



The  
Clearing  
Corporation™

Nancy K. Brooks  
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203 OCT 30 11:45

October 30, 2003

Re: **Rule Certification Pursuant to Section  
5c(c)(1) of the Commodity Exchange  
Act and Commission Regulation 40.6**

**VIA AIR COURIER AND E-MAIL**

Ms. Jean A. Webb  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

Dear Ms. Webb:

The Clearing Corporation, f/k/a the Board of Trade Clearing Corporation ("The Clearing Corporation"), hereby submits, pursuant to Commodity Futures Trading Commission ("Commission") Regulation 40.6, a self-certification of the amended Rules of The Clearing Corporation (the "Amended Rules"). The Clearing Corporation is registered with the Commission as a derivatives clearing organization. As detailed below, The Clearing Corporation intends to make the Amended Rules effective on the business day following the filing of this submission with the Commission at its Washington, D.C. headquarters and with its Chicago regional office.

This submission includes the Amended Rules. A description of the principal changes contained in the Amended Rules follows. Certification of the Amended Rules pursuant to Section 5c(c)(1) of the Commodity Exchange Act is also provided herein.

Amended Rules:

Pursuant to a self-certification submitted to the Commission by The Clearing Corporation on October 1, 2003, The Clearing Corporation, among other things, made the Rules for Merchants' Exchange LLC, Commodities Management Exchange, Inc., ChemConnect, Inc., and IntercontinentalExchange, Inc., including Rule 802, effective on October 2, 2003<sup>1</sup>, but

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<sup>1</sup> Pursuant to the terms of the Assignment Agreement entered into between The Clearing Corporation and IntercontinentalExchange, Inc., The Clearing Corporation's obligation and duty to perform any clearing and settlement services is deferred until March 1, 2004. Accordingly, IntercontinentalExchange, Inc. has agreed not to submit for clearing and The Clearing Corporation will not accept for clearing any IntercontinentalExchange, Inc. contracts until after February 29, 2004.

not operative until the approval of the trustees of The Clearing Corporation Trust Fund for the revolving credit agreement between The Clearing Corporation and Clearing Corporation Trust Fund. Such approval was given on October 23, 2003; hence, such Rules are operative effective October 23, 2003.

These Amended Rules include changes to Chapter 12 (ChemConnect, Inc.) detailing the process whereby The Clearing Corporation will act as escrow agent with respect to the amounts that ChemConnect will require clearing participants to post as collateral for the settlement of ChemConnect's swap contracts.

At a special stockholder meeting held on October 23, 2003 ("Special Meeting"), stockholders of The Clearing Corporation adopted a Restated Certificate of Incorporation and Restated Bylaws. Pursuant to these documents, The Clearing Corporation changed its name from the "Board of Trade Clearing Corporation" to "The Clearing Corporation" redesignated its "Board of Governors" as its "Board of Directors," and redesignated its "members" as its "participants". This last change reflects the fact that participants are no longer required to own stock in The Clearing Corporation, but instead will contribute to a newly established guaranty fund as provided in the Rules certified to the Commission on October 1, 2003. The Rules have been revised to give effect to these changes.

Annexed as Exhibits hereto are the following:

- A. Amended Rules of The Clearing Corporation.
- B. A copy of the Amended Rules of The Clearing Corporation marked to show changes from the Rules as currently in effect (October 1, 2003 submission).
- C. Restated Certificate of Incorporation of The Clearing Corporation.
- D. A copy of the Restated Certificate of Incorporation of The Clearing Corporation marked to show changes from the Certificate of Incorporation in effect immediately prior to the specified meeting.
- E. Restated Bylaws of The Clearing Corporation.
- F. A copy of the Restated Bylaws of The Clearing Corporation marked to show changes from the Bylaws in effect immediately prior to the special meeting.

Certification:

The Clearing Corporation hereby certifies that the Amended Rules, Restated Certificate of Incorporation, and Restated Bylaws comply with the Act and the regulations thereunder. There were no substantive opposing views to the Rules; the Board of Governors unanimously recommended on September 17, 2003 that the stockholders adopt the Restated Certificate of Incorporation and Restated Bylaws. The stockholders voted 50 to 34 (with

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two abstentions) to adopt the Restated Certificate of Incorporation and Restated Bylaws at the Special Meeting.

The Clearing Corporation would be pleased to respond to any questions that the Commission or the staff may have regarding this submission. Please direct any questions or requests for information to the attention of the undersigned at (312) 786-5711 or Robert G. Hertel, Jr., Associate General Counsel, at (312) 786-5743, or Kevin R. McClear, Vice President, Special Counsel, at (312) 786-5763.

Sincerely,



Nancy K. Brooks

Enclosures

cc: Jane Kang Thorpe (w/encl.)  
John C. Lawton (w/encl.)  
Rosemary Hollinger (w/encl. by messenger)  
Frank Zimmerle (w/encl. by messenger)

# Rules of The Clearing Corporation

## 1. INTERPRETATION

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### 101. Definitions.

#### **Board; Board of Directors**

The Board of Directors of the Clearing Corporation.

#### **Business Day**

Any day (other than Saturdays, Sundays and holidays observed by the Clearing Corporation) on which the Clearing Corporation is open for business.

#### **Bylaws**

The Bylaws of the Clearing Corporation, as in effect from time to time.

#### **Certificate of Incorporation**

The Restated Certificate of Incorporation of the Clearing Corporation, as amended from time to time.

#### **Clearing Corporation**

The Clearing Corporation.

#### **Collateral**

At any time, such property, other than Margin, as may be delivered, or in which a security interest may be granted, by a Participant to the Clearing Corporation or its custodian, as collateral for the Obligations, and all proceeds of the foregoing.

#### **Commission**

The U.S. Commodity Futures Trading Commission.

#### **Commodities**

All goods, articles, services, rights and interests in which Exchange Contracts are dealt in.

## **Contracts**

Exchange Contracts and OTC Contracts.

## **Default**

Any event that would constitute a default under Rule 605.

## **Exchange Contract**

A Futures Contract, Option on a Futures Contract or Option on a commodity that is dealt in on or subject to the rules of an Exchange Market and submitted to the Clearing Corporation for clearance in accordance with these Rules.

## **Exchange Market**

An exchange or market that has been designated by or registered with the Commodity Futures Trading Commission as a contract market or derivatives transaction execution facility, is party to an agreement with the Clearing Corporation for the provision of clearing services, and is specifically identified in these Rules as an Exchange Market.

### **... Interpretations and Policies:**

- .01 The following exchanges and markets are Exchange Markets in respect of the following Exchange Contracts:
- (a) U.S. Futures Exchange, L.L.C., with respect to (i) 30-year Treasury Bond Futures, (ii) 10-year Treasury Note Futures, (iii) 5-year Treasury Note Futures, (iv) 2-year Treasury Note Futures, (v) Options on 30-year Treasury Bond Futures, (vi) Options on 10-year Treasury Note Futures, (vii) Options on 5-year Treasury Note Futures, and (viii) Options on 2-year Treasury Note Futures, as set forth more fully in Chapter 9.
  - (b) Board of Trade of the City of Chicago, Inc., with respect to (i) Futures Contracts and Options on Corn, Futures Contracts on mini-sized Corn, Futures Contracts and Options on Soybeans, Futures Contracts on mini-sized Soybeans, Futures Contracts and Options on Wheat, Futures Contracts on mini-sized Wheat, Futures Contracts and Options on Oats, Futures Contracts and Options on Rough Rice, Futures Contracts and Options on Soybean Oil, Futures Contracts and Options on Soybean Meal, Futures Contracts and Options on 5-Year Interest Rate Swap, Futures Contracts and Options on 10-Year Interest Rate Swap, Futures Contracts on 10-Year Municipal Note Index, Futures Contracts and Options on 30-Day Federal Funds, Futures Contracts and Options on the Dow Jones Industrial Average Index, Futures Contracts on the Dow Jones-AIG Commodity Index, and Futures Contracts on the mini-sized Dow (\$5 Multiplier), but only through and including November 24, 2003; and (ii) Futures Contracts and Options (standard and flex) on U.S.

Treasury Bonds, Futures Contracts on mini-sized U.S. Treasury Bonds, Futures Contracts and Options (standard and flex) on Long-Term U.S. Treasury Notes (6½ - 10 Year), Futures Contracts on mini-sized Long-Term U.S. Treasury Notes, Futures Contracts and Options (standard and flex) on Medium-Term U.S. Treasury Notes (5 Year), Futures Contracts and Options (standard and flex) on Short-Term U.S. Treasury Notes (2 Year), Futures Contracts and Options on Long-Term Fannie Mae Benchmark Notes and Freddie Mac Reference Notes, Futures Contracts and Options on Medium-Term Fannie Mae Benchmark Notes and Freddie Mac Reference Notes, Futures Contracts on mini-sized New York Silver, Future Contracts on mini-sized New York Gold, and Futures Contracts on mini-sized Three-Month Eurodollar Time Deposits, but only through and including January 2, 2004.

- (c) Merchants' Exchange LLC, with respect to (i) Cash-Settled Brent Crude Oil Futures, (ii) Cash-Settled European Gas Oil Futures, (iii) Cash-Settled Light "Sweet" Crude Oil Futures, (iv) Cash-Settled Natural Gas Futures, (v) Cash-Settled No. 2 Heating Oil (New York Harbor Delivery) Futures, (vi) Cash-Settled Unleaded Gasoline (New York Harbor Delivery) Futures, (vii) Barge Freight Futures on the Illinois Waterway, and (viii) Barge Freight Futures on St. Louis Harbor ("ME Contracts"), as set forth more fully in Chapter 10.

### **Final Settlement**

With respect to a Participant that has open Trades or positions in Contracts at the close of trading on the Last Trading Day, the issuance of instructions by the Clearing Corporation to such Participant's settlement bank to debit or credit the Participant's variation settlement account on the next Business Day and the acceptance thereof by such settlement bank.

### **Futures Contracts**

Contracts for the purchase or sale of a Commodity for future delivery dealt in pursuant to the rules of an Exchange Market.

### **General Guaranty Fund**

At any time, funds or other property of the Clearing Corporation, set aside and recorded on the books of the Clearing Corporation in support of the Obligations of Participants in respect of Contracts on specified Markets.

### **Guaranty Funds**

The General Guaranty Fund and such Special Guaranty Funds as are in existence from time to time.

**Last Trading Day**

The final day of trading in a Contract, as set forth in the rules of the relevant Market or in these Rules.

**Margin**

Original Margin (including super and special margin), Option premiums and variation settlements paid or payable by or to a Participant to or by the Clearing Corporation.

**Markets**

Exchange Markets and OTC Markets.

**Obligations**

All financial obligations of a Participant arising under these Rules in respect of or arising out of Contracts, in either case however created, arising or evidenced, whether direct or indirect, absolute or contingent, existing, due or to become due.

**Option**

An Option on a Futures Contract or Option on a Commodity, dealt in pursuant to the rules of an Exchange Market.

**OTC Contract**

An agreement, contract, or transaction that is specifically identified in these Rules as an OTC Contract and submitted to the Clearing Corporation in accordance with these Rules and that is: (i) (A) an interest rate swap, option, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, or forward rate agreement; (B) a same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, or forward agreement; (C) an equity index or equity swap; (D) a debt index or debt swap; (E) a credit spread or credit swap, option, or forward agreement; (F) a commodity index or commodity swap, option, or forward agreement; or (G) a weather swap, weather derivative, or weather option; (ii) similar to any other agreement, contract, or transaction referred to above that is a forward, swap, or option on one or more occurrences of any event, rates, currencies, commodities, economic or other indices or measures of economic or other risk or value; (iii) excluded from the Commodity Exchange Act under section 2(c), 2(d), 2(f), or 2(g) of such Act, or exempted under section 2(h) or 4(c) of such Act; or (iv) an option to enter into any, or any combination of, agreements, contracts or transactions referred to herein.

**OTC Market**

A market that is party to an agreement with the Clearing Corporation for the provision of clearing services and that is specifically identified in these Rules as an OTC Market.

... Interpretations and Policies:

- .01 The following exchanges and markets are OTC Markets in respect of the following OTC Contracts:
- (a) Commodities Management Exchange, Inc. with respect to (i) CMX AL London NA A380 (Single-Day Settlement), (ii) CMX AL NA A380 (Monthly-Average Settlement), (iii) CMX AL Midwest Survey A380 (Single-Day Settlement), (iv) CMX AL Midwest Survey A380 (Monthly-Average Settlement), (v) CMX AL London Alloy (Single-Day Settlement), (vi) CMX AL London Alloy (Monthly-Average Settlement), (vii) CMX AL London Hi Grade (Single-Day Settlement), (viii) CMX AL London Hi Grade (Monthly-Average Settlement), (ix) CMX AL Midwest Transaction Price Survey (Single-Day Settlement), (x) CMX AL Midwest Survey Transaction Price (Monthly-Average Settlement), (xi) CMX AL New York Primary (Single-Day Settlement), (xii) CMX AL New York Primary (Monthly-Average Settlement), (xiii) CMX AL MW Transaction Premium (Single-Day Settlement), and (xiv) CMX AL MW Transaction Premium (Monthly-Average Settlement) (each, a "CMX Contract," and collectively, "CMX Contracts"), as set forth more fully in Chapter 11 and Appendix 11-A.
  - (b) ChemConnect, Inc. with respect to (i) Ethane Forward (F.O.B. at Enterprise Product Partners L.P. facility at Mt. Belvieu, Texas), (ii) Ethane Swap (Settled to Ethane Forward), (iii) Options on Ethane Forward, (iv) Propane Forward (F.O.B. at Texas Eastern Pipeline Company facility at Mt. Belvieu, Texas), (v) Propane Swap (Settled to Propane Forward), (vi) Options on Propane Forward (each, a "ChemConnect Contract," and collectively, "ChemConnect Contracts"), as set more fully in Chapter 12 and Appendix 12-A.
  - (c) IntercontinentalExchange, Inc., with respect to (i) PJM West Peak Power Contracts and (ii) Into Cinergy, Sellers Daily Choice Peak Power Contracts (each, an "ICE Contract," and collectively, "ICE Contracts"), as set forth more fully in Chapter 13 and Appendix 13-A.

### **Participant**

A person that has been approved by the Clearing Corporation for the submission of Contracts and that is party to an agreement with the Clearing Corporation specifically relating to transactions in Contracts.

### **Person**

An individual, sole proprietorship, partnership, limited liability company, association, firm, trust, corporation or other entity, as the context may require.

### **President**

The President of the Clearing Corporation.



## **Rule**

References to a “Rule” or “Rules” are references to the Rules of the Clearing Corporation.

## **Settlement Price**

The price, established in accordance with Rule 404, for each open Contract.

## **Special Guaranty Funds**

The funds established by the Clearing Corporation in support of the Obligations of certain Participants in respect of certain Contracts in certain Markets.

### **... Interpretations and Policies:**

- .01 The following guaranty fund is a Special Guaranty Fund in respect of the following Markets:
- (a) Emerging Markets Guaranty Fund, with respect to (i) Merchants' Exchange LLC, (ii) Commodities Management Exchange, Inc., (iii) ChemConnect, Inc., and (iv) IntercontinentalExchange, Inc.

## **Trades**

Transactions in Contracts.

## **Transfer Trades**

With respect to Exchange Contracts, transactions commonly referred to as give-ups, office transfers, exchanges of futures for physicals or exchanges of futures for swaps, as well as such other transactions in Exchange Contracts as may be defined as Transfer Trades by the Clearing Corporation. With respect to OTC Contracts, transactions in OTC Contracts that are defined as Transfer Trades by the Clearing Corporation.

## **102. Scope and Interpretation.**

- (a) The Rules set forth herein are applicable only to Trades and related obligations arising out of Exchange Contracts and OTC Contracts. In the event of a conflict between these Rules and the Bylaws of the Clearing Corporation, these Rules will prevail. In the event of a conflict between these Rules generally and Rules adopted by the Clearing Corporation specifically governing Trades and related obligations made on a particular Market or particular types of transactions, the Rules specifically governing such Trades, obligations or transactions will prevail. More particularly:

- (i) The Rules in Chapters 1 - 8 are supplemented for specific Contracts and Markets by the Rules in Chapters 9 *et seq.* (Thus, for example, the definitions in Rule 101 are supplemented, for purposes of Chapter 9, by the additional definitions in Rule 9-101.) The Rules in Chapters 9 *et seq.* shall apply only to the Exchange or Market specified in the caption to such Chapter.
  - (ii) Where the numbering of a Rule in Chapters 9 *et seq.* corresponds to that of a Rule in Chapters 1 - 8, the Rule in Chapters 1 - 8 is superseded to the extent applicable by the correspondingly numbered Rule in Chapter 9 *et seq.* (Thus, for example, references in Chapter 9 to the term "Settlement Price" mean the Settlement Price established in accordance with Rule 9-404.)
  - (iii) Where a Rule in Chapter 9 *et seq.* is "[Reserved]," the correspondingly numbered Rule in Chapters 1 - 8 is made expressly inapplicable to the Markets and Contracts that are the subject of the Rules in that Chapter.
- (b) In these Rules, unless a clear contrary intention appears, (a) the singular number includes the plural number and vice versa, (b) reference to the masculine, feminine or neuter gender includes each other gender, (c) any reference to a number of days shall mean calendar days unless Business Days are specified, and (d) any reference to times shall mean the time in Chicago, Illinois. Except as otherwise specifically provided in these Rules, an act that otherwise would be required or permitted by these Rules to be performed on a date that is not a Business Day may be performed on the next day that is a Business Day.

## 2. MEMBERSHIP

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### 201. Qualifications of Participants.

- (a) The Clearing Corporation shall have the sole power to determine whether any applicant for status of Participant, or any existing Participant, satisfies the qualifications established by the Clearing Corporation. Only persons found by the Corporation to be so qualified shall be permitted to be Participants. For the purpose of determining whether any applicant or Participant is thus qualified, the Clearing Corporation may establish minimum capital and other financial requirements for Participants, examine the books and records of any applicant or Participant, and may take such other steps as it may deem necessary to ascertain the facts bearing upon the question of qualification.
- (b) In order to justify the Clearing Corporation assuming the risk of clearing their Trades, Participants must meet and maintain such standards of business integrity, financial capacity, creditworthiness, operational capability, experience and competence as may be established by the Clearing Corporation from time to time. Without limitation of the foregoing, no applicant shall be admitted as a participant unless:
  - (i) It meets, at the time of admission and maintains thereafter, such minimum capital requirements as may be established from time to time by the Clearing Corporation.
  - (ii) It has established satisfactory relationships with, and has designated to the Clearing Corporation, an approved settlement bank for confirmation and payment of all Margins and settlements with the Clearing Corporation.
  - (iii) It maintains back-office facilities staffed with experienced and competent personnel or has entered into a facilities management agreement in form and substance acceptable to the Clearing Corporation.
  - (iv) It files in a timely manner all reports and information relating to the Participant, Persons controlling the Participant, and related or affiliated organizations as required by these Rules or otherwise required by the Clearing Corporation.

### 202. Application for Participant Status.

- (a) Persons desiring to clear Trades through the Clearing Corporation shall make application in such form as shall be prescribed by the Clearing Corporation. Each applicant must agree to abide by the Certificate of Incorporation, Bylaws, Rules, interpretations and policies of the Clearing Corporation as in effect from time to time. An applicant for status of a Participant shall be conclusively deemed to have agreed to have no recourse against the Clearing Corporation in the event that its application to become a Participant is rejected.

- (b) Notwithstanding a sale or transfer of Participant status, a Person qualified as a Participant agrees to be responsible for any violation of the Bylaws, Rules, interpretations and policies of the Clearing Corporation committed by such Person while a Participant and agrees to have any disputes which arise while a Participant which relate to or arise out of any transaction with the Clearing Corporation or status of a Participant in the Clearing Corporation resolved in accordance with the Bylaws and Rules.

**203. Restriction on Activity.**

The failure to continue to comply with the conditions of the Bylaws and Rules may subject a Participant to a suspension or revocation of clearing privileges. In addition, or in the alternative, and in either case in its sole discretion, the Clearing Corporation shall be authorized: (a) to impose such additional capital, Margin or other requirements as it shall deem appropriate for the protection of the Clearing Corporation and its Participants; (b) to allow such Participant to submit Trades solely for the Participant's own account; (c) to allow such Participant to submit Trades for liquidation only; (d) to limit or restrict the type of Contracts that may be cleared by such Participant in any of its accounts with the Clearing Corporation; or (e) to limit or restrict the number of Contracts that are permitted to be maintained by such Participant in any of its accounts with the Clearing Corporation.

**204. Financial Statements of Participants.**

Each Participant shall submit statements of its financial condition at such times and in such manner as shall be prescribed from time to time.

**205. Parent Guarantee.**

- (a) A Participant that is organized as a corporation, the majority of whose outstanding capital stock is owned or controlled by another corporation or by a partnership or limited liability company, shall be approved for the clearing of Contracts only if its controlling parent organization or individuals with a significant ownership interest guarantee the Participant's obligations relating to Contracts. For purposes of this paragraph, stock of a corporate applicant or Participant which is owned or controlled by an officer, stockholder, or partner of another organization will be considered owned or controlled by such other organization. The Clearing Corporation may, for good cause shown, waive this provision.
- (b) A partnership whose partners include one or more other partnerships, corporations or limited liability companies shall be approved for the clearing of Contracts only if all of its partners are general partners. The Clearing Corporation may, for good cause shown, waive this provision.
- (c) A limited liability company, the majority of whose membership interests are owned or controlled by another limited liability company or by a corporation or partnership, shall be approved for the clearing of Contracts only if its controlling parent organization or individuals with a significant ownership interest guarantee

the Participant's obligations relating to Contracts. For purposes of this paragraph, membership interests which are owned or controlled by a manager, managing Participant, an officer, shareholder or partner of another organization will be considered owned or controlled by such other organization. The Clearing Corporation may, for good cause shown, waive this provision.

... **Interpretations and Policies:**

- .01 The guarantee of a Participant's obligations required by this Rule shall, unless otherwise provided in particular cases, be applicable only to Trades made for a proprietary account (as such term is defined in Commodity Futures Trading Commission Regulation 1.3(y)) or other non-customer accounts of the Participant.

**206. Common Owner Guarantee.**

- (d) No more than one Participant shall be owned or controlled, directly or indirectly, by the same Person unless:
- (i) Each such Participant consents to the use by the Clearing Corporation of any and all assets of the Participant in the possession of the Clearing Corporation or under its control to satisfy the obligations of all such commonly owned or controlled Participant to the Clearing Corporation;
  - (ii) Each such Participant guarantees to the Clearing Corporation all obligations of all such commonly owned or controlled Participants, including, without limitation, obligations arising out of house and customer account positions maintained by the Clearing Corporation; and
  - (iii) Each such Participant irrevocably consents to its immediate suspension or expulsion from its status as a Participant in the Clearing Corporation should it fail timely and fully to honor its guarantee of the obligations of such commonly owned or controlled Participants or should such a commonly owned or controlled Participant fail to honor its guarantee of such Participant.
- (e) The Clearing Corporation may grant exemptions from the requirements of this Rule 206 for good cause shown if it determines that such exemptions will not jeopardize the financial integrity of the Clearing Corporation.

**207. Notices Required of Participants.**

- (a) Each Participant shall immediately notify the Clearing Corporation, orally and in writing, of:
- (i) Any material adverse change in the Participant's financial condition including, but not limited to, a decline in net capital or, with respect to

Participants that are not registered with the Commodity Futures Trading Commission as futures commission merchants, net worth equal of 20% or more, or if such Participant knows or has reason to believe that its adjusted net capital has fallen below the Clearing Corporation's minimum capital requirements;

- (ii) Any proposed material reduction (and, in all cases, if the reduction is 30% or more) in the Participant's operating capital, including the incurrence of a contingent liability which would materially affect the Participant's capital or other representations contained in the latest financial statement submitted to the Clearing Corporation should such liability become fixed; provided, that any such reduction in operating capital shall not be effected by the Participant if the Clearing Corporation specifically objects thereto, in writing, within thirty days after receipt of written notice thereof;
- (iii) Any refusal of admission to, withdrawal of any application for membership in, any suspension, expulsion, bar, fine, censure, denial of membership, registration or license, withdrawal of any application for registration, cease and desist order, temporary or permanent injunction, denial of trading privileges, or any other sanction or discipline through an adverse determination, voluntary settlement or otherwise, by the Commodity Futures Trading Commission, the Securities and Exchange Commission, any commodity or securities exchange, clearing organization, the National Futures Association, the National Association of Securities Dealers, any self-regulatory organization or other business or professional association;
- (iv) The imposition of any restriction or limitation on the business conducted by the Participant on or with any securities or futures clearing organization or exchange (including, without limitation, any contract market, derivatives transaction facility, exempt board of trade or other trading facility), other than restrictions or limitations imposed generally on all Participants of or participants in such clearing organization or exchange;
- (v) Any failure by such Participant, or any guarantor or commonly owned or controlled Participant (as provided in Rules 205 and 206) to perform any of its material contracts, obligations or agreements;
- (vi) Any determination that it, or any guarantor or commonly owned or controlled Participant (as provided in Rules 205 and 206), will be unable to perform any of its material contracts, obligations or agreements;
- (vii) The insolvency of such Participant, or of any guarantor or commonly owned or controlled Participant (as provided in Rules 205 and 206);
- (viii) The institution of any proceeding by or against the Participant, any affiliate of the Participant, or any Person with an ownership interest of greater than

5% in the Participant, under any provision of the bankruptcy laws of the United States, or under the Securities Investor Protection Act of 1970, any other statute or equitable power of a court of like nature or purpose, in which such Participant or Person is designated as the bankrupt, debtor or equivalent, or a receiver is appointed or if a receiver, trustee or similar official is appointed for the Participant, such Person, or its or their property;

- (ix) The receipt by such Participant, or the filing by such Participant with a self-regulatory organization, of a notice of material inadequacy; and
  - (x) The receipt by such Participant from its independent auditors of an audit opinion that is not unqualified.
- (b) Each Participant shall promptly provide written notice to the Clearing Corporation of:
- (i) Any changes in its name, business address, its telephone or facsimile number, electronic mail address, or any number or access code for any electronic communication device used by it to communicate with the Clearing Corporation;
  - (ii) Any proposed change in the organizational or ownership structure or management of a Participant Firm; and
  - (iii) Any transfer, offer to transfer, or termination of an Exchange Market membership, where such membership has been designated under the rules of such Exchange Market for the benefit of the Participant.

... **Interpretations and Policies:**

- .01 As used in paragraph (a)(i), the term “net capital” means the greatest of: (a) the minimum net capital requirement established by the Clearing Corporation for such Participant; (b) with respect to a Participant that is a registered futures commission merchant, adjusted net capital as provided in Commodity Futures Trading Commission Regulation 1.17; and, (c) with respect to a Participant that is a registered broker-dealer, excess adjusted net capital as provided in Securities and Exchange Commission Regulation 15c3-1.

**208. Exchange Membership.**

The Clearing Corporation may decline or restrict the ability of a Participant to clear Trades made on any Exchange where such Participant is not admitted to the privileges of membership or is not approved by such Exchange Market to clear Trades made on or subject to the rules of such Exchange Market.

**209. Termination of Participant Status.**

- (a) Upon the occurrence of a Termination Event (as defined herein), the Clearing Corporation may, in its sole discretion, impose limitations, conditions and restrictions upon a Participant or terminate the status of the Participant. In such circumstances, the Clearing Corporation may, in its sole discretion, (i) decline to accept new Trades, (ii) cause open Contracts to be transferred to another clearing organization designated by the Market, with such security against claims and liabilities as the Clearing Corporation shall deem necessary for its protection, (iii) permit Trades to be tendered for liquidation only, (iv) cause open Contracts to be settled in cash or liquidated in the open market, and (v) otherwise take or omit to take such actions, or any combination thereof, as it deems necessary or appropriate in the circumstances.
  
- (b) As used herein, "Termination Event" shall mean the occurrence of any of the following:
  - (i) The expiration or termination of the agreement for clearing services between the Clearing Corporation and the relevant Market;
  - (ii) The expiration or termination of the agreement between the Participant and the Clearing Corporation;
  - (iii) A representation or warranty made by the Participant to the Clearing Corporation under or in connection with any agreement between the Clearing Corporation and the Participant shall be false or misleading in any material respect as of the date on which made;
  - (iv) The breach by the Participant of the Rules or any of the terms or provisions of any agreement between the Clearing Corporation and the Participant which is not remedied promptly after notice from the Clearing Corporation; or
  - (v) The Participant shall be in Default.



### 3. CLEARING OF CONTRACTS

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#### 301. Effect of Clearance.

Trades submitted for clearance by or for the account of a Participant shall be submitted to the Clearing Corporation as required by the Rules and the rules of the Market, and if the Clearing Corporation accepts the same, as provided in Rule 310, the buying Participant shall be deemed to have bought such Contract from the Clearing Corporation and the selling Participant shall be deemed to have sold such Contract to the Clearing Corporation. Upon such substitution, such buyers and sellers shall be released from their obligations to each other, and the Clearing Corporation shall be deemed to have succeeded to all the rights, and to have assumed all the obligations, of the original parties to such contracts.

#### 302. Tender of Trades.

The filing of a Trade confirmation by or on behalf of a Participant, as hereinafter provided, shall be deemed a tender to the Clearing Corporation for clearance of the Trade listed on such confirmation. These Rules shall constitute part of the terms of each Contract tendered to the Clearing Corporation.

#### 303. Adjustments.

- (a) Where a Futures Contract is cleared and the contract price is less than the Settlement Price of the day, the selling Participant shall pay to the Clearing Corporation and the buying Participant shall receive from the Clearing Corporation the difference between the value of the Futures Contract based upon the Settlement Price of the day and the contract price. In like manner, if the contract price of a Futures Contract is more than the Settlement Price of the day, the buying Participant shall pay to the Clearing Corporation, and the selling Participant shall receive from the Clearing Corporation, the difference between the value of the Futures Contract based upon the Settlement Price of the day and the Contract price.
- (b) Such payments shall be at the time and in the manner prescribed by the Clearing Corporation. Thereupon, the selling Participant shall be deemed to have sold such Futures Contract to the Clearing Corporation, and the buying Participant shall be deemed to have bought such Futures Contract from the Clearing Corporation, in each case at the Settlement Price of the day. Thereafter, from day to day, to the extent such transaction remains open, similar payments shall be made to bring the Trade to the Settlement Price of that day, and after such payments have been made, the buying Participant shall be deemed to have bought, and the selling Participant shall be deemed to have sold, such Futures Contract to the Clearing Corporation at the Settlement Price of such day.

**304. Offsets.**

Where, as the result of substitution under Rule 301, a Participant has bought from the Clearing Corporation any amount of a given Futures Contract for a particular delivery, and subsequently, and prior to such delivery, such Participant sells to the Clearing Corporation any amount of the same Futures Contract for the same delivery, the second transaction shall be deemed pro tanto a settlement or adjustment of the prior transaction, except as provided in Rule 311, and except with respect to Options. In like manner, where a Participant sells to the Clearing Corporation any amount of a given Futures Contract for a particular delivery, and subsequently, and before delivery, such Participant buys any amount of the same Futures Contract for the same delivery, the second transaction shall be deemed pro tanto a settlement or adjustment of the prior transaction, except as provided in Rule 311, and except with respect to Options. Thereupon, such Participant shall become liable to pay the loss or entitled to collect the profit, as the case may be, upon such adjusted transactions, and shall be under no further liability to receive or make delivery with respect thereto. For purposes of this Rule, the first Trades made shall be deemed the first Trades offset.

**305. Trade Confirmations.**

Each Business Day, the exact hours as from time to time fixed by the Clearing Corporation, Participants shall file with the Clearing Corporation confirmations, in the manner prescribed by the Clearing Corporation (which, in the case of electronic trading systems that submit matched trades to the Clearing Corporation, shall be satisfied by confirming reports automatically generated by such system that contain the information set forth herein), covering Trades made during the day (including scratch Trades) showing for each Trade (a) the identity of both Participants, (b) whether bought or sold, (c) the quantity involved, (d) the delivery month, (e) the Contract expiration and series involved, (f) the price and/or premium, (g) whether for house, customer, non-customer or floor trader account, and (h) such other information as may be required by the Clearing Corporation to effect the matching of Trades between the buyer and the seller.

**306. Disagreement in Trade Confirmations.**

If a Trade confirmation of any Participant shall not correspond in all material respects with the confirmation of the other party to such Trade, the Clearing Corporation may reject such Trade and notify both Participants, setting forth the basis of such objection.

**307. Statement of Trades and Positions.**

The Clearing Corporation shall make available to a Participant a statement of Trades and positions for each Business Day on which such Participant has Trades to be cleared or a position open with the Clearing Corporation. Such statement shall show the amounts the Participant shall pay to or receive from the Clearing Corporation under Rule 303 and the amount of premium the Participant shall pay to or receive from the Clearing Corporation, in all cases at the time and in the manner prescribed by the Clearing Corporation.

**308. Daily Variation Settlements.**

If the statement of Trades and positions made available to a Participant under Rule 307 shows a net balance in favor of the Clearing Corporation, the Participant shall, at the time and in the manner prescribed by the Clearing Corporation, pay such net balance to the Clearing Corporation. Payment will be considered made hereunder only if made in a manner prescribed by the Clearing Corporation and results in immediate credit to the account of the Clearing Corporation. If such statement shows a net balance in favor of the Participant, the Clearing Corporation shall promptly pay, at the time and in the manner prescribed by the Clearing Corporation, the amount of such net balance to the Participant.

**309. Statement of Original Margins and Premiums.**

At the time a Participant a statement of the Participant's Trades and positions is made available pursuant to Rule 307, the Clearing Corporation shall also make available a statement showing original Margins and Option premiums deposited by the Participant, the amount of such Margins and premiums required by the Clearing Corporation, and the Participant's net surplus of, or deficit in, such Margins and premiums.

**310. Acceptance of Trades by Clearing Corporation.**

The Clearing Corporation shall accept no Trades for clearance except for the account of its Participants. A Trade, except a Transfer Trade, is accepted upon either the Clearing Corporation's receipt and acknowledgment of a matched Trade or matching of Trade confirmations. A Transfer Trade is accepted upon receipt of all payments and deposits required to be made pursuant to these Rules by the Participants who are parties to the Transfer Trade. Issuance by the Clearing Corporation, to a Participant, of a statement of Trades and positions as provided in Rule 307 shall constitute confirmation that the Trades listed on such statement, except Transfer Trades, have been accepted by the Clearing Corporation.

**311. Trades for Customers.**

Where a Participant clears a Trade for a customer, whether a Participant or non-Participant of an Exchange Market, the Participant becomes liable to the Clearing Corporation and the Clearing Corporation liable to the Participant on such Trade in the same manner and to the same extent as if the Trade were for the account of the Participant; provided, however, that Trades designated by the Participant as for the Participant's customer shall not be offset under Rule 304 against Trades designated by the Participant as for the Participant's own account.

**312. Separate Accounts.**

A Participant required by law to segregate a particular class of transactions with the Clearing Corporation shall maintain a separate account for that purpose (the "separate account"). When appropriately so designated by the Participant, the separate account shall be treated as to Margins, Option premiums, daily variation settlements, deliveries and all other operations as though it were the account of a different Participant except that, (a) excess funds in any

other account of the Participant may be allocated by the Clearing Corporation to the separate account to the extent necessary to meet applicable Margin and variation deposit requirements of these Rules, and (b) if the Participant is in Default under Rule 605 as to any account maintained by the Participant with the Clearing Corporation or for any reason ceases to be a Participant, the open Trades in all such accounts may be closed in the open market, transferred to any other Participant, or otherwise resolved and the deficit, if any, in the separate account applied to the balance in any other account of the Participant. The Clearing Corporation shall maintain all funds held in the separate accounts in accordance with relevant provisions of the Commodity Exchange Act and Commodity Futures Trading Commission regulations.

The shares of Clearing Corporation stock owned by a Participant shall secure all obligations of such Participant arising in connection with the separate account of such Participant.

**313. Records.**

Participants shall keep permanent records showing, with respect to each purchase or sale, the names of both Participants, the Futures Contract, Option series, quantity, date, price, delivery or expiration month, the name or account identifier of the customer for whom the Trade was made and such other information as may be required by law, regulation, or by the Clearing Corporation. Such permanent records shall be retained for at least five years, either in original form or in such other form as the Clearing Corporation may from time to time authorize, and shall be deemed the joint property of the Clearing Corporation and the Participant keeping such records. The Clearing Corporation shall be entitled to inspect or take temporary possession of such records at any time upon demand.

**314. Reporting.**

Participants shall make reports of their positions at the time and in the manner prescribed by the Clearing Corporation.

**315. Limitation of Liability.**

The liability of the Clearing Corporation shall be limited to losses resulting from the substitution of the Clearing Corporation upon contracts between Participants in accordance with these Rules. The Clearing Corporation shall not be liable for obligations of a non-Participant, obligations of a Participant to a non-Participant, obligations of a Participant to another Participant of the Clearing Corporation who is acting for such other Participant as broker, or obligations of a Participant to a customer, nor shall the Clearing Corporation become liable to make deliveries to or accept deliveries from a customer of its Participants.

**316. Non-Acceptance of Trades.**

In case of the non-acceptance of the Trades of any Participant, the Clearing Corporation shall be deemed to have incurred no obligations respecting the Trades that are not so accepted. It shall be incumbent upon the Participants who are parties to any such Trades to take such steps as the Participants may deem necessary or proper for such Participants' own protection.

**317. Authority of President.**

Without limitation of any authority conferred by the Certificate of Incorporation, the Bylaws, other provisions of these Rules, or resolutions of the Board or any committee of the Board, the President is authorized, should he deem it necessary or advisable, to take such action consistent with the Risk Plan as he deems necessary or appropriate for the protection of the Clearing Corporation. The President may take such action pending a meeting of the Risk Committee, but shall modify or rescind such action if so instructed by the Risk Committee or the Board.

## 4. MARGIN AND SETTLEMENTS

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### 401. Clearing Corporation Lien.

Each Participant agrees that the Clearing Corporation shall have a first lien and security interest on all Margin, Option premiums, Trades, positions and other property held in or for the accounts of such Participant as security for all obligations of such Participant to the Clearing Corporation.

### 402. Original Margin.

- (a) Margin deposits, other than variation deposits, shall be known as original Margin. The Clearing Corporation shall, from time to time, fix the amount of original Margin which shall be called to protect the Clearing Corporation on Trades in Contracts.
- (b) Original Margin shall be deposited in the manner prescribed in Rules 405 and 406. Upon performance or closing out of contracts thus secured, the original Margin deposits may be withdrawn by the Participant upon the authorization of the Clearing Corporation. Margin calls shall ordinarily be uniform, but where particular risks are deemed hazardous, the Clearing Corporation may, in its sole discretion, depart from the rule of uniformity and call for additional Margin.

### 403. Variation Deposits.

Margin called by reason of market fluctuations shall be known as variation deposits and shall be paid to the Clearing Corporation on demand in the manner prescribed by Rule 308. Variation deposits shall be deemed payments on account of Trades and positions for that Business Day and shall be reflected on statements of Trades and positions for that day. The Clearing Corporation require additional variation deposits at any time to the extent of market fluctuations.

### 404. Settlement Price.

- (a) Except as otherwise provided in this Rule, the Settlement Price for each open Contract shall be determined at the close of each day's trading, through and including the Last Trading Day, as follows:
  - (i) If a Contract is actively traded during a trading day, the Settlement Price shall be the last Trade price, or a price established within the closing range, for that Contract.
  - (ii) If a Contract is not actively traded during a trading day, the Settlement Price shall be a price established within the current bids and offers, or based on a current bid or offer, for that Contract.

- (iii) If no current bids or offers are available for an Option, the Settlement Price shall be a price established (A) in relation to quoted spread prices against other actively traded Options of the same expiration date and underlying Futures Contract, or (B) using generally accepted theoretical relationships, or (C) in relation to other actively traded Options of the same underlying Futures Contract, or (D) in relation to the prices of the underlying Futures Contract or Commodity.
  - (iv) If no current bids or offers are available for a Futures Contract, the Settlement Price shall be a price established (A) in relation to quoted spread prices against other actively traded Futures Contracts, or (B) in relation to other futures or Commodity prices.
- (b) Notwithstanding the foregoing, when deemed necessary by the Clearing Corporation in order to protect the respective interests of the Clearing Corporation and Participants, the Clearing Corporation may establish the Settlement Price for any Contract at a price deemed appropriate by the President under the circumstances. When the Clearing Corporation determines that circumstances necessitate the application of this paragraph, the reasons for that determination and the basis for the establishment of the Settlement Price in such circumstances shall be recorded.
- (c) In carrying out the responsibilities under this Rule, the Clearing Corporation may consult, as appropriate, with one or more Markets and may consider all relevant market information.

**405. Cash Margin Deposits.**

If the statement of original Margins furnished to a Participant under Rule 309 shows a deficit in original Margins, such Participant shall, at the time and in the manner prescribed by the Clearing Corporation, pay an amount in U.S. Dollars, or foreign currency acceptable to the Clearing Corporation, sufficient to cover such deficit to the Clearing Corporation. Payment will be considered made hereunder only if made in a manner prescribed by the Clearing Corporation and if such payment results in immediate credit to the account of the Clearing Corporation.

**406. Non-Cash Margin Deposits.**

In lieu of maintaining original Margins in cash, as provided for in Rule 405, Participants may deposit such types of collateral as may be approved by the Risk Committee of the Board or by the President, consistent with criteria established by the Risk Committee.

Where a Participant defaults, all non-cash Margins may be converted to cash or otherwise transferred by the Clearing Corporation for the account of the Participant or its customers without further notice.

**407. Option Premiums.**

Participants shall deposit Option premiums with the Clearing Corporation at the time and in the manner prescribed by the Clearing Corporation.



## 5. DELIVERIES

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### 501. Assignment of Deliveries.

Upon receipt of notices of intention to deliver on Futures Contracts cleared through the Clearing Corporation, issued by sellers in accordance with the rules and regulations of an Exchange Market, the Clearing Corporation shall assign such deliveries to eligible buyers in accordance with such rules and regulations. The Clearing Corporation shall promptly notify buyers as to deliveries assigned to them and shall furnish to sellers the names of buyers obligated to accept such deliveries from them. Delivery and payment therefore shall be made by and between such buyers and sellers in the time and manner prescribed by the rules and regulations of the Exchange Market.

If on the last notice day of a delivery month the total of notices of intention to deliver any Commodity is less than the total of Futures Contracts of such Commodity remaining open and required to be settled by delivery, the Clearing Corporation shall allocate the total quantity of such Commodity tendered for final delivery pro rata, as near as may be practicable, among buyers entitled to receive delivery of such Commodity, and the defaults shall be allocated in the same manner.

### 502. Purchases and Sales for Physical Delivery.

Issuance of a notice of intention to deliver by a Participant to the Clearing Corporation shall constitute an offer by such Participant to sell to the Clearing Corporation the specified quantity of the Commodity involved, at the delivery price, and to purchase from the Clearing Corporation the same quantity of the same Commodity at the same price. Acceptance of such notice by the Clearing Corporation shall constitute its acceptance of the Participant's offer to sell and repurchase. Such acceptance is effective at the time delivery is required to be made according to the rules and regulations of the Exchange Market and the Rules of the Clearing Corporation.

Assignment of delivery to a Participant by the Clearing Corporation shall constitute an offer of the Clearing Corporation to sell to such Participant the specified quantity of the Commodity involved, at the delivery price, and to purchase from such Participant the same quantity of the same Commodity at the same price. Acceptance of such assignment of delivery by such Participant shall constitute his acceptance of the Clearing Corporation's offer to sell and repurchase. Such acceptance is effective at the time delivery is required to be made according to the rules and regulations of the Exchange Market and the Rules of the Clearing Corporation.

The Clearing Corporation shall, at the time delivery is required to be made, consider the corresponding sales to such assigned buyers made hereunder as having been settled and shall apply the opposing repurchase made hereunder as an adjustment of the respective Participants' futures positions with the Clearing Corporation in the manner prescribed by these Rules.

**503. Delivery Price.**

All deliveries on Futures Contracts shall be made at the Settlement Price of the day preceding the day of issuance of notice of intention to deliver, or at the price required in the contract terms and conditions, if such terms and conditions require a different price. The statement of Trades and positions specified in Rule 307 will reflect futures positions closed by delivery and the amount of final adjustment bringing delivery prices to Settlement Prices of the day of notice.

**504. Posting of Deliveries.**

During each delivery month, the Clearing Corporation shall cause to be posted, not later than the Business Day following the filing of notices of intention to deliver, the name of each Participant issuing notices of intention to deliver on Futures Contracts and the total amount of each Commodity tendered by such Participant for delivery together with the name of each Participant accepting assignment of deliveries and the total amount of each Commodity assigned to such Participant.

**505. Settlements on Defaulted Deliveries.**

- (a) In the event a Participant fails to fulfill its delivery obligations as prescribed in these Rules, the Clearing Corporation's sole obligation shall be to pay reasonable damages proximately caused by the Default, but in no event shall the Clearing Corporation be obligated to: (i) pay any damages greater than the difference of the delivery price of the specific Commodity and the reasonable market price of such Commodity at the time delivery is required to be made in accordance with the rules and regulations of the Exchange Market and the Rules of the Clearing Corporation; (ii) make or accept delivery of the actual Commodity; (iii) pay any damages relating to the accuracy, genuineness, completeness, or acceptability of certificates, instruments, warehouse receipts or other similar documents; or (iv) pay any damages relating to the failure or insolvency of banks, custodians, escrow agents, depositories, warehouses, or similar entities that may be involved with a delivery.
- (b) Notwithstanding any provision of these Rules, the Clearing Corporation has no obligation or liability to any Participant or any other Person relating to a failure to fulfill a delivery obligation unless it is notified by the non-defaulting Participant of such failure as soon as possible, but in no event later than sixty minutes after the time the delivery obligation was to have been discharged in accordance with the rules and regulations of the Exchange Market and the Rules of the Clearing Corporation.
- (c) Delivery obligations of a Participant to another Participant which are not discharged by the Participant shall thereupon be deemed an obligation of the defaulting Participant to the Clearing Corporation. The defaulting Participant's obligations to the Clearing Corporation must be discharged not later than sixty minutes after the time such obligations originally were required to be discharged to the non-defaulting Participant.

**506. Assignment of Exercises of Options.**

Upon receipt of notices of intention to exercise Options cleared through the Clearing Corporation, issued by buyers in accordance with the rules and regulations of the Exchange Market, the Clearing Corporation shall assign such exercises to eligible sellers in accordance with such rules and regulations. The Clearing Corporation shall promptly notify selling Participants as to the exercises assigned to them and shall furnish to buying Participants the names of selling Participants obligated to accept such assignments. Delivery and payment shall be made in the time and manner prescribed by the rules and regulations of the Exchange Market.

Any Option not exercised by the time and date fixed for expiration of the Option in the rules and regulations of the Exchange Market shall not be exercisable.

**507. Exercise Price.**

All Option exercises shall be made at the strike price of the Option. The statement of Trades and positions will reflect the offsetting of each Option that was exercised and assigned, Trades and positions in Futures Contracts resulting from the exercise and assignment of Options, and the amount of the final adjustment being the strike price marked to the Settlement Price on the date the Option were exercised.

**508. Deliveries in the Event of Bankruptcy.**

- (a) This Rule shall be applicable to Contracts made on or through the facilities of an Exchange Market as and to the extent such Exchange Market has in effect one or more rules (each, a "Bankruptcy Delivery Rule") adopted in accordance with Commodity Futures Trading Commission Regulation 190.05(b).
- (b) If any customer of a Participant that is a debtor shall wish to make or take delivery under a Futures Contract as provided in a Bankruptcy Delivery Rule, such customer shall deliver written notification thereof to the Clearing Corporation not later than noon on the second Business Day, which Business Day must be within the current delivery period, following the date of the entry of the order for relief with respect to such debtor, whereupon such customer shall assume all of the obligations of the debtor to the Clearing Corporation and the opposite Participant with respect to such Futures Contract.
  - (i) If such customer is seeking to make delivery in fulfillment of such Futures Contract, such notification shall be accompanied by:
    - (A) evidence, satisfactory to the Clearing Corporation, that the debtor, on behalf of the customer, or the customer, has presented a notice of delivery to the Clearing Corporation; and
    - (B) evidence verifying to the Clearing Corporation that the customer owns and has in its possession or under its control, such certificates, instruments, warehouse receipts or other documents

as are required pursuant to the Rules and the Bankruptcy Delivery Rule to make delivery in fulfillment of such Contract.

- (ii) If such customer is seeking to take delivery in fulfillment of such futures Contract, such notification shall be accompanied by:
  - (A) the notice of delivery which has been issued by the Clearing Corporation to the debtor and allocated by the debtor to the customer, and
  - (B) evidence verifying to the Clearing Corporation that the customer owns and has in its possession or under its control a certified check, drawn on an approved depository bank and made payable to the order of the opposite Participant in the full amount payable on the delivery of the Contract.
- (c) The Clearing Corporation shall provide to the opposite Participant copies of all information provided to the Clearing Corporation pursuant to paragraph (b) above, provided, however, that the Clearing Corporation shall have no responsibility to investigate or otherwise verify the accuracy, genuineness or completeness of any certificate, instrument, warehouse receipt or other document or check delivered to or by the Clearing Corporation pursuant to the Bankruptcy Delivery Rule and this Rule and shall, in no event, have any liability for the quantity or quality of the commodity or other interest delivered.

**509. Cash Settlement.**

After trading ceases on the last day of trading for Futures Contracts without physical delivery, the Clearing Corporation shall consider the maintenance of an open position by a Participant to constitute an offer to sell to or an offer to purchase from the Clearing Corporation the specific quantity of the Futures Contract involved at the Settlement Price determined for such Futures Contract on the last day of trading in such contracts.

The Clearing Corporation shall, once trading in such Futures Contracts has terminated pursuant to the rules and regulations of the Exchange Market, consider the corresponding sales or purchases made hereunder as an adjustment of the respective Participants' positions in Futures Contracts with the Clearing Corporation in the manner prescribed by these Rules.

## 6. MISCELLANEOUS

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### 601. Emergencies.

- (a) The Board, upon the affirmative vote of the Directors voting at a meeting where a quorum is deemed present, may adopt an emergency resolution which shall supersede and supplant all contrary or inconsistent resolutions or Rules. Absent extraordinary circumstances, a Director who has a substantial financial interest in the outcome of such a vote shall abstain from deliberating and voting on the matter in question.
- (b) An emergency resolution shall expire upon the happening of either of the following events: (i) the Board shall have voted to rescind the emergency resolution; or (ii) 90 days shall have elapsed since the emergency resolution was adopted.
- (c) All Trades, all accounts and positions with the Clearing Corporation, and all Participants shall be subject to the exercise of these emergency powers by the Board.
- (d) As used herein, the term “emergency” shall include without limitation all emergency circumstances now or hereafter referenced in the Commodity Exchange Act and the Regulations of the Commodity Futures Trading Commission thereunder, and all other circumstances in which an emergency may lawfully be declared by the Board.
- (e) Except as otherwise stated in an emergency resolution adopted hereunder, the powers exercised by the Board under this Rule shall be in addition to and not in derogation of authority granted by the Certificate of Incorporation and Bylaws to a committee or officer of the Clearing Corporation to take action as specified therein.

### 602. Physical Emergencies.

In the event the physical functions of the Clearing Corporation are, or are threatened to be, severely and adversely affected by a physical emergency such as, but not limited to, fire or other casualty, bomb threats, substantial inclement weather, power failures, communications breakdowns or transportation breakdowns, the Chairman, a Vice Chairman or the President of the Clearing Corporation or, in their absence, another officer of the Clearing Corporation, is authorized to take such action as he or she shall deem necessary or appropriate to deal with such emergency.

### 603. Force Majeure.

Notwithstanding any other provision of these Rules, the Clearing Corporation shall not be obligated to perform its obligations under these Rules or any agreement with a Participant relating to Contracts, or to compensate any person for losses occasioned by any delay or failure of performance, to the extent such delay or failure is the result of acts of God, lightning, earthquake, fire, epidemic, landslide, drought, hurricane, tornado, storm,

explosion, flood, nuclear radiation, act of a public enemy or blockade, insurrection, riot or civil disturbance, strike or labor disturbance, or any other cause beyond the Clearing Corporation's reasonable control (whether or not similar to any of the foregoing).

If the Clearing Corporation shall, as a result of any of the above-described events, fail to perform any of its obligations, such failure shall be excused for a period equal to the period of delay caused by such event. In such an event, the Clearing Corporation shall give written notice thereof to the affected Market or such Participant, as the case may be, as soon as it is reasonably practicable and attempt diligently to remove such condition.

**604. Suspension of Rules.**

The time frames fixed by these Rules, interpretations or policies of the Clearing Corporation for the doing of any act or acts may be extended, or the doing of any act or acts required by these Rules or any interpretations issued by the Clearing Corporation may be waived, and any provision of these Rules or any interpretations issued by the Clearing Corporation may be suspended by the Board or by any officer of the Clearing Corporation having a rank of Vice President or higher whenever, in the judgment of the Board or such officer, such extension, waiver or suspension is necessary or expedient. Any such extension or waiver may continue in effect after the event or events giving rise thereto but shall not continue in effect for more than thirty calendar days after the date thereof unless it shall be approved by the Clearing Corporation within such period of thirty calendar days.

**605. Defaults.**

- (a) A Participant is in default (i) who fails to meet any of the Participant's obligations upon the Participant's Contracts with the Clearing Corporation, (ii) who fails to deposit Margin (whether original, special or variation) or premiums within one hour after demand by the Clearing Corporation, or (iii) who is suspended or expelled by the Market or by the Clearing Corporation. Upon such default, the Clearing Corporation may cause all open Trades of such Participant to be closed in the open market, transferred to any other Participant, or otherwise resolved as deemed appropriate by the Clearing Corporation and any debit balance owing to the Clearing Corporation shall be immediately due and payable.
- (b) In closing, transferring or otherwise resolving the open Trades of a Participant as provided in paragraph (a) of this Rule, the Clearing Corporation shall have the right:
  - (i) With respect to open Trades in a separate account of such Participant provided for in Rule 312, to set off (A) any proceeds received by the Clearing Corporation from the disposition of such open Trades and any property or proceeds thereof deposited with or held by the Clearing Corporation as Margin for such account against (B) any amounts paid by the Clearing Corporation in the disposition of such open Trades, including any commissions or other losses or expenses incurred in connection therewith or in connection with the liquidation of Margin deposits in such account and any other amounts owed to the Clearing Corporation as a result of transactions in the account or otherwise lawfully chargeable

against the account;

- (ii) With respect to the open Trades in any other account of such Participant, to set off (A) any proceeds by the Clearing Corporation from the disposition of such open Trades, any property or proceeds thereof deposited with or held by the Clearing Corporation as Margin for such account, and any other property of the Participant within the possession or control of the Clearing Corporation other than property which has been identified by such Participant as required to be segregated as provided for in Rule 312, against (B) any amounts paid by the Clearing Corporation in the disposition of such open Trades, including any commissions or other losses or expenses incurred in connection therewith or in connection with the liquidation of Margin deposits in such account, and any other obligations of the Participant to the Clearing Corporation, including obligations of the Participant to the Clearing Corporation remaining after the setoffs referred to in paragraph (b)(i) of this Rule, and any obligations arising from any other accounts maintained by the Participant with the Clearing Corporation;
  - (iii) To cause Trades and positions held in accounts of the Participant that is in Default to be offset against each other and, to the extent of any remaining imbalance, against the Trades and positions of other Participants;
  - (iv) To cause Trades and positions in Contracts held in accounts of the Participant that is in Default and of other Participants to be settled at the Settlement Price for such Contracts, or at such other price or prices as Clearing Corporation may deem fair and reasonable in the circumstances; and
  - (v) To defer closing or otherwise settling such Trades and Contracts if, in its discretion, it determines that the closing out of some or all of the suspended Participant's Trades or Contracts would not be in the best interests of Clearing Corporation or other Participants, taking into account the size and nature of the positions in question, market conditions prevailing at the time, the potential market effects of such liquidating transactions as might be directed by Clearing Corporation, and such other circumstances as it deems relevant.
- (c) Notwithstanding the foregoing, the liquidation and disposition of positions, Margin and other property subject to a cross-margin, cross-netting or common banking and settlement arrangement between the Clearing Corporation and another clearing organization shall be subject to the terms of the agreement between the Clearing Corporation and such other clearing organization.

- (d) Any obligation of the Clearing Corporation to a Participant arising from a Trade or from any provision of the Bylaws or these Rules shall be subject to all the terms of the Bylaws and Rules, including the setoff and other rights set forth herein. The rights of the Clearing Corporation set forth herein shall be in addition to other rights that the Clearing Corporation may have under applicable law and governmental regulations, other provisions of the Bylaws and Rules, additional agreements with the Participant or any other source.

**606. Fees; Fines and Charges.**

- (a) Clearing fees and other charges for Clearing Corporation services shall be as fixed from time to time by the Clearing Corporation.
- (b) In addition to any authority granted by the Bylaws, the President or his authorized representative may assess fines and charges against Participants, as and to the extent authorized, for the failure to comply with the Bylaws, these Rules or any other requirement of the Clearing Corporation. A Participant may appeal to the Board of Directors a fine, or a charge in excess of \$500, on the grounds that such fine or charge is excessive or unreasonable. On appeal, the Board may assess a different or greater penalty.

**607. Trading by Employees Prohibited.**

- (a) No employee of the Clearing Corporation shall:
  - (i) trade or participate directly or indirectly in any transaction in any commodity interest, except to the extent necessary to carry out the provisions of Rule 605 or as otherwise permitted pursuant to an exemption granted in accordance with this Rule; or
  - (ii) disclose any material, non-public information obtained as a result of such Person's employment with the Clearing Corporation where the employee has or should have a reasonable expectation that the information disclosed may assist another Person in trading any commodity interest; provided, that an employee is not prohibited from making disclosures in the course of the employee's duties, or to another self-regulatory organization, linked exchange, court of competent jurisdiction or representative of any agency or department of the federal or state government acting in his or her official capacity.
- (b) From time to time, the Clearing Corporation may adopt additional Rules which set forth circumstances under which exemptions from the trading prohibition contained in paragraph (a)(i) will be granted. The effectiveness of such rules and the procedures for administration of such rules shall be governed by applicable regulations of the Commodity Futures Trading Commission.
- (c) All terms used in this Rule shall be construed consistently with the definitions appearing in Commodity Futures Trading Commission Regulation 1.59.



**608. Forms; Transmission of Data to the Clearing Corporation.**

- (a) In connection with any transaction or matter handled through, with or by the Clearing Corporation under or pursuant to the Rules, the form of any required list, notice or other document shall be as from time to time prescribed by the Clearing Corporation, and additions to, changes in and elimination of any such forms may be made by the Clearing Corporation at any time in its discretion.
- (b) A Participant may execute any document to be delivered to the Clearing Corporation or to any other Participant pursuant to these Rules by means of a mechanically or electronically reproduced facsimile signature of a representative of the Participant; provided, that the Participant shall have complied with such requirements as may be prescribed by the Clearing Corporation in connection with the use of such facsimile signatures.

**609. Just and Equitable Principles of Trade; Acts Detrimental to the Interest or Welfare of the Clearing Corporation.**

- (a) The Clearing Corporation shall have the power to suspend or revoke clearing privileges or authorize the assessment of fines or charges against Participants for engaging in conduct inconsistent with just and equitable principles of trade.
- (b) The Clearing Corporation shall have the power to suspend or revoke clearing privileges or authorize the assessment of fines or charges against Participants for engaging in acts detrimental to the interest or welfare of the Clearing Corporation.

**610. Death, Disappearance or Incapacity of Individual Participant.**

- (a) Upon the death, disappearance or incapacity (all as reasonably determined by the Clearing Corporation) of an Individual Participant, the Clearing Corporation may cause all open Trades of such Participant to be closed in the open market, transferred to any other Participant, or otherwise resolved as deemed appropriate by the Clearing Corporation and any debit balance owing to the Clearing Corporation shall be immediately due and payable.
- (b) In closing, transferring or otherwise resolving the open Trades of an Individual Participant as provided in paragraph (a), the Clearing Corporation shall have the right, with respect to any account of such Participant, to set off (A) any proceeds received by the Clearing Corporation from the disposition of open Trades, any property or proceeds thereof deposited with or held by the Clearing Corporation as Margin for such account, and any other property of the Participant within the possession or control of the Clearing Corporation, against (B) (i) any amounts paid by the Clearing Corporation in connection with the disposition of such open Trades, including any losses, commissions or other expenses incurred in connection therewith or in connection with the liquidation of Margin deposits in such account, and (ii) any other obligations of the Participant to the Clearing Corporation.

- (c) Any obligation of the Clearing Corporation to a Participant arising from a Trade or from any provision of the Bylaws or Rules shall be subject to all the terms of the Bylaws and Rules, including the setoff and other rights set forth herein and therein. The rights of the Clearing Corporation set forth in this Rule shall be in addition to other rights that the Clearing Corporation may have under applicable law and governmental regulations, other provisions of the Rules, the Bylaws, additional agreements with the Participant or any other source. The Clearing Corporation shall be authorized to take all such actions under this Rule as the Clearing Corporation in its sole discretion determines is appropriate or necessary under the circumstances.

**611. Construction in Accordance with Illinois Law.**

The Rules of the Clearing Corporation, and all rights and obligations thereunder, shall be construed in accordance with the internal laws of the State of Illinois, without giving effect to the conflict of law provisions thereof.

7. LINKED MARKET TRANSACTIONS

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[RESERVED]

## 8. GUARANTY FUND

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### 801. General Guaranty Fund.

- (a) *Collateral Requirements.* Each Participant shall make, and maintain so long as it is a Participant, a deposit or deposits of Collateral to the General Guaranty Fund in the form and in such amounts as may be determined by The Clearing Corporation from time to time in its sole discretion ("Required Contribution"). The Clearing Corporation shall cause appropriate entries to be made in its books and records to reflect the deposit of Collateral into the General Guaranty Fund. The Clearing Corporation shall have the sole right to withdraw cash, securities or other property from, or to authorize the sale or other disposition of any securities or property held in, the General Guaranty Fund.
- (b) *Participant Default; Application of Proceeds.* If a Participant is in Default and, as a result thereof, The Clearing Corporation suffers any loss or expense upon any liquidation or other disposition of a Participant's open Contracts, or a Participant shall fail to make any other payment or render any other performance required under the Rules, then The Clearing Corporation shall (after appropriate application of Margin posted by such Participant and other funds in or payable to the accounts of the Participant) apply the Participant's contributions to the General Guaranty Fund, in the manner and in the order of priority set forth below:
  - (i) **FIRST:** To the payment of the costs and expenses of any sale, collection or other realization of such Margin or Collateral, including, without limitation, fees and expenses of counsel, and all reasonable expenses, liabilities and advances made or incurred by The Clearing Corporation in connection therewith;
  - (ii) **SECOND:** To the satisfaction of any deficiencies in the customer segregated accounts (if any) maintained by such Participant pursuant to rules of the Commission resulting, caused by or arising, directly or indirectly, from such Default;
  - (iii) **THIRD:** To the payment of any other obligations of such Participant to The Clearing Corporation (such other obligations, together with the costs and expenses, and deficiencies described in paragraphs (i) and (ii), the "General Reimbursement Obligations");
  - (iv) **FOURTH:** To the payment of any other Obligations; and
  - (v) **FIFTH:** To or upon the order of the Participant that is in Default, to The Clearing Corporation or to whomsoever may be lawfully entitled to receive the same (including, without limitation, any insurer, surety or guarantor of the obligations of The Clearing Corporation) or as a court of competent jurisdiction may direct, of any surplus then remaining from such Proceeds.

- (c) *Application of General Guaranty Fund; Other Funding.* If the Margin and other funds of a Participant that is in Default and its contributions to the General Guaranty Fund are insufficient to discharge in full the General Reimbursement Obligations of such Participant, any remaining deficiency shall be charged against the remaining assets in the General Guaranty Fund, pro rata from each other Participant's contributions thereto.

Any such deficiency shall remain a liability of the Participant to GCC, which it may collect from any other assets of such Participant or by legal process.

- (d) *Reimbursement of Collateral.* The Clearing Corporation shall notify Participants whenever an amount is paid out of the General Guaranty Fund to meet Obligations to The Clearing Corporation as provided in paragraphs (b) or (c) above. If Collateral is paid out of the General Guaranty Fund pursuant to paragraph (c) and, as a result, the amount of Collateral credited to a Participant is less than the amount it was required to maintain pursuant to paragraph (a) immediately prior to such pay out, the Participant shall deposit additional Collateral into the General Guaranty Fund in an amount at least sufficient to bring that Participant's total Collateral back to the required amount. All such additional Collateral shall be deposited prior to The Clearing Corporation's opening of business on the third Business Day following such notice or such later time as The Clearing Corporation shall determine in its sole discretion. A Participant that fails to deposit the full amount of such additional Collateral shall be in Default, and The Clearing Corporation may, in addition to any other remedies it may have, debit such Participant's house margin account for any or all or such unpaid amount.
- (e) *Lien.* As security for any and all Obligations of a Participant to The Clearing Corporation, including, but not limited to, the General Reimbursement Obligations, each Participant grants The Clearing Corporation a first-priority perfected security interest in the Participant's Collateral. In furtherance and not in limitation of the foregoing, all outstanding shares of Class A common stock of The Clearing Corporation shall be Collateral deposited in the General Guaranty Fund and subject to the foregoing grant of security interest until the same shall have been released in accordance with these Rules and the policies and practices of The Clearing Corporation.
- (f) *Non-Interference.* A Participant shall take no action, including but not limited to attempting to obtain a court order, that could interfere with the ability of The Clearing Corporation to apply its Margin, Collateral or other assets.

... **Interpretations and Policies:**

- .01 As used in this Rule 801, "Participant" includes a Participant that has been suspended or expelled by The Clearing Corporation or whose privileges in respect of Trades and Contracts have been restricted pursuant to Rule 403.
- .02 The General Guaranty Fund is solely in respect of U.S. Futures Exchange, L.L.C.

## 802. Special Guaranty Funds.

- (a) *Collateral Requirements.* The Clearing Corporation may from time to time require Participants who desire to clear Contracts traded on Markets other than U.S. Futures Exchange, L.L.C. to provide Collateral for deposit into one or more Special Guaranty Funds. All such Collateral shall be in the form and in such amounts as may be determined by The Clearing Corporation from time to time in its sole discretion ("Required Contribution"). The Clearing Corporation shall cause appropriate entries to be made in its books and records to reflect the deposit of Collateral into each such Special Guaranty Fund. The Clearing Corporation shall have the sole right to withdraw cash, securities or other property from, or to authorize the sale or other disposition of any securities or property held in, a Special Guaranty Fund.
- (b) *Participants Default; Application of Proceeds.* If a Participant is in Default and, as a result thereof, The Clearing Corporation suffers any loss or expense upon any liquidation or other disposition of a Participant's open Contracts, or a Participant shall fail to make any other payment or render any other performance required under the Rules, then The Clearing Corporation shall (after appropriate application of Margin posted by such Participant and other funds in or payable to the accounts of the Participant) apply the Participant's contributions to one or more Special Guaranty Funds, in the manner and in the order of priority set forth below:
- (i) FIRST: To the payment of the costs and expenses of any sale, collection or other realization of such Margin or Collateral, including, without limitation, fees and expenses of counsel, and all reasonable expenses, liabilities and advances made or incurred by the Clearing Corporation in connection therewith;
  - (ii) SECOND: To the satisfaction of any deficiencies in the customer segregated accounts maintained by Participants pursuant to the rules of the Commission resulting, caused by or arising, directly or indirectly, from such Default;
  - (iii) THIRD: To the payment of any other obligations of such Participant to the Clearing Corporation (such other obligations, together with the costs and expenses, and deficiencies described in paragraphs (i) and (ii), the "Special Reimbursement Obligations");
  - (iv) FOURTH: To the payment of any other Obligations; and
  - (v) FIFTH: To or upon the order of the Participant that is in Default, to the Clearing Corporation or to whomsoever may be lawfully entitled to receive the same (including, without limitation, any insurer, surety or guarantor of the obligations of the Clearing Corporation) or as a court of competent jurisdiction may direct, of any surplus then remaining from such Proceeds.

- (c) *Application of Special Guaranty Funds; Other Funding.* If the Margin and other funds of a Participant that is in Default and its contributions to Special Guaranty Funds are insufficient to discharge in full the Reimbursement Obligations of such Participant, any remaining deficiency shall be charged against the Special Guaranty Fund(s), in proportion to the Special Reimbursement Obligations attributable to the Market(s) that are supported by such Special Guaranty Fund(s);

Any such deficiency shall remain a liability of the Participant to GCC, which it may collect from any other assets of such Participant or by legal process.

- (d) *Reimbursement of Collateral.* The Clearing Corporation shall notify Participants authorized to clear Contracts for a Market whenever an amount is paid out of the Special Guaranty Fund related to that Market to meet Obligations to GCC as provided in paragraphs (b) or (c) above. If Collateral is paid out of a Special Guaranty Fund pursuant to paragraph (c) and, as a result, the amount of Collateral credited to a Participant is less than such Participant's Required Contribution, the Participant shall deposit additional Collateral into that Special Guaranty Fund in an amount such that that Participant's total Collateral in that Special Guaranty Fund is at least equal to the Required Contribution. All such additional Collateral shall be deposited prior to The Clearing Corporation's opening of business on the third Business Day following such assessment or such later time as The Clearing Corporation shall determine in its sole discretion. A Participant that fails to deposit the full amount of such additional Collateral shall be in Default.
- (e) *Lien.* As security for any and all Obligations of a Participant to the Clearing Corporation, including but not limited to, the Special Reimbursement Obligations, each Participant grants to The Clearing Corporation a first-priority perfected security interest in the Collateral.
- (f) *Non-Interference.* A Participant shall take no action, including but not limited to attempting to obtain a court order, that could interfere with the ability of the Clearing Corporation to apply its Margin, Collateral or other assets.

... **Interpretations and Policies:**

- .01** As used in this Rule 802, "Participant" includes a Participant that has been suspended or expelled by The Clearing Corporation or whose privileges in respect of Trades and Contracts have been restricted pursuant to Rule 403.

## **9. U.S. FUTURES EXCHANGE, L.L.C.**

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### **9-101. Definitions.**

#### **Bank**

For purposes of Rules 9-501 through 9-517, a U.S. commercial bank (either Federal or State charter) that is a Participant of the Federal Reserve System and has capital, surplus and undivided earnings in excess of \$100,000,000.

#### **Eurex**

Eurex Frankfurt AG, a German corporation.

#### **Eurex Clearing**

Eurex Clearing AG, Frankfurt, a German corporation.

#### **EurexUS**

U.S. Futures Exchange, L.L.C., a Delaware limited liability company.

#### **Off-Order Book Trade**

A trade in Contracts subject to the rules of EurexUS that is matched bilaterally between two Participants outside the EurexUS central order book or is generated by EurexUS on behalf of Participants, such as exchanges of futures for physicals (basis trades), exchanges of futures for swaps, block trades, strategy trades, volatility trades, and reverse trades (canceling erroneous trades), but not including a Post-Trade Transaction.

#### **On-Order Book Trade**

A trade that is matched in the central order book of EurexUS.

#### **Post-Trade Transaction**

Transfers of positions between Participants, give-ups, split-ups and such other trade and position management and similar instructions as may be authorized from time to time by the Clearing Corporation.

#### **Range**

A range, not greater than the highest trade price or less than the lowest trade price in the relevant Contract traded on EurexUS on the same Trading Day, in either case as increased or decreased by the amount(s) set forth in the rules of EurexUS.



## **Trading Day**

The trading day as determined by EurexUS from time to time.

### **9-202. Application for Participant Status.**

- (a) Persons desiring to clear Trades through the Clearing Corporation shall make application in such form as shall be prescribed by the Clearing Corporation. Each applicant must agree to abide by the Certificate of Incorporation, Bylaws, Rules, interpretations and policies of the Clearing Corporation, and the rules of EurexUS, all as in effect from time to time. An applicant for status of a Participant shall be conclusively deemed to have agreed to have no recourse against the Clearing Corporation in the event that its application to become a participant is rejected.
- (b) Notwithstanding a sale or transfer of Participant status, a Person qualified as a Participant agrees to be responsible for any violation of the Bylaws, Rules, interpretations and policies of the Clearing Corporation committed by such Person while a Participant and agrees to have any disputes which arise while a Participant which relate to or arise out of any transaction with the Clearing Corporation or status of a Participant in the Clearing Corporation resolved in accordance with the Bylaws and Rules.

### **9-310 Acceptance of Trades by Clearing Corporation**

In the case of all On-Order Book Trades, and Off-Order Book Trades falling within the Range, acceptance of the Trade occurs upon trade matching by the EurexUS trading system. In the case of Off-Order Book Trades falling outside the Range and all Post-Trade Transactions, acceptance shall occur upon receipt of all payments and deposits required to be made pursuant to these Rules by the Participants who are parties to such Trades and Transactions.

### **9-315. Limitation of Liability.**

The liability of the Clearing Corporation shall be limited to losses resulting from the substitution of the Clearing Corporation upon contracts between Participants in accordance with these Rules, but in no event shall the amount of such liability exceed the amount on deposit in the General Guaranty Fund. The Clearing Corporation shall not be liable for obligations of a non-Participant, obligations of a Participant to a non-Participant, obligations of a Participant to another Participant of the Clearing Corporation who is acting for such other Participant as broker, or obligations of a Participant to a customer, nor shall the Clearing Corporation become liable to make deliveries to or accept deliveries from a customer of its Participants.

### **9-404. Settlement Price**

- (a) Except as otherwise provided in this Rule, the Settlement Price for each open Contract shall be determined as follows:

- (i) Except for Contracts using the EurexUS trading system that have a closing auction period, the Settlement Price shall be the price recommended for such Contract by EurexUS as determined in accordance with the rules of EurexUS.
  - (ii) If a Contract using the EurexUS trading system has a closing auction period, the Settlement Price shall be the closing price as determined in accordance with the rules of EurexUS.
- (b) Notwithstanding the foregoing, when deemed necessary by the Clearing Corporation in order to protect the respective interests of the Clearing Corporation and Participants, the Clearing Corporation may establish the Settlement Price for any Contract at a price deemed appropriate by the Clearing Corporation under the circumstances. When the Clearing Corporation determines that circumstances necessitate the application of this paragraph, the reasons for that determination and the basis for the establishment of the Settlement Price in such circumstances shall be recorded.
- (c) In carrying out the responsibilities under this Rule, the Clearing Corporation may consult, as appropriate, with one or more Markets and may consider all relevant market information.

#### **9-501. Delivery Notices.**

A seller obligated or desiring to make delivery of a Commodity shall issue and deliver to the Clearing Corporation a delivery notice containing the name and business address of the issuer of such notice; the date of issue; the date of delivery; the name of the Commodity; the total contracted quantity in satisfaction of which the delivery is being tendered and such other information as the Clearing Corporation shall direct in regard to any particular Commodity.

Delivery notices shall be furnished to the Clearing Corporation electronically in such form as may be specified by the Clearing Corporation. The Clearing Corporation shall assign deliveries to Participants having Contracts to take delivery, for their own account or for one or more customers, of the same or lesser amount of the same Commodity. The Clearing Corporation shall notify such Participants of the deliveries which have been assigned to them and shall furnish to issuers of delivery notices the names of Participants obligated to accept their deliveries. Participants receiving delivery notices shall assign delivery to the oldest open contracts on their books at the close of business on the previous day.

Upon determining the buyers obligated to accept deliveries tendered by issuers of delivery notices, the Clearing Corporation shall furnish to each issuer the names of the buyers obligated to accept delivery from such Participant for each Commodity for which a notice was tendered and shall also inform the issuer of the number of contracts for which each buyer is obligated. Failure of the seller to object to such assignment by 7:00 a.m. on the business day preceding the intended date of delivery shall establish an irrebuttable presumption that the issuance of the delivery notice was authorized by the person in whose name the notice was issued.

#### **9-502. Purchases and Sales for Physical Delivery.**

Issuance of a notice of intention to deliver by a Participant to the Clearing Corporation shall constitute an offer by such Participant to sell to the Clearing Corporation the specified quantity of the Commodity involved, at the delivery price, and to purchase from the Clearing Corporation the same quantity of the same Commodity at the same price. Acceptance of such notice by the Clearing Corporation shall constitute its acceptance of the Participant's offer to sell and repurchase. Such acceptance is effective at the time delivery is required to be made according to the Rules of the Clearing Corporation.

Assignment of delivery to a Participant by the Clearing Corporation shall constitute an offer of the Clearing Corporation to sell to such Participant the specified quantity of the Commodity involved, at the delivery price, and to purchase from such Participant the same quantity of the same Commodity at the same price. Acceptance of such assignment of delivery by such Participant shall constitute his acceptance of the Clearing Corporation's offer to sell and repurchase. Such acceptance is effective at the time delivery is required to be made according to the Rules of the Clearing Corporation.

The Clearing Corporation shall, at the time delivery is required to be made, consider the corresponding sales to such assigned buyers made hereunder as having been settled and shall apply the opposing repurchase made hereunder as an adjustment of the respective Participants' futures positions with the Clearing Corporation in the manner prescribed by these Rules.

#### **9-504 Posting of Deliveries.**

During each delivery month, the Clearing Corporation shall post, not later than the Business Day following the filing of notices of intention to deliver, the name of each Participant issuing notices of intention to deliver on Futures Contracts and the total amount of each Commodity tendered by such Participant for delivery, together with the name of each Participant accepting assignment of deliveries and the total amount of each Commodity assigned to such Participant.

#### **9-505. Settlements on Defaulted Deliveries.**

- (a) If a Participant fails to fulfill its delivery obligations as prescribed in these Rules, the Clearing Corporation's sole obligation shall be to pay reasonable damages proximately caused by the Default, but in no event shall the Clearing Corporation be obligated to: (i) pay any damages greater than the difference of the delivery price of the specific Commodity and the reasonable market price of such Commodity at the time delivery is required to be made in accordance with the rules and regulations of EurexUS and the Rules of the Clearing Corporation; (ii) make or accept delivery of the actual Commodity; (iii) pay any damages relating to the accuracy, genuineness, completeness, or acceptability of certificates, instruments, warehouse receipts or other similar documents; or (iv) pay any damages relating to the failure or insolvency of banks, custodians, escrow agents, depositories, warehouses, or similar entities that may be involved with a delivery.

- (b) Notwithstanding any other provision of these Rules, the Clearing Corporation has no obligation or liability to any Participant or any other Person relating to a failure to fulfill a delivery obligation unless it is notified by the non-defaulting Participant of such failure as soon as possible, but in no event later than sixty minutes after the time the delivery obligation was to have been discharged in accordance with the rules and regulations of EurexUS and the Rules of the Clearing Corporation.
- (c) Delivery obligations of a Participant to another Participant that are not discharged by the Participant shall thereupon be deemed an obligation of the defaulting Participant to the Clearing Corporation. The defaulting Participant's obligations to the Clearing Corporation must be discharged not later than sixty minutes after the time such obligations originally were required to be discharged to the non-defaulting Participant.
- (d) If a buying Participant fails to effect payment to its assigned seller by 1:00 p.m. on the date scheduled for delivery, the selling Participant must immediately notify the Clearing Corporation. The Clearing Corporation will then determine, in its sole discretion, whether the failure of the buying Participant to effect payment constitutes a technical failure that can be remedied or whether the buyer's failure to effect payment constitutes a delivery default. If the Clearing Corporation determines, in its sole discretion, that the failure was caused by a technical failure (including a bank instruction error or failure of the Federal Reserve wire), the buyer will be allowed to make payment subsequent to 1:00 p.m. If the Clearing Corporation determines, in its sole discretion, that the failure constitutes a delivery default, the Clearing Corporation will instruct the selling Participant to sell the invoiced securities as soon as reasonably practicable. The defaulting buyer Participant will in such circumstances be liable to its assigned sellers for the amount, if any, that the reasonable sale price of the invoiced securities (including costs) is less than the original invoiced amount.

If a selling Participant fails to effect delivery to its assigned buyer by 1:00 p.m. on the date scheduled for delivery, the buying Participant must immediately notify the Clearing Corporation. The Clearing Corporation will then determine, in its sole discretion, whether the seller's failure to effect delivery constitutes a technical failure that can be remedied or whether the seller's failure to effect delivery constitutes a delivery default. If the Clearing Corporation determines that the failure was caused by a technical failure (including a bank instruction error or failure of the Federal Reserve wire), the seller will be allowed to make delivery subsequent to 1:00 p.m. If the Clearing Corporation determines that the failure constitutes a delivery default, the Clearing Corporation will instruct the buyer to purchase substitute deliverable securities as soon as reasonably practicable. The defaulting selling Participant will in such circumstances be liable to its assigned buyer(s) for the reasonable damages (including costs) incurred by the buyer(s) relating to the purchase of the substitute securities.

The Clearing Corporation's delivery guaranty to a non-defaulting buying or selling Participant shall in all cases be subject to the provisions of Rule 9-505(a) and Chapter 8 hereof.

Any claim for damages or other dispute relating to a delivery failure or default will be resolved between the applicable buying and selling Participants pursuant to binding arbitration before the National Futures Association (“NFA”). Failure by a Participant to comply with the NFA’s resolution may be subject to charges or result in the suspension of the Participant’s clearing privileges at the Clearing Corporation, or both.

**9-510. Report of Eligibility to Receive Delivery.**

Prior to 8:00 p.m. (or by such other time designated by the Clearing Corporation) of each day on which delivery notices may be delivered to the Clearing Corporation, each Participant shall report to the Clearing Corporation, at such times and in such manner as shall be prescribed by the Clearing Corporation, the amounts of its purchases of Commodities then eligible for delivery which remain open on its books in accordance with these Rules. Such reports shall show the dates on which such purchases were made, and shall exclude purchases to which the Participant has applied deliveries assigned to it but which remain open on its books pending receipt of delivery. With respect to omnibus accounts, the reports described above shall show the dates on which such purchases were made, as reflected on the ultimate customers’ account statements.

**9-511. Payment.**

Payment shall be made in Federal Funds. The buying Participant obligated to take delivery must take delivery and make payment before 1:00 p.m. on the day of delivery except as otherwise provided in Rule 9-509 and on banking holidays when delivery must be taken and payment made before 9:30 a.m. on the next banking business day. Adjustments for differences between contract prices and delivery prices established by the Clearing Corporation shall be made with the Clearing Corporation.

**9-512. Buyer's Banking Notification.**

The buying Participant shall provide the selling Participant with notice, in such form as the Clearing Corporation may prescribe from time to time, setting forth: the identification number and name of the buying Participant; the delivery date; the notification number of the delivery assignment; the identification number and name of the selling Participant making delivery; the quantity of the Commodity being delivered; the buying Participant's bank and account number; and specific Federal Reserve wire instructions for the transfer of securities. Such notice shall be provided by 4:00 p.m. on the business day immediately prior to delivery day or by such other time as may be designated by the Clearing Corporation.

**9-513. Standards.**

The contract grade(s) for delivery on Futures Contracts made under these Rules, together with any premiums or discounts applicable thereto, shall be as set forth in the rules of EurexUS.

**9-514. Deliveries on Futures Contracts.**

Deliveries against U.S. Treasury securities Futures Contracts shall be by book-entry transfer between accounts of Participants at Banks in accordance with Department of the Treasury Circular 300, Subpart O: Book-Entry Procedure. Delivery must be made no later than the last business day of the month. Notice of intention to deliver shall be given to the Clearing Corporation by 8:00 p.m., or by such other time designated by the Clearing Corporation, on the second business day preceding delivery day. If the buying Participant does not agree with the terms of the invoice received from the selling Participant, the buying Participant must notify the selling Participant, and the dispute must be settled by 9:30 a.m. on delivery day. The selling Participant must have contract grade U.S. Treasury securities in place at its Bank in a form acceptable to its Bank for delivery no later than 10:00 a.m. on delivery day. The selling Participant must notify its Bank to transfer contract grade U.S. Treasury securities by book-entry to the buying Participant's account at the buying Participant's Bank on a delivery versus payment basis. On delivery day, the buying Participant shall make funds available by 7:30 a.m. and notify its Bank to accept contract grade U.S. Treasury contracts and to remit Federal Funds to the selling Participant's account at the selling Participant's Bank in payment for delivery therefor. Contract grade U.S. Treasury securities must be transferred and payment must be made before 1:00 p.m. on delivery day.

All deliveries shall be assigned by the Clearing Corporation. Where a Participant of the Clearing Corporation has an interest both long and short for customers on its own books, it must tender to the Clearing Corporation such notices of intention to deliver as it received from its customers who are short.

**9-515. Wire Failure.**

If delivery cannot be accomplished because of a failure of the Federal Reserve wire or because of a failure of either the buying Participant's Bank's or the selling Participant's Bank's access to the Federal Reserve wire, delivery shall be made before 9:30 a.m. on the next business day on which the Federal Reserve wire or Bank access to it is operable. Interest shall, in such circumstances, accrue to the buyer beginning on the day on which the securities were to be originally delivered and shall be paid to the buyer by the seller. In the event of such failure, both the buyer and seller must provide documented evidence that the instructions were given to their respective Banks in accordance with Rules 9-511 and 9-514 and that all other provisions of Rules 9-511 and 9-514 have been complied with.

**9-516. Date of Delivery.**

Delivery of U.S. Treasury securities may be made by the selling Participant upon any permissible delivery day of the delivery month the seller may select. Delivery of U.S. Treasury securities must be made no later than the last business day of the delivery month.

**9-517. Seller's Invoice to Buyers.**

Upon determining the buyers obligated to accept deliveries tendered by issuers of delivery notices, the Clearing Corporation shall promptly furnish each issuer the names of the buyers obligated to accept delivery from such issuer and a description of each Commodity tendered

by him which was assigned by the Clearing Corporation to each such buyer. Thereupon, sellers (issuers of delivery notices) shall prepare invoices addressed to their assigned buyers, describing the documents to be delivered to each such buyer. Such invoices shall show the amount which buyers must pay to sellers in settlement of the actual deliveries, based on the delivery prices established by the Clearing Corporation, and adjusted for applicable interest payments. Such invoices shall be delivered to the Clearing Corporation by 2:00 p.m., or by such other time designated by the Clearing Corporation, on the business day preceding the intended date of delivery, except on the next-to-last business day of the month, where such invoices shall be delivered to the Clearing Corporation by 3:00 p.m., or by such other time as may be designated by the Clearing Corporation. Upon receipt of such invoices, the Clearing Corporation shall promptly make them available to buyers in the manner determined by the Clearing Corporation from time to time.

## 10. MERCHANTS' EXCHANGE LLC

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### 10-101. Definitions

#### Exchange

The Merchants' Exchange LLC.

#### ME Contract

The term "ME Contract" has the meaning set forth in Rule 101 in relation to the definition of "Exchange Market."

### 10-315. Limitation of Liability.

The liability of the Clearing Corporation shall be limited to losses resulting from the substitution of the Clearing Corporation upon contracts between Participants in accordance with these Rules, but in no event shall the amount of such liability hereunder or under any other provision of these Rules exceed the total amount on deposit in the Emerging Markets Guaranty Fund. The Clearing Corporation shall not be liable for obligations of a non-Participant, obligations of a Participant to a non-Participant, obligations of a Participant to another Participant of the Clearing Corporation who is acting for such other Participant as broker, or obligations of a Participant to a customer, nor shall the Clearing Corporation become liable to make deliveries to or accept deliveries from a customer of its Participants.

### 10-404. Settlement Prices.

- (a) The Settlement Price for each open ME Contract means the price for that Contract established in accordance with this Rule at the close of each day's trading.
- (b) Except as otherwise provided in this Rule, the daily Settlement Price for each open ME Contract shall be determined as follows:
  - (i) If an ME Contract is actively traded during a trading day, the Settlement Price shall be the last Trade price or a price established within the closing range, for that Contract.
  - (ii) If an ME Contract is not actively traded during a trading day, the Settlement Price shall be a price established within the current bids and offers, or based on a current bid or offer, for that ME Contract.



- (iii) If no current bids or offers are available for an ME contract, the Settlement Price shall be a price established (A) in relation to quoted spread prices against other actively traded ME Contracts, or (B) in relation to other Futures, Option or Commodity prices.
- (c) The Settlement Price for Final Settlement of an ME Contract shall be the price required by the Exchange contract terms and conditions.
- (d) Notwithstanding the foregoing, when deemed necessary by the Clearing Corporation in order to protect the respective interests of the Clearing Corporation and Participants, the Clearing Corporation may establish the Settlement Price for any ME Contract at a price deemed appropriate under the circumstances. When the Clearing Corporation determines that circumstances necessitate the application of this paragraph, the reasons for that determination and the basis for the establishment of the Settlement Price in such circumstances shall be recorded.
- (e) In carrying out the responsibilities under this Rule, the Clearing Corporation may consult the Exchange and may consider all relevant market information.

**10-505. Delivery Default.**

The Clearing Corporation shall under no circumstances be obligated to make or accept deliveries in satisfaction of ME Contracts made on or through the facilities of the Exchange, nor shall the Clearing Corporation have any obligation or liability to any Participant or to any other person relating to a failure to fulfill a delivery Obligation following the Clearing Corporation's assignment of Participant buyers to selling Participant as provided herein.

Following the Clearing Corporation's issuance of notices regarding delivery assignments, the Participants shall be substituted in lieu of the Clearing Corporation as buyers and sellers in the ME Contracts between the Clearing Corporation and Participant sellers and buyers, respectively, and the ME Contracts between such Participants and the Clearing Corporation will be deemed discharged and terminated, in each case effective from and after Final Settlement.

## 11. COMMODITIES MANAGEMENT EXCHANGE, INC.

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### 11-101. Definitions.

#### CMX

Commodities Management Exchange, Inc.

#### CMX Contract

The term "CMX Contract" has the meaning set forth in Rule 101 in relation to the definition of "OTC Market."

#### CMX Trading System

The electronic Trade matching system operated by CMX for the trading of CMX Contracts.

### 11-304. Offsets.

Where, as the result of substitution under Rule 501, any Participant has bought from Clearing Corporation any amount of a given CMX Contract for a particular delivery and subsequently, and prior to such delivery, such Participant sells to the Clearing Corporation any amount of the same CMX Contract for the same delivery, the subsequent transaction shall be deemed *pro tanto* a settlement or adjustment of the prior transaction. In like manner, where a Participant sells to the Clearing Corporation any amount of a given CMX Contract for a particular delivery and subsequently, and before delivery, such Participant buys any amount of the same CMX Contract for the same delivery, the second transaction shall be deemed *pro tanto* a settlement or adjustment of the prior transaction. Thereupon, such Participant shall become liable to pay the loss or entitled to collect the profit, as the case may be, upon such adjusted transactions. For purposes of this Rule, the first Trades made shall be deemed the first Trades offset.

### 11-310. Acceptance of Trades by the Clearing Corporation.

- (a) The Clearing Corporation shall accept Trades only if such Trades are submitted by or on behalf of a Participant.

- (b) A Trade in a CMX Contract shall not be deemed to be accepted by the Clearing Corporation until the later of: (i) receipt of all payments and deposits required to be made pursuant to these Rules by the Participants who are parties to the Trade, and (ii) thirty minutes after the Clearing Corporation's matching of Trade confirmations submitted by Participants. The Clearing Corporation may at any time prior to the expiration of such thirty-minute period decline to accept such Trade, whether or not the Clearing Corporation has received the Margin and other payments and deposits required to be made in respect thereof. In such an event, the Clearing Corporation will promptly notify the affected Participants and CMX.
- (c) Issuance by the Clearing Corporation to a Participant of the statement of Trades and positions provided for in Rule 307 shall not constitute confirmation that the Trades listed on such statement have been accepted by the Clearing Corporation.

... **Interpretations and Policies:**

- .01 The Clearing Corporation's normal business hours are from 7:00 a.m. to 4:00 p.m. on Business Days. In the event that a Trade is received or matched between 3:30 p.m. and 7:00 a.m., the Clearing Corporation will not be deemed to have accepted such Trade until 7:30 a.m. on the next Business Day. On Business Days on which normal business hours do not apply, the times referenced above will be adjusted accordingly.
- .02 If the Clearing Corporation declines to accept a Trade (as provided in paragraph (b)), it will refund the Participants' Margin and other payments and deposits. In the event that one of the Participants is in Default, the Clearing Corporation will refund Margin, payments and deposits only to the Participant that is not in Default.

**11-312. Reserved.**

**11-315. Limitation of Liability.**

The liability of the Clearing Corporation shall be limited to losses resulting from the substitution of the Clearing Corporation upon contracts between Participants in accordance with these Rules, but in no event shall the amount of such liability hereunder or under any other provision of these Rules exceed the total amount on deposit in the Emerging Markets Guaranty Fund. The Clearing Corporation shall not be liable for obligations of a non-Participant, obligations of a Participant to a non-Participant, obligations of a Participant to another Participant of the Clearing Corporation who is acting for such other Participant as broker, or obligations of a Participant to a customer, nor shall the Clearing Corporation become liable to make deliveries to or accept deliveries from a customer of its Participants.

**11-404. Settlement Prices.**

- (a) The Settlement Price for a CMX Contract means the price for such CMX

Contract established by the Clearing Corporation in accordance with this Rule.

- (b) The Settlement Price for each open CMX Contract shall be determined based upon the recommendation of CMX. In carrying out the responsibilities under this Rule, the Clearing Corporation may consult, as appropriate, any committee of the Clearing Corporation, and may consider all relevant market information, including (but not limited to) price data from spot, forward, and derivative markets for both physical and financial products.
- (c) The Settlement Price for Final Settlement of a CMX Contract shall be the price required by the terms and conditions established by CMX for such CMX Contract.
- (d) Notwithstanding the foregoing, when deemed necessary by the Clearing Corporation in order to protect the respective interests of the Clearing Corporation and Participants, the Clearing Corporation may establish the Settlement Price for any CMX Contract at a price deemed appropriate by the Clearing Corporation under the circumstances. When the Clearing Corporation determines that circumstances necessitate the application of the powers conferred hereby, the reasons for that determination and the basis for the establishment of the Settlement Price in such circumstances shall be recorded.
- (e) In carrying out the responsibilities under this Rule, the Clearing Corporation may consult, as appropriate, any committees of the Clearing Corporation or the Exchange, and may consider all relevant market information.
- (f) In no event shall the Settlement Price (including the Settlement Price for Final Settlement) of any CMX AL MW Transaction Premium (single-day swap) or CMX AL MW Transaction Premium (monthly-average swap) be less than \$.0005/pound.

**11-501 –**

**11-504. Reserved.**

**11-505. Delivery Default.**

The Clearing Corporation shall under no circumstances be obligated to make or accept deliveries in satisfaction of CMX Contracts made on or through the facilities of the Exchange, nor shall the Clearing Corporation have any obligation or liability to any Participant or to any other person relating to a failure to fulfill a delivery Obligation following the Clearing Corporation's assignment of Participant buyers to selling Participant as provided herein.

The Clearing Corporation shall, at the time delivery is required to be made according to the rules of the Exchange and these Rules, consider the corresponding sales to such assigned buying Participants made hereunder as having been settled, shall adjust the respective Participants' positions with the Clearing Corporation in the manner prescribed by these Rules, and shall have no further obligation to Participants in respect of such CMX Contracts and positions.

11-506–

11-508. Reserved.

**11-509. Cash Settlement.**

After trading ceases on the Last Trading Day, the Clearing Corporation shall deem the maintenance by a Participant of an open position in a CMX Contract to constitute an offer to sell to or buy from the Clearing Corporation, as the case may be, the specific quantity of the commodity or other interest that underlies such CMX Contract at the final Settlement Price established in accordance with Rule 11-404.

Cash settlement of CMX Contracts shall ordinarily be made on the second Business Day after the Last Trading Day. The Clearing Corporation shall, at the time cash settlement is required to be made, consider the corresponding sales or purchases made hereunder as an adjustment of the respective Participants' positions with the Clearing Corporation in the manner prescribed by these Rules.

## APPENDIX 11-A

Product Specification – CMX AL London NA A380  
(Single-Day Settlement)

<b>CMX Contract Description</b>	<b>CMX AL London NA A380 (Single-Day Settlement)</b>
Clearing Corporation Description	AL Ldn NA A380 Day
Commodity Code	AA
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Two Business Days preceding the third Wednesday of the contract month
Cash Settlement	Third Wednesday of the contract month
Contract Months	Monthly out to 60 months

## APPENDIX 11-A

**Product Specification – CMX AL London NA A380  
(Monthly-Average Settlement)**

<b>CMX Contract Description</b>	<b>CMX AL London NA A380 (Monthly-Average Settlement)</b>
Clearing Corporation Description	AL Ldn NA A380 MAS
Commodity Code	AB
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Last Business Day of the contract month
Cash Settlement	Two Business Days following Last Trading Day
Contract Months	Monthly out to 60 months

APPENDIX 11-A

Product Specification – CMX AL Midwest Survey A380  
(Single-Day Settlement)

CMX Contract Description	CMX AL Midwest Survey A380 (Single-Day Settlement)
Clearing Corporation Description	AL MW Srvy A380 Day
Commodity Code	AC
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Two Business Days preceding the third Wednesday of the contract month
Cash Settlement	Third Wednesday of the contract month
Contract Months	Monthly out to 60 months



## APPENDIX 11-A

**Product Specification – CMX AL Midwest Survey A380  
(Monthly-Average Settlement)**

<b>CMX Contract Description</b>	<b>CMX AL Midwest Survey A380 (Monthly-Average Settlement)</b>
Clearing Corporation Description	AL MW Srvy A380 MAS
Commodity Code	AD
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Last Business Day of the contract month
Cash Settlement	Two Business Days following Last Trading Day
Contract Months	Monthly out to 60 months

**APPENDIX 11-A****Product Specification – CMX AL London Alloy  
(Single-Day Settlement)**

<b>CMX Contract Description</b>	<b>CMX AL London Alloy (Single-Day Settlement)</b>
Clearing Corporation Description	AL Ldn Alloy Day
Commodity Code	AE
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Two Business Days preceding the third Wednesday of the contract month
Cash Settlement	Third Wednesday of the contract month
Contract Months	Monthly out to 60 months

## APPENDIX 11-A

**Product Specification – CMX AL London Alloy  
(Monthly-Average Settlement)**

<b>CMX Contract Description</b>	<b>CMX AL London Alloy (Monthly-Average Settlement)</b>
Clearing Corporation Description	AL Ldn Alloy MAS
Commodity Code	AF
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Last Business Day of the contract month
Cash Settlement	Two Business Days following Last Trading Day
Contract Months	Monthly out to 60 months

## APPENDIX 11-A

Product Specification – CMX AL London Hi Grade  
(Single-Day Settlement)

CMX Contract Description	CMX AL London Hi Grade (Single-Day Settlement)
Clearing Corporation Description	AL Ldn Hi Grade Day
Commodity Code	AG
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Two Business Days preceding the third Wednesday of the contract month
Cash Settlement	Third Wednesday of the contract month
Contract Months	Monthly out to 60 months

**APPENDIX 11-A**

**Product Specification – CMX AL London Hi Grade  
(Monthly-Average Settlement)**

<b>CMX Contract Description</b>	<b>CMX AL London Hi Grade (Monthly-Average Settlement)</b>
Clearing Corporation Description	AL Ldn Hi Grade MAS
Commodity Code	AH
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Last Business Day of the contract month
Cash Settlement	Two Business Days following Last Trading Day
Contract Months	Monthly out to 60 months

APPENDIX 11-A

Product Specification – CMX AL Midwest Transaction Price Survey  
(Single-Day Settlement)

CMX Contract Description	CMX AL Midwest Transaction Price Survey (Single-Day Settlement)
Clearing Corporation Description	AL MW Trns Srvy Day
Commodity Code	AI
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Two Business Days preceding the third Wednesday of the contract month
Cash Settlement	Third Wednesday of the contract month
Contract Months	Monthly out to 60 months

APPENDIX 11-A

Product Specification – CMX AL Midwest Transaction Price Survey  
(Monthly-Average Settlement)

CMX Contract Description	CMX AL Midwest Transaction Price Survey (Monthly-Average Settlement)
Clearing Corporation Description	AL MW Trns Srvy MAS
Commodity Code	AJ
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Last Business Day of the contract month
Cash Settlement	Two Business Days following Last Trading Day
Contract Months	Monthly out to 60 months

**APPENDIX 11-A**

**Product Specification –CMX AL New York Primary  
(Single-Day Settlement)**

<b>CMX Contract Description</b>	<b>CMX AL New York Primary (Single-Day Settlement)</b>
Clearing Corporation Description	AL NY Primary Day
Commodity Code	AK
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Third to last Business Day of the contract month
Cash Settlement	Last Business Day of the contract month
Contract Months	Monthly out to 60 months



APPENDIX 11-A

Product Specification – CMX AL New York Primary  
(Monthly-Average Settlement)

<b>CMX Contract Description</b>	<b>CMX AL New York Primary (Monthly-Average Settlement)</b>
Clearing Corporation Description	AL NY Primary MAS
Commodity Code	AL
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Last Business Day of the contract month
Cash Settlement	Two Business Days following Last Trading Day
Contract Months	Monthly out to 60 months

## APPENDIX 11-A

**Product Specification – CMX AL MW Transaction Premium  
(Single-Day Settlement)**

<b>CMX Contract Description</b>	<b>CMX AL MW Transaction Premium (Single-Day Settlement)</b>
Clearing Corporation Description	AL MW Prem PL Day
Commodity Code	AM
Contract Unit	440,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$220.00
Last Trading Day	Two Business Days preceding the third Wednesday of the contract month
Cash Settlement	Third Wednesday of the contract month. The Settlement Price for Final Settlement will in no event be less than .05 cents (\$.0005) per pound.
Contract Months	Monthly out to 60 months

**Product Specification – CMX AL MW Transaction Premium  
(Monthly-Average Settlement)**

<b>CMX Contract Description</b>	<b>CMX AL MW Transaction Premium (Monthly-Average Settlement)</b>
Clearing Corporation Description	AL MW Prem PL MAS
Commodity Code	AN
Contract Unit	440,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$220.00
Last Trading Day	Last Business Day of the contract month
Cash Settlement	Two Business Days following Last Trading Day. The Settlement Price for Final Settlement will in no event be less than .05 cents (\$.0005) per pound.
Contract Months	Monthly out to 60 months

## 12. CHEMCONNECT, INC.

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### 12-101. Definitions.

#### **ChemConnect**

ChemConnect, Inc.

#### **ChemConnect Contract**

The term “ChemConnect Contract” has the meaning set forth in Rule 101 in relation to the definition of “OTC Market.”

#### **Contract Value**

As to any ChemConnect Contract on any day, the product of the current Settlement Price and the contract size per lot (as set forth in Appendix 12-A).

#### **Default**

Any event that would constitute a default under Rule 605 or Rule 12-804.

#### **Delivery Collateral**

All collateral held by Clearing Corporation, as escrow agent, in respect of a ChemConnect Contract following Final Settlement of any ChemConnect Contract that provides for physical delivery. “Original Delivery Collateral” and “Supplementary Delivery Collateral” shall have the meanings set forth in Rule 12-701(b).

#### **Final Settlement**

With respect to a Participant that has open trades or positions in ChemConnect Contracts at the close of trading on the Last Trading Day, the issuance of instructions by the Clearing Corporation to such Participant’s settlement bank to debit or credit the Participant’s variation settlement account on the next Business Day and the acceptance thereof by such settlement bank.

#### **... Interpretations and Policies:**

- .01 The Clearing Corporation ordinarily will effect Final Settlement of ChemConnect Contracts by 6:40 a.m. on the first Business Day following the Last Trading Day in such ChemConnect Contract.

## **ChemConnect User Agreement**

The agreement between ChemConnect and a Participant or Customer governing the responsibilities of parties to ChemConnect Contracts, including the terms for delivery thereof.

## **ChemConnect System**

The system operated by ChemConnect for the trading of ChemConnect Contracts.

## **Last Trading Day**

As to any ChemConnect Contract, the last day on which a particular delivery month or expiration is available on the ChemConnect System.

## **Non-Defaulting Participant**

The term “non-Defaulting Participant” has the meaning given that term in Rule 12-705.

## **Swap Settlement Collateral**

All collateral (including Initial Swap Collateral and Supplementary Swap Collateral) held by the Clearing Corporation, as escrow agent, following Final Settlement, in respect of a ChemConnect Contract that provides for cash settlement.

## **12-304. Offsets.**

- (a) Where, as the result of substitution under Rule 301, any Participant has bought from the Clearing Corporation any amount of a given ChemConnect Contract for a particular delivery and subsequently, and prior to such delivery, such Participant sells to the Clearing Corporation any amount of the same ChemConnect Contract for the same delivery, the subsequent transaction shall be deemed *pro tanto* a settlement or adjustment of the prior transaction. In like manner, where a Participant sells to the Clearing Corporation any amount of a given ChemConnect Contract for a particular delivery and subsequently, and before delivery, such Participant buys any amount of the same ChemConnect Contract for the same delivery, the second transaction shall be deemed *pro tanto* a settlement or adjustment of the prior transaction. Thereupon, such Participant shall become liable to pay the loss or entitled to collect the profit, as the case may be, upon such adjusted transactions. For purposes of this Rule, the first Trades made shall be deemed the first Trades offset.
- (b) The Clearing Corporation will, upon direction from a Participant, establish one or more sub-accounts within such Participant’s account at the Clearing Corporation. The Clearing Corporation will ordinarily offset long and short positions in ChemConnect Contract that are identified by the Participant as having been made for such a sub-account.

... **Interpretations and Policies:**

- .01 A Participant is permitted to establish one or more sub-accounts for itself or for Customers. In the event of a Default, the applicable Guaranty Funds will be applied only to the combined (net) position in those sub-accounts.

**12-310. Acceptance of Trades by the Clearing Corporation.**

- (a) The Clearing Corporation shall accept Trades for clearance only if such Trades are submitted on behalf of a Participant.
- (b) A Trade (other than a Transfer Trade or a Block Trade) in a ChemConnect Contract shall not be deemed to be accepted by the Clearing Corporation until thirty minutes after the Clearing Corporation's receipt of corresponding sides to a Trade submitted to it by ChemConnect. The Clearing Corporation may at any time prior to the expiration of such period decline to accept such Trade. In that event, the Clearing Corporation will promptly notify the affected Participants and ChemConnect.
- (c) A Transfer Trade shall not be accepted until the Clearing Corporation has received from the Participants who are parties to the Trade all payments and deposits required to be made pursuant to these Rules.
- (d) A Block Trade shall be submitted to the Clearing Corporation, together with such additional information as may be required and, if not rejected by the Clearing Corporation within one hour of the submission thereof by ChemConnect, shall be deemed accepted by the Clearing Corporation. In the event that the Clearing Corporation rejects a Block Trade, it will promptly notify the affected Participants and ChemConnect.
- (e) Issuance by the Clearing Corporation to a Participant of the statement of Trades and positions provided for in Rule 307 shall not constitute confirmation that the Trades listed on such statement have been accepted by the Clearing Corporation.
- (f) As used herein, (i) the term "Block Trade" shall mean a privately negotiated transaction in a ChemConnect Contract that is submitted to the Clearing Corporation by ChemConnect but not executed through the ChemConnect System.

... **Interpretations and Policies:**

- .01 The Clearing Corporation's normal business hours are from 7:00 a.m. to 4:00 p.m. on Business Days. In the event that a Trade (other than a Block Trade) is received between 3:30 p.m. and 7:00 a.m., the Clearing Corporation will not be deemed to have accepted such Trade until 7:30 a.m. on the next Business Day. In the event that a Block Trade is submitted to the Clearing Corporation

between 3:00 p.m. and 7:00 a.m., the Clearing Corporation will not be deemed to have accepted such Trade until 8:00 a.m. on the next Business Day. On Business Days on which normal business hours do not apply, the time frames referenced above will be adjusted accordingly.

**12-312. Reserved.**

**12-315. Limitation of Liability.**

The liability of the Clearing Corporation shall be limited to losses resulting from the substitution of the Clearing Corporation upon contracts between Participants in accordance with these Rules, but in no event shall the amount of such liability hereunder or under any other provision of these Rules exceed the total amount on deposit in the Emerging Markets Guaranty Fund. The Clearing Corporation shall not be liable for obligations of a non-Participant, obligations of a Participant to a non-Participant, obligations of a Participant to another Participant of the Clearing Corporation who is acting for such other Participant as broker, or obligations of a Participant to a customer, nor shall the Clearing Corporation become liable to make deliveries to or accept deliveries from a customer of its Participants.

**12-402. Original Margins.**

- (a) Margin, other than variation settlements, shall be known as original Margin. The Clearing Corporation shall, from time to time, fix the amount of original Margin which shall be called to protect the Clearing Corporation on Trades in ChemConnect Contracts. On the Last Trading Day, original Margin for any ChemConnect Contract that settles by physical delivery shall be equal to at least 30% of the Contract Value. On the Last Trading Day, original Margin for any ChemConnect Contract that cash settles shall be equal to at least 10% of the Contract Value.
- (b) When the amount callable shall have been fixed, such Margin shall be called by the Clearing Corporation. Normally, Margin calls will be uniform, but where particular risks are deemed hazardous, the Clearing Corporation may depart from the rule of uniformity and call for additional Margin. Upon performance or closing out of Contracts thus secured, original Margin deposits may be withdrawn by the Participant upon the authorization of the Clearing Corporation except as otherwise provided in Rules 12-501 and 12-502.
- (c) Original Margin may be required of Participants on a gross basis, without reduction for opposite positions in the same ChemConnect Contract, and shall be deposited in the manner prescribed by the Clearing Corporation.

**12-404. Settlement Prices.**

- (a) The Settlement Price for a ChemConnect Contract means the price for such ChemConnect Contract established in accordance with this Rule at the close of each day's trading.

- (b) The Settlement Price for each open ChemConnect Contract shall be determined by the Clearing Corporation based upon the recommendation of ChemConnect. The Clearing Corporation may consult, as appropriate, any committee of the Clearing Corporation, and may consider all relevant market information, including (but not limited to) price data from spot, forward, and derivative markets for both physical and financial products.
- (c) The Settlement Price for Final Settlement of a ChemConnect Contract shall be the price established pursuant to the terms and conditions of the ChemConnect Contract User Agreement.
- (d) Notwithstanding the foregoing, when deemed necessary by the Clearing Corporation in order to protect the respective interests of the Clearing Corporation and Participants, the Clearing Corporation may establish the Settlement Price for any ChemConnect Contract at a price deemed appropriate by the Clearing Corporation under the circumstances. When the Clearing Corporation determines that circumstances necessitate the application of the powers conferred hereby, the reasons for that determination and the basis for the establishment of the Settlement Price in such circumstances shall be recorded.
- (e) In carrying out the responsibilities under this Rule, the Clearing Corporation may consult, as appropriate, any committees of the Clearing Corporation or ChemConnect, and may consider all relevant market information.

**12-501. Assignment of Deliveries and Swap Settlements.**

- (a) By 3:00 p.m. on the first Business Day following the Last Trading Day, the Clearing Corporation shall assign buyers by account and sellers by account for delivery purposes. The Clearing Corporation shall thereupon notify Participants of the account-to-account assignments. Such notification shall be given by no later than 5:00 p.m. on the first Business Day following the Last Trading Day. The Clearing Corporation shall also notify ChemConnect of the account-to-account assignments. ChemConnect shall identify the names of and the contact information for the respective assigned accounts and provide such information to the Participants and the Clearing Corporation.



- (b) Provided that a Participant is not in Default, the Clearing Corporation shall instruct the Participant to deposit for credit to an escrow account maintained by the Clearing Corporation an amount equivalent to the original Margin requirement that is on deposit with the Clearing Corporation as of Final Settlement. Such amount shall be held in escrow by the Clearing Corporation as Original Delivery Collateral. During the delivery month (from the second business day after Last Trading Day until delivery), the buying Participant and selling Participant will be required to deliver to the Clearing Corporation, for credit to an escrow account maintained by the Clearing Corporation, such amounts (Supplementary Delivery Collateral) as required pursuant to the terms of the ChemConnect User Agreement. Such Supplementary Delivery Collateral will be transferred by wire transfer of immediately available funds of the United States of America to the escrow account designated by the Clearing Corporation. The Clearing Corporation shall release Supplementary Delivery Collateral pursuant to the terms of the ChemConnect User Agreement.
- (c) In the event that the Clearing Corporation is notified by both Participants that assigned accounts have agreed to the terms of an alternative delivery process, Delivery Collateral held by the Clearing Corporation in respect of such assigned accounts shall be returned or released to the Participants as provided in Rule 12-502(d)(iii).
- (d) By 3:00 p.m. on the first Business Day following the Last Trading Day, the Clearing Corporation shall assign buyers by account and sellers by account for swap settlement purposes. The Clearing Corporation shall thereupon notify Participants of the account-to-account assignments. Such notification shall be given by no later than 5:00 p.m. on the first Business Day following the Last Trading Day. The Clearing Corporation shall also notify ChemConnect of the account-to-account assignments. ChemConnect shall identify the names of and the contact information for the respective assigned accounts and provide such information to the Participants and the Clearing Corporation.
- (e) Provided that a Participant is not in Default, the Clearing Corporation shall instruct the Participant to deposit for credit to an escrow account maintained by the Clearing Corporation an amount equivalent to the original Margin requirement that is on deposit with the Clearing Corporation as of Final Settlement. Such amount shall be held in escrow by the Clearing Corporation as Initial Swap Collateral. During the settlement month (from the second business day after Last Trading Day until swap settlement), the buying Participant and selling Participant will be required to deliver to the Clearing Corporation, for credit to an escrow account maintained by the Clearing Corporation, such amounts (Supplementary Swap Collateral) as required pursuant to the terms of the ChemConnect User Agreement. Such Supplementary Swap Collateral will be transferred by wire transfer of immediately available funds of the United States of America to the escrow account designated by the Clearing Corporation. The Clearing Corporation shall release Supplementary Swap Collateral pursuant to the terms of the ChemConnect User Agreement.

- (f) In the event that the Clearing Corporation is notified by both Participants that assigned accounts have agreed to the terms of an alternative swap process, Swap Settlement Collateral held by the Clearing Corporation in respect of such assigned accounts shall be returned or released to the Participants as provided in Rule 12-502(d)(iii).

**12-502. Purchases and Sales for Physical Delivery; Application of Delivery Collateral; Application of Swap Settlement Collateral.**

- (a) A ChemConnect Contract that has not been liquidated or offset prior to the termination of trading on the Last Trading Day shall be settled by delivery or swap settlement in the manner established by the ChemConnect User Agreement unless otherwise settled pursuant to the terms of an alternative delivery process (as provided in Rule 12-501(c)) or alternative swap settlement as provided for in Rule 12-501(f).
- (b) Following the Clearing Corporation's issuance of notices regarding delivery assignments(as provided in Rule 12-501(a)) or swap settlement (as provided for in Rule 12-501(d), the Clearing Corporation shall assign Participant buyers receiving such notices to Participant sellers receiving such notices and the Participant buyers shall be substituted in lieu of the Clearing Corporation as buyer in the ChemConnect Contracts between the Clearing Corporation and Participant sellers, and the ChemConnect Contracts between Participant buyers and the Clearing Corporation will be deemed discharged and terminated, in each case effective from and after Final Settlement. The buyer and seller Participants shall continue to be subject to the requirements of Rule 12-501 notwithstanding such substitution.
- (c) Pursuant to the terms of the ChemConnect User Agreement, with respect to delivery contracts, Participant buyers will be required to provide an amount that represents full payment to be held in escrow by the Clearing Corporation (the "Escrowed Payment Amount"). The Escrowed Payment Amount will not be deemed to be an Obligation of the Participant buyer to the Clearing Corporation and therefore, failure of a Participant buyer to post the Escrowed Payment Amount with the Clearing Corporation shall not be considered a default under the Clearing Corporation Rule 12-605. The Clearing Corporation shall release any Escrow Payment Amount held by it as escrow agent at such time as provided for in the ChemConnect User Agreement.
- (d) Provided that a Participant has not notified the Clearing Corporation of a delivery default or swap settlement default, the Clearing Corporation will release Delivery Collateral or Swap Settlement Collateral to the Participant that has posted the same as provided herein.

- (i) The Clearing Corporation will return Delivery Collateral deposited by a selling Participant on the tenth (10<sup>th</sup>) Business Day after the scheduled delivery day unless the Counterparty Participant has provided timely written notice to the Clearing Corporation, as escrow agent, that delivery was not made timely and in full.
- (ii) The Clearing Corporation will return any Delivery Collateral and Escrow Payment Amount deposited by a buying Participant on the tenth (10<sup>th</sup>) Business Day after the scheduled payment date established by ChemConnect unless the Counterparty Participant has provided timely written notice to the Clearing Corporation, as escrow agent, that such payment was not made timely and in full.
- (iii) The Clearing Corporation will return Swap Settlement Collateral deposited by a Participant on the second Business Day after the last day of the swap settlement month.
- (iv) Provided that a Participant has not notified the Clearing Corporation of a delivery default or swap settlement default, the Clearing Corporation, as escrow agent, will release any Delivery Collateral and Escrow Payment Amount or Swap Settlement Collateral, as applicable, to selling and buying Participants that have entered into an alternative delivery process (as provided in Rule 12-501(c)) or alternative swap settlement (as provided for in Rule 12-501(f)) on the second Business Day following notice of the alternative delivery process or alternative swap settlement. In the event that only one such Participant is in Default, the Clearing Corporation will, as escrow agent, release Delivery Collateral solely to the non-Defaulting Participant.
- (e) Notwithstanding the foregoing, if the Clearing Corporation, as escrow agent, receives written instructions signed by ChemConnect or an order of a court of competent jurisdiction to the effect that a Participant is entitled to receive an amount of Delivery Collateral, Escrow Payment Amount, or Swap Settlement Collateral identified in such written instructions or order, the Clearing Corporation shall disburse such amount of such collateral to such Participant.

- (f) Beyond the exercise of reasonable care in the custody and preservation thereof, the Clearing Corporation will have no duty as to any Margin, Delivery Collateral, Swap Settlement Collateral, or Escrow Payment Amount in its possession or control or in the possession or control of any sub-agent or bailee or any income therefrom or as to the preservation of rights against prior parties or any other rights pertaining thereto. The Clearing Corporation will be deemed to have exercised reasonable care in the custody and preservation of Margin, Delivery Collateral, Swap Settlement Collateral, or Escrow Payment Amount in its possession or control if such Margin, Delivery Collateral, Swap Settlement Collateral, or Escrow payment Amount is accorded treatment substantially equal to that which it accords its own property, and will not be liable or responsible for any loss or damage to any Margin, Delivery Collateral, Swap Settlement Collateral, or Escrow Payment Amount, or for any diminution in the value thereof, by reason of any act or omission of any sub-agent or bailee selected by the Clearing Corporation in good faith or by reason of any act or omission by the Clearing Corporation pursuant to instructions from a Participant, except to the extent that such liability arises from the Clearing Corporation's gross negligence or willful misconduct. THE CLEARING CORPORATION SHALL NOT BE LIABLE FOR ANY LOSS, COST, OR EXPENSE ARISING FROM THE FAILURE OF A PARTICIPANT OR CUSTOMER OR OTHER NON-PARTICIPANT TO PERFORM ANY OF ITS DELIVERY OR SWAP SETTLEMENT OBLIGATIONS, INCLUDING THE POSTING OF DELIVERY COLLATERAL, SWAP SETTLEMENT COLLATERAL OR ESCROW PAYMENT AMOUNT.

**12-503. Delivery Price; Swap Settlement Price.**

- (a) All deliveries on ChemConnect Contracts shall be made at the Settlement Price for such ChemConnect Contract on the Last Trading Day.
- (b) Pursuant to the terms of the ChemConnect User Agreement, the final swap settlement amount payable by either the seller or buyer, as appropriate, for a applicable ChemConnect Contract shall be the difference between the Settlement Price on the Last Trading Day and the arithmetic average of the daily market values of the underlying physical product as such values are determined in accordance with ChemConnect's policies.

**12-505. Settlements on Defaulted Deliveries.**

- (a) The Clearing Corporation, as escrow agent, shall not under any circumstance be obligated to make or accept deliveries or to make swap settlement payments in satisfaction of ChemConnect Contracts, nor shall the Clearing Corporation have any obligation or liability to any Participant or to any other person relating to a failure to fulfill a delivery obligation or make a swap settlement payment following the Clearing Corporation's assignment of delivery instructions and swap settlements as provided in Rule 12-501.

- (b) In the event that a Participant (a “Defaulting party”) shall fail to fulfill its delivery obligations (including payment therefor) or its swap settlement obligations and the opposite Participant (the “non-Defaulting Participant”) shall have given timely notice thereof as provided in Rule 12-502(c), the Clearing Corporation’s sole obligation, as escrow agent, shall be to release to the non-Defaulting Participant any Delivery Collateral or Swap Settlement Collateral, as applicable, held by the Clearing Corporation in respect of the Defaulting party’s positions, pursuant to the instructions of ChemConnect or a court of competent jurisdiction. In the event that more than one non-Defaulting Participant is entitled thereto, the Clearing Corporation shall allocate such Delivery Collateral or swap Settlement Collateral, as applicable, ratably among the non-Defaulting Participants pursuant to the instructions of ChemConnect or a court of competent jurisdiction. In the event that there is a conflict or inconsistency in respect of any such instructions, the Clearing Corporation shall be entitled to determine, in its sole discretion, the controlling instructions.
- (c) Notwithstanding anything to the contrary in these Rules (including, without limitation, Rule 12-605), the Clearing Corporation, as escrow agent, holds Delivery Collateral, any Escrow Payment Amount, and Swap Settlement Collateral to secure the obligations of a Participant arising under ChemConnect Contracts and will not retain or apply Delivery Collateral, any Escrow Payment Amount, or Swap Settlement Collateral in satisfaction of a Participant’s obligations to the Clearing Corporation.

**12-605. Defaults.**

- (a) A Participant is in Default if such Participant (i) is in default under Rule 605, (ii) fails to meet any of its Obligations upon its Contracts with the Clearing Corporation, (iii) fails to deposit Margin within one hour after demand by the Clearing Corporation, (iv) fails to satisfy any of its obligations under Rule 802 or (v) is suspended, expelled or prohibited from trading by a Market or by the Clearing Corporation. Upon such Default, the Clearing Corporation may impose limitations, conditions and restrictions upon such Participant or terminate the status of the Participant, and may cause all open Trades of such Participant to be closed in the open market, transferred to any other Participant, or otherwise resolved as deemed appropriate by the Clearing Corporation, and any debit balance owing to the Clearing Corporation shall be immediately due and payable.
- (b) In closing, transferring or otherwise resolving the open Trades of a Participant as provided in paragraph (a) of this Rule, the Clearing Corporation shall have the right:
  - (i) With respect to open Trades in Contracts, to set off (A) any proceeds received by the Clearing Corporation from the disposition of such open Trades and any property or proceeds thereof deposited with or held by the Clearing Corporation as Margin for such accounts against (B) any amounts paid by the Clearing Corporation in the disposition of such

open Trades, including any commissions or other losses or expenses incurred in connection therewith or in connection with the liquidation of Margin deposits in such accounts and any other amounts owed to the Clearing Corporation as a result of transactions in the accounts or otherwise lawfully chargeable against the accounts;

- (ii) With respect to all other open Trades (in ChemConnect Contracts or otherwise) held in any other account of such Participant, to set off (A) any proceeds received by the Clearing Corporation from the disposition of such open Trades, any property or proceeds thereof deposited with or held by the Clearing Corporation as Margin for such accounts, and any other property of the Participant within the possession or control of the Clearing Corporation against (B) any amounts paid by the Clearing Corporation in the disposition of such open Trades, including any commissions or other losses or expenses incurred in connection therewith or in connection with the liquidation of Margin in such account, and any other obligations of the Participant to the Clearing Corporation, including obligations of the Participant to the Clearing Corporation remaining after the setoffs referred to in subparagraph (b)(i) of this Rule, and any obligations arising from any other accounts maintained by the Participant with the Clearing Corporation;
- (iii) To cause Trades and positions held in accounts of the Participant that is in Default to be offset against each other and, to the extent of any remaining imbalance, against the Trades and positions of other Participants;
- (iv) To cause Trades and positions in Contracts held in accounts of the Participant that is in Default and of other Participants to be settled at the Settlement Price for such Contracts, or at such other price or prices as the Clearing Corporation may deem fair and reasonable in the circumstances; and
- (v) To defer closing or otherwise settling such Trades and Contracts if, in its discretion, it determines that the closing out of some or all of the suspended Participant's Trades or Contracts would not be in the best interests of the Clearing Corporation or other Participants, taking into account the size and nature of the positions in question, market conditions prevailing at the time, the potential market effects of such liquidating transactions as might be directed by the Clearing Corporation, and such other circumstances as it deems relevant.

- (c) If the Board of Directors or the President shall (i) determine that the Clearing Corporation is unable, for any reason, to close out any Contracts in a prompt and orderly fashion, or to convert to cash any Margin of a suspended Participant, or (ii) elects pursuant to paragraph (b)(v) not to close out any such Trades or Contracts, the Clearing Corporation may, solely for the purpose of reducing the risk to the Clearing Corporation resulting from the continued maintenance of such positions or the continued holding of such Margin, authorize the execution of hedging transactions, including, without limitation, the purchase or sale of underlying commodities or commodities deemed similar thereto or Contracts on any such underlying or similar interests. Any authorization of hedging transactions shall be reported promptly to the Board, and any such Trades that are executed shall be reported to the Board on a daily basis. Any costs or expenses, including losses, sustained by the Clearing Corporation in connection with transactions effected for its account as authorized hereby shall be charged to the account of the suspended Participant, and any gains realized on such transactions shall be credited to such account.
- (d) Any obligation of the Clearing Corporation to a Participant arising from a Trade or from any provision of the Rules shall be subject to all the terms of the Rules, including the setoff and other rights set forth in this Rule. The rights of the Clearing Corporation set forth in this Rule shall be in addition to other rights that the Clearing Corporation may have under applicable law and governmental regulations, other provisions of these Rules, additional agreements with the Participant or any other source.

... **Interpretations and Policies:**

- .01 The Clearing Corporation may declare a Participant that is in Default under this Rule 12-605 also to be in Default under and Rule 605.

**PRODUCT SPECIFICATIONS – CHEMCONNECT CONTRACTS**



## Product Specification Ethane

Item	Specification
Contract Description	Ethane Forward – Enterprise – Mt. Belvieu
Contract Size per lot	42,000 US Gallons (1,000 Barrels)
Currency	US Dollars and cents per Gallon
Last Trading Day	Last business day of the month preceding the delivery month
Contract Series	Up to 24 consecutive calendar months.
Delivery	F.O.B. at Enterprise Products Partners L.P. facility in Mt. Belvieu, Texas. Product shall conform to industry standards for fungible liquefied ethane gas as determined by the Gas Processors Association.

Item	Specification
Contract Description	Ethane Swap – Enterprise - Mt. Belvieu
Contract Size per lot	42,000 US Gallons (1,000 Barrels)
Currency	US Dollars and cents per Gallon
Last Trading Day	Last business day of the month preceding the delivery month.
Contract Series	Up to 24 consecutive calendar months.
Final Settlement/Clearing Corporation	Final Settlement Price for Last Trading Day
Final ChemConnect Swap Settlement Price	Arithmetic average of the daily market values for the underlying product as determined each Business Day during the swap settlement month in accordance with ChemConnect's policies.

## Product Specification Propane

Item	Specification
Contract Description	Propane Forward – TET - Mt. Belvieu
Contract Size per lot	42,000 US Gallons (1,000 Barrels)
Currency	US cents per Gallon
Last Trading Day	Last business day of the month preceding the delivery month.
Contract Series	Up to 24 consecutive calendar months.
Delivery	F.O.B. at Texas Eastern Products Pipeline Company (TEPPCO) facility in Mt. Belvieu, Texas. Product shall conform to industry standards for fungible liquefied propane gas as determined by the Gas Processors Association (GPA-HD-5).

Item	Specification
Contract Description	Propane Swap – Mt. Belvieu
Contract Size per lot	42,000 US Gallons (1,000 Barrels)
Currency	US cents per Gallon
Last Trading Day	Last business day of the month preceding the delivery month.
Contract Series	Up to 24 consecutive calendar months.
Final Settlement/Clearing Corporation	Final Settlement Price for Last trading Day
Final ChemConnect Swap Settlement Price	Arithmetic average of the daily market values for the underlying product as determined each Business Day during the swap settlement month in accordance with ChemConnect's policies.

### **13. INTERCONTINENTALEXCHANGE, INC.**

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#### **13-101. Definitions.**

##### **Contract Value**

As to any ICE Contract on any day, the product of the current Settlement Price and the contract size per lot (as set forth in Appendix 13-A).

##### **Customer**

A party, other than a Participant, that is obligated to make or receive physical delivery in settlement of an ICE Contract.

##### **Daily Limit**

“Daily Limit” shall have the meaning set forth in Rule 13-310(g).

##### **Default**

Any event that would constitute a default under Rule 605 or Rule 13-605.

##### **Delivery Collateral**

Original Delivery Collateral and Supplementary Delivery Collateral held by the Clearing Corporation as escrow agent in respect of an ICE Contract following Final Settlement of such ICE Contract. “Original Delivery Collateral” and “Supplementary Delivery Collateral” have the meanings set forth in Rule 13-501(c).

##### **EEl Agreement**

The form of Edison Electric Institute Master Power Purchase & Sale Agreement (including the completed Cover Sheet thereto, plus the Collateral Annex and completed Paragraph 10) incorporated by reference into Annex F of the ICE Participant Agreement, as amended from time to time.

##### **Final Settlement**

With respect to a Participant that has open Trades or positions in ICE Contracts at the close of trading on the Last Trading Day, the issuance of instructions by the Clearing Corporation to such Participant’s settlement bank to debit or credit the Participant’s variation settlement account on the next Business Day and the acceptance thereof by such settlement bank.

... **Interpretations and Policies:**

- .01 The Clearing Corporation ordinarily will effect Final Settlement of a physically settled ICE Contract by 6:40 a.m. on the first Business Day following the Last Trading Day in such ICE Contract.

**ICE**

IntercontinentalExchange, Inc.

**ICE Contract**

The term "ICE Contract" has the meaning set forth in Rule 101 in relation to the definition of "OTC Market."

**ICE Participant Agreement**

The agreement between ICE and a Participant or Customer governing the responsibilities of parties to ICE Contracts, including the terms for delivery thereof.

**ICE Trading System**

The electronic Trade matching system operated by ICE for the trading of ICE Contracts.

**Last Trading Day**

As to any ICE Contract, the last day on which a particular delivery month or expiration is listed for trading on the ICE Trading System.

**Non-Defaulting Participant**

The term "non-Defaulting Participant" has the meaning given that term in Rule 13-505.

**13-304. Offsets.**

- (a) Where, as the result of substitution under Rule 301, any Participant has bought from the Clearing Corporation any amount of a given ICE Contract for a particular delivery and subsequently, and prior to such delivery, such Participant sells to the Clearing Corporation any amount of the same ICE Contract for the same delivery, the subsequent transaction shall be deemed pro tanto a settlement or adjustment of the prior transaction. In like manner, where a Participant sells to the Clearing Corporation any amount of a given ICE Contract for a particular delivery and subsequently, and before delivery, such Participant buys any amount of the same ICE Contract for the same delivery, the second transaction shall be deemed pro tanto a settlement or adjustment of the prior transaction. Thereupon, such Participant shall become liable to pay the loss or entitled to collect the profit, as the case may be, upon such adjusted transactions. For purposes of this Rule, the first Trades made shall be deemed the first Trades offset.

- (b) The Clearing Corporation will, upon direction from a Participant, establish one or more sub-accounts within such Participant's account at the Clearing Corporation. The Clearing Corporation will ordinarily offset long and short positions in an ICE Contract that are identified by the Participant as having been made for such a sub-account.

**13-307. Statement of Trades and Positions.**

The Clearing Corporation shall make available to Participants a statement of Trades and positions for each Business Day on which such Participant has Trades to be cleared or a position open with the Clearing Corporation.

... **Interpretations and Policies:**

- .01 Each ICE Contract represents either 400 MWhs of Western power or 800 MWhs of Eastern and Mid Continent power. One month of power will be represented by a number of Contracts equal to the number of NERC peak days in that month.

**13-310. Acceptance of Trades by the Clearing Corporation.**

- (a) The Clearing Corporation shall accept Trades for clearance only if such Trades are submitted on behalf of a Participant.
- (b) A Trade (other than a Transfer Trade or a Block Trade) in an ICE Contract shall not be deemed to be accepted by the Clearing Corporation until thirty minutes after the Clearing Corporation's receipt of a matched Trade submitted to it by ICE. The Clearing Corporation may at any time prior to the expiration of such period decline to accept such Trade. In that event, the Clearing Corporation will promptly notify the affected Participants and ICE.
- (c) A Transfer Trade shall not be accepted until the Clearing Corporation has received from the Participants who are parties to the Trade all payments and deposits required to be made pursuant to these Rules.
- (d) A Block Trade shall be submitted to the Clearing Corporation, together with such additional information as may be required and, if not rejected by the Clearing Corporation within one hour of the submission thereof, shall be deemed accepted by the Clearing Corporation. In the event that the Clearing Corporation rejects a Block Trade, it will promptly notify the affected Participants and ICE.
- (e) Issuance by the Clearing Corporation to a Participant of the statement of Trades and positions provided for in Rule 307 shall not constitute confirmation that the Trades listed on such statement have been accepted by the Clearing Corporation.

- (f) The Clearing Corporation may from time to time establish Daily Limits and may in such circumstances decline to accept for clearance Trades in ICE Contracts that exceed any such Daily Limit. Except as otherwise provided in a resolution adopted pursuant to Rule 601 or 602, Daily Limits shall not apply on the last two trading days for any ICE Contract. Notwithstanding the foregoing, the Clearing Corporation may in its discretion accept such a Trade if doing so will reduce the Clearing Corporation's net exposure to a Participant. The Clearing Corporation will give Participants prompt notice of the adoption of Daily Limits.
- (g) As used herein, (i) the term "Block Trade" shall mean a privately negotiated transaction in an ICE Contract that is submitted to the Clearing Corporation by ICE but not executed through the ICE Trading System, and (ii) the term "Daily Limit" shall mean a price that is above or below the preceding day's Settlement Price by more than a specified increment.

... **Interpretations and Policies:**

- .01 The Clearing Corporation's normal business hours are from 7:00 a.m. to 4:00 p.m. on Business Days. In the event that a Trade (other than a Block Trade) is received or matched between 3:30 p.m. and 7:00 a.m., the Clearing Corporation will not be deemed to have accepted such Trade until 7:30 a.m. on the next Business Day. In the event that a Block Trade is submitted to the Clearing Corporation between 3:00 p.m. and 7:00 a.m., the Clearing Corporation will not be deemed to have accepted such Trade until 8:00 a.m. on the next Business Day. On Business Days on which normal business hours do not apply, the time frames referenced above will be adjusted accordingly.

**13-311. Trades for Customers.**

Where a Participant clears a Trade for a Customer, the Participant for whose account such Trade has been cleared becomes liable to the Clearing Corporation and the Clearing Corporation liable to such Participant on such Trade as if the Trade were for the account of the Participant, subject in all cases to the provisions of Rule 13-304.

**13-312. Reserved.**

**13-315. Limitation of Liability**

The liability of the Clearing Corporation shall be limited to losses resulting from the substitution of the Clearing Corporation upon contracts between Participants in accordance with these Rules, but in no event shall the amount of such liability hereunder or under any other provision of these Rules exceed the total amount on deposit in the Emerging Markets Guaranty Fund. The Clearing Corporation shall not be liable for obligations of a non-Participant, obligations of a Participant to a non-Participant, obligations of a Participant to another Participant of the Clearing Corporation who is acting for such other Participant as broker, or obligations of a Participant to a customer, not shall the Clearing Corporation become liable to make deliveries to or accept deliveries from a customer of its Participants.

#### **13-402. Original Margin.**

- (a) Margin, other than variation settlements, shall be known as original Margin. The Clearing Corporation shall, from time to time, fix the amount of original Margin which shall be called to protect the Clearing Corporation on Trades in ICE Contracts. On the Last Trading Day, original Margin for any ICE Contract that settles by physical delivery shall be equal to 50% of the Contract Value.
- (b) When the amount callable shall have been fixed, such Margin shall be called by the Clearing Corporation. Normally, Margin calls will be uniform, but where particular risks are deemed hazardous, the Clearing Corporation may depart from the rule of uniformity and call for additional Margin. Upon performance or closing out of Contracts thus secured, original Margin deposits may be withdrawn by the Participant upon the authorization of the Clearing Corporation except as otherwise provided in Rules 13-501 and 13-502.
- (c) Original Margin may be required of Participants on a gross basis, without reduction for opposite positions in the same ICE Contract, and shall be deposited in the manner prescribed by the Clearing Corporation.

#### **13-404. Settlement Prices.**

- (a) The Settlement Price for an ICE Contract means the price for such ICE Contract established in accordance with this Rule at the close of each day's trading.
- (b) The Settlement Price for each open ICE Contract shall be determined by the Clearing Corporation based upon the recommendation of ICE. The Clearing Corporation may consult, as appropriate, any committee of the Clearing Corporation, and may consider all relevant market information, including (but not limited to) price data from spot, forward, and derivative markets for both physical and financial products.
- (c) The Settlement Price for Final Settlement of an ICE Contract shall be the price required by the ICE Contract terms and conditions.
- (d) Notwithstanding the foregoing, when deemed necessary by the Clearing Corporation in order to protect the respective interests of the Clearing Corporation and Participants, the Clearing Corporation may establish the Settlement Price for any ICE Contract at a price deemed appropriate by the Clearing Corporation under the circumstances. When the Clearing Corporation determines that circumstances necessitate the application of the powers conferred hereby, the reasons for that determination and the basis for the establishment of the Settlement Price in such circumstances shall be recorded.

- (e) In carrying out the responsibilities under this Rule, the Clearing Corporation may consult, as appropriate, any committees of the Clearing Corporation or the Exchange, and may consider all relevant market information.

... **Interpretations and Policies:**

- .01 The Clearing Corporation may establish Daily Limits as provided in Rule 13-310. In such an event, the Settlement Price ordinarily will be established at a price that is within such Daily Limit.

**13-501. Assignment of Deliveries.**

- (a) By 8:00 a.m. on the first Business Day following the Last Trading Day, Participant buyers and Participant sellers shall report their gross long and short positions, respectively, and shall identify the holders (whether Participants or Customers) of each long and short position in an ICE Contract reflected on the books of such Participant.
- (b) By 10:00 a.m. on the first Business Day following the Last Trading Day, the Clearing Corporation will provide ICE with a report of the long and short delivery positions held by Participants and Customers for delivery, as reported to the Clearing Corporation as provided in paragraph (a). ICE will provide the Clearing Corporation with instructions regarding the delivery assignment of all such open positions, including the names of the parties that are to make and take delivery and their Participants (if the Participant is not itself the party that is to make or take delivery), by no later than 4:00 p.m. on the first Business Day following the Last Trading Day. The Clearing Corporation shall thereupon notify Participants of the assignments made by ICE. Such notification shall be given by no later than 6:00 p.m. on the first Business Day following the Last Trading Day.
- (c) Provided that a Participant is not in Default, original Margin deposited by that Participant in respect of ICE Contracts that remain open after Final Settlement shall be retained by the Clearing Corporation as Original Delivery Collateral. Thereafter, such a Participant shall deposit with the Clearing Corporation Supplementary Delivery Collateral in a form and manner acceptable to the Clearing Corporation and in an amount sufficient to cause the Delivery Collateral for each such ICE Contract to be equivalent to the Contract Value. Such Supplementary Delivery Collateral shall be deposited by no later than 5:00 p.m. on the third Business Day following the Last Trading Day. Failure to do so shall constitute a Default pursuant to Rule 605 and shall subject the Participant to discipline by the Clearing Corporation.



- (d) Notwithstanding the provisions of paragraph (c), assigned Participants shall not be required to deposit Supplementary Delivery Collateral if they have notified the Clearing Corporation that they have agreed to the terms of an alternative delivery arrangement. Any such notice shall be given by 3:30 p.m. on the second Business Day following the Last Trading Day or such later time and in such form as may be specified by the Clearing Corporation. In such an event, Original Delivery Collateral held by the Clearing Corporation in respect of such deliveries shall be returned or released to the Participants as provided in Rule 13-502(c)(iii).

**13-502. Purchases and Sales for Physical Delivery; Application of Delivery Collateral.**

- (a) An ICE Contract that has not been liquidated or offset prior to the termination of trading on the Last Trading Day shall be settled by delivery in the manner established by the ICE Participant Agreement unless otherwise settled pursuant to the terms of an alternative delivery arrangement as provided in Rule 13-501(d).
- (b) Following the Clearing Corporation's issuance of notices regarding delivery assignments as provided in Rule 13-501(b), the Clearing Corporation shall assign Participant buyers to Participant sellers in accordance with the delivery assignments made by ICE, and the Participants shall be substituted in lieu of the Clearing Corporation as buyers and sellers in the ICE Contracts between the Clearing Corporation and Participant sellers and buyers, respectively, and the ICE Contracts between such Participants and the Clearing Corporation will be deemed discharged and terminated, in each case effective from and after Final Settlement. The buyer and seller Participants shall continue to be subject to the requirements of Rule 13-501 notwithstanding such substitution. Following satisfaction of the obligations of the buyer and seller Participants as to Delivery Collateral under Rule 13-501(c), the contract between the Participants will be novated and replaced, as applicable, by a contract between the Customers making and receiving delivery with respect to such contract in accordance with the ICE Participant Agreement.
- (c) Acting solely in its capacity as escrow agent, the Clearing Corporation will release Delivery Collateral to the Participant that has posted the same as provided herein.
  - (i) The Clearing Corporation will return Delivery Collateral deposited by a selling Participant on the third Business Day after the last delivery day unless the buying Participant has provided timely written notice to the Clearing Corporation that delivery was not made timely and in full.
  - (ii) The Clearing Corporation will return Delivery Collateral deposited by a buying Participant on the second Business Day after the scheduled payment date established by ICE unless the selling Participant has provided timely written notice to the Clearing Corporation that such payment was not made timely and in full.

- (iii) Provided that a Participant is not in Default, the Clearing Corporation will release Original Delivery Collateral to selling and buying Participants that have entered into an alternative delivery arrangement (as provided in Rule 13-501(d)) on the third Business Day following the Last Trading Day. In the event that only one such Participant is in Default, the Clearing Corporation will release Original Delivery Collateral solely to the non-Defaulting Participant.
- (d) Notwithstanding the foregoing, if the Clearing Corporation receives written instructions signed by ICE or an order of a court of competent jurisdiction to the effect that a Participant is entitled to receive an amount of Delivery Collateral identified in such written instructions or order, the Clearing Corporation will disburse such amount of Delivery Collateral to such Participant.
- (e) Beyond the exercise of reasonable care in the custody and preservation thereof, the Clearing Corporation will have no duty as to any Margin or Delivery Collateral in its possession or control or in the possession or control of any sub-agent or bailee or any income therefrom or as to the preservation of rights against prior parties or any other rights pertaining thereto. The Clearing Corporation will be deemed to have exercised reasonable care in the custody and preservation of Margin or Delivery Collateral in its possession or control if such Margin or Delivery Collateral is accorded treatment substantially equal to that which it accords its own property, and will not be liable or responsible for any loss or damage to any Margin or Delivery Collateral, or for any diminution in the value thereof, by reason of any act or omission of any sub-agent or bailee selected by the Clearing Corporation in good faith or by reason of any act or omission by the Clearing Corporation pursuant to instructions from a Participant, except to the extent that such liability arises from the Clearing Corporation's gross negligence or willful misconduct. THE CLEARING CORPORATION SHALL NOT BE LIABLE FOR ANY LOSS, COST, OR EXPENSE ARISING FROM THE FAILURE OF A PARTICIPANT OR CUSTOMER OR OTHER NON-PARTICIPANT TO PERFORM ANY OF ITS DELIVERY OBLIGATIONS, INCLUDING THE POSTING OF DELIVERY COLLATERAL.

**13-503. Delivery Price.**

All deliveries on ICE Contracts shall be made at the Settlement Price for such ICE Contract on the Last Trading Day.

**13-505. Settlements on Defaulted Deliveries.**

- (a) The Clearing Corporation shall not under any circumstance be obligated to make or accept deliveries in satisfaction of ICE Contracts, nor shall the Clearing Corporation have any obligation or liability to any Participant or to any other person relating to a failure to fulfill a delivery obligation following the Clearing

Corporation's assignment of delivery instructions as provided in Rule 13-501.

- (b) In the event that a Participant or Customer (a "Defaulting party") shall fail to fulfill its delivery obligations (including payment therefor) and the opposite Participant (the "non-Defaulting Participant") shall have given timely notice thereof as provided in Rule 13-502(c), the Clearing Corporation's sole obligation shall be to release to the non-Defaulting Participant or its Customer, as appropriate, any Delivery Collateral held by the Clearing Corporation in respect of the Defaulting party's positions, pursuant to the instructions of ICE or a court of competent jurisdiction. In the event that more than one non-Defaulting Participant is entitled thereto, the Clearing Corporation shall allocate such Delivery Collateral ratably among the non-Defaulting Participants pursuant to the instructions of ICE or a court of competent jurisdiction. In the event that there is a conflict or inconsistency in respect of any such instructions, the Clearing Corporation shall be entitled to determine, in its sole discretion, the controlling instructions.
- (c) Notwithstanding anything to the contrary in these Rules (including, without limitation, Rule 13-605), the Clearing Corporation holds Delivery Collateral solely as escrow agent to secure the obligations of a Participant or a Customer arising under ICE Contracts and will not retain or apply Delivery Collateral in satisfaction of a Participant's obligations to the Clearing Corporation.

#### **13-510. Customer Deliveries.**

At least five Business Days prior to the Last Trading Day, a Participant shall confirm that each Customer holding a position in the expiring month is qualified (in the manner determined by ICE) to effect delivery. A Participant may not clear a Trade for the account of a Customer at any time during the five Business Days preceding and including the Last Trading Day unless such Trade liquidates or offsets an existing position in the Customer's account at the Participant or the Participant has confirmed or confirms promptly that the Customer is prepared (in a manner deemed satisfactory by ICE) to effect delivery. In the event that the Participant is unable timely to obtain such confirmation, it shall liquidate the Customer's positions in the expiring ICE Contract prior to the close of trading on the Last Trading Day.

#### **... Interpretations and Policies:**

- .01 ICE has established the following requirements for Customers who wish to maintain open positions on and after five Business Days prior to the Last Trading Day in an ICE Contract:

#### **PJM:**

The Customer must be a Participant of PJM.

### **Into Cinergy:**

The seller must (a) own generation (greater than the short position) within the Cinergy grid, (b) have a source (greater than the short position) outside the Cinergy grid, together with sufficient firm transmission from the source to the Cinergy grid, or (c) have entered into a valid and binding bilateral transaction that offsets the ICE Contract.

The buyer must (a) have load (greater than the long position) within the Cinergy grid or (b) have load (greater than the long position) outside the Cinergy grid, together with sufficient firm transmission from the Cinergy grid to the load, or (c) have entered into a valid and binding bilateral transaction that offsets the ICE Contract.

### **13-605. Defaults.**

- (a) A Participant is in Default if such Participant (i) is in default under Rule 605, (ii) fails to meet any of its obligations upon its Contracts with the Clearing Corporation, (iii) fails to deposit Margin within one hour after demand by the Clearing Corporation, or (iv) is suspended, expelled or prohibited from trading by a Market or by the Clearing Corporation. Upon such Default, the Clearing Corporation may impose limitations, conditions and restrictions upon such Participant or terminate the status of the Participant, and may cause all open Trades of such Participant to be closed in the open market, transferred to any other Participant, or otherwise resolved as deemed appropriate by the Clearing Corporation, and any debit balance owing to the Clearing Corporation shall be immediately due and payable.
- (b) In closing, transferring or otherwise resolving the open Trades of a Participant as provided in paragraph (a) of this Rule, the Clearing Corporation shall have the right:
  - (i) With respect to open Trades in Contracts, to set off (A) any proceeds received by the Clearing Corporation from the disposition of such open Trades and any property or proceeds thereof deposited with or held by the Clearing Corporation as Margin for such accounts against (B) any amounts paid by the Clearing Corporation in the disposition of such open Trades, including any commissions or other losses or expenses incurred in connection therewith or in connection with the liquidation of Margin deposits in such accounts and any other amounts owed to the Clearing Corporation as a result of transactions in the accounts or otherwise lawfully chargeable against the accounts;

- (ii) With respect to all other open Trades (in ICE Contracts or otherwise) held in any other account of such Participant, to set off (A) any proceeds received by the Clearing Corporation from the disposition of such open Trades, any property or proceeds thereof deposited with or held by the Clearing Corporation as Margin for such accounts, and any other property of the Participant within the possession or control of the Clearing Corporation against (B) any amounts paid by the Clearing Corporation in the disposition of such open Trades, including any commissions or other losses or expenses incurred in connection therewith or in connection with the liquidation of Margin in such account, and any other obligations of the Participant to the Clearing Corporation, including obligations of the Participant to the Clearing Corporation remaining after the setoffs referred to in subparagraph (b)(i) of this Rule, and any obligations arising from any other accounts maintained by the Participant with the Clearing Corporation;
- (iii) To cause Trades and positions held in accounts of the Participant that is in Default to be offset against each other and, to the extent of any remaining imbalance, against the Trades and positions of other Participants;
- (iv) To cause Trades and positions in Contracts held in accounts of the Participant that is in Default and of other Participants to be settled at the Settlement Price for such Contracts, or at such other price or prices as the Clearing Corporation may deem fair and reasonable in the circumstances; and
- (v) To defer closing or otherwise settling such Trades and Contracts if, in its discretion, it determines that the closing out of some or all of the suspended Participant's Trades or Contracts would not be in the best interests of the Clearing Corporation or other Participants, taking into account the size and nature of the positions in question, market conditions prevailing at the time, the potential market effects of such liquidating transactions as might be directed by the Clearing Corporation, and such other circumstances as it deems relevant.

- (c) If the Board of Directors or the President shall (i) determine that the Clearing Corporation is unable, for any reason, to close out any Contracts in a prompt and orderly fashion, or to convert to cash any Margin of a suspended Participant, or (ii) elects pursuant to paragraph (b)(v) not to close out any such Trades or Contracts, the Clearing Corporation may, solely for the purpose of reducing the risk to the Clearing Corporation resulting from the continued maintenance of such positions or the continued holding of such Margin, authorize the execution of hedging transactions, including, without limitation, the purchase or sale of underlying commodities or commodities deemed similar thereto or Contracts on any such underlying or similar interests. Any authorization of hedging transactions shall be reported promptly to the Board, and any such Trades that are executed shall be reported to the Board on a daily basis. Any costs or expenses, including losses, sustained by the Clearing Corporation in connection with transactions effected for its account as authorized hereby shall be charged to the account of the suspended Participant, and any gains realized on such transactions shall be credited to such account.
  
- (d) Any obligation of the Clearing Corporation to a Participant arising from a Trade or from any provision of the Rules shall be subject to all the terms of the Rules, including the setoff and other rights set forth in this Rule. The rights of the Clearing Corporation set forth in this Rule shall be in addition to other rights that the Clearing Corporation may have under applicable law and governmental regulations, other provisions of these Rules, additional agreements with the Participant or any other source.

**. . Interpretations and Policies:**

- .01 The Clearing Corporation may declare a Participant that is in Default under this Rule 13-605 also to be in Default under and Rule 605.

## Product Specification - PJM-West

Item	Specification
Contract Description	Physically settled US Power, Electricity Firm - LD Peak Physical, Fixed Price – PJM West Hub
Rate	50 MWh
Contract Size per lot	800 MWh
Unit of Trading	Trading takes place in multiples of 50 MWhs for a 16-hour peak day. 1 lot equals 800 peak MWhs per day. For example, a 5 lot position in a monthly contract for May 03 has a value of 5 (lots) x 21 peak days (22 minus 1 NERC holiday) x 50 (MWhs) x 16 (peak hours) = 84,000 MWhs. NOTE: For each ICE Contract, ICE will report to the Clearing Corporation a quantity equal to the number of peak days in that delivery month. [For example, one 50MWhs ICE Contract for a month will be reported to the Clearing Corporation as 21 “units,” each representing 800 MWhs (50 MWhs x 16 peak hours per day).] the Clearing Corporation’s records, therefore, will reflect the number of units associated with ICE Contracts, and transactions reported by or to the Clearing Corporation shall be effected in “units” (multiples of the number of peak days in the delivery month).
Delivery Schedule	Monday – Friday HE 08:00 HE 23:00 EPT excluding NERC Holidays
Currency	US Dollars and cents per MWh
Minimum Settlement Price Fluctuation	One US cent (\$0.01) per MWh
Last Trading Day	No Trades deliverable in the current month shall be made during the last three Business Days prior to the first calendar day of the delivery month.
Contract Series	Up to 72 consecutive calendar months commencing with the next calendar month.
Delivery	Physical delivery is effected pursuant to the terms of Annex F of the ICE Participant Agreement and the terms of the EEI Agreement incorporated by reference therein.

## Product Specification - Into Cinergy, Sellers Daily Choice

Item	Specification
Contract Description	Physically settled US Power, Electricity Into Peak Physical, Fixed Price – Into Cinergy, Sellers Daily Choice
Rate	50 MWh
Contract Size per lot	800 MWh
Unit of Trading	Trading takes place in multiples of 50 MWhs for a 16-hour peak day. 1 lot equals 800 peak MWhs per day. For example, a 5 lot position in a monthly contract for May 03 has a value of 5 (lots) x 21 peak days (22 minus 1 NERC holiday) x 50 (MWhs) x 16 (peak hours) = 84,000 MWhs. NOTE: For each ICE Contract, ICE will report to the Clearing Corporation a quantity equal to the number of peak days in that delivery month. [For example, one 50MWhs ICE Contract for a month will be reported to the Clearing Corporation as 21 “units,” each representing 800 MWhs (50 MWhs x 16 peak hours per day).] the Clearing Corporation’s records, therefore, will reflect the number of units associated with ICE Contracts, and transactions reported by or to the Clearing Corporation shall be effected in “units” (multiples of the number of peak days in the delivery month).
Currency	US Dollars and cents per MWh
Minimum Settlement Price Fluctuation	One US cent (\$0.01) per MWh
Last Trading Day	No Trades deliverable in the current month shall be made during the last three Business Days prior to the first calendar day of the delivery month.
Contract Series	Up to 72 consecutive calendar months commencing with the next calendar month.
Delivery	Physical delivery is effected pursuant to the terms of Annex F of the ICE Participant Agreement and the terms of the EEI Agreement incorporated by reference therein.



# Rules of ~~The~~ the ~~Board of Trade~~ Clearing Corporation

## 1. INTERPRETATION

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### 101. Definitions.

#### **Board; Board of ~~Governors~~ Directors**

The Board of ~~Governors~~ Directors of the Clearing Corporation.

#### **Business Day**

Any day (other than Saturdays, Sundays and holidays observed by the Clearing Corporation) on which the Clearing Corporation is open for business.

#### **Bylaws**

The Bylaws of the Clearing Corporation, as in effect from time to time.

#### **Certificate of Incorporation**

The Restated Certificate of Incorporation of the Clearing Corporation, as amended from time to time.

#### **Clearing Corporation**

The ~~Board of Trade~~ Clearing Corporation.

#### **Collateral**

At any time, such property, other than Margin, as may be delivered, or in which a security interest may be granted, by a ~~Member~~ Participant to the Clearing Corporation or its custodian, as collateral for the Obligations, and all proceeds of the foregoing.

#### **Commission**

The U.S. Commodity Futures Trading Commission.

#### **Commodities**

All goods, articles, services, rights and interests in which Exchange Contracts are dealt in.

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## **Contracts**

Exchange Contracts and OTC Contracts.

## **Default**

Any event that would constitute a default under Rule 605.

## **Exchange Contract**

A Futures Contract, Option on a Futures Contract or Option on a commodity that is dealt in on or subject to the rules of an Exchange Market and submitted to the Clearing Corporation for clearance in accordance with these Rules.

## **Exchange Market**

An exchange or market that has been designated by or registered with the Commodity Futures Trading Commission as a contract market or derivatives transaction execution facility, is party to an agreement with the Clearing Corporation for the provision of clearing services, and is specifically identified in these Rules as an Exchange Market.

### **. . . Interpretations and Policies:**

- .01 The following exchanges and markets are Exchange Markets in respect of the following Exchange Contracts:
- (a) U.S. Futures Exchange, L.L.C., with respect to (i) 30-year Treasury Bond Futures, (ii) 10-year Treasury Note Futures, (iii) 5-year Treasury Note Futures, (iv) 2-year Treasury Note Futures, (v) Options on 30-year Treasury Bond Futures, (vi) Options on 10-year Treasury Note Futures, (vii) Options on 5-year Treasury Note Futures, and (viii) Options on 2-year Treasury Note Futures, as set forth more fully in Chapter 9.
  - (b) Board of Trade of the City of Chicago, Inc., with respect to (i) Futures Contracts and Options on Corn, Futures Contracts on mini-sized Corn, Futures Contracts and Options on Soybeans, Futures Contracts on mini-sized Soybeans, Futures Contracts and Options on Wheat, Futures Contracts on mini-sized Wheat, Futures Contracts and Options on Oats, Futures Contracts and Options on Rough Rice, Futures Contracts and Options on Soybean Oil, Futures Contracts and Options on Soybean Meal, Futures Contracts and Options on 5-Year Interest Rate Swap, Futures Contracts and Options on 10-Year Interest Rate Swap, Futures Contracts on 10-Year Municipal Note Index, Futures Contracts and Options on 30-Day Federal Funds, Futures Contracts and Options on the Dow Jones Industrial Average Index, Futures Contracts on the Dow Jones-AIG Commodity Index, and Futures Contracts on the mini-sized Dow (\$5 Multiplier), but only through and including November 24, 2003; and (ii) Futures Contracts and Options (standard and flex) on U.S.

Treasury Bonds, Futures Contracts on mini-sized U.S. Treasury Bonds, Futures Contracts and Options (standard and flex) on Long-Term U.S. Treasury Notes (6½ - 10 Year), Futures Contracts on mini-sized Long-Term U.S. Treasury Notes, Futures Contracts and Options (standard and flex) on Medium-Term U.S. Treasury Notes (5 Year), Futures Contracts and Options (standard and flex) on Short-Term U.S. Treasury Notes (2 Year), Futures Contracts and Options on Long-Term Fannie Mae Benchmark Notes and Freddie Mac Reference Notes, Futures Contracts and Options on Medium-Term Fannie Mae Benchmark Notes and Freddie Mac Reference Notes, Futures Contracts on mini-sized New York Silver, Future Contracts on mini-sized New York Gold, and Futures Contracts on mini-sized Three-Month Eurodollar Time Deposits, but only through and including January 2, 2004.

- (c) Merchants' Exchange LLC, with respect to (i) Cash-Settled Brent Crude Oil Futures, (ii) Cash-Settled European Gas Oil Futures, (iii) Cash-Settled Light "Sweet" Crude Oil Futures, (iv) Cash-Settled Natural Gas Futures, (v) Cash-Settled No. 2 Heating Oil (New York Harbor Delivery) Futures, (vi) Cash-Settled Unleaded Gasoline (New York Harbor Delivery) Futures, (vii) Barge Freight Futures on the Illinois Waterway, and (viii) Barge Freight Futures on St. Louis Harbor ("ME Contracts"), as set forth more fully in Chapter 10.

#### **Final Settlement**

With respect to a ~~Member~~ **Participant** that has open Trades or positions in Contracts at the close of trading on the Last Trading Day, the issuance of instructions by the Clearing Corporation to such ~~Member's~~ **Participant's** settlement bank to debit or credit the ~~Member's~~ **Participant's** variation settlement account on the next Business Day and the acceptance thereof by such settlement bank.

#### **Futures Contracts**

Contracts for the purchase or sale of a Commodity for future delivery dealt in pursuant to the rules of an Exchange Market.

#### **General Guaranty Fund**

At any time, funds or other property of the Clearing Corporation, set aside and recorded on the books of the Clearing Corporation in support of the Obligations of Participants in respect of Contracts on specified Markets.

#### **Guaranty Funds**

The General Guaranty Fund and such Special Guaranty Funds as are in existence from time to time.

## **Last Trading Day**

The final day of trading in a Contract, as set forth in the rules of the relevant Market or in these Rules.

## **Margin**

Original Margin (including super and special margin), Option premiums and variation settlements paid or payable by or to a **Member Participant** to or by the Clearing Corporation.

## **Markets**

Exchange Markets and OTC Markets.

## **Member**

~~An Individual Member or Member Firm admitted to membership in the Clearing Corporation. As used in these Rules, the term "Individual Member" shall mean a sole proprietor or the sole owner, if any, of a Member Firm.~~

## **Member Firm**

~~A Member organized and doing business as a corporation, partnership, limited liability company or other form of organization authorized by the Clearing Corporation.~~

## **Obligations**

All financial obligations of a **Member Participant** arising under these Rules in respect of or arising out of Contracts, in either case however created, arising or evidenced, whether direct or indirect, absolute or contingent, existing, due or to become due.

## **Option**

An Option on a Futures Contract or Option on a Commodity, dealt in pursuant to the rules of an Exchange Market.

## **OTC Contract**

An agreement, contract, or transaction that is specifically identified in these Rules as an OTC Contract and submitted to the Clearing Corporation in accordance with these Rules and that is: (i) (A) an interest rate swap, option, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, or forward rate agreement; (B) a same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, or forward agreement; (C) an equity index or equity swap; (D) a debt index or debt swap; (E) a credit spread or credit swap, option, or forward agreement; (F) a commodity index or commodity swap, option, or forward agreement; or (G) a weather swap, weather derivative, or weather option; (ii) similar to any other

agreement, contract, or transaction referred to above that is a forward, swap, or option on one or more occurrences of any event, rates, currencies, commodities, economic or other indices or measures of economic or other risk or value; (iii) excluded from the Commodity Exchange Act under section 2(c), 2(d), 2(f), or 2(g) of such Act, or exempted under section 2(h) or 4(c) of such Act; or (iv) an option to enter into any, or any combination of, agreements, contracts or transactions referred to herein.

## OTC Market

A market that is party to an agreement with the Clearing Corporation for the provision of clearing services and that is specifically identified in these Rules as an OTC Market.

... Interpretations and Policies:

- .01 The following exchanges and markets are OTC Markets in respect of the following OTC Contracts:
- (a) Commodities Management Exchange, Inc. with respect to (i) CMX AL London NA A380 (Single-Day Settlement), (ii) CMX AL NA A380 (Monthly-Average Settlement), (iii) CMX AL Midwest Survey A380 (Single-Day Settlement), (iv) CMX AL Midwest Survey A380 (Monthly-Average Settlement), (v) CMX AL London Alloy (Single-Day Settlement), (vi) CMX AL London Alloy (Monthly-Average Settlement), (vii) CMX AL London Hi Grade (Single-Day Settlement), (viii) CMX AL London Hi Grade (Monthly-Average Settlement), (ix) CMX AL Midwest Transaction Price Survey (Single-Day Settlement), (x) CMX AL Midwest Survey Transaction Price (Monthly-Average Settlement), (xi) CMX AL New York Primary (Single-Day Settlement), (xii) CMX AL New York Primary (Monthly-Average Settlement), (xiii) CMX AL MW Transaction Premium (Single-Day Settlement), and (xiv) CMX AL MW Transaction Premium (Monthly-Average Settlement) (each, a "CMX Contract," and collectively, "CMX Contracts"), as set forth more fully in Chapter 11 and Appendix 11-A.
  - (b) ChemConnect, Inc. with respect to (i) Ethane Forward (F.O.B. at Enterprise Product Partners L.P. facility at Mt. Belvieu, Texas), (ii) Ethane Swap (Settled to Ethane Forward), (iii) Options on Ethane Forward, (iv) Propane Forward (F.O.B. at Texas Eastern Pipeline Company facility at Mt. Belvieu, Texas), (v) Propane Swap (Settled to Propane Forward), (vi) Options on Propane Forward (each, a "ChemConnect Contract," and collectively, "ChemConnect Contracts"), as set more fully in Chapter 12 and Appendix 12-A.
  - (c) IntercontinentalExchange, Inc., with respect to (i) PJM West Peak Power Contracts and (ii) Into Cinergy, Sellers Daily Choice Peak Power Contracts (each, an "ICE Contract," and collectively, "ICE Contracts"), as set forth more fully in Chapter 13 and Appendix 13-A.

**Participant**

A person that has been approved by the Clearing Corporation for the submission of Contracts and that is party to an agreement with the Clearing Corporation specifically relating to transactions in Contracts.

**Person**

An individual, sole proprietorship, partnership, limited liability company, association, firm, trust, corporation or other entity, as the context may require.

**President**

The President of the Clearing Corporation.

**Rule**

References to a "Rule" or "Rules" are references to the Rules of the Clearing Corporation.

**Settlement Price**

The price, established in accordance with Rule 404, for each open Contract.

**Stockholder Approval**

~~The approval of, inter alia, the restated certificate of incorporation and bylaws of the Clearing Corporation by the stockholders of the Clearing Corporation.~~

**Special Guaranty Funds**

The funds established by the Clearing Corporation in support of the Obligations of certain Members **Participants** in respect of certain Contracts in certain Markets.

**... Interpretations and Policies:**

**.01** The following guaranty fund is a Special Guaranty Fund in respect of the following Markets:

- (a) Emerging Markets Guaranty Fund, with respect to (i) Merchants' Exchange LLC, (ii) Commodities Management Exchange, Inc., (iii) ChemConnect, Inc., and (iv) IntercontinentalExchange, Inc.

**Trades**

Transactions in Contracts.

## Transfer Trades

With respect to Exchange Contracts, transactions commonly referred to as give-ups, office transfers, exchanges of futures for physicals or exchanges of futures for swaps, as well as such other transactions in Exchange Contracts as may be defined as Transfer Trades by the Clearing Corporation. With respect to OTC Contracts, transactions in OTC Contracts that are defined as Transfer Trades by the Clearing Corporation.

### 102. Scope and Interpretation.

- (a) The Rules set forth herein are applicable only to Trades and related obligations arising out of Exchange Contracts and OTC Contracts. In the event of a conflict between these Rules and the Bylaws of the Clearing Corporation, these Rules will prevail. In the event of a conflict between these Rules generally and Rules adopted by the Clearing Corporation specifically governing Trades and related obligations made on a particular Market or particular types of transactions, the Rules specifically governing such Trades, obligations or transactions will prevail. More particularly:
  - (i) The Rules in Chapters 1 - 8 are supplemented for specific Contracts and Markets by the Rules in Chapters 9 *et seq.* (Thus, for example, the definitions in Rule 101 are supplemented, for purposes of Chapter 9, by the additional definitions in Rule 9-101.) The Rules in Chapters 9 *et seq.* shall apply only to the Exchange or Market specified in the caption to such Chapter.
  - (ii) Where the numbering of a Rule in Chapters 9 *et seq.* corresponds to that of a Rule in Chapters 1 - 8, the Rule in Chapters 1 - 8 is superseded to the extent applicable by the correspondingly numbered Rule in Chapter 9 *et seq.* (Thus, for example, references in Chapter 9 to the term "Settlement Price" mean the Settlement Price established in accordance with Rule 9-404.)
  - (iii) Where a Rule in Chapter 9 *et seq.* is "[Reserved]," the correspondingly numbered Rule in Chapters 1 - 8 is made expressly inapplicable to the Markets and Contracts that are the subject of the Rules in that Chapter.
- (b) In these Rules, unless a clear contrary intention appears, (a) the singular number includes the plural number and vice versa, (b) reference to the masculine, feminine or neuter gender includes each other gender, (c) any reference to a number of days shall mean calendar days unless Business Days are specified, and (d) any reference to times shall mean the time in Chicago, Illinois. Except as otherwise specifically provided in these Rules, an act that otherwise would be required or permitted by these Rules to be performed on a date that is not a Business Day may be performed on the next day that is a Business Day.

## 2. MEMBERSHIP

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### 201. Qualifications of ~~Members~~ Participants.

- (a) The Clearing Corporation shall have the sole power to determine whether any applicant for ~~membership~~ status of Participant, or any existing ~~Member~~ Participant, satisfies the qualifications for ~~membership~~ established by the Clearing Corporation. Only persons found by the Corporation to be so qualified shall be permitted to be ~~Members~~ Participants. For the purpose of determining whether any applicant or ~~Member~~ Participant is thus qualified, the Clearing Corporation may establish minimum capital and other financial requirements for ~~Members~~ Participants, examine the books and records of any applicant or ~~Member~~ Participant, and may take such other steps as it may deem necessary to ascertain the facts bearing upon the question of qualification.
- (b) In order to justify the Clearing Corporation assuming the risk of clearing their Trades, ~~Members~~ Participants must meet and maintain such standards of business integrity, financial capacity, creditworthiness, operational capability, experience and competence as may be established by the Clearing Corporation from time to time. Without limitation of the foregoing, no applicant shall be admitted ~~to membership~~ as a participant unless:
- (i) It meets, at the time of admission and maintains thereafter, such minimum capital requirements as may be established from time to time by the Clearing Corporation.
  - (ii) It has established satisfactory relationships with, and has designated to the Clearing Corporation, an approved settlement bank for confirmation and payment of all Margins and settlements with the Clearing Corporation.
  - (iii) It maintains back-office facilities staffed with experienced and competent personnel or has entered into a facilities management agreement in form and substance acceptable to the Clearing Corporation.
  - (iv) It files in a timely manner all reports and information relating to the ~~Member~~ Participant, Persons controlling the ~~Member~~ Participant, and related or affiliated organizations as required by these Rules or otherwise required by the Clearing Corporation.



**202. Application for ~~Membership~~ Participant Status.**

- (a) Persons desiring to clear Trades through the Clearing Corporation shall make application in such form as shall be prescribed by the Clearing Corporation. Each applicant must agree to abide by the Certificate of Incorporation, Bylaws, Rules, interpretations and policies of the Clearing Corporation as in effect from time to time. An applicant for ~~membership~~ **status of a Participant** shall be conclusively deemed to have agreed to have no recourse against the Clearing Corporation in the event that its application for ~~membership~~ **to become a Participant** is rejected.
- (b) Notwithstanding a sale or transfer of ~~membership~~ **Participant status**, a Person qualified as a ~~Member~~ **Participant** agrees to be responsible for any violation of the Bylaws, Rules, interpretations and policies of the Clearing Corporation committed by such Person while a ~~Member~~ **Participant** and agrees to have any disputes which arise while a ~~Member~~ **Participant** which relate to or arise out of any transaction with the Clearing Corporation or ~~membership~~ **status of a Participant** in the Clearing Corporation resolved in accordance with the Bylaws and Rules.

**203. Restriction on Activity.**

The failure to continue to comply with the conditions of the Bylaws and Rules may subject a ~~Member~~ **Participant** to a suspension or revocation of clearing privileges. In addition, or in the alternative, and in either case in its sole discretion, the Clearing Corporation shall be authorized: (a) to impose such additional capital, Margin or other requirements as it shall deem appropriate for the protection of the Clearing Corporation and its ~~Members~~ **Participants**; (b) to allow such ~~Member~~ **Participant** to submit Trades solely for the ~~Member's~~ **Participant's** own account; (c) to allow such ~~Member~~ **Participant** to submit Trades for liquidation only; (d) to limit or restrict the type of Contracts that may be cleared by such ~~Member~~ **Participant** in any of its accounts with the Clearing Corporation; or (e) to limit or restrict the number of Contracts that are permitted to be maintained by such ~~Member~~ **Participant** in any of its accounts with the Clearing Corporation.

**204. Financial Statements of ~~Members~~ Participants.**

Each ~~Member~~ **Participant** shall submit statements of its financial condition at such times and in such manner as shall be prescribed from time to time.

**205. Parent Guarantee.**

- (a) A **Member Participant** that is organized as a corporation, the majority of whose outstanding capital stock is owned or controlled by another corporation or by a partnership or limited liability company, shall be approved for the clearing of Contracts only if its controlling parent organization or individuals with a significant ownership interest guarantee the ~~member's~~ **Participant's** obligations relating to Contracts. For purposes of this paragraph, stock of a corporate applicant or **Member Participant** which is owned or controlled by an officer, stockholder, or partner of another organization will be considered owned or controlled by such other organization. The Clearing Corporation may, for good cause shown, waive this provision.
- (b) A partnership whose partners include one or more other partnerships, corporations or limited liability companies shall be approved for the clearing of Contracts only if all of its partners are general partners. The Clearing Corporation may, for good cause shown, waive this provision.
- (c) A limited liability company, the majority of whose membership interests are owned or controlled by another limited liability company or by a corporation or partnership, shall be approved for the clearing of Contracts only if its controlling parent organization or individuals with a significant ownership interest guarantee the ~~Member's~~ **Participant's** obligations relating to Contracts. For purposes of this paragraph, membership interests which are owned or controlled by a manager, managing ~~member~~ **Participant**, an officer, shareholder or partner of another organization will be considered owned or controlled by such other organization. The Clearing Corporation may, for good cause shown, waive this provision.

**... Interpretations and Policies:**

- .01 The guarantee of a ~~Member's~~ **Participant's** obligations required by this Rule shall, unless otherwise provided in particular cases, be applicable only to Trades made for a proprietary account (as such term is defined in Commodity Futures Trading Commission Regulation 1.3(y)) or other non-customer accounts of the **Member Participant**.

**206. Common Owner Guarantee.**

- (d) No more than one **Member Participant** shall be owned or controlled, directly or indirectly, by the same Person unless:
  - (i) Each such **Member Participant** consents to the use by the Clearing Corporation of any and all assets of the **Member Participant** in the possession of the Clearing Corporation or under its control to satisfy the obligations of all such commonly owned or controlled **Member Participant** to the Clearing Corporation;

- (ii) Each such **Member Participant** guarantees to the Clearing Corporation all obligations of all such commonly owned or controlled **Members Participants**, including, without limitation, obligations arising out of house and customer account positions maintained by the Clearing Corporation; and
  - (iii) Each such **Member Participant** irrevocably consents to its immediate suspension or expulsion from ~~membership~~ **its status as a Participant** in the Clearing Corporation should it fail timely and fully to honor its guarantee of the obligations of such commonly owned or controlled **Members Participants** or should such a commonly owned or controlled **Member Participant** fail to honor its guarantee of such **Member Participant**.
- (e) The Clearing Corporation may grant exemptions from the requirements of this Rule 206 for good cause shown if it determines that such exemptions will not jeopardize the financial integrity of the Clearing Corporation.

**207. Notices Required of Members Participants.**

- (a) Each **Member Participant** shall immediately notify the Clearing Corporation, orally and in writing, of:
  - (i) Any material adverse change in the **Member's Participant's** financial condition including, but not limited to, a decline in net capital or, with respect to **Members Participants** that are not registered with the Commodity Futures Trading Commission as futures commission merchants, net worth equal of 20% or more, or if such **Member Participant** knows or has reason to believe that its adjusted net capital has fallen below the Clearing Corporation's minimum capital requirements;
  - (ii) Any proposed material reduction (and, in all cases, if the reduction is 30% or more) in the **Member's Participant's** operating capital, including the incurrence of a contingent liability which would materially affect the **Member's Participant's** capital or other representations contained in the latest financial statement submitted to the Clearing Corporation should such liability become fixed; provided, that any such reduction in operating capital shall not be effected by the **Member Participant** if the Clearing Corporation specifically objects thereto, in writing, within thirty days after receipt of written notice thereof;

- (iii) Any refusal of admission to, withdrawal of any application for membership in, any suspension, expulsion, bar, fine, censure, denial of membership, registration or license, withdrawal of any application for registration, cease and desist order, temporary or permanent injunction, denial of trading privileges, or any other sanction or discipline through an adverse determination, voluntary settlement or otherwise, by the Commodity Futures Trading Commission, the Securities and Exchange Commission, any commodity or securities exchange, clearing organization, the National Futures Association, the National Association of Securities Dealers, any self-regulatory organization or other business or professional association;
- (iv) The imposition of any restriction or limitation on the business conducted by the **Member Participant** on or with any securities or futures clearing organization or exchange (including, without limitation, any contract market, derivatives transaction facility, exempt board of trade or other trading facility), other than restrictions or limitations imposed generally on all **members Participants** of or participants in such clearing organization or exchange;
- (v) Any failure by such **Member Participant**, or any guarantor or commonly owned or controlled **Member Participant** (as provided in Rules 205 and 206) to perform any of its material contracts, obligations or agreements;
- (vi) Any determination that it, or any guarantor or commonly owned or controlled **Member Participant** (as provided in Rules 205 and 206), will be unable to perform any of its material contracts, obligations or agreements;
- (vii) The insolvency of such **Member Participant**, or of any guarantor or commonly owned or controlled **Member Participant** (as provided in Rules 205 and 206);
- (viii) The institution of any proceeding by or against the **Member Participant**, any affiliate of the **Member Participant**, or any Person with an ownership interest of greater than 5% in the **Member Participant**, under any provision of the bankruptcy laws of the United States, or under the Securities Investor Protection Act of 1970, any other statute or equitable power of a court of like nature or purpose, in which such **Member Participant** or Person is designated as the bankrupt, debtor or equivalent, or a receiver is appointed or if a receiver, trustee or similar official is appointed for the **Member Participant**, such Person, or its or their property;
- (ix) The receipt by such **Member Participant**, or the filing by such **Member Participant** with a self-regulatory organization, of a notice of material inadequacy; and

- (x) The receipt by such **Member Participant** from its independent auditors of an audit opinion that is not unqualified.
- (b) Each **Member Participant** shall promptly provide written notice to the Clearing Corporation of:
  - (i) Any changes in its name, business address, its telephone or facsimile number, electronic mail address, or any number or access code for any electronic communication device used by it to communicate with the Clearing Corporation;
  - (ii) Any proposed change in the organizational or ownership structure or management of a **Member Participant** Firm; and
  - (iii) Any transfer, offer to transfer, or termination of an Exchange Market membership, where such membership has been designated under the rules of such Exchange Market for the benefit of the **Member Participant**.

... **Interpretations and Policies:**

- .01 As used in paragraph (a)(i), the term “net capital” means the greatest of: (a) the minimum net capital requirement established by the Clearing Corporation for such **Member Participant**; (b) with respect to a **Member Participant** that is a registered futures commission merchant, adjusted net capital as provided in Commodity Futures Trading Commission Regulation 1.17; and, (c) with respect to a **Member Participant** that is a registered broker-dealer, excess adjusted net capital as provided in Securities and Exchange Commission Regulation 15c3-1.

**208. Exchange Membership.**

The Clearing Corporation may decline or restrict the ability of a **Member Participant** to clear Trades made on any Exchange where such **Member Participant** is not admitted to the privileges of membership or is not approved by such Exchange Market to clear Trades made on or subject to the rules of such Exchange Market.

209. **Termination of Membership Participant Status.**

- (a) Upon the occurrence of a Termination Event (as defined herein), the Clearing Corporation may, in its sole discretion, impose limitations, conditions and restrictions upon a **Member Participant** or terminate the status of the **Member Participant**. In such circumstances, the Clearing Corporation may, in its sole discretion, (i) decline to accept new Trades, (ii) cause open Contracts to be transferred to another clearing organization designated by the Market, with such security against claims and liabilities as the Clearing Corporation shall deem necessary for its protection, (iii) permit Trades to be tendered for liquidation only, (iv) cause open Contracts to be settled in cash or liquidated in the open market, and (v) otherwise take or omit to take such actions, or any combination thereof, as it deems necessary or appropriate in the circumstances.
- (b) As used herein, "Termination Event" shall mean the occurrence of any of the following:
  - (i) The expiration or termination of the agreement for clearing services between the Clearing Corporation and the relevant Market;
  - (ii) The expiration or termination of the agreement between the **Member Participant** and the Clearing Corporation;
  - (iii) A representation or warranty made by the **Member Participant** to the Clearing Corporation under or in connection with any agreement between the Clearing Corporation and the **Member Participant** shall be false or misleading in any material respect as of the date on which made;
  - (iv) The breach by the **Member Participant** of the Rules or any of the terms or provisions of any agreement between the Clearing Corporation and the **Member Participant** which is not remedied promptly after notice from the Clearing Corporation; or
  - (v) The **Member Participant** shall be in Default.

### 3. CLEARING OF CONTRACTS

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#### 301. Effect of Clearance.

Trades submitted for clearance by or for the account of a **Member Participant** shall be submitted to the Clearing Corporation as required by the Rules and the rules of the Market, and if the Clearing Corporation accepts the same, as provided in Rule 310, the buying **Member Participant** shall be deemed to have bought such Contract from the Clearing Corporation and the selling **Member Participant** shall be deemed to have sold such Contract to the Clearing Corporation. Upon such substitution, such buyers and sellers shall be released from their obligations to each other, and the Clearing Corporation shall be deemed to have succeeded to all the rights, and to have assumed all the obligations, of the original parties to such contracts.

#### 302. Tender of Trades.

The filing of a Trade confirmation by or on behalf of a **Member Participant**, as hereinafter provided, shall be deemed a tender to the Clearing Corporation for clearance of the Trade listed on such confirmation. These Rules shall constitute part of the terms of each Contract tendered to the Clearing Corporation.

#### 303. Adjustments.

- (a) Where a Futures Contract is cleared and the contract price is less than the Settlement Price of the day, the selling **Member Participant** shall pay to the Clearing Corporation and the buying **Member Participant** shall receive from the Clearing Corporation the difference between the value of the Futures Contract based upon the Settlement Price of the day and the contract price. In like manner, if the contract price of a Futures Contract is more than the Settlement Price of the day, the buying **Member Participant** shall pay to the Clearing Corporation, and the selling **Member Participant** shall receive from the Clearing Corporation, the difference between the value of the Futures Contract based upon the Settlement Price of the day and the Contract price.
- (b) Such payments shall be at the time and in the manner prescribed by the Clearing Corporation. Thereupon, the selling **Member Participant** shall be deemed to have sold such Futures Contract to the Clearing Corporation, and the buying **Member Participant** shall be deemed to have bought such Futures Contract from the Clearing Corporation, in each case at the Settlement Price of the day. Thereafter, from day to day, to the extent such transaction remains open, similar payments shall be made to bring the Trade to the Settlement Price of that day, and after such payments have been made, the buying Participant shall be deemed to have bought, and the selling Participant shall be deemed to have sold, such Futures Contract to the Clearing Corporation at the Settlement Price of such day.

**304. Offsets.**

Where, as the result of substitution under Rule 301, a **Member Participant** has bought from the Clearing Corporation any amount of a given Futures Contract for a particular delivery, and subsequently, and prior to such delivery, such **Member Participant** sells to the Clearing Corporation any amount of the same Futures Contract for the same delivery, the second transaction shall be deemed pro tanto a settlement or adjustment of the prior transaction, except as provided in Rule 311, and except with respect to Options. In like manner, where a **Member Participant** sells to the Clearing Corporation any amount of a given Futures Contract for a particular delivery, and subsequently, and before delivery, such **Member Participant** buys any amount of the same Futures Contract for the same delivery, the second transaction shall be deemed pro tanto a settlement or adjustment of the prior transaction, except as provided in Rule 311, and except with respect to Options. Thereupon, such **Member Participant** shall become liable to pay the loss or entitled to collect the profit, as the case may be, upon such adjusted transactions, and shall be under no further liability to receive or make delivery with respect thereto. For purposes of this Rule, the first Trades made shall be deemed the first Trades offset.

**305. Trade Confirmations.**

Each Business Day, the exact hours as from time to time fixed by the Clearing Corporation, **Members Participants** shall file with the Clearing Corporation confirmations, in the manner prescribed by the Clearing Corporation (which, in the case of electronic trading systems that submit matched trades to the Clearing Corporation, shall be satisfied by confirming reports automatically generated by such system that contain the information set forth herein), covering Trades made during the day (including scratch Trades) showing for each Trade (a) the identity of both **Members Participants**, (b) whether bought or sold, (c) the quantity involved, (d) the delivery month, (e) the Contract expiration and series involved, (f) the price and/or premium, (g) whether for house, customer, non-customer or floor trader account, and (h) such other information as may be required by the Clearing Corporation to effect the matching of Trades between the buyer and the seller.

**306. Disagreement in Trade Confirmations.**

If a Trade confirmation of any **Member Participant** shall not correspond in all material respects with the confirmation of the other party to such Trade, the Clearing Corporation may reject such Trade and notify both **Members Participants**, setting forth the basis of such objection.

**307. Statement of Trades and Positions.**

The Clearing Corporation shall make available to a **Member Participant** a statement of Trades and positions for each Business Day on which such **Member Participant** has Trades to be cleared or a position open with the Clearing Corporation. Such statement shall show the amounts the **Member Participant** shall pay to or receive from the Clearing Corporation under Rule 303 and the amount of premium the **Member Participant** shall pay to or receive from the Clearing Corporation, in all cases at the time and in the manner prescribed by the Clearing Corporation.



**308. Daily Variation Settlements.**

If the statement of Trades and positions made available to a Member Participant under Rule 307 shows a net balance in favor of the Clearing Corporation, the Member Participant shall, at the time and in the manner prescribed by the Clearing Corporation, pay such net balance to the Clearing Corporation. Payment will be considered made hereunder only if made in a manner prescribed by the Clearing Corporation and results in immediate credit to the account of the Clearing Corporation. If such statement shows a net balance in favor of the Member Participant, the Clearing Corporation shall promptly pay, at the time and in the manner prescribed by the Clearing Corporation, the amount of such net balance to the Member Participant.

**309. Statement of Original Margins and Premiums.**

At the time a Member Participant a statement of the Member's Participant's Trades and positions is made available pursuant to Rule 307, the Clearing Corporation shall also make available a statement showing original Margins and Option premiums deposited by the Member Participant, the amount of such Margins and premiums required by the Clearing Corporation, and the Member's Participant's net surplus of, or deficit in, such Margins and premiums.

**310. Acceptance of Trades by Clearing Corporation.**

The Clearing Corporation shall accept no Trades for clearance except for the account of its Members Participants. A Trade, except a Transfer Trade, is accepted upon either the Clearing Corporation's receipt and acknowledgment of a matched Trade or matching of Trade confirmations. A Transfer Trade is accepted upon receipt of all payments and deposits required to be made pursuant to these Rules by the Members Participants who are parties to the Transfer Trade. Issuance by the Clearing Corporation, to a Member Participant, of a statement of Trades and positions as provided in Rule 307 shall constitute confirmation that the Trades listed on such statement, except Transfer Trades, have been accepted by the Clearing Corporation.

**311. Trades for Customers.**

Where a Member Participant clears a Trade for a customer, whether a Member Participant or non-Member Participant of an Exchange Market, the Member Participant becomes liable to the Clearing Corporation and the Clearing Corporation liable to the Member Participant on such Trade in the same manner and to the same extent as if the Trade were for the account of the Member Participant; provided, however, that Trades designated by the Member Participant as for the Member's Participant's customer shall not be offset under Rule 304 against Trades designated by the Member Participant as for the Member's Participant's own account.

**312. Separate Accounts.**

A **Member Participant** required by law to segregate a particular class of transactions with the Clearing Corporation shall maintain a separate account for that purpose (the “separate account”). When appropriately so designated by the **Member Participant**, the separate account shall be treated as to Margins, Option premiums, daily variation settlements, deliveries and all other operations as though it were the account of a different **Member Participant** except that, (a) excess funds in any other account of the **Member Participant** may be allocated by the Clearing Corporation to the separate account to the extent necessary to meet applicable Margin and variation deposit requirements of these Rules, and (b) if the **Member Participant** is in Default under Rule 605 as to any account maintained by the **Member Participant** with the Clearing Corporation or for any reason ceases to be a **Member Participant**, the open Trades in all such accounts may be closed in the open market, transferred to any other **Member Participant**, or otherwise resolved and the deficit, if any, in the separate account applied to the balance in any other account of the **Member Participant**. The Clearing Corporation shall maintain all funds held in the separate accounts in accordance with relevant provisions of the Commodity Exchange Act and Commodity Futures Trading Commission regulations.

The shares of Clearing Corporation stock owned by a **Member Participant** shall secure all obligations of such **Member Participant** arising in connection with the separate account of such **Member Participant**.

**313. Records.**

**Members Participants** shall keep permanent records showing, with respect to each purchase or sale, the names of both **Members Participants**, the Futures Contract, Option series, quantity, date, price, delivery or expiration month, the name or account identifier of the customer for whom the Trade was made and such other information as may be required by law, regulation, or by the Clearing Corporation. Such permanent records shall be retained for at least five years, either in original form or in such other form as the Clearing Corporation may from time to time authorize, and shall be deemed the joint property of the Clearing Corporation and the **Member Participant** keeping such records. The Clearing Corporation shall be entitled to inspect or take temporary possession of such records at any time upon demand.

**314. Reporting.**

**Members Participants** shall make reports of their positions at the time and in the manner prescribed by the Clearing Corporation.

**315. Limitation of Liability.**

The liability of the Clearing Corporation shall be limited to losses resulting from the substitution of the Clearing Corporation upon contracts between **Members Participants** in accordance with these Rules. The Clearing Corporation shall not be liable for obligations of a non-**Member Participant**, obligations of a **Member Participant** to a non-**Member Participant**, obligations of a **Member Participant** to another **Member Participant** of the Clearing Corporation who is acting for such other **member Participant** as broker, or obligations of a **Member Participant** to a customer, nor shall the Clearing Corporation

become liable to make deliveries to or accept deliveries from a customer of its ~~Members~~ Participants.

**316. Non-Acceptance of Trades.**

In case of the non-acceptance of the Trades of any ~~Member~~ Participant, the Clearing Corporation shall be deemed to have incurred no obligations respecting the Trades that are not so accepted. It shall be incumbent upon the ~~Members~~ Participants who are parties to any such Trades to take such steps as the ~~Members~~ Participants may deem necessary or proper for such ~~Members'~~ Participants' own protection.

**317. Authority of President.**

Without limitation of any authority conferred by the Certificate of Incorporation, the Bylaws, other provisions of these Rules, or resolutions of the Board or any committee of the Board, the President is authorized, should he deem it necessary or advisable, to take such action consistent with the Risk Plan as he deems necessary or appropriate for the protection of the Clearing Corporation. The President may take such action pending a meeting of the Risk Committee, but shall modify or rescind such action if so instructed by the Risk Committee or the Board.

#### 4. MARGIN AND SETTLEMENTS

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##### 401. Clearing Corporation Lien.

Each Member Participant agrees that the Clearing Corporation shall have a first lien and security interest on all Margin, Option premiums, Trades, positions and other property held in or for the accounts of such Member Participant as security for all obligations of such Member Participant to the Clearing Corporation.

##### 402. Original Margin.

- (a) Margin deposits, other than variation deposits, shall be known as original Margin. The Clearing Corporation shall, from time to time, fix the amount of original Margin which shall be called to protect the Clearing Corporation on Trades in Contracts.
- (b) Original Margin shall be deposited in the manner prescribed in Rules 405 and 406. Upon performance or closing out of contracts thus secured, the original Margin deposits may be withdrawn by the Member Participant upon the authorization of the Clearing Corporation. Margin calls shall ordinarily be uniform, but where particular risks are deemed hazardous, the Clearing Corporation may, in its sole discretion, depart from the rule of uniformity and call for additional Margin.

##### 403. Variation Deposits.

Margin called by reason of market fluctuations shall be known as variation deposits and shall be paid to the Clearing Corporation on demand in the manner prescribed by Rule 308. Variation deposits shall be deemed payments on account of Trades and positions for that Business Day and shall be reflected on statements of Trades and positions for that day. The Clearing Corporation require additional variation deposits at any time to the extent of market fluctuations.

##### 404. Settlement Price.

- (a) Except as otherwise provided in this Rule, the Settlement Price for each open Contract shall be determined at the close of each day's trading, through and including the Last Trading Day, as follows:
  - (i) If a Contract is actively traded during a trading day, the Settlement Price shall be the last Trade price, or a price established within the closing range, for that Contract.
  - (ii) If a Contract is not actively traded during a trading day, the Settlement Price shall be a price established within the current bids and offers, or based on a current bid or offer, for that Contract.

- (iii) If no current bids or offers are available for an Option, the Settlement Price shall be a price established (A) in relation to quoted spread prices against other actively traded Options of the same expiration date and underlying Futures Contract, or (B) using generally accepted theoretical relationships, or (C) in relation to other actively traded Options of the same underlying Futures Contract, or (D) in relation to the prices of the underlying Futures Contract or Commodity.
- (iv) If no current bids or offers are available for a Futures Contract, the Settlement Price shall be a price established (A) in relation to quoted spread prices against other actively traded Futures Contracts, or (B) in relation to other futures or Commodity prices.
- (b) Notwithstanding the foregoing, when deemed necessary by the Clearing Corporation in order to protect the respective interests of the Clearing Corporation and ~~Members~~ **Participants**, the Clearing Corporation may establish the Settlement Price for any Contract at a price deemed appropriate by the President under the circumstances. When the Clearing Corporation determines that circumstances necessitate the application of this paragraph, the reasons for that determination and the basis for the establishment of the Settlement Price in such circumstances shall be recorded.
- (c) In carrying out the responsibilities under this Rule, the Clearing Corporation may consult, as appropriate, with one or more Markets and may consider all relevant market information.

**405. Cash Margin Deposits.**

If the statement of original Margins furnished to a ~~Member~~ **Participant** under Rule 309 shows a deficit in original Margins, such ~~Member~~ **Participant** shall, at the time and in the manner prescribed by the Clearing Corporation, pay an amount in U.S. Dollars, or foreign currency acceptable to the Clearing Corporation, sufficient to cover such deficit to the Clearing Corporation. Payment will be considered made hereunder only if made in a manner prescribed by the Clearing Corporation and if such payment results in immediate credit to the account of the Clearing Corporation.

**406. Non-Cash Margin Deposits.**

In lieu of maintaining original Margins in cash, as provided for in Rule 405, ~~Members~~ **Participants** may deposit such types of collateral as may be approved by the Risk Committee of the Board or by the President, consistent with criteria established by the Risk Committee.

Where a ~~Member~~ **Participant** defaults, all non-cash Margins may be converted to cash or otherwise transferred by the Clearing Corporation for the account of the ~~Member~~ **Participant** or its customers without further notice.

**407. Option Premiums.**

~~Members~~ **Participants** shall deposit Option premiums with the Clearing Corporation at the time and in the manner prescribed by the Clearing Corporation.

## 5. DELIVERIES

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### 501. Assignment of Deliveries.

Upon receipt of notices of intention to deliver on Futures Contracts cleared through the Clearing Corporation, issued by sellers in accordance with the rules and regulations of an Exchange Market, the Clearing Corporation shall assign such deliveries to eligible buyers in accordance with such rules and regulations. The Clearing Corporation shall promptly notify buyers as to deliveries assigned to them and shall furnish to sellers the names of buyers obligated to accept such deliveries from them. Delivery and payment therefore shall be made by and between such buyers and sellers in the time and manner prescribed by the rules and regulations of the Exchange Market.

If on the last notice day of a delivery month the total of notices of intention to deliver any Commodity is less than the total of Futures Contracts of such Commodity remaining open and required to be settled by delivery, the Clearing Corporation shall allocate the total quantity of such Commodity tendered for final delivery pro rata, as near as may be practicable, among buyers entitled to receive delivery of such Commodity, and the defaults shall be allocated in the same manner.

### 502. Purchases and Sales for Physical Delivery.

Issuance of a notice of intention to deliver by a **Member Participant** to the Clearing Corporation shall constitute an offer by such **Member Participant** to sell to the Clearing Corporation the specified quantity of the Commodity involved, at the delivery price, and to purchase from the Clearing Corporation the same quantity of the same Commodity at the same price. Acceptance of such notice by the Clearing Corporation shall constitute its acceptance of the **Member's Participant's** offer to sell and repurchase. Such acceptance is effective at the time delivery is required to be made according to the rules and regulations of the Exchange Market and the Rules of the Clearing Corporation.

Assignment of delivery to a **Member Participant** by the Clearing Corporation shall constitute an offer of the Clearing Corporation to sell to such **Member Participant** the specified quantity of the Commodity involved, at the delivery price, and to purchase from such **Member Participant** the same quantity of the same Commodity at the same price. Acceptance of such assignment of delivery by such **Member Participant** shall constitute his acceptance of the Clearing Corporation's offer to sell and repurchase. Such acceptance is effective at the time delivery is required to be made according to the rules and regulations of the Exchange Market and the Rules of the Clearing Corporation.

The Clearing Corporation shall, at the time delivery is required to be made, consider the corresponding sales to such assigned buyers made hereunder as having been settled and shall apply the opposing repurchase made hereunder as an adjustment of the respective **Members' Participants'** futures positions with the Clearing Corporation in the manner prescribed by these Rules.

**503. Delivery Price.**

All deliveries on Futures Contracts shall be made at the Settlement Price of the day preceding the day of issuance of notice of intention to deliver, or at the price required in the contract terms and conditions, if such terms and conditions require a different price. The statement of Trades and positions specified in Rule 307 will reflect futures positions closed by delivery and the amount of final adjustment bringing delivery prices to Settlement Prices of the day of notice.

**504. Posting of Deliveries.**

During each delivery month, the Clearing Corporation shall cause to be posted, not later than the Business Day following the filing of notices of intention to deliver, the name of each **Member Participant** issuing notices of intention to deliver on Futures Contracts and the total amount of each Commodity tendered by such **Member Participant** for delivery together with the name of each **Member Participant** accepting assignment of deliveries and the total amount of each Commodity assigned to such **Member Participant**.

**505. Settlements on Defaulted Deliveries.**

- (a) In the event a **Member Participant** fails to fulfill its delivery obligations as prescribed in these Rules, the Clearing Corporation's sole obligation shall be to pay reasonable damages proximately caused by the Default, but in no event shall the Clearing Corporation be obligated to: (i) pay any damages greater than the difference of the delivery price of the specific Commodity and the reasonable market price of such Commodity at the time delivery is required to be made in accordance with the rules and regulations of the Exchange Market and the Rules of the Clearing Corporation; (ii) make or accept delivery of the actual Commodity; (iii) pay any damages relating to the accuracy, genuineness, completeness, or acceptability of certificates, instruments, warehouse receipts or other similar documents; or (iv) pay any damages relating to the failure or insolvency of banks, custodians, escrow agents, depositories, warehouses, or similar entities that may be involved with a delivery.
- (b) Notwithstanding any provision of these Rules, the Clearing Corporation has no obligation or liability to any **Member Participant** or any other Person relating to a failure to fulfill a delivery obligation unless it is notified by the non-defaulting **Member Participant** of such failure as soon as possible, but in no event later than sixty minutes after the time the delivery obligation was to have been discharged in accordance with the rules and regulations of the Exchange Market and the Rules of the Clearing Corporation.



- (c) Delivery obligations of a **Member Participant** to another **Member Participant** which are not discharged by the **Member Participant** shall thereupon be deemed an obligation of the defaulting **Member Participant** to the Clearing Corporation. The defaulting **Member's Participant's** obligations to the Clearing Corporation must be discharged not later than sixty minutes after the time such obligations originally were required to be discharged to the non-defaulting **Member Participant**.

**506. Assignment of Exercises of Options.**

Upon receipt of notices of intention to exercise Options cleared through the Clearing Corporation, issued by buyers in accordance with the rules and regulations of the Exchange Market, the Clearing Corporation shall assign such exercises to eligible sellers in accordance with such rules and regulations. The Clearing Corporation shall promptly notify selling **Members Participants** as to the exercises assigned to them and shall furnish to buying **Members Participants** the names of selling **Members Participants** obligated to accept such assignments. Delivery and payment shall be made in the time and manner prescribed by the rules and regulations of the Exchange Market.

Any Option not exercised by the time and date fixed for expiration of the Option in the rules and regulations of the Exchange Market shall not be exercisable.

**507. Exercise Price.**

All Option exercises shall be made at the strike price of the Option. The statement of Trades and positions will reflect the offsetting of each Option that was exercised and assigned, Trades and positions in Futures Contracts resulting from the exercise and assignment of Options, and the amount of the final adjustment being the strike price marked to the Settlement Price on the date the Option were exercised.

**508. Deliveries in the Event of Bankruptcy.**

- (a) This Rule shall be applicable to Contracts made on or through the facilities of an Exchange Market as and to the extent such Exchange Market has in effect one or more rules (each, a "Bankruptcy Delivery Rule") adopted in accordance with Commodity Futures Trading Commission Regulation 190.05(b).
- (b) If any customer of a **Member Participant** that is a debtor shall wish to make or take delivery under a Futures Contract as provided in a Bankruptcy Delivery Rule, such customer shall deliver written notification thereof to the Clearing Corporation not later than noon on the second Business Day, which Business Day must be within the current delivery period, following the date of the entry of the order for relief with respect to such debtor, whereupon such customer shall assume all of the obligations of the debtor to the Clearing Corporation and the opposite **Member Participant** with respect to such Futures Contract.
  - (i) If such customer is seeking to make delivery in fulfillment of such Futures Contract, such notification shall be accompanied by:

- (A) evidence, satisfactory to the Clearing Corporation, that the debtor, on behalf of the customer, or the customer, has presented a notice of delivery to the Clearing Corporation; and
  - (B) evidence verifying to the Clearing Corporation that the customer owns and has in its possession or under its control, such certificates, instruments, warehouse receipts or other documents as are required pursuant to the Rules and the Bankruptcy Delivery Rule to make delivery in fulfillment of such Contract.
- (ii) If such customer is seeking to take delivery in fulfillment of such futures Contract, such notification shall be accompanied by:
- (A) the notice of delivery which has been issued by the Clearing Corporation to the debtor and allocated by the debtor to the customer, and
  - (B) evidence verifying to the Clearing Corporation that the customer owns and has in its possession or under its control a certified check, drawn on an approved depository bank and made payable to the order of the opposite **Member Participant** in the full amount payable on the delivery of the Contract.
- (c) The Clearing Corporation shall provide to the opposite **Member Participant** copies of all information provided to the Clearing Corporation pursuant to paragraph (b) above, provided, however, that the Clearing Corporation shall have no responsibility to investigate or otherwise verify the accuracy, genuineness or completeness of any certificate, instrument, warehouse receipt or other document or check delivered to or by the Clearing Corporation pursuant to the Bankruptcy Delivery Rule and this Rule and shall, in no event, have any liability for the quantity or quality of the commodity or other interest delivered.

**509. Cash Settlement.**

After trading ceases on the last day of trading for Futures Contracts without physical delivery, the Clearing Corporation shall consider the maintenance of an open position by a **Member Participant** to constitute an offer to sell to or an offer to purchase from the Clearing Corporation the specific quantity of the Futures Contract involved at the Settlement Price determined for such Futures Contract on the last day of trading in such contracts.

The Clearing Corporation shall, once trading in such Futures Contracts has terminated pursuant to the rules and regulations of the Exchange Market, consider the corresponding sales or purchases made hereunder as an adjustment of the respective **Members' Participants'** positions in Futures Contracts with the Clearing Corporation in the manner prescribed by these Rules.

## 6. MISCELLANEOUS

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### 601. Emergencies.

- (a) The Board, upon the affirmative vote of the ~~Governors~~ **Directors** voting at a meeting where a quorum is deemed present, may adopt an emergency resolution which shall supersede and supplant all contrary or inconsistent resolutions or Rules. Absent extraordinary circumstances, a ~~Governor~~ **Director** who has a substantial financial interest in the outcome of such a vote shall abstain from deliberating and voting on the matter in question.
- (b) An emergency resolution shall expire upon the happening of either of the following events: (i) the Board shall have voted to rescind the emergency resolution; or (ii) 90 days shall have elapsed since the emergency resolution was adopted.
- (c) All Trades, all accounts and positions with the Clearing Corporation, and all ~~Members~~ **Participants** shall be subject to the exercise of these emergency powers by the Board.
- (d) As used herein, the term “emergency” shall include without limitation all emergency circumstances now or hereafter referenced in the Commodity Exchange Act and the Regulations of the Commodity Futures Trading Commission thereunder, and all other circumstances in which an emergency may lawfully be declared by the Board.
- (e) Except as otherwise stated in an emergency resolution adopted hereunder, the powers exercised by the Board ~~of Governors~~ under this Rule shall be in addition to and not in derogation of authority granted by the Certificate of Incorporation and Bylaws to a committee or officer of the Clearing Corporation to take action as specified therein.

### 602. Physical Emergencies.

In the event the physical functions of the Clearing Corporation are, or are threatened to be, severely and adversely affected by a physical emergency such as, but not limited to, fire or other casualty, bomb threats, substantial inclement weather, power failures, communications breakdowns or transportation breakdowns, the Chairman, a Vice Chairman or the President of the Clearing Corporation or, in their absence, another officer of the Clearing Corporation, is authorized to take such action as he or she shall deem necessary or appropriate to deal with such emergency.

### 603. Force Majeure.

Notwithstanding any other provision of these Rules, the Clearing Corporation shall not be obligated to perform its obligations under these Rules or any agreement with a ~~Member~~ **Participant** relating to Contracts, or to compensate any person for losses occasioned by any delay or failure of performance, to the extent such delay or failure is the result of acts of

God, lightning, earthquake, fire, epidemic, landslide, drought, hurricane, tornado, storm, explosion, flood, nuclear radiation, act of a public enemy or blockade, insurrection, riot or civil disturbance, strike or labor disturbance, or any other cause beyond the Clearing Corporation's reasonable control (whether or not similar to any of the foregoing).

If the Clearing Corporation shall, as a result of any of the above-described events, fail to perform any of its obligations, such failure shall be excused for a period equal to the period of delay caused by such event. In such an event, the Clearing Corporation shall give written notice thereof to the affected Market or such **Member Participant**, as the case may be, as soon as it is reasonably practicable and attempt diligently to remove such condition.

**604. Suspension of Rules.**

The time frames fixed by these Rules, interpretations or policies of the Clearing Corporation for the doing of any act or acts may be extended, or the doing of any act or acts required by these Rules or any interpretations issued by the Clearing Corporation may be waived, and any provision of these Rules or any interpretations issued by the Clearing Corporation may be suspended by the Board of ~~Governors~~ or by any officer of the Clearing Corporation having a rank of Vice President or higher whenever, in the judgment of the Board of ~~Governors~~ or such officer, such extension, waiver or suspension is necessary or expedient. Any such extension or waiver may continue in effect after the event or events giving rise thereto but shall not continue in effect for more than thirty calendar days after the date thereof unless it shall be approved by the Clearing Corporation within such period of thirty calendar days.

**605. Defaults.**

- (a) A **Member Participant** is in default (i) who fails to meet any of the **Member's Participant's** obligations upon the **Member's Participant's** Contracts with the Clearing Corporation, (ii) who fails to deposit Margin (whether original, special or variation) or premiums within one hour after demand by the Clearing Corporation, or (iii) who is suspended or expelled by the Market or by the Clearing Corporation. Upon such default, the Clearing Corporation may cause all open Trades of such **Member Participant** to be closed in the open market, transferred to any other **Member Participant**, or otherwise resolved as deemed appropriate by the Clearing Corporation and any debit balance owing to the Clearing Corporation shall be immediately due and payable.
- (b) In closing, transferring or otherwise resolving the open Trades of a **Member Participant** as provided in paragraph (a) of this Rule, the Clearing Corporation shall have the right:

- (i) With respect to open Trades in a separate account of such **Member Participant** provided for in Rule 312, to set off (A) any proceeds received by the Clearing Corporation from the disposition of such open Trades and any property or proceeds thereof deposited with or held by the Clearing Corporation as Margin for such account against (B) any amounts paid by the Clearing Corporation in the disposition of such open Trades, including any commissions or other losses or expenses incurred in connection therewith or in connection with the liquidation of Margin deposits in such account and any other amounts owed to the Clearing Corporation as a result of transactions in the account or otherwise lawfully chargeable against the account;
- (ii) With respect to the open Trades in any other account of such **Member Participant**, to set off (A) any proceeds by the Clearing Corporation from the disposition of such open Trades, any property or proceeds thereof deposited with or held by the Clearing Corporation as Margin for such account, and any other property of the **Member Participant** within the possession or control of the Clearing Corporation other than property which has been identified by such **Member Participant** as required to be segregated as provided for in Rule 312, against (B) any amounts paid by the Clearing Corporation in the disposition of such open Trades, including any commissions or other losses or expenses incurred in connection therewith or in connection with the liquidation of Margin deposits in such account, and any other obligations of the **Member Participant** to the Clearing Corporation, including obligations of the **Member Participant** to the Clearing Corporation remaining after the setoffs referred to in paragraph (b)(i) of this Rule, and any obligations arising from any other accounts maintained by the **Member Participant** with the Clearing Corporation;
- (iii) To cause Trades and positions held in accounts of the **Member Participant** that is in Default to be offset against each other and, to the extent of any remaining imbalance, against the Trades and positions of other **Members Participants**;
- (iv) To cause Trades and positions in Contracts held in accounts of the **Member Participant** that is in Default and of other **Members Participants** to be settled at the Settlement Price for such Contracts, or at such other price or prices as Clearing Corporation may deem fair and reasonable in the circumstances; and

- (v) To defer closing or otherwise settling such Trades and Contracts if, in its discretion, it determines that the closing out of some or all of the suspended ~~Member's~~ **Participant's** Trades or Contracts would not be in the best interests of Clearing Corporation or other ~~Members~~ **Participants**, taking into account the size and nature of the positions in question, market conditions prevailing at the time, the potential market effects of such liquidating transactions as might be directed by Clearing Corporation, and such other circumstances as it deems relevant.
- (c) Notwithstanding the foregoing, the liquidation and disposition of positions, Margin and other property subject to a cross-margin, cross-netting or common banking and settlement arrangement between the Clearing Corporation and another clearing organization shall be subject to the terms of the agreement between the Clearing Corporation and such other clearing organization.
- (d) Any obligation of the Clearing Corporation to a **Member Participant** arising from a Trade or from any provision of the Bylaws or these Rules shall be subject to all the terms of the Bylaws and Rules, including the setoff and other rights set forth herein. The rights of the Clearing Corporation set forth herein shall be in addition to other rights that the Clearing Corporation may have under applicable law and governmental regulations, other provisions of the Bylaws and Rules, additional agreements with the **Member Participant** or any other source.

**606. Fees; Fines and Charges.**

- (a) Clearing fees and other charges for Clearing Corporation services shall be as fixed from time to time by the Clearing Corporation.
- (b) In addition to any authority granted by the Bylaws, the President or his authorized representative may assess fines and charges against ~~Members~~ **Participants**, as and to the extent authorized, for the failure to comply with the Bylaws, these Rules or any other requirement of the Clearing Corporation. A **Member Participant** may appeal to the Board of ~~Governors~~ **Directors** a fine, or a charge in excess of \$500, on the grounds that such fine or charge is excessive or unreasonable. On appeal, the Board of ~~Governors~~ may assess a different or greater penalty.

**607. Trading by Employees Prohibited.**

- (a) No employee of the Clearing Corporation shall:
  - (i) trade or participate directly or indirectly in any transaction in any commodity interest, except to the extent necessary to carry out the provisions of Rule 605 or as otherwise permitted pursuant to an exemption granted in accordance with this Rule; or

- (ii) disclose any material, non-public information obtained as a result of such Person's employment with the Clearing Corporation where the employee has or should have a reasonable expectation that the information disclosed may assist another Person in trading any commodity interest; provided, that an employee is not prohibited from making disclosures in the course of the employee's duties, or to another self-regulatory organization, linked exchange, court of competent jurisdiction or representative of any agency or department of the federal or state government acting in his or her official capacity.
- (b) From time to time, the Clearing Corporation may adopt additional Rules which set forth circumstances under which exemptions from the trading prohibition contained in paragraph (a)(i) will be granted. The effectiveness of such rules and the procedures for administration of such rules shall be governed by applicable regulations of the Commodity Futures Trading Commission.
- (c) All terms used in this Rule shall be construed consistently with the definitions appearing in Commodity Futures Trading Commission Regulation 1.59.

**608. Forms; Transmission of Data to the Clearing Corporation.**

- (a) In connection with any transaction or matter handled through, with or by the Clearing Corporation under or pursuant to the Rules, the form of any required list, notice or other document shall be as from time to time prescribed by the Clearing Corporation, and additions to, changes in and elimination of any such forms may be made by the Clearing Corporation at any time in its discretion.
- (b) A **Member Participant** may execute any document to be delivered to the Clearing Corporation or to any other **Member Participant** pursuant to these Rules by means of a mechanically or electronically reproduced facsimile signature of a representative of the **Member Participant**; provided, that the **Member Participant** shall have complied with such requirements as may be prescribed by the Clearing Corporation in connection with the use of such facsimile signatures.

**609. Just and Equitable Principles of Trade; Acts Detrimental to the Interest or Welfare of the Clearing Corporation.**

- (a) The Clearing Corporation shall have the power to suspend or revoke clearing privileges or authorize the assessment of fines or charges against **Members Participants** for engaging in conduct inconsistent with just and equitable principles of trade.
- (b) The Clearing Corporation shall have the power to suspend or revoke clearing privileges or authorize the assessment of fines or charges against **Members Participants** for engaging in acts detrimental to the interest or welfare of the Clearing Corporation.

**610. Death, Disappearance or Incapacity of Individual Member Participant.**

- (a) Upon the death, disappearance or incapacity (all as reasonably determined by the Clearing Corporation) of an Individual Member Participant, the Clearing Corporation may cause all open Trades of such Member Participant to be closed in the open market, transferred to any other Member Participant, or otherwise resolved as deemed appropriate by the Clearing Corporation and any debit balance owing to the Clearing Corporation shall be immediately due and payable.
- (b) In closing, transferring or otherwise resolving the open Trades of an Individual Member Participant as provided in paragraph (a), the Clearing Corporation shall have the right, with respect to any account of such Member Participant, to set off (A) any proceeds received by the Clearing Corporation from the disposition of open Trades, any property or proceeds thereof deposited with or held by the Clearing Corporation as Margin for such account, and any other property of the Member Participant within the possession or control of the Clearing Corporation, against (B) (i) any amounts paid by the Clearing Corporation in connection with the disposition of such open Trades, including any losses, commissions or other expenses incurred in connection therewith or in connection with the liquidation of Margin deposits in such account, and (ii) any other obligations of the Member Participant to the Clearing Corporation.
- (c) Any obligation of the Clearing Corporation to a Member Participant arising from a Trade or from any provision of the Bylaws or Rules shall be subject to all the terms of the Bylaws and Rules, including the setoff and other rights set forth herein and therein. The rights of the Clearing Corporation set forth in this Rule shall be in addition to other rights that the Clearing Corporation may have under applicable law and governmental regulations, other provisions of the Rules, the Bylaws, additional agreements with the Member Participant or any other source. The Clearing Corporation shall be authorized to take all such actions under this Rule as the Clearing Corporation in its sole discretion determines is appropriate or necessary under the circumstances.

**611. Construction in Accordance with Illinois Law.**

The Rules of the Clearing Corporation, and all rights and obligations thereunder, shall be construed in accordance with the internal laws of the State of Illinois, without giving effect to the conflict of law provisions thereof.



7. LINKED MARKET TRANSACTIONS

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[RESERVED]

## 8. GUARANTY FUND

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### 801. General Guaranty Fund.

- (a) *Collateral Requirements.* Each Participant shall make, and maintain so long as it is a Participant, a deposit or deposits of Collateral to the General Guaranty Fund in the form and in such amounts as may be determined by The Clearing Corporation from time to time in its sole discretion ("Required Contribution"). The Clearing Corporation shall cause appropriate entries to be made in its books and records to reflect the deposit of Collateral into the General Guaranty Fund. The Clearing Corporation shall have the sole right to withdraw cash, securities or other property from, or to authorize the sale or other disposition of any securities or property held in, the General Guaranty Fund.
- (b) *Participant Default; Application of Proceeds.* If a Participant is in Default and, as a result thereof, The Clearing Corporation suffers any loss or expense upon any liquidation or other disposition of a Participant's open Contracts, or a Participant shall fail to make any other payment or render any other performance required under the Rules, then The Clearing Corporation shall (after appropriate application of Margin posted by such Participant and other funds in or payable to the accounts of the Participant) apply the Participant's contributions to the General Guaranty Fund, in the manner and in the order of priority set forth below:
- (i) FIRST: To the payment of the costs and expenses of any sale, collection or other realization of such Margin or Collateral, including, without limitation, fees and expenses of counsel, and all reasonable expenses, liabilities and advances made or incurred by The Clearing Corporation in connection therewith;
  - (ii) SECOND: To the satisfaction of any deficiencies in the customer segregated accounts (if any) maintained by such Participant pursuant to rules of the Commission resulting, caused by or arising, directly or indirectly, from such Default;
  - (iii) THIRD: To the payment of any other obligations of such Participant to The Clearing Corporation (such other obligations, together with the costs and expenses, and deficiencies described in paragraphs (i) and (ii), the "General Reimbursement Obligations");
  - (iv) FOURTH: To the payment of any other Obligations; and
  - (v) FIFTH: To or upon the order of the Participant that is in Default, to The Clearing Corporation or to whomsoever may be lawfully entitled to receive the same (including, without limitation, any insurer, surety or guarantor of the obligations of The Clearing Corporation) or as a court of competent jurisdiction may direct, of any surplus then remaining from such Proceeds.

- (c) *Application of General Guaranty Fund; Other Funding.* If the Margin and other funds of a Participant that is in Default and its contributions to the General Guaranty Fund are insufficient to discharge in full the General Reimbursement Obligations of such Participant, any remaining deficiency shall be charged against the remaining assets in the General Guaranty Fund, pro rata from each other Participant's contributions thereto.

Any such deficiency shall remain a liability of the Participant to GCC, which it may collect from any other assets of such Participant or by legal process.

- (d) *Reimbursement of Collateral.* The Clearing Corporation shall notify Participants whenever an amount is paid out of the General Guaranty Fund to meet Obligations to The Clearing Corporation as provided in paragraphs (b) or (c) above. If Collateral is paid out of the General Guaranty Fund pursuant to paragraph (c) and, as a result, the amount of Collateral credited to a Participant is less than the amount it was required to maintain pursuant to paragraph (a) immediately prior to such pay out, the Participant shall deposit additional Collateral into the General Guaranty Fund in an amount at least sufficient to bring that Participant's total Collateral back to the required amount. All such additional Collateral shall be deposited prior to The Clearing Corporation's opening of business on the third Business Day following such notice or such later time as The Clearing Corporation shall determine in its sole discretion. A Participant that fails to deposit the full amount of such additional Collateral shall be in Default, and The Clearing Corporation may, in addition to any other remedies it may have, debit such Participant's house margin account for any or all or such unpaid amount.
- (e) *Lien.* As security for any and all Obligations of a Participant to The Clearing Corporation, including, but not limited to, the General Reimbursement Obligations, each Participant grants The Clearing Corporation a first-priority perfected security interest in the Participant's Collateral. In furtherance and not in limitation of the foregoing, all outstanding shares of Class A common stock of The Clearing Corporation shall, ~~upon Stockholder Approval,~~ be Collateral deposited in the General Guaranty Fund and subject to the foregoing grant of security interest until the same shall have been released in accordance with these Rules and the policies and practices of The Clearing Corporation.
- (f) *Non-Interference.* A Participant shall take no action, including but not limited to attempting to obtain a court order, that could interfere with the ability of The Clearing Corporation to apply its Margin, Collateral or other assets.

... **Interpretations and Policies:**

- .01 As used in this Rule 801, "Participant" includes a Participant that has been suspended or expelled by The Clearing Corporation or whose privileges in respect of Trades and Contracts have been restricted pursuant to Rule 403.
- .02 The General Guaranty Fund is solely in respect of U.S. Futures Exchange, L.L.C.

802. Special Guaranty Funds.

- (a) *Collateral Requirements.* The Clearing Corporation may from time to time require ~~Members~~ **Participant**s who desire to clear Contracts traded on Markets other than U.S. Futures Exchange, L.L.C. to provide Collateral for deposit into one or more Special Guaranty Funds. All such Collateral shall be in the form and in such amounts as may be determined by The Clearing Corporation from time to time in its sole discretion ("Required Contribution"). The Clearing Corporation shall cause appropriate entries to be made in its books and records to reflect the deposit of Collateral into each such Special Guaranty Fund. The Clearing Corporation shall have the sole right to withdraw cash, securities or other property from, or to authorize the sale or other disposition of any securities or property held in, a Special Guaranty Fund.
- (b) *Members **Participant**s Default; Application of Proceeds.* If a ~~Member~~ **Participant** is in Default and, as a result thereof, The Clearing Corporation suffers any loss or expense upon any liquidation or other disposition of a ~~Member's~~ **Participant's** open Contracts, or a ~~Member~~ **Participant** shall fail to make any other payment or render any other performance required under the Rules, then The Clearing Corporation shall (after appropriate application of Margin posted by such ~~Member~~ **Participant** and other funds in or payable to the accounts of the ~~Member~~ **Participant**) apply the ~~Member's~~ **Participant's** contributions to one or more Special Guaranty Funds, in the manner and in the order of priority set forth below:
- (i) FIRST: To the payment of the costs and expenses of any sale, collection or other realization of such Margin or Collateral, including, without limitation, fees and expenses of counsel, and all reasonable expenses, liabilities and advances made or incurred by the Clearing Corporation in connection therewith;
- (ii) SECOND: To the satisfaction of any deficiencies in the customer segregated accounts maintained by ~~Members~~ **Participant**s pursuant to the rules of the Commission resulting, caused by or arising, directly or indirectly, from such Default;
- (iii) THIRD: To the payment of any other obligations of such ~~Member~~ **Participant** to the Clearing Corporation (such other obligations, together with the costs and expenses, and deficiencies described in paragraphs (i) and (ii), the "Special Reimbursement Obligations");
- (iv) FOURTH: To the payment of any other Obligations; and

- (v) **FIFTH:** To or upon the order of the **Member Participant** that is in Default, to the Clearing Corporation or to whomsoever may be lawfully entitled to receive the same (including, without limitation, any insurer, surety or guarantor of the obligations of the Clearing Corporation) or as a court of competent jurisdiction may direct, of any surplus then remaining from such Proceeds.
- (c) *Application of Special Guaranty Funds; Other Funding.* If the Margin and other funds of a **Member Participant** that is in Default and its contributions to Special Guaranty Funds are insufficient to discharge in full the Reimbursement Obligations of such **Member Participant**, any remaining deficiency shall be charged against the Special Guaranty Fund(s), in proportion to the Special Reimbursement Obligations attributable to the Market(s) that are supported by such Special Guaranty Fund(s);
- Any such deficiency shall remain a liability of the **Member Participant** to GCC, which it may collect from any other assets of such **Member Participant** or by legal process.
- (d) *Reimbursement of Collateral.* The Clearing Corporation shall notify **Members Participants** authorized to clear Contracts for a Market whenever an amount is paid out of the Special Guaranty Fund related to that Market to meet Obligations to GCC as provided in paragraphs (b) or (c) above. If Collateral is paid out of a Special Guaranty Fund pursuant to paragraph (c) and, as a result, the amount of Collateral credited to a **Member Participant** is less than such **Member's Participant's** Required Contribution, the **Member Participant** shall deposit additional Collateral into that Special Guaranty Fund in an amount such that that **Member's Participant's** total Collateral in that Special Guaranty Fund is at least equal to the Required Contribution. All such additional Collateral shall be deposited prior to The Clearing Corporation's opening of business on the third Business Day following such assessment or such later time as The Clearing Corporation shall determine in its sole discretion. A **Member Participant** that fails to deposit the full amount of such additional Collateral shall be in Default.
- (e) *Lien.* As security for any and all Obligations of a **Member Participant** to the Clearing Corporation, including but not limited to, the Special Reimbursement Obligations, each **Member Participant** grants to The Clearing Corporation a first-priority perfected security interest in the Collateral.
- (f) *Non-Interference.* A **Member Participant** shall take no action, including but not limited to attempting to obtain a court order, that could interfere with the ability of the Clearing Corporation to apply its Margin, Collateral or other assets.

... **Interpretations and Policies:**

- .01** As used in this Rule 802, "~~Member~~"**Participant**" includes a **Member Participant** that has been suspended or expelled by The Clearing Corporation or whose privileges in respect of Trades and Contracts have been restricted pursuant to Rule 403.



## 9. U.S. FUTURES EXCHANGE, L.L.C.

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### 9-101. Definitions.

#### **Bank**

For purposes of Rules 9-501 through 9-517, a U.S. commercial bank (either Federal or State charter) that is a ~~member~~ **Participant** of the Federal Reserve System and has capital, surplus and undivided earnings in excess of \$100,000,000.

#### **Eurex**

Eurex Frankfurt AG, a German corporation.

#### **Eurex Clearing**

Eurex Clearing AG, Frankfurt, a German corporation.

#### **EurexUS**

U.S. Futures Exchange, L.L.C., a Delaware limited liability company.

#### **Off-Order Book Trade**

A trade in Contracts subject to the rules of EurexUS that is matched bilaterally between two ~~Members~~ **Participants** outside the EurexUS central order book or is generated by EurexUS on behalf of ~~Members~~ **Participants**, such as exchanges of futures for physicals (basis trades), exchanges of futures for swaps, block trades, strategy trades, volatility trades, and reverse trades (canceling erroneous trades), but not including a Post-Trade Transaction.

#### **On-Order Book Trade**

A trade that is matched in the central order book of EurexUS.

#### **Post-Trade Transaction**

Transfers of positions between ~~Members~~ **Participants**, give-ups, split-ups and such other trade and position management and similar instructions as may be authorized from time to time by the Clearing Corporation.

#### **Range**

A range, not greater than the highest trade price or less than the lowest trade price in the relevant Contract traded on EurexUS on the same Trading Day, in either case as increased or decreased by the amount(s) set forth in the rules of EurexUS.

## Trading Day

The trading day as determined by EurexUS from time to time.

### 9-202. Application for ~~Membership~~ Participant Status.

- (a) Persons desiring to clear Trades through the Clearing Corporation shall make application in such form as shall be prescribed by the Clearing Corporation. Each applicant must agree to abide by the Certificate of Incorporation, Bylaws, Rules, interpretations and policies of the Clearing Corporation, and the rules of EurexUS, all as in effect from time to time. An applicant for ~~membership~~ status of a Participant shall be conclusively deemed to have agreed to have no recourse against the Clearing Corporation in the event that its application ~~for membership to become a participant~~ is rejected.
- (b) Notwithstanding a sale or transfer of ~~membership~~ Participant status, a Person qualified as a ~~Member~~ Participant agrees to be responsible for any violation of the Bylaws, Rules, interpretations and policies of the Clearing Corporation committed by such Person while a ~~Member~~ Participant and agrees to have any disputes which arise while a ~~Member~~ Participant which relate to or arise out of any transaction with the Clearing Corporation or ~~membership~~ status of a Participant in the Clearing Corporation resolved in accordance with the Bylaws and Rules.

### 9-310 Acceptance of Trades by Clearing Corporation

In the case of all On-Order Book Trades, and Off-Order Book Trades falling within the Range, acceptance of the Trade occurs upon trade matching by the EurexUS trading system. In the case of Off-Order Book Trades falling outside the Range and all Post-Trade Transactions, acceptance shall occur upon receipt of all payments and deposits required to be made pursuant to these Rules by the ~~Members~~ Participants who are parties to such Trades and Transactions.

### 9-315. Limitation of Liability.

The liability of the Clearing Corporation shall be limited to losses resulting from the substitution of the Clearing Corporation upon contracts between ~~Members~~ Participants in accordance with these Rules, but in no event shall the amount of such liability exceed the amount on deposit in the General Guaranty Fund. The Clearing Corporation shall not be liable for obligations of a non-~~Member~~ Participant, obligations of a ~~Member~~ Participant to a non-~~Member~~ Participant, obligations of a ~~Member~~ Participant to another ~~Member~~ Participant of the Clearing Corporation who is acting for such other ~~member~~ Participant as broker, or obligations of a ~~Member~~ Participant to a customer, nor shall the Clearing Corporation become liable to make deliveries to or accept deliveries from a customer of its ~~Members~~ Participants.



#### 9-404. Settlement Price

- (a) Except as otherwise provided in this Rule, the Settlement Price for each open Contract shall be determined as follows:
  - (i) Except for Contracts using the EurexUS trading system that have a closing auction period, the Settlement Price shall be the price recommended for such Contract by EurexUS as determined in accordance with the rules of EurexUS.
  - (ii) If a Contract using the EurexUS trading system has a closing auction period, the Settlement Price shall be the closing price as determined in accordance with the rules of EurexUS.
- (b) Notwithstanding the foregoing, when deemed necessary by the Clearing Corporation in order to protect the respective interests of the Clearing Corporation and ~~Members~~ **Participants**, the Clearing Corporation may establish the Settlement Price for any Contract at a price deemed appropriate by the Clearing Corporation under the circumstances. When the Clearing Corporation determines that circumstances necessitate the application of this paragraph, the reasons for that determination and the basis for the establishment of the Settlement Price in such circumstances shall be recorded.
- (c) In carrying out the responsibilities under this Rule, the Clearing Corporation may consult, as appropriate, with one or more Markets and may consider all relevant market information.

#### 9-501. Delivery Notices.

A seller obligated or desiring to make delivery of a Commodity shall issue and deliver to the Clearing Corporation a delivery notice containing the name and business address of the issuer of such notice; the date of issue; the date of delivery; the name of the Commodity; the total contracted quantity in satisfaction of which the delivery is being tendered and such other information as the Clearing Corporation shall direct in regard to any particular Commodity.

Delivery notices shall be furnished to the Clearing Corporation electronically in such form as may be specified by the Clearing Corporation. The Clearing Corporation shall assign deliveries to ~~Members~~ **Participants** having Contracts to take delivery, for their own account or for one or more customers, of the same or lesser amount of the same Commodity. The Clearing Corporation shall notify such ~~Members~~ **Participants** of the deliveries which have been assigned to them and shall furnish to issuers of delivery notices the names of ~~Members~~ **Participants** obligated to accept their deliveries. ~~Members~~ **Participants** receiving delivery notices shall assign delivery to the oldest open contracts on their books at the close of business on the previous day.

Upon determining the buyers obligated to accept deliveries tendered by issuers of delivery notices, the Clearing Corporation shall furnish to each issuer the names of the buyers obligated to accept delivery from such ~~Member~~ **Participant** for each Commodity for which

a notice was tendered and shall also inform the issuer of the number of contracts for which each buyer is obligated. Failure of the seller to object to such assignment by 7:00 a.m. on the business day preceding the intended date of delivery shall establish an irrebuttable presumption that the issuance of the delivery notice was authorized by the person in whose name the notice was issued.

**9-502. Purchases and Sales for Physical Delivery.**

Issuance of a notice of intention to deliver by a Member Participant to the Clearing Corporation shall constitute an offer by such Member Participant to sell to the Clearing Corporation the specified quantity of the Commodity involved, at the delivery price, and to purchase from the Clearing Corporation the same quantity of the same Commodity at the same price. Acceptance of such notice by the Clearing Corporation shall constitute its acceptance of the Member's Participant's offer to sell and repurchase. Such acceptance is effective at the time delivery is required to be made according to the Rules of the Clearing Corporation.

Assignment of delivery to a Member Participant by the Clearing Corporation shall constitute an offer of the Clearing Corporation to sell to such Member Participant the specified quantity of the Commodity involved, at the delivery price, and to purchase from such Member Participant the same quantity of the same Commodity at the same price. Acceptance of such assignment of delivery by such Member Participant shall constitute his acceptance of the Clearing Corporation's offer to sell and repurchase. Such acceptance is effective at the time delivery is required to be made according to the Rules of the Clearing Corporation.

The Clearing Corporation shall, at the time delivery is required to be made, consider the corresponding sales to such assigned buyers made hereunder as having been settled and shall apply the opposing repurchase made hereunder as an adjustment of the respective Members' Participants' futures positions with the Clearing Corporation in the manner prescribed by these Rules.

**9-504 Posting of Deliveries.**

During each delivery month, the Clearing Corporation shall post, not later than the Business Day following the filing of notices of intention to deliver, the name of each Member Participant issuing notices of intention to deliver on Futures Contracts and the total amount of each Commodity tendered by such Member Participant for delivery, together with the name of each Member Participant accepting assignment of deliveries and the total amount of each Commodity assigned to such Member Participant.

#### 9-505. Settlements on Defaulted Deliveries.

- (a) If a **Member Participant** fails to fulfill its delivery obligations as prescribed in these Rules, the Clearing Corporation's sole obligation shall be to pay reasonable damages proximately caused by the Default, but in no event shall the Clearing Corporation be obligated to: (i) pay any damages greater than the difference of the delivery price of the specific Commodity and the reasonable market price of such Commodity at the time delivery is required to be made in accordance with the rules and regulations of EurexUS and the Rules of the Clearing Corporation; (ii) make or accept delivery of the actual Commodity; (iii) pay any damages relating to the accuracy, genuineness, completeness, or acceptability of certificates, instruments, warehouse receipts or other similar documents; or (iv) pay any damages relating to the failure or insolvency of banks, custodians, escrow agents, depositories, warehouses, or similar entities that may be involved with a delivery.
- (b) Notwithstanding any other provision of these Rules, the Clearing Corporation has no obligation or liability to any **Member Participant** or any other Person relating to a failure to fulfill a delivery obligation unless it is notified by the non-defaulting **Member Participant** of such failure as soon as possible, but in no event later than sixty minutes after the time the delivery obligation was to have been discharged in accordance with the rules and regulations of EurexUS and the Rules of the Clearing Corporation.
- (c) Delivery obligations of a **Member Participant** to another **Member Participant** that are not discharged by the **Member Participant** shall thereupon be deemed an obligation of the defaulting **Member Participant** to the Clearing Corporation. The defaulting **Member's Participant's** obligations to the Clearing Corporation must be discharged not later than sixty minutes after the time such obligations originally were required to be discharged to the non-defaulting **Member Participant**.

- (d) If a buying **Member Participant** fails to effect payment to its assigned seller by 1:00 p.m. on the date scheduled for delivery, the selling **Member Participant** must immediately notify the Clearing Corporation. The Clearing Corporation will then determine, in its sole discretion, whether the failure of the buying **Member Participant** to effect payment constitutes a technical failure that can be remedied or whether the buyer's failure to effect payment constitutes a delivery default. If the Clearing Corporation determines, in its sole discretion, that the failure was caused by a technical failure (including a bank instruction error or failure of the Federal Reserve wire), the buyer will be allowed to make payment subsequent to 1:00 p.m. If the Clearing Corporation determines, in its sole discretion, that the failure constitutes a delivery default, the Clearing Corporation will instruct the selling **Member Participant** to sell the invoiced securities as soon as reasonably practicable. The defaulting buyer **Member Participant** will in such circumstances be liable to its assigned sellers for the amount, if any, that the reasonable sale price of the invoiced securities (including costs) is less than the original invoiced amount.

If a selling **Member Participant** fails to effect delivery to its assigned buyer by 1:00 p.m. on the date scheduled for delivery, the buying **Member Participant** must immediately notify the Clearing Corporation. The Clearing Corporation will then determine, in its sole discretion, whether the seller's failure to effect delivery constitutes a technical failure that can be remedied or whether the seller's failure to effect delivery constitutes a delivery default. If the Clearing Corporation determines that the failure was caused by a technical failure (including a bank instruction error or failure of the Federal Reserve wire), the seller will be allowed to make delivery subsequent to 1:00 p.m. If the Clearing Corporation determines that the failure constitutes a delivery default, the Clearing Corporation will instruct the buyer to purchase substitute deliverable securities as soon as reasonably practicable. The defaulting selling **Member Participant** will in such circumstances be liable to its assigned buyer(s) for the reasonable damages (including costs) incurred by the buyer(s) relating to the purchase of the substitute securities.

The Clearing Corporation's delivery guaranty to a non-defaulting buying or selling **Member Participant** shall in all cases be subject to the provisions of Rule 9-505(a) and Chapter 8 hereof.

Any claim for damages or other dispute relating to a delivery failure or default will be resolved between the applicable buying and selling **Members Participants** pursuant to binding arbitration before the National Futures Association ("NFA"). Failure by a **Member Participant** to comply with the NFA's resolution may be subject to charges or result in the suspension of the **Member's Participant's** clearing privileges at the Clearing Corporation, or both.

**9-510. Report of Eligibility to Receive Delivery.**

Prior to 8:00 p.m. (or by such other time designated by the Clearing Corporation) of each day on which delivery notices may be delivered to the Clearing Corporation, each **Member Participant** shall report to the Clearing Corporation, at such times and in such manner as shall be prescribed by the Clearing Corporation, the amounts of its purchases of Commodities then eligible for delivery which remain open on its books in accordance with these Rules. Such reports shall show the dates on which such purchases were made, and shall exclude purchases to which the **Member Participant** has applied deliveries assigned to it but which remain open on its books pending receipt of delivery. With respect to omnibus accounts, the reports described above shall show the dates on which such purchases were made, as reflected on the ultimate customers' account statements.

**9-511. Payment.**

Payment shall be made in Federal Funds. The buying **Member Participant** obligated to take delivery must take delivery and make payment before 1:00 p.m. on the day of delivery except as otherwise provided in Rule 9-509 and on banking holidays when delivery must be taken and payment made before 9:30 a.m. on the next banking business day. Adjustments for differences between contract prices and delivery prices established by the Clearing Corporation shall be made with the Clearing Corporation.

**9-512. Buyer's Banking Notification.**

The buying **Member Participant** shall provide the selling **Member Participant** with notice, in such form as the Clearing Corporation may prescribe from time to time, setting forth: the identification number and name of the buying **Member Participant**; the delivery date; the notification number of the delivery assignment; the identification number and name of the selling **Member Participant** making delivery; the quantity of the Commodity being delivered; the buying **Member's Participant's** bank and account number; and specific Federal Reserve wire instructions for the transfer of securities. Such notice shall be provided by 4:00 p.m. on the business day immediately prior to delivery day or by such other time as may be designated by the Clearing Corporation.

**9-513. Standards.**

The contract grade(s) for delivery on Futures Contracts made under these Rules, together with any premiums or discounts applicable thereto, shall be as set forth in the rules of EurexUS.

#### **9-514. Deliveries on Futures Contracts.**

Deliveries against U.S. Treasury securities Futures Contracts shall be by book-entry transfer between accounts of **Members Participant's** at Banks in accordance with Department of the Treasury Circular 300, Subpart O: Book-Entry Procedure. Delivery must be made no later than the last business day of the month. Notice of intention to deliver shall be given to the Clearing Corporation by 8:00 p.m., or by such other time designated by the Clearing Corporation, on the second business day preceding delivery day. If the buying **Member Participant** does not agree with the terms of the invoice received from the selling **Member Participant**, the buying **Member Participant** must notify the selling **Member Participant**, and the dispute must be settled by 9:30 a.m. on delivery day. The selling **Member Participant** must have contract grade U.S. Treasury securities in place at its Bank in a form acceptable to its Bank for delivery no later than 10:00 a.m. on delivery day. The selling **Member Participant** must notify its Bank to transfer contract grade U.S. Treasury securities by book-entry to the buying **Member's Participant's** account at the buying **Member's Participant's** Bank on a delivery versus payment basis. On delivery day, the buying **Member Participant** shall make funds available by 7:30 a.m. and notify its Bank to accept contract grade U.S. Treasury contracts and to remit Federal Funds to the selling **Member's Participant's** account at the selling **Member's Participant's** Bank in payment for delivery therefor. Contract grade U.S. Treasury securities must be transferred and payment must be made before 1:00 p.m. on delivery day.

All deliveries shall be assigned by the Clearing Corporation. Where a **Member Participant** of the Clearing Corporation has an interest both long and short for customers on its own books, it must tender to the Clearing Corporation such notices of intention to deliver as it received from its customers who are short.

#### **9-515. Wire Failure.**

If delivery cannot be accomplished because of a failure of the Federal Reserve wire or because of a failure of either the buying **Member's Participant's** Bank's or the selling **Member's Participant's** Bank's access to the Federal Reserve wire, delivery shall be made before 9:30 a.m. on the next business day on which the Federal Reserve wire or Bank access to it is operable. Interest shall, in such circumstances, accrue to the buyer beginning on the day on which the securities were to be originally delivered and shall be paid to the buyer by the seller. In the event of such failure, both the buyer and seller must provide documented evidence that the instructions were given to their respective Banks in accordance with Rules 9-511 and 9-514 and that all other provisions of Rules 9-511 and 9-514 have been complied with.

#### **9-516. Date of Delivery.**

Delivery of U.S. Treasury securities may be made by the selling **Member Participant** upon any permissible delivery day of the delivery month the seller may select. Delivery of U.S. Treasury securities must be made no later than the last business day of the delivery month.

**9-517. Seller's Invoice to Buyers.**

Upon determining the buyers obligated to accept deliveries tendered by issuers of delivery notices, the Clearing Corporation shall promptly furnish each issuer the names of the buyers obligated to accept delivery from such issuer and a description of each Commodity tendered by him which was assigned by the Clearing Corporation to each such buyer. Thereupon, sellers (issuers of delivery notices) shall prepare invoices addressed to their assigned buyers, describing the documents to be delivered to each such buyer. Such invoices shall show the amount which buyers must pay to sellers in settlement of the actual deliveries, based on the delivery prices established by the Clearing Corporation, and adjusted for applicable interest payments. Such invoices shall be delivered to the Clearing Corporation by 2:00 p.m., or by such other time designated by the Clearing Corporation, on the business day preceding the intended date of delivery, except on the next-to-last business day of the month, where such invoices shall be delivered to the Clearing Corporation by 3:00 p.m., or by such other time as may be designated by the Clearing Corporation. Upon receipt of such invoices, the Clearing Corporation shall promptly make them available to buyers in the manner determined by the Clearing Corporation from time to time.

## 10. MERCHANTS' EXCHANGE LLC

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### 10-101. Definitions

#### Exchange

The Merchants' Exchange LLC.

#### ME Contract

The term "ME Contract" has the meaning set forth in Rule 101 in relation to the definition of "Exchange Market."

### 10-315. Limitation of Liability.

The liability of the Clearing Corporation shall be limited to losses resulting from the substitution of the Clearing Corporation upon contracts between **Members Participant**s in accordance with these Rules, but in no event shall the amount of such liability hereunder or under any other provision of these Rules exceed the total amount on deposit in the Emerging Markets Guaranty Fund. The Clearing Corporation shall not be liable for obligations of a non-**Member Participant**, obligations of a **Member Participant** to a non-**Member Participant**, obligations of a **Member Participant** to another **Member Participant** of the Clearing Corporation who is acting for such other **member Participant** as broker, or obligations of a **Member Participant** to a customer, nor shall the Clearing Corporation become liable to make deliveries to or accept deliveries from a customer of its **Members Participant**s.

### 10-404. Settlement Prices.

- (a) The Settlement Price for each open ME Contract means the price for that Contract established in accordance with this Rule at the close of each day's trading.
- (b) Except as otherwise provided in this Rule, the daily Settlement Price for each open ME Contract shall be determined as follows:
  - (i) If an ME Contract is actively traded during a trading day, the Settlement Price shall be the last Trade price or a price established within the closing range, for that Contract.
  - (ii) If an ME Contract is not actively traded during a trading day, the Settlement Price shall be a price established within the current bids and offers, or based on a current bid or offer, for that ME Contract.



- (iii) If no current bids or offers are available for an ME contract, the Settlement Price shall be a price established (A) in relation to quoted spread prices against other actively traded ME Contracts, or (B) in relation to other Futures, Option or Commodity prices.
- (c) The Settlement Price for Final Settlement of an ME Contract shall be the price required by the Exchange contract terms and conditions.
- (d) Notwithstanding the foregoing, when deemed necessary by the Clearing Corporation in order to protect the respective interests of the Clearing Corporation and **Members Participants**, the Clearing Corporation may establish the Settlement Price for any ME Contract at a price deemed appropriate under the circumstances. When the Clearing Corporation determines that circumstances necessitate the application of this paragraph, the reasons for that determination and the basis for the establishment of the Settlement Price in such circumstances shall be recorded.
- (e) In carrying out the responsibilities under this Rule, the Clearing Corporation may consult the Exchange and may consider all relevant market information.

**10-505. Delivery Default.**

The Clearing Corporation shall under no circumstances be obligated to make or accept deliveries in satisfaction of ME Contracts made on or through the facilities of the Exchange, nor shall the Clearing Corporation have any obligation or liability to any **Member Participant** or to any other person relating to a failure to fulfill a delivery Obligation following the Clearing Corporation's assignment of **Member Participant** buyers to selling **Member Participant** as provided herein.

Following the Clearing Corporation's issuance of notices regarding delivery assignments, the **Members Participants** shall be substituted in lieu of the Clearing Corporation as buyers and sellers in the ME Contracts between the Clearing Corporation and **Member Participant** sellers and buyers, respectively, and the ME Contracts between such **Members Participants** and the Clearing Corporation will be deemed discharged and terminated, in each case effective from and after Final Settlement.

11. COMMODITIES MANAGEMENT EXCHANGE, INC.

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11-101. Definitions.

CMX

Commodities Management Exchange, Inc.

CMX Contract

The term "CMX Contract" has the meaning set forth in Rule 101 in relation to the definition of "OTC Market."

CMX Trading System

The electronic Trade matching system operated by CMX for the trading of CMX Contracts.

11-304. Offsets.

Where, as the result of substitution under Rule 501, any **Member Participant** has bought from Clearing Corporation any amount of a given CMX Contract for a particular delivery and subsequently, and prior to such delivery, such **Member Participant** sells to the Clearing Corporation any amount of the same CMX Contract for the same delivery, the subsequent transaction shall be deemed *pro tanto* a settlement or adjustment of the prior transaction. In like manner, where a **Member Participant** sells to the Clearing Corporation any amount of a given CMX Contract for a particular delivery and subsequently, and before delivery, such **Member Participant** buys any amount of the same CMX Contract for the same delivery, the second transaction shall be deemed *pro tanto* a settlement or adjustment of the prior transaction. Thereupon, such **Member Participant** shall become liable to pay the loss or entitled to collect the profit, as the case may be, upon such adjusted transactions. For purposes of this Rule, the first Trades made shall be deemed the first Trades offset.

11-310. Acceptance of Trades by the Clearing Corporation.

- (a) The Clearing Corporation shall accept Trades only if such Trades are submitted by or on behalf of a **Participant**.

- (b) ~~Member.~~  
(b) A Trade in a CMX Contract shall not be deemed to be accepted by the Clearing Corporation until the later of: (i) receipt of all payments and deposits required to be made pursuant to these Rules by the **Members Participants** who are parties to the Trade, and (ii) thirty minutes after the Clearing Corporation's matching of Trade confirmations submitted by **Members Participants**. The Clearing Corporation may at any time prior to the expiration of such thirty-minute period decline to accept such Trade, whether or not the Clearing Corporation has received the Margin and other payments and deposits required to be made in respect thereof. In such an event, the Clearing Corporation will promptly notify the affected **Members Participants** and CMX.
- (c) Issuance by the Clearing Corporation to a **Member Participant** of the statement of Trades and positions provided for in Rule 307 shall not constitute confirmation that the Trades listed on such statement have been accepted by the Clearing Corporation.

.. . . **Interpretations and Policies:**

- .01 The Clearing Corporation's normal business hours are from 7:00 a.m. to 4:00 p.m. on Business Days. In the event that a Trade is received or matched between 3:30 p.m. and 7:00 a.m., the Clearing Corporation will not be deemed to have accepted such Trade until 7:30 a.m. on the next Business Day. On Business Days on which normal business hours do not apply, the times referenced above will be adjusted accordingly.
- .02 If the Clearing Corporation declines to accept a Trade (as provided in paragraph (b)), it will refund the **Members' Participants' Margin** and other payments and deposits. In the event that one of the **Members Participants** is in Default, the Clearing Corporation will refund Margin, payments and deposits only to the **Member Participant** that is not in Default.

11-312. **Reserved.**

11-315. **Limitation of Liability.**

The liability of the Clearing Corporation shall be limited to losses resulting from the substitution of the Clearing Corporation upon contracts between **Members Participants** in accordance with these Rules, but in no event shall the amount of such liability hereunder or under any other provision of these Rules exceed the total amount on deposit in the Emerging Markets Guaranty Fund. The Clearing Corporation shall not be liable for obligations of a non-**Member Participant**, obligations of a **Member Participant** to a non-**Member Participant**, obligations of a **Member Participant** to another **Member Participant** of the Clearing Corporation who is acting for such other **member Participant** as broker, or obligations of a **Member Participant** to a customer, nor shall the Clearing Corporation become liable to make deliveries to or accept deliveries from a customer of its **Members Participants**.

**11-404. Settlement Prices.**

- (a) The Settlement Price for a CMX Contract means the price for such CMX Contract established by the Clearing Corporation in accordance with this Rule.
- (b) The Settlement Price for each open CMX Contract shall be determined based upon the recommendation of CMX. In carrying out the responsibilities under this Rule, the Clearing Corporation may consult, as appropriate, any committee of the Clearing Corporation, and may consider all relevant market information, including (but not limited to) price data from spot, forward, and derivative markets for both physical and financial products.
- (c) The Settlement Price for Final Settlement of a CMX Contract shall be the price required by the terms and conditions established by CMX for such CMX Contract.
- (d) Notwithstanding the foregoing, when deemed necessary by the Clearing Corporation in order to protect the respective interests of the Clearing Corporation and ~~Members~~ **Participants**, the Clearing Corporation may establish the Settlement Price for any CMX Contract at a price deemed appropriate by the Clearing Corporation under the circumstances. When the Clearing Corporation determines that circumstances necessitate the application of the powers conferred hereby, the reasons for that determination and the basis for the establishment of the Settlement Price in such circumstances shall be recorded.
- (e) In carrying out the responsibilities under this Rule, the Clearing Corporation may consult, as appropriate, any committees of the Clearing Corporation or the Exchange, and may consider all relevant market information.
- (f) In no event shall the Settlement Price (including the Settlement Price for Final Settlement) of any CMX AL MW Transaction Premium (single-day swap) or CMX AL MW Transaction Premium (monthly-average swap) be less than \$.0005/pound.

11-501 –

11-504. Reserved.

**11-505. Delivery Default.**

The Clearing Corporation shall under no circumstances be obligated to make or accept deliveries in satisfaction of CMX Contracts made on or through the facilities of the Exchange, nor shall the Clearing Corporation have any obligation or liability to any ~~Member~~ **Participant** or to any other person relating to a failure to fulfill a delivery Obligation following the Clearing Corporation's assignment of ~~Member~~ **Participant** buyers to selling ~~Member~~ **Participant** as provided herein.

The Clearing Corporation shall, at the time delivery is required to be made according to the rules of the Exchange and these Rules, consider the corresponding sales to such assigned

buying ~~Members~~ **Participants** made hereunder as having been settled, shall adjust the respective ~~Members'~~ **Participants'** positions with the Clearing Corporation in the manner prescribed by these Rules, and shall have no further obligation to ~~Members~~ **Participants** in respect of such CMX Contracts and positions.

~~11-506~~ \_\_\_\_\_ ~~11~~

~~506~~

~~11-508~~. Reserved.

**11-509. Cash Settlement.**

After trading ceases on the Last Trading Day, the Clearing Corporation shall deem the maintenance by a ~~Member~~ **Participant** of an open position in a CMX Contract to constitute an offer to sell to or buy from the Clearing Corporation, as the case may be, the specific quantity of the commodity or other interest that underlies such CMX Contract at the final Settlement Price established in accordance with Rule 11-404.

Cash settlement of CMX Contracts shall ordinarily be made on the second Business Day after the Last Trading Day. The Clearing Corporation shall, at the time cash settlement is required to be made, consider the corresponding sales or purchases made hereunder as an adjustment of the respective ~~Members'~~ **Participants'** positions with the Clearing Corporation in the manner prescribed by these Rules.

## APPENDIX 11-A

Product Specification – CMX AL London NA A380  
(Single-Day Settlement)

CMX Contract Description	CMX AL London NA A380 (Single-Day Settlement)
Clearing Corporation Description	AL Ldn NA A380 Day
Commodity Code	AA
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Two Business Days preceding the third Wednesday of the contract month
Cash Settlement	Third Wednesday of the contract month
Contract Months	Monthly out to 60 months

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**Product Specification – CMX AL London NA A380  
(Monthly-Average Settlement)**

<b>CMX Contract Description</b>	<b>CMX AL London NA A380 (Monthly-Average Settlement)</b>
Clearing Corporation Description	AL Ldn NA A380 MAS
Commodity Code	AB
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Last Business Day of the contract month
Cash Settlement	Two Business Days following Last Trading Day
Contract Months	Monthly out to 60 months

## APPENDIX 11-A

Product Specification – CMX AL Midwest Survey A380  
(Single-Day Settlement)

<b>CMX Contract Description</b>	<b>CMX AL Midwest Survey A380 (Single-Day Settlement)</b>
Clearing Corporation Description	AL MW Srvy A380 Day
Commodity Code	AC
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Two Business Days preceding the third Wednesday of the contract month
Cash Settlement	Third Wednesday of the contract month
Contract Months	Monthly out to 60 months



APPENDIX 11-A

Product Specification – CMX AL Midwest Survey A380  
(Monthly-Average Settlement)

CMX Contract Description	CMX AL Midwest Survey A380 (Monthly-Average Settlement)
Clearing Corporation Description	AL MW Srvy A380 MAS
Commodity Code	AD
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Last Business Day of the contract month
Cash Settlement	Two Business Days following Last Trading Day
Contract Months	Monthly out to 60 months

**APPENDIX 11-A**

**Product Specification – CMX AL London Alloy  
(Single-Day Settlement)**

<b>CMX Contract Description</b>	<b>CMX AL London Alloy (Single-Day Settlement)</b>
Clearing Corporation Description	AL Ldn Alloy Day
Commodity Code	AE
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Two Business Days preceding the third Wednesday of the contract month
Cash Settlement	Third Wednesday of the contract month
Contract Months	Monthly out to 60 months

APPENDIX 11-A

Product Specification – CMX AL London Alloy  
(Monthly-Average Settlement)

CMX Contract Description	CMX AL London Alloy (Monthly-Average Settlement)
Clearing Corporation Description	AL Ldn Alloy MAS
Commodity Code	AF
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Last Business Day of the contract month
Cash Settlement	Two Business Days following Last Trading Day
Contract Months	Monthly out to 60 months

APPENDIX 11-A

Product Specification – CMX AL London Hi Grade  
(Single-Day Settlement)

CMX Contract Description	CMX AL London Hi Grade (Single-Day Settlement)
Clearing Corporation Description	AL Ldn Hi Grade Day
Commodity Code	AG
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Two Business Days preceding the third Wednesday of the contract month
Cash Settlement	Third Wednesday of the contract month
Contract Months	Monthly out to 60 months

APPENDIX 11-A

Product Specification – CMX AL London Hi Grade  
(Monthly-Average Settlement)

CMX Contract Description	CMX AL London Hi Grade (Monthly-Average Settlement)
Clearing Corporation Description	AL Ldn Hi Grade MAS
Commodity Code	AH
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Last Business Day of the contract month
Cash Settlement	Two Business Days following Last Trading Day
Contract Months	Monthly out to 60 months

**Product Specification – CMX AL Midwest Transaction Price Survey  
(Single-Day Settlement)**

<b>CMX Contract Description</b>	<b>CMX AL Midwest Transaction Price Survey (Single-Day Settlement)</b>
Clearing Corporation Description	AL MW Trns Srvy Day
Commodity Code	AI
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Two Business Days preceding the third Wednesday of the contract month
Cash Settlement	Third Wednesday of the contract month
Contract Months	Monthly out to 60 months

**Product Specification – CMX AL Midwest Transaction Price Survey  
(Monthly-Average Settlement)**

<b>CMX Contract Description</b>	<b>CMX AL Midwest Transaction Price Survey (Monthly-Average Settlement)</b>
Clearing Corporation Description	AL MW Trns Srvy MAS
Commodity Code	AJ
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Last Business Day of the contract month
Cash Settlement	Two Business Days following Last Trading Day
Contract Months	Monthly out to 60 months

APPENDIX 11-A

Product Specification –CMX AL New York Primary  
(Single-Day Settlement)

CMX Contract Description	CMX AL New York Primary (Single-Day Settlement)
Clearing Corporation Description	AL NY Primary Day
Commodity Code	AK
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Third to last Business Day of the contract month
Cash Settlement	Last Business Day of the contract month
Contract Months	Monthly out to 60 months



**APPENDIX 11-A**

**Product Specification – CMX AL New York Primary  
(Monthly-Average Settlement)**

<b>CMX Contract Description</b>	<b>CMX AL New York Primary (Monthly-Average Settlement)</b>
Clearing Corporation Description	AL NY Primary MAS
Commodity Code	AL
Contract Unit	44,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$22.00
Last Trading Day	Last Business Day of the contract month
Cash Settlement	Two Business Days following Last Trading Day
Contract Months	Monthly out to 60 months

APPENDIX 11-A

Product Specification – CMX AL MW Transaction Premium  
(Single-Day Settlement)

<b>CMX Contract Description</b>	<b>CMX AL MW Transaction Premium (Single-Day Settlement)</b>
Clearing Corporation Description	AL MW Prem PL Day
Commodity Code	AM
Contract Unit	440,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$220.00
Last Trading Day	Two Business Days preceding the third Wednesday of the contract month
Cash Settlement	Third Wednesday of the contract month. The Settlement Price for Final Settlement will in no event be less than .05 cents (\$.0005) per pound.
Contract Months	Monthly out to 60 months

**Product Specification – CMX AL MW Transaction Premium  
(Monthly-Average Settlement)**

<b>CMX Contract Description</b>	<b>CMX AL MW Transaction Premium (Monthly-Average Settlement)</b>
Clearing Corporation Description	AL MW Prem PL MAS
Commodity Code	AN
Contract Unit	440,000 lbs.
Price Quotation	.05 cents (\$.0005) per pound
Minimum Price Fluctuation	.05 cents = \$220.00
Last Trading Day	Last Business Day of the contract month
Cash Settlement	Two Business Days following Last Trading Day. The Settlement Price for Final Settlement will in no event be less than .05 cents (\$.0005) per pound.
Contract Months	Monthly out to 60 months

## 12. ~~CHEMCONNECT~~ CHEMCONNECT, INC.

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### 12-101. Definitions.

#### ChemConnect

ChemConnect, Inc.

#### ChemConnect Contract

The term "ChemConnect Contract" has the meaning set forth in Rule 101 in relation to the definition of "OTC Market."

#### Contract Value

As to any ChemConnect Contract on any day, the product of the current Settlement Price and the contract size per lot (as set forth in Appendix 12-A).

#### Default

Any event that would constitute a default under Rule 605 or Rule 12-804.

#### Delivery Collateral

All collateral held by Clearing Corporation, as escrow agent, in respect of a ChemConnect Contract following Final Settlement of any ChemConnect Contract that provides for physical delivery. "Original Delivery Collateral" and "Supplementary Delivery Collateral" shall have the meanings set forth in Rule 12-701(b).

#### Final Settlement

With respect to a ~~Member~~ Participant that has open trades or positions in ChemConnect Contracts at the close of trading on the Last Trading Day, the issuance of instructions by the Clearing Corporation to such ~~Member's~~ Participant's settlement bank to debit or credit the ~~Member's~~ Participant's variation settlement account on the next Business Day and the acceptance thereof by such settlement bank.

#### . . . Interpretations and Policies:

- .01 The Clearing Corporation ordinarily will effect Final Settlement of ~~a physically settled ChemConnect Contract~~ Contracts by 6:40 a.m. on the first Business Day following the Last Trading Day in such ChemConnect Contract.

## ChemConnect User Agreement

The agreement between ChemConnect and a **Member Participant** or Customer governing the responsibilities of parties to ChemConnect Contracts, including the terms for delivery thereof.

## ChemConnect System

The system operated by ChemConnect for the trading of ChemConnect Contracts.

## Last Trading Day

As to any ChemConnect Contract, the last day on which a particular delivery month or expiration is available on the ChemConnect System.

## Non-Defaulting **Member Participant**

The term “non-Defaulting **Member<sup>2</sup> Participant**” has the meaning given that term in Rule 12-705.

## Swap Settlement Collateral

All collateral held by ~~(including Initial Swap Collateral and Supplementary Swap Collateral) held by the~~ Clearing Corporation ~~following Final Settlement~~, as escrow agent, following Final Settlement, in respect of a ChemConnect Contract that provides for cash settlement.

## 12-304. Offsets.

- (a) Where, as the result of substitution under Rule 301, any **Member Participant** has bought from the Clearing Corporation any amount of a given ChemConnect Contract for a particular delivery and subsequently, and prior to such delivery, such ~~Member sells~~ **Participant**~~sells~~ to the Clearing Corporation any amount of the same ChemConnect Contract for the same delivery, the subsequent transaction shall be deemed *pro tanto* a settlement or adjustment of the prior transaction. In like manner, where a **Member Participant** sells to the Clearing Corporation any amount of a given ChemConnect Contract for a particular delivery and subsequently, and before delivery, such **Member Participant** buys any amount of the same ChemConnect Contract for the same delivery, the second transaction shall be deemed *pro tanto* a settlement or adjustment of the prior transaction. Thereupon, such **Member Participant** shall become liable to pay the loss or entitled to collect the profit, as the case may be, upon such adjusted transactions. For purposes of this Rule, the first Trades made shall be deemed the first Trades offset.

- (b) The Clearing Corporation will, upon direction from a ~~Member~~ **Participant**, establish one or more sub-accounts within such ~~Member's~~ **Participant's** account at the Clearing Corporation. The Clearing Corporation will ordinarily offset long and short positions in ChemConnect Contract that are identified by the ~~Member~~ **Participant** as having been made for such a sub-account.

... **Interpretations and Policies:**

- .01 A **Participant** is permitted to establish one or more sub-accounts for itself or ~~Member~~ for Customers. In the event of a Default, the applicable Guaranty Funds will be applied only to the combined (net) position in those sub-accounts. ~~Statement of Trades and Positions.~~

**12-310. Acceptance of Trades by the Clearing Corporation.**

- (a) The Clearing Corporation shall accept Trades for clearance only if such Trades are submitted on behalf of a **Participant**.
- ~~(b)~~ ~~Member.~~  
(b) A Trade (other than a Transfer Trade or a Block Trade) in a ChemConnect Contract shall not be deemed to be accepted by the Clearing Corporation until thirty minutes after the Clearing Corporation's receipt of corresponding sides to a Trade submitted to it by ChemConnect. The Clearing Corporation may at any time prior to the expiration of such period decline to accept such Trade. In that event, the Clearing Corporation will promptly notify the affected ~~Members~~ **Participants** and ChemConnect.
- (c) A Transfer Trade shall not be accepted until the Clearing Corporation has received from the ~~Members~~ **Participants** who are parties to the Trade all payments and deposits required to be made pursuant to these Rules.
- (d) A Block Trade shall be submitted to the Clearing Corporation, together with such additional information as may be required and, if not rejected by the Clearing Corporation within one hour of the submission thereof by ChemConnect, shall be deemed accepted by the Clearing Corporation. In the event that the Clearing Corporation rejects a Block Trade, it will promptly notify the affected ~~Members~~ **Participants** and ChemConnect.
- (e) Issuance by the Clearing Corporation to a ~~Member~~ **Participant** of the statement of Trades and positions provided for in Rule 307 shall not constitute confirmation that the Trades listed on such statement have been accepted by the Clearing Corporation.
- (f) As used herein, (i) the term "Block Trade" shall mean a privately negotiated transaction in a ChemConnect Contract that is submitted to the Clearing Corporation by ChemConnect but not executed through the ChemConnect System.

... **Interpretations and Policies:**

- .01 The Clearing Corporation's normal business hours are from 7:00 a.m. to 4:00 p.m. on Business Days. In the event that a Trade (other than a Block Trade) is received between 3:30 p.m. and 7:00 a.m., the Clearing Corporation will not be deemed to have accepted such Trade until 7:30 a.m. on the next Business Day. In the event that a Block Trade is submitted to the Clearing Corporation between 3:00 p.m. and 7:00 a.m., the Clearing Corporation will not be deemed to have accepted such Trade until 8:00 a.m. on the next Business Day. On Business Days on which normal business hours do not apply, the time frames referenced above will be adjusted accordingly.

**12-312. Reserved.**

**12-315. Limitation of Liability.**

The liability of the Clearing Corporation shall be limited to losses resulting from the substitution of the Clearing Corporation upon contracts between ~~Members~~ **Participant**s in accordance with these Rules, but in no event shall the amount of such liability hereunder or under any other provision of these Rules exceed the total amount on deposit in the Emerging Markets Guaranty Fund. The Clearing Corporation shall not be liable for obligations of a non-~~Member~~ **Participant**, obligations of a ~~Member~~ **Participant** to a non-~~Member~~ **Participant**, obligations of a ~~Member~~ **Participant** to another ~~Member~~ **Participant** of the Clearing Corporation who is acting for such other ~~member~~ **Participant** as broker, or obligations of a ~~Member~~ **Participant** to a customer, nor shall the Clearing Corporation become liable to make deliveries to or accept deliveries from a customer of its ~~Members~~ **Participant**s.

**12-402. Original Margins.**

- (a) Margin, other than variation settlements, shall be known as original Margin. The Clearing Corporation shall, from time to time, fix the amount of original Margin which shall be called to protect the Clearing Corporation on Trades in ChemConnect Contracts. On the Last Trading Day, original Margin for any ChemConnect Contract that settles by physical delivery shall be equal to at least 30% of the Contract Value. **On the Last Trading Day, original Margin for any ChemConnect Contract that cash settles shall be equal to at least 10% of the Contract Value.**
- (b) ~~(b)~~ When the amount callable shall have been fixed, such Margin shall be called by the Clearing Corporation. Normally, Margin calls will be uniform, but where particular risks are deemed hazardous, the Clearing Corporation may depart from the rule of uniformity and call for additional Margin. Upon performance or closing out of Contracts thus secured, original Margin deposits may be withdrawn by the ~~Member~~ **Participant** upon the authorization of the Clearing Corporation except as otherwise provided in Rules 12-501 and 12-502.

- (c) Original Margin may be required of ~~Members~~ **Participants** on a gross basis, without reduction for opposite positions in the same ChemConnect Contract, and shall be deposited in the manner prescribed by the Clearing Corporation.

**12-404. Settlement Prices.**

- (a) The Settlement Price for a ChemConnect Contract means the price for such ChemConnect Contract established in accordance with this Rule at the close of each day's trading.
- (b) The Settlement Price for each open ChemConnect Contract shall be determined by the Clearing Corporation based upon the recommendation of ChemConnect. The Clearing Corporation may consult, as appropriate, any committee of the Clearing Corporation, and may consider all relevant market information, including (but not limited to) price data from spot, forward, and derivative markets for both physical and financial products.
- (c) The Settlement Price for Final Settlement of a ChemConnect Contract shall be the price established pursuant to the terms and conditions of the ChemConnect Contract User Agreement.
- (d) Notwithstanding the foregoing, when deemed necessary by the Clearing Corporation in order to protect the respective interests of the Clearing Corporation and ~~Members~~ **Participants**, the Clearing Corporation may establish the Settlement Price for any ChemConnect Contract at a price deemed appropriate by the Clearing Corporation under the circumstances. When the Clearing Corporation determines that circumstances necessitate the application of the powers conferred hereby, the reasons for that determination and the basis for the establishment of the Settlement Price in such circumstances shall be recorded.
- (e) In carrying out the responsibilities under this Rule, the Clearing Corporation may consult, as appropriate, any committees of the Clearing Corporation or ChemConnect, and may consider all relevant market information.

**12-501. Assignment of Deliveries and Swap Settlements.**

- (a) By 3:00 p.m. on the first Business Day following the Last Trading Day, the Clearing Corporation shall assign buyers by account and sellers by account for delivery purposes. The Clearing Corporation shall thereupon notify ~~Members~~ **Participants** of the account-to-account assignments. Such notification shall be given by no later than 5:00 p.m. on the first Business Day following the Last Trading Day. The Clearing Corporation shall also notify ChemConnect of the account-to-account assignments. ChemConnect shall identify the names of and the contact information for the respective assigned accounts and provide such information to the ~~Members~~ **Participants** and the Clearing Corporation.



- (b) Provided that a **Member Participant** is not in Default, the Clearing Corporation shall instruct the **Member Participant** to deposit for credit to an escrow account maintained by the Clearing Corporation an amount equivalent to the original Margin requirement that is on deposit with the Clearing Corporation as of Final Settlement. Such amount shall be held in escrow by the Clearing Corporation as Original Delivery Collateral. During the delivery month (from the second business day after Last Trading Day until delivery), the buying **Member Participant** and selling **Member Participant** will be required to deliver to the Clearing Corporation, for credit to an escrow account maintained by the Clearing Corporation, such amounts (Supplementary Delivery Collateral) as required pursuant to the terms of the ChemConnect User Agreement. Such Supplementary Delivery Collateral will be transferred by wire transfer of immediately available funds of the United States of America to the escrow account designated by the Clearing Corporation. The Clearing Corporation shall release Supplementary Delivery Collateral pursuant to the terms of the ChemConnect User Agreement.
- (c) In the event that the Clearing Corporation is notified by both **Members Participants** that assigned accounts have agreed to the terms of an alternative delivery process, Delivery Collateral held by the Clearing Corporation in respect of such assigned accounts shall be returned or released to the **Members Participants** as provided in Rule 12-502(d)(iii).
- (d) **By 3:00 p.m. on the first Business Day following the Last Trading Day, the Clearing Corporation shall assign buyers by account and sellers by account for swap settlement purposes. The Clearing Corporation shall thereupon notify Participants of the account-to-account assignments. Such notification shall be given by no later than 5:00 p.m. on the first Business Day following the Last Trading Day. The Clearing Corporation shall also notify ChemConnect of the account-to-account assignments. ChemConnect shall identify the names of and the contact information for the respective assigned accounts and provide such information to the Participants and the Clearing Corporation.**

- (e) Provided that a Participant is not in Default, the Clearing Corporation shall instruct the Participant to deposit for credit to an escrow account maintained by the Clearing Corporation an amount equivalent to the original Margin requirement that is on deposit with the Clearing Corporation as of Final Settlement. Such amount shall be held in escrow by the Clearing Corporation as Initial Swap Collateral. During the settlement month (from the second business day after Last Trading Day until swap settlement), the buying Participant and selling Participant will be required to deliver to the Clearing Corporation, for credit to an escrow account maintained by the Clearing Corporation, such amounts (Supplementary Swap Collateral) as required pursuant to the terms of the ChemConnect User Agreement. Such Supplementary Swap Collateral will be transferred by wire transfer of immediately available funds of the United States of America to the escrow account designated by the Clearing Corporation. The Clearing Corporation shall release Supplementary Swap Collateral pursuant to the terms of the ChemConnect User Agreement.
- (f) In the event that the Clearing Corporation is notified by both Participants that assigned accounts have agreed to the terms of an alternative swap process, Swap Settlement Collateral held by the Clearing Corporation in respect of such assigned accounts shall be returned or released to the Participants as provided in Rule 12-502(d)(iii).

**12-502. Purchases and Sales for Physical Delivery; Application of Delivery Collateral; Application of Swap Settlement Collateral.**

- ~~(a)~~ (a) A ChemConnect Contract that has not been liquidated or offset prior to the termination of trading on the Last Trading Day shall be settled by delivery or swap settlement in the manner established by the ChemConnect User Agreement unless otherwise settled pursuant to the terms of an alternative delivery process (as provided in Rule 12-501(c)) or alternative swap settlement as provided for in Rule 12-501(f).
- (b) ~~(b)~~ Following the Clearing Corporation's issuance of notices regarding delivery assignments (as provided in Rule 12-501(a)) or swap settlement (as provided for in Rule 12-501(d)), the Clearing Corporation shall assign Member Participant buyers receiving such notices to Member Participant sellers receiving such notices and the Member Participant buyers shall be substituted in lieu of the Clearing Corporation as buyer in the ChemConnect Contracts between the Clearing Corporation and Member Participant sellers, and the ChemConnect Contracts between Member Participant buyers and the Clearing Corporation will be deemed discharged and terminated, in each case effective from and after Final Settlement. The buyer and seller Members Participants shall continue to be subject to the requirements of Rule 12-501 notwithstanding such substitution.

- (c) Pursuant to the terms of the ChemConnect User Agreement, **Member with respect to delivery contracts, Participant** buyers will be required to provide an amount that represents full payment to be held in escrow by the Clearing Corporation (the "Escrowed Payment Amount"). The Escrowed Payment Amount will not be deemed to be an Obligation of the **Member Participant** buyer to the Clearing Corporation and therefore, failure of a **Member Participant** buyer to post the Escrowed Payment Amount with the Clearing Corporation shall not be considered a default under the Clearing Corporation Rule 12-605. The Clearing Corporation shall release any Escrow Payment Amount held by it as escrow agent at such time as provided for in the ChemConnect User Agreement.
- (d) **Provided that a Participant has not notified the Clearing Corporation of a delivery default or swap settlement default, the**~~(d)~~ The Clearing Corporation will release Delivery Collateral **or Swap Settlement Collateral** to the **Member Participant** that has posted the same as provided herein.
- (i) The Clearing Corporation will return Delivery Collateral deposited by a selling **Member Participant** on the tenth (10<sup>th</sup>) Business Day after the scheduled delivery day unless the Counterparty **Member Participant** has provided timely written notice to the Clearing Corporation, as escrow agent, that delivery was not made timely and in full.
- (ii) The Clearing Corporation will return any Delivery Collateral and Escrow Payment Amount deposited by a buying **Member Participant** on the tenth (10<sup>th</sup>) Business Day after the scheduled payment date established by ChemConnect unless the Counterparty **Member Participant** has provided timely written notice to the Clearing Corporation, as escrow agent, that such payment was not made timely and in full.
- (iii) The Clearing Corporation will return Swap Settlement Collateral deposited by a Participant on the second Business Day after the last day of the swap settlement month.**
- (iv) Provided that a Participant**~~(iii) Provided that a Member~~ has not notified the Clearing Corporation of a delivery default **or swap settlement default**, the Clearing Corporation, as escrow agent, will release any Delivery Collateral and Escrow Payment Amount **or Swap Settlement Collateral, as applicable**, to selling and buying **Members Participants** that have entered into an alternative delivery process (as provided in Rule 12-501(c)) **or alternative swap settlement (as provided for in Rule 12-501(f))** on the second Business Day following notice of the alternative delivery process **or alternative swap settlement**. In the event that only one such **Member Participant** is in Default, the Clearing Corporation will, as escrow agent, release Delivery Collateral solely to the non-Defaulting **Participant**.

- (e) ~~Member.~~  
(e) Notwithstanding the foregoing, if the Clearing Corporation, as escrow agent, receives written instructions signed by ChemConnect or an order of a court of competent jurisdiction to the effect that a **Member Participant** is entitled to receive an amount of Delivery Collateral ~~or~~, Escrow Payment Amount, or Swap Settlement Collateral identified in such written instructions or order, the Clearing Corporation shall disburse such amount of such collateral to such **Participant**.
- (f) ~~Member.~~  
(f) Beyond the exercise of reasonable care in the custody and preservation thereof, the Clearing Corporation will have no duty as to any Margin ~~or~~, Delivery Collateral, Swap Settlement Collateral, or Escrow Payment Amount in its possession or control or in the possession or control of any sub-agent or bailee or any income therefrom or as to the preservation of rights against prior parties or any other rights pertaining thereto. The Clearing Corporation will be deemed to have exercised reasonable care in the custody and preservation of Margin ~~or~~, Delivery Collateral, Swap Settlement Collateral, or Escrow Payment Amount in its possession or control if such Margin ~~or~~, Delivery Collateral, Swap Settlement Collateral, or Escrow payment Amount is accorded treatment substantially equal to that which it accords its own property, and will not be liable or responsible for any loss or damage to any Margin ~~or~~, Delivery Collateral, Swap Settlement Collateral, or Escrow Payment Amount, or for any diminution in the value thereof, by reason of any act or omission of any sub-agent or bailee selected by the Clearing Corporation in good faith or by reason of any act or omission by the Clearing Corporation pursuant to instructions from a **Member Participant**, except to the extent that such liability arises from the Clearing Corporation's gross negligence or willful misconduct. THE CLEARING CORPORATION SHALL NOT BE LIABLE FOR ANY LOSS, COST, OR EXPENSE ARISING FROM THE FAILURE OF A **MEMBER PARTICIPANT** OR CUSTOMER OR OTHER NON-MEMBER **PARTICIPANT** TO PERFORM ANY OF ITS DELIVERY OR SWAP SETTLEMENT OBLIGATIONS, INCLUDING THE POSTING OF DELIVERY COLLATERAL, SWAP SETTLEMENT COLLATERAL OR ESCROW PAYMENT AMOUNT.

**12-503. Delivery Price; Swap Settlement Price.**

- (a) =  
All deliveries on ChemConnect Contracts shall be made at the Settlement Price for such ChemConnect Contract on the Last Trading Day.

- (b) Pursuant to the terms of the ChemConnect User Agreement, the final swap settlement amount payable by either the seller or buyer, as appropriate, for a applicable ChemConnect Contract shall be the difference between the Settlement Price on the Last Trading Day and the arithmetic average of the daily market values of the underlying physical product as such values are determined in accordance with ChemConnect's policies.

#### 12-505. Settlements on Defaulted Deliveries.

- (a) The Clearing Corporation, as escrow agent, shall not under any circumstance be obligated to make or accept deliveries or to make swap settlement payments in satisfaction of ChemConnect Contracts, nor shall the Clearing Corporation have any obligation or liability to any Member **Participant** or to any other person relating to a failure to fulfill a delivery obligation or make a swap settlement payment following the Clearing Corporation's assignment of delivery instructions and swap settlements as provided in Rule 12-501.
- (b) In the event that a Member **Participant** (a "Defaulting party") shall fail to fulfill its delivery obligations (including payment therefor) or its swap settlement obligations and the opposite Member **Participant** (the "non-Defaulting Member") **Participant**) shall have given timely notice thereof as provided in Rule 12-502(c), the Clearing Corporation's sole obligation, as escrow agent, shall be to release to the non-Defaulting Member **Participant** any Delivery Collateral or Swap Settlement Collateral, as applicable, held by the Clearing Corporation in respect of the Defaulting party's positions, pursuant to the instructions of ChemConnect or a court of competent jurisdiction. In the event that more than one non-Defaulting Member **Participant** is entitled thereto, the Clearing Corporation shall allocate such Delivery Collateral or swap Settlement Collateral, as applicable, ratably among the non-Defaulting Members **Participants** pursuant to the instructions of ChemConnect or a court of competent jurisdiction. In the event that there is a conflict or inconsistency in respect of any such instructions, the Clearing Corporation shall be entitled to determine, in its sole discretion, the controlling instructions.
- (c) Notwithstanding anything to the contrary in these Rules (including, without limitation, Rule 12-605), the Clearing Corporation, as escrow agent, holds Delivery Collateral ~~and~~, any Escrow Payment Amount, and Swap Settlement Collateral to secure the obligations of a Member **Participant** arising under ChemConnect Contracts and will not retain or apply Delivery Collateral ~~and~~, any Escrow Payment Amount, or Swap Settlement Collateral in satisfaction of a Member's **Participant's** obligations to the Clearing Corporation.

#### 12-509. Cash Settlement.

~~(a) After trading ceases on the Last Trading Day, the Clearing Corporation shall deem the maintenance by a Member of an open position in a ChemConnect Contract to constitute an offer to sell to or buy from the Clearing Corporation, as the case may be, the specific quantity of the commodity or other interest that underlies such ChemConnect Contract at the final Settlement Price. The Clearing Corporation shall, at such time consider the corresponding sales or purchases~~

~~made hereunder as an adjustment of the respective Members' positions with the Clearing Corporation in the manner prescribed by these Rules.~~

~~(b) During the swap settlement month (from the first business day after Last Trading Day until swap settlement), the buying Member and selling Member will be required to deliver to the Clearing Corporation, for credit to an escrow account maintained by the Clearing Corporation, such Swap Settlement Collateral as required pursuant to the terms of the ChemConnect User Agreement. Such Swap Settlement Collateral will be transferred by wire transfer of immediately available funds of the United States of America to the escrow account designated by the Clearing Corporation. The Clearing Corporation shall release Swap Settlement Collateral pursuant to the terms of the ChemConnect User Agreement.~~

~~(c) Beyond the exercise of reasonable care in the custody and preservation thereof, the Clearing Corporation will have no duty as to any Swap Settlement Collateral or Escrow Payment Amount in its possession or control or in the possession or control of any sub-agent or bailee or any income therefrom or as to the preservation of rights against prior parties or any other rights pertaining thereto. The Clearing Corporation will be deemed to have exercised reasonable care in the custody and preservation of Swap Settlement Collateral in its possession or control if such Swap Settlement Collateral is accorded treatment substantially equal to that which it accords its own property, and will not be liable or responsible for any loss or damage to any Swap Settlement Collateral, or for any diminution in the value thereof, by reason of any act or omission of any sub-agent or bailee selected by the Clearing Corporation in good faith or by reason of any act or omission by the Clearing Corporation pursuant to instructions from a Member, except to the extent that such liability arises from the Clearing Corporation's gross negligence or willful misconduct. THE CLEARING CORPORATION SHALL NOT BE LIABLE FOR ANY LOSS, COST, OR EXPENSE ARISING FROM THE FAILURE OF A MEMBER OR CUSTOMER OR OTHER NON-MEMBER TO PERFORM ANY OF SWAP SETTLEMENT COLLATERAL OBLIGATIONS, INCLUDING THE POSTING OF SWAP SETTLEMENT COLLATERAL AMOUNTS.~~

#### 12-605. Defaults.

- (a) A **Member Participant** is in Default if such **Member Participant** (i) is in default under Rule 605, (ii) fails to meet any of its Obligations upon its Contracts with the Clearing Corporation, (iii) fails to deposit Margin within one hour after demand by the Clearing Corporation, (iv) fails to satisfy any of its obligations under Rule 802 or (v) is suspended, expelled or prohibited from trading by a Market or by the Clearing Corporation. Upon such Default, the Clearing Corporation may impose limitations, conditions and restrictions upon such **Member Participant** or terminate the status of the **Member Participant**, and may cause all open Trades of such **Member Participant** to be closed in the open market, transferred to any other **Member Participant**, or otherwise resolved as deemed appropriate by the Clearing Corporation, and any debit balance owing to the Clearing Corporation shall be immediately due and payable.
- (b) In closing, transferring or otherwise resolving the open Trades of a **Member Participant** as provided in paragraph (a) of this Rule, the Clearing Corporation shall have the right:

- (i) With respect to open Trades in Contracts, to set off (A) any proceeds received by the Clearing Corporation from the disposition of such open Trades and any property or proceeds thereof deposited with or held by the Clearing Corporation as Margin for such accounts against (B) any amounts paid by the Clearing Corporation in the disposition of such open Trades, including any commissions or other losses or expenses incurred in connection therewith or in connection with the liquidation of Margin deposits in such accounts and any other amounts owed to the Clearing Corporation as a result of transactions in the accounts or otherwise lawfully chargeable against the accounts;
- (ii) With respect to all other open Trades (in ChemConnect Contracts or otherwise) held in any other account of such **Member Participant**, to set off (A) any proceeds received by the Clearing Corporation from the disposition of such open Trades, any property or proceeds thereof deposited with or held by the Clearing Corporation as Margin for such accounts, and any other property of the **Member Participant** within the possession or control of the Clearing Corporation against ~~(B) any~~ **(B) any** amounts paid by the Clearing Corporation in the disposition of such open Trades, including any commissions or other losses or expenses incurred in connection therewith or in connection with the liquidation of Margin in such account, and any other obligations of the **Member Participant** to the Clearing Corporation, including obligations of the **Member Participant** to the Clearing Corporation remaining after the setoffs referred to in subparagraph (b)(i) of this Rule, and any obligations arising from any other accounts maintained by the **Member Participant** with the Clearing Corporation;
- (iii) To cause Trades and positions held in accounts of the **Member Participant** that is in Default to be offset against each other and, to the extent of any remaining imbalance, against the Trades and positions of other **Participants**;
- (iv) **Members**;  
~~(iv)~~ To cause Trades and positions in Contracts held in accounts of the **Member Participant** that is in Default and of other **Members Participants** to be settled at the Settlement Price for such Contracts, or at such other price or prices as the Clearing Corporation may deem fair and reasonable in the circumstances; and

- (v) To defer closing or otherwise settling such Trades and Contracts if, in its discretion, it determines that the closing out of some or all of the suspended ~~Member's~~ **Participant's** Trades or Contracts would not be in the best interests of the Clearing Corporation or other ~~Members~~ **Participants**, taking into account the size and nature of the positions in question, market conditions prevailing at the time, the potential market effects of such liquidating transactions as might be directed by the Clearing Corporation, and such other circumstances as it deems relevant.
  
- (c) If the Board of ~~Governors~~ **Directors** or the President shall ~~(i) determine~~ **(i) determine** that the Clearing Corporation is unable, for any reason, to close out any Contracts in a prompt and orderly fashion, or to convert to cash any Margin of a suspended ~~Member~~ **Participant**, or ~~(ii) elects pursuant to paragraph (b)(v) not to close out any such Trades or Contracts,~~ the Clearing Corporation may, solely for the purpose of reducing the risk to the Clearing Corporation resulting from the continued maintenance of such positions or the continued holding of such Margin, authorize the execution of hedging transactions, including, without limitation, the purchase or sale of underlying commodities or commodities deemed similar thereto or Contracts on any such underlying or similar interests. Any authorization of hedging transactions shall be reported promptly to the Board of ~~Governors~~, and any such Trades that are executed shall be reported to the Board of ~~Governors~~ on a daily basis. Any costs or expenses, including losses, sustained by the Clearing Corporation in connection with transactions effected for its account as authorized hereby shall be charged to the account of the suspended ~~Member~~ **Participant**, and any gains realized on such transactions shall be credited to such account.
  
- (d) Any obligation of the Clearing Corporation to a ~~Member~~ **Participant** arising from a Trade or from any provision of the Rules shall be subject to all the terms of the Rules, including the setoff and other rights set forth in this Rule. The rights of the Clearing Corporation set forth in this Rule shall be in addition to other rights that the Clearing Corporation may have under applicable law and governmental regulations, other provisions of these Rules, additional agreements with the ~~Member~~ **Participant** or any other source.

... **Interpretations and Policies:**

- .01 The Clearing Corporation may declare a ~~Member~~ **Participant** that is in Default under this Rule 12-605 also to be in Default under and Rule 605.



**PRODUCT SPECIFICATIONS – CHEMCONNECT CONTRACTS**

## Product Specification Ethane

Item	Specification
Contract Description	Ethane Forward – Enterprise – <b>Mt. Belvieu</b>
Contract Size per lot	42,000 US Gallons (1,000 Barrels)
Currency	US Dollars and cents per Gallon
Last Trading Day	Last business day of the month preceding the delivery month
Contract Series	Up to 24 consecutive calendar months.
Delivery	F.O.B. at Enterprise Products Partners L.P. facility in Mt. Belvieu, Texas, <b>Product shall conform to industry standards for fungible liquefied ethane gas as determined by the Gas Processors Association.</b>

Item	Specification
Contract Description	Ethane Swap – <b>Enterprise</b> - Mt. Belvieu
Contract Size per lot	42,000 US Gallons (1,000 Barrels)
Currency	US Dollars and cents per Gallon
Last Trading Day	Last business day of the month preceding the delivery month.
Contract Series	Up to 24 consecutive calendar months.
Final Settlement/Clearing Corporation	Final Settlement Price for Last Trading Day
<b>Final ChemConnect Swap Settlement Price</b>	<b>Arithmetic average of the daily market values for the underlying product as determined each Business Day during the swap settlement month in accordance with ChemConnect's policies</b> <del>Item Specification Contract Description Option (Call or Put) on Ethane Forward Enterprise Contract Size per lot 42,000 US Gallons (1,000 Barrels) Currency US Dollars and cents per Gallon Contract Series Up to 24 consecutive calendar months.</del>

Product Specification Propane

Item	Specification
Contract Description	Propane Forward – <b>TET</b> - Mt. Belvieu
Contract Size per lot	42,000 US Gallons (1,000 Barrels)
Currency	US cents per Gallon
Last Trading Day	Last business day of the month preceding the delivery month.
Contract Series	Up to 24 consecutive calendar months.
Delivery	F.O.B. at Texas Eastern Products Pipeline Company (TEPPCO) facility in Mt. Belvieu, Texas. <b>Product shall conform to industry standards for fungible liquefied propane gas as determined by the Gas Processors Association (GPA-HD-5).</b>

Item	Specification
Contract Description	Propane Swap – Mt. Belvieu
Contract Size per lot	42,000 US Gallons (1,000 Barrels)
Currency	US cents per Gallon
Last Trading Day	Last business day of the month preceding the delivery month.
Contract Series	Up to 24 consecutive calendar months.
Final Settlement/Clearing Corporation	Final Settlement Price for Last trading Day
<b>Final ChemConnect Swap Settlement Price</b>	<b>Arithmetic average of the daily market values for the underlying product as determined each Business Day during the swap settlement month in accordance with ChemConnect's policies</b> <del>Item Specification Contract Description Option (Call or Put) on Propane Forward Mt. Belvieu Contract Size per lot 42,000 US Gallons (1,000 Barrels) Currency US cents per Gallon Contract Series Up to 24 consecutive calendar months.</del>

### 13. INTERCONTINENTALEXCHANGE, INC.

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#### 13-101. Definitions.

##### **Contract Value**

As to any ICE Contract on any day, the product of the current Settlement Price and the contract size per lot (as set forth in Appendix 13-A).

##### **Customer**

A party, other than a **Member Participant**, that is obligated to make or receive physical delivery in settlement of an ICE Contract.

##### **Daily Limit**

“Daily Limit” shall have the meaning set forth in Rule 13-310(g).

##### **Default**

Any event that would constitute a default under Rule 605 or Rule 13-605.

##### **Delivery Collateral**

Original Delivery Collateral and Supplementary Delivery Collateral held by the Clearing Corporation as escrow agent in respect of an ICE Contract following Final Settlement of such ICE Contract. “Original Delivery Collateral” and “Supplementary Delivery Collateral” have the meanings set forth in Rule 13-501(c).

##### **EEI Agreement**

The form of Edison Electric Institute Master Power Purchase & Sale Agreement (including the completed Cover Sheet thereto, plus the Collateral Annex and completed Paragraph 10) incorporated by reference into Annex F of the ICE **Member Participant** Agreement, as amended from time to time.

##### **Final Settlement**

With respect to a **Member Participant** that has open Trades or positions in ICE Contracts at the close of trading on the Last Trading Day, the issuance of instructions by the Clearing Corporation to such **Member’s Participant’s** settlement bank to debit or credit the **Member’s Participant’s** variation settlement account on the next Business Day and the acceptance thereof by such settlement bank.

... **Interpretations and Policies:**

- .01 The Clearing Corporation ordinarily will effect Final Settlement of a physically settled ICE Contract by 6:40 a.m. on the first Business Day following the Last Trading Day in such ICE Contract.

~~ICE~~

ICE

IntercontinentalExchange, Inc.

**ICE Contract**

The term "ICE Contract" has the meaning set forth in Rule 101 in relation to the definition of "OTC Market."

**ICE Member Participant Agreement**

The agreement between ICE and a Member Participant or Customer governing the responsibilities of parties to ICE Contracts, including the terms for delivery thereof.

**ICE Trading System**

The electronic Trade matching system operated by ICE for the trading of ICE Contracts.

**Last Trading Day**

As to any ICE Contract, the last day on which a particular delivery month or expiration is listed for trading on the ICE Trading System.

**Non-Defaulting Member Participant**

The term "non-Defaulting Member Participant" has the meaning given that term in ~~Rule 13~~ Rule 13-505.

### 13-304. Offsets.

- (a) Where, as the result of substitution under Rule 301, any Member Participant has bought from the Clearing Corporation any amount of a given ICE Contract for a particular delivery and subsequently, and prior to such delivery, such Member Participant sells to the Clearing Corporation any amount of the same ICE Contract for the same delivery, the subsequent transaction shall be deemed pro tanto a settlement or adjustment of the prior transaction. In like manner, where a Member Participant sells to the Clearing Corporation any amount of a given ICE Contract for a particular delivery and subsequently, and before delivery, such Member Participant buys any amount of the same ICE Contract for the same delivery, the second transaction shall be deemed pro tanto a settlement or adjustment of the prior transaction. Thereupon, such Member Participant shall become liable to pay the loss or entitled to collect the profit, as the case may be, upon such adjusted transactions. For purposes of this Rule, the first Trades made shall be deemed the first Trades offset.
- (b) The Clearing Corporation will, upon direction from a Member Participant, establish one or more sub-accounts within such Member's Participant's account at the Clearing Corporation. The Clearing Corporation will ordinarily offset long and short positions in an ICE Contract that are identified by the Member Participant as having been made for such a sub-account.

### 13-307. Statement of Trades and Positions.

The Clearing Corporation shall make available to Members Participants a statement of Trades and positions for each Business Day on which such Member Participant has Trades to be cleared or a position open with the Clearing Corporation.

#### ... Interpretations and Policies:

- .01 Each ICE Contract represents either 400 MWhs of Western power or 800 MWhs of Eastern and Mid Continent power. One month of power will be represented by a number of Contracts equal to the number of NERC peak days in that month.

### 13-310. Acceptance of Trades by the Clearing Corporation.

- (a) The Clearing Corporation shall accept Trades for clearance only if such Trades are submitted on behalf of a Participant.
- (b) Member:  
~~(b)~~ A Trade (other than a Transfer Trade or a Block Trade) in an ICE Contract shall not be deemed to be accepted by the Clearing Corporation until thirty minutes after the Clearing Corporation's receipt of a matched Trade submitted to it by ICE. The Clearing Corporation may at any time prior to the expiration of such period decline to accept such Trade. In that event, the Clearing Corporation will promptly notify the affected Members Participants and ICE.

- (c) A Transfer Trade shall not be accepted until the Clearing Corporation has received from the ~~Members~~ **Participants** who are parties to the Trade all payments and deposits required to be made pursuant to these Rules.
- (d) A Block Trade shall be submitted to the Clearing Corporation, together with such additional information as may be required and, if not rejected by the Clearing Corporation within one hour of the submission thereof, shall be deemed accepted by the Clearing Corporation. In the event that the Clearing Corporation rejects a Block Trade, it will promptly notify the affected ~~Members~~ **Participants** and ICE.
- (e) Issuance by the Clearing Corporation to a ~~Member~~ **Participant** of the statement of Trades and positions provided for in Rule 307 shall not constitute confirmation that the Trades listed on such statement have been accepted by the Clearing Corporation.
- (f) The Clearing Corporation may from time to time establish Daily Limits and may in such circumstances decline to accept for clearance Trades in ICE Contracts that exceed any such Daily Limit. Except as otherwise provided in a resolution adopted pursuant to Rule 601 or 602, Daily Limits shall not apply on the last two trading days for any ICE Contract. Notwithstanding the foregoing, the Clearing Corporation may in its discretion accept such a Trade if doing so will reduce the Clearing Corporation's net exposure to a ~~Member~~ **Participant**. The Clearing Corporation will give ~~Members~~ **Participants** prompt notice of the adoption of Daily Limits.
- (g) As used herein, (i) the term "Block Trade" shall mean a privately negotiated transaction in an ICE Contract that is submitted to the Clearing Corporation by ICE but not executed through the ICE Trading System, and (ii) the term "Daily Limit" shall mean a price that is above or below the preceding day's Settlement Price by more than a specified increment.

**.. . Interpretations and Policies:**

- .01 The Clearing Corporation's normal business hours are from 7:00 a.m. to 4:00 p.m. on Business Days. In the event that a Trade (other than a Block Trade) is received or matched between 3:30 p.m. and 7:00 a.m., the Clearing Corporation will not be deemed to have accepted such Trade until 7:30 a.m. on the next Business Day. In the event that a Block Trade is submitted to the Clearing Corporation between 3:00 p.m. and 7:00 a.m., the Clearing Corporation will not be deemed to have accepted such Trade until 8:00 a.m. on the next Business Day. On Business Days on which normal business hours do not apply, the time frames referenced above will be adjusted accordingly.

~~13-311. Trades for Customers.~~

**13-311. Trades for Customers.**

Where a **Member Participant** clears a Trade for a Customer, the **Member Participant** for whose account such Trade has been cleared becomes liable to the Clearing Corporation and the Clearing Corporation liable to such **Member Participant** on such Trade as if the Trade were for the account of the **Member Participant**, subject in all cases to the provisions of Rule 13-304.

**13-312. Reserved.**

**13-315. Limitation of Liability**

The liability of the Clearing Corporation shall be limited to losses resulting from the substitution of the Clearing Corporation upon contracts between **Members Participants** in accordance with these Rules, but in no event shall the amount of such liability hereunder or under any other provision of these Rules exceed the total amount on deposit in the Emerging Markets Guaranty Fund. The Clearing Corporation shall not be liable for obligations of a non-**Member Participant**, obligations of a **Member Participant** to a non-**Member Participant**, obligations of a **Member Participant** to another **Member Participant** of the Clearing Corporation who is acting for such other **member Participant** as broker, or obligations of a **Member Participant** to a customer, not shall the Clearing Corporation become liable to make deliveries to or accept deliveries from a customer of its **Members Participants**.

**13-402. Original Margin.**

- (a) Margin, other than variation settlements, shall be known as original Margin. The Clearing Corporation shall, from time to time, fix the amount of original Margin which shall be called to protect the Clearing Corporation on Trades in ICE Contracts. On the Last Trading Day, original Margin for any ICE Contract that settles by physical delivery shall be equal to 50% of the Contract Value.
- (b) When the amount callable shall have been fixed, such Margin shall be called by the Clearing Corporation. Normally, Margin calls will be uniform, but where particular risks are deemed hazardous, the Clearing Corporation may depart from the rule of uniformity and call for additional Margin. Upon performance or closing out of Contracts thus secured, original Margin deposits may be withdrawn by the **Member Participant** upon the authorization of the Clearing Corporation except as otherwise provided in Rules 13-501 and 13-502.
- (c) Original Margin may be required of **Members Participants** on a gross basis, without reduction for opposite positions in the same ICE Contract, and shall be deposited in the manner prescribed by the Clearing Corporation.



#### 13-404. Settlement Prices.

- (a) The Settlement Price for an ICE Contract means the price for such ICE Contract established in accordance with this Rule at the close of each day's trading.
- (b) The Settlement Price for each open ICE Contract shall be determined by the Clearing Corporation based upon the recommendation of ICE. The Clearing Corporation may consult, as appropriate, any committee of the Clearing Corporation, and may consider all relevant market information, including (but not limited to) price data from spot, forward, and derivative markets for both physical and financial products.
- (c) The Settlement Price for Final Settlement of an ICE Contract shall be the price required by the ICE Contract terms and conditions.
- (d) Notwithstanding the foregoing, when deemed necessary by the Clearing Corporation in order to protect the respective interests of the Clearing Corporation and ~~Members~~ **Participants**, the Clearing Corporation may establish the Settlement Price for any ICE Contract at a price deemed appropriate by the Clearing Corporation under the circumstances. When the Clearing Corporation determines that circumstances necessitate the application of the powers conferred hereby, the reasons for that determination and the basis for the establishment of the Settlement Price in such circumstances shall be recorded.
- (e) In carrying out the responsibilities under this Rule, the Clearing Corporation may consult, as appropriate, any committees of the Clearing Corporation or the Exchange, and may consider all relevant market information.

#### . . . Interpretations and Policies:

- .01 The Clearing Corporation may establish Daily Limits as provided in Rule 13-310. In such an event, the Settlement Price ordinarily will be established at a price that is within such Daily Limit.

#### ~~13-501. Assignment of Deliveries.~~ **13-501. Assignment of Deliveries.**

- ~~(a)~~ **(a)** By 8:00 a.m. on the first Business Day following the Last Trading Day, **Member Participant** buyers and **Member Participant** sellers shall report their gross long and short positions, respectively, and shall identify the holders (whether **Members Participants** or Customers) of each long and short position in an ICE Contract reflected on the books of such **Participant**.

- (b) Member.  
(b) By 10:00 a.m. on the first Business Day following the Last Trading Day, the Clearing Corporation will provide ICE with a report of the long and short delivery positions held by Members Participants and Customers for delivery, as reported to the Clearing Corporation as provided in paragraph (a). ICE will provide the Clearing Corporation with instructions regarding the delivery assignment of all such open positions, including the names of the parties that are to make and take delivery and their Members Participants (if the Member Participant is not itself the party that is to make or take delivery), by no later than 4:00 p.m. on the first Business Day following the Last Trading Day. The Clearing Corporation shall thereupon notify Members Participants of the assignments made by ICE. Such notification shall be given by no later than 6:00 p.m. on the first Business Day following the Last Trading Day.
- (c) Provided that a Member Participant is not in Default, original Margin deposited by that Member Participant in respect of ICE Contracts that remain open after Final Settlement shall be retained by the Clearing Corporation as Original Delivery Collateral. Thereafter, such a Member Participant shall deposit with the Clearing Corporation Supplementary Delivery Collateral in a form and manner acceptable to the Clearing Corporation and in an amount sufficient to cause the Delivery Collateral for each such ICE Contract to be equivalent to the Contract Value. Such Supplementary Delivery Collateral shall be deposited by no later than 5:00 p.m. on the third Business Day following the Last Trading Day. Failure to do so shall constitute a Default pursuant to ~~Rule 605~~ Rule 605 and shall subject the Member Participant to discipline by the Clearing Corporation.
- (d) Notwithstanding the provisions of paragraph (c), assigned Members Participants shall not be required to deposit Supplementary Delivery Collateral if they have notified the Clearing Corporation that they have agreed to the terms of an alternative delivery arrangement. Any such notice shall be given by 3:30 p.m. on the second Business Day following the Last Trading Day or such later time and in such form as may be specified by the Clearing Corporation. In such an event, Original Delivery Collateral held by the Clearing Corporation in respect of such deliveries shall be returned or released to the Members Participants as provided in ~~Rule 13-~~Rule 13-502(c)(iii).

**13-502. Purchases and Sales for Physical Delivery; Application of Delivery Collateral.**

- (a) An ICE Contract that has not been liquidated or offset prior to the termination of trading on the Last Trading Day shall be settled by delivery in the manner established by the ICE Member Participant Agreement unless otherwise settled pursuant to the terms of an alternative delivery arrangement as provided in Rule 13-501(d).

- (b) Following the Clearing Corporation's issuance of notices regarding delivery assignments as provided in Rule 13-501(b), the Clearing Corporation shall assign **Member Participant** buyers to **Member Participant** sellers in accordance with the delivery assignments made by ICE, and the **Members Participants** shall be substituted in lieu of the Clearing Corporation as buyers and sellers in the ICE Contracts between the Clearing Corporation and **Member Participant** sellers and buyers, respectively, and the ICE Contracts between such **Members Participants** and the Clearing Corporation will be deemed discharged and terminated, in each case effective from and after Final Settlement. The buyer and seller **Members Participants** shall continue to be subject to the requirements of ~~Rule 13~~ **Rule 13**-501 notwithstanding such substitution. Following satisfaction of the obligations of the buyer and seller **Members Participants** as to Delivery Collateral under ~~Rule 13~~ **Rule 13**-501(c), the contract between the **Members Participants** will be novated and replaced, as applicable, by a contract between the Customers making and receiving delivery with respect to such contract in accordance with the ICE **Member Participant** Agreement.
- (c) Acting solely in its capacity as escrow agent, the Clearing Corporation will release Delivery Collateral to the **Member Participant** that has posted the same as provided herein.
- (i) The Clearing Corporation will return Delivery Collateral deposited by a selling **Member Participant** on the third Business Day after the last delivery day unless the buying **Member Participant** has provided timely written notice to the Clearing Corporation that delivery was not made timely and in full.
- (ii) The Clearing Corporation will return Delivery Collateral deposited by a buying **Member Participant** on the second Business Day after the scheduled payment date established by ICE unless the selling **Member Participant** has provided timely written notice to the Clearing Corporation that such payment was not made timely and in full.
- (iii) Provided that a **Member Participant** is not in Default, the Clearing Corporation will release Original Delivery Collateral to selling and buying **Members Participants** that have entered into an alternative delivery arrangement (as provided in Rule 13-501(d)) on the third Business Day following the Last Trading Day. In the event that only one such **Member Participant** is in Default, the Clearing Corporation will release Original Delivery Collateral solely to the non-Defaulting **Participant**.

- (d) ~~Member.~~  
(d) Notwithstanding the foregoing, if the Clearing Corporation receives written instructions signed by ICE or an order of a court of competent jurisdiction to the effect that a **Member Participant** is entitled to receive an amount of Delivery Collateral identified in such written instructions or order, the Clearing Corporation will disburse such amount of Delivery Collateral to such **Participant**.
- (e) ~~Member.~~  
(e) Beyond the exercise of reasonable care in the custody and preservation thereof, the Clearing Corporation will have no duty as to any Margin or Delivery Collateral in its possession or control or in the possession or control of any sub-agent or bailee or any income therefrom or as to the preservation of rights against prior parties or any other rights pertaining thereto. The Clearing Corporation will be deemed to have exercised reasonable care in the custody and preservation of Margin or Delivery Collateral in its possession or control if such Margin or Delivery Collateral is accorded treatment substantially equal to that which it accords its own property, and will not be liable or responsible for any loss or damage to any Margin or Delivery Collateral, or for any diminution in the value thereof, by reason of any act or omission of any sub-agent or bailee selected by the Clearing Corporation in good faith or by reason of any act or omission by the Clearing Corporation pursuant to instructions from a ~~Member~~ **Participant**, except to the extent that such liability arises from the Clearing Corporation's gross negligence or willful misconduct. THE CLEARING CORPORATION SHALL NOT BE LIABLE FOR ANY LOSS, COST, OR EXPENSE ARISING FROM THE FAILURE OF A **MEMBER PARTICIPANT** OR CUSTOMER OR OTHER **NON-MEMBER PARTICIPANT** TO PERFORM ANY OF ITS DELIVERY OBLIGATIONS, INCLUDING THE POSTING OF DELIVERY COLLATERAL.

### 13-503. Delivery Price.

All deliveries on ICE Contracts shall be made at the Settlement Price for such ICE Contract on the Last Trading Day.

### 13-505. Settlements on Defaulted Deliveries.

- (a) The Clearing Corporation shall not under any circumstance be obligated to make or accept deliveries in satisfaction of ICE Contracts, nor shall the Clearing Corporation have any obligation or liability to any **Member Participant** or to any other person relating to a failure to fulfill a delivery obligation following the Clearing Corporation's assignment of delivery instructions as provided in ~~Rule 13-~~**Rule 13-501**.

- (b) In the event that a **Member Participant** or Customer (a “Defaulting party”) shall fail to fulfill its delivery obligations (including payment therefor) and the opposite **Member Participant** (the “non-Defaulting Member”) **Participant**) shall have given timely notice thereof as provided in Rule 13-502(c), the Clearing Corporation’s sole obligation shall be to release to the non-Defaulting **Member Participant** or its Customer, as appropriate, any Delivery Collateral held by the Clearing Corporation in respect of the Defaulting party’s positions, pursuant to the instructions of ICE or a court of competent jurisdiction. In the event that more than one non-Defaulting **Member Participant** is entitled thereto, the Clearing Corporation shall allocate such Delivery Collateral ratably among the non-Defaulting **Members Participants** pursuant to the instructions of ICE or a court of competent jurisdiction. In the event that there is a conflict or inconsistency in respect of any such instructions, the Clearing Corporation shall be entitled to determine, in its sole discretion, the controlling instructions.
- (c) Notwithstanding anything to the contrary in these Rules (including, without limitation, Rule 13-605), the Clearing Corporation holds Delivery Collateral solely as escrow agent to secure the obligations of a **Member Participant** or a Customer arising under ICE Contracts and will not retain or apply Delivery Collateral in satisfaction of a **Member’s Participant’s** obligations to the Clearing Corporation.

#### 13-510. Customer Deliveries.

At least five Business Days prior to the Last Trading Day, a **Member Participant** shall confirm that each Customer holding a position in the expiring month is qualified (in the manner determined by ICE) to effect delivery. A **Member Participant** may not clear a Trade for the account of a Customer at any time during the five Business Days preceding and including the Last Trading Day unless such Trade liquidates or offsets an existing position in the Customer’s account at the **Member Participant** or the **Member Participant** has confirmed or confirms promptly that the Customer is prepared (in a manner deemed satisfactory by ICE) to effect delivery. In the event that the **Member Participant** is unable timely to obtain such confirmation, it shall liquidate the Customer’s positions in the expiring ICE Contract prior to the close of trading on the Last Trading Day.

#### ... Interpretations and Policies:

- .01 ICE has established the following requirements for Customers who wish to maintain open positions on and after five Business Days prior to the Last Trading Day in an ICE Contract:

~~PJM:~~

**PJM:**

The Customer must be a **member Participant** of PJM.

### Into Cinergy:

The seller must (a) own generation (greater than the short position) within the Cinergy grid, (b) have a source (greater than the short position) outside the Cinergy grid, together with sufficient firm transmission from the source to the Cinergy grid, or (c) have entered into a valid and binding bilateral transaction that offsets the ICE Contract.

The buyer must (a) have load (greater than the long position) within the Cinergy grid or (b) have load (greater than the long position) outside the Cinergy grid, together with sufficient firm transmission from the Cinergy grid to the load, or (c) have entered into a valid and binding bilateral transaction that offsets the ICE Contract.

### 13-605. Defaults.

- (a) A **Member Participant** is in Default if such **Member Participant** (i) is in default under Rule 605, (ii) fails to meet any of its obligations upon its Contracts with the Clearing Corporation, (iii) fails to deposit Margin within one hour after demand by the Clearing Corporation, or (iv) is suspended, expelled or prohibited from trading by a Market or by the Clearing Corporation. Upon such Default, the Clearing Corporation may impose limitations, conditions and restrictions upon such **Member Participant** or terminate the status of the **Member Participant**, and may cause all open Trades of such **Member Participant** to be closed in the open market, transferred to any other **Member Participant**, or otherwise resolved as deemed appropriate by the Clearing Corporation, and any debit balance owing to the Clearing Corporation shall be immediately due and payable.
- (b) In closing, transferring or otherwise resolving the open Trades of a **Member Participant** as provided in paragraph (a) of this Rule, the Clearing Corporation shall have the right:
- (i) With respect to open Trades in Contracts, to set off (A) any proceeds received by the Clearing Corporation from the disposition of such open Trades and any property or proceeds thereof deposited with or held by the Clearing Corporation as Margin for such accounts against (B) any amounts paid by the Clearing Corporation in the disposition of such open Trades, including any commissions or other losses or expenses incurred in connection therewith or in connection with the liquidation of Margin deposits in such accounts and any other amounts owed to the Clearing Corporation as a result of transactions in the accounts or otherwise lawfully chargeable against the accounts;

- (ii) With respect to all other open Trades (in ICE Contracts or otherwise) held in any other account of such **Member Participant**, to set off (A) any proceeds received by the Clearing Corporation from the disposition of such open Trades, any property or proceeds thereof deposited with or held by the Clearing Corporation as Margin for such accounts, and any other property of the **Member Participant** within the possession or control of the Clearing Corporation against (B) any amounts paid by the Clearing Corporation in the disposition of such open Trades, including any commissions or other losses or expenses incurred in connection therewith or in connection with the liquidation of Margin in such account, and any other obligations of the **Member Participant** to the Clearing Corporation, including obligations of the **Member Participant** to the Clearing Corporation remaining after the setoffs referred to in ~~subparagraph (b)(i)~~ **subparagraph (b)(i)** of this Rule, and any obligations arising from any other accounts maintained by the **Member Participant** with the Clearing Corporation;
- (iii) To cause Trades and positions held in accounts of the **Member Participant** that is in Default to be offset against each other and, to the extent of any remaining imbalance, against the Trades and positions of other **Participants**;
- (iv) **Members**;  
~~(iv)~~ To cause Trades and positions in Contracts held in accounts of the **Member Participant** that is in Default and of other **Members Participants** to be settled at the Settlement Price for such Contracts, or at such other price or prices as the Clearing Corporation may deem fair and reasonable in the circumstances; and
- (v) To defer closing or otherwise settling such Trades and Contracts if, in its discretion, it determines that the closing out of some or all of the suspended **Member's Participant's** Trades or Contracts would not be in the best interests of the Clearing Corporation or other **Members Participants**, taking into account the size and nature of the positions in question, market conditions prevailing at the time, the potential market effects of such liquidating transactions as might be directed by the Clearing Corporation, and such other circumstances as it deems relevant.

- (c) If the Board of ~~Governors~~ **Directors** or the President shall ~~(i) determine~~ **(i) determine** that the Clearing Corporation is unable, for any reason, to close out any Contracts in a prompt and orderly fashion, or to convert to cash any Margin of a suspended ~~Member~~, or ~~(ii) elects~~ **Participant, or (ii) elects** pursuant to paragraph (b)(v) not to close out any such Trades or Contracts, the Clearing Corporation may, solely for the purpose of reducing the risk to the Clearing Corporation resulting from the continued maintenance of such positions or the continued holding of such Margin, authorize the execution of hedging transactions, including, without limitation, the purchase or sale of underlying commodities or commodities deemed similar thereto or Contracts on any such underlying or similar interests. Any authorization of hedging transactions shall be reported promptly to the Board ~~of Governors~~, and any such Trades that are executed shall be reported to the Board ~~of Governors~~ on a daily basis. Any costs or expenses, including losses, sustained by the Clearing Corporation in connection with transactions effected for its account as authorized hereby shall be charged to the account of the suspended ~~Member~~ **Participant**, and any gains realized on such transactions shall be credited to such account.
- (d) Any obligation of the Clearing Corporation to a ~~Member~~ **Participant** arising from a Trade or from any provision of the Rules shall be subject to all the terms of the Rules, including the setoff and other rights set forth in this Rule. The rights of the Clearing Corporation set forth in this Rule shall be in addition to other rights that the Clearing Corporation may have under applicable law and governmental regulations, other provisions of these Rules, additional agreements with the ~~Member~~ **Participant** or any other source.

**.. Interpretations and Policies:**

- .01 The Clearing Corporation may declare a ~~Member~~ **Participant** that is in Default under this Rule 13-605 also to be in Default under and Rule 605.



**APPENDIX 13-A**

**Product Specification - PJM-West**

<b>Item</b>	<b>Specification</b>
Contract Description	Physically settled US Power, Electricity Firm - LD Peak Physical, Fixed Price – PJM West Hub
Rate	50 MWh
Contract Size per lot	800 MWh
Unit of Trading	Trading takes place in multiples of 50 MWhs for a 16-hour peak day. 1 lot equals 800 peak MWhs per day. For example, a 5 lot position in a monthly contract for May 03 has a value of 5 (lots) x 21 peak days (22 minus 1 NERC holiday) x 50 (MWhs) x 16 (peak hours) = 84,000 MWhs. NOTE: For each ICE Contract, ICE will report to the Clearing Corporation a quantity equal to the number of peak days in that delivery month. [For example, one 50MWhs ICE Contract for a month will be reported to the Clearing Corporation as 21 “units,” each representing 800 MWhs (50 MWhs x 16 peak hours per day).] the Clearing Corporation’s records, therefore, will reflect the number of units associated with ICE Contracts, and transactions reported by or to the Clearing Corporation shall be effected in “units” (multiples of the number of peak days in the delivery month).
Delivery Schedule	Monday – Friday HE 08:00 HE 23:00 EPT excluding NERC Holidays
Currency	US Dollars and cents per MWh
Minimum Settlement Price Fluctuation	One US cent (\$0.01) per MWh
Last Trading Day	No Trades deliverable in the current month shall be made during the last three Business Days prior to the first calendar day of the delivery month.
Contract Series	Up to 72 consecutive calendar months commencing with the next calendar month.
Delivery	Physical delivery is effected pursuant to the terms of Annex F of the ICE <del>Member</del> <b>Participant</b> Agreement and the terms of the EEI Agreement incorporated by reference therein.

**APPENDIX 13-A**

**Product Specification - Into Cinergy, Sellers Daily Choice**

<b>Item</b>	<b>Specification</b>
Contract Description	Physically settled US Power, Electricity Into Peak Physical, Fixed Price – Into Cinergy, Sellers Daily Choice
Rate	50 MWh
Contract Size per lot	800 MWh
Unit of Trading	Trading takes place in multiples of 50 MWhs for a 16-hour peak day. 1 lot equals 800 peak MWhs per day. For example, a 5 lot position in a monthly contract for May 03 has a value of 5 (lots) x 21 peak days (22 minus 1 NERC holiday) x 50 (MWhs) x 16 (peak hours) = 84,000 MWhs. NOTE: For each ICE Contract, ICE will report to the Clearing Corporation a quantity equal to the number of peak days in that delivery month. [For example, one 50MWhs ICE Contract for a month will be reported to the Clearing Corporation as 21 “units,” each representing 800 MWhs (50 MWhs x 16 peak hours per day).] the Clearing Corporation’s records, therefore, will reflect the number of units associated with ICE Contracts, and transactions reported by or to the Clearing Corporation shall be effected in “units” (multiples of the number of peak days in the delivery month).
Currency	US Dollars and cents per MWh
Minimum Settlement Price Fluctuation	One US cent (\$0.01) per MWh
Last Trading Day	No Trades deliverable in the current month shall be made during the last three Business Days prior to the first calendar day of the delivery month.
Contract Series	Up to 72 consecutive calendar months commencing with the next calendar month.
Delivery	Physical delivery is effected pursuant to the terms of Annex F of the ICE <del>Member</del> <b>Participant</b> Agreement and the terms of the EEI Agreement incorporated by reference therein.

**RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**BOARD OF TRADE CLEARING CORPORATION**

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Board of Trade Clearing Corporation, a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the corporation is Board of Trade Clearing Corporation. Board of Trade Clearing Corporation was originally incorporated under the same name, and the original Certificate of Incorporation of the corporation was filed with the Secretary of State of the State of Delaware on October 5, 1925.

2. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Restated Certificate of Incorporation restates and integrates and further amends the Certificate of Incorporation of the corporation so as to read in its entirety as set forth in Exhibit A attached hereto and made a part hereof.

3. This Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, Board of Trade Clearing Corporation has caused this Restated Certificate of Incorporation to be signed by its authorized officer this 23<sup>rd</sup> day of October, 2003.

BOARD OF TRADE CLEARING CORPORATION

By: /s/ Dennis A. Dutterer

Name: Dennis A. Dutterer

Title: President and Chief Executive Officer

**EXHIBIT A**

**RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**THE CLEARING CORPORATION**

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1. The name of the Corporation is The Clearing Corporation.
2. The office of the registered agent in the State of Delaware is located in Wilmington, in the County of New Castle. The registered agent in charge thereof is The Corporation Trust Company, at 1209 Orange Street in the City of Wilmington.
3. The nature of the business of the Corporation and the objects or purposes proposed to be transacted, promoted or carried on by it are to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.
4. The total number of shares of capital stock which the Corporation has authority to issue is 3,600,000 shares, consisting of:
  - (a) 3,000,000 shares of Class A Common Stock, par value \$0.01 per share (the "Class A Stock");
  - (b) 100,000 shares of Class E Common Stock, par value \$0.01 per share (the "Class E Stock"); and
  - (c) 500,000 shares of Preferred Stock, par value \$0.01 per share (the "Preferred Stock").

The Class A Stock and the Class E Stock are hereinafter collectively referred to as the "Common Stock." At the time when this Restated Certificate of Incorporation becomes effective pursuant to the General Corporation Law of the State of Delaware (the "Effective Time") and without any further action on the part of the Corporation or its stockholders, (i) each share of the Corporation's common stock, without par value, issued and outstanding immediately prior to the Effective Time (the "Old Common Stock") shall be automatically reclassified, converted and split into one hundred (100) shares of Class A Stock and (ii) each share of the Corporation's common stock, without par value, issued but not outstanding immediately prior to the Effective Time shall be cancelled and shall not be reclassified, converted or split into any other shares of stock of the Corporation. From and after the Effective Time, the certificates representing shares of Old Common Stock shall be deemed cancelled and such shares shall not be recognized as outstanding on the books of the Corporation for any purpose.

Subdivision A. Common Stock

Except as otherwise provided in this Subdivision A or as otherwise required by applicable law, all shares of Class A Stock and Class E Stock shall be identical in all respects and shall entitle the holders thereof to the same rights and privileges, subject to the same qualifications, limitations and restrictions.

(1) Voting Rights.

(a) General. Except as may otherwise be provided in this Restated Certificate of Incorporation, as the same may be amended, or by applicable law, the holders of Class A Stock and the holders of Class E Stock shall be entitled to one vote per share on all matters to be voted on by the stockholders of the Corporation.

(b) Election of Directors. Subject to the rights of the holders, if any, of any Preferred Stock, the holders of Class A Stock shall be entitled to elect all but one of the directors of the Corporation (collectively, the "Class A Directors") and the holders of the Class E Stock, voting separately as a class, shall be entitled to nominate and elect one director of the Corporation (the "Class E Director"). Unless and except to the extent that the Bylaws of the Corporation shall so require, elections of directors need not be by written ballot.

(c) One Class Outstanding. Notwithstanding anything in this Section (1) to the contrary, the holders of Class A Stock shall be entitled to elect all of the directors and shall have exclusive voting power on all matters at any time when no Class E Stock is issued and outstanding, and the holders of Class E Stock shall be entitled to elect all of the directors and shall have exclusive voting power on all matters at any time when no Class A Stock is issued and outstanding, subject in each case to the rights of the holders, if any, of any Preferred Stock.

(d) Issuance of Additional Shares of Class E Stock. Notwithstanding anything in this Restated Certificate of Incorporation to the contrary, the Corporation may not issue any additional shares of Class E Stock, other than those issued on the date hereof to Eurex U.S. Holdings, Inc. ("Eurex U.S."), unless the holders of a majority of the outstanding shares of Class E Stock approve such issuance at a meeting of such stockholders.

(2) Dividends and Distributions. All shares of Class E Stock shall be treated identically with shares of Class A Stock with respect to dividends and other distributions (whether of cash, securities or other property); provided that if dividends are declared that are payable in shares of Class A Stock or Class E Stock, then holders of Class A Stock shall receive dividends payable in shares of Class A Stock and holders of Class E Stock shall receive dividends payable in shares of Class E Stock; provided further that such stock dividends shall be payable at the same rate on both classes of stock.

(3) Conversion.

(a) Conversion of Class A Stock. The Class A Stock is not convertible into any other class or series of stock.

(b) Conversion of Class E Stock.

(i) Each outstanding share of Class E Stock shall automatically convert into one share of Class A Stock immediately following the issuance of shares of Class A Stock pursuant to exercise of the option granted under that certain Stock Option Agreement dated as of September 3, 2003 (the "Stock Option Agreement") between Eurex U.S. and the Corporation (the time of such issuance being hereinafter referred to as the "Option Event").

(ii) Each share of Class E Stock shall automatically convert into one share of Class A Stock in the event such share is sold or transferred to any person other than to a member of the Eurex Group. If any share of Class E Stock is sold or transferred to a member of the Eurex Group who subsequently ceases to be a member of the Eurex Group, each such share shall automatically convert into one share of Class A Stock at the effective time of such sale or transfer.

(iii) For purposes of this paragraph (b): "Eurex Group" shall mean Eurex Frankfurt AG (or any successor to Eurex Frankfurt AG by way of merger or consolidation) and any person controlling, controlled by or under common control with such entity; the term "control" (including the terms "controlled by" and "under common control with"), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly or as trustee or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person; the term "Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended.

(iv) All shares of Class E Stock which shall be reacquired by the Corporation as a result of a conversion effected pursuant to the provisions of this paragraph (b) shall be retired and may not be reissued by the Corporation.

(4) Liquidation. Subject to the rights of the holders, if any, of any Preferred Stock, the holders of Class A Stock and the holders of Class E Stock shall be

entitled to participate ratably on a per share basis in all distributions to the holders of Common Stock in any liquidation, dissolution or winding up of the Corporation.

- (5) Subdivisions, Reclassifications and Combinations. The Corporation shall not subdivide, reclassify or combine any class of Common Stock without at the same time making an equivalent subdivision, reclassification or combination of the other class of Common Stock.
- (6) Mergers, Consolidations and Asset Dispositions. In the event the Corporation shall merge or consolidate with or into another corporation (where the Corporation is not the surviving corporation or where there is any change whatsoever in, or distribution with respect to, the outstanding shares of Class A Stock or Class E Stock), or sell, transfer or otherwise dispose of all or substantially all of its property, assets or business to another corporation and, pursuant to the terms of such merger, consolidation or disposition of assets, (a) shares of common stock of the surviving, resulting or acquiring corporation, as the case may be, or (b) any cash, shares of stock or other securities or property of any nature whatsoever (including warrants or other subscription or purchase rights) in addition to or in lieu of common stock of the surviving, resulting or acquiring corporation, as the case may be, are to be received by or distributed to the holders of Class A Stock or Class E Stock, then the shares of Class A Stock and the shares of Class E Stock shall be treated in a manner that is economically equivalent.
- (7) At all times prior to the earliest of (i) the Option Event, (ii) the Termination Date (as defined in the Option Agreement) and (iii) the termination of the Option Agreement in accordance with the terms thereof, the Corporation shall reserve and keep available, free from preemptive rights, out of the aggregate of its authorized but unissued shares of Class A Stock, for the purpose of (a) effecting conversion of the shares of Class E Stock into Class A Stock and (b) issuing shares of Class A Stock to Eurex U.S. pursuant to the Option Agreement, a number of shares of Class A Stock equal to 51% of the total number of authorized shares of Common Stock, and the shares of Class A Stock that are so reserved may not be issued for any other purpose.

#### Subdivision B. Preferred Stock

Authority is hereby expressly granted to the Board of Directors to authorize the issuance of one or more series of Preferred Stock and with respect to each such series to fix by resolution or resolutions providing for the issuance of such series the voting powers, full or limited, if any, of the shares of such series and the designations, powers, preferences and relative, participating, optional or other special rights and the qualifications, limitations or restrictions thereof.

5. Board of Directors.

(a) General. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, which shall consist of not less than seven and no more than fifteen directors, with the exact number of directors to be determined from time to time by resolution adopted by the affirmative vote of a majority of the entire Board of Directors. For purposes of this Restated Certificate of Incorporation and the Bylaws of the Corporation, the “entire Board of Directors” shall mean the number of directors that would be in office if there were no vacancies nor any unfilled newly created directorships and the “total number of Class A Directors” shall mean the number of Class A Directors that would be in office if there were no vacancies nor any unfilled newly created directorships.

(b) Terms of Office of Directors.

(i) Subject to the provisions of subparagraph (ii) below, the Class A Directors shall be divided into three subclasses, designated Class A-I, Class A-II and Class A-III. Each subclass shall consist, as nearly as possible, of one third of the total number of Class A Directors. Class I directors shall initially be elected for a term to expire at the first annual meeting of stockholders following the Effective Time, Class II directors shall initially be elected for a term to expire at the second annual meeting of stockholders following the Effective Time and Class III directors shall initially be elected for a term to expire at the third annual meeting of stockholders following the Effective Time. At each annual meeting of stockholders following the Effective Time, successors to the subclass of Class A Directors whose terms expire at that annual meeting shall be elected for a term expiring at the third succeeding annual meeting of stockholders. If the number of directors is altered, any increase or decrease shall be apportioned among the subclasses so as to maintain the number of directors in each subclass as equal as possible, and any additional director of any subclass elected to fill a newly created directorship resulting from an increase in such subclass shall hold office for a term that shall coincide with the remaining term of that subclass, but in no case shall a decrease in the number of directors shorten the term of any incumbent director.

(ii) From and after the Option Event, the provisions of subparagraph (i) above shall be of no further force and effect and all of the directors shall thereafter be elected for a one-year term at each annual meeting of stockholders of the Corporation.

(iii) So long as any shares of Class E Stock are outstanding, the Class E Director shall be elected for a one-year term expiring at the next succeeding annual meeting of stockholders of the Corporation.



(iv) Each director shall hold office until the annual meeting of stockholders in the year in which his or her term expires and his or her successor is elected and qualified, subject to his or her earlier death, resignation, disqualification or removal.

(c) Removal of Directors.

(i) Beginning at the conclusion of the first meeting of stockholders held after the Effective Time and ending upon the occurrence of the Option Event, a Class A Director may be removed only for cause. At all times prior to the conclusion of the first meeting of stockholders held after the Effective Time and at all times from and after the Option Event, a Class A Director may be removed with or without cause, regardless of whether the Class A Directors are then divided into subclasses as provided in subparagraph (b)(i) above. In the case of a removal without cause, such removal shall be effected (but only to the extent permitted by the preceding sentences of this subparagraph (i)) by the vote of the holders of Class A Stock, voting separately as a class. In the case of a removal for cause, such removal shall be effected by the holders of Class A Stock and the holders of Class E Stock, voting as a single class.

(ii) A Class E Director may be removed with or without cause at any time. In the case of a removal without cause, such removal shall be effected by the vote of the holders of Class E Stock, voting separately as a class. In the case of a removal for cause, such removal shall be effected by the holders of Class A Stock and the holders of Class E Stock, voting as a single class.

(d) Vacancies and Newly Created Directorships. Any vacancy in the office of a Class A Director created by the death, resignation, disqualification or removal of a Class A Director or any newly created directorship resulting from an increase in the number of Class A Directors may be filled by a vote of the holders of Class A Stock or by a majority of the Class A Directors then in office, although less than a quorum, or by a sole remaining Class A Director. Any vacancy in the office of a director created by the death, resignation, disqualification or removal of a Class E Director may be filled only by a vote of the holders of Class E Stock. Any director elected by stockholders or by some or all of the directors to fill a vacancy or a newly created directorship shall serve until the annual meeting of stockholders at which the term of office of the class or subclass to which he or she has been elected expires and until his or her successor has been elected and has qualified.

(e) Rights of Holders of Preferred Stock. Notwithstanding the foregoing, whenever the holders of any one or more series of Preferred Stock shall have the right, voting separately as a class or series, to elect directors, the election,

removal, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of the Restated Certificate of Incorporation, as the same may be amended, applicable thereto, and such directors shall not be divided into classes pursuant to this Article 5 unless expressly provided by such terms.

6. To the fullest extent permitted by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended, a director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Any amendment, modification or repeal of the foregoing sentence shall not adversely affect any right or protection of a director of the Corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.
7. In furtherance and not in limitation of the powers of stockholders of the Corporation conferred by statute, the Board of Directors is expressly authorized to adopt, amend, modify, alter or repeal the Bylaws.
8. Subject to the provisions hereof, the Corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in this Restated Certificate of Incorporation, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of any nature conferred upon stockholders, directors or any other persons by and pursuant to this Restated Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this article. Notwithstanding the foregoing sentence, this Restated Certificate of Incorporation may not be amended (a) to alter or change the powers, preferences or special rights of the shares of Class E Stock so as to affect them adversely or (b) to alter or change in any manner Section 4(b), Section 4(A)(1)(d), Section 4(A)(7) or Section 5(b)(iii) hereof, unless, in each instance, the holders of a majority of the outstanding shares of Class E Stock shall have voted in favor of such amendment at a meeting of such stockholders.

**RESTATED CERTIFICATE OF INCORPORATION**  
**OF**  
**BOARD OF TRADE CLEARING CORPORATION**

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1. The name of this Corporation is Board of Trade Clearing Corporation, a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the corporation is Board of Trade Clearing Corporation. Board of Trade Clearing Corporation was originally incorporated under the same name, and the original Certificate of Incorporation of the corporation was filed with the Secretary of State of the State of Delaware on October 5, 1925.

2. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Restated Certificate of Incorporation restates and integrates and further amends the Certificate of Incorporation of the corporation so as to read in its entirety as set forth in Exhibit A attached hereto and made a part hereof.

3. This Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware.

4. This Restated Certificate of Incorporation shall become effective at and not until \_\_\_\_\_, 2003 at 10:00 a.m. Eastern Time.]

IN WITNESS WHEREOF, Board of Trade Clearing Corporation has caused this Restated Certificate of Incorporation to be signed by its authorized officer this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

**BOARD OF TRADE CLEARING CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A

RESTATED CERTIFICATE OF INCORPORATION

OF

THE CLEARING CORPORATION

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1. The name of the Corporation is The Clearing Corporation.
2. The office of the registered agent in the State of Delaware is located in Wilmington, in the County of New Castle. The registered agent in charge thereof is The Corporation Trust Company, at 1209 Orange Street in the City of Wilmington.
3. The nature of the business of the Corporation and the objects or purposes proposed to be transacted, promoted or carried on by it are as follows, to wit:
  - (a) ~~To purchase and to sell the commodities and securities which now are, or which may hereafter be dealt in on the Board of Trade of the City of Chicago ("Association"), and to acquire by purchase or otherwise contracts made in accordance with the charter, rules, bylaws and regulations of the Association for the purchase or sale of commodities and securities dealt in upon the Association, and to assume the obligations arising under such contracts, and to settle, adjust and clear for compensation contracts for the purchase and sale of commodities and securities upon and subject to the charter, rules, bylaws and regulations of the Association; also to settle, adjust and clear for compensation money balances between members of the Association; also in its discretion to exercise all or any part of the powers above set forth with respect to commodities and securities dealt in upon other exchanges, and contracts made upon and subject to the rules, bylaws and regulations of other exchanges whether in the State of Delaware or elsewhere;~~
  - (b) ~~To acquire by purchase, subscription or otherwise, and to hold for investment or otherwise, and to use, sell, assign, transfer, mortgage, pledge or otherwise deal with or dispose of stocks, bonds, or any other obligations or securities of any corporation or corporations, including the securities of the Corporation;~~
  - (c) ~~To purchase or otherwise acquire, and to hold, own, maintain, work, develop, sell, lease, exchange, hire, convey, mortgage or otherwise dispose of and deal in, lands and lease holds, and any interest, estate and rights in real property, and any personal or mixed property, and any franchises, rights, licenses or privileges necessary, convenient or appropriate for any of the purposes herein expressed;~~
  - (d) ~~To do all and everything necessary, suitable or proper for the accomplishment of any of the purposes, or the attainment of any of the objects, or the furtherance of any of the powers hereinbefore set forth, and to do every other act or acts incident or appurtenant to, or growing out of, or connected with the aforesaid business or powers, or any part or parts thereof, and to exercise all or any of its corporate powers~~

~~or rights in the State of Delaware and in the various other states, territories, colonies, and dependencies of the United States, in the District of Columbia and in all or any foreign countries; and~~

- ~~(e) To engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.~~
- ~~4. The capital stock of the Corporation shall be divided into fifteen thousand shares without par value. Such stock may be issued by the Corporation, and shall be subscribed to by the stockholders, from time to time for such consideration as may be fixed from time to time by the Board of Governors.~~
- ~~5. The Corporation shall have perpetual existence.~~
- ~~6. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.~~
- ~~7. The following special provisions are incorporated herein in recognition of the diverse interests of the stockholders of the Corporation:~~
- ~~(a) The management of the business and affairs of the Corporation and the establishment of its policies shall be vested in a board of directors, to be known as the Board of Governors, which shall consist of nine voting members and the President of the Corporation, who shall be an ex officio, nonvoting member of the Board.~~
- ~~(b) The stockholders shall be divided into two groups solely for purposes of the nomination, qualification and election of Governors. "Group A Clearing Members" shall consist of the clearing member, whether an individual, firm or corporation, that is required, pursuant to the Bylaws, to hold the greatest number of shares of stock in the Corporation and clearing members holding the next greatest number of required shares until the total number of required shares held by such clearing members (including the clearing member with the greatest number of required shares) equals or exceeds half of the issued and outstanding stock of the Corporation. "Group B Clearing Members" shall consist of all clearing members that are not Group A Clearing Members.~~
- ~~(c) The term "Group A Governor" shall mean an individual who, at the time of his or her nomination or appointment to the Board of Governors, is a Group A Clearing Member or a partner or officer of a firm or corporation that is a Group A Clearing Member. The term "Group B Governor" shall mean an individual who, at the time of his or her nomination or appointment to the Board of Governors, is a Group B Clearing Member or a partner or officer of a firm or corporation that is a Group B Clearing Member. The term "At Large Governor" shall mean an individual who, at the time of his or her nomination or appointment to the Board of Governors, is a stockholder of the Corporation, or a partner or officer of a firm or corporation that is~~

~~a stockholder, regardless of whether such stockholder, firm or corporation is a Group A Clearing Member or a Group B Clearing Member.~~

~~(d) With respect to the election of Group A Governors and Group B Governors, each stockholder shall be entitled to one vote for each share of stock held by such stockholder; provided, that a stockholder shall in no event be entitled to vote more than the number of shares required to be held by such stockholder pursuant to the Bylaws.~~

~~(e) With respect to the election of At Large Governors and all other matters submitted to a vote of the stockholders, each stockholder shall have one vote irrespective of the number of shares held by such stockholder.~~

~~8. The following special provisions are incorporated for the regulation of the business and the conduct of the affairs of the Corporation, and for the purposes of creating, defining, limiting, and regulating the powers of the Corporation, its Governors, and stockholders.~~

~~(a) The Bylaws may prescribe the place or places for holding stockholders' and Governors' meetings.~~

~~(b) The Bylaws may prescribe what persons, firms, or corporations shall be eligible to own stock in the Corporation, and may provide that persons, firms, or corporations other than those designated shall not be qualified to become or remain stockholders.~~

~~(c) The Corporation shall at all times retain and possess a first lien upon its own shares owned by any stockholder to secure any and all obligations owing by such stockholder to the Corporation.~~

~~(d) The Corporation may pass Bylaws giving itself the option to purchase at book value the shares of deceased or disqualified stockholders. Such Bylaws may also prescribe the method of establishing such book value.~~

~~(e) The Bylaws may provide that the Corporation shall have the option to purchase a part of the shares of any stockholder where such stockholder owns a greater number of shares than is justified by the volume of his clearances. The Bylaws may also provide that clearing privileges will be denied to stockholders who own an amount of stock which is inadequate as compared with the volume of their clearances.~~

~~(f) The Corporation may pass Bylaws conferring upon its Board of Governors, any committee thereof or other designated agents the power to determine whether applicants for stock are qualified to become stockholders, and also to determine whether existing stockholders are qualified to continue as stockholders. Such Bylaws may provide that if any stockholder is found to have become disqualified, he may no longer clear trades through the Corporation, and the Corporation shall have the option to purchase his shares at book value. Such Bylaws may also provide that the~~

~~Board of Governors, any committee thereof or other designated agents shall have access to the books and papers of all stockholders in order to determine their qualifications to continue as stockholders.~~

- ~~(g) The Bylaws may provide that all stock certificates issued by the Corporation shall be endorsed by the owner and deposited with the Corporation to secure its lien thereon, and also to secure its right to purchase such shares in the event a stockholder subsequently becomes deceased or disqualified.~~
- ~~(h) to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.~~

4. The total number of shares of capital stock which the Corporation has authority to issue is 3,600,000 shares, consisting of:

- (a) 3,000,000 shares of Class A Common Stock, par value \$0.01 per share (the "Class A Stock");
- (b) 100,000 shares of Class E Common Stock, par value \$0.01 per share (the "Class E Stock"); and
- (c) 500,000 shares of Preferred Stock, par value \$0.01 per share (the "Preferred Stock").

The Class A Stock and the Class E Stock are hereinafter collectively referred to as the "Common Stock." At the time when this Restated Certificate of Incorporation becomes effective pursuant to the General Corporation Law of the State of Delaware (the "Effective Time") and without any further action on the part of the Corporation or its stockholders, (i) each share of the Corporation's common stock, without par value, issued and outstanding immediately prior to the Effective Time (the "Old Common Stock") shall be automatically reclassified, converted and split into one hundred (100) shares of Class A Stock and (ii) each share of the Corporation's common stock, without par value, issued but not outstanding immediately prior to the Effective Time shall be cancelled and shall not be reclassified, converted or split into any other shares of stock of the Corporation. From and after the Effective Time, the certificates representing shares of Old Common Stock shall be deemed cancelled and such shares shall not be recognized as outstanding on the books of the Corporation for any purpose.

#### Subdivision A. Common Stock

Except as otherwise provided in this Subdivision A or as otherwise required by applicable law, all shares of Class A Stock and Class E Stock shall be identical in all respects and shall entitle the holders thereof to the same rights and privileges, subject to the same qualifications, limitations and restrictions.

(1) Voting Rights.

(a) General. Except as may otherwise be provided in this Restated Certificate of Incorporation, as the same may be amended, or by applicable law, the holders of Class A Stock and the holders of Class E Stock shall be entitled to one vote per share on all matters to be voted on by the stockholders of the Corporation.

(b) Election of Directors. Subject to the rights of the holders, if any, of any Preferred Stock, the holders of Class A Stock shall be entitled to elect all but one of the directors of the Corporation (collectively, the "Class A Directors") and the holders of the Class E Stock, voting separately as a class, shall be entitled to nominate and elect one director of the Corporation (the "Class E Director"). Unless and except to the extent that the Bylaws of the Corporation shall so require, elections of directors need not be by written ballot.

(c) One Class Outstanding. Notwithstanding anything in this Section (1) to the contrary, the holders of Class A Stock shall be entitled to elect all of the directors and shall have exclusive voting power on all matters at any time when no Class E Stock is issued and outstanding, and the holders of Class E Stock shall be entitled to elect all of the directors and shall have exclusive voting power on all matters at any time when no Class A Stock is issued and outstanding, subject in each case to the rights of the holders, if any, of any Preferred Stock.

(d) Issuance of Additional Shares of Class E Stock. Notwithstanding anything in this Restated Certificate of Incorporation to the contrary, the Corporation may not issue any additional shares of Class E Stock, other than those issued on the date hereof to Eurex U.S. Holdings, Inc. ("Eurex U.S."), unless the holders of a majority of the outstanding shares of Class E Stock approve such issuance at a meeting of such stockholders.

(2) Dividends and Distributions. All shares of Class E Stock shall be treated identically with shares of Class A Stock with respect to dividends and other distributions (whether of cash, securities or other property); provided that if dividends are declared that are payable in shares of Class A Stock or Class E Stock, then holders of Class A Stock shall receive dividends payable in shares of Class A Stock and holders of Class E Stock shall receive dividends payable in shares of Class E Stock; provided further that such stock dividends shall be payable at the same rate on both classes of stock.



**(3) Conversion.**

**(a) Conversion of Class A Stock. The Class A Stock is not convertible into any other class or series of stock.**

**(b) Conversion of Class E Stock.**

**(i) Each outstanding share of Class E Stock shall automatically convert into one share of Class A Stock immediately following the issuance of shares of Class A Stock pursuant to exercise of the option granted under that certain Stock Option Agreement dated as of September 3, 2003 (the "Stock Option Agreement") between Eurex U.S. and the Corporation (the time of such issuance being hereinafter referred to as the "Option Event").**

**(ii) Each share of Class E Stock shall automatically convert into one share of Class A Stock in the event such share is sold or transferred to any person other than to a member of the Eurex Group. If any share of Class E Stock is sold or transferred to a member of the Eurex Group who subsequently ceases to be a member of the Eurex Group, each such share shall automatically convert into one share of Class A Stock at the effective time of such sale or transfer.**

**(iii) For purposes of this paragraph (b): "Eurex Group" shall mean Eurex Frankfurt AG (or any successor to Eurex Frankfurt AG by way of merger or consolidation) and any person controlling, controlled by or under common control with such entity; the term "control" (including the terms "controlled by" and "under common control with"), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly or as trustee or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person; the term "Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended.**

**(iv) All shares of Class E Stock which shall be reacquired by the Corporation as a result of a conversion effected pursuant to the provisions of this paragraph (b) shall be retired and may not be reissued by the Corporation.**

- (4) Liquidation. Subject to the rights of the holders, if any, of any Preferred Stock, the holders of Class A Stock and the holders of Class E Stock shall be entitled to participate ratably on a per share basis in all distributions to the holders of Common Stock in any liquidation, dissolution or winding up of the Corporation.
- (5) Subdivisions, Reclassifications and Combinations. The Corporation shall not subdivide, reclassify or combine any class of Common Stock without at the same time making an equivalent subdivision, reclassification or combination of the other class of Common Stock.
- (6) Mergers, Consolidations and Asset Dispositions. In the event the Corporation shall merge or consolidate with or into another corporation (where the Corporation is not the surviving corporation or where there is any change whatsoever in, or distribution with respect to, the outstanding shares of Class A Stock or Class E Stock), or sell, transfer or otherwise dispose of all or substantially all of its property, assets or business to another corporation and, pursuant to the terms of such merger, consolidation or disposition of assets, (a) shares of common stock of the surviving, resulting or acquiring corporation, as the case may be, or (b) any cash, shares of stock or other securities or property of any nature whatsoever (including warrants or other subscription or purchase rights) in addition to or in lieu of common stock of the surviving, resulting or acquiring corporation, as the case may be, are to be received by or distributed to the holders of Class A Stock or Class E Stock, then the shares of Class A Stock and the shares of Class E Stock shall be treated in a manner that is economically equivalent.
- (7) At all times prior to the earliest of (i) the Option Event, (ii) the Termination Date (as defined in the Option Agreement) and (iii) the termination of the Option Agreement in accordance with the terms thereof, the Corporation shall reserve and keep available, free from preemptive rights, out of the aggregate of its authorized but unissued shares of Class A Stock, for the purpose of (a) effecting conversion of the shares of Class E Stock into Class A Stock and (b) issuing shares of Class A Stock to Eurex U.S. pursuant to the Option Agreement, a number of shares of Class A Stock equal to 51% of the total number of authorized shares of Common Stock, and the shares of Class A Stock that are so reserved may not be issued for any other purpose.

Subdivision B. Preferred Stock

Authority is hereby expressly granted to the Board of Directors to authorize the issuance of one or more series of Preferred Stock and with respect to each such series to fix by resolution or resolutions providing for the issuance of such series the voting powers, full or limited, if any, of the shares of such series and the

designations, powers, preferences and relative, participating, optional or other special rights and the qualifications, limitations or restrictions thereof.

**5. Board of Directors.**

**(a) General. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, which shall consist of not less than seven and no more than fifteen directors, with the exact number of directors to be determined from time to time by resolution adopted by the affirmative vote of a majority of the entire Board of Directors. For purposes of this Restated Certificate of Incorporation and the Bylaws of the Corporation, the “entire Board of Directors” shall mean the number of directors that would be in office if there were no vacancies nor any unfilled newly created directorships and the “total number of Class A Directors” shall mean the number of Class A Directors that would be in office if there were no vacancies nor any unfilled newly created directorships.**

**(b) Terms of Office of Directors.**

**(i) Subject to the provisions of subparagraph (ii) below, the Class A Directors shall be divided into three subclasses, designated Class A-I, Class A-II and Class A-III. Each subclass shall consist, as nearly as possible, of one third of the total number of Class A Directors. Class I directors shall initially be elected for a term to expire at the first annual meeting of stockholders following the Effective Time, Class II directors shall initially be elected for a term to expire at the second annual meeting of stockholders following the Effective Time and Class III directors shall initially be elected for a term to expire at the third annual meeting of stockholders following the Effective Time. At each annual meeting of stockholders following the Effective Time, successors to the subclass of Class A Directors whose terms expire at that annual meeting shall be elected for a term expiring at the third succeeding annual meeting of stockholders. If the number of directors is altered, any increase or decrease shall be apportioned among the subclasses so as to maintain the number of directors in each subclass as equal as possible, and any additional director of any subclass elected to fill a newly created directorship resulting from an increase in such subclass shall hold office for a term that shall coincide with the remaining term of that subclass, but in no case shall a decrease in the number of directors shorten the term of any incumbent director.**

**(ii) From and after the Option Event, the provisions of subparagraph (i) above shall be of no further force and effect and all of the directors shall thereafter be elected for a one-year term at each annual meeting of stockholders of the Corporation.**

(iii) So long as any shares of Class E Stock are outstanding, the Class E Director shall be elected for a one-year term expiring at the next succeeding annual meeting of stockholders of the Corporation.

(iv) Each director shall hold office until the annual meeting of stockholders in the year in which his or her term expires and his or her successor is elected and qualified, subject to his or her earlier death, resignation, disqualification or removal.

(c) Removal of Directors.

(i) Beginning at the conclusion of the first meeting of stockholders held after the Effective Time and ending upon the occurrence of the Option Event, a Class A Director may be removed only for cause. At all times prior to the conclusion of the first meeting of stockholders held after the Effective Time and at all times from and after the Option Event, a Class A Director may be removed with or without cause, regardless of whether the Class A Directors are then divided into subclasses as provided in subparagraph (b)(i) above. In the case of a removal without cause, such removal shall be effected (but only to the extent permitted by the preceding sentences of this subparagraph (i)) by the vote of the holders of Class A Stock, voting separately as a class. In the case of a removal for cause, such removal shall be effected by the holders of Class A Stock and the holders of Class E Stock, voting as a single class.

(ii) A Class E Director may be removed with or without cause at any time. In the case of a removal without cause, such removal shall be effected by the vote of the holders of Class E Stock, voting separately as a class. In the case of a removal for cause, such removal shall be effected by the holders of Class A Stock and the holders of Class E Stock, voting as a single class.

(d) Vacancies and Newly Created Directorships. Any vacancy in the office of a Class A Director created by the death, resignation, disqualification or removal of a Class A Director or any newly created directorship resulting from an increase in the number of Class A Directors may be filled by a vote of the holders of Class A Stock or by a majority of the Class A Directors then in office, although less than a quorum, or by a sole remaining Class A Director. Any vacancy in the office of a director created by the death, resignation, disqualification or removal of a Class E Director may be filled only by a vote of the holders of Class E Stock. Any director elected by stockholders or by some or all of the directors to fill a vacancy or a newly created directorship shall serve until the annual meeting of stockholders at which the term of office of the class or

subclass to which he or she has been elected expires and until his or her successor has been elected and has qualified.

(e) Rights of Holders of Preferred Stock. Notwithstanding the foregoing, whenever the holders of any one or more series of Preferred Stock shall have the right, voting separately as a class or series, to elect directors, the election, removal, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of the Restated Certificate of Incorporation, as the same may be amended, applicable thereto, and such directors shall not be divided into classes pursuant to this Article 5 unless expressly provided by such terms.

6. To the fullest extent permitted by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended, a director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Any amendment, modification or repeal of the foregoing sentence shall not adversely affect any right or protection of a director of the Corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

7. In furtherance and not in limitation of the powers of stockholders of the Corporation conferred by statute, the Board of Governors Directors is expressly authorized to adopt, amend, modify, alter or repeal the Bylaws.

~~(i) The Bylaws may provide that stockholders shall have no right to subscribe to unissued or treasury shares.~~

~~(j) The Bylaws may define offenses against the Corporation, and may provide that stockholders committing such offenses may be fined or deprived of clearing privileges, either temporarily or permanently.~~

~~(k) Stockholders shall be required to sign an agreement to abide by the~~ 8. Subject to the provisions hereof, the Corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in this Restated Certificate of Incorporation, and other provisions authorized by the laws and Bylaws of the Corporation as amended from time to time.

~~(l) The Bylaws may provide that subject to the prior rights of the Corporation, the shares owned by each member shall be subject to lien for obligations owing to other members.~~

~~9. To the fullest extent permitted by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended, a Governor of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Governor~~ at the time in force may be added or inserted, in

**the manner now or hereafter prescribed by law; and all rights, preferences and privileges of any nature conferred upon stockholders, directors or any other persons by and pursuant to this Restated Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this article. Notwithstanding the foregoing sentence, this Restated Certificate of Incorporation may not be amended (a) to alter or change the powers, preferences or special rights of the shares of Class E Stock so as to affect them adversely or (b) to alter or change in any manner Section 4(b), Section 4(A)(1)(d), Section 4(A)(7) or Section 5(b)(iii) hereof, unless, in each instance, the holders of a majority of the outstanding shares of Class E Stock shall have voted in favor of such amendment at a meeting of such stockholders.**

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----- COMPARISON OF FOOTNOTES -----

-FOOTNOTE 1-

\* Incorporated in the State of Delaware, October 5, 1925.  
Last amended on June 14, 1999.

----- **COMPARISON OF HEADERS** -----

**Restated** Certificate of Incorporation  
Board of Trade **The** Clearing Corporation

-HEADER 1-

**Header Discontinued**

**-HEADER 2-**

**EXHIBIT A**

----- COMPARISON OF FOOTERS -----

-FOOTER 1-

+ 6

-FOOTER 2-

5 7

6/14/99 \_\_\_

-FOOTER 3-

6/14/99 \_\_\_ + \_

-FOOTER 4-

RC

----- REVISION LIST -----

The bracketed numbers refer to the Page and Paragraph for the start of the paragraph in both the old and the new documents.

- [1:1 1:1] Changed "CERTIFICATE" to "RESTATED CERTIFICATE"
- [1:3 1:3] Changed "CORPORATION\*" to ""
- [1:4 1:4] Changed "1. The name ... Corporation is Board" to "Board"
- [1:4 1:4] Changed "Corporation." to "Corporation, ... as follows:"
- [1:4 1:5] Add Paras "1. The name of ... CLEARING CORPORATION"
- [1:4 1:17] Changed "Corporation." to "1. The name ... Corporation."
- [1:6 1:19] Changed "as follows, to wit: " to "to engage ... Delaware."
- [1:7 1:20] Del Paras "(a) To purchase ... or disqualified."
- [1:29 1:20] Add Paras "4. The total number ... modification or repeal."
- [1:29 1:59] Changed "(h) " to "7. "
- [1:29 1:59] Changed "Governors " to "Directors "
- [1:30 1:60] Del Paras "(i) The Bylaws ... or permanently."
- [1:32 1:60] Changed "(k) Stockholders ... abide by the " to "8. Subject ... Restated "
- [1:32 1:60] Changed "Incorporation ... time to time." to "Incorporation"
- [1:32 1:60] Changed "Incorporation and" to "Incorporation, ... stockholders."
- [1:33 1:60] Del Para "(l) The Bylaws ... other members."
- [1:34 1:60] Changed "9. To the ... Corporation Law of" to " of"
- [1:34 1:60] Changed "as the same ... a Governor" to "at the time ... stockholders"

----- NOTE CHANGES -----

- [1 1] Del Heads "\* Incorporated ... June 14, 1999."
- [1 1] Changed "Certificate" to "Restated Certificate"
- [1 1] Changed "Board of Trade " to "The "
- [1 2] Add Heads "Header Discontinued"

EXHIBIT A"

- [1 1] Changed "1" to "6"
- [2 2] Changed "5" to "7"
- [2 2] Changed "6/14/99\_\_" to "\_\_"
- [3 3] Changed "6/14/99\_\_1\_" to "\_\_"
- [3 3] Changed "6/14/99\_\_1\_" to "\_\_"
- [3 4] Add Foot"\_\_\_\_  
R"
- [3 4] Del Foot "C"

This redlined draft, generated by CompareRite (TM) - The Instant Redliner, shows the differences between -



Restated Certificate of Incorporation  
The Clearing Corporation

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original document : J:\#ATTNYS\BOB\MISC\BOTCC - CERTIFICATE OF INCORPORATION  
6\_14\_99 VERSION FROM MAYER BROWN.DOC  
and revised document: J:\#ATTNYS\BOB\MISC\BOTCC - RESTATED CERTIFICATE OF  
INCORPORATION - AS APPROVED BY BOARD 9\_3\_03 FROM MAYER BROWN.DOC

CompareRite found 8 change(s) in the text  
CompareRite found 10 change(s) in the notes

Deletions appear as Overstrike text  
Additions appear as Bold-Underline text

**BYLAWS**  
**OF**  
**THE CLEARING CORPORATION**

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**ARTICLE I**

**MEETINGS OF STOCKHOLDERS**

Section 1. Annual Meetings. If required by applicable law, an annual meeting of stockholders shall be held for the election of directors at such date, time and place, if any, either within or without the State of Delaware, as may be designated by resolution of the Board of Directors from time to time. Subject to Section 14 of this Article I, any other proper business may be transacted at the annual meeting.

Section 2. Special Meetings. Special meetings of stockholders for any purpose or purposes may be called by the Board of Directors, the Chairperson of the Board or the President at such date, time and place, if any, either within or without the State of Delaware, as may be designated by the Board of Directors, the Chairperson of the Board or the President, as the case may be. The Board of Directors shall call a special meeting of stockholders upon the written request of stockholders representing not less than one-third of the then outstanding voting power of the Common Stock of the corporation. Any such request must be delivered to or mailed and received by the Secretary at the principal executive offices of the corporation and must set forth as to each matter the requesting stockholders propose to bring before the special meeting (i) a brief description of the business desired to be brought before the special meeting and the reasons for conducting such business at the special meeting, (ii) the name and address of such stockholders as they appear on the books of the corporation and of the beneficial owners, if any, on whose behalf the proposal is made, (iii) the class or series and number of shares of capital stock of the corporation which are owned beneficially or of record by such stockholders and such beneficial owners, (iv) a description of all arrangements or understandings between such stockholders and any other person or persons (including their names) in connection with the proposal of such business by such stockholders and any material interest of such stockholders in such business, and (v) a representation that such stockholders intend to appear in person or by proxy at the special meeting to bring such business before the meeting.

Section 3. Notice of Meetings. Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given that shall state the place, if any, date and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the certificate of incorporation or these bylaws, the notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation.

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Section 4. Adjournments. Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 5. Quorum. Except as otherwise provided by law, the certificate of incorporation or these bylaws, at each meeting of stockholders the presence in person or by proxy of the holders of a majority in voting power of the outstanding shares of stock entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum. In the absence of a quorum, the stockholders so present may, by a majority in voting power thereof, adjourn the meeting from time to time in the manner provided in Section 4 of this Article I until a quorum shall attend. Shares of its own stock belonging to the corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the corporation or any subsidiary of the corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section 6. Organization. Meetings of stockholders shall be presided over by the Chairperson of the Board, if any, or in his or her absence by the Vice Chairperson of the Board, if any, or in his or her absence by the President, or in his or her absence by a Vice President, or in the absence of the foregoing persons by a chairperson designated by the Board of Directors, or in the absence of such designation by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 7. Voting; Proxies. Except as otherwise provided by or pursuant to the provisions of the certificate of incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder which has voting power upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders or to express consent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the corporation a revocation of the proxy or a new proxy bearing a later date. Voting at meetings of stockholders need not be by written ballot. At all meetings of stockholders for the election of directors at which a quorum is present a plurality of the votes cast shall be sufficient to elect. All other elections and questions presented to the stockholders at a meeting at which a quorum is present shall, unless otherwise provided by the certificate of incorporation, these bylaws, the rules or regulations of any stock exchange applicable to the corporation, or applicable law or pursuant to any regulation applicable to the corporation or its

securities, be decided by the affirmative vote of the holders of a majority in voting power of the shares of stock of the corporation which are present in person or by proxy and entitled to vote thereon.

Section 8. Fixing Date for Determination of Stockholders of Record. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date: (1) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting; (2) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten (10) days from the date upon which the resolution fixing the record date is adopted by the Board of Directors; and (3) in the case of any other action, shall not be more than sixty (60) days prior to such other action. If no record date is fixed: (1) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (2) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action of the Board of Directors is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation in accordance with applicable law, or, if prior action by the Board of Directors is required by law, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action; and (3) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 9. List of Stockholders Entitled to Vote. The officer who has charge of the stock ledger shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting or (ii) during ordinary business hours at the principal place of business of the corporation. The list of stockholders must also be open to examination at the meeting as required by applicable law. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list of stockholders or the books of the corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 10. Action By Written Consent of Stockholders. Unless otherwise restricted by the certificate of incorporation, any action required or permitted to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which minutes of proceedings of stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall, to the extent required by law, be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the corporation.

Section 11. Inspectors of Election. The corporation may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of capital stock of the corporation outstanding and the voting power of each such share, (ii) determine the shares of capital stock of the corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of capital stock of the corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

Section 12. Conduct of Meetings. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures,

whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the corporation, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 13. Advance Notice Provisions for Election of Class A Directors. Only persons who are nominated in accordance with the following procedures shall be eligible for election as Class A Directors (as defined in the certificate of incorporation). Nominations of persons for election as Class A Directors may be made at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors, (a) by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (b) by any stockholder (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 13 and on the record date for the determination of stockholders entitled to vote at such meeting and (ii) who complies with the notice procedures set forth in this Section 13. A stockholder's notice must be delivered to or mailed and received by the Secretary at the principal executive offices of the corporation (a) in the case of an annual meeting, not less than 90 days nor more than 120 days prior to the first anniversary of the preceding year's annual meeting; *provided, however*, that in the event that the date of the annual meeting is advanced by more than 30 days or delayed by more than 60 days from the anniversary date of the preceding year's annual meeting or no annual meeting was held in the preceding year, notice by the stockholder must be so delivered not earlier than the 90<sup>th</sup> day prior to such annual meeting and not later than the close of business on the later of the 60<sup>th</sup> day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such annual meeting is first made; and (b) in the case of a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the tenth day following the day on which notice of the date of the special meeting was mailed or public announcement of the date of the special meeting was made, whichever first occurs. A stockholder's notice to the Secretary must be in writing and set forth (a) as to each person whom the stockholder proposes to nominate for election as a director, all information relating to such person that is required to be disclosed in connection with solicitations of proxies for election of directors pursuant to Regulation 14A of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder; and (b) as to the stockholder giving the notice (i) the name and address of such stockholder as they appear on the books of the corporation and of the beneficial owner, if any, on whose behalf the nomination is made, (ii) the class or series and number of shares of capital stock of the corporation which are owned beneficially or of record by

such stockholder and such beneficial owner, (iii) a description of all arrangements or understandings between such stockholder and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by such stockholder, (iv) a representation that such stockholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice, and (v) any other information relating to such stockholder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Regulation 14A of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to be named as a nominee and to serve as a director if elected. No person shall be eligible for election as a director of the corporation unless nominated in accordance with the procedures set forth in this Section 13. If the chairperson of the meeting determines that a nomination was not made in accordance with the foregoing procedures, the chairperson of the meeting shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded. No adjournment or postponement of a meeting of stockholders shall commence a new period for the giving of notice of a stockholder proposal hereunder.

Section 14. Requirements for Business to be Transacted at Annual Meetings. Except as otherwise provided in Section 13 of this Article I and subject to the provisions of the certificate of incorporation, no business may be transacted at an annual meeting of stockholders, other than business that is either (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (c) otherwise properly brought before the meeting by any stockholder of the corporation (i) who is stockholder of record on the date of the giving of the notice provided for in this Section 14 and on the record date for the determination of stockholders entitled to vote at such annual meeting and (ii) who complies with the notice procedures set forth in this Section 14. A stockholder's notice must be delivered to or mailed and received by the Secretary at the principal executive offices of the corporation not less than 90 days nor more than 120 days prior to the first anniversary of the preceding year's annual meeting; *provided, however*, that in the event that the date of the annual meeting is advanced by more than 30 days or delayed by more than 60 days from the anniversary date of the preceding year's annual meeting or no annual meeting was held in the preceding year, notice by the stockholder must be so delivered not earlier than the 90<sup>th</sup> day prior to such annual meeting and not later than the close of business on the later of the 60<sup>th</sup> day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made. A stockholder's notice to the Secretary must be in writing and set forth as to each matter such stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and address of such stockholder as they appear on the books of the corporation and of the beneficial owner, if any, on whose behalf the proposal is made, (iii) the class or series and number of shares of capital stock of the corporation which are owned beneficially or of record by such stockholder and such beneficial owner, (iv) a description of all arrangements or understandings between such stockholder and any other person or persons (including their names) in connection with the proposal of such business by such stockholder and any material interest of such stockholder in such business, and (v) a representation that such stockholder intends to appear in person or by proxy at the annual meeting to bring such business

before the meeting. No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 14 or in Section 13 of this Article I, *provided, however*, that once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 14 or in Section 13 of this Article I shall be deemed to preclude discussion by any stockholder of any such business. If the chairperson of an annual meeting determines that business was not properly brought before the annual meeting in accordance with the foregoing procedures, the chairperson of the meeting shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted. No adjournment or postponement of a meeting of stockholders shall commence a new period for the giving of notice of a stockholder proposal hereunder.

## ARTICLE II

### BOARD OF DIRECTORS

Section 1. Number; Qualifications. Subject to applicable law, the number of members of the Board of Directors shall be as provided in the certificate of incorporation. Directors need not be stockholders.

Section 2. Election; Resignation; Vacancies. Members of the Board of Directors shall be elected as provided by the certificate of incorporation and applicable law. Any director may resign at any time upon written notice to the corporation. Any newly created directorship or any vacancy occurring in the Board of Directors for any cause may be filled in accordance with the provisions of the certificate of incorporation and applicable law.

Section 3. Regular Meetings. Regular meetings of the Board of Directors may be held at such places within or without the State of Delaware and at such times as the Board of Directors may from time to time determine.

Section 4. Special Meetings. Special meetings of the Board of Directors may be held at any time or place within or without the State of Delaware whenever called by the Chairperson of the Board, the President or any three members of the Board of Directors. Notice of a special meeting of the Board of Directors shall be given by the person or persons calling the meeting at least one hour before the special meeting.

Section 5. Telephonic Meetings Permitted. Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this bylaw shall constitute presence in person at such meeting.

Section 6. Quorum; Vote Required for Action. At all meetings of the Board of Directors the directors entitled to cast a majority of the votes of the entire Board of Directors shall constitute a quorum for the transaction of business. Except in cases in which the certificate of incorporation, these bylaws or applicable law otherwise provides, a majority of the votes



entitled to be cast by the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 7. Organization. Meetings of the Board of Directors shall be presided over by the Chairperson of the Board, if any, or in his or her absence by the Vice Chairperson of the Board, if any, or in his or her absence by the President, or in their absence by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 8. Action by Unanimous Consent of Directors. Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmissions are filed with the minutes of proceedings of the board or committee in accordance with applicable law.

Section 9. Rulemaking Authority. The Board of Directors shall have the power to (a) adopt, amend, modify, alter or repeal such rules governing the business and affairs of the corporation as it deems necessary from time to time, (b) adopt and issue such orders, resolutions, exemptions, directions and interpretations, including interpretations of said rules and these bylaws, and (c) delegate the powers set forth in clauses (a) and (b) of this Section 9 to any committee or any officer upon such terms as the Board of Directors deems appropriate.

Section 10. Compensation. Directors may be paid such compensation for their services as the Board of Directors may from time to time determine plus reimbursement for expenses of attendance at meetings. These payments shall not preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

Section 11. Disqualification from Service on Board of Directors. Any person (i) who is found by a final decision or settlement agreement (or absent a finding in the settlement agreement if any acts charged included a disciplinary offense) to have committed a disciplinary offense, as defined in Commodity Futures Trading Commission Regulation 1.63(a), (ii) whose registration with the Commodity Futures Trading Commission in any capacity has been revoked or suspended, (iii) who is subject to an agreement with the Commodity Futures Trading Commission or any self-regulatory organization not to apply for registration, (iv) who is subject to a denial, suspension or disqualification from serving on a 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 (v) who has been convicted of any felony listed in Section 8a(2)(D)(ii) through (iv) of the Commodity Exchange Act, is prohibited from serving on the Board of Directors or any disciplinary committee of the corporation for a period of three years from the date of such final decision or settlement agreement or for such time as the person remains subject to any suspension, expulsion or has failed to pay any portion of a fine imposed for committing a disciplinary offense, whichever is longer.

### ARTICLE III

#### COMMITTEES

Section 1. Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it.

Section 2. Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these bylaws.

### ARTICLE IV

#### OFFICERS

Section 1. Election; Qualifications; Term of Office; Resignation; Removal; Vacancies. The Board of Directors shall elect a President and Secretary, and it may, if it so determines, elect one or more Vice Presidents, one or more Assistant Secretaries, a Treasurer and one or more Assistant Treasurers and such other officers as it shall from time to time deem necessary or desirable. The Board of Directors may also elect a Chairperson of the Board and one or more Vice Chairpersons of the Board from among its members. Each officer shall hold office until the first meeting of the Board of Directors after the annual meeting of stockholders next succeeding his or her election, and until his or her successor is elected and qualified or until his or her earlier resignation or removal. Any officer may resign at any time upon written notice to the corporation. The Board of Directors may remove any officer with or without cause at any time, but such removal shall be without prejudice to the contractual rights of such officer, if any, with the corporation. Any number of offices may be held by the same person. Any vacancy occurring in any office of the corporation by death, resignation, removal or otherwise may be filled for the unexpired portion of the term by the Board of Directors at any regular or special meeting.

Section 2. Powers and Duties of Officers. The officers of the corporation shall have such powers and duties in the management of the corporation as may be prescribed by these bylaws or by a resolution of the Board of Directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board of Directors. The

Board of Directors may require any officer, agent or employee to give security for the faithful performance of his or her duties.

Section 3. Assistant and Subordinate Officers. The Board of Directors may from time to time authorize any committee or officer to appoint assistant and subordinate officers. Any committee or officer that is authorized to appoint any assistant or subordinate officer shall also have the authority to remove such officer with or without cause at any time (without prejudice to the contractual rights of such officer, if any, with the corporation) and to fill any vacancy occurring in any such office by death, resignation, removal or otherwise. For purposes of this Section 3, assistant and subordinate officers are all officers below the level of Vice President, Secretary or Treasurer.

Section 4. Compensation of Officers. The Board of Directors shall have power to fix, and from time to time change, the salaries and other compensation and remuneration, of whatever kind, of all officers of the corporation. No officer shall be prevented from receiving such salary by reason of the fact that he or she is also a director of the corporation. The Board of Directors may authorize any committee or officer, upon whom the power of appointing assistant and subordinate officers may have been conferred, to fix, and from time to time change, the salaries, compensation and remuneration of such assistant and subordinate officers.

Section 5. Chairperson of the Board. The Chairperson of the Board shall, when present, preside at all meetings of the Board of Directors and all meetings of the stockholders, and shall generally do and perform all acts incident to the office of Chairperson of the Board or which are authorized or required by law. Subject to the approval of the Board of Directors, the Chairperson of the Board may appoint committees and the chairpersons thereof where the method of appointment is not otherwise provided.

Section 6. Vice Chairpersons of the Board. The Vice Chairperson or Vice Chairpersons, at the request of the Chairperson of the Board, or in his or her absence or during his or her inability to act, shall perform the duties and exercise the functions of the Chairperson of the Board, and when so acting shall have the powers of the Chairperson of the Board. If there be more than one Vice Chairperson of the Board, the Board of Directors may determine which one or more of the Vice Chairpersons shall perform any of such duties or exercise any of such functions, or if such determination is not made by the Board of Directors, the Chairperson of the Board may make such determination; otherwise any of the Vice Chairpersons of the Board may perform any of such duties or exercise any of such functions.

Section 7. President. The President shall be the chief executive officer of the corporation. He or she may execute, in the name of the corporation, all authorized deeds, mortgages, bonds, contracts or other instruments, except in cases in which the signing and execution thereof shall have been expressly delegated to some other officer or agent of the corporation. In general, he or she shall perform such other duties customarily performed by a president of a corporation and shall perform such other duties and have such other powers as are from time to time assigned to him or her by the Board of Directors.

Section 8. Vice Presidents. The Vice President or Vice Presidents, at the request of the President, or in the President's absence or during his or her inability to act, shall perform the

duties and exercise the functions of the President, and when so acting shall have the powers of the President. If there be more than one Vice President, the Board of Directors may determine which one or more of the Vice Presidents shall perform any of such duties or exercise any of such functions, or if such determination is not made by the Board of Directors, the chief executive officer, or the President may make such determination; otherwise any of the Vice Presidents may perform any of such duties or exercise any of such functions. Each Vice President shall perform such other duties and have such other powers, and have such additional descriptive designations in their titles (if any), as are from time to time assigned to them by the Board of Directors or the President.

Section 9. Secretary. The Secretary shall: (a) keep a record of all proceedings of the stockholders, the Board of Directors and any committees thereof in one or more books provided for that purpose; (b) give, or cause to be given, all notices that are required by law or these bylaws to be given by the Secretary; (c) be custodian of the corporate records and, if the corporation has a corporate seal, of the seal of the corporation; (d) have authority to affix the seal of the corporation to all instruments the execution of which requires such seal and to attest such affixing of the seal; (e) keep a register of the address of each stockholder which shall be furnished to the Secretary by such stockholder; (f) have authority to certify as true and correct, copies of these bylaws or resolutions of the stockholders, the Board of Directors and committees thereof, and of other documents of the corporation; and (g) in general, perform the duties incident to the office of secretary and such other duties as from time to time may be prescribed by the Board of Directors, the Chairperson of the Board or the President. The Board of Directors may give general authority to any other officer to affix the seal of the corporation and to attest such affixing of the seal.

Section 10. Treasurer. The Treasurer shall be the principal accounting and financial officer of the corporation. The Treasurer shall have charge of and be responsible for the stock records of the corporation and for maintenance of adequate books of account for the corporation; have charge and custody of all funds and securities of the corporation, and be responsible therefor and for the receipt and disbursement thereof; and perform the duties incident to the office of treasurer and such other duties as may from time to time be prescribed by the Board of Directors, the Chairperson of the Board or the President.

Section 11. Appointing Attorneys and Agents; Voting Securities of Other Entities. Unless otherwise provided by resolution adopted by the Board of Directors, the Chairperson of the Board, the President or any Vice President may from time to time appoint an attorney or attorneys or agent or agents of the corporation, in the name and on behalf of the corporation, to cast the votes which the corporation may be entitled to cast as the holder of stock or other securities in any other corporation or other entity, any of whose stock or other securities may be held by the corporation, at meetings of the holders of the stock or other securities of such other corporation or other entity, or to consent in writing, in the name of the corporation as such holder, to any action by such other corporation or other entity, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consents, and may execute or cause to be executed in the name and on behalf of the corporation and under its corporate seal or otherwise, all such written proxies or other instruments as he or she may deem necessary or proper. Any of the rights set forth in this Section 11 which may be delegated to an

attorney or agent may also be exercised directly by the Chairperson of the Board, the President or any Vice President.

Section 12. Physical Emergencies. In the event the physical functions of the corporation are, or are threatened to be, severely and adversely affected by a physical emergency such as, but not limited to, fire or other casualty, power failures, substantial inclement weather, communications or transportation breakdowns, labor disputes, civil commotions, bomb threats, warlike operations, invasions, rebellions, hostilities, sabotage or terrorism, the Chairperson or any Vice Chairperson of the Board of Directors, the President or, in their absence, another officer of the Corporation, is authorized to take such action as he or she shall deem necessary or appropriate to deal with such emergency.

## ARTICLE V

### STOCK

Section 1. Certificates. Every holder of stock shall be entitled to have a certificate signed by or in the name of the corporation by the Chairperson or a Vice Chairperson of the Board of Directors, if any, or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the corporation certifying the number of shares owned by such holder in the corporation. Any of or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

Section 2. Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. The corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

## ARTICLE VI

### INDEMNIFICATION

Section 1. Right to Indemnification. The corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "Covered Person") who was or is a party or is threatened to be made a party to, or has been subpoenaed to testify or has agreed to appear voluntarily as a witness in, or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the corporation or, while a director or officer of the corporation, is or was serving at

the request of the corporation as a director, officer, trustee, employee or agent of another corporation or of a partnership, limited liability company, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all costs, charges, expenses, liability and losses (including attorneys' fees, judgments, fines, excise taxes or penalties paid or payable under the Employee Retirement Income Security Act of 1974, and amounts paid or to be paid in settlement) reasonably incurred or suffered by such Covered Person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, trustee, employee or agent of another corporation or of a partnership, limited liability company, joint venture, trust, enterprise or nonprofit entity and shall inure to the benefit of such person's heirs, executors and administrators. Notwithstanding the preceding sentence, except as otherwise provided in Section 3 of this Article VI, the corporation shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized in the specific case by the Board of Directors of the corporation.

Section 2. Prepayment of Expenses. The corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition, provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Article VI or otherwise.

Section 3. Claims. If a claim for indemnification (following the final disposition of a proceeding) or advancement of expenses under this Article VI is not paid in full within thirty days after a written claim therefor by the Covered Person has been received by the corporation, the Covered Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law. It shall be a defense to any action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking has been tendered to the corporation) that the claimant has failed to meet a standard of conduct which makes it permissible under applicable law for the corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the corporation. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is permissible in the circumstances because the claimant has met such standard of conduct, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders), that the claimant has not met such standard of conduct, nor the termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall be a defense to the action or create a presumption that the claimant has failed to meet the required standard of conduct.

Section 4. Nonexclusivity of Rights. The rights conferred on any Covered Person by this Article VI shall not be exclusive of any other rights which such Covered Person may have or

hereafter acquire under any statute, provision of the certificate of incorporation, these bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

Section 5. Other Sources. The corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, trustee, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

Section 6. Insurance. The corporation may maintain insurance, at its expense, to protect itself and any director, officer, trustee, employee or agent of the corporation or another corporation, partnership, limited liability company, joint venture, trust, enterprise or nonprofit entity against any expense, liability or loss, whether or not the corporation would have the power to indemnify such person against such expense, liability or loss under applicable law.

Section 7. Amendment, Repeal or Modification. Any amendment, repeal or modification of the foregoing provisions of this Article VI shall not adversely affect any right or protection hereunder of any Covered Person in respect of any act or omission occurring prior to the time of such amendment, repeal or modification.

Section 8. Other Indemnification and Prepayment of Expenses. This Article VI shall not limit the right of the corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

Section 9. Compliance with Law. Notwithstanding any other provision of this Article VI, the corporation shall not indemnify any person if such indemnification would be contrary to law.

## ARTICLE VII

### MISCELLANEOUS

Section 1. Fiscal Year. The fiscal year of the corporation shall be the calendar year.

Section 2. Seal. The corporate seal shall have the name of the corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors.

Section 3. Manner of Notice. Except as otherwise provided herein or permitted by applicable law, notices to directors and stockholders shall be in writing and delivered personally or mailed to the directors or stockholders at their addresses appearing on the books of the corporation. Notices to directors may be given by telecopier, telephone or other means of electronic transmission. Notices shall be deemed to have been given (i) when received, if given in person, (ii) on the date of receipt, if sent by telecopier, electronic mail or other confirmed means of electronic communication, (iii) one day after delivery, properly addressed, to a

reputable courier for same-day or overnight delivery, or (iv) three days after being deposited, properly addressed, in the U.S. Mail, postage prepaid.

Section 4. Waiver of Notice of Meetings of Stockholders, Directors and Committees. Any waiver of notice, given by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in a waiver of notice.

Section 5. Form of Records. Any records maintained by the corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time.

Section 6. Knowledge of Transactions. Except as expressly authorized by the Board of Directors, or required by law, no person other than the President, and such employees as have been authorized by the President, shall have access to the books or records of the corporation which disclose the trades or positions of any stockholder that is a clearing participant, but if the President deems it necessary, he may, at any time, report the facts shown by the corporation's records to the Board of Directors or a committee thereof to enable the Board of Directors or such committee to take such action as may be proper.

Section 7. Material Information.

(a) No person who is a member of the Board of Directors or a committee thereof shall:

(1) trade for such person's own account, or for or on behalf of any other account, in any commodity interest on the basis of any material, non-public information obtained through special access related to the performance of such person's official duties as a director or committee member; or

(2) disclose for any purpose inconsistent with the performance of such person's official duties as a director or committee member material, non-public information obtained through special access related to the performance of such duties as a director or committee member or inconsistent with the corporation's corporate governance security policy.

(b) All terms used in this Section 7 shall be construed consistently with the definitions contained in Commodity Futures Trading Commission Regulation 1.59.

(c) Violation by a director or committee member of this Section 7 or of any other confidentiality obligation, including any obligation established pursuant to an agreement between such director or committee member and the corporation, or of any conflict of interest or security policy or procedure adopted by the corporation or imposed by applicable law or



agreement with the corporation, shall constitute, without limitation, a breach of fiduciary duty and shall be grounds for the removal for cause under applicable law of such director or committee member from the Board of Directors and any committee thereof.

Section 8. Litigation Expenses. Any stockholder who fails to prevail in a lawsuit or similar proceeding instituted by that stockholder against the corporation or any of its directors, officers, committee members, agents or employees, must pay to the corporation all reasonable expenses, including attorneys' fees, incurred by the corporation in the defense of such proceeding. A stockholder additionally may be charged for any unusual expenses incurred by the corporation and caused directly or indirectly by such stockholder including, without limitation, the cost of producing records pursuant to a court order or other legal process in any litigation or other proceeding to which a stockholder is a party or in which such records relating to such stockholder are required to be produced, whether such production is at the instance of such stockholder or of any party other than the corporation.

Section 9. Bonding. Officers and employees may be placed under bond in such sum or sums as may be determined by the Board of Directors, the premiums to be paid by the Corporation.

Section 10. Interpretation. In these bylaws, unless a clear contrary intention appears, (a) the singular number includes the plural number and vice versa, (b) reference to the masculine, feminine or neuter gender includes each other gender, (c) any reference to a number of days shall mean calendar days unless business days are specified, and (d) any reference to times shall mean the time in Chicago, Illinois. Except as otherwise specifically provided in these bylaws, an act that otherwise would be required or permitted by these bylaws to be performed on a date that is not a business day may be performed on the next day that is a business day.

Section 11. Amendment of Bylaws. These bylaws may be altered, amended or repealed, and new bylaws made, by the Board of Directors, but the stockholders may make additional bylaws and may alter and repeal any bylaws, whether adopted by them or otherwise, by the affirmative vote of stockholders representing not less than a majority of the then outstanding voting power of the corporation.

**Bylaws of the  
Board of Trade Clearing Corporation**

**1. Definitions**

**101. Definitions.**

~~Whenever used in these Bylaws or in the Rules of the Corporation, terms defined in the Certificate of Incorporation shall have the same meaning as in the Certificate of Incorporation. Unless the context otherwise requires, the following words and expressions shall, for all purposes of these Bylaws and the Rules of the Corporation, have the meanings herein specified:~~

~~Board; Board of Governors~~

~~The Board of Governors of the Corporation.~~

~~Certificate of Incorporation~~

~~The Restated Certificate of Incorporation of the Corporation, as amended from time to time.~~

~~Corporation~~

~~The Board of Trade Clearing Corporation, a Delaware corporation.~~

~~Delaware Law~~

~~The Delaware General Corporation Law, as in effect from time to time.~~

~~Designated Representative~~

~~When used with respect to a Stockholder that is an entity, the individual designated on the books and records of the Corporation as being authorized to vote in all matters submitted to a vote of the Stockholders of the Corporation; when used with respect to an individual Stockholder, such Stockholder.~~

~~Exchange~~

~~An exchange or market for which the Corporation has agreed to provide transaction processing or clearing services.~~

~~Guaranty Fund~~

~~Guaranty Fund shall have the meaning provided in the Rules.~~

~~Member; Clearing Member~~

~~An Individual Member or Member Firm admitted to membership in the Corporation. As used herein, the term "Individual Member" shall mean a sole proprietor or the sole owner, if any, of a Member Firm.~~

~~Member Firm~~

~~A Member organized and doing business as a corporation, partnership, limited liability company or other form of organization authorized by the Corporation.~~

~~Rules~~

~~The Rules of the Corporation, as in effect from time to time.~~

~~Stockholder~~

~~A person or entity owning stock in the Corporation.~~

~~102. Interpretation BYLAWS~~

~~OF~~

~~THE CLEARING CORPORATION~~

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ARTICLE I

MEETINGS OF STOCKHOLDERS

Section 1. Annual Meetings. If required by applicable law, an annual meeting of stockholders shall be held for the election of directors at such date, time and place, if any, either within or without the State of Delaware, as may be designated by resolution of the Board of Directors from time to time. Subject to Section 14 of this Article I, any other proper business may be transacted at the annual meeting.

Section 2. Special Meetings. Special meetings of stockholders for any purpose or purposes may be called by the Board of Directors, the Chairperson of the Board or the President at such date, time and place, if any, either within or without the State of Delaware, as may be designated by the Board of Directors, the Chairperson of the Board or the President, as the case may be. The Board of Directors shall call a special meeting of stockholders upon the written request of stockholders representing not less than one-third of the then outstanding voting power of the Common Stock of the corporation. Any such request must be delivered to or mailed and received by the Secretary at the principal executive offices of the corporation and must set forth as to each matter the requesting stockholders propose to bring before the special meeting (i) a brief description of the business desired to be brought before the special meeting and the reasons for conducting such business at the special meeting, (ii) the name and address of such stockholders as they

appear on the books of the corporation and of the beneficial owners, if any, on whose behalf the proposal is made, (iii) the class or series and number of shares of capital stock of the corporation which are owned beneficially or of record by such stockholders and such beneficial owners, (iv) a description of all arrangements or understandings between such stockholders and any other person or persons (including their names) in connection with the proposal of such business by such stockholders and any material interest of such stockholders in such business, and (v) a representation that such stockholders intend to appear in person or by proxy at the special meeting to bring such business before the meeting.

Section 3. Notice of Meetings. Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given that shall state the place, if any, date and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the certificate of incorporation or these bylaws, the notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation.

Section 4. Adjournments. Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 5. Quorum. Except as otherwise provided by law, the certificate of incorporation or these bylaws, at each meeting of stockholders the presence in person or by proxy of the holders of a majority in voting power of the outstanding shares of stock entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum. In the absence of a quorum, the stockholders so present may, by a majority in voting power thereof, adjourn the meeting from time to time in the manner provided in Section 4 of this Article I until a quorum shall attend. Shares of its own stock belonging to the corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the corporation or any subsidiary of the corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section 6. Organization. Meetings of stockholders shall be presided over by the Chairperson of the Board, if any, or in his or her absence by the Vice Chairperson of the Board, if any, or in his or her absence by the President, or in his or her absence by a Vice President, or in the absence of the foregoing persons by a chairperson designated by the

Board of Directors, or in the absence of such designation by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 7. Voting; Proxies. Except as otherwise provided by or pursuant to the provisions of the certificate of incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder which has voting power upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders or to express consent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the corporation a revocation of the proxy or a new proxy bearing a later date. Voting at meetings of stockholders need not be by written ballot. At all meetings of stockholders for the election of directors at which a quorum is present a plurality of the votes cast shall be sufficient to elect. All other elections and questions presented to the stockholders at a meeting at which a quorum is present shall, unless otherwise provided by the certificate of incorporation, these bylaws, the rules or regulations of any stock exchange applicable to the corporation, or applicable law or pursuant to any regulation applicable to the corporation or its securities, be decided by the affirmative vote of the holders of a majority in voting power of the shares of stock of the corporation which are present in person or by proxy and entitled to vote thereon.

Section 8. Fixing Date for Determination of Stockholders of Record. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date: (1) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting; (2) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten (10) days from the date upon which the resolution fixing the record date is adopted by the Board of Directors; and (3) in the case of any other action, shall not be more than sixty (60) days prior to such other action. If no record date is fixed: (1) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (2) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action of the Board of Directors is required by law, shall

be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation in accordance with applicable law, or, if prior action by the Board of Directors is required by law, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action; and (3) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 9. List of Stockholders Entitled to Vote. The officer who has charge of the stock ledger shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting or (ii) during ordinary business hours at the principal place of business of the corporation. The list of stockholders must also be open to examination at the meeting as required by applicable law. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list of stockholders or the books of the corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 10. Action By Written Consent of Stockholders. Unless otherwise restricted by the certificate of incorporation, any action required or permitted to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which minutes of proceedings of stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall, to the extent required by law, be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the corporation.

Section 11. Inspectors of Election. The corporation may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that

no inspector so appointed or designated is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of capital stock of the corporation outstanding and the voting power of each such share, (ii) determine the shares of capital stock of the corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of capital stock of the corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

Section 12. Conduct of Meetings. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the corporation, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 13. Advance Notice Provisions for Election of Class A Directors. Only persons who are nominated in accordance with the following procedures shall be eligible

for election as Class A Directors (as defined in the certificate of incorporation). Nominations of persons for election as Class A Directors may be made at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors, (a) by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (b) by any stockholder (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 13 and on the record date for the determination of stockholders entitled to vote at such meeting and (ii) who complies with the notice procedures set forth in this Section 13. A stockholder's notice must be delivered to or mailed and received by the Secretary at the principal executive offices of the corporation (a) in the case of an annual meeting, not less than 90 days nor more than 120 days prior to the first anniversary of the preceding year's annual meeting; *provided, however,* that in the event that the date of the annual meeting is advanced by more than 30 days or delayed by more than 60 days from the anniversary date of the preceding year's annual meeting or no annual meeting was held in the preceding year, notice by the stockholder must be so delivered not earlier than the 90<sup>th</sup> day prior to such annual meeting and not later than the close of business on the later of the 60<sup>th</sup> day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such annual meeting is first made; and (b) in the case of a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the tenth day following the day on which notice of the date of the special meeting was mailed or public announcement of the date of the special meeting was made, whichever first occurs. A stockholder's notice to the Secretary must be in writing and set forth (a) as to each person whom the stockholder proposes to nominate for election as a director, all information relating to such person that is required to be disclosed in connection with solicitations of proxies for election of directors pursuant to Regulation 14A of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder; and (b) as to the stockholder giving the notice (i) the name and address of such stockholder as they appear on the books of the corporation and of the beneficial owner, if any, on whose behalf the nomination is made, (ii) the class or series and number of shares of capital stock of the corporation which are owned beneficially or of record by such stockholder and such beneficial owner, (iii) a description of all arrangements or understandings between such stockholder and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by such stockholder, (iv) a representation that such stockholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice, and (v) any other information relating to such stockholder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Regulation 14A of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to be named as a nominee and to serve as a director if elected. No person shall be eligible for election as a director of the corporation unless nominated in accordance with the procedures set forth in this Section 13. If the chairperson of the meeting determines that a nomination was not made in accordance with the foregoing procedures, the chairperson of the meeting shall declare to the meeting that the nomination was defective and such defective nomination



shall be disregarded. No adjournment or postponement of a meeting of stockholders shall commence a new period for the giving of notice of a stockholder proposal hereunder.

Section 14. Requirements for Business to be Transacted at Annual Meetings. Except as otherwise provided in Section 13 of this Article I and subject to the provisions of the certificate of incorporation, no business may be transacted at an annual meeting of stockholders, other than business that is either (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (c) otherwise properly brought before the meeting by any stockholder of the corporation (i) who is stockholder of record on the date of the giving of the notice provided for in this Section 14 and on the record date for the determination of stockholders entitled to vote at such annual meeting and (ii) who complies with the notice procedures set forth in this Section 14. A stockholder's notice must be delivered to or mailed and received by the Secretary at the principal executive offices of the corporation not less than 90 days nor more than 120 days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced by more than 30 days or delayed by more than 60 days from the anniversary date of the preceding year's annual meeting or no annual meeting was held in the preceding year, notice by the stockholder must be so delivered not earlier than the 90<sup>th</sup> day prior to such annual meeting and not later than the close of business on the later of the 60<sup>th</sup> day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made. A stockholder's notice to the Secretary must be in writing and set forth as to each matter such stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and address of such stockholder as they appear on the books of the corporation and of the beneficial owner, if any, on whose behalf the proposal is made, (iii) the class or series and number of shares of capital stock of the corporation which are owned beneficially or of record by such stockholder and such beneficial owner, (iv) a description of all arrangements or understandings between such stockholder and any other person or persons (including their names) in connection with the proposal of such business by such stockholder and any material interest of such stockholder in such business, and (v) a representation that such stockholder intends to appear in person or by proxy at the annual meeting to bring such business before the meeting. No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 14 or in Section 13 of this Article I, provided, however, that once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 14 or in Section 13 of this Article I shall be deemed to preclude discussion by any stockholder of any such business. If the chairperson of an annual meeting determines that business was not properly brought before the annual meeting in accordance with the foregoing procedures, the chairperson of the meeting shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted. No adjournment or postponement of a meeting of stockholders shall commence a new period for the giving of notice of a stockholder proposal hereunder.

ARTICLE II

BOARD OF DIRECTORS

Section 1. Number; Qualifications. Subject to applicable law, the number of members of the Board of Directors shall be as provided in the certificate of incorporation. Directors need not be stockholders.

Section 2. Election; Resignation; Vacancies. Members of the Board of Directors shall be elected as provided by the certificate of incorporation and applicable law. Any director may resign at any time upon written notice to the corporation. Any newly created directorship or any vacancy occurring in the Board of Directors for any cause may be filled in accordance with the provisions of the certificate of incorporation and applicable law.

Section 3. Regular Meetings. Regular meetings of the Board of Directors may be held at such places within or without the State of Delaware and at such times as the Board of Directors may from time to time determine.

Section 4. Special Meetings. Special meetings of the Board of Directors may be held at any time or place within or without the State of Delaware whenever called by the Chairperson of the Board, the President or any three members of the Board of Directors. Notice of a special meeting of the Board of Directors shall be given by the person or persons calling the meeting at least one hour before the special meeting.

Section 5. Telephonic Meetings Permitted. Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this bylaw shall constitute presence in person at such meeting.

Section 6. Quorum; Vote Required for Action. At all meetings of the Board of Directors the directors entitled to cast a majority of the votes of the entire Board of Directors shall constitute a quorum for the transaction of business. Except in cases in which the certificate of incorporation, these bylaws or applicable law otherwise provides, a majority of the votes entitled to be cast by the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 7. Organization. Meetings of the Board of Directors shall be presided over by the Chairperson of the Board, if any, or in his or her absence by the Vice Chairperson of the Board, if any, or in his or her absence by the President, or in their absence by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 8. Action by Unanimous Consent of Directors. Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or such

committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmissions are filed with the minutes of proceedings of the board or committee in accordance with applicable law.

Section 9. Rulemaking Authority. The Board of Directors shall have the power to (a) adopt, amend, modify, alter or repeal such rules governing the business and affairs of the corporation as it deems necessary from time to time, (b) adopt and issue such orders, resolutions, exemptions, directions and interpretations, including interpretations of said rules and these bylaws, and (c) delegate the powers set forth in clauses (a) and (b) of this Section 9 to any committee or any officer upon such terms as the Board of Directors deems appropriate.

\* 2 moved from here; text not shown

## 2. Governance

### 201. Board of Governors.

~~(a) The voting members of the Board of Governors shall be divided into three successive classes so that the terms of the members of only one class shall expire at each annual meeting of the shareholders of the Corporation. Governors shall be elected at each annual meeting of the shareholders of the Corporation to succeed those Governors whose terms then expire. The Governors elected at each annual meeting of the shareholders of the Corporation shall be identified as being of the same category (Group A, Group B or At Large) and class as the Governors they succeed and shall, where applicable, be elected for a term expiring at the third succeeding annual meeting of the shareholders of the Corporation or until their respective successors have been elected and qualified.~~

~~(b) The Governors shall be divided into three categories designated as Group A Governors, Group B Governors and At Large Governors as those terms are defined in the Certificate of Incorporation. Any vacancies in the Board, whether created by expiration of term, death, resignation, disqualification, removal or other causes, may be filled only by a Governor of the same category as the Governor previously occupying such Governorship so that only a Group A Governor can succeed a Group A Governor, only a Group B Governor can succeed a Group B Governor and only an At Large Governor can succeed an At Large Governor. Each Governor shall continue to serve as a member of the category to which he or she was originally assigned throughout his or her term notwithstanding that such Governor, or the firm or corporation of which such Governor is a partner or officer, changes its status from Group A Clearing Member to Group B Clearing Member, or vice versa, during such term.~~

~~(i) No two Governors shall be associated with the same Clearing Member.~~

~~(e) A Governor may serve no more than two successive terms. A person who has served two successive terms shall be eligible to again serve as Governor after the occurrence of one~~

~~annual election of Governors in which the person is not a candidate. For purposes of determining eligibility to serve a successive term, a Governor who has served eighteen months or more of any term shall be considered to have served a full term.~~

~~202. Specific Powers of Board of Governors.~~

~~The business and affairs of the Corporation shall be managed and controlled by or under the direction of the Board of Governors, which may exercise all such powers of, and do all such acts and things as may be done by, the Corporation and which may do all such lawful acts and things as are not by law or by the Certificate of Incorporation or by these Bylaws directed or required to be exercised or done by the Stockholders. Without prejudice to such powers, it is hereby expressly declared that the Board shall have the following powers:~~

- ~~(a) To adopt and alter a common seal of the Corporation;~~
- ~~(b) To purchase or otherwise acquire for the Corporation any property, rights or privileges which the Corporation is authorized to acquire;~~
- ~~(c) To pay for any property purchased for the Corporation either wholly or partly in money, stock, bonds, debentures or other securities of the Corporation;~~
- ~~(d) To borrow money and to make and issue notes, bonds, and other negotiable and transferable instruments, mortgages, deeds of trust and trust agreements, and to do every act and thing necessary to effectuate the same;~~
- ~~(e) To remove any officer for cause and, in the Board's discretion, transfer the powers and duties of any officer to any other person;~~
- ~~(f) To appoint and remove or suspend such officers or agents as the Board may deem necessary and to determine their duties and fix, and from time to time change, their salaries or remuneration, and to require security as and when the Board deems appropriate;~~
- ~~(g) To confer upon any officer of the Corporation the power to appoint, remove and suspend subordinate officers or agents;~~
- ~~(h) To call special meetings of the Stockholders for any purpose or purposes;~~
- ~~(i) To adopt, amend, modify, alter or repeal such Bylaws as it deems necessary or appropriate from time to time;~~
- ~~(j) To adopt, amend, modify, alter or repeal such Rules governing the business and affairs of the Corporation as it deems necessary or appropriate from time to time;~~
- ~~(k) To adopt and issue such orders, resolutions, exemptions, directions and interpretations, including interpretations of the Bylaws and Rules, and to make such decisions as it deems necessary or appropriate; and~~

~~(l) Subject to Delaware Law, to delegate any of the powers of the Board of Governors in relation to the ordinary business of the Corporation, including without limitation the powers enumerated in paragraphs (i), (j) and (k) of this Bylaw, to any standing or special committee, or to any officer or agent (with power to subdelegate), upon such terms as the Board deems appropriate.~~

~~203. Annual Meeting of the Board.~~

~~The Board shall hold a regular meeting, to be known as the annual meeting, immediately following the annual meeting of the Stockholders. At such meeting, the Board shall elect a Chairman, a First Vice Chairman and a Second Vice Chairman of the Board from their number who shall hold office until the next annual election of the Chairman and the Vice Chairmen and until their respective successors are elected and qualified. At such meeting, the Board also shall elect a Treasurer and Secretary, who need not be Governors. Such officers shall hold office until their successors are elected and qualified.~~

~~204. Regular Meetings.~~

~~Regular meetings of the Board of Governors may be held at such places and times as shall be determined from time to time by the Chairman of the Board or by resolution of the Board.~~

~~205. Special Meetings.~~

~~Special meetings of the Board of Governors may be called by the Chairman of the Board or the President, and shall be called upon the written request of any three Governors, upon not less than one hour's notice to each Governor.~~

~~206. Quorum and Voting.~~

~~A majority of the Governors shall constitute a quorum at any meeting of the Board of Governors except that a lesser number may adjourn a meeting to another time and place. Each voting member of the Board of Governors shall have one vote at all meetings of the Board or any committee thereof. The vote of a majority of the Governors present at any meeting shall be the official act and decision of the Board or such committee. Nothing herein shall be construed to limit or modify the provisions of Bylaw 222.~~

~~207. Waiver of Notice; Business and Purpose.~~

~~Notice of any meeting of the Board of Governors may be waived in writing (including by facsimile or electronic mail) and signed by the person or persons entitled to such notice either before or after the time of the meeting. The attendance of a Governor at any meeting shall constitute a waiver of notice of such meeting, except where a Governor attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened and at the beginning of the meeting records such objection with the person acting as secretary of the meeting and does not thereafter vote on any action taken at the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special~~

~~meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by Delaware Law.~~

~~208. Action Without Meeting.~~

~~Unless otherwise specifically prohibited by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Governors or of any committee thereof may be taken without a meeting, if all members of the Board of Governors or such committee, as the case may be, execute a consent thereto in writing (including by facsimile or electronic mail) setting forth the action so taken, and the writing or writings are filed with the minutes of proceedings of the Board of Governors or such committee.~~

~~209. Attendance by Telephone.~~

~~Members of the Board of Governors, or any committee thereof, may participate in and act at any meeting of the Board of Governors, or such committee, as the case may be, through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such meeting shall constitute attendance and presence in person at the meeting of the person or persons so participating.~~

~~210. Compensation.~~

~~Governors Section 10. Compensation. Directors may be paid such compensation for their services as the Board of Governors Directors may from time to time determine plus reimbursement for expenses of attendance at meetings. These payments shall not preclude any Governor director from serving the Corporation corporation in any other capacity and receiving compensation therefor.~~

~~\*\* 1 Any person (1) Section 11. Disqualification from Service on Board of Directors. Any person (i) who is found by a final decision or settlement agreement (or absent a finding in the settlement agreement if any acts charged included a disciplinary offense) to have committed a disciplinary offense, as defined in Commodity Futures Trading Commission Regulation 1.63(a); or (2), (ii) whose registration with the Commodity Futures Trading Commission in any capacity has been revoked or suspended; or (3), (iii) who is subject to an agreement with the Commodity Futures Trading Commission or any self-regulatory organization not to apply for registration; or (4), (iv) who is subject to a denial, suspension or disqualification from serving on a disciplinary committee, arbitration panel or governing board of any self-regulatory organization as that term is defined in Section 3(a)(26) of the Securities Exchange Act of 1934; or (5) (v) who has been convicted of any felony listed in Section 8a(2)(D)(ii) through (iv) of the Commodity Exchange Act, is prohibited from serving on the Board of Governors Directors or any disciplinary committee of the Corporation corporation for a period of three years from the date of such final decision or settlement agreement or for such time as the person remains subject to any suspension, expulsion or has failed to pay any portion of a fine imposed for committing a disciplinary offense, whichever is longer.~~

**ARTICLE III**

**COMMITTEES**

**Section 1 211. Committees.** The Board of Governors, by resolution adopted by a majority of the whole Board of Governors, may create **Directors may designate** one or more committees and appoint the chairman thereof and one or more Governors or other Members to serve thereon; provided, that such committees shall constitute committees of the Board only to the extent that all the members thereof are Governors. Each Governor appointed to serve on any such committee shall serve, unless the resolution designating the respective committee is sooner amended or rescinded by the Board of Governors, until their respective successors are designated. The Board of Governors, by resolution adopted by a majority of the whole Board, may also designate additional Governors, **each committee to consist of one or more of the directors of the corporation. The Board of Directors may designate one or more directors** as alternate members of any committee to serve as members of such committee in the place and stead of any regular committee member or members thereof who may be unable to attend a meeting or otherwise unavailable to act as a member of such, **who may replace any absent or disqualified member at any meeting of the** committee. In the absence or disqualification of a committee member and all alternate committee members designated to serve in the place and stead of such committee member, the committee **member of the committee, the** member or members thereof present at any meeting and not disqualified from voting, whether or not such committee member or members **he, she or they** constitute a quorum, may unanimously appoint another Governor **member of the Board of Directors** to act at the meeting in the place and stead of **any** such absent or disqualified committee member. **member. Any such committee, to the extent permitted by law and to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it.**

**212. Meetings. Section 2. Committee Rules.** Unless the Board of Directors otherwise provides, **each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these bylaws.**

**UNLESS OTHERWISE SPECIFIED IN THESE BYLAWS, MEETINGS OF COMMITTEES MAY BE CALLED AT ANY TIME BY THE CHAIRMAN OF THE BOARD, THE PRESIDENT, OR THE CHAIRMAN OF THE RESPECTIVE COMMITTEE. A MAJORITY OF THE MEMBERS OF THE COMMITTEE SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF BUSINESS AND, EXCEPT AS EXPRESSLY LIMITED BY THIS SECTION, THE ACT OF A MAJORITY OF THE MEMBERS PRESENT AT ANY MEETING AT WHICH THERE IS A QUORUM SHALL BE THE ACT OF SUCH COMMITTEE. UNLESS OTHERWISE SPECIFIED IN THESE BYLAWS OR IN THE RESOLUTION DESIGNATING THE COMMITTEE, A MAJORITY OF THE MEMBERS OF ANY SUCH COMMITTEE MAY SELECT ITS CHAIRMAN, FIX ITS RULES OF PROCEDURE, FIX THE TIME AND PLACE OF ITS MEETINGS AND SPECIFY WHAT NOTICE OF MEETINGS, IF ANY, SHALL BE**

**GIVEN: ARTICLE IV**

**OFFICERS**

213. Officers.

The officers of the Corporation shall be a Chairman, a First Vice Chairman and a Second Vice Chairman of the Board, all of whom shall be Governors, a President, **Section 1. Election; Qualifications; Term of Office; Resignation; Removal; Vacancies. The Board of Directors shall elect a President and Secretary, and it may, if it so determines, elect one or more Vice Presidents, a Secretary and a Treasurer one or more Assistant Secretaries, a Treasurer and one or more Assistant Treasurers and such other officers as it shall from time to time deem necessary or desirable. The Board of Directors may also elect a Chairperson of the Board and one or more Vice Chairpersons of the Board** the Board or the President may elect or appoint from time to time. Any officer or agent of the Corporation who is elected or appointed by the Board of Governors or the President and whose duties are not specified in these Bylaws shall perform such duties and have such powers as may from time to time be prescribed by the Board of Governors, the Chairman of the Board or the President. Except in any case where a duty or power is identified as one that is to be performed or held exclusively by a designated officer of the Corporation, the specification of such an officer in these Bylaws or the Rules shall not preclude the appointment of subordinate officers or agents to perform such duties or to hold such powers.

214. Chairman of the Board.

The Chairman of the Board of Governors shall be elected by the Board of Governors from among its members at the annual. **Each officer shall hold office until the first meeting of the Board of Governors. The Chairman shall be elected to such position for no more than two consecutive one-year terms. Directors after the annual meeting of stockholders next succeeding his or her election, and until his or her successor is elected and qualified or until his or her earlier resignation or removal. Any officer may resign at any time upon written notice to the corporation. The Board of Directors may remove any officer with or without cause at any time, but such removal shall be without prejudice to the contractual rights of such officer, if any, with the corporation. Any number of offices may be held by the same person. Any vacancy occurring in any office of the corporation by death, resignation, removal or otherwise may be filled for the unexpired portion of the term by the Board of Directors at any regular or special meeting.**

The Chairman **Section 2. Powers and Duties of Officers. The officers of the corporation shall have such powers and duties in the management of the corporation as may be prescribed by these bylaws or by a resolution of the Board of Directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board of Directors. The Board of Directors may require any officer, agent or employee to give security for the faithful performance of his or her duties.**

**Section 3. Assistant and Subordinate Officers. The Board of Directors may from time to time authorize any committee or officer to appoint assistant and subordinate**



officers. Any committee or officer that is authorized to appoint any assistant or subordinate officer shall also have the authority to remove such officer with or without cause at any time (without prejudice to the contractual rights of such officer, if any, with the corporation) and to fill any vacancy occurring in any such office by death, resignation, removal or otherwise. For purposes of this Section 3, assistant and subordinate officers are all officers below the level of Vice President, Secretary or Treasurer.

Section 4. Compensation of Officers. The Board of Directors shall have power to fix, and from time to time change, the salaries and other compensation and remuneration, of whatever kind, of all officers of the corporation. No officer shall be prevented from receiving such salary by reason of the fact that he or she is also a director of the corporation. The Board of Directors may authorize any committee or officer, upon whom the power of appointing assistant and subordinate officers may have been conferred, to fix, and from time to time change, the salaries, compensation and remuneration of such assistant and subordinate officers.

Section 5. Chairperson of the Board. The Chairperson of the Board shall, when present, preside at all meetings of the Board, act as temporary chairman at, and call to order, of Directors and all meetings of the Stockholders stockholders, and shall generally do and perform all acts incident to the office of Chairman Chairperson of the Board or which are authorized or required by law. Subject to the approval of the Board, the Chairman of Directors, the Chairperson of the Board may appoint committees and the chairmen chairpersons thereof where the method of appointment is not otherwise provided.

~~215. Vice Chairmen.~~ Section 6. Vice Chairpersons of the Board. The Vice Chairperson or Vice Chairpersons, at the request of the Chairperson of the Board, or in his or her absence or during his or her inability to act, shall perform the duties and exercise the functions of the Chairperson of the Board, and when so acting shall have the powers of the Chairperson of the Board. If there be more than one Vice Chairperson of the Board, the Board of Directors may determine which one or more of the Vice Chairpersons shall perform any of such duties or exercise any of such functions, or if such determination is not made by the Board of Directors, the Chairperson of the Board may make such determination; otherwise any of the Vice Chairpersons of the Board may perform any of such duties or exercise any of such functions.

~~The First Vice Chairman shall be vested with all the powers and shall perform all the duties of the Chairman of the Board in the absence or disability of the Chairman of the Board, unless or until the Board of Governors shall otherwise determine.~~

~~The Second Vice Chairman shall be vested with all the powers and shall perform all the duties of the Chairman of the Board in the absence or disability of the Chairman of the Board and the First Vice Chairman, unless or until the Board of Governors shall otherwise determine. The Vice Chairmen shall have such other powers and perform such other duties as shall be prescribed by the Board.~~

~~216~~ Section 7. President. The President shall be the chief executive officer of the corporation. He or she may execute, in the name of the corporation, all authorized deeds,

mortgages, bonds, contracts or other instruments, except in cases in which the signing and execution thereof shall have been expressly delegated to some other officer or agent of the corporation. In general, he or she appointed by the Board of Governors. The President, who shall not be a member of an Exchange, a Stockholder of the Corporation, or a partner or officer of a firm or corporation which is a Stockholder or Member, shall serve as an ex officio, nonvoting member of the Board of Governors and shall be responsible to the Board for the management and administration of the business affairs of the Corporation. The Board of Governors is expressly authorized to fix the compensation of the President; to prescribe the duties to be performed by him not inconsistent with law, the Certificate of Incorporation and these Bylaws; and to prescribe his tenure of office. Except as otherwise provided in the Bylaws, the President, or an officer or other person authorized by the President, shall sign all contracts, agreements and instruments on behalf of the Corporation.

217. Vice Presidents.

The Board of Governors may appoint one or more Vice Presidents who, in the absence or disability of the President and in their order, shall perform the duties of the office of President (other than service on the Board of Governors) and who shall perform such other duties as the Board of Governors customarily performed by a president of a corporation and shall perform such other duties and have such other powers as are from time to time assigned to him or her by the Board of Directors.

**Section 8. Vice Presidents. The Vice President or Vice Presidents, at the request of the President, or in the President's absence or during his or her inability to act, shall perform the duties and exercise the functions of the President, and when so acting shall have the powers of the President. If there be more than one Vice President, the Board of Directors may determine which one or more of the Vice Presidents shall perform any of such duties or exercise any of such functions, or if such determination is not made by the Board of Directors, the chief executive officer, or the President may require. make such determination; otherwise any of the Vice Presidents may perform any of such duties or exercise any of such functions. Each Vice President shall perform such other duties and have such other powers, and have such additional descriptive designations in their titles (if any), as are from time to time assigned to them by the Board of Directors or the President.**

218 **Section 9. Secretary.** The Secretary shall: (a) keep a record of all proceedings of the Stockholders stockholders, the Board of Governors, Directors and any committees thereof in one or more books provided for that purpose; (b) give, or cause to be given, all notices that are required by law or these Bylaws bylaws to be given by the Secretary; (c) be custodian of the corporate records and, if the Corporation corporation has a corporate seal, of the seal of the Corporation corporation; (d) have authority to affix the seal of the Corporation corporation to all instruments the execution of which requires such seal and to attest such affixing of the seal; (e) keep a register of the address of each Stockholder stockholder which shall be furnished to the Secretary by such Stockholder; (f) sign, with the Chairman or a Vice Chairman, or the President or any Vice President, or any other officer thereunto authorized by the Board of Governors, any certificates for shares of stock of the Corporation; (g) have stockholder; (f) have authority to certify as true and correct, copies of the Bylaws, these bylaws or resolutions of the Stockholders stockholders, the Board of Governors Directors and committees thereof, and of

other documents of the ~~Corporation~~; **corporation**; and ~~(h)(g)~~ in general, perform the duties incident to the office of secretary and such other duties as from time to time may be prescribed by the Board of ~~Governors, the Chairman~~ **Directors, the Chairperson** of the Board or the President. The Board of ~~Governors~~ **Directors** may give general authority to any other officer to affix the seal of the ~~Corporation~~ **corporation** and to attest such affixing of the seal.

219. ~~Treasurer.~~

**Section 10. Treasurer.** The Treasurer shall be the principal accounting and financial officer of the ~~Corporation~~ **corporation**. The Treasurer shall have charge of and be responsible for the stock records of the ~~Corporation~~ **corporation** and for maintenance of adequate books of account for the ~~Corporation~~ **corporation**; have charge and custody of all funds and securities of the ~~Corporation~~ **corporation**, and be responsible therefor and for the receipt and disbursement thereof; and perform the duties incident to the office of treasurer and such other duties as may from time to time be prescribed by the Board of ~~Governors, the Chairman~~ **Directors, the Chairperson** of the Board or the President.

~~220. Resignations.~~ **Section 11. Appointing Attorneys and Agents; Voting Securities of Other Entities.** Unless otherwise provided by resolution adopted by the Board of Directors, the Chairperson of the Board, the President or any Vice President may from time to time appoint an attorney or attorneys or agent or agents of the corporation, in the name and on behalf of the corporation, to cast the votes which the corporation may be entitled to cast as the holder of stock or other securities in any other corporation or other entity, any of whose stock or other securities may be held by the corporation, at meetings of the holders of the stock or other securities of such other corporation or other entity, or to consent in writing, in the name of the corporation as such holder, to any action by such other corporation or other entity, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consents, and may execute or cause to be executed in the name and on behalf of the corporation and under its corporate seal or otherwise, all such written proxies or other instruments as he or she may deem necessary or proper. Any of the rights set forth in this Section 11 which may be delegated to an attorney or agent may also be exercised directly by the Chairperson of the Board, the President or any Vice President.

A Governor, member of a committee, or officer may resign at any time. Such resignation shall be made in writing.

221. ~~Filling of Vacancies.~~

~~Vacancies in the office of Vice President, Secretary or Treasurer may be filled by the Governors in office, although less than a quorum, by the appointment of any qualified person, who shall hold office for the unexpired term and until his successor shall be duly elected and qualified. Any vacancy in the office of Governor may be filled by nomination by the Chairman of the Board of Governors of any qualified person, subject to the approval by the Governors then in office, although less than a quorum, which person shall hold office for the unexpired term and~~

~~until his successor shall be duly elected and qualified. Vacancies in the membership of any committee shall be filled in accordance with Bylaw 211 and a vacancy in the office of President shall be filled in accordance with Bylaw 216.~~

~~222. Physical Emergencies.~~

**Section 12. Physical Emergencies.** In the event the physical functions of the Corporation ~~corporation~~ are, or are threatened to be, ~~severally~~ **severely** and adversely affected by a physical emergency such as, but not limited to, fire or other casualty, power failures, substantial inclement weather, communications or transportation breakdowns, labor disputes, civil commotions, bomb threats, warlike operations, invasions, rebellions, hostilities, sabotage or terrorism, the ~~Chairman~~ **Chairperson** or a ~~any~~ Vice ~~Chairman~~ **Chairperson** of the Board of ~~Governors~~ **Directors**, the President or, in their absence, another officer of the Corporation, is authorized to take such action as he or she shall deem necessary or appropriate to deal with such emergency.

~~223. SERVICE ON BOARD OF GOVERNORS. ARTICLE V~~

STOCK

**Section 1. Certificates.** Every holder of stock shall be entitled to have a certificate signed by or in the name of the corporation by the Chairperson or a Vice Chairperson of the Board of Directors, if any, or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the corporation certifying the number of shares owned by such holder in the corporation. Any of or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

**Section 2. Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates.** The corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

ARTICLE VI

INDEMNIFICATION

**Section 1. Right to Indemnification.** The corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "Covered Person") who was or is a party or is threatened to be made a party to, or has been subpoenaed to testify or has agreed to appear

voluntarily as a witness in, or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the corporation or, while a director or officer of the corporation, is or was serving at the request of the corporation as a director, officer, trustee, employee or agent of another corporation or of a partnership, limited liability company, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all costs, charges, expenses, liability and losses (including attorneys' fees, judgments, fines, excise taxes or penalties paid or payable under the Employee Retirement Income Security Act of 1974, and amounts paid or to be paid in settlement) reasonably incurred or suffered by such Covered Person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, trustee, employee or agent of another corporation or of a partnership, limited liability company, joint venture, trust, enterprise or nonprofit entity and shall inure to the benefit of such person's heirs, executors and administrators. Notwithstanding the preceding sentence, except as otherwise provided in Section 3 of this Article VI, the corporation shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized in the specific case by the Board of Directors of the corporation.

Section 2. Prepayment of Expenses. The corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition, provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Article VI or otherwise.

Section 3. Claims. If a claim for indemnification (following the final disposition of a proceeding) or advancement of expenses under this Article VI is not paid in full within thirty days after a written claim therefor by the Covered Person has been received by the corporation, the Covered Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law. It shall be a defense to any action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking has been tendered to the corporation) that the claimant has failed to meet a standard of conduct which makes it permissible under applicable law for the corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the corporation. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is permissible in the circumstances because the claimant has met such standard of conduct, nor an actual determination by the corporation

(including its Board of Directors, independent legal counsel or its stockholders), that the claimant has not met such standard of conduct, nor the termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall be a defense to the action or create a presumption that the claimant has failed to meet the required standard of conduct.

Section 4. Nonexclusivity of Rights. The rights conferred on any Covered Person by this Article VI shall not be exclusive of any other rights which such Covered Person may have or hereafter acquire under any statute, provision of the certificate of incorporation, these bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

Section 5. Other Sources. The corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, trustee, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

Section 6. Insurance. The corporation may maintain insurance, at its expense, to protect itself and any director, officer, trustee, employee or agent of the corporation or another corporation, partnership, limited liability company, joint venture, trust, enterprise or nonprofit entity against any expense, liability or loss, whether or not the corporation would have the power to indemnify such person against such expense, liability or loss under applicable law.

Section 7. Amendment, Repeal or Modification. Any amendment, repeal or modification of the foregoing provisions of this Article VI shall not adversely affect any right or protection hereunder of any Covered Person in respect of any act or omission occurring prior to the time of such amendment, repeal or modification.

Section 8. Other Indemnification and Prepayment of Expenses. This Article VI shall not limit the right of the corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

Section 9. Compliance with Law. Notwithstanding any other provision of this Article VI, the corporation shall not indemnify any person if such indemnification would be contrary to law.

## ARTICLE VII

### MISCELLANEOUS

Section 1. Fiscal Year. The fiscal year of the corporation shall be the calendar year.

**Section 2. Seal.** The corporate seal shall have the name of the corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors.

**Section 3. Manner of Notice.** Except as otherwise provided herein or permitted by applicable law, notices to directors and stockholders shall be in writing and delivered personally or mailed to the directors or stockholders at their addresses appearing on the books of the corporation. Notices to directors may be given by telecopier, telephone or other means of electronic transmission. Notices shall be deemed to have been given (i) when received, if given in person, (ii) on the date of receipt, if sent by telecopier, electronic mail or other confirmed means of electronic communication, (iii) one day after delivery, properly addressed, to a reputable courier for same-day or overnight delivery, or (iv) three days after being deposited, properly addressed, in the U.S. Mail, postage prepaid.

**Section 4. Waiver of Notice of Meetings of Stockholders, Directors and Committees.** Any waiver of notice, given by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in a waiver of notice.

**Section 5. Form of Records.** Any records maintained by the corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time.

**Section 6. Knowledge of Transactions.** Except as expressly authorized by the Board of Directors, or required by law, no person other than the President, and such employees as have been authorized by the President, shall have access to the books or records of the corporation which disclose the trades or positions of any stockholder that is a clearing participant, but if the President deems it necessary, he may, at any time, report the facts shown by the corporation's records to the Board of Directors or a committee thereof to enable the Board of Directors or such committee to take such action as may be proper.

**Section 7. Material Information.**

**(a) No person who is a member of the Board of Directors or a committee thereof shall:**

\* 1 moved from here; text not shown

~~All terms used herein shall be construed consistently with Commodity Futures Trading Commission Regulation 1.63(a).~~

### ~~3. Stockholders Meetings~~

#### ~~301. Meetings.~~

~~(a) All Stockholders' meetings shall be held at such time and place, within or without the State of Delaware, as shall be designated by the Board of Governors. The exact place of the meeting shall be specified in each instance in the call which is made for such meeting.~~

~~(b) The Board of Governors may fix in advance a date as the record date for the purpose of determining the Stockholders entitled to notice of or to vote at a meeting of Stockholders, such date in any case to be not less than twenty days prior to the date on which such meeting is to be held. If no record date is fixed by the Board of Governors, the day next preceding the date on which the notice is mailed shall be the record date.~~

#### ~~302. Designated Representative.~~

~~(a) A Stockholder may be represented, in person or by proxy, at a meeting of the Stockholders only by and through its Designated Representative. A Stockholder that is not so represented shall not be counted toward the quorum for, and shall not be permitted to vote at, such meeting.~~

~~(b) A person who has been appointed as the Designated Representative of a Member Firm shall cease to be authorized to act as such if such person ceases to be employed by or otherwise associated with such Member Firm. A Member Firm may at any time replace its Designated Representative upon written notice, in form and substance satisfactory to the Corporation, confirming that the person designated as such replacement has been duly and validly authorized to act as such. The Corporation shall not be required to recognize any person other than an individual that is so authorized, nor shall the Corporation be required to recognize any assignee, administrator or executor of a Member as the Designated Representative of such Member.~~

#### ~~303. Quorum; Adjournments.~~

~~The holders of a majority of the stock issued and outstanding, entitled to vote and represented by a Designated Representative, present in person or represented by proxy, shall constitute a quorum at all meetings of the Stockholders for the transaction of business, except as otherwise required by these Bylaws, the Certificate of Incorporation, or Delaware Law. If a quorum is not represented, the holders of the stock represented by a Designated Representative, present in person or represented by proxy at the meeting and entitled to vote thereat shall have power, by the affirmative vote of a majority of such Stockholders, to adjourn~~



~~the meeting to another time and/or place, without notice other than announcement at the meeting, except as hereinafter provided, until a quorum shall be present or represented. At such adjourned meeting, at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the original meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Stockholder of record entitled to vote at the meeting. Withdrawal of Stockholders from any meeting shall not cause the failure of a duly constituted quorum at such meeting.~~

~~304. Voting.~~

~~(a) At all meetings of the Stockholders, each Stockholder shall be entitled to vote, in person, or by proxy appointed in an instrument in writing subscribed by such Stockholder's Designated Representative, all but not less than all of the voting power of record, whether determined by the number of shares of stock owned by such Stockholder or otherwise, on the record date for the meeting.~~

~~(b) When a quorum is present at any meeting, the affirmative vote of the holders of a majority of the stock having voting power present in person or represented by proxy and voting shall decide any question brought before such meeting, unless the question is one upon which, by express provision of law or of the Certificate of Incorporation, a different vote is required, in which case such express provision shall govern and control the decision of such question.~~

~~(c) The Stockholders may only amend the Bylaws of the Corporation, including, without limitation, this Bylaw 304, upon the affirmative vote of stockholders representing not less than a majority of the total then outstanding voting power of the Corporation.~~

~~305. Annual Meeting.~~

~~The annual meeting of the Stockholders for the election of Governors and the transaction of other business shall be held on the third Wednesday in February. The Board of Governors may at any time prior to the date that is ten days before the third Wednesday in February designate another date for the annual meeting not later than thirty days after the date on which the annual meeting would otherwise be required to be held. The annual meeting shall be held on the date so designated at such time and place, within or without the State of Delaware, as shall be designated by the Chairman of the Board.~~

~~306. Nominations for and Election of Governors.~~

~~(a) At the regular November Board meeting, but in no event less than sixty days before the annual meeting of Stockholders, the Board shall appoint a Nominating Committee consisting of five persons, of whom at least two shall be Group A Clearing Members or associated with Member Firms that are Group A Clearing Members and of whom at least two shall be Group B Clearing Members or associated with Member Firms that are Group B Clearing Members, but none of whom shall be members of the Board. The Board shall endeavor to achieve balanced representation among Stockholders in making appointments to the Nominating~~

~~Committee and shall endeavor to appoint persons of diverse experience and familiarity with the markets and with clearing and settlement and related business activities that are or may be conducted by the Corporation.~~

~~(b) Not less than forty days before the annual meeting of Stockholders, and subject in all cases to the provisions of Bylaw 201, the Nominating Committee shall nominate candidates for the positions of Group A Governor, Group B Governor and At-Large Governor, as the case may be, in the class of Governors whose terms will expire at the annual meeting for the ensuing term. The Nominating Committee shall nominate no fewer than one nor more than two candidates for each such position. The Nominating Committee shall endeavor to achieve balanced representation among Stockholders in its selection of nominees and shall endeavor to nominate for positions on the Board of Governors candidates of diverse experience and familiarity with the markets and with clearing and settlement and related business activities that are or may be conducted by the Corporation. The Nominating Committee shall report the names of the persons so nominated to the President. The President shall immediately notify the Stockholders of the names of the persons thus nominated. In the event that a nominee nominated by the Nominating Committee withdraws or becomes ineligible, the Nominating Committee shall nominate another candidate. Any twenty Stockholders by petition may nominate one or more candidates for any or all of such positions, subject in all cases to the provisions of Bylaw 201. Any such petition must be filed with the President no later than 3:00 p.m. on the twenty-first calendar day before the annual meeting. Only persons nominated by the Nominating Committee or by petition as provided herein and in Bylaw 201 shall be eligible for election.~~

~~(c) On the twentieth calendar day preceding the annual meeting, each Stockholder shall be provided a proxy, in ballot form, listing the names of the persons nominated by the Nominating Committee and by petition for positions on the Board of Governors. Stockholders may cast their vote in person or by proxy for one candidate for each position. Unless only one candidate has been nominated in one or more categories, in which case such candidate(s) shall be elected regardless of the number of votes received, Governors shall be elected by a majority vote of all Stockholders present (including those voting by proxy). If no candidate in a category receives a majority of votes, the candidate receiving a plurality of votes in such category shall be elected a Governor.~~

#### ~~307. Special Meetings.~~

~~(a) Special meetings of the Stockholders for any purpose may be called by the Chairman of the Board, by the Board, or by the President.~~

~~(b) The Chairman of the Board shall call a special meeting upon the written request of twenty five Stockholders. Any such request must be delivered to the Secretary, must be signed by the Designated Representative of such Stockholder(s), and must set forth as to each matter proposed by the Stockholder(s) to be brought before the meeting (i) the name, as it appears on the Corporation's books, of the Stockholder(s) proposing such business, (ii) a brief description of the business desired to be brought before the Stockholders and, if applicable, the reasons for conducting such business at the annual meeting, and (iii) any material interest of the Stockholder(s) in such business.~~

~~(c) Such meetings shall be held at such time and place, within or without the State of Delaware, as shall be specified by the Chairman of the Board, by the Board, or by the President. The Board of Governors may postpone or reschedule any previously scheduled special meeting.~~

~~308. Notice of Meetings.~~

~~Written notice of Stockholders' meetings, stating the time and place of the meetings, and the general nature of the business to be considered, shall be given by the Secretary to each Stockholder at his last known address not less than 10 days before the date of the meeting.~~

~~309. Purpose of Meeting.~~

~~(a) At an annual or special meeting of the Stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before a meeting, business must be (i) specified in the notice of meeting (or any supplement thereto) given by the Secretary or Assistant Secretary at the direction of the Board of Governors, the Chairman of the Board or the President (including, without limitation, pursuant to Bylaw 307), (ii) brought before the meeting by or at the direction of the Board of Governors or the Chairman of the Board, or (iii) properly brought before an annual meeting by a Stockholder.~~

~~(b) For business to be properly brought before an annual meeting by a Stockholder, the Stockholder must have given notice thereof in writing to the Secretary of the Corporation not later than the last business day in January; provided, that if the date of the annual meeting is other than the third Wednesday in February, such notice must be given to the Secretary by the later of (i) twenty one days before the annual meeting or (ii) five days after issuance of the notice of meeting. For business to be properly brought before a special meeting, notice thereof must be given by the Secretary of the Corporation to the Stockholders.~~

~~4. Corporation Stock~~

~~401. Qualifications of Stockholders.~~

~~The Corporation shall have the power to determine whether any applicant for shares, or any existing Stockholder, satisfies the qualifications therefor established by the Board. Only persons found by the Corporation to be so qualified shall be permitted to own stock of the Corporation. For the purpose of determining whether any applicant or Stockholder is thus qualified, the Corporation may take such steps as it may deem necessary to ascertain the facts bearing upon the question of qualification.~~

~~402. Option of Corporation to Purchase Shares.~~

~~The Corporation shall have an option to purchase all or a portion of the shares held by a Stockholder, at the current subscription price of such shares established under Bylaw 404, if (i) such Stockholder desires to dispose of its shares, becomes insolvent or bankrupt, or fails to comply with the Bylaws or Rules, (ii) in the event of the death, disappearance or incapacity (all as reasonably determined by the Corporation) of an Individual Member; or (iii) if such Stockholder, having previously qualified for membership in the Corporation, ceases to be so qualified or fails to use the Corporation as a clearing agency for such Member's trades for a consecutive period of ninety days. The option of the Corporation to purchase such shares shall continue for thirty days after the Corporation acquires notice of the facts giving rise to such option, and if not exercised within that period, the Stockholder may sell such shares to any other Stockholder.~~

~~403. Board May Readjust Holdings.~~

~~(a) Subject to the other provisions of this Bylaw, the amount of stock owned by each Member, compared with the total amount of stock issued and outstanding, shall be approximately in proportion to the volume of business cleared and/or carried for such Member by the Corporation during the preceding twelve months, as compared with the total such volume of the Corporation. Notwithstanding the foregoing, the Corporation may permit a Member to own a greater or lesser number of shares than is justified by the volume of business cleared and/or carried by the Corporation for such Member. No Member shall own fewer than the minimum nor more than the maximum number of shares per Member fixed by the Board of Governors from time to time; provided that a Member may own fewer than such minimum number of shares if the Member contributes to the Guaranty Fund the amount for such Member fixed by the Corporation from time to time pursuant to the Rules.~~

~~(b) The Board of Governors at any time may require a Member who owns a greater number of shares than is justified by the volume of business cleared and/or carried by the Corporation for such Member to surrender all or any portion of such excess shares. The Corporation shall in such circumstances have an option, for thirty days after the tender date established by the Board of Governors, to purchase such excess shares at the current subscription price established under Bylaw 404 and, if not purchased by the Corporation within that period, the Member may sell such shares to any other Member. The Board of Governors at any time may require that a Member purchase additional shares as necessary to maintain such approximate proportion.~~

~~(c) In the event that the capital shares of the Corporation shall be increased, the Board of Governors may require that each Member that is also a Stockholder subscribe to the additional shares in the proportion that such Member's current stockholdings bear to the total stockholdings in the Corporation or, in lieu of subscribing for such additional shares, to contribute to the Guaranty Fund an amount fixed by the Corporation.~~

~~404. Price of Shares.~~

~~The subscription price of shares of stock of the Corporation shall be fixed by the Board from time to time and shall, unless otherwise be determined by the Board, be based upon the book value of such shares but shall, in no instance, be less than \$2,500 per share. The~~

~~amount of subscription price in excess of \$2,500 per share shall be credited to the capital surplus of the Corporation. Shares repurchased by the Corporation from its Members may be resold to other Members of the Corporation.~~

~~405. Stock Certificates.~~

~~The shares of the Corporation shall be represented by certificates in such form as the Secretary may approve; provided, however, the Board of Governors may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Each certificate for shares shall be consecutively numbered or otherwise identified. Certificates of stock in the Corporation shall be signed by or in the name of the Corporation by the President or a Vice President and by the Secretary or, if elected, an Assistant Secretary of the Corporation. In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer before such certificate is issued, the certificate may be issued by the Corporation with the same effect as if such officer were such officer at the date of its issue.~~

~~406. Shares as Security.~~

~~All stock certificates issued by the Corporation shall be endorsed by the owner and deposited with the Corporation. The Corporation shall retain possession of all certificates evidencing Corporation shares to secure the right of the Corporation to purchase such shares under these Bylaws and, with respect to shares owned by Members, to secure all obligations owing by Members to the Corporation. Subject to the prior lien of the Corporation, the shares of Corporation stock owned by each Member shall be subject to a lien for obligations of the Member owing to other Members, which lien shall be fully subordinated, in right of payment, enforcement and otherwise, to the Corporation's lien. No Member shall seek to enforce its lien on Corporation shares unless and until all obligations of the owner of such shares to the Corporation have been paid and satisfied in full.~~

5. Miscellaneous

~~501. Investment of Capital.~~

~~The capital and surplus of the Corporation, in excess of the capital necessary to meet expenses, shall be invested by the Treasurer pursuant to investment guidelines in effect from time to time.~~

~~502. Dividends.~~

~~The Board of Governors may declare dividends from the surplus or net profits arising from the business of the Corporation as and when the Board deems expedient. Before declaring any dividend, there may be reserved out of the accumulated profits such sum or sums as the Board of Governors from time to time in its discretion thinks proper for working~~

~~capital or as a reserve fund to meet contingencies or for equalizing dividends, or for such other purposes as the Board shall think conducive to the interests of the Corporation. The Board may close the transfer books not more than twenty days preceding the day appointed for the payment of any dividend.~~

~~503. Fiscal Year.~~

~~The fiscal year of the Corporation shall be the calendar year.~~

~~504. Corporate Seal.~~

~~The corporate seal, if any, of the Corporation shall be in such form as may be approved from time to time by the Board of Governors. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.~~

~~505. Notices and Mailing.~~

~~Except as otherwise provided by Delaware Law, the Certificate of Incorporation or these Bylaws, all notices required to be given by any provision of these Bylaws shall be deemed to have been given (i) when received, if given in person, (ii) on the date of receipt, if sent by facsimile, electronic mail or other confirmed means of electronic communication, (iii) one day after delivery, properly addressed, to a reputable courier for same-day or overnight delivery, or (iv) three days after being deposited, properly addressed, in the U.S. Mail, postage prepaid.~~

~~506. Waiver of Notice.~~

~~Whenever any notice is required to be given under Delaware Law or the provisions of the Certificate of Incorporation or these Bylaws, a waiver thereof in writing, signed manually or electronically by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to notice.~~

~~507. Knowledge of Transactions.~~

~~Except as expressly authorized by the Board of Governors, or required by law, no person other than the President, and such employees as have been authorized by the President, shall have access to the books or records of the Corporation which disclose the trades or positions of any Member, but if the President deems it necessary, he may, at any time, report the facts shown by the Corporation's records to the Risk Committee or to the Board to enable the Risk Committee or the Board to take such action as may be proper.~~

~~508. Material Information.~~

~~(a) No person who is a member of the Board of Governors or a committee of the Corporation shall:~~

~~(i) (1) trade for such person's own account, or for or on behalf of any other account, in any commodity interest on the basis of any material, non-public information~~

obtained through special access related to the performance of such person's official duties as a ~~Governor~~ director or committee member; or

(ii)(2) disclose for any purpose inconsistent with the performance of such person's official duties as a ~~Governor~~ director or committee member material, non-public information obtained through special access related to the performance of such duties as a ~~Governor~~ director or committee member or inconsistent with the Corporation's corporation's corporate governance security policy.

(b) All terms used in this ~~Bylaw~~ Section 7 shall be construed consistently with the definitions contained in Commodity Futures Trading Commission Regulation 1.59.

(c) Violation by a ~~Governor~~ director or ~~by a~~ committee member of this ~~Bylaw~~ Section 7 or of any other confidentiality obligation, including any obligation established pursuant to an agreement between such ~~Governor~~ director or committee member and the ~~Corporation~~ corporation, or of any conflict of interest or security policy or procedure adopted by the ~~Corporation~~ corporation or imposed by applicable law or agreement with the ~~Corporation~~ corporation, shall constitute, without limitation, a breach of fiduciary duty and shall be grounds for the removal for cause under applicable law of such ~~Governor from the Board and any committee of the Corporation or of such committee member from committees of the Corporation.~~ director or committee member from the Board of Directors and any committee thereof.

509 ~~Section 8. Litigation Expenses.~~ Any Member stockholder who fails to prevail in a lawsuit or similar proceeding instituted by that Member stockholder against the ~~Corporation~~ corporation or any of its ~~Governors~~ directors, officers, committee members, agents or employees, must pay to the ~~Corporation~~ corporation all reasonable expenses, including attorneys' fees, incurred by the ~~Corporation~~ corporation in the defense of such proceeding. A Member stockholder additionally may be charged for any unusual expenses incurred by the ~~Corporation~~ corporation and caused directly or indirectly by such Member stockholder including, without limitation, the cost of producing records pursuant to a court order or other legal process in any litigation or other proceeding to which a Member is a party or in which such records relating to such Member are required to be produced, whether such production is at the instance of such Member or of any party other than the Corporation.

510. ~~Indemnification of Personnel.~~

(a) ~~Each person who was or is a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, including all appeals (hereinafter a "proceeding"), by reason of the fact that he, or a person for whom he is the legal representative, is or was a Governor, officer or member of any committee of the Corporation, or such Governor, officer or Committee member is or was serving at the request of the Corporation as a Governor, officer, Committee member, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans (each, an "indemnified party"), shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the laws of Delaware against all costs, charges, expenses, liability and losses (including~~

~~attorneys' fees, judgments, fines, excise taxes or penalties paid or payable under the Employee Retirement Income Security Act of 1974, and amounts paid or to be paid in settlement) reasonably incurred or suffered by such indemnified party in connection therewith and such indemnification shall continue as to a person who has ceased to be a Governor, officer or Committee member or employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise and shall inure to the benefit of his heirs, executors and administrators. The right to indemnification conferred in this Bylaw shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition, upon receipt by the Corporation of an undertaking, by or on behalf of such indemnified party, to repay all amounts so advanced if it shall ultimately be determined he is not entitled to be indemnified under this Bylaw or otherwise. The Corporation may, by action of the Board of Governors, provide indemnification to employees and agents of the Corporation with the same or lesser scope and effect as the foregoing indemnification of Governors, officers and Committee members.~~

~~(b) If a claim under paragraph (a) of this Bylaw is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking has been tendered to the Corporation) that the claimant has failed to meet a standard of conduct which makes it permissible under Delaware Law for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Governors, independent legal counsel, or its Stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is permissible in the circumstances because he has met such standard of conduct, nor an actual determination by the Corporation (including its Board of Governors, independent legal counsel, or its Stockholders), that the claimant has not met such standard of conduct, nor the termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall be a defense to the action or create a presumption that the claimant has failed to meet the required standard of conduct.~~

~~(c) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Bylaw shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, agreement, vote of Stockholders or disinterested Governors or otherwise.~~

~~(d) The Corporation may maintain insurance, at its expense, to protect itself and any Governor, officer, committee member, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under Delaware Law.~~



~~(e) To the extent that any Governor, officer, committee member, employee or agent of the Corporation is by reason of such position, or a position with another entity or enterprise at the request of the Corporation, a witness in any proceeding, he shall be indemnified against all costs and expenses actually and reasonably incurred by him or on his behalf in connection therewith.~~

~~(f) Any amendment, repeal or modification of any provision of this Bylaw by the Stockholders or the Governors of the Corporation shall not adversely affect any right or protection of a Governor, officer or committee member of the Corporation existing at the time of such amendment, repeal or modification.~~

~~(g) Notwithstanding the above, the Corporation will not indemnify any person if such indemnification is contrary to law.~~

~~511. Bonding.~~

~~**stockholder is a party or in which such records relating to such stockholder are required to be produced, whether such production is at the instance of such stockholder or of any party other than the corporation.**~~

~~**Section 9. Bonding.** Officers and employees may be placed under bond in such sum or sums as may be determined by the Board of Governors **Directors**, the premiums to be paid by the Corporation.~~

~~**\*\* 2 Section 10. Interpretation.** In these Bylaws **bylaws**, unless a clear contrary intention appears, (a) the singular number includes the plural number and vice versa, (b) reference to the masculine, feminine or neuter gender includes each other gender, (c) any reference to a number of days shall mean calendar days unless business days are specified, and (d) any reference to times shall mean the time in Chicago, Illinois. Except as otherwise specifically provided in these Bylaws **bylaws**, an act that otherwise would be required or permitted by these Bylaws **bylaws** to be performed on a date that is not a business day may be performed on the next day that is a business day.~~

~~512. Adherence to Bylaws and Rules.~~

~~Stockholders and Members shall comply with and be bound by the Bylaws and Rules as in effect from time to time. **Section 11. Amendment of Bylaws. These bylaws may be altered, amended or repealed, and new bylaws made, by the Board of Directors, but the stockholders may make additional bylaws and may alter and repeal any bylaws, whether adopted by them or otherwise, by the affirmative vote of stockholders representing not less than a majority of the then outstanding voting power of the corporation.**~~