

**DW SEF LLC**

**SWAP EXECUTION FACILITY**

**RULES**

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## Chapter 1. DEFINITIONS; INTERPRETATION; AMENDMENTS

### 101. Defined Terms

Unless otherwise specified in these Rules or unless the context otherwise requires, the terms defined below in this Rule 101 shall for all purposes of these Rules have the meanings specified herein.

#### *Account Manager*

The term “Account Manager” means a Participant or Trading Customer that exercises investment discretion on behalf of one or more Client Accounts and that otherwise meets the criteria described in CFTC Regulation 1.35(b)(5)(i).

#### *Active Participant List Screen*

The term “Active Participant List Screen” means the screen identified in Rule 310(d).

#### *Affiliate*

An “Affiliate” of, or a Person “Affiliated” with, another Person means a Person who, directly or indirectly, Controls, is Controlled by, or is under common Control with, such other Person.

#### *API*

The term “API” means application programming interface.

#### *Appeals Panel*

The term “Appeals Panel” means a panel appointed by the Chief Compliance Officer pursuant to Rule 716(g).

#### *Applicable Law*

The term “Applicable Law” means, with respect to any Person, any statute, law, regulation, rule or ordinance of any governmental authority, Derivatives Clearing Organization or self-regulatory organization applicable to such Person, including without limitation the CEA, the Exchange Act and CFTC Regulations.

#### *Audit Trail*

The term “Audit Trail” has the meaning given that term in Rule 505(a).

#### *Authorized User*

The term “Authorized User” means (i) any natural person who is an authorized agent or employee of a Participant authorized to exercise Trading Privileges of the Participant on the SEF or Trading Customer authorized to access the SEF, and (ii) in the case of a Participant that has authorized a computer or system to access the SEF via an API, the natural person such Participant has designated to be responsible for such computer or system’s activity on the SEF.

#### *Beneficial Ownership or Beneficially Owned*

The term “Beneficial Ownership,” or an interest “Beneficially Owned” by any Person, means, with respect to an account, a direct or indirect (through one or more subsidiaries or Affiliates) pecuniary interest in the account (through any Swap, arrangement, understanding, relationship or otherwise).

*Block Trade*

The term "Block Trade" means a transaction in a Swap effected in accordance with Rule 411.

*Board*

The term "Board" means the Board of Managers of the Company constituted in accordance with the LLC Agreement, these Rules and Applicable Law.

*Breakage Agreement*

The term "Breakage Agreement" means any arrangement, whether contained in an agreement between the parties to a Cleared Swap or in the Rules, that provides for the assessment of liability or payment of damages between the parties to the Cleared Swap in the event the Cleared Swap is rejected from clearing, as such term is defined or interpreted by the CFTC from time to time.

*Business Day*

The term "Business Day" means any day or portion thereof on which the Company is open for trading.

*Cancel Order*

The term "Cancel Order" means an Order that cancels fully or partially an existing Order.

*Cancel Replace Order*

The term "Cancel Replace Order" means an Order to cancel fully or partially an existing Order and replace it with a new Order for a different quantity or price.

*CAO or Chief Administrative Officer*

The term "CAO" or "Chief Administrative Officer" means the individual appointed by the Board from time to time to serve as chief administrative officer of the Company.

*CCO or Chief Compliance Officer*

The term "CCO" or "Chief Compliance Officer" means the individual appointed by the Board from time to time to oversee compliance matters in accordance with Rule 212.

*CEA*

The term "CEA" means the Commodity Exchange Act, as amended.

*CEO or Chief Executive Officer*

The term "CEO" or "Chief Executive Officer" means the individual appointed by the Board from time to time to serve as chief executive officer of the Company.

*CFTC*

The term "CFTC" means the Commodity Futures Trading Commission and includes any successor agency or authority.

*CFTC Regulation*

The term "CFTC Regulation" means any rule, regulation, order or directive and any published interpretation thereof adopted or promulgated from time to time by the CFTC.

### *Cleared Swap*

The term “Cleared Swap” means a Swap that is required to be cleared by a DCO pursuant to Section 2(h)(2)(D) of the CEA and CFTC Regulation 50.2 or is otherwise designated by or on behalf of the parties to be submitted to a DCO for clearing, including a Resubmitted Cleared Swap, including any such Swap that is rejected from clearing by the applicable DCO.

### *Clearing Customer*

The term “Clearing Customer” means a Person (i) clearing Swaps through a Clearing Member as a customer of such Clearing Member, or (ii) clearing Swaps through an affiliated Clearing Member acting as agent for such Person.

### *Clearing Member*

The term “Clearing Member” means, with respect to a given Swap, a member of a DCO that is authorized pursuant to the rules of the DCO to clear trades in such Swap for its own account, or on behalf of a Clearing Customer, as applicable, as may be permitted under these Rules and the rules of such DCO.

### *Clearing Member Relationship Agreement*

The term “Clearing Member Relationship Agreement” has the meaning given that term in Rule 1003.

### *Client Account*

The term “Client Account” means a Person that has granted investment discretion to an Account Manager to trade on its behalf.

### *Company*

The term “Company” means DW SEF LLC.

### *Company Official*

The term “Company Official” means any Officer of, or individual employed directly by, the Company or any individual rendering similar services to the Company under a Regulatory Services Agreement.

### *Control*

The term “Control,” including the terms “Controlling,” “Controlled by” and “under common Control with,” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of securities or otherwise.

### *Cross Trade*

The term “Cross Trade,” means a Required Transaction in which an Introducing Agent acts as agent for a Trading Customer on one side of the transaction and as principal, or as agent for another Trading Customer, on the other side of the transaction, in either case following Pre-Execution Communication.

### *DCO or Derivatives Clearing Organization*

The term “DCO” or “Derivatives Clearing Organization” has the meaning given that term in Section 1a(15) of the CEA and, as used in these Rules, means any derivatives clearing organization that is registered or exempt from registration as such with the CFTC, that a Participant may designate to provide clearing services for one or more Swaps traded pursuant to these Rules.



### *Designated Contact*

The term “Designated Contact” means an individual, designated by a Participant pursuant to Rule 416, with authority to act on behalf of such Participant, as applicable.

### *Disciplinary Panel*

The term “Disciplinary Panel” means the panel appointed pursuant to Rule 710 to conduct hearings in connection with disciplinary proceedings (other than summary impositions of fines pursuant to Rule 717), to make findings, render decisions, and impose sanctions pursuant to Chapter 7 of the Rules.

### *Electronic Access*

The term “EA” or “Electronic Access” means electronic access to the SEF’s order and execution functionality through direct electronic connection of a Trading Customer designated by an Introducing Agent pursuant to Rule 304.

### *Eligible Contract Participant*

The term “Eligible Contract Participant” has the meaning given that term under Section 1a(18) of the CEA and CFTC Regulations thereunder.

### *Emergency*

The term “Emergency” has the meaning given that term in Rule 412(a).

### *Exchange Act*

The term “Exchange Act” means the Securities Exchange Act of 1934, as amended.

### *Independent Software Vendor or ISV*

The term “Independent Software Vendor” or “ISV” means a Person that makes available to Participants a system or platform offering smart order routing, front-end trading applications, an aggregator platform or a combination of the foregoing but that does not provide Participants the ability to effect transactions on such system or platform.

### *Introducing Agent*

The term “Introducing Agent” means a Participant (other than a Person acting as an Account Manager) that is a futures commission merchant or introducing broker registered with the CFTC, or any person that is exempt from such registration (or not required under Applicable Law to so register), and that submits Orders or executes Block Trades, Package Transactions, Cross Trades or Resubmitted Cleared Swaps, on behalf of one or more disclosed Trading Customers as agent, or designates a Trading Customer pursuant to Rule 304. In the case of a Package Transaction one or more component(s) of which is(are) a Security(ies), the term means a Participant that is an Introducing Agent and is also registered with the SEC as a broker-dealer.

### *Investigation Report*

The term “Investigation Report” has the meaning given that term in Rule 703.

### *LLC Agreement*

The term “LLC Agreement” means the Limited Liability Company Agreement of DW SEF LLC, dated as of June 17, 2013, as amended, supplemented or otherwise modified from time to time.

### *Manager*

The term “Manager” means any member of the Board.

### *Market Data*

The term “Market Data” means any and all data and other information submitted for entry into the SEF relating to Orders or Swaps transacted pursuant to these Rules, including (i) the price and quantity data from any and all transactions executed pursuant to these Rules and the times at which such transactions were submitted and executed, (ii) information on bids and offers (including the time at which such data or information was submitted to or generated by the SEF), and (iii) any other data contained in, derived from or related to such information, volume information, the format and presentation of any such data or information, and transmissions, publications or disseminations of such data or information to Participants, Authorized Users, Market Data Vendors and other persons with whom the Company has a written agreement related thereto.

### *Market Data Vendors*

The term “Market Data Vendors” means one or more vendors of financial market information which have entered into agreements with the Company to distribute Market Data.

### *Market Regulation Team*

The term “Market Regulation Team” means the CCO and the individuals under the supervision of the CCO who are responsible for enforcing these Rules and conducting investigations of alleged violations of these Rules. As the term is used herein, the Market Regulation Team includes: (i) the Company’s compliance staff dedicated to enforcing these Rules and performing services directly related to the Company’s compliance with Applicable Law; (ii) employees of other divisions of the Company or its Affiliates who have certain regulatory responsibilities with respect to the Company; and (iii) the staff of a Regulatory Services Provider providing services to the Company pursuant to a Regulatory Services Agreement.

### *Message Traffic*

The term “Message Traffic” means electronic transmissions of Orders, Order modifications, Cancel Orders, Cancel Replace Orders, trade reports and other messages entered into the SEF by or through a Participant, Authorized User, or Trading Customer, as applicable, or sent to or through a Participant, Authorized User, or Trading Customer, as applicable, by the Company. Depending on the context, Message Traffic may refer to one-way or two-way transmissions.

### *NFA*

The term “NFA” means the National Futures Association.

### *Nominating Committee*

The term “Nominating Committee” means the committee of the Board constituted pursuant to Rule 203.

### *Notice to Participants*

The term “Notice to Participants” means a communication sent by or on behalf of the Company to all Participants as described in Rule 310.

### *Officer*

The term “Officer” means any officer of the Company.

### *Order*

The term “Order” means a firm bid or offer for a Swap pursuant to these Rules, and includes any modification to or cancellation of such a bid or offer.

### *Order Book*

The term “Order Book” means the portion of the SEF that operates by means of an electronic network that uses a central limit order book trading methodology and maintains an automated audit trail of Orders and the matching of Orders in accordance with CFTC Regulation 37.3(a)(3).

### *Owner*

The term “Owner” means any person or entity holding an ownership interest in the Company or defined as a “Member” in the LLC Agreement.

### *Package Sequencing Rejection*

The term “Package Sequencing Rejection” has the meaning given that term in Rule 1005.A(a).

### *Package Transaction*

The term “Package Transaction” means a “package transaction” as defined in CFTC No-Action Letter No. 14-62 (May 1, 2014), or as such term is otherwise defined or interpreted by the CFTC from time to time.

### *Participant*

The term “Participant” means any Person that has been granted Trading Privileges under these Rules and who may permit Authorized Users of such Participant to exercise such Trading Privileges pursuant to the Rules. Except as expressly permitted in these Rules, a Participant may not be an ISV or automated trading system (based on a Person’s function, not legal entity affiliation). A Participant does not include an Authorized User, Client Account, Clearing Customer or Trading Customer when acting in any such capacity.

### *Participant Data*

The term “Participant Data” means any and all data and other information (i) submitted to the Company by or through a Participant or a Participant’s Trading Customer and (ii) regarding any and all Orders of such Participant or a Trading Customer of such Participant, in each case acting on its own behalf or on behalf of a Client Account.

### *Participant Documentation*

The term “Participant Documentation” means such agreements, addenda or amendments (and any schedules or adopted protocols related thereto) as required from time to time by the Company to be executed by a Participant for such Participant to obtain or maintain Trading Privileges on the SEF.

### *Participation Committee*

The term “Participation Committee” means the committee of the Board constituted pursuant to Rule 204.

### *Permitted Package Transaction*

The term “Permitted Package Transaction” means any Package Transaction eligible for relief from Section 2(h)(8) of the CEA under CFTC No-Action Letter No. 14-62 (May 1, 2014), or under any subsequent temporary or permanent CFTC rule, guidance or other action.

#### *Permitted Transaction*

The term “Permitted Transaction” means any transaction not involving a Swap that is required by Section 2(h)(8) of the CEA to be executed on, or pursuant to the rules of, a swap execution facility or a designated contract market.

#### *Person*

The term “Person” means any natural person, association, partnership, limited liability company, joint venture, trust or corporation.

#### *Pre-Execution Communication*

The term “Pre-Execution Communication” means a communication between two Persons for the purpose of establishing the terms of an Order for a Swap prior to execution of the Swap on the SEF, including any communication that involves pre-determination of the size, side of market, or price of such an Order; provided that any communication between two Persons that involves an agreement between the parties to a Swap that legally binds the parties to such Swap shall not be considered a Pre-Execution Communication.

#### *Proprietary Information*

The term “Proprietary Information” has the meaning given that term in Rule 1104(e).

#### *Public Director*

The term “Public Director” means a director of the Company with the qualifications described in Rule 209.

#### *Regulatory Oversight Committee*

The term “Regulatory Oversight Committee” means the committee of the Board constituted in accordance with Rule 205.

#### *Regulatory Services Agreement*

The term “Regulatory Services Agreement” means the agreement, if any, pursuant to which the Company delegates certain of its market surveillance and trade practice surveillance functions to a Regulatory Services Provider.

#### *Reporting Counterparty*

The term “Reporting Counterparty” means, for purposes of these Rules and Part 45 of CFTC Regulations, the party to a transaction executed on the SEF or otherwise pursuant to these Rules that is designated as such pursuant to Rule 616.

#### *Required Swap Creation Data*

The term “Required Swap Creation Data” has the meaning given that term in CFTC Regulation 45.1.

#### *Required Transaction*

The term “Required Transaction” means any transaction involving a Swap that is required by Section 2(h)(8) of the CEA to be executed on, or pursuant to the rules of, a swap execution facility or a designated contract market, except that such term does not include Block Trades, Permitted Package Transactions or Resubmitted Cleared Swaps.

#### *Resubmitted Cleared Swap*

The term “Resubmitted Cleared Swap” means a Cleared Swap resubmitted to the Company in accordance with Rule 1005.A.

#### *Risk-Based Limit*

The term “Risk-Based Limit” means any credit, trading or other limit established by a Clearing Member pursuant to CFTC Regulation 1.73(a)(1) or CFTC Regulation 23.609 and in a manner consistent with the terms of the Clearing Member Relationship Agreement and these Rules.

#### *RSP or Regulatory Services Provider*

The term “RSP” or “Regulatory Services Provider” means the organization, if any, which provides regulatory services to the Company pursuant to a Regulatory Services Agreement.

#### *Rule*

The term “Rule” means any rule adopted or amended, from time to time, by the Company related to or in respect of the operation of, or business conducted on, the SEF.

#### *SB Swap*

The term “SB Swap” means security-based swap as defined in the Exchange Act and SEC Regulations and, as used in these Rules, refers solely to transactions (including Orders) in SB Swaps that are made or to be made on the SEF or pursuant to these Rules.

#### *SDR or Swap Data Repository*

The term “SDR” or “Swap Data Repository” means any swap data repository registered with the CFTC to which the Company may select to report, as required by and in accordance with the CEA and CFTC Regulations, the terms of each Swap executed pursuant to these Rules.

#### *Security*

The term “Security” has the meaning given that term under Section 3(a)(10) of the Exchange Act.

#### *SEC*

The term “SEC” means the Securities and Exchange Commission and includes any successor agency or authority.

#### *SEC Regulation*

The term “SEC Regulation” means any rule, regulation, order or directive and any interpretation thereof adopted from time to time by the SEC.

#### *SEF or Swap Execution Facility*

The term “SEF” or “Swap Execution Facility” means the swap execution facility operated by the Company and registered as such with the CFTC.

#### *Standing Committee*

The term “Standing Committee” means each of the Nominating Committee, the Participation Committee and the Regulatory Oversight Committee. In the event and to the extent that the Company registers with the SEC as a SB Swap execution facility, the term also includes the Swap Review Committee.

### *Swap*

The term “Swap” has the meaning given that term in Section 1a(47) of the CEA and in the CFTC Regulations promulgated thereunder (without regard to any determination by the Secretary of the Treasury pursuant to Section 1b of the CEA) and, as used in these Rules, refers solely to transactions in Swaps (including Orders) that are made or to be made on the SEF or pursuant to these Rules.

### *Swap Review Committee*

The term “Swap Review Committee” means the committee constituted pursuant to Rule 206.

### *Terms Incorporated by Reference*

The term “Terms Incorporated by Reference” has the meaning given that term in Rule 1101(c)(i).

### *Trade Communication*

The term “Trade Communication” has the meaning given that term in Rule 1101(c)(i).

### *Trading Customer*

The term “Trading Customer” means a Person entering Orders or submitting Block Trades, Package Transactions, Cross Trades or Resubmitted Cleared Swaps either through an Introducing Agent as that Introducing Agent’s customer or having been designated in accordance with Rule 304. A Trading Customer may either be acting as a principal or as an Account Manager acting on behalf of one or more Client Accounts; provided that the term “Trading Customer” shall not include any such Client Accounts.

### *Trading Hours*

The term “Trading Hours” means, with respect to any Swap, the hours during which the SEF is regularly open for the trading of such Swap.

### *Trading Privileges*

The term “Trading Privileges” means the rights granted to a Participant to enter Orders, submit Block Trades, Package Transactions, Cross Trades or Resubmitted Cleared Swaps, and otherwise effect Swap transactions whether directly or indirectly (including through an ISV), on or pursuant to the Rules of the SEF, either on its own behalf, on behalf of, or as Introducing Agent for, Trading Customers or Client Accounts. For the avoidance of doubt, a Trading Customer shall not be deemed to have Trading Privileges solely on the basis of engaging in the foregoing activity through an Introducing Agent.

### *Uncleared Swap*

The term “Uncleared Swap” means a Swap other than a Cleared Swap.

### *Underlying Instrument*

The term “Underlying Instrument” means, with respect to a Swap, the good, right, security, index or other asset or measure which is the subject of that Swap.

### *User ID*

The term “User ID” means a unique identification number assigned by the Company to an Authorized User.

## **102. Rules of Interpretation**

For all purposes of these Rules, except as otherwise expressly provided herein or unless the context otherwise requires:

- (a) the terms defined in these Rules include the plural as well as the singular and *vice versa*;
- (b) words importing gender include all genders;
- (c) any reference to a Chapter, Rule or Appendix refers to a Chapter or Rule of, or Appendix to, these Rules;
- (d) any reference to these Rules refers to these Rules, including all Appendices hereto, and the words herein, hereof, thereto, hereto and hereunder and words of similar import refer to these Rules and their Appendices as a whole and not to any particular Chapter, Rule, Appendix or any other subdivision;
- (e) references to days, months and years refer to calendar days, months and years, respectively;
- (f) all references herein to “including” are deemed to be followed by the words “without limitation;” and
- (g) any term used but not defined herein that is defined in the CEA or CFTC Regulations shall have the meaning assigned to it therein.

**103. Effect of Titles**

The titles of these Rules have been inserted for convenience of reference only and shall not affect the meaning of these Rules.

**104. Amendment of Rules**

The Board may adopt new Rules and may amend or repeal existing Rules. All such new Rules, amendments or repeals shall become effective on the date specified by the Board or its designee (subject to any required filing with, or approval thereof by, the CFTC).

**105. Security-Based Swaps**

In the event and to the extent that the Company registers with the SEC as a SB Swap execution facility, all references in these Rules to:

- (a) “CEA” shall be deemed additionally to include the Exchange Act;
- (b) “CFTC Regulations” shall be deemed additionally to include SEC Regulations;
- (c) “DCO” shall be deemed additionally to include any securities clearing agency registered under the Exchange Act that accepts for clearing one or more SB Swaps transacted on the SEF or pursuant to these Rules;
- (d) “SDR” shall be deemed additionally to include any SB Swap data repository as defined in the Exchange Act and SEC Regulations that the Company may select to report, as required by and in accordance with the Exchange Act, the terms of SB Swaps executed pursuant to these Rules;
- (e) “SEF” shall be deemed additionally to include the SB Swap execution facility operated or to be operated by the Company and registered or to be registered with the SEC; and
- (f) “Swap” shall be deemed additionally to include any SB Swap.





## Chapter 2. GOVERNANCE

### 201. Board of Managers

- (a) The business and affairs of the Company shall be managed by the Board in accordance with the LLC Agreement.
- (b) At all times following the appropriate compliance date of the CFTC Regulations applicable to the Company's governance as a SEF, the members of the Board shall include no fewer than the minimum number or percentage of Public Directors<sup>1</sup> required by such CFTC Regulations. Each Public Director shall be elected in accordance with the LLC Agreement, and shall serve for a term of two years from the date of his election (or the remainder of any Public Director term to which he is elected as a replacement) and until his successor is duly appointed, or until his earlier resignation, removal for cause or dismissal pursuant to the LLC Agreement.
- (c) The compensation of Public Directors and other non-executive members of the Board shall not be linked to the business performance of the Company.

### 202. Standing Committees

- (a) As described in Chapter 2 of these Rules, the Board, if required by CFTC Regulations, shall have at least the three following Standing Committees: the Nominating Committee, the Participation Committee and the Regulatory Oversight Committee. In the event that the Company registers with the SEC as a SB Swap execution facility, the Swap Review Committee shall also be a Standing Committee.
- (b) Except as otherwise specified by these Rules, the members of Standing Committees shall be appointed in accordance with the LLC Agreement and at all times shall conform to the requirements of Applicable Law. The Board shall designate the chairperson of each Standing Committee.
- (c) Each Standing Committee shall assist in the supervision, management and control of the affairs of the Company within its particular area of responsibility.
- (d) Subject to the authority of the Board and Applicable Law, each Standing Committee shall determine the manner and form in which its proceedings shall be conducted.

### 203. Nominating Committee

Not later than the compliance date of the CFTC Regulations applicable to the Company's governance as a SEF, the Board shall designate certain of its members to serve as the Nominating Committee which shall: (i) identify individuals qualified to serve on the Board, consistent with the criteria approved by the Board and the composition requirements of Applicable Law; and (ii) administer a process for the nomination of individuals to the Board. At all times following the compliance date of applicable CFTC Regulations, the Nominating Committee shall include no fewer than the minimum number or percentage of Public Directors required by such CFTC Regulations. If required by CFTC Regulations, one of the Public Directors shall serve as the chair of the Nominating Committee.

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<sup>1</sup>CFTC regulations refer to Public Directors, but such persons shall be Managers in accordance with the Company's LLC Agreement. References to Public Directors herein shall mean Managers.

#### **204. Participation Committee**

- (a) Not later than the compliance date of the CFTC Regulations applicable to the Company's governance as a SEF, the Board shall designate certain of its members to serve as the Participation Committee which shall:
  - (i) determine the standards and requirements for initial and continuing eligibility for being a Participant;
  - (ii) review appeals of initial denials of Participant applications; and
  - (iii) review for approval any new Rules or the amendment or repeal of existing Rules that may result in different categories of Participants receiving disparate access to the SEF.
- (b) At all times following the compliance date of the CFTC Regulations applicable to the Company's governance as a SEF, the Participation Committee shall include no fewer than the minimum number or percentage of Public Directors required by such CFTC Regulations. If required by CFTC Regulations, one of the Public Directors shall serve as the chair of the Participation Committee.
- (c) In reviewing appeals of initial denials of Participant applications, the Participation Committee shall not uphold any denial if the relevant application meets the standards and requirements that the Participation Committee has established.
- (d) The Participation Committee shall not, and shall not permit the Company to, restrict access or impose burdens on access to the SEF in a discriminatory manner, within each category or class of Participants or between similarly situated categories or classes of Participants.

#### **205. Regulatory Oversight Committee**

- (a) The Board shall designate certain of its members to serve as the Regulatory Oversight Committee which shall:
  - (i) oversee the Company's regulatory program, including trade practice and market surveillance; audits, examinations, and other regulatory responsibilities with respect to Participants and their Authorized Users (including ensuring compliance with any financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and the conduct of investigations;
  - (ii) monitor the Company's regulatory program for sufficiency, effectiveness and independence;
  - (iii) review the size and allocation of the regulatory budget and resources, and the number, hiring and termination, and compensation of regulatory personnel;
  - (iv) review the performance of the Chief Compliance Officer and make recommendations with respect to such performance to the Board;
  - (v) prepare an annual report for the Board and the CFTC describing the Company's self-regulatory program, which sets forth the regulatory program's expenses, describes its staffing and structure, catalogues investigations and disciplinary proceedings taken during the year, and reviews the performance of Disciplinary Panels, Appeals Panels and the CCO;
  - (vi) recommend changes to the Company's regulatory program that would ensure fair, vigorous, and effective regulation;
  - (vii) review all regulatory proposals, actions or changes prior to implementation and advise the Board as to whether and how such proposals, actions or changes may affect the Company's regulation and its conduct and governance standards; and

- (viii) exercise any other functions expressly assigned to it in these Rules.
- (b) Not later than the compliance date of the CFTC Regulations applicable to the Company's governance as a SEF and at all times thereafter, the Regulatory Oversight Committee shall include no fewer than the minimum number or percentage of Public Directors required by such CFTC Regulations. If required by CFTC Regulations, one of the Public Directors shall serve as the chair of the Regulatory Oversight Committee. Each member of the Regulatory Oversight Committee shall serve for a term of two calendar years from the date of his appointment or for the remainder of the term to which he is appointed as a replacement, and until the due appointment of his successor, or until his earlier resignation or removal (as a member of the Regulatory Oversight Committee or as a member of the Board) for cause or dismissal pursuant to the LLC Agreement.

#### **206. Swap Review Committee**

- (a) In the event the Company registers with the SEC as a SB Swap execution facility, the Board shall designate certain of its members and Authorized Users of Participants to serve as the Swap Review Committee. In making such appointments, the Board shall provide for the fair representation of Participants and shall endeavor to ensure that no single class of Participant dominates such Committee. In general, the Swap Review Committee shall determine the SB Swaps that the Company will list for trading and the SB Swaps that will be delisted from trading pursuant to criteria established by the Company. More specifically, the Swap Review Committee shall:
  - (i) determine, after taking into account all of the terms and conditions of a SB Swap and the markets for such swap and any relevant underlying securities, whether such SB Swap is readily subject to manipulation prior to the initiation of trading of any SB Swap; and
  - (ii) review on a quarterly basis each SB Swap executed pursuant to these Rules to determine whether the trading characteristics of such SB Swap justify a change to the SB Swap execution facility for such SB Swap. In making this determination, the Swap Review Committee shall consider whether (1) the liquidity in each SB Swap is at an appropriate level for the SB Swap execution facility and (2) such SB Swap would be more suited for trading on a different type of platform. The results of the foregoing reviews shall be reported promptly to the Chief Compliance Officer and annually to the Regulatory Oversight Committee.
- (b) At all times following the compliance date of applicable SEC Regulations, the Swap Review Committee shall meet the composition requirements prescribed by such SEC Regulations.

#### **207. Reporting to the CFTC**

If the Board rejects a recommendation or supersedes an action of the Regulatory Oversight Committee or the Participation Committee, the Company shall submit a written report to the CFTC detailing: (i) the recommendation of or action proposed to be taken by the Regulatory Oversight Committee or the Participation Committee; (ii) the rationale for such recommendation or action; (iii) the rationale of the Board for rejecting such recommendation or superseding such action; and (iv) the course of action that the Board decided to take contrary to such recommendation or action.

#### **208. Additional Committees and Panels**

- (a) The Board may create such additional committees of the Board as it may deem necessary or advisable.

- (b) In addition to the Standing Committees, the Board may from time to time constitute and appoint, by rule or resolution, special committees of the Board and designate their composition, responsibilities and powers. The provisions regarding Standing Committees in Rule 202 shall apply *mutatis mutandis* to any such special committees.
- (c) The Company may create additional committees or panels of the Company for such purposes as may from time to time be necessary or advisable. Members of each such committee or panel may be members of the Board, Participants (if individuals) or any of their Authorized Users or such other individuals as may be qualified to serve on such committee or panel.

## **209. Public Director Qualifications**

To serve as a Public Director of the Board and any of the Standing Committees as and when may be required by applicable CFTC Regulations and Rules 201 through 205 above, an individual must meet the qualifications of a Public Director specified by such CFTC Regulations, the CEA and other Applicable Law in effect for the period of such service.

## **210. Eligibility**

- (a) No Person may serve as a Manager, Officer or member of a Standing Committee, Disciplinary Panel or Appeals Panel if the Person:
  - (i) was found within the past three years by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the CFTC to have committed a disciplinary offense;
  - (ii) entered into a settlement agreement within the past three years in which any of the findings or, in absence of such findings, any of the acts charged, included a disciplinary offense;
  - (iii) is currently suspended from trading on any contract market, is suspended or expelled from membership with any self-regulatory organization, is serving any sentence of probation or owes any portion of a fine imposed pursuant to either (A) a finding by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the CFTC that such person committed a disciplinary offense, or (B) a settlement agreement in which any of the findings or, in absence of such findings, any of the acts charged, included a disciplinary offense;
  - (iv) is currently subject to an agreement with the CFTC or any self-regulatory organization not to apply for registration with the CFTC or membership in such self-regulatory organization;
  - (v) is currently subject to or has had imposed on him within the past three years a CFTC registration revocation or suspension in any capacity for any reason, or has been convicted within the past three years of any of the felonies listed in Section 8a(2)(D)(ii) through (iv) of the CEA; or
  - (vi) is currently 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.
- (b) Upon the occurrence of an event listed in this Rule 210 with respect to a Manager, Officer or member of a Standing Committee, Disciplinary Panel or Appeals Panel, such Person shall disclose the occurrence of such event to the Chief Compliance Officer or his designee.

## 211. Officers

The Board shall appoint a Chief Executive Officer, a President, a Chief Administrative Officer, a Chief Compliance Officer and such other officers of the Company as it may deem necessary or appropriate from time to time, in each case for such term and on such other conditions as it sees fit. Any Officer may also be a member, manager, director, officer, partner or employee of the Company or any of its Affiliates.

## 212. Chief Compliance Officer

- (a) The Board shall designate an individual to serve as the Chief Compliance Officer (“CCO”) of the Company. The CCO shall:
- (i) report directly to the Chief Executive Officer;
  - (ii) oversee and review the Company’s compliance with the Core Principles set forth in Section 5h of the CEA and Part 37 of the CFTC Regulations;
  - (iii) resolve, in consultation with the Board, the Regulatory Oversight Committee or the Chief Executive Officer, any conflicts of interest that may arise, including:
    - (A) conflicts between business considerations and compliance requirements, including the requirement that the swap execution facility provide fair, open and impartial access in accordance with CFTC Regulation 37.202; and
    - (B) conflicts between the Company’s management and members of the Board;
  - (iv) establish and administer written policies and procedures reasonably designed to prevent violations of the CEA and CFTC Regulations;
  - (v) take reasonable steps to ensure compliance with the CEA and CFTC Regulations;
  - (vi) if applicable, monitor compliance with provisions of the Exchange Act and SEC Regulations thereunder applicable to SB Swap transactions on the SEF;
  - (vii) establish procedures for the remediation of noncompliance issues identified by the CCO through compliance office reviews, look-backs, internal or external audit findings, self-reported errors or validated complaints;
  - (viii) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues;
  - (ix) establish and administer a compliance manual designed to promote compliance with the applicable laws, rules, and regulations and a written code of ethics designed to prevent ethical violations and to promote honesty and ethical conduct;
  - (x) supervise the Company’s self-regulatory program with respect to trade practice surveillance, market surveillance, real-time market monitoring, compliance with audit trail requirements, enforcement and disciplinary proceedings, audits, examinations, and other regulatory responsibilities with respect to Participants;
  - (xi) supervise the effectiveness and sufficiency of any regulatory services provided to the Company by the Regulatory Service Provider in accordance with CFTC Regulation 37.204; and

- (xii) prepare the Company's annual compliance report in accordance with CFTC Regulation 37.1501.
- (b) No individual disqualified from registration pursuant to Section 8a(2) or 8a(3) of the CEA may serve as CCO.

**213. Confidentiality**

No member of the Board, any committee established by the Board, or any Disciplinary Panel or Appeals Panel shall use or disclose any material, non-public information obtained in connection with the performance of his official duties for any purpose other than the performance of such official duties.

**214. Conflicts of Interest**

- (a) *Definitions.* For purposes of this Rule 214, the following definitions shall apply:
  - (i) The term "member's affiliated firm" shall mean a firm in which a member of the relevant deliberating body is an employee, an "associated person," as defined in CFTC Regulation 1.3(aa), or a "principal," as defined in CFTC Regulation 3.1(a).
  - (ii) The term "named party in interest" shall mean a Person or entity that is identified by name as a subject of any matter of a Rule enforcement or any disciplinary matter or appeal being considered by the Board, a disciplinary committee or oversight panel.
  - (iii) The term "significant action" shall mean any action taken by the Company, including without limitation a change of any Rule, to address an Emergency.
- (b) *Named Party in Interest Conflict.*
  - (i) *Prohibition.* No Officer or member of the Board, Standing Committee, Disciplinary Panel or Appeals Panel shall knowingly participate in deliberations or voting in any matter involving a named party in interest where such person:
    - (A) is a named party in interest;
    - (B) is an employer, employee or fellow employee of a named party in interest;
    - (C) has any other significant, ongoing business relationship with a named party in interest, excluding relationships limited to executing Swaps opposite each other or to clearing Swaps through the same Clearing Members;
    - (D) has a family relationship with a named party in interest. For purposes of this paragraph (b)(i)(D), the term "family relationship" shall mean with respect to a Person, such Person's spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law;
    - (E) has a direct and substantial financial interest in the result of the deliberations or vote based upon trades or positions that could reasonably be expected to be affected by such Company Proceeding or Emergency. A direct and substantial financial interest includes (but is not limited to) trades and positions in accounts of, controlled by, or

Affiliated with the Interested Person that could reasonably be expected to be affected by such deliberations or vote; or

- (F) has a conflict between the exercise of the authority by the Director, Officer, member of any Committee, Disciplinary Panel Member or Appeal Panel Member concerning such Company Proceeding or Emergency and his or her personal interests due to any other circumstances.
- (ii) *Chief Compliance Officer Recusal.* Where the Chief Compliance Officer's participation in deliberations or voting would be prohibited pursuant to paragraphs (b)(i) or (c)(i) of this Rule 214, the Chief Compliance Officer shall recuse himself from such deliberation or vote giving rise to the conflict, and the Board shall appoint an individual without such conflict and meeting to the greatest extent practicable the requirements of a Chief Compliance Officer to serve as Chief Compliance Officer for the specific deliberation or vote giving rise to the conflict.
- (iii) *Disclosure.* Prior to consideration of any matter involving a named party in interest, each member of the deliberating body shall disclose to the Chief Compliance Officer, or his designee, whether such member has or believes that he may have one of the relationships listed in paragraph (b)(i) with a named party in interest.
- (iv) *Procedure and Determination.* The Chief Compliance Officer, or his designee, shall determine whether any member of the relevant deliberating body is subject to a conflicts restriction under this Rule 214. Such determination shall be based upon a review of the following information:
  - (A) any information provided by such member pursuant to paragraph (b) (iii) and any additional information requested by the Chief Compliance Officer or his designee; and
  - (B) any other relevant information that is held by the Company or obtained from a reasonably available source that the Chief Compliance Officer or his designee reasonably believes to be accurate.
- (c) *Financial Interest in a Significant Action Conflict.*
  - (i) *Prohibition.* No Officer or member of the Board, Standing Committee, Disciplinary Panel or Appeals Panel shall participate in deliberations and voting on any significant action if such person knows or reasonably should know that he or she has a direct or indirect substantial financial interest in the result of the deliberation or vote, based upon positions in Swaps or related Underlying Instruments that could reasonably be expected to be affected by the significant action under consideration, as determined pursuant to this paragraph (c).
  - (ii) *Disclosure.* Prior to consideration of any significant action, each member of the deliberating body who does not choose to abstain from deliberations and voting may disclose to the Chief Compliance Officer, or his designee, any information that may be relevant to a determination of whether such member has a direct and substantial financial interest in the result of the vote, including:
    - (A) gross positions held at the DCOs for such member's personal accounts or "controlled accounts," as defined in CFTC Regulation 1.3(j);
    - (B) gross positions held at the DCOs in accounts of any entity in which such member is a "principal," as defined in CFTC Regulation 3.1(a); and

- (C) any other types of positions, whether maintained at the DCOs or elsewhere, held in such member's personal accounts or the proprietary accounts of such member's Affiliated firm, that the Company reasonably expects could be affected by the significant action.
- (iii) *Procedure and Determination.* The Chief Compliance Officer, or his designee, shall determine whether any member of the relevant deliberating body is subject to a conflicts restriction under this paragraph (c) based upon a review of the most recent large user reports and clearing records available to the Company, information provided by such member with respect to positions pursuant to clause (ii) above and any other source of information that is held by and reasonably available to the Company that the Chief Compliance Officer or his designee deems to be accurate, taking into consideration the exigency of the significant action being contemplated.
- (iv) *Deliberation Exemption.* Any Officer or member of the Board, Standing Committee, Disciplinary Panel or Appeals Panel who would otherwise be required to abstain from deliberations and voting pursuant to this paragraph (c) (excluding the Chief Compliance Officer) may participate in deliberations, but not voting, if the deliberating body, after considering the factors specified below, determines that such participation would be consistent with the public interest; provided, however, that before reaching any such determination, the deliberating body shall fully consider any information disclosed pursuant to paragraph (c)(ii). In making its determination, the deliberating body shall consider:
  - (A) whether such member's participation in deliberations is necessary to achieve a quorum; and
  - (B) whether such member has unique or special expertise, knowledge or experience in the matter being considered.
- (d) *Documentation.* The minutes of any meeting to which the conflicts determination procedures set forth in this Rule 214 apply shall reflect the following information:
  - (i) the names of all members of the relevant deliberating body who attended such meeting in person or who otherwise were present by electronic means;
  - (ii) the name of any member of the relevant deliberating body who voluntarily recused himself or was required to abstain from deliberations or voting on a matter and the reason for the recusal or abstention, if stated;
  - (iii) information that was reviewed for each member of the relevant deliberating body, including position information in the case of a significant action conflict; and
  - (iv) any determination made in accordance with paragraph (c)(iii) above.

**215. Maintenance of Books and Records by the Company**

- (a) The Company shall keep, or cause to be kept, all books and records required to be maintained pursuant to the CEA and CFTC Regulations.
- (b) The Company shall retain all such books and records for the life of each Swap transacted pursuant to these Rules and five years following the termination of such Swap, and shall make such books and records readily accessible for inspection, in each case in the form and manner required under the CEA and CFTC Regulations.



- (c) The Company may disclose, to any government agency, self-regulatory organization or other Person, information concerning or associated with a Participant or other Person if the Company believes such disclosure is necessary and appropriate in exercising a legal or regulatory function, whether or not a formal arrangement governing the disclosure exists or a request for information was made.

### Chapter 3. TRADING PRIVILEGES AND PARTICIPANTS

#### 301. Jurisdiction

- (a) ANY PERSON INITIATING OR EXECUTING A TRANSACTION ON OR SUBJECT TO THE RULES OF THE SEF DIRECTLY OR THROUGH AN INTERMEDIARY, ANY PERSON FOR WHOSE BENEFIT SUCH A TRANSACTION IS INITIATED OR EXECUTED AND ANY CLEARING MEMBER WITH RESPECT TO SUCH A TRANSACTION SHALL BE DEEMED TO CONSENT TO (I) BE BOUND BY, AND COMPLY WITH, THE RULES AND APPLICABLE LAW, **TO THE EXTENT APPLICABLE TO IT**, (II) SUBMIT TO THE JURISDICTION OF THE COMPANY WITH RESPECT TO ANY AND ALL MATTERS ARISING FROM, RELATED TO, OR IN CONNECTION WITH, ITS STATUS, ACTS OR OMISSIONS ON THE SEF, AND (III) **TO THE EXTENT APPLICABLE TO IT**, ASSIST THE COMPANY IN COMPLYING WITH ITS LEGAL AND REGULATORY OBLIGATIONS, COOPERATE WITH THE COMPANY AND ANY GOVERNMENTAL AUTHORITY HAVING JURISDICTION OVER THE COMPANY IN ANY INQUIRY, INVESTIGATION, AUDIT, EXAMINATION OR PROCEEDING, AND AUTHORIZE THE COMPANY OR ITS AFFILIATES TO PROVIDE INFORMATION REGARDING THE COMPANY TO THE RSP OR ANY SELF-REGULATORY ORGANIZATION. TO FULFILL ANY OF THE COMPANY'S OBLIGATIONS UNDER THE RULES, APPLICABLE LAW OR THE PARTICIPANT DOCUMENTATION.

#### 302. Trading Privileges

- (a) Subject to the requirements, procedures and conditions described in this Chapter 3 and any limitation, restriction or revocation from time to time imposed by the Company, Trading Privileges to the SEF shall be provided solely to Participants. Trading Privileges are non-transferable, non-assignable and may not be sold or leased. By virtue of obtaining Trading Privileges, a Participant shall not obtain any equity or other interest in the Company, including voting rights or rights to receive any dividends or other distributions, whether arising from a dissolution, merger, consolidation involving the Company or otherwise.
- (b) Subject to Rule 302(f), the Company may deny Trading Privileges to any Person:
- (i) if such Person is unable satisfactorily to demonstrate a capacity to adhere to all applicable Rules and Applicable Law;
  - (ii) if such Person would bring the Company into material disrepute, as determined by the Company in its sole but reasonable discretion; or
  - (iii) for such other good cause as the Company reasonably and in good faith may decide.
- (c) Subject to Rule 302(f), the Company may determine not to permit any Person to keep its Trading Privileges, or may suspend, remove or limit such Trading Privileges, if, after such Trading Privileges have been approved, the Person:
- (i) fails to meet any of the qualification requirements for Trading Privileges;
  - (ii) fails to meet any condition placed by the Company on such Trading Privileges;
  - (iii) violates any agreement with the Company or a DCO;

- (iv) has summary action taken against it by the Company pursuant to Rules 717 or 718; or
  - (v) is sanctioned under Rule 715 for any violation of the Rules.
- (d) In the case of any suspension, revocation or limitation of the Trading Privileges of any Participant pursuant to this Rule 302 or otherwise, the Company, in its sole discretion, may also suspend, revoke or limit the status of any natural person as an Authorized User of such Participant, in each case as the Company deems necessary to protect other Participants and the integrity of the Company.
  - (e) In the case of any suspension, revocation or limitation on the status of any natural person as an Authorized User of any Participant pursuant to this Rule 302 or otherwise, the Company, in its sole discretion, may also suspend, revoke or limit the Trading Privileges of such Participant or the status of such Participant's other Authorized Users, in each case as the Company deems necessary to protect other Participants and the integrity of the Company.
  - (f) Any decision by the Company to deny, suspend, revoke or limit the Trading Privileges of any Person or the status of any natural person as an Authorized User will be exercised by the Company in an impartial, transparent, fair and nondiscriminatory manner.

**303. Participant Eligibility and Access to the SEF**

- (a) A Person that desires to become a Participant shall:
  - (i) be, and represent in writing to the Company that it is an Eligible Contract Participant;
  - (ii) if it is an Account Manager, represent in writing to the Company that each of its Client Accounts is an Eligible Contract Participant;
  - (iii) complete and submit the Participant Documentation;
  - (iv) provide such information and documentation as may be reasonably requested by the Company, and comply with the procedures established by the Company for admission;
  - (v) distribute the Rules and Notices to Participants to its Authorized Users and Trading Customers (as applicable) or cause the Rules and Notices to Participants to be so distributed consistent with Rule 310(c); and
  - (vi) if such Person is organized or established under the laws of a country other than the United States:
    - (A) represent and certify to the Company that it is in compliance with the registration or authorization requirements of its home country, that it is regulated in its home country by a financial regulatory authority with respect to the maintenance of relevant books and records, that it is subject to regular inspections and examinations by such home country regulator; and
    - (B) make such other representations as the Company deems necessary to comply with Applicable Law.
- (b) [Reserved].

- (c) A Participant that is registered as a Swap Dealer must undertake and be able to discharge (i) on the SEF, any pre-trade disclosure it may owe to its counterparty when engaging in a Swap transaction on a disclosed basis with that counterparty, and (ii) off the SEF, any due diligence and analysis obligations it may owe to its counterparty.
- (d) At all times, each Participant must comply with all applicable eligibility criteria required pursuant to these Rules, agrees to be identified on the Active Participant List Screen as set out in Rule 310(d), and shall notify the Company immediately if it ceases to meet any of such applicable eligibility criteria.
- (e) A Person seeking to act as an ISV may not be a Participant when acting in an ISV capacity and must satisfy the Company's technological integrity requirements and not adversely affect the Company's ability to comply with the CEA and CFTC Regulations.
- (f) A Person whose application for Participant status has been denied or granted conditionally pursuant to this Rule 303, and any Participant whose access to the SEF is revoked, suspended or limited pursuant to Rules 302 or 305, may appeal the Company's decision in accordance with the provisions of Chapter 7. A determination of the Company to revoke, suspend or limit a Person's access to the SEF pursuant to Rules 302 and 305 shall not take effect until the review procedures under Chapter 7 have been exhausted or the time for review has expired.
- (g) A Person whose application to become a Participant has been denied pursuant to this Rule 303 shall not be eligible for re-application during the six months immediately following such denial.
- (h) [Reserved].

#### **304. Introducing Agent Eligibility and Access to the SEF**

- (a) An Introducing Agent shall:
  - (i) Represent in writing to the Company that the Trading Customer is an Eligible Contract Participant and, if the Trading Customer is an Account Manager, each of such Account Manager's Client Accounts is an Eligible Contract Participant;
  - (ii) Ensure that each Order, Block Trade, Package Transaction, Cross Trade or Resubmitted Cleared Swap submitted by the Introducing Agent on behalf of the Trading Customer will properly identify the underlying Trading Customer on a pre-trade basis;
  - (iii) If the Trading Customer is registered as a Swap Dealer, undertake and be able to discharge, or cause the Trading Customer to discharge in an Uncleared Swap (i) on the SEF, any pre-trade disclosure the Trading Customer may owe to its counterparty when engaging in a Swap transaction on a disclosed basis with that counterparty, and (ii) off the SEF, any due diligence and analysis obligations the Trading Customer may owe to its counterparty; and
  - (iv) Require the Trading Customer to provide written or electronic representations and agreements that the Trading Customer:
    - (A) Qualifies as an Eligible Contract Participant;
    - (B) If the Trading Customer is an Account Manager, represents that each of its Client Accounts is an Eligible Contract Participant;

- (C) Agrees to be bound by and comply with the Rules, to the extent applicable;
  - (D) Authorizes the Company to send Trade Communications for Swaps entered into by the Introducing Agent on behalf of the Trading Customer to such Introducing Agent and authorizes such Introducing Agent to accept such Trade Communications on behalf of the Trading Customer;
  - (E) Has clearing arrangements in place in order to permit such Trading Customer to clear Swaps in compliance with Rule 1003 with respect to any Cleared Swaps entered into by such Trading Customer, including, where applicable, Cleared Swaps entered into on behalf of its Client Accounts; and
  - (F) Has all registrations, licenses and consents required by its constituent documents and Applicable Law to transact in Swaps on or pursuant to the Rules of the SEF.
- (b) EA Trading Customers.
- (i) An Introducing Agent may designate a Trading Customer for Electronic Access. The Company shall promptly grant or deny such designation pursuant to the process set forth in this Rule 304(b).
  - (ii) Each prospective Introducing Agent will submit or cause Trading Customers to submit the appropriate documentation identifying for which Trading Customers such Introducing Agent intends to designate for Electronic Access and the identifying information of Authorized User(s) of such EA Trading Customers.
  - (iii) The Company shall, in its sole but reasonable discretion, and acting in an impartial, transparent, fair and nondiscriminatory manner, approve or deny an application of a Trading Customer to have Electronic Access to the SEF through an Introducing Agent. The Company will notify an Introducing Agent of its approval or disapproval of the designation of a Trading Customer for Electronic Access.
  - (iv) The Company may, in its sole but reasonable discretion, and acting in an impartial, transparent, fair and nondiscriminatory manner, by notice to the relevant Introducing Agent in accordance with Chapter 7 of these Rules and procedures established by the Company, revoke, suspend or limit a Trading Customer's Electronic Access.
  - (v) Upon the Company's request, an Introducing Agent or the Trading Customer, as necessary, must be able to (A) identify each natural person exercising trading authority on behalf of an EA Trading Customer and (B) revoke, suspend or limit the ability of any such natural person to submit Orders on the SEF.
  - (vi) An Introducing Agent may at any time terminate the designation for Electronic Access of any of its Trading Customers by providing (i) prior written notice to the relevant Trading Customer and (ii) written notice of such termination to the Company and until such time, such designation shall not be terminated (unless otherwise terminated by the Company).
- (c) Each Introducing Agent shall take reasonable steps to ensure that its activities on behalf of its Trading Customers, and the activities of its Trading Customers, related to the Company, wherever conducted, comply with all Applicable Law.

- (d) To the extent necessary or required under Applicable Law, the Company shall provide all Trade Communications for Trading Customer transactions to the Introducing Agent acting on behalf of such Trading Customer. Any Introducing Agent that transacts on behalf of any Trading Customer shall be responsible for ensuring that such Trading Customer has access to all Trade Communications for the Swaps it executes on behalf of such Trading Customer, provided, however, the foregoing shall not apply to EA Trading Customers.

**305. Authorized Users**

- (a) Each Participant that is not a natural person shall appoint in writing (via electronic mail or the Company's authorization forms) at least one of its employees (or, if Participant has no employees, an agent who is a natural person) to act as an Authorized User. A Participant may also appoint additional employees, agents or authorized contractors who are individuals to act as Authorized Users and shall specify whether each such additional Authorized User is entitled (i) to exercise Trading Privileges on behalf of the Participant subject to the terms and conditions of these Rules, or (ii) to access the SEF on "view only" basis.
- (b) The Company may, in its sole but reasonable discretion, and acting in an impartial, transparent, fair and nondiscriminatory manner, revoke, suspend, or limit the status of a Person as an Authorized User, and shall promptly notify the relevant Participant in accordance with the procedures established by the Company.
- (c) A Participant may at any time revoke an authorization granted by it to any Authorized User or a User ID granted to any other Person by providing written notice of such revocation to the Company and the Company shall, as soon as is practicable, revoke and disable such Person's access to the SEF. A Participant shall take immediate and appropriate measures to ensure that, after any such revocation, (i) the affected Authorized User shall not have access to the SEF and (ii) the affected Person shall not utilize its User ID, and the Company shall act promptly, but in any event within one Business Day of receiving notice from the Participant, to disallow the entry of Orders or submission of Block Trades, Package Transactions, Cross Trades or Resubmitted Cleared Swaps by any such Person.
- (d) All obligations of Participants under these Rules shall also apply to each of their Authorized Users, to the extent applicable, and each Participant shall be responsible for the actions and omissions of each of its Authorized Users. Each Participant will ensure on an ongoing basis that none of its Authorized Users is subject to a disqualification pursuant to any Applicable Law (unless an appropriate exemption has been obtained with respect thereto) and that each of its Authorized Users will be technically proficient in respect of the use of the SEF. Each Participant shall have procedures for performing day-to-day monitoring of its Authorized Users to ensure that each will conduct its business in a fair and equitable manner and in accordance with these Rules.
- (e) For purposes of these Rules, any reference to (i) the Trading Privileges of a Participant shall also be deemed to refer and apply to the exercise of Trading Privileges by any of such Participant's Authorized Users, (ii) a Participant submitting or receiving Orders, bids, offers or Message Traffic into or from the Company or transacting in Swaps on the SEF, shall be deemed to also refer and apply to any such actions engaged in by any Person using any of such Participant's Trading Privileges, and (iii) the knowledge of, or matters known to, any Participant shall be deemed to also refer to and include the knowledge of, or matters known to, its Authorized Users.

**306. Credit Arrangements Required**

A Participant that is registered as a swap dealer or major swap participant with the CFTC that executes an Uncleared Swap on or pursuant to the Rules of the SEF shall do so only with a

counterparty with which it or the underlying party(ies) on whose behalf it is executing the Swap has established swap trading relationship documentation consistent with the requirements of CFTC Regulation 23.504.

**307. Dues, Assessments and Fees**

The Company shall set and communicate in writing the times and amounts of any dues, assessments or fees to be paid by Participants, which dues, assessments or fees shall be paid to the Company when due. If a Participant fails to pay when due any Company dues, assessments or fees levied on such Participant, and such payment obligation remains unsatisfied for thirty days after its due date, the Company may suspend, revoke, limit, condition, restrict or qualify the Trading Privileges of such Participant as it deems necessary or appropriate. The provisions of Chapter 7 (other than Rule 717) shall not apply to any such suspension, revocation, limitation, condition, restriction or qualification.

**308. Continuing Application of Rules and Jurisdiction**

Any Participant whose Trading Privileges are suspended, revoked or terminated, as well as any Authorized User or EA Trading Customer whose status as such has been suspended, revoked or terminated, shall remain bound by these Rules and Applicable Law and subject to the jurisdiction of the Company with respect to any and all matters arising from, related to, or in connection with, the status, acts or omissions of such Participant, Authorized User or EA Trading Customer arising prior to such suspension, revocation or termination. Such Participant, Authorized User or EA Trading Customer must also cooperate in respect of any disciplinary proceeding arising under Chapter 7 as if its Trading Privileges were not suspended, revoked or terminated.

**309. Recording Communications**

Each of the Company and each Participant may, but is not obliged to, record conversations and retain copies of electronic communications between Officers, employees or agents of the Company, on one hand, and Participants, Authorized Users, Trading Customers and other Persons, on the other hand. Any such recordings or copies thereof may be retained as required by Applicable Law. The RSP will have access to such recordings or copies of electronic communications to the extent required to perform certain regulatory services for the Company pursuant to the Regulatory Services Agreement.

**310. Notices to Participants**

- (a) The Company shall publish a notice with respect to each addition to, modification of, or clarification of, these Rules or of any action to implement any Rules, in a form and manner that is reasonably designed to enable each Participant to become aware of and familiar with, and to implement any necessary preparatory measures to be taken by it with respect to, such addition, modification or clarification prior to the effective date thereof (each a "Notice to Participants"). Each Notice to Participants shall be published prior to the earlier of its filing with the CFTC or the effective date thereof, and in any event within the time frame required under Applicable Law.
- (b) For purposes of publication in accordance with paragraph (a), it shall be sufficient (without limiting the discretion of the Company as to any other reasonable means of communication) if a Notice to Participants is published on the Company's website; provided, however, where practicable to do so, the Company shall also notify the Participant's Authorized Users via the SEF or electronic mail. Any Notice to Participants shall be deemed to have been made to all Participants and Authorized Users.
- (c) Each Introducing Agent and Account Manager is responsible for providing relevant Notices to Participants to each of its Trading Customers or Client Accounts, as applicable, and the Company shall not be responsible or liable for the failure of any

Introducing Agent or Account Manager to provide Notices to Participants to any of its Trading Customers or Client Accounts.

- (d) Participants that have Authorized Users logged into the Order Book with authority to exercise Trading Privileges will be identified on a separate screen on the SEF; such screen shall be identified as the Active Participant List Screen.
- (e) Nothing in this Rule shall in any way limit the authority of the Company to take action in response to an Emergency.

### **311. Communications Between the Company and Participants**

Each Participant must provide the Company with its current electronic mail address and the electronic mail address of each of its Authorized Users and promptly update each such address whenever it changes. All communications between the Company and the Participant will be transmitted by electronic mail (or by telephone confirmed by electronic mail) and/or posted on the SEF or on the Company website, except as otherwise specified by the Company. Each Participant shall be responsible for conveying such communications to its Authorized Users and other Persons to whom the Participant has given its User ID(s). Each Participant will also be responsible for promptly reviewing and, if necessary, responding to all electronic communications from the Company to the Participant or any of its Authorized Users or any Person to whom it has given User ID(s) assigned to it by the Company. The Regulatory Services Provider will have access to such communications to the extent required to perform certain regulatory services to the Company pursuant to the Regulatory Services Agreement. All communications made to a Participant shall also be deemed to have been made to all of its Authorized Users and Trading Customers.

### **312. Withdrawal of Participant**

- (a) To withdraw from the SEF, a Participant must notify the Company in accordance with procedures established by the Company for such purpose.
- (b) Effective upon the date that the Company accepts the withdrawal of a Participant (which withdrawal shall be deemed accepted upon receipt by the Company of written notice of withdrawal), all rights and privileges of such Participant and its Authorized Users shall terminate (including such Participant's Trading Privileges and its Authorized Users' ability to access the SEF) immediately (and the Company may suspend prior to termination if necessary to appropriately effectuate such termination). The withdrawal of a Participant shall not affect the rights of the Company under these Rules or relieve the former Participant of its obligation under the terms of any Swap entered into or otherwise arising under these Rules before the effective date of such withdrawal. A Participant that has withdrawn remains subject to these Rules, the Company requirements and the jurisdiction of the Company for acts done and omissions made while a Participant, and must cooperate in any disciplinary proceeding under Chapter 7 as if the withdrawn Participant were still a Participant.

### **313. Financial or Other Incentive Programs**

The Company may from time to time establish programs that provide Participants with financial or other incentives for meeting trading volume, liquidity or other thresholds as may be established by the Company, including a market making program.



## Chapter 4. TRADING STANDARDS

### 401. Swaps Traded on the SEF

- (a) The Company shall determine which Swaps can be traded from time to time pursuant to these Rules, provided that any determination in respect of listing a Swap for trading pursuant to these Rules shall be submitted to the CFTC as required by the CEA and CFTC Regulations.
- (b) Subject to compliance with the CEA and CFTC Regulations, Swaps traded on the SEF may be Cleared Swaps or Uncleared Swaps.

### 402. Business Days and Trading Hours

The Company shall from time to time determine (a) the Business Days during any particular calendar year and (b) the Trading Hours on such Business Days for any particular Swap available for trading on the SEF. All time references shall be based on local time prevailing in the City of New York, New York. Opening times start on the first second of the minute cited. Closing times end on the last second of the minute cited. Trading Hours may vary among different types of Swaps. The Company may from time to time adopt procedures for the opening or closing of trading in any Swap.

### 403. Price Dissemination and Publication of Trading Information

- (a) The Company shall directly or indirectly transmit data regarding each Swap executed pursuant to these Rules to an SDR in the form and manner, and within the timeframe, required by the CEA and CFTC Regulations. The Company shall transmit Required Swap Creation Data for each Swap executed pursuant to these Rules to the appropriate SDR in the form and manner, and within the timeframe, required by CFTC Regulation 37.901(a). The Company may provide such Required Swap Creation Data to Participants and Authorized Users no earlier than the time it transmits such information to an SDR and in a form that does not disclose the identities, or otherwise facilitate identification, of the parties to the Swap.
- (b) The Company shall publish information as required by CFTC Regulation 37.901(b).

### 404. Execution of Swap Transactions

#### 404.A. Order Book (Minimum Functionality).

- (a) Participants shall have the ability to post Orders on the Order Book in any Swap offered on the SEF in accordance with these Rules, for its own account, the account of any Client Account for whom it acts as an Account Manager, or for the account of any Trading Customer for whom it acts as an Introducing Agent.
- (b) An Introducing Agent seeking to execute a Cross Trade must (i) in the case of an execution by the Introducing Agent as principal against the Trading Customer, enter the Trading Customer's Order into the Order Book at least 15 seconds before entering its Order into the Order Book or (ii), in the case of an execution of two Trading Customers' Orders against each other, enter the Trading Customer whose Order it received first into the Order Book at least 15 seconds before entering the second Trading Customer's Order into the Order Book.

#### 404.B. Order Entry

- (a) Each Authorized User that exercises Trading Privileges shall enter Orders by electronic transmission to the SEF, and the Company shall maintain an electronic record of those

entries. Each Participant shall be responsible for any and all Orders entered by Authorized Users and Trading Customers using User IDs assigned to the Participant by the Company.

- (b) All Orders on the SEF must contain the following information: (i) the instrument description including the Underlying Instrument and Swap expiration date; (ii) whether such Order is a buy or sell Order; (iii) Order type, (iv) price; (v) notional amount; (vi) the User ID of the person entering the Order (viii) such additional information as may be prescribed from time to time by the Company, including the DCO designated to clear the Order and the information required under Rule 414.

#### **404.C. Order Types and Interaction**

- (a) The Company may, in its sole discretion, adopt procedures relating to transactions in Swaps and the types of Orders that may be entered on the SEF with respect to any Swap (which shall be set by the Company from time to time and published by the Company), including establishing limits or minimums on the number and/or size of Orders that may be submitted by a Participant through the SEF or subject to the Rules, and establishing minimum price quoting increments for each Swap.
- (b) Orders are added to the Order Book in price then time priority, and will match continuously when bids can match offers, subject to the Order types established by the Company.

#### **404.D. Required and Permitted Transactions.**

Each transaction in a Swap that does not qualify as a Block Trade, Permitted Package Transaction or Resubmitted Cleared Swap shall be executed on the SEF through the Order Book as described in this Rule 404. Except for Block Trades, Permitted Package Transactions and Resubmitted Cleared Swaps, there is no distinction in the manner in which Required and Permitted Transactions, as defined in the CEA, are posted and executed in the Order Book. Block Trades may be executed in accordance with Rule 411, Permitted Package Transactions may be executed in accordance with Rule 411.A and Resubmitted Cleared Swaps may be executed in accordance with Rule 1005.A.

#### **405. Modification or Cancellation of Orders**

Any Order that has been entered into the SEF may be modified or cancelled unless and until it has been executed or has otherwise expired. Such modification or cancellation will become effective only upon acceptance by the Company of a "Cancel Replace Order" or "Cancel Order," as the case may be, with respect to the original Order, prior to the expiration or execution of such Order. If the Company modifies or cancels an Order under this Rule 405, it will do so in good faith and in a commercially reasonable manner and will provide prior written notice of such modification or cancellation to the affected Participants. Nothing in this Rule shall in any way limit the authority of the Company to take action in response to an Emergency pursuant to Rule 412.

#### **406. Information Regarding Orders**

The Company will make information from the SEF available to Participants and other Persons at such times and in such manner (whether through the SEF, financial information services or otherwise) as it may be required by Applicable Law; provided that Participant Data and other information directly related to a Participant, Trading Customer or Client Account, as applicable, shall not be disclosed by the Company unless permitted by the Participant Documentation, these Rules or Applicable Law. Each Participant or other Person receiving any such information through the SEF may redistribute such information only to such extent and in such manner as may be permitted by the Company in writing from time to time.

#### **407. Price Adjustments by the Company**

(a) *Adjustment Authority.*

The Company may adjust trade prices, solely in accordance with published policies of the Company, when such action is necessary to mitigate market disrupting events caused solely by improper conduct such as market manipulation or clearly erroneous trading behavior (e.g., fat finger). If the Company takes any action pursuant to this Rule 407(a), it will give prompt notice and in any event will use good faith, commercially reasonable efforts to provide the affected Participants with reasonable prior notice and to obtain such Participants' consent to such adjustment. Such Participants, if acting as Introducing Agents, shall be responsible for obtaining consent to such adjustment from their Trading Customer(s).

(b) *Review of Trades.*

The Company may initiate a review of a trade based on its analysis of market conditions or in response to a request for review by a Participant. A request for review that is made by a Participant must be made as soon as practicable but in no event after the end of the Business Day in which such transaction took place. The Company shall promptly determine whether the trade will be subject to review, and upon deciding to review a trade, the Company will promptly issue an alert to all affected Participants indicating that the trade is under review. In the case of Swaps determined by the Company to be illiquid, the Company may initiate a review on its own initiative if it determines that the trade price was significantly out of line with prices in the market at the time of such transaction (based on pricing data that is readily available to the Company). In the course of its review of any trade, the Company may, but is not obligated to, inform any of the parties to the trade of the identity and contact information of any other party to the trade.

#### **408. Position Limits**

(a) The Company may adopt position limits for Swaps executed on the SEF, and grant exemptions from position limits, as it may determine to be necessary and appropriate, in accordance with CFTC Regulations (including notice provisions consistent with Applicable Law). This Rule 408 shall apply in the event that the Company does adopt any such position limits, which limits will be included in these Rules if adopted and prior notice of any such adoption will be provided as a Notice to Participants consistent with Rule 310 and in accordance with Applicable Law.

(b) A Person seeking an exemption from position limits, including limits established pursuant to a previously approved exemption, must file the required application with the Market Regulation Team and receive approval prior to exceeding such limits. Notwithstanding the foregoing, a Person who establishes an exemption-eligible position in excess of position limits and files the required application with the Company shall not be in violation of this Rule provided the filing occurs within one Business Day after assuming the position. In the event the positions in excess of the limits are not deemed to be exemption-eligible, the applicant will be in violation of speculative limits for the period of time in which the excess positions remained open.

(c) The application must be in the form and manner prescribed by the Market Regulation Team and, at a minimum, must: (i) provide a description of the exemption sought, including whether the exemption is for bona fide hedging positions as defined in CFTC Regulation §1.3(z)(1), risk management positions or arbitrage/spread positions; (ii) provide a complete and accurate explanation of the underlying exposure related to the exemption request; (iii) agree to promptly provide, upon request by the Market Regulation Team, information or documentation regarding the Person's application; (iv) agree to comply with all terms, conditions or limitations imposed by the Market Regulation Team

with respect to the exemption; (v) agree that the Market Regulation Team may modify or revoke the exemption at any time; (vi) agree to initiate and liquidate positions in an orderly manner; and (vii) agree to promptly submit a supplemental statement to the Market Regulation Team whenever there is a material change to the information provided in the most recent application.

- (d) Pursuant to Section 4a(a) of the CEA, the CFTC may also from time to time establish position limits for Swaps traded pursuant to these Rules. For any Swap subject to a position limit set by the CFTC, the Company shall not set its position limit at a level higher than the CFTC's limit.
- (e) A Person who exceeds a position limit as a result of maintaining positions in Swaps at more than one Clearing Member shall be deemed to have waived confidentiality regarding its positions and the identity of the Clearing Members at which those positions are maintained if such Person does not remedy the position limit breach on its own as soon as practicable but in no event later than the end of the trading day during which it exceeded such position limit and received notice from the Company thereof.
- (f) Nothing in this Rule shall in any way limit the authority of the Company to take action in response to an Emergency or the authority of the Company to review at any time any position owned or controlled by any Person and, as the Company may deem necessary to comply with Applicable Law, to direct that such position be reduced to the position limit provided by the Company.

#### **409. Position Accountability**

The Company shall adopt position accountability levels for Required Transactions as it may determine to be necessary and appropriate, in accordance with CFTC Regulations (including notice provisions consistent with Applicable Law). Upon adoption of position accountability levels by the Company, a Person who holds or controls aggregate positions in a Swap in excess of such position accountability levels relating to that Swap shall be subject to the following provisions.

- (a) Such Person shall provide, in a timely manner upon request by the Market Regulation Team, information regarding the nature of the position, trading strategy, and hedging information if applicable.
- (b) Such Person shall, if so ordered by the Market Regulation Team, acting in its discretion, liquidate or not increase further the positions which exceed such levels.
- (c) Such positions must be initiated and liquidated in an orderly manner.
- (d) This Rule 409 shall not limit the jurisdiction of the Company to take action that it determines necessary or appropriate in respect of any positions on the SEF.
- (e) Upon request, Participants must provide the Market Regulation Team with information, in a form and manner acceptable to the Market Regulation Team, identifying the owner, any controlling parties and any additional required information for each reportable account.

#### **410. Aggregation of Positions**

For purposes of Rule 408 and Rule 409, positions in Swaps shall be aggregated in accordance with CFTC Regulations.

#### **411. Block Trades**

- (a) The Company may designate any Swap as eligible for bilaterally negotiated Block Trades under this Rule and shall determine the minimum size thresholds for the Swaps in which

Block Trades are permitted. In determining the minimum size threshold, the Company shall take into consideration (to the extent available) the size distribution of transactions in the Swap, the size distribution of transactions in the related cash markets, and all other information relevant to transaction size in the relevant Swap. Participants and Trading Customers may enter into Block Trades, at prices mutually agreed, with respect to Swaps that have been designated by the Company for such purpose, provided that the conditions in this Rule 411 are satisfied. For any Swap subject to a minimum block trade size set by the CFTC, the Company shall not set such minimum size at a level lower than that of the CFTC.

- (b) The following shall govern Block Trades:
  - (i) Each buy or sell Order underlying a Block Trade must state explicitly that it is to be, or may be, executed by means of a Block Trade;
  - (ii) A Block Trade must be for a quantity that is at or in excess of the applicable minimum block size as set forth in this Rule;
  - (iii) The price at which a Block Trade is executed must be fair and reasonable in light of (A) the size of the Block Trade, (B) the prices and sizes of other transactions in the same Swap at the relevant time, (C) the prices and sizes of transactions in other relevant markets at the relevant time, and (D) the circumstances of the markets or the parties to the Block Trade; and
  - (iv) Except as may otherwise be permitted by Applicable Law, Participants or Trading Customers shall not aggregate Orders for different accounts to achieve the minimum block size.
- (c) For Block Trades executed off the SEF pursuant to these Rules and submitted to the Company in accordance with this Rule 411, the Reporting Counterparty to a Block Trade, or the Introducing Agent or Account Manager acting on behalf of such Reporting Counterparty, as applicable, must report the time of execution, counterparty and information required pursuant to Rule 414 for each Block Trade to the Company as soon as technologically practicable following execution of such Block Trade but no later than 10 minutes before the time in which such Block Trade would be publicly disseminated by a SDR. The Company will report Required Swap Creation Data for each Block Trade to the SDR as soon as technologically practicable after such information has been reported to the Company. The Company reserves the right to report the Block Trade even if the non-Reporting Counterparty to the Block Trade has not acknowledged the trade details to the Company within the time prescribed herein.
- (d) The Company may, but is not required to, accept and process a Block Trade where the Reporting Counterparty is a Participant or a Trading Customer of an Introducing Agent or a Client Account of an Account Manager, but the counterparty to the trade is not a Participant or a Trading Customer of an Introducing Agent or a Client Account of an Account Manager, provided that the Reporting Counterparty or its Introducing Agent or Account Manager, as applicable, has entered into the appropriate documentation with the Company that includes a representation by the Reporting Counterparty or its Introducing Agent or Account Manager, as applicable, to the Company that the non-Reporting Counterparty to the Transaction (i) is an Eligible Contract Participant, (ii) has authorized the Reporting Counterparty or its Introducing Agent, as applicable, to report the Block Trade to the Company, and (iii) agrees that such Block Trade will be subject to the Rules and will satisfy any other obligations that the Company may prescribe.

#### **411.A. Package Transactions.**

- (a) The Company may from time to time designate Package Transactions eligible for execution on the SEF, or bilaterally pursuant to this Rule 411.A.
- (b) A Permitted Package Transaction executed on the SEF may be executed by any execution method permitted under Rule 404.
- (c) The following provisions shall govern any Permitted Package Transaction executed bilaterally and submitted to the Company in accordance with this Rule 411.A:
  - (i) The price at which such Permitted Package Transaction is executed must be fair and reasonable in light of (A) the size of the Permitted Package Transaction, (B) the prices and sizes of other transactions in the same Permitted Package Transaction at the relevant time, (C) the prices and sizes of transactions in other relevant markets at the relevant time, and (D) the circumstances of the markets or the parties to the Permitted Package Transaction; and
  - (ii) The Reporting Counterparty to such Permitted Package Transaction, or the Introducing Agent or Account Manager acting on behalf of such Reporting Counterparty, as applicable, must report the time of execution, counterparty and information required pursuant to Rule 414 for each Permitted Package Transaction to the Company as soon as technologically practicable following execution of such Permitted Package Transaction. The Company will report Required Swap Creation Data for the Swap component(s) of each Permitted Package Transaction to the SDR as soon as technologically practicable after such information has been reported to the Company.
- (d) The parties (and any Introducing Agent or Account Manager acting on behalf of either party) to a Permitted Package Transaction designated as eligible for execution on or pursuant to the Rules of the SEF must comply with applicable policies and procedures that may be established from time to time by the Company.
- (e) The Company may, but is not required to, accept and process a Permitted Package Transaction where the Reporting Counterparty is a Participant or a Trading Customer of an Introducing Agent or a Client Account of an Account Manager, but the counterparty to the trade is not a Participant or a Trading Customer of an Introducing Agent or a Client Account of an Account Manager, provided that the Reporting Counterparty or its Introducing Agent or Account Manager, as applicable, has entered into the appropriate documentation with the Company that includes a representation by the Reporting Counterparty or its Introducing Agent or Account Manager, as applicable, to the Company that the non-Reporting Counterparty to the Transaction (i) is an Eligible Contract Participant, (ii) has authorized the Reporting Counterparty or its Introducing Agent, as applicable, to report the Permitted Package Transaction to the Company, and (iii) agrees that such Permitted Package Transaction will be subject to the Rules and will satisfy any other obligations that the Company may prescribe.

#### **412. Emergencies**

- (a) *Emergency Defined.* The term “Emergency” means any occurrence or circumstance that, in the opinion of the Board, the CEO or the Chief Administrative Officer, requires immediate action and threatens or may threaten the fair and orderly trading in, or the liquidation of or delivery pursuant to, any Swap traded pursuant to these Rules. An Emergency may include any of the following:
  - (i) Any manipulative activity or attempted manipulative activity;
  - (ii) Any actual, attempted or threatened corner, squeeze, congestion or undue concentration of positions;

- (iii) Any circumstance that may materially affect the performance of Swaps, including failure of the payment system or the bankruptcy or insolvency of any Participant;
  - (iv) Any action taken by the U.S. federal or any foreign government, any other governmental body, or any other entity or trading facility (foreign or domestic), in each case that may have a direct adverse effect on clearing, settlement or trading on the SEF; and
  - (v) Any circumstance that may have a severe, adverse effect upon the functioning of the SEF.
- (b) *Emergency Authority.* In the event of an Emergency, the Chief Administrative Officer or any individual designated by the Chief Administrative Officer and approved by the Board may place into immediate effect a temporary emergency addition to these Rules which may provide for, or may authorize the Board or any committee thereof to undertake, actions necessary or appropriate to respond to the Emergency, including such actions as:
- (i) imposing or modifying position or price limits;
  - (ii) extending, limiting or changing the Trading Hours in respect of one or more Swaps;
  - (iii) suspending or curtailing trading, or limiting trading to liquidation only, in any or all Swaps;
  - (iv) ordering the liquidation of Swaps or the reduction of positions, provided that, subject to Applicable Law, the Company will use reasonable efforts to coordinate with applicable DCOs before taking any of the actions in this subsection (iv);
  - (v) modifying or suspending any provision of these Rules; and/or
  - (vi) taking market actions as may be directed by the CFTC.

Any such action placed into effect in accordance with the preceding sentence shall be reviewed by the Board as soon as practicable under the circumstances and may be revoked, suspended or modified by the Board. The Company will provide notice of such action to Participants as soon as practicable.

- (c) *Physical Emergency.* If, in the judgment of the CEO, the Chief Administrative Officer, or any individual designated by the CEO or the Chief Administrative Officer and approved by the Board, the physical functions of the SEF are, or are threatened to be, severely and adversely affected by a physical emergency, such Person shall have authority to take such action as he may deem necessary or appropriate to respond to such physical emergency, including closing the SEF, delaying the opening of trading in one or more Swaps or suspending trading in or extending Trading Hours for one or more Swaps. In the event that any action has been taken pursuant to the immediately preceding sentence, any Person who is authorized to take such action may order the removal of any restriction previously imposed pursuant to such sentence, upon a determination by such Person that the physical emergency that gave rise to such restriction has sufficiently abated to permit the physical functions of the SEF to continue in an orderly manner. Any Order by any Person shall be subject to review, modification or reversal by the Board. In the event that trading is suspended in any or all Swaps, any unexecuted Orders for the suspended Swaps that are currently resting in the SEF will automatically be cancelled and must be resubmitted upon resumption of trading in the affected Swaps.
- (d) *Notification and Recording.*
- (i) The Company will use reasonable efforts to notify the CFTC prior to implementing, modifying or terminating a rule pursuant to Rule 412(b). If such

prior notification is not practicable, the Company will notify the CFTC as soon as reasonably practicable, but in all circumstances within 24 hours of the implementation, modification or termination of such Emergency Rule.

- (ii) Whenever the Company takes action pursuant to this Rule 412 to respond to an Emergency it will, where practicable, ensure that prompt notice is given to Participants.
  - (iii) Upon taking any action in response to an Emergency, the Company shall document the decisions and deliberations related to such action. Such documentation will be maintained for at least five years following the date on which the Emergency ceases to exist or to affect the Company, and all such documentation will be provided to the CFTC upon request.
  - (iv) When the Company determines that the Emergency has been reduced sufficiently to allow the Company to resume normal functioning, any such actions will be modified or terminated, as appropriate, and notice, when practicable, will be given to Participants.
- (e) *Conflicts of Interest.* The conflict of interest provisions set forth in Rule 214 and the related documentation requirements set forth in Rule 214 shall apply, with any such modifications or adaptations as may be necessary or appropriate under the circumstances, to the taking of any action under this Rule 412 by the CEO, the Chief Administrative Officer or his designee.
- (f) If the Emergency is related to a Swap that is fungible with financial products traded on another swap execution facility or a designated contract market, the Company will endeavor to coordinate its response with any directions received from the CFTC.

#### **413. Limitation of Liability**

- (a) EXCEPT AS PROVIDED BELOW OR AS PROVIDED IN THE PARTICIPANT DOCUMENTATION, NEITHER THE COMPANY, NOR ANY AFFILIATE OF THE COMPANY, NOR ANY OF THEIR RESPECTIVE MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES, EQUITYHOLDERS, AGENTS, CONSULTANTS OR SERVICE PROVIDERS (INCLUDING ANY REGULATORY SERVICES PROVIDER), NOR ANY MEMBER OF ANY COMMITTEE OR OTHER GOVERNING BODY OF ANY AFFILIATE OF THE COMPANY (EACH OF THE FOREGOING, AS APPLICABLE, THE "DISCLAIMING PARTY" AND, COLLECTIVELY, "DISCLAIMING PARTIES"), SHALL BE LIABLE TO ANY PERSON FOR ANY LOSSES ARISING OUT OF OR IN CONNECTION WITH:
- (i) ANY FAILURE, MALFUNCTION, FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY, INTERRUPTION, TERMINATION, OR ANY OTHER EVENT, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OPERATION, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF THE SEF OR ANY OTHER SYSTEMS AND SERVICES OF THE COMPANY, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS AND SERVICES, INCLUDING WITHOUT LIMITATION, ELECTRONIC ORDER ENTRY AND DELIVERY, TRADING THROUGH ANY ELECTRONIC MEANS, ELECTRONIC COMMUNICATION OF MARKET DATA OR INFORMATION, WORKSTATIONS USED BY PARTICIPANTS, TRADING CUSTOMERS, AUTHORIZED USERS AND CLEARING MEMBERS, PRICE REPORTING SYSTEMS AND ANY AND ALL TERMINALS, COMMUNICATIONS NETWORKS, CENTRAL COMPUTERS, SOFTWARE, HARDWARE AND FIRMWARE RELATING THERETO; OR
  - (ii) ANY FAILURE OR MALFUNCTION, FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY, INTERRUPTION OR TERMINATION, OR ANY OTHER EVENT, OF ANY SYSTEM OR SERVICE OF THE COMPANY, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, CAUSED BY ANY THIRD PARTIES INCLUDING,



BUT NOT LIMITED TO, INDEPENDENT SOFTWARE VENDORS AND NETWORK PROVIDERS;  
OR

- (iii) ANY ERRORS OR INACCURACIES IN INFORMATION PROVIDED BY THE COMPANY OR ANY OF THE COMPANY'S SYSTEMS, SERVICES OR FACILITIES; OR
- (iv) ANY UNAUTHORIZED ACCESS TO OR UNAUTHORIZED USE OF ANY OF THE COMPANY'S SYSTEMS, SERVICES, EQUIPMENT OR FACILITIES BY ANY PERSON.

THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY WHETHER A CLAIM IS BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY AND NEGLIGENT MISREPRESENTATION), RESTITUTION, BREACH OF STATUTORY DUTY, BREACH OF WARRANTY OR OTHERWISE AND WITHOUT REGARD TO WHETHER THE CLAIM IS BROUGHT DIRECTLY OR AS A THIRD-PARTY CLAIM, UNLESS THE DISCLAIMING PARTY HAS BEEN FINALLY ADJUDICATED BY A COURT OF COMPETENT JURISDICTION TO HAVE ENGAGED IN FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

- (b) THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS PROVIDED BY THE COMPANY OR ANY OTHER DISCLAIMING PARTIES, RELATING TO ANY SYSTEMS OR SERVICES OF THE COMPANY OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, INCLUDING THE SEF, AND THE COMPANY HEREBY SPECIFICALLY DISCLAIMS, OVERRIDES AND EXCLUDES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, CONDITIONS, OTHER CONTRACTUAL TERMS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES WITH RESPECT TO THE SERVICES, WHETHER EXPRESS, IMPLIED OR STATUTORY, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY THE COMPANY OR ANY OTHER DISCLAIMING PARTY OR OTHERWISE (INCLUDING BUT NOT LIMITED TO, AS TO TITLE, SATISFACTORY QUALITY, ACCURACY, COMPLETENESS, UNINTERRUPTED USE, NON-INFRINGEMENT, TIMELINESS, TRUTHFULNESS, SEQUENCE AND ANY IMPLIED WARRANTIES, CONDITIONS AND OTHER CONTRACTUAL TERMS ARISING FROM TRANSACTION USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE) RELATING TO ANY SYSTEMS OR SERVICES OF THE COMPANY OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, INCLUDING THE SEF.
- (c) UNLESS THE COMPANY HAS BEEN FINALLY ADJUDICATED BY A COURT OF COMPETENT JURISDICTION TO HAVE ENGAGED IN FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, THE COMPANY'S TOTAL COMBINED AGGREGATE LIABILITIES SHALL NOT EXCEED \$100,000 FOR ALL LOSSES FROM ALL CAUSES SUFFERED BY ALL PERSONS ON A SINGLE DAY; \$200,000 FOR ALL LOSSES SUFFERED BY ALL PERSONS FROM ALL CAUSES IN A SINGLE CALENDAR MONTH; AND \$1,000,000 FOR ALL LOSSES FROM ALL CAUSES SUFFERED BY ALL PERSONS IN A SINGLE CALENDAR YEAR. IF THE NUMBER OF ALLOWED CLAIMS ARISING OUT OF ANY FAILURES OR MALFUNCTIONS ON A SINGLE DAY OR SINGLE MONTH CANNOT BE FULLY SATISFIED BECAUSE OF THE ABOVE DOLLAR LIMITATIONS, ALL SUCH CLAIMS SHALL BE LIMITED TO A PRO RATA SHARE OF THE MAXIMUM AMOUNT FOR THE RESPECTIVE PERIOD. IN NO EVENT SHALL THE TOTAL COMBINED AGGREGATE LIABILITY OF THE DISCLAIMING PARTIES FOR ALL CLAIMS ARISING OUT OF ANY FAILURES, MALFUNCTIONS, FAULTS IN DELIVERY, DELAYS, OMISSIONS, SUSPENSIONS, INACCURACIES, INTERRUPTIONS, TERMINATIONS OR ANY OTHER CAUSES IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OPERATION, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF ANY OF THE COMPANY'S SYSTEMS OR SERVICES, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, INCLUDING THE SEF, OR THE NEGLIGENCE OF THE COMPANY OR ANY DISCLAIMING PARTY EXCEED \$1,000,000 IN ANY GIVEN CALENDAR YEAR.
- (d) UNDER NO CIRCUMSTANCES SHALL THE COMPANY BE LIABLE TO A PARTICIPANT, AUTHORIZED USER, TRADING CUSTOMER, CLIENT ACCOUNT OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY LOSS OR PUNITIVE DAMAGES OF ANY KIND, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT

LIABILITY, BREACH OF WARRANTIES OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF REVENUE, LOSS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF CONTRACTS, LOSS OF THE USE OF MONEY, LOSS OF ANTICIPATED SAVINGS, LOSS OF BUSINESS, LOSS OF OPPORTUNITY, LOSS OF MARKET SHARE, LOSS OF GOODWILL, LOSS OF REPUTATION OR LOSS OF, DAMAGE TO OR CORRUPTION OF DATA, HOWEVER SUFFERED OR INCURRED, REGARDLESS OF WHETHER THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR WHETHER SUCH DAMAGES OTHERWISE COULD HAVE BEEN FORESEEN OR PREVENTED.

- (e) UNDER NO CIRCUMSTANCES SHALL THE COMPANY BE LIABLE FOR THE ACTS, ERRORS OR OMISSIONS OF ANY THIRD PARTY, INCLUDING ANY MARKET DATA VENDOR, SDR OR DCO, OTHER THAN THE RSP ACTING IN ITS CAPACITY AS SUCH.
- (f) IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE TERMS OF THE PARTICIPANT DOCUMENTATION AND THIS RULE, THE TERMS OF THE PARTICIPANT DOCUMENTATION SHALL SUPERSEDE THIS RULE AND SHALL GOVERN THE LIABILITY OF THE COMPANY TO THE PARTICIPANT.
- (g) ANY DISPUTE ARISING OUT OF THE USE OF THE SYSTEMS OR SERVICES OF THE COMPANY OR SERVICES, EQUIPMENT, OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, INCLUDING THE SEF, IN WHICH ONE OR MORE DISCLAIMING PARTIES IS A PARTY SHALL BE ARBITRATED PURSUANT TO THESE RULES IN CHAPTER 8, AND REFERENCES IN CHAPTER 8 TO A "PARTICIPANT" SHALL, TO THE EXTENT RELEVANT, BE DEEMED FOR SUCH PURPOSE TO MEAN AND INCLUDE THE DISCLAIMING PARTIES. ANY SUCH CLAIM AGAINST A DISCLAIMING PARTY SHALL BE BROUGHT WITHIN ONE YEAR FROM THE TIME THAT A CAUSE OF ACTION HAS ACCRUED. THIS PARAGRAPH (G) SHALL IN NO WAY BE CONSTRUED TO CREATE A CAUSE OF ACTION AND SHALL NOT AUTHORIZE AN ACTION THAT WOULD OTHERWISE BE PROHIBITED BY THESE RULES. IF FOR ANY REASON, A COURT OF COMPETENT JURISDICTION FINDS THAT A DISPUTE IS NOT ARBITRABLE, SUCH DISPUTE MAY BE LITIGATED ONLY IN ACCORDANCE WITH RULE 1113.

#### **414. Requirements for Persons Submitting Orders**

- (a) Each Order submitted to the SEF shall be submitted under the applicable User ID of the Authorized User or Participant, as applicable, entering or intermediating such Order.
- (b) Each Order submitted to the SEF shall include information identifying the relevant Swap (including the delivery or expiry month), price, notional amount of the Swap, correct CTI code (as described in Rule 615), buy or sell, appropriate account designation, and, as applicable, Clearing Member(s), Derivatives Clearing Organization and Order type.
- (c) Each Order submitted to the SEF shall include the following information for the Participant entering or intermediating such Order (to the extent such information is not otherwise pre-populated):
  - (i) the legal entity identifier of such Participant or, if the Participant is acting as an Introducing Agent, the legal entity identifier of the underlying Trading Customer;
  - (ii) a yes/no indication of whether such Participant or, if the Participant is acting as an Introducing Agent, whether the underlying Trading Customer, is a swap dealer with respect to the Swap for which the Order is placed;
  - (iii) a yes/no indication of whether such Participant or, if the Participant is acting as an Introducing Agent, whether the underlying Trading Customer, is a major swap participant with respect to the Swap for which the Order is placed;
  - (iv) a yes/no indication of whether such Participant or, if the Participant is acting as an Introducing Agent, whether the underlying Trading Customer, is a financial entity;

- (v) a yes/no indication of whether such Participant or, if the Participant is acting as an Introducing Agent, whether the underlying Trading Customer, is a U.S. person;
- (vi) an indication of whether such Participant or, if the Participant is acting as an Introducing Agent, whether the underlying Trading Customer, will elect the clearing requirement exception in CEA Section 2(h)(7) for any Swap resulting from the Order; and
- (vii) if the Swap (or Swap component(s) of a Package Transaction) will be allocated:
  - (A) an indication that the Swap(s) will be allocated; and
  - (B) if the Swap is allocated pre-execution, the account and legal entity identifiers for each Client Account that will receive allocations.
- (d) Post-allocation Swaps shall be respectively effected and reported in accordance with the rules of the Derivatives Clearing Organization and Swap Data Repository and in accordance with CFTC Regulations.
- (e) As used in this Rule 414, “legal entity identifier,” “swap dealer,” “major swap participant,” “financial entity,” “unique swap identifier” and “U.S. person” have the meaning given those terms in the CEA and CFTC Regulations and, as applicable, exemptive or no-action relief or interpretive guidance issued by the CFTC or its staff.

**415. User IDs**

- (a) No Person may use a User ID to place any Order except as permitted by these Rules, nor may any Person knowingly permit or assist the unauthorized use of a User ID. Each Participant shall take reasonable measures to ensure that no assigned User ID is used by any Person not authorized by these Rules.
- (b) No Person shall submit to the SEF any Order using the User ID of any other Person, unless the Person submitting the Order is an authorized EA Trading Customer of an Introducing Agent or one of its Authorized Users.
- (c) Each Participant shall provide in writing to the Company, and keep current such information as the Company may require concerning itself and each of its Authorized Users or any other Person it permits to have direct access, including Trading Customers who have been granted Electronic Access to the SEF by using its User ID.
- (d) Any request that the Company activate or deactivate a User ID shall be submitted in writing by a Designated Contact of the relevant Participant in the manner provided for by the Company. The Company shall have no liability for any action or inaction due to its good faith reliance upon such a written request or for any communication system failure.
- (e) Each Participant shall notify the Market Regulation Team promptly upon becoming aware of:
  - (i) any unauthorized disclosure or use of any User ID assigned to such Participant or any of its Authorized Users or Trading Customers and of any other reason for deactivating a User ID assigned to such Participant or any of its Authorized Users;
  - (ii) any unauthorized disclosure or use of any User ID assigned to an Authorized User of such Participant and of any other reason for deactivating a User ID assigned to an Authorized User of such Participant;

- (iii) any unauthorized access to the SEF by any Person using a User ID assigned to such Participant or any of its Authorized Users; or
- (iv) any unauthorized access to the SEF by any Person using a User ID assigned to an Authorized User of such Participant.

**416. Designated Contact**

Each Participant shall (i) identify in writing to the Company one or more Designated Contacts as the Company may determine, and (ii) ensure that at least one of its Designated Contacts is available by telephone at any time one of its Authorized Users is accessing the SEF.

**417. Message Traffic**

The Company may at any time restrict or establish utilization fees in respect of Message Traffic, either with respect to all or any Participants, Authorized Users and/or Trading Customers in order to safeguard the security or operations of the SEF, or to preserve market integrity, fair and orderly trading, or if otherwise in the public interest.

**418. Workup Protocol**

The Company may adopt rules and implement trading protocols from time to time to allow Participants to engage in workup sessions following the execution of trades pursuant to Rule 404 and as may be permitted by CFTC Regulations.

## Chapter 5. OBLIGATIONS OF PARTICIPANTS, AUTHORIZED USERS AND TRADING CUSTOMERS

### 501. Duties and Responsibilities of Participants, Authorized Users and Trading Customers

- (a) Each Participant, Authorized User and Trading Customer shall:
  - (i) use the SEF in a responsible manner and not for any improper purpose;
  - (ii) use the SEF only to conduct business that is subject to these Rules and in a manner consistent with these Rules;
  - (iii) comply with these Rules, submit to the jurisdiction of the Company to enforce these Rules and act in a manner consistent with these Rules;
  - (iv) comply with the rules of the DCO that accepts for clearing a Swap traded by the Participant, Authorized User or Trading Customer, pursuant to these Rules, to the extent applicable to such Participant, Authorized User or Trading Customer, and such Swap;
  - (v) observe high standards of market conduct, fair dealing, and just and equitable principles of trade while conducting or seeking to conduct any business connected with or concerning the Company;
  - (vi) not knowingly mislead or conceal any material fact or matter required to be disclosed in any dealings or filings with the Company or in connection with a disciplinary proceeding; and
  - (vii) keep all User IDs, account numbers and passwords related to the SEF confidential.
- (b) Each Participant or Trading Customer that is registered, or required to be registered, with the CFTC as a swap dealer or a major swap participant is responsible for compliance with the mandatory trading requirement of Section 2(h)(8) of the CEA when such Participant or Trading Customer enters into, or facilitates entry into, a Swap that is made available to trade within the meaning of Section 2(h)(8) of the CEA and that is required to be cleared pursuant to Section 2(h)(2)(D) of the CEA and CFTC Regulation 50.2.
- (c) Participants and Trading Customers shall comply with all applicable anti-spoofing policies for Swaps which the Company posts on the SEF or sets forth in Notices to Participants from time to time.

### 502. Required Notices

- (a) Each Participant shall promptly notify the CCO upon becoming aware of any of the following events, in each case, with respect to the Participant's status, and the status of its Authorized Users or Trading Customers, which relates to or may affect its or their participation or conduct on the SEF:
  - (i) any material changes to information provided to the Company in connection with an application for Participant or Authorized User status or EA Trading Customer approval;
  - (ii) any refusal of admission to any self-regulatory organization, or withdrawal of an application for membership or participant status in a self-regulatory organization, by the Participant or any of its Authorized Users or EA Trading Customers;
  - (iii) any expulsion, suspension or fine in excess of \$[50,000] (whether through an adverse determination, voluntary settlement or otherwise) imposed on the

- Participant or any of its Authorized Users or EA Trading Customers, by any self-regulatory organization;
- (iv) any denial or withdrawal of an application for registration or license with respect to the Participant or any of its Authorized Users or EA Trading Customers by or from any government agency or self-regulatory organization, and any revocation, suspension or conditioning of a registration or license granted by any government agency or self-regulatory organization to the Participant or any of its Authorized Users or EA Trading Customers;
  - (v) the commencement of any judicial or administrative proceeding against the Participant or any of its Authorized Users or EA Trading Customers by a government agency or the imposition of a fine in excess of \$[50,000], cease and desist order, denial of Trading Privileges, censure or other sanction or remedy (whether through an adverse determination, voluntary settlement or otherwise) imposed by any government agency or self-regulatory organization;
  - (vi) the indictment or conviction of, or any confession of guilt or plea of guilty or *nolo contendere* by, the Participant or any of its Authorized Users or EA Trading Customers, senior officers or principals for any felony or for any misdemeanor involving, arising from, or related to, the purchase or sale of any Swap or other financial instrument, or involving or arising from fraud or moral turpitude;
  - (vii) the bankruptcy or insolvency of the Participant or any of its Affiliates or Trading Customers; and
  - (viii) the failure of any Participant or any of its Trading Customers to be an Eligible Contract Participant.
- (b) Each Participant shall promptly notify the Company upon becoming aware of an error or omission in Required Swap Creation Data for a Swap executed on or pursuant to the Rules of the SEF. If such error or omission relates to a Block Trade or Permitted Package Transaction,, the Participant shall also promptly notify the counterparty to such Block Trade or Permitted Package Transaction upon becoming aware of such error or omission.

### **503. Books and Records; Cooperation in Proceedings**

- (a) Each Participant, Authorized User, and Trading Customer shall prepare and keep current all books, ledgers and other similar records required to be kept by it, or by such Trading Customer, as applicable, pursuant to the CEA, CFTC Regulations and these Rules, and shall prepare and keep current such other books and records and adopt such forms as the Company may from time to time prescribe. Such books and records shall be made available to the Company and its authorized representatives during regular business hours and the Company agrees to adhere to Participant's reasonable logical and physical access and security procedures, and with respect to the CFTC, the Department of Justice and their respective authorized representatives, upon request in accordance with Applicable Law.
- (b) Each Participant, Authorized User, and Trading Customer shall provide the RSP with the same access to its books and records and offices as it is required to provide the Company under these Rules and Applicable Law.
- (c) Upon reasonable prior notice, the Company may require a Participant, its Authorized User(s) or Trading Customer(s) to furnish, such information concerning the Participant's, Authorized User's or Trading Customer's business that is subject to these Rules as the Company deems necessary to enable it to perform its obligations under Applicable Law, including information relating to (i) Swaps executed on the SEF, including the information required under CFTC Regulation 37.404(b), and (ii) information requested by a

government agency relating to the Company and/or the Company's compliance with Applicable Law that the Company believes is maintained by, or otherwise in the possession of, a Participant, Authorized User or Trading Customer.

- (d) All data and information provided to or obtained by the Company pursuant to this Rule 503 shall be subject to the provisions of Rule 1106.

#### **504. System Security**

Each Participant shall (i) be solely responsible for controlling and monitoring the use of all User IDs issued to it, or its Authorized Users or Trading Customers by the Company, (ii) ensure that each Person accessing the SEF using such User IDs is assigned a unique password and that each password is used only by the Person to whom it is assigned, and (iii) notify the Company promptly upon becoming aware of any unauthorized disclosure or use of the User IDs or passwords or of any other reason for deactivating User IDs or passwords. Each Participant shall be bound by any actions taken through the use of its User IDs or passwords, including the execution of transactions, whether or not such actions were authorized by such Participant or any of its Authorized Users or executed by anyone other than an Authorized User or EA Trading Customer of such Participant, except to the extent that (a) Participant has notified the Company in writing that such User ID or password should be canceled or suspended and the Company has not taken appropriate actions within a reasonable time to cancel or suspend such User ID or password, or (b) unauthorized use of the User ID or password is the direct result of gross negligence or willful misconduct by the Company.

#### **505. Front-End User Interface; Audit Trail**

- (a) Each Participant shall be solely responsible for ensuring that any front-end interface connecting to the SEF that is not provided by the Company, and that is used by the Participant, its Authorized Users, EA Trading Customers or any other Person using its User IDs, maintains a routing/front-end audit trail for all Orders, including entry, modification, cancellation and responses to such messages, entered into the SEF through any gateway to the SEF, including the times thereof to the highest level of precision achievable by the Participant's operating system, but at least to the nearest second ("Audit Trail"). Data that are so captured must not be capable of being modified.
- (b) Participants shall maintain, or shall cause other third parties to whom they have provided connectivity to the SEF to maintain, Audit Trail data in the form and manner required by CFTC Regulations and in accordance with such additional requirements as may be established by the Company. Participants must have the ability to produce such data, or cause such data to be produced, in a standard format upon request of the Market Regulation Team.

#### **506. Financial Requirements**

Each Participant must notify the Company promptly upon becoming aware that it, or any of its Trading Customers, fails to satisfy the minimum financial requirements applicable to it in order to participate on the SEF, including the requirement to qualify as an Eligible Contract Participant. Upon request by the Company, Participants shall submit financial and related information for itself and its Trading Customers to the Company and the RSP sufficient to demonstrate that it or its Trading Customers, as applicable, qualify as an Eligible Contract Participant(s). A Participant that is unable to demonstrate to the Company that (a) it is in compliance with such minimum financial requirements shall not engage in transactions subject to these Rules except for the purpose of closing open positions or (b) one of its Trading Customers is in compliance with such minimum financial requirements shall not engage in transactions on behalf of such Trading Customer subject to these Rules except for the purpose of closing open positions.

**507. Restrictions on Activity**

If the Company determines that the financial or operational condition of a Participant, Trading Customer or one of its Affiliates is such that to allow that Participant or Trading Customer to continue to have access to the SEF would adversely affect the Company or the financial markets, the Company may limit or restrict the number or type of Swaps that may be traded by such Participant or Trading Customer on the SEF or terminate, in whole or in part, the Trading Privileges of such Participant or such Trading Customer's Introducing Agent(s), as well as the exercise of such Trading Privileges by its or their Authorized Users.

**508. Disaster Recovery; Business Continuity**

- (a) Each Participant shall have written disaster recovery and business continuity policies and procedures in place in accordance with Applicable Law.
- (b) In the event Participant does not have independent obligations to maintain disaster recovery and business continuity policies and procedures under Applicable Law, the Company may prescribe additional and/or alternative requirements for a Participant's compliance with this Rule.



## Chapter 6. BUSINESS CONDUCT

### 601. Rule Violations

It shall be a violation of these Rules for a Participant to violate any written agreement made with the Company.

### 602. Just and Equitable Principles of Trade

It shall be a violation of these Rules for a Participant, Authorized User or Trading Customer to engage in conduct inconsistent with just and equitable principles of trade.

### 603. Fraudulent Acts

No Participant, Authorized User, Trading Customer, or other Person shall engage in any fraudulent act or engage in any scheme to defraud, deceive, trick or mislead another person (including the Company or the RSP) in connection with or related to any Swap or other activity related to the SEF.

### 604. Fictitious Transactions Prohibited

No Participant, Authorized User, Trading Customer, or other Person shall engage in fictitious transactions, or submit a fictitious Order, with knowledge of its nature.

### 605. Market Disruption Prohibited

Orders entered into the SEF for the purpose of upsetting the equilibrium of the market in any Swap or creating a condition in which prices do not or will not reflect market values (based on market conditions and prices at the time such Order is entered into the SEF, as determined by reference to available market data) are prohibited, and any Participant, Authorized User, or Trading Customer who makes or assists in entering any such Order with knowledge of the purpose thereof or who, with such knowledge, in any way assists in carrying out any plan or scheme for the entering of any such Order will be deemed to have engaged in an act detrimental to the Company.

### 606. Market Manipulation Prohibited

No Participant, Authorized User, or Trading Customer or other Person shall manipulate or attempt to manipulate the market in any Swap.

### 607. Disruptive Trading Practices Prohibited

No Participant, Authorized User, or Trading Customer shall engage in any trading practice or conduct that constitutes a "disruptive trading practice," as such term is described in Section 4c(a)(5) of the CEA and CFTC Regulations.

### 608. Prohibition of Misstatements

It shall be a violation of these Rules for a Participant, Authorized User, Trading Customer or other Person to make any knowing misstatement of a material fact to the Company (including the Board, any Standing Committee, any other committee of the Company, any Disciplinary Panel or Appeals Panel or any Company Official) or to the RSP (including any members of its staff) or knowingly to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading.

**609. Acts Detrimental**

It shall be a violation of these Rules for a Participant, Authorized User, Trading Customer or other Person to engage in any act which is materially detrimental to the Company's ability to operate the SEF or comply with Applicable Law.

**610. Supervision**

A Participant shall be responsible for establishing, maintaining and administering supervisory procedures that are reasonably designed to ensure that its Authorized Users comply with these Rules. A Participant may be held accountable for the actions of its Authorized Users.

**611. Disclosing Orders**

Except as otherwise permitted by these Rules, no Participant or any Authorized User or Trading Customer shall disclose to any Person that is not acting on behalf of such Participant or Trading Customer the terms of any Order prior to its entry into the SEF, other than (i) an Authorized User of the same Participant for the sole purpose of executing or recording such Order, (ii) a Company Official, (iii) the RSP, the CFTC, the Department of Justice or any other regulatory or self-regulatory organization with jurisdiction over the Company or such Participant or Trading Customer, or (iv) the Client Account(s) or Trading Customer(s) on behalf of which such Participant is acting as Account Manager or Introducing Agent with respect to such Order.

**612. Customer Swap Execution**

- (a) An Authorized User shall not enter an Order into the SEF for an Introducing Agent's own account when such Authorized User knows that the Introducing Agent is in possession of a request from a Trading Customer to submit an Order for the same Swap, which request has not been executed, cancelled or expired.
- (b) Neither an Introducing Agent nor any of its Authorized Users shall withhold or withdraw from the SEF any Order for the benefit of any Person other than the Trading Customer placing the Order.
- (c) An Introducing Agent shall, as soon as is technologically practicable, enter into the SEF as an Order, based on the Trading Customer's instruction, all executable trading instructions received from its Trading Customers, unless the Trading Customer has requested that the transaction be executed as a Block Trade pursuant to Rule 411 or as a Permitted Package Transaction pursuant to Rule 411.A. If such trading instruction cannot be immediately entered into the SEF, an electronic record that includes the account identifier of the Trading Customer, time of receipt, and terms of the trading instruction, must immediately be created, and the trading instruction must be entered into the SEF as soon as practicable thereafter.
- (d) Non-discretionary executable trading instructions of a Trading Customer received by an Introducing Agent shall be entered into the SEF as Orders, based on the Trading Customer's instruction, in the sequence received, unless the Trading Customer has requested that the transaction be executed as a Block Trade pursuant to Rule 411 or as a Permitted Package Transaction pursuant to Rule 411.A. Non-discretionary trading instructions that cannot be immediately entered must be entered when the trading instructions become executable, in the sequence in which the trading instructions were received.
- (e) Cross Trades must satisfy Rule 404.A(b).

**613. Wash Sales Prohibited**

No Person shall buy and sell a Swap, place or accept buy and sell Orders in the same Swap, or knowingly execute or accommodate the execution of such Orders by direct or indirect means, if the Person knows or reasonably should know that the purpose of the transactions is to avoid taking a bona fide market position exposed to market risk. Buy and sell Orders for different accounts with common Beneficial Ownership that are entered with the intent to negate market risk or price competition shall also be deemed to violate this Rule.

**614. “Money passing,” Pre-Arranged and Noncompetitive Transactions Prohibited**

- (a) No Person may enter Orders the purpose of which is to enter into Swaps without a net change in either party’s open positions but a resulting profit to one party and a loss to the other party, commonly known as a “money pass.”
- (b) No Person shall pre-arrange any purchase or sale or noncompetitively execute any transaction on or pursuant to the Rules of the SEF.
- (c) The provisions of paragraph (b) shall not apply to (i) Cross Trades executed in accordance with Rule 404.A(b), (ii) Block Trades executed in accordance with Rule 411, (iii) Permitted Package Transactions executed in accordance with Rule 411.A(c), or (iv) Resubmitted Cleared Swaps executed in accordance with Rule 1005.A.

**615. Recordkeeping**

- (a) Each Participant, Authorized User or EA Trading Customer must include one of the following customer type indicator (“CTI”) codes with each Order:
  - (i) CTI 1 - Transactions initiated and executed by a Participant for its own account, for an account it controls or for an account in which it has an ownership or financial interest.
  - (ii) CTI 2 - Transactions executed for the proprietary account (as such term is defined in CFTC Regulation 1.3(y)) of a Participant or Clearing Member.
  - (iii) CTI 3 - Transactions in which a Participant or Authorized User is trading (i) for the personal account of another Participant that is an individual or for the personal account of an Authorized User, (ii) for an account that is controlled by such other Participant or Authorized User, or (iii) for an account in which such other Participant or Authorized User has an ownership or financial interest.
  - (iv) CTI 4 - Any transaction not within the definition of CTI 1, 2 or 3, including transactions entered into on behalf of Trading Customers.
- (b) CTI 2 will be the default CTI code for all Orders but each Participant, Authorized User or Trading Customer may assign a different CTI to its Orders.

**616. Reporting Counterparty**

The Reporting Counterparty for each Swap shall be established pursuant to CFTC Regulation 45.8 and in accordance with compliant industry practice.

## Chapter 7. DISCIPLINE AND ENFORCEMENT

### 701. General

- (a) All Persons subject to the Company's jurisdiction under Rule 301 are subject to this Chapter 7 if they, or with respect to a Participant, any other Person using any of its User IDs, are alleged to have violated, or to have aided and abetted a violation of, or are about to violate, any Rule or any provision of Applicable Law for which the Company possesses disciplinary jurisdiction.
- (b) The Company, through the Market Regulation Team and the Disciplinary Panel, will conduct inquiries, investigations, disciplinary proceedings and appeals from disciplinary proceedings, summary impositions of fines, summary suspensions or other summary actions in accordance with this Chapter 7. Members of the Market Regulation Team shall not operate under the control of any person with the ability to exercise Trading Privileges.
- (c) The Company may delegate any or all of its powers or responsibilities under this Chapter 7 to the RSP, which may take any action on behalf of the Company that the Company is permitted to take hereunder; provided, however, that the Company shall retain supervisory authority with respect to such powers and responsibilities and will document instances where its actions differ in any material respect from those recommended by the RSP. In the event of any such delegation, references to the Market Regulation Team in this Chapter 7 shall be construed to be references to the RSP.
- (d) No Company Official or member of the Board will interfere with or attempt to influence the process or resolution of any inquiry, investigation, disciplinary proceeding, appeal from a disciplinary proceeding, summary imposition of fines, summary suspension or other summary action, except where such individual is a member of the enforcement staff or a member of the relevant Disciplinary Panel.
- (e) Any Participant, Authorized User, or Trading Customer may be represented by counsel at their own expense during any inquiry, investigation, disciplinary proceeding, appeal from a disciplinary proceeding, summary imposition of fines, summary suspension or other summary actions pursuant to this Chapter 7.
- (f) The Company may hold a Participant liable for, and impose sanctions against, such Participant for such Participant's own acts and omissions, the acts or omissions of the Participant's Authorized Users, or the acts or omissions of any Person or API using a User ID of such Participant or any of its Authorized Users, provided, however, that a Participant shall not be liable for the acts and omissions of a Trading Customer if the Participant took reasonable steps to ensure that its activities on behalf of the Trading Customer, and the activities of its Trading Customer, related to the SEF, wherever conducted, complied with all Applicable Law.

### 702. Inquiries and Investigation

- (a) The Market Regulation Team will investigate any matter within the Company's disciplinary jurisdiction of which it becomes aware. The Market Regulation Team will determine the nature and scope of its inquiries and investigations within its sole discretion and will function independently of any commercial interests of the Company.
- (b) The Market Regulation Team has the authority to:
  - (i) initiate and conduct inquiries and investigations;
  - (ii) prepare Investigation Reports and make recommendations concerning initiating disciplinary proceedings;
  - (iii) prosecute alleged violations within the Company's disciplinary jurisdiction; and

- (iv) represent the Company on an appeal to an Appeal Panel of any disciplinary proceeding, summary imposition of fines, summary suspension or other summary action.
- (c) Each Participant, Authorized User, Trading Customer or other Person with respect to Orders or transactions on the SEF:
  - (i) is obligated to appear, testify and respond in writing to interrogatories within the time period required by the Market Regulation Team in connection with:
    - (A) any Rule;
    - (B) any inquiry or investigation; or
    - (C) any preparation by and presentation during a disciplinary proceeding or appeal from a decision in a disciplinary proceeding, summary imposition of fines, summary suspension or other summary action by the Company;
  - (ii) is obligated to produce books, records, papers, documents or other tangible evidence in his possession, custody or control within the time period required by the Market Regulation Team in connection with:
    - (A) any Rule;
    - (B) any inquiry or investigation; or
    - (C) any preparation by and presentation during a disciplinary proceeding or appeal from a decision in any disciplinary proceeding, summary imposition of fines, summary suspension or other summary action by the Company; and
  - (iii) may not impede or delay any inquiry, investigation, disciplinary proceeding, appeal from a disciplinary proceeding, summary imposition of fines, summary suspension or other summary action.

### **703. Reports of Investigations**

- (a) The Market Regulation Team will maintain a log of all investigations and their disposition. The Market Regulation Team will prepare a written report of each investigation (the "Investigation Report"), regardless of whether the evidence gathered during any inquiry or investigation forms a reasonable basis to believe that a violation within the Company's jurisdiction has occurred or is about to occur or whether the evidence gathered results in closing the matter without further action or through summary action.
- (b) Any Investigation Report will include the reasons for initiating the investigation (including a summary of the complaint, if any), all relevant facts and evidence gathered and the analysis, conclusions and recommendation of the Market Regulation Team. For each potential respondent, the Market Regulation Team will recommend either (i) closing the investigation without further action, (ii) entering into a summary action, (iii) resolving the investigation through an informal disposition, including the issuance by the Market Regulation Team of a warning letter (provided that no more than one warning letter for the same violation may be issued to the same potential respondent during a rolling 12-month period), (iv) initiating disciplinary proceedings, or (v) negotiating a settlement. An informal disposition (including the issuance of a warning letter by the Market Regulation Team) will not constitute a finding of a violation or a sanction.
- (c) The Market Regulation Team shall provide the Investigation Report to the Chief Compliance Officer, who shall determine whether the Investigation Report is complete.
- (d) The Market Regulation Team shall complete each investigation in a timely manner and, absent mitigating factors, no later than 12 months after the date that such investigation was opened.

#### **704. Opportunity to Respond**

- (a) After completing the Investigation Report, the Market Regulation Team may, upon approval of the Chief Compliance Officer, notify each potential respondent that the Market Regulation Team has recommended formal disciplinary charges against each such potential respondent.
- (b) The Market Regulation Team may allow a potential respondent to propose a settlement of the matter or to submit a written statement explaining why either a disciplinary proceeding should not be instituted or one or more of the potential charges should not be brought. The potential respondent shall submit such written statement within the time limit established by the Market Regulation Team.

#### **705. Review of Investigation Reports**

- (a) After the completion of the Investigation Report and the receipt of any submission made by the potential respondent pursuant to Rule 704(b), the Market Regulation Team will, within 30 days, take one of the following actions:
  - (i) If the Market Regulation Team determines that additional investigation or evidence is needed to decide whether a reasonable basis exists to believe that a violation within the Company's jurisdiction has occurred or is about to occur, it will conduct further investigation.
  - (ii) If the Market Regulation Team determines that a reasonable basis exists to believe that a violation within the Company's jurisdiction has occurred or is about to occur, the potential respondent will be served with a notice of charges and proceed in accordance with this Chapter 7.
  - (iii) If the Market Regulation Team determines that disciplinary proceedings are unwarranted, it may issue a warning letter setting forth, in writing, the facts and analysis supporting the decision.
  - (iv) If the Market Regulation Team determines that no reasonable basis exists to believe that a violation within the Company's jurisdiction has occurred or is about to occur, it may direct that no further action be taken. Upon such determination, the Market Regulation Team will provide a written statement setting forth the facts and analysis supporting the decision.

#### **706. Notice of Charges**

- (a) If the Market Regulation Team authorizes disciplinary proceedings pursuant to Rule 705(a)(ii), it will prepare, and serve in accordance with Rule 708, a notice of charges.
- (b) A notice of charges will:
  - (i) state the acts, practices or conduct in which the respondent is alleged to have engaged;
  - (ii) state the Rule alleged to have been violated or about to be violated;
  - (iii) advise the respondent of its right to a hearing and its right to be represented by legal counsel or any other representative of its choosing (other than a Director, Officer or employee of the Company, any member of the Disciplinary Panel or any Person substantially related to the disciplinary proceedings such as a material witness or other respondent) in all succeeding stages of the disciplinary process;

- (iv) state the period of time within which the respondent can request a hearing on the notice of charges, which will not be less than 20 days after service of the notice of charges;
- (v) advise the respondent that any failure to request a hearing within the period stated, except for good cause, will be deemed to constitute a waiver of the right to a hearing; and
- (vi) advise the respondent that any allegation in the notice of charges that is not expressly denied will be deemed to be admitted.

**707. Answer to Notice of Charges**

- (a) If the respondent determines to answer a notice of charges, the respondent must file an answer within 20 days after being served with such notice, or within such other time period determined appropriate by the Chief Compliance Officer.
- (b) To answer a notice of charges, the respondent must in writing:
  - (i) for each allegation set forth in the notice of charges,
    - (A) admit such allegation,
    - (B) deny such allegation, or
    - (C) affirmatively state that the respondent does not have and is unable to obtain sufficient information to admit or deny such allegation, which shall have the effect of a denial of such allegation;
  - (ii) specify any specific facts that contradict the notice of charges;
  - (iii) specify any affirmative defenses to the notice of charges;
  - (iv) sign and serve the answer on the Chief Compliance Officer; and
  - (v) if applicable, request a hearing before a Disciplinary Panel.
- (c) Any failure by the respondent to timely serve an answer to a notice of charges will be deemed to be an admission to the allegations in such notice. Any failure by the respondent to answer one or more allegations in a notice of charges will be deemed to be an admission of that allegation or those allegations. Any allegation in a notice of charges that the respondent fails to expressly deny will be deemed to be admitted. A general denial by the respondent, without more, will not satisfy the requirements of paragraph(b) of this Rule 707.
- (d) If a respondent admits or fails to specifically deny any of the allegations in the notice of charges, the Disciplinary Panel shall find that the violations set forth in such allegations have been committed and shall impose a sanction for such violations. The Disciplinary Panel shall promptly notify the respondent in writing of any sanction imposed pursuant to this Rule 707 and advise the respondent that the respondent may request a hearing on such sanction within 20 days of the respondent being served with such notice. Any failure by the respondent to timely request a hearing with respect to a notice of sanctions will be deemed to be an acceptance of the sanctions in such notice and waiver of any right to appeal such sanctions.
- (e) A respondent shall be granted a hearing before a Disciplinary Panel for every instance in which such respondent (i) denies an allegation and requests a hearing in accordance with paragraph (b) above, or (ii) requests a hearing in accordance with paragraph (d) above.

## **708. Service of Notice of Charges**

Any notice of charges or other documents contemplated to be served pursuant to this Chapter 7 may be served (and service shall be deemed complete) either: (i) upon the respondent personally, by leaving the same at his place of business or by deposit in the United States mail, postage prepaid, via registered or certified mail addressed to the respondent at the address as it appears on the books and records of the Company, or (ii) transmittal by electronic mail to the respondent's electronic mail address as it appears on the books and records of the Company, if followed by a hard copy of the document sent promptly thereafter by registered or certified mail addressed to the respondent at the respondent's address as it appears on the books and records of the Company.

## **709. Settlements**

- (a) A respondent or potential respondent may at any time propose in writing an offer of settlement to anticipated or instituted disciplinary proceedings. Any offer of settlement should contain proposed findings and sanctions and be signed by the respondent or potential respondent and submitted to the Market Regulation Team. A respondent or potential respondent may offer to settle disciplinary proceedings without admitting or denying the findings contained in the order of the disciplinary proceedings but must accept the jurisdiction of the Company over it and over the subject matter of the proceedings and consent to the entry of the findings and sanctions imposed.
- (b) If a respondent or potential respondent submits an offer of settlement in accordance with paragraph (a) of this Rule 709, the Market Regulation Team will forward the offer to the Disciplinary Panel with a recommendation on whether to accept or reject the offer. The respondent or potential respondent may withdraw such offer of settlement at any time before acceptance by the Disciplinary Panel, but may not withdraw such offer at any time after acceptance by the Disciplinary Panel.
- (c) The Disciplinary Panel may accept the offer of settlement, but may not alter the terms of a settlement offer unless the respondent or potential respondent agrees.
- (d) If an offer of settlement is accepted by the Disciplinary Panel, it shall issue a written decision specifying:
  - (i) the Rule violations it has reason to believe were committed, including the basis or reasons for its conclusions;
  - (ii) any sanction to be imposed, which must include full customer restitution where customer harm has been demonstrated; and
  - (iii) if applicable, that the respondent has accepted the sanctions imposed without either admitting or denying the Rule violations.
- (e) In the event that the Disciplinary Panel accepts an offer of settlement without the agreement of the Market Regulation Team, the decision must adequately support such acceptance.
- (f) If an offer of settlement is accepted and the related order of disciplinary proceedings becomes final, the respondent's submission of the offer will be deemed to constitute a waiver of the right to notice, opportunity for a hearing and review and appeal under these Rules.
- (g) If the offer of settlement of a respondent or potential respondent is not accepted by the Disciplinary Panel, fails to become final or is withdrawn by the respondent or potential respondent before its acceptance by the Disciplinary Panel, the matter will proceed as if the offer had not been made and the offer and all documents relating to it will not become part of the record. Neither a respondent or potential respondent nor the Market



Regulation Team may use an unaccepted offer of settlement as an admission or in any other manner at a hearing of, or appeal from, disciplinary proceedings.

#### **710. Disciplinary Panels**

- (a) The Disciplinary Panel shall conduct hearings in connection with any disciplinary proceedings (except for summary impositions of fines pursuant to Rule 717), to make findings, render decisions, and impose sanctions pursuant to this Chapter 7.
- (b) Each Disciplinary Panel shall be composed of three individuals selected by the Chief Compliance Officer. Except in cases limited to the timely submission of accurate records, each Disciplinary Panel shall consist of at least one individual who would not be disqualified from serving as a Public Director, who shall chair the Disciplinary Panel.
- (c) No member of the Market Regulation Team may serve on a Disciplinary Panel.
- (d) Except as may otherwise be provided in these Rules, the Board may at any time remove any member of a Disciplinary Panel for cause.
- (e) Within 10 days of being notified of the appointment of the Disciplinary Panel, a respondent may seek to disqualify any individual named to the Disciplinary Panel for the reasons identified in these Rules, by serving written notice on the Chief Compliance Officer and providing a copy thereof to the chairman of the Disciplinary Panel. By not timely filing a request for disqualification, the respondent will be deemed to have waived any objection to the composition of a Disciplinary Panel. The Chief Compliance Officer will decide in his sole discretion the merits of any request for disqualification. Any such decision will be final and not subject to appeal.
- (f) All information, records, materials and documents provided to the Disciplinary Panel and all deliberations, testimony, information, records, materials and documents related thereto shall be treated as non-public and confidential and shall not be disclosed, except as necessary to further a Company investigation or as otherwise required by law. No individual shall serve on a Disciplinary Panel unless that individual has agreed in writing that he will not publish, divulge, or make known in any manner facts or information regarding the business of any Person or other information which may come to his or her attention in his official capacity as a member of the Disciplinary Panel, except (i) when reporting to the Board or to a Standing Committee concerned with such information, (ii) when reporting to the Market Regulation Team, (iii) when requested by the CFTC or other government agency, or (iv) when compelled to testify in any judicial or administrative proceeding.

#### **711. Convening Hearings of Disciplinary Proceedings**

- (a) All disciplinary proceedings (except for summary impositions of fines pursuant to Rule 717) will be conducted at a hearing before a Disciplinary Panel. Hearings will be conducted privately and confidentially. Notwithstanding the confidentiality of hearings, the Disciplinary Panel may appoint an expert to attend any hearing and assist in deliberations if such expert agrees to be subject to an appropriate confidentiality agreement.
- (b) After reasonable notice to each respondent, the Disciplinary Panel will promptly convene a hearing to conduct the disciplinary proceedings with respect to such respondent. Parties to a disciplinary proceeding include each respondent and the Market Regulation Team.
- (c) The chairman of the Disciplinary Panel may continue, adjourn or otherwise conduct the hearing, as he may deem appropriate. The chairman of the Disciplinary Panel will determine all procedural and evidentiary matters, including the admissibility and

relevance of any evidence proffered. In determining procedural and evidentiary matters, the chairman of the Disciplinary Panel will not be bound by any evidentiary or procedural rules or law. Once admitted during the hearing, the Disciplinary Panel may consider, and attach the weight it believes appropriate to, evidence or other materials. The Company's Legal Department will provide guidance to the chairman of the Disciplinary Panel on the conduct of the hearing.

- (d) Except for procedural and evidentiary matters decided by the chairman of the Disciplinary Panel pursuant to paragraph (c) of this Rule 711 and Rule 712 below, unless each respondent otherwise consents, the entire Disciplinary Panel must be present during the entire hearing and any related deliberations.

## **712. Respondent Review of Evidence**

- (a) Prior to the commencement of a hearing, each respondent will be given the opportunity, subject to (b), (c) and (d) below, to review all books, records, documents, papers, transcripts of testimony and other tangible evidence in the possession or under the control of the Company that the Market Regulation Team will use to support the allegations and proposed sanctions in the notice of charges or which the chairman of the Disciplinary Panel deems relevant to the disciplinary proceedings. Notwithstanding the foregoing, no respondent will have the right to review, and the Company will have no obligation to disclose, any information protected by attorney-client privilege. All requests for such information must be made not less than 10 days prior to the scheduled hearing date, unless the chairman of the Disciplinary Panel agrees otherwise.
- (b) If any books, records, documents, papers, transcripts of testimony, or other tangible evidence contain information that could adversely affect the competitive position of the Person providing the information or if such information might compromise other investigations being conducted by the Market Regulation Team, the Market Regulation Team may redact, edit or code such information before furnishing it to the respondent.
- (c) Notwithstanding anything in paragraph (b) of this Rule 712 to the contrary, the Market Regulation Team:
  - (i) will not redact, edit or code competitive or investigative information contained in documents in a manner that would materially impair the respondent's ability to defend against the allegations or proposed sanctions in the notices of charges, and
  - (ii) will provide the respondent with access to the information and portions of the documents that the Market Regulation Team intends to rely on to support the allegations or proposed sanctions in the notice of charges.
- (d) For purposes of this Rule 712, information that could adversely affect competitive positions includes positions in Swaps currently held, trading strategies employed in establishing or liquidating positions, the identity of any Participant, Authorized User, Trading Customer or other Person and the personal finances of the Person providing the information.
- (e) The respondent shall treat as confidential all data and information provided to it pursuant to this Rule 712, and shall not disclose any such data or information, except as necessary to the respondent's defense of notice of charges and any appeal of the decision of the Disciplinary Panel.

### 713. Conducting Hearings of Disciplinary Panels

- (a) At a hearing conducted in connection with any disciplinary proceedings, the Market Regulation Team will present its case supporting the allegations and proposed sanctions in the notice of charges to the Disciplinary Panel. If a respondent has timely filed an answer to the notice of charges in accordance with Rule 707, the respondent is entitled to attend and participate in the hearing.
- (b) At a hearing conducted in connection with any disciplinary proceedings, the Market Regulation Team and each respondent may:
  - (i) present evidence and facts determined relevant and admissible by the chairman of the Disciplinary Panel;
  - (ii) call and examine witnesses; and
  - (iii) cross-examine witnesses called by other parties.
- (c) If the respondent fails to file an answer, has filed a general denial, or if any or all of the allegations in the notice of charges are not expressly denied in the respondent's answer, the chairman of the Disciplinary Panel may limit evidence concerning any allegations not expressly denied in determining the sanctions to impose. If a respondent fails to file an answer but appears at the hearing, the respondent may not participate in the hearing (by calling or cross-examining witnesses, testifying in defense, presenting evidence concerning the notice of charges, or otherwise) unless the Disciplinary Panel determines that the respondent had a compelling reason for failing to timely file an answer. If the Disciplinary Panel determines that the respondent had a compelling reason for failing to timely file an answer, the Disciplinary Panel will adjourn the hearing and direct the respondent to promptly file the written answer in accordance with Rule 707.
- (d) Any Person entitled, or required or called upon, to attend a hearing before a Disciplinary Panel pursuant to paragraph (b)(ii) of this Rule 713 will be given reasonable notice, confirmed in writing, specifying the date, time and place of the hearing, and the caption of the disciplinary proceedings. The Company will require all natural persons acting as employees or agents of Participants or Trading Customers, Authorized Users and other Persons that are called as witnesses to appear at the hearing and produce evidence. The Company will make reasonable efforts to secure the presence of all other Persons called as witnesses whose testimony would be relevant.
- (e) If during any disciplinary proceedings the Disciplinary Panel determines that a reasonable basis exists to believe that the respondent violated a Rule or a provision of Applicable Law other than the violations alleged in the notice of charges, the Disciplinary Panel may consider those apparent violations after providing the respondent with an opportunity to answer the additional allegations in accordance with Rule 707. In connection with considering apparent violations pursuant to this paragraph (e), the Disciplinary Panel may request that the Market Regulation Team provide the Disciplinary Panel with any additional information.
- (f) The Disciplinary Panel may summarily impose sanctions on any Participant, Authorized User or Trading Customer that impedes or delays the progress of a hearing.
- (g) The Company will arrange for any hearing conducted in connection with disciplinary proceedings to be recorded verbatim, or substantially verbatim, in a manner capable of accurate transcription. The record shall not be transcribed unless requested by CTFC staff or the respondent or the decision is appealed. If the respondent requests a copy of all or portions of the recording of a hearing, the chairman of the Disciplinary Panel may within his sole discretion order the respondent to pay the costs for transcribing the recording of the hearing.

- (h) No interlocutory appeals of rulings of any Disciplinary Panel or chairman of the Disciplinary Panel are permitted.

#### **714. Decision of Disciplinary Panel**

- (a) As promptly as reasonable following a hearing, the Disciplinary Panel will issue an order rendering its decision based on the weight of the evidence contained in the record of the disciplinary proceedings. A decision by a majority of the Disciplinary Panel will constitute the decision of the Disciplinary Panel.
- (b) The Company will serve a copy of the order of the Disciplinary Panel on the respondent and the Market Regulation Team. The order will include:
  - (i) the notice of charges or summary of the allegations;
  - (ii) the answer, if any, or a summary of the answer;
  - (iii) a brief summary of the evidence introduced at the hearing (or, where appropriate, incorporation by reference of the Investigation Report);
  - (iv) findings of fact and conclusions concerning each allegation, including each specific Rule that the respondent is found to have violated;
  - (v) the imposition of sanctions, if any, and the effective date of each sanction; and
  - (vi) notice of the respondent's right to appeal pursuant to Rule 716.
- (c) A Disciplinary Panel shall be dissolved automatically when it has decided the matter for which it was appointed and has notified the respondent and the Chief Compliance Officer in writing of its decision.
- (d) Unless a timely notice of appeal is filed pursuant to Rule 716, the order of the Disciplinary Panel will become final upon the expiration of 20 days after the order is served on the respondent and a copy thereof is provided to the Market Regulation Team.

#### **715. Sanctions**

- (a) After notice and opportunity for hearing in accordance with these Rules, the Company will impose sanctions if any Participant, Authorized User, Trading Customer or other Person using any of the Participant's User IDs is found to have violated or to have attempted to violate a Rule for which the Company possesses disciplinary jurisdiction. Any such sanctions shall take into account the respondent's disciplinary history (if any). The Company may impose one or more of the following sanctions or remedies:
  - (i) a warning letter, provided that no more than one warning letter may be issued to the same respondent found to have committed the same rule violation within a rolling 12-month period;
  - (ii) censure;
  - (iii) limitation, restriction or qualification of Trading Privileges or other activities, functions or operations;
  - (iv) suspension of Trading Privileges for a period not to exceed 12 months;
  - (v) fine (subject to paragraph (b) of this Rule 715);
  - (vi) restitution or disgorgement;
  - (vii) termination of Trading Privileges;
  - (viii) expulsion; or
  - (ix) any other sanction or remedy deemed to be appropriate.

- (b) The Company may impose a fine of up to \$25,000 for each violation. If a fine or other amount is not paid within 30 days of the date that it becomes payable, then interest will accrue on the sum from the date that it became payable at the quoted prime rate plus three per cent. The Company has sole discretion to select the bank on whose quotations to base the prime rate. Each Participant will be responsible for paying any fine or other amount imposed on any of its Authorized Users, or Trading Customers.

**716. Appeal from Disciplinary Panel Decision, Summary Impositions of Fines and Other Summary Actions**

- (a) Each respondent found by the Disciplinary Panel to have violated (or, in the case of a Participant, whose Authorized User, Trading Customer or other Person using its User ID was found to have violated) a Rule or who is subject to any summary fine imposed pursuant to Rule 717 or any summary action imposed pursuant to Rule 718 may appeal the decision within 20 days of receiving the order of the Disciplinary Panel or the notice of summary action, as the case may be, by filing a notice of appeal with the Chief Compliance Officer.
- (b) The Market Regulation Team may appeal all or any part of a decision of the Disciplinary Panel, including any sanctions that may or may not have been imposed by the Disciplinary Panel, within 20 days of receiving the order of the Disciplinary Panel, by filing a notice of appeal with the Chief Compliance Officer.
- (c) While an appeal is pending, the effect of the order of the Disciplinary Panel or the summary action (including any sanctions, remedies or costs imposed thereby) shall be suspended.
- (d) The notice of appeal must state in writing the grounds for appeal, including the findings of fact, conclusions or sanctions to which the respondent objects. An appellant may appeal the order of the Disciplinary Panel or any summary action on the grounds that:
  - (i) the order or summary action was arbitrary, capricious, an abuse of discretion, or not in accordance with these Rules;
  - (ii) the order or summary action exceeded the authority or jurisdiction of the Disciplinary Panel, the Chief Compliance Officer or the Company;
  - (iii) the order or summary action failed to observe required procedures;
  - (iv) the order or summary action was unsupported by the facts or evidence; or
  - (v) the sanctions, remedies or costs which were imposed were inappropriate or unsupported by the record.
- (e) The Chief Compliance Officer will forward copies of any notice of appeal received by it to all parties to the disciplinary proceeding or summary action, as the case may be, except the appellant. On or before the 20th day after filing a notice of appeal, the appellant must file with the Chief Compliance Officer and serve on the Market Regulation Team a brief supporting the notice of appeal and documents supporting the brief. On or before the 20th day after the date on which the appellant serves their supporting brief, the appellee must file and serve its brief in opposition. On or before the 10th day after the date on which the appellee serves its brief in opposition, the appellant must file and serve a brief in reply on the Market Regulation Team.
- (f) In connection with any appeal, the Market Regulation Team will furnish to the Chief Compliance Officer and to the respondent/appellant a transcript of the hearing, any exhibits introduced at the hearing, the notice of appeal and briefs filed to support and oppose the appeal.

- (g) No later than 30 days after the last submission filed pursuant to paragraph (d) of this Rule 716, the Chief Compliance Officer will appoint an Appeals Panel to consider and determine the appeal. An Appeals Panel shall be comprised of three individuals, none of whom shall be a member of the Market Regulation Team or have been a member of any Disciplinary Panel involved in the matters on appeal. The chairman of the Appeals Panel shall be an individual who would not be disqualified from serving as a Public Director.
- (h) Within 10 days of being notified of the appointment of the Appeals Panel, a respondent may seek to disqualify any individual named to the Appeals Panel for the reasons identified in these Rules, by serving written notice on the Chief Compliance Officer. By not timely filing a request for disqualification, the respondent will be deemed to have waived any objection to the composition of the Appeals Panel. The Chief Compliance Officer will decide the merits of any request for disqualification within his or her sole discretion. Any such decision will be final and not subject to appeal.
- (i) The Appeals Panel may hold a hearing to allow parties to present oral arguments. Any hearing will be conducted privately and confidentially. Notwithstanding the confidentiality of hearings, the Appeals Panel may appoint an expert to attend any hearing and assist in the deliberations if such individuals agree to be subject to appropriate confidentiality agreements. In determining procedural and evidentiary matters, the Appeals Panel will not be bound by evidentiary or procedural rules or law.
- (j) The Appeals Panel will only consider on appeal the record before the Disciplinary Panel or, in the case of a summary action, the record considered by the Chief Compliance Officer, the notice of appeal, the briefs filed in support and opposition of the appeal, and any oral arguments of the parties. The Appeals Panel may only consider new evidence when the Appeals Panel is satisfied that good cause exists for why the evidence was not introduced during the disciplinary proceeding or when imposing the summary action.
- (k) After completing its review, the Appeals Panel may affirm, modify or reverse any order of the Disciplinary Panel or summary action under appeal, in whole or in part, including increasing, decreasing or eliminating any sanction or remedy imposed, imposing any other sanction or remedy authorized by these Rules, or remanding the matter to the same or a different Disciplinary Panel for further disciplinary proceedings or for reconsideration by the Chief Compliance Officer in the case of summary action. The Appeals Panel may order a new hearing for good cause or if the Appeals Panel deems it appropriate.
- (l) As promptly as reasonably possible following its review, the Appeals Panel will issue a written decision on appeal rendering its decision based on the weight of the evidence before the Appeals Panel. The decision of the Appeals Panel will include a statement of findings of fact and conclusions for each finding, sanction, remedy and cost reviewed on appeal, including each specific Rule and provision of Applicable Law that the respondent is found to have violated, if any, and the imposition of sanctions, remedies and costs, if any, and the effective date of each sanction, remedy or cost.
- (m) The Appeals Panel's written order on appeal (including findings of fact and conclusions and the imposition of sanctions, remedies and costs, and the effective date of any sanction, remedy cost) will be the final action of the Company and will not be subject to appeal within the Company.

#### **717. Summary Imposition of Fines**

- (a) The Chief Compliance Officer may summarily impose a fine against a Participant (on behalf of itself or any of its Authorized Users, Trading Customers or other Persons using any of its User IDs) for failing:

- (i) to timely pay fees, cost, charges or fines to the Company or a DCO;
  - (ii) to make timely and accurate submissions to the Company of notices, reports or other information required by these Rules; and
  - (iii) to keep any books and records required by these Rules.
- (b) The Market Regulation Team, acting on behalf of the Chief Compliance Officer, will give notice of any fine imposed pursuant to this Rule 717 to each Participant, Authorized User or Trading Customer subject thereto. The notice will specify (i) the violation of these Rules for which the fine is being imposed, (ii) the date of the violation and (iii) the amount of the fine. Within 20 days of serving the notice of fine, the Participant, Authorized User or Trading Customer as the case may be, must either pay or cause the payment of the fine or file notice of an appeal pursuant to Rule 716. Unless timely notice of appeal is filed pursuant to Rule 716, the fine will become final upon the expiration of 20 days after the notice of fine is served on the Participant, Authorized User, or Trading Customer, as the case may be.
- (c) The Company will set the amount of any fines imposed pursuant to this Rule 717, with the maximum fine for each violation not to exceed \$5,000. Summary imposition of fines pursuant to this Rule 717 will not preclude the Company from bringing any other action against the Participant, Authorized User, or Trading Customer, as the case may be.

#### **718. Summary Suspensions and Other Summary Actions**

- (a) Notwithstanding anything in these Rules to the contrary, if the Chief Compliance Officer believes that immediate action is necessary to protect the best interests of the Company or the marketplace, the Chief Compliance Officer may, after consultation with the Regulatory Oversight Committee summarily suspend, revoke, limit, condition, restrict or qualify the Trading Privileges of a Participant or the exercise of such Trading Privileges by any of its Authorized Users and take other summary action against a Participant or any of its Authorized Users, or Trading Customers in accordance with these Rules.
- (b) Whenever practicable, the Market Regulation Team, acting on behalf of the Chief Compliance Officer, shall provide prior written notice to the party against whom any action in accordance with paragraph (a) shall be taken. If prior notice is not practicable, the Company will give notice at the earliest possible opportunity to the respondent against whom the action is brought. The Market Regulation Team, acting on behalf of the Chief Compliance Officer, will prepare a notice of summary action (which will state the action, the reasons for the action, and the effective time, date and duration of the action) and serve the notice on such party and advise the recipient of the notice of its right to a prompt hearing before a Disciplinary Panel and its right to be represented by legal counsel or other representative at such hearing. A request by the recipient of the notice for such a hearing shall not delay the effectiveness of the summary action.
- (c) At the request of the Company, a respondent against whom a summary action is brought pursuant to this Rule 718 must provide books and records over which the respondent has access or control and must furnish information to, or appear or testify before, the Company or the Disciplinary Panel with the enforcement of any Rule.
- (d) If a hearing is requested pursuant to paragraph (b) of this Rule 718, the Disciplinary Panel will promptly convene a hearing to be conducted in accordance with Rule 713.
- (e) As promptly as reasonably possible after the hearing, the Disciplinary Panel will issue to the respondent a written order affirming, modifying, or reversing the summary action. The order will include a description of the summary action taken, a summary of the evidence introduced at the reinstatement hearing, a statement of findings of fact and conclusions, a

description of any action taken or to be taken by the Company, and the effective date, time and duration thereof.

- (f) Any decision of a Disciplinary Panel pursuant to this Rule 718 will be the final action of the Company, and not subject to appeal within the Company upon serving the respondent with a copy of the decision.

#### **719. Reinstatement after Summary Suspension**

- (a) A respondent whose Trading Privileges are suspended, revoked, limited, conditioned, restricted or qualified pursuant to Rule 718 may apply for reinstatement by filing with the Market Regulation Team a written request stating the applicant's reasons for seeking reinstatement. The Company will not consider a respondent's request for reinstatement if the respondent:
  - (i) owes any fines, fees, charges or costs to the Company;
  - (ii) continues to fail to appear at disciplinary proceedings without good cause; or
  - (iii) continues to impede the progress of disciplinary proceedings.
- (b) Within a reasonable period after the filing of a request for reinstatement, the Appeals Panel will conduct a hearing to consider the request. At the hearing for reinstatement, the respondent will present its case supporting the reinstatement and the Market Regulation Team, acting on behalf of the Chief Compliance Officer may, in its discretion, present its case opposing or supporting the reinstatement and each may present relevant and admissible evidence and facts and call, examine and cross-examine witnesses. At the hearing for reinstatement, the Company may require any Participant, Authorized User, or Trading Customer (and, as applicable, any of their employees or affiliates) involved in activity proposed to be conducted on the SEF to appear as witnesses and produce evidence if the Appeals Panel determines that the evidence is relevant.
- (c) As promptly as reasonably possible after a reinstatement hearing, the Appeals Panel will issue an order reinstating, denying the reinstatement, or placing conditions on the reinstatement of the Trading Privileges of the respondent. The order will include a brief summary of the evidence introduced at the reinstatement hearing; and, if applicable, findings of fact and conclusions not contained in the notice of summary action issued pursuant to Rule 718(b) above. The order of the Appeals Panel may not be appealed.

#### **720. Rights and Responsibilities after Suspension or Termination**

- (a) When the Trading Privileges of a Participant or the exercise of such Trading Privileges by an Authorized User are suspended for a period of 12 months or less, none of its rights and Trading Privileges (including the right to hold oneself out to the public as a Participant or Authorized User or enter Orders into the SEF and receive Participant rates for fees, costs, and charges and deposit margin at Participant levels) will apply to such Participant or Authorized User during the period of the suspension, except for the right to assert claims against others as provided in Chapter 8 of these Rules. Any such suspension will not affect the rights of creditors under these Rules or relieve the Participant or Authorized User of its obligations under these Rules to perform any Swaps entered into before the suspension, or for any Company fees, costs, or charges incurred during the suspension. The Company may discipline a suspended Participant or Authorized User under this Chapter 7 for any violation of a Rule or provision of Applicable Law committed by the Participant or Authorized User before, during or after the suspension.
- (b) When the Trading Privileges of a Participant or the exercise of such Trading Privileges by an Authorized User are terminated, all of its rights and Trading Privileges will terminate,



except for the right of the Participant or Authorized User in question to assert claims against others, as provided in Chapter 8 of these Rules. Any such termination will not affect the rights of creditors under these Rules. A terminated Participant or Authorized User may only seek to reinstate his authorization to exercise Trading Privileges by providing the Company with satisfactory evidence that he complies with Rule 303. The Company will not consider the application of a terminated Participant or Authorized User if such Participant or Authorized User, as the case may be, fails to appear at disciplinary proceedings without good cause or impedes the progress of disciplinary proceedings.

- (c) A suspended or terminated Participant, Authorized User or [Trading Customer] remains subject to these Rules and the jurisdiction of the Company for any acts or omissions prior to the suspension or termination, and must cooperate in any inquiry, investigation, disciplinary proceeding, appeal from disciplinary proceedings, summary suspension or other summary action as if the suspended or terminated Participant or Authorized User still had Trading Privileges or the exercise of such Trading Privileges, respectively.

#### **721. Notice of Disciplinary Proceedings**

The Company will provide written notice of disciplinary proceedings to the parties and the RSP consistent with applicable CFTC Regulations. Whenever the Company suspends, expels, fines or otherwise disciplines, or denies any Person access, to the Company, the Company will make the public disclosures required by CFTC Regulations.

## Chapter 8. ARBITRATION

### 801. General

- (a) Except as otherwise provided in these Rules, Participants, Authorized Users and Trading Customers shall arbitrate pursuant to these Rules in this Chapter 8 all disputes, controversies and claims between or among themselves arising out of a Swap or the use of the systems or services of the Company or the services, equipment, or facilities used to support such systems or services, including, without limitation, the SEF. Any such claim against a Participant, Authorized User or Trading Customer shall be brought within two years from the time that a cause of action has accrued. This Rule 801 shall in no way be construed to create a cause of action and shall not authorize an action that would otherwise be prohibited by these Rules or Applicable Law. If for any reason a court of competent jurisdiction finds that a dispute is not arbitrable, such dispute may be litigated only in accordance with Rule 1113.
- (b) Notwithstanding the foregoing, this Rule 801 does not apply to disputes between or among Participants, Authorized Users or Trading Customers that: (i) such Persons are required by the rules of a self-regulatory organization to submit to the dispute resolution procedures of that self-regulatory organization; or (ii) such Persons have, by valid and binding agreement, committed to negotiate or litigate in a forum other than the forum set out in Rule 802.

### 802. Forum and Arbitration Rules

NFA will conduct any and all arbitrations of a type described in Rule 801 pursuant to NFA's Member Arbitration Rules, as if each Participant or Trading Customer to such arbitration was an "NFA Member," and references in the Member Arbitration Rules to an "Associate" of an "NFA Member" shall mean and include an Authorized User.

### 803. Initiating an Arbitration Claim

- (a) A Participant, Authorized User or Trading Customer may initiate an arbitration claim by submitting the required documents and fees to NFA.
- (b) A Participant, Authorized User or Trading Customer submitting an arbitration claim shall provide notice of such claim to the Company.

### 804. Claims Relating to Trade Cancellations or Price Adjustments

All claims relating to trade cancellations or price adjustments pursuant to Rule 407 shall be arbitrated in accordance with this Chapter 8.

### 805. Penalties

- (a) Any failure on the part of any Participant, Authorized User or Trading Customer to arbitrate a case subject to arbitration, or the commencement by any such Participant, Authorized User or Trading Customer of a suit in any court prior to arbitrating a case subject to arbitration, violates these Rules and subjects such Person to disciplinary proceedings pursuant to Chapter 7.
- (b) The Company may summarily suspend, pursuant to Chapter 7, a Participant or Authorized User that fails to satisfy an arbitration award rendered in any arbitration conducted pursuant to this Chapter 8.

## **Chapter 9. SWAPS**

### **901. Swap Specifications**

Each Swap will meet such specifications, and all trading in such Swap will be subject to such procedures and requirements, as described in the terms and conditions governing such Swap and posted on the website of the Company ([www.tradeweb.com](http://www.tradeweb.com)).

### **902. Swap Modifications**

The specifications for, and the procedures and requirements for trading, any Swap may not be modified in any respect without the prior approval of the Company.

### **903. Settlement of Uncleared Swaps**

Settlement of all Uncleared Swaps shall be effected bilaterally between the parties to the Uncleared Swap pursuant to the terms of such Uncleared Swap and applicable agreements between the parties to the trade, and the Company shall not have any responsibility for any element of such settlement.

## Chapter 10. CLEARING

### 1001. Rules of the Derivatives Clearing Organization

The clearing services provided by the DCO with respect to any Cleared Swap, and the rights and obligations of purchasers and sellers under Cleared Swaps (including rights and obligations in respect of clearing and settlement, variation payments and performance at maturity), will be governed by the rules of the DCO.

### 1002. Clearing Services

- (a) The Company is responsible for the submission of each Cleared Swap to the Clearing Member designated by each Participant or Trading Customer of an Introducing Agent, as applicable.
- (b) The Company shall provide facilities to route each Cleared Swap to the DCO identified by the parties to such Cleared Swap. All Cleared Swap transaction information routed to the applicable DCO, including in circumstances where the Participant uses an affirmation hub or other third-party service provider to route such Cleared Swap transaction information, shall be routed in a manner acceptable to the applicable DCO and consistent with the requirements of CFTC Regulation 39.12(b)(7).
- (c) The Company may modify, limit or discontinue the routing facilities described in paragraph (b) above upon no less than 60 days' prior notice to Participants.

### 1003. Clearing Arrangements

- (a) As a condition to submitting or responding to an Order in the Order Book or transacting a Block Trade or Permitted Package Transaction, in each case for or involving a Cleared Swap, or Resubmitted Cleared Swap, a Participant or Trading Customer that is not a Clearing Member must, for each Cleared Swap, designate a Clearing Member to pre-screen (under CFTC Regulation 1.73) and clear the Participant's, Trading Customer's, or Client Account's side, as applicable of the Cleared Swap that has entered into a Clearing Member Relationship Agreement with the Company designating (on the Clearing Customer List attached to such Clearing Member Relationship Agreement or pursuant to the Clearing Member/Participant onboarding process established by the Company) the Participant, Trading Customer or Client Account, as applicable, as a customer or proprietary account of the Clearing Member with respect to that class of Cleared Swaps and the DCO designated for clearing the Cleared Swap. The Company shall communicate the procedures for such onboarding process, if applicable, as a Notice to Participants consistent with Rule 310.
- (b) As a condition to submitting or responding to an Order in the Order Book or transacting a Block Trade or Permitted Package Transaction, in each case for or involving a Cleared Swap, or Resubmitted Cleared Swap, a Participant that is a Clearing Member with respect to such Cleared Swap must (i) screen such Order for compliance with such Participant's Risk-Based Limits in a manner consistent with the requirements of CFTC Regulation 23.609 and (ii) take steps reasonably designed to ensure that any Cleared Swap resulting from such Order is accepted for clearing at the applicable DCO.
- (c) To the extent required by Applicable Law, the parties to a Cleared Swap that is or is a component of a Block Trade or Permitted Package Transaction respectively, that is not executed on the SEF must comply with the obligations set out in Rule 1003(a) and (b), as applicable.

#### **1004. Swaps Rejected From Clearing**

- (a) To the extent required by Applicable Law, any Cleared Swap executed on or pursuant to the Rules of the SEF that is rejected from clearing by the relevant DCO shall be deemed void *ab initio*. The parties to such a Cleared Swap may not hold the trade in a suspended state and re-submit it to the Company other than as provided for in Rule 1005.A.
- (b) If the Company receives notice from a DCO that a Cleared Swap executed on or pursuant to the Rules of the SEF has been rejected from clearing by the DCO, it shall, as soon as technologically practicable after notice that the Cleared Swap was rejected from clearing by the DCO, report to the SDR to which data for such Cleared Swap was originally reported (i) pursuant to Part 43 of the CFTC's Regulations, a cancellation of the Cleared Swap and (ii) pursuant to Part 45 of the CFTC's Regulations, a termination of the Cleared Swap indicating, to the extent required by Applicable Law, that it is void *ab initio*.
- (c) To the extent required by Applicable Law, no Participant or Trading Customer or prospective Participant or Trading Customer may enforce a Breakage Agreement with another Participant or Trading Customer, or require such an agreement as a condition to trading with such other Participant or Trading Customer on or pursuant to the Rules of the SEF in respect of a Cleared Swap.

#### **1005. [Reserved]**

##### **1005.A. Package Sequencing Rejection.**

- (a) A Participant or Trading Customer that executes a Cleared Swap (other than a Resubmitted Cleared Swap previously accepted for clearance) that is rejected from clearing by the relevant DCO because the sequencing of submission of the legs of a Package Transaction for clearing results in the breach of a credit limit but where the Package Transaction as a whole did not breach a credit limit (a "Package Sequencing Rejection") may, pursuant to the procedures described in Rules 1005.A(c) and (d) below, submit to the Company a Resubmitted Cleared Swap with terms and conditions that match the terms and conditions of the original Cleared Swap, other than the time of execution. For the avoidance of doubt, if only a portion of such Package Transaction is rejected from clearing because of a Package Sequencing Rejection, such resubmission would not in every case include all components of a Package Transaction, but rather only the portion(s) of the Package Transaction rejected from clearing as described above, and a Participant may, pursuant to the procedures described in Rules 1005.A(c) and (d) below, submit to the Company a Resubmitted Cleared Swap consisting of the rejected portion(s) of the original Package Transaction, with terms and conditions that match the terms and conditions of the original rejected portion(s) of the Package Transaction, other than the time of execution. This procedure is not available for a Cleared Swap that is rejected for any other reason, including a Cleared Swap that is rejected from clearing by the relevant DCO because of a clerical or operational error or omission resulting from a mismatch of the terms of the Cleared Swap.
- (b) The Company will provide notice to the Participant that submitted a Cleared Swap that is rejected from clearing because of a Package Sequencing Rejection as soon as reasonably practicable, of (i) the issuance of a notice of rejection by the relevant DCO, including the exact time of such rejection and (ii) in the event that the parties fail to resubmit a Resubmitted Cleared Swap pursuant to the procedures described in Rules 1005.A(c) and (d) below, the expiration of the 60-minute window for resubmission of such Resubmitted Cleared Swap. Each Introducing Agent and Account Manager is responsible for providing such notices to each of its Trading Customers or Client Accounts, as applicable, and the Company shall not be responsible or liable for the

failure of any Introducing Agent or Account Manager to provide such notices to any of its Trading Customers or Client Accounts.

- (c) The Reporting Counterparty (or, if applicable, the Introducing Agent or Account Manager acting on behalf of a Trading Customer or Client Account that is the Reporting Counterparty) to a Resubmitted Cleared Swap must, as quickly as technologically practicable after receipt by its Clearing Member for the original Cleared Swap of notice of the original Cleared Swap's rejection from clearing (but in any case no later than 60 minutes from the issuance of a notice of rejection by the relevant DCO to such Clearing Member), report to the Company the time of execution, counterparty, and information required pursuant to Rule 414 for the Resubmitted Cleared Swap, as well as the unique swap identifier (as that term is defined in CFTC Regulations) for the original Cleared Swap. By submitting such report, the Reporting Counterparty (or, if applicable, the Introducing Agent or Account Manager acting on behalf of a Trading Customer or Client Account that is the Reporting Counterparty) shall be deemed to represent to the Company that:
- (i) The original Cleared Swap was rejected from clearing because of a Package Sequencing Rejection;
  - (ii) If the Reporting Counterparty is the Clearing Member with respect to the Resubmitted Cleared Swap, it agrees to submit the Resubmitted Cleared Swap to the relevant DCO;
  - (iii) If the Reporting Counterparty is not the Clearing Member with respect to the Resubmitted Cleared Swap, (A) its Clearing Member agrees to submit the Resubmitted Cleared Swap to the relevant DCO; (B) it has authorized its Clearing Member to submit the Resubmitted Cleared Swap to the relevant DCO; and (C) its Clearing Member has not required it or its Trading Customer to agree in advance to the submission of Resubmitted Cleared Swaps, but rather sought such consent after the original Cleared Swap was rejected from clearing by the relevant DCO; and
  - (iv) The original Cleared Swap was not a Resubmitted Cleared Swap.
- (d) The non-Reporting Counterparty (or, if applicable, the Introducing Agent or Account Manager acting on behalf of a Trading Customer or Client Account that is the non-Reporting Counterparty) to the Resubmitted Cleared Swap must, as quickly as technologically practicable after the Company notifies it of the trade details submitted by the Reporting Counterparty (or, if applicable, the Introducing Agent or Account Manager acting on behalf of a Trading Customer or Client Account that is the Reporting Counterparty) pursuant to Rule 1005.A(c) above (but in any case no later than 60 minutes from the issuance of a notice of rejection by the relevant DCO to such Clearing Members), acknowledge such trade details to the Company. By acknowledging such trade details, the non-Reporting Counterparty (or, if applicable, the Introducing Agent or Account Manager acting on behalf of a Trading Customer or Client Account that is the non-Reporting Counterparty) shall be deemed to represent to the Company that:
- (i) The original Cleared Swap was rejected from clearing because of a Package Sequencing Rejection;
  - (ii) If the non-Reporting Counterparty is the Clearing Member with respect to the Resubmitted Cleared Swap, it agrees to submit the Resubmitted Cleared Swap to the relevant DCO;
  - (iii) If the non-Reporting Counterparty is not the Clearing Member with respect to the Resubmitted Cleared Swap, (A) its Clearing Member agrees to submit the

Resubmitted Cleared Swap to the relevant DCO; (B) it has authorized its Clearing Member to submit the Resubmitted Cleared Swap to the relevant DCO; and (C) its Clearing Member has not required it to agree in advance to the submission of Resubmitted Cleared Swaps, but rather sought such consent after the original Cleared Swap was rejected from clearing by the relevant DCO; and

- (iv) The original Cleared Swap was not a Resubmitted Cleared Swap.
- (e) Upon the submission and acknowledgment of a Resubmitted Cleared Swap in accordance with Rules 1005.A(c) and (d), the Company will report to the SDR to which it reported data for the original Cleared Swap the swap transaction data for the Resubmitted Cleared Swap pursuant to Parts 43 and 45 of the CFTC's Regulations, as well as the unique swap identifier (as that term is defined in CFTC Regulations) for the original Cleared Swap.
- (f) To the extent required by Applicable Law, if a Resubmitted Cleared Swap is rejected from clearing by the relevant DCO, it shall be deemed void *ab initio*, and the Company will not provide the parties to such Resubmitted Cleared Swap a second opportunity to submit a new trade.

## Chapter 11. MISCELLANEOUS

### 1101. Legal Certainty; Confirmations

- (a) No Swap listed for trading on the SEF shall be void, voidable, subject to rescission or otherwise invalidated or rendered unenforceable as a result of either: (1) any violation by any Person of any provision of the CEA or CFTC Regulations; or (2) any action taken by the CFTC that has the effect of amending, altering or supplementing these Rules or any of the terms or conditions of a Swap listed for trading on the SEF.
- (b) Issuance of SEF Confirmations for Cleared Swaps. In accordance with CFTC Regulation 37.6(b) and Parts 43 and 45 of CFTC Regulations, the Company will make available to each counterparty or, if applicable, the Introducing Agent or Account Manager acting on behalf of a Trading Customer or Client Account that is a counterparty, to a Cleared Swap that is entered into on the SEF or otherwise pursuant to these Rules a written record of all of the terms of the transaction which shall legally supersede any previous agreement and serve as a confirmation of the transaction.
- (c) Issuance of SEF Confirmations for Uncleared Swaps.
  - (i) The economic terms specific to the transaction agreed by the Participants or Trading Customers on the SEF with respect to an Uncleared Swap shall be reflected by the Company in a written communication (the "**Trade Communication**") sent to or through the applicable Participants. The Trade Communication, and to the extent not inconsistent therewith, the documents and agreements (including, without limitation, ISDA master agreements, other master agreements, terms supplements, master confirmation agreements, and incorporated industry definitions) governing such transaction existing at the time of such commitment to which the Participants, Trading Customers or Client Accounts, as applicable, are parties (the "**Terms Incorporated by Reference**") shall, taken together, for purposes of these Rules and CFTC Regulation 37.6(b) and Parts 43 and 45 of CFTC Regulations comprise all of the terms of such transaction and serve as a confirmation of such transaction.
  - (ii) In satisfaction of the obligations imposed on the Company under CFTC Regulation 37.6(b), (A) each Trade Communication is deemed to incorporate the Terms Incorporated by Reference, as described in Rule 1101(c)(i), to the extent not inconsistent therewith, and (B) the provisions of Rule 1101(c)(iii) shall supersede and govern any conflicting terms between the parties.
  - (iii) In the event of any conflict between (A) the Trade Communication, Applicable Law or these Rules and (B) the Terms Incorporated by Reference, the Trade Communication, Applicable Law or these Rules (as applicable) shall prevail to the extent of any inconsistency.
- (d) For both Cleared Swaps and Uncleared Swaps executed on or pursuant to the Rules of the SEF, the confirmation of all terms of the transaction shall be effective as of the time of execution; provided that specific customer identifiers for Client Accounts included in bunched orders need not be included in confirmations provided by the Company if the applicable requirements of CFTC Regulation 1.35(b)(5) are satisfied by the Account Manager.
- (e) The Company may use a third-party service provider to issue confirmations to the counterparties, whether in Cleared Swaps or Uncleared Swaps, provided such third-party provider is contractually obligated to satisfy the requirements of the Company and Applicable Law.



#### **1102. Trading by Company Officials Prohibited; Misuse of Material, Non-Public Information**

- (a) No Board member, member of a Disciplinary Panel or Appeals Panel or Company Official may trade, directly or indirectly, any Swap, swap traded on another swap execution facility or other market, or any commodity interest relating thereto where such individual has access to material non-public information concerning such Swap or commodity interest. Participation by a Company Official in a retirement plan sponsored by the Company shall not be deemed to constitute trading directly or indirectly in a Swap or commodity interest related thereto, notwithstanding such plan's trading of swaps or commodity interests related thereto.
- (b) Company Officials, agents and independent contractors of the Company are prohibited from disclosing material non-public information obtained as a result of their employment, agency relationship or engagement with the Company where the Company Official, agent or independent contractor expected or should have reasonably expected that the information disclosed may assist a Person in trading any Swap, any swap traded on another swap execution facility or other market, or any related underlying commodity or security.
- (c) No Company Official may trade, directly or indirectly any Swap or any commodity interest related thereto.
- (d) Terms used in this Rule 1102 and not otherwise defined in these Rules shall have the meaning set forth in CFTC Regulations 1.3 and 1.59.

#### **1103. Gifts and Gratuities**

Except with the prior written approval of the Chief Compliance Officer, no Participant or Trading Customer shall, directly or indirectly, give or permit to be given anything of value, including gifts and gratuities, to any Director or Officer of, or individual employed by, the Company in an amount that exceeds the maximum value permitted by the Company's gifts and entertainment policy as in force from time to time.

#### **1104. Market Data**

- (a) Subject to each Participant's or Trading Customer's rights in its Participant Data (including fills) and the terms of the Participant Documentation, the Company shall have a royalty free, worldwide, perpetual license to any Participant Data, and shall own all rights, title and interest in and to all intellectual property and other proprietary rights (including all copyright, patent, trademark or trade secret rights) in all derivative works based on Participant Data that are created by or on behalf of the Company to the extent that such derived data is truly a derivative of the Participant Data, and, unless required by Applicable Law or pursuant to agreements with a DCO to use such Market Data solely for internal risk management purposes, and decisions with respect to use and distribution of Market Data shall be made by the Board of the Company; provided, however, subject to its obligations under Applicable Law and such DCO agreements, the Company shall not use (or permit other parties to use) Market Data, including the Participant Data, to replicate or reverse engineer a Participant's or Trading Customer's trading strategies, and Company shall not sell, retransmit or redistribute Participant Data unless such Participant Data is anonymized and aggregated with other Market Data, including but not limited to the transaction data of other Participants or Trading Customers. Participants, Trading Customers and other Persons Affiliated with any of the foregoing may not distribute, sell or retransmit Market Data to any third party without the consent of the Company, provided that each Participant and Trading Customer, if applicable, retains such rights as it may enjoy under Applicable Law with respect to Participant Data solely

in the form such Participant Data was submitted to the Company by such Participant or Trading Customer. Nothing in this Rulebook or Participant Documentation shall restrict a Participant or Trading Customer with respect to its use of (including creation of any derivative works in respect of) its own Participant Data.

- (b) The Company will not use for business or marketing purposes any proprietary data or personal information collected or received from or on behalf of any Person for the purpose of fulfilling the Company's regulatory obligations.
- (c) The Company may share such proprietary data or personal information with one or more registered entities (as such term is defined in CFTC Regulations) in accordance with Applicable Law.
- (d) Each Participant, Trading Customer, and Account Manager (on behalf of itself and its Client Accounts) hereby acknowledges and agrees that the Company may disclose and disseminate Required Swap Creation Data pursuant to these Rules.
- (e) Each Participant and Trading Customer acknowledges and agrees that the Company owns and shall retain all right, title and interest in and to the SEF, all components thereof, including without limitation all related applications, all application programming interfaces, user interface designs, software and source code and any and all intellectual property rights therein, including, without limitation all registered or unregistered, as applicable copyright, trade mark, service mark, trade secret, trade name, data or database rights, design rights, moral rights, inventions, whether or not capable or protection by patent or registration, rights in commercial information or technical information, including know-how, research and development data and manufacturing methods, patent, and other intellectual property and ownership rights, including applications for the grant of any of the same, in or to the SEF and all other related proprietary rights of the Company and/or any of its Affiliates (together, with any and all enhancements, corrections, bug fixes, updates and other modifications to any of the foregoing and any and all data or information of any kind transmitted by means of any of the foregoing, "Proprietary Information"). Each Participant and Trading Customer further acknowledges and agrees that the Proprietary Information is the exclusive, valuable and confidential property of the Company. Each Participant and Trading Customer acknowledges and agrees that it shall not reverse engineer, copy, bug fix, correct, update, transfer, reproduce, republish, broadcast, create derivative works based on or otherwise modify, in any manner, all or any part of the SEF or the Proprietary Information. Each Participant and Trading Customer agrees to keep the Proprietary Information confidential and not to transfer, rent, lease, loan, sell or distribute, directly or indirectly, all or any portion of the SEF or any Proprietary Information.

#### **1105. Anti-Money Laundering and Anti-Terrorism**

It is Company policy (1) not to engage in or knowingly assist any money laundering or other illicit business; and (2) not to engage in or knowingly assist, or be a conduit for, terrorist financing. Participants will be required to provide to the Company sufficient information relating to Participants and their Trading Customers, if applicable, for the Company to complete "know your customer" checks and to conduct restricted list searches, including searches against the Specially Designated Nationals and Blocked Persons list maintained by the Office of Foreign Assets Control of the U.S Department of the Treasury.

#### **1106. Confidentiality**

Except as otherwise provided in these Rules and the Participant Documentation, all non-public information provided by a Participant, Authorized User or Trading Customer to the Company shall be held in confidence and shall not be made known to any other Person except as follows:

- (a) with the consent of the Participant, Authorized User or Trading Customer providing such information;
- (b) to a Government Agency or the regulatory authority of any foreign jurisdiction, if the Company is requested or legally required to do so by such Government Agency;
- (c) pursuant to legal process;
- (d) to a Derivatives Clearing Organization of which such Participant or Trading Customer is a member or in connection with the clearing of a Swap;
- (e) to a Swap Data Repository;
- (f) subject to appropriate confidentiality requirements, to any Person providing services to the Company, including the Regulatory Services Provider;
- (g) pursuant to an information sharing agreement or other arrangement or procedures in accordance with Rule 1107;
- (h) to the Board, Board committees, Disciplinary Panels, Company Officials, attorneys, auditors, and agents and independent contractors that have been engaged by the Company who require such information in connection with the discharge of their duties to the Company; and
- (i) as otherwise permitted under these Rules.

#### **1107. Information-Sharing Agreements**

The Company may enter into agreements or other arrangements or procedures to coordinate surveillance with domestic or foreign regulators, self-regulatory organizations, clearing organizations, exchanges, markets or other execution facilities to share information and provide other forms of mutual assistance for market surveillance, audits, investigations, enforcement actions and other regulatory purposes required by CFTC Regulation 37.504 and Applicable Law. As part of any such information-sharing agreements or other arrangements or procedures adopted pursuant to this Rule, the Company may:

- (a) provide market surveillance reports to other markets and to clearing organizations;
- (b) share information and documents concerning current and former Participants, Authorized Users and Trading Customers with other markets and clearing organizations;
- (c) share information and documents concerning ongoing and completed investigations with other markets and clearing organizations; and/or
- (d) require Participants to provide information and documents to the Company as reasonably practicable: provided that the Company will not require Account Managers or Introducing Agents to provide information or documents regarding their Trading Customers or Client Accounts unless required by Applicable Law.

#### **1108. Regulatory Services Agreement**

If the Company enters into a Regulatory Services Agreement with an RSP to provide certain regulatory services for the Company, the RSP may perform certain surveillance, investigative, and regulatory functions under these Rules and the Company may provide information to the RSP in connection with the performance by the RSP of those functions. The Chief Compliance Officer shall retain supervisory authority with respect to any functions performed by the RSP pursuant to such Regulatory Services Agreement.

#### **1109. Force Majeure**

Notwithstanding any other provision of these Rules, the Company shall not be obligated to perform its obligations under these Rules or any agreement with a Participant or Trading Customer, or to compensate any Person for losses occasioned by any delay or failure of performance, to the extent a delay or failure of performance is the result of circumstances that the Company determines, in its sole discretion, may have an adverse effect upon the functions and facilities of the Company, including acts of God, fire or other natural disasters, bomb threats, acts of terrorism or war, severely inclement weather, power outages, or interruption in telecommunications or Internet services or services by network service providers.

#### **1110. Extension or Waiver of Rules**

The Company may, in its sole discretion, waive, or extend the time period for performing, any act or acts designated by these Rules, but only to the extent that such waiver or extension is not inconsistent with the CEA or CFTC Regulations.

#### **1111. Effect of Amendment, Repeal or New Rule**

The Company may, in compliance with the CEA and CFTC Regulations, amend or repeal any Rule and/or adopt new Rules. Any such amendment or repeal of a Rule or adoption of a new Rule, shall, upon the effective date of such amendment, repeal or adoption, as applicable, be binding on all Persons subject to the jurisdiction of the Company (regardless of when any such Person became subject to the Company's jurisdiction) and all Swaps (regardless of whether any such Swap was entered into after such effective date); provided that any amendment or repeal of Rules or any adoption of new Rules regarding disclosure or confidentiality of Participant Data or information about a Participant, Trading Customer, or Client Account, as applicable, shall be binding on all Persons subject to the jurisdiction of the Company after the effective date of such amendment, repeal or adoption, and all Swaps entered into after such effective date. The Company shall, if reasonably practicable, provide Participants with prior notice of any amendment or repeal of any Rule or adoption of any new Rule.

#### **1112. Signatures**

Rather than rely on an original signature, the Company may elect to rely on a signature that is transmitted, recorded or stored by any electronic, optical, or similar means (including telecopy, imaging, photocopying, electronic mail, electronic data interchange, telegram, or telex) as if it were (and the signature shall be considered and have the same effect as) a valid and binding original.

#### **1113. Governing Law; Legal Proceedings**

- (a) The Rules, and the rights and obligations of the Company, Participants, Authorized Users, Trading Customers and any other Person under these Rules, shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed and performed wholly within the State of New York, without regard to any provisions of New York law that would apply the substantive law of a different jurisdiction.
- (b) Any action, suit or proceeding against the Company, its Officers, Managers, limited liability company members, employees, agents or any member of any committee must be brought within one year from the date that a cause of action has accrued. Any such action, suit or proceeding shall be brought in the State or Federal courts located within the Borough of Manhattan in the City of New York. Each Participant, Authorized User and Trading Customer expressly consents to the jurisdiction of any such court, waives any objection to venue therein, and waives any right it may have to a trial by jury.

- (c) In the event that any Person fails to prevail in a lawsuit or other legal proceeding related to the business of the Company instituted by such Person against (i) the Company or (ii) any Affiliate of the Company, or any of their respective officers, directors, equityholders, employees, agents, or any member of any committee, such Person shall pay to the Company all expenses, including reasonable attorneys' fees, incurred by the Company in the defense of such proceeding. This paragraph shall not apply to Company disciplinary actions, appeals thereof, or any instance in which the Board has granted a waiver of the provisions hereof.