

C.F.T.C.

OFFICE OF THE SECRETARIAT  
NASDAQ OMX Futures Exchange, Inc.  
1900 Market Street  
Philadelphia, PA 19103

2009 APR 8 PM 4 09

**Rule Self-Certification**

April 7, 2009

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

Re: Amendments to NFX By-Laws and Rules  
Reference File SR-NFX-2009-07

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 amendments to its By-Laws regarding the composition of the Board of Directors, composition of the Nominating Committee, a Standing Committee of the Board of Directors, and other technical amendments. Additionally, NFX submits amendments to its Rules to add a definition for public director and amend its disciplinary rules to add criteria for public directors on hearing panels. The amendments are attached at Exhibit A. The amendments will become effective on April 9, 2009.

NFX intends to amend its By-Laws to add public directors to its Standing Committees at a later date.

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 Commodity Exchange Act and regulations thereunder.

Regards,

  
Ben Craig  
President

cc: Mr. Glenn Spann

## Exhibit A

*New language is underlined and deleted text is in brackets.*

### NASDAQ OMX Futures Exchange (NFX) BY-LAWS

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#### ARTICLE III Shareholders

##### 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 shall include [eleven] 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 nominees for the directors to be elected by the common shareholders at the next annual election of the Exchange. The Secretary of the Exchange, upon receipt of the report of the Nominating Committee, shall notify the shareholders and the membership of the names of the nominees for the directors to be elected by the common shareholders at the annual meeting and election of the Exchange.

(d) Nominations 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 nominees for the directors to be elected by the common shareholders. All such candidates who qualify for election to the Board shall be deemed nominees for the position of director to be elected by the common shareholders.

(e) 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) At the annual meeting of shareholders, the following directors shall be elected: [eleven] 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.

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## ARTICLE IV Directors

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### Sec. 2. Composition of Board of Directors

(a) The number of directors of the Exchange shall be [eleven] nine, all of whom shall be citizens of the United States.

(b) The Chief Executive Officer of the Exchange shall be Chairman of the Board of Directors of the Exchange.

(c) The [eleven] nine directors shall be elected as provided in the By-Laws at the annual meeting of shareholders of the Exchange and each such director shall be elected for a term of one year and until his successor shall be elected and shall qualify under law and the By-Laws.

(d) [Of] [t]The [eleven] nine members of the Board of Directors shall consist of the Chairman, the President, four Public Directors and three who shall qualify as commercial interest representatives pursuant to Commodity Futures Trading Commission Regulation 1.64. [three shall be non-members of the Exchange, and any two shall qualify as commercial interest representatives.] In total, the Board of Directors shall be comprised of persons from a variety of membership interests who will meaningfully represent the Exchange's diversity of interests, consistent with Commodity Futures Trading Commission Regulation 1.64(b)(3). Specifically, the directors shall represent both on-floor and off-floor interests. If the numbers required by the foregoing classification of directors are not maintained at any time due to a vacancy or vacancies on the Board of Directors such requirements shall be suspended until the earlier of such time as the vacancy or vacancies is filled pursuant to the By-Laws or the election of directors at the next succeeding annual meeting of the Exchange and their qualification for office, except as otherwise required by Commodity Futures Trading Commission regulations.

(e) The [Vice Chairman] President shall report to the Chairman of the Board and, in the absence or incapacity of the Chairman, shall perform all the duties of that office.

(f) Members of the Board of Directors shall be ineligible for service if any of the conditions specified in Commodity Futures Trading Commission Regulation 1.63 (b) (1) through (6) are met. If for such reason any director becomes ineligible for

continued service, that director shall be removed in a manner permitted by the By-laws.

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#### **Sec. 10. Vacancies**

Vacancies on the Board, including vacancies resulting from an increase in the number of directors, shall be filled by a majority vote of the directors then in office, although less than a quorum, and each individual so elected and who qualifies therefor shall be a director until his successor is elected by the common shareholders or the voting trustees, as required under the By-Laws, who may make such election at the next annual meeting of the Exchange or at any special meeting duly called for that purpose and held prior thereto, or until his earlier resignation or removal. [Where the vacancy results by virtue of a change in status of an ex-officio director as described in By-Law Section 4-2(b), the Board shall elect as an ex-officio director the individual who succeeds to the office of the vacating director.]

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#### **ARTICLE V Committees**

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#### **Sec. 8. Nominating Committee**

The Nominating Committee shall consist of the Chairman, [Vice Chairman] a Public Director and one other director who the Board of Directors may authorize and who shall be a director of the Exchange.

#### **ARTICLE VIII Officers**

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#### **Sec. 4. Chief Executive Officer**

The Chief Executive Officer of the Exchange shall be a member of the Board of Directors. The Chief Executive Officer shall be Chairman of the Board of Directors of the Exchange. The Chief Executive Officer shall have general supervision over the business and affairs of the Exchange. The Chief Executive Officer shall have all powers and duties of supervision and man[e]agement usually incident to the office of the Chief Executive Officer of a corporation, except as specifically limited by a resolution of the Board. The Chief Executive Officer shall exercise such other powers and perform such other duties as may be assigned to the Chief Executive Officer from time to time by the Board of Directors. The Chief Executive Officer shall be an ex-officio member of all Standing Committees.

Subject to the approval of the Board of Directors, the Chief Executive Officer may appoint the other officers of the Exchange as provided for in the By-Laws and such additional officers as he may determine are required for the efficient management of the Exchange. Subject to like approval, he may fix their duties, responsibilities and terms of office or employment and he may terminate their terms of office or employment at any time. All officers of the Exchange as provided for in the By-Laws shall be responsible to the Board of Directors and all other officers shall be responsible to the Chief Executive Officer for the proper performance of their duties. The Chief Executive Officer shall have power to appoint or hire agents and all other employees of the Exchange; to fix the duties, responsibilities and terms of their employment and to terminate their employment at any time.

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#### **Sec. 6. 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. [He] 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[, under whose supervision he shall be]. [He] 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. 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. [He] 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. [He] The Treasurer shall have all such powers and duties as generally are incident to the position of Treasurer or as may be assigned to [him] the Treasurer by the Board of Directors or by the Chief Executive Officer.

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### **NASDAQ OMX Futures Exchange (NFX)—Rules**

#### **DEFINITIONS (Rules 1—59)**

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### **Rule 34. Public Director**

The term "Public Director" means an individual must first be found by the Board of Directors to have no material relationship with the Exchange. A "material relationship" is one that reasonably could affect the independent judgment or decision making of the director. A director shall be considered to have a "material relationship" with the contract market if any of the following circumstances exist: (A) the director is an officer or employee of the Exchange or an officer of employee of its affiliate. ("Affiliate" includes parents or subsidiaries of the Exchange or entities that share a common parent with the Exchange; (B) the director is a member of the Exchange, or an officer or director of a member ("Member" is defined according to Section 1a(24) of the Commodity Exchange Act and Commission Regulation 1.3(q); (C) the director, or a firm with which the director is an officer, director or partner, receives more than \$ 100,000 in combined annual payments from the Exchange, or any affiliate of the Exchange, (as defined herein), for legal, accounting, or consulting services. Compensation for services as a director of the Exchange or as a director of an affiliate of the contract market does not count toward the \$100,000 payment limit, nor does deferred compensation for services prior to becoming a director, so long as such compensation is in no way contingent, conditioned, or revocable; and (D) any of the relationships herein apply to a member of the director's "immediate family," i.e., spouse, parents, children, and siblings. All of the disqualifying circumstances described herein are subject to a one-year look back. Public Directors may also serve as directors of the Exchange's affiliate as defined herein if they otherwise meet the definition of public.

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### **DISCIPLINARY RULES (Rules 401—413)**

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#### **Rule 405. Hearing**

(a) Participants and Selection of Hearing Panels. A hearing on the Statement of Charges shall, at the request of respondent in his Answer, or upon motion of the Business Conduct Committee, be held before a Hearing Panel composed of three persons to be appointed by the Chairman of the Business Conduct Committee, one of whom be public and qualify as a Public Director. The presiding person of each Hearing Panel shall be a member of the Business Conduct Committee. One person on the Hearing Panel shall be a member of the Exchange, or a general partner or officer of a member organization, or such other person whom the Chairman of the Business Conduct Committee considers to be qualified. Pursuant to Commission Regulation, unless the case is related to decorum or attire, financial requirements or reporting or recordkeeping, and does not involve fraud, deceit or conversion, at least two of the three members of the Hearing Panel shall represent a membership interest. [other than that of the subject of the disciplinary proceeding and, if the subject of the disciplinary action is a member of the Exchange's Board of Directors or any major disciplinary committee, or whenever any of the rule violations involved pertain to manipulation or attempted manipulation of the price of a commodity, futures contract or option on a futures contract, or to conduct which directly results in financial harm to a non-member of the Exchange, one person shall be a non-member of the Exchange.] The Chairman of the Committee shall select these two other persons from those persons who shall have been

designated by the Chairman of the Board of Directors to serve on such hearing panels. In making such selections the Chairman shall, to the extent practicable, choose individuals whose background, experience and training qualify them to consider and make determinations regarding the subject matter to be presented to the Hearing Panel. He shall also consider such factors as the availability of individual hearing officers, the extent of their prior service on Hearing Panels and any relationship between such persons and a respondent which might make it inappropriate for such person to serve on the Hearing Panel. Also, the Chairman shall consider if any group or class of industry participants dominates or exercises a disproportionate influence on the panel.

No person may serve on the Hearing Panel if he or any person or firm with which he is affiliated has a financial, personal, or other direct interest in the matter under consideration. Promptly after the selection of the panelists, the Chairman of the Committee shall cause written notice thereof to be given to the accused. If any person involved in the disciplinary proceeding shall have knowledge of a relationship between himself and any person selected for service on the Hearing Panel which might result in such panelist being unable to render a fair and impartial decision, he shall give prompt written notice thereof to the Chairman of the Committee, specifying the nature of such relationship and the grounds for contesting the qualification of such person to serve on the Hearing Panel. The decision of the Chairman of the Committee shall be final and conclusive with respect to the qualification of any person to serve on the Hearing Panel.

(b) Notice of Hearing and Pre-Hearing Procedures. The respondent shall be given at least fifteen (15) business days' notice of the time and place of the hearing. The presiding person of the Hearing Panel may schedule a pre-hearing conference to be held not less than eight (8) business days in advance of the scheduled hearing date, to be attended by a representative(s) of the Enforcement Department, each of the respondents and a member of the Hearing Panel for the purpose of clarifying and simplifying issues and otherwise expediting the proceeding. At such a conference, the Enforcement Department and the respondent shall furnish to the Panel and to each other copies of all books, documents or other tangible evidence in their possession or under their control which are to be relied upon in presenting or defending against the charges contained in the Statement of Charges, respectively, or which are relevant to those charges. The Enforcement Department and the respondent shall also attempt to stipulate to the authenticity of documents and to facts and issues not in dispute and any other items which will serve to expedite the hearing of the matter at such a conference.

(c) Conduct of Hearing. The Hearing Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the hearing.

- (1) The formal rules of evidence shall not apply; nevertheless, the procedures for the hearing shall not be so informal as to deny a fair hearing.
- (2) A representative of the Enforcement Department shall present the charges of rule violations and the evidence in support thereof which are the subject of the hearing.
- (3) The respondent shall be entitled to appear personally at the hearing.
- (4) The representative of the Enforcement Department and the respondent shall be entitled to cross-examine any persons appearing as witnesses at the hearing.

- (5) The representative of the Enforcement Department and the respondent shall be entitled to call witnesses who shall testify under oath and be subject to cross-examination and questioning by the Hearing Panel and to present such evidence as may be relevant to the charges.
- (6) The presiding person of the Hearing Panel may, on his own motion, request the production of documentary evidence and witnesses.
- (7) The Exchange shall require persons within its jurisdiction who are called as witnesses to appear at the hearing and to produce evidence. It shall make reasonable efforts to secure the presence of all other persons called as witnesses whose testimony would be relevant.
- (8) If the respondent has requested a hearing, a substantially verbatim record of the hearing shall be made and shall become a part of the record of the proceeding. The record must be one that is capable of being accurately transcribed; however, it need not be transcribed unless the transcript is requested by Commission staff or the respondent, the decision is appealed under Rule 409 or is reviewed by the Commission pursuant to Section 8c of the Act or Part 9 of the Commission's Regulations. In all other instances, a summary record of a hearing is permitted.
- (9) The cost of transcribing the record of the hearing shall be borne by a respondent who requests the transcript, appeals the decision pursuant to Rule 409, or whose application for Commission review of the disciplinary action has been granted under Part 9 of the Commission's Regulations. In all other instances, the cost of transcribing the record shall be borne by the Exchange.

(d) Recommendation of Hearing Panel. Based on its review of the entire record of the proceeding, the Hearing Panel shall submit a written report to the Business Conduct Committee containing:

- (1) proposed findings of fact concerning the allegations in the Statement of Charges;
- (2) conclusions as to whether a violation within the disciplinary jurisdiction of the Exchange has been committed and an enumeration of such violations; and
- (3) recommendations as to appropriate sanctions.

(e) Intervention. Any person not otherwise a party may intervene as a party to the hearing upon demonstrating to the satisfaction of the Hearing Panel that he has an interest in the subject of the hearing and that the disposition of the matter, may, as a practical matter, impair or impede his ability to protect that interest. Also, the Hearing Panel may in its discretion permit a person to intervene as a party to the hearing when the person's claim or defense and the main action have questions of law or fact in common. Any person wishing to intervene as a party to a hearing shall file with the Hearing Panel a notice requesting the right to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought. The Hearing Panel, in exercising its discretion concerning intervention, shall take into consideration whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.



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#### Rule 409. Review

(a) Petition. A respondent shall have fifteen (15) business days after service of notice and a copy of a decision made pursuant to Rules 406(c) and 408 to petition the Board of Directors for review thereof. Such petition shall be in writing and shall specify the findings and conclusions of the Business Conduct Committee which are the subject of the petition, together with the reasons that respondent petitions for review of these findings and conclusions, and whether he desires a hearing before an advisory committee of the Board thereon. Any objections to a decision not specified in the petition for review shall be thereafter waived. If the respondent does not petition the Board of Directors for review of a decision of the Business Conduct Committee within the time prescribed herein or petitions the Board and the Board takes no action for thirty (30) days after service upon it of such a decision, the decision of the Business Conduct Committee shall become a final decision of the Exchange on either of such dates, as applicable.

(b) Conduct of Review. The petition for review shall be considered by the Board of Directors, except that no director shall participate in such consideration if he participated in any prior stage of the proceeding or if he or any person or firm with which he is affiliated has a financial, personal, or other direct interest in the matter. Also, the Board of Directors who review the matter on appeal must consist of at least one Public Director. Unless the Board of Directors shall decide for good cause shown, such review shall be based solely upon the record before the Board of Directors and the petition for review. The Chairman of the Board shall appoint an advisory committee of three directors to examine the record on appeal, one of whom shall meet the qualifications of a Public Director, which shall give an advisory opinion thereon to the Board of Directors and before whom any hearing on review shall be conducted pursuant to Rule 409(c). [Pursuant to Commission Regulation 1.64, unless the case is related to decorum or attire, financial requirements or reporting or recordkeeping, and does not involve fraud, deceit or conversion, the advisory committee shall be comprised of at least two directors representing a membership interest other than that of the subject of the petition for review and, if the subject of the disciplinary action is a member of the Exchange's Board of Directors or any major disciplinary committee, or whenever any of the rule violations involved pertain to manipulation or attempted manipulation of the price of a commodity, futures contract or option on a futures contract, or to conduct which directly results in financial harm to a non-member of the Exchange, at least one director shall not be a member of the Exchange.]

Promptly following the review proceeding and based upon such review, the Board of Directors[, comprised of the appropriate number of non-member and commercial interest directors and a variety of membership interests pursuant to Commission Regulation 1.64(b), by a majority vote of those members,] shall issue a written decision thereon. The decision shall include a statement of findings and conclusions with respect to each charge or sanction reviewed, including the specific rules which the respondent was found to have violated by the Business Conduct Committee and a declaration of any sanction imposed and the effective date of such sanction. The Board of Directors may decide to affirm, reverse or modify, in whole or in part, the decision of the Business Conduct Committee. Such modifications may include an increase or decrease of the sanction. The decision on review shall be in writing, shall be final and shall be served on the respondent in accordance with Rule 411.

(c) Conduct of Hearing on Review. Whenever the Board of Directors determines for good cause shown that a hearing on review is appropriate, a respondent shall be given at least ten (10) business days' notice of the time and place of the hearing. The hearing shall be held before an advisory committee of three directors, appointed by the Chairman of the Board. The appointment of such panelists shall be governed by those procedures set forth in Rule 405(a) concerning notice to the respondent and issues for fairness and impartiality and the hearing shall be conducted in accordance with the requirements set forth in Rule 405(c)(1)-(8). No director shall serve on a panel if such director participated in any prior stage of the proceeding or if he or any person or firm with which he is affiliated has a financial, personal, or other direct interest in the matter. After the hearing takes place, the panel shall submit a written report to the Board of Directors containing its recommendations as to whether the decision of the Business Conduct Committee should be affirmed, modified or reversed. Upon receipt of this report, the Board of Directors shall thereafter proceed in accordance with Rule 409(b).

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