Any Participant, Authorized User, or Broker Firm whose right to access the SEF is revoked, suspended, or terminated shall remain bound by the Rules, and, in each case to the extent applicable, and subject to the jurisdiction of the SEF with respect to any and all matters arising from, related to, or in connection with, the status, actions or omissions of such Participant, Authorized User, or Broker Firm prior to such revocation or termination.
- 3.1.3 An Authorized User who is suspended for any period remains subject to the Rules and the SEF's jurisdiction throughout the period of suspension. After revocation or termination of the designation of an Authorized User, the Authorized User remains subject to the Rules and the jurisdiction of the SEF for acts done and omissions made while registered as an Authorized User. Any Disciplinary Proceeding relating to an Authorized User shall occur as if the Authorized User were still registered as such.

3.2 Participants

- 3.2.1 Each Participant will have the right to access the SEF, including the right to place Orders for each of its proprietary accounts. The access rights of a Participant hereunder may not be transferred, assigned, sold or leased.
- 3.2.2 A Participant will not be a limited liability company member of the SEF and will not obtain any equity or other interest in the SEF, including voting rights or rights to receive any dividends or other distributions, whether arising from a dissolution, merger or consolidation involving the SEF or otherwise.

3.3 Requirements for Participants

- 3.3.1 A Participant must be admitted to the SEF and deliver an executed Participant Agreement. To be eligible for admission, the Participant must demonstrate to the SEF that it:
 - (a) is of good reputation and business integrity, as determined by a review of the following: (a) criminal proceedings or judgments against the Participant, especially in cases involving fiduciary matters, (b) orders or notices by regulatory bodies denying or restricting trading privileges on relevant contract markets, (c) disciplinary or arbitration records at any exchange, association, or similar tribunal, (d) fines, suspensions, or expulsions from any commodity or security exchange, clearing organization, the National Futures Association, the Financial Industry Regulatory Authority, or any other organization

deemed relevant by the SEF, (e) significant financial or credit difficulties or distress and/or (f) any false statements made within or in connection with the Participant's application;

- (b) complies with the financial responsibility, recordkeeping and reporting requirements set out in Rule 3.4;
- (c) is validly organized, in good standing, and authorized by its governing body and, if relevant, documents of organization, to trade SEF Contracts;
- (d) is not Insolvent;
- (e) is not prohibited from using the services of the SEF for any reason whatsoever;
- (f) holds all registrations required under Applicable Law, if any, including any FCM, Supervised Person and/or Associated Person registration, as applicable;
- (g) is not subject to statutory disqualification under Section 8a(2) of the CEA; and
- (h) satisfies any other criteria that the SEF may require from a Participant.

3.3.2 As part of the application process, the SEF may request any information and documentation as it may reasonably require in order to determine whether the SEF's eligibility requirements have been satisfied. Any Participant organized or located outside of the United States shall enter into a written agreement acceptable to the SEF appointing a third party as its U.S. agent for service of process for purposes of CFTC Regulation 15.05, and shall provide the SEF with a copy of the agreement.

3.3.3 The SEF may deny, condition, suspend, or terminate Participant, status of any entity that:

- (a) is unable to satisfactorily demonstrate its ability to satisfy the eligibility criteria to become or remain compliant with such criteria;
- (b) is unable to satisfactorily demonstrate its capacity to adhere to all applicable Rules. or
- (c) fails to meet such other generally applicable qualifications as the SEF Participant Committee may from time to time determine.
- (d) would bring the SEF into disrepute as determined by the SEF in its sole discretion; or

(e) shows such other cause as the SEF may reasonably determine.

- 3.3.4 If the SEF decides to deny or condition a Person's application, the SEF shall promptly notify the applicant in writing to the address provided by the applicant on the SEF application form.
- 3.3.5 A person approved as a Participant shall be subject to all of the Rules.
- 3.3.6 Each applicant and each Participant agrees (i) promptly to provide, or procure the provision of, such information and documents as the SEF may reasonably request, including but not limited to full information on the Participant's activities for contracts on another SEF, Contract Market or foreign board of trade if the Participant has activity in SEF Contracts settled by reference to prices on such other SEF, Contract Market or foreign board of trade, and (ii) that the SEF, without being prevented by any duty of confidentiality by any holder of information, may obtain such information and documents from from the SDR.
- 3.3.7 The SEF shall grant access to independent software vendors that meet the requirements for Participants set out in this Rule 3.3.
- 3.3.8 Each Person that applies to become a Participant must submit an application to the SEF in a form and manner prescribed by the SEF. Each applicant must promptly update any application materials previously provided to the SEF if any of the information provided therein becomes inaccurate or incomplete after the date of submission and prior to any approval of the application. The SEF shall act upon, and approve or disapprove, any such application without unreasonable delay.
- 3.3.9 Each Person approved as a Participant in accordance with Rule 3.3.8 above shall agree in writing to abide by the Rules and consent to the jurisdiction of the SEF.
- 3.3.10 Upon satisfaction of the requirements and procedures set forth in Rules 3.3.8 and Rule 3.3.9, the SEF will grant a Person's application to become a Participant. If the application process is not completed within six months of submission of an application and payment of any applicable fee, the application will be deemed to be withdrawn.

3.4 Minimum Financial Requirements

- 3.4.1 A Participant must qualify as an Eligible Contract Participant at all times and must promptly notify the SEF if it fails to qualify as an Eligible Contract Participant.
- 3.4.2 A Participant or Broker Firm that is registered with the CFTC as an FCM must remain in compliance with the minimum financial and related reporting

requirements of CFTC Regulations. Specifically, all Participants or Broker Firms registered with the CFTC as FCMs or IBs must maintain capital in accordance with CFTC Regulation 1.17. A copy of any notice or written report that a Participant or Broker Firm is required to file with the CFTC pursuant to CFTC Regulations 1.10, 1.12 and/or 1.17 must also be filed with the SEF within the time periods prescribed for such filing or delivery in CFTC Regulations 1.10, 1.12 and/or 1.17. A Participant or Broker Firm that violates CFTC Regulations 1.10, 1.12 or 1.17 will be deemed to have violated this Rule 3.4.2.

- 3.4.3 A Participant that is not registered with the CFTC must submit to the SEF or the Regulatory Service Provider, if any, annual audited financial statements certified by a certified independent public accountant (or by a Person having similar qualifications if the Participant's books of account are kept outside the United States) within ninety calendar days of the Participant's fiscal year-end. If audited financial statements are not available, the Participant must submit unaudited financial statements or the most recent tax return to the SEF.

3.5 Duties and Responsibilities of Participants

- 3.5.1 Each Participant shall, and shall cause its Authorized Users to:
- (a) access the SEF in a responsible manner and not for any improper purpose;
 - (b) access the SEF only to conduct business that is subject to the Rules and the SEF Requirements and in a manner consistent with the Rules and the SEF Requirements;
 - (c) comply with the Rules and the SEF Requirements and act in a manner consistent with the Rules and the SEF Requirements;
 - (d) observe high standards of integrity, market conduct, commercial honor, fair dealing, and just and equitable principles of trade while conducting or seeking to conduct any business connected with or concerning the SEF;
 - (e) not knowingly mislead or conceal any material fact or matter in any dealings or filings with the SEF or in connection with a Disciplinary Proceedings;
 - (f) cooperate promptly and fully with the SEF in any investigation, inquiry, audit, examination or proceeding regarding compliance with the Rules or any Disciplinary Proceedings or arbitration;
 - (g) comply with any order issued by the SEF;

- (h) keep all User IDs, account numbers and passwords related to the SEF confidential; and
- (i) keep, or cause to be kept, complete and accurate books and records, including, without limitation, all books and records required to be maintained pursuant to the Applicable Law, for at least five (5) years, and make such books and records available for inspection by a representative of the SEF, the CFTC or the U.S. Department of Justice.

3.5.2 In addition to the requirements of Rule 3.5.1, each Participant shall employ practices to monitor and enforce compliance with its internal risk limits and shall be responsible for all Orders and Transactions effected by or for the account of such Participant, its Authorized Users or by any Person using its or their User IDs.

3.6 Authorized Users

- 3.6.1 Each Participant and Broker Firm must designate at least one of its employees as an Authorized User.
- 3.6.2 By agreeing to become an Authorized User, an individual agrees to be bound by the duties and responsibilities of an Authorized User set out in Rule 3.7 and to be subject to, and comply with, the Rules.
- 3.6.3 To designate an Authorized User, a Participant must follow the procedures established by the SEF. The SEF may establish criteria that individuals must fulfill to become an Authorized User. Without limiting the generality of the foregoing, each Participant will ensure on an ongoing basis that (i) none of its Authorized Users are subject to a disqualification pursuant to any Applicable Law (unless an appropriate exemption has been obtained with respect thereto) and (ii) each of its Authorized Users is technically proficient and conducts their business in a fair and equitable manner.
- 3.6.4 The SEF will promptly notify a Participant in writing of the approval of designated Authorized User(s) or if the SEF declines to approve the nomination of an Authorized User.
- 3.6.5 The SEF will maintain a list of all designated Authorized Users for each Participant.
- 3.6.6 The SEF may, in its sole discretion, revoke or suspend the designation of an individual as an Authorized User and shall promptly notify the Participant of such action.
- 3.6.7 To request the termination of the designation of an individual as an Authorized User, the Participant must follow the procedures established by the SEF. The SEF may, in its sole discretion, refuse to accept a request to

terminate the registration of an Authorized User or may postpone the effective date of the termination of registration if the SEF considers it necessary for the protection of the Participant or in the SEF's best interest. Based on the information provided to, and other information gathered by, the SEF regarding the request to terminate the registration of an Authorized User, the SEF will determine whether to:

- (a) accept the request to terminate such registration;
- (b) postpone the effective date of termination of the registration; and/or
- (c) impose any terms or conditions before or after the effective date of termination of the registration.

3.7 Duties and Responsibilities of Authorized Users

3.7.1 By agreeing to act as an Authorized User, such Person agrees to be bound by the duties and responsibilities of an Authorized User and to be subject to, and comply with, the Rules.

3.7.2 An Authorized User must:

- (a) ensure that activity conducted under the User IDs assigned to it complies with Applicable Law and the Rules;
- (b) have the authority, at the SEF's request, to adjust or withdraw any Order submitted under such User IDs;
- (c) have and maintain all necessary regulatory approvals and/or licenses to operate as an Authorized User;
- (d) cooperate promptly and fully with the SEF in any investigation, inquiry, audit, examination or proceeding regarding compliance with the Rules or any Disciplinary Proceedings or arbitration proceeding;
- (e) comply with any order issued by the SEF; and
- (f) agree to such other terms and conditions as may be established by the SEF from time to time.

3.8 Broker Firms Accessing the SEF

A Broker Firm may trade an account on behalf of a Participant under separate agreement between that Broker Firm and the Participant.

3.9 Required Notices

- 3.9.1 Each Participant shall immediately notify the SEF upon becoming aware of any of the following events:
- (a) any material changes to the information provided to the SEF by the Participant;
 - (b) any damage to, or failure or material inadequacy of, the systems, facilities or equipment of the Participant used to effect Transactions on the SEF;
 - (c) any refusal of admission to, or withdrawal by the Participant of any application for membership in, any Self-Regulatory Organization;
 - (d) any denial or withdrawal of an application for registration or license by or from any governmental agency, and any revocation, suspension or conditioning of a registration or license granted by any Governmental Authority;
 - (e) the commencement of any judicial or administrative proceeding against the Participant by a Governmental Authority or the imposition of any fine, cease and desist order, denial of trading privileges, censure or other sanction or remedy (whether through an adverse determination, voluntary settlement or otherwise) imposed by any Governmental Authority;
 - (f) the indictment or conviction of, or any confession of guilt or plea of guilty or nolo contendere by, the Participant or any of its officers for any felony or misdemeanor involving, arising from, or related to, the purchase or sale of any commodity, security, futures contract, option or other financial instrument, or involving or arising from fraud or moral turpitude; and
 - (g) the Insolvency of the Participant or any of its Affiliates.
- 3.9.2 Each Participant shall notify the SEF at least ten business days prior to any merger, acquisition, consolidation, combination, sale or other material change of ownership.
- 3.9.3 Nothing in this Rule 3.9 is intended to substitute for or limit any other reporting obligations that a Participant may have to the SEF or any regulatory agency or Self-Regulatory Organization.

3.10 Account Administrators

- 3.10.1 Each Participant shall appoint at least one Account Administrator who shall be responsible for monitoring the Participant's participation on the SEF, the compliance of the Participant with the Rules and communication with the SEF. The Account Administrator(s) may access the SEF for risk

management, audit and other back-office purposes as specified by the SEF from time to time.

3.10.2 Account Administrators shall not have Trading Privileges on the SEF.

3.10.3 A Participant shall promptly notify the SEF of a change in the identity of any of its Account Administrators.

3.11 Access Requirements and Terms

3.11.1 Participant accounts will be issued User IDs and passwords for secure access. The Participant is responsible for the security of these items, and any misuse is the responsibility of the Participant.

3.11.2 User IDs and passwords are for the Participant's use only and shall not be shared with other parties.

3.11.3 A Participant must notify the SEF immediately upon any suspicion of theft of a password, or any unauthorized access.

3.12 Dues and Fees

3.12.1 SEF dues and fees are posted at the SEF website and updated from time to time.

3.13 Inspections by the SEF

3.13.1 The SEF and the Regulatory Services Provider, if any, shall have the right, in connection with determining whether the Rules are being, will be, or have been complied with by the Participant or Broker Firm to:

- (a) inspect systems, equipment and software operated by the Participant or Broker Firm in connection with business that is or may be subject to the Rules, wherever located;
- (b) access the systems, equipment, software, and the premises on which the systems, equipment, and software are located, any data stored in any of the systems or equipment, during the regular business hours of the SEF, without prior notice to the Participant or Broker Firm; and/or
- (c) copy and/or reproduce any data to which the SEF has access under this rule.

3.13.2 Each Participant or Broker Firm shall provide the Regulatory Services Provider, if any, with the same access as it would be required to provide to the SEF.

- 3.13.3 The SEF may require a Participant or Broker Firm to furnish such information concerning their business that is subject to the Rules of the SEF as the SEF deems necessary to enable the SEF to perform its obligations under Applicable Law, including information relating to (i) contracts executed on the SEF and in related derivatives markets, including in the products underlying those SEF Contracts, and (ii) information requested by a government agency relating to the SEF's business and/or the SEF's compliance with Applicable Law that the SEF believes is maintained by, or otherwise in the possession of, a Participant or Broker Firm.

3.14 Liquidity Provider Program

In its discretion, the SEF may offer a liquidity provider program that provides incentives to Participants that meet trading volume or liquidity thresholds established by the SEF. The liquidity provider program may offer reduced fees, amongst other incentives, for qualified liquidity providers as determined by the SEF.

3.15 Broker Firms

- 3.15.1 Participants may enter Orders and effect Transactions through a Broker Firm acting on their behalf.
- 3.15.2 A Broker Firm:
- (a) must enter into the applicable Broker Firm Agreement with the SEF and agree to be subject to and to comply with the Rules;
 - (b) must agree to enter Orders and effect Transactions on behalf of a Participant only in accordance with these Rules and procedures established by the SEF;
 - (c) must have and maintain all necessary regulatory approvals and/or licenses to enter Orders and effect Transactions on behalf of Participants to the SEF;
 - (d) must maintain adequate financial resources in accordance with Rule 3.4; and
 - (e) must agree to such other terms and conditions as may be established by the SEF from time to time.
- 3.15.3 The Broker Firm shall be responsible to the SEF for any failure by such Broker Firm (or its employees or agents) to comply with the Rules.
- 3.15.4 The SEF will maintain a list of all designated Broker Firms for each Participant. The SEF may, in its sole discretion, revoke or suspend the designation of an individual as a Broker Firm and shall promptly notify the

appropriate Participants of such action.

SECTION IV MARKET OPERATIONS

4.1 Market Hours and Operation

4.1.1 Market Hours

The SEF will be open for trading on all business days during the market hours specified in the trading calendar, which is available at the SEF website. During non-trading hours, SEF systems will allow users to submit, modify and cancel orders as defined in this Section IV. Block Trades submitted during non-trading hours will be queued and executed in the order of submission when the market is next opened.

4.1.2 Procedures

With respect to trading on or through the SEF, the SEF may adopt, without limitation, procedures relating to Transactions in SEF Contracts and trading on the SEF, including procedures to:

- (a) disseminate the prices of bids and offers and the prices of trades in SEF Contracts;
- (b) record and account for SEF Contracts;
- (c) perform market surveillance and regulation on matters affecting SEF Contracts;
- (d) establish limits on the number and/or size of Orders that may be submitted to the SEF;
- (e) establish limits on the number of SEF Contracts that may be traded on the SEF or pursuant to the Rules;
- (f) establish a limit on the maximum daily price fluctuations for any SEF Contracts and provide for any related restriction or suspension of trading in such SEF Contracts; and
- (g) require a suspended or expelled Participant, or a Participant with restricted trading rights, to cause SEF Contracts to be executed for such Participant's account to reduce or eliminate such Participant's open positions.

4.1.3 Market Suspension and Emergencies

The SEF reserves the right to adjust Trading Hours and suspend market activities (including cancelling or suspending Orders and the Matching Engine) for all or a

subset of SEF Contracts in the case of extenuating market circumstances which include, but are not limited to, any occurrence or circumstance that the SEF determines requires immediate action to preserve the fair and orderly trading in, or the liquidation of or delivery pursuant to, any SEF Contracts.

During an Emergency, the Board may implement temporary emergency procedures and rules ("**Emergency Rules**"), subject to the applicable provisions of the CEA and CFTC Regulations. Emergency Rules may require or authorize the SEF, the Board, any committee of the Board, the President or, in his or her absence, any other Officer to take actions necessary or appropriate to respond to the Emergency, including, but not limited to, the following actions:

- (a) suspending or curtailing trading or limiting trading to liquidation only (in whole or in part);
- (b) extending or shortening the Last Trading Day for SEF Contracts;
- (c) providing alternative settlement mechanisms;
- (d) ordering the liquidation or transfer of Transactions, the fixing of a settlement price, or the reduction of positions;
- (e) extending, limiting or changing the Trading Hours;
- (f) temporarily modifying or suspending any provision of the Rules;
- (g) imposing or modifying trading limits, price limits and/or position limits; and/or
- (h) any other action as directed by the CFTC.

Before any Emergency Rule may be adopted and enforced, a required vote of the Board must approve the enforcement of such Emergency Rule at a duly convened meeting. Directors may attend such a meeting by teleconference. If the President, or another authorized Officer, determines that Emergency Rules must be implemented with respect to an Emergency before a meeting of the Board can reasonably be convened, then the President or such Officer shall have the authority, without Board 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 President or such Officer must convene a meeting as soon as practicable. Emergency actions taken pursuant to Rule 4.1.3 are subject to the conflict of interest provisions set forth in Rule 2.6.

Whenever the SEF, the Board, any committee of the Board, the President or other authorized Officer takes actions necessary or appropriate to respond to an Emergency, a duly authorized representative of the SEF, where possible, will post an announcement in a notice to Participants. When the Board, any committee of the Board, the President or other authorized Officer determines that the Emergency has

been reduced sufficiently to allow the SEF to resume normal functioning, any such actions responding to an Emergency will be terminated.

The SEF will use reasonable efforts to notify the CFTC prior to implementing, modifying or terminating an Emergency Rule. If such prior notification is not possible or practicable, the SEF will notify the CFTC as soon as possible or reasonably practicable.

Upon taking any action in response to an Emergency, the SEF will document the decision-making process related to such action. Such documentation will be kept for at least five years following the date on which the Emergency ceases to exist or to affect the SEF, and all such documentation will be provided to the CFTC upon request.

4.2 Contract Specifications

The terms and conditions of each SEF Contract are set forth in the Contract Specifications. The Contract Specifications are made available on the SEF website and are subject to revision or amendment from time to time.

4.3 Use of User IDs

- 4.3.1 Each Participant and Broker Firm and each of their Authorized Users must have a unique, SEF-assigned, registered User ID.
- 4.3.2 Each Order entered must contain a SEF-assigned User ID that identifies the Authorized User that entered the Order.
- 4.3.3 No Person may use a User ID to place any Order except as permitted by the Rules, nor may any Person knowingly permit or assist the unauthorized use of a User ID. Each Participant, Broker Firm and Authorized User shall ensure that no User ID is used by any Person not authorized by these Rules. Each Participant and Broker Firm must have in place policies and procedures to ensure the proper use and protection of User IDs.
- 4.3.4 Each Participant and Broker Firm shall ensure the accuracy of the registration information of its Authorized Users at all times.
- 4.3.5 Each Participant and Broker Firm shall be solely responsible for controlling and monitoring the use of all User IDs issued to it and to its Authorized Users of the SEF.
- 4.3.6 Each Participant and Broker Firm shall notify the SEF promptly upon becoming aware of:
 - (a) any unauthorized disclosure or use of any User ID assigned to it or any of its Authorized Users and of any other reason for deactivating a User ID; and

- (b) any unauthorized access to the SEF by any Authorized User or by any Person using a User ID assigned to such Participant, Broker Firm or Authorized User.

4.3.7 Any algorithm or other trading system that automates the generation and routing of Orders to the SEF must have a unique, SEF-assigned, registered User ID.

4.3.8 Each Participant and Broker Firm and each of their Authorized Users shall be bound by any actions taken through the use of a User ID assigned to such Participant, Broker Firm or Authorized User (other than any such actions resulting from the fault or negligence of the SEF), including the submission of Orders and/or execution of Transactions, whether or not such actions were taken or authorized by such Participant, Broker Firm or Authorized User, as the case may be.

4.4 Screen Trading

4.4.1 Order Entry

- (a) Each Participant or Broker Firm shall enter Orders on the Platform, and the SEF shall maintain an electronic record of those entries. Each Participant shall be responsible for any and all Orders entered using User IDs assigned to the Participant or its Authorized Users by the SEF.
- (b) All Orders on the Platform must contain the following information: (i) the relevant SEF Contract code; (ii) whether such Order is a buy or sell Order; (iii) the Order type, (iv) price; (v) quantity; (vi) account designation (the number to an account); (vii) the User ID of the Person entering the Order; (viii) CTI code; and (ix) such additional information as may be prescribed from time to time by the SEF.

4.4.2 Order Types

At the discretion of the SEF, the following types of Orders, as well as any other types that may be approved from time to time, may be entered into the Platform with respect to any SEF Contract:

- (a) **Market Order.** A simple Order to buy or sell immediately executed at the best price currently available on the Platform.
- (b) **Limit Order.** A simple Order executed when a specific price is met.
- (c) **All-or-None Order.** A Limit Order where only the entire submitted size is available for execution.

- (d) Stop Order. A Market Order whose activation is dependent upon a specific price being reached or surpassed (*e.g.*, a Stop Order to buy becomes a Market Order in the system when a trade is executed at or below the stop price, while a Stop Order to sell becomes a Market Order in the system when a trade is executed at or above the stop price).
- (e) Stop Limit Order. A Stop Order that activates a Limit Order when the stop price is reached or surpassed.

4.4.3 Trade Matching

The Matching Engine will use a price and time based algorithm for matching Orders. For Orders at the same price level, older Orders will have a higher priority. An Order will lose its priority if its price is changed or quantity is increased.

4.4.4 Allocation of Bunched Orders

- (a) Orders eligible for post-execution allocation must be allocated by an eligible account manager in accordance with section 1.35(b)(5) of the CEA.
- (b) Allocations must be made as soon as practicable after the entire transaction is executed, but in any event account managers must provide allocation information no later than a time sufficiently before the end of the day the order is executed to ensure that records identify the ultimate customer for each trade. The Participant must submit the allocation to the SEF no later than the end of the trading day.
- (c) Allocations must be fair and equitable. No account or group of accounts may receive consistently favorable or unfavorable treatment.
- (d) The allocation methodology must be sufficiently objective and specific to permit independent verification of the fairness of the allocations using that methodology by appropriate regulatory and self-regulatory authorities and by outside auditors.
- (e) Eligible account managers shall keep and must make available upon request of any representative of the SEF, the Commission, the United States Department of Justice, or other appropriate regulatory agency, the information specified in section 1.35(b)(5)(iii) of the CEA.

4.4.5 Swap Data Repository

Pursuant to CFTC Regulation 45, all swap data for a given swap will be reported to a

single swap data repository as designated by the SEF. As soon as technologically practicable after execution, the SEF will transmit both counterparties to the swap to the SDR.

4.4.6 Trading Information

The SEF shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the SEF. Trading information will be published on the SEF website at the end of the day.

4.5 **Block Trades**

4.5.1 If the SEF offers Required Transactions, the SEF shall designate the SEF Contracts in which Block Trades are permitted and determine the minimum block size for such transactions. Appendix A to these Rules (“Minimum Block Sizes for the SEF Contracts”) sets forth a listing of minimum block sizes for SEF Contracts.

4.5.2 The following rules shall govern Block Trades for Required Transactions:

- (a) A Block Trade must be for a quantity that is at or in excess of the applicable minimum threshold. Orders may not be aggregated in order to achieve the minimum transaction size unless expressly permitted under Applicable Law.
- (b) Each Participant entering into a Block Trade must be an Eligible Contract Participant.
- (c) A Broker Firm may submit a Block Trade to the SEF on behalf of Participants that have consented to or provided instructions to execute Block Trades.
- (d) The price at which a Block Trade is executed must be fair and reasonable in light of (i) the size of the Block Trade, (ii) the prices and sizes of other transactions in the same SEF Contract at the relevant time, (iii) the prices and sizes of transactions in other relevant markets at the relevant time, and (iv) the circumstances of the markets or the Participants to the Block Trade.
- (e) Block Trades shall not set off conditional orders (*e.g.*, Stop Orders) or otherwise affect orders submitted to the Matching Engine.
- (f) Parties to a Block Trade must ensure that each Block Trade is submitted without delay upon execution of the trade, in no event later than fifteen (15) minutes after execution through an approved

submission method. The submission must include the SEF Contract(s), contract month(s), price, quantity of the Transaction, time of execution, as well as any other information that the SEF may require. The SEF shall promptly publish price and volume information.

- (g) Broker Firms and Participants involved in the execution of Block Trades must maintain written or electronic records of all such Block Trades, including an electronic timestamp reflecting the date and time each such Order was received as well as an electronic timestamp reflecting the date and time such Order was executed or cancelled.

4.5.3 Trade Entry

For both Permitted and Required Transactions, Block Trades may be submitted to the SEF by Participants or Broker Firms.

For Block Trades that are submitted directly by Participants, both Participants must confirm the Block Trades to each other, specifying the identical Expiry(s) to be traded, the volume and price, the buyer and seller, and which Participant will report the Block Trade to the SEF.

A Broker Firm must specify the Expiry(s) to be traded, the volume and price, and the buyer and. Both buyer and seller must be Participants.

4.5.4 Modification and Cancellation

Block Trades submitted during the SEF's Trading Hours are subject to immediate confirmation by the SEF and may not be modified or cancelled by either Broker Firms or Participants. If erroneous information has been submitted as part of a Block Trade, the SEF should be notified as soon as the error is detected. If appropriate, the SEF will facilitate the modification of the trade on a discretionary basis; any trade modification the SEF agrees to submit to the SDR will be done during normal Trading Hours.

Block Trades submitted outside of Trading Hours and queued for reporting to the SDR above may be cancelled directly on the Platform as long as the cancellation occurs before the SEF reopens for regular Trading Hours.

4.5.5 Risk Limit Validation

All Block Trades submitted by either a Broker Firm or Participant will be subject to Trade Risk Limit verification. Upon verification that the Block Trade will not cause any party to the Block Trade to exceed its Trade Risk Limit, the Block Trade will be submitted to the SDR.

A Participant that has exceeded its Trade Risk Limit (because of changes in the risk

profile of such Participant's existing positions or otherwise) may be party to a Block Trade only if such Block Trade will reduce the Trade Risk Limit violation.

4.6 Position Transfers

The SEF may permit transfer trades to move positions between Customer Accounts for administrative purposes ("**Position Transfers**") where no change in beneficial ownership is involved. Participants must obtain approval from the SEF for a Position Transfer; such approval shall be granted at the sole discretion of the SEF. Position Transfers will not contribute to any reported volume, price, or trading range.

4.7 Trade Cancellations; Trade Reviews

4.7.1 Trade Cancellation Authority

The SEF may adjust trade prices or cancel (bust) trades when such action is necessary to mitigate market disrupting events caused by the improper or erroneous use of the SEF or by system defects or malfunctions. Notwithstanding any other provision of this Rule 4.7.1, the SEF may adjust trade prices or cancel any trade if the SEF determines that allowing the trade to stand as executed may have a material, adverse effect on the integrity of the market. Any decision of the SEF with respect to an adjustment or cancellation subject to this Rule 4.7.1 shall be final.

4.7.2 Review of Trades

The SEF may review a trade based on its analysis of market conditions or a request for review by a user of the SEF. A request for review must be made within five minutes of the execution of the trade. The SEF shall promptly determine whether the trade will be subject to review, and upon deciding to review a trade, the SEF will promptly issue an alert to all Participants indicating that the trade is under review. In the case of SEF Contracts determined by the SEF to be illiquid, the SEF may initiate a review up to one hour after the execution of the trade, and has the authority, but not the obligation, to review trades reported more than one hour following execution if it determines that the trade price was significantly out of line with fair value. In the course of its review of any trade, the SEF may, but is not obligated to, inform any of the parties to the trade of the identity and contact information of any other party to the trade.

4.8 Settlement

The SEF will provide links to relevant Settlement Prices from reference sources for SEF Contracts on the SEF Website.

4.9 Recordkeeping; Audit Trail

- 4.9.1 Participants that access the SEF electronically are responsible for maintaining or causing to be maintained an audit trail for all electronic Orders, which shall include Order entry, modification, and cancellation (the

“**Audit Trail**”). Such Audit Trail shall include Orders submitted and the times of Order entry and of any Order modification or cancellation. Times that are so captured must not be capable of being modified by the Person entering the Order and must reflect all necessary data fields specified by the SEF from time to time. For executed Orders, the Audit Trail must record the execution time of the trade along with all execution information.

- 4.9.2 Participants shall maintain Audit Trail information for a minimum of five (5) years and must have the ability to produce Audit Trail data in a standard format upon request of the SEF.
- 4.9.3 CTI Codes. Each Participant or Broker Firm must identify each Transaction executed on the Platform on the record of Transactions submitted to the SEF with the correct CTI code. The CTI codes are as follows:

CTI 1: Transactions initiated and executed by an individual member for his own account, for an account he controls or for an account in which he has ownership or financial interest;

CTI 2: Transactions executed for the proprietary account of a member firm;

CTI 3: Transactions where an individual member or authorized trader executes for the personal account of another individual member, for an account the other individual member controls or for an account in which the other individual member has ownership or financial interest;

CTI 4: Any transaction not meeting the definition of CTI 1, 2 or 3. (These should be non-member customer transactions).

4.10 Information Regarding Orders

- 4.10.1 The SEF will make information regarding Orders (including prices bid or offered), trades and any other matters it may deem appropriate available to Participants and other Persons at such times and in such manner (whether through the SEF, financial information services or otherwise) as it may consider necessary or advisable from time to time.
- 4.10.2 Each Participant or other Person receiving any such information referred to in Rule 4.10.1 above shall not redistribute such information other than to the extent and in the manner as may be expressly permitted by the SEF in writing from time to time.

4.11 Disaster Recovery; Business Continuity

- 4.11.1 Each Participant shall have written disaster recovery and business continuity policies and procedures in place to ensure it is able to perform certain basic operational functions in the event of a significant internal or external interruption to its operations. At a minimum, the following areas

must be addressed in the Participant's policies and procedures:

- (a) the Participant must have procedures in place to allow it to continue to operate during periods of stress or to transfer accounts to another fully operational Participant with minimal disruption to the SEF;
- (b) the Participant must perform periodic testing of disaster recovery and business continuity plans, duplication of critical systems at back up sites and periodic back-up of critical information and provide the SEF with information regarding the foregoing upon request; and
- (c) the Participant must maintain and, at the request of the SEF, provide accurate and complete information for its key personnel. A Participant must inform the SEF in a timely manner whenever a change to its key personnel is made.

4.11.2 The SEF may prescribe additional and/or alternative requirements for a Participant's compliance with this rule.

SECTION V CLEARING

The SEF currently only offers Permitted Swaps, without Clearing. This section is reserved should Required Swaps, with clearing, be added to the SEF in the future.

SECTION VI CODE OF CONDUCT

Preamble

This code of conduct defines and reaffirms the values, principles and internal controls that Participants, Authorized Users, and Broker Firms as applicable, must follow in conducting their business activities on the SEF. This code of conduct is intended to complement the internal principles and practices of Participants, Authorized Users, and Broker Firms and to guide market participants as they submit bids and offers, execute Transactions, and use other services on the SEF. Compliance with this code helps ensure that activity on the SEF is conducted with integrity. Violations of this code of conduct may result in penalties including, but not limited to, temporary or permanent loss of access to the SEF.

6.1 Ethical Standards

Conducting trading activities in an honorable and principled manner consistent with this code is the essence of ethical conduct with respect to the SEF. Participants, Authorized Users, and Broker Firms shall act in accordance with these standards of ethics with regard to its SEF activity:

- 6.1.1 **Regulatory Compliance.** No Participant, Authorized User, or Broker Firm shall engage in conduct that is a violation of the CEA or CFTC Regulations, or

the Rules of the and will conduct its business in accordance with all applicable laws, regulations, tariffs and rules, and in good faith, with a commitment to honest dealing.

- 6.1.2 **Fraud.** No Participant, Authorized User, or Broker Firm shall engage in any fraudulent act or engage in any scheme to defraud, deceive, trick or mislead in connection with or related to any SEF activity.
- 6.1.3 **Good Faith.** No Participant, Authorized User, or Broker Firm shall knowingly enter, or cause to be entered, bids or offers into the system other than in good faith for the purpose of executing bona fide transactions.
- 6.1.4 **Transaction Integrity.** Participants, Authorized Users, and Broker Firms shall honor the terms and conditions of the Rules and SEF Requirements and will transact in SEF Contracts only for legitimate business purposes.
- 6.1.5 **Antitrust.** No Participant, Authorized User, or Broker Firm shall collude with other Persons to affect the price or supply of any commodity, allocate territories, customers or SEF Contracts, or otherwise unlawfully restrain competition.
- 6.1.6 **Risk Management.** Participants and Broker Firms shall adopt, adhere to and enforce risk management and other policies and structures that are designed to ensure that trading activities are conducted in accordance with this Code.

6.2 Sound Trading Practices

Commodity markets reflect the constantly changing dynamics of supply and demand. Efficient business operations in such an environment demand practices that can manage risk and discover market prices. Such practices must be consistent with the guiding ethical standards of this code or conduct. Participants, Authorized Users, and Broker Firms will act in accordance with these standards of sound trading practices with regard to its SEF activity:

- 6.2.1 **Skills.** Each Participant, Authorized User, and Broker Firm is responsible for understanding all factors that influence commodity markets, in order to maintain a high level of competence in its trading. All Participants, Authorized Users, and Broker Firms must actively and continually work to upgrade their skills, knowledge, and expertise in order to maintain a high standard of professional knowledge.
- 6.2.2 **Rules.** The SEF will provide updates to these Rules and memos regarding the application and interpretation of these Rules. It is the obligation of each Participants, Authorized Users, and Broker Firms to ensure these documents are read and understood. It shall be prohibited for a Participant, Authorized User, or Broker Firm to violate any Rule or any agreement made with the SEF, or to engage in fraud, dishonorable or dishonest conduct, or conduct which is inconsistent with just and equitable principles of trade.

- 6.2.3 **Price Manipulation, Fictitious, Non-Competitive or Artificial Transactions.** No Person shall effect or induce the purchase or sale of any SEF Contract for the purpose of creating or inducing a false, misleading, or artificial appearance of activity in such SEF Contract, or for the purpose of unduly or improperly influencing the market price of such SEF Contract or for the purpose of making a price which does not reflect the true state of the market in such SEF Contract. No Person shall arrange and execute simultaneous offsetting buy and sell Orders in a SEF Contract with intent to artificially affect reported revenues, trading volumes or prices.
- 6.2.4 **Market Manipulation.** No Person shall attempt to manipulate, or manipulate the market, in any SEF Contract. No Person shall directly or indirectly participate in or have any interest in the profit of a manipulative operation or knowingly manage or finance a manipulative operation. This includes any pool, syndicate, or joint account, whether in corporate form or otherwise, organized or used intentionally for the purposes of unfairly influencing the market price of any SEF Contract.
- 6.2.5 **Market Disruption.** Orders entered on the SEF for the purpose of upsetting the equilibrium of the market in any SEF Contract or creating a condition in which prices do not or will not reflect fair market values are prohibited, and any Person who makes or assists in entering any such order with knowledge of the purpose thereof or who, with such knowledge, in any way assists in carrying out any plan or scheme for the entering of any such order, will be deemed to have engaged in an act detrimental to the SEF.
- 6.2.6 **Gratuities.** Except with the prior written approval of the Chief Compliance Officer, no Person shall, directly or indirectly, give or permit to be given anything of value, including gifts and gratuities, to a SEF Official in an amount that exceeds the maximum value permitted by the SEF's gifts and entertainment policy.
- 6.2.7 **Disruptive Trading Practices.** No Person shall engage in any trading, practice, or conduct that constitutes a disruptive trading practice, as defined in section 4c(a)(5) of the CEA (7 U.S.C. 6c(a)(5)), or in any interpretive guidance issued by the CFTC, such as 78 Fed. Reg. 31890.
- 6.2.8 **Rumors.** No Person shall knowingly circulate, in any manner, rumors that might affect market conditions in any SEF Contract; provided, however, that this shall not prohibit discussion of unsubstantiated information, so long as its source and unverified nature are disclosed.
- 6.2.9 **False Reports.** No Person shall make any knowing misstatement of a material fact to the SEF, any SEF Official, or any Board committee or Disciplinary or Appeals Panel. No Person shall knowingly disseminate false or misleading reports regarding Transactions, the SEF or one or more commodity markets.

- 6.2.10 **Wash Sales.** No Person shall place or accept buy and sell Orders in the same product and expiration month, when they know or reasonably should know that the purpose of the orders is to avoid taking a bona fide market position exposed to market risk (transactions commonly known or referred to as wash sales). Buy and sell Orders that are entered with the intent to negate market risk or price competition shall be deemed to violate the prohibition on wash sales. Additionally, no Participant shall knowingly execute or accommodate the execution of such Orders by direct or indirect means.
- 6.2.11 **Financial Condition.** No trading will be conducted for the purpose of misrepresenting the financial condition of the Participant, Authorized User, or Broker Firm.
- 6.2.12 **Acts Detrimental to the SEF.** No Person shall engage in any act that is detrimental to the SEF. Misuse of the SEF is strictly prohibited. It shall be deemed an act detrimental to the SEF to permit unauthorized use of the SEF, to assist any Person in obtaining unauthorized access to the SEF, to trade on the SEF without an agreement and an established account, to alter the equipment associated with the SEF (except with the SEF's consent), to interfere with the operation of the SEF, to intercept or interfere with information provided thereby, or in any way to use the SEF in a manner contrary to the Rules.
- 6.2.13 **Supervision.** Participants and Broker Firms shall establish, maintain and administer reasonable supervisory procedures to monitor the compliance of Authorized Users and Supervised Persons with the Rules and any applicable provisions of the CEA or CFTC Regulations and such Participant or Broker Firm may be held accountable for the actions of such Authorized Users or Supervised Persons.
- 6.2.14 **Disclosing Order Information.** No Person shall disclose an Order to buy or sell, except to a designated SEF Official or the CFTC or as necessary to efficiently execute the Order nor shall any Person solicit or induce another Person to disclose Order information. No Person shall take action or direct another to take action based on non-public Order information, however acquired. The mere statement of opinions or indications of the price at which a market may open or resume trading does not constitute a violation of this rule.

6.3 Priority of Customer Orders

- 6.3.1 No Person shall knowingly enter an Order into the Platform for its own account, an account in which it has a direct or indirect financial interest, or an account over which it has discretionary trading authority, including, without limitation, an Order allowing discretion as to time and price, when such Person is in possession of a Customer Order that can be but has not been

submitted to the Platform.

- 6.3.2 For purposes of this Rule 6.3, a Person will not be deemed to knowingly buy or sell a SEF Contract or execute a discretionary Order if (i) such Person is a corporate or other legal entity consisting of more than one individual trader; (ii) such Person has in place appropriate “firewall” or separation of function procedures; and (iii) the Person or Authorized User buying or selling the SEF Contract or executing the discretionary Order in question has no direct knowledge of the Order to buy or sell the same SEF Contract for any other Person at the same price or at the market price or of the Customer Order for the same SEF Contract, as the case may be.

6.4 Trading Against Customer Orders

- 6.4.1 **General Prohibition.** No Person in possession of a Customer Order shall knowingly take, directly or indirectly, the opposite side of such Order for its own account, an account in which it has a direct or indirect financial interest, or an account over which it has discretionary trading authority.
- 6.4.2 **Exceptions.** The foregoing restriction does not prohibit permissible pre-execution discussions conducted in accordance with Rule 6.9.4 and shall not apply to the following:
- (a) Block Trades affected pursuant to Rule 4.5;
 - (b) A trade knowingly made by a Person on the Platform against an Customer Order for its own account, an account in which it has a direct or indirect financial interest, or an account over which it has discretionary trading authority if the Customer Order has been entered immediately upon receipt and has first been exposed on the Platform for a minimum of five (5) seconds; or
 - (c) Transactions in which the Customer has consented in writing prior to the transaction to waive the application of this Rule 6.4 as long as: (1) the Participant or Broker Firm has clearly notified the Customer that the Participant or Broker Firm may take, directly or indirectly, the opposite side of such Customer’s Order for its own account, an account in which it has a direct or indirect financial interest, or an account over which it has discretionary trading authority; (2) the Participant or Broker Firm has waited for a minimum of five (5) seconds after first entering the Order received from the Customer into the Platform before taking the opposite side of the transaction; and (3) the Participant or Broker Firm maintains a record that clearly identifies, by appropriate descriptive words, all such transactions, including the time of execution, Commodity, date, price, quantity and delivery month and provides a copy of such record to the SEF.

6.5 Crossing Orders

- 6.5.1 Opposite Orders for different beneficial owners that are placed by a Person with discretion (including time and price discretion) over both accounts may be entered into the Platform, as long as one Order is exposed for a minimum of five (5) seconds.
- 6.5.2 Independently initiated Orders on opposite sides of the market for different beneficial account owners that are immediately executable against each other may be entered without delay provided that the Orders did not involve pre-execution communications.

6.6 Withholding of Customer Orders Prohibited

No Broker Firm shall withhold or withdraw from the market any Customer Order, or any part of an Order, for the benefit of any Person other than the Customer.

6.7 Priority of Execution

- 6.7.1 Customer Orders must be entered into the Platform as soon as practicable. A Broker Firm that receives a Customer Order that is not immediately entered into the Platform must create a non-erasable record of the Order, including the Order instructions, account designation, date, time of receipt and any other information that may be required by the SEF.
- 6.7.2 Customer Orders received by a Broker Firm shall be entered into the Platform in the sequence received. Customer Orders that cannot be immediately entered into the Platform must be entered when the Orders become executable in the sequence in which the Orders were received.
- 6.7.3 Nondiscretionary Customer Orders received by a Broker Firm shall be entered into the Platform in the sequence in which they were received. Nondiscretionary Customer Orders that cannot be immediately entered into the Platform must be entered when the Orders become executable in the sequence in which the Orders were received.

6.8 Responsibility for Customer Orders

- 6.8.1 A Broker Firm must exercise due care in the handling and execution of Customer Orders. In the case of a dispute as to whether a Broker Firm has exercised due care, the SEF is authorized to determine whether the Broker Firm was negligent and, if applicable, whether an adjustment is owed to the Customer.
- 6.8.2 A Broker Firm may not directly or indirectly guarantee the execution of an Order or any of its terms such as the quantity or price and may only report an execution that has been effected on the Platform or pursuant to the Rules. This Rule 6.8 shall not be construed to prevent a Broker Firm from assuming or sharing in the losses resulting from an error or the mishandling of an Order.

6.8.3 A Broker Firm may not adjust the price at which an Order was executed or be held responsible for executing or failing to execute an Order unless such Broker Firm was negligent or is settling a bona fide dispute regarding negligence. Broker Firms shall document all adjustments. Broker Firms shall make and retain a record that contains the date the adjustment was made, the name of the Broker Firm making the adjustment, the account to which the adjustment was credited, the amount of the adjustment, the Order number, and the reason for the adjustment. Such records must be provided to the SEF upon request.

6.9 Money Passing, Pre-Arranged, Pre-Negotiated and Noncompetitive Trades Prohibited

6.9.1 No Person may enter Orders the purpose of which is to enter into Contracts without a net change in either party's open positions but a resulting profit to one party and a loss to the other party, commonly known as a "money pass."

6.9.2 No Person shall prearrange or pre-negotiate any purchase or sale or noncompetitively execute any Transaction, except as provided in Rule 6.9.3 or Rule 6.9.4.

6.9.3 The foregoing restriction shall not apply to Block Trades affected pursuant to Rule 4.5.

6.9.4 Participants and Authorized Users may engage in pre-execution communications with regard to transactions executed or to be executed on the SEF if one party (the first party) wishes to be assured that a contra party (the second party) will take the opposite side of the first party's Order, subject to the following restrictions:

- (a) A party may not engage in pre-execution communications with other market participants on behalf of another party unless the party for whose benefit the trade is being made has previously consented to permit such communications.
- (b) Parties to pre-execution communications shall not disclose to a non-party the details of such communications or enter an Order to take advantage of information conveyed during such communications except in accordance with this rule.
- (c) The first party's Order must be entered into the SEF first, and the second party's Order may not be entered into the SEF until a period of five (5) seconds has elapsed from the time entry of the first Order.

6.10 Disciplinary Procedures; Termination of Connection

- 6.10.1 All access denials, suspensions, expulsions and other restrictions imposed upon a Participant, Authorized User, or Broker Firm by the SEF pursuant to Disciplinary Proceedings shall restrict with equal force and effect, access to, and use of, the SEF.
- 6.10.2 The SEF, at its sole discretion, shall have the right to summarily terminate the connection of any Participant, Authorized User, or Broker Firm or the access of any User ID to the SEF. Additionally, the SEF, at its sole discretion, shall have the right to direct a Participant to immediately terminate access to the SEF for any of such Participant's Authorized Users.

6.11 Position Limits and Accountability

- 6.11.1 The SEF does not have any Contracts subject to position limits at this time.
- 6.11.2 The CFTC may also from time to time establish position limits for SEF Contracts traded pursuant to these Rules. For any future SEF Contract subject to a position limit set by the CFTC, the SEF shall not set its position limit at a level higher than the CFTC's limit.
- 6.11.3 The SEF will demonstrate compliance with Commission Regulation 37.600 for Permitted Transactions by sending the Commission a list of Permitted Transactions traded on the SEF.
- 6.11.4 This Rule shall not limit the jurisdiction of the SEF to take action that it determines necessary or appropriate in respect of any positions on the SEF.

6.12 Aggregation of Positions

For purposes of Rule 6.11, positions in SEF Contracts shall be aggregated as required under CFTC Regulations.

6.13 Information Disclosure and Documentation

- 6.13.1 Participants, Authorized Users, and Broker Firms shall provide information relating to SEF Contracts to regulators in compliance with all applicable rules and requirements and continue to cooperate with regulators as reasonably necessary to assist in their understanding of the markets.
- 6.13.2 Participants, Authorized Users, and Broker Firms shall ensure that any information disclosed to the SEF is accurate and consistent. No existing or prospective Participant, Authorized User, and Broker Firm shall make any false statements or misrepresentations in any application, report or other communication to the SEF.

6.14 Compliance

Each Participant and Broker Firm will have a compliance program commensurate with the

size and scope of its trading activities on the SEF and designed to ensure appropriate, timely and ongoing review of trading practices and compliance with the Rules. Each Participant and Broker Firm will act in accordance with these practices for compliance and monitoring with regard to its SEF activity:

- 6.14.1 Provide for proper training of personnel on the provisions of the Rules.
- 6.14.2 Maintain internal policies and procedures to promote compliance with the Rules.
- 6.14.3 Promptly disclose to the SEF the details of any violations of the Rules involving Participant's or Broker Firm's activities on the SEF or provision of market information to the SEF or any of its Affiliates.
- 6.14.4 Provide an environment that encourages employees to engage in safe and confidential discussions and to disclose to senior management any trading practices that might violate the Rules.
- 6.14.5 Require any consultant, contractor and/or subcontractor to disclose all financial affiliations and conflict of interests. Ensure that consultants, contractors or subcontractors do not cause any disclosure of information in violation of this code and that confidentiality agreements are in effect where appropriate.
- 6.14.6 Establish clear lines of accountability for trading practices, including provisions relating to the responsibilities of corporate officers, with appropriate oversight by the board of directors or other senior corporate management committee.

SECTION VII DISCIPLINE AND ENFORCEMENT

7.1 General

- (a) Participants, Authorized Users and other Persons within the SEF's jurisdiction are subject to this Section VII if they are alleged to: (i) have violated; (ii) have aided and abetted a violation of; (iii) be violating; or (iv) be about to violate, any Rule of the SEF.
- (b) Except when the Board reserves responsibility for an inquiry or investigation to itself or delegates its responsibility to a committee of the Board, the SEF will conduct inquiries, investigations, Disciplinary Proceedings and appeals from Disciplinary Proceedings, summary impositions of fines, summary suspensions or other summary actions in accordance with this Section VII.
- (c) The SEF may delegate any or all of its powers or responsibilities under this Section VII to the Market Regulation Department, which may take any actions on behalf of the SEF that the SEF is permitted to take hereunder. In the event of any such delegation, references to the SEF in this Section VII shall be construed to be references to the

Market Regulation Department. The Market Regulation Department will maintain an enforcement staff that will effectively and promptly prosecute violations in accordance with this Section VII. The enforcement staff may not include persons that are associated with the SEF's Participants or persons whose interests conflict with their enforcement duties. Further, a member of the enforcement staff may not operate under the direction or control of any Participant. Any reference to the Market Regulation Department in this Section VII shall also be a reference to the enforcement staff.

- (d) No member of the staff of the SEF will interfere with or attempt to influence the process or resolution of any inquiry, investigation, Disciplinary Proceeding, appeal from a Disciplinary Proceeding, summary imposition of fines, summary suspension or other summary action. No member of the Board will interfere with or attempt to influence the process or resolution of any inquiry, investigation, Disciplinary Proceeding, appeal from a Disciplinary Proceeding, summary imposition of fines, summary suspension or other summary action with respect to which the Board member is not a member of the relevant Disciplinary Panel or Appeal Panel.
- (e) Upon being served with a notice of charges, the respondent may be represented by counsel or any other representative of its choosing, at its own expense, in all succeeding stages of the disciplinary process pursuant to this Section VII.
- (f) Pursuant to this Section VII, the SEF may hold:
 - (i) a Participant liable, and impose sanctions against such Participant, for such Participant's own acts and omissions that constitute a violation of Applicable Law;
 - (ii) a Participant liable, and impose sanctions against such Participant, for the acts and omissions of each Authorized User authorized by, and each other agent or representative of, such Participant that constitute a violation of Applicable Law as if such violation were that of the Participant;
 - (iii) an Authorized User liable, and impose sanctions against him or her, for such Authorized User's own acts and omissions that constitute a violation of Applicable Law;
 - (iv) an Authorized User liable, and impose sanctions against him or her, for the acts and omissions of each agent or representative of such Authorized User that constitute a violation of Applicable Law as if such violation were that of the Authorized User; and
 - (v) The Board shall appoint individuals on Disciplinary Panels and Appeal Panels at the recommendation of the Chief Compliance Officer to serve for a term of one year subject to reappointment, removal or replacement by the Board. The term of an individual selected as a member of a Disciplinary Panel or an Appeal Panel will not expire until the relevant Disciplinary Proceedings are complete.

7.2 Inquiries and Investigation

- (a) The Market Regulation Department will investigate any matter within the SEF's disciplinary jurisdiction that is brought to the attention of the Market Regulation Department. An investigation must be commenced upon the receipt of a request from the CFTC staff or upon the discovery or receipt of information by the SEF that, in the judgment of the Market Regulation Department, indicates a possible basis for finding that a violation has occurred or will occur. The Market Regulation Department will determine the nature and scope of its preliminary inquiries and investigations within its sole discretion.
- (b) The Market Regulation Department has the authority to:
- (i) initiate and conduct preliminary inquiries and investigations;
 - (ii) prepare investigative reports and make recommendations concerning the initiation of Disciplinary Proceedings;
 - (iii) prosecute alleged violations within the SEF's disciplinary jurisdiction; and
 - (iv) represent the SEF on appeal from any Disciplinary Proceeding, summary imposition of fines, summary suspension or other summary action.
- (c) Each Participant, Authorized User and other Person subject to the SEF's jurisdiction:
- (i) is obligated to appear and testify and respond in writing to inquiries within the time period required by the Market Regulation Department in connection with (A) any SEF Business or Rule of the SEF; (B) any preliminary inquiry or investigation; or (C) 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 by the SEF;
 - (ii) 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 Market Regulation Department in connection with (A) any Rule of the SEF; (B) any inquiry or investigation; or (C) 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 SEF; and
 - (iii) may not impede or delay any preliminary inquiry, investigation, Disciplinary Proceeding, appeal from a Disciplinary Proceeding, summary imposition of fines, summary suspension or other summary action.

7.3 Reports of Investigations

- (a) The Market Regulation Department will maintain a log of all investigations and their disposition. The Market Regulation Department will prepare a written report of an investigation for the Chief Compliance Officer when the evidence gathered during any

inquiry or investigation forms a reasonable basis to believe that a violation within the SEF's jurisdiction has occurred or is about to occur. Any such written investigation report will include the following information:

- (i) the reason(s) for initiating the investigation;
 - (ii) a summary of the complaint, if any;
 - (iii) all relevant facts and evidence gathered;
 - (iv) the Market Regulation Department's analysis and conclusions; and
 - (v) the recommendation of the Market Regulation Department as to whether disciplinary action should be pursued.
- (b) For each potential respondent, the Market Regulation Department will recommend any one of the following actions:
- (i) closing the investigation without further action;
 - (ii) resolving the investigation through an informal disposition, including the issuance of a warning letter; or
 - (iii) initiating Disciplinary Proceedings.
- (c) If the Market Regulation Department determines that no reasonable basis exists for finding a violation, then the written investigation report will include the following information:
- (i) the reasons for initiating the investigation;
 - (ii) if the investigation was initiated by a complaint from a market participant or regulator, a summary of the complaint;
 - (iii) all relevant facts and evidence gathered; and
 - (iv) the Market Regulation Department's analysis and conclusions.
- (d) After reviewing the Market Regulation Department's written investigation report, the Chief Compliance Officer will either:
- (i) decline to forward the investigative report to a Review Panel for further review;
 - (ii) forward the investigative report to a Review Panel for further review without a recommendation regarding the initiation of Disciplinary Proceedings; or
 - (iii) forward the investigative report to a Review Panel for further review with a recommendation to initiate Disciplinary Proceedings.

- (e) Each Market Regulation Department investigation must be completed in a timely manner. Absent mitigating factors, a timely manner is no later than twelve (12) months after the date that an investigation is opened. Mitigating factors that may reasonably justify an investigation taking longer than twelve (12) months to complete include the complexity of the investigation, the number of firms or individuals involved as potential wrongdoers, the number of potential violations to be investigated, and the volume of documents and data to be examined and analyzed.
- (f) In addition to any of the actions permitted pursuant to this Rule 7.3, the Market Regulation Department may issue a warning letter to the potential respondent. Such warning letter, if issued, shall not be construed as a penalty or an indication that a finding of a violation has been made. A copy of such warning letter that is issued shall be included in the investigation report of such potential respondent. No more than one warning letter for the same potential violation may be issued to the same potential respondent during any rolling twelve (12) month period.

7.4 Review of Investigative Reports

- (a) The Review Panel shall review the written investigation reports prepared by the Market Regulation Department to determine whether further action with respect to the matters discussed therein is required.
- (b) The Review Panel will review each completed investigation report promptly after receipt thereof and, within twenty (20) days of such receipt, take one of the following actions:
 - (i) If the Review Panel determines that additional investigation or evidence is needed, the Review Panel shall promptly direct the Market Regulation Department to conduct further investigation;
 - (ii) If the Review Panel determines that no reasonable basis exists for finding a violation or that prosecution is otherwise unwarranted, the Review Panel may direct that no further action be taken. Such determination must be in writing, and must include a written statement setting forth the facts and analysis supporting the decision; or
 - (iii) If the Review Panel determines that a reasonable basis exists for finding a violation and adjudication is warranted, it must direct that the person or entity alleged to have committed the violation be served with a notice of charges.
- (c) Any member of the Review Panel must promptly recuse himself or herself and notify the Chief Compliance Officer of the recusal if such member has a relationship of a type listed in Rule 2.6.1 with a potential respondent in an investigative report.
- (d) The Review Panel shall be comprised of three members. Furthermore, no group or class of participants may dominate or exercise disproportionate influence on a Review Panel. In addition, the Review Panel must not include any members of the Market Regulation Department or any person involved in adjudicating any other stage of the same proceeding. No member of the Review Panel may participate in deliberations or

voting on any matter in which he or she has a financial, personal or other direct interest. A Review Panel may not include any members of the Market Regulation Department or any person involved in adjudicating any other stage of the same proceeding. If a vacancy shall occur on a Review Panel after it has begun its proceedings, the remaining members shall complete consideration and disposition of the matter. Once a Review Panel has determined the matter for which it was appointed and has notified the Chief Compliance Officer in writing of its decision, it shall be dissolved automatically. Except as may otherwise be provided in these rules the Board may, at any time, with or without cause, remove any member of a Review Panel.

7.5 Notice of Charges

- (a) If the Review Panel authorizes Disciplinary Proceedings pursuant to Rule 7.4, the Market Regulation Department will prepare, and serve in accordance with Rule 7.7, a notice of charges.
- (b) A notice of charges must:
 - (i) adequately state the acts, practices or conduct that the respondent is alleged to have engaged in;
 - (ii) state the provision(s) of Applicable Law alleged to have been violated or about to be violated;
 - (iii) advise the respondent of its right to a hearing and its right to counsel;
 - (iv) state the period of time within which the respondent can request a hearing on the notice of charges, which will not be less than twenty (20) days after service of the notice of charges;
 - (v) 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
 - (vi) advise the respondent that a failure to answer or to expressly deny a charge may be deemed to be an admission of such charge.
- (c) Upon being served with a notice of charges, the respondent has the right to be represented by legal counsel or any other representative of its choosing in all succeeding stages of the Disciplinary Proceedings, other than a Director, member of an applicable Disciplinary Panel, SEF employee or other person substantially related to the underlying investigation.

7.6 Answer to Notice of Charges

- (a) If the respondent determines to answer a notice of charges, the respondent must file a written answer within twenty (20) days after being served with such notice, or within such later time period determined appropriate by the chairperson of the Review Panel.

- (b) To answer a notice of charges, the respondent must in writing:
 - (i) specify the allegations that the respondent denies or admits;
 - (ii) specify the allegations that the respondent does not have sufficient information to either deny or admit;
 - (iii) specify any specific facts that contradict the notice of charges;
 - (iv) specify any affirmative defenses to the notice of charges; and
 - (v) sign and serve the answer on the Hearing Panel.
- (c) Any failure by the respondent to timely serve a written 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 or expressly deny one or more allegations in a notice of charges will be deemed to be an admission of that allegation or those allegations. A general denial by the respondent, without more, will not satisfy the foregoing requirements.
- (d) If a respondent admits or fails to specifically deny any of the allegations in the notice of charges, the Hearing Panel shall find that such violations set forth in such allegations have been committed and shall impose a sanction for each such violation. The Hearing Panel shall promptly notify the respondent in writing of any sanction to be imposed pursuant to this Rule 7.6(d) and advise the respondent that it may request a hearing on such sanction within the time period specified in the notice. The failure to request such a hearing within such time period shall be deemed to constitute an acceptance of such sanction. Any hearing pursuant to this Rule 7.6(d) shall be concerned only with the sanction(s) imposed by the Hearing Panel pursuant to this Rule 7.6(d).

7.7 Service of Notice of Charges

Any notice of charges or other documents contemplated to be served pursuant to this Section VII may be served upon the respondent either personally or by leaving the same at his or her place of business or by deposit with the United States post office, postage prepaid via registered or certified mail addressed to the respondent at the address as it appears on the books and records of the SEF.

7.8 Settlements

- (a) At any time after a notice of charges has been issued, the respondent may propose in writing an offer of settlement to anticipated or instituted Disciplinary Proceedings. Any offer of settlement must contain proposed findings and sanctions and be signed by the respondent or potential respondent and submitted to the Market Regulation 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 SEF over it and over the subject matter of the proceedings and consent to the entry of the findings and sanctions imposed under such offer of settlement.

- (b) The Review Panel or Hearing Panel, as applicable, may accept the offer of settlement, but may not alter the terms of a settlement offer unless the respondent or potential respondent agrees.
- (c) If an offer of settlement is accepted, the Review Panel or Hearing Panel, as applicable, must issue a written decision specifying the rule violations that the presiding panel has reason to believe were committed, including the basis or reasons for the presiding panel's conclusions, and any sanction to be imposed, which shall include full Customer restitution where Customer harm is demonstrated. Should an offer of settlement be accepted by the Hearing Panel without the agreement of the Market Regulation Department, such written decision must adequately support the Hearing Panel's acceptance of the settlement. If applicable, such written decision must also include a statement that the respondent has accepted the sanctions imposed without either admitting or denying the rule violations.
- (d) The respondent or potential respondent may withdraw his or her offer of settlement at any time before final acceptance by the presiding panel.
- (e) If the offer of settlement of a respondent or potential respondent is not accepted, fails to become final or is withdrawn before final acceptance by the presiding panel, 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 the respondent, the potential respondent, nor the Market Regulation Department may use an unaccepted offer of settlement as an admission or in any other manner at a hearing of, or appeal from, any Disciplinary Proceedings.
- (f) Any accepted settlement agreement shall include a waiver by the respondent of all rights to appeal or otherwise challenge or contest the validity of the settlement offer.

7.9 Hearing Panel

- (a) The Board will appoint a Hearing Panel to conduct hearings in connection with any Disciplinary Proceedings authorized by a Review Panel, to make findings and impose sanctions pursuant to this Section VII.
- (b) The Hearing Panel shall be comprised of three members. The chair of the Hearing Panel shall be appointed by the Board. No group or class of participants may dominate or exercise disproportionate influence on a Hearing Panel, and no member of the Hearing Panel may participate in deliberations or voting on any matter in which he or she has a financial, personal or other direct interest. A Hearing Panel may not include any members of the Market Regulation Department or any person involved in adjudicating any other stage of the same proceeding. If a vacancy shall occur on a Hearing Panel after it has begun its proceedings, the remaining members shall complete consideration and disposition of the matter. Once a Hearing Panel has determined the matter for which it was appointed and has notified the Chief Compliance Officer in writing of its decision, it shall be dissolved automatically. The Board may, at any time remove any member of a Hearing Panel for cause.

- (c) Any of the functions of the SEF or the Hearing Panel under this Section VII may be performed by a Regulatory Service Provider pursuant to a delegation of such functions by the SEF, and references to the Review Panel, the Hearing Panel or the Market Regulation Department, as appropriate, shall be deemed to be references to such Regulatory Service Provider. Nevertheless, the SEF will retain exclusive authority in all substantive decisions made by any Regulatory Service Provider, including, but not limited to, denials of access to the Platform for disciplinary reasons. The SEF will document any instances where its actions differ from those recommended by the Regulatory Service Provider.
- (d) Within ten days of being notified of the appointment of a Hearing Panel, a respondent may seek to disqualify any individual named to the Hearing Panel for the reasons identified in Rule 2.6.1, or for any other reasonable grounds, by serving written notice on the General Counsel and providing a copy thereof to the Hearing Panel. By not timely filing a request for disqualification, the respondent will be deemed to have waived any objection to the composition of a Hearing Panel. The General Counsel 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.

7.10 Convening Hearings of Disciplinary Proceedings

- (a) All Disciplinary Proceedings (except for summary impositions of fines pursuant to Rule 7.17) will be conducted at a hearing before a Hearing Panel. A hearing will be conducted privately and confidentially unless the Hearing 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, a Hearing 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.
- (b) After reasonable notice to each respondent, the Hearing Panel will promptly convene a hearing to conduct Disciplinary Proceedings with respect to such respondent. Parties to a Disciplinary Proceeding include each respondent and the Market Regulation Department. The hearing shall be conducted before members of the Hearing Panel.
- (c) The chairman of the Hearing Panel may continue, adjourn or otherwise conduct the hearing as he or she may deem appropriate. The chairman of the Hearing 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 Hearing Panel will not be bound by any evidentiary or procedural rules or law; nevertheless, the procedures for the hearing may not be so informal as to deny a fair hearing. Once admitted during the hearing, the Hearing Panel may consider, and attach the weight it believes appropriate to, evidence or other materials. The SEF will provide guidance to the chairman of the Hearing Panel on the conduct of the hearing.
- (d) Except for procedural and evidentiary matters decided by the chairman of the Hearing Panel pursuant to paragraph (c) above and Rule 7.11, unless each respondent

otherwise consents, the entire Hearing Panel must be present during the entire hearing and any related deliberations.

7.11 Respondent Review of Evidence

- (a) Prior to the commencement of a hearing, each respondent will be given the opportunity to review all books, records, documents, papers, transcripts of testimony and other evidence in the possession or under the control of the SEF that the Market Regulation Department will use to support the allegations and proposed sanctions in the notice of charges or which the chairman of the Hearing Panel deems relevant to those charges. Notwithstanding the foregoing, no respondent will have the right to review, and the SEF will have no obligation to disclose, any information protected by attorney-client privilege.
- (b) If any books, records, documents, papers, transcripts of testimony or other tangible evidence contain information that could adversely affect the competitive position of the Person providing the information or if such information might compromise other investigations being conducted by the Market Regulation Department, the Market Regulation Department may redact, edit or code such information before furnishing it to the respondent.
- (c) Notwithstanding anything in paragraph (b) above to the contrary, the Market Regulation Department:
 - (i) will not redact, edit or code competitive or investigative information contained in documents in a manner that would impair the respondent's ability to defend against the allegations or proposed sanctions in the notices of charges, and
 - (ii) will provide the respondent with access to the information and portions of the documents that the Market Regulation Department intends to rely on to support the allegations or proposed sanctions in the notice of charges or that are relevant to those charges.
- (d) For purposes of this Rule 7.11, information that could adversely affect competitive positions includes positions in SEF Contracts currently held, trading strategies employed in establishing or liquidating positions, the identity of Customers, and the personal finances of the Person providing the information.
- (e) Unless indicated otherwise by the chairman of the Hearing Panel, all such requests for access to information identified in Rule 7.11(a) must be made not less than ten (10) days prior to the scheduled hearing date.

7.12 Conducting Hearings of Disciplinary Proceedings

- (a) At a hearing conducted with a Hearing Panel, the Market Regulation Department will present its case supporting the allegations and proposed sanctions in the notice of charges to the Hearing Panel. The respondent is entitled to appear personally and participate in the hearing.

- (b) At a hearing conducted with a Hearing Panel, the Market Regulation Department and each respondent may:
 - (i) present evidence and facts deemed relevant and admissible by the chairman of the Hearing Panel;
 - (ii) call and examine witnesses (including, but not limited to, employees or agents of the SEF that form part of the Market Regulation Department); and
 - (iii) cross-examine witnesses called by other parties.
- (c) If a respondent has failed to timely file a written answer to a notice of charges but appears at the hearing, the respondent may not participate in the hearing (except for a hearing pursuant to Rule 7.6(d)) unless the Hearing Panel determines that the respondent had a compelling reason for failing to timely file an answer. If the Hearing Panel determines that the respondent had a compelling reason for failing to timely file an answer, the Hearing Panel will adjourn the hearing and direct the respondent to promptly file a written answer in accordance with Rule 7.6.
- (d) Any person entitled, required, or called upon to attend a hearing before a Hearing Panel pursuant to paragraph (b)(ii) 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 SEF will require persons within its jurisdiction that are called as witnesses to appear at the hearing and produce evidence, and will make reasonable efforts to secure the presence of all other persons called as witnesses whose testimony would be relevant.
- (e) If, during any Disciplinary Proceedings, the Hearing Panel determines that a reasonable basis exists to believe that the respondent violated, or is about to violate, a Rule of the SEF or a provision of Applicable Law other than the violations alleged in the notice of charges, the Hearing Panel may consider those apparent violations after providing the respondent with an opportunity to answer the additional allegations in accordance with Rule 7.6. In connection with considering apparent violations pursuant to this paragraph (e), the Hearing Panel may request that the Market Regulation Department provide the Hearing Panel with any additional information.
- (f) The Hearing Panel may summarily impose sanctions on any Participant, Authorized User, or other Person within the SEF's jurisdiction whose actions impede the progress of a hearing.
- (g) The SEF will arrange for any hearing conducted in connection with Disciplinary Proceedings to be recorded verbatim, or substantially verbatim, in a manner capable of accurate transcription, and a copy of such recordings shall become a part of the record of such proceedings. If the respondent requests a copy of all or portions of the recording of a hearing, the chairman of the Hearing Panel may, within his or her sole discretion, order the respondent to pay the costs for transcribing the recording of the hearing.
- (h) No interlocutory appeals of rulings of any Hearing Panel, or chairman of the Hearing

Panel, are permitted.

7.13 Decision of Hearing Panel

- (a) Promptly following a hearing, the Hearing Panel will render a written decision based on the weight of the evidence contained in the record of the Disciplinary Proceedings. A decision by a majority of the Hearing Panel will constitute the decision of the Hearing Panel.
- (b) The SEF will serve a copy of the written decision on the respondent and the Market Regulation Department. The written decision will include the following information:
 - (i) the notice of charges or a summary of the charges;
 - (ii) the answer, if any, or a summary of the answer;
 - (iii) a summary of the evidence introduced at the hearing or, where appropriate, incorporation by reference of the investigation report;
 - (iv) a statement of findings and conclusions with respect to each charge, and a complete explanation of the evidentiary and other bases for such findings and conclusions with respect to each charge;
 - (v) an indication of each specific rule that the respondent was found to have violated; and
 - (vi) a declaration of all sanctions imposed against the respondent, including the basis for such sanctions and the effective date of such sanctions.
- (c) Unless a timely notice of appeal is filed pursuant to Rule 7.16, the order of the Disciplinary Proceedings will become final upon the expiration of 20 days after the order is served on the respondent and a copy thereof is provided to the Market Regulation Department.

7.14 Sanctions

- (a) After notice and opportunity for hearing in accordance with these rules, the SEF will impose sanctions if a Participant, Authorized User, or other Person within the SEF's jurisdiction is found to have violated any Applicable Law. Disciplinary sanctions imposed by the SEF shall be commensurate with the violations committed, and shall be clearly sufficient to deter recidivism or similar violations by other market participants. In addition, the respondent's disciplinary history will be taken into account in determining the appropriate sanction.
- (b) The SEF may impose one or more of the following sanctions or remedies:
 - (i) censure;
 - (ii) limitation on the Participant's right to access all or part of the Platform;

- (iii) suspension of the Participant's right to access all or part of the Platform for a period not to exceed twelve (12) months;
 - (iv) fine of up to \$1,000,000 for each violation;
 - (v) restitution or disgorgement;
 - (vi) expulsion or termination of a Participant, Authorized User or other Person within the SEF's jurisdiction; or
 - (vii) any other sanction or remedy deemed to be appropriate.
- (c) Each Participant 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 Participant.

7.15 Costs

Regardless of the outcome of any Disciplinary Proceeding, a Hearing Panel may order a respondent to pay some or all of the costs associated with the Disciplinary Proceedings, including costs that the Hearing Panel believes were unnecessarily caused by the respondent. Costs may include costs associated with the inquiry or investigation, the prosecution by the Market Regulation Department, legal and professional assistance, the hearing, and administrative and other expenses incurred by the Hearing Panel.

7.16 Appeal from Hearing Panel Decision

- (a) Parties to a Disciplinary Proceeding may appeal the decision of the Hearing Panel within twenty (20) days of receiving the order of the Disciplinary Proceedings by filing a notice of appeal with the General Counsel of the SEF. While an appeal is pending, the effect of the written decision issued by the Hearing Panel (including any sanctions, remedies, or costs imposed thereby) is suspended.
- (b) In a notice of appeal, the appellant must state in writing the grounds for appeal, including the findings of fact, conclusions, or sanctions to which the appellant objects. An appellant may appeal the written decision of a Hearing Panel on any of the following grounds:
 - (i) the decision was arbitrary, capricious, an abuse of discretion, or not in accordance with the Rules of the SEF;
 - (ii) the decision exceeded the authority or jurisdiction of the Hearing Panel or the SEF;
 - (iii) the decision failed to observe required procedures;
 - (iv) the decision was unsupported by the facts or evidence; or

- (v) the imposed sanctions, remedies, or costs were inappropriate or unsupported by the record.
- (c) The General Counsel will forward copies of any notice of appeals received by it to all parties to the Disciplinary Proceedings in question, except the appellant. On or before the 20th day after filing a notice of appeal, the appellant must file with the Chief Compliance Officer and serve the Market Regulation Department a brief supporting the notice of appeal and documents supporting the brief. On or before the 20th day after the date on which the appellant served its brief, the appellee may file and serve its brief in opposition.
- (d) Within twenty (20) days after the last submission filed pursuant to paragraph (c) above, the Board will appoint an Appeal Panel to consider and determine the appeal. The Appeal Panel shall be comprised of three members. No group or class of participants may dominate or exercise disproportionate influence on an Appeal Panel. An individual may not serve on an Appeal Panel if the individual has a relationship of a type described in Rule 2.6.1. The appeals proceeding shall be conducted before all members of the Appeal Panel.
- (e) Within ten (10) days of being notified of the appointment of an Appeal Panel, the appellant may seek to disqualify any individual named to the Appeal Panel for the reasons listed in Rule 2.6.1 or for any other reasonable grounds, by serving written notice on the General Counsel of the SEF. By not timely filing a request for disqualification, the appellant will be deemed to have waived any objection to the composition of the Appeal Panel. The General Counsel will decide the merits of any such objection in his or her sole discretion. Any such decision will be final and not subject to appeal.
- (f) An Appeal Panel may hold a hearing to allow parties to present oral arguments. Any hearing will be conducted privately and confidentially unless the chairman of the Appeal Panel decides that the hearing, or any part of it, should be held in public after giving each appellant the opportunity to present its, his, or her views on holding a public hearing. Notwithstanding the confidentiality of hearings, an Appeal 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 Appeal Panel will not be bound by any evidentiary or procedural rules or law.
- (g) Except for good cause, the Appeal Panel will only consider on appeal the record before the Hearing Panel, the written exceptions filed by the parties, and the oral or written arguments of the parties. The Appeal Panel may only consider new evidence when it is satisfied that good cause exists as to why the evidence was not introduced during a prior stage of the Disciplinary Proceeding. In connection with any appeal, the Market Regulation Department will furnish to the Appeal Panel a transcript of the hearing, any exhibits introduced at the hearing, the notice of appeal, and briefs filed to support and oppose the appeal.
- (h) After completing its review, the Appeal Panel may affirm, modify, or reverse any order

of Disciplinary Proceedings 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 of the SEF; or remanding the matter to the same or a different Hearing Panel for further Disciplinary Proceedings. The Appeal Panel may order a new hearing for good cause, or if the Appeal Panel deems it appropriate.

- (i) Promptly following the appeal proceeding, the Appeal Panel will issue a written decision and provide a copy to the parties. The written decision issued by the Appeal Panel must adhere to all the requirements of Rule 7.13(b), to the extent that a different conclusion is reached from that issued by the Hearing Panel. A decision by a majority of the Appeal Panel will constitute the decision of the Appeal Panel.
- (j) An Appeal Panel's written decision on appeal (including findings of fact and conclusions and the imposition of sanctions, remedies, and costs, and the effective date of any sanction, remedy, or cost) will be the final action of the SEF, and will not be subject to appeal within the SEF. Disciplinary sanctions imposed by the SEF shall be commensurate with the violations committed, and shall be clearly sufficient to deter recidivism or similar violations by other market participants. In addition, the respondent's disciplinary history will be taken into account in determining the appropriate sanction.

7.17 Summary Imposition of Fines Relating to Submission of Records

- (a) The SEF may fine a Participant, Authorized User or other Person subject to the jurisdiction of the SEF for failure:
 - (1) to make timely payments of initial or variation margin, Options premiums, fees, cost, charges or fines to the SEF;
 - (2) to make timely and accurate submissions to the SEF of notices, reports or other information required by the SEF Rules; and/or
 - (3) to keep any books and records required by the SEF Rules.
- (b) The SEF will set the amount of any fines imposed pursuant to Rule 7.17, with the maximum fine for each violation not to exceed \$5,000. A warning letter may be issued for first-time violations or violators, provided that no more than one warning letter may be issued per any rolling twelve (12) month period for the same violation.

7.18 Emergency Disciplinary Proceedings

- (a) Notwithstanding anything in the Rules of the SEF to the contrary, the SEF may impose a sanction, including suspension of the Participant's right to access the Platform or the association of an Authorized User with a Participant, or take other summary action against any Participant, Authorized User, or other Person subject to the SEF's jurisdiction, if the SEF reasonably believes such immediate action is necessary to protect the best interest of the marketplace.

- (b) Whenever summary action pursuant to paragraph (a) above is proposed, the SEF will, if practicable, serve the party against whom the action is contemplated with written notice. If prior notice is not practicable, the SEF will give notice at the earliest possible opportunity to the respondent against whom the action is brought. The notice will be prepared by the Market Regulation Department, and such notice will state the action, briefly state the reasons for the action, and state the effective time, date, and duration of the action.
- (c) The respondent shall be given the opportunity for a hearing as soon as reasonably practicable, and the hearing must be conducted before a Hearing Panel pursuant to Rules 7.9-7.13. The respondent shall have the right to be represented by legal counsel, or any other representative of its choosing and at its own expense, in all proceedings subsequent to the emergency action taken.
- (d) Promptly after the hearing concerning a summary action or suspension, the Hearing Panel will render a written decision based on the weight of the evidence contained in the record of the proceeding. The decision of a majority of the Hearing Panel will be the decision of the Hearing Panel. The SEF will serve copies of the written decision of the Hearing Panel on the respondent and the Market Regulation Department. The written decision will include the following information:
 - (i) a description of, and reasons for, the summary action taken;
 - (ii) a summary of the evidence produced at the hearing;
 - (iii) a statement of findings of fact and conclusions;
 - (iv) a determination that the summary action should be affirmed, modified, or reversed; and
 - (v) a declaration of any action to be taken pursuant to the determination, and the effective date and duration of such action.
- (e) Any decision of a Hearing Panel pursuant to this Rule 7.18 will be the final action of the SEF, and not subject to appeal within the SEF upon serving the respondent with a copy of the decision.
- (f) At the request of the SEF, a respondent, against whom a summary action is brought pursuant to this Rule 7.18, must provide access to and/or copies of books and records over which the respondent has access or control, and must furnish information to, or appear or testify before, the SEF in connection with the enforcement of any Rule of the SEF.

7.19 Rights and Responsibilities after Suspension or Termination

- (a) When the right of a Participant, Authorized User or other Person to access the Platform is suspended for a period of twelve (12) months or less, none of its rights will apply during the period of the suspension, except for the right of the Participant, Authorized User to assert claims against others as provided in the Rules of the SEF. Any

such suspension will not relieve the Participant, Authorized User, or Other Person of its obligations under the Rules of the SEF to perform any transactions entered into before the suspension, or for any SEF fees, costs, or charges incurred during the suspension. The SEF may discipline a suspended Participant, Authorized User, or Other Person under this Section VII for any violation of Applicable Law committed by the Participant, Authorized User or Other Person before, during, or after the suspension.

- (b) When the right of a Participant, Authorized User or other Person to access the Platform is terminated, all of its rights will terminate, except for the right of the Participant, Authorized User, or Other Person in question to assert claims against others, as provided in the Rules of the SEF. A terminated Participant, Authorized User, or Other Person may only seek to reinstate its right to access the Platform by filing an application in accordance with Rule 3.3. The SEF will not consider the application of a terminated Participant, Authorized User, or Other Person if such Participant, Authorized User, or Other Person has failed to appear at Disciplinary Proceedings without good cause, or has impeded the progress of Disciplinary Proceedings.
- (c) A suspended or terminated Participant, Authorized User or other Person remains subject to the Rules of the SEF and the jurisdiction of the SEF 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 Participant, Authorized User or other Person still had the right to access the Platform.

7.20 Notice to the Respondent, the CFTC, and the Public

The SEF will provide written notice of Disciplinary Proceedings to the parties and the CFTC consistent with CFTC Regulations. Whenever the SEF suspends, expels, fines, or otherwise disciplines, or denies any Person access, to the SEF, the SEF will make the public disclosures required by CFTC Regulations.

SECTION VIII ARBITRATION

8.1 In General

Participants, Authorized Users, and Broker Firms shall arbitrate all disputes, controversies or claims between or among themselves that relate to or arise out of any Contract or otherwise arise out of one or more transactions made or to be made on the Platform or subject to the Rules of the SEF and that are based upon facts and circumstances that occurred at a time when the parties were Participants, Authorized Users, and Broker Firms .

8.2 Participant, Authorized User, or Broker Firm Initiating an Arbitration Claim

A Participant, Authorized User, or Broker Firm may initiate an arbitration claim by submitting any required documents and fees to the chosen Arbitrator. A Participant, Authorized User, or Broker Firm that initiates such an arbitration claim shall submit notice thereof to the SEF.

8.3 Penalties

- 8.3.1 Any failure on the part of a Participant, Authorized User, or Broker Firm to arbitrate a dispute subject to this Section VIII, or the commencement by any such person of a suit in any court prior to arbitrating a case that is required to be arbitrated pursuant to this Section VIII, violates the Rules and shall subject such Person to Disciplinary Proceedings pursuant to Section VII. Participant, Authorized User, or Broker Firm
- 8.3.2 The Chief Compliance Officer may summarily suspend, pursuant to Rule 8.3.1, a Participant, Authorized User, or Broker Firm that fails to timely satisfy an arbitration award rendered in any arbitration pursuant to this Section VIII.

SECTION IX MISCELLANEOUS

9.1 Trading by SEF Officials Prohibited; Misuse of Material, Non-Public Information

- 9.1.1 Terms used in this Rule 9.1 and not otherwise defined in the Rules shall have the meanings set forth in CFTC Regulations 1.3 and 1.59. As used in this Rule 9.1, the term “SEF Official” does not include any member of the Board, a committee established by the Board, a Hearing Panel or Appeal Panel if such Person is not also an Officer or employee of the SEF.
- 9.1.2 No SEF Official may trade, directly or indirectly, (i) any SEF Contract traded on or subject to the Rules or any related financial instrument.
- 9.1.3 The Chief Compliance Officer (or, in the case of the Chief Compliance Officer, the Board) may grant exemptions from the provisions of Rule 9.1.1 to SEF Officials on a case-by- case basis under circumstances that are not contrary to the purposes of this Rule and CFTC Regulation 1.59. Such circumstances may include, but are not necessarily limited to:
- (a) participation in pooled investment vehicles where such SEF Official has no direct or indirect control over Transactions effected by or for the account of the pool;
 - (b) service by such SEF Official as an executor or administrator of an estate;
 - (c) service by such SEF Official in any other fiduciary capacity, such as an officer of a charitable organization, in which such SEF Official receives no pecuniary benefit from the trading of SEF Contracts or other financial instruments;
 - (d) trading in SEF Contracts or financial instruments executed on or subject to the rules of a swap execution facility, a designated contract market or a national securities exchange under circumstances in which such SEF Official’s access to material non-public information in respect of such financial instruments is sufficiently minimal or attenuated so as to be insignificant; and

- (e) such other circumstances as the Chief Compliance Officer (or, in the case of the Chief Compliance Officer, the Board) may determine.
- 9.1.4 For the avoidance of doubt, participation by a SEF Official in a retirement plan sponsored by the SEF shall not be deemed to constitute trading directly or indirectly in a SEF Contract or financial instrument, notwithstanding such plan's trading of SEF Contracts or financial instruments.
- 9.1.5 Any SEF Official that has received an exemption under Rule 9.1.3(b) must:
- (a) furnish to the SEF (or, in the case of the Chief Compliance Officer, to the Board) account statements and other documents relevant to the trading activities that are so exempted; and
 - (b) inform the Chief Compliance Officer (or, in the case of the Chief Compliance Officer, the Board) within one business day of any material change of information that may affect such SEF Official's qualification for such exemption.
- 9.1.6 SEF Officials, agents and independent contractors of the SEF are prohibited from disclosing material non-public information obtained as a result of their employment, agency relationship or engagement with the SEF where the SEF Official, agent or independent contractor expected or should have reasonably expected that the information disclosed may assist a Person in trading any SEF Contract, any SEF Contract traded on another designated contract market or other market, or any related underlying commodity or security.

9.2 Market Data

- 9.2.1 Each Participant, and Broker 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 SEF owns and shall retain all right, title and interest in and to the SEF, 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 (a) copyright, (b) trade mark, (c) service mark, (d) trade secret, (e) trade name, (f) data or database rights, (g) design rights, (h) moral rights, (i) inventions, whether or not capable or protection by patent or registration, (j) rights in commercial information or technical information, including know-how, research and development data and manufacturing methods, (k) patent, and (l) other intellectual property and ownership rights, including applications for the grant of any of the same, in or to the SEF and all other related proprietary rights of the SEF 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 transmitted by means of any of the foregoing, including, without limitation, the market data, the “**Proprietary Information**”). Each Participant and Broker 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 SEF. Each Participant and Broker Firm acknowledges and agrees that it shall not and 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 SEF or the Proprietary Information. Each Participant and Broker Firm further agrees to and 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, loan, sell or distribute, directly or indirectly, all or any portion of the SEF or any Proprietary Information.

- 9.2.2 Notwithstanding any other provision of this Rule 9.2, each Participant, Authorized User, or Broker Firm 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 SEF by such Participant, Authorized User, or Broker Firm.
- 9.2.3 Subject to the provisions of paragraph (a), all Participants, Authorized Users, Broker Firms, and other Persons affiliated with any of the foregoing hereby acknowledge and agree that the SEF 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 agree not to distribute, create derivative works based on, or otherwise use or commercially exploit market data and any such derivative works, provided that Participants, Authorized Users, Broker Firms, and such other Persons may use market data for their own internal business purposes. Without limiting the generality of the foregoing, Participants, Authorized Users, Broker Firms, and other Persons affiliated with any of the foregoing may not distribute, sell or retransmit market data exchange to any third party.
- 9.2.4 Each Participant, Authorized User, and Broker Firm hereby grants the SEF a non-exclusive, perpetual, freely transferable, world-wide and royalty-free license to use, distribute, sub-license, disclose and sell market data, in any manner, media and jurisdiction, for the benefit of the SEF and/or its Affiliates; provided that, except as may otherwise be required by law or permitted by Rule 2.8 or in any written agreement between the SEF and such Participant, the SEF shall not disclose market data other than on an aggregated basis that does not directly or indirectly identify individual Participants.

9.3 Recording of Communications

The SEF or the Regulatory Services Provider, if any, may record conversations and retain copies of electronic communications between SEF Officials and Participants, Authorized Users, and Broker Firms and their agents. Any such recordings may be retained by the SEF or the Regulatory Services Provider in such manner and for such periods of time as the SEF may deem necessary or appropriate, including as may be required by Applicable Law.

9.4 Confidentiality

Except as provided in Rule 9.2, all information provided by a Participant, Authorized User, or Broker Firm to the SEF shall be held in confidence and shall not be made known to any other Person except as follows:

- (a) with the consent of the Participant providing such information;
- (b) to a Governmental Authority, if the SEF is requested or legally required to do so by such Governmental Authority;
- (c) pursuant to legal process;
- (d) Participant, Authorized User, or Broker Firm subject to appropriate confidentiality requirements, to any Person providing services to the SEF, including but not limited to the Regulatory Services Provider, if any;
- (e) to the Board, any committee, SEF Officials, attorneys and auditors, and to agents and independent contractors that have been engaged by the SEF who require such information in connection with the discharge of their duties to the SEF; and
- (f) as otherwise permitted under the Rules.

9.5 Force Majeure

Notwithstanding any other provision of the rules, the SEF shall not be obligated to perform its obligations under the rules or any agreement with any Person, or to compensate any Person for losses occasioned by any delay or failure of performance, to the extent a delay or failure of performance is the result of circumstances that the SEF determines, in its sole discretion, may have an adverse effect upon the functions and facilities of the SEF, including, but not limited to, acts of God, fire or other natural disasters, bomb threats, acts of terrorism or war or severely inclement weather.

9.6 Extension or Waiver of Rules

The SEF may, in its sole discretion, waive, or extend the time period for performing, any act or acts designated by the rules, but only to the extent such waiver or extension is not

inconsistent with Applicable Law.

9.7 Effect of Amendment, Repeal or New Rule

The SEF may, in compliance with the CEA and CFTC Regulations, amend or repeal any Rule and/or adopt new Rules. Any such amendment or repeal of a Rule or adoption of a new 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 SEF (regardless of when any such Person became subject to the SEF's jurisdiction) and all SEF Contracts (regardless of whether any such SEF Contract was entered into before, on or after such effective date).

9.8 Signatures

Rather than rely on an original signature, the SEF 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.

9.9 Governing Law; Legal Proceedings

- 9.9.1 The Rules, and the rights and obligations of the SEF and Participants under the Rules, shall be governed by, and construed in accordance with, the laws of the State of Texas applicable to contracts executed and performed wholly within the State of Texas without regard to any provisions of Texas law that would apply the substantive law of a different jurisdiction.
- 9.9.2 Any action, suit or proceeding against the SEF, its Officers, directors, limited liability company members, employees, agents, or any member of any committee must be brought within one (1) 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 Houston, Texas. Each Participant, Authorized User, or Broker Firm 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.
- 9.9.3 In the event that a Participant, Authorized User, or Broker Firm or an Affiliate of such Person who fails to prevail in a lawsuit or other legal proceeding instituted by such Participant or such Affiliate against (i) the SEF or (ii) any Affiliate of the SEF or any of their respective officers, directors, equity holders, employees, agents, or any member of any committee, and related to the business of the SEF, such Participant, Authorized User, or Broker Firm shall pay to the SEF all reasonable expenses, including attorneys' fees, incurred by the SEF in the defense of such proceeding. This Rule 9.9.3 shall not apply to SEF disciplinary actions, appeals thereof, or an instance in which the Board has granted a waiver of the provisions hereof.

9.10 LIMITATION OF LIABILITY; NO WARRANTIES

A PERSON'S USE OF THE SERVICES, THE SYSTEM, SEF PROPERTY AND ANY OTHER INFORMATION AND MATERIALS PROVIDED BY THE SEF, IS AT THE PERSON'S OWN RISK, AND THE SERVICES, THE SEF PROPERTY AND ANY OTHER INFORMATION AND MATERIALS PROVIDED BY THE SEF 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 SEF DOES NOT GUARANTEE THAT (i) THE SEF PROPERTY OR THE SERVICES WILL OPERATE IN AN ERROR FREE, SECURE OR UNINTERRUPTED MANNER, (ii) ANY INFORMATION OR MATERIALS PROVIDED BY THE SEF OR ACCESSIBLE THROUGH THE SEF PROPERTY WILL BE ACCURATE, COMPLETE, RELIABLE, OR TIMELY, OR (iii) THE SEF PROPERTY OR ANY ASPECTS OF THE SERVICES WILL BE FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS. THE SEF SHALL HAVE NO LIABILITY FOR THE CREDITWORTHINESS OF ANY PERSON OR FOR THE ACTS OR OMISSIONS OF ANY PERSON UTILIZING THE SERVICES OR ANY ASPECT OF THE SERVICES OR SYSTEM. A PERSON ACCESSING THE SEF IS SOLELY RESPONSIBLE FOR THE SECURITY AND INTEGRITY OF ITS TECHNOLOGY. A PERSON'S ACCESS TO THE SYSTEM AND THE SERVICES MAY BE INTERNET-BASED AND THAT THE SEF HAS NO CONTROL OVER THE INTERNET OR A PERSON'S CONNECTIONS THERETO. ANY PERSON ACCESSING THE SEF ACKNOWLEDGES THAT THE INTERNET, COMPUTER NETWORKS, AND COMMUNICATIONS LINKS AND DEVICES NECESSARY TO ENABLE A PERSON TO ACCESS AND USE THE SYSTEM AND THE SERVICES ARE INHERENTLY INSECURE AND VULNERABLE TO ATTEMPTS AT UNAUTHORIZED ENTRY AND THAT NO FORM OF PROTECTION CAN ENSURE PARTICIPANT'S DATA, HARDWARE, OR SOFTWARE OR THE SYSTEM OR OTHER SEF PROPERTY WILL BE FULLY SECURE. FURTHERMORE, THE SEF SHALL HAVE NO OBLIGATION TO MONITOR OR VERIFY ANY INFORMATION DISPLAYED THROUGH THE SYSTEM.

EXCLUDING ANY LIABILITY FOR SUCH PARTY'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, AND EXCLUDING, IN THE CASE OF PARTICIPANT, PARTICIPANT'S INDEMNIFICATION OBLIGATIONS PURSUANT TO SECTION 11 OF THE PARTICIPANT AGREEMENT, EACH PARTY AGREES THAT IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, LOSS OF REVENUE, LOSS OR CORRUPTION OF DATA, TRADING LOSSES OR BUSINESS INTERRUPTION AND THE LIKE, ARISING IN ANY MANNER WHATSOEVER OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY USE (WHETHER OR NOT AUTHORIZED) OR INABILITY TO USE THE SEF PROPERTY OR ANY OTHER INFORMATION OR MATERIALS PROVIDED TO PARTICIPANT BY THE SEF OR ACCESSIBLE THROUGH THE SERVICES, INCLUDING THE ACCURACY, COMPLETENESS, RELIABILITY, TIMELINESS, QUALITY, SECURITY, PERFORMANCE, OR PRICING OF THE SERVICES OR ANY FAILURES, DEGRADATIONS OR DELAYS ASSOCIATED THEREWITH, REGARDLESS OF WHETHER SUCH DAMAGES ARISE IN TORT, CONTRACT, OR OTHERWISE, AND EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, IF A COURT OR OTHER TRIBUNAL OF COMPETENT JURISDICTION SHOULD FIND THE SEF LIABLE FOR ANY LOSS, DAMAGE OR EXPENSES UNDER THIS AGREEMENT, THE AGGREGATE LIABILITY OF THE SEF UNDER THE AGREEMENT, REGARDLESS OF THE FORM OF ACTION, SHALL IN NO EVENT EXCEED THE GREATER OF (i) \$10,000 AND (ii) THE TOTAL COMMISSIONS, FEES, OR OTHER AMOUNTS (EXCLUDING ANY APPLICABLE TAXES AND

DUTIES) PAID TO THE SEF BY PARTICIPANT DURING THE SIX MONTHS PRECEDING THE DATE ON WHICH THE EVENTS GIVING RISE TO SUCH LIABILITY AROSE.

ANY CLAIM FOR REDRESS OR DAMAGES HEREUNDER SHALL BE FILED IN A COURT OF COMPETENT JURISDICTION WITHIN TWO (2) YEARS 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 9.10 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.