

Rule Self-Certification

September 7, 2010

Office of the Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st St., N.W.
Washington, D.C. 20581

OFFICE OF THE SECRETARIAT
C.F.T.O.
2010 SEP 7 PM 5 03

Re: Amendments to NFX By-Laws and Rules
Reference File SR-NFX-2010-09

Ladies and Gentlemen:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended ("Act"), and Section 40.6 of the regulations promulgated by the Commodity Futures Trading Commission under the Act, the NASDAQ OMX Futures Exchange, Inc. ("NFX" or "Exchange") hereby submits the attached amendment to its By-Laws and Rules. Such amendments serve to: (i) update the nominating process in the By-Laws to amend the date of the annual meeting and provide more specificity to the board nomination process; (ii) add language to the By-Laws to specify that NFX shall have a Chief Regulatory Officer; (iii) amend the By-Laws to change the composition of the Executive Committee; (iv) update certain membership rules; (v) amend outdated floor references in the Rules; (vi) update the Rules to amend the Exchange's financial requirements; (vii) update Rules concerning the disclosure of information and conflicts of interest; (viii) update the summary fine Rule; and (ix) make other minor technical amendments to the Rules. The amendments are attached as Exhibit A.

The amendments to the NFX By-Laws and Rules will become effective on September 9, 2010.

There were no opposing views among NFX's Board of Directors, members or market participants. NFX hereby certifies that these rule amendments comply with the Act and regulations thereunder.

Regards,



Daniel Carrigan

Senior Managing Director, Products and Services & Operations

cc: Mr. Glenn Spann
Mr. J. Goodwin
Mr. Russell Rose

Exhibit A

New text is underlined; deleted text is in brackets.

NASDAQ OMX Futures Exchange (NFX) BY-LAWS

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ARTICLE III Shareholders

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Sec. 4. Annual Meeting

The annual meeting of shareholders shall be held on [the second Monday of May in each year if not a legal holiday, and if a legal holiday, then on the next secular day following] a date that is no earlier than 45 days prior to, and no later than 45 days subsequent to, the anniversary of the prior year's annual meeting at 4:30 P.M., when a Board of Directors shall be elected and such other business as may properly be brought before the meeting shall be transacted. If the annual meeting shall not be called and held during any calendar year, any shareholder may call such meeting at any time thereafter.

* * * * *

Sec. 6. Nomination of Directors; Nominating Committee

(a) There shall be a Nominating Committee which shall submit nominations for the directors to be elected by the common shareholders, as described below.

(b) The Nominating Committee shall submit nominations for the directors to be elected by the common shareholders at the annual meeting and election of the Exchange. [Such nominations] The Nominating Committee shall [include] nominate nine individuals, five of whom shall be the individuals nominated by the membership in accordance with By-Law Section 3-6(d). In making nominations, the Nominating Committee shall give due consideration to the various functions and activities of the Exchange and its members.

(c) The Nominating Committee shall report in writing to the Secretary of the Exchange[, on the second Monday in April,] the names of [the] its nominees for [the] directors to be [elected] voted upon by the common shareholders at the next annual election of the Exchange. The report shall be delivered to the Secretary no later than the date that is 30 days prior to the date of the annual meeting at which the director nominees will be voted upon. The Secretary of the Exchange, upon receipt of the report of the Nominating Committee, shall notify the common shareholders and the membership of the names of the Nominating Committee's nominees for the directors to be [elected] voted by upon the common shareholders at the annual meeting and election of the Exchange.

(d) Nominations for directors by the membership [for the positions of the five directors which are to be filled at the annual meeting and election of the Exchange] shall

be made by a written petition filed with the Nominating Committee within two weeks after the membership has been notified of the [names of the] Nominating Committee's nominees for the directors to be [elected] voted upon by the common shareholders. If fewer than five candidates are nominated by petition by the membership and qualified for election, the Nominating Committee shall submit the names of additional nominees as directors so that the number of nominees is nine. All such candidates who qualify for election to the Board shall be deemed nominees for the position of director to be [elected] voted upon by the common shareholders.

(e) The Secretary shall collect from each nominee for Director such information as is reasonably necessary to serve as the basis for a determination as to whether the nominee may be classified as a Public Director or commercial interest representative, and the Secretary shall certify to the Nominating Committee each nominee's classification, if applicable. Throughout their term directors shall update all information submitted by them to the Secretary.

~~(e)f~~ A ballot shall be prepared by the Secretary of the Exchange containing the names of all nominees for the office of director. The ballot shall indicate whether the person is nominated by the Nominating Committee or the membership, and the membership interest represented by such nominee.

~~(f)g~~ At the annual meeting of shareholders, the [following directors shall be elected: nine directors from among the nominees for such offices submitted by the Nominating Committee, five of whom are nominated for such offices by petition of the membership.] ballot containing the names of all nominees for the office of directors shall be submitted to the common shareholders for a vote.

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ARTICLE VIII Officers

Sec. 1. Officers

The officers of the Exchange shall be elected by the Board of Directors and shall be a Chief Executive Officer, a President, one or more Vice Presidents, Secretary, Treasurer, Chief Regulatory Officer and such other officers as the Board of Directors shall authorize from time to time; provided, however, that the Chief Executive Officer of the Exchange, with the approval of the Board of Directors, may appoint one or more of such other officers as provided in the By-Laws. Any number of offices may be held by the same individual except the offices of the President and Treasurer. It shall not be necessary for the officers to be directors, except that the Chief Executive Officer shall be a member of the Board of Directors. The Board of Directors shall elect or appoint such agents as it may deem appropriate.

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Sec. 6. Chief Regulatory Officer

The Chief Regulatory Officer shall have general supervision of the regulatory operations of the Exchange, including responsibility for overseeing the Exchange's surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another self-regulatory organization to which the Exchange is a party. The Chief Regulatory Officer shall meet with the Regulatory Oversight Committee of the Exchange in executive session at regularly scheduled meetings of such committee, and at any time upon request of the Chief Regulatory Officer or any member of the Regulatory Oversight Committee.

Sec. [6]7. Secretary

The Secretary shall attend all meetings of the Board of Directors and all meetings of the shareholders and shall act as clerk thereof, and record all votes of the Exchange and the minutes of all its transactions in a book to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the shareholders and of the Board of Directors as required under the By-Laws, and shall perform such other duties as may be prescribed by the Board of Directors or Chief Executive Officer. The Secretary shall keep in safe custody the seal of the Exchange, and when authorized by the Board of Directors, affix the same to any instrument requiring it.

Sec. [7]8. Treasurer

The Treasurer shall have charge of all funds and securities beneficially owned by the Exchange; shall endorse the same for deposit or collection when necessary; and deposit the same to the credit of the Exchange in such banks or depositories as the Board of Directors may authorize. The Treasurer may endorse all commercial documents requiring endorsements for or on behalf of the Exchange and may sign all receipts and vouchers for payments made to the Exchange. The Treasurer shall have all such powers and duties as generally are incident to the position of Treasurer or as may be assigned to the Treasurer by the Board of Directors or by the Chief Executive Officer.

Sec. [8]9. Vacancies

If the office of one or more officers or agents becomes vacant for any reason, the Board of Directors or, subject to the approval of the Board of Directors, the Chief Executive Officer may choose a successor or successors who shall hold office for the unexpired term in respect of which such vacancy occurred.

ARTICLE V Committees

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Sec. 5. Executive Committee

(a) The Executive Committee shall consist of the Chairman of the Board of Directors, two Public Directors and [three] two other directors who the Board of Directors may authorize. The Executive Committee shall execute and implement policy

previously established by the Board of Directors, shall make recommendations concerning policy previously established by the Board of Directors, shall appoint a panel of disinterested individuals to arbitrate any dispute between members and member organizations submitted for arbitration pursuant to the Arbitration Rules of the Exchange and exercise other authority incidental thereto and shall have such other powers and shall perform such other duties as the Board of Directors may delegate to it in writing from time to time.

(b) When the Board of Directors is not in session, the Executive Committee shall have and may exercise all power and authority of the Board, which may lawfully be delegated to it by the Board and which are not in conflict with the limitations created by the Board, the Certificate of Incorporation or By-Laws. All actions of the Executive Committee shall be reported to the Board of Directors.

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NASDAQ OMX Futures Exchange (NFX)—Rules

Rule 105. Purchase, Sale or Transfer of Membership Shares

(a) Membership shares may be purchased when and as made available by the Exchange. The purchaser shall deposit a certified check for the purchase price of any membership share purchased under this paragraph (a) within seven (7) days after such purchaser is notified of his approval pursuant to Rule 101 or such other period of time as may be applicable. The purchase of such a membership share thereafter shall be effected in accordance with paragraphs (e) and (f) of this Rule.

(b) Outstanding membership shares which are transferable may be purchased only through the Exchange's designated department. Bids must be submitted in writing to the Exchange's designated department, which will file all bids according to the highest price and the earliest submission date. All bids remain in effect until written revocation thereof is received by the Exchange's designated department, except that such bids shall not be binding in any transfer of a membership share by the Exchange pursuant to Rule 116.

(c) Outstanding membership shares which are transferable may be transferred only through the Exchange's designated department. All offers for the sale of a membership share must be submitted in writing to the Exchange's designated department. The Exchange's designated department will file all such offers according to the lowest price and the earliest submission date. All offers remain in effect until written revocation thereof is received by the Exchange's designated department.

(d) When an offer filed in accordance with paragraph (c) is matched with a bid filed in accordance with paragraph (b) of this Rule, the purchaser must deposit with the Exchange's designated department a certified check for the purchase price; and the person whose membership share is being transferred or its legal representative must execute and deliver to the

Exchange's designated department an agreement to transfer the membership share to the purchaser.

(e) Written notice of a proposed transfer, either voluntary or by the Exchange, including the purchase of a membership share from the Exchange, shall be [sent to each member and member organization and] posted on the Exchange's website [Floor] for not less than seven (7) consecutive days immediately preceding the effective date of such transfer, which notice shall specify such date.

(f) Written notice of the effective transfer shall be [sent to each member and member organization and] posted on the Exchange's website [Floor].

(g) Following the consummation of such transfer, the transferor of such membership share shall cease to have any rights or privileges of membership, except that such transfer shall not affect the rights of the transferor or the member organization for which the transferor's membership was registered, relating to claims pursuant to Rule 107.

Rule 106. Contracts on the Exchange by Transferors

A member proposing to transfer its membership share to another person shall not make any contract [on the Floor] after the last business day prior to the effective date of such transfer, unless such member shall remain a [floor] member in good standing notwithstanding the transfer.

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Rule 126. Transfer of Equitable Title

A transfer of equitable title to a membership share may be made upon submission of the name of the candidate to the Exchange and notice thereof to the membership of the Exchange by posting such notice on the Exchange's website [Floor] in accordance with the provisions of paragraph (e) of Rule 105. Such a transfer may not be effected pursuant to a leasing agreement. The Exchange may disapprove any such transfer if it determines that such transfer would be contrary to the Act or the Commission's Regulations or to the By-Laws and Rules of the Exchange, or for other good cause.

* * * * *

Rule 133. Notice of Changes Within Member or Member Organization

(a) Each member and member organization, as applicable, shall give prompt written notice to the Exchange on such form as may be required by the Exchange: (1) of the death, retirement, resignation or any change in status of a member (including both legal and equitable title holders), Designated Person, Authorized Trader, or officer or partner of the member organization [any person affiliated with such member or member organization]; (2) of the sale of substantially all of the assets, merger, consolidation, liquidation, or dissolution of the member organization; and

(3) of any material change in the ownership interests of such member organization by any member affiliated with the member organization.

Rule 134. Addresses of Members and Member Organizations

Every member and member organization shall register with the Exchange's [designated] Membership [d]Department an address and subsequent changes thereof where notices may be served. [The registered address of every member who personally transacts business on the Floor must be in the vicinity of the Exchange.]

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Rule 202. Financial Requirements

(a) Each member and member organization which is a futures commission merchant or an introducing broker shall comply with the requirements prescribed in Commission Regulations 1.10, 1.12, 1.17 and 1.18 and with the additional requirements of this Rule.

(b) Each member and member organization which is not subject to the requirements prescribed in Commission Regulations 1.10, 1.12, 1.17 and 1.18 shall at the time of application for admission to membership or for approval as a member organization, and upon admission to membership or approval as a member organization have net liquid assets in the amount of \$[25]100,000 or more.

[(1) Each member who is the sole proprietor of a sole proprietorship that is registered as a registered commodities trader ("RCT") and each member organization affiliated with a member that is registered as an RCT thereafter shall at all time comply with the above requirement of paragraph (b) of this Rule or with the requirements of subparagraphs (b)(1)(i) and (b)(1)(ii) of this Rule:]

[(i) maintain positive net liquid assets and positive equity in its clearing account or accounts; and]

[(ii) have filed with the Exchange a Letter of Guarantee which has been issued for such member or member organization by a clearing member and which Letter of Guarantee has not been cancelled pursuant to subparagraph (b)(1)(ii)(B) of this Rule.]

[(A) The Letter of Guarantee shall provide that the issuing clearing member guarantees the financial responsibility of the member which is registered as an RCT or of the member organization with which the RCT is affiliated with respect to all transactions effected on the Exchange by such RCTs.]

[(B) The Letter of Guarantee filed with the Exchange shall remain in effect until the Exchange receives written notice from the issuing clearing member of its intent to cancel such Letter of Guarantee. Written notice of intent to cancel received by the Exchange at least one-half hour prior to the normal opening of trading shall become effective on the day of receipt; written notice of intent to cancel received by the Exchange less than one-half hour prior to the normal opening

of trading shall not become effective until the opening of trading on the next business day following its receipt by the Exchange. A cancellation shall in no way relieve a clearing member of responsibility for transactions guaranteed prior to the effectiveness of the cancellation.]

[(2) Each member who is the sole proprietor of a sole proprietorship that is registered as a floor broker and each member organization affiliated with a member that is registered as a floor broker shall thereafter maintain at all times net liquid assets in the amount of \$15,000 or more and, if its membership has not been registered for a clearing member or if such member organization is not a clearing member, establish and maintain at all times an account with a clearing member for the sole purpose of carrying positions resulting from errors made in the course of such floor brokerage business. Prior to effecting any transaction on the Exchange, any such member or member organization shall file with the Exchange a Letter of Guarantee which has been issued for the member or member organization by such clearing member and which has not been cancelled pursuant to subparagraph (b)(2)(ii) of this Rule.]

[(i) The Letter of Guarantee shall provide that the issuing clearing member guarantees the financial responsibility of the member which is registered as a floor broker or of the member organization with which the floor broker is affiliated with respect to all transactions effected in the error account of such member or member organization.]

[(ii) The Letter of Guarantee filed with the Exchange shall remain in effect until the Exchange receives written notice from the issuing clearing member of intent to cancel such Letter of Guarantee. The effectiveness of written notice of intent to cancel the Letter of Guarantee shall be determined pursuant to the provisions of subparagraph (b)(1)(ii)(B) of this Rule. A cancellation shall in no way relieve a clearing member of responsibility for transactions guaranteed prior to the effectiveness of the cancellation.]

[(3) Each member or member organization of the Exchange which is not subject to any other financial requirement of the Exchange or of the Commission following admission to membership or approval as a member organization shall thereafter at all times maintain net liquid assets in the amount of \$15,000 or more.]

(c) Each member and member organization shall file with the Exchange two signed copies of any proposed subordination agreement at least ten (10) days prior to the proposed effective date of the agreement or at such other time as the Exchange for good cause shall accept such filing. Any proposed subordination agreement shall comply with the requirements of Commission Regulation 1.17 applicable to such agreements. No proposed agreement shall become effective unless and until the Exchange has found the agreement acceptable. This provision shall apply to members for whom the Exchange is their designated self-regulatory organization ("DSRO").

(d) Each member and member organization shall file with the Exchange a copy of any notice required to be filed with the Commission pursuant to Commission Regulations 1.12 and 1.17 concurrently with the same being filed with the Commission.

(e) The Exchange may at any time or from time to time, with respect to a particular member or member organization or all members or member organizations or a new member or member organization, prescribe net capital or net worth requirements greater than or in addition to those prescribed under this Rule, including more stringent treatment of items in computing net capital or net worth.

(f) For the purposes of this Rule, the term "net liquid assets" shall [have the same meaning as set forth in NASDAQ OMX PHLX Rule 703(b).] mean current assets less current liabilities.

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Rule 208. Disclosure and Trading by Exchange Employees, Consultants, Directors and Committee Members

(a) Disclosure of Information.

(i) Employees. An employee of the Exchange shall not disclose to any other person any material, non-public information which such employee obtains as a result of his or her employment at the Exchange if such employee has or should have a reasonable expectation that such information disclosed may assist another person in trading any commodity interest; however, such provision does not prohibit disclosures made in the course of an employee's duties or disclosure made to another self-regulatory organization, linked exchange, court of competent jurisdiction or representative of any agency or department of the federal or state government acting in his or her official capacity.

(ii) Directors and Committee Members. No member of the Exchange's Board of Directors or any standing committee shall use or disclose, for any purpose other than the performance of such person's official duties as a Director or member of a standing committee, material, non-public information obtained as a result of such person's participation on any committee or governing board of the Exchange.

(b) Member Transactions. No member or member organization shall effect a transaction in a commodity interest for an account in which an employee of the Exchange or any affiliate of the Exchange is directly or indirectly interested, or any other commodity interest traded on or cleared by another contract market, linked exchange or clearing organization where such employee has access to material non-public information concerning such commodity interest[; provided, however, that such employee may be exempt pursuant to paragraph (d)].

(c) Employee Transactions. No employee of the Exchange or any affiliate of the Exchange may purchase or sell for his own account or for the account of others any commodity interest where the employee has access to material nonpublic information concerning such commodity interest.

[(d) Exceptions: under the following circumstances, and upon application to and approval by the Exchange, the Exchange may exempt, on a case-by-case basis, an employee from the above prohibition, providing that such an exemption is not contrary to the purposes of Rule 208, CFTC Regulation 1.59, the Act, the public interest or just and equitable principles of trade:]

[(A) participation in pooled investment vehicles where the employee of the Exchange has no direct or indirect control over transactions executed by the pool;]

[(B) service as an executor or administrator of an estate;]

[(C) service in any other fiduciary capacity, such as an officer of a charitable organization, in which the employee receives no pecuniary benefit from the trading of commodity interests;]

[(D) trading in commodity interests traded on or subject to the rules of other exchanges under circumstances in which the employee's access to material non-public information as to those commodity interests is sufficiently minimal or attenuated so as to be insignificant.]

[The Exchange shall establish a procedure for application for and approval of exemptions pursuant to this paragraph. Participation in an Exchange-sponsored savings or retirement plan shall not be deemed to constitute trading directly or indirectly in a commodity interest, notwithstanding such]plan's use of pooled funds which utilize commodity interests or the trading thereof.

[(e)d] For purposes of this Rule 208 the term "employee" shall include any consultant hired by the Exchange.

• • • *Commentary:* -----

.01 With respect to the above-referenced Rule 208 the Exchange has determined that the terms "material non-public information" and "commodity interest" shall be defined pursuant to CFTC regulation 1.59(a).

[Rule 209. Transactions for Clerks Entitled to Access to Floor] Reserved.

[No member or member organization shall effect a transaction in a commodity interest for an account in which any clerk entitled to access to the Floor is directly or indirectly interested, whether said clerk is its own employee or an employee of another member or member organization, without the prior written consent of the Exchange.]

* * * * *

Rule 402. Investigation and Authorization of Complaint

(a) *Initiation of Investigation.* The Exchange shall investigate possible violations within the disciplinary jurisdiction of the Exchange upon instruction of either the Board, the Business Conduct Committee, or other Exchange officials or upon receipt by the Exchange of a written accusation from a member, member organization or from any person which specifies in reasonable detail the facts which are the subject of the accusation.

(b) *Cooperation with Investigation or Examination.* Each member, member organization, or person associated with a member shall promptly comply with any request of the Exchange's regulatory staff, including the Enforcement Department, or any officer of the Exchange for information, documents or testimony; each member, member organization or person associated with a member or member organization shall not otherwise impede or delay an Exchange investigation into matters within its disciplinary jurisdiction.

(c) *Right to Counsel.* A member, member organization or person associated with a member shall have the right to be represented by counsel in connection with requests for information, documents or testimony and throughout the course of any disciplinary proceeding and the review thereof or any hearing concerning a summary action.

(d) *Report.* Whenever the staff of the Exchange has a reasonable basis to believe that a violation within the disciplinary jurisdiction of the Exchange has occurred, a written report shall be submitted to the Business Conduct Committee specifying the violations which are believed to have occurred and those facts which gave rise to these violations.

(e) *Notice and Statement.* Prior to submitting its report, the staff shall notify the person(s) who is the subject of the report ("Subject") of the general nature of the allegations and of the specific provisions of the Commodity Exchange Act, rules and regulations promulgated thereunder, or the Certificate of Incorporation, by-laws or rules of the Exchange or any interpretation thereof or any resolution of the Board regulating the conduct of business on the Exchange, that appear to have been violated. The staff shall also inform the Subject that the report will be reviewed by the Committee. The Subject may then submit a written statement to the Committee concerning why no disciplinary action should be taken. To assist a Subject in preparing such a written statement, he shall have access to any documents and other materials in the investigative file of the Exchange that were furnished by him or his agents.

(f)(i) *Determination to Initiate Charges.* Whenever it shall appear to the Business Conduct Committee that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange and that disciplinary action is warranted, the Business Conduct Committee shall direct the staff of the Exchange to prepare a statement of charges. Whenever the Business Conduct Committee determines that violations within the disciplinary jurisdiction of the Exchange have not occurred or that disciplinary action is not warranted it shall so instruct the staff and its instruction not to initiate disciplinary action along with the reasons for not initiating such action shall be recorded in the minutes of the Business Conduct Committee.

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Rule 406. Summary Disciplinary Proceedings

[(a) *Initiation of Summary Disposition Proceeding.* A Hearing Panel may make a summary decision in a disciplinary proceeding that violations within the disciplinary jurisdiction of the Exchange have occurred and impose sanctions upon those culpable for such conduct whenever:]

[(i) any member, or member organization or person associated with or employed by a member or member organization has admitted to such a violation; or]

[(ii) there is no dispute concerning those material facts which give rise to such violations.]

[(b) *Notice to Respondent.* The Exchange shall serve notice and a copy of such a summary decision upon Respondents in accordance with Rule 411. Respondents may, no later than (15) fifteen business days after service, file with the Exchange a written reply to the summary decision, including documentary support, asking the Hearing Panel to set aside any of the findings made or sanctions imposed in the summary decision. Respondents may include a request for a hearing in their reply. If a reply is not filed within the specified time period, the summary decision shall become final and the Respondents shall have waived any and all rights of review. Hearings held pursuant to this section shall be governed by those procedures contained in Rule 405. When a Respondent has admitted to committing a violation, any further proceeding pursuant to these disciplinary rules shall be limited to the issue of the propriety of the sanction imposed.]

[(c) *Further Proceeding.* The Hearing Panel shall set aside a decision in a summary proceeding if a Respondent establishes that an issue of material fact or law exists as to any of the findings contained or sanctions imposed in the summary decision. Should a summary decision be set aside on these grounds, a hearing will then be scheduled on the merits of the issues in dispute and the case shall proceed in accordance with Rules 405, 408 and 409. If the Hearing Panel decides that no issues of material fact or law exist with respect to the summary decision, the summary decision becomes final and may be appealed in accordance with Rules 409.]

[(d) Summary Violations.]

[(A) Floor Officials. The Exchange may designate Floor Members to serve as Floor Officials. Floor Officials shall resolve floor trading disputes that are not resolved among the parties and administer Floor Advices. In addition, Floor Officials may issue fines for decorum offenses.]

[(B) Summary Procedure—Decorum. A Floor Official may, without hearing, impose minor penalties against members for decorum offenses committed by such members or by a person or persons for whom such members are responsible. Decorum offenses include the following: smoking, food and beverage, identification badges, order, visitors, dress code and security.]

(a) In lieu of commencing a "disciplinary proceeding" as that term is used in Exchange Rules 401-414, the Exchange may, subject to requirements set forth in this Rule, impose a fine, not to exceed \$5,000, on any member for any violation of a certain rules which are specified herein. The Exchange shall have determined such a violation is minor in nature. Notwithstanding the foregoing, the Exchange may determine to consider any violation the subject of a disciplinary proceeding.

(b) In any action taken by the Exchange pursuant to this Rule, the person against whom a fine is imposed shall be served with a written statement, signed by an authorized official of the Exchange on behalf of the Business Conduct Committee, setting forth (i) the alleged violation; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each violation; and (iv) the date by which such determination becomes final and such fine becomes due and payable to the Exchange or when such determination must be contested, as provided in paragraph (d) hereunder, such date to be not less than seven business days after the date of service of the written statement.

(c) If the person against whom a fine is imposed pursuant to this Rule pays the fine, such payment shall be deemed to be a waiver by such person of his right to a disciplinary proceeding under Exchange Rules 401-414 and any review of the matter by the Business Conduct Committee, an Exchange Hearing Panel, the Disciplinary Review Committee, or the Exchange Board of Directors.

(d) Any person against whom a fine is imposed pursuant to this Rule may contest the Exchange's determination by filing with the Department of the Exchange taking the action not later than the date by which such determination must be contested a written response meeting the requirements of an "Answer" as provided in Rule 404, at which point the matter shall be referred to the Business Conduct Committee for its consideration and determination.

(e) The Committee may then (a) decide that the matter be dismissed and the notice of alleged violation be rescinded; (b) decide that the notice, as issued, is valid, whereupon the alleged violator could either pay the fine or contest the matter before a Hearing Panel; (c) decide that the notice, as issued, should be modified to specify either a higher or lower fine than the one on the notice as issued, whereupon the alleged violator could either pay the new fine or contest the matter before a Hearing Panel; or (d) decide that the matter merits formal disciplinary action and authorize issuance of a Complaint, pursuant to Exchange Rule 402.

(f) If a disciplinary proceeding thereafter results, and the Hearing Panel determines that the person has violated the rule as alleged, the Hearing Panel shall (a) be free to impose any disciplinary sanction provided for in Exchange Rules 401-414 and (b) determine whether the violation is minor in nature.

Failure to Comply with an Exchange Inquiry

Each Member, member organization or associated person is required to promptly comply with any request of information made by the Exchange, or any other regulatory authority acting on behalf of the Exchange, in connection with any regulatory inquiry, investigation or examination relating to the Exchange's disciplinary jurisdiction or regulatory obligations.

For the purpose of this rule, information received within ten (10) business days from the date of the original request shall be deemed to meet the requirement of prompt compliance, except for purposes of Examinations Department requests, information received within two business days from the date of the original request shall be deemed to meet the requirement of prompt compliance.

The Exchange may under extenuating circumstances grant extensions to allow for responses beyond the allotted requirement. Requests for extensions must be submitted in writing to the appropriate department, prior to the due date of the outstanding request. Each additional request for information not furnished within the allotted time periods may be considered a separate occurrence for purposes of the fine schedule below.

FINE SCHEDULE (Implemented on a three year running calendar basis.)

1st Occurrence	\$[500]1,000.00
2nd Occurrence	\$[1]2,[0]500.00
[3rd Occurrence	\$2,500.00]
[4 th]3rd and Thereafter	Sanction is discretionary with Business Conduct Committee

[Reporting of Exchange for Physical (EFPs) Transactions:]

[All reports of EFPs shall be made in a form as prescribed by the Exchange. The memoranda of EFPs shall reflect the identity of the parties, clearing member organization, the time of the transaction, number of future contracts involved, their designated symbols, the equivalent cash (spot) commodity's price of the transaction and such other pertinent documentation evidencing transfer of the cash (spot) commodities component of the transaction.]

[FINE SCHEDULE]

[1st Occurrence	\$500.00]
[2nd Occurrence	\$1,000.00]
[3rd Occurrence	\$2,500.00]
[4th and Thereafter	Sanction is discretionary with Business Conduct Committee]

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Rule 409. Review

(a) *Petition by Respondent.* A Respondent shall have 10 days after service of notice and a copy of a decision made by the Hearing Panel to appeal such decision to the Board of Directors in accordance with By-Law Article XI, Section 11-3. Such petition shall be in writing and shall specify the findings and conclusions in such decision, which is the subject of the petition, together with the reasons that Respondent petitions for review of these findings and conclusions. Any objections to a decision not specified in the petition for review shall be thereafter waived. Within 15 days after a Respondent's petition for review has been filed with the Secretary of the Exchange pursuant to By-Law Article XI, Section 11-1(a), Enforcement staff may submit to the Secretary a written response to the petition. A copy of the response must be served upon the

Respondent. A Respondent has 15 days from the service of the response to file a reply with the Secretary and Enforcement staff.

(b) *Conduct of Review.*

- (i) The review shall be conducted by the Board of Directors or an Advisory Committee thereof. If an Advisory Committee is appointed to conduct the review, it shall be composed of three Board members, one of whom shall be a Public Director. Any Board member who participated in a matter before the Business Conduct Committee or Hearing Panel may not participate in any review of that matter by the Board of Directors or an Advisory Committee. Unless the Board of Directors or the Advisory Committee shall decide to hear oral arguments, such review shall be based solely upon the record and written exceptions filed by the parties. The review shall be conducted as soon as is practicable.
- (ii) Should the Board of Directors conduct the review, then based upon such review, the Board of Directors by a majority vote of its members, shall decide to affirm, reverse or modify, in whole or in part the decision of the Hearing Panel. Such modification may include an increase or decrease of the sanction. The Board of Directors may not reverse, or modify, in whole or in part, the findings, conclusions and decision if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The decision of the Board shall be in writing, shall be promptly served on the Respondent in accordance with Rule 411, and shall be final and conclusive subject to Rule 409(c) and (d), as well as the provisions of the Commodity Exchange Act.
- (iii) Should the review be conducted by an Advisory Committee, the Advisory Committee shall submit a written report to the Board of Directors. In such report, the Advisory Committee shall recommend to affirm, reverse or modify, in whole or in part, the decision of the Hearing Panel. Such modification may include an increase or decrease of the sanction. The Advisory Committee may not reverse, or modify, in whole or in part, the findings, conclusions or decision if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The Board of Directors by a majority vote of its members, shall decide to affirm, reject or modify, in whole or in part the recommendations of the Advisory Committee. Such modification may include an increase or decrease of the sanction. The Board of Directors may not reverse, or modify, in whole or in part, the findings, conclusions and decision of the Advisory Committee if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The decision of the Board shall be in writing, shall be promptly served on the Respondent in accordance with Rule 411, and shall be final and conclusive subject to Rule 409(c) and (d), as well as to the provisions of the Commodity Exchange Act.

(c) *Review on Motion of Board of Directors.* The Board of Directors may on its own initiative order review of a Hearing Panel decision within 20 days after notice of the decision has been

served on the Respondent. Such review shall be conducted in accordance with the procedure set forth in paragraph (b) of this Rule. Should the Board of Directors vote to modify or reverse such decision, the Board shall make its own findings and issue a final decision of the Exchange. An Advisory Committee appointed by the Board of Directors may conduct such a review in accordance with the provisions of Rule 409.

(d) *Petition by Enforcement Staff.* An appeal of a decision made by the Hearing Panel may also be taken by the Enforcement staff by petitioning the Board of Directors, within 10 days after service of notice and a copy of the decision, for permission to proceed with such appeal. Such petition shall be in writing and shall specify the findings and conclusions of such decision, which are the subject of the petition, together with the reasons that Enforcement staff petitions for review of these findings and conclusions. Any objections to a decision not specified in the petition for review shall be thereafter waived. If permission to appeal is granted, staff shall serve a copy of the petition on the Respondent within five days of permission to appeal being granted. Within 15 days Respondent may submit to the Board of Directors a written response to the petition. A copy of the response must be served upon the Exchange's Enforcement staff, who then has 15 days from the service of the response to file a reply with the Board of Directors and the Respondent.

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Rule 450. Duty to Report

(a) If an emergency event shall occur with respect to any member or member organization, such member or member organization promptly shall advise the [Secretary] Membership Department of the Exchange of the occurrence thereof by the fastest available means of communication and immediately thereafter shall deliver written notice to the Exchange specifying

- (1) the nature of such emergency event,
- (2) the time when such emergency event occurred, and
- (3) whether such member or member organization consents to a summary suspension pursuant to this Rule and Rule 451 and, if so, whether such member or member organization waives a hearing with respect thereto.

(b) For purposes of this Rule, the term "emergency event" shall mean with respect to any member or member organization:

- (1) the filing of a petition, answer or other document, or the taking of any other action, by a member or member organization with respect to itself, or against such member or member organization seeking a liquidation, arrangement, reorganization or other or similar relief under the provisions of the Federal Bankruptcy Act or of any other state or federal law for the relief of insolvent debtors;
- (2) the dissolution of such member or member organization;

- (3) the insolvency (as defined under any applicable state or federal law) of such member or member organization;
- (4) the failure of such member or member organization to meet the applicable financial requirements of the Exchange, the Clearing Corporation or any governmental agency or self-regulatory body;
- (5) the failure of such member or member organization to meet when due any margin call issued by any clearing organization or other person or to pay any option premium when due to any person, the default by such member or member organization under any commodity interest on this or any other contract market, or the failure or inability for financial reasons of such member or member organization to fulfill any of its contracts;
or
- (6) the imposition of any injunction or other restraint by any government agency, court or arbitrator which may affect the ability of such member or member organization to perform its contracts or otherwise to engage in business.

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Rule 458. Reinstatement of Suspended Member

(a) When a member or member organization suspended under the provisions of these member responsibility rules applies for reinstatement, notice thereof shall be sent by the designated department of the Exchange to each member or member organization of the Exchange [and] by post[ed]ing a notice on the Exchange's website [Floor] at least fourteen (14) days prior to the consideration by the Executive Committee of said application. The applicant shall furnish to said Committee a list of creditors, a statement of the amounts originally owing and the nature of the settlement in each case. If satisfactory proof of settlement with all creditors is furnished, said Committee may approve his reinstatement.

(b) If the application for reinstatement is denied by the Executive Committee, the applicant may appeal within ten (10) days thereafter to the Board of Directors, which may act on its reinstatement.

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Rule 1300. Voting By Members of Board and Certain Committees

(a) Definitions. For purposes of this Rule:

(1) Committee shall refer to any of the following:

(i) [Business Conduct Committee] Standing Committee of the Board of Directors as defined in Article IV, Section 1;

(ii) Advisory Committee appointed pursuant to Rule 409;

(iii) Hearing Panel appointed pursuant to Rule 405; or

(iv) Any other person or committee of persons, or any subcommittee thereof, that is authorized by the Exchange to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions, or to hear appeals thereof in cases involving any violations of Exchange rules, except those cases where the person or committee is authorized summarily to impose minor penalties for violating rules regarding decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions or similar activities.

(2) Family relationship shall mean a person's spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.

(3) Governing Board shall refer to either of the following:

(i) Board of Directors

(ii) Executive Committee

(iii) or any subcommittee of the Board of Directors or the Executive Committee

(4) Member's affiliate firm shall mean a firm in which the member is a "principal," as defined in Commission Regulation Section 3.1(a) or an employee.

(5) Named party in interest shall mean a person or entity that is identified by name as a subject of any matter being considered by the Board or Committee.

(6) Significant Action shall mean any actions or rule changes which address an "emergency" as defined in Commission Regulation 40.1(g) (exclusive of physical emergencies), and any changes in margin levels that are designed to respond to extraordinary market conditions or are likely to have a substantial effect on prices in any contract traded at the Exchange.

(b) Relationship with named party in interest.

(1) Nature of relationship. A member of a Governing Board or Committee must abstain from such body's deliberations and voting on any matter involving a named party in interest where such member:

(i) is a named party in interest;

(ii) is an employer, employee, or fellow employee of a named party in interest;

(iii) is associated with a named party in interest through a "broker association" as defined in Commission Regulation on 156.1;

(iv) has any other significant, ongoing business relationship with a named party in interest;
or

(v) has a family relationship with a named party in interest.

(2) Disclosure of relationship. Prior to the consideration of any matter involving a named party in interest, each member of a Governing Board or Committee must disclose to the Exchange's compliance department whether he or she has one of the relationships listed in section (b)(1) above with a named party in interest.

(3) Procedure for determination. The Exchange's [compliance department staff] Secretary shall review items for consideration by the Governing Board or Committee for purposes of determining whether any such member thereof is subject to a conflict restriction in any matter involving a named party in interest. Such determinations shall be based upon information provided by the member pursuant to paragraph (b)(2) above and any other information held by and reasonably available to the Exchange's Secretary [compliance department].

(c) Financial interest in a significant action.

(1) Nature of relationship. A member of any Governing Board or Committee must abstain from such body's deliberations and voting on any significant action if the member knowingly has a direct and substantial financial interest in the result of the vote based upon either position at the Exchange or other exchange positions that could reasonably be expected to be affected by the action.

(2) Disclosure of interest. Prior to the consideration of any significant action, each member of any Governing Board or Committee must disclose to the Exchange's [compliance department] Secretary the position information referred to in paragraph (b)(3) below that is known to him or her or any other information that would present a conflict. This requirement does not apply to members who choose to abstain from deliberations and voting on the subject of the significant action.

[(3) Procedure for determination. The Exchange's compliance department staff shall review items for consideration by the Governing Board or Committee for purposes of determining whether any such member thereof is subject to a conflict restriction in any significant action. Such determinations shall include a review of:]

[(i) Exchange gross positions held in the member's personal accounts or accounts controlled by such member;]

[(ii) Exchange gross positions held in proprietary accounts at the members affiliated firm;]

[(iii) Exchange gross positions held in accounts in which the member is a principle;]

[(iv) Exchange net positions held in customer accounts at the member's affiliated firm; and]

[(v) Any other positions, whether Exchange or other exchange, held in the member's personal accounts or the proprietary accounts of the member's affiliated firm that could reasonably be expected to be affected by the significant action.]

[(4) Basis for determination. Such determinations by the compliance department shall be based upon:]

[(i) the most recent large trader and clearing records available;]

[(ii) information provided by the member pursuant to paragraph (c)(2) above with respect to positions; and,]

[(iii) any other source of information that is held by and reasonably available.]

[(d) Participating in deliberations. The Governing Board or Committee may permit a member to participate in deliberations prior to a vote on a significant action for which such member otherwise would be required to abstain, pursuant to paragraph (c) above, if such participation would be consistent with the public interest and the member recuses himself or herself from voting on such action. The Governing Board or Committee shall consider the following in determining whether to permit the member to participate in deliberations on a significant action:]

[(i) whether such member's participation in the deliberations is necessary for achieving a quorum in the matter; and]

[(ii) whether the member has unique or special expertise, knowledge or experience in the matter under consideration.]

[(e) Consideration of position information. Prior to any determination pursuant to paragraph (d) above, the Governing Board or Committee must fully consider the position information which is the basis for the member's direct and substantial financial interest in the result of a vote on a significant action pursuant to paragraph (c) above.]

[(f)d] Documentation of determination. The Governing Board or Committee must reflect in its minutes or otherwise document that the conflicts determination procedures required by this Rule have been followed. Such records must also include:

(i) the names of all members who attended the meeting in person or who otherwise were present by electronic means;

(ii) the name of any member who voluntarily recused himself or herself or was required to abstain from deliberations and/or voting on a matter and the reason for the recusal or abstention, if stated; and information on the position information that was reviewed for each member.

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