October 2, 2012

Via Electronic Mail

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: CBOE Futures Exchange, LLC Rule Certification
Submission Number CFE-2012-26

Dear Mr. Stawick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended ("Act"), and §40.6(a) of the regulations promulgated by the Commodity Futures Trading Commission ("Commission") under the Act, CBOE Futures Exchange, LLC ("CFE" or "Exchange") hereby submits a CFE rule amendment ("Amendment") to amend CFE rules consistent with the rules, acceptable practices, and guidance adopted by the Commission under the caption Core Principles and Other Requirements for Designated Contract Markets ("DCMs") and published in the Federal Register at 77 FR 36611 (June 19, 2012). The Amendment will become effective on October 17, 2012.

The Amendment includes CFE rule amendments relating to a number of the DCM core principles under Section 5 of the Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). These DCM core principles are listed below along with a description of the CFE rule amendments included in the Amendment that are most related to that particular DCM core principle.

Core Principle 2 - Compliance with Rules

- CFE is amending CFE Rule 216 to make clear that CFE may enter into regulatory cooperation and information-sharing agreements with swap execution facilities and has the capacity to carry out international information-sharing agreements as the Commission may require.

- CFE is amending CFE Rule 302 to further codify CFE's access requirements in CFE's Rules, including the manner in which CFE Trading Privilege Holders ("TPHs") may access CFE's trading system and the limitation of direct access to CFE's trading system solely to TPHs and TPH access provided by Independent Software Vendors.

- CFE is amending a number of CFE rules, including CFE Rules 414, 415, 501, 502, 611, and 702, to clarify and augment various recordkeeping requirements under CFE's Rules and CFE's ability under those Rules to collect information and documents in a form and manner prescribed by CFE and/or within the time frame

designated by CFE.

- CFE is adding CFE Rule 512A to its Rules to establish a mechanism for preventing access to CFE by Persons that are denied access to CFE. CFE will post a list of those Persons on its website, and TPHs will be prohibited under CFE Rule 512A from transmitting any order to CFE that is for the account of any Person on this list.

- CFE is amending CFE Rule 609 to require each TPH to be responsible for establishing, maintaining, and administering reasonable supervisory procedures to ensure that its customers comply with Applicable Law, CFE Rules, and the rules of CFE's Clearing Corporation.

- CFE is adding to its Rules CFE Rule 616 relating to wash trades, CFE Rule 617 relating to money passes, CFE Rule 618 relating to accommodation trading, and CFE Rule 619 relating to front-running. Although these abusive trading practices are already prohibited by other CFE rules, each of these practices will now also be specifically addressed in CFE's Rulebook through the addition of the above rules. In addition, CFE is adding CFE Rule 620 to its Rulebook in order to specifically prohibit the disruptive practices enumerated in Section 4c(a)(5) of the Act, which were added to the Act by Section 747 of the Dodd-Frank Act.

- CFE is amending CFE Policy and Procedure III (within the Policy and Procedure portion of CFE's Rules) to make clear that CFE is authorized to bust or adjust any trade when necessary to mitigate market disrupting events caused by malfunctions in CFE's trading system or errors in orders or quotes submitted by TPHs or market participants. CFE is also amending Policy and Procedure III to allow for CFE to bust or adjust a Block Trade or the contract leg of an Exchange of Contract for Related Position transaction posted by mistake and to allow CFE to bust or adjust a trade not correctly processed due to a system malfunction by CFE's trading system.

<u>Core Principle 4 - Prevention of Market Disruption</u>

- CFE is amending CFE Rules 152 and 404 to eliminate stop orders as acceptable order type on CFE and is amending CFE Rules 404A and 1202 to delete references to stop orders. This will eliminate the possibility that a stop order may be triggered and then trade at an anomalous price. CFE still allows stop limit orders, as those orders become limit orders when triggered and cannot be executed at a level worse than the limit price.

- CFE is adding CFE Rule 417A to its Rules and is amending various provisions in its contract specification rule chapters to incorporate new market-wide trading halt provisions consistent with the market-wide trading halt provisions that have been adopted by the national securities exchanges. CFE Rule 417A will become effective on February 4, 2013 when the comparable national securities exchange market-wide trading halt rules become effective. Until that time, CFE has existing market-wide trading halt provisions in its contract specification rule chapters that halt trading in CFE products whenever a market-wide trading halt commonly known as a circuit breaker is in effect on the New York Stock Exchange.

- CFE is amending CFE Rule 501 to require the retention by TPHs of records relating

to their activities in an underlying commodity or reference market and related derivatives markets in relation to any contract listed on CFE and to require TPHs to make those records available to CFE upon request.

- CFE is adding CFE Rule 513A to its Rules and is amending various provisions in its contract specification rule chapters to codify two new risk controls that CFE is putting in place in order to augment its existing risk controls. These two new risk controls consist of a pre-trade order size limit risk control and a price reasonability check risk control for orders with a limit price.

- CFE is narrowing the Threshold Widths that are applicable under CFE Policy and Procedure I. Policy and Procedure I relates to market order processing and the changes to the Threshold Widths are intended to expand the applicability of the market order protection features set forth in Policy and Procedure I. CFE is also updating the description of the market order processing procedures in Policy and Procedure I.

Core Principle 6 - Emergency Authority

- CFE is amending CFE Rules 135 and 418 and CFE Policy and Procedure V to augment and clarify CFE's rule provisions relating to emergencies and the exercise of CFE's emergency authority.

Core Principle 9 - Execution of Transactions

- CFE is amending CFE Rule 420 to specify an additional situation in which CFE, in its sole discretion and upon written request, may allow a transfer of positions. In particular, Rule 420 is being amended to make clear that CFE may permit a position transfer as a result of an Authorized Trader moving from one TPH organization to another TPH organization. CFE believes it is appropriate to permit position transfers in this situation since it is a non-recurring transaction like an asset purchase.

Core Principle 11 - Financial Integrity of Transactions

- CFE is adding CFE Rule 503A to its rules to require any TPH that is a Futures Commission Merchant or Introducing Broker to concurrently file with CFE its Form 1-FR-FCM, Form 1-FR-IB, or FOCUS Report Part II, IIA, or Part II CSE submissions, as applicable. Rule 503A also establishes additional reporting requirements for any TPH that is a Futures Commission Merchant which is not a Clearing Member of CFE's Clearing Corporation or which clears through another Clearing Member and that has customers with positions in CFE products. This information will assist CFE in performing its obligations under Core Principle 11 with respect to these TPHs.

- CFE is adding an Appendix to Chapter 5 of CFE's Rulebook, which includes new CFE Rules 518-536, to further address minimum financial standards for intermediaries, the segregation of customer and proprietary funds, the custody of customer funds, the investment standards for customer funds, and related recordkeeping. Specifically, Appendix 5 incorporates directly into CFE's Rulebook a number of Commission regulations in this regard, including Commission Regulations

1.10, 1.12, 1.17, 1.18, 1.20, 1.21, 1.22, 1.23, 1.24, 1.25, 1.26, 1.27, 1.28, 1.29, 1.30, 1.31, 1.32, and 1.36. The violation of these Commission regulations already constitutes a violation of CFE Rules. In addition to and as a supplement to those existing rules, the Appendix to Chapter 5 is intended to specifically include within CFE's Rulebook the requirements from each of these regulations and to provide that a violation of any of these regulations by a TPH that is subject to the applicable regulation constitutes a violation of a specific CFE rule applicable to that regulation.

Core Principle 12 - Protection of Markets and Market Participants

- CFE is amending CFE Rule 608, which prohibits conduct inconsistent with just and equitable principles of trade, to further address abusive trading practices, including without limitation, fraudulent, noncompetitive, or unfair actions.

Core Principle 13 - Disciplinary Procedures

- CFE is making numerous amendments to CFE Rules 209 and 307 and to Chapter 7 of CFE's Rulebook in order to better conform those provisions to the Commission regulations and guidance under Core Principle 13. One of the key changes that CFE is making to its Rules in this regard is to provide that no member of a CFE Business Conduct Committee ("BCC") Panel that considers the authorization of charges or whether to accept a settlement or letter of consent in a CFE disciplinary matter may serve on the BCC Panel that conducts a hearing or summary proceedings in that matter.

Core Principle 14 - Dispute Resolution

- CFE is amending CFE Rule 801 to better conform CFE's arbitration rules to the provisions of Commission Regulation 166.5 relating to dispute settlement procedures.

Core Principle 15 - Governance Fitness Standards

- CFE is amending CFE Rule 204 to further clarify its application in relation to the eligibility to serve on CFE's Board of Directors, the BCC, any BCC Panel, or any other CFE disciplinary committee, arbitration panel, or oversight panel, consistent with the provisions of Commission Regulation 1.63.

- CFE is amending CFE Rule 304 to make clear that a statutory disqualification is grounds for denial of an application for Trading Privileges on CFE.

Core Principle 16 - Conflicts of Interest

- CFE is amending CFE Rule 215 to further codify in CFE's Rules CFE policies in relation to gifts to CFE employees.

- CFE is codifying in CFE Policy and Procedure VII and CFE Policy and Procedure VIII CFE's current Regulatory Independence Policies for Regulatory Group Personnel and Non-Regulatory Group Personnel. CFE previously adopted these Policies, and they are applicable to CFE and its affiliated exchanges. These Policies

are intended to contribute toward assuring the independence of CFE's Regulatory Group and that the Regulatory Group performs its regulatory functions without regard to the actual or perceived business interests of CFE or any person or entity regulated by CFE. Additionally, CFE is adding CFE Rule 219 to its Rules to prohibit TPHs from discussing with CFE directors and non-regulatory personnel issues, questions, and complaints regarding CFE regulatory matters to the extent that those discussions are not permitted under CFE's Regulatory Independence Policies.

Core Principle 20 - System Safeguards

- CFE is adding CFE Rule 513B to its Rules to require TPHs to take appropriate actions as instructed by CFE to accommodate CFE's business continuity-disaster recovery plans and to connect to CFE's disaster recovery site and participate in CFE and industry business continuity-disaster recovery testing as and to the extent required by CFE.

Additionally, CFE is codifying in CFE Policy and Procedure V an updated version of CFE's current Confidentiality Policy for Information Received or Reviewed in a Regulatory Capacity. The revised version of the Policy now incorporates additional language consistent with the provisions of Committee Regulation 38.7.

The Amendment also includes various related clarifying changes CFE's Rules and minor updates to the Rules.

The amendments to CFE's Rules included as part of the Amendment are set forth in Exhibit A to this rule certification and the amendments to the Policy and Procedure portion of CFE's Rules included as part of the Amendment are set forth in Exhibit B of this rule certification. Additions are shown in double-underlined text and deletions in [bracketed] text.

Finally, the Amendment includes two Addenda to the Regulatory Services Agreement ("NFA RSA Addenda") that CFE has in place with National Futures Association ("NFA") which are set forth in Exhibit C to this rule certification and a new Regulatory Services Agreement ("OCC RSA") between CFE and The Options Clearing Corporation ("OCC") which is set forth in Exhibit D to this rule certification.

The NFA RSA Addenda update CFE's existing Regulatory Services Agreement with NFA under which NFA performs various surveillance, investigative, and regulatory functions for CFE. Consistent with the requirements under Core Principle 2, the NFA RSA Addenda, among other things, include updated surveillance and regulatory services provisions as well as provisions that will enable CFE to meet its obligations to supervise and conduct periodic reviews of the quality, adequacy, and effectiveness of the regulatory services provided by NFA to CFE. CFE Rule 217 already reflects that CFE has contracted with NFA to provide certain regulatory services to CFE, and CFE is making a clarifying change to Rule 217 to make clear that CFE may receive information from NFA in connection with NFA's performance of those functions.

The OCC RSA includes regulatory services of a financial nature that OCC will be providing for CFE as well as provisions that will enable CFE to supervise and conduct periodic reviews of OCC's performance of those functions. The OCC RSA is intended to, among other things, assist CFE in meeting various of its obligations under Core Principle 11. CFE is also adding CFE Rule 218 to its Rulebook to reflect that CFE has contracted OCC in this regard pursuant to a Regulatory Services Agreement.

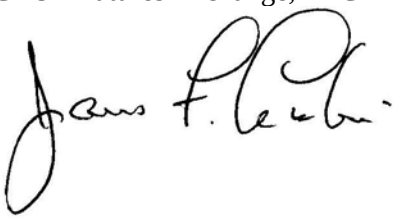
CFE believes that the impact of the Amendment will be beneficial to the public and market participants. CFE is not aware of any substantive opposing views to the Amendment. CFE hereby certifies that the Amendment complies with the Act and the regulations thereunder. CFE further certifies that it has posted a notice of pending certification with the Commission and a copy of this submission on CFE's Web site (http://cfe.cboe.com/aboutcfe/rules.aspx) concurrent with the filing of this submission with the Commission.

CFE intends to file portions of the Amendment as they may relate to security futures with the Securities and Exchange Commission pursuant to Section 19b-7 of the Securities Exchange Act of 1934.

* * * * *

Questions regarding this submission may be directed to Arthur Reinstein at (312) 786-7570 or Jennifer Klebes-Golding at (312) 786-7466. Please reference our submission number CFE-2012-26 in any related correspondence.

CBOE Futures Exchange, LLC



By: James F. Lubin
Managing Director

cc: Nancy Markowitz (CFTC)
Aaron Brodsky (CFTC)
National Futures Association
The Options Clearing Corporation

EXHIBIT A

CHANGES TO
CBOE FUTURES EXCHANGE, LLC RULEBOOK

(Additions are shown in double-underlined text and
deletions are shown in [bracketed] text)

* * * * *

102 Appeals Committee

The term "Appeals Committee" means the appeals committee constituted in accordance with, and with the authority and rights set forth or referred to, in Rule [210] 211.

* * * * *

104. Arbitration Committee

The term "Arbitration Committee" means the arbitration committee constituted in accordance with, and with the authority and rights set forth or referred to in, Rule [209] 210.

105. Authorized Trader

The term "Authorized Trader" means any natural person who is a Trading Privilege Holder or who is authorized by a Trading Privilege Holder to access the CBOE System on behalf of the Trading Privilege Holder.

* * * * *

108. BCC Panel

The term "BCC Panel" has the meaning set forth in Rule [208] 209.

* * * * *

111. Business Conduct Committee

The term "Business Conduct Committee" means the business conduct committee of the Exchange constituted in accordance with, and with the authority and rights set forth or referred to in, Rule [208] 209.

* * * * *

116. CBOE Workstation

The term "CBOE Workstation" means any computer connected directly [or indirectly] to the CBOE System, including by means of CBOE's application program interface, for the purpose of trading Contracts.

* * * * *

135. Emergency

The term "Emergency" means any occurrence or circumstance which requires immediate action and threatens or may threaten the fair and orderly trading in, or the liquidation of or delivery pursuant to, any Contract or the integrity of the market, whether the need for intervention arises exclusively from the Exchange's market or as part of a coordinated, cross-market intervention. An Emergency may include, without limitation, any of the following:

(a) Any manipulative activity or disruptive trading practices or attempted manipulative activity or disruptive trading practices;

(b) Any actual, attempted or threatened corner, squeeze, congestion or undue concentration of positions;

(c) Any circumstance which may materially adversely affect the performance of Contracts, including any failure of the payment system;

(d) Any action taken by the federal or any foreign government, any other governmental body or any other exchange or trading facility (foreign or domestic), in each case which may have a direct adverse effect on trading on the Exchange;

(e) Any circumstance which may have a severe, adverse effect upon the physical functions of the Exchange, including fire or other casualty, bomb threats, terrorist acts, substantial inclement weather, power failures, communications breakdowns, computer system breakdowns, malfunctions of plumbing, heating, ventilation and air conditioning systems and transportation breakdowns;

(f) The bankruptcy or insolvency of any Trading Privilege Holder or the imposition of any injunction or other restraint by any government agency, court or arbitrator upon a Trading Privilege Holder which may affect the ability of that Trading Privilege Holder to perform on its Contracts;

(g) Any circumstance in which it appears that a Trading Privilege Holder or any other Person has failed to perform its Contracts, is insolvent, or is in such financial or operational condition or is conducting business in such a manner that such Person cannot be permitted to continue in business without jeopardizing the safety of Customer funds, other Trading Privilege

Holders, the Exchange or the Clearing Corporation; and

(h) Any other unusual, unforeseeable and adverse circumstance with respect to which it is impracticable for the Exchange to submit in a timely fashion a reviewable rule to the Commission.

* * * * *

139. Exchange of Contract for Related Position

The term "Exchange of Contract for Related Position" means an exchange of a Contract listed on the Exchange for a Related Position, as that term is defined in Rule [414(f)] 414(a), that is entered into in accordance with the Rules of the Exchange.

* * * * *

147A. Independent Software Vendor

The term "Independent Software Vendor" has the meaning set forth in Rule 302.

* * * * *

152. Order

The term "Order" means any Market Order, Limit Order, Cancel Order, Cancel Replace Order, Day Order, Good 'til Canceled Order, Spread Order or Contingency Order (including any All or None Order, Fill or Kill Order, Immediate or Cancel Order[, Stop Order] or Stop Limit Order), all having the respective meanings set forth in Rule 404, as well as any other types of Orders that may be approved by the Exchange from time to time.

* * * * *

156. President

The term "President" means the individual serving as president of CBOE Holdings from time to time.

* * * * *

170A. Strip

The term "strip" has the meaning set forth in Rule 415(a)(i).

* * * * *

204. Eligibility

(a) No Person may serve as a member of the Board, the Business Conduct Committee, any BCC Panel or any other [“]disciplinary committee,[” “]arbitration panel[”] or [“]oversight panel[” (all as defined in Commission Regulation § 1.63)] of the Exchange if[, in the last three years before the date of determination,] such Person [was found to have committed any “disciplinary offense” (as defined in Commission Regulation § 1.63), was suspended from trading, had a registration revoked or was suspended from serving on a governing board under federal laws.]:

(i) was found within the prior three years by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the Commission to have committed a disciplinary offense;

(ii) entered into a settlement agreement within the prior three years in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense;

(iii) currently is suspended from trading on any contract market, is suspended or expelled from membership with any self-regulatory organization, is serving any sentence of probation or owes any portion of a fine imposed pursuant to either:

(A) a finding by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the Commission that such Person committed a disciplinary offense; or,

(B) a settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense;

(iv) currently is subject to an agreement with the Commission or any self-regulatory organization not to apply for registration with the Commission or membership in any self-regulatory organization;

(v) currently is subject to or has had imposed on him or her within the prior three years a Commission registration revocation or suspension in any capacity for any reason, or has been convicted within the prior three years of any of the felonies listed in Section 8a(2)(D)(ii) through (iv) of the CEA;

(vi) currently is subject to a denial, suspension or

disqualification from serving on the disciplinary committee, arbitration panel or governing board of any self-regulatory organization as that term is defined in Section 3(a)(26) of the Exchange Act; or

(vii) is subject to a basis for refusal to register a Person under Section 8a(2) of the CEA.

(b) For purposes of this Rule 204, the terms "arbitration panel," "disciplinary committee," "disciplinary offense," "final decision," "oversight panel," "self-regulatory organization" and "settlement agreement" have the definitions set forth in Commission Regulation § 1.63(a).

205. Officers

The President shall be the individual serving as president of CBOE Holdings from time to time. The Board shall appoint [a President,] one or more Managing Directors or Vice Presidents, a Secretary, a Treasurer, a Chief Regulatory Officer, a General Counsel and such other officers as it may deem necessary or appropriate from time to time, in each case for such term and on such other conditions as it sees fit. Any officer of the Exchange may be a director, officer or employee of CBOE Holdings or [the] CBOE.

* * * * *

209. Business Conduct Committee

The functions and responsibilities of the Business Conduct Committee shall be assumed by the business conduct committee of the CBOE, as appointed from time to time pursuant to CBOE Rule 2.1(a). The Business Conduct Committee shall not include any Exchange regulatory staff. The Business Conduct Committee shall have the authority and rights assigned to it in Chapter 7, which shall be exercised in each instance by a panel of the Business Conduct Committee (each such panel, a "BCC Panel"). [The Business Conduct Committee may, in its discretion, designate a panel to act in its place for any and all actions with respect to a particular matter or particular types of matters (each such panel, a "BCC Panel").] [Any such] Each BCC Panel shall consist of no fewer than three members of the Business Conduct Committee, each of whom shall be appointed by the chairman of the Business Conduct Committee. At least one member of the Business Conduct Committee and of each BCC Panel shall be an individual who would qualify as a Public Director as defined in Rule 201(b)(ii). No group or class of industry participants shall dominate or exercise disproportionate influence on the Business Conduct Committee or any BCC Panel. No member of a BCC Panel that considers the authorization of charges or whether to accept a settlement or letter of consent in a disciplinary matter under Chapter 7 shall be a member of the BCC Panel that conducts a hearing or summary proceedings in that matter under Chapter 7. No BCC Panel shall

include any member of the Business Conduct Committee that has a financial, personal or other direct interest in the matter under consideration.

* * * * *

214. Confidentiality and Conflicts of Interest

(a) No member of the Board or any committee established by the Board or the Rules of the Exchange shall use or disclose any material non-public information, obtained in connection with such member's participation in the Board or such committee, for any purpose other than the performance of his or her official duties as a member of the Board or such committee.

(b) No officer, employee or agent of the Exchange shall (i) trade in any commodity interest or security if such officer, employee or agent has access to material non-public information concerning such commodity interest or security or (ii) disclose to any other Person material non public information obtained in connection with such employee's, officer's or agent's employment, if such employee, officer or agent could reasonably expect that such information may assist another Person in trading any commodity interest or security.

(c) No Exchange regulatory or enforcement employee shall accept directly or indirectly any gift, gratuity, compensation or any other form of remuneration valued at more than nominal monetary value annually from any Trading Privilege Holder or any Related Party of a Trading Privilege Holder without the approval of the President. No other Exchange employee shall accept directly or indirectly any gift, gratuity, compensation or any other form of remuneration valued at an amount greater than [$100] $50 annually from any Trading Privilege Holder or any Related Party of a Trading Privilege Holder (other than reasonable and conventional business meals and courtesies) without the approval of the President.

(d) The Exchange enforcement staff may not include any Trading Privilege Holder, Related Party of a Trading Privilege Holder or individual whose interests conflict with the Exchange's enforcement duties. A member of the Exchange enforcement staff may not operate under the direction or control of any Person or Persons with Trading Privileges on the Exchange.

(e)[d] For purposes of this Rule 214, the terms "employee," "material information," "non-public information," "related commodity interest" and "commodity interest" shall have the meanings ascribed to them in Commission Regulation § 1.59 and the term "security" shall have the meaning ascribed to it in Section 3(a)(10) of the Exchange Act.

215. Conflicts of Interest - Named Party in Interest or

Financial Interest in Significant Action

(a) *Named Party in Interest Conflict.*

(i) *Prohibition.* No member of the Board, the Business Conduct Committee, any BCC Panel or any other "disciplinary committee" or "oversight panel" (both as defined in Commission Regulation § 1.69) of the Exchange shall knowingly participate in such body's deliberations or voting in any matter involving a named party in interest where such member (A) is a named party in interest, (B) is an employer, employee or fellow employee of a named party in interest, (C) has any other significant, ongoing business relationship with a named party in interest, excluding relationships limited to executing Futures or Options transactions opposite each other or to clearing Futures or Options transactions through the same Clearing Members or (D) has a family relationship with a named party in interest. For purposes of this clause (i), a "family relationship" exists between a named party in interest and a member if such party is the member's spouse, former spouse, parent, stepparent, child, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.

(ii) *Disclosure*. Prior to consideration of any matter involving a named party in interest, each member of the deliberating body who does not choose to abstain from deliberations and voting shall disclose to the General Counsel, or his or her designee, whether such member has one of the relationships listed in clause (i) above with a named party in interest.

(iii) *Procedure and Determination.* The General Counsel, or his or her designee, shall determine whether any member of the relevant deliberating body who does not choose to abstain from deliberations and voting is subject to a conflicts restriction under this paragraph (a). Such determination shall be based upon a review of the following information:

(A) information provided by such member pursuant to clause (ii) above; and

(B) any other source of information that is held by and reasonably available to the Exchange.

(b) *Financial Interest in a Significant Action Conflict.*

(i) *Prohibition.* No member of the Board, the Business

Conduct Committee, any BCC Panel or any other "disciplinary committee" or "oversight panel" (both as defined in Commission Regulation § 1.69) of the Exchange shall participate in such body's deliberations and voting on any significant action if such member knowingly has a direct and substantial financial interest in the result of the vote based upon either Exchange or non-Exchange positions that could reasonably be expected to be affected by the significant action under consideration, as determined pursuant to clause (iii) below. For purposes of this clause (i), the term "significant action" means (A) any action or rule change that addresses a specific Emergency or (B) any change in margin level that are designed to respond to extraordinary market conditions or that otherwise are likely to have a substantial effect on prices in any Contract.

(ii) *Disclosure*. Prior to consideration of any significant action, each member of the deliberating body who does not choose to abstain from deliberations and voting shall disclose to the General Counsel, or his or her designee, position information that is known to such member with respect to any particular month or months that are under consideration, and any other positions which the deliberating body reasonably expects could be affected by the significant action, as follows:

(A) gross positions held at the Exchange in such member's personal accounts or "controlled accounts," as defined in Commission Regulation § 1.3(j);

(B) gross positions held at the Exchange in proprietary accounts, as defined in Commission Regulation § 1.17(b)(3), at such member's affiliated firm;

(C) gross positions held at the Exchange in accounts in which such member is a principal, as defined in Commission Regulation § 3.1(a);

(D) net positions held at the Exchange in Customer accounts, as defined in Commission Regulation § 1.17(b)(2), at such member's affiliated firm; and

(E) any other types of positions, whether maintained at the Exchange or elsewhere, held in such member's personal accounts or the proprietary accounts of such member's affiliated firm, that the Exchange reasonably expects could be affected by the significant action.

(iii) *Procedure and Determination*. The General Counsel, or his or her designee, shall determine whether any member of the relevant deliberating body who does not choose to abstain from deliberations and voting is subject to a conflicts restriction under this paragraph (b). Such determination shall be based upon a review of the following information:

(A) the most recent large trader reports and clearing records available to the Exchange;

(B) information provided by such member pursuant to clause (ii) above; and

(C) any other source of information that is held by and reasonably available to the Exchange taking into consideration the exigency of the significant action being contemplated.

(D) Unless the deliberating body establishes a lower position level, a member thereof shall be subject to the prohibition set forth in clause (i) above if the review by the General Counsel, or his or her designee, identifies a position in such member's personal or controlled accounts or accounts in which such member is a principal as specified in subclauses (ii)(A), (C) and (E), in excess of an aggregate number of 10 lots of Futures and Options converted to Futures equivalents, taken together, or a position in the accounts of such member's affiliated firm as specified in subclauses (ii)(B), (D) and (E), in excess of an aggregate number of 100 lots of Futures and Options converted to Futures equivalents, taken together.

(iv) *Deliberation Exemption*. Any member of the Board, the Business Conduct Committee, any BCC Panel or any other "disciplinary committee" or "oversight panel" (both as defined in Commission Regulation § 1.69) of the Exchange who would otherwise be required to abstain from deliberations and voting pursuant to clause (i) above may participate in deliberations, but not voting, if the deliberating body, after considering the factors specified below, determines that such participation would be consistent with the public interest; *provided*, *however*, that before reaching any such determination, the deliberating body shall fully consider the position information specified in clause (ii), above, which is the basis for such member's substantial financial interest in the significant action that is being contemplated. In making its determination, the deliberating body shall consider:

(A) whether such member's participation in the deliberations is necessary to achieve a quorum; and

(B) whether such member has unique or special expertise, knowledge or experience in the matter being considered.

(c) *Documentation*. The minutes of any meeting to which the conflicts determination procedures set forth in this Rule 215 apply shall reflect the following information:

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

(ii) the name of any member of the relevant deliberating body who voluntarily recused himself or herself or was required to abstain from deliberations or voting on a matter and the reason for the recusal or abstention, if stated;

(iii) information on the position information that was reviewed for each member of the relevant deliberating body; and

(iv) any determination made in accordance with clause (iv) of paragraph (b) above.

Regulation

216. Regulatory Cooperation and Information-Sharing Agreements

The Exchange may from time to time enter into such agreements with domestic or foreign self-regulatory organizations, associations, boards of trade, swap execution facilities and their respective regulators providing for the exchange of information and other forms of mutual assistance for financial surveillance, routine audits, market surveillance, investigative, enforcement and other regulatory purposes as the Exchange may consider necessary or appropriate or as the Commission may require. The Exchange is authorized to provide information to any such organization, association, board of trade, swap execution facility or regulator that is a party to an information sharing agreement with the Exchange, in accordance with the terms and subject to the conditions set forth in such agreement. Without limiting the generality of the foregoing, the Exchange shall have the capacity to carry out international information-sharing agreements as the Commission may require.

217. Regulatory Services Agreement with NFA

The Exchange has contracted with NFA to provide certain

regulatory services to the Exchange pursuant to a Regulatory Services Agreement. In accordance that Agreement, NFA may perform certain surveillance, investigative, and regulatory functions under the Rules of the Exchange. [and the] The Exchange may provide information to and receive information from NFA in connection with the performance by NFA of those functions.

218. Regulatory Services Provided by The Options Clearing Corporation

The Exchange has contracted with The Options Clearing Corporation ("OCC") to provide certain regulatory services to the Exchange pursuant to a Regulatory Services Agreement. In accordance with that Agreement, OCC may perform for the Exchange certain financial surveillance functions and functions related to the protection of customers. The Exchange may provide information to and receive information from OCC in connection with the performance by OCC of those functions.

219. Communications Regarding Regulatory Matters

Trading Privilege Holders and Related Parties shall not discuss with Exchange directors or non-regulatory personnel issues, questions, concerns, or complaints about regulatory matters (as defined in Exchange Policy and Procedure XIII), except to the extent permitted by the Rules of the Exchange.

Minutes

220[217]. Minutes

The Board and each Board or Exchange committee shall keep minutes of each of its meetings which reflect all of the decisions made by the Board or committee at that meeting.

* * * * *

302. Trading Privilege Holders

(a) Each Trading Privilege Holder shall have the right to access the CBOE System, including the right to place Orders for each of its proprietary accounts and, if otherwise registered in any required capacity (if so required) to place Orders for the accounts of Customers.

(b) Subject to the requirements and procedures set forth in this Chapter 3, Trading Privileges shall be offered to all applicants from time to time approved by the Exchange as eligible to be Trading Privilege Holders, subject to any limitations or restrictions from time to time imposed by the Exchange.

(c) Trading Privileges are non-transferable, non-

assignable and may not be sold or leased, except that a Trading Privilege Holder may, with the prior written consent of the Exchange, transfer Trading Privileges to a Trading Privilege Holder organization or organization approved to be a Trading Privilege Holder: (i) which is an Affiliate; or (ii) which continues substantially the same business without regard to the form of the transaction used to achieve such continuation, e.g., merger, sale of substantially all assets, reincorporation, reorganization or the like.

(d) By virtue of obtaining Trading Privileges, a Trading Privilege Holder shall not obtain any equity or other interest in the Exchange, including voting rights or rights to receive any dividends or other distributions, whether arising from a dissolution, merger or consolidation involving the Exchange or otherwise.

(e) A Trading Privilege Holder may access the CBOE System through a direct connection to the CBOE System or through an Independent Software Vendor with a direct connection to the CBOE System. Trading Privilege Holders and Independent Software Vendors must comply with the technical specifications and requirements for establishing a direct connection to the CBOE System that are prescribed by the Exchange in order to put in place a direct connection to the CBOE System.

(f) An Independent Software Vendor is an organization that desires to provide or provides connectivity to the CBOE System on behalf of one or more Trading Privilege Holders and is not itself a Trading Privilege Holder. Each Trading Privilege Holder that accesses the CBOE System through the services of an Independent Software Vendor is subject to all of the Rules of the Exchange that apply to Trading Privilege Holders, including, without limitation, audit trail requirements and the requirement that any such Trading Privilege Holder that is not a Clearing Member be guaranteed by a Clearing Member in accordance with Rule 1101. No Person other than a Trading Privilege Holder may receive connectivity to the CBOE System from an Independent Software Vendor (except that it is permissible for an Independent Software Vendor to provide connectivity to the CBOE System to another Independent Software Vendor solely for purposes of enabling one or more Trading Privilege Holders to access the CBOE System). Connectivity to the CBOE System established by an Independent Software Vendor may not be used by the Independent Software Vendor itself for its own trading activities. Any Trading Privilege Holder that receives connectivity to the CBOE System through an Independent Software Vendor must do so through a separate connection and its own login(s) to the CBOE System that are not utilized by any other Trading Privilege Holder.

(g) Other than as permitted by this Rule 302 in relation

to Independent Software Vendors that provide connectivity to the CBOE System on behalf of one or more Trading Privilege Holders, no Person other than a Trading Privilege Holder and its Related Parties may have direct electronic access to the CBOE System. Without limiting the generality of the foregoing, no Person, such as a Customer, that is not a Trading Privilege Holder or Related Party of a Trading Privilege Holder may enter Orders directly into the CBOE System for execution. Instead, any Order entered by a Person, such as a Customer, that is not a Trading Privilege Holder or Related Party of a Trading Privilege Holder must pass through a Trading Privilege Holder's system(s) before receipt of the Order by the CBOE System. No Trading Privilege Holder or Related Party shall facilitate or assist in providing a Person that is not a Trading Privilege Holder or Related Party of a Trading Privilege Holder with direct electronic access to the CBOE System.

* * * * *

304. Eligibility for Trading Privileges

(a) Each trading permit holder of CBOE with trading privileges on CBOE from time to time shall, by virtue of such trading permit, be eligible to obtain Trading Privileges without any need to satisfy any additional criteria or requirements, except as may be otherwise prescribed by the Exchange from time to time; *provided* that (i) such trading permit holder is not subject to any statutory disqualification (unless an appropriate exemption has been obtained with respect thereto), (ii) to the extent required by Applicable Law, such trading permit holder is registered or otherwise permitted by the appropriate regulatory body or bodies to conduct business on the Exchange and (iii) any such trading permit holder that is not a Clearing Member shall be guaranteed by a Clearing Member in the manner described in Rule 1101.

Each Person that is not, at the time of application, a trading permit holder of CBOE with trading privileges on CBOE and that wishes to have Trading Privileges in any Contracts must (i) [be of good financial standing,] not be subject to any statutory disqualification (unless an appropriate exemption has been obtained with respect thereto), (ii) to the extent required by Applicable Law, be registered or otherwise permitted by the appropriate regulatory body or bodies to conduct business on the Exchange, and (iii) if such Person is not a Clearing Member, such Person shall be guaranteed by a Clearing Member in the manner described in Rule 1101. In addition, in each such case, the Exchange may deny (or may condition) the grant of Trading Privileges, or may prevent a Person from becoming associated (or may condition an association) with a Trading Privilege Holder for the same reasons for which the NFA may deny or revoke registration of a futures commission merchant or if such Person:

(i) [(A) has a net worth (excluding personal assets) below $25,000 if such Person is an individual, (B) has a net worth (excluding personal assets) below $50,000 if such Person is an organization, (C) has financial difficulties involving an amount that is more than 5% of such Person's net worth or (D) has a pattern of failure to pay just debts;

(ii)]is unable satisfactorily to demonstrate a capacity to adhere to all applicable Rules of the Exchange, Rules of the Clearing Corporation, Commission Regulations (and, to the extent the Person applies for Trading Privileges with respect to Security Futures, applicable Exchange Act Regulations), including those concerning record-keeping, reporting, finance and trading procedures;

(ii[i]) would bring the Exchange into disrepute; or

([iv]iii) for such other cause as the Exchange reasonably may decide.

(b) The Exchange shall deny the grant of Trading Privileges where an applicant has failed to meet any requirements for such grant.

(c) The Exchange may determine not to permit a Trading Privilege Holder or any Authorized Trader of a Trading Privilege Holder to keep its Trading Privileges or maintain its association with a Trading Privilege Holder, or may condition such Trading Privileges or association, as the case may be, if such Trading Privilege Holder or Authorized Trader:

(i) fails to meet any of the qualification requirements for Trading Privileges or association after such Trading Privileges or association have been approved;

(ii) fails to meet any condition placed by the Exchange on such Trading Privileges or association; or

(iii) violates any agreement with the Exchange.

(d) Any decision made by the Exchange pursuant to this Rule 304 must be consistent with the provisions of this Rule and the provisions of the CEA.

Any applicant who has been denied Trading Privileges or association with a Trading Privilege Holder or granted only conditional Trading Privileges or association, pursuant to this Rule 304, and any Trading Privilege Holder or Authorized Trader of a Trading Privilege Holder who is not permitted to keep its Trading Privileges or maintain its association with a Trading Privilege Holder or whose Trading Privileges

or association are conditioned pursuant to this Rule 304, may appeal the Exchange's decision in accordance with the provisions of Chapter 9. No determination of the Exchange to discontinue or condition a Person's Trading Privileges or association with a Trading Privilege Holder pursuant to this Rule 304 shall take effect until the review procedures under Chapter 9 have been exhausted or the time for review has expired.

Any applicant to become a Trading Privilege Holder who has been denied Trading Privileges pursuant to this Rule 304 shall not be eligible for re-application during the six months immediately following such denial.

* * * * *

307. Emergency Disciplinary Actions and Limitations of Trading Privileges

(a) Notwithstanding anything in Rule 304 to the contrary, the Exchange may at any time impose a sanction or take other summary action against [revoke, suspend, limit, condition, restrict or qualify the Trading Privileges of] any Trading Privilege Holder or Related Party of a Trading Privilege Holder if, [in the sole discretion] upon the reasonable belief of the Exchange, such immediate action is [in the best interest of the Exchange] necessary to protect the best interest of the marketplace, including, without limitation, for the protection of Customers, Trading Privilege Holders, Clearing Members or the Exchange. Any such sanction or other summary action may include, without limitation, revoking, suspending, limiting, conditioning, restricting, denying or qualifying the access to the Exchange, the Trading Privileges or the activities, functions and operations of a Trading Privilege Holder or Related Party of a Trading Privilege Holder. One instance in which the Exchange may take action under this Rule 307 is if a Trading Privilege Holder or Related Party is or becomes subject to a statutory disqualification. [Any such sanction imposed on a Trading Privilege Holder pursuant to this paragraph (a) may be appealed by such Trading Privilege Holder in accordance with the provisions of Chapter 9.] The following procedures shall be applicable to any such action:

(i) If practicable, a Respondent shall be served with a notice before the action is taken, or otherwise at the earliest possible opportunity. The notice shall state the action, briefly state the reasons for the action, and state the effective time and date, and the duration of the action.

(ii) The Respondent shall be entitled to be represented in all proceedings subsequent to the imposition of the emergency action by legal counsel or any representative of the

Respondent's choosing, except for any member of the Exchange's Board of Directors or Business Conduct Committee, any Exchange employee or any Person substantially related to the emergency action, such as a material witness or a Respondent.

(iii) The Respondent may make a written request in accordance with Rule 704(c) for access to books, documents or other evidence concerning the emergency action that are in the possession or under the control of the Exchange, except that the sixty day time period in Rule 704(c) shall not be applicable and any such request must be made within 10 days from the date of service of the notice of the emergency action.

(iv) The Respondent shall have 10 days from the date of service of the notice of the emergency action to request a hearing regarding the emergency action by providing written notice of the request to the Secretary. In the event that the Respondent requests a hearing regarding the emergency action, the hearing shall be held as soon as reasonably practicable.

(v) The hearing shall be conducted before a BCC Panel pursuant to Rule 706, except that the BCC Panel may determine in accordance with paragraph (a)(iv) above to shorten the fifteen day and five day time periods in Rule 706(b).

(vi) Promptly following the hearing, the BCC Panel shall render a written decision based upon the weight of the evidence contained in the record of the proceeding and shall serve notice of the decision upon the Respondent pursuant to Rule 712 and upon the Exchange. The decision shall include a description of the summary action taken; the reasons for the summary action; a summary of the evidence produced at the hearing; a statement of findings and conclusions; a determination that the summary action should be affirmed, modified or reversed; and a declaration of any action to be taken pursuant to the determination, and the effective date and duration of such action.

(vii) The decision issued by the BCC Panel shall be subject to the review procedures under Rule 710.

(b) If a Clearing Member revokes any authorization granted and guarantee made by it to any Trading Privilege Holder pursuant to Rule 1101(b), such Trading Privilege Holder's Trading Privileges shall be automatically terminated, and such Trading Privilege Holder must obtain another guarantee from a Clearing Member before its Trading Privileges

will be reinstated. If such Trading Privilege Holder fails to obtain such a replacement guarantee within three months from the effective date of the revocation of the guarantee by its previous Clearing Member, its Trading Privileges shall be automatically terminated.

308. Consent to Exchange Jurisdiction

(a) By accessing, or entering any Order into, the CBOE System, and without any need for any further action, undertaking or agreement, a Trading Privilege Holder or Authorized Trader agrees (i) to be bound by, and comply with, the Rules of the Exchange, the Rules of the Clearing Corporation and Applicable Law, in each case to the extent applicable to it, and (ii) to become subject to the jurisdiction of the Exchange with respect to any and all matters arising from, related to, or in connection with, the status, actions or omissions of such Trading Privilege Holder or Authorized Trader.

(b) Any Trading Privilege Holder or Authorized Trader whose Trading Privileges are revoked or terminated, whether pursuant to Rule 307 or Chapter 7, shall remain bound by the Rules of the Exchange, the Rules of the Clearing Corporation and Applicable Law, in each case to the extent applicable to it, and subject to the jurisdiction of the Exchange with respect to any and all matters arising from, related to, or in connection with, the status, actions or omissions of such Trading Privilege Holder or Authorized Trader prior to such revocation or termination.

(c) Any Person initiating or executing a transaction on or subject to the Rules of the Exchange directly or through an intermediary, and any Person for whose benefit such a transaction has been initiated or executed, expressly consents to the jurisdiction of the Exchange and agrees to be bound by and comply with the Rules of the Exchange in relation to such transactions, including, but not limited to, rules requiring cooperation and participation in investigatory and disciplinary processes.

(d) Any Person subject to Rule 308(c) that is not a Trading Privilege Holder or Related Party is bound by and required to comply with the following Rules of the Exchange for purposes of Rule 308(c) to the same extent that a Trading Privilege Holder or Related Party is bound by and required to comply with those Rules of the Exchange: Rules 219, 306, 307, 308, 309, 310(a), 401, 402, 404, 404A, 405, 406, 407, 408, 409, 410, 411, 412, 412A, 413, 414, 415, 416, 417, 418, 419, 420, 511, 512A, 516, 517, 601, 602, 603, 604, 606, 607, 608, 610, 611, 612, 613, 614, [and] 615, 616, 617, 618, 619, and 620, Chapter 7, Chapter 8, Chapter 9, Chapter 10, Rule 1104, every Exchange Contract Specification Chapter, Exchange Policy and Procedures I, II, III, and IV, and the Exchange Fee Schedule.

* * * * *

310. Notices

(a) Except as otherwise provided by the Rules of the Exchange, [Any] any notice required to be given by the Rules of the Exchange or otherwise shall be deemed to have been given:

(i) in person upon delivery of the notice in person to the Person to whom such notice is addressed;

(ii) by mail upon deposit of the notice in the United States mail, enclosed in a postage prepaid envelope;

(iii) by messenger or overnight courier service upon provision of the notice to the messenger or courier service, provided that the delivery method does not require payment of the messenger or courier service fee to deliver the notice by the Person to whom the notice is addressed;

(iv) by facsimile machine upon acknowledgment by the facsimile machine used to transmit the notice of the successful transmission of the notice;

(v) by electronic mail upon electronic transmission of the notice; and

(vi) by telephone when received.

Any such notice must be addressed to its intended recipient at the intended recipient's address (including the intended recipient's business or residence address, facsimile number, electronic address, or telephone number, as applicable) as it appears on the books and records of the Exchange, or if no address appears on such books and records, then at such address as shall be otherwise known to the Exchange, or if no such address appears on such books and records, then in care of the registered agent of the Exchange in the State of Delaware.

(b) Without limiting the generality of the foregoing, the Exchange shall publish a notice with respect to each addition to, or modification of, the Rules of the Exchange, in a form and manner that is reasonably designed to enable each Trading Privilege Holder to become aware of and familiar with, and to implement any necessary preparatory measures to be taken by it with respect to, such addition or modification, prior to the effective date thereof; *provided* that any failure of the Exchange to so publish a notice shall not affect the effectiveness of the addition or modification in question. Each Trading Privilege Holder shall provide its

respective Authorized Traders with copies of any such notice. For purposes of publication in accordance with the first sentence of this Rule 310(b), it shall be sufficient (without limiting the discretion of the Exchange as to any other reasonable means of communication) if a notice is (a) sent to each Trading Privilege Holder by mail, recognized courier service, facsimile or electronic mail (including by means of a hyperlink included in an electronic mail message), to the address, facsimile number or electronic mail address (as applicable) as is appears on the books and records of the Exchange and (b) published on the Exchange's website.

* * * * *

402. Trading Hours

(a) The Exchange shall from time to time determine (i) on which days the Exchange shall be regularly open for business in any Contract ("Business Days") and (ii) during which hours trading in any Contract may regularly be conducted on such days ("Trading Hours"). Trading Hours shall include any regular and extended trading hours under the rules governing the relevant Contract. Except to the extent expressly permitted by the Rules of the Exchange, no Trading Privilege Holder (including its Authorized Traders) shall make any bid or offer for, or engage in any transaction in, any Contract before or after such hours.

(b) The Exchange may modify its regular Business Days and Trading Hours to not be open for business or to have shortened trading hours in connection with a holiday or a period of mourning.

(c) [(b)] The Exchange may from time to time adopt procedures for the opening or closing of trading in any Contract.

Entry and Execution of Orders

403. Order Entry

(a) All Orders shall be entered into the CBOE System by electronic transmission through a CBOE Workstation, and the Exchange shall maintain an electronic record of those entries. Each Trading Privilege Holder (including its Authorized Traders) shall be responsible in every respect for any and all Orders entered by it (including its Related Parties) and for compliance by its Related Parties with this Rule 403. Prior to entering any Order, the relevant Related Party shall sign onto the CBOE System by inputting the user identification assigned for such purpose by the Exchange. Each Order must contain the following information: (i) whether such Order is a buy or sell Order; (ii) Order type; (iii) commodity; (iv) contract month; (v) price; (vi) quantity; (vii) account type; (viii) account designation (the number assigned by a Trading Privilege Holder

to each of its accounts); (ix) in the case of Orders for Options, strike price, type of option (put or call) and expiration month; and (x) such additional information as may be prescribed from time to time by the Exchange.

(b) With respect to orders received by a Trading Privilege Holder (including its Authorized Traders) which are immediately entered into the CBOE System, no record needs to be kept by such Trading Privilege Holder, except as may be required pursuant to Rule 501 and Applicable Law. However, if a Trading Privilege Holder (including its Authorized Traders) receives orders which cannot be immediately entered into the CBOE System, such Trading Privilege Holder must prepare an order form in a non-alterable written medium, which shall be time-stamped and include the account designation, date and other required information. Each such form must be retained by the Trading Privilege Holder for at least five years from the time it is prepared. Any such Orders must be entered into the CBOE System, in the order they were received, as soon as they can be entered into the CBOE System.

(c) Each Trading Privilege Holder shall maintain front-end audit trail information for all electronic orders entered into the CBOE [system] System, including order modifications and cancellations. This audit trail must contain all order entry, modification, cancellation and response receipt time(s) as well as all Financial Information Exchange interface (FIX) tag information and fields or CBOE Market Interface (CMi) order structure, as applicable.

404. Acceptable Orders

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

(a) Market Order. A "Market Order" is an order to buy or sell a stated number of Contracts at the best price available on the Exchange.

(b) Limit Order. A "Limit Order" is an order to buy or sell a stated number of Contracts at a specified price, or at a better price.

(c) Cancel Order. A "Cancel Order" is an order that cancels, partially or fully, an existing buy or sell order.

(d) Cancel Replace Order. A "Cancel Replace Order" is an order to cancel an existing buy or sell order and replace it with a new order for a different quantity or price.

(e) Day Order. A "Day Order" is an order for any Contract that, unless executed, remains as an executable Order in the CBOE System

until the end of the Business Day for such Contract on which it is entered.

(f) Good-'til-Canceled Order. A "Good-'til-Canceled Order" is an order that, unless executed, remains in the CBOE System until it is withdrawn by the Trading Privilege Holder (including its Authorized Traders) who placed it or the Expiration Date of the Contract to which it relates, whichever occurs first.

(g) Spread Order. A "Spread Order" is an order to simultaneously buy and sell at least two Contracts in a form accommodated by the CBOE System.

(h) Contingency Orders. A "Contingency Order" is an order that is contingent upon a condition being satisfied while the order remains in the CBOE System, and may be one of the following order types:

(i) *All or None Order*. An "All or None Order" is an order which is to be executed in its entirety at its limit price.

(ii) *Fill or Kill Order*. A "Fill or Kill Order" is an order which is automatically cancelled unless executed in its entirety within a short period of time after its receipt.

(iii) *Immediate or Cancel Order*. An "Immediate or Cancel Order" is a Market Order or Limit Order which is automatically cancelled unless executed in whole or in part within a short period of time after its receipt.

[(iv) *Stop Order*. A "Stop Order" is an order to buy or sell when the market for a particular Contract reaches a specified price. A Stop Order to buy becomes a Market Order when the relevant Contract trades or is bid at or above the stop price. A Stop Order to sell becomes a Market Order when the relevant Contract trades or is offered at or below the stop price.]

(iv) [(v)]*Stop Limit Order*. A "Stop Limit Order" is an order to buy or sell when the market for a particular Contract reaches a specified price. A Stop Limit Order to buy becomes a Limit Order when the relevant Contract trades or is bid at or above the stop limit price. A Stop Limit Order to sell becomes a Limit Order when the relevant Contract trades or is offered at or below the stop limit price.

404A. Trade at Settlement Transactions

(a) A Trade at Settlement ("TAS") transaction is a transaction in a Contract at a price or premium equal to the daily settlement price, or a specified differential above or below the daily

settlement price, for the Contract on a trading day. The actual amount of a TAS transaction price or premium is determined subsequent to the transaction based upon the daily settlement price of the Contract.

(b) The rules governing a Contract shall specify if TAS transactions are permitted in that Contract. If TAS transactions are permitted in a Contract, the rules governing the Contract shall set forth the extent to which TAS transactions in that Contract may occur on the CBOE System, as spread transactions, as Block Trades and/or as Exchange of Contract for Related Position transactions; the trading hours for TAS transactions in that Contract; the permissible price range from the daily settlement price for each of the permitted types of TAS transactions in that Contract; and the permissible minimum increment for each of the permitted types of TAS transactions in that Contract.

(c) TAS orders and quotes in a Contract will interact only with other TAS orders and quotes in the Contract and will not interact with non-TAS orders and quotes in the Contract. The same execution priorities that are applicable to non-TAS orders and quotes in a Contract shall also apply with respect to TAS orders and quotes in the Contract, unless otherwise specified in the rules governing the Contract.

(d) All TAS orders are required to be Day Orders. TAS market orders [and TAS stop orders] are not permitted.

(e) If TAS spread transactions are permitted in a Contract, (i) the provisions of Exchange Policy and Procedure II relating to spread order processing shall be applicable to those transactions, except that (A) any TAS spreads are required to be two-legged spreads where the ratio of the number of contracts in one leg to the number of contracts in the other leg is 1:1 and (B) paragraphs (a), (d) and (e)(iii) of Exchange Policy and Procedure II shall not apply to TAS spread transactions and (ii) any TAS Block Trade spread transactions are required to be two-legged spreads where the ratio of the number of contracts in one leg to the number of contracts in the other leg is 1:1.

* * * * *

414. Exchange of Contract for Related Position

(a) A bona *fide* Exchange of Contract for Related Position may be entered into with respect to any Contract designated by the Exchange and in accordance with the applicable trading increments set forth in the rules governing such Contract, at a price mutually agreed upon by the parties to such transaction. Each Exchange of Contract for Related Position must contain the following three essential elements:

(i) A transaction in a Contract that is listed on the Exchange and a transaction in a related position or an option on the related position (known as the "Related Position");

(ii) An exchange of Contract for the Related Position that involves an actual transfer of ownership, which must include (x) possession, right of possession, or right to future possession of each leg prior to the exchange, (y) an ability to perform the Exchange of Contract for Related Position, and (z) a transfer of title of the Contract and Related Position upon consummation of the exchange; and

(iii) Separate parties, such that the accounts involved on each side of the Exchange of Contract for Related Position have different beneficial ownership or are under separate control, provided that separate profit centers of a futures commission merchant operating under separate control are deemed to be separate parties for purposes of this Rule 414.

(b) For purposes of this Rule 414, the term "Related Position" shall include, but not be limited to, a security, an option, a Contract, any commodity as that term is defined by the CEA, or a group or basket of any of the foregoing. The Related Position being exchanged need not be the same as the underlying of the Contract transaction being exchanged, but the Related Position must have a high degree of price correlation to the underlying of the Contract transaction so that the Contract transaction would serve as an appropriate hedge for the Related Position.

(c) In every Exchange of Contract for Related Position, one party must be the buyer of the Related Position and the seller of the corresponding Contract and the other party must be the seller of the Related Position and the buyer of the corresponding Contract. Further, the quantity of the Related Position traded in an Exchange of Contract for Related Position must correlate to the quantity represented by the Contract portion of the transaction.

(d) Exchange of Contract for Related Position transactions with respect to any Contract may occur during and outside of the Trading Hours set forth in the rules governing such Contract, unless otherwise specified in those rules. Each party to an Exchange of Contract for Related Position shall comply with all applicable Rules of the Exchange other than those which by their terms only apply to trading through the CBOE System.

(e) Each Exchange of Contract for Related Position shall be designated as such, and cleared through the Clearing Corporation as if it were a transaction executed through the CBOE System.

(f) Every Trading Privilege Holder handling, executing, clearing or carrying Exchange of Contract for Related Position transactions or positions shall identify and mark as such by appropriate symbol or designation all Exchange of Contract for Related Position transactions or positions and all orders, records and memoranda pertaining thereto.

(g) Each Trading Privilege Holder involved in any Exchange of Contract for Related Position shall either maintain records evidencing compliance with the criteria set forth in this Rule 414 or be able to obtain such records from its Customer involved in the Exchange of Contract for Related Position. Such records shall include, without limitation, documentation relating to the Related Position portion of the Exchange of Contract for Related Position transaction, including those documents customarily generated in accordance with Related Position market practices which demonstrate the existence and nature of the Related Position portion of the transaction. Upon request by the Exchange and within the time frame designated by the Exchange, any such Trading Privilege Holder shall produce satisfactory evidence that an Exchange of Contract for Related Position transaction meets the requirements set forth in this Rule 414.

(h) [(g)] Each Trading Privilege Holder executing an Exchange of Contract for Related Position transaction must have at least one designated Person that is either a Trading Privilege Holder or a Related Party of a Trading Privilege Holder and is pre-authorized by a Clearing Member to report Exchange of Contract for Related Position transactions on behalf of the Trading Privilege Holder ("Authorized Reporter"). When an entity designated as an Authorized Reporter reports an Exchange of Contract for Related Position transaction, the report must be made by one Related Party of that entity respecting that specific transaction. Only an Authorized Reporter of a Trading Privilege Holder will be allowed to report an Exchange of Contract for Related Position transaction on behalf of that Trading Privilege Holder. A Clearing Member that authorizes an Authorized Reporter to report Exchange of Contract for Related Position transactions on behalf of a Trading Privilege Holder accepts responsibility for all such transactions reported to the Exchange by that Authorized Reporter on behalf of the Trading Privilege Holder. Any designation of an Authorized Reporter or revocation of a previous designation of an Authorized Reporter, including any termination of the guarantee provided for in the preceding sentence, must be made in a form and manner prescribed by the Exchange and shall become effective as soon as the Exchange is able to process the designation or revocation.

(i) [(h)] Each party to an Exchange of Contract for Related Position transaction is obligated to have an Authorized Reporter call the Help Desk after the transaction is agreed upon to notify the Exchange of the terms of the transaction. For this purpose, agreement to the transaction includes,

without limitation, agreement to the actual price or premium of the Contract leg of the transaction (except in the case of a TAS Exchange of Contract for Related Position transaction that is permitted by the rules governing the relevant Contract, in which case agreement to the transaction includes, without limitation, agreement upon whether the price or premium of the Contract leg of the transaction will be the daily settlement price or an agreed upon differential above or below the daily settlement price). Unless otherwise specified in the rules governing the relevant Contract,

(i) if the transaction is agreed upon between the time that Trading Hours commence in the relevant Contract and 3:15 p.m. Chicago time, this notification to the Help Desk shall be made without delay and by no later than ten minutes after the transaction is agreed upon (in which event the Help Desk will report the transaction and provide a written transaction summary on that day pursuant to paragraph ([j]k) below);

(ii) if the transaction is agreed upon between 3:15 p.m. Chicago time and 3:25 p.m. Chicago time, this notification to the Help Desk shall be made either

(A) on the day the transaction is agreed upon by no later than 3:25 p.m. Chicago time (in which event the Help Desk will report the transaction and provide a written transaction summary on that day pursuant to paragraph ([j]k) below) or

(B) on the following Business Day by no later than ten minutes from the time that Trading Hours commence in the relevant Contract (in which event the Help Desk will report the transaction and provide a written transaction summary on that Business Day pursuant to paragraph ([j]k) below); and

(iii) if the transaction is agreed upon after 3:25 p.m. Chicago time and prior to the time that Trading Hours commence in the relevant Contract on the following Business Day, this notification to the Help Desk shall be made on that following Business Day by no later than ten minutes from the time that Trading Hours commence in the relevant Contract (in which event the Help Desk will report the transaction and provide a written transaction summary on that Business Day pursuant to paragraph ([j]k) below).

(j) [(i)] The notification to the Help Desk of an Exchange of Contract for Related Position transaction shall include (i) the identity, contract month,

price or premium, quantity, and time of execution of the relevant Contract leg (i.e., the time the parties agreed to the Exchange of Contract for Related Position transaction), (ii) the counterparty Clearing Member, (iii) the identity, quantity and price of the Related Position, and (iv) any other information required by the Exchange. After the notification of an Exchange of Contract for Related Position transaction has been provided to the Help Desk, the Exchange of Contract for Related Position transaction may not be changed and the Exchange of Contract for Related Position transaction may not be cancelled (provided, however, that corrections to any inaccuracies in the transaction summary of the Exchange of Contract for Related Position transaction provided by the Help Desk may be made as provided in paragraph ([j]k) below).

(k) [(j)] The Help Desk will report the Contract leg of the transaction to the CBOE System and provide a written transaction summary to the Authorized Reporters that reported the transaction to the Help Desk on behalf of each party to the transaction. The transaction summary will include the transaction information reported to the Help Desk by the Authorized Reporters and any other relevant information included by the Help Desk. The Authorized Reporters and the parties to the transaction shall have thirty minutes from the time the Help Desk transmits the transaction summary to Authorized Reporters to notify the Help Desk of any inaccuracies in the content of the transaction summary and of the corrections to any inaccurate information. It is the responsibility of the buying and selling parties to effect any subsequent allocations or necessary updates to non-critical matching fields utilizing a post-trade processing system designated by the Exchange.

(l) [(k)] The Help Desk may review an Exchange of Contract for Related Position transaction for compliance with the requirements of this Rule and may determine not to permit the Exchange of Contract for Related Position transaction to be consummated, or may bust an Exchange of Contract for Related Position transaction for which the Contract leg has been posted or for which the Help Desk has transmitted a transaction summary, if the Help Desk determines that the Exchange of Contract for Related Position transaction does not conform with those requirements.

(m) [(l)] The posting of the Contract leg of an Exchange of Contract for Related Position transaction by the Help Desk or the transmission by the Help Desk of a transaction summary for the transaction does not constitute a determination by the Exchange that the Exchange of Contract for Related Position transaction was effected in conformity with the requirements of this Rule. An Exchange of Contract for Related Position transaction for which the Contract leg is posted by the Help Desk or for which the Help Desk has transmitted a transaction summary that does not conform to the requirements of this Rule shall be processed and given effect if it is not busted, but will be subject to appropriate disciplinary

action in accordance with the Rules of the Exchange.

(n) [(m)] Any Exchange of Contract for Related Position transaction in violation of the requirements of this Rule shall constitute conduct which is inconsistent with just and equitable principles of trade.

415. Block Trading

(a) If and to the extent permitted by the rules governing the applicable Contract, Trading Privilege Holders may enter into transactions outside the CBOE System, at prices mutually agreed, provided all of the following conditions are satisfied (such transactions, "Block Trades"):

(i) Each buy or sell order underlying a Block Trade must (A) state explicitly that it is to be, or may be, executed by means of a Block Trade and (B) be for at least such minimum number of Contracts as will from time to time be specified by the Exchange; *provided* that only (x) a commodity trading advisor registered under the CEA, (y) an investment adviser registered as such with the Securities and Exchange Commission that is exempt from regulation under the CEA and Commission Regulations thereunder and (z) any Person authorized to perform functions similar or equivalent to those of a commodity trading advisor in any jurisdiction outside the United States of America, in each case with total assets under management exceeding US$25 million, may satisfy this requirement by aggregating orders for different accounts that are under management or control by such commodity trading advisor, investment adviser, or other Person. Other than as provided in the foregoing sentence, orders for different accounts may not be aggregated to satisfy Block Trade size requirements. For purposes of this Rule, if the Block Trade is executed as a spread order (as defined in Rule 404(g)) or as a strip (*i.e.*, a transaction with legs in multiple contract months that are exclusively for the purchase or exclusively for the sale of a Contract), the total quantity of the transaction and the quantity of each leg of the transaction must meet any designated minimum sizes applicable to those types of transactions that are set forth in the rules governing the relevant Contract.

(ii) Each party to a Block Trade must qualify as an "eligible contract participant" (as such term is defined in Section 1a(12) of the CEA); *provided* that, if the Block Trade is entered into on behalf of Customers by (A) a commodity trading advisor registered under the Act, (B) an investment adviser registered as such with the Securities and Exchange Commission that is exempt from regulation under the Act and Commission

Regulations thereunder or (C) any Person authorized to perform functions similar or equivalent to those of a commodity trading advisor in any jurisdiction outside the United States of America, in each case with total assets under management exceeding US$25 million, then only such commodity trading advisor or investment adviser, as the case may be, but not the individual Customers, need to so qualify.

(b) 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, at the relevant time, of orders in the order book for the same Contract, the same contract on other markets and similar or related contracts on the Exchange and other markets, including without limitation the underlying cash and futures markets; (iii) the prices and sizes, at the relevant time, of transactions in the same Contract, the same contract on other markets and similar or related contracts on the Exchange and other markets, including without limitation the underlying cash and futures markets; (iv) the circumstances of the parties to the Block Trade; and (v) whether the Block Trade is executed as a spread order or as a strip.

The following guidelines shall apply in determining whether the execution price of a Block Trade that is not executed as a spread order or as a strip is "fair and reasonable." These guidelines are general and may not be applicable in each instance. Whether the execution price of a Block Trade is "fair and reasonable" depends upon the particular facts and circumstances.

In the event the quantity present in the order book is greater or equal to the quantity needed to fill an order of the size of the Block Trade, it would generally be expected that the Block Trade price would be better than the price present in the order book. In the event the quantity present in the order book is less than the quantity needed to fill an order of the size of the Block Trade, it would generally be expected that the Block Trade price would be relatively close to the price present in the order book and that the amount of the differential between the two prices would be smaller to the extent that the differential between the quantity present in the order book and the Block Trade quantity is smaller.

(c) Block Trades with respect to any Contract may occur during and outside of the Trading Hours set forth in the rules governing such Contract, unless otherwise specified in those rules. Each party to a Block Trade shall comply with all applicable Rules of the Exchange other than those which by their terms only apply to trading through the CBOE System.

(d) Each Block Trade shall be designated as such, and cleared through the Clearing Corporation as if it were a transaction executed through the

CBOE System. The Exchange will publicize information identifying the trade as a Block Trade and identifying the relevant Contract, contract month, price or premium, quantity for each Block Trade and, if applicable, the underlying commodity, whether the transaction involved a put or a call and the strike price immediately after such information has been reported to the Exchange.

(e) Each Trading Privilege Holder that is party to a Block Trade shall record the following details on its order ticket: the Contract (including the delivery or expiry month) to which such Block Trade relates; the number of Contracts traded; the price of execution or premium; the time of execution (i.e., the time the parties agreed to the Block Trade); the identity of the counterparty; that the transaction is a Block Trade; and, if applicable, details regarding the Customer for which the Block Trade was executed, the underlying commodity, whether the transaction involved a put or a call and the strike price. Every Trading Privilege Holder handling, executing, clearing or carrying Block Trades or positions shall identify and mark as such by appropriate symbol or designation all Block Trades or positions and all orders, records and memoranda pertaining thereto. Upon request by the Exchange and within the time frame designated by the Exchange, such Trading Privilege Holder shall produce satisfactory evidence, including the order ticket referred to in the preceding sentence, that the Block Trade meets the requirements set forth in this Rule 415.

(f) Each Trading Privilege Holder executing a side of a Block Trade must have at least one designated Person that is either a Trading Privilege Holder or a Related Party of a Trading Privilege Holder and is pre-authorized by a Clearing Member to report Block Trades on behalf of the Trading Privilege Holder ("Authorized Reporter"). If an entity designated as an Authorized Reporter reports a Block Trade, the report must be made by a Related Party of that entity. Only an Authorized Reporter of a Trading Privilege Holder will be allowed to report a Block Trade on behalf of that Trading Privilege Holder. A Clearing Member that authorizes an Authorized Reporter to report Block Trades on behalf of a Trading Privilege Holder accepts responsibility for all such transactions reported to the Exchange by that Authorized Reporter on behalf of the Trading Privilege Holder. Any designation of an Authorized Reporter or revocation of a previous designation of an Authorized Reporter, including any termination of the guarantee provided for in the preceding sentence, must be made in a form and manner prescribed by the Exchange and shall become effective as soon as the Exchange is able to process the designation or revocation.

(g) Each party to a Block Trade is obligated to have an Authorized Reporter call the Help Desk after the transaction is agreed upon to notify the Exchange of the terms of the transaction. For this purpose, agreement

to the transaction includes, without limitation, agreement to the actual price or premium of the Block Trade (except in the case of a TAS Block Trade that is permitted by the rules governing the relevant Contract, in which case agreement to the transaction includes, without limitation, agreement upon whether the price or premium of the Block Trade will be the daily settlement price or an agreed upon differential above or below the daily settlement price). Unless otherwise specified in the rules governing the relevant Contract,

(i) if the transaction is agreed upon between the time that Trading Hours commence in the relevant Contract and 3:15 p.m. Chicago time, this notification to the Help Desk shall be made without delay and by no later than ten minutes after the transaction is agreed upon (in which event the Help Desk will report the transaction and provide a written transaction summary on that day pursuant to paragraph (i) below);

(ii) if the transaction is agreed upon between 3:15 p.m. Chicago time and 3:25 p.m. Chicago time, this notification to the Help Desk shall be made either

(A) on the day the transaction is agreed upon by no later than 3:25 p.m. Chicago time (in which event the Help Desk will report the transaction and provide a written transaction summary on that day pursuant to paragraph (i) below) or

(B) on the following Business Day by no later than ten minutes from the time that Trading Hours commence in the relevant Contract (in which event the Help Desk will report the transaction and provide a written transaction summary on that Business Day pursuant to paragraph (i) below); and

(iii) if the transaction is agreed upon after 3:25 p.m. Chicago time and prior to the time that Trading Hours commence in the relevant Contract on the following Business Day, this notification to the Help Desk shall be made on that following Business Day by no later than ten minutes from the time that [regular] Trading Hours commence in the relevant Contract (in which event the Help Desk will report the transaction and provide a written transaction summary on that Business Day pursuant to paragraph (i) below).

(h) The notification to the Help Desk with respect to a Block Trade shall include the relevant Contract, contract month, price or premium, quantity, time of execution (i.e., the time the parties agreed to the Block

Trade), counterparty Clearing Member and, if applicable, the underlying commodity, whether the transaction involved a put or a call and the strike price, and any other information that is required by the Exchange. After the notification of a Block Trade has been provided to the Help Desk, the terms of the Block Trade may not be changed and the Block Trade may not be cancelled (provided, however, that corrections to any inaccuracies in the transaction summary of the Block Trade provided by the Help Desk may be made as provided in paragraph (i) below).

(i) The Help Desk will report both sides of the Block Trade to the CBOE System and provide a written transaction summary to the Authorized Reporters that reported the Block Trade to the Help Desk on behalf of each party to the Block Trade. The transaction summary will include the trade information reported to the Help Desk by the Authorized Reporters and any other relevant information included by the Help Desk. The Authorized Reporters and the parties to the Block Trade shall have thirty minutes from the time the Help Desk transmits the transaction summary to Authorized Reporters to notify the Help Desk of any inaccuracies in the content of the transaction summary and of the corrections to any inaccurate information. It is the responsibility of the buying and selling Trading Privilege Holders to effect any subsequent allocations or necessary updates to non-critical matching fields utilizing a post-trade processing system designated by the Exchange.

(j) A Trading Privilege Holder may execute an Order placed for a non-discretionary Customer account by means of a Block Trade only if the Customer has previously consented thereto. This consent may be obtained on either a trade-by-trade basis or for all such Orders.

(k) The Help Desk may review a Block Trade for compliance with the requirements of this Rule and may determine not to permit the Block Trade to be consummated, or may bust a Block Trade that has been posted or for which the Help Desk has transmitted a transaction summary, if the Help Desk determines that the Block Trade does not conform with those requirements.

(l) The posting of a Block Trade by the Help Desk or the transmission by the Help Desk of a transaction summary for a Block Trade does not constitute a determination by the Exchange that the Block Trade was effected in conformity with the requirements of this Rule. A Block Trade that is posted by the Help Desk or for which the Help Desk has transmitted a transaction summary that does not conform to the requirements of this Rule shall be processed and given effect if it is not busted but will be subject to appropriate disciplinary action in accordance with the Rules of the Exchange.

(m) Any Block Trade in violation of the requirements of this Rule shall

constitute conduct which is inconsistent with just and equitable principles of trade.

* * * * *

417A. Market-Wide Trading Halts Due to Extraordinary Market Volatility

(a) The Exchange will halt trading in all Contracts and shall not reopen for the time periods specified in this Rule if there is a Level 1, 2 or 3 Market Decline.

(b) For purposes of this Rule:

(i) A "Market Decline" means a decline in price of the S&P 500 Index between 8:30 a.m. and 3:00 p.m. (all times are CT) on a trading day as compared to the closing price of the S&P 500 Index for the immediately preceding trading day. The Level 1, Level 2 and Level 3 Market Declines that will be applicable for the trading day will be the levels publicly disseminated by securities information processors.

(ii) A "Level 1 Market Decline" means a Market Decline of 7%.

(iii) A "Level 2 Market Decline" means a Market Decline of 13%.

(iv) A "Level 3 Market Decline" means a Market Decline of 20%.

(b) Halts in Trading:

(i) If a Level 1 or Level 2 Market Decline occurs after 8:30 a.m. and up to and including 2:25 p.m. or, in the case of an early scheduled close, 11:25 a.m., the Exchange shall halt trading in all Contracts for 15 minutes after a Level 1 or Level 2 Market Decline. The Exchange shall halt trading based on a Level 1 or Level 2 Market Decline only once per trading day. The Exchange will not halt trading if a Level 1 or Level 2 Market Decline occurs after 2:25 p.m. or, in the case of an early scheduled close, 11:25 a.m.

(ii) If a Level 3 Market Decline occurs at any time during the trading day, the Exchange shall halt trading in all Contracts until the next trading day.

(c) If a circuit breaker is initiated in all Contracts due to a Level 1 or Level 2 Market Decline, the Exchange may resume trading in each Contract anytime after the 15-minute halt period.

(d) This Rule shall become effective on February 4, 2013.

(e) Nothing in this Rule shall be construed to limit the ability of the Exchange to halt or suspend trading in any Contract pursuant to any other Exchange rule or policy.

418. Emergencies

(a) General. If the President, or any individual designated by the President [and approved by the Board], determines on behalf of the Board that an Emergency exists, the President or such designee, as the case may be, may take or place into immediate effect a temporary Emergency action or rule. Any such action or rule may provide for, or may authorize the Exchange, the Board or any committee thereof to undertake actions necessary or appropriate to respond to the Emergency, including such actions as:

(i) limiting trading to liquidation only, in whole or in part;

(ii) extending or shortening, as applicable, the Expiration Date or Expiration Month of any Contract;

(iii) extending the time of delivery, changing delivery points or the means of delivery provided in the rules governing any Contract;

(iv) imposing or modifying position or price limits or intraday market restrictions with respect to any Contract;

(v) ordering the liquidation of Contracts, the fixing of a settlement price or any reduction in positions;

(vi) ordering the transfer of Contracts, and the money, securities, and property securing such Contracts, held on behalf of Customers by any Trading Privilege Holder to one or more other Trading Privilege Holders willing to assume such Contracts or obligated to do so;

(vii) extending, limiting or changing hours of trading;

(viii)declaring a fast market in a Contract;

(ix) temporarily [increasing] the Threshold Width, pre-

trade order size limit or price reasonability ranges for a Contract;

(x) suspending, [or] curtailing, halting or delaying the opening of trading in any or all Contracts, or modifying circuit breakers;

(xi) requiring Clearing Members, Trading Privilege Holders or Customers to meet special margin requirements; [or]

(xii) altering any settlement terms or conditions of a Contract;

(xiii) [(xii)] modifying or suspending any provision of the Rules of the Exchange or the Rules of the Clearing Corporation[.] or;

(xiii) providing for the carrying out of such actions through the Exchange's agreements with a third-party provider of clearing or regulatory services.

The Exchange has the authority to independently respond to emergencies in an effective and timely manner consistent with the nature of the emergency, as long as all such actions taken by the Exchange are made in good faith to protect the integrity of the markets. Additionally, the Exchange has the authority to respond to emergencies in consultation and cooperation with the Commission and is also authorized to take such market actions as may be directed by the Commission. In situations where a Contract is fungible with a Contract on another platform, emergency action to liquidate or transfer open interest must be as directed, or agreed to, by the Commission or the Commission's staff.

(b) Physical Emergency. If the President, or any individual designated by the President [and approved by the Board], determines on behalf of the Board that the physical functions of the Exchange are, or are threatened to be, severely and adversely affected by a Physical Emergency (such as a fire or other casualty, bomb threats, terrorist acts, substantial inclement weather, power failures, communications breakdowns, computer system breakdowns, screen-based trading system breakdowns or transportation breakdowns), such Person may take any action that he or she may deem necessary or appropriate to respond to such Physical Emergency, including such actions as:

(i) closing the Exchange;

(ii) delaying the opening of trading in one or more Contracts; or

(iii) suspending, curtailing or halting trading in or

extending or shortening trading hours for one or more Contracts.

(c) In the event that any Emergency or Physical Emergency action has been taken pursuant to paragraph (a) or (b) above, any Person who is authorized to take such action may order the removal of any restriction previously imposed based upon a determination by such Person that the Emergency or Physical Emergency that gave rise to such restriction no longer exists or has sufficiently abated to permit the functions of the Exchange to continue in an orderly manner. Any Emergency or Physical Emergency action placed into effect in accordance with paragraph (a) or (b) above may be reviewed by the Board at any time and may be revoked, suspended or modified by the Board. Any rule placed into effect in accordance with paragraph (a) above may remain in effect for up to 30 Business Days, after which time it must be approved by the Board to remain in effect. Any such rule shall be reviewed by the Board as soon as practicable under the circumstances, and may be revoked, suspended or modified by the Board.

(d) Notification and Recording. The Exchange will [telephonically] notify the Commission of: (i) any rule placed into effect pursuant to paragraph (a) above as soon as practicable after the decision is made to implement the rule and (ii) any action taken in response to an Emergency or Physical Emergency pursuant to paragraphs (a) or (b) above (other than the declaration of a fast market in a Contract) as soon as practicable after the action is taken. The Exchange will submit to the Commission any rule placed into effect pursuant to paragraph (a) above, and information on all regulatory actions carried out by the Exchange pursuant to this Rule 418, in accordance with Commission Regulation § 40.6. The decision-making process with respect to, and the reasons for, any action taken pursuant to this Rule 418 will be recorded in writing.

(e) Conflicts of Interest. The conflict of interest provisions set forth in Rule 214(b) and the related documentation requirements set forth in Rule 214(c) shall apply, with any such modifications or adaptations as may be necessary or appropriate under the circumstances, to the taking of any action under this Rule 418 by the President, or his or her designee.

* * * * *

420. Transfers of Positions

(a) Existing trades may be transferred either on the books of a Clearing Member or from one Clearing Member to another Clearing Member to:

(i) correct errors in an existing Contract, provided that the original trade documentation confirms the error;

(ii) transfer an existing Contract from one account to another where no change in ownership is involved; or

(iii) transfer an existing Contract through operation of law from death or bankruptcy.

(b) Upon written request, the Exchange may, in its sole discretion, allow the transfer of a position:

(i) as a result of a merger, asset purchase, consolidation, or similar non-recurring transaction for a Person;

(ii) as a result of an Authorized Trader moving from one Trading Privilege Holder organization to another Trading Privilege Holder organization; or

(iii) [(ii)] if the President or his designee determines that allowing the transfers would be in the interest of preserving an orderly market, the protection of market participants, or the best interest of the Exchange or is otherwise warranted due to unusual or extenuating circumstance.

(c) The transfer of positions pursuant to this Rule may be effected at the:

(i) original trade prices of the positions that appear on the books of the transferring Clearing Member, in which case the records of the transfer must indicate the original trade dates for the positions;

(ii) mark-to-market prices of the positions on the day of the transfer;

(iii) mark-to-market prices of the positions on the trading day prior to the transfer; or

(iv) the then current market price of the positions.

Each Clearing Member that is a party to a transfer of positions must make and retain records stating the nature of the transaction; the date of the transfer; the transfer prices and the date of those prices (including the "as of date," if applicable); the name of the counter-party Clearing Member; and any other information required by the Clearing Corporation.

* * * * *

501. Books and Records

(a) Each Trading Privilege Holder and Clearing Member shall prepare and keep current all books, ledgers and other similar records required to be kept by it pursuant to the CEA, Commission Regulations, the Exchange Act, Exchange Act Regulations, and the Rules of the Exchange, and shall prepare and keep current such other books and records and adopt such forms as the Exchange may from time to time prescribe. Such books and records shall include, without limitation, records of the activity, positions and transactions of each Trading Privilege Holder and Clearing Member in the underlying commodity or reference market and related derivatives markets in relation to a Contract. Such books and records shall be made available to the Exchange upon request in a form and manner prescribed by the Exchange and within the time frame designated by the Exchange.

(b) With respect to each order, bid, offer or other message transmitted to the CBOE System by an Authorized Trader of a Trading Privilege Holder, the Trading Privilege Holder shall keep a record of which Authorized Trader of the Trading Privilege Holder caused that order, bid, offer or other message to be transmitted to the CBOE System.

(c) If a Contract listed on the Exchange is settled by reference to the price of a contract or commodity traded in another venue, including a price or index derived from prices on another designated contract market, Trading Privilege Holders shall make available to the Exchange upon request in a form and manner prescribed by the Exchange and within the time frame designated by the Exchange information and their books and records regarding their activities in the reference market.

502. Inspection and Delivery

Each Trading Privilege Holder and Clearing Member shall keep all books and records required to be kept by it pursuant to the Rules of the Exchange for a period of five years from the date on which they are first prepared, unless otherwise provided in the Rules of the Exchange or required by law. Such books and records shall be readily accessible during the first two years of such five-year period. During such five-year period, all such books and records shall be made available for inspection by, and copies thereof shall be delivered to, the Exchange and its authorized representatives upon request in a form and manner prescribed by the Exchange and within the time frame designated by the Exchange and its authorized representatives.

* * * * *

503A. Reporting by Futures Commission Merchants and Introducing Brokers

(a) Each Trading Privilege Holder that is a Futures Commission Merchant or Introducing Broker shall, in a form and manner prescribed by

the Exchange, concurrently file with the Exchange a copy of all Form 1-FR-FCM, Form 1-FR-IB or FOCUS Report Part II, IIA or Part II CSE submissions, as applicable, made by the Trading Privilege Holder.

(b) Each Trading Privilege Holder that is a Futures Commission Merchant and (i) is not Clearing Member or (ii) is a Clearing Member that utilizes another Clearing Member for purposes of clearing Exchange Contracts shall, in a form and manner prescribed by the Exchange, provide a report to the Exchange on a daily basis which sets forth the positions, if any, in Exchange Contracts of the Trading Privilege Holder's customers held by any Clearing Member in the customer range at the Clearing Corporation.

504. Authority of the [President] Exchange to Impose Restrictions

Whenever a Trading Privilege Holder or Clearing Member is subject to the early warning requirements set forth in Commission Regulation § 1.12 or, if applicable, Exchange Act Regulation § 17a-11, the [President, or his or her designee,] Exchange may impose such conditions or restrictions on the business and operations of such Trading Privilege Holder or Clearing Member, as the case may be, as the [President, or his or her designee,] Exchange may deem necessary [or appropriate] to protect the best interest of the marketplace, including, without limitation, for the protection of Customers, other Trading Privilege Holders, other Clearing Members or the Exchange. The procedures set forth in Rule 307(a) shall be applicable to any such action.

* * * * *

512A. Denial of Access

The Exchange shall post on its website a list of any Persons that are denied access to the Exchange by the Exchange. No Trading Privilege Holder or Related Party shall transmit any Order to the Exchange that is for the account of any such Person.

System Security, Risk Controls and Business Continuity Preparations

513. System Security

(a) Each Trading Privilege Holder shall at all times have at least one employee or agent (the "Responsible Trader") designated as its administrator with respect to the use of the CBOE System by such Trading Privilege Holder (including its Authorized Traders). The Exchange may prescribe such qualification standards for Responsible Traders as it may from time to time determine necessary or advisable. Among other things,

each Responsible Trader shall (i) have full control over access to the CBOE System by the Trading Privilege Holder (including its Authorized Traders) represented by such Responsible Trader and (ii) be able to contact the Help Desk, if required, in order to request withdrawal, in a form and manner prescribed by the Exchange, of any and all Orders placed, or purported to be placed, by such Trading Privilege Holder (including its Authorized Traders). The Responsible Trader or Responsible Traders of any Trading Privilege Holder shall also be solely responsible for any and all communications between the Exchange and such Trading Privilege Holder, and any and all notices or other communications sent to such Responsible Trader or Responsible Traders by the Exchange shall be binding on such Trading Privilege Holder. Each Trading Privilege Holder shall notify the Exchange promptly of any change regarding any of its Responsible Traders.

(b) Each Trading Privilege Holder shall be solely responsible for controlling and monitoring the use of all user identification codes and passwords to access the CBOE System (collectively, "Passwords") issued to its Responsible Trader or Responsible Traders by the Exchange, shall provide the Passwords only to its Authorized Traders, and shall notify the Exchange promptly upon becoming aware of any unauthorized disclosure or use of the Passwords or access to the Exchange or of any other reason for deactivating Passwords. Each Trading Privilege Holder shall be bound by any actions taken through the use of its Passwords (other than any such actions resulting from the fault or negligence of the Exchange), including the execution of transactions, whether or not such actions were authorized by such Trading Privilege Holder or any of its directors, officers or employees.

(c) Each Trading Privilege Holder shall be solely responsible for ensuring that the connection point for any CBOE Workstation is in the United States, except as otherwise expressly permitted by the Exchange. To the extent necessary to ensure the operational integrity of the CBOE System, the Exchange may at any time limit the locations of any or all CBOE Workstations to specified locations, and each Trading Privilege Holder shall ensure prompt compliance by itself and its Authorized Traders with any such limitation.

(d) The Exchange may limit the number of messages sent by Trading Privilege Holders to the CBOE System in order to protect the integrity of the CBOE System. In addition, the Exchange may impose restrictions on the use of any individual access to the CBOE System, including temporary termination of an individual access, if it believes such restrictions are necessary to ensure the proper performance of the CBOE System or to protect the integrity of the market. Any limitations or restrictions under this paragraph (d) shall be applied in a fair and non-discriminatory manner.

513A. Risk Controls

(a) *Pre-Trade Order Size Limits*. Each Clearing Member shall have the ability, in a form and manner prescribed by the Exchange, to set a maximum pre-trade order size limit by product in accordance with this Rule 513A(a). Each limit shall apply in a manner determined by the Exchange to all orders in an Exchange product that are received by the CBOE System for which the Clearing Member is identified in the order submission as the Clearing Member for the execution of the order, regardless of the Trading Privilege Holder that submits the order to the CBOE System. Each limit set for an Exchange product shall apply to all contract months or series, as applicable, in that product. Each limit will apply to simple orders and will also apply to spread orders utilizing as the spread order size the number of times the applicable ratio is being submitted as part of the spread order. The CBOE System shall reject any order received by the CBOE System that exceeds the applicable limit. The Exchange shall set a default maximum pre-trade order size limit by product which shall be set forth in the rules governing the applicable Contract and which shall apply if a Clearing Member does not set a different limit in accordance with this Rule 513A(a).

(b) *Price Reasonability Checks*. The CBOE System shall in a manner determined by the Exchange reject (i) any buy order with a limit price if the limit price upon receipt of the order by the CBOE System is more than a designated amount above the prevailing best offer in the applicable Contract and (ii) any sell order with a limit price if the limit price upon receipt of the order by the CBOE System is more than a designated amount below the prevailing best bid in the applicable Contract. The designated amounts for the price reasonability checks referenced in the preceding sentence shall be set forth in the rules governing the applicable Contract. The price reasonability checks will apply during Trading Hours and will not apply prior to the opening of trading in a Contract. Except as provided in the following sentence, the price reasonability checks will apply to simple orders and will also apply to spread orders utilizing a derived spread market that is calculated from the disseminated market of each leg of the spread. No price reasonability checks will apply to (i) stop limit orders, (ii) Trade at Settlement orders and (iii) simple buy orders when the prevailing offer is zero.

513B. Business Continuity Preparations

Trading Privilege Holders shall take appropriate actions as instructed by the Exchange to accommodate the Exchange's business continuity-disaster recovery plans and shall connect to the Exchange's disaster recovery site and participate in Exchange and industry business continuity-disaster recovery testing as and to the extent required by the Exchange.

* * * * *

Margin

516. Customer Margin Requirements for Contracts other than Security Futures

(a) *Scope of Rule*. This Rule 516 shall apply to positions resulting from transactions in Contracts other than Security Futures, traded on the Exchange or subject to the Rules of the Exchange, to the extent that such positions are held by Clearing Members and, if applicable, Trading Privilege Holders on behalf of Customers in futures accounts (as such term is defined in Commission Regulation § 1.3(vv) and Exchange Act Regulation 15c3-3(a)). No Clearing Member or, if applicable, Trading Privilege Holder may effect a transaction or carry a position in a Contract other than Security Futures in the account of a Customer, whether or not such Customer is a Trading Privilege Holder, without proper and adequate margin in accordance with this Rule 516, all other applicable Rules of the Exchange, the rules of the Clearing Corporation and Applicable Law.

In addition, Clearing Members and, if applicable, Trading Privilege Holders must adhere to the procedures set forth in the "Margins Handbook" issued by the Joint Audit Committee. In the event the Margins Handbook is inconsistent with the Rules of the Exchange, the Rules of the Exchange shall have precedence. Terms used in this Rule 516 that are not defined in the Rules of the Exchange shall have the meanings set forth in the Margins Handbook.

(b) *Computation of Margin Requirements*. Clearing Members and, if applicable, Trading Privilege Holders must employ a risk-based portfolio margining system acceptable to the Exchange, such as the Standard Portfolio Analysis of Risk (SPAN®)* margin system, to compute margin requirements on the applicable Contracts. The margin requirements imposed by this Rule 516 are the minimum requirements. Clearing Members and, if applicable, Trading Privilege Holders may impose higher rates and/or more stringent requirements.

(c) *Margin Rates*. The Clearing Corporation, pursuant to Commission Regulation §39.13, shall determine the rates to be used to derive customer initial margin requirements for any Contract. The Exchange shall determine the rates used to derive initial margin requirements for any account type not covered by Commission Regulation §39.13 and maintenance margin requirements for any Contract. In the event of a change in the margin requirement levels required by the Clearing Corporation or the Exchange, such change shall apply to both new and existing positions. The Exchange shall have the authority to apply different margin rates or margin requirement levels to different types of accounts at its discretion to any account type not covered, in respect of

customer initial margin, by Commission Regulation §39.13. The term "customer initial margin" has the meaning set forth in Commission Regulation §1.3.

(d) *Acceptable Margin Deposits*. Clearing Members and, if applicable, Trading Privilege Holders may accept from Customers as margin the following: cash currencies of any denomination, readily marketable securities (as defined by Exchange Act Rule 15c3-1(c)(11) and applicable Securities and Exchange Commission interpretations), money market mutual funds allowable under Commission Regulation § 1.25, and letters of credit issued by a bank or trust company.

Securities that have been issued by the Customer or an affiliate of the Customer shall not be accepted as margin unless the Clearing Member or Trading Privilege Holder files a petition with, and receives permission from, the Exchange. Bank-issued and trust-issued letters of credit must be drawable in the United States and in a form acceptable to the Exchange. Letters of credit in a form approved by the Clearing Corporation are deemed a form acceptable to the Exchange. Letters of credit issued by the Customer, an affiliate of the Customer, the Clearing Member, an affiliate of the Clearing Member, or, if applicable, the Trading Privilege Holder or an affiliate of the Trading Privilege Holder shall not be accepted by Clearing Members or Trading Privilege Holders as margin. All Customer assets accepted by Clearing Members and, if applicable, Trading Privilege Holders as margin deposits must be and remain unencumbered by third party liens against the depositing Customer. Cash currency margin deposits shall be valued at market value, unless the Exchange has prescribed otherwise. Clearing Members and, if applicable, Trading Privilege Holders must comply with Commission Regulation § 1.49 when accepting and holding foreign currencies as a margin deposit on any Contract. All other margin deposits shall be valued at an amount not to exceed market value less applicable deductions, as set forth in Exchange Act Rule 15c3-1.

(e) *Order Acceptance*. Clearing Members and, if applicable, Trading Privilege Holders shall not accept orders for an account unless sufficient margin is on deposit in the account or is forthcoming within a reasonable period of time. In the event an account has been subject to a margin call for an unreasonable time, Clearing Members and, if applicable, Trading Privilege Holders are only permitted to accept orders that reduce the margin requirements of positions existing in the account. In the event an account has been in debit for an unreasonable time, Clearing Members and, if applicable, Trading Privilege Holders are not permitted to accept orders.

(f) *Margin Calls*. Calls for margin in the amount necessary to reach the initial margin equity requirement must be issued: (i) when margin

equity in an account initially falls below the maintenance margin requirement, and (ii) subsequently, when the sum of margin equity plus existing margin calls in an account is less than the maintenance margin requirement. Such calls must be made within one business day after the occurrence of the event that gives rise to the call. A Clearing Member and, if applicable, Trading Privilege Holder may, at any time, at its discretion, call for additional margin. A Clearing Member and, if applicable, Trading Privilege Holder is not required to call for or collect margin for day trades.

(g) *Reduction/Deletion of Margin Calls*. A margin call may be reduced only through the receipt of margin deposits permitted pursuant to Rule 516(d). A margin call may be deleted through: (i) the receipt of margin deposits permitted under Rule 516(d) that equals or exceeds the amount of the total margin call, or (ii) inter-day favorable market movements and/or the liquidation of positions, provided that margin equity in the account is equal to or greater than the initial margin requirement. The oldest outstanding margin call shall be reduced first.

(h) *Margin Call Records*. Clearing Members and, if applicable, Trading Privilege Holders must maintain written records of all margin calls made, reduced and deleted.

(i) *Release of Margin Deposits*. Clearing Members and, if applicable, Trading Privilege Holders may release margin deposits to a Customer only if such deposits are in excess of the initial margin requirements.

(j) *Loans to Customers*. Clearing Members and, if applicable, Trading Privilege Holders may not extend loans to Customers to use as a margin deposit unless such loans are secured, as defined in Commission Regulation §1.17(c)(3), and the proceeds of such loans are treated in accordance with Commission Regulation §1.30.

(k) *Aggregation of Accounts and Positions*. For margin purposes, Clearing Members and, if applicable, Trading Privilege Holders may aggregate Customer accounts having identical ownership within the same classification of Customer segregated, Customer secured, and nonsegregated.

(l) *Hedge Rate Eligibility*. When extending hedge margin rates, Clearing Members and, if applicable Trading Privilege Holders must have reasonable support that such rates are being applied to bona-fide hedge and risk management positions, as defined by Rule 412.

(m) *Omnibus Accounts*.

(i) Margin shall be collected on a gross basis in the

case of a foreign or domestic omnibus account.

(ii) Maintenance margin requirements shall serve as both the initial and maintenance margin requirements in the case of omnibus accounts.

(iii) Written instructions from foreign and domestic omnibus accounts shall be obtained and maintained for positions entitled to spread or hedge margin rates.

(n) *Liquidation of* Accounts. In the event a margin call is not met within a reasonable time (for purposes of Rule 516(n), one hour is deemed to be a reasonable time), the Customer's trades, or a sufficient portion thereof, may be closed-out in order to attain the required margin status. A determination as to when and under what circumstances liquidation may occur is at the full discretion of the Clearing Member or, if applicable, Trading Privilege Holder.

(o) *Failure to Maintain Margin Requirements.* The Exchange may direct a Clearing Member or, if applicable, Trading Privilege Holder to immediately liquidate all or part of a Customer's positions to eliminate a margin deficiency if the Clearing Member or Trading Privilege Holder has failed to maintain margin requirements for the account in accordance with Rule 516.

* "SPAN" is a registered trademark of Chicago Mercantile Exchange Inc., used herein under license. Chicago Mercantile Exchange Inc. assumes no liability in connection with the use of SPAN by any person or entity.

* * * * *

Schedule A to Chapter 5

Margin Levels for Offsetting Positions

* * * * *

Appendix to Chapter 5

518. Compliance with Minimum Financial Requirements, Financial Reporting Requirements, and Requirements Relating to Protection of Customer Funds

Without limiting the generality and applicability of the prior Rules in Chapter 5, any other Rules of the Exchange (including, without limitation, Rules 501, 502, 503, 505, 506, 604, and 605), and Applicable Law, Trading Privilege Holders shall comply with the Commission Regulations relating to

minimum financial requirements, financial reporting requirements, and protection of customer funds that are set forth in this Appendix to Chapter 5 to the extent that Trading Privilege Holders are subject to those Commission Regulations. To the extent that any of the Commission Regulations set forth in this Appendix to Chapter 5 are amended from time to time by the Commission, Trading Privilege Holders are required to comply with the Commission Regulations as amended, to the extent applicable, regardless of whether the Exchange has yet amended this Appendix to Chapter 5 to incorporate the amendments.

519. Compliance with Commission Regulation 1.10 - Financial Reports of Futures Commission Merchants and Introducing Brokers

Any Trading Privilege Holder subject to Commission Regulation 1.10 that violates Commission Regulation 1.10 shall be deemed to have violated this Rule 519. Commission Regulation 1.10 is set forth below and incorporated into this Rule 519.

Commission Regulation 1.10 - Financial reports of futures commission merchants and introducing brokers.

(a) *Application for registration.* (1) Except as otherwise provided, a futures commission merchant or an applicant for registration as a futures commission merchant, in order to satisfy any requirement in this part that it file a Form 1-FR, must file a Form 1-FR-FCM, and any reference in this part to Form 1-FR with respect to a futures commission merchant or applicant therefor shall be deemed to be a reference to Form 1-FR-FCM. Except as otherwise provided, an introducing broker or an applicant for registration as an introducing broker, in order to satisfy any requirement in this part that it file a Form 1-FR, must file a Form 1-FR-IB, and any reference in this part to Form 1-FR with respect to an introducing broker or applicant therefor shall be deemed to be a reference to Form 1-FR-IB.

(2) (i) (A) Except as provided in paragraphs (a)(3) and (h) of this section, each person who files an application for registration as a futures commission merchant and who is not so registered at the time of such filing, must, concurrently with the filing of such application, file either:

(*1*) A Form 1-FR-FCM certified by an independent public accountant in accordance with §1.16 as of a date not more than 45 days prior to the date on which such report is filed; or

(*2*) A Form 1-FR-FCM as of a date not more than 17 business days prior to the date on which such report is filed and a Form 1-FR-FCM certified by an independent public accountant in accordance with §1.16 as of a date not more than one year prior to the date on which such report is filed.

(B) Each such person must include with such financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(ii) (A) Except as provided in paragraphs (a)(3) and (h) of this section, each person who files an application for registration as an introducing broker and who is not so registered at the time of such filing, must, concurrently with the filing of such application, file either:

(*1*) A Form 1-FR-IB certified by an independent public accountant in accordance with §1.16 as of a date not more than 45 days prior to the date on which such report is filed;

(*2*) A Form 1-FR-IB as of a date not more than 17 business days prior to the date on which such report is filed and a Form 1-FR-IB certified by an independent public accountant in accordance with §1.16 as of a date not more than one year prior to the date on which such report is filed;

(*3*) A Form 1-FR-IB as of a date not more than 17 business days prior to the date on which such report is filed, *Provided, however,* that such applicant shall be subject to a review by the applicant's designated self-regulatory organization within six months of registration; or

(*4*) A guarantee agreement.

(B) Each person filing in accordance with paragraphs (a)(2)(ii)(A) (*1*), (*2*) or (*3*) of this section must include with such financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(3)(i) The provisions of paragraph (a)(2) of this section do not apply to any person succeeding to and continuing the business of another futures commission merchant. Each such person who files an application for registration as a futures commission merchant and who is not so registered in that capacity at the time of such filing must file a Form 1-FR-FCM as of the first month end following the date on which his registration is approved. Such report must be filed with the National Futures Association, the Commission and the designated self-regulatory organization, if any, not more than 17 business days after the date for which the report is made.

(ii) The provisions of paragraph (a)(2) of this section do not apply to any person succeeding to and continuing the business of another introducing broker.

(A) Each such person who succeeds to and continues the business of an introducing broker which was not operating pursuant to a guarantee agreement, or which was operating pursuant to a guarantee agreement and was also a securities broker or dealer at the time of succession, who files an application for registration as an introducing broker, and who is not so registered in that capacity at the time of such filing, must file with the National Futures Association either a guarantee agreement with his application for registration or a Form 1-FR-IB as of the first month end following the date on which his registration is approved. Such Form 1-FR-IB must be filed not more than 17 business days after the date for which the report is made.

(B) Each such person who succeeds to and continues the business of an introducing broker which was operating pursuant to a guarantee agreement and which was not also a securities broker or dealer at the time of succession, who files an application for registration as an introducing broker, and who is not so registered in that capacity at the time of such filing, must file with the National Futures Association either a guarantee agreement or a Form 1-FR-IB with his application for registration. If such person files a Form 1-FR-IB with his application for registration, such person must also file a Form 1-FR-IB, certified by an independent public accountant, as of a date no later than the end of the month registration is granted. The Form 1-FR-IB certified by an independent public accountant must be filed with the National Futures Association not more than 45 days after the date for which the report is made.

(b) *Filing of financial reports.* (1)(i) Except as provided in paragraphs (b)(3) and (h) of this section, each person registered as a futures commission merchant must file a Form 1-FR-FCM as of the close of business each month. Each Form 1-FR-FCM must be filed no later than 17 business days after the date for which the report is made.

(ii) In addition to the monthly financial reports required by paragraph (b)(1)(i) of this section, each person registered as a futures commission merchant must file a Form 1-FR-FCM as of the close of its fiscal year, which must be certified by an independent public accountant in accordance with §1.16, and must be filed no later than 90 days after the close of the futures commission merchant's fiscal year: *Provided, however,* that a registrant which is registered with the Securities and Exchange Commission as a securities broker or dealer must file this report not later than the time permitted for filing an annual audit report under §240.17a–5(d)(5) of this title.

(2)(i) Except as provided in paragraphs (b)(3) and (h) of this section, and except for an introducing broker operating pursuant to a guarantee agreement which is not also a securities broker or dealer, each person registered as an introducing broker must file a Form 1–FR–IB semiannually as of the middle and the close of each fiscal year. Each Form 1–FR–IB must be filed no later than 17 business days after the date for which the report is made.

(ii)(A) In addition to the financial reports required by paragraph (b)(2)(i) of this section, each person registered as an introducing broker must file a Form 1–FR–IB as of the close of its fiscal year which must be certified by an independent public accountant in accordance with §1.16 no later than 90 days after the close of each introducing broker's fiscal year: *Provided, however* , that a registrant which is registered with the Securities and Exchange Commission as a securities broker or dealer must file this report not later than the time permitted for filing an annual audit report under §240.17a–5(d)(5) of this title.

(B) If an introducing broker has filed previously a Form 1-FR-IB, certified by an independent public accountant in accordance with the provisions of paragraphs (a)(2)(ii) or (j)(8) of this section and §1.16 of this part, as of a date not more than one year prior to the close of such introducing broker's fiscal year, it need not have certified by an independent public accountant the Form 1-FR-IB filed as of the introducing broker's first fiscal year-end following the as of date of its initial certified Form 1-FR-IB. In such a case, the introducing broker's Form 1-FR-IB filed as of the close of the second fiscal year-end following the as of date of its initial certified Form 1-FR-IB must cover the period of time between those two dates and must be certified by an independent public accountant in accordance with §1.16 of this part.

(3) The provisions of paragraphs (b)(1) and (b)(2) of this section may be met by any person registered as a futures commission merchant or as an introducing broker who is a member of a designated self-regulatory organization and conforms to minimum financial standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations, or resolutions and approved by the Commission pursuant to Section 4f(b) of the Act and §1.52: *Provided, however* , That each such registrant shall promptly file with the Commission a true and exact copy of each financial report which it files with such designated self-regulatory organization.

(4) Upon receiving written notice from any representative of the National Futures Association, the Commission or any self-regulatory organization of which it is a member, an applicant or registrant, except an applicant for registration as an introducing broker which has filed concurrently with its application for registration a guarantee agreement and which is not also a securities broker or dealer, must, monthly or at such times as specified, furnish the National Futures Association, the Commission or the self-regulatory organization requesting such information a Form 1–FR or such other financial information as requested by the National Futures Association, the Commission or the self-regulatory organization. Each such Form 1–FR or such other information must be furnished within the time period specified in the written notice, and in accordance with the provisions of paragraph (c) of this section.

(c) *Where to file reports.* (1) Form 1–FR filed by an introducing broker pursuant to paragraph (b)(2) of this section need be filed only with, and will be considered filed when received by, the

National Futures Association. Other reports or information provided for in this section will be considered filed when received by the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located and by the designated self-regulatory organization, if any; and reports or other information required to be filed by this section by an applicant for registration will be considered filed when received by the National Futures Association. Any report or information filed with the National Futures Association pursuant to this paragraph shall be deemed for all purposes to be filed with, and to be the official record of, the Commission.

(2)(i) Except as provided in the last sentence of this subparagraph, all filings or other notices prepared by a futures commission merchant pursuant to this section may be submitted to the Commission in electronic form using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission, if the futures commission merchant or a designated self-regulatory organization has provided the Commission with the means necessary to read and to process the information contained in such report. A Form 1–FR required to be certified by an independent public accountant in accordance with §1.16 which is filed by a futures commission merchant must be filed in paper form and may not be filed electronically.

(ii) Except as provided in paragraph (h) of this section, all filings or other notices or applications prepared by an introducing broker or applicant for registration as an introducing broker or futures commission merchant pursuant to this section must be filed electronically in accordance with electronic filing procedures established by the National Futures Association. In the case of a Form 1–FR–IB that is required to be certified by an independent public accountant in accordance with §1.16, a paper copy of any such filing with the original manually signed certification must be maintained by the introducing broker or applicant for registration as an introducing broker in accordance with §1.31.

(3) Any information required of a registrant by a self-regulatory organization pursuant to paragraph (b)(4) of this section need be furnished only to such self-regulatory organization and the Commission, and any information required of an applicant by the National Futures Association pursuant to paragraph (b)(4) of this section need be furnished only to the National Futures Association and the Commission.

(4) Any guarantee agreement entered into between a futures commission merchant and an introducing broker in accordance with the provisions of this section need be filed only with, and will be considered filed when received by, the National Futures Association.

(d) *Contents of financial reports.* (1) Each Form 1–FR filed pursuant to this §1.10 which is not required to be certified by an independent public accountant must be completed in accordance with the instructions to the form and contain:

(i) A statement of financial condition as of the date for which the report is made;

(ii) Statements of income (loss) and a statement of changes in ownership equity for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

(iii) A statement of changes in liabilities subordinated to claims of general creditors for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

(iv) A statement of the computation of the minimum capital requirements pursuant to §1.17 as of the date for which the report is made;

(v) For a futures commission merchant only, the statements of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, and the statement of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with §30.7 of this chapter as of the date for which the report is made; and

(vi) In addition to the information expressly required, such further material information as may be necessary to make the required statements and schedules not misleading.

(2) Each Form 1–FR filed pursuant to this §1.10 which is required to be certified by an independent public accountant must be completed in accordance with the instructions to the form and contain:

(i) A statement of financial condition as of the date for which the report is made;

(ii) Statements of income (loss), cash flows, changes in ownership equity, and changes in liabilities subordinated to claims of general creditors, for the period between the date of the most recent certified statement of financial condition filed with the Commission and the date for which the report is made: *Provided,* That for an applicant filing pursuant to paragraph (a)(2) of this section the period must be the year ending as of the date of the statement of financial condition;

(iii) A statement of the computation of the minimum capital requirements pursuant to §1.17 as of the date for which the report is made;

(iv) For a futures commission merchant only, the statements of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, and the statement of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with §30.7 of this chapter as of the date for which the report is made;

(v) Appropriate footnote disclosures;

(vi) A reconciliation, including appropriate explanations, of the statement of the computation of the minimum capital requirements pursuant to §1.17 and, for a futures commission merchant only, the statements of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer option accounts, and the statement of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with §30.7 of this chapter, in the certified Form 1–FR with the applicant's or registrant's corresponding uncertified most recent Form 1–FR filing when material differences exist or, if no material differences exist, a statement so indicating; and

(vii) In addition to the information expressly required, such further material information as may be necessary to make the required statements not misleading.

(3) The statements required by paragraphs (d)(2)(i) and (d)(2)(ii) of this section may be presented in accordance with generally accepted accounting principles in the certified reports filed as of the close of the registrant's fiscal year pursuant to paragraphs (b)(1)(ii) or (b)(2)(ii) of this section or accompanying the application for registration pursuant to paragraph (a)(2) of this section, rather than in the format specifically prescribed by these regulations: *Provided,* the statement of financial condition is presented in a format as consistent as possible with the Form 1–FR and a reconciliation is provided reconciling such statement of financial condition to the statement of the computation of the minimum capital requirements pursuant to §1.17. Such reconciliation must be certified by an independent public accountant in accordance with §1.16.

(4) Attached to each Form 1–FR filed pursuant to this section must be an oath or affirmation that to the best knowledge and belief of the individual making such oath or affirmation the information contained in the Form 1–FR is true and correct. The individual making such oath or affirmation must be:

(i) If the registrant or applicant is a sole proprietorship, the proprietor; if a partnership, any general partner; if a corporation, the chief executive officer or chief financial officer; and, if a limited liability company or limited liability partnership, the chief executive officer, the chief financial officer, the manager, the managing member, or those members vested with the management authority for the limited liability company or limited liability partnership; or

(ii) If the registrant or applicant is registered with the Securities and Exchange Commission as a securities broker or dealer, the representative authorized under §240.17a–5 of this title to file for the securities broker or dealer its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, part II, part IIA, or part II CSE.

(iii) In the case of a Form 1–FR filed via electronic transmission in accordance with procedures established by or approved by the Commission, such transmission must be accompanied by the user authentication assigned to the authorized signer under such procedures, and the use of such user authentication will constitute and become a substitute for the manual signature of the authorized signer for the purpose of making the oath or affirmation referred to in this paragraph.

(e) *Election of fiscal year.* (1) An applicant wishing to establish a fiscal year other than the calendar year may do so by notifying the National Futures Association of its election of such fiscal year, in writing, concurrently with the filing of the Form 1–FR pursuant to paragraph (a)(2) of this section, but in no event may such fiscal year end more than one year from the date of the Form 1–FR filed pursuant to paragraph (a)(2) of this section. An applicant that does not so notify the National Futures Association will be deemed to have elected the calendar year as its fiscal year.

(2) (i) A registrant must continue to use its elected fiscal year, calendar or otherwise, unless a change in such fiscal year has been approved pursuant to this paragraph (e)(2).

(ii) *Futures commission merchant registrants.* (A) A futures commission merchant may file with its designated self-regulatory organization an application to change its fiscal year, a copy of which the registrant must file with the Commission. The application shall be approved or denied in writing by the designated self-regulatory organization. The registrant must file immediately with the Commission a copy of any notice it receives from the designated self-regulatory organization to approve or deny the registrant's application to change its fiscal year. A written notice of approval shall become effective upon the filing by the registrant of a copy with the Commission, and a written notice of denial shall be effective as of the date of the notice.

(B) A futures commission merchant that is registered with the Securities and Exchange Commission as a securities broker or dealer may file with its designated self-regulatory organization copies of any notice or application filed with its designated examining authority, pursuant to §240.17a–5(d)(1)(i) of this title, for a change in fiscal year or “as of” date for its annual audited financial statement. The registrant must also file immediately with the designated self-regulatory organization and the Commission copies of any notice it receives from its designated examining authority to approve or deny the registrant's request for change in fiscal year or “as of” date. Upon the receipt by the designated self-regulatory organization and the Commission of copies of any such notice of approval, the change in fiscal year or “as of” date referenced in the notice shall be deemed approved under this paragraph (e)(2).

(C) Any copy that under this paragraph (e)(2) is required to be filed with the Commission shall be filed with the regional office of the Commission with jurisdiction over the state in which the

registrant's principal place of business is located, and any copy or application to be filed with the designated self-regulatory organization shall be filed at its principal place of business.

(iii) *Introducing broker registrants.* (A) An introducing broker may file with the National Futures Association an application to change its fiscal year, which shall be approved or denied in writing.

(B) An introducing broker that is registered with the Securities and Exchange Commission as a securities broker or dealer may file with the National Futures Association copies of any notice or application filed with its designated examining authority, pursuant to §240.17a–5(d)(1)(i) of this title, for a change in fiscal year or "as of" date for its annual audited financial statement. The registrant must also file immediately with the National Futures Association copies of any notice it receives from its designated examining authority to approve or deny the registrant's request for change in fiscal year or "as of" date. Upon the receipt by the National Futures Association of copies of any such notice of approval, the change in fiscal year or "as of" date referenced in the notice shall be deemed approved under this paragraph (e)(2).

(f) *Extension of time for filing uncertified reports.* (1) In the event a registrant finds that it cannot file its Form 1–FR, or, in accordance with paragraph (h) of this section, its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, part II, part IIA, or part II CSE (FOCUS report), for any period within the time specified in paragraphs (b)(1)(i) or (b)(2)(i) of this section without substantial undue hardship, it may request approval for an extension of time, as follows:

(i) *Futures commission merchant registrants* . (A) A futures commission merchant may file with its designated self-regulatory organization an application for extension of time, a copy of which the registrant must file with the Commission. The application shall be approved or denied in writing by the designated self-regulatory organization. The registrant must file immediately with the Commission a copy of any notice it receives from the designated self-regulatory organization to approve or deny the registrant's request for extension of time. A written notice of approval shall become effective upon the filing by the registrant of a copy with the Commission, and a written notice of denial shall be effective as of the date of the notice.

(B) A futures commission merchant that is registered with the Securities and Exchange Commission as a securities broker or dealer may file with its designated self-regulatory organization a copy of any application that the registrant has filed with its designated examining authority, pursuant to §240.17–a5(l)(5) of this title, for an extension of time to file its FOCUS report. The registrant must also file immediately with the designated self-regulatory organization and the Commission copies of any notice it receives from its designated examining authority to approve or deny the requested extension of time. Upon receipt by the designated self-regulatory organization and the Commission of copies of any such notice of approval, the requested extension of time referenced in the notice shall be deemed approved under this paragraph (f)(1).

(C) Any copy that under this subparagraph (f)(1)(i) is required to be filed with the Commission shall be filed with the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located.

(ii) *Introducing broker registrants* . (A) An introducing broker may file with the National Futures Association an application for extension of the time, which shall be approved or denied in writing.

(B) An introducing broker that is registered with the Securities and Exchange Commission as a securities broker or dealer may file with the National Futures Association copies of any application that the registrant has filed with its designated examining authority, pursuant to §240.17–a5(l)(5) of this title, for an extension of time to file its FOCUS report. The registrant must also file immediately with the National Futures Association copies of any notice it receives from its

designated examining authority to approve or deny the requested extension of time. Upon the receipt by the National Futures Association of a copy of any such notice of approval, the requested extension of time referenced in the notice shall be deemed approved under this paragraph (f)(1)(ii).

(2) In the event an applicant finds that it cannot file its report for any period within the time specified in paragraph (b)(4) of this section without substantial undue hardship, it may file with the National Futures Association an application for an extension of time to a specified date which may not be more than 90 days after the date as of which the financial statements were to have been filed. The application must state the reasons for the requested extension and must contain an agreement to file the report on or before the specified date. The application must be received by the National Futures Association before the time specified in paragraph (b)(4) of this section for filing the report. Notice of such application must be filed with the regional office of the Commission with jurisdiction over the state in which the applicant's principal place of business is located concurrently with the filing of such application with the National Futures Association. Within ten calendar days after receipt of the application for an extension of time, the National Futures Association shall:

(i) Notify the applicant of the grant or denial of the requested extension; or

(ii) Indicate to the applicant that additional time is required to analyze the request, in which case the amount of time needed will be specified.

(g) *Public availability of reports.* (1) Forms 1–FR filed pursuant to this section, and FOCUS reports filed in lieu of Forms 1–FR pursuant to paragraph (h) of this section, will be treated as exempt from mandatory public disclosure for purposes of the Freedom of Information Act and the Government in the Sunshine Act and parts 145 and 147 of this chapter, except for the information described in paragraph (g)(2) of this section.

(2) The following information in Forms 1–FR, and the same or equivalent information in FOCUS reports filed in lieu of Forms 1–FR, will be publicly available:

(i) The amount of the applicant's or registrant's adjusted net capital; the amount of its minimum net capital requirement under §1.17 of this chapter; and the amount of its adjusted net capital in excess of its minimum net capital requirement; and

(ii) The following statements and footnote disclosures thereof: the Statement of Financial Condition in the certified annual financial reports of futures commission merchants and introducing brokers; the Statements (to be filed by a futures commission merchant only) of Segregation Requirements and Funds in Segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, and the Statement (to be filed by a futures commission merchant only) of Secured Amounts and Funds held in Separate Accounts for foreign futures and foreign options customers in accordance with §30.7 of this chapter.

(3) [Reserved]

(4) All information that is exempt from mandatory public disclosure under paragraph (g)(1) of this section will, however, be available for official use by any official or employee of the United States or any State, by any self-regulatory organization of which the person filing such report is a member, by the National Futures Association in the case of an applicant, and by any other person to whom the Commission believes disclosure of such information is in the public interest. Nothing in this paragraph (g) will limit the authority of any self-regulatory organization to request or receive any information relative to its members' financial condition.

(5) The independent accountant's opinion and a guarantee agreement filed pursuant to this section will be deemed public information.

(h) *Filing option available to a futures commission merchant or an introducing broker that is also a securities broker or dealer.* Any applicant or registrant which is registered with the Securities and Exchange Commission as a securities broker or dealer may comply with the requirements of this section by filing (in accordance with paragraphs (a), (b), (c), and (j) of this section) a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE (FOCUS Report), in lieu of Form 1–FR; *Provided, however* , That all information which is required to be furnished on and submitted with Form 1–FR is provided with such FOCUS Report; and *Provided, further* , That a certified FOCUS Report filed by an introducing broker or applicant for registration as an introducing broker in lieu of a certified Form 1–FR–IB must be filed according to National Futures Association rules, either in paper form or electronically, in accordance with procedures established by the National Futures Association, and if filed electronically, a paper copy of such filing with the original manually signed certification must be maintained by such introducing broker or applicant in accordance with §1.31.

(i) *Filing option available to an introducing broker or applicant for registration as an introducing broker which is also a country elevator.* Any introducing broker or applicant for registration as an introducing broker which is also a country elevator but which is not also a securities broker or dealer may comply with the requirements of this section by filing (in accordance with paragraphs (a), (b) and (c) of this section) a copy of a financial report prepared by a grain commission firm which has been authorized by the Deputy Vice President of the Commodity Credit Corporation of the United States Department of Agriculture to provide a compilation report of financial statements of warehousemen for purposes of Uniform Grain Storage Agreements, and which complies with the standards for independence set forth in §1.16(b)(2) with respect to the registrant or applicant: *Provided, however,* That all information which is required to be furnished on and submitted with Form 1–FR is provided with such financial report, including a statement of the computation of the minimum capital requirements pursuant to §1.17: *And, provided further,* That the balance sheet is presented in a format as consistent as possible with the Form 1–FR and a reconciliation is provided reconciling such balance sheet to the statement of the computation of the minimum capital requirements pursuant to §1.17. Attached to each financial report filed pursuant to this paragraph (i) must be an oath or affirmation that to the best knowledge and belief of the individual making such oath or affirmation the information contained therein is true and correct. If the applicant or registrant is a sole proprietorship, then the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; or if a corporation, by the chief executive officer or chief financial officer.

(j) *Requirements for guarantee agreement.* (1) A guarantee agreement filed pursuant to this section must be signed in a manner sufficient to be a binding guarantee under local law by an appropriate person on behalf of the futures commission merchant or retail foreign exchange dealer and the introducing broker, and each signature must be accompanied by evidence that the signatory is authorized to enter the agreement on behalf of the futures commission merchant, retail foreign exchange dealer, or introducing broker and is such an appropriate person. For purposes of this paragraph (j), an appropriate person shall be the proprietor, if the firm is a sole proprietorship; a general partner, if the firm is a partnership; and either the chief executive officer or the chief financial officer, if the firm is a corporation; and, if the firm is a limited liability company or limited liability partnership, either the chief executive officer, the chief financial officer, the manager, the managing member, or those members vested with the management authority for the limited liability company or limited liability partnership.

(2) No futures commission merchant or retail foreign exchange dealer may enter into a guarantee agreement if:

(i) It knows or should have known that its adjusted net capital is less than the amount set forth in

§1.12(b) of this part or §5.6(b) of this chapter, as applicable; or

(ii) There is filed against the futures commission merchant or retail foreign exchange dealer an adjudicatory proceeding brought by or before the Commission pursuant to the provisions of sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or §§3.55, 3.56 or 3.60 of this chapter.

(3) A retail foreign exchange dealer may enter into a guarantee agreement only with an introducing broker as defined in §5.1(f)(1) of this chapter. A retail foreign exchange dealer may not enter into a guarantee agreement with an introducing broker as defined in §1.3(mm) of this part.

(4) A guarantee agreement filed in connection with an application for initial registration as an introducing broker in accordance with the provisions of §3.10(a) of this chapter shall become effective upon the granting of registration or, if appropriate, a temporary license, to the introducing broker. A guarantee agreement filed other than in connection with an application for initial registration as an introducing broker shall become effective as of the date agreed to by the parties.

(5)(i) If the registration of the introducing broker is suspended, revoked, or withdrawn in accordance with the provisions of this chapter, the guarantee agreement shall expire as of the date of such suspension, revocation or withdrawal.

(ii) If the registration of the futures commission merchant or retail foreign exchange dealer is suspended or revoked, the guarantee agreement shall expire 30 days after such suspension or revocation, or at such earlier time as may be approved by the Commission, the introducing broker, and the introducing broker's designated self-regulatory organization.

(6) A guarantee agreement may be terminated at any time during the term thereof:

(i) By mutual written consent of the parties, signed by an appropriate person on behalf of each party, with prompt written notice thereof, signed by an appropriate person on behalf of each party, to the Commission and to the designated self-regulatory organizations of the futures commission merchant or retail foreign exchange dealer and the introducing broker;

(ii) For good cause shown, by either party giving written notice of its intention to terminate the agreement, signed by an appropriate person, to the other party to the agreement, to the Commission, and to the designated self-regulatory organizations of the futures commission merchant or retail foreign exchange dealer and the introducing broker; or

(iii) By either party giving written notice of its intention to terminate the agreement, signed by an appropriate person, at least 30 days prior to the proposed termination date, to the other party to the agreement, to the Commission, and to the designated self-regulatory organizations of the futures commission merchant or retail foreign exchange dealer and the introducing broker.

(7) The termination of a guarantee agreement by a futures commission merchant, retail foreign exchange dealer or an introducing broker, or the expiration of such an agreement, shall not relieve any party from any liability or obligation arising from acts or omissions which occurred during the term of the agreement.

(8) An introducing broker may not simultaneously be a party to more than one guarantee agreement: *Provided, however,* That the provisions of this paragraph (j)(8) shall not be deemed to preclude an introducing broker from entering into a guarantee agreement with another futures commission merchant or retail foreign exchange dealer if the introducing broker, futures

commission merchant or retail foreign exchange dealer which is a party to the existing agreement has provided notice of termination of the existing agreement in accordance with the provisions of paragraph (j)(6) of this section, and the new guarantee agreement does not become effective until the day following the date of termination of the existing agreement: *And, provided further,* That the provisions of this paragraph (j)(8) shall not be deemed to preclude an introducing broker from entering into a guarantee agreement with another futures commission merchant or retail foreign exchange dealer if the futures commission merchant or retail foreign exchange dealer which is a party to the existing agreement ceases to remain registered and the existing agreement would therefore expire in accordance with the provisions of paragraph (j)(6)(ii) of this section.

(9)(i)(A) An introducing broker that is a party to a guarantee agreement that has been terminated in accordance with the provisions of paragraph (j)(6) of this section, or that is due to expire in accordance with the provisions of paragraph (j)(5)(ii) of this section, must cease doing business as an introducing broker on or before the effective date of such termination or expiration unless, on or before 10 days prior to the effective date of such termination or expiration or such other period of time as the Commission or the designated self-regulatory organization may allow for good cause shown, the introducing broker files with its designated self-regulatory organization either a new guarantee agreement effective as of the day following the date of termination of the existing agreement, or, in the case of a guarantee agreement that is due to expire in accordance with the provisions of paragraph (j)(4)(ii) of this section, a new guarantee agreement effective on or before such expiration, or either:

(*1*) A Form 1–FR–IB certified by an independent public accountant in accordance with §1.16 as of a date not more than 45 days prior to the date on which the report is filed; or

(*2*) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which the report is filed and a Form 1–FR–IB certified by an independent public accountant in accordance with §1.16 as of a date not more than one year prior to the date on which the report is filed: *Provided, however,* that an introducing broker as defined in §5.1(f)(1) of this chapter that is party to a guarantee agreement that has been terminated or that has expired must cease doing business as an introducing broker on or before the effective date of such termination or expiration unless, on or before 10 days prior to the effective date of such termination or expiration or such other period of time as the Commission or the designated self-regulatory organization may allow for good cause shown, the introducing broker files with its designated self-regulatory organization a new guarantee agreement effective on or before the termination or expiration date of the terminating or expiring guarantee agreement.

(B) Each person filing a Form 1–FR–IB in accordance with this section must include with the financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(ii)(A) Notwithstanding the provisions of paragraph (j)(9)(i) of this section or of §1.17(a), an introducing broker that is a party to a guarantee agreement that has been terminated in accordance with the provisions of paragraph (j)(6)(ii) of this section shall not be deemed to be in violation of the minimum adjusted net capital requirement of §1.17(a)(1)(iii) or (a)(2) for 30 days following such termination. Such an introducing broker must cease doing business as an introducing broker on or after the effective date of such termination, and may not resume doing business as an introducing broker unless and until it files a new agreement or either:

(*1*) A Form 1–FR–IB certified by an independent public accountant in accordance with §1.16 as of a date not more than 45 days prior to the date on which the report is filed; or

(*2*) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which the report is filed and a Form 1–FR–IB certified by an independent public accountant in accordance with §1.16 as of a date not more than one year prior to the date on which the report is filed: *Provided, however,* that an introducing broker as defined in §5.1(f)(1) of this chapter that is party to a guarantee agreement that has been terminated must cease doing business as an introducing broker from and after the effective date of such termination, and may not resume doing business as an introducing broker as defined in §5.1(f)(1) of this chapter unless and until it files a new guarantee agreement.

(B) Each person filing a Form 1–FR–IB in accordance with this section must include with the financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(k) *Filing option available to an introducing broker.* (1) Any introducing broker or applicant for registration as an introducing broker which is not operating or intending to operate pursuant to a guarantee agreement may comply with the requirements of this section by filing (in accordance with paragraphs (a), (b) and (c) of this section) a Form 1-FR-IB in lieu of a Form 1-FR-FCM.

(2) If an introducing broker or applicant therefor avails itself of the filing option available under paragraph (k)(1) of this section, the report required to be filed in accordance with §1.16(c)(5) of this part must be filed as of the date of the Form 1-FR-IB being filed, and such an introducing broker or applicant therefor must maintain its financial records and make its monthly formal computation of its adjusted net capital, as required by §1.18 of this part, in a manner consistent with Form 1-FR-IB.

520. Compliance with Commission Regulation 1.12 - Maintenance of Minimum Financial Requirements by Futures Commission Merchants and Introducing Brokers

Any Trading Privilege Holder subject to Commission Regulation 1.12 that violates Commission Regulation 1.12 shall be deemed to have violated this Rule 520. Commission Regulation 1.12 is set forth below and incorporated into this Rule 520.

Commission Regulation 1.12 - Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

(a) Each person registered as a futures commission merchant or who files an application for registration as a futures commission merchant, and each person registered as an introducing broker or who files an application for registration as an introducing broker (except for an introducing broker or applicant for registration as an introducing broker operating pursuant to, or who has filed concurrently with its application for registration, a guarantee agreement and who is not also a securities broker or dealer), who knows or should have known that its adjusted net capital at any time is less than the minimum required by §1.17 or by the capital rule of any self-regulatory organization to which such person is subject, if any, must:

(1) Give telephonic notice, to be confirmed in writing by facsimile notice, as set forth in paragraph (i) of this section that the applicant's or registrant's adjusted net capital is less than required by §1.17 or by other capital rule, identifying the applicable capital rule. The notice must be given immediately after the applicant or registrant knows or should know that its adjusted net capital is less than required by any of the aforesaid rules to which the applicant or registrant is subject; and

(2) Provide together with such notice documentation in such form as necessary to adequately reflect the applicant's or registrant's capital condition as of any date such person's adjusted net capital is less than the minimum required. The applicant or registrant must provide similar documentation for other days as the Commission may request.

(b) Each person registered as a futures commission merchant, or who files an application for registration as a futures commission merchant, who knows or should have known that its adjusted net capital at any time is less than the greatest of:

(1) 150 percent of the minimum dollar amount required by §1.17(a)(1)(i)(A);

(2) 110 percent of the amount required by §1.17(a)(1)(i)(B);

(3) 150 percent of the amount of adjusted net capital required by a registered futures association of which it is a member, unless such amount has been determined by a margin-based capital computation set forth in the rules of the registered futures association, and such amount meets or exceeds the amount of adjusted net capital required under the margin-based capital computation set forth in §1.17(a)(1)(i)(B), in which case the required percentage is 110 percent, or

(4) For securities brokers or dealers, the amount of net capital specified in Rule 17a–11(c) of the Securities and Exchange Commission (17 CFR 240.17a–11(c)), must file written notice to that effect as set forth in paragraph (i) of this section within twenty-four (24) hours of such event.

(c) If an applicant or registrant at any time fails to make or keep current the books and records required by these regulations, such applicant or registrant must, on the same day such event occurs, provide facsimile notice of such fact, specifying the books and records which have not been made or which are not current, and within forty-eight (48) hours after giving such notice file a written report stating what steps have been and are being taken to correct the situation.

(d) Whenever any applicant or registrant discovers or is notified by an independent public accountant, pursuant to §1.16(e)(2) of this chapter, of the existence of any material inadequacy, as specified in §1.16(d)(2) of this chapter, such applicant or registrant must give facsimile notice of such material inadequacy within twenty-four (24) hours, and within forty-eight (48) hours after giving such notice file a written report stating what steps have been and are being taken to correct the material inadequacy.

(e) Whenever any self-regulatory organization learns that a member registrant has failed to file a notice or written report as required by §1.12, that self-regulatory organization must immediately report this failure by telephone, confirmed in writing immediately by facsimile notice, as provided in paragraph (i) of this section.

(f)(1) [Reserved]

(2) Whenever a registered futures commission merchant determines that any position it carries for another registered futures commission merchant or for a registered leverage transaction merchant must be liquidated immediately, transferred immediately or that the trading of any account of such futures commission merchant or leverage transaction merchant shall be only for purposes of liquidation, because the other futures commission merchant or the leverage transaction merchant has failed to meet a call for margin or to make other required deposits, the carrying futures commission merchant must immediately give telephonic notice, confirmed in writing immediately by facsimile notice, of such a determination to the principal office of the Commission at Washington, DC.

(3) Whenever a registered futures commission merchant determines that an account which it is carrying is undermargined by an amount which exceeds the futures commission merchant's adjusted net capital determined in accordance with §1.17, the futures commission merchant must immediately give telephonic notice, confirmed in writing immediately by facsimile notice, of such a determination to the designated self-regulatory organization and the principal office of the Commission at Washington, DC. This paragraph (f)(3) shall apply to any account carried by the futures commission merchant, whether a customer, noncustomer, omnibus or proprietary account. For purposes of this paragraph (f)(3), if any person has an interest of 10 percent or more in ownership or equity in, or guarantees, more than one account, or has guaranteed an account in addition to his own account, all such accounts shall be combined. A designated self-regulatory organization may grant an exemption from the provisions of this paragraph to a futures commission merchant with respect to any particular account on a continuous basis provided the designated self-regulatory organization documents the reasons for granting such an exemption and continues to monitor any such account.

(4) A futures commission merchant shall report immediately by telephone, confirmed immediately in writing by facsimile notice, whenever any commodity interest account it carries is subject to a margin call, or call for other deposits required by the futures commission merchant, that exceeds the futures commission merchant's excess adjusted net capital, determined in accordance with §1.17, and such call has not been answered by the close of business on the day following the issuance of the call. This applies to all accounts carried by the futures commission merchant, whether customer, noncustomer, or omnibus, that are subject to margining, including commodity futures and options. In addition to actual margin deposits by an account owner, a futures commission merchant may also take account of favorable market moves in determining whether the margin call is required to be reported under this paragraph.

(5)(i) A futures commission merchant shall report immediately by telephone, confirmed immediately in writing by facsimile notice, whenever its excess adjusted net capital is less than six percent of the maintenance margin required by the futures commission merchant on all positions held in accounts of a noncustomer other than a noncustomer who is subject to the minimum financial requirements of:

(A) A futures commission merchant, or

(B) The Securities and Exchange Commission for a securities broker and dealer.

(ii) For purposes of paragraph (f)(5)(i) of this section, maintenance margin shall include all deposits which the futures commission merchant requires the noncustomer to maintain in order to carry its positions at the futures commission merchant.

(g) A futures commission merchant shall provide written notice of a substantial reduction in capital as compared to that last reported in a financial report filed with the Commission pursuant to §1.10. This notice shall be provided as follows:

(1) If any event or series of events, including any withdrawal, advance, loan or loss cause, on a net basis, a reduction in net capital (or, if the futures commission merchant is qualified to use the filing option available under §1.10(h), tentative net capital as defined in the rules of the Securities and Exchange Commission) of 20 percent or more, notice must be provided within two business days of the event or series of events causing the reduction; and

(2) If equity capital of the futures commission merchant or a subsidiary or affiliate of the futures commission merchant consolidated pursuant to §1.17(f) (or 17 CFR 240.15c3–1e) would be withdrawn by action of a stockholder or a partner or a limited liability company member or by redemption or repurchase of shares of stock by any of the consolidated entities or through the

payment of dividends or any similar distribution, or an unsecured advance or loan would be made to a stockholder, partner, sole proprietor, limited liability company member, employee or affiliate, such that the withdrawal, advance or loan would cause, on a net basis, a reduction in excess adjusted net capital (or, if the futures commission merchant is qualified to use the filing option available under §1.10(h), excess net capital as defined in the rules of the Securities and Exchange Commission) of 30 percent or more, notice must be provided at least two business days prior to the withdrawal, advance or loan that would cause the reduction: *Provided, however,* That the provisions of paragraphs (g)(1) and (g)(2) of this section do not apply to any futures or securities transaction in the ordinary course of business between a futures commission merchant and any affiliate where the futures commission merchant makes payment to or on behalf of such affiliate for such transaction and then receives payment from such affiliate for such transaction within two business days from the date of the transaction.

(3) Upon receipt of such notice from a futures commission merchant, the Director of the Division of Clearing and Intermediary Oversight or the Director's designee may require that the futures commission merchant provide or cause a Material Affiliated Person (as that term is defined in §1.14(a)(2)) to provide, within three business days from the date of request or such shorter period as the Division Director or designee may specify, such other information as the Division Director or designee determines to be necessary based upon market conditions, reports provided by the futures commission merchant, or other available information.

(h) Whenever a person registered as a futures commission merchant knows or should know that the total amount of its funds on deposit in segregated accounts on behalf of customers, or that the total amount set aside on behalf of customers trading on non-United States markets, is less than the total amount of such funds required by the Act and the Commission's rules to be on deposit in segregated or secured amount accounts on behalf of such customers, the registrant must report such deficiency immediately by telephone notice, confirmed immediately in writing by facsimile notice, to the registrant's designated self-regulatory organization and the principal office of the Commission in Washington, DC, to the attention of the Director and the Chief Accountant of the Division of Clearing and Intermediary Oversight.

(i)(1) Every notice and written report required to be given or filed by this section (except for notices required by paragraph (f) of this section) by a futures commission merchant or a self-regulatory organization must be filed with the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located, with the principal office of the Commission in Washington, DC, with the designated self-regulatory organization, if any; and with the Securities and Exchange Commission, if such registrant is a securities broker or dealer. Every notice and written report required to be given or filed by this section by an applicant for registration as a futures commission merchant must be filed with the National Futures Association (on behalf of the Commission), with the designated self-regulatory organization, if any, and with the Securities and Exchange Commission, if such applicant is a securities broker or dealer. Any notice or report filed with the National Futures Association pursuant to this paragraph shall be deemed for all purposes to be filed with, and to be the official record of, the Commission.

(2) Every notice and written report which an introducing broker or applicant for registration as an introducing broker is required to give or file by paragraphs (a), (c) and (d) of this section must be filed with the National Futures Association (on behalf of the Commission), with the designated self-regulatory organization, if any, and with every futures commission merchant carrying or intending to carry customer accounts for the introducing broker or applicant for registration as an introducing broker. Any notice or report filed with the National Futures Association pursuant to this paragraph shall be deemed for all purposes to be filed with, and to be the official record of, the Commission.

(3) Every notice or report required to be provided in writing to the Commission under this section may, in lieu of facsimile, be filed via electronic transmission using a form of user authentication

assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission. Any such electronic submission must clearly indicate the registrant or applicant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer.

521. Compliance with Commission Regulation 1.17 - Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers

Any Trading Privilege Holder subject to Commission Regulation 1.17 that violates Commission Regulation 1.17 shall be deemed to have violated this Rule 521. Commission Regulation 1.17 is set forth below and incorporated into this Rule 521.

Commission Regulation 1.17 - Minimum financial requirements for futures commission merchants and introducing brokers.

(a)(1)(i) Except as provided in paragraph (a)(2)(i) of this section, each person registered as a futures commission merchant must maintain adjusted net capital equal to or in excess of the greatest of:

(A) $1,000,000;

(B) The futures commission merchant's risk-based capital requirement, computed as eight percent of the total risk margin requirement for positions carried by the futures commission merchant in customer accounts and noncustomer accounts.

(C) The amount of adjusted net capital required by a registered futures association of which it is a member; or

(D) For securities brokers and dealers, the amount of net capital required by Rule 15c3–1(a) of the Securities and Exchange Commission (17 CFR 240.15c3–1(a)).

(ii) Each person registered as a futures commission merchant engaged in soliciting or accepting orders and customer funds related thereto for the purchase or sale of any commodity for future delivery or any commodity option on or subject to the rules of a registered derivatives transaction execution facility from any customer who does not qualify as an “institutional customer” as defined in §1.3(g) must:

(A) Be a clearing member of a derivatives clearing organization and maintain net capital in the amount of the greater of $20,000,000 or the amounts otherwise specified in paragraph (a)(1)(i) of this section; or

(B) Receive orders on behalf of the customer from a commodity trading advisor acting in accordance with §4.32 of this chapter.

(iii) Except as provided in paragraph (a)(2) of this section, each person registered as an introducing broker must maintain adjusted net capital equal to or in excess of the greatest of:

(A) $45,000;

(B) The amount of adjusted net capital required by a registered futures association of which it is a member; or

(C) For securities brokers and dealers, the amount of net capital required by Rule 15c3–1(a) of the Securities and Exchange Commission (17 CFR 240.15c3–1(a)).

(2)(i) The requirements of paragraph (a)(1) of this section shall not be applicable if the registrant is a member of a designated self-regulatory organization and conforms to minimum financial standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations or resolutions approved by the Commission pursuant to section 4f(b) of the Act and §1.52.

(ii) The minimum requirements of paragraph (a)(1)(iii) of this section shall not be applicable to an introducing broker which elects to meet the alternative adjusted net capital requirement for introducing brokers by operation pursuant to a guarantee agreement which meets the requirements set forth in §1.10(j). Such an introducing broker shall be deemed to meet the adjusted net capital requirement under this section so long as such agreement is binding and in full force and effect, and, if the introducing broker is also a securities broker or dealer, it maintains the amount of net capital required by Rule 15c3–1(a) of the Securities and Exchange Commission (17 CFR 240.15c3–1(a)).

(3) No person applying for registration as a futures commission merchant or as an introducing broker shall be so registered unless such person affirmatively demonstrates to the satisfaction of the National Futures Association that it complies with the financial requirements of this section. Each registrant must be in compliance with this section at all times and must be able to demonstrate such compliance to the satisfaction of the Commission or the designated self-regulatory organization.

(4) A futures commission merchant who is not in compliance with this section, or is unable to demonstrate such compliance as required by paragraph (a)(3) of this section, must transfer all customer accounts and immediately cease doing business as a futures commission merchant until such time as the firm is able to demonstrate such compliance: *Provided, however,* The registrant may trade for liquidation purposes only unless otherwise directed by the Commission and/or the designated self-regulatory organization: *And, Provided further,* That if such registrant immediately demonstrates to the satisfaction of the Commission or the designated self-regulatory organization the ability to achieve compliance, the Commission or the designated self-regulatory organization may in its discretion allow such registrant up to a maximum of 10 business days in which to achieve compliance without having to transfer accounts and cease doing business as required above. Nothing in this paragraph (a)(4) shall be construed as preventing the Commission or the designated self-regulatory organization from taking action against a registrant for non-compliance with any of the provisions of this section.

(5) An introducing broker who is not in compliance with this section, or is unable to demonstrate such compliance as required by paragraph (a)(3) of this section, must immediately cease doing business as an introducing broker until such time as the registrant is able to demonstrate such compliance: *Provided, however,* That if such registrant immediately demonstrates to the satisfaction of the Commission or the designated self-regulatory organization the ability to achieve compliance, the Commission or the designated self-regulatory organization may in its discretion allow such registrant up to a maximum of 10 business days in which to achieve compliance without having to cease doing business as required above. If the introducing broker is required to cease doing business in accordance with this paragraph (a)(5), the introducing broker must immediately notify each of its customers and the futures commission merchants carrying the account of each customer that it has ceased doing business. Nothing in this paragraph (a)(5) shall be construed as preventing the Commission or the designated self-regulatory organization

from taking action against a registrant for non-compliance with any of the provisions of this section.

(b) For the purposes of this section:

(1) Where the applicant or registrant has an asset or liability which is defined in Securities Exchange Act Rule 15c3–1 (§240.15c3–1 of this title) the inclusion or exclusion of all or part of such asset or liability for the computation of adjusted net capital shall be in accordance with §240.15c3–1 of this title, unless specifically stated otherwise in this section.

(2) *Customer* means customer (as defined in §1.3(k)), option customer (as defined in §1.3(jj) and in §32.1(c) of this chapter), cleared over the counter customer (as defined in §1.17(b)(10)), and includes a foreign futures, foreign options customer (as defined in §30.1(c) of this chapter).

(3) *Proprietary account* means an account in which commodity futures, options or cleared over the counter derivative positions are carried on the books of the applicant or registrant for the applicant or registrant itself, or for general partners in the applicant or registrant.

(4) *Noncustomer account* means an account in which commodity futures, options or cleared over the counter derivative positions are carried on the books of the applicant or registrant which is either:

(i) An account that is not included in the definition of customer (as defined in §1.17(b)(2)) or proprietary account (as defined in §1.17(b)(3)), or

(ii) An account for a foreign-domiciled person trading futures or options on a foreign board of trade, and such account is a proprietary account as defined in §1.3(y) of this title, but is not a proprietary account as defined in §1.17(b)(3).

(5) *Clearing organization* means clearing organization (as defined in §1.3(d)) and includes a clearing organization of any board of trade.

(6) *Business day* means any day other than a Sunday, Saturday, or holiday.

(7) *Customer account* means an account in which commodity futures, options or cleared over the counter derivative positions are carried on the books of the applicant or registrant which is either:

(i) An account that is included in the definition of customer (as defined in §1.17(b)(2)), or

(ii) An account for a foreign-domiciled person trading on a foreign board of trade, where such account for the foreign-domiciled person is not a proprietary account (as defined in §1.17(b)(3)) or a noncustomer account (as defined in §1.17(b)(4)(ii)).

(8) *Risk margin* for an account means the level of maintenance margin or performance bond required for the customer or noncustomer positions by the applicable exchanges or clearing organizations, and, where margin or performance bond is required only for accounts at the clearing organization, for purposes of the FCM's risk-based capital calculations applying the same margin or performance bond requirements to customer and noncustomer positions in accounts carried by the FCM, subject to the following.

(i) Risk margin does not include the equity component of short or long option positions maintained in an account;

(ii) The maintenance margin or performance bond requirement associated with a long option position may be excluded from risk margin to the extent that the value of such long option position does not reduce the total risk maintenance or performance bond requirement of the account that holds the long option position;

(iii) The risk margin for an account carried by a futures commission merchant which is not a member of the exchange or the clearing organization that requires collection of such margin should be calculated as if the futures commission merchant were such a member; and

(iv) If a futures commission merchant does not possess sufficient information to determine what portion of an account's total margin requirement represents risk margin, all of the margin required by the exchange or the clearing organization that requires collection of such margin for that account, shall be treated as risk margin.

(9) *Cleared over the counter derivative positions* means "over the counter derivative instrument" (as defined in 12 U.S.C. 4421) positions of any person in accounts carried on the books of the futures commission merchant and cleared by any organization permitted to clear such instruments under the laws of the relevant jurisdiction.

(10) *Cleared over the counter customer* means any person that is not a proprietary person as defined in §1.3(y) and for whom the futures commission merchant carries on its books one or more accounts for the over the counter-cleared derivative positions of such person.

(c) Definitions: For the purposes of this section:

(1) *Net capital* means the amount by which current assets exceed liabilities. In determining "net capital":

(i) Unrealized profits shall be added and unrealized losses shall be deducted in the accounts of the applicant or registrant, including unrealized profits and losses on fixed price commitments and forward contracts;

(ii) All long and all short positions in commodity options which are traded on a contract market and listed security options shall be marked to their market value and all long and all short securities and commodities positions shall be marked to their market value;

(iii) The value attributed to any commodity option which is not traded on a contract market shall be the difference between the option's strike price and the market value for the physical or futures contract which is the subject of the option. In the case of a call commodity option which is not traded on a contract market, if the market value for the physical or futures contract which is the subject of the option is less than the strike price of the option, it shall be given no value. In the case of a put commodity option which is not traded on a contract market, if the market value for the physical or futures contract which is the subject of the option is more than the strike price of the option, it shall be given no value; and

(iv) The value attributed to any unlisted security option shall be the difference between the option's exercise value or striking value and the market value of the underlying security. In the case of an unlisted call, if the market value of the underlying security is less than the exercise value or striking value of such call, it shall be given no value; and, in the case of an unlisted put, if the market value of the underlying security is more than the exercise value or striking value of the unlisted put, it shall be given no value.

(2) The term *current assets* means cash and other assets or resources commonly identified as

those which are reasonably expected to be realized in cash or sold during the next 12 months. “Current assets” shall:

(i) Exclude any unsecured commodity futures or option account containing a ledger balance and open trades, the combination of which liquidates to a deficit or containing a debit ledger balance only: *Provided, however,* Deficits or debit ledger balances in unsecured customers', non-customers', and proprietary accounts, which are the subject of calls for margin or other required deposits may be included in current assets until the close of business on the business day following the date on which such deficit or debit ledger balance originated providing that the account had timely satisfied, through the deposit of new funds, the previous day's debit or deficits, if any, in its entirety.

(ii) Exclude all unsecured receivables, advances and loans except for:

(A) Receivables resulting from the marketing of inventories commonly associated with the business activities of the applicant or registrant and advances on fixed price purchases commitments: *Provided,* Such receivables or advances are outstanding no longer than 3 calendar months from the date that they are accrued;

(B) Interest receivable, floor brokerage receivable, commissions receivable from other brokers or dealers (other than syndicate profits), mutual fund concessions receivable and management fees receivable from registered investment companies and commodity pools: *Provided,* Such receivables are outstanding no longer than thirty (30) days from the date they are due; and dividends receivable outstanding no longer than thirty (30) days from the payable date;

(C) Receivables from clearing organizations and securities clearing organizations;

(D) Receivables from registered futures commission merchants or brokers, resulting from commodity futures or option transactions, except those specifically excluded under paragraph (c)(2)(i) of this section;

(E) Insurance claims which arise from a reportable segment of the applicant's or registrant's overall business activities, as defined in generally accepted accounting principles, other than in the commodity futures, commodity option, security and security option segments of the applicant's or registrant's business activities which are not outstanding more than 3 calendar months after the date they are recorded as a receivable;

(F) All other insurance claims not subject to paragraph (c)(2)(ii)(E) of this section, which are not older than seven (7) business days from the date the loss giving rise to the claim is discovered; insurance claims which are not older than twenty (20) business days from the date the loss giving rise to the claim is discovered and which are covered by an option of outside counsel that the claim is valid and is covered by insurance policies presently in effect; insurance claims which are older than twenty (20) business days from the date the loss giving rise to the claim is discovered and which are covered by an opinion of outside counsel that the claim is valid and is covered by insurance policies presently in effect and which have been acknowledged in writing by the insurance carrier as due and payable: *Provided,* Such claims are not outstanding longer than twenty (20) business days from the date they are so acknowledged by the carrier;

(iii) Exclude all prepaid expenses and deferred charges;

(iv) Exclude all inventories except for:

(A) Readily marketable spot commodities; or spot commodities which “adequately collateralize”

indebtedness under paragraph (c)(7) of this section;

(B) Securities which are considered "readily marketable" (as defined in §240.15c3–1(c)(11) of this title) or which "adequately collateralize" indebtedness under paragraph (c)(7) of this section;

(C) Work in process and finished goods which result from the processing of commodities at market value;

(D) Raw materials at market value which will be combined with spot commodities to produce a finished processed commodity; and

(E) Inventories held for resale commonly associated with the business activities of the applicant or registrant;

(v) Include fixed assets and assets which otherwise would be considered noncurrent to the extent of any long-term debt adequately collateralized by assets acquired for use in the ordinary course of the trade or business of an applicant or registrant and any other long-term debt adequately collateralized by assets of the applicant or registrant if the sole recourse of the creditor for nonpayment of such liability is to such asset: *Provided,* Such liabilities are not excluded from liabilities in the computation of net capital under paragraph (c)(4)(vi) of this section;

(vi) Exclude all assets doubtful of collection or realization less any reserves established therefor;

(vii) Include, in the case of future income tax benefits arising as a result of unrealized losses, the amount of such benefits not exceeding the amount of income tax liabilities accrued on the books and records of the applicant or registrant, but only to the extent such benefits could have been applied to reduce accrued tax liabilities on the date of the capital computation, had the related unrealized losses been realized on that date;

(viii) Include guarantee deposits with clearing organizations and stock in clearing organizations to the extent of its margin value;

(ix) In the case of an introducing broker or an applicant for registration as an introducing broker, include 50 percent of the value of a guarantee or security deposit with a futures commission merchant which carries or intends to carry accounts for the customers of the introducing broker; and

(x) Exclude exchange memberships.

(3) A loan or advance or any other form of receivable shall not be considered "secured" for the purposes of paragraph (c)(2) of this section unless the following conditions exist:

(i) The receivable is secured by readily marketable collateral which is otherwise unencumbered and which can be readily converted into cash: *Provided, however,* That the receivable will be considered secured only to the extent of the market value of such collateral after application of the percentage deductions specified in paragraph (c)(5) of this section; and

(ii)(A) The readily marketable collateral is in the possession or control of the applicant or registrant; or

(B) The applicant or registrant has a legally enforceable, written security agreement, signed by the debtor, and has a perfected security interest in the readily marketable collateral within the meaning of the laws of the State in which the readily marketable collateral is located.

(4) The term *liabilities* means the total money liabilities of an applicant or registrant arising in connection with any transaction whatsoever, including economic obligations of an applicant or registrant that are recognized and measured in conformity with generally accepted accounting principles. "Liabilities" also include certain deferred credits that are not obligations but that are recognized and measured in conformity with generally accepted accounting principles. For the purposes of computing "net capital", the term "liabilities":

(i) Excludes liabilities of an applicant or registrant which are subordinated to the claims of all general creditors of the applicant or registrant pursuant to a satisfactory subordination agreement, as defined in paragraph (h) of this section;

(ii) Excludes, in the case of a futures commission merchant, the amount of money, securities and property due to commodity futures or option customers which is held in segregated accounts in compliance with the requirements of the Act and these regulations: *Provided, however,* That such exclusion may be taken only if such money, securities and property held in segregated accounts have been excluded from current assets in computing net capital;

(iii) Includes, in the case of an applicant or registrant who is a sole proprietor, the excess of liabilities which have not been incurred in the course of business as a futures commission merchant or as an introducing broker over assets not used in the business;

(iv) Excludes the lesser of any deferred income tax liability related to the items in paragraphs (c)(4)(i) (A), (B), and (C) below, or the sum of paragraphs (c)(4)(i) (A), (B), and (C) below:

(A) The aggregate amount resulting from applying to the amount of the deductions computed in accordance with paragraph (c)(5) of this section the appropriate Federal and State tax rate(s) applicable to any unrealized gain on the asset on which the deduction was computed;

(B) Any deferred tax liability related to income accrued which is directly related to an asset otherwise deducted pursuant to this section;

(C) Any deferred tax liability related to unrealized appreciation in value of any asset(s) which has been otherwise excluded from current assets in accordance with the provisions of this section;

(v) Excludes any current tax liability related to income accrued which is directly related to an asset otherwise deducted pursuant to this section; and

(vi) Excludes liabilities which would be classified as long term in accordance with generally accepted accounting principles to the extent of the net book value of plant, property and equipment which is used in the ordinary course of any trade or business of the applicant or registrant which is a reportable segment of the applicant's or registrant's overall business activities, as defined in generally accepted accounting principles, other than in the commodity futures, commodity option, security and security option segments of the applicant's or registrant's business activities: *Provided,* That such plant, property and equipment is not included in current assets pursuant to paragraph (c)(2)(v) of this section.

(5) The term *adjusted net capital* means net capital less:

(i) The amount by which any advances paid by the applicant or registrant on cash commodity contracts and used in computing net capital exceeds 95 percent of the market value of the commodities covered by such contracts;

(ii) In the case of all inventory, fixed price commitments and forward contracts, the applicable

percentage of the net position specified below:

(A) Inventory which is currently registered as deliverable on a contract market and covered by an open futures contract or by a commodity option on a physical.—No charge.

(B) Inventory which is covered by an open futures contract or commodity option.—5 percent of the market value.

(C) Inventory which is not covered.—20 percent of the market value.

(D) Inventory and forward contracts in those foreign currencies that are purchased or sold for future delivery on or subject to the rules of a contract market, and which are covered by an open futures contract.—No charge

(E) Inventory and forward contracts in euros, British pounds, Canadian dollars, Japanese yen, or Swiss francs, and which are not covered by an open futures contract or commodity option.—6 percent of the market value.

(F) Fixed price commitments (open purchases and sales) and forward contracts which are covered by an open futures contract or commodity option.—10 percent of the market value.

(G) Fixed price commitments (open purchases and sales) and forward contracts which are not covered by an open futures contract or commodity option.—20 percent of the market value.

(iii)—(iv) [Reserved]

(v) In the case of securities and obligations used by the applicant or registrant in computing net capital, and in the case of a futures commission merchant with securities in segregation pursuant to section 4d(2) of the Act and the regulations in this chapter which were not deposited by customers, the percentages specified in Rule 240.15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vi)) (“securities haircuts”) and 100 percent of the value of “nonmarketable securities” as specified in Rule 240.15c3–1(c)(2)(vii) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vii));

(vi) In the case of securities options and/or other options for which a haircut has been specified for the option or for the underlying instrument in §240.15c3–1 appendix A of this title, the treatment specified in, or under, §240.15c3–1 appendix A, after effecting certain adjustments to net capital for listed and unlisted options as set forth in such appendix;

(vii) In the case of an applicant or registrant who has open contractual commitments, as hereinafter defined, the deductions specified in §240.15c3–1(c)(2)(viii) of this title;

(viii) In the case of a futures commission merchant, for undermargined customer commodity futures accounts and commodity option customer accounts the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade or if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions, after application of calls for margin or other required deposits which are outstanding three business days or less. If there are no such maintenance margin requirements or clearing organization margin requirements, then the amount of funds required to provide margin equal to the amount necessary after application of calls for margin or other required deposits outstanding three business days or less to restore original margin when the original margin has been depleted by 50 percent or more: *Provided,* To the extent a deficit is excluded from current assets in accordance with paragraph (c)(2)(i) of this section such amount

shall not also be deducted under this paragraph (c)(5)(viii). In the event that an owner of a customer account has deposited an asset other than cash to margin, guarantee or secure his account, the value attributable to such asset for purposes of this subparagraph shall be the lesser of (A) the value attributable to the asset pursuant to the margin rules of the applicable board of trade, or (B) the market value of the asset after application of the percentage deductions specified in this paragraph (c)(5);

(ix) In the case of a futures commission merchant, for undermargined commodity futures and commodity option noncustomer and omnibus accounts the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade or if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions, after application of calls for margin or other required deposits which are outstanding two business days or less. If there are no such maintenance margin requirements or clearing organization margin requirements, then the amount of funds required to provide margin equal to the amount necessary after application of calls for margin or other required deposits outstanding two business days or less to restore original margin when the original margin has been depleted by 50 percent or more: *Provided,* To the extent a deficit is excluded from current assets in accordance with paragraph (c)(2)(i) of this section such amount shall not also be deducted under this paragraph (c)(5)(ix). In the event that an owner of a noncustomer or omnibus account has deposited an asset other than cash to margin, guarantee or secure his account the value attributable to such asset for purposes of this subparagraph shall be the lesser of (A) the value attributable to such asset pursuant to the margin rules of the applicable board of trade, or (B) the market value of such asset after application of the percentage deductions specified in this paragraph (c)(5);

(x) In the case of open futures contracts or cleared OTC derivative positions and granted (sold) commodity options held in proprietary accounts carried by the applicant or registrant which are not covered by a position held by the applicant or registrant or which are not the result of a "changer trade" made in accordance with the rules of a contract market:

(A) For an applicant or registrant which is a clearing member of a clearing organization for the positions cleared by such member, the applicable margin requirement of the applicable clearing organization;

(B) For an applicant or registrant which is a member of a self-regulatory organization 150 percent of the applicable maintenance margin requirement of the applicable board of trade, or clearing organization, whichever is greater;

(C) For all other applicants or registrants, 200 percent of the applicable maintenance margin requirements of the applicable board of trade or clearing organization, whichever is greater; or

(D) For open contracts or granted (sold) commodity options for which there are no applicable maintenance margin requirements, 200 percent of the applicable initial margin requirement: *Provided,* The equity in any such proprietary account shall reduce the deduction required by this paragraph (c)(5)(x) if such equity is not otherwise includable in adjusted net capital;

(xi) In the case of an applicant or registrant which is a purchaser of a commodity option not traded on a contract market which has value and such value is used to increase adjusted net capital, ten percent of the market value of the physical or futures contract which is the subject of such option but in no event more than the value attributed to such option;

(xii) In the case of an applicant or registrant which is a purchaser of a commodity option which is traded on a contract market the same safety factor as if the applicant or registrant were the grantor of such option in accordance with paragraph (c)(5)(x) of this section, but in no event shall

the safety factor be greater than the market value attributed to such option;

(xiii) Five percent of all unsecured receivables includable under paragraph (c)(2)(ii)(D) of this section used by the applicant or registrant in computing "net capital" and which are not due from:

(A) A registered futures commission merchant;

(B) A broker or dealer that is registered as such with the Securities and Exchange Commission; or

(C) A foreign broker that has been granted comparability relief pursuant to §30.10 of this chapter, *Provided, however,* that the amount of the unsecured receivable not subject to the five percent capital charge is no greater than 150 percent of the current amount required to maintain futures and option positions in accounts with the foreign broker, or 100 percent of such greater amount required to maintain futures and option positions in the accounts at any time during the previous six-month period, and *Provided, that,* in the case of customer funds, such account is treated in accordance with the special requirements of the applicable Commission order issued under §30.10 of this chapter.

(xiv) For securities brokers and dealers, all other deductions specified in §240.15c3–1 of this title.

(6) Election of alternative capital deductions that have received approval of Securities and Exchange Commission pursuant to §240.15c3–1(a)(7) of this title.

(i) Any futures commission merchant that is also registered with the Securities and Exchange Commission as a securities broker or dealer, and who also satisfies the other requirements of this paragraph (c)(6), may elect to compute its adjusted net capital using the alternative capital deductions that, under §240.15c3–1(a)(7) of this title, the Securities and Exchange Commission has approved by written order. To the extent that a futures commission merchant is permitted by the Securities and Exchange Commission to use alternative capital deductions for its unsecured receivables from over-the-counter transactions in derivatives, or for its proprietary positions in securities, forward contracts, or futures contracts, the futures commission merchant may use these same alternative capital deductions when computing its adjusted net capital, in lieu of the deductions that would otherwise be required by paragraph (c)(2)(ii) of this section for its unsecured receivables from over-the-counter derivatives transactions; by paragraph (c)(5)(ii) of this section for its proprietary positions in forward contracts; by paragraph (c)(5)(v) of this section for its proprietary positions in securities; and by paragraph (c)(5)(x) of this section for its proprietary positions in futures contracts.

(ii) *Notifications of election or of changes to election.* (A) No election to use the alternative market risk and credit risk deductions referenced in paragraph (c)(6)(i) of this section shall be effective unless and until the futures commission merchant has filed with the Commission, addressed to the Director of the Division of Clearing and Intermediary Oversight, a notice that is to include a copy of the approval order of the Securities and Exchange Commission referenced in paragraph (c)(6)(i) of this section, and to include also a statement that identifies the amount of tentative net capital below which the futures commission merchant is required to provide notice to the Securities and Exchange Commission, and which also provides the following information: a list of the categories of positions that the futures commission merchant holds in its proprietary accounts, and, for each such category, a description of the methods that the futures commission merchant will use to calculate its deductions for market risk and credit risk, and also, if calculated separately, deductions for specific risk; a description of the value at risk (VaR) models to be used for its market risk and credit risk deductions, and an overview of the integration of the models into the internal risk management control system of the futures commission merchant; a description of how the futures commission merchant will calculate current exposure and maximum potential

exposure for its deductions for credit risk; a description of how the futures commission merchant will determine internal credit ratings of counterparties and internal credit risk weights of counterparties, if applicable; and a description of the estimated effect of the alternative market risk and credit risk deductions on the amounts reported by the futures commission merchant as net capital and adjusted net capital.

(B) A futures commission merchant must also, upon the request of the Commission at any time, supplement the statement described in paragraph (c)(6)(ii)(A) of this section, by providing any other explanatory information regarding the computation of its alternative market risk and credit risk deductions as the Commission may require at its discretion.

(C) A futures commission merchant must also file the following supplemental notices with the Director of the Division and Clearing and Intermediary Oversight:

(*1*) A notice advising that the Securities and Exchange Commission has imposed additional or revised conditions for the approval evidenced by the order referenced in paragraph (c)(6)(i) of this section, and which describes the new or revised conditions in full, and

(*2*) A notice which attaches a copy of any approval by the Securities and Exchange Commission of amendments that a futures commission merchant has requested for its application, filed under 17 CFR 240.15c3–1e, to use alternative market risk and credit risk deductions approved by the Securities and Exchange Commission.

(D) A futures commission merchant may voluntarily change its election to use the alternative market risk and credit risk deductions referenced in paragraph (c)(6)(i) of this section, by filing with the Director of the Division of Clearing and Intermediary Oversight a written notice specifying a future date as of which it will no longer use the alternative market risk and credit risk deductions, and will instead compute such deductions in accordance with the requirements otherwise applicable under paragraph (c)(2)(ii) of this section for unsecured receivables from over-the-counter derivatives transactions; by paragraph (c)(5)(ii) of this section for proprietary positions in forward contracts; by paragraph (c)(5)(v) of this section for proprietary positions in securities; and by paragraph (c)(5)(x) of this section for proprietary positions in futures contracts.

(iii) *Conditions under which election terminated.* A futures commission merchant may no longer elect to use the alternative market risk and credit risk deductions referenced in paragraph (c)(6)(i) of this section, and shall instead compute the deductions otherwise required under paragraph (c)(2)(ii) of this section for unsecured receivables from over-the-counter derivatives transactions; by paragraph (c)(5)(ii) of this section for proprietary positions in forward contracts; by paragraph (c)(5)(v) of this section for proprietary positions in securities; and by paragraph (c)(5)(x) of this section for proprietary positions in futures contracts, upon the occurrence of any of the following:

(A) The Securities and Exchange Commission revokes its approval of the market risk and credit risk deductions for such futures commission merchant;

(B) A futures commission merchant fails to come into compliance with its filing requirements under this paragraph (c)(6), after having received from the Director of the Division of Clearing and Intermediary Oversight written notification that the firm is not in compliance with its filing requirements, and must cease using alternative capital deductions permitted under this paragraph (c)(6) if it has not come into compliance by a date specified in the notice; or

(C) The Commission by written order finds that permitting the futures commission merchant to continue to use such alternative market risk and credit risk deductions is no longer necessary or appropriate for the protection of customers of the futures commission merchant or of the integrity of the futures or options markets.

(iv) *Additional filing requirements.* Any futures commission merchant that elects to use the alternative market risk and credit risk deductions referenced in paragraph (c)(6)(i) of this section must file with the Commission, in addition to the filings required by paragraph (c)(6)(ii) of this section, copies of any and all of the following documents, at such time as the originals are filed with the Securities and Exchange Commission:

(A) Information that the futures commission merchant files on a monthly basis with its designated examining authority or the Securities and Exchange Commission, whether by way of schedules to its FOCUS reports or by other filings, in satisfaction of 17 CFR 240.17a–5(a)(5)(i);

(B) The quarterly reports required by 17 CFR 240.17a–5(a)(5)(ii);

(C) The supplemental annual filings as required by 17 CFR 240.17a–5(k);

(D) Any notification to the Securities and Exchange Commission or the futures commission merchant's designated examining authority of planned withdrawals of excess net capital; and

(E) Any notification that the futures commission merchant is required to file with the Securities and Exchange Commission when its tentative net capital is below an amount specified by the Securities and Exchange Commission.

(7) *Liabilities* are "adequately collateralized" when, pursuant to a legally enforceable written instrument, such liabilities are secured by identified assets that are otherwise unencumbered and the market value of which exceeds the amount of such liabilities.

(8) The term *contractual commitments* shall include underwriting, when issued, when distributed, and delayed delivery contracts; and the writing or endorsement of security puts and calls and combinations thereof; but shall not include uncleared regular way purchases and sales of securities. A series of contracts of purchase or sale of the same security, conditioned, if at all, only upon issuance, may be treated as an individual commitment.

(d) Each applicant or registrant shall have equity capital (inclusive of satisfactory subordination agreements which qualify under this paragraph (d) as equity capital) of not less than 30 percent of the debt-equity total, provided, an applicant or registrant may be exempted from the provisions of this paragraph (d) for a period not to exceed 90 days or for such longer period which the Commission may, upon application of the applicant or registrant, grant in the public interest or for the protection of investors. For the purposes of this paragraph (d):

(1) Equity capital means a satisfactory subordination agreement entered into by a partner or stockholder or limited liability company member which has an initial term of at least 3 years and has a remaining term of not less than 12 months if:

(i) It does not have any of the provisions for accelerated maturity provided for by paragraphs (h)(2) (ix)(A), (x)(A), or (x)(B) of this section, or the provisions allowing for special prepayment provided for by paragraph (h)(2)(vii)(B) of this section, and is maintained as capital subject to the provisions restricting the withdrawal thereof required by paragraph (e) of this section; or

(ii) The partnership agreement provides that capital contributed pursuant to a satisfactory subordination agreement as defined in paragraph (h) of this section shall in all respects be partnership capital subject to the provisions restricting the withdrawal thereof required by paragraph (e) of this section, and

(A) In the case of a corporation, the sum of its par or stated value of capital stock, paid in capital

in excess of par, retained earnings, unrealized profit and loss, and other capital accounts.

(B) In the case of a partnership, the sum of its capital accounts of partners (inclusive of such partners' commodities, options and securities accounts subject to the provisions of paragraph (e) of this section), and unrealized profit and loss.

(C) In the case of a sole proprietorship, the sum of its capital accounts of the sole proprietorship and unrealized profit and loss.

(D) In the case of a limited liability company, the sum of its capital accounts of limited liability company members, and unrealized profit and loss.

(2) Debt-equity total means equity capital as defined in paragraph (d)(1) of this section plus the outstanding principal amount of satisfactory subordination agreements.

(e) No equity capital of the applicant or registrant or a subsidiary's or affiliate's equity capital consolidated pursuant to paragraph (f) of this section, whether in the form of capital contributions by partners (including amounts in the commodities, options and securities trading accounts of partners which are treated as equity capital but excluding amounts in such trading accounts which are not equity capital and excluding balances in limited partners' capital accounts in excess of their stated capital contributions), par or stated value of capital stock, paid-in capital in excess of par or stated value, retained earnings or other capital accounts, may be withdrawn by action of a stockholder or partner or limited liability company member or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor, limited liability company member, or employee if, after giving effect thereto and to any other such withdrawals, advances, or loans and any payments of payment obligations (as defined in paragraph (h) of this section) under satisfactory subordination agreements and any payments of liabilities excluded pursuant to paragraph (c)(4)(vi) of this section which are scheduled to occur within six months following such withdrawal, advance or loan:

(1) Either adjusted net capital of any of the consolidated entities would be less than the greatest of:

(i) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(iii)(A) of this section;

(ii) For a futures commission merchant or applicant therefor, 120 percent of the amount required by paragraph (a)(1)(i)(B) of this section;

(iii) 120 percent of the amount of adjusted net capital required by a registered futures association of which it is a member; or

(iv) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1(e) of the Securities and Exchange Commission (17 CFR 240.15c3–1(e)); or

(2) In the case of any applicant or registrant included within such consolidation, if equity capital of the applicant or registrant (inclusive of satisfactory subordination agreements which qualify as equity under paragraph (d) of this section) would be less than 30 percent of the required debt-equity total as defined in paragraph (d) of this section.

Provided, That this paragraph (e) shall not preclude an applicant or registrant from making

required tax payments or preclude the payment to partners of reasonable compensation. The Commission may, upon application of the applicant or registrant, grant relief from this paragraph (e) if the Commission deems it to be in the public interest or for the protection of nonproprietary accounts.

(f)(1) Every applicant or registrant, in computing its net capital pursuant to this section must, subject to the provisions of paragraphs (f)(2) and (f)(4) of this section, consolidate in a single computation, assets and liabilities of any subsidiary or affiliate for which it guarantees, endorses, or assumes directly or indirectly the obligations or liabilities. The assets and liabilities of a subsidiary or affiliate whose liabilities and obligations have not been guaranteed, endorsed, or assumed directly or indirectly by the applicant or registrant may also be so consolidated if an opinion of counsel is obtained as provided for in paragraph (f)(2) of this section.

(2)(i) If the consolidation, provided for in paragraph (f)(1) of this section, of any such subsidiary or affiliate results in the increase of the applicant's or registrant's adjusted net capital or decreases the minimum adjusted net capital requirement, and an opinion of counsel called for in paragraph (f)(2)(ii) of this section has not been obtained, such benefits shall not be recognized in the applicant's or registrant's computation required by this section.

(ii) Except as provided for in paragraph (f)(2)(i) of this section, consolidation shall be permitted with respect to any subsidiaries or affiliates which are majority owned and controlled by the applicant or registrant, and for which the applicant can demonstrate to the satisfaction of the National Futures Association, or for which the registrant can demonstrate to the satisfaction of the Commission and the designated self-regulatory organization, if any, by an opinion of counsel, that the net asset values or the portion thereof related to the parent's ownership interest in the subsidiary or affiliate, may be caused by the applicant or registrant or an appointed trustee to be distributed to the applicant or registrant within 30 calendar days. Such opinion must also set forth the actions necessary to cause such a distribution to be made, identify the parties having the authority to take such actions, identify and describe the rights of other parties or classes of parties, including but not limited to customers, general creditors, subordinated lenders, minority shareholders, employees, litigants, and governmental or regulatory authorities, who may delay or prevent such a distribution and such other assurances as the National Futures Association, the Commission or the designated self-regulatory organization by rule or interpretation may require. Such opinion must be current and periodically renewed in connection with the applicant's or registrant's annual audit pursuant to §1.10 or upon any material change in circumstances.

(3) In preparing a consolidated computation of adjusted net capital pursuant to this section, the following minimum and non-exclusive requirements shall be observed;

(i) Consolidated adjusted net capital shall be reduced by the estimated amount of any tax reasonably anticipated to be incurred upon distribution of the assets of the subsidiary or affiliate.

(ii) Liabilities of a consolidated subsidiary or affiliate which are subordinated to the claims of present and future creditors pursuant to a satisfactory subordination agreement shall be deducted from consolidated adjusted net capital unless such subordination extends also to the claims of present or future creditors of the parent applicant or registrant and all consolidated subsidiaries.

(iii) Subordinated liabilities of a consolidated subsidiary or affiliate which are consolidated in accordance with paragraph (f)(3)(ii) of this section may not be prepaid, repaid, or accelerated if any of the entities included in such consolidation would otherwise be unable to comply with the provisions of paragraph (h) of this section.

(iv) Each applicant or registrant included within the consolidation shall at all times be in compliance with the adjusted net capital requirement to which it is subject.

(4) No applicant or registrant shall guarantee, endorse, or assume directly or indirectly any obligation or liability of a subsidiary or affiliate unless the obligation or liability is reflected in the computation of adjusted net capital pursuant to this section except as provided in paragraph (f)(2)(i) of this section.

(g)(1) The Commission may by order restrict, for a period up to twenty business days, any withdrawal by a futures commission merchant of equity capital, or any unsecured advance or loan to a stockholder, partner, limited liability company member, sole proprietor, employee or affiliate, if:

(i) Such withdrawal, advance or loan would cause, when aggregated with all other withdrawals, advances or loans during a 30 calendar day period from the futures commission merchant or a subsidiary or affiliate of the futures commission merchant consolidated pursuant to §1.17(f) (or 17 CFR 240.15c3–1e), a net reduction in excess adjusted net capital (or, if the futures commission merchant is qualified to use the filing option available under §1.10(h), excess net capital as defined in the rules of the Securities and Exchange Commission) of 30 percent or more, and

(ii) The Commission, based on the facts and information available, concludes that any such withdrawal, advance or loan may be detrimental to the financial integrity of the futures commission merchant, or may unduly jeopardize its ability to meet customer obligations or other liabilities that may cause a significant impact on the markets.

(2) The futures commission merchant may file with the Secretary of the Commission a written petition to request rescission of the order issued under paragraph (g)(1) of this section. The petition filed by the futures commission merchant must specify the facts and circumstances supporting its request for rescission. The Commission shall respond in writing to deny the futures commission merchant's petition for rescission, or, if the Commission determines that the order issued under paragraph (g)(1) of this section should not remain in effect, the order shall be rescinded.

(h) The term *satisfactory subordination agreement* ("subordination agreement") means an agreement which contains the minimum and nonexclusive requirements set forth below.

(1) Certain definitions for purposes of this section:

(i) A subordination agreement may be either a subordinated loan agreement or a secured demand note agreement.

(ii) The term *subordinated loan agreement* means the agreement or agreements evidencing or governing a subordinated borrowing of cash.

(iii) The term "collateral value" of any securities pledged to secure a secured demand note means the market value of such securities after giving effect to the percentage deductions specified in Rule 240.15c3–1d(a)(2)(iii) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(a)(2)(iii)).

(iv) The term *payment obligation* means the obligation of an applicant or registrant in respect to any subordination agreement:

(A) To repay cash loaned to the applicant or registrant pursuant to a subordinated loan agreement; or

(B) To return a secured demand note contributed to the applicant or registrant or to reduce the

unpaid principal amount thereof and to return cash or securities pledged as collateral to secure the secured demand note; and (C) "payment" shall mean the performance by an applicant or registrant of a payment obligation.

(v)(A) The term *secured demand note agreement* means an agreement (including the related secured demand note) evidencing or governing the contribution of a secured demand note to an applicant or registrant and the pledge of securities and/or cash with the applicant or registrant as collateral to secure payment of such secured demand note. The secured demand note agreement may provide that neither the lender, his heirs, executors, administrators, or assigns shall be personally liable on such note and that in the event of default the applicant or registrant shall look for payment of such note solely to the collateral then pledged to secure the same.

(B) The secured demand note shall be a promissory note executed by the lender and shall be payable on the demand of the applicant or registrant to which it is contributed: *Provided, however,* That the making of such demand may be conditioned upon the occurrence of any of certain events which are acceptable to the designated self-regulatory organization and the Commission.

(C) If such note is not paid upon presentment and demand as provided for therein, the applicant or registrant shall have the right to liquidate all or any part of the securities then pledged as collateral to secure payment of the same and to apply the net proceeds of such liquidation, together with any cash then included in the collateral, in payment of such note. Subject to the prior rights of the applicant or registrant as pledgee, the lender, as defined in paragraph (h)(i)(v)(F) of this section may retain ownership of the collateral and have the benefit of any increases and bear the risks of any decreases in the value of the collateral and may retain the right to vote securities contained within the collateral and any right to income therefrom or distributions thereon, except the applicant or registrant shall have the right to receive and hold as pledgee all dividends payable in securities and all partial and complete liquidating dividends.

(D) Subject to the prior rights of the applicant or registrant as pledgee, the lender may have the right to direct the sale of any securities included in the collateral, to direct the purchase of securities with any cash included therein, to withdraw excess collateral or to substitute cash or other securities as collateral: *Provided,* That the net proceeds of any such sale and the cash so substituted and the securities so purchased or substituted are held by the applicant or registrant as pledgee, and are included within the collateral to secure payment of the secured demand note: *And provided further,* That no such transaction shall be permitted, if, after giving effect thereto, the sum of the amount of any cash, plus the collateral value of the securities, then pledged as collateral to secure the secured demand note would be less than the unpaid principal amount of the secured demand note.

(E) Upon payment by the lender, as distinguished from a reduction by the lender which is provided for in paragraph (h)(2)(vi)(C) of this section or reduction by the applicant or registrant as provided for in paragraph (h)(2)(vii) of this section, of all or any part of the unpaid principal amount of the secured demand note, the applicant or registrant shall issue to the lender a subordinated loan agreement in the amount of such payment (or in the case of an applicant or registrant that is a partnership, credit a capital account of the lender), or issue preferred or common stock of the applicant or registrant in the amount of such payment, or any combination of the foregoing, as provided for in the secured demand note agreement.

(F) The term *lender* means the person who lends cash to an applicant or registrant pursuant to a subordinated loan agreement and the person who contributes a secured demand note to an applicant or registrant pursuant to a secured demand note agreement.

(2) Minimum requirements for subordination agreements:

(i) Subject to paragraph (h)(1) of this section, a subordination agreement shall mean a written agreement between the applicant or registrant and the lender, which:

(A) Has a minimum term of 1 year, except for temporary subordination agreements provided for in paragraph (h)(3)(v) of this section, and

(B) Is a valid and binding obligation enforceable in accordance with its terms (subject as to enforcement to applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws) against the applicant or registrant and the lender and their respective heirs, executors, administrators, successors, and assigns.

(ii) *Specific amount.* All subordination agreements shall be for a specific dollar amount which shall not be reduced for the duration of the agreement except by installments as specifically provided for therein and except as otherwise provided in this paragraph (h)(2) of this section.

(iii) *Effective subordination.* The subordination agreement shall effectively subordinate any right of the lender to receive any payment with respect thereto, together with accrued interest or compensation, to the prior payment or provision for payment in full of all claims of all present and future creditors of the applicant or registrant arising out of any matter occurring prior to the date on which the related payment obligation matures, except for claims which are the subject of subordination agreements which rank on the same priority as or junior to the claim of the lender under such subordination agreements.

(iv) *Proceeds of subordinated loan agreements.* The subordinated loan agreement shall provide that the cash proceeds thereof shall be used and dealt with by the applicant or registrant as part of its capital and shall be subject to the risks of the business.

(v) *Certain rights of the borrower.* The subordination agreement shall provide that the applicant or registrant shall have the right to:

(A) Deposit any cash proceeds of a subordinated loan agreement and any cash pledged as collateral to secure a secured demand note in an account or accounts in its own name in any bank or trust company;

(B) Pledge, repledge, hypothecate and rehypothecate, any or all of the securities pledged as collateral to secure a secured demand note, without notice, separately or in common with other securities or property for the purpose of securing any indebtedness of the applicant or registrant; and

(C) Lend to itself or others any or all of the securities and cash pledged as collateral to secure a secured demand note.

(vi) *Collateral for secured demand notes.* Only cash and securities which are fully paid for and which may be publicly offered or sold without registration under the Securities Act of 1933, and the offer, sale, and transfer of which are not otherwise restricted, may be pledged as collateral to secure a secured demand note. The secured demand note agreement shall provide that if at any time the sum of the amount of any cash, plus the collateral value of any securities, then pledged as collateral to secure the secured demand note is less than the unpaid principal amount of the secured demand note, the applicant or registrant must immediately transmit written notice to that effect to the lender. The secured demand note agreement shall also provide that if the borrower is an applicant, such notice must also be transmitted immediately to the National Futures Association, and if the borrower is a registrant, such notice must also be transmitted immediately to the designated self-regulatory organization, if any, and the Commission. The secured demand note agreement shall also require that following such transmittal:

(A) The lender, prior to noon of the business day next succeeding the transmittal of such notice, may pledge as collateral additional cash or securities sufficient, after giving effect to such pledge, to bring the sum of the amount of any cash plus the collateral value of any securities, then pledged as collateral to secure the secured demand note, up to an amount not less than the unpaid principal amount of the secured demand note; and

(B) Unless additional cash or securities are pledged by the lender as provided in paragraph (h)(2)(vi)(A) above, the applicant or registrant at noon on the business day next succeeding the transmittal of notice to the lender must commence sale, for the account of the lender, of such of the securities then pledged as collateral to secure the secured demand note and apply so much of the net proceeds thereof, together with such of the cash then pledged as collateral to secure the secured demand note as may be necessary to eliminate the unpaid principal amount of the secured demand note: *Provided, however,* That the unpaid principal amount of the secured demand note need not be reduced below the sum of the amount of any remaining cash, plus the collateral value of the remaining securities, then pledged as collateral to secure the secured demand note. The applicant or registrant may not purchase for its own account any securities subject to such a sale; and

(C) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by paragraph (h)(2)(vi)(B) of this section, the lender, with the prior written consent of the applicant and the National Futures Association, or with the prior written consent of the registrant and the designated self-regulatory organization or, if the registrant is not a member of a designated self-regulatory organization, the Commission, may reduce the unpaid principal amount of the secured demand note: *Provided,* That after giving effect to such reduction the adjusted net capital of the applicant or registrant would not be less than the greatest of:

(*1*) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(iii)(A) of this section;

(*2*) For a futures commission merchant or applicant therefor, 120 percent of the amount required by paragraph (a)(1)(i)(B) of this section;

(*3*) 120 percent of the amount of adjusted net capital required by a registered futures association of which it is a member; or

(*4*) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(b)(6)(iii) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(b)(6)(iii)): *Provided, further,* That no single secured demand note shall be permitted to be reduced by more than 15 percent of its original principal amount and after such reduction no excess collateral may be withdrawn.

(vii) *Permissive prepayments and special prepayments.* (A) An applicant or registrant at its option, but not at the option of the lender, may, if the subordination agreement so provides, make a payment of all or any portion of the payment obligation thereunder prior to the scheduled maturity date of such payment obligation (hereinafter referred to as a “prepayment”), but in no event may any prepayment be made before the expiration of one year from the date such subordination agreement became effective: *Provided, however,* That the foregoing restriction shall not apply to temporary subordination agreements which comply with the provisions of paragraph (h)(3)(v) of this section nor shall it apply to “special prepayments” made in accordance with the provisions of paragraph (h)(2)(vii)(B) of this section. No prepayment shall be made if, after giving effect thereto (and to all payments of payment obligations under any other subordination agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such prepayment is to occur pursuant to this provision, or on or prior to the

date on which the payment obligation in respect to such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the applicant or registrant, the adjusted net capital of the applicant or registrant is less than the greatest of:

(*1*) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(iii)(A) of this section;

(*2*) For a futures commission merchant or applicant therefor, 120 percent of the amount required by paragraph (a)(1)(i)(B) of this section;

(*3*) 120 percent of the amount of adjusted net capital required by a registered futures association of which it is a member; or

(*4*) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(b)(7) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(b)(7)).

(B) An applicant or registrant at its option, but not at the option of the lender, may, if the subordination agreement so provides, make a payment at any time of all or any portion of the payment obligation thereunder prior to the scheduled maturity date of such payment obligation (hereinafter referred to as a "special prepayment"). No special prepayment shall be made if, after giving effect thereto (and to all payments of payment obligations under any other subordination agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such special prepayment is to occur pursuant to this provision, or on or prior to the date on which the payment obligation in respect to such special prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the applicant or registrant, the adjusted net capital of the applicant or registrant is less than the greatest of:

(*1*) 200 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(iii)(A) of this section;

(*2*) For a futures commission merchant or applicant therefor, 125 percent of the amount required by paragraph (a)(1)(i)(B) of this section;

(*3*) 120 percent of the amount of adjusted net capital required by a registered futures association of which it is a member; or

(*4*) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(c)(5)(ii) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(c)(5)(ii)): *Provided, however,* That no special prepayment shall be made if pre-tax losses during the latest three-month period were greater than 15 percent of current excess adjusted net capital.

(C)(*1*) Notwithstanding the provisions of paragraphs (h)(2)(vii)(A) and (h)(2)(vii)(B) of this section, in the case of an applicant, no prepayment or special prepayment shall occur without the prior written approval of the National Futures Association; in the case of a registrant, no prepayment or special prepayment shall occur without the prior written approval of the designated self-regulatory organization, if any, or of the Commission if the registrant is not a member of a self-regulatory organization.

(*2*) A registrant may make a prepayment or special prepayment without the prior written

approval of the designated self-regulatory organization: Provided, That the registrant: Is a securities broker or dealer registered with the Securities and Exchange Commission; files a request to make a prepayment or special prepayment with its applicable securities designated examining authority, as defined in Rule 15c3–1(c)(12) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(12)), in the form and manner prescribed by the designated examining authority; files a copy of the prepayment request or special prepayment request with the designated self-regulatory organization at the time it files such request with the designated examining authority in the form and manner prescribed by the designated self-regulatory organization; and files a copy of the designated examining authority's approval of the prepayment or special prepayment with the designated self-regulatory organization immediately upon receipt of such approval. The approval of the prepayment or special prepayment by the designated examining authority will be deemed approval by the designated self-regulatory organization, unless the designated self-regulatory organization notifies the registrant that the designated examining authority's approval shall not constitute designated self-regulatory organization approval.

(*3*) The designated self-regulatory organization shall immediately provide the Commission with a copy of any notice of approval issued where the requested prepayment or special prepayment will result in the reduction of the registrant's net capital by 20 percent or more or the registrant's excess adjusted net capital by 30 percent or more.

(viii) *Suspended repayment.* (A) The payment obligation of the applicant or registrant in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to payment of such payment obligation (and to all payments of payment obligations of the applicant or registrant under any other subordination agreement(s) then outstanding which are scheduled to mature on or before such payment obligation), the adjusted net capital of the applicant or registrant would be less than the greatest of:

(*1*) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(iii)(A) of this section;

(*2*) For a futures commission merchant or applicant therefor, 120 percent of the amount required by paragraph (a)(1)(i)(B) of this section;

(*3*) 120 percent of the amount of adjusted net capital required by a registered futures association of which it is a member; or

(*4*) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(b)(8)(i) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(b)(8)(i)): *Provided,* That the subordination agreement may provide that if the payment obligation of the applicant or registrant thereunder does not mature and is suspended as a result of the requirement of this paragraph (h)(2)(viii) for a period of not less than six months, the applicant or registrant shall then commence the rapid and orderly liquidation of its business, but the right of the lender to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this section.

(B) [Reserved]

(ix) *Accelerated maturity.* Obligation to repay to remain subordinate:

(A) Subject to the provisions of paragraph (h)(2)(viii) of this section, a subordination agreement may provide that the lender may, upon prior written notice to the applicant and the National Futures Association, or upon prior written notice to the registrant and the designated self-regulatory organization or, if the registrant is not a member of a designated self-regulatory

organization, the Commission, given not earlier than six months after the effective date of such subordination agreement, accelerate the date on which the payment obligation of the borrower, together with accrued interest or compensation, is scheduled to mature to a date not earlier than six months after giving of such notice, but the right of the lender to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this paragraph (h)(2) of this section.

(B) Notwithstanding the provisions of paragraph (h)(2)(viii) of this section, the payment obligation of the applicant or registrant with respect to a subordination agreement, together with accrued interest and compensation, shall mature in the event of any receivership, insolvency, liquidation pursuant to the Securities Investor Protection Act of 1970 or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to the bankruptcy laws, or any other marshalling of the assets and liabilities of the applicant or registrant, but the right of the lender to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of paragraph (h)(2) of this section.

(x) *Accelerated maturity of subordination agreements on event of default and event of acceleration.* Obligation to repay to remain subordinate:

(A) A subordination agreement may provide that the lender may, upon prior written notice to the applicant and the National Futures Association, or upon prior written notice to the registrant and the designated self-regulatory organization or, if the registrant is not a member of a designated self-regulatory organization, the Commission, of the occurrence of any event of acceleration (as hereinafter defined) given no sooner than six months after the effective date of such subordination agreement, accelerate the date on which the payment obligation of the applicant or registrant, together with accrued interest or compensation, is scheduled to mature, to the last business day of a calendar month which is not less than six months after notice of acceleration is received by the applicant and by the National Futures Association, or by the registrant and the designated self-regulatory organization or, if the registrant is not a member of a designated self-regulatory organization, the Commission. Any subordination agreement containing such events of acceleration may also provide that, if upon such accelerated maturity date the payment obligation of the applicant or registrant is suspended as required by paragraph (h)(2)(viii) of this section and liquidation of the applicant or registrant has not commenced on or prior to such accelerated maturity date, notwithstanding paragraph (h)(2)(viii) of this section, the payment obligation of the applicant or registrant with respect to such subordination agreement shall mature on the day immediately following such accelerated maturity date and in any such event the payment obligations of the applicant or registrant with respect to all other subordination agreements then outstanding shall also mature at the same time but the rights of the respective lenders to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of paragraph (h)(2) of this section. Events of acceleration which may be included in a subordination agreement complying with this paragraph (h)(2)(x) of this section shall be limited to:

(*1*) Failure to pay interest or any installment of principal on a subordination agreement as scheduled;

(*2*) Failure to pay when due other money obligations of a specified material amount;

(*3*) Discovery that any material, specified representation or warranty of the applicant or registrant which is included in the subordination agreement and on which the subordination agreement was based or continued was inaccurate in a material respect at the time made;

(*4*) Any specified and clearly measurable event which is included in the subordination agreement and which the lender and the applicant or registrant agree, (a) is a significant

indication that the financial position of the applicant or registrant has changed materially and adversely from agreed upon specified norms; or (b) could materially and adversely affect the ability of the applicant or registrant to conduct its business as conducted on the date the subordination agreement was made; or (c) is a significant change in the senior management of the applicant or registrant or in the general business conducted by the applicant or registrant from that which obtained on the date the subordination agreement became effective;

(*5*) Any continued failure to perform agreed covenants included in the subordination agreement relating to the conduct of the business of the applicant or registrant or relating to the maintenance and reporting of its financial position; and

(B) Notwithstanding the provisions of paragraph (h)(2)(viii) of this section, a subordination agreement may provide that, if liquidation of the business of the applicant or registrant has not already commenced, the payment obligation of the applicant or registrant shall mature, together with accrued interest or compensation, upon the occurrence of an event of default (as hereinafter defined). Such agreement may also provide that, if liquidation of the business of the applicant or registrant has not already commenced, the rapid and orderly liquidation of the business of the applicant or registrant shall then commence upon the happening of an event of default. Any subordination agreement which so provides for maturity of the payment obligation upon the occurrence of an event of default shall also provide that the date on which such event of default occurs shall, if liquidation of the applicant or registrant has not already commenced, be the date on which the payment obligation of the applicant or registrant with respect to all other subordination agreements then outstanding shall mature but the rights of the respective lenders to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of paragraph (h)(2) of this section. Events of default which may be included in a subordination agreement shall be limited to:

(*1*) The making of an application by the Securities Investor Protection Corporation for a decree adjudicating that customers of the applicant or registrant are in need of protection under the Securities Investor Protection Act of 1970 and the failure of the applicant or registrant to obtain the dismissal of such application within 30 days;

(*2*) Failure to meet the minimum capital requirements of the designated self-regulatory organization, or of the Commission, throughout a period of 15 consecutive business days, commencing on the day the borrower first determines and notifies the designated self-regulatory organization, if any, of which he is a member and the Commission, in the case of a registrant, or the National Futures Association, in the case of an applicant, or commencing on the day any self-regulatory organization, the Commission or the National Futures Association first determines and notifies the applicant or registrant of such fact;

(*3*) The Commission shall revoke the registration of the applicant or registrant;

(*4*) The self-regulatory organization shall suspend (and not reinstate within 10 days) or revoke the applicant or registrant's status as a member thereof;

(*5*) Any receivership, insolvency, liquidation pursuant to the Securities Investor Protection Act of 1970 or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to bankruptcy laws, or any other marshalling of the assets and liabilities of the applicant or registrant. A subordination agreement which contains any of the provisions permitted by this subparagraph (2)(x) shall not contain the provision otherwise permitted by paragraph (h)(2)(ix)(A) of this section.

(3) *Miscellaneous provisions*— (i) *Prohibited cancellation.* The subordination agreement shall not be subject to cancellation by either party; no payment shall be made with respect thereto and the

agreement shall not be terminated, rescinded or modified by mutual consent or otherwise if the effect thereof would be inconsistent with the requirements of paragraph (h) of this section.

(ii) *Notice of maturity or accelerated maturity.* Every applicant or registrant shall immediately notify the National Futures Association, and the registrant shall immediately notify the designated self-regulatory organization, if any, and the Commission if, after giving effect to all payments of payment obligations under subordination agreements then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the applicant or registrant, its adjusted net capital would be less than:

(A) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(iii)(A) of this section;

(B) For a futures commission merchant or applicant therefor, 120 percent of the amount required by paragraph (a)(1)(i)(B) of this section;

(C) 120 percent of the amount of adjusted net capital required by a registered futures association of which it is a member; or

(D) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(c)(2) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(c)(2)).

(iii) *Certain legends.* If all the provisions of a satisfactory subordination agreement do not appear in a single instrument, then the debenture or other evidence of indebtedness shall bear on its face an appropriate legend stating that it is issued subject to the provisions of a satisfactory subordination agreement which shall be adequately referred to and incorporated by reference.

(iv) *Legal title to securities.* All securities pledged as collateral to secure a secured demand note must be in bearer form, or registered in the name of the applicant or registrant or the name of its nominee or custodian.

(v) *Temporary subordinations.* To enable an applicant or registrant to participate as an underwriter of securities or undertake other extraordinary activities and remain in compliance with the adjusted net capital requirements of this section, an applicant or registrant shall be permitted, on no more than three occasions in any 12-month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date the subordination agreement became effective: *Provided,* That this temporary relief shall not apply to any applicant or registrant if the adjusted net capital of the applicant or registrant is less than the greatest of:

(A) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(iii)(A) of this section;

(B) For a futures commission merchant or applicant therefor, 120 percent of the amount required by paragraph (a)(1)(i)(B) of this section;

(C) 120 percent of the amount of adjusted net capital required by a registered futures association of which it is a member;

(D) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(c)(5)(i) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(c)(5)(i)); or

(E) The amount of equity capital as defined in paragraph (d) of this section is less than the limits specified in paragraph (d) of this section. Such temporary subordination agreement shall be subject to all the other provisions of this section.

(vi) *Filing.* An applicant shall file a signed copy of any proposed subordination agreement (including nonconforming subordination agreements) with the National Futures Association at least ten days prior to the proposed effective date of the agreement or at such other time as the National Futures Association for good cause shall accept such filing. A registrant that is not a member of any designated self-regulatory organization shall file two signed copies of any proposed subordination agreement (including nonconforming subordination agreements) with the regional office of the Commission nearest the principal place of business of the registrant at least ten days prior to the proposed effective date of the agreement or at such other time as the Commission for good cause shall accept such filing. A registrant that is a member of a designated self-regulatory organization shall file signed copies of any proposed subordination agreement (including nonconforming subordination agreements) with the designated self-regulatory organization in such quantities and at such time as the designated self-regulatory organization may require prior to the effective date. The applicant or registrant shall also file with said parties a statement setting forth the name and address of the lender, the business relationship of the lender to the applicant or registrant and whether the applicant or registrant carried funds or securities for the lender at or about the time the proposed agreement was so filed. A proposed agreement filed by an applicant with the National Futures Association shall be reviewed by the National Futures Association, and no such agreement shall be a satisfactory subordination agreement for the purposes of this section unless and until the National Futures Association has found the agreement acceptable and such agreement has become effective in the form found acceptable. A proposed agreement filed by a registrant shall be reviewed by the designated self-regulatory organization with whom such an agreement is required to be filed prior to its becoming effective or, if the registrant is not a member of any designated self-regulatory organization, by the regional office of the Commission where the agreement is required to be filed prior to its becoming effective. No proposed agreement shall be a satisfactory subordination agreement for the purposes of this section unless and until the designated self-regulatory organization or, if a registrant is not a member of any designated self-regulatory organization, the Commission, has found the agreement acceptable and such agreement has become effective in the form found acceptable: Provided, however, That a proposed agreement shall be a satisfactory subordination agreement for purpose of this section if the registrant: is a securities broker or dealer registered with the Securities and Exchange Commission; files signed copies of the proposed subordination agreement with the applicable securities designated examining authority, as defined in Rule 15c3–1(c)(12) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(12)), in the form and manner prescribed by the designated examining authority; files signed copies of the proposed subordination agreement with the designated self-regulatory organization at the time it files such copies with the designated examining authority in the form and manner prescribed by the designated self-regulatory organization; and files a copy of the designated examining authority's approval of the proposed subordination agreement with the designated self-regulatory organization immediately upon receipt of such approval. The designated examining authority's determination that the proposed subordination agreement satisfies the requirements for a satisfactory subordination agreement will be deemed a like finding by the designated self-regulatory organization, unless the designated self-regulatory organization notifies the registrant that the designated examining authority's determination shall not constitute a like finding by the designated self-regulatory organization.

(vii) *Subordination agreements that incorporate adjusted net capital requirements in effect prior to September 30, 2004.* Any subordination agreement that incorporates the adjusted net capital requirements in paragraphs (h)(2)(vi)(C)(*2*), (h)(2)(vii)(A)(*2*) and (B)(*2*), (h)(2)(viii)(A)(*2*), (h)(3)(ii)(B), and (h)(3)(v)(B) of this section, as in effect prior to September 30, 2004, and which has been deemed to be satisfactorily subordinated pursuant to this section prior to September 30, 2004, shall continue to be deemed a satisfactory subordination agreement until the maturity of

such agreement. In the event, however, that such agreement is amended or renewed for any reason, then such agreement shall not be deemed a satisfactory subordination agreement unless the amended or renewed agreement meets the requirements of this section.

(4) A designated self-regulatory organization and the Commission may allow debt with a maturity date of 1 year or more to be treated as meeting the provisions of this paragraph (h): *Provided,* (i) Such exemption shall only be given when the registrant's adjusted net capital is less than the minimum required by this section or by the capital rule of the designated self-regulatory organization to which such registrant is subject;

(ii) That such debt did not exist prior to its use under this paragraph (h)(4);

(iii) Such exemption shall be for a period of 30 days or such lesser period as the designated self-regulatory organization and the Commission may determine;

(iv) Such exemption shall not be allowed more than once in any 12 month period; and

(v) At all times during such exemption the registrant shall make a good faith effort to comply with the provisions of this section or the capital rule of the designated self-regulatory organization to which such registrant is subject exclusive of any benefits derived from this paragraph (h)(4).

(i) [Reserved]

(j) For the purposes of this section *cover* is defined as follows:

(1) *General definition.* Cover shall mean transactions or positions in a contract for future delivery on a board of trade or a commodity option where such transactions or positions normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel, and where they are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise, and where they arise from:

(i) The potential change in the value of assets which a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising.

(ii) The potential change in the value of liabilities which a person owes or anticipates incurring, or

(iii) The potential change in the value of services which a person provides, purchases or anticipates providing or purchasing. Notwithstanding the foregoing, no transactions or positions shall be classified as cover for the purposes of this section unless their purpose is to offset price risks incidental to commercial cash or spot operations and such positions are established and liquidated in accordance with sound commercial practices and unless the provisions of paragraphs (j) (2) and (3) of this section have been satisfied.

(2) *Enumerated cover transactions.* The definition of covered transactions and positions in paragraph (j)(1) of this section includes, but is not limited to, the following specific transactions and positions:

(i) Ownership or fixed-price purchase of any commodity which does not exceed in quantity (A) the sales of the same commodity for future delivery on a board of trade or (B) the purchase of a put commodity option of the same commodity for which the market value for the actual commodity or futures contract which is the subject of the option is less than the strike price of the option or (C) the ownership of a commodity option position established by the sale (grant) of a call commodity

option of the same commodity for which the market value for the actual commodity or futures contract which is the subject of the option is more than the strike price of the option: *Provided,* That for purposes of paragraph (c)(5)(x) of this section the market value for the actual commodity or futures contract which is the subject of such option need not be more than the strike price of that option;

(ii) Fixed-price sale of any commodity which does not exceed in quantity (A) the purchase of the same commodity for future delivery on a board of trade or (B) the purchase of a call commodity option of the same commodity for which the market value for the actual commodity or futures contract which is the subject of such option is more than the strike price of the option or (C) ownership of a commodity option position established by the sale (grant) of a put commodity option of the same commodity for which the market value for the actual commodity or futures contract which is the subject of the option is less than the strike price of the option: *Provided,* That for purposes of paragraph (c)(5)(x) of this section the market value for the actual commodity or futures contract which is the subject of such option need not be less than the strike price of that option; and

(iii) Ownership or fixed-price contracts of a commodity described in paragraphs (j)(2)(i) and (j)(2)(ii) of this section may also be covered other than by the same quantity of the same cash commodity, provided that the fluctuations in value of the position for future delivery or commodity option are substantially related to the fluctuations in value of the actual cash position.

(3) *Nonenumerated cases.* Upon specific request, the Commission may recognize transactions and positions other than those enumerated in paragraph (j)(2) of this section as cover in amounts and under the terms and conditions as it may specify. Any applicant or registrant who wishes to avail itself of the provisions of this paragraph (j)(3) must apply to the Commission in writing at its principal office in Washington, DC giving full details of the transaction including detailed information which will demonstrate that the transaction is economically appropriate to the reduction of risk exposure attendant to the conduct and management of a commercial enterprise.

522. Compliance with Commission Regulation 1.18 - Records for and relating to Financial Reporting and Monthly Computation by Futures Commission Merchants and Introducing Brokers

Any Trading Privilege Holder subject to Commission Regulation 1.18 that violates Commission Regulation 1.18 shall be deemed to have violated this Rule 522. Commission Regulation 1.18 is set forth below and incorporated into this Rule 522.

Commission Regulation 1.18 - Records for and relating to financial reporting and monthly computation by futures commission merchants and introducing brokers.

(a) No person shall be registered as a futures commission merchant or as an introducing broker under the Act unless, commencing on the date his application for such registration is filed, he prepares and keeps current ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting his asset, liability, income, expense and capital accounts, and in which (except as otherwise permitted in writing by the Commission) all his asset, liability and capital accounts are classified into either the account classification subdivisions specified on Form 1–FR–FCM or Form 1–FR–IB, respectively, or, if such person is registered with the Securities and Exchange Commission as a securities broker or dealer and he files (in accordance with §1.10(h)) a copy of his Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or

Part II CSE (FOCUS report) in lieu of Form 1–FR–FCM or Form 1–FR–IB, the account classification subdivisions specified on such FOCUS report, or categories that are in accord with generally accepted accounting principles. Each person so registered shall prepare and keep current such records.

(b)(1) Each applicant or registrant must make and keep as a record in accordance with §1.31 formal computations of its adjusted net capital and of its minimum financial requirements pursuant to §1.17 or the requirements of the designated self-regulatory organization to which it is subject as of the close of business each month. Such computations must be completed and made available for inspection by any representative of the National Futures Association, in the case of an applicant, or of the Commission or designated self-regulatory organization, if any, in the case of a registrant, within 17 business days after the date for which the computations are made, commencing the first month end after the date the application for registration is filed.

(2) An applicant or registrant that has filed a monthly Form 1–FR or Statement of Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE (FOCUS report) in accordance with the requirements of §1.10(b) will be deemed to have satisfied the requirements of paragraph (b)(1) of this section for such month.

(c) The provisions of this section do not apply to an introducing broker which is operating pursuant to a guarantee agreement, nor do such provisions apply to an applicant for registration as an introducing broker who files concurrently with such application a guarantee agreement, provided such introducing broker or applicant therefor is not also a securities broker or dealer.

523. Compliance with Commission Regulation 1.20 - Customer Funds to Be Segregated and Separately Accounted For

Any Trading Privilege Holder subject to Commission Regulation 1.20 that violates Commission Regulation 1.20 shall be deemed to have violated this Rule 523. Commission Regulation 1.20 is set forth below and incorporated into this Rule 523.

Commission Regulation 1.20 - Customer funds to be segregated and separately accounted for

(a) All customer funds shall be separately accounted for and segregated as belonging to commodity or option customers. Such customer funds when deposited with any bank, trust company, clearing organization or another futures commission merchant shall be deposited under an account name which clearly identifies them as such and shows that they are segregated as required by the Act and this part. Each registrant shall obtain and retain in its files for the period provided in §1.31 a written acknowledgment from such bank, trust company, clearing organization, or futures commission merchant, that it was informed that the customer funds deposited therein are those of commodity or option customers and are being held in accordance with the provisions of the Act and this part: *Provided, however,* that an acknowledgment need not be obtained from a clearing organization that has adopted and submitted to the Commission rules that provide for the segregation as customer funds, in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder, of all funds held on behalf of customers. Under no circumstances shall any portion of customer funds be obligated to a clearing organization, any member of a contract market, a futures commission merchant, or any depository except to purchase, margin, guarantee, secure, transfer, adjust or settle trades, contracts or commodity option transactions of commodity or option customers. No person, including any clearing organization or any depository, that has received customer funds for deposit in a segregated account, as provided in this section, may hold, dispose of, or use any

such funds as belonging to any person other than the option or commodity customers of the futures commission merchant which deposited such funds.

(b) All customer funds received by a clearing organization from a member of the clearing organization to purchase, margin, guarantee, secure or settle the trades, contracts or commodity options of the clearing member's commodity or option customers and all money accruing to such commodity or option customers as the result of trades, contracts or commodity options so carried shall be separately accounted for and segregated as belonging to such commodity or option customers, and a clearing organization shall not hold, use or dispose of such customer funds except as belonging to such commodity or option customers. Such customer funds when deposited in a bank or trust company shall be deposited under an account name which clearly shows that they are the customer funds of the commodity or option customers of clearing members, segregated as required by the Act and these regulations. The clearing organization shall obtain and retain in its files for the period provided by §1.31 an acknowledgment from such bank or trust company that it was informed that the customer funds deposited therein are those of commodity or option customers of its clearing members and are being held in accordance with the provisions of the Act and these regulations.

(c) Each futures commission merchant shall treat and deal with the customer funds of a commodity customer or of an option customer as belonging to such commodity or option customer. All customer funds shall be separately accounted for, and shall not be commingled with the money, securities or property of a futures commission merchant or of any other person, or be used to secure or guarantee the trades, contracts or commodity options, or to secure or extend the credit, of any person other than the one for whom the same are held: *Provided, however,* That customer funds treated as belonging to the commodity or option customers of a futures commission merchant may for convenience be commingled and deposited in the same account or accounts with any bank or trust company, with another person registered as a futures commission merchant, or with a clearing organization, and that such share thereof as in the normal course of business is necessary to purchase, margin, guarantee, secure, transfer, adjust, or settle the trades, contracts or commodity options of such commodity or option customers or resulting market positions, with the clearing organization or with any other person registered as a futures commission merchant, may be withdrawn and applied to such purposes, including the payment of premiums to option grantors, commissions, brokerage, interest, taxes, storage and other fees and charges, lawfully accruing in connection with such trades, contracts or commodity options: *Provided, further,* That customer funds may be invested in instruments described in §1.25.

524. Compliance with Commission Regulation 1.21 - Care of Money and Equities Accruing to Customers

Any Trading Privilege Holder subject to Commission Regulation 1.21 that violates Commission Regulation 1.21 shall be deemed to have violated this Rule 524. Commission Regulation 1.21 is set forth below and incorporated into this Rule 524.

Commission Regulation 1.21 - Care of money and equities accruing to customers.

All money received directly or indirectly by, and all money and equities accruing to, a futures commission merchant from any clearing organization or from any clearing member or from any member of a contract market incident to or resulting from any trade, contract or commodity option made by or through such futures commission merchant on behalf of any commodity or option customer shall be considered as accruing to such commodity or option customer within the meaning of the Act and these regulations. Such money and equities shall be treated and dealt

with as belonging to such commodity or option customer in accordance with the provisions of the Act and these regulations. Money and equities accruing in connection with commodity or option customers' open trades, contracts, or commodity options need not be separately credited to individual accounts but may be treated and dealt with as belonging undivided to all commodity or option customers having open trades, contracts, or commodity option positions which if closed would result in a credit to such commodity or option customers.

525. Compliance with Commission Regulation 1.22 - Use of Customer Funds Restricted

Any Trading Privilege Holder subject to Commission Regulation 1.22 that violates Commission Regulation 1.22 shall be deemed to have violated this Rule 525. Commission Regulation 1.22 is set forth below and incorporated into this Rule 525.

Commission Regulation 1.22 - Use of customer funds restricted.

No futures commission merchant shall use, or permit the use of, the customer funds of one commodity and/or option customer to purchase, margin, or settle the trades, contracts, or commodity options of, or to secure or extend the credit of, any person other than such customer or option customer. Customer funds shall not be used to carry trades or positions of the same commodity and/or option customer other than in commodities or commodity options traded through the facilities of a contract market.

526. Compliance with Commission Regulation 1.23 - Interest of Futures Commission Merchants in Segregated Funds; Additions and Withdrawals

Any Trading Privilege Holder subject to Commission Regulation 1.23 that violates Commission Regulation 1.23 shall be deemed to have violated this Rule 526. Commission Regulation 1.23 is set forth below and incorporated into this Rule 526.

Commission Regulation 1.23 - Interest of futures commission merchant in segregated funds; additions and withdrawals.

The provision in section 4d(a)(2) of the Act and the provision in §1.20(c), which prohibit the commingling of customer funds with the funds of a futures commission merchant, shall not be construed to prevent a futures commission merchant from having a residual financial interest in the customer funds, segregated as required by the Act and the rules in this part and set apart for the benefit of commodity or option customers; nor shall such provisions be construed to prevent a futures commission merchant from adding to such segregated customer funds such amount or amounts of money, from its own funds or unencumbered securities from its own inventory, of the type set forth in §1.25, as it may deem necessary to ensure any and all commodity or option customers' accounts from becoming undersegregated at any time. The books and records of a futures commission merchant shall at all times accurately reflect its interest in the segregated funds. A futures commission merchant may draw upon such segregated funds to its own order, to the extent of its actual interest therein, including the withdrawal of securities held in segregated safekeeping accounts held by a bank, trust company, contract market clearing organization or other futures commission merchant. Such withdrawal shall not result in the funds of one commodity and/or option customer being used to purchase, margin or carry the trades, contracts or commodity options, or extend the credit of any other commodity customer, option customer or

other person.

527. Compliance with Commission Regulation 1.24 - Segregated Funds; Exclusions Therefrom

Any Trading Privilege Holder subject to Commission Regulation 1.24 that violates Commission Regulation 1.24 shall be deemed to have violated this Rule 527. Commission Regulation 1.24 is set forth below and incorporated into this Rule 527.

Commission Regulation 1.24 - Segregated funds; exclusions therefrom.

Money held in a segregated account by a futures commission merchant shall not include: (a) Money invested in obligations or stocks of any clearing organization or in memberships in or obligations of any contract market; or (b) money held by any clearing organization which it may use for any purpose other than to purchase, margin, guarantee, secure, transfer, adjust, or settle the contracts, trades, or commodity options of the commodity or option customers of such futures commission merchant.

528. Compliance with Commission Regulation 1.25 - Investment of Customer Funds

Any Trading Privilege Holder subject to Commission Regulation 1.25 that violates Commission Regulation 1.25 shall be deemed to have violated this Rule 528. Commission Regulation 1.25 is set forth below and incorporated into this Rule 528.

Commission Regulation 1.25 - Investment of customer funds.

(a) *Permitted investments.* (1) Subject to the terms and conditions set forth in this section, a futures commission merchant or a derivatives clearing organization may invest customer money in the following instruments (permitted investments):

(i) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (U.S. government securities);

(ii) General obligations of any State or of any political subdivision thereof (municipal securities);

(iii) Obligations of any United States government corporation or enterprise sponsored by the United States government (U.S. agency obligations);

(iv) Certificates of deposit issued by a bank (certificates of deposit) as defined in section 3(a)(6) of the Securities Exchange Act of 1934, or a domestic branch of a foreign bank that carries deposits insured by the Federal Deposit Insurance Corporation;

(v) Commercial paper fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation (commercial paper);

(vi) Corporate notes or bonds fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit

Insurance Corporation (corporate notes or bonds); and

(vii) Interests in money market mutual funds.

(2)(i) In addition, a futures commission merchant or derivatives clearing organization may buy and sell the permitted investments listed in paragraphs (a)(1)(i) through (vii) of this section pursuant to agreements for resale or repurchase of the instruments, in accordance with the provisions of paragraph (d) of this section.

(ii) A futures commission merchant or a derivatives clearing organization may sell securities deposited by customers as margin pursuant to agreements to repurchase subject to the following:

(A) Securities subject to such repurchase agreements must be "highly liquid" as defined in paragraph (b)(1) of this section.

(B) Securities subject to such repurchase agreements must not be "specifically identifiable property" as defined in §190.01(kk) of this chapter.

(C) The terms and conditions of such an agreement to repurchase must be in accordance with the provisions of paragraph (d) of this section.

(D) Upon the default by a counterparty to a repurchase agreement, the futures commission merchant or derivatives clearing organization shall act promptly to ensure that the default does not result in any direct or indirect cost or expense to the customer.

(3) Obligations issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Association are permitted while these entities operate under the conservatorship or receivership of the Federal Housing Finance Authority with capital support from the United States.

(b) *General terms and conditions.* A futures commission merchant or a derivatives clearing organization is required to manage the permitted investments consistent with the objectives of preserving principal and maintaining liquidity and according to the following specific requirements:

(1) *Liquidity.* Investments must be "highly liquid" such that they have the ability to be converted into cash within one business day without material discount in value.

(2) *Restrictions on instrument features.* (i) With the exception of money market mutual funds, no permitted investment may contain an embedded derivative of any kind, except as follows:

(A) The issuer of an instrument otherwise permitted by this section may have an option to call, in whole or in part, at par, the principal amount of the instrument before its stated maturity date; or

(B) An instrument that meets the requirements of paragraph (b)(2)(iv) of this section may provide for a cap, floor, or collar on the interest paid; *provided, however,* that the terms of such instrument obligate the issuer to repay the principal amount of the instrument at not less than par value upon maturity.

(ii) No instrument may contain interest-only payment features.

(iii) No instrument may provide payments linked to a commodity, currency, reference instrument, index, or benchmark except as provided in paragraph (b)(2)(iv) of this section, and it may not otherwise constitute a derivative instrument.

(iv)(A) Adjustable rate securities are permitted, subject to the following requirements:

(*1*) The interest payments on variable rate securities must correlate closely and on an unleveraged basis to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, the one-month or three-month LIBOR rate, or the interest rate of any fixed rate instrument that is a permitted investment listed in paragraph (a)(1) of this section;

(*2*) The interest payment, in any period, on floating rate securities must be determined solely by reference, on an unleveraged basis, to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, the one-month or three-month LIBOR rate, or the interest rate of any fixed rate instrument that is a permitted investment listed in paragraph (a)(1) of this section;

(*3*) Benchmark rates must be expressed in the same currency as the adjustable rate securities that reference them; and

(*4*) No interest payment on an adjustable rate security, in any period, can be a negative amount.

(B) For purposes of this paragraph, the following definitions shall apply:

(*1*) The term *adjustable rate security* means, a floating rate security, a variable rate security, or both.

(*2*) The term *floating rate security* means a security, the terms of which provide for the adjustment of its interest rate whenever a specified interest rate changes and that, at any time until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have market value that approximates its amortized cost.

(*3*) The term *variable rate security* means a security, the terms of which provide for the adjustment of its interest rate on set dates (such as the last day of a month or calendar quarter) and that, upon each adjustment until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(v) Certificates of deposit must be redeemable at the issuing bank within one business day, with any penalty for early withdrawal limited to any accrued interest earned according to its written terms.

(vi) Commercial paper and corporate notes or bonds must meet the following criteria:

(A) The size of the issuance must be greater than $1 billion;

(B) The instrument must be denominated in U.S. dollars; and

(C) The instrument must be fully guaranteed as to principal and interest by the United States for its entire term.

(3) *Concentration —*(i) *Asset-based concentration limits for direct investments.* (A) Investments in U.S. government securities shall not be subject to a concentration limit.

(B) Investments in U.S. agency obligations may not exceed 50 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(C) Investments in each of commercial paper, corporate notes or bonds and certificates of deposit may not exceed 25 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(D) Investments in municipal securities may not exceed 10 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(E) Subject to paragraph (b)(3)(i)(G) of this section, investments in money market mutual funds comprising only U.S. government securities shall not be subject to a concentration limit.

(F) Subject to paragraph (b)(3)(i)(G) of this section, investments in money market mutual funds, other than those described in paragraph (b)(3)(i)(E) of this section, may not exceed 50 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(G) Investments in money market mutual funds comprising less than $1 billion in assets and/or which have a management company comprising less than $25 billion in assets, may not exceed 10 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(ii) *Issuer-based concentration limits for direct investments.* (A) Securities of any single issuer of U.S. agency obligations held by a futures commission merchant or derivatives clearing organization may not exceed 25 percent of total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(B) Securities of any single issuer of municipal securities, certificates of deposit, commercial paper, or corporate notes or bonds held by a futures commission merchant or derivatives clearing organization may not exceed 5 percent of total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(C) Interests in any single family of money market mutual funds described in paragraph (b)(3)(i)(F) of this section may not exceed 25 percent of total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(D) Interests in any individual money market mutual fund described in paragraph (b)(3)(i)(F) of this section may not exceed 10 percent of total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(E) For purposes of determining compliance with the issuer-based concentration limits set forth in this section, securities issued by entities that are affiliated, as defined in paragraph (b)(5) of this section, shall be aggregated and deemed the securities of a single issuer. An interest in a permitted money market mutual fund is not deemed to be a security issued by its sponsoring entity.

(iii) *Concentration limits for agreements to repurchase —*(A) *Repurchase agreements.* For purposes of determining compliance with the asset-based and issuer-based concentration limits set forth in this section, securities sold by a futures commission merchant or derivatives clearing organization subject to agreements to repurchase shall be combined with securities held by the futures commission merchant or derivatives clearing organization as direct investments.

(B) *Reverse repurchase agreements.* For purposes of determining compliance with the asset-based and issuer-based concentration limits set forth in this section, securities purchased by a futures commission merchant or derivatives clearing organization subject to agreements to resell shall be combined with securities held by the futures commission merchant or derivatives clearing organization as direct investments.

(iv) *Treatment of customer-owned securities.* For purposes of determining compliance with the asset-based and issuer-based concentration limits set forth in this section, securities owned by the customers of a futures commission merchant and posted as margin collateral are not included in total assets held in segregation by the futures commission merchant, and securities posted by a futures commission merchant with a derivatives clearing organization are not included in total assets held in segregation by the derivatives clearing organization.

(v) *Counterparty concentration limits.* Securities purchased by a futures commission merchant or derivatives clearing organization from a single counterparty, subject to an agreement to resell to that counterparty, shall not exceed 25 percent of total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(4) *Time-to-maturity.* (i) Except for investments in money market mutual funds, the dollar-weighted average of the time-to-maturity of the portfolio, as that average is computed pursuant to §270.2a–7 of this title, may not exceed 24 months.

(ii) For purposes of determining the time-to-maturity of the portfolio, an instrument that is set forth in paragraphs (a)(1)(i) through (vii) of this section may be treated as having a one-day time-to-maturity if the following terms and conditions are satisfied:

(A) The instrument is deposited solely on an overnight basis with a derivatives clearing organization pursuant to the terms and conditions of a collateral management program that has become effective in accordance with §39.4 of this chapter;

(B) The instrument is one that the futures commission merchant owns or has an unqualified right to pledge, is not subject to any lien, and is deposited by the futures commission merchant into a segregated account at a derivatives clearing organization;

(C) The derivatives clearing organization prices the instrument each day based on the current mark-to-market value; and

(D) The derivatives clearing organization reduces the assigned value of the instrument each day by a haircut of at least 2 percent.

(5) *Investments in instruments issued by affiliates.* (i) A futures commission merchant shall not invest customer funds in obligations of an entity affiliated with the futures commission merchant, and a derivatives clearing organization shall not invest customer funds in obligations of an entity affiliated with the derivatives clearing organization. An affiliate includes parent companies, including all entities through the ultimate holding company, subsidiaries to the lowest level, and companies under common ownership of such parent company or affiliates.

(ii) A futures commission merchant or derivatives clearing organization may invest customer funds in a fund affiliated with that futures commission merchant or derivatives clearing organization.

(6) *Recordkeeping.* A futures commission merchant and a derivatives clearing organization shall prepare and maintain a record that will show for each business day with respect to each type of

investment made pursuant to this section, the following information:

(i) The type of instruments in which customer funds have been invested;

(ii) The original cost of the instruments; and

(iii) The current market value of the instruments.

(c) *Money market mutual funds.* The following provisions will apply to the investment of customer funds in money market mutual funds (the fund).

(1) The fund must be an investment company that is registered under the Investment Company Act of 1940 with the Securities and Exchange Commission and that holds itself out to investors as a money market fund, in accordance with §270.2a–7 of this title.

(2) The fund must be sponsored by a federally-regulated financial institution, a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, an investment adviser registered under the Investment Advisers Act of 1940, or a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation.

(3) A futures commission merchant or derivatives clearing organization shall maintain the confirmation relating to the purchase in its records in accordance with §1.31 and note the ownership of fund shares (by book-entry or otherwise) in a custody account of the futures commission merchant or derivatives clearing organization in accordance with §1.26. The futures commission merchant or the derivatives clearing organization shall obtain the acknowledgment letter required by §1.26 from an entity that has substantial control over the fund shares purchased with customer segregated funds and has the knowledge and authority to facilitate redemption and payment or transfer of the customer segregated funds. Such entity may include the fund sponsor or depository acting as custodian for fund shares.

(4) The net asset value of the fund must be computed by 9 a.m. of the business day following each business day and made available to the futures commission merchant or derivatives clearing organization by that time.

(5)(i) General requirement for redemption of interests. A fund shall be legally obligated to redeem an interest and to make payment in satisfaction thereof by the business day following a redemption request, and the futures commission merchant or derivatives clearing organization shall retain documentation demonstrating compliance with this requirement.

(ii) Exception. A fund may provide for the postponement of redemption and payment due to any of the following circumstances:

(A) For any period during which there is a non-routine closure of the Fedwire or applicable Federal Reserve Banks;

(B) For any period:

(*1*) During which the New York Stock Exchange is closed other than customary week-end and holiday closings; or

(*2*) During which trading on the New York Stock Exchange is restricted;

(C) For any period during which an emergency exists as a result of which:

(*1*) Disposal by the company of securities owned by it is not reasonably practicable; or

(*2*) It is not reasonably practicable for such company fairly to determine the value of its net assets;

(D) For any period as the Securities and Exchange Commission may by order permit for the protection of security holders of the company;

(E) For any period during which the Securities and Exchange Commission has, by rule or regulation, deemed that:

(*1*) Trading shall be restricted; or

(*2*) An emergency exists; or

(F) For any period during which each of the conditions of §270.22e–3(a)(1) through (3) of this title are met.

(6) The agreement pursuant to which the futures commission merchant or derivatives clearing organization has acquired and is holding its interest in a fund must contain no provision that would prevent the pledging or transferring of shares.

(7) The appendix to this section sets forth language that will satisfy the requirements of paragraph (c)(5) of this section.

(d) *Repurchase and reverse repurchase agreements.* A futures commission merchant or derivatives clearing organization may buy and sell the permitted investments listed in paragraphs (a)(1)(i) through (vii) of this section pursuant to agreements for resale or repurchase of the securities (agreements to repurchase or resell), provided the agreements to repurchase or resell conform to the following requirements:

(1) The securities are specifically identified by coupon rate, par amount, market value, maturity date, and CUSIP or ISIN number.

(2) Permitted counterparties are limited to a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation, a securities broker or dealer, or a government securities broker or government securities dealer registered with the Securities and Exchange Commission or which has filed notice pursuant to section 15C(a) of the Government Securities Act of 1986.

(3) A futures commission merchant or derivatives clearing organization shall not enter into an agreement to repurchase or resell with a counterparty that is an affiliate of the futures commission merchant or derivatives clearing organization, respectively. An affiliate includes parent companies, including all entities through the ultimate holding company, subsidiaries to the lowest level, and companies under common ownership of such parent company or affiliates.

(4) The transaction is executed in compliance with the concentration limit requirements applicable to the securities transferred to the customer segregated custodial account in connection with the agreements to repurchase referred to in paragraphs (b)(3)(iii)(A) and (B) of this section.

(5) The transaction is made pursuant to a written agreement signed by the parties to the agreement, which is consistent with the conditions set forth in paragraphs (d)(1) through (13) of this section and which states that the parties thereto intend the transaction to be treated as a purchase and sale of securities.

(6) The term of the agreement is no more than one business day, or reversal of the transaction is possible on demand.

(7) Securities transferred to the futures commission merchant or derivatives clearing organization under the agreement are held in a safekeeping account with a bank as referred to in paragraph (d)(2) of this section, a derivatives clearing organization, or the Depository Trust Company in an account that complies with the requirements of §1.26.

(8) The futures commission merchant or the derivatives clearing organization may not use securities received under the agreement in another similar transaction and may not otherwise hypothecate or pledge such securities, except securities may be pledged on behalf of customers at another futures commission merchant or derivatives clearing organization. Substitution of securities is allowed, *provided, however,* that:

(i) The qualifying securities being substituted and original securities are specifically identified by date of substitution, market values substituted, coupon rates, par amounts, maturity dates and CUSIP or ISIN numbers;

(ii) Substitution is made on a “delivery versus delivery” basis; and

(iii) The market value of the substituted securities is at least equal to that of the original securities.

(9) The transfer of securities to the customer segregated custodial account is made on a delivery versus payment basis in immediately available funds. The transfer of funds to the customer segregated cash account is made on a payment versus delivery basis. The transfer is not recognized as accomplished until the funds and/or securities are actually received by the custodian of the futures commission merchant's or derivatives clearing organization's customer funds or securities purchased on behalf of customers. The transfer or credit of securities covered by the agreement to the futures commission merchant's or derivatives clearing organization's customer segregated custodial account is made simultaneously with the disbursement of funds from the futures commission merchant's or derivatives clearing organization's customer segregated cash account at the custodian bank. On the sale or resale of securities, the futures commission merchant's or derivatives clearing organization's customer segregated cash account at the custodian bank must receive same-day funds credited to such segregated account simultaneously with the delivery or transfer of securities from the customer segregated custodial account.

(10) A written confirmation to the futures commission merchant or derivatives clearing organization specifying the terms of the agreement and a safekeeping receipt are issued immediately upon entering into the transaction and a confirmation to the futures commission merchant or derivatives clearing organization is issued once the transaction is reversed.

(11) The transactions effecting the agreement are recorded in the record required to be maintained under §1.27 of investments of customer funds, and the securities subject to such transactions are specifically identified in such record as described in paragraph (d)(1) of this section and further identified in such record as being subject to repurchase and reverse repurchase agreements.

(12) An actual transfer of securities to the customer segregated custodial account by book entry

is made consistent with Federal or State commercial law, as applicable. At all times, securities received subject to an agreement are reflected as "customer property."

(13) The agreement makes clear that, in the event of the bankruptcy of the futures commission merchant or derivatives clearing organization, any securities purchased with customer funds that are subject to an agreement may be immediately transferred. The agreement also makes clear that, in the event of a futures commission merchant or derivatives clearing organization bankruptcy, the counterparty has no right to compel liquidation of securities subject to an agreement or to make a priority claim for the difference between current market value of the securities and the price agreed upon for resale of the securities to the counterparty, if the former exceeds the latter.

(e) *Deposit of firm-owned securities into segregation.* A futures commission merchant shall not be prohibited from directly depositing unencumbered securities of the type specified in this section, which it owns for its own account, into a segregated safekeeping account or from transferring any such securities from a segregated account to its own account, up to the extent of its residual financial interest in customers' segregated funds; *provided, however,* that such investments, transfers of securities, and disposition of proceeds from the sale or maturity of such securities are recorded in the record of investments required to be maintained by §1.27. All such securities may be segregated in safekeeping only with a bank, trust company, derivatives clearing organization, or other registered futures commission merchant. Furthermore, for purposes of §§1.25, 1.26, 1.27, 1.28, and 1.29, investments permitted by §1.25 that are owned by the futures commission merchant and deposited into such a segregated account shall be considered customer funds until such investments are withdrawn from segregation.

Appendix to §1.25 - Money Market Mutual Fund Prospectus Provisions Acceptable for Compliance With Section 1.25(c)(5)

Upon receipt of a proper redemption request submitted in a timely manner and otherwise in accordance with the redemption procedures set forth in this prospectus, the [Name of Fund] will redeem the requested shares and make a payment to you in satisfaction thereof no later than the business day following the redemption request. The [Name of Fund] may postpone and/or suspend redemption and payment beyond one business day only as follows:

a. For any period during which there is a non-routine closure of the Fedwire or applicable Federal Reserve Banks;

b. For any period (1) during which the New York Stock Exchange is closed other than customary week-end and holiday closings or (2) during which trading on the New York Stock Exchange is restricted;

c. For any period during which an emergency exists as a result of which (1) disposal of securities owned by the [Name of Fund] is not reasonably practicable or (2) it is not reasonably practicable for the [Name of Fund] to fairly determine the net asset value of shares of the [Name of Fund];

d. For any period during which the Securities and Exchange Commission has, by rule or regulation, deemed that (1) trading shall be restricted or (2) an emergency exists;

e. For any period that the Securities and Exchange Commission, may by order permit for your protection; or

f. For any period during which the [Name of Fund,] as part of a necessary liquidation of the fund, has properly postponed and/or suspended redemption of shares and payment in accordance with federal securities laws.

529. Compliance with Commission Regulation 1.26 - Deposit of Instruments Purchased with Customer Funds

Any Trading Privilege Holder subject to Commission Regulation 1.26 that violates Commission Regulation 1.26 shall be deemed to have violated this Rule 529. Commission Regulation 1.26 is set forth below and incorporated into this Rule 529.

Commission Regulation 1.26 - Deposit of instruments purchased with customer funds.

(a) Each futures commission merchant who invests customer funds in instruments described in §1.25 shall separately account for such instruments and segregate such instruments as belonging to such commodity or option customers. Such instruments, when deposited with a bank, trust company, clearing organization or another futures commission merchant, shall be deposited under an account name which clearly shows that they belong to commodity or option customers and are segregated as required by the Act and this part. Each futures commission merchant upon opening such an account shall obtain and retain in its files an acknowledgment from such bank, trust company, clearing organization or other futures commission merchant that it was informed that the instruments belong to commodity or option customers and are being held in accordance with the provisions of the Act and this part. *Provided, however,* that an acknowledgment need not be obtained from a clearing organization that has adopted and submitted to the Commission rules that provide for the segregation as customer funds, in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder, of all funds held on behalf of customers and all instruments purchased with customer funds. Such acknowledgment shall be retained in accordance with §1.31. Such bank, trust company, clearing organization or other futures commission merchant shall allow inspection of such obligations at any reasonable time by representatives of the Commission.

(b) Each clearing organization which invests money belonging or accruing to commodity or option customers of its clearing members in instruments described in §1.25 shall separately account for such instruments and segregate such instruments as belonging to such commodity or option customers. Such instruments, when deposited with a bank or trust company, shall be deposited under an account name which will clearly show that they belong to commodity or option customers and are segregated as required by the Act and this part. Each clearing organization upon opening such an account shall obtain and retain in its files a written acknowledgment from such bank or trust company that it was informed that the instruments belong to commodity or option customers of clearing members and are being held in accordance with the provisions of the Act and this part. Such acknowledgment shall be retained in accordance with §1.31. Such bank or trust company shall allow inspection of such instruments at any reasonable time by representatives of the Commission.

530. Compliance with Commission Regulation 1.27 - Record of Investments

Any Trading Privilege Holder subject to Commission Regulation 1.27 that violates Commission Regulation 1.27 shall be deemed to have violated this Rule 530. Commission Regulation 1.27 is set forth below and incorporated into this Rule 530.

Commission Regulation 1.27 - Record of investments.

(a) Each futures commission merchant which invests customer funds, and each derivatives clearing organization which invests customer funds of its clearing members' customers or option customers, shall keep a record showing the following:

(1) The date on which such investments were made;

(2) The name of the person through whom such investments were made;

(3) The amount of money or current market value of securities so invested;

(4) A description of the instruments in which such investments were made, including the CUSIP or ISIN numbers;

(5) The identity of the depositories or other places where such instruments are segregated;

(6) The date on which such investments were liquidated or otherwise disposed of and the amount of money or current market value of securities received of such disposition, if any;

(7) The name of the person to or through whom such investments were disposed of; and

(8) Daily valuation for each instrument and readily available documentation supporting the daily valuation for each instrument. Such supporting documentation must be sufficient to enable auditors to verify the valuations and the accuracy of any information from external sources used in those valuations.

(b) Each derivatives clearing organization which receives documents from its clearing members representing investment of customer funds shall keep a record showing separately for each clearing member the following:

(1) The date on which such documents were received from the clearing member;

(2) A description of such documents, including the CUSIP or ISIN numbers; and

(3) The date on which such documents were returned to the clearing member or the details of disposition by other means.

(c) Such records shall be retained in accordance with §1.31. No such investments shall be made except in instruments described in §1.25.

531. Compliance with Commission Regulation 1.28 - Appraisal of Instruments Purchased with Customer Funds

Any Trading Privilege Holder subject to Commission Regulation 1.28 that violates Commission Regulation 1.28 shall be deemed to have violated this Rule 531. Commission Regulation 1.28 is set forth below and incorporated into this Rule 531.

Commission Regulation 1.28 - Appraisal of instruments purchased with customer funds.

Futures commission merchants who invest customer funds in instruments described in §1.25 of

this part shall include such instruments in segregated account records and reports at values which at no time exceed current market value, determined as of the close of the market on the date for which such computation is made.

532. Compliance with Commission Regulation 1.29 - Increment of Interest Resulting from Investment of Customer Funds

Any Trading Privilege Holder subject to Commission Regulation 1.29 that violates Commission Regulation 1.29 shall be deemed to have violated this Rule 532. Commission Regulation 1.29 is set forth below and incorporated into this Rule 532.

Commission Regulation 1.29 - Increment of interest resulting from investment of customer funds.

The investment of customer funds in instruments described in §1.25 shall not prevent the futures commission merchant or clearing organization so investing such funds from receiving and retaining as its own any increment or interest resulting therefrom.

533. Compliance with Commission Regulation 1.30 - Loans by Futures Commission Merchants; Treatment of Proceeds

Any Trading Privilege Holder subject to Commission Regulation 1.30 that violates Commission Regulation 1.30 shall be deemed to have violated this Rule 533. Commission Regulation 1.30 is set forth below and incorporated into this Rule 533.

Commission Regulation 1.30 - Loans by futures commission merchants; treatment of proceeds.

Nothing in these regulations shall prevent a futures commission merchant from lending its own funds to commodity or option customers on securities and property pledged by such commodity or option customers, or from repledging or selling such securities and property pursuant to specific written agreement with such commodity or option customers. The proceeds of such loans used to purchase, margin, guarantee, or secure the trades, contracts, or commodity options of commodity or option customers shall be treated and dealt with by a futures commission merchant as belonging to such commodity or option customers, in accordance with and subject to the provisions of section 4d(a)(2) of the Act and these regulations.

534. Compliance with Commission Regulation 1.31 - Books and Records; Keeping and Inspection

Any Trading Privilege Holder subject to Commission Regulation 1.31 that violates Commission Regulation 1.31 shall be deemed to have violated this Rule 534. Commission Regulation 1.31 is set forth below and incorporated into this Rule 534.

Commission Regulation 1.31 - Books and records; keeping and inspection.

(a)(1) All books and records required to be kept by the Act or by these regulations shall be kept

for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period. All such books and records shall be open to inspection by any representative of the Commission or the United States Department of Justice.

(2) A copy of any book or record required to be kept by the Act or by these regulations shall be provided, at the expense of the person required to keep the book or record, to a Commission representative upon the representative's request. Instead of furnishing a copy, such person may provide the original book or record for reproduction, which the representative may temporarily remove from such person's premises for this purpose. All copies or originals shall be provided promptly. Upon request, the Commission representative shall issue a receipt provided by such person for any copy or original book or record received. At the request of the Commission representative, such person shall, upon the return thereof, issue a receipt for any copy or original book or record returned by the representative.

(b) Except as provided in paragraph (d) of this section, immediate reproductions on either “micrographic media” (as defined in paragraph (b)(1)(i) of this section) or “electronic storage media” (as defined in paragraph (b)(1)(ii) this section) may be kept in that form for the required time period under the conditions set forth in this paragraph (b).

(1) For purposes of this section:

(i) The term “micrographic media” means microfilm or microfiche or any similar medium.

(ii) The term “electronic storage media” means any digital storage medium or system that:

(A) Preserves the records exclusively in a non-rewritable, non-erasable format;

(B) Verifies automatically the quality and accuracy of the storage media recording process;

(C) Serializes the original and, if applicable, duplicate units of storage media and creates a time-date record for the required period of retention for the information placed on such electronic storage media; and

(D) Permits the immediate downloading of indexes and records preserved on the electronic storage media onto paper, microfilm, microfiche or other medium acceptable under this paragraph upon the request of representatives of the Commission or the Department of Justice.

(2) Persons who use either micrographic media or electronic storage media to maintain records in accordance with this section must:

(i) Have available at all times, for examination by representatives of the Commission or the Department of Justice, facilities for immediate, easily readable projection or production of micrographic media or electronic storage media images;

(ii) Be ready at all times to provide, and immediately provide at the expense of the person required to keep such records, any easily readable hard-copy image that representatives of the Commission or Department of Justice may request;

(iii) Keep only Commission-require records on the individual medium employed (e.g., a disk or sheets of microfiche);

(iv) Store a duplicate of the record, in any medium acceptable under this regulation, at a location separate from the original for the period of time required for maintenance of the original; and

(v) Organize and maintain an accurate index of all information maintained on both the original and duplicate storage media such that:

(A) The location of any particular record stored on the media may be immediately ascertained;

(B) The index is available at all times for immediate examination by representatives of the Commission or the Department of Justice;

(C) A duplicate of the index is stored at a location separate from the original index; and

(D) Both the original index and the duplicate index are preserved for the time period required for the records included in the index.

(3) In addition to the foregoing conditions, persons using electronic storage media must:

(i) Be ready at all times to provide, and immediately provide at the expense of the person required to keep such records, copies of such records on such approved machine-readable media as defined in §15.00(1) of this chapter which any representative of the Commission or the Department of Justice may request. Records must use a format and coding structure specified in the request.

(ii) Develop and maintain written operational procedures and controls (an "audit system") designed to provide accountability over both the initial entry of required records to the electronic storage media and the entry of each change made to any original or duplicate record maintained on the electronic storage media such that:

(A) The results of such audit system are available at all times for immediate examination by representatives of the Commission or the Department of Justice;

(B) The results of such audit system are preserved for the time period required for the records maintained on the electronic storage media; and

(C) The written operational procedures and controls are available at all times for immediate examination by representatives of the Commission or the Department of Justice.

(iii) Either

(A) Maintain, keep current, and make available at all times for immediate examination by representatives of the Commission or Department of Justice all information necessary to access records and indexes maintained on the electronic storage media; or

(B) Place in escrow and keep current a copy of the physical and logical format of the electronic storage media, the file format of all different information types maintained on the electronic storage media and the source code, documentation, and information necessary to access the records and indexes maintained on the electronic storage media.

(4) In addition to the foregoing conditions, any person who uses only electronic storage media to preserve some or all of its required records ("Electronic Recordkeeper") shall, prior to the media's use, enter into an arrangement with at least one third party technical consultant ("Technical Consultant") who has the technical and financial capability to perform the undertakings described in this paragraph (b)(4). The arrangement shall provide that the Technical Consultant will have access to, and the ability to download, information from the Electronic Recordkeeper's electronic storage media to any medium acceptable under this regulation.

(i) The Technical Consultant must file with the Commission an undertaking in a form acceptable to the Commission, signed by the Technical Consultant or a person duly authorized by the Technical Consultant. An acceptable undertaking must include the following provision with respect to the Electronic Recordkeeper:

With respect to any books and records maintained or preserved on behalf of the Electronic Recordkeeper, the undersigned hereby undertakes to furnish promptly to any representative of the United States Commodity Futures Trading Commission or the United States Department of Justice (the "Representative"), upon reasonable request, such information as is deemed necessary by the Representative to download information kept on the Electronic Recordkeeper's electronic storage media to any medium acceptable under 17 CFR 1.31. The undersigned also undertakes to take reasonable steps to provide access to information contained on the Electronic Recordkeeper's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be maintained under the Commodity Exchange Act or the rules, regulations, or orders of the United States Commodity Futures Trading Commission, in a format acceptable to the Representative. In the event the Electronic Recordkeeper fails to download a record into a readable format and after reasonable notice to the Electronic Recordkeeper, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to do so, at no charge to the United States, as the Representative may request.

(ii) [Reserved]

(c) Persons employing an electronic storage system shall provide a representation to the Commission prior to the initial use of the system. The representation shall be made by the person required to maintain the records, the storage system vendor, or another third party with appropriate expertise and shall state that the selected electronic storage system meets the requirements set forth in paragraph (b)(1)(ii) of this section. Persons employing an electronic storage system using media other than optical disk or CD-ROM technology shall so state. The representation shall be accompanied by the type of oath or affirmation described in §1.10(d)(4).

(d) Trading cards, documents on which trade information is originally recorded in writing, written orders required to be kept pursuant to §1.35(a), (a–1)(1), (a–1)(2) and (d), and paper copies of electronically filed certified Forms 1–FR and FOCUS Reports with the original manually signed certification must be retained in hard-copy for the required time period.

535. Compliance with Commission Regulation 1.32 - Segregated Account; Daily Computation and Record

Any Trading Privilege Holder subject to Commission Regulation 1.32 that violates Commission Regulation 1.32 shall be deemed to have violated this Rule 535. Commission Regulation 1.32 is set forth below and incorporated into this Rule 535.

Commission Regulation 1.32 - Segregated account; daily computation and record.

(a) Each futures commission merchant must compute as of the close of each business day, on a currency-by-currency basis:

(1) The total amount of customer funds on deposit in segregated accounts on behalf of commodity and option customers;

(2) the amount of such customer funds required by the Act and these regulations to be on deposit in segregated accounts on behalf of such commodity and option customers; and

(3) the amount of the futures commission merchant's residual interest in such customer funds.

(b) In computing the amount of funds required to be in segregated accounts, a futures commission merchant may offset any net deficit in a particular customer's account against the current market value of readily marketable securities, less applicable percentage deductions (*i.e.,* "securities haircuts") as set forth in Rule 15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 241.15c3–1(c)(2)(vi)), held for the same customer's account. The futures commission merchant must maintain a security interest in the securities, including a written authorization to liquidate the securities at the futures commission merchant's discretion, and must segregate the securities in a safekeeping account with a bank, trust company, clearing organization of a contract market, or another futures commission merchant. For purposes of this section, a security will be considered readily marketable if it is traded on a "ready market" as defined in Rule 15c3–1(c)(11)(i) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(11)(i)).

(c) The daily computations required by this section must be completed by the futures commission merchant prior to noon on the next business day and must be kept, together with all supporting data, in accordance with the requirements of §1.31.

536. Compliance with Commission Regulation 1.36 - Record of Securities and Property Received from Customers and Options Customers

Any Trading Privilege Holder subject to Commission Regulation 1.36 that violates Commission Regulation 1.36 shall be deemed to have violated this Rule 536. Commission Regulation 1.36 is set forth below and incorporated into this Rule 536.

Commission Regulation 1.36 - Record of securities and property received from customers and options customers.

(a) Each futures commission merchant and each retail foreign exchange dealer shall maintain, as provided in §1.31, a record of all securities and property received from customers, retail forex customers or option customers in lieu of money to margin, purchase, guarantee, or secure the commodity, retail forex or commodity option transactions of such customers, retail forex customers or option customers. Such record shall show separately for each customer, retail forex customer or option customer: A description of the securities or property received; the name and address of such customer, retail forex customer or option customer; the dates when the securities or property were received; the identity of the depositories or other places where such securities or property are segregated or held; the dates of deposits and withdrawals from such depositories; and the dates of return of such securities or property to such customer, retail forex customer or option customer, or other disposition thereof, together with the facts and circumstances of such other disposition. In the event any futures commission merchant deposits with the clearing organization of a contract market, directly or with a bank or trust company acting as custodian for such clearing organization, securities and/or property which belong to a particular customer or option customer, such futures commission merchant shall obtain written acknowledgment from such clearing organization that it was informed that such securities or property belong to customers or option customers of the futures commission merchant making the deposit. Such acknowledgment shall be retained as provided in §1.31.

(b) Each clearing organization of a contract market which receives from members securities or property belonging to particular customers or option customers of such members in lieu of money to margin, purchase, guarantee, or secure the commodity or commodity option transactions of such customers or option customers, or receives notice that any such securities or property have been received by a bank or trust company acting as custodian for such clearing organization, shall maintain, as provided in §1.31, a record which will show separately for each member, the dates when such securities or property were received, the identity of the depositories or other places where such securities or property are segregated, the dates such securities or property were returned to the member, or otherwise disposed of, together with the facts and circumstances of such other disposition including the authorization therefor.

* * * * *

604. Adherence to Law

No Trading Privilege Holder (including its Related Parties) shall engage in conduct in violation of Applicable Law, the Rules of the Exchange , [or] the Rules of the Clearing Corporation (insofar as the Rules of the Clearing Corporation relate to the reporting or clearance of any transaction in Contracts) or any agreement with the Exchange.

* * * * *

608. Acts Detrimental to the Exchange; Acts Inconsistent with Just and Equitable Principles of Trade; Abusive Practices

It shall be an offense to [violate any Rule of the Exchange or Rule of the Clearing Corporation regulating the conduct or business of a Trading Privilege Holder (including its respective Related Parties) or any agreement made with the Exchange, or to] engage in any act detrimental to the Exchange, [or] in conduct inconsistent with just and equitable principles of trade or in abusive practices, including without limitation, fraudulent, noncompetitive or unfair actions.

609. Supervision

Each Trading Privilege Holder shall be responsible for establishing, maintaining and administering reasonable supervisory procedures to ensure that its Related Parties and Customers comply with Applicable Law, the Rules of the Exchange and the Rules of the Clearing Corporation[, and]. A Trading Privilege Holder may be held accountable for the actions of [such] its Related Parties. In addition, each Responsible Trader shall be responsible for supervising the Related Parties of the Trading Privilege Holder represented by it, and may be held accountable for the actions of such Related Parties.

* * * * *

611. Trading Against Customers' Orders

No Trading Privilege Holder (including its Related Parties) shall enter into a transaction on behalf of a Customer in which such Trading Privilege Holder or Related Party or any Person trading for an account in which such Trading Privilege Holder or Related Party has a financial interest, intentionally assumes the opposite side of the transaction. The foregoing restriction shall not prohibit pre-execution discussions conducted in accordance with procedures established by the Exchange from time to time, and shall not apply to any Exchange of Contract for Related Position, any Block Trade or any facilitation crossing transaction meeting all of the following criteria (or such other criteria as may be established by the Exchange from time to time):

(a) the Customer has previously consented in writing to such transactions and such consent has not been revoked prior to the applicable transaction;

(b) if the Trading Privilege Holder desires to cross a Customer Order with an Order of the Trading Privilege Holder or Related Party and a bid and an offer for the relevant Contract are resting in the CBOE System, the Trading Privilege Holder may enter the Customer Order into the CBOE System and may immediately thereafter enter the opposing Order representing no more than 30% of the Customer Order's contract size (rounded up to the nearest whole contract);

(c) the Trading Privilege Holder or Related Party has waited for a period of three seconds after first entering the Order received from the Customer into the CBOE System before taking the opposite side of the transaction, or if the Trading Privilege Holder initially crossed 30% of the Customer Order as provided in Rule 611(b), the Trading Privilege Holder has waited for a period of three seconds after first entering the Customer Order into the CBOE System before entering an opposing Order for the remaining balance, if any, of the Customer Order;

(d) the Trading Privilege Holder maintains a record that clearly identifies, by appropriate descriptive words, all such transactions, including the time of execution, commodity, date, price, quantity and delivery month; and

(e) the Trading Privilege Holder provides a copy of the record referred to in clause (d) above to the Exchange upon request by the Exchange and within the time frame designated by the Exchange.

Because the Orders entered into the CBOE System pursuant to this Rule 611 are exposed to the market, there is no assurance that the Orders of the Trading Privilege Holder will be matched against the Customer Order.

* * * * *

616. Wash Trades

No Trading Privilege Holder nor any of its Related Parties shall place or accept buy and sell orders in the same Contract and expiration month, and, for a put or call option, the same strike price, where the Trading Privilege Holder or Related Party knows or reasonably should know that the purpose of the orders is to avoid taking a bona fide market position exposed to market risk (transactions commonly known or referred to as wash trades). Buy and sell orders for different accounts with common beneficial ownership that are entered with the intent to negate market risk or price competition shall also be deemed to violate the prohibition on wash trades. Additionally, no Trading Privilege Holder nor any of its Related Parties shall knowingly execute or accommodate the execution of such orders by direct or indirect means.

617. Money Passes

No Trading Privilege Holder nor any of its Related Parties shall prearrange the execution of transactions on the Exchange for the purpose of passing money between accounts. All transactions executed on the Exchange must be made in good faith for the purpose of executing bona fide transactions, and prearranged trades intended to effectuate a transfer of funds from one account to another are prohibited.

618. Accommodation Trading

No Trading Privilege Holder nor any of its Related Parties shall enter into non-competitive transactions on the Exchange for the purpose of assisting another Person to engage in transactions that are in violation of the Rules of the Exchange or Applicable Law.

619. Front-Running

No Trading Privilege Holder nor any of its Related Parties shall take a position in a Contract based upon non-public information regarding an impending transaction by another Person in the same or a related Contract, except as expressly permitted by Rules 407, 414, 415 and 611 or in accordance with any policies or procedures for pre-execution discussions from time to time adopted by the Exchange.

620. Disruptive Practices

No Trading Privilege Holder nor any of its Related Parties shall engage in any trading, practice or conduct on the Exchange or subject to the Rules of the Exchange that:

(i) Violates bids or offers;

(ii) Demonstrates intentional or reckless disregard for the orderly

execution of transactions during the closing period; or

(iii) Is, is of the character of, or is commonly known as the trade as "spoofing" (bidding or offering with the intent to cancel the bid or offer before execution).

* * * * *

701. Disciplinary Jurisdiction

(a) A Trading Privilege Holder and any Related Party who is alleged to have violated, or aided and abetted a violation of, any provision of the CEA, Commission Regulations thereunder, the Exchange Act, Exchange Act Regulations thereunder, or any Rule of the Exchange regulating the conduct of business on the Exchange shall be subject to the disciplinary jurisdiction of the Exchange under this Chapter 7, and after notice and opportunity for a hearing may be appropriately disciplined by expulsion, suspension, limitation of activities, functions and operations, fine, censure, being suspended or barred from using Trading Privileges, denial of access to the Exchange, undertakings or any other fitting sanction, in accordance with the provisions of this Chapter 7.

(b) A Trading Privilege Holder or Related Party may be charged with any violation committed by Related Parties under its, his or her supervision or by the Trading Privilege Holder with which it, he or she is associated, as the case may be, as though such violation were its, his or her own.

(c) A former Trading Privilege Holder or Related Party shall remain subject to the disciplinary jurisdiction of the Exchange following any revocation of its Trading Privileges in accordance with Rule 306(b) or 307 or termination of association, as the case may be, with respect to matters that occurred prior to such revocation or termination, as the case may be, provided written notice of the commencement of any inquiry into disciplinary matters is given by the Exchange to such former Trading Privilege Holder or Related Party within one year from receipt by the Exchange of the latest written notice of such revocation or termination, as the case may be. The foregoing notice requirement shall not apply to any Person who at any time after such revocation or termination, as the case may be, again subjects itself to the disciplinary jurisdiction of the Exchange by becoming a Trading Privilege Holder or a Related Party of a Trading Privilege Holder.

702. Complaint and Investigation

(a) Initiation of Investigation. The Exchange shall investigate possible violations within the disciplinary jurisdiction of the Exchange upon

[order] request of the Commission, the Board, the Regulatory Oversight Committee, the Business Conduct Committee, the President or any other Exchange official designated by the President, or [whenever there is a reasonable basis for the Exchange to investigate] upon the discovery or receipt of information by the Exchange that indicates a reasonable basis for finding that a violation may have occurred or will occur. The Exchange shall also investigate possible violations within the disciplinary jurisdiction of the Exchange upon receipt of a complaint, written or oral, alleging such violations made by a Trading Privilege Holder or by any other Person alleging injury as a result of such violations (the "Complainant"), provided such complaint specifies in reasonable detail the facts constituting the alleged violation. To assist the Exchange in investigating possible violations, the Complainant should sign written complaints or identify itself when making oral complaints, and also should identify the specific statutory provisions or Rules of the Exchange allegedly violated.

(b) Requirement to Furnish Information. Each Trading Privilege Holder and Related Party shall be obligated upon request by the Exchange and within the time frame designated by the Exchange to appear and testify, and to respond in writing to interrogatories and furnish documentary materials and other information requested by the Exchange in connection with (i) any investigation initiated pursuant to paragraph (a) of this Rule 702, (ii) any hearing or appeal conducted pursuant to this Chapter 7 or preparation by the Exchange in anticipation of any such hearing or appeal or (iii) an Exchange inquiry resulting from any agreement entered into by the Exchange pursuant to Rule 215. No Trading Privilege Holder or Related Party shall impede or delay any Exchange investigation or proceeding conducted pursuant to this Chapter 7 or any Exchange inquiry resulting from any agreement entered into by the Exchange pursuant to Rule 215, nor refuse to comply with a request made by the Exchange pursuant to this paragraph (b). [Each Trading Privilege Holder and Related Party is entitled to be represented by counsel during any such Exchange investigation, proceeding or inquiry.]

(c) Representation. Each Trading Privilege Holder and Related Party is entitled to be represented during all stages of any proceeding pursuant to this Chapter 7 by legal counsel or any representative of the Trading Privilege Holder's or Related Party's choosing, except for any member of the Exchange's Board of Directors or Business Conduct Committee, any Exchange employee or any Person substantially related to the underlying investigations, such as a material witness or a Respondent.

(d) [(c)] Report. In every instance where Exchange staff determines from surveillance or from an investigation [results in a finding] that [there are reasonable grounds to believe that] a reasonable basis exists for finding a violation has been committed of a Rule of the Exchange, the

Exchange staff shall submit a written report of its investigation to [the Business Conduct Committee] a BCC Panel.

(e) [(d)] Notice, Statement and Access. Prior to submitting its report, the Exchange shall notify each Person who is the subject of the report (the "Subject") of the general nature of the allegations and of the specific provisions of the CEA, Commission Regulations thereunder, the Exchange Act, Exchange Act Regulations thereunder, or Rules of the Exchange regulating the conduct of business on the Exchange that appear to have been violated. Except when [the Business Conduct Committee] a BCC Panel determines that expeditious action is required, a Subject shall have the right, within 15 days from the date of the notification referred to in the preceding sentence, to submit a written statement to the Business Conduct Committee concerning why no disciplinary action should be taken. To assist a Subject in preparing such a written statement, such Subject shall have access to any documents and other materials in the investigative file of the Exchange that were furnished by such Subject or its agents.

(f) [(e)] Videotaped Response. In lieu of, or in addition to, submitting a written statement concerning why no disciplinary action should be taken as permitted by paragraph (d) of this Rule 702, the Subject may submit a statement in the form of a videotaped response. Except when [the Business Conduct Committee] a BCC Panel determines that expeditious action is required, the Subject shall have 15 days from the date of service of the notification referred to in such paragraph (d) to submit such videotaped response. The Exchange may from time to time establish standards concerning the length and format of such videotaped responses.

703. Expedited Proceeding

Upon receipt of the notification referred to in the first sentence of Rule 702(d), a Subject may seek to dispose of the matter to which such notification relates through a letter of consent signed by it. If a Subject desires to attempt to so dispose of such matter, it must submit to the Exchange, within 15 days from the date of service of such notification, a written notice electing to proceed in an expedited manner pursuant to this Rule 703. Such Subject must then endeavor to reach agreement with the Exchange upon a letter of consent which is acceptable to the Exchange and which sets forth a stipulation of facts and findings concerning the Subject's conduct, each violation committed by the Subject and the sanction or sanctions therefor. A matter can only be disposed of through a letter of consent if the Exchange and the Subject are able to agree upon terms of a letter of consent which are acceptable to the Exchange, and such agreed letter is signed by the Subject.

At any point in the negotiations regarding a letter of consent, the Exchange may deliver to the Subject, or the Subject may deliver to the Exchange,

a written declaration of an end to the negotiations. Upon delivery of any such declaration, the Subject will have the right, within 15 days from such delivery, to submit a written statement pursuant to Rule 702(d) and thereafter the matter may be brought to [the Business Conduct Committee] a BCC Panel for appropriate action. In lieu of, or in addition to, submitting a written statement pursuant to Rule 702(d), the Subject may submit a statement in the form of a videotaped response pursuant to Rule 702(e). In the event that the Subject and the Exchange are able to agree upon a letter of consent which is acceptable to the Exchange, such letter shall be submitted to [the Business Conduct Committee] a BCC Panel.

A BCC Panel may accept a letter of consent which provides that the Subject accepts a sanction without either admitting or denying the violations upon which the sanction is based. A BCC Panel may not alter the terms of a letter of consent unless the Subject agrees. A Subject may withdraw a letter of consent at any time before final acceptance of the letter of consent by a BCC Panel. If a letter of consent is withdrawn after submission, or is rejected by a BCC Panel, the Subject shall not be deemed to have made any admissions by reason of the letter of consent and shall not otherwise be prejudiced by having submitted the letter of consent. If such letter is accepted by the [Business Conduct Committee] BCC Panel, it may adopt such letter as its decision and shall take no further action against the Subject respecting the matters to which the letter relates. If such letter is rejected by the [Business Conduct Committee] BCC Panel, the matter shall proceed as though such letter had not been submitted. [The Business Conduct Committee's] A BCC Panel's decision to accept or reject a letter of consent shall be final, and a Subject may not seek review thereof.

704. Charges

(a) Determination Not to Initiate Charges. Whenever it appears to [the Business Conduct Committee] a BCC Panel from a report submitted to it pursuant to Rule 702(c) that no probable cause exists for finding a violation within the disciplinary jurisdiction of the Exchange, or whenever [the Business Conduct Committee] a BCC Panel otherwise determines that no further action is warranted with respect to the matter to which such report relates, it shall issue a written statement to that effect setting forth its reasons for such finding, which statement shall be sent to the relevant Subject and the Complainant, if any.

(b) Initiation of Charges. Whenever it appears to [the Business Conduct Committee] a BCC Panel from a report submitted to it pursuant to Rule 702(c) that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange and that further proceedings are warranted, the [Business Conduct Committee] BCC Panel shall direct the staff of the Exchange to prepare a statement of charges against each Person alleged to have committed a violation (the "Respondent"), specifying (i) the acts, conduct or practices in which the Respondent is [charged] alleged to have engaged; (ii) [and setting forth] the specific

provisions of the CEA, Commission Regulations thereunder, the Exchange Act, Exchange Act Regulations thereunder, or Rules of the Exchange [of which such acts are in violation] alleged to have been violated (or about to be violated) by the Respondent; (iii) that the Respondent is entitled, upon request, to a hearing on the charges; and (iv) the period within which a hearing on the charges may be requested. A copy of such statement shall be served upon the Respondent in accordance with Rule 712. The Complainant, if any, shall be notified if further proceedings are warranted.

(c) Access to Books, Documents or Other Evidence. Provided that a Respondent has made a written request for access to books, documents or other evidence within 60 calendar days after a statement of charges has been served upon such Respondent in accordance with Rule 712, such Respondent shall have access to all [documents] books, documents or other evidence concerning the case to which such statement relates that are in the [investigative file] possession or under the control of the Exchange, subject to the limitations in the following sentence [except for investigation and examination reports and materials prepared by the Exchange in connection with such reports or in anticipation of a disciplinary hearing. In providing such documents, the Exchange may protect the identity of a Complainant]. The Exchange may withhold documents that are privileged or constitute attorney work product, documents that were prepared by an employee of the Exchange but will not be offered in evidence in the disciplinary proceedings, documents that may disclose a technique or guideline used in examinations, investigations or enforcement proceedings and documents that disclose the identity of a confidential source.

(d) No Trading Privilege Holder or Related Party shall make or cause to be made any Ex Parte Communication with any member of the Business Conduct Committee concerning the merits of any matter pending under this Chapter 7. No member of the Business Conduct Committee shall make or cause to be made any Ex Parte Communication with any Trading Privilege Holder or Related Party concerning the merits or any matter pending under this Chapter 7.

705. Answer

A Respondent shall file a written answer to a statement of charges provided to it pursuant to Rule 704(b) within 15 days from the date of service of such statement. The answer shall specifically admit or deny each allegation contained in the statement, and the Respondent shall be deemed to have admitted any allegation not specifically denied. The answer may also contain any defense which the Respondent wishes to raise, and may be accompanied by documents in support of such answer or defense. In the event that a Respondent fails to file an answer, all charges contained in the statement of charges provided to it shall be deemed to be admitted.

706. Hearing

(a) Participants. Subject to Rule 707 of this Chapter 7, a hearing on any charges made under this Chapter 7 shall be held before a BCC Panel. The Exchange (including the Exchange enforcement and regulatory staffs) and the relevant Respondent shall be the parties to any hearing.

(b) Prehearing Procedures. The BCC Panel shall determine the date, time and location of any hearing and shall promptly hold any hearing upon the completion of any procedures prior to the hearing pursuant to this Chapter 7. All parties shall be given at least 15 days' prior notice of the time and place of any hearing. Hearings shall generally be held in Chicago, Illinois, but a BCC Panel may decide to hold a hearing in any other location to accommodate the parties, witnesses, Exchange staff or the BCC Panel members. Not less than five business days in advance of a scheduled hearing date, each party shall furnish to the BCC Panel and each of the other parties copies of all documentary evidence such party intends to present at such hearing and a list containing the names of all witnesses the party intends to present at such hearing. Where the time and nature of a proceeding permit, the parties shall meet in a pre-hearing conference for the purpose of clarifying and simplifying issues and otherwise expediting the proceeding. At any such pre-hearing conference, the parties shall attempt to reach agreement respecting the authenticity of documents, facts not in dispute and any other items the resolution of which may serve to expedite the hearing of the matter. At the request of any party, the BCC Panel or the chairperson thereof shall hear and decide all pre-hearing issues not so resolved among the parties. Interlocutory Board review of any decision made by a BCC Panel prior to completion of a hearing is generally prohibited. Such interlocutory review shall be permitted only if a BCC Panel agrees to such review after determining that a particular issue is a controlling issue of rule or policy and that immediate Board review would materially advance the ultimate resolution of a matter before such BCC Panel.

(c) Conduct of Hearing. A BCC Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of any hearing before it. Formal rules of evidence shall not apply. The Respondent shall appear personally at the hearing. The charges shall be presented by a representative of the Exchange who, along with the Respondent and any other party, may present evidence and produce witnesses who shall testify under oath and are subject to being questioned by the BCC Panel and the other parties. The Respondent and any intervening parties are entitled to be represented by legal counsel or another person in accordance with Rule 702(c) who may participate fully in the hearing. A transcript of each hearing shall be made and shall become part of the record for the matter to which such hearing relates.

(d) [Documents and] Witnesses. Persons within the jurisdiction of the Exchange who are called as witnesses for a hearing are required to participate in the hearing and to produce evidence. The Exchange shall make reasonable efforts to secure the presence of any other Person called as a witness for a hearing whose testimony a BCC Panel determines would be relevant if that Person does not voluntarily appear as a hearing witness. [A BCC Panel may request the production of documentary evidence and witnesses with respect to any matter before it. If the Exchange or a Trading Privilege Holder (including its Related Parties) does not voluntarily produce non-privileged documents or hearing witnesses the Respondent has requested, a Respondent may submit a written request to a BCC Panel asking such BCC Panel to enter an order compelling the production of non-privileged documents by the Exchange or such Trading Privilege Holder (including its Related Parties) or compelling the testimony of such Trading Privilege Holder or such Related Party or any Person within the Exchange's control. Before entering any such order, the BCC Panel must hear any objections raised by Exchange staff to the issuance of such an order. When deciding whether or not to issue the requested order, the BCC Panel shall weigh the probative value of the documents or testimony in question against considerations such as undue delay, waste of time, confusion, unfair prejudice or needless presentation of cumulative evidence. As a condition to issuing any such order, the BCC Panel may require the Respondent to pay the costs of complying with the requested order, including a witness's travel expenses. No Trading Privilege Holder (including its Related Parties) shall refuse to furnish relevant testimony, documentary materials or other information requested or ordered by a BCC Panel.]

(e) Summary Action. A BCC Panel may summarily impose a sanction upon any Person within the jurisdiction of the Exchange whose actions impede the progress of a hearing. Notice of any such summary determination, specifying the violations and sanctions, shall be served upon the Respondent, who shall have the right, within 10 days from the date of service, to notify the BCC Panel that it, he or she desires a hearing upon the violations and sanctions. Failure to so notify the BCC Panel within such 10-day period shall constitute admission of the violations, acceptance of the sanctions and a waiver of all rights of review with respect to the violations and sanctions.

707. Summary Proceedings

Notwithstanding the provisions of Rule 706, [the Business Conduct Committee] a BCC Panel may make a determination in any matter before it without a hearing that a Respondent has committed violations alleged in a statement of charges that the Respondent has admitted or failed to deny [and may impose a penalty as to violations which the Respondent has admitted or has failed to answer or which otherwise do not appear to be in dispute]. In the event

that a BCC Panel makes such a determination, the Respondent shall be deemed to have admitted and waived all rights of review with respect to the violations that the BCC Panel has found the Respondent to have committed and the BCC Panel shall impose a sanction for each of those violations. Notice of any such summary determination, specifying the violations and [penalty] sanctions, shall be served upon the Respondent, who shall have the right, within 10 days from the date of service, to notify the [Business Conduct Committee] BCC Panel that it, he or she desires a hearing [upon all or a portion of any charges not previously admitted or] upon the [penalty] sanctions. Failure to so notify the [Business Conduct Committee] BCC Panel within such 10-day period shall constitute [admission of the violations and] acceptance of the [penalty contemplated by] sanctions included in such summary determination and a waiver of all rights of review with respect to the sanctions. [If a Respondent requests a hearing in accordance with this Rule 707, the matters which are the subject of the hearing shall be treated as if the summary determination had not been made.]

708. Offers of Settlement

(a) Submission of Offer. At any time during a period not to exceed 120 days immediately following the date of service of a statement of charges upon a Respondent in accordance with Rule 712, such Respondent may submit to the Business Conduct Committee a maximum of two written and signed offers of settlement, which shall contain a proposed stipulation of facts and consent to a specified sanction. If a Respondent elected to proceed pursuant to Rule 703, however, and negotiations ended pursuant to a written declaration of an end to negotiations, the number of days in excess of 30 between (i) the date on which the Exchange received the Respondent's election to proceed in an expedited manner and (ii) the date of the written declaration of an end to negotiations, shall be deducted from the 120-day period specified in the prior sentence; provided, however, that in no event shall the time period within which the Respondent may properly submit offers of settlement to the Business Conduct Committee pursuant to this paragraph (a) be less than 14 days from the date that the statement of charges is served upon the Respondent.

(b) Acceptance or Rejection of Offer. A BCC Panel may permit a Respondent to accept a sanction through an offer of settlement without either admitting or denying the violations upon which the sanction is based. A BCC Panel may not alter the terms of an offer of settlement unless the Respondent agrees. A Respondent may withdraw an offer of settlement at any time before final acceptance of the offer of settlement by a BCC Panel. If an offer of settlement is withdrawn after submission, or is rejected by a BCC Panel, the Respondent shall not be deemed to have made any admissions by reason of the offer of settlement and shall not otherwise be prejudiced by having submitted the offer of settlement. To the extent that [the Business Conduct Committee] a BCC Panel accepts [any] an offer of settlement, [it] the BCC Panel shall issue a written

decision[, including findings and conclusions and imposing a sanction,] consistent with the terms of such offer specifying the rule violations the BCC Panel has reason to believe were committed, including the basis or reasons for the BCC Panel's conclusions, and any sanctions to be imposed. If a BCC Panel accepts an offer of settlement that is not recommended for acceptance by Exchange staff, the decision shall adequately support the BCC Panel's acceptance of the settlement. If applicable, a decision accepting an offer of settlement shall include a statement that the Respondent has accepted the sanctions imposed without either admitting or denying the violations. To the extent that [the Business Conduct Committee] a BCC Panel rejects any offer of settlement, it shall notify the Respondent of such rejection and the matter shall proceed as if such offer had not been made, and such offer and all documents relating thereto shall not become part of the record for the matter in question. Any decision of [the Business Conduct Committee] a BCC Panel issued upon acceptance of an offer of settlement as well as any determination of [the Business Conduct] a BCC Panel whether or not to accept or reject such an offer shall be final, and the Respondent may not seek any review thereof.

(c) [(b)] Submission of Statement. A Respondent may submit a written statement in support of any offer of settlement made by it. In addition, if the Exchange staff does not recommend acceptance of an offer of settlement before [the Business Conduct Committee] a BCC Panel, a Respondent shall be notified and may appear before the [Committee] BCC Panel to make an oral statement in support of such offer. If the [Business Conduct Committee] BCC Panel rejects an offer of settlement that the Exchange staff supports, a Respondent may appear before the [Business Conduct Committee] BCC Panel to make an oral statement concerning why he or she believes the [Business Conduct Committee] BCC Panel should change its decision and accept such offer. A Respondent must make a request for any such appearance within five days of service of notice that his or her offer was rejected or that the Exchange staff will not recommend acceptance.

(d) [(c)] Notwithstanding the limitation on the number of settlement offers set forth in paragraph (a) above, [the Business Conduct Committee] a BCC Panel, in its sole discretion, at any time after a statement of charges has been issued during the 120-day period specified in paragraph (a) above (or such shorter period as may be mandated by such paragraph), may permit a Respondent to submit an offer of settlement, provided the stipulation of facts and specified sanction contained in such offer of settlement are deemed acceptable by the [Business Conduct Committee] BCC Panel.

(e) [(d)] If the Exchange takes more than 30 days to provide a Respondent with access to documents pursuant to the requirements of Rule 704(c), the 120-day period specified in paragraph (a) above (or such

shorter period may be mandated by such paragraph) shall be tolled during such period in excess of 30 days; provided that, if the settlement period pursuant to paragraph (a) above is less than 120 days, the settlement period shall be tolled to the extent necessary to allow the Respondent at least seven days after being provided with access to documents to submit an offer of settlement.

(f) [(e)] Subject to Rule 707, after the 120-day period specified in paragraph (a) above (or such shorter period as may be mandated by such paragraph) or after [the Business Conduct Committee's] a BCC Panel's rejection of a Respondent's second offer of settlement, whichever is earlier, a hearing will be scheduled and will proceed in accordance with Rule 706.

709. Decision

Following any hearing conducted pursuant to Rule 706, the BCC Panel conducting such hearing shall issue a decision in writing determining, based upon the weight of the evidence contained in [solely on] the record of the hearing, [determining] whether the Respondent has committed a violation and imposing the sanction, if any, therefor. [If such BCC Panel is not composed of at least a majority of the members of the Business Conduct Committee, its determination shall be automatically reviewed by a majority of the members of the Business Conduct Committee, which may affirm, reverse or modify in whole or in part or may remand the matter for additional findings or supplemental proceedings. Any such modification may include additional, lesser or different sanctions.] Each decision made pursuant to this Rule 709 shall include [a statement of findings and conclusions, with the reasons therefor, upon all material issues presented on the record for the matter in question. Where a sanction is imposed, the decision shall include a statement specifying the acts or practices in which the Respondent has been found to have engaged and setting forth the] (i) the statement of charges or summary of the charges; (ii) the answer, if any, or summary of the answer; (iii) a summary of the evidence produced at the hearing; (iv) a statement of findings and conclusions with respect to each charge, and a complete explanation of the evidentiary and other basis for such findings and conclusions with respect to each charge; (v) an indication of each specific [provisions] provision of the CEA, Commission Regulations thereunder, the Exchange Act, Exchange Act Regulations thereunder, or Rules of the Exchange [of which the acts are deemed to be in violation] that the Respondent was found to have violated; and (vi) a declaration of all sanctions imposed against the Respondent, including the basis for such sanctions and the effective date of such sanctions. The Respondent shall be promptly sent a copy of any decision made pursuant to this Rule 709. After Board review pursuant to Rule 710, or upon expiration of the time for such review in accordance with Rule 710, whichever occurs first, a decision will be considered final, and the Exchange shall publish [a summary thereof] the decision.

710. Review

(a) (i) Petition. A Respondent and the Exchange shall each have the right, within 15 days after service of notice of a decision made pursuant to Rule 709, to petition for review of such decision by filing a copy of such petition with the Secretary and the other party to the hearing. Any such petition shall be in writing and shall specify the findings , [and] conclusions and sanctions to which exceptions are taken, together with reasons for such exceptions. Any objections to a decision not specified by written exception shall be considered to have been abandoned.

(ii) *Written Submissions*. Within 15 days after a petition for review has been filed with the Secretary pursuant to clause (i) above, the other party to the hearing may submit to the Secretary a written response to the petition. A copy of such response must be served upon the petitioner. A petitioner has 15 days from the service of the response to file a reply with the Secretary and the other party to the hearing.

(b) Conduct of Review. Any review shall be conducted by the Board or a committee of the Board that includes at least one Public Director, whose decision must be ratified by the Board. [Any] No director who participated in a particular matter before the Business Conduct Committee or any BCC Panel or who is a regulatory staff member may [not] participate in any review of such matter by the Board. Unless the Board decides to open the record for the introduction of evidence or to hear additional arguments based upon good cause shown, such review shall be based solely upon the record and the written exceptions filed by the parties. In the course of a review pursuant to this Rule 710, new issues may be raised by the Board; provided that the Respondent shall be given notice of, and an opportunity to address, any such new issues. The Board may affirm, reverse or modify, in whole or in part, any decision of [the Business Conduct Committee] a BCC Panel reviewed by it. Any such modification may include additional, lesser or different sanctions. The decision issued by the Board shall adhere to all of the requirements of Rule 709 to the extent that the Board reaches a different conclusion from that issued by a BCC Panel. Any decision of the Board pursuant to this Rule 710 shall be in writing, shall be promptly served on the Respondent, and shall be final.

(c) Review on Motion of Board. The Board may on its own initiative order review of any decision made pursuant to Rule 707 or 709 within 30 days after notice of the decision has been served on the Respondent. Any such review shall be conducted in accordance with the procedures set forth in paragraph (b) above.

(d) Review of Decision Not to Initiate Charges. Upon application by the Regulatory Oversight Committee within 45 days from the date the Exchange serves the Subject with notice of a decision by [the Business

Conduct Committee] a BCC Panel pursuant to Rule 704(a) not to initiate charges that have been recommended by Exchange staff, the Board may order review of such decision. Such review shall be conducted in accordance with the procedures set forth in paragraph (b) above, as applicable.

711. Judgment and Sanction

(a) Sanctions. Trading Privilege Holders (including their Related Parties) shall (subject to any rule or order of the Commission) be appropriately disciplined by [the Business Conduct Committee] a BCC Panel for violations under these Rules by expulsion, suspension, limitation of activities, functions and operations, fine, censure, being suspended or barred from using Trading Privileges, denial of access to the Exchange, undertakings or any other fitting sanction.

(b) Sanction Considerations. All disciplinary sanctions imposed pursuant to this Chapter 7 shall be commensurate with the violations committed, clearly sufficient to deter recidivism or similar violations by other market participants and take into account the Respondent's disciplinary history. In the event of demonstrated customer harm, any disciplinary sanction imposed pursuant to this Chapter 7 shall also include full customer restitution, except where the amount of restitution, or to whom it should be provided, cannot be reasonably determined.

(c) [(b)] Effective Date of Judgment. Any sanctions imposed pursuant to this Chapter 7 shall not become effective until the review process with respect to such decision has been completed or such decision otherwise becomes final. Pending effectiveness of a decision imposing a sanction on a Respondent, [the Business Conduct Committee] a BCC Panel may impose such conditions and restrictions on the activities of such Respondent as the [Business Conduct Committee] BCC Panel may consider reasonably necessary for the protection of Customers, Trading Privilege Holders or the Exchange.

712. Service of Notice

Any charges, notices or other documents contemplated to be served pursuant to this Chapter 7 may be served upon the Respondent either personally or by leaving the same at his or her place of business or by deposit in the United States mail, postage prepaid, via registered or certified mail addressed to the Respondent at the address as it appears on the books and records of the Exchange.

713. Extension of Time Limits

Any time limits imposed under this Chapter 7 for the submission

of answers, petitions or other materials may be extended by permission of the authority at the Exchange to whom such materials are to be submitted.

714. Imposition of Fines for Minor Rule Violations

(a) Notwithstanding any other provision of this Chapter 7 to the contrary, the Exchange may, subject to the requirements set forth herein, impose a fine, not to exceed $15,000, on any Trading Privilege Holder or Related Party of a Trading Privilege Holder with respect to any violation of the Rules of the Exchange relating to the timely submission of accurate records required for clearing or verifying each day's transactions, decorum or other similar activities. For purposes of imposing fines pursuant to this Rule 714, the Exchange may aggregate individual violations of particular Rules of the Exchange and treat such violations as a single offense. In other instances, the Exchange may, if no exceptional circumstances are present, impose a fine based upon a determination that there exists a pattern or practice of violative conduct. The Exchange also may aggregate similar violations generally if the conduct was unintentional, there was no injury to public investors or the violations resulted from a single problem or cause that has been corrected. Actions taken pursuant to this Rule 714 shall be processed in accordance with the procedures set forth in this Rule 714 rather than the procedures set forth in the remainder of this Chapter 7 unless otherwise indicated.

(b) In any action taken by the Exchange pursuant to this Rule 714, any Person against whom a fine is imposed shall be served with a written statement, prepared by the Exchange, setting forth: (i) the provision of the Rules of the Exchange allegedly violated; (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 must be paid or contested as provided below, which date shall be not less than 30 days after the date of service of such written statement. The issuance of a fine, a member's failure to contest the fine, or a member's submission or the Exchange's acceptance of an offer of settlement in connection with this Rule 714 do not constitute an admission of the violation in question.

(c) (i) Any Person against whom a fine is imposed pursuant to this Rule 714 may contest the Exchange's determination by filing with the office of the Secretary, on or before the date specified pursuant to clause (b)(iv) of this Rule 714, a written answer in accordance with Rule 705 (which shall apply with such changes as may be appropriate under the circumstances), at which point the matter shall become subject to review by [the Business Conduct Committee] a BCC Panel. The filing must include a request for a hearing, if a hearing is desired. Hearings shall be conducted in accordance with the provisions of Rule 706 (which shall apply with such changes as may be appropriate under the circumstances).

If a hearing is not requested, the review shall be based on written submissions and shall be conducted in a manner to be determined by the [Business Conduct Committee] BCC Panel.

(ii) If after a hearing or review based on written submissions pursuant to clause (i) above the [Business Conduct Committee] BCC Panel determines that the conduct serving as the basis for the action under review is in violation of that provision of the Rules of the Exchange the violation of which has been charged, the [Business Conduct Committee] BCC Panel (A) may impose any one or more of the disciplinary sanctions authorized by the Rules of the Exchange and (B) shall impose a forum fee against the Person charged in the amount of one hundred dollars ($100) if the determination was reached without a hearing, or in the amount of three hundred dollars ($300) if a hearing was conducted. Notwithstanding the foregoing, in the event that the [Business Conduct Committee] BCC Panel determines that the Person charged [is guilty of] committed one or more violations of Rules of the Exchange and the sole disciplinary sanction imposed by the [Business Conduct Committee] BCC Panel for such violations is a fine which is less than the total fine initially imposed by the Exchange pursuant to this Rule 714, the [Business Conduct Committee] BCC Panel shall have discretion to waive the imposition of a forum fee.

(iii) The committee or department of the Exchange that commenced any action under this Rule 714, the Person charged and any member of the Board may require a review by the Board of any determination by [the Business Conduct Committee] a BCC Panel under this Rule 714 by proceeding in accordance with Rule 710 (which shall apply with such changes as may be appropriate under the circumstances). In connection with such review the committee or department of the Exchange that commenced the action under this Rule 714 shall have the same rights as a Respondent under Rule 710.

(iv) In the event that a fine imposed pursuant to this Rule 714 is upheld by [the Business Conduct Committee] a BCC Panel or, if applicable, on review by the Board, such fine, plus interest thereon, at a rate from time to time specified by the Exchange for such purpose, from and including the date specified in clause (b)(iv) of this Rule 714, shall be immediately due and payable.

(d) The Exchange [may] shall specify in clause (e) of this Rule 714 the types of violations of Rules of the Exchange that will be considered minor rule violations for purposes of this Rule 714 and a fine schedule for such

violations. Any fine schedule may allow for warning letters to be issued for first-time violations or violators and shall provide for progressively larger fines for recurring violations. Nothing in this Rule 714 shall require the Exchange to impose a fine pursuant to this Rule 714 with respect to the violation of any provision of the Rules of the Exchange included in any listing of minor rule violations. In addition, the Exchange may, whenever it determines that any violation is intentional, egregious or otherwise not minor in nature, proceed under the Exchange's formal disciplinary rules as set forth in Rules 702 through 713, rather than under this Rule 714.

(e) There are currently no types of violations of Rules of the Exchange that will be considered minor rule violations for purposes of this Rule 714.

715. Warning Letters

A BCC Panel or Exchange staff may issue a warning letter to a Person concerning a violation by that Person of a Rule of the Exchange or when no rule violation by that Person has been found, such as a warning letter issued as a reminder or for educational purposes. No more than one warning letter may be issued by the Exchange to the same Person found to have committed the same rule violation within a rolling twelve month period.

801. Matters Subject to Arbitration; Incorporation by Reference

(a) [Any dispute, claim or controversy, arising] Matters that may be subject to arbitration under this Chapter 8 shall include:

(i) any dispute, claim or controversy arising between a Customer and a Trading Privilege Holder (including its Related Parties) that (A) arises out of any transaction executed on or subject to the Rules of the Exchange, (B) is executed or effected through a Trading Privilege Holder, and (C) does not require for adjudication the presence of essential witnesses or third parties over whom the Exchange does not have jurisdiction and who are not otherwise available (*provided* that [a Customer shall not be subject to arbitration pursuant to] no such dispute, claim or controversy shall be subject to arbitration under this Chapter 8 without such Customer's prior written consent given in accordance with Commission Regulation § 166.5[(c)]); and

(ii) any dispute, claim or controversy arising between or among parties who are Trading Privilege Holders or Related Parties in connection with, or otherwise related to, the Exchange business of such parties.[; or

(iii) between or among one or more Trading Privilege

Holders or Related Parties, on the one hand, and any other Person, on the other hand,

in each case in connection with, or otherwise related to, the Exchange business of such parties,] Any matter that may be subject to arbitration under this Chapter 8 shall be arbitrated under this Chapter 8 only upon the request of any such party and upon the approval of the Director of Arbitration[,]. Any matter arbitrated under this Chapter 8 shall be arbitrated in accordance with Chapter XVIII of the CBOE rules, as such rules may be amended or otherwise modified from time to time, unless otherwise provided under this Chapter 8. Such rules shall apply to any such dispute, claim or controversy with any such changes as may be necessary or appropriate under the circumstances. Chapter XVIII of the CBOE rules is hereby incorporated by reference into this Chapter 8; *provided* that any reference in such rules to the "Director of Arbitration" or the "Arbitration Committee" shall be deemed to refer to the Director of Arbitration or the Arbitration Committee, as applicable, of the Exchange.

(b) Notwithstanding anything to the contrary set forth in Chapter XVIII of the CBOE rules: Trading Privilege Holders shall comply with the forum election and notice provisions set forth in Commission Regulations § 166.5(c)(3)-(5) to the extent required to do so. Parties to any matter arbitrated under this Chapter shall be provided with an opportunity for a prompt hearing under, and in accordance with, Chapter XVIII of the CBOE rules. No Trading Privilege Holder shall bring a counterclaim against any Customer which is not an "eligible contract participant" as defined under the Act in an arbitration proceeding under this Chapter 8 unless the requirements set forth in Commission Regulation § 166.5(f) are satisfied. The procedures for resolving an arbitration between or among parties who are Trading Privilege Holders or Related Parties shall be independent of, and shall not interfere with or delay, the resolution of Customer claims or grievances in an arbitration under this Chapter 8.

(c)[(b)] If a party to a dispute, in an answer, reply or other written response to a request for arbitration, challenges the appropriateness of submitting a matter to arbitration under this Chapter 8, the Director of Arbitration shall serve upon the parties written notice of his or her decision to accept or reject the matter for arbitration. The decision by the Director of Arbitration to accept or reject a matter for arbitration shall, at the request of any party to the dispute, be subject to review by the Board or a panel of the Board. Requests for review must be submitted in writing to the Secretary within 10 calendar days from receipt of notice of the decision by the Director of Arbitration.

(d)[(c)] No dispute, claim or controversy shall be eligible for submission to arbitration under this Chapter 8 where the time period specified in CBOE Rule 18.6, as such rule may be amended from time to time, shall have elapsed from the occurrence or event giving rise to the act or the dispute, claim or controversy. This Rule 801([c]d) shall not extend any applicable statutes of limitation, nor shall it apply to any case which is directed to arbitration by a court of competent jurisdiction.

* * * * *

1202. Contract Specifications

(a) *Multiplier*. The contract multiplier for each VIX futures contract is $1,000.00. For example, a contract size of one VIX futures contract would be $16,500 if the VIX index level were 16.5 (16.5 x $1,000.00).

(b) *Schedule and Prohibited Order Types*. The Exchange may list for trading up to nine near-term serial months and five months on the February quarterly cycle for the VIX futures contract. The final settlement date for the VIX futures contract shall be on the Wednesday that is thirty days prior to the third Friday of the calendar month immediately following the month in which the applicable VIX futures contract expires. If the third Friday of the month subsequent to expiration of the applicable VIX futures contract is a CBOE holiday, the final settlement date for the contract shall be thirty days prior to the CBOE business day immediately preceding that Friday.

The trading days for VIX futures contracts shall be the same trading days of options on the S&P 500 Composite Stock Price Index, as those days are determined by CBOE.

The trading hours for VIX futures contracts are from 7:00 a.m. Chicago time to 3:15 p.m. Chicago time. The time period from 8:30 a.m. Chicago time until 3:15 p.m. Chicago time shall be considered regular trading hours for the VIX futures contract, and the time period from 7:00 a.m. Chicago time until the commencement of regular trading hours for the VIX futures contract shall be considered extended trading hours for the VIX futures contract. The trading hours for VIX futures contracts from 7:00 a.m. Chicago time to 3:15 p.m. Chicago time shall constitute a single trading session.

Market Orders for VIX futures contracts will not be accepted by the Exchange during extended trading hours for the VIX futures contract or during any other time period outside of regular trading hours for the VIX futures contract. Any Market Orders for VIX futures contracts received by the Exchange outside of regular trading hours for the VIX futures contract will be automatically rejected.

[Stop Orders for VIX futures contracts will not be accepted by the Exchange at any time. Any Stop Orders for VIX futures contracts received by the Exchange at any time will be automatically rejected.]

(c) *Minimum Increments*. Except as provided in the following sentence, the minimum fluctuation of the VIX futures contract is 0.05 index points, which has a value of $50.00.

The individual legs and net prices of spread trades in the VIX futures contract may be in increments of 0.01 index points, which has a value of $10.00.

(d) *Position Accountability*. VIX futures are subject to position accountability under Rule 412A.

A person is subject to the position accountability requirements set forth in Rule 412A if the person (i) owns or controls at any time more than the number of contracts net long or net short in all VIX futures and Mini VIX futures contract months combined that in the aggregate would exceed the equivalent of 50,000 VIX futures contracts, (ii) owns or controls more than the number of contracts net long or net short in the expiring VIX futures and Mini VIX futures contract months combined that in the aggregate would exceed the equivalent of 30,000 VIX futures contracts, commencing on the Friday prior to the final settlement date of the expiring VIX futures or (iii) owns or controls more than the number of contracts net long or net short in the expiring VIX futures and Mini VIX futures contract months combined that in the aggregate would exceed the equivalent of 10,000 VIX futures contracts, commencing on the business day immediately preceding the final settlement date of the expiring VIX futures. Under this Rule, one Mini VIX futures contract shall be deemed to be equivalent to one-tenth (0.10) of one VIX futures contract.

For the purposes of this rule, the positions of all accounts directly or indirectly owned or controlled by a person or persons, and the positions of all accounts of a person or persons acting pursuant to an expressed or implied agreement or understanding shall be cumulated.

(e) *Termination of Trading*. Trading on the VIX futures contract terminates on the business day immediately preceding the final settlement date of the VIX futures contract for the relevant spot month. When the last trading day is moved because of an Exchange holiday, the last trading day for an expiring VIX futures contract will be the day immediately preceding the last regularly-scheduled trading day.

(f) *Contract Modifications*. Specifications are fixed as of the first day of trading of a contract. If any U.S. government agency or body issues an order, ruling, directive or law that conflicts with the requirements of these

rules, such order, ruling, directive or law shall be construed to take precedence and become part of these rules, and all open and new contracts shall be subject to such government orders.

(g) *Execution Priorities*. Pursuant to Rule 406(a)(i), the base allocation method of price-time priority shall apply to trading in VIX futures contracts.

(h) *Crossing Two or More Original Orders*. The eligible size for an original Order that may be entered for a cross trade with one or more other original Orders pursuant to Rule 407 is one Contract. The request for quote response period under Rule 407(a) for the request for quote required to be sent before the initiation of a cross trade under Rule 407 is five seconds. Following the request for quote response period, the Trading Privilege Holder or Authorized Trader, as applicable, must expose to the market for at least three seconds under Rule 407(b) at least one of the original Orders that it intends to cross.

(i) *Price Limit and Circuit Breaker Halts*. Pursuant to Rule 413, VIX futures contracts are not subject to price limits.

Prior to February 4, 2013, trading [Trading] in VIX futures contracts shall be halted whenever a market-wide trading halt commonly known as a circuit breaker is in effect on the New York Stock Exchange in response to extraordinary market conditions. On and after February 4, 2013, trading in VIX futures contracts shall be halted pursuant to Rule 417A if there is a Level 1, 2 or 3 Market Decline.

(j) *Exchange of Contract for Related Position*. Exchange of Contract for Related Position transactions, as set forth in Rule 414, may be entered into with respect to VIX futures contracts. Any Exchange of Contract for Related Position transaction must satisfy the requirements of Rule 414.

The minimum price increment for an Exchange of Future for Related Position involving the VIX futures contract is 0.01 index points.

(k) *Block Trades*. Pursuant to Rule 415(a)(i), the minimum Block Trade quantity for the VIX futures contract is 200 contracts if there is only one leg involved in the trade. If the Block Trade is executed as a spread order, one leg must meet the minimum Block Trade quantity for the VIX futures contract and the other leg(s) must have a contract size that is reasonably related to the leg meeting the minimum Block Trade quantity. If the Block Trade is executed as a transaction with legs in multiple contract months and all legs of the Block Trade are exclusively for the purchase or exclusively for the sale of VIX futures contracts (a "strip"), the minimum Block Trade quantity for the strip is 300 contracts and each leg of the strip is required to have a minimum size of 100 contracts.

The minimum price increment for a Block Trade in the VIX futures contract is 0.01 index points.

(l) *No-Bust Range*. Pursuant to Rule 416: (i) for trades executed during extended trading hours for the VIX futures contract, the Exchange error trade policy may only be invoked for a trade price that is greater than 20% on either side of the market price of the applicable VIX futures contract, and (ii) for trades executed during regular trading hours for the VIX futures contract, the Exchange error trade policy may only be invoked for a trade price that is greater than 10% on either side of the market price of the applicable VIX futures contract.

In accordance with Policy and Procedure III, the Help Desk will determine what the true market price for the relevant Contract was immediately before the potential error trade occurred. In making that determination, the Help Desk may consider all relevant factors, including the last trade price for such Contract, a better bid or offer price, a more recent price in a different contract month and the prices of related contracts trading on the Exchange or other markets.

(m) *Pre-execution Discussions*. The Order Exposure Period under Policy and Procedure IV before an Order may be entered to take the other side of another Order with respect to which there has been pre-execution discussions is three seconds after the first Order was entered into the CBOE System. If no bid or offer price exist in the relevant VIX futures contract, the RFQ Response Period under Policy and Procedure IV that must elapse following the request for quote that is required to be sent prior to the entry of the first Order is five seconds.

(n) *Reportable Position*. Pursuant to Commission Regulation §15.03 and Commission Regulation Part 17, the position level that is required to be reported to the Commission is any open position in VIX futures contracts at the close of trading on any trading day equal to or in excess of 200 contracts on either side of the market.

(o) *Threshold Widths*. For purposes of Policy and Procedure I and Policy and Procedure II, the Threshold Widths for the VIX futures contract are as follows:

VIX Index Level	Threshold Width
[1 – 100	20
100 – 200	50
200 – 10000	100]
0 - 15.00	1.50
15.01 - 25.00	2.50
25.01 - 35.00	3.50

35.01 - 50.00	5.00
50.01+	7.50

The minimum size of bids and offers that establish a Threshold Width is one contract.

(p) *Daily Settlement Price*. The daily settlement price for each VIX futures contract will be the average of the final bid and final offer for the VIX futures contract at the close of trading, subject to the following. If the average of the final bid and final offer is not at a minimum increment for the VIX futures contract, the daily settlement price shall be the average of the final bid and final offer rounded up to the nearest minimum increment. If there is no bid or offer at the close of trading, the Exchange may in its sole discretion establish a daily settlement price that it deems to be a fair and reasonable reflection of the market.

(q) *Trade at Settlement Transactions*. Trade at Settlement ("TAS") transactions pursuant to Rule 404A are permitted in VIX futures and may be transacted on the CBOE System (other than as spread transactions), as Block Trades (including as spread transactions but not as a strip) and as Exchange of Contract for Related Position transactions. The trading hours for all types of TAS transactions in VIX futures are from 7:00 a.m. Chicago time to 3:12 p.m. Chicago time. The permissible price range for all types of TAS transactions in VIX futures is from $100 (0.10 index points x $1,000) below the daily settlement price to $100 above the daily settlement price. The permissible minimum increment for TAS non-spread transactions in VIX futures that are transacted on the CBOE System is 0.01 index points, and the permissible minimum increment for TAS spread transactions, Block Trades and Exchange of Contract for Related Position transactions in VIX futures is 0.01 index points.

(r) *Default Pre-Trade Order Size Limit.* The default maximum pre-trade order size limit for VIX futures that will apply if a Clearing Member does not set a different limit in accordance with Rule 513A(a) is 1,000 contracts.

(s) *Price Reasonability Checks*. Pursuant to and as further described in Rule 513A(b), the CBOE System shall in a manner determined by the Exchange reject (i) any buy order with a limit price in a VIX futures contract if the limit price upon receipt of the order by the CBOE System is more than a designated amount above the prevailing best offer in that contract and (ii) any sell order with a limit price in a VIX futures contract if the limit price upon receipt of the order by the CBOE System is more than a designated amount below the prevailing best bid in that contract. The designated amounts for the price reasonability checks referenced in the preceding sentence are as follows:

Price Range	Designated Amount
0 – 15.00	1.50
15.01 – 25.00	2.50
25.01 – 35.00	3.50
35.01 – 50.00	5.00
50.01+	7.50

This Rule 1202(s) is not applicable to TAS orders in VIX futures. The permissible parameters for TAS orders in VIX futures are set forth in Rule 1202(q).

* * * * *

1402. Contract Specifications

(a) *Multiplier*. The contract multiplier for each Mini VIX futures contract is $100.00. For example, a contract size of one Mini VIX futures contract would be $1,650 if the VIX index level were 16.5 (16.5 x $100.00).

(b) *Schedule*. The Exchange may list for trading up to three near-term serial months for the Mini VIX futures contract. The final settlement date for the Mini VIX futures contract shall be on the Wednesday that is thirty days prior to the third Friday of the calendar month immediately following the month in which the applicable Mini VIX futures contract expires. If the third Friday of the month subsequent to expiration of the applicable Mini VIX futures contract is a CBOE holiday, the final settlement date for the contract shall be thirty days prior to the CBOE business day immediately preceding that Friday.

The trading days for Mini VIX futures contracts shall be the same trading days of options on the S&P 500 Composite Stock Price Index, as those days are determined by CBOE.

The trading hours for Mini VIX futures contracts are from 8:30 a.m. Chicago time to 3:15 p.m. Chicago time.

(c) *Minimum Increments*. Except as provided in the following sentence, the minimum fluctuation of the Mini VIX futures contract is 0.05 index points, which has a value of $5.00.

The individual legs and net prices of spread trades in the Mini VIX futures contract may be in increments of 0.01 index points, which has a value of $1.00.

(d) *Position Accountability*. Mini VIX futures are subject to position accountability under Rule 412A.

A person is subject to the position accountability requirements set forth in Rule 412A if the person (i) owns or controls at any time more than the number of contracts net long or net short in all VIX futures and Mini VIX futures contract months combined that in the aggregate would exceed the equivalent of 50,000 VIX futures contracts, (ii) owns or controls more than the number of contracts net long or net short in the expiring VIX futures and Mini VIX futures contract months combined that in the aggregate would exceed the equivalent of 30,000 VIX futures contracts, commencing on the Friday prior to the final settlement date of the expiring VIX futures or (iii) owns or controls more than the number of contracts net long or net short in the expiring VIX futures and Mini VIX futures contract months combined that in the aggregate would exceed the equivalent of 10,000 VIX futures contracts, commencing on the business day immediately preceding the final settlement date of the expiring VIX futures. Under this Rule, one Mini VIX futures contract shall be deemed to be equivalent to one-tenth (0.10) of one VIX futures contract.

For the purposes of this rule, the positions of all accounts directly or indirectly owned or controlled by a person or persons, and the positions of all accounts of a person or persons acting pursuant to an expressed or implied agreement or understanding shall be cumulated.

(e) *Termination of Trading*. Trading on the Mini VIX futures contract terminates on the business day immediately preceding the final settlement date of the Mini VIX futures contract for the relevant spot month. When the last trading day is moved because of a CFE holiday, the last trading day for an expiring Mini VIX futures contract will be the day immediately preceding the last regularly-scheduled trading day.

(f) *Contract Modifications*. Specifications are fixed as of the first day of trading of a contract. If any U.S. government agency or body issues an order, ruling, directive or law that conflicts with the requirements of these rules, such order, ruling, directive or law shall be construed to take precedence and become part of these rules, and all open and new contracts shall be subject to such government orders.

(g) *Execution Priorities*. Pursuant to Rule 406(a)(ii), the base allocation method of pro rata priority shall apply to trading in Mini VIX futures contracts. The following priorities shall overlay the pro rata priority base allocation method and shall be applied in the sequence below.

1. A Market Turner priority shall be applied pursuant to Rule 406(b)(ii) with a Market Turner priority participation

percentage of 30%.

2. A DPM participation right priority shall then be applied pursuant to Rule 406(b)(iii) with a DPM participation right percentage of 30%, and the DPM shall receive any further allocation resulting from the subsequent application of the pro rata priority below to the DPM's remaining quote/Order size at the best price pursuant to Rule 406(b)(iii)(C)(2).

3. The pro rata priority base allocation method shall then be applied.

(h) *Crossing Two or More Original Orders*. The eligible size for an original Order that may be entered for a cross trade with one or more other original Orders pursuant to Rule 407 is one Contract. The request for quote response period under Rule 407(a) for the request for quote required to be sent before the initiation of a cross trade under Rule 407 is five seconds. Following the request for quote response period, the Trading Privilege Holder or Authorized Trader, as applicable, must expose to the market for at least three seconds under Rule 407(b) at least one of the original Orders that it intends to cross.

(i) *Price Limits and Circuit Breaker Halts*. Pursuant to Rule 413, Mini VIX futures contracts are not subject to price limits.

Prior to February 4, 2013, trading [Trading] in Mini VIX futures contracts shall be halted whenever a market-wide trading halt commonly known as a circuit breaker is in effect on the New York Stock Exchange in response to extraordinary market conditions. On and after February 4, 2013, trading in Mini VIX futures contracts shall be halted pursuant to Rule 417A if there is a Level 1, 2 or 3 Market Decline.

(j) *Exchange of Contract for Related Position*. Exchange of Contract for Related Position transactions, as set forth in Rule 414, may be entered into with respect to Mini VIX futures contracts. Any Exchange of Contract for Related Position transaction must satisfy the requirements of Rule 414.

The minimum price increment for an Exchange of Future for Related Position transaction involving the Mini VIX futures contract is 0.01 index points.

(k) *Block Trades*. Block Trade transactions, as set forth in Rule 415, are not permitted in Mini VIX futures contracts.

(l) *No-Bust Range*. Pursuant to Rule 416, the Exchange error trade policy may only be invoked for a trade price that is greater than 10% on

either side of the market price of the applicable Mini VIX futures contract. In accordance with Policy and Procedure III, the Help Desk will determine what the true market price for the relevant Contract was immediately before the potential error trade occurred. In making that determination, the Help Desk may consider all relevant factors, including the last trade price for such Contract, a better bid or offer price, a more recent price in a different contract month, and the prices of related contracts trading on the Exchange or other markets.

(m) *Pre-execution Discussions*. The Order Exposure Period under Policy and Procedure IV before an Order may be entered to take the other side of another Order with respect to which there has been pre-execution discussions is three seconds after the first Order was entered into the CBOE System. If no bid or offer price exist in the relevant Mini VIX futures contract, the RFQ Response Period under Policy and Procedure IV that must elapse following the request for quote that is required to be sent prior to the entry of the first Order is five seconds.

(n) *Reportable Position*. Pursuant to Commission Regulation §15.03 and Commission Regulation Part 17, the position level that is required to be reported to the Commission is any open position in Mini VIX futures contracts at the close of trading on any trading day equal to or in excess of 200 contracts on either side of the market.

(o) *Threshold Widths*. For purposes of Policy and Procedure I and Policy and Procedure II, the Threshold Widths for the Mini VIX futures contract are as follows:

VIX Index Level	Threshold Width
[1 – 100	20
100 – 200	50
200 – 10000	100]
0 - 15.00	1.50
15.01 - 25.00	2.50
25.01 - 35.00	3.50
35.01 - 50.00	5.00
50.01+	7.50

The minimum size of bids and offers that establish a Threshold Width is one contract.

(p) *Daily Settlement Price.* The daily settlement price for each Mini VIX futures contract will be the average of the final bid and final offer for the Mini VIX futures contract at the close of trading, subject to the following. If the average of the final bid and final offer is not at a minimum increment for the Mini VIX futures contract, the daily

settlement price shall be the average of the final bid and final offer rounded up to the nearest minimum increment.. If there is no bid or offer at the close of trading, the Exchange may in its sole discretion establish a daily settlement price that it deems to be a fair and reasonable reflection of the market.

(q) *Trade at Settlement Transactions*. Trade at Settlement ("TAS") transactions are not permitted in Mini VIX futures.

(r) *Default Pre-Trade Order Size Limit.* The default maximum pre-trade order size limit for Mini VIX futures that will apply if a Clearing Member does not set a different limit in accordance with Rule 513A(a) is 1,000 contracts.

(s) *Price Reasonability Checks*. Pursuant to and as further described in Rule 513A(b), the CBOE System shall in a manner determined by the Exchange reject (i) any buy order with a limit price in a Mini VIX futures contract if the limit price upon receipt of the order by the CBOE System is more than a designated amount above the prevailing best offer in that contract and (ii) any sell order with a limit price in a Mini VIX futures contract if the limit price upon receipt of the order by the CBOE System is more than a designated amount below the prevailing best bid in that contract. The designated amounts for the price reasonability checks referenced in the preceding sentence are as follows:

Price Range	Designated Amount
0 - 15.00	1.50
15.01 - 25.00	2.50
25.01 - 35.00	3.50
35.01 - 50.00	5.00
50.01+	7.50

* * * * *

1602. Contract Specifications

(a) *Multiplier*. The contract multiplier for each Volatility Index futures contract is $100. For example, a contract size of one Volatility Index futures contract would be $1,895 if the underlying Volatility Index level were 18.95 (18.95 x $100).

All Volatility Index futures contracts (with and without open interest) that were listed for trading with a $1,000 contract trading prior to February 21, 2012 shall be split into 10 contracts prior to the open of trading on February 21, 2012.

(b) *Schedule*. The Exchange may list for trading up to nine near-term serial months and up to five additional months on the February quarterly cycle for a Volatility Index futures contract.

The final settlement date for a Volatility Index futures contract shall be on the Wednesday that is thirty days prior to the third Friday of the calendar month immediately following the month in which the contract expires. If the third Friday of the month subsequent to expiration of the applicable Volatility Index futures contract is a CBOE holiday, the Final Settlement Date for the contract shall be thirty days prior to the CBOE business day immediately preceding that third Friday.

The trading days for a Volatility Index futures contract shall be the same as the trading days of the component options comprising the respective Volatility Index, as those days are determined by CBOE.

Trading Hours	Volatility Index Security Future
8:30 a.m. – 3:00 p.m. (Chicago Time)	VXAPL
	VXAZN
	VXGS
	VXGOG
	VXIBM
	GVZ
	OVX
	VXFXI
	VXEWZ
	VXGDX

Trading Hours	Volatility Index Security Future
8:30 a.m. – 3:15 p.m. (Chicago Time)	VXEEM
	VXXLE

(c) *Minimum Increments*. Except as provided in the following sentence, the minimum fluctuation of a Volatility Index futures contract is 0.05 index points, which has a value of $5.00.

The individual legs and net prices of spread trades in a Volatility Index futures contract may be in increments of 0.01 index points, which has a value of $1.00.

(d) *Position Limits*. Volatility Index futures are subject to position limits under Rule 412.

A person may not own or control: (1) more than 50,000 contracts net long or net short in all Volatility Index futures contracts on the same Volatility

Index combined; (2) more than 30,000 contracts net long or net short in the expiring futures contract month for a Volatility Index future; and (3) more than 13,500 contracts net long or net short in the expiring contract for a Volatility Index future held during the last 5 trading days for the expiring Volatility Index futures contract month. For the purposes of this rule, the positions of all accounts directly or indirectly owned or controlled by a person or persons, and the positions of all accounts of a person or persons acting pursuant to an expressed or implied agreement or understanding shall be cumulated.

For the purposes of this rule, the positions of all accounts directly or indirectly owned or controlled by a person or persons, and the positions of all accounts of a person or persons acting pursuant to an expressed or implied agreement or understanding shall be cumulated.

The foregoing position limits shall not apply to positions that are subject to a position limit exemption meeting the requirements of Commission Regulations and CFE Rules.

(e) *Termination of Trading*. Trading on a Volatility Index futures contract terminates on the business day immediately preceding the final settlement date of the Volatility Index futures contract for the relevant spot month. When the last trading day is moved because of a CFE holiday, the last trading day for an expiring Volatility Index futures contract will be the day immediately preceding the last regularly-scheduled trading day.

(f) *Contract Modifications*. Specifications are fixed as of the first day of trading of a contract. If any U.S. government agency or body issues an order, ruling, directive or law that conflicts with the requirements of these rules, such order, ruling, directive or law shall be construed to take precedence and become part of these rules, and all open and new contracts shall be subject to such government orders.

(g) *Execution Priorities.* Pursuant to Rule 406(a)(ii), the base allocation method of price-time priority shall apply to trading in Volatility Index futures contracts.

(h) *Crossing Two Original Orders*. The eligible size for an original Order that may be entered for a cross trade with one or more other original Orders pursuant to Rule 407 is one Contract. The request for quote response period under Rule 407(a) for the request for quote required to be sent before the initiation of a cross trade under Rule 407 is five seconds. Following the request for quote response period, the Trading Privilege Holder or Authorized Trader, as applicable, must expose to the market for at least three seconds under Rule 407(b) at least one of the original Orders that it intends to cross.

(i) *Price Limits and Halts*. Pursuant to Rule 413, Volatility Index futures contracts are not subject to price limits.

Trading in Volatility Index futures contracts shall be halted to the extent required by Rule 417 relating to "regulatory halts."[and] Prior to February 4, 2013, trading in Volatility Index futures contracts shall also be halted whenever a market-wide trading halt commonly known as a circuit breaker is in effect on the New York Stock Exchange in response to extraordinary market conditions. On and after February 4, 2013, trading in Volatility Index futures contracts shall also be halted pursuant to Rule 417A if there is a Level 1, 2 or 3 Market Decline.

(j) *Exchange of Contract for Related Position*. Exchange of Contract for Related Position transactions, as set forth in Rule 414, may be entered into with respect to Volatility Index futures contracts. Any Exchange of Contract for Related Position transaction must satisfy the requirements of Rule 414.

The minimum price increment for an Exchange of Future for Related Position involving a Volatility Index futures contract is 0.01 index points.

(k) *Block Trades*. Pursuant to Rule 415(a)(i), the minimum Block Trade quantity for a Volatility Index futures contract is 1,000 contracts if there is only one leg involved in the trade. If the Block Trade is executed as a spread order, one leg must meet the minimum Block Trade quantity for a Volatility Index futures contract and the other leg(s) must have a contract size that is reasonably related to the leg meeting the minimum Block Trade quantity. If the Block Trade is executed as a transaction with legs in multiple contract months and all legs of the Block Trade are exclusively for the purchase or exclusively for the sale of a Volatility Index futures contract (a “strip”), the minimum Block Trade quantity for the strip is 1,500 contracts and each leg of the strip is required to have a minimum size of 500 contracts.

The minimum price increment for a Block Trade in a Volatility Index futures contract is 0.01 index points.

No natural person associated with a Trading Privilege Holder or Authorized Trader that has knowledge of a pending Block Trade of such Trading Privilege Holder or Authorized Trader, or a Customer thereof in a Volatility Index future on the Exchange, may enter an Order or execute a transaction, whether for his or her own account or, if applicable, for the account of a Customer over which he or she has control, for or in a Volatility Index future to which such Block Trade relates until after (i) such Block Trade has been reported to and published by the Exchange and (ii) any additional time period from time to time prescribed by the Exchange in its block trading procedures or contract specifications has

expired.

(l) *No-Bust Range*. Pursuant to Rule 416, the Exchange error trade policy may only be invoked for a trade price that is greater than 10% on either side of the market price of the applicable Volatility Index futures contract. In accordance with Policy and Procedure III, the Help Desk will determine what the true market price for the relevant Contract was immediately before the potential error trade occurred. In making that determination, the Help Desk may consider all relevant factors, including the last trade price for such Contract, a better bid or offer price, a more recent price in a different contract month, and the prices of related contracts trading on the Exchange or other markets.

(m) *Pre-execution Discussions*. The Order Exposure Period under Policy and Procedure IV before an Order may be entered to take the other side of another Order with respect to which there has been pre-execution discussions is three seconds after the first Order was entered into the CBOE System. If no bid or offer price exist in the relevant Volatility Index futures contract, the RFQ Response Period under Policy and Procedure IV that must elapse following the request for quote that is required to be sent prior to the entry of the first Order is five seconds.

(n) *Reportable Position.* Pursuant to Commission Regulation §15.03 and Commission Regulation Part 17, the position level that is required to be reported to the Commission is any open position in a Volatility Index futures contract at the close of trading on any trading day equal to or in excess of 200 contracts on either side of the market.

(o) *Threshold Widths*. For purposes of Policy and Procedure I and Policy and Procedure II, the Threshold Widths for a Volatility Index futures contract are as follows:

Volatility Index Level	Threshold Width
[1 – 100	20
100 – 200	50
200 – 10000	100]
0 - 15.00	1.50
15.01 - 25.00	2.50
25.01 - 35.00	3.50
35.01 - 50.00	5.00
50.01+	7.50

The minimum size of bids and offers that establish a Threshold Width is one contract.

(p) *Daily Settlement Price.* The daily settlement price for each

Volatility Index Futures contract will be the average of the final bid and final offer for the Volatility Index Futures contract at the close of trading, subject to the following. If the average of the final bid and final offer is not at a minimum increment for the Volatility Index Futures contract, the daily settlement price shall be the average of the final bid and final offer rounded up to the nearest minimum increment. If there is no bid or offer at the close of trading, the Exchange may in its sole discretion establish a daily settlement price that it deems to be a fair and reasonable reflection of the market.

(q) *Trade at Settlement Transactions*. Trade at Settlement ("TAS") transactions are not permitted in Volatility Index Futures.

(r) *Default Pre-Trade Order Size Limit.* The default maximum pre-trade order size limit for Volatility Index Futures that will apply if a Clearing Member does not set a different limit in accordance with Rule 513A(a) is 1,000 contracts.

(s) *Price Reasonability Checks*. Pursuant to and as further described in Rule 513A(b), the CBOE System shall in a manner determined by the Exchange reject (i) any buy order with a limit price in a Volatility Index Futures contract if the limit price upon receipt of the order by the CBOE System is more than a designated amount above the prevailing best offer in that contract and (ii) any sell order with a limit price in a Volatility Index Futures contract if the limit price upon receipt of the order by the CBOE System is more than a designated amount below the prevailing best bid in that contract. The designated amounts for the price reasonability checks referenced in the preceding sentence are as follows:

Price Range	Designated Amount
0 - 15.00	1.50
15.01 - 25.00	2.50
25.01 - 35.00	3.50
35.01 - 50.00	5.00
50.01+	7.50

* * * * *

1702. Contract Specifications

(a) *Multiplier*. The contract multiplier for each VXN futures contract is $1,000. For example, a contract size of one VXN futures contract would be $21,000, if the VXN index level were 21 (21 x $1,000.00)

(b) *Schedule*. The Exchange may list for trading up to nine near-term serial months and five months on the February quarterly cycle for the

VXN futures contract. The final settlement date for the VXN futures contract shall be the Wednesday that is thirty days prior to the third Friday of the calendar month immediately following the month in which the applicable VXN futures contract expires. If the third Friday of the month subsequent to expiration of the applicable VXN futures contract is a CBOE holiday, the final settlement date for the contract shall be thirty days prior to the CBOE business day immediately preceding that Friday.

The trading days for VXN futures contracts shall be the same trading days of options on the Nasdaq-100 Index traded on CBOE, as those days are determined by CBOE.

The trading hours for VXN futures contracts are from 8:30 a.m. Chicago time to 3:15 p.m. Chicago time.

(c) *Minimum Increments*. Except as provided in the following sentence, the minimum fluctuation of the VXN futures contract is 0.05 index points, which has a value of $50.00.

The individual legs and net prices of spread trades in the VXN futures contract may be in increments of 0.01 index points, which has a value of $10.00

(d) *Position Limits.* A person may not own or control more than 5,000 contracts net long or net short in all contract months of a VXN futures contract combined.

For the purposes of this rule, the positions of all accounts directly or indirectly owned or controlled by a person or persons, and the positions of all accounts of a person or persons acting pursuant to an expressed or implied agreement or understanding shall be cumulated.

The foregoing position limit shall not apply to positions that are subject to a position limit exemption meeting the requirements of Commission Regulations and CFE Rules

(e) *Termination of Trading*. Trading in VXN futures contracts terminates on the business day immediately preceding the final settlement date of the VXN futures contract for the relevant spot month. When the last trading day is moved because of a CFE holiday, the last trading day for an expiring VXN futures contract will be the day immediately preceding the last regularly-scheduled trading day.

(f) *Contract Modifications*. Specifications are fixed as of the first day of trading of a contract. If any U.S. government agency or body issues an order, ruling, directive or law that conflicts with the requirements of these rules, such order, ruling, directive or law shall be construed to take

precedence and become part of these rules, and all open and new contracts shall be subject to such government orders.

(g) *Execution Priorities.* Pursuant to Rule 406(a)(i), the base allocation method of price-time priority shall apply to trading in VXN futures contracts.

(h) *Crossing Two Original Orders*. The eligible size for an original Order that may be entered for a cross trade with another original Order pursuant to Rule 407 is one Contract. The request for quote response period under Rule 407(a) for the request for quote required to be sent before the initiation of a cross trade under Rule 407 is five seconds. Following the request for quote response period, the Trading Privilege Holder or Authorized Trader, as applicable, must expose to the market for at least five seconds under Rule 407(b) at least one of the original Orders that it intends to cross.

(i) *Price Limits and Circuit Breaker Halts*. Pursuant to Rule 413, VXN futures contracts are not subject to price limits.

Prior to February 4, 2013, trading [Trading] in VXN futures contracts shall be halted whenever a market-wide trading halt commonly known as a circuit breaker is in effect on the New York Stock Exchange in response to extraordinary market conditions. On and after February 4, 2013, trading in VXN futures contracts shall be halted pursuant to Rule 417A if there is a Level 1, 2 or 3 Market Decline.

(j) *Exchange of Contract for Related Position.* Exchange of Contract for Related Position transactions, as set forth in Rule 414, may be entered into with respect to VXN futures contracts. Any Exchange of Contract for Related Position transaction must satisfy the requirements of Rule 414.

(k) *Block Trades*. Pursuant to Rule 415(a)(i), the minimum Block Trade quantity for the VXN futures contract is 100 contracts if there is only one leg involved in the trade. If the Block Trade is executed as a spread order, one leg must meet the minimum Block Trade quantity for the VXN futures contract and the other leg(s) must have a contract size that is reasonably related to the leg meeting the minimum Block Trade quantity.

(l) *No-Bust Range*. Pursuant to Rule 416, the CFE error trade policy may only be invoked for a trade price that is greater than 10% on either side of the market price of the applicable VXN futures contract. In accordance with Policy and Procedure III, the Help Desk will determine what the true market price for the relevant Contract was immediately before the potential error trade occurred. In making that determination, the Help Desk may consider all relevant factors, including the last trade

price for such Contract, a better bid or offer price, a more recent price in a different contract month and the prices of related contracts trading on the Exchange and other markets.

(m) *Pre-execution Discussions*. The Order Exposure Period under Policy and Procedure IV before an Order may be entered to take the other side of another Order with respect to which there has been pre-execution discussions is three seconds after the first Order was entered into the CBOE System. If no bid or offer price exist in the relevant VXN futures contract, the RFQ Response Period under Policy and Procedure IV that must elapse following the request for quote that is required to be sent prior to the entry of the first Order is five seconds.

(n) *Reportable Position.* Pursuant to Commission Regulation §15.03 and Commission Regulation Part 17, the position level that is required to be reported to the Commission is any open position in VXN futures contracts at the close of trading on any trading day equal to or in excess of 200 contracts on either side of the market.

(o) *Threshold Widths*. For purposes of Policy and Procedure I and Policy and Procedure II, the Threshold Widths for the VXN futures contract are as follows:

VXN Index Level	Threshold Width
[1 – 100	20
100 – 200	50
200 – 10000	100]
0 - 15.00	1.50
15.01 - 25.00	2.50
25.01 - 35.00	3.50
35.01 - 50.00	5.00
50.01+	7.50

The minimum size of bids and offers that establish a Threshold Width is one contract.

(p) *Daily Settlement Price.* The daily settlement price for each VXN futures contract will be the average of the final bid and final offer for the VXN futures contract at the close of trading, subject to the following. If the average of the final bid and final offer is not at a minimum increment for the VXN futures contract, the daily settlement price shall be the average of the final bid and final offer rounded up to the nearest minimum increment. If there is no bid or offer at the close of trading, the Exchange may in its sole discretion establish a daily settlement price that it deems to be a fair and reasonable reflection of the market.

(q) *Trade at Settlement Transactions*. Trade at Settlement ("TAS") transactions are not permitted in VXN futures.

(r) *Default Pre-Trade Order Size Limit.* The default maximum pre-trade order size limit for VXN futures that will apply if a Clearing Member does not set a different limit in accordance with Rule 513A(a) is 1,000 contracts.

(s) *Price Reasonability Checks*. Pursuant to and as further described in Rule 513A(b), the CBOE System shall in a manner determined by the Exchange reject (i) any buy order with a limit price in a VXN futures contract if the limit price upon receipt of the order by the CBOE System is more than a designated amount above the prevailing best offer in that contract and (ii) any sell order with a limit price in a VXN futures contract if the limit price upon receipt of the order by the CBOE System is more than a designated amount below the prevailing best bid in that contract. The designated amounts for the price reasonability checks referenced in the preceding sentence are as follows:

Price Range	Designated Amount
0 - 15.00	1.50
15.01 - 25.00	2.50
25.01 - 35.00	3.50
35.01 - 50.00	5.00
50.01+	7.50

* * * * *

2002. Contract Specifications

(a) *Multiplier*. The contract multiplier for each RPX Future is $10.00. For example, a contract size of one RPX Future would be $2047.60 if the RPX index level were 204.76 (204.76 x $10.00).

(b) *Schedule.* The Exchange may list for trading up to twenty quarterly expirations for each RPX Future. The final settlement date of RPX Futures shall be on the last business day of the contract expiration month. This business day is 63 days following the end of the 28-day calculation period for the expiring contract. For example, a June 2012 RPX Futures settling on June 29, 2012 would be based on the 28 day-calendar period ending April 27, 2012. The following expiration listing convention for RPX Futures will be used:

Contract Expiration Month	28-Day Calendar Period Ending
March	January
June	April

Contract Expiration Month	28-Day Calendar Period Ending
September	July
December	October

If the Exchange is closed on the final settlement date because of an Exchange holiday, the final settlement date for the expiring contract will be the immediately preceding business day.

The trading days for RPX Futures are any Business Days the Exchange is open for trading.

The trading hours for RPX Futures are from 8:30 a.m. to 3:00 p.m. Chicago time.

(c) *Minimum Increments*. Except as provided in the following sentence, the minimum fluctuation of each RPX Future is 0.05 index points, which has a value of $0.50.

The individual legs and net prices of spread trades in each RPX Futures may be in increments of 0.01 index points, which has a value of $0.01.

(d) *Position Limits*. RPX Futures are subject to position limits under Rule 412.

A person may not own or control more than 50,000 contracts net long or net short in each RPX Future combined.

For the purposes of this rule, the positions of all accounts directly or indirectly owned or controlled by a person or persons, and the positions of all accounts of a person or persons acting pursuant to an expressed or implied agreement or understanding shall be cumulated.

The foregoing position limits shall not apply to positions that are subject to a position limit exemption meeting the requirements of Commission Regulations and Exchange Rules.

(e) *Termination of Trading*. Trading of RPX Futures terminates on the business day immediately preceding the final settlement date of the expiring RPX Future. When the regularly scheduled last trading day for an expiring RPX Future falls on an Exchange holiday, the last trading day will be the day immediately preceding the last regularly scheduled trading day.

(f) *Contract Modifications*. Specifications are fixed as of the first day of trading of a contract. If any U.S. government agency or body issues an order, ruling, directive or law that conflicts with the requirements of these rules, such order, ruling, directive or law shall be construed to take

precedence and become part of these rules, and all open and new contracts shall be subject to such government orders.

(g) *Execution Priorities*. Pursuant to Rule 406(a)(i), the base allocation method of price-time priority shall apply to trading in RPX Futures. Pursuant to Rule 406(b)(iii), a DPM trade participation right priority shall overlay the price-time priority base allocation method.

(h) *Crossing Two or More Original Orders*. The eligible size for an original Order that may be entered for a cross trade with one or more other original Orders pursuant to Rule 407 is one Contract. The request for quote response period under Rule 407(a) for the request for quote required to be sent before the initiation of a cross trade under Rule 407 is five seconds. Following the request for quote response period, the Trading Privilege Holder or Authorized Trader, as applicable, must expose to the market for at least three seconds under Rule 407(b) at least one of the original Orders that it intends to cross.

(i) *Price Limits and Halts*. Pursuant to Rule 413, RPX Futures are not subject to price limits.

Prior to February 4, 2013, trading [Trading] in RPX Futures shall be halted whenever a market-wide trading halt commonly known as a circuit breaker is in effect on the New York Stock Exchange in response to extraordinary market conditions. On and after February 4, 2013, trading in RPX Futures shall be halted pursuant to Rule 417A if there is a Level 1, 2 or 3 Market Decline.

(j) *Exchange of Contract for Related Position*. Exchange of Contract for Related Position transactions, as set forth in Rule 414, may be entered into with respect to RPX Futures. Any Exchange of Contract for Related Position transaction must satisfy the requirements of Rule 414.

The minimum price increment for an Exchange of Contract for Related Position involving RPX Futures is 0.01 index points.

(k) *Block Trades*. Pursuant to Rule 415(a)(i), the minimum Block Trade quantity for RPX Futures is 200 contracts if there is only one leg involved in the trade. If the Block Trade is executed as a spread order, one leg must meet the minimum Block Trade quantity for RPX futures and the other leg(s) must have a contract size that is reasonably related to the leg meeting the minimum Block Trade quantity. If the Block Trade is executed as a transaction with legs in multiple contract months and all legs of the Block Trade are exclusively for the purchase or exclusively for the sale of RPX Futures (a "strip"), the minimum Block Trade quantity for the strip is 300 contracts and each leg of the strip is required to have a minimum size of 100 contracts.

The minimum price increment for a Block Trade in RPX Futures contract is 0.01 index points.

(l) *No Bust Range.* Pursuant to Rule 416, the Exchange error trade policy may only be invoked for a trade price that is greater than 10% on either side of the market price of the applicable RPX Futures. In accordance with Policy and Procedure III, the Help Desk will determine what the true market price for the relevant Contract was immediately before the potential error trade occurred. In making that determination, the Help Desk may consider all relevant factors, including the last trade price for such Contract, a better bid or offer price, a more recent price in a different contract month, and the prices of related contracts trading on the Exchange or other markets.

(m) *Pre-execution Discussions*. The Order Exposure Period under Policy and Procedure IV before an Order may be entered to take the other side of another Order with respect to which there has been pre-execution discussions is three seconds after the first Order was entered into the CBOE System. If no bid or offer price exist in the relevant RPX Futures, the RFQ Response Period under Policy and Procedure IV that must elapse following the request for quote that is required to be sent prior to the entry of the first Order is five seconds.

(n) *Reportable Position*. Pursuant to Commission Regulation §15.03 and Commission Regulation Part 17, the position level that is required to be reported to the Commission is any open position in RPX Futures at the close of trading on any trading day equal to or in excess of 25 contracts on either side of the market.

(o) *Threshold Widths.* For purposes of Policy and Procedure I and Policy and Procedure II, the Threshold Widths for RPX Futures contract are as follows:

RPX Index Level	Threshold Width
[1 – 400	40
401 – 2000	100]
0 - 150.00	15
150.01 - 250.00	25
250.01 - 350.00	35
350.01 - 500.00	50
500.01+	75

The minimum size of bids and offers that establish a Threshold Width is one contract.

(p) *Daily Settlement Price*. The daily settlement price for each RPX

Futures contract will be the average of the final bid and final offer for the RPX Futures contract at the close of trading, subject to the following. If the average of the final bid and final offer is not at a minimum increment for the RPX Futures contract, the daily settlement price shall be the average of the final bid and final offer rounded up to the nearest minimum increment. If there is no bid or offer at the close of trading, the Exchange may in its sole discretion establish a daily settlement price that it deems to be a fair and reasonable reflection of the market.

(q) *Trade at Settlement Transactions*. Trade at Settlement ("TAS") transactions are not permitted in RPX Futures.

(r) *Default Pre-Trade Order Size Limit.* The default maximum pre-trade order size limit for RPX Futures that will apply if a Clearing Member does not set a different limit in accordance with Rule 513A(a) is 5,000 contracts.

(s) *Price Reasonability Checks*. Pursuant to and as further described in Rule 513A(b), the CBOE System shall in a manner determined by the Exchange reject (i) any buy order with a limit price in an RPX Futures contract if the limit price upon receipt of the order by the CBOE System is more than a designated amount above the prevailing best offer in that contract and (ii) any sell order with a limit price in an RPX futures contract if the limit price upon receipt of the order by the CBOE System is more than a designated amount below the prevailing best bid in that contract. The designated amounts for the price reasonability checks referenced in the preceding sentence are as follows:

Price Range	Designated Amount
0 - 150.00	15
150.01 - 250.00	25
250.01 - 350.00	35
350.01 - 500.00	50
500.01+	75

* * * * *

2302. Contract Specifications

(a) *Multiplier*. The contract multiplier for the S&P 500 Variance futures contract is $1.

(b) *Schedule*. The Exchange may list contract months for S&P 500 Variance futures that correspond to the listed contract months for options on the S&P 500 Composite Stock Price Index listed and traded on CBOE.

The final settlement date for an S&P 500 Variance futures contract shall be on the third Friday of the expiring futures contract month. If the third Friday of the expiring month is a CFE holiday, the Final Settlement Date for the expiring contract shall be the CFE business day immediately preceding the third Friday.

The trading days for S&P 500 Variance futures contracts shall be the same trading days of options on the S&P 500 Composite Stock Price Index, as those days are determined by CBOE.

The trading hours for the S&P 500 Variance futures contract are from 8:30 a.m. Chicago time to 3:15 p.m. Chicago time.

(c) *Minimum Increments and Minimum Quote and Order Sizes*. The minimum fluctuation of the S&P 500 Variance futures contract is 0.05 volatility index points.

The minimum quote size and the minimum order size for the S&P 500 Variance futures contract is 1,000 vega notional and all quotes and orders must be in multiples of 1,000 vega notional.

(d) *Position Limits*. S&P 500 Variance futures are subject to position limits under Rule 412.

A person may not own or control contracts exceeding 125,000 units of variance notional net long or net short in all contract months of an S&P 500 Variance futures contract combined.

For the purposes of this rule, the positions of all accounts directly or indirectly owned or controlled by a person or persons, and the positions of all accounts of a person or persons acting pursuant to an expressed or implied agreement or understanding shall be cumulated.

The foregoing position limit shall not apply to positions that are subject to a position limit exemption meeting the requirements of Commission Regulations and CFE Rules.

(e) *Termination of Trading*. Trading in S&P 500 Variance futures contracts terminates on the business day immediately preceding the final settlement date of the S&P 500 Variance futures contract for the relevant spot month. When the last trading day is moved because of a CFE holiday, the last trading day for an expiring S&P 500 Variance futures contract will be the day immediately preceding the last regularly-scheduled trading day.

(f) *Contract Modifications*. Specifications are fixed as of the first day of trading of a contract. If any U.S. government agency or body issues an

order, ruling, directive or law that conflicts with the requirements of these rules, such order, ruling, directive or law shall be construed to take precedence and become part of these rules, and all open and new contracts shall be subject to such government orders.

(g) *Execution Priorities.* Pursuant to Rule 406(a)(i), the base allocation method of price-time priority shall apply to trading in S&P 500 Variance futures contracts. A Lead Market Maker trade participation right priority shall overly the price-time priority base allocation method as provided in Policy and Procedure XI.

(h) *Crossing Two or More Original Orders*. The eligible size for an original Order that may be entered for a cross trade with another original Order pursuant to Rule 407 is a contract amount equal to 1,000 vega notional. The request for quote response period under Rule 407(a) for the request for quote required to be sent before the initiation of a cross trade under Rule 407 is five seconds. Following the request for quote response period, the Trading Privilege Holder or Authorized Trader, as applicable, must expose to the market for at least three seconds under Rule 407(b) at least one of the original Orders that it intends to cross.

(i) *Price Limits and Circuit Breaker Halts*. Pursuant to Rule 413, S&P 500 Variance futures contracts are not subject to price limits.

Prior to February 4, 2013, trading [Trading] in S&P 500 Variance futures contracts shall be halted whenever a market-wide trading halt commonly known as a circuit breaker is in effect on the New York Stock Exchange in response to extraordinary market conditions. On and after February 4, 2013, trading in S&P 500 Variance futures contracts shall be halted pursuant to Rule 417A if there is a Level 1, 2 or 3 Market Decline.

(j) *Exchange of Contract for Related Position*. Exchange of Contract for Related Position transactions, as set forth in Rule 414, may be entered into with respect to S&P 500 Variance futures contracts. Any Exchange of Contract for Related Position transaction must satisfy the requirements of Rule 414 and must be for a minimum order size of 1,000 vega notional.

(k) *Block Trades*. Pursuant to Rule 415(a)(i), the minimum Block Trade quantity for the S&P 500 Variance futures is a contract amount equaling 200,000 vega notional if there is only one leg involved in the trade. If the Block Trade is executed as a spread order, one leg must meet the minimum Block Trade quantity for the S&P 500 Variance futures contract and the other leg(s) must have a contract size that is reasonably related to the leg meeting the minimum Block Trade quantity.

(l) *No-Bust Range*. Pursuant to Rule 416 the Exchange error trade policy may only be invoked for: (i) a trade price that is greater than 10%

on either side of the market price, quoted in volatility points, of the applicable S&P 500 Variance futures contract (referred to as trade price errors), and (ii) an error as to the value of the calculated realized variance, the value of the discount factor, or the value of the daily interest rate that results in an incorrect converted futures contract price (referred to as standard formula input errors).

In accordance with Policy and Procedure III, for trade price errors, the Help Desk will determine what the true market price for the relevant Contract was immediately before the potential error trade occurred. In making that determination, the Help Desk may consider all relevant factors, including the last trade price for such Contract, a better bid or offer price, a more recent price in a different contract month and the prices of related contracts trading on the Exchange and other markets. In accordance with Policy and Procedure III, for standard formula input errors, the determination of whether an input error occurred is solely within the Help Desk's discretion.

(m) *Pre-execution Discussions*. The Order Exposure Period under Policy and Procedure IV before an Order may be entered to take the other side of another Order with respect to which there has been pre-execution discussions is three seconds after the first Order was entered into the CBOE System. If no bid or offer price exist in the relevant S&P 500 Variance futures contract, the RFQ Response Period under Policy and Procedure IV that must elapse following the request for quote that is required to be sent prior to the entry of the first Order is five seconds.

(n) *Reportable Position.* Pursuant to Commission Regulation §15.03 and Commission Regulation Part 17, the position level that is required to be reported to the Commission is any open position in S&P 500 Variance futures contracts at the close of trading on any trading day equal to or in excess of 25 variance units on either side of the market.

(o) *Threshold Widths.* For purposes of Policy and Procedure I and Policy and Procedure II, the Threshold Widths for the S&P 500 Variance futures contract are as follows:

Price Range in Volatility Points	Threshold Width
1 – 15	5.00
16 – 25	7.50
26 – 40	10.00
41 – 100	20.00
101 – 10000+	50.00

The minimum size of bids and offers that establish a Threshold Width is a contract amount equal to 1,000 vega notational.

(p) *Daily Settlement Price.* The daily settlement price for each S&P 500 Variance futures contract will be the average of the final bid and final offer for the S&P 500 Variance futures contract at the close of trading converted from volatility points to an adjusted futures price, subject to the following. If the average of the final bid and final offer is not at a minimum increment for the S&P 500 Variance futures contract, the daily settlement price shall be the average of the final bid and final offer rounded up to the nearest minimum increment and then converted from volatility points to an adjusted futures price. If there is no bid or offer at the close of trading, the Exchange may in its sole discretion establish a daily settlement price that it deems to be a fair and reasonable reflection of the market.

(q) *Trade at Settlement Transactions*. Trade at Settlement ("TAS") transactions are not permitted in S&P 500 Variance futures.

(r) *Default Pre-Trade Order Size Limit.* The default maximum pre-trade order size limit for S&P 500 Variance futures that will apply if a Clearing Member does not set a different limit in accordance with Rule 513A(a) is 150,000 vega notional.

(s) *Price Reasonability Checks.* Pursuant to and as further described in Rule 513A(b), the CBOE System shall in a manner determined by the Exchange reject (i) any buy order with a limit price in an S&P 500 Variance futures contract if the limit price upon receipt of the order by the CBOE System is more than a designated amount above the prevailing best offer in that contract and (ii) any sell order with a limit price in an S&P 500 Variance futures contract if the limit price upon receipt of the order by the CBOE System is more than a designated amount below the prevailing best bid in that contract. The designated amounts for the price reasonability checks referenced in the preceding sentence are as follows:

Price Range	**Designated Amount**

0 - 15.00	1.50
15.01 - 25.00	2.50
25.01 - 35.00	3.50
35.01 - 50.00	5.00
50.01+	7.50

EXHIBIT B

CHANGES TO
CBOE FUTURES EXCHANGE, LLC
POLICIES AND PROCEDURES

(Additions are shown in double-underlined text and
deletions are shown in [bracketed] text)

I. Market Order Processing

(a) If a Threshold Width (as defined below) exists for a particular Contract[, even if established by a pair of unrelated bids and offers for a quantity that is less than that required for purposes of any quote requirements applicable to market makers], then the CBOE System will match any Market Order against resting Orders and quotes for such Contract at the best price then available, followed by Orders and quotes at the next best price, until such Market Order is fully executed or a Threshold Width no longer exists, whichever occurs first.

(b) (i) If a Threshold Width does not exist for a particular Contract (including if any portion of a Market Order is not executed because a Threshold Width for such Contract no longer exists), then the CBOE System will hold any Market Order (or such portion) for such Contract in queue[,] and send a request for quote ("RFQ") to [market makers] liquidity providers then providing quotes for such Contract [and send a notice to the Person that placed such Market Order about the Order status].

(ii) Any RFQ sent pursuant to clause (i) above will include the Contract quantity of the Market Order to which it relates, but will not specify whether such Order is a buy or sell Order. Any and all quotes received in response to such RFQ will first be held in queue, and will then be executed against the Market Order to which they relate, in accordance with the following principles:

(A) If, at any time during the RFQ response time [specified by the Exchange] (which the Exchange has specified as thirty seconds), the spread between the best available bid and offer for the relevant Contract narrows to [a specified percentage (as determined by the Exchange) of] or within the Threshold Width for such Contract, then the CBOE System will execute such Market Order against the quote or quotes entered in response to the RFQ and any other resting Orders, until such Market Order is fully executed or a Threshold Width no longer exists, whichever occurs first. If any portion of the Market Order is not

executed because a Threshold Width no longer exists, then the CBOE System will hold such portion in queue again[,] and send another RFQ to the [market makers] liquidity providers then providing quotes for such Contract[, and send a notice to the Person that placed such Market Order about the Order status].

(B) (1) If the CBOE System receives a Limit Order on the same side of the market as such Market Order, such Limit Order could otherwise be executed against the best bid or offer then available and at least one quote within the Threshold Width for the relevant Contract has been received in response to such RFQ, then the CBOE System will execute such Market Order against such best bid or offer. If no such quote has been received, then the CBOE System will execute such Limit Order ahead of such Market Order.

(2) If one or more quotes received in response to such RFQ could be executed against such Market Order as well as against one or more Limit Orders that are already resting in the CBOE System at a particular price, then:

(x) If the aggregate quantity of Contracts to which such quotes relate is equal to or greater than the aggregate quantity of such Market Order and Limit Orders, then all such Orders will be executed at the price of such Limit Orders.

(y) If the aggregate quantity of Contracts to which such quotes relate is smaller than the aggregate quantity of such Market Order and Limit Orders, then such Market Order will be executed ahead of such Limit Orders, at a price that differs from the price of such Limit Orders by the minimum price fluctuation for the relevant Contract.

(C) If [a specified percentage (as determined by the Exchange) of the market makers] fifty percent of the liquidity providers then providing quotes for the relevant Contract have responded to such RFQ with quotes within the Threshold Width for such Contract, or the RFQ response time [specified by the Exchange] has expired and at least one quote within such Threshold Width has been received, whichever occurs first, then the CBOE System will execute such Market Order against Orders resting in the CBOE System. For purposes of the percentage

requirement set forth in the immediately preceding sentence, a quote received in response to an RFQ will count even if it is executed against an Order resting in the CBOE System before all quotes counting towards such percentage requirement have been received. If a portion of the Market Order is not executed because a Threshold Width no longer exists, then the CBOE System will hold such portion in queue again[,] and send another RFQ to the [market makers] liquidity providers then providing quotes for such Contract [and send a notice to the Person that placed such Market Order about the Order status].

(iii) If a Market Order can be executed in accordance with the principles set forth in clause (ii) above and there are one or more Market Orders on the opposite side of the market, the CBOE System will execute such Orders[:

(A) At] at a price equal to the average of the prices of the best available bid and offer, provided such average price is a Threshold Width price.[; or

(B) If the average price referred to in subclause (A) above is not a Threshold Width price, then at the Threshold Width price that is closest to such average price and to the last trade price for the relevant Contract.]

For purposes of this clause (iii), "Threshold Width price" means a price within the Threshold Width.

(iv) If no quotes within the Threshold Width for the relevant Contract are received in response to an RFQ prior to the expiration of the RFQ response time [specified by the Exchange], then the CBOE System will continue to hold the Market Order in [question,] queue and repeat the RFQ cycle[, send a notice to the Person that placed such Market Order and send an alert message to the Help Desk so that the Help Desk may solicit quotes from the market makers then providing quotes for such Contract].

(v) If a Market Order is held in queue in accordance with this paragraph (b), subsequent Market Orders on the same side of the market for the same Contract are queued as well, to ensure that all such Market Orders are processed in time sequence.

(vi) If trading in any Contract is halted while a Market Order for such Contract is held in queue in accordance with this paragraph (b), the CBOE System will hold such Order until, and execute it at, the next opening of trading in the relevant Contract;

provided that any Day Order will be automatically purged if such opening does not occur on the same trading day.

(c) The term "Threshold Width" means, with respect to a particular Contract, a bid and offer for a minimum size set forth in the rules governing such Contract and within the maximum width set forth in such rules.

II. Spread Order Processing

(a) The CBOE System will support the following types of Spread Orders: two-legged spreads where the ratio of the number of Contracts in one leg to the number of Contracts in the other leg is 1:1 and 1:2; three-legged spreads where the ratio is 1:1:1 or 1:2:1; four-legged spreads where the ratio is 1:1:1:1; and any other spread type from time to time approved by the Exchange.

(b) The CBOE System will treat each Spread Order as a unique product for all purposes and will assign each a unique product name.

(c) A Trading Privilege Holder or Authorized Trader may, at any time after submitting a Spread Order, change the net price, the multiplier or quantity of the spread, the time in force and any contingency; *provided* that any increase (but not a decrease) in the multiplier or quantity shall affect the priority position of such Spread Order.

(d) A Spread Order may be executed only if (i) each of its legs is within the Threshold Width for the relevant Contract and (ii) only one of its legs trades at a price ahead of Orders then resting in the CBOE System.

(e) Once a Spread Order is executed, the CBOE System will:

(i) Disseminate to the Person that placed such Spread Order a fill report for the spread in its entirety[, but not for] and the individual legs;

(ii) Disseminate to the designated back office fill reports for the individual legs; and

(iii) Disseminate last sale reports for the individual legs, with an indication that the last sale is part of a spread trade, to any information processor then employed by the Exchange.

(f) The provisions of this Policy and Procedure II shall only apply to TAS transactions to the extent set forth in Rule 404A(e).

III. Resolution of Error Trades (Rule 416)

A. *General Policy*

1. *Invoking Error Trade Policy*

Any request by a Trading Privilege Holder to invoke the error trade policy with respect to any trade must be made to the help desk as soon as possible. Additionally, an employee of the Exchange can bring a potential error trade to the help desk's attention. The help desk may provide assistance only to Trading Privilege Holders. In all cases, if a potential error trade is not brought to the help desk's attention within eight minutes after the relevant trade occurred, such trade will stand, except as provided in Part B below.

2. *Procedure Followed by Help Desk*

When a potential error trade is brought to the help desk's attention, the help desk will determine whether the trade price is in the "no bust range" for the relevant Contract, as set forth in the Rules governing such Contract. With respect to trades involving a Spread Order, the help desk may also consider the theoretical net price of the Spread Order and apply the "no bust range" in relation to that theoretical net price (such that if the net trade price of the Spread Order was inside (outside) that "no bust range", all of the trades involving the Spread Order would be treated as inside (outside) the "no bust range"). In making a determination regarding the theoretical net price of a Spread Order, the help desk may consider all relevant factors, including the net of the true market prices of the Contracts that comprise the individual legs of the Spread Order (each determined in the manner described above) and the net price of other Spread Orders of the same type.

In determining whether the trade price is within the "no bust range," the help desk will determine what the true market price for the relevant Contract was immediately before the potential error trade occurred. In making such determination, the help desk may consider all relevant factors, including the last trade price for such Contract, a better bid or offer price, a more recent price in a different contract month or series and the prices of related contracts trading on the Exchange or other markets.

3. *Trade Price Inside "No Bust Range"*

If the help desk determines that the trade price of a potential error trade was inside the "no bust range" for the relevant Contract, such trade will stand and no further action will be taken. No such trade can be busted by

agreement of the parties to such trade.

4. *Trade Price Outside "No Bust Range"*

If the help desk determines that the trade price of a potential error trade was outside the "no bust range" for the relevant Contract, it will send an alert to all CBOE Workstations that are able to receive text messages for such Contract from the CBOE System, indicating that such trade may be an error trade. The help desk will also attempt to contact all parties to such trade.

If all parties to a trade agree to bust such trade within 10 minutes from the time that the error trade alert message was sent, then such trade will be busted. If any party to such trade cannot be contacted or does not agree to bust such trade, Exchange staff will review the circumstances surrounding such trade to determine whether such trade should be busted. The factors that may be considered by Exchange staff in this connection include: the market conditions immediately before and after such trade occurred; the volatility of the market; the prices of related instruments in other markets; whether one or more parties to such trade believe that such trade was made at a valid price; and any other factors that Exchange staff may deem relevant. Exchange staff shall make its decision as promptly as practicable. Such decision shall be final.

If a trade is busted, either by agreement of the parties thereto or by Exchange staff, the help desk will cancel such trade. The error trade price and any invalid price quotes due to an error trade that is busted will be removed from the Exchange's official record of time and sales.

If a trade is not busted, the parties thereto cannot reverse such trade, except as provided in Part B below. The parties to any such trade may also not "trade out" of such trade by entering into a pre-arranged offsetting transaction; *provided* that the parties may engage in pre-execution discussions with each other in accordance with procedures established by the Exchange from time to time.

5. *Contingency Orders Triggered by Error Trade*

If an error trade is busted, either by agreement of the parties thereto or by Exchange staff, the help desk will also (a) bust all trades that were triggered as a result of contingency Orders being triggered by such trade and (b) cancel all bids and offers that were entered into the CBOE System as a result of contingency Orders being triggered by such trade. The help desk will notify the Trading Privilege Holders responsible for the trades so busted and the bids or offers so cancelled so that the original Orders can be re-entered into the CBOE System.

6. *Notice of Final Action*

As soon as a decision regarding a potential error trade has been made, the help desk will disseminate a notice, indicating whether such trade is busted or stands. In the case of a busted trade, the help desk will attempt to facilitate a resolution by re-establishing Orders and their respective priorities in the CBOE System.

B. *Policy When Error Trade Not Brought to Help Desk's Attention Within Time Limit*

This Part B applies only to any error trade that cannot be busted under Part A above because it was not brought to the help desk's attention within the eight-minute time limit specified therein. The procedures described in this Part B cannot be used if the trade price of the error trade in question was within the "no bust range" for the relevant Contract at the relevant time.

1. *Both Parties Agree to Transfer Position*

If both parties to an error trade agree, they may transfer the position resulting from such trade between each other. Any such transfer must be made at the original trade price and for the same quantity as the original trade. The parties may also, but are not required to, provide for a cash adjustment to compensate one side of such error trade. Any such transfer must be reported to the Exchange in the manner from time to time prescribed by the Exchange.

2. *Arbitration of Disputes*

If the parties to an error trade do not agree to transfer the position resulting from such trade, then the party causing such trade may file an arbitration claim against the Trading Privilege Holder representing the other side. Written notice of such claim must be given to the Exchange not later than by the close of business on the Business Day immediately succeeding the day on which such error trade occurred. Any such arbitration claim will be dismissed if the owner of the account on the other side of the error trade is not a Trading Privilege Holder or any Person otherwise subject to the Exchange's jurisdiction. If not dismissed, arbitration proceedings will be conducted in accordance with the arbitration rules incorporated by reference into Chapter 8. In deciding the claim, consideration will be given to, among other factors, the reasonableness of the actions taken by each party and what action (*e.g.*, laying off the position in another market) the party on the other side of the error trade took before being notified that such trade was being questioned. The maximum amount that can be recovered in any such arbitration proceedings is the difference between the error trade price and the true market price for the relevant Contract immediately before such error trade occurred, as determined on the basis

of the factors listed in Part A above.

C. *Voluntary Adjustment of Trade Price*

When an error trade outside of the "no bust range" for the relevant Contract is busted in accordance with Part A above, the parties to such trade may agree voluntarily to keep such trade but to adjust its price, provided all of the following conditions are met:

1. The quantity of the position being transferred must be identical to the quantity of the error trade that was busted.

2. In the case of an error trade below the true market price for the relevant Contract, the adjusted price must be the lowest price at which such Contract traded at or about the time of the error trade without such trades being busted. In the case of an error trade above the true market price for the relevant Contract, the adjusted price must be the highest price at which such Contract traded at or about the time of the error trade without such trades being busted.

3. The parties to any adjusted trade must report such trade to the Clearing Corporation not later than by the close of business on the Business Day immediately succeeding the day on which such error trade occurred. Any such adjusted trade must also be reported to the Exchange on a form approved by the Exchange.

D. *Schedule of Administrative Fees*

When an error trade is taken to Exchange staff and busted pursuant to Part A above, the party responsible for the error shall pay [an] any applicable administrative fee to the Exchange in accordance with the fee schedule published by the Exchange from time to time.

When a party responsible for an error trade is able to have the resulting position transferred pursuant to Part B.1 above, or brings an arbitration claim pursuant to Part B.2 above, such party shall pay [an] any applicable administrative fee to the Exchange, in addition to any applicable arbitration fees, in accordance with the fee schedule published by the Exchange from time to time.

E. *Busting Trades After System Freeze*

In the case of certain types of CBOE System failures, it is possible that the matching engine will "freeze" with live Orders in the queue waiting to be matched. When the CBOE System is "unfrozen", the pending Orders can be matched before the help desk can halt the matching engine. The help desk is authorized to bust any trade resulting from matches in these circumstances if, and only if, the price of such trade is outside of the "no bust range" for the relevant Contract at the time that a confirmation of such trade was sent.

F. *Busting Trades When Trading Privilege Holder is on Both Sides of the Trade*

Notwithstanding any other provision of this policy, the help desk is authorized to bust any trade regardless of the price range in which the trade occurs if (i) the trade resulted from the matching of a Trading Privilege Holder's bid, offer, or Order for the Trading Privilege Holder's own account with another bid or offer of that Trading Privilege Holder or another Order for that Trading Privilege Holder's own account and (ii) the Trading Privilege Holder brings the relevant trade to the help desk's attention within eight minutes after the relevant trade occurred.

G. *Busting Trades That Occur After a Regulatory Halt is Instituted*

As provided by Rule 417, trades in a Single Stock Future or in a Narrow-Based Stock Index Future made after the time an underlying regulatory halt is instituted and before trading has been resumed in the affected Security Future Contract are subject to cancellation or "bust" by the help desk.

H. *Busting Trades in the S&P 500 Variance Futures Contract*

In its sole discretion, the Help Desk is authorized to bust a trade in the S&P 500 Variance futures contract if it determines that an error as to the value of the calculated realized variance, the value of the discount factor, or the value of the daily interest rate has resulted in an incorrect futures converted contract price. The determination as to whether a standard formula input error occurred is solely within the Help Desk's discretion. The busting of a trade by the Help Desk due to a standard formula input error must occur on the same day that the trade occurred.

I. *Busting or Adjusting Block Trades and the Contract Leg of Exchange of Contract for Related Position Transactions Posted by Mistake*

The help desk is authorized to bust or adjust any posted Block Trade or Contract leg of an Exchange of Contract for Related Position transaction if there is a mistake or inaccuracy in the manner in which the help desk posted the Block Trade or Contract Leg and an Authorized Reporter for or party to the transaction notifies the help desk of the mistake or error in accordance with Rule 414(j) or Rule 415(i), as applicable, within thirty minutes from the time the help desk transmits the transaction summary for the transaction to the Authorized Reporters for the transaction.

J. *Busting or Adjusting Trades Not Correctly Processed Due to System Malfunction*

The help desk is authorized to bust or adjust any trade that is not correctly processed by the CBOE System due to a system malfunction.

K. *Busting or Adjusting Trades to Mitigate Market Disrupting Events*

The help desk, in consultation with the President or a Managing Director, is authorized to bust or adjust any trade when necessary to mitigate market disrupting events caused by malfunctions in the CBOE System or errors in orders or quotes submitted by Trading Privilege Holders and market participants.

L. *Notice of Trade Busts and Adjustments*

The help desk shall disseminate notice of any bust or adjustment of a trade pursuant to this Policy and Procedure III.

* * * * *

V. Emergency and Physical Emergency Delegations and Procedures (Rules 132 and 418)

A. *Specific Emergency and Physical Emergency Delegations*

1. Emergency Delegations

Rule 132 defines the term "Emergency" and provides a non-exclusive list of circumstances that may constitute an Emergency.

Rule 418(a) grants the President or any individual designated by the President the authority to determine on behalf of the Board the existence of an Emergency and the authority to take actions in response to an Emergency, including all of the actions listed below. The President or the President's designee may also order the removal of any restriction previously imposed based upon a determination that the Emergency no longer exists or has sufficiently abated to permit the function of the Exchange to continue in an orderly manner.

Pursuant to Rule 418(a), [the President has designated and the Board has authorized] the following [additional] individuals in addition to the President are authorized as designees of the President to determine the existence of an Emergency and to take the actions specified in the delegations below in response to an Emergency. These additional individuals may also order the removal of any restriction that the applicable individual has been delegated the authority to impose based upon a determination by the applicable individual that the Emergency no longer exists or has sufficiently abated to permit the function of the Exchange to continue in an orderly manner.

Rule	Emergency Actions	Emergency Delegations
418(a)(i)	Limiting trading to liquidation only, in whole or in part	• Managing Director

Rule	Emergency Actions	Emergency Delegations
418(a)(ii)	Extending or shortening, as applicable, the Expiration Date or Expiration Month of any Contract	• Managing Director
418(a)(iii)	Extending the time of delivery, changing delivery points or the means of delivery provided in the rules governing any Contract	• Managing Director
418(a)(iv)	Imposing or modifying position or price limits or intraday market restrictions with respect to any Contract	• Managing Director
418(a)(v)	Ordering the liquidation of Contracts, the fixing of a settlement price or any reduction in positions	• Managing Director
418(a)(vi)	Ordering the transfer of Contracts, and the money, securities, and property securing such Contracts, held on behalf of Customers by any Trading Privilege Holder to one or more other Trading Privilege Holders willing to assume such Contracts or obligated to do so	• Managing Director
418(a)(vii)	Extending, limiting or changing hours of trading	• Managing Director or • [Head of Trading Operations Division] • Senior Person in Charge of Help Desk
418(a)(viii)	Declaring a fast market in a Contract	• Managing Director or • [Head of Trading Operations Division or] • Senior Person in Charge of Help Desk
418(a)(ix)	Temporarily [Increasing] changing the Threshold Width, Pre-Trade Order Size or Price Reasonability Ranges for a Contract	• Managing Director or • [Head of Trading Operations Division

Rule	Emergency Actions	Emergency Delegations
		or] • Senior Person in Charge of Help Desk
418(a)(x)	Suspending, [or] curtailing, halting or delaying the opening of trading in any or all Contracts [(*e.g.*, a trading halt)]	• Managing Director or • [Head of Trading Operations Division or] • Senior Person in Charge of Help Desk
418(a)(x)	Modifying circuit breakers	• Managing Director
418(a)(xi)	Requiring Clearing Members, Trading Privilege Holders or Customers to meet special margin requirements	• Managing Director or • Chief Regulatory Officer
418(a)(xii)	Altering any settlement terms or conditions of a Contract	• Managing Director
418(a)(xiii[xii])	Suspending any provision of the Rules of the Exchange or the Rules of the Clearing Corporation	• Managing Director or • Chief Regulatory Officer
418(a)(xiv[xiii])	Modifying any provisions of the Rules of the Exchange or the Rules of the Clearing Corporation	• Managing Director
418(a)(xv)	Providing for the carrying out of such actions through the Exchange's agreements with a third-party provider of clearing or regulatory services	• Managing Director or • Chief Regulatory Officer

2. *Physical Emergency Delegations*

Rule 418(b) governs emergencies affecting the physical functions of the Exchange and provides a non-exclusive list of circumstances that may constitute such a "Physical Emergency."

Rule 418(b) grants the President or any individual designated by the President the authority to determine on behalf of the Board the existence of a Physical Emergency and the authority to take actions in response to a Physical Emergency, including all of the actions listed below. The

President or the President's designee may also order the removal of any restriction previously imposed based upon a determination that the Physical Emergency no longer exists or has sufficiently abated to permit the function of the Exchange to continue in an orderly manner.

Pursuant to Rule 418(b), [the President has designated and the Board has authorized] the following [additional] individuals in addition to the President are authorized as designees of the President to determine the existence of a Physical Emergency and to take the actions specified in the delegations below in response to a Physical Emergency. These additional individuals may also order the removal of any restriction that the applicable individual has been delegated the authority to impose based upon a determination by the applicable individual that the Physical Emergency no longer exists or has sufficiently abated to permit the function of the Exchange to continue in an orderly manner.

Rule	**Physical Emergency Actions**	**Physical Emergency Delegations**
418(b)	Delaying the opening of trading in one or more Contracts	• Managing Director or • [Head of Trading Operations Division or] • Senior Person in Charge of Help Desk
418(b)	Suspending, curtailing or halting trading in one or more Contracts [(*e.g.*, a trading halt)]	• Managing Director or • [Head of Trading Operations Division or] • Senior Person in Charge of Help Desk
418(b)	Extending or shortening trading hours for one or more Contracts	• Managing Director [or] • [Head of Trading Operations Division]
418(b)	Closing the Exchange	• Managing Director

B. ***Procedures for Exercise of Emergency and Physical Emergency Delegations***

In the event that action is taken by the President or other individual with delegated authority in response to an Emergency or Physical Emergency as

provided for in Paragraph A, the Board shall be advised of (1) the circumstances that gave rise to the determination of the Emergency or Physical Emergency, (2) the action taken in response to the Emergency or Physical Emergency, and (3) the outcome of events relating to the Emergency or Physical Emergency. This notification shall be provided to the Board no later than its next meeting and shall be provided sooner to the extent required by Rule 418(c) or if the President or other individual with delegated authority with respect to the action taken determines that it would be advisable to do so under the circumstances.

In determining how soon the foregoing notification should be provided to the Board, the President or other individual with delegated authority with respect to the action taken should consider the significance of the action taken and of any continuing market impact resulting from that action. For example, the declaration of a fast market or the imposition a trading halt of limited duration are the types of actions that would not normally be expected to be immediately brought to the Board's attention. Conversely, the ordering of the transfer of Contracts, and the money, securities, and property securing such Contracts, held on behalf of a Customer by a Trading Privilege Holder to another Trading Privilege Holder who assumed such Contracts would normally be expected to be expeditiously brought to the Board's attention.

* * * * *

XI. Confidentiality Policy for Information Received or Reviewed in a Regulatory Capacity

I. Purpose

The Regulatory Services Division of the Exchange and other personnel within the Regulatory Group receive and review confidential information in connection with fulfilling Exchange regulatory responsibilities. This policy sets forth in detail the specific types of information received or reviewed in a regulatory capacity that must be kept confidential and the limited circumstances in which the information may be used and disclosed to other individuals and entities.

II. Scope

This policy applies to the staff of the Regulatory Group and any other individuals that have an obligation to maintain the confidentiality of confidential information received or reviewed in a regulatory capacity as a result of properly getting access to the confidential information. The Regulatory Group consists of all employees of the Regulatory Services Division and any employee who is performing services for the Regulatory Services Division, including, when providing such services, the General Counsel and enforcement attorneys as well as systems and database personnel who are assigned to work on matters for the Regulatory Services Division.

III. Confidential Information

For the purposes of this policy, confidential information received or reviewed in a regulatory capacity, whether such confidential information originates at the Exchange or any other self-regulatory organization or is provided to the Exchange pursuant to a memorandum of understanding or agreement or any other type of similar information sharing arrangement, includes:

a. Position Data – Data collected via the reporting of large trader positions (via Commission Form 102) as well as clearing member position data maintained in The Options Clearing Corporation's clearing system;

b. Financial Information – Financial records, including original third party or internal source documents, used in the production of financial reports or used to demonstrate compliance with Exchange rules;

c. Detailed Transaction Data – Trade data at the specific account level for individual trades from which market positions and/or profit and loss might be derived; and

d. Investigative Materials – Documents collected as part of routine surveillance activities or investigations of potential rule violations, including, but not limited to (i) account statements; (ii) orders to buy and sell contracts traded on the Exchange; (iii) customer account agreements; (iv) bank records; and, (v) audio tape.

e. Other Confidential Information – Any other information required to be kept confidential pursuant to the CBOE Holdings, Inc. and Subsidiaries Regulatory Independence Policy for Regulatory Group Personnel (Regulatory Independence Policy).

IV. Responsibilities

Senior management in the Regulatory Services Division is responsible for ensuring that Regulatory Group staff are aware of, and adhere to, this policy.

V. Procedure

Confidential information received or reviewed in a regulatory capacity shall be used solely for regulatory purposes and shall be made available exclusively to Regulatory Group staff, to the National Futures Association in its capacity as regulatory services provider to the Exchange, and as otherwise permitted by the Regulatory Independence Policy.

Confidential information received or reviewed in a self-regulatory capacity may also be released pursuant to (i) a request by the Commodity Futures Trading Commission, Securities and Exchange Commission, or the United States Department of Justice; (ii) a request by a securities or derivatives self-regulatory organization pursuant to an information sharing agreement; or, (iii) a valid subpoena or other order of a court that directs the Exchange to release such confidential information. Any disclosure under these circumstances must be approved by senior management in the Regulatory Services

Division or in the Legal Division, as appropriate.

VI. Use of Regulatory Data

The Exchange may not use for business or marketing purposes any proprietary data or personal information the Exchange collects or receives, from or on behalf of any Person, for the purpose of fulfilling the Exchange's regulatory obligations; provided, however, that the Exchange may use such data or information for business or marketing purposes if the Person from whom the Exchange collects or receives such data or information clearly consents to the Exchange's use of such data or information in such manner. The Exchange may not condition access to its trading facility on a market participant's consent to the use of proprietary data or personal information for business or marketing purposes.

VII. Consequences of Noncompliance

Failure to comply with this policy may result in disciplinary action in accordance with the Exchange's employment policies.

XII. CBOE Holdings, Inc. and Subsidiaries Regulatory Independence Policy for Regulatory Group Personnel

Introduction

This policy applies to all employees of the Regulatory Services Division of Chicago Board Options Exchange, Incorporated ("CBOE") and any employee of any of the CBOE Companies (as that term is defined below) who is performing services for the Regulatory Services Division, including, when providing such services, CBOE's General Counsel and enforcement attorneys as well as systems and database personnel who are assigned to work on matters for the Regulatory Services Division. The personnel subject to this policy are referred to collectively as the "Regulatory Group."

The Regulatory Group is responsible for performing the regulatory function for CBOE, C2 Options Exchange, Incorporated ("C2"), CBOE Stock Exchange (which is a facility of CBOE) ("CBSX") and CBOE Futures Exchange, LLC ("CFE") and for performing regulatory services for other self-regulatory organizations. CBOE Holdings, Inc. is the parent of CBOE, C2 and CFE; and those entities, along with CBSX and any other CBOE Holdings, Inc. subsidiaries, are referred to collectively in this policy as the "CBOE Companies."

Purpose

The purpose of this policy is to preserve the independence of the Regulatory Group as it performs regulatory functions for CBOE, C2, CBSX and CFE and as it performs regulatory services for other self-regulatory organizations and to avoid even the appearance that the performance of those regulatory functions and services is or can be affected by the business interests of a CBOE Company or the business interests of any

trading permit or privilege holder of a CBOE Company.

The Independence of the Regulatory Group

All regulatory decisions shall be made without regard to the actual or perceived business interests of the CBOE Companies or any of their trading permit or privilege holders.

Regulatory Group personnel shall act to preserve the independence of the Regulatory Services Division's regulatory functions and may not take any action that could, or reasonably might appear to represent an attempt to, interfere with the independent performance of the Regulatory Services Division's regulatory function.

Communications Regarding Regulatory Matters

All information concerning a regulatory matter (as that term is defined below) involving the Regulatory Services Division or another regulator shall be treated as confidential and may not be used for any purpose unrelated to the regulatory function of the Regulatory Services Division. In addition, except as provided below, as required by law, or as specifically authorized by the Regulatory Services Division's Chief Regulatory Officer or CBOE's General Counsel, Regulatory Group personnel shall not communicate about any regulatory matter with any person who is not a member of the Regulatory Group.

Regulatory matters include regulatory investigations, examinations, inquiries or complaints either from or about a regulated entity or person concerning existing or anticipated regulatory actions, investigative and surveillance activities of the Regulatory Services Division, and the planning and development of examination programs and surveillance procedures. Regulatory matters also include any regulatory investigation, examination, inquiry or complaint that is being investigated or brought by the SEC or by any other regulator. Regulatory matters do not include regulatory inquiries about CBOE or its employees or representatives or activities related to potential legislation, rule-making or general regulatory policies that do not include specific facts about existing or anticipated regulatory investigations, examinations or actions.

As exceptions to the restriction on communications concerning regulatory matters, Regulatory Group personnel may discuss regulatory matters with:

- Personnel of a CBOE Company or committee in order to obtain information reasonably necessary to perform the Regulatory Group's regulatory activities;

- Personnel of a CBOE Company to the extent necessary to allow a CBOE Company to assess whether its operations, procedures or systems should be altered to address an issue arising out of a regulatory matter;

- Other regulators or governmental agencies;

- Regulated entities or persons, provided such communication is reasonably related

to either a determination as to whether a regulatory violation has occurred, the resolution of a regulatory matter, or an effort to obtain regulatory compliance;

- Employees and directors of a CBOE Company, provided such communication is limited to conveying the final disposition of a regulatory matter;

- Members of the Regulatory Oversight Committees of CBOE, C2 or CFE;

- Members of the Business Conduct Committees of CBOE, C2 and CFE;

- Directors of a CBOE Company to the extent that the communication is (i) relevant to the Board's self-regulatory responsibilities, or (ii) related to an appeal from a regulatory decision that the director is involved in deciding;

- Employees of a CBOE Company to the extent relevant either to determining whether an application to become a trading permit or privilege holder should be approved or to a mandatory reporting obligation;

- CBOE lawyers or outside counsel retained to assist with that regulatory matter;

- Other self-regulatory organizations to which the Regulatory Services Division is providing regulatory services, provided the communication reasonably pertains to a regulatory matter as to which the Regulatory Services Division is providing such services; or

- As otherwise approved by the Regulatory Services Division's Chief Regulatory Officer or CBOE's General Counsel.

In addition, Regulatory Group personnel may discuss issues concerning management, budgeting and financial planning issues of the Regulatory Services Division with directors and employees of the CBOE Companies, provided that those communications do not include specific facts about existing or anticipated regulatory investigations, examinations or actions.

Response to Improper Communications

If a member of the Regulatory Group receives a communication that reasonably could be considered to be a request or a suggestion that business considerations should bear on the handling of a regulatory matter, that person shall immediately report the communication to the Chief Regulatory Officer of the Regulatory Services Division and/or the General Counsel. The Chief Regulatory Officer and General Counsel shall then jointly determine how to ensure that the improper communication does not improperly affect the regulatory process.

Violations of the Policy

Any violation of this policy shall be subject to appropriate disciplinary action, which may include the termination of employment.

XIII. CBOE Holdings, Inc. and Subsidiaries Regulatory Independence Policy for Non-Regulatory Group Personnel

Summary

This policy is designed to preserve the independence of CBOE's Regulatory Services Division by prohibiting certain communications between directors or non-regulatory employees of a CBOE Company and CBOE regulatory personnel concerning regulatory matters. Subject to the exceptions described below, this policy:

1. Prohibits directors and non-regulatory employees of a CBOE Company from discussing issues related to regulatory matters with CBOE regulatory personnel;

2. Prohibits directors and non-regulatory employees of a CBOE Company from communicating with CBOE's regulatory personnel about regulatory issues, questions or complaints that a regulated person or entity has raised about regulatory matters;

3. Provides that, if a director or non-regulatory employee of a CBOE Company is contacted by a regulated person or entity regarding a regulatory matter, the response to such a communication must be limited to advising the person or entity to contact the Chief Regulatory Officer of the Regulatory Services Division or to call the Regulatory Services Division's hotline at 312-786-7261.

Purpose

The purpose of this policy is to preserve the independence of the Regulatory Services Division as it performs its regulatory functions and to avoid even the appearance that the performance of those regulatory functions is or can be affected by the business interests of any CBOE Company or the business interests of any trading permit or privilege holder of any CBOE Company.[1]

[1] CBOE and C2 Options Exchange, Incorporated ("C2") are self-regulatory organizations under the Securities and Exchange Act of 1934 ("Act"), and each is required to enforce compliance by its trading permit holders and their associated persons with the provisions of the Act, the SEC's rules and regulations, that exchange's rules, and certain rules of the Federal Reserve Board and The Options Clearing Corporation. CBOE Futures Exchange, LLC ("CFE") is a designated contract market under the Commodity Exchange Act ("CEA") and is required to enforce compliance by its trading privilege holders and their related parties with the CEA, the regulations of the Commodity Futures Trading Commission, the CFE's rules, certain rules of the Federal Reserve Board, certain rules of The Options Clearing Corporation and, to the extent applicable, the Act and rules and regulations promulgated pursuant to the Act.

Persons Subject to the Policy

This policy applies to all directors and employees of CBOE Holdings, Inc., its subsidiary, Chicago Board Options Exchange, Incorporated ("CBOE"), and all other subsidiaries or affiliates of CBOE Holdings, Inc. All of those entities are collectively referred to in this policy as the "CBOE Companies."

CBOE's Regulatory Services Division is responsible for performing the regulatory functions of CBOE, C2, CBSX and CFE and for performing regulatory services for other self-regulatory organizations. For purposes of this policy, the Regulatory Services Division shall be deemed to include any employee of any CBOE Company who is performing services for the Regulatory Services Division, including, when providing such services, CBOE's General Counsel and enforcement attorneys as well as systems and database personnel who are assigned to work on matters for the Regulatory Services Division. The employees of the Regulatory Services Division and the personnel referred to in the preceding sentence are referred to collectively as the "Regulatory Group."

The Independence of the Regulatory Group

No director or employee of any CBOE Company shall take any action that could, or reasonably might appear to represent an attempt to, interfere with the independent performance of the Regulatory Services Division's regulatory functions or activities.

Communications Regarding Regulatory Matters

Except as otherwise provided below, no director of any CBOE Company or any employee of a CBOE Company engaged in activities outside of the Regulatory Group shall engage in any communications with personnel of the Regulatory Group about any regulatory matter. Regulatory matters include regulatory investigations, examinations, inquiries or complaints either from or about a regulated entity or person concerning existing or anticipated regulatory actions and all investigative and surveillance activities of the Regulatory Services Division, and the planning and development of examination programs and surveillance procedures. Regulatory matters do not include regulatory inquiries about CBOE or its employees or representatives or activities related to potential legislation, rule-making or general regulatory policies that do not include specific facts about existing or anticipated regulatory investigations, examinations or actions.

As exceptions to this restriction, directors and non-Regulatory Group employees of a CBOE Company may discuss regulatory matters with Regulatory Group personnel to the extent such communications are:

- Initiated by the Regulatory Group personnel in order to obtain information reasonably necessary to carry out the Regulatory Services Division's regulatory activities;

- For the purpose of alerting the Regulatory Services Division to the existence of a possible regulatory violation;

- Between Regulatory Group personnel and members of the Regulatory Oversight Committees of CBOE, C2, or CFE;

- Between Regulatory Group personnel and directors of a CBOE Company to the extent the communication is relevant to the Board's self-regulatory responsibilities;

- For the limited purpose of determining whether an application to become a trading permit or privilege holder should be approved or in connection with mandatory reporting obligations;

- For the limited purpose of conveying the final disposition of a regulatory matter;

- Between Regulatory Group personnel and a director of a CBOE Company concerning an appeal from a regulatory decision that the director is involved in deciding;

- Between Regulatory Group personnel and a director of a CBOE Company concerning a regulatory matter involving that director or a firm that employs that director; or

- Authorized by the Regulatory Group's Chief Regulatory Officer or CBOE's General Counsel.

Directors and employees of a CBOE Affiliate may discuss issues concerning the management, budget and financial planning issues of the Regulatory Services Division with Regulatory Group personnel, provided that those communications do not include specific facts about existing or anticipated regulatory investigations, examinations or actions.

Responding To Communications Regarding Regulatory Matters

Except as otherwise provided in this policy, no director or employee of any CBOE Company shall inform any Regulatory Group personnel about any issues, questions, concerns or complaints about a regulatory matter or issue raised by a trading permit or privilege holder of any CBOE Company or by any other person or entity.

Except as otherwise provided in this policy, if a regulated person or entity attempts to raise an issue, question, concern or complaint about a regulatory matter or issue related to that regulated person or entity with a director or with an employee of a CBOE Company who is not a member of the Regulatory Group, the response to such a communication shall be limited to advising the person or entity to raise the issue directly with the Chief Regulatory Officer of the Regulatory Services Division or to call the Regulatory Services

Division's complaint line at 312-786-7261. Under no circumstances should any director or any employee who is not a member of the Regulatory Group provide any guidance or advice regarding a regulatory matter. Regulatory Group personnel shall follow the policies of the Regulatory Services Division regarding when it is appropriate to provide guidance or advice regarding regulatory matters.

Violations of the Policy

Any violation of this policy shall be subject to appropriate disciplinary action, which may include the termination of employment.

EXHIBIT C

NFA RSA ADDENDA

ADDENDUM TO
REGULATORY SERVICES AGREEMENT

National Futures Association (“NFA”) and CBOE Futures Exchange, LLC ("Exchange") hereby agree that this Addendum, dated as of October 17, 2012, shall be incorporated into and modify the Regulatory Services Agreement, dated as of April 10, 2009, by and between NFA and Exchange.

1. Section 1, Services, is amended by adding the following at the end of Section 1:

NFA agrees that it shall provide the Regulatory Services in a manner that permits Exchange to comply with the Core Principles that are applicable to DCMs under the CEA.

NFA represents to Exchange that NFA has the capacity and resources necessary to provide the Regulatory Services in an effective and timely manner, including without limitation adequate staff. NFA shall use automated systems, including without limitation automated surveillance systems ("NFA Systems"), to provide the Regulatory Services.

NFA's Systems shall capture and retain all audit trail data provided to NFA by Exchange necessary to detect, investigate, and prevent customer and market abuses. Such data will be sufficient to reconstruct all transactions within a reasonable period of time and to provide evidence of any violations of the rules of Exchange. The audit trail will permit Exchange and NFA to track a customer order from the time of receipt

through fill, allocation, or other disposition, and shall include both order and trade data.

In order to provide Exchange with the ability to supervise the quality and effectiveness of the Regulatory Services that NFA provides, NFA, in accordance with mutually agreed procedures, shall provide reports and attend meetings with Exchange and permit Exchange (including any third party advisor, consultant, accountant, or auditor retained by Exchange that is subject to the confidentiality provisions of Section 12 of the Agreement) annually to conduct on-site monitoring of NFA's provision of the Regulatory Services. Notwithstanding anything to the contrary set forth in Section 12 of the Agreement, Exchange may disclose to the CFTC Exchange reviews of the adequacy and effectiveness of the Regulatory Services that NFA provides (which may include disclosure of Proprietary Business Information provided by NFA to CFE), provided that Exchange requests confidential treatment of any Proprietary Business Information of NFA that may be included in those Exchange reviews.

2. Section 6, Disaster Recovery, is deleted in its entirety and replaced with the following:

System Safeguards and Disaster Recovery.

(a) NFA shall maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures and development of NFA Systems that are reliable, secure and have

adequate scalable capacity. NFA will follow generally accepted standards and best practices with respect to the development, operation, reliability, security, and capacity of NFA Systems. NFA shall maintain disaster recovery capabilities at a location other than NFA's Chicago office that will permit NFA to recover from a disaster and continue providing services to Exchange within the time period required by the CFTC. NFA shall also maintain a backup power supply system designed to provide an uninterrupted supply of electrical power, in the event of temporary electrical outages, to the equipment utilized by NFA to perform the Regulatory Services.

(b) At least annually or as may otherwise be required by the CFTC, NFA shall test NFA Systems to ensure that they are reliable, secure and have adequate scalable capacity and the operation and effectiveness of its disaster recovery plan and shall include Exchange data and services as part of such test. Exchange shall participate in the test of NFA's disaster recovery plan. NFA shall notify Exchange of the test date in writing at least ninety (90) days prior to the test date. NFA shall perform these tests using qualified independent professionals who are either independent contractors or NFA employees who are not responsible for development or operation of NFA Systems.

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed in their names as of the date above written.

NATIONAL FUTURES ASSOCIATION	CBOE FUTURES EXCHANGE, LLC
By: /s/ Daniel J. Roth Authorized Representative	By: /s/ Karen N. Christiansen Authorized Representative
Name: Daniel J. Roth	Name: Karen N. Christiansen
Title: President and CEO	Title: Chief Regulatory Officer
Date: October 1, 2012	Date: October 1, 2012

ADDENDUM TO
SCHEDULES A AND B OF REGULATORY SERVICES AGREEMENT

National Futures Association (“NFA”) and CBOE Futures Exchange, LLC ("Exchange") hereby agree that this Addendum, dated as of October 17, 2012, shall be incorporated into and modify Schedule A and Schedule B of the Regulatory Services Agreement, dated as of April 9, 2009, by and between NFA and Exchange.

2. Schedule A, Section I, A is amended by substituting the phrase, (collectively "exchange of derivative for related position" or "EDRP")" for the phrase "("ECRP")" in the second paragraph.

3. Schedule A, Section I, C is amended by:

(i) inserting the following at the beginning of Section 1, C:

"NFA’s trade practice surveillance system shall monitor for fraudulent trading, e.g., intentionally deceptive trading for personal financial gain, as well as the following types of transactions in connection with the time, size and percentage parameters that will be or have been set based upon Exchange's rules or, in the absence of applicable Exchange rules, upon NFA standards, and that may be revised from time to time based upon product offerings, market activities, trader profile information and exchange procedures.";

(ii) deleting the phrase, "Money Passing" in paragraphs 9 and 10 and replacing it with "Money Passing/Accommodation Trading"; and

(iii) adding the following:

"(21) **Spoofing:**

An authorized trader places a large bid/offer where the same authorized trader has resting order(s) on the opposite side of the

market as the larger bid/offer; the resting order(s) is executed and the authorized trader cancels the large bid/offer prior to it being executed."

3. Schedule A, Section IV, C is amended by inserting the following after the first paragraph of Section IV, C:

"NFA shall provide the written report specified in the preceding paragraph in sufficient time to enable Exchange to complete the investigation within twelve (12) months from the date that NFA opened the investigation. However, if mitigating factors that the CFTC has specified as reasonable justification for an investigation taking longer than twelve (12) months to complete exist, NFA shall conclude the investigation and provide such written report in a reasonable prompt manner."

4. Section VII is added to Schedule A as follows:

VII. <u>Financial Surveillance.</u>

NFA shall receive and promptly review financial and related information from Exchange's members for compliance with Exchange's minimum financial standards. Exchange shall require its members to submit financial information to NFA in such manner as NFA shall require. NFA shall receive and, consistent with the requirements of CFTC Regulation 1.52, review financial and related information for futures commission merchants, retail foreign exchange dealers, and introducing brokers for compliance of such entities with Exchange's minimum financial standards and CFTC regulations.

NFA's financial surveillance of Exchange's members shall not include continually surveying the obligations of each futures commission merchant created by the positions of its customers; comparing those obligations to the financial resources of the futures commission merchant; or taking steps to use this information to protect customer funds.

5. Schedule B, Section C, 1 is amended by replacing it with the following:

"CFE shall pay $200/hour for (i) any legal services performed by an NFA attorney with regard to the services described in Schedule A, Section IV and (ii) any Financial Surveillance Services described in Schedule A, Section VII performed in relation to firms for which NFA is not the designated self-regulatory organization."

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed in their names as of the date above written.

NATIONAL FUTURES ASSOCIATION	CBOE FUTURES EXCHANGE, LLC
By: /s/ Daniel J. Roth Authorized Representative	By: /s/ Karen N. Christiansen Authorized Representative
Name: Daniel J. Roth	Name: Karen N. Christiansen
Title: President and CEO	Title: Chief Regulatory Officer
Date: October 1, 2012	Date: October 1, 2012

EXHIBIT D

OCC RSA

REGULATORY SERVICES AGREEMENT

This REGULATORY SERVICES AGREEMENT (this "Agreement") is entered into on the 17th day of October, 2012, by and between The Options Clearing Corporation ("OCC") and CBOE Futures Exchange, LLC ("CFE").

WHEREAS, pursuant to Part 38 of the Commodity Futures Trading Commission ("CFTC") Regulations, Designated Contract Markets ("DCMs") are required to comply with certain financial surveillance and regulatory requirements;

WHEREAS, CFTC Regulations allow a DCM to comply with certain financial surveillance and regulatory requirements through the use of a third party regulatory services provider and CFE desires to have OCC perform specific financial surveillance and regulatory services to assist CFE in complying with certain sections of Part 38 of the CFTC's Regulations; and

WHEREAS, OCC is willing and able to provide the requested financial surveillance and regulatory services to CFE.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, OCC and CFE agree as follows:

1. Regulatory Services.

(a) Commencing as of the date hereof and continuing throughout the term established by Section 4 below, OCC shall provide the following financial surveillance and regulatory services ("Regulatory Services") to CFE:

(i) on a daily basis, provide notification to CFE if a common member is identified through OCC's Position Risk Reporting;

(ii) on a daily basis, provide pay/collect information to CFE that is specific to CFE's products;

(iii) on a monthly basis, provide Watch Level Reports to CFE for any common member that appears on such Watch Level Report;

(iv) on an as needed basis, provide notification to CFE if a common member fails to meet a margin call as required by OCC;

(v) on a schedule agreed to by both parties, provide intra-day margin results to CFE for common clearing members; and

(vi) any other financial surveillance and regulatory services mutually agreed to in writing by OCC and CFE.

(b) As the largest equity options clearing organization in the world, a Derivatives Clearing Organization ("DCO") registered with the CFTC and a clearing agency registered with the Securities and Exchange Commission ("SEC"), OCC has the capacity and resources to provide the requested Regulatory Services.

2. Supervision of Regulatory Services. CFE may conduct periodic reviews of the adequacy and effectiveness of the Regulatory Services performed by OCC. Periodic reviews will occur on a semiannual basis or on such other schedule as mutually

agreed to by OCC and CFE. CFE shall provide OCC with at least thirty (30) days advance notice of its desire to conduct a review of the Regulatory Services provided to CFE. The periodic reviews shall include OCC's provision of timely access to CFE of relevant OCC data, reports, information and staff as reasonably requested. All data, reports, information and staff statements related to or derived from: 1) the periodic reviews, or 2) the provision of Regulatory Services as set forth in Section 1 of the Agreement, are the confidential information of OCC. CFE and its directors, officers, employees, and agents shall maintain the confidentiality of such confidential information. Notwithstanding the above, CFE may share such confidential data, reports and information with the CFTC or other relevant regulatory agency provided that the confidential treatment of such information is maintained and OCC is notified prior to or promptly following the time such confidential information is shared with a regulatory agency.

3. Indemnification. CFE shall indemnify and hold harmless OCC and any of its respective affiliates, directors, officers, employees and agents (each such person, a "Covered Person") from and against all losses, costs and expenses (including, without limitation, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs and expenses) incurred in connection with the defense of any actual or threatened third party lawsuit, action, proceeding, inquiry (whether formal or informal), audit, examination or claim (other than any lawsuit, action, proceeding, or claim brought by the CFTC or any other regulatory agency that regulates OCC's activities) directly arising from, related to or otherwise connected with any action or inaction related to or

otherwise connected with this Agreement, including those related to any breach of this Agreement by CFE; *provided* that such action or inaction did not constitute fraud, willful misconduct, gross negligence or bad faith of the Covered Person.

4. Term. This Agreement shall remain in effect through an initial term concluding one year after the date hereof and shall be automatically extended for additional one-year terms thereafter, except that it may be terminated by either party upon at least 90 days prior written notice to the other party.

5. Disclaimer of Warranties and Limitation of Liability.

THE REGULATORY SERVICES, FILES, DATA AND INFORMATION PROVIDED BY OCC TO CFE PURSUANT TO THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY AND CFE'S USE THEREOF IS AT ITS OWN RISK. OCC DOES NOT MAKE, AND HEREBY SPECIFICALLY DISCLAIMS, AND CFE RELEASES AND WAIVES, ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND PURPOSE, NON-INFRINGEMENT, TITLE, OR ANY WARRANTY ARISING UNDER STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, OCC DOES NOT WARRANT THAT THE FILES, DATA OR INFORMATION ARE ACCURATE OR WILL MEET CFE'S REQUIREMENTS NOR THAT THE REGULATORY SERVICES WILL BE PROVIDED IN A TIMELY MANNER WITHOUT ERRORS.

FURTHERMORE, OCC DOES NOT WARRANT THAT ANY ERRORS, DEFECTS OR INEFFICIENCIES WILL BE CORRECTED, AND OCC DOES NOT ASSUME ANY LIABILITY FOR FAILURE TO CORRECT ANY SUCH ERROR, DEFECT OR INEFFICIENCY. IN NO EVENT SHALL OCC BE LIABLE TO CFE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM OR RELATED TO THE USE OR PERFORMANCE OF THE REGULATORY SERVICES, FILES, DATA OR INFORMATION.

6. Miscellaneous

(a) Notices. Any notice, consent or other communication made or given in connection with this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or facsimile or five days after mailed by certified mail, return receipt requested, as follows:

If to OCC, to:

The Options Clearing Corporation
One North Wacker Drive, Suite 500
Chicago IL, 60606
Attention: President of The Options Clearing Corporation
With a Copy to: General Counsel
Facsimile No.: (312) 977-0611

If to CFE, to:

CBOE Futures Exchange, LLC
400 South LaSalle Street
Chicago IL, 60605
Attention: Chief Regulatory Officer of CBOE Futures Exchange, LLC
Facsimile No.: (312) 786-7982
With a Copy to: General Counsel of CBOE Futures Exchange, LLC
Facsimile No.: (312) 786-7919

(b) Entire Agreement. This Agreement contains all of the terms agreed upon or made by OCC and CFE relating to the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements, negotiations, correspondence, undertakings and communications of OCC and CFE, oral or written, with respect to such subject matter.

(c) Amendments and Waivers. No provision of this Agreement may be amended, modified, waived or discharged except as agreed to in writing by OCC and CFE. The failure of OCC or CFE to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive OCC or CFE, as applicable, of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

(d) Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of OCC and CFE and their respective successors and permitted assigns. Neither OCC nor CFE may assign all or any portion of its rights, obligations or liabilities under this Agreement without the prior written consent of the other.

(e) No Third-party Beneficiary. This Agreement is for the benefit only of OCC and CFE and is not intended to and shall not be construed as granting any rights or otherwise benefiting any other natural or legal person.

(f) Information Request. CFE agrees to provide OCC with clearing member information or any other information required by OCC to perform the Regulatory Services set forth in Section 1 of the Agreement.

(g) Governing Law. OCC and CFE expressly agree that all terms and provisions hereof shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to its conflict of laws principles, applicable to agreements made and to be performed in that State.

(h) Forum Selection. OCC and CFE agree that any claim, counterclaim, set-off or defense relating in any way to this Agreement shall be heard and determined by a Federal or State court located in Chicago, Illinois, without a jury, which right to a jury trial is hereby expressly waived by OCC and CFE.

(i) Headings. The headings contained in this Agreement are intended solely for convenience and shall not affect the rights of OCC or CFE.

(j) Counterparts. This Agreement may be signed in any number of counterparts, and all such counterparts together shall be deemed one and the same instrument.

(k) Survival. The provisions of Sections 3 and 5 hereof shall survive the termination of this Agreement.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed as of the date first written above.

THE OPTIONS CLEARING CORPORATION

By /s/ James E. Brown
Name: James E. Brown
Title: Executive Vice President and
General Counsel

CBOE FUTURES EXCHANGE, LLC

By /s/ Karen Christiansen
Name: Karen N. Christiansen
Title: Chief Regulatory Officer