

## Rule Self-Certification

September 10, 2013

Office of the Secretary  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

Re: Regulations §40.6 Submission Certification  
Amending contract specifications for 10 ounce gold futures contract and amending  
Appendix B  
Reference File: SR-NFX-2013-18

Ladies and Gentlemen:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and §40.6 of the regulations promulgated by the Commodity Futures Trading Commission under the Act, the NASDAQ OMX Futures Exchange, Inc. (“Exchange”) submits this self-certification to amend the contract specifications for 10 Troy ounce gold futures located at Chapter VIII, Section 16. The Exchange is amending the eligible Block Trade threshold to lower it from 100 to 10 contracts. The Exchange is also amending its guidance concerning Block Trades and Exchange for Related Positions at Appendix B to offer Futures Participants an alternative method to report such trades to the Exchange. This rule filing will be effective on September 25, 2013.

Chapter VIII, entitled “Metals,” lists the terms and conditions for the 10 Troy ounce gold futures contract (“Gold Contract”). This Gold Contract is a cash settled gold futures contract for which the Final Settlement Price is based on the final settlement price for gold futures listed on the Commodity Exchange, Inc. (“COMEX”). Upon initially listing the Gold Contract the Exchange established a Block Trade threshold level at one hundred contracts pursuant to Chapter IV, Section 11, entitled “Block Trades.” The Exchange is amending the Block Trade threshold level for the Gold Contract to ten contracts. The Gold Contract has not had activity to date and the reduction of the Block Trade threshold is intended to generate activity in the Gold Contract. The Exchange does not operate its market twenty-four hours a day similar to other futures markets. The Exchange transacts business from 8:00 a.m. to 5:00 p.m. E.T. By lowering the Block Trade threshold level for the Gold Contract from 100 to 10 contracts, the Exchange would provide its Futures Participants the opportunity to exit positions in the Gold Contract by utilizing a Block Trade. The Exchange notes that NYMEX’s Gold Volatility Index (VIX) Futures (GVF) is currently set at 5 contracts for block trading. The Exchange would continue to review the trading volume in the Gold Contract and adjust the Block Trade threshold for the Gold Contract accordingly by submitting a rule change.

The Exchange is amending its guidance concerning Block Trades and Exchange For Related Positions at Appendix B to provide that Futures Participants may either electronically report Block Trades or Exchange for Related Positions to the Exchange via the Participant Trade Report message in the NASDAQ Futures FIX protocol interface or by submitting the information to [Futures@nasdaqomx.com](mailto:Futures@nasdaqomx.com). Chapter IV, Section 11, entitled “Block Trades,” specifies that “[u]nless otherwise agreed to by the principal counterparties to the Block Trade, the Futures Participant must ensure that each Block Trade is reported to the Exchange within five minutes of the time of execution; except that Block Trades executed outside of Trading Hours must be reported within fifteen minutes of the commencement of Trading Hours on the next Business Day for that Contract. The report must include the Contract, contract month, price, quantity of the transaction, the respective Clearing Futures Participants, the time of execution, and, for options on Futures, strike price, put or call and expiration month. The Exchange shall promptly publish such information separately from the reports of transactions in the regular market.” Chapter IV, Section 12, entitled “Exchange For Related Positions,” specifies that “[e]ach such transaction shall be submitted to the Exchange within the time period and in the manner specified by the Exchange.” The Exchange indicates that manner in which such reports must be submitted to the Exchange in its guidance located at Appendix B. The Exchange anticipates that Futures Participants would submit reports for Block Trades and Exchange for Related Positions electronically and would only use the alternate method of submitting reports to the Exchange in the event that a connection with the Exchange is either not yet established or there is a technical issue. The Exchange believes that providing Futures Participants alternative methods to submit the documentation to the Exchange would assist Futures Participants in complying with Exchange Rules with respect to the timely submission of such information.

- **Compliance with Rules:** Trading is subject to the Rules at Chapter III of the Exchange’s Rulebook, which includes prohibitions against fraudulent, noncompetitive, unfair and abusive practices. Additionally, trading is subject to the trading procedures and standards in Chapter IV of the Rulebook. As with all products listed for trading on the Exchange, the Gold Contract is subject to extensive monitoring and surveillance by the Exchange’s regulatory group in conjunction with the National Futures Association pursuant to the provisions of a Regulatory Services Agreement. Additionally, the Exchange has the authority to exercise its investigatory and enforcement power where potential rule violations are identified. The Exchange’s disciplinary rules are contained in Chapter V of the Rulebook, which permits the Exchange to discipline, suspend or expel members or market participants that violate its Rules.
- **Contracts not readily subject to manipulation:** Trading is subject to Chapters III and IV of the Exchange’s Rulebook which include prohibitions on manipulation and price distortion.
- **Availability of information:** The Exchange publishes Contract specifications on its website, together with daily trading volume, open interest and price information. The Block Trade and Exchange for Related Position guidance provides detailed information regarding compliance with Exchange Rules at Chapter IV, Sections 11 and 12.

- Financial integrity of contracts: All Contracts traded on the Exchange are cleared by The Options Clearing Corporation which is a registered derivatives clearing organization with the Commission.
- Trade Information: All required trade information is included in the audit trail and is sufficient for the Market Regulation Department to monitor for market abuse.
- Protection of market participants: Chapter III of the Exchange's Rulebook contains prohibitions precluding intermediaries from disadvantaging their customers.
- Execution of Transactions: The Exchange provides a competitive, open and efficient market and mechanism for executing transactions that protects the price discovery process and also authorizes for bona fide business purposes rules for Block Trades and Exchange for Related Positions at Chapter IV, Sections 11 and 12.

There were no opposing views among the Exchange's Board of Directors, members or market participants. The Exchange hereby certifies that the amendments to Chapter VIII, Section 16 and Appendix B comply with the Commodity Exchange Act and regulations thereunder. The Exchange also certifies that notice of pending certification and a copy of this submission have been concurrently posted on the Exchange's website at <http://www.nasdaqtrader.com/Micro.aspx?id=NFX>.

Regards,



Daniel R. Carrigan  
President

cc: Mr. J. Goodwin  
National Futures Association  
The Options Clearing Corporation

## **Exhibit A**

*New text is underlined; deleted text is in brackets.*

### **NASDAQ OMX Futures Exchange – Rules**

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#### **Chapter VIII Metals**

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#### **Section 16 Block Trades**

Pursuant to Chapter IV, Section 11, the 10 Troy ounce gold futures contract shall be eligible for Block Trades and the threshold level shall be [one hundred]ten (10[0]) contracts.

\* \* \* \* \*

## **Exhibit B**

*New text is underlined.*



### **Appendix B – Block Trade and Exchange for Related Position**

The Exchange is providing this guidance related to Block Trades and Exchange for Related Positions to provide members additional information for submitting these types of trades to the Exchange in compliance with Exchange Rules related to Block Trades and Exchange for Related Positions at Chapter IV, Sections 11 and 12.

#### **Block Trades**

##### *Generally*

Block Trades are permissible, noncompetitive, privately negotiated transactions at or in excess of a minimum threshold quantity of contracts, which are executed apart and away from the public auction market. The minimum quantity threshold is designated in the contract specifications for each Contract that is eligible for Block Trades. Only Orders of a commodity trading advisor (“CTA”) or foreign Person performing a role or function to a CTA may be aggregated in order to achieve the minimum transaction size, otherwise Orders may not be aggregated.

Each party to a Block Trade must be an Eligible Contract Participant as that term is defined in Section 1a(18) of the Commodity Exchange Act. A Futures Participant shall not execute any Order by means of a Block Trade for a Customer unless the Customer has specified that the Order be executed as a Block Trade. Block Trades may be executed at any time.

##### *Prices of Block Trades*

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 Contract at the relevant time, (iii) the prices and sizes of transactions in other relevant markets, including without limitation the underlying cash market or related futures markets, at the relevant time, and (iv) the circumstances of the markets or the parties to the Block Trade. The price must be in accordance with the minimum tick increment for a particular Contract as specified in the contract specifications. Block Trades do not set off conditional Orders or otherwise affect Orders in the Order Book.

Block Trades between the accounts of affiliated parties are permitted provided that (i) the Block Trade is executed at a fair and reasonable price; (ii) each party has a legal and independent bona fide business purpose for engaging in the Block Trade; (iii) each party’s decision to enter into the Block Trade is made by an independent decision-maker. If the above requirements are not

satisfied, the Block Trade transaction may constitute an illegal wash sale prohibited by Chapter III, Section 23(g).

#### *Reporting Requirements*

Unless otherwise agreed to by the principal counterparties to the Block Trade, it is the obligation of the Futures Participant to report Block Trades. The Futures Participant must ensure that each Block Trade is reported to the Exchange within five minutes of the time of execution; except that Block Trades executed outside of Trading Hours must be reported within fifteen minutes of the commencement of Trading Hours on the next Business Day for that Contract.

Block Trades may be reported to the Exchange either electronically via the Participant Trade Report message in the NASDAQ Futures FIX protocol interface or by submitting the information to [Futures@nasdaqomx.com](mailto:Futures@nasdaqomx.com).

The Block Trade report made to the Exchange must include the following information: Contract, contract month, price, quantity of the transaction, the respective Clearing Futures Participants, the time of execution, and, for options on Futures, strike price, put or call and expiration month. Failure to timely and accurately report Block Trades may subject the Futures Participant to disciplinary action.

#### *Documentation*

Futures Participants must provide Block Trade documentation to the Exchange upon request. Documentation requested by the Exchange may include evidence that the price of the Block Trade transaction was fair and reasonable based on relevant market information, including underlying markets and independence of the parties to the transaction.

#### *Recordkeeping*

Clearing Futures Participants and Futures Participants involved in the execution of Block Trades must maintain a record of the transaction in accordance with this Rule.

#### *Publication*

The Exchange shall promptly publish Block Trade information separately from the reports of transactions in the regular market. Block trades are reported independently of transaction prices in the regular market and are not included as part of the daily trading range (i.e. they do not impact the daily high/low prices).

#### *Use of Non-Public Information*

Parties involved in the solicitation or negotiation of a Block Trade may not disclose the details of those communications to any other party for any purpose other than to facilitate the execution of the Block Trade. Parties privy to nonpublic information regarding a consummated Block Trade may not disclose such information to any other party prior to the public report of the Block Trade by the Exchange. Pre-hedging or anticipatory hedging of any part of the Block Trade in

the same Contract or a closely related contract based upon a solicitation to participate in a Block Trade is not permitted. A closely-related product is one that is highly correlated to, or serves as a substitute for, or is the functional equivalent of the product being traded as part of a Block Trade.

Counterparties to a Block Trade are permitted to initiate trades to hedge or offset risk associated with the Block Trade following the consummation of the Block Trade but prior to the public report of the Block Trade by the Exchange.

Except as provided above, parties privy to nonpublic information related to a Block Trade may not trade in the same Contract or a closely-related contract for the purpose of gaining an advantage through use of such nonpublic information prior to the public report of the Block Trade by the Exchange.

### **Exchange For Related Positions (“EFRP”)**

#### *Generally*

EFRPs are permissible, noncompetitive, privately negotiated transactions executed apart and away from the public auction market which are permitted by arrangement between only two parties in accordance with Exchange Rule located at Chapter IV, Section 12. The Exchange currently permits the following types of EFRP transactions:

Exchange for Physical (“EFP”) - A privately negotiated and simultaneous exchange of an Exchange futures position for a corresponding cash position.

Exchange for Risk (“EFR”) - A privately negotiated and simultaneous exchange of an Exchange futures position for a corresponding OTC swap or other OTC instrument.

Exchange of Options for Options (“EOO”) - A privately negotiated and simultaneous exchange of an Exchange option position for a corresponding OTC option position or other OTC instrument with similar characteristics.

Contingent EFRPs are prohibited. A contingent EFRP is the execution of one EFRP transaction which is contingent upon the execution of another EFRP transaction and the cash, swap or OTC transactions related to the two EFRPs economically offset.

Permissible EFRPs are bilaterally negotiated apart from a public auction market and subsequently novated by the Clearing Corporation, just like any other futures transaction. The cash, spot or OTC position that is traded opposite to the futures contract in the context of an EFRP must be a product that represents a legitimate economic offset. The item that is deliverable on the futures contract may always be used for the cash or OTC component of the transaction. If the commodity used to fulfill the cash or OTC component is not deliverable against the futures contract, it must be an item that is reasonably equivalent in terms of its physical and economic properties. The cash commodity or OTC component should have a reliable and demonstrable price relationship with the futures contract. It should exhibit price movement that parallels the price movement of the futures contract. A lack of consistent price

relationship between the cash commodity or OTC component and the futures contract could be evidence that a party did not engage in a permissible EFRP transaction in violation of the Exchange Rules at Chapter IV, Section 12 and Section 4(a) of the Act as such transaction was not conducted subject to the rules of a contract market designated or registered with the Exchange.

An EFRP may be transacted at any time and at any price agreed upon by the two counterparties provided the Exchange has designated a Contract as eligible for EFRPs. The related position (cash, OTC swap, OTC option, or other OTC derivative) must involve the commodity underlying the Exchange Contract, or must be a derivative, by-product, or related product of such commodity that has a reasonable degree of price correlation to the commodity underlying the Exchange Contract.

#### *Price and Quantity*

An EFRP transaction may be entered into in accordance with the applicable price increments or option premium increments set forth in Contract, at such prices as are mutually agreed upon by the two parties to the transaction. The quantity covered by the related position must be approximately equivalent to the quantity covered by the Exchange Contracts.

#### *Reporting Requirements*

EFRP transactions may be reported to the Exchange at any time during Trading Hours and for 30 minutes after the close of trading in a particular Contract. The date and the time of execution of all EFRP transactions must be denoted on the record of the transaction. Futures Participants should collect and maintain the relevant documentation described above in a manner that is readily accessible to produce to the Exchange upon request.

EFRPs may be reported to the Exchange either electronically via the Participant Trade Report message in the NASDAQ Futures FIX protocol interface or by submitting the information to [Futures@nasdaqomx.com](mailto:Futures@nasdaqomx.com).

Each Clearing Futures Participant and omnibus account submitting large trader positions in accordance with this Rule must submit for each reportable account the EFRP volume bought and sold in the reportable instrument, by contract month, and additionally for EOOs, by put and call strike. The information must be included in the daily large trader report to the Exchange.

#### *Documentation*

Futures Participants and Clearing Futures Participants are responsible for exercising due diligence as to the bona fide nature of EFRP transactions submitted on behalf of Customers. Futures Participants and Clearing Futures Participants must obtain or have the right to access documentation confirming the details of the futures, cash or OTC component to an EFRP transaction. Documentation customarily generated in accordance with futures or options components of an EFRP transaction may include: account statements or order tickets. Documentation customarily generated in accordance with cash market or other relevant market practices such as signed swap agreements, OTC contracts, cash confirmations, invoices,



warehouse receipts and bills of sale, as well as documentation that demonstrates proof of payment and transfer of ownership of the related position transaction (e.g. canceled checks, bank statements, Fedwire confirms, Fixed Income Clearing Corporation documents, bills of lading etc.), which evidence title to or contract(s) to buy or sell the cash commodity involved in the transaction and a transference of ownership. Documentation must demonstrate that buyer of the futures contract is the seller of the physical or OTC component of the EFRP. EFRP documentation must be provided to the Exchange upon request

It shall be the responsibility of the Futures Participant and the Clearing Futures Participant to demonstrate, upon the request of Exchange staff, that the EFRP transaction is bona fide and conducted by a person eligible to transact the OTC component. For the protection of the market and investors, the Exchange believes that Futures Participants and Clearing Futures Participants should know their Customers. By way of example, a Futures Participant or Clearing Participant should understand their Customer's business and with respect to EFRP transactions, this would entail knowing the relative portion of the Customer's EFRP transactions in a Customer relative to business transacted by that Customer in the underlying commodity or relevant OTC related position in addition to information concerning Customer experience. In reviewing EFRP documentation, Exchange staff considers whether the offsetting cash commodity or OTC component was an independent transaction exposed to price competition as well as the length of time between transactions. Exchange staff may request documentation concerning negotiation of a transaction to establish the bona fide nature of the transaction.

#### *Recordkeeping*

Customer confirmations and account statements must reflect transactions which transacted as EFRP.

#### *Ownership and Affiliated Accounts*

The accounts involved in the execution of an EFRP transaction must be (i) independently controlled accounts with different beneficial ownership; or (ii) independently controlled accounts of separate legal entities with the same beneficial ownership, provided that the account controllers operate in separate business units; or (iii) independently controlled accounts within the same legal entity, provided that the account controllers operate in separate business units; or (iv) commonly controlled accounts of separate legal entities, provided that the separate legal entities have different beneficial ownership.

However, on or after the first day on which delivery notices can be tendered in a physically delivered Exchange futures contract, an EFRP transaction may not be executed for the purpose of offsetting concurrent long and short positions in the expiring Exchange futures contract when the accounts involved in such transaction are owned by the same legal entity and when the date of the Exchange futures position being offset is not the same as the date of the offsetting transaction.