Nodal Clear Rulebook

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SECTION I DEFINITIONS

1.1 Definitions

Unless the context otherwise requires, the terms defined in this Rule have the meanings specified below for all purposes under the Rules:

Adjusted Net Capital means an FCM's adjusted net capital requirement as calculated under CFTC Regulation 1.17.

Affected Clearing Member has the meaning set forth in Rule 9.1.2

Affiliate. A Person that directly or indirectly, controls, is controlled by, or is under common control with another Person.

Allowance has the meaning set forth in Rule 9.3.2.

Appeals Committee. A panel comprised of a chair and two individuals appointed by the Board to consider appeals under Section V.

Applicable Law. With respect to any Person, any statute, law, regulation, rule or ordinance of any Governmental Authority or Self-Regulatory Organization applicable to such Person, including the CEA and CFTC Regulations.

Approved Financial Institution. A bank or trust company designated by the Board pursuant to Rule 3.18.

Assessments has the meaning set forth in Rule 3.35(b)(vi).

Authorized User. A natural person who is either employed by or is an agent of a Clearing Member and who is authorized by the Clearing House as an Authorized User in accordance with Rule 3.8.

Bank Holiday means any day when banks in the State of New York generally are closed, as determined by the Clearing House.

Bankruptcy Event has the meaning set forth in Rule 3.38.1.

Base Margin Amount has the meaning set forth in Rule 3.34.1(b).

Base Uncovered Stress Loss Amount has the meaning set forth in Rule 3.34.1(c).

Base Volume Amount has the meaning set forth in Rule 3.34.1(d).

Board. The Board of Directors of the Clearing House.

Business Day. Any day on which the Clearing House is open for business, other than Saturday, Sunday, or a Bank Holiday.

CEA. The Commodity Exchange Act, as it may be amended from time to time.

CFTC or ***Commission***. The Commodity Futures Trading Commission.

CFTC Regulations. The regulations of the CFTC.

Chairman. The Chairman of the Board of the Clearing House.

Chief Compliance Officer. The individual appointed by the Board to serve as the chief compliance officer of the Clearing House.

Chief Executive Officer. The individual appointed by the Board to serve as the chief executive officer of the Clearing House.

Chief Risk Officer. The individual appointed by the Board to serve as the chief risk officer of the Clearing House.

Clearing Activity. Any clearing business conducted pursuant to the Rules or which is required to be conducted pursuant to the Rules.

Clearing House. Nodal Clear, LLC, a Delaware limited liability company registered with the CFTC as a derivatives clearing organization.

Clearing House Official. Any Officer or employee of the Clearing House and any member of the Board or committee established by the Board.

Clearing Member. An entity meeting the requirements of, and approved for, clearing membership at the Clearing House that is authorized pursuant to Rule 3.3 to clear trades in one or more Exchange Contracts. Except for those Clearing Members that clear solely for one or more House Accounts (each, a "**House-Only Clearing Member**"), all other Clearing Members must be registered with the CFTC as FCMs (each, an "**FCM Clearing Member**").

Clearing Member Agreement. An agreement between the Clearing House and a Clearing Member, which must be executed in order for a Clearing Member to have access to the Clearing House for the purpose of clearing Exchange Contracts.

Clearing System. The systems, software, equipment, hardware, apparatus, appliances, gateways, application programming interfaces and other components used by or on behalf of the Clearing House to perform its clearing functions.

Collateral. At any time, such property as may be delivered by a Clearing Member to the Clearing House as collateral for the obligations of such Clearing Member to the Clearing House, and all proceeds of the foregoing and all proceeds of any of the foregoing, held in or for the accounts of a Clearing Member in connection with the financial obligations of such Clearing Member, however

created, arising or evidenced, whether direct or indirect, absolute or contingent, existing, due or to become due.

Compliance Manager has the meaning set forth in Rule 5.1.1.

Confidential Information has the meaning set forth in Rule 7.13.

Contract Specifications. The descriptions of the contractual items for each Exchange Contract as set forth in the Exchange Rules.

Corporate Action has the meaning set forth in the Exchange Rules and Contract Specifications.

Customer has the meaning set forth in CFTC Regulation 1.3.

Customer Account means an account established by a Clearing Member with the Clearing House in which the Clearing Member maintains trades, positions and Margin solely for Customers of the Clearing Member.

Default. Any event that would constitute a default under Rule 3.29.

Deliverable has the meaning set forth in the Contract Specifications of Physically Settled Exchange Contracts.

Delivery Facility means any Person or facility used for the delivery of Deliverables, including but not limited to, warehouses appearing on the list of nominated warehouses as published by the Exchange, facilities and systems operated by such Persons, and Registries.

Delivery Failure means a Clearing Member failing to meet any delivery obligation in full under or in connection with any Physically Settled Exchange Contract.

Director. An individual serving on the Board.

Disciplinary Action has the meaning set forth in Rule 5.1.1.

Disciplinary Panel. Either or both of a Review Panel and a Hearing Panel, as the context requires.

Emergency means any occurrence or circumstances which, in the opinion of the Board, Chief Executive Officer, Chairman or Chief Risk Officer, requires immediate action, and that threatens, or may threaten, the fair and orderly settlement or integrity of any Exchange Contract, including:

(a) any circumstance that may materially affect the performance of an Exchange Contract;

(b) any action taken by a Governmental Authority, Self-Regulatory Organization, state or local governmental body, or foreign or domestic exchange or market that may have an adverse effect on the clearing of Exchange Contracts through the Clearing House or the settlement, legality or enforceability of any Exchange Contract;

(c) any actual, attempted or threatened corner, squeeze, congestion, manipulative activity or undue concentration of positions in an Exchange Contract;

(d) any other circumstance that may have a severe, adverse effect upon the functions and facilities of the Clearing House, including, but not limited to, acts of God, pandemics, fire or other natural disasters, bomb threats, acts of terrorism or war, severely inclement weather, failure or malfunction of all or a portion of the Clearing System, or other system breakdowns or interruptions such as power, computer, communication or transportation systems or the Internet;

(e) the Insolvency of any Clearing Member or the imposition of any injunction or other restraint by any Governmental Authority, court or arbitrator upon a Clearing Member which may affect the ability of a Clearing Member to satisfy its obligations;

(f) any circumstance in which it appears to the Board that a Clearing Member:

(i) has failed to perform on an Exchange Contract;

(ii) is Insolvent;

(iii) is otherwise in Default; or

(iv) is in such financial or operational condition or is conducting business such that the Clearing Member cannot be permitted to continue in business without jeopardizing the safety of funds of Customers, Clearing Members or the Clearing House; or

(g) any other unusual, unforeseeable or adverse circumstance as determined by the Board or the Chief Executive Officer (or, as applicable, the Chairman or Chief Risk Officer).

EMTS has the meaning set forth in Rule 9.4.2.

Exchange. A company designated by the CFTC as a contract market that has entered into a clearing services agreement with the Clearing House.

Exchange Contract. Any contract available for trading on an Exchange and for clearing through the Clearing House.

Exchange Contract Segment has the meaning set forth in 3.34.1(f).

Exchange Rules. Any rule, interpretation, stated policy, or instrument corresponding to any of the foregoing as adopted from time to time by the relevant Exchange.

Expiry. An Exchange Contract with a specific date of expiration.

Financial Performance has the meaning set forth in Rule 9.1.2.

Force Majeure Event means, in relation to delivery obligations pursuant to any Physically Settled Exchange Contract, any event that is an event of force majeure (or similar event, howsoever defined) for that Physically Settled Exchange Contract under the Contract Specifications or Exchange Rules.

FCM. A futures commission merchant as defined in CEA §1a(28) and CFTC Regulation 1.3~~(p)~~ that is registered with the CFTC as such.

Funding Payment has the meaning set forth in the Exchange Rules and Contract Specifications.

General Counsel. The individual appointed by the Board to serve as the general counsel of the Clearing House.

Governmental Authority. Any domestic or foreign government (or political subdivision), governmental or regulatory authority, agency, court, commission or other governmental or regulatory entity.

Guaranty Fund. The fund comprising the monies, securities and instruments deposited by Clearing Members pursuant to Rule 3.12, which fund shall be used as provided in Rule 3.35 to reimburse the Clearing House for losses sustained by the Clearing House as a result of the failure of any Clearing Member to discharge its obligations in accordance with the Rules.

Guaranty Fund Deposit Requirement has the meaning set forth in Rule 3.34.2(a).

Guaranty Fund Deposit Surcharge has the meaning set forth in Rule 3.34.1(e).

Hearing Panel. A Disciplinary Panel that will, pursuant to the procedures set forth in Section V, adjudicate disciplinary cases pursuant to a notice of charges and execute other duties as provided in Section V. The members of the Hearing Panel will be appointed in accordance with Rule 5.1.12.

House Account has the meaning set forth in CFTC Regulation 39.2.

Initial Margin. The initial amount of Collateral that must be deposited with or paid to the Clearing House by Clearing Members in accordance with the Rules as a performance bond in respect of the Exchange Contracts held in the House Account and Customer Account of such Clearing Members.

Insolvency and ***Insolvent*** means the occurrence of any of the following events with respect to a Clearing Member:

(a) the Clearing Member is determined to be insolvent by a Governmental Authority or Self-Regulatory Organization;

(b) if the Clearing Member is a member of the Securities Investor Protection Corporation, a court of competent jurisdiction finds that the Clearing Member meets any one of the conditions set forth in clauses (A), (B), (C) or (D) of Section 5(b)(1) of the Securities Investor Protection Act of 1970;

(c) in the event of the entry or the making of a decree or order by a court, Governmental Authority or other supervisory authority of competent jurisdiction: (i) adjudging the Clearing Member as bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization, arrangement, liquidation, dissolution, adjustment or composition of or in respect of the Clearing Member under the Bankruptcy Code or any other applicable federal, state or other U.S. or non-U.S. law, including any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law; (iii) appointing a custodian, liquidator, provisional liquidator, administrator, provisional administrator, assignee, trustee, sequestrator or other similar official for the Clearing Member or for any substantial part of its property; (iv) ordering the winding up or liquidation of the Clearing Member's affairs; or (v) consenting to the institution by the Clearing Member of proceedings to be adjudicated as a bankrupt or insolvent;

(d) the filing by the Clearing Member of a petition, or any case or proceeding, seeking reorganization or relief under the Bankruptcy Code or any other applicable federal, state or other U.S. or non-U.S. law, including any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law, or the consent by the Clearing Member to the filing of any such petition, case or proceeding or to the appointment of a custodian, liquidator, provisional liquidator, administrator, provisional administrator, assignee, trustee, sequestrator or other similar official for the Clearing Member or for any substantial part of its property, or the making by the Clearing Member of an assignment for the benefit of its creditors, or the admission by the Clearing Member in writing of its inability to pay its debts generally as they become due, or the taking of corporate or

similar action by the Clearing Member in furtherance of the foregoing;

(e) notwithstanding the above, the appointment of the Federal Deposit Insurance Corporation as receiver for purposes of resolution pursuant to Title II of the Dodd-Frank Act, or the appointment of a foreign government authority as receiver for purposes of resolution under an analogous resolution regime, is excluded from the definition of Insolvency or Insolvent.

Investigation Report has the meaning as set forth in Rule 5.1.6.

LLC Agreement. The Limited Liability Company Agreement of the Clearing House, as it may be amended or restated from time to time.

Liquidity Event. A Liquidity Event means an event that causes the Clearing House to require financial liquidity: (i) to satisfy payment obligations of a Clearing Member that is in Default or has been suspended; (ii) to satisfy payment obligations associated with the transfer of account(s) of a Clearing Member that is in Default or has been suspended; or (iii) as a result of a payment or wire transfer delay, liquidity constraint, or default by an Approved Financial Institution. The decision to declare a Liquidity Event shall be in the sole discretion of the Clearing House.

Margin. Initial Margin and Variation Margin or either of them.

Margin Account(s) has the meaning set forth in Rule 3.22.

NFA. National Futures Association.

Nodal Deliverable RINs Contracts has the meaning set forth in Rule 9.4.1.

Nodal Deliverable US Environmental Contract has the meaning set forth in Rule 9.3.1.

Officer has the meaning set forth in Rule 2.2.1.

Outstanding Exposure means any payment obligation, other than Margin, due in respect of an Exchange Contract, as applicable (including, but not limited to, any ~~cash adjustment~~Funding Payment, option premium, or Physically Settled Exchange Contract delivery value).

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

Physically Settled has the meaning set forth in the Exchange Rules.

President. The individual appointed by the Board to serve as the president of the Clearing House.

Public Director. A Director having the qualifications set forth in Rule 2.1.6.

Registry has the meaning set forth in Rule 9.3.2.

Registry Operator has the meaning set forth in Rule 9.3.2.

RINs has the meaning set forth in Rule 9.4.2.

Replenishment has the meaning set forth in Rule 3.34.7(b).

Respondent. A Clearing Member, Authorized User or any Person using the User ID of an Authorized User that is under investigation for alleged Rule violation(s) or against which charges have been filed.

Review Panel. A disciplinary panel that will, pursuant to the procedures set forth in Section V, review Investigation Reports submitted to it by the Chief Compliance Officer. The members of the Review Panel will be appointed in accordance with Rule 5.1.12.

Routine Request is a request, inquiry, or order of (i) the CFTC that is not pursuant to Part 11 of the CFTC Regulations or (ii) the Securities and Exchange Commission, a securities self-regulatory organization, or a futures self-regulatory organization that does not trigger a notice requirement under CFTC Regulation 1.12(m).

Rules. Any rule, interpretation, stated policy, or instrument corresponding to any of the foregoing, including these Rules, as adopted from time to time by the Clearing House.

Securities Exchange Act means the Securities Exchange Act of 1934, as amended.

Security Futures Product has the meaning set forth in Section 1a(45) of the CEA and Section 3(a)(56) of the Securities Exchange Act.

Self-Regulatory Organization has the meaning set forth in CFTC Regulation 1.3 and in section 3(a)(26) of the Securities Exchange Act ~~of 1934~~ and includes a derivatives clearing organization that is registered as such with the CFTC.

Settlement Price has the meaning set forth in Rule 3.39.

Termination Event means the occurrence of any of the following:

(a) the expiration or termination of the Clearing Member Agreement between a Clearing Member and the Clearing House;

(b) a representation or warranty made by the Clearing Member to the Clearing House under or in connection with any agreement between the Clearing House and the Clearing Member shall be false or misleading in any material respect as of the date on which made or repeated;

(c) the Clearing Member does not meet the qualifications for Clearing Members set forth in Rule 3.2; or

(d) the breach by the Clearing Member of the Rules or any of the terms or provisions of any agreement between the Clearing House and the Clearing Member.

Tender has the meaning set forth in Rule 9.3.2 or 9.4.2, as applicable.

Treasury Securities. United States Treasury bills, Treasury notes and Treasury bonds.

User ID. The unique identifier that is assigned by the Exchange to each Authorized User.

Variation Margin means (i) on the Business Day an Exchange Contract has been accepted for clearing by the Clearing House, the difference between the price at which such Exchange Contract was bought or sold and the Settlement Price for such Exchange Contract; and (ii) thereafter, the difference, as applicable, between (x) the Settlement Price on a given Business Day and the preceding Settlement Price for such Exchange Contract, or (y) the price at which such Exchange Contract was closed on the books of the Clearing House and the preceding Settlement Price for such Exchange Contract.

Weekend means not a Business Day but a Saturday and Sunday.

Withdrawal Date has the meaning set forth in Rule 3.37.1(b).

Withdrawal Deposit has the meaning set forth in Rule 3.37.7.

1.2 Rules of Interpretation

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

(a) terms defined in the Rules include the plural as well as the singular and vice versa;

(b) words importing gender include all genders;

(c) any reference to a Rule refers to a Rule of these Rules;

(d) any reference in a Rule to a paragraph or clause is to the referenced paragraph or clause in such Rule;

(e) any reference to "the Rules" or "these Rules" refers to these Rules, and the words "herein," "hereof," "thereto," "hereto," "hereunder" and words of similar import refer to these Rules as a whole and not to any particular Section, Rule or any other subdivision;

(f) references to days, months and years refer to calendar days, months and years, respectively; and

(g) all references to "including" are deemed to be followed by the words "without limitation."

SECTION II GOVERNANCE

2.1 Composition of the Board; Board Powers

2.1.1 The Board is authorized to oversee the day-to-day management and business operations of the Clearing House in accordance with the LLC Agreement.

2.1.2 The Board will approve Rules, provided that the Board may delegate the authority to approve such Rules to a Board committee or one or more Officers of the Clearing House; provided further that certifications or applications with respect to any such Rules will be submitted to the CFTC as required by Applicable Law.

2.1.3 The Board has the power to call for review, and to affirm, modify, suspend or overrule, any and all decisions and actions of committees or special committees of the Board or one or more Officers of the Clearing House related to the day-to-day business operations of the Clearing House.

2.1.4 To serve as a Director, an individual must possess the ability to contribute to the effective oversight and management of Clearing House, taking into account the needs of Clearing House and such factors as the individual's experience, perspective, skills and knowledge of the industry in which Clearing House operates. This shall include sufficient expertise, where applicable, in financial services, risk management and clearing services.

2.1.5 At all times not less than thirty-five percent (35%) of the Directors with voting authority, but not fewer than two (2) individuals, shall be Public Directors.

2.1.6 To qualify as a Public Director, an individual must be found, by action of the Board, to have no material relationship with the Clearing House. The Board must make such finding upon the nomination or appointment of the Director and as often as necessary in light of all circumstances relevant to such Director, but in no case less than annually. A "material relationship" is one that reasonably could affect the independent judgment or decision-making of the Director. The Board need not consider previous service as a Director of the Clearing House to constitute a "material relationship." A Director shall be considered to have a "material relationship" with the Clearing House if any of the following circumstances exist or have existed within the past year:

(a) such Director is an Officer or an employee of the Clearing House, or an officer or an employee of an Affiliate of the Clearing House;

(b) such Director has an ownership interest in the Clearing House;

(c) such Director is a director, officer, or employee of a Clearing Member, Exchange participant or Person with an ownership interest in the Clearing House;

(d) such Director, or an entity of which the Director is a partner, officer or director, receives more than $100,000 in combined annual payments for legal, accounting, or consulting services from the Clearing House or any of its Affiliates. Compensation for services as a Director of Clearing House or as a director of an Affiliate thereof does not count toward the $100,000 payment limit, nor does deferred compensation for services rendered prior to becoming a Director, so long as such compensation is in no way contingent, conditioned or revocable;

(e) Any of the "material relationships" set forth above apply to the "immediate family" of such Director (*i.e.*, spouse, parents, children, and siblings, in each case, whether by blood, marriage or adoption).

(f) A Public Director of the Clearing House may serve as a director of an Affiliate of the Clearing House if he or she otherwise qualifies as a Public Director in accordance with this Section 2.1.6.

2.1.7 The Board shall have procedures, as may be further set forth in policies that Clearing House may adopt, to remove a member from the Board where the conduct of such member is likely to be prejudicial to the sound and prudent management of the Clearing House.

2.1.8 The Board shall establish arrangements to permit consideration of the views of Clearing Members in connection with the functioning of the Clearing House and with additions or amendments to the Rules and shall make a description of such arrangements available to the public and to the CFTC. Major decisions of the Board will be disclosed to Clearing Members and the CFTC. Major decisions of the Board with a broad market impact will be disclosed to the public.

2.2 Officers

2.2.1 The Clearing House shall appoint from time to time one or more individuals with appropriate experience, skills and integrity to serve as the Chairman, Chief Executive Officer, President, Chief Risk Officer, Chief Compliance Officer, General Counsel and may further appoint such other officers of the Clearing House or any subsidiary of the Clearing House (each, an "**Officer**") as deemed necessary or appropriate, with such titles, duties, and authority as the Clearing House shall approve, to carry out the business of the Clearing House or any subsidiary of the Clearing House, and upon such terms and conditions as the Board shall determine.

2.2.2 Except as otherwise provided in Rule 2.3.1, any Officer may also be a director, officer, partner or employee of the Clearing House or any of its Affiliates.

2.2.3 The Chief Risk Officer shall be responsible for implementing the risk management policies, procedures and controls of the Clearing House and for making recommendations regarding risk management functions to the Risk Management Committee and the Board.

2.2.4 The Chief Compliance Officer, in consultation with the Risk Management Committee and the Board, shall be responsible for developing and enforcing appropriate compliance policies and procedures, to fulfill the duties and obligations of the Clearing House set forth in the CEA and CFTC Regulations.

2.2.5 The Officers shall have such other powers and duties in the management of Clearing House as the Board may prescribe from time to time, subject to the terms of the LLC Agreement.

2.3 Eligibility/Fitness

2.3.1 An individual may not serve as a Board member, serve on a committee established by the Board or hold a 10% or greater ownership interest in the Clearing House, if the individual:

(a) within the prior three (3) years has been found, by a final decision in any action or proceeding brought in a court of competent jurisdiction, or by any Governmental Authority or Self-Regulatory Organization to have committed a disciplinary offense;

(b) within the prior three (3) years has entered into a settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged, included a disciplinary offense;

(c) is currently suspended from trading on or from membership in a Self-Regulatory Organization, is serving any sentence or probation, or owes any portion of a fine or penalty related to either: (A) a finding of a disciplinary offense by a final decision in any action or proceeding brought in a court of competent jurisdiction, Governmental Authority or Self-Regulatory Organization; or (B) a settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense;

(d) is currently subject to an agreement with a Governmental Authority or Self-Regulatory Organization not to apply for registration with such Governmental Authority or for membership in such Self-Regulatory Organization;

(e) is currently, or within the past three (3) years has been, subject to a revocation or suspension of registration by a Governmental Authority or Self-Regulatory Organization;

(f) 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; or

(g) is subject to a statutory disqualification pursuant to Section 8a(2) of the CEA.

For purposes of this Rule 2.3.1, the terms "disciplinary offense," "final decision" and "settlement agreement" have the meaning given those terms in CFTC Regulation 1.63(a).

2.3.2 Prior to appointment to the Board or to a committee established by the Board, each individual shall certify that he or she is not disqualified pursuant to Rule 2.3.1. In addition, each Director will certify on at least an annual basis regarding his or her continued compliance with Rule 2.3.1.

2.4 Committees

2.4.1 The Board shall have at least the following standing committees: the Nominating Committee and the Risk Management Committee, each with the roles and responsibilities set out below.

2.4.2 *Nominating Committee*. The Nominating Committee of the Board shall consist of at least 51% Public Directors. The Nominating Committee reports to the Board and shall be chaired by a Public Director. The Nominating Committee shall be responsible for: (i) identifying individuals qualified to serve on the Board, consistent with the criteria that the Board may require and any composition requirement promulgated by the CFTC; and (ii) administering a process for the nomination of Board candidates.

2.4.3 *Risk Management Committee*. The Risk Management Committee of the Board reports to the Board and shall consist of at least 35% Public Directors. The Risk Management Committee shall oversee the Clearing House risk program on behalf of the Board with the authority to: (i) monitor the risk program of the Clearing House for sufficiency, effectiveness and independence; and (ii) oversee all facets of the risk program, including:

(a) Clearing Member membership criteria;

(b) risk management policy, financial safeguards and financial surveillance;

(c) surveillance, audits, examinations, and other regulatory responsibilities with respect to Clearing Members (including compliance with, as applicable, financial integrity, financial reporting, recordkeeping and other requirements);

(d) reviewing the size and allocation of the risk and compliance budgets and resources, and the number, hiring, termination and compensation of risk and compliance personnel;

(e) supervising the Chief Risk Officer, who will report to the Risk Management Committee in addition to the Chief Executive Officer;

(f) supervising the Chief Compliance Officer, who will report to the Risk Management Committee in addition to the Chief Executive Officer;

(g) authorizing its Chairman and the Chief Risk Officer to establish a Risk Advisory Committee to meet as needed and to be chaired by the Chief Risk Officer, which Committee will include Clearing Member representation in order to provide recommendations to the Clearing House and the Risk Management Committee upon request;

(h) recommending changes to ensure fair, vigorous, and effective regulation and risk management; and

(i) reviewing regulatory proposals prior to implementation and advising the Board as to whether and how such changes may impact regulation.

The Risk Management Committee shall take such other actions as may be required by the Rules or as otherwise delegated to it by the Board.

2.4.4 In addition to the standing committees, the Board shall have the power and authority to create and terminate, in accordance with the LLC Agreement, special committees of the Board and designate their composition, responsibilities and powers.

2.5 Treatment and Use of Non-Public Information

2.5.1 All information received by the Clearing House regarding past or current positions carried by the Clearing House or any other clearing organization for a Clearing Member or an Affiliate of such Clearing Member, margin payments between the Clearing House or any other clearing organization and a Clearing Member or an Affiliate of such Clearing Member, and financial statements filed with the Clearing House by any Clearing Member, shall be treated as confidential and will not be disclosed to any other Person except as follows:

(a) upon written consent of the Clearing Member involved;

(b) to the Exchange and Affiliates of the Exchange, as deemed appropriate by the Clearing House;

(c) to the CFTC, the United States Department of Justice, or other Governmental Authority, upon request pursuant to the requirements of Applicable Law;

(d) pursuant to subpoena or order of a court, Governmental Authority or Self-Regulatory Organization of competent jurisdiction;

(e) to any contract market or trading facility for audit, compliance, or market surveillance purposes, subject to terms and conditions as the Clearing House may deem appropriate; or

(f) pursuant to Rule 2.6.

2.5.2 No member of the Board or any committee established by the Board or by or pursuant to the Rules will use or disclose any material non-public information obtained in connection with such member's participation on the Board or such committee for any purpose other than the performance of his or her official duties as a member of the Board or such committee.

2.5.3 No Officer, employee or agent of the Clearing House may disclose to any other Person material non-public information obtained in connection with such employee's, Officer's or agent's employment, except where such disclosure is in the course of such employee's, Officer's, or agent's duties to the Clearing House or as permitted in Rule 2.5.1.

2.5.4 For the purposes of this Rule 2.5, the terms "material information" and "non-public information" each shall have the meaning set forth in CFTC Regulation 1.59(a).

2.6 Information-Sharing Arrangements

The Clearing House may enter into any arrangement with any Person or body (including any Governmental Authority or Self-Regulatory Organization) if the Clearing House considers such arrangement to be in furtherance of the Clearing House's purpose or duties under the Rules or Applicable Law. Information shared thereunder will be subject to confidentiality provisions to the extent permitted by Applicable Law.

2.7 Conflicts of Interest

2.7.1 Named Party In Interest Conflict

(a) No member of the Board will knowingly participate in such body's deliberations or voting in any matter involving a named party in interest where such member: (i) is a named party in interest in the matter; (ii) is an employer, employee or fellow employee of a named party in interest; (iii) has any other significant, ongoing business relationship with a named party in interest, excluding relationships limited to Exchange Contracts; or (iv) has a family relationship with a named party in interest.

(b) Prior to consideration of any matter involving a named party in interest, any member of the deliberating body who has a potential conflict of interest and chooses not to abstain from deliberations and voting will disclose to the Chief Compliance Officer whether such member has one of the relationships listed in paragraph (a) above with a named party in interest.

(c) The Chief Compliance Officer will determine whether any member of the relevant deliberating body who does not choose to abstain from deliberations and voting is subject to a conflicts restriction under this paragraph (c). Such determination will be based upon a review of the following information: (i) information provided by such member pursuant to paragraph (b) above; and (ii) any other source of information that is held by and reasonably available to the Clearing House.

2.7.2 Financial Interest in a Significant Action Conflict

(a) No member of the Board will participate in such body's deliberations and voting on any significant action if such member has a direct and substantial financial interest in the result of the vote, as determined pursuant to paragraph (c) below.

(b) Prior to consideration of any significant action, any individual who has a potential conflict of interest and chooses not to abstain from deliberations and voting will disclose to the Chief Compliance Officer 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.

(c) The Chief Compliance Officer will determine whether any individual who does not choose to abstain from deliberations or voting is subject to a conflicts restriction under this paragraph (c). Such determination will be based upon a review of the following information: (i) the most recent large trader reports and clearing records available to the Clearing House; (ii) information provided by such member pursuant to paragraph (b) above; and (iii) any other information reasonably available to the Clearing House, taking into

consideration the exigency of the significant action being contemplated.

(d) Any member of the Board or any committee of the Board who would otherwise be required to abstain from deliberations and voting pursuant to paragraph (a) above may participate in deliberations, but not voting, if the deliberating body, after considering the factors specified below, determines that such participation would be consistent with the public interest; provided, however, that before reaching any such determination, the deliberating body will fully consider the information specified in paragraph (b) above which is the basis for such member's substantial financial interest in the significant action that is being contemplated. In making its determination, the deliberating body will consider: (i) whether such member's participation in the deliberations is necessary to achieve a quorum; and (ii) whether such member has unique or special expertise, knowledge or experience in the matter being considered.

2.7.3 The minutes of any meeting to which the conflicts determination procedures set forth in this Rule apply will reflect the following information:

(a) the names of all members of the relevant deliberating body who attended such meeting in person or who otherwise participated in such meeting;

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

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

(d) any determination made in accordance with paragraph (d) of Rule 2.7.2.

2.8 Maintenance of Books and Records by Clearing House

2.8.1 The Clearing House shall keep, or cause to be kept, complete and accurate books and records of accounts of the Clearing House, including all books and records required to be maintained pursuant to the CEA and CFTC Regulations.

2.8.2 The Clearing House shall retain all such books and records for at least five (5) years in accordance with CFTC Regulations and shall make such books and records readily accessible for inspection by the CFTC and the U.S.

Department of Justice during the first two (2) years of such five-year period.

2.9 Emergencies

2.9.1 During an Emergency, the Board may implement temporary emergency procedures and rules ("**Emergency Rules**"), subject to applicable provisions of the CEA and CFTC regulations. If the Chief Executive Officer (or, in the event that the Chief Executive Officer is unavailable, the Chairman or the Chief Risk Officer) determines that Emergency Rules must be implemented with respect to an Emergency before a meeting of the Board can reasonably be convened, then the Chief Executive Officer (or, if applicable, the Chairman or the Chief Risk Officer) shall have the authority, without Board action, to implement such Emergency Rules with respect to such Emergency that he or she deems necessary or appropriate to respond to such Emergency.

2.9.2 Pursuant to this Rule 2.9, Emergency Rules may require or authorize the Clearing House, the Board, any Committee, the Chief Executive Officer (or, if the Chief Executive Officer is unavailable, the Chairman or Chief Risk Officer) or any other officer of the Clearing House to take actions necessary or appropriate to respond to the Emergency, including:

(a) suspending or curtailing clearing or limiting clearing to liquidation only (in whole or in part);

(b) extending or shortening the expiration date and/or the last settlement date for Exchange Contracts;

(c) providing alternative settlement mechanisms;

(d) ordering the liquidation of Exchange Contracts, the fixing of a Settlement Price, or the reduction of positions;

(e) extending, limiting or changing the hours of operation of the Clearing House;

(f) temporarily modifying or suspending any provision of the Rules;

(g) changing the amount of money to be paid in connection with an Exchange Contract, whether previously or thereafter settled;

(h) requiring Clearing Members to meet special Margin and/or Outstanding Exposure requirements;

(i) imposing or modifying limits on the size of positions that may be carried by Clearing Members; and/or

(j) with respect to an Emergency that is specific to one or more Clearing Members, employing the procedures set forth in Rule 5.3.

2.9.3 Whenever the Clearing House takes action to respond to an Emergency (including, without limitation, the actions set forth in Rule 2.9.2), it will, where possible, ensure that timely notice is given to Clearing Members.

2.9.4 The Clearing House will use reasonable efforts to notify the CFTC prior to implementing, modifying or terminating an Emergency Rule. If such prior notification is not possible or practicable, the Clearing House will notify the CFTC as soon as reasonably practicable, but in all circumstances within twelve hours of the implementation, modification or termination of such Emergency Rule.

2.9.5 Upon taking any action in response to an Emergency, the Clearing House will document the decisions and deliberations related to such action for review by the Board as soon as practicable. Such documentation will be kept for at least five years following the date on which the Emergency ceases to exist or to affect the Clearing House, and all such documentation will be provided to the CFTC upon request.

SECTION III CLEARING

3.1 Categories of Clearing Membership

There shall be two categories of Clearing Members: (i) FCM Clearing Members; and (ii) House-Only Clearing Members.

3.2 Qualification of Clearing Members

3.2.1 Each applicant for qualification as a Clearing Member must satisfy the following requirements:

(a) it shall be a corporation, limited liability company, partnership or other entity in good standing in its jurisdiction of formation;

(b) it shall be qualified to conduct business in the State of New York or have an agency agreement in place with an entity qualified in the State of New York that provides an agent for service of process and other communications from the Clearing House in connection with the business of the Clearing Member;

(c) it shall be engaged in or demonstrate its capacity to engage in the conduct of the business of a Clearing Member;

(d) it shall have received all necessary registrations, approvals and consents from all applicable regulatory authorities and Governmental Authorities to permit it to conduct the business of a Clearing Member;

(e) it shall demonstrate such fiscal integrity as would justify the Clearing House's assumption of the risks inherent in clearing Exchange Contracts;

(f) it shall demonstrate financial capitalization commensurate with Clearing House requirements as set by the Risk Management Committee from time to time, provided that the minimum capital requirement shall not be more than $50,000,000;

(g) if it is clearing on behalf of Customers, it shall be registered as an FCM; if it is clearing Security Futures Products on behalf of Customers, it also shall be registered or notice-registered as a broker-dealer under Section 15(b) of the Securities Exchange Act;

(h) it shall have established satisfactory relationships with, and designated to the Clearing House, an Approved Financial Institution for confirmation and payment of all Initial Margin, Variation Margin, Outstanding Exposure, and other settlements with the Clearing House;

(i) it shall maintain back-office facilities staffed with experienced and competent personnel or have entered into a facilities management agreement in form and substance acceptable to the Clearing House; and

(j) it shall have adequate operational capacity, including the ability to process expected peak volumes and values within required time frames, fulfill Collateral payment and delivery obligations imposed by the Clearing House and participate in default management activities.

3.2.2 A Clearing Member shall promptly notify the Clearing House if it fails to satisfy any of the qualifications for membership in Rule 3.2.1.

3.2.3 The Board may grant exemptions to the qualifications for membership in Rule 3.2.1 if it is determined that such an exemption would not jeopardize the financial or operational integrity of the Clearing House.

3.3 Applications for Membership

Any Person desiring to become a Clearing Member shall execute a Clearing Member Agreement and submit an application in such form as shall be prescribed by the Clearing House, which shall include a certification that the applicant has received, reviewed and agrees to abide by the Rules and perform the duties and responsibilities of a Clearing Member. Only Persons found to meet the qualifications set forth in Rule 3.2 will be permitted to be Clearing Members. For the purpose of determining whether any applicant or Clearing Member is so qualified, the Clearing House may examine the books and records of any applicant or Clearing Member and may take such other steps as it may deem necessary to assess the qualifications of an applicant or Clearing Member. An applicant for Clearing Member status shall be conclusively deemed to have agreed to have no recourse against the Clearing House in the event that its application to become a Clearing Member is rejected.

3.4 Appeal of Clearing Membership Decisions

An applicant that fails to be approved for membership shall be informed by the Clearing House and shall have seven (7) Business Days thereafter to file an appeal to the Board seeking further consideration. The Board may approve the applicant by a majority vote if it determines that the decision to deny the application was in error.

3.5 Duties and Responsibilities of Clearing Members

Each Clearing Member shall, and where applicable, shall cause all of its Authorized Users and employees to:

(a) comply with and act in a manner consistent with the Rules and any rules of or agreement with a Delivery Facility, as applicable;

(b) ensure that all Clearing Activity conducted by the Clearing Member is performed in a manner that is consistent with the Rules;

(c) ensure that only the Clearing House's facilities are used to conduct Clearing Activity;

(d) ensure that the Clearing House's facilities are used in a responsible manner and are not used for any improper purpose;

(e) meet all financial requirements provided by the Rules;

(f) guarantee and assume complete responsibility for all Exchange Contracts submitted by it or which it has authorized another Person to submit for clearing in its name;

(g) maintain its deposit in the Guaranty Fund as required by the Rules;

(h) observe high standards of integrity, market conduct, commercial honor, fair dealing and just and equitable principles of trade while conducting any Clearing Activity, or any aspect of any business connected with or concerning the Clearing House;

(i) immediately inform the Clearing House of any changes to the account information provided by the Clearing Member;

(j) keep User IDs and passwords confidential;

(k) promptly review and, if necessary, respond to all communications sent by the Clearing House;

(l) keep, or cause to be kept, complete and accurate books and records as required to be maintained pursuant to the CEA and CFTC Regulations for the time and in the manner specified by CFTC Regulations; and make such books and records available for inspection by a representative of the Clearing House, the CFTC or other Governmental Authority of competent jurisdiction;

(m) not knowingly mislead or conceal any material fact or matter in any dealings or filings with the Clearing House or in connection with a Disciplinary Action;

(n) be responsible, even after it has withdrawn as a Clearing Member, for any violations of Rules committed by it while it was a Clearing Member;

(o) cooperate with the Clearing House and any Governmental Authority in any inquiry, investigation, audit, examination or proceeding;

(p) adopt, adhere to and enforce risk management and other policies and procedures that are designed to address the risks that the Clearing Member poses to the Clearing House (including whether a Customer presents a heightened risk profile) and promptly provide, upon request by the Clearing House or the CFTC, information related to the risk management policies, procedures and practices of the Clearing Member;

(q) coordinate with the Clearing House to develop and test business continuity and disaster recovery plans that enable effective resumption of daily processing, clearing and settlement following a disruption; and

(r) adopt, adhere to, and enforce risk management and other policies and procedures that are designed to ensure that any increase in an account's incremental margin requirement from trading on the Weekend does not exceed the account's excess margin on deposit at the Clearing Member as of the latest completed margin run preceding the Weekend. If the Clearing Member provides real-time adjustments to the account's Weekend trading capacity based on the account's net gains or net losses, all of the account's positions must be included in the net gain or net loss calculation, whether realized or unrealized. If the Clearing Member credits an account's net gain at any point in time toward the account's prefunded trading capacity, it must also debit net loss at any other point in time incurred by the account during the same Weekend.

3.6 Prohibited Practices

3.6.1 Clearing Members are prohibited from engaging in practices that may cause degradation of the Clearing System or the Clearing House's other services or facilities.

3.6.2 Clearing Members, Authorized Users and other Persons subject to the jurisdiction of the Clearing House are prohibited from engaging in acts or practices contrary to the purposes of the Clearing House, and from committing any act or engaging in any conduct that is likely to bring the Clearing House into disrepute. These prohibited practices include, but are not limited to: (i) engaging in any activity that presents a risk of harm to the Clearing House, Clearing Members or the public and (ii) engaging in conduct or practices that are detrimental to the best interests of the Clearing House or that adversely affect the integrity of the Clearing House or the Clearing System.

3.7 Termination; Restriction on Activity

3.7.1 Upon the occurrence of a Termination Event, the Board may, in its sole discretion, impose limitations, conditions and restrictions upon a Clearing Member or terminate the status of the Clearing Member. In such circumstances, the Board may, in its sole discretion:

(a) decline to accept new positions in Exchange Contracts for the House Accounts and/or Customer Accounts of such Clearing Member;

(b) permit transactions in Exchange Contracts to be tendered for liquidation only;

(c) cause open Exchange Contracts to be settled in cash or liquidated in the open market; and

(d) otherwise take or omit to take such actions, or any combination thereof, as it deems necessary or appropriate in the circumstances.

3.7.2 Failure to comply with the Rules may subject a Clearing Member to a suspension or revocation of clearing privileges. In addition, or in the alternative, and in either case in its sole discretion, the Board shall be authorized to:

(a) impose on such Clearing Member such additional capital, Initial Margin or other requirements as it shall deem appropriate for the protection of the Clearing House and its Clearing Members;

(b) allow such Clearing Member to submit Exchange Contracts for liquidation only; and

(c) limit or restrict the type of Exchange Contracts that may be cleared by such Clearing Member in any of its accounts with the Clearing House.

3.8 Authorized Users

3.8.1 Each Clearing Member shall designate one or more Authorized Users who will be responsible for all Clearing Activity conducted on behalf of the Clearing Member. Each Clearing Member must provide the Clearing House with current contact information and any other requested information for each of its Authorized Users so that the Clearing House is able to immediately contact the Authorized Users. The Clearing House will not accept the registration as an Authorized User of any individual who is an employee of the Clearing House.

3.8.2 To designate an Authorized User, a Clearing Member must follow the procedures established by the Clearing House. The Clearing House may establish criteria that individuals must fulfill to become an Authorized User. By agreeing to become an Authorized User, an individual agrees to be bound by the duties and responsibilities of an Authorized User and to be subject to, and comply with, the Rules applicable to Authorized Users.

3.8.3 The Clearing House will promptly notify a Clearing Member of the approval of nominated Authorized Users, and will maintain a list of all appointed Authorized Users for each Clearing Member.

3.8.4 The Clearing House shall promptly notify a Clearing Member if it declines to approve, revokes or suspends the designation of an Authorized User.

3.8.5 To request the termination of the designation of an Authorized User, the Clearing Member or Authorized User must notify the Clearing House following the procedures established by the Clearing House.

3.8.6 The Clearing House may, in its sole discretion, refuse to accept a request to terminate the registration of an Authorized User, or may postpone the effective date of the termination of registration if the Clearing House considers it necessary for the protection of Clearing Members or in the Clearing House's best interest.

3.8.7 Based on the information provided to, and other information gathered by, the Clearing House regarding the request to terminate the registration of an Authorized User, the Clearing House will:

(a) accept the request to terminate the designation;

(b) postpone the effective date of termination of the designation; and/or

(c) impose any terms or conditions before or after the effective date of termination of the designation.

3.8.8 After termination or revocation of the designation or during any period of suspension of an Authorized User, the Authorized User remains subject to

the Rules and the jurisdiction of the Clearing House for acts done and omissions made while acting as an Authorized User. Any Clearing House proceeding relating to an Authorized User shall occur as if the Authorized User were still designated as such.

3.9 Capital Requirements

3.9.1 A Clearing Member must at all times maintain minimum regulatory capital of the greater of (i) $10,000,000, or (ii) the capital requirements imposed by any Government Agency, Self-Regulatory Organization or other examining authority or regulator to which such Clearing Member is subject by statute, regulation or agreement.

3.9.2 The Risk Management Committee may prescribe additional capital requirements with respect to any Clearing Member.

3.10 Position Risk

3.10.1 The Clearing House shall have authority to develop and implement risk control policies for Customer and House Account transactions and positions. Further, the Clearing House shall have authority to take such action, including but not limited to: (i) imposing enhanced capital requirements; (ii) imposing enhanced Initial Margin requirements; (iii) prohibiting an increase or requiring a reduction in positions; and (iv) liquidating or transferring positions when, in the sole discretion of the Clearing House, such action is necessary to effectively manage risk posed to the Clearing House by a Clearing Member.

3.10.2 Where any two or more Clearing Members are Affiliates, the Board may impose risk limits on the aggregate positions that such Clearing Members may carry with the Clearing House.

3.11 Financial Reporting Requirements

3.11.1 Each Clearing Member shall file with the Clearing House:

(a) A financial statement in the form prescribed in Rule 3.11.2 within sixty (60) days after the end of such Clearing Member's fiscal year, together with a summary description in reasonable detail of the risk management, policies, procedures and systems that were maintained by such Clearing Member during such fiscal year and a financial statement in the form prescribed in Rule 3.11.2 within seventeen (17) days after the end of each month; and

(b) A copy of each financial statement, financial report, or notice pursuant to CFTC Regulation 1.12, which it files with any Governmental Authority or Self-Regulatory Organization of which it is a member or participant at the same time it files such statement,

report, or notice with any such Governmental Authority or Self-Regulatory Organization, and if such statement, report, or notice is other than a routine periodic statement, report, or notice required under the bylaws, rules or regulations of such entity, such copy shall be accompanied by a written statement, pursuant to CFTC Regulation 1.12, setting forth (to the extent known) the reasons why such Clearing Member is filing such statement, report, or notice.

3.11.2 The financial statements required by subparagraph Rule 3.11.1 shall be submitted on Form 1-FR-FCM or FOCUS Report Part II, provided that if the Clearing Member is not required to submit Form 1-FR-FCM or a FOCUS Report it must provide financial information in the form and manner prescribed by the Clearing House. The financial statement for the fiscal year of a Clearing Member shall be certified by an independent public accountant, and the monthly financial statements shall be certified by the president, the chief financial officer or a general partner of the Clearing Member.

3.11.3 Each Clearing Member shall file with the Clearing House such financial or other information, in addition to that which is explicitly required by this Rule 3.11, as may be requested by the Clearing House from time to time.

3.11.4 In the event that a Clearing Member: (i) fails to meet any obligation to deposit or pay any Margin or Outstanding Exposure when and as required by any clearing organization of which it is a member; (ii) fails to be in compliance with any applicable financial requirements of any Governmental Authority or Self-Regulatory Organization; or (iii) becomes the subject of a bankruptcy petition, receivership proceeding or the equivalent, such Clearing Member shall immediately so advise the Clearing House both telephonically and in writing.

3.12 Guaranty Requirement

3.12.1 Unless waived by the Clearing House, each Clearing Member must provide and maintain with the Clearing House a correct roster of every Person (including natural persons) that directly or indirectly is the beneficial owner (determined in accordance with Rule 13d-3 under the Securities Exchange Act ~~of 1934~~, as amended) of 5% or more of any class of equity security of the Clearing Member. For purposes of this rule, the term "equity security" includes any stock, partnership interest, membership interest or similar security, or any security convertible into such a security, or carrying any option, warrant or right to subscribe to or purchase such a security, or any other instrument or right that the Clearing House deems to be of similar nature and considers necessary or appropriate to treat as an equity security. If such Person owns its interest in the Clearing Member indirectly through one or more intermediaries, all such intermediaries must be disclosed, including:

(a) if a corporation, all shareholders who own 5% or more of any class of equity security of the Clearing Member;

(b) if a partnership, all general and any limited or other partners who have contributed 5% or more of the capital of such Clearing Member, or

(c) if a limited liability company, owners of membership interests of 5% or more of such Clearing Member.

3.12.2 At the discretion of the Clearing House, a Clearing Member may be required to provide the Clearing House with a written guarantee, in a form reasonably satisfactory to the Clearing House, from any Person owning, directly or indirectly, 5% or more of any class of the equity securities of the Clearing Member pursuant to which such Person shall guarantee all obligations arising out of (i) accounts cleared by the Clearing Member that are non-Customer accounts, including proprietary accounts of the Clearing Member, and (ii) accounts carried by another Clearing Member if such accounts would be considered non-Customer Accounts, including proprietary accounts of the Clearing Member, if carried directly by the Clearing Member. Notwithstanding anything herein to the contrary, the guarantee required by this Rule 3.12.2 shall not apply to any obligation of the Clearing Member to pay an Assessment to the Clearing House pursuant to Rule 3.35.

3.12.3 A Clearing Member must provide a written guaranty of its obligations to the Clearing House when a Clearing Member reorganizes into a different form of legal entity (other than a reorganization arising from an Insolvency proceeding). The guaranty must be in a form reasonably satisfactory to the Clearing House and must run from the new Clearing Member to the existing Clearing Member with respect to all obligations of the existing Clearing Member to the Clearing House and all agreements entered into by the existing Clearing Member with the Clearing House.

3.13 Notices Required of Clearing Members

3.13.1 Financial Notices.

A Clearing Member must provide immediate notice to the Clearing House, orally and in writing, if the Clearing Member:

(a) gives notice to the CFTC pursuant to CFTC Regulation 1.12 or to the Securities and Exchange Commission pursuant to Securities Exchange Act Rule 17a-11;

(b) changes its fiscal year;

(c) changes its public accountants; or

(d) fails to comply with additional accounting, reporting, financial and/or operational requirements prescribed by the Clearing House or Delivery Facility;

(e) is subject to an Initial Margin, Variation Margin, or Outstanding Exposure call in any account that exceeds the Clearing Member's excess Adjusted Net Capital; or

(f) is subject to any financial or business development that could materially affect the ability of the Clearing Member to comply with its obligations as a Clearing Member.

3.13.2 Operational Notices.

A Clearing Member must provide immediate notice to the Clearing House, orally and in writing of:

(a) any material damage to, or failure or inadequacy of, the systems, facilities or equipment of the Clearing Member to effect transactions pursuant to the Rules or to timely perform the Clearing Member's financial obligations under or in connection with Exchange Contracts;

(b) any failure by such Clearing Member, or any guarantor or commonly owned or controlled Clearing Member to perform on any of its material contracts, obligations or agreements;

(c) any determination that it, or any guarantor, will be unable to perform on any of its material contracts, guarantees, obligations or agreements;

(d) the Insolvency of such Clearing Member or of any guarantor;

(e) the institution of any proceeding by or against the Clearing Member, any affiliate of the Clearing Member, or any Person with a beneficial ownership of greater than 5% in the Clearing Member, under any provision of the bankruptcy laws of the United States, or under the Securities Investor Protection Act of 1970, any other statute or equitable power of a court of like nature or purpose, in which such Clearing Member or Person is designated as bankrupt, debtor or equivalent, or if a receiver, trustee or similar official is appointed for the Clearing Member, such Person, or its or their property;

(f) the receipt by such Clearing Member, or the filing by such Clearing Member with a Self-Regulatory Organization, of a notice of material inadequacy; or

(g) the receipt by such Clearing Member from its independent auditors of an audit opinion that is qualified.

3.13.3 A Clearing Member must provide prompt written notice to the Clearing House of:

(a) any change in its name, business address, telephone or facsimile number, electronic mail address, or any number or access code for any electronic communication device used by it to communicate with the Clearing House;

(b) a change in any of its relevant key personnel;

(c) any Person directly or indirectly becoming a beneficial owner of 5% or more of any class of its equity securities;

(d) any refusal of admission to, withdrawal of any application for membership in, any suspension, expulsion, bar, material fine, censure, denial of membership, registration or license, withdrawal of any application for registration, cease and desist order, temporary or permanent injunction, denial of trading privileges, or any other material sanction or discipline through an adverse determination, voluntary settlement or otherwise, by any Governmental Authority, Self-Regulatory Organization, Delivery Facility, or other business or professional association; or

(e) the imposition of any restriction or limitation on the business conducted by the Clearing Member on or with any Self-Regulatory Organization other than restrictions or limitations imposed generally on all members of or participants in such Self-Regulatory Organization).

3.13.4 A Clearing Member must provide at least ten (10) Business Days prior written notice to the Clearing House of:

(a) any proposed change in the organizational or ownership structure or management of a Clearing Member, including any merger, combination or consolidation between the Clearing Member and another Person;

(b) the assumption or guaranty by the Clearing Member of all or substantially all of the liabilities of another Person in connection with a direct or indirect acquisition of all or substantially all of that Person's assets;

(c) the sale of a significant part of the Clearing Member's business or assets to another Person;

(d) a proposed change in the direct or indirect beneficial ownership of 20% or more of the Clearing Member; or

(e) any change in the system provider used by such Clearing Member to process transactions in Exchange Contracts.

3.14 No Transfer of Membership

No membership in the Clearing House may be transferred to another Person except in connection with a merger or other business combination where such transfer of membership is approved by the Clearing House.

3.15 Adequate Assurances

If the Clearing House has reason to believe that a Clearing Member may fail to comply with any of the Rules, it may require the Clearing Member to provide it, within such timeframe, in such detail, and in such manner as the Clearing House shall determine, with adequate assurances that the Clearing Member will continue to comply with the Rules.

3.16 Acceptance for Clearing; Novation

3.16.1 The Clearing House will coordinate with the Exchange and FCM Clearing Members to accept or reject Exchange Contracts for clearing as quickly after execution as technologically practicable. The Clearing House will accept Exchange Contracts for clearing when such Exchange Contracts have been received by the Clearing System if the parties to such Exchange Contracts have clearing arrangements in place and have satisfied any applicable risk limits imposed by the Clearing Member, the Exchange or the Clearing House. Subject to the foregoing and to Rule 3.16.2, the Clearing House shall accept for clearing any Exchange Contract that has been executed pursuant to Exchange Rules and submitted by the Exchange to the Clearing House for clearance, and shall not accept for clearing any Exchange Contract submitted to it by any Person other than the Exchange. All Exchange Contracts accepted for clearing by the Clearing House shall be subject in all respects to these Rules.

3.16.2 The Clearing House, by accepting an Exchange Contract offered to it for clearing, shall assume, in the place of each Clearing Member that is a party to such Exchange Contract, all liabilities and obligations imposed by such Exchange Contract to the Clearing Member that is the other party thereto and shall succeed to and become vested with all rights and benefits accruing therefrom. Such assumption by the Clearing House shall terminate all liabilities and obligations of the Clearing Member whose Exchange Contract is so accepted to the other Clearing Member which was a party to such Exchange Contract.

3.16.3 The Clearing House shall be entitled to rely conclusively on the accuracy and authenticity of any information regarding any Exchange Contract submitted to the Clearing House by the Exchange on behalf of a Clearing Member, whether or not the Clearing Member in fact authorized the submission of such Exchange Contract for clearing.

3.16.4 Where, as the result of novation under this Rule 3.16, a Clearing Member has bought and sold for the same account, (i) an Exchange Contract with the same expiry or (ii) a put or call option with the same margining style on the same Exchange Contract with the same strike price and expiry, such purchase and sale will be offset by the Clearing House. Such a Clearing Member shall be required to pay the loss or entitled to collect the profit, as the case may be, upon such offsetting transactions, and shall have no further rights or be under any further obligation with respect thereto. For purposes of this Rule, the first Exchange Contract made shall be deemed the first Exchange Contract offset.

3.16.5 THE LIABILITIES AND OBLIGATIONS OF THE CLEARING HOUSE ARISING PURSUANT TO THIS RULE 3.16.2 SHALL EXTEND ONLY TO CLEARING MEMBERS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE CLEARING HOUSE SHALL NOT HAVE ANY LIABILITY OR OBLIGATION TO ANY CUSTOMER ARISING OUT OF OR WITH RESPECT TO ANY EXCHANGE CONTRACT OR TO ANY CLEARING MEMBER OR OTHER PERSON WITH RESPECT TO ANY EXCHANGE CONTRACT WHICH HAS NOT BEEN ACCEPTED FOR CLEARING BY THE CLEARING HOUSE.

3.17 Transfers of Open Positions

Any transfer of an Exchange Contract shall be subject to the following:

(a) subject to the limitations of Exchange position transfer rules, the Clearing House will approve a position transfer without requiring the prior close-out and re-booking of Exchange Contracts if the Clearing Member currently carrying a Customer Account (the "**Carrying Clearing Member**") notifies the Clearing House that a Customer has requested to transfer all or a portion of the positions in the Customer Account to another Clearing Member (the "**Receiving Clearing Member**") provided that (i) the notification includes a representation that the Customer is not currently in default, the Customer's name, account mnemonics and, if the transfer is not of an entire account, a description of which Exchange Contracts are to be transferred; and (ii) the Receiving Clearing Member agrees to accept the transfer, the transferred Exchange Contracts will have appropriate Margin at the Receiving Clearing Member and any remaining Exchange Contracts in the Customer's Account at the Carrying Clearing Member will have appropriate Margin.

(b) if the transferor is in Default, transfers may only be effected at the latest Settlement Price unless the Clearing House in its discretion determines that, because of excess Margin on deposit or for other sufficient reason, accepting the transfer at other prices would not jeopardize the Clearing House; and

(c) if, in any case, the Clearing House in its discretion determines that it would be contrary to the best interests of the Clearing House to accept a transfer at a price other than the latest Settlement Price, it may, notwithstanding any provision to the contrary in the Exchange Rules, require such transfer to be effected at the Settlement Price.

3.18 Approved Financial Institutions

3.18.1 A bank or trust company may be designated by the Board as an Approved Financial Institution to act as a depository for Margin and Outstanding Exposure amounts on behalf of Clearing Members or in such other capacity as the Board may approve. To become designated as an Approved Financial Institution, a bank or trust company must submit an application in such form and containing such information as the Clearing House from time to time may require and must meet such financial and other requirements as the Board may establish from time to time including requirements related to capitalization, creditworthiness, access to liquidity, operational reliability, and regulation and supervision. A bank or trust company that has been designated by the Board as an Approved Financial Institution for any purpose may act as such until such designation is suspended or terminated in accordance with Rule 3.18.2.

3.18.2 If a bank or trust company does not meet the requirements established by the Clearing House pursuant to this Rule 3.18, or if the Board determines that it would be in the best interest of the Clearing House or its Clearing Members, the Clearing House may:

(a) deny the application of such bank or trust company for designation as an Approved Financial Institution;

(b) suspend or terminate the status of such bank or trust company as an Approved Financial Institution for any or all purposes; or

(c) approve the application or permit the bank or trust company to continue as an Approved Financial Institution, subject in either case to such terms, conditions and limitations as the Clearing House, in its judgment, deems appropriate.

3.18.3 All wire transfers made by Clearing Members to the Clearing House must be drawn on or made by an Approved Financial Institution.

3.18.4 If at any time the Board suspends or terminates the status of an Approved Financial Institution, affected Clearing Members shall immediately replace the same with an active Approved Financial Institution complying with these Rules.

3.19 Liens Held by the Clearing House

The Clearing House shall have a first lien and perfected security interest in, and right of setoff against, all Margin, Outstanding Exposure amounts, Guaranty Fund deposits, Collateral and other property (including Exchange Contracts), and all proceeds of any of the foregoing, held in or for the accounts of a Clearing Member in connection with the financial obligations of such Clearing Member, however created, arising or evidenced, whether direct or indirect, absolute or contingent, existing, due or to become due.

3.20 Initial Margin; Additional Margin

3.20.1 Each Clearing Member shall deposit with or pay to the Clearing House Initial Margin for each cleared Exchange Contract in such amounts, in such forms, at such times and in accordance with such systems as may be prescribed by these Rules or by the Board. Initial Margin requirements shall be as determined by the Clearing House from time to time. Initial Margin requirements shall be calculated on a gross basis for each Customer, and Clearing Members are not permitted to net positions of different Customers against one another. Clearing Members shall collect Initial Margin from their Customers, for Customers with heightened risk profiles (consistent with the Clearing Member's risk management policies and procedures), at a level that exceeds the Initial Margin amount determined by the Clearing House by such amount as the Clearing House shall specify from time to time. For Exchange Contracts that are equity style options, the Clearing House will determine option value for each option and the net option value of each portfolio. For a settlement cycle, (i) if the net option value of the portfolio is positive, such amount may be used to satisfy Initial Margin requirements for the portfolio, (ii) if the net option value of a portfolio is negative, such amount will increase the Initial Margin requirements for the portfolio. For Physically Settled Exchange Contracts, delivery Margin is a component of Initial Margin.

3.20.2 The Clearing House will review the adequacy of its Initial Margin requirements each Business Day. Whenever the Chief Risk Officer or his or her delegate concludes that unstable conditions relating to one or more Exchange Contracts exist, or that the maintenance of an orderly market or the preservation of the fiscal integrity of the Clearing House requires additional Initial Margin, or that any Clearing Member is carrying Exchange Contracts or incurring risks in its House Account or Customer Account that are larger than is justified by the financial or operational condition of the Clearing Member, the Chief Risk Officer or his or her delegate may require additional Initial Margin to be deposited with the

Clearing House within such time as may be specified by the Chief Risk Officer, or his or her delegate, or limit withdrawals of excess Initial Margin on deposit from such Clearing Member for such time as may be specified by the Chief Risk Officer, or his or her delegate. Such additional Margin may be for one or more Exchange Contracts from one or more Clearing Members and for long and/or short positions.

3.20.3 Without limitation of the Clearing House's other rights to use or apply a Clearing Member's Initial Margin as permitted in these Rules, under Applicable Law or otherwise, the Clearing House may: (i) invest any cash deposited as Initial Margin in accordance with the Clearing House's investment policies and CFTC Regulation 1.25 and any interest, capital gain or other income earned on such investments shall belong and be credited to the Clearing House; (ii) use a Clearing Member's cash or securities constituting Initial Margin in its House Account from time to time to meet temporary liquidity needs of the Clearing House (whether or not such Clearing Member is in Default), in a manner consistent with the Clearing House's liquidity policies and Applicable Law, including by way of assignment, transfer, pledge, repledge or creation of a lien on or security interest in such Initial Margin in connection with borrowing, repurchase transactions or other liquidity arrangements to support payment obligations of the Clearing House in respect of Exchange Contracts; and (iii) charge and collect any operational fees or expenses incurred by the Clearing House in connection with the deposit by a Clearing Member of Margin and the Clearing House shall have the right to instruct each Approved Financial Institution to debit the House Account maintained by each Clearing Member, and/or any other account designated by such Clearing Member for purposes of this Rule, for any payment of these fees or expenses due to the Clearing House.

~~3.20.3~~3.20.4 Each Clearing Member carrying a Security Futures Product in a Customer Account shall collect Customer Margin for Security Futures Product positions in accordance with CFTC Regulations 41.41 through 41.49 and SEC Regulations 242.400 through 242.406.

3.21 Variation Margin

Where Exchange Contracts are accepted for clearing and the price of such Exchange Contracts is less than the Settlement Price therefor, the selling Clearing Member shall be obligated to pay Variation Margin to, and the buying Clearing Member shall be entitled to receive Variation Margin from, the Clearing House as set forth in Rule 3.23 and in the policies and procedures of the Clearing House. Where Exchange Contracts are accepted for clearing and the price of such Exchange Contracts is greater than the Settlement Price, the buying Clearing Member shall be obligated to pay Variation Margin to, and the selling Clearing Member shall be entitled to receive Variation Margin from, the Clearing House in accordance with the process set forth below and any other policies and procedures

of the Clearing House. Thereafter, Clearing Members shall be obligated to pay or entitled to receive Variation Margin on open Exchange Contracts and on Exchange Contracts that have been closed on the books of the Clearing House. All Variation Margin payments to the Clearing House shall be made in immediately available funds. If an Approved Financial Institution fails to pay Variation Margin on behalf of a Clearing Member, such Clearing Member will remain obligated to pay such Variation Margin to the Clearing House notwithstanding such failure.

3.21.1 Funding Payments

Open positions in perpetual Exchange Contracts shall be subject to Funding Payments calculated in accordance with the applicable Exchange Rules and Contract Specifications. The Clearing House shall calculate and process Funding Payments during its intraday and end-of-day settlement cycles.

3.22 Cash Margin Deposits and Other Payments

Each Clearing Member shall establish and maintain House and, if applicable, Customer accounts at an Approved Financial Institution. A Clearing Member shall use such accounts for the payment of Initial Margin, Variation Margin, and any other payments due to the Clearing House pursuant to these Rules ("**Margin Account(s)**"). The Clearing House shall have the right to instruct such Approved Financial Institution to debit the Margin Account(s) maintained by a Clearing Member for any deposits of Initial Margin, payments of Variation Margin, payments of Outstanding Exposure, or any other payments due to the Clearing House pursuant to these Rules and to deposit such funds into the appropriate Clearing House account.

3.23 Margin and Other Payments

3.23.1 The Clearing House shall advise each Clearing Member of the amount of Initial Margin, Variation Margin, and Outstanding Exposure owing to or from such Clearing Member after the close of trading on each Business Day and:

(a) If the aggregate net amount of Variation Margin and Outstanding Exposure for all Exchange Contracts carried for Customers by such Clearing Member is owing to the Clearing House, the Clearing House shall instruct such Clearing Member's Approved Financial Institution to transfer funds from the Customer Margin Account maintained by such Clearing Member with such Approved Financial Institution to the settlement account of the Clearing House at its bank in an amount equal to the amount so owing;

(b) If the aggregate net amount of Variation Margin and Outstanding Exposure for all Exchange Contracts carried for Customers by such Clearing Member is owing to such Clearing Member, the Clearing

House shall instruct its bank to transfer funds from the Clearing House's settlement account to the Customer Margin Account maintained by such Clearing Member with such Approved Financial Institution in an amount equal to the amount so owing;

(c) If the aggregate net amount of Variation Margin and Outstanding Exposure for all Exchange Contracts carried for House Accounts by such Clearing Member is owing to the Clearing House, the Clearing House shall instruct such Clearing Member's Approved Financial Institution to transfer funds from the proprietary Margin Account maintained by such Clearing Member with such Approved Financial Institution to the settlement account of the Clearing House at its bank in an amount equal to the amount so owing;

(d) If the aggregate net amount of Variation Margin and Outstanding Exposure for all Exchange Contracts carried for House Accounts by such Clearing Member is owing to such Clearing Member, the Clearing House shall instruct its bank to transfer funds from the Clearing House's settlement account to the House Margin Account maintained by such Clearing Member with such Approved Financial Institution in an amount equal to the amount so owing; provided, however, that on any day on which Variation Margin and Outstanding Exposure for the Customer Account is owing by such Clearing Member to the Clearing House, the Clearing House shall not transfer funds owing to the Clearing Member in respect of the Clearing Member's House Account until the amount owing by the Clearing Member to the Clearing House with respect to such Customer Account has been paid in full; provided further, that on any day on which the Clearing House is required to pay Variation Margin and Outstanding Exposure to a Clearing Member House Account but such Clearing Member is required to deposit Initial Margin or to increase the amount of its Guaranty Fund deposit, the Clearing House may net such amounts due from such Clearing Member against the Clearing House's obligation to pay such Clearing Member Variation Margin and Outstanding Exposure and instead make a single payment to, or receive a single payment from, such Clearing Member;

(e) If the aggregate net amount of Initial Margin for all Exchange Contracts carried for Customers by such Clearing Member is owing to the Clearing House, the Clearing House shall instruct such Clearing Member's Approved Financial Institution to wire transfer funds from the Customer Margin Account maintained by such Clearing Member with such Approved Financial Institution to the Customer Margin account of the Clearing House at its bank in an amount equal to the amount so owing; and

(f) If the aggregate net amount of Initial Margin for all Exchange Contracts carried for House Accounts by such Clearing Member is owing to the Clearing House, the Clearing House shall instruct such Clearing Member's Approved Financial Institution to wire transfer funds from the House Margin Account maintained by such Clearing Member with such Approved Financial Institution to the House Margin account of the Clearing House at its bank in an amount equal to the amount so owing.

3.23.2 Initial Margin, Variation Margin, and Outstanding Exposure payments to the Clearing House shall be made in immediately available funds. Variation Margin and Outstanding Exposure for any Exchange Contract shall be paid in the currency in which such Exchange Contract is settled pursuant to the Contract Specifications.

3.23.3 Notwithstanding any other provision of the Rules, if the Chief Risk Officer or his or her delegate, determines (i) that unstable conditions relating to one or more Exchange Contracts exist, or that the maintenance of an orderly market or the preservation of the fiscal integrity of the Clearing House so requires, or (ii) that any Clearing Member is carrying Exchange Contracts or incurring risks in its House Accounts or Customer Accounts that are larger than is justified by the financial or operational condition of the Clearing Member, the Clearing House may issue one or more intra-day calls requiring the deposit of Initial Margin with the Clearing House by such time as the Clearing House shall specify. An intra-day call based on a determination as to the conditions specified in clause (i) above may be issued to any or all Clearing Members. An intra-day call based on a determination as to the conditions specified in clause (ii) above may be issued to any Clearing Member with respect to which such determination is made. If the Clearing House makes an intra-day call for Initial Margin, the Clearing House shall:

(a) Give notice to each Clearing Member that is required to make payment to the Clearing House of the amount payable by such Clearing Member; and

(b) Immediately after giving or making reasonable efforts to give the notice described in paragraph (a), the Clearing House may instruct the Approved Financial Institution at which each such Clearing Member maintains Margin Accounts to transfer immediately available funds from the appropriate account of each such Clearing Member into the appropriate account of the Clearing House in the amount as determined by the Clearing House.

3.23.4 Initial Margin shall initially be deposited in cash with the Clearing House as provided in Rule 3.23.1. Thereafter, the Clearing House may permit a Clearing Member to substitute securities for cash on deposit as Initial

Margin or irrevocable letters of credit for Customer cash on deposit as Initial Margin. If irrevocable letters of credit are substituted, then such substitution shall be subject to Rule 3.24.3. If securities are substituted, such substitution shall be subject to Rule 3.24.1 and 3.24.2 in all respects and effected by delivering to the Clearing House securities and a request for the release of the cash Initial Margin for which the securities will be substituted by the time specified by the Clearing House on the day on which the Clearing Member wishes to make the substitution. Net income, if any, generated by any securities held by the Clearing House as Initial Margin for any Clearing Member shall belong and be credited to such Clearing Member.

3.23.5 Subject to Rule 3.23.8, the Clearing House shall return to a Clearing Member the amount of any excess Initial Margin on deposit from such Clearing Member, provided that the Clearing House shall have received a request for such a release from such Clearing Member by such time as may be specified by the Clearing House on the day such release is to be made.

3.23.6 Excess Initial Margin shall not be released pursuant to Rule 3.23.5: (i) if the excess Margin is due to any House Account of Clearing Member unless the Clearing Member has deposited and paid all Margin and other amounts required from such Clearing Member for its House Account and Customer Account or otherwise pursuant to these Rules; or (ii) if the excess Margin is due to the Customer Account of the Clearing Member, unless the Clearing Member has deposited and paid all Margin required from its Customer Account pursuant to these Rules for such accounts. Notwithstanding any provision to the contrary in these Rules, the Clearing House may refuse to release the amount of excess Initial Margin on deposit in the House Accounts or Customer Accounts of a Clearing Member that has requested such release if the Chief Risk Officer or his or her delegate concludes that the financial or operational condition of the Clearing Member is such that the release of excess Initial Margin would be contrary to the fiscal integrity of the Clearing House unless the Clearing Member substantiates to the satisfaction of the Clearing House that the amount to be released will be returned to one or more Customers in accordance with Applicable Law.

3.23.7 A Clearing Member shall not permit a Customer to withdraw Margin from its account if such withdrawal would cause the Margin deposits that would remain in such account following the withdrawal to be less than the then-prevailing Initial Margin requirement.

3.23.8 Upon notice from the Clearing House that a transfer of funds from a Clearing Member's account pursuant to Rule 3.23.1 was not effected as instructed by the Clearing House for any reason, the Clearing Member shall deliver to the Clearing House the amount required at such time and in such form as the Clearing House may prescribe.

3.24 Deposit of Non-Cash Collateral as Initial Margin

3.24.1 A Clearing Member may substitute securities for all or part of the cash it has on deposit with the Clearing House as Initial Margin, in accordance with Rule 3.23.1 and this Rule 3.24.1, provided, however, that the Board may prescribe limitations regarding the extent to which interests in any category of permitted securities may be substituted for cash Initial Margin.

(a) The only securities eligible for deposit as Initial Margin are Treasury Securities that have been approved for such purpose by the Risk Management Committee.

(b) Securities shall be valued in accordance with such methodology as may be adopted by the Risk Management Committee.

(c) Every deposit of Treasury Securities shall be made by wire transfer to an account of the Clearing House pursuant to such procedures and requirements prescribed by the Clearing House.

(d) Deposits of securities shall be made by such means and subject to such agreements and undertakings as may be prescribed by the Clearing House.

3.24.2 If securities deposited by a Clearing Member pursuant to this Rule 3.24 are sold by the Clearing House, the net proceeds thereof shall be deposited into one or more Initial Margin accounts maintained by the Clearing House and shall be credited to the appropriate Customer Account or House Account of such Clearing Member.

3.24.3 A Clearing Member may substitute irrevocable letters of credit from its Customers for Customer cash it has on deposit with the Clearing House as Initial Margin, in accordance with Rule 3.23.1 and this Rule 3.24.3, provided, however, that the Clearing House may prescribe limitations regarding the use of irrevocable letters of credit to meet Initial Margin requirements.

(a) Irrevocable letters of credit must be in a form acceptable to the Clearing House.

(b) Irrevocable letters of credit must be drawable in the United States.

(c) A Clearing Member shall not accept from a Customer irrevocable letters of credit that are issued by the Customer, an affiliate of the Customer, the Clearing Member, or an affiliate of the Clearing Member.

3.25 Finality of Settlement

Payments or transfers of funds to and from the Clearing House, including but not limited to Margin payments, Outstanding Exposure payments, and Guaranty Fund deposits, are irrevocable and unconditional when, as the case may be, they are debited from or credited to an account of the Clearing House at an Approved Financial Institution, provided that adjustments may be made after such time for the correction of errors.

3.26 Bank Holidays and Weekends

If the Exchange is open for trading on any Bank Holiday or Weekend, the following procedures will apply:

(a) On the Business Day preceding such Bank Holiday or Weekend, each Clearing Member shall deposit or pay such Initial Margin, Variation Margin, and Outstanding Exposure as may be required by the Clearing House. Such deposit or payment shall be made without offset or reduction by reason of excess Initial Margin held by the Clearing House for the account of such Clearing Member.

(b) On the Business Day following such Bank Holiday or Weekend, deposits and payments of Initial Margin, Variation Margin and Outstanding Exposure, and withdrawals of excess Margin, shall be made to and by the Clearing House in accordance with these Rules, except that such deposits and payments shall be made with respect to transactions made on such Bank Holiday or Weekend and on the Business Day preceding such Bank Holiday or Weekend.

3.27 Segregation of Customer Funds

All Customer funds received by the Clearing House from a Clearing Member to purchase, Margin, guarantee, secure or settle the Exchange Contracts of the Clearing Member's Customers, and all money accruing to such Customers as a result thereof, shall be segregated as customer funds in accordance with all relevant provisions of the CEA and CFTC Regulations. This Rule satisfies the requirement in CFTC Regulation 1.20(d)(1) that a Clearing Member must obtain a written acknowledgement from the Clearing House that such Customer funds are being held in accordance with such provisions.

3.28 Fees

The Clearing House shall have the right to instruct each Approved Financial Institution to debit the House Account maintained by each Clearing Member, and/or any other account designated by such Clearing Member for purposes of this Rule, for any payment of fees, charges or other amounts (other than fines or penalties) due to the Clearing House or due to the Exchange (if and to the extent the Clearing House shall be acting as a collection agent for the Exchange).

3.29 Defaults

3.29.1 If any of the following events occurs with respect to a Clearing Member (regardless of whether any such event is cured by any guarantor or other third party on behalf of such Clearing Member or otherwise):

(a) Such Clearing Member fails to meet any of its obligations under its Exchange Contracts with the Clearing House,

(b) The Clearing Member is Insolvent,

(c) Such Clearing Member fails to pay when due any amounts owing to the Clearing House (including, but not limited to, any amounts arising from Delivery Failure under Rule 9.1.3),

(d) Such Clearing Member or an Affiliate of such Clearing Member, including a guarantor for such Clearing Member, is subject to a default, event of default, or other similar event or condition, by another derivatives clearing organization, clearing agency or financial market utility (whether an Affiliate of the Clearing House or not), as "default," "event of default," or other similar event or condition, as defined by such entity,

(e) Such Clearing Member fails to make any required deposit to the Guaranty Fund when and as required by these Rules, or

(f) The Clearing House determines that such Clearing Member is not in compliance with the provisions of Rule 3.2 and that such noncompliance poses an unacceptable risk to the Clearing House,

then, and in any such event, the Clearing House may declare that a "**Default**" has occurred and may determine that such Clearing Member shall be suspended as a Clearing Member.

3.30 Liquidation on Termination or Suspension of Clearing Member

3.30.1 When a Person ceases to be a Clearing Member or is suspended as a Clearing Member, such Person shall be prohibited from establishing new positions and all open Exchange Contracts carried by the Clearing House for such Clearing Member shall be closed out as expeditiously as practicable such that:

(a) Open Exchange Contracts are transferred by the Clearing Member and accepted by one or more other Clearing Members, with the prior consent of the Clearing House, or transferred by the Clearing House to one or more other Clearing Members pursuant to an auction of the Exchange Contracts or other procedure instituted by the Clearing House;

(b) Exchange Contracts subject to outstanding delivery obligations are Physically Settled or transferred by the Clearing House to one or more other Clearing Members pursuant to an auction of the Exchange Contracts or other procedure instituted by the Clearing House;

(c) The Chief Executive Officer or Chief Risk Officer, or in the absence of both the Chief Executive Officer and the Chief Risk Officer, any Director with voting authority may determine that, in his or her opinion, liquidation be deferred for the protection of the financial integrity of the Clearing House; or

(d) Open Exchange Contracts are liquidated in the manner set forth in Rule 3.31 to the extent that paragraphs (a), (b), or (c) do not apply.

3.30.2 The Chief Executive Officer and Chief Risk Officer, or in the absence of either or both the Chief Executive Officer and the Chief Risk Officer, one or two Directors with voting authority may substitute for the Chief Executive Officer or Chief Risk Officer to jointly authorize the execution from time to time, solely for the purpose of reducing the risk to the Clearing House resulting from the continued maintenance of such open Exchange Contracts, the purchase or sale of Exchange Contracts or other hedging or risk reducing transactions. The Chief Executive Officer and the Chief Risk Officer may delegate to one or more Persons the authority to determine, within such guidelines as they may prescribe, the nature and timing of such transactions.

3.31 Method of Closing Out

3.31.1 The open Exchange Contracts of a Clearing Member that, pursuant to Rule 3.30, are required to be liquidated pursuant to this Rule 3.31, shall be liquidated in such manner as the Clearing House, in its sole discretion, may direct. Without limiting the generality of the foregoing:

(a) Any such liquidation may be effected by executing block trades with one or more Clearing Members or Exchange participants or by directly entering orders into the Exchange's trading platform for the purchase or sale of Exchange Contracts. The Chief Executive Officer or Chief Risk Officer may designate and authorize an individual, and may engage a third party, to be responsible for implementing such liquidation.

(b) Notwithstanding any other provision of this Rule 3.31.1, any such liquidation may be effected without placing orders for execution, by making appropriate book entries on the records of the Clearing House (including, without limitation, by pairing and canceling offsetting long and short positions in the Exchange Contracts carried

by the Clearing Member) at a price equal to the Settlement Price on the day such liquidation is ordered or at such other price as the Board may establish; provided, however, if an order for relief has been entered with respect to such Person and its property is thereby subject to the control of a bankruptcy court, the Clearing House will not effect any such liquidation by book entry except as may be permitted by CFTC Regulations.

3.31.2 All liquidations made pursuant to this Rule 3.31 shall be for the account and risk of the Person which ceases to be a Clearing Member or which is suspended as a Clearing Member. The Clearing Member shall be liable to the Clearing House for any commissions or other expenses incurred in liquidating such Exchange Contracts.

3.32 Amounts Payable to the Clearing House

Upon completion of the liquidation or transfer of the positions of a Clearing Member pursuant to Rule 3.31, the Clearing House shall be entitled on demand to recover from such Clearing Member all amounts due to the Clearing House for all losses, liabilities and expenses (including without limitation legal fees and disbursements) incurred by the Clearing House in connection with such liquidation or transfer, and such Clearing Member's Collateral, together with any other assets held by, pledged to or otherwise available to the Clearing House, including any guarantee issued pursuant to Rule 3.12.2, shall be applied by the Clearing House to discharge the Obligations of such Clearing Member to the Clearing House (including any amounts, and costs and expenses associated with the liquidation, transfer or management of Exchange Contracts held in or for the accounts of such Clearing Member, and any fees, assessments or fines imposed by the Clearing House on such Clearing Member).

3.33 Reinstatement of Suspended Member

Any Clearing Member suspended pursuant to Rule 3.30 may apply for reinstatement pursuant to Rule 3.3.

3.34 Guaranty Fund

3.34.1 The Clearing House shall establish and maintain a Guaranty Fund.

For the purposes of this Rule 3.34, the following terms shall have the following meanings:

(a) "**Initial Margin Amount**" shall mean, as to any Clearing Member as of any day, such Clearing Member's Initial Margin requirement for such Clearing Member's House Account and Customer Account as determined by the Clearing House for the trading day (or for such other day in such months as the Board shall direct generally).

(b) "**Base Margin Amount**" shall mean that portion of each Clearing Member's Guaranty Fund Deposit Requirement that is based upon the Initial Margin Amount.

(c) "**Base Uncovered Stress Loss Amount**" shall mean the portion of each Clearing Member's Guaranty Fund Deposit Requirement that is based upon the uncovered stress loss, as determined pursuant to the Clearing House's risk policies.

(d) "**Base Volume Amount**" shall mean that portion of each Clearing Member's Guaranty Fund Deposit Requirement that is based upon the volume of Exchange Contracts cleared by it, as determined pursuant to the Clearing House's risk policies.

(e) "**Guaranty Fund Deposit Surcharge**" shall mean that portion of a Clearing Member's Guaranty Fund Deposit Requirement that, if assessed, is linked to concerns regarding specific Clearing Members such as concentration risk, capital ratios, or other credit concerns. The Clearing Member's Guaranty Fund Deposit Surcharge shall be determined pursuant to the Clearing House's risk policies.

(f) "**Exchange Contract Segment**" shall mean an Exchange Contract or groups of Exchange Contracts as determined by the Clearing House.

3.34.2 Each Clearing Member shall deposit and maintain in the Guaranty Fund an amount calculated as follows:

(a) For each Clearing Member, the amount to be deposited and maintained in the Guaranty Fund shall be the sum of the Clearing Member's Base Margin Amount, Base Uncovered Stress Loss Amount, Base Volume Amount, and Guaranty Fund Deposit Surcharge, computed pursuant to Rule 3.34 (the "**Guaranty Fund Deposit Requirement**") provided that:

(i) Each new Clearing Member shall be required to deposit such amount as determined by the Risk Management Committee; provided further, that in no event shall the amount of such deposit be less than seven hundred and fifty thousand dollars ($750,000), or such other amount as the Risk Management Committee may establish from time to time; and

(ii) Subject to such thresholds as may be established by the Risk Management Committee from time to time, a Clearing Member whose Guaranty Fund Deposit Requirement has increased relative to its current contribution shall be required to deposit cash or Treasury Securities to remedy such deficiency.

(b) Subject to Rule 3.10, the Risk Management Committee shall have the authority to cause the Base Margin Amount, Base Uncovered Stress Loss Amount, Base Volume Amount, and Guaranty Fund Deposit Surcharge of all Clearing Members to be recalculated at any time, and to require Clearing Members to immediately deposit in the Guaranty Fund any amounts required to meet the recalculated Guaranty Fund Deposit Requirements.

(c) The Clearing House shall have the authority to define and redefine the Exchange Contract Segments and to apportion the Guaranty Fund Deposit Requirement of each Clearing Member to the Exchange Contract Segment in which the Clearing Member holds Exchange Contracts. The Clearing House will determine whether a Clearing Member holds Exchange Contracts in an Exchange Contract Segment at the time the Guaranty Fund Deposit Requirement is recalculated. The Clearing House shall provide advance notice to Clearing Members when making: (1) a material change to an existing Exchange Contract Segment; or (2) a new Exchange Contract Segment. The Clearing House shall not make material changes to an Exchange Contract Segment when a Clearing Member is in Default and such Default is being actively managed by the Clearing House.

3.34.3 Deposits in the Guaranty Fund may be made by any Clearing Member in the form of cash or Treasury Securities that are approved by the Risk Management Committee for this purpose; provided, however, that each Clearing Member shall deposit a minimum of 50% of its Guaranty Fund requirement in the form of cash. Treasury Securities shall be valued in accordance with methodology adopted by the Risk Management Committee, and shall be deposited by such means and subject to such agreements and undertakings as may be prescribed by the Clearing House. To the extent that any Clearing Member deposits Treasury Securities in the Guaranty Fund, such Clearing Member thereby represents and warrants that such securities are owned by it free and clear of any security interests, liens, encumbrances, charges or adverse claims of any kind.

3.34.4 Guaranty Fund deposits shall be held in a bank approved for the purpose by the Clearing House, in an account or accounts separate from all other cash and securities held by the Clearing House. The Clearing House shall have the sole right to withdraw cash or securities from, or to authorize the sale or other disposition of any securities held in, such account or accounts subject to the rights of any assignee, pledgee or holder of a security interest in the Guaranty Fund or any cash or securities therein.

3.34.5 So long as any Person is a Clearing Member and thereafter for the period until the Clearing House returns such Person's Guaranty Fund deposits as

provided in Rule 3.37, its Guaranty Fund deposits may be applied by the Clearing House:

(a) against any amounts that become due from such Person to the Clearing House for any reason (including but not limited to Initial Margin, Variation Margin, Outstanding Exposure, fees, assessments, and fines) at any time it was a Clearing Member and for the period until the Clearing House returns such Person's Guaranty Fund deposits as provided in Rule 3.37;

(b) against any amounts that are charged as provided in or pursuant to Rule 3.35 against the Guaranty Fund Deposit Requirements of all Clearing Members at any time that such Person was a Clearing Member and for the period until the Clearing House returns such Person's Guaranty Fund deposits as provided in Rule 3.37; and

(c) to provide such funds, on such terms and conditions, as the Board in its discretion, acting by a vote of not less than three-fourths of all Directors eligible to vote, may deem necessary or appropriate to facilitate the transfer of Customer Accounts from a Clearing Member experiencing financial difficulty to another Clearing Member, if the Board shall determine by such vote that to do so is in the best interest of the Clearing House.

3.34.6 The Clearing House may at any time and from time to time assign, transfer, pledge, repledge or otherwise create a lien on or security interest in, the Guaranty Fund and/or the cash and securities held in the Guaranty Fund to secure the repayment of funds borrowed by the Clearing House (plus interest, fees and other amounts payable in connection therewith) or pursuant to a repurchase agreement or similar transaction. Any such borrowing or repurchase agreement or similar transaction shall be on terms and conditions deemed necessary or advisable by the Clearing House (including the collateralization thereof) in its sole discretion, and may be in amounts greater, and extend for periods of time longer, than the obligations, if any, of any Clearing Member to the Clearing House for which such cash or securities was pledged to or deposited with the Clearing House. Any funds so borrowed or obtained in repurchase agreements or similar transactions shall be used and applied by the Clearing House solely for the purposes for which cash or securities held in the Guaranty Fund are authorized to be used pursuant to the Rules; provided that the failure of the Clearing House to use such funds in accordance with this Rule 3.34.6 shall not impair any of the rights or remedies of any assignee, pledgee or holder of any such lien or security interest or repurchase transaction counterparty. Cash, securities and other property held in the Guaranty Fund, subject to the rights and powers of the Clearing House with respect thereto as set forth in the Rules and any agreements between any Clearing Member and the Clearing House, and subject to the rights and powers of any Person to

which the Guaranty Fund or any cash or securities held therein shall have been assigned, transferred, pledged, repledged or otherwise subjected to a lien or security interest, shall remain the property of the respective Clearing Members depositing such cash and securities.

3.34.7 Subject to the rights of any assignee, transferee, pledgee or holder of a lien or security interest as provided in Rule 3.34.6, if at any time the amount of any cash, plus the value of any securities, on deposit in the Guaranty Fund for any Clearing Member:

(a) shall exceed the amount required to be on deposit for such Clearing Member by more than such amount as the Clearing House may prescribe, the Clearing House will return the excess to such Clearing Member upon its written request.

(b) shall be less than the amount required to be on deposit for such Clearing Member by more than such amount as the Clearing House may prescribe, such Clearing Member shall restore the deficiency (including, without limitation, a deficiency caused by the application of such Clearing Member's deposits in the Guaranty Fund as described in Rule 3.34.5) on demand (a "**Replenishment**"); provided, however, that a Clearing Member that has withdrawn as a Clearing Member shall not be required to restore a deficiency occurring after its Withdrawal Date, subject to any limitations in this Rule 3.34.

3.34.8 Any interest earned on securities deposited in the Guaranty Fund by a Clearing Member shall belong and be credited to such Clearing Member. The Clearing House may invest cash deposited in the Guaranty Fund in securities which are direct obligations of the United States government and may engage in repurchase transactions with any cash or securities on deposit. Any interest, capital gain or other income earned on any such investments or repurchase transactions shall belong and be credited to the Clearing House.

3.34.9 If the Guaranty Fund or any part thereof is lost as a result of the Insolvency of any bank or other depository, embezzlement, defalcation or any reason other than use pursuant to Rule 3.35 of these Rules, such loss may, in the discretion of the Board, be restored by application of the following sources of funds in the order listed (each such source to be fully utilized before the next following source is applied):

(a) Such portion, if any, of the surplus of the Clearing House as the Board determines to be available for such purpose; and

(b) Assessments levied by the Clearing House upon the Clearing Members, which Assessments shall be paid to the Clearing House

at such time and in such manner as the Board may specify, which shall be no later than the normal end-of-day settlement time for the Business Day on which such assessment is levied.

3.34.10 In the event that the Guaranty Fund or any part thereof shall have been applied as described in Rule 3.34.5 or shall have been lost as described in Rule 3.34.9, and the Clearing House shall thereafter recover any amount so applied or lost from any Person liable therefore, the amount of such recovery (after deducting any expenses, including legal fees and expenses incurred in connection therewith) shall be credited to the Guaranty Fund deposits of each Clearing Member in that proportion which the amount required to be on deposit by such Clearing Member bears to the amount required to be on deposit by all Clearing Members as of the date upon which such application took place or such loss was incurred.

3.34.11 Any expense, including legal fees and operational expenses, incurred by the Clearing House in connection with the deposit by a Clearing Member of assets into the Guaranty Fund, or the return thereof to such Clearing Member, may at the option of the Clearing House be charged to such Clearing Member. To collect these fees or expenses the Clearing House shall have the right to instruct each Approved Financial Institution to debit the House Account maintained by each Clearing Member, and/or any other account designated by such Clearing Member for purposes of this Rule, for any payment of these fees or expenses due to the Clearing House.

3.34.12 Notwithstanding anything to the contrary herein (but subject to Rule 3.34.9(a) above), the Clearing House shall not be liable if the Guaranty Fund or any part thereof and/or any margin (whether for the house or customer account) or other assets provided by or held for the account of a Clearing Member are lost or decrease in value as a result of the insolvency or failure of any bank or other depository or third party settlement system.

Nothing in this paragraph Rule 3.34.12 will limit any liability of the Clearing House for its own gross negligence or willful misconduct.

3.35 Monetary Defaults; Use of Guaranty Fund; Assessments

If any Clearing Member fails to deposit with, or pay to, the Clearing House in full any Initial Margin, Variation Margin, Outstanding Exposure, Guaranty Fund contribution, Assessment or other sum (not including any fees, dues or fines) under or in connection with any Exchange Contract, when and as required by or pursuant to the Rules, such failure shall constitute a "**Monetary Default**" and any payment obligations or losses, whether present or future, actual or contingent, shall constitute the "**Defaulted Obligation**." If and at such times as the Clearing House has in effect a procedure whereby deposits or payments of sums with or to the Clearing House are effected by having the Clearing House instruct Approved Financial Institutions to transfer funds from Clearing Members' accounts with such

Approved Financial Institution directly to the accounts of the Clearing House, a Clearing Member shall be deemed to have failed to deposit or pay any sum when and as required if such Approved Financial Institution fails to wire transfer funds when and as instructed by the Clearing House. In the event that at any time a Monetary Default occurs on the part of any Clearing Member (the "**Defaulting Clearing Member**"), then:

(a) The following shall apply:

(i) If and to the extent a Monetary Default relates to an Exchange Contract carried in any Customer Account of a Defaulting Clearing Member, the Defaulted Obligation shall be reduced in the following priority order: (1) by the Margin and such other assets of the Customer Account of the Defaulting Clearing Member; and (2) by the Guaranty Fund deposit, Margin, and such other assets of the House Account of the Defaulting Clearing Member, to the extent such funds have not been exhausted to fulfill the requirements of 3.35(a)(ii).

(ii) If and to the extent a Monetary Default relates to an Exchange Contract carried in the House Account of a Defaulting Clearing Member, the Guaranty Fund deposit, Margin and such other assets as are held for the House Account of the Defaulting Clearing Member, shall be applied to pay the Defaulted Obligation.

(iii) The Defaulting Clearing Member shall immediately restore any deficiencies in its Margin, Outstanding Exposure, and Guaranty Fund deposits resulting from any such applications.

(iv) Margin held by the Clearing House for the Customer Account shall not be used to cover losses in the House Account of a Defaulting Clearing Member.

(v) If the Defaulted Obligation is associated with an Exchange Contract Segment, the funds described in paragraphs (a)(i) and (a)(ii) of this Rule 3.35 associated with an Exchange Contract Segment shall first be used to reduce the Defaulted Obligation based on the Exchange Contract Segment(s) giving rise to the loss, in accordance with Clearing House procedures.

(b) If, after the application of funds in accordance with paragraph (a) of this Rule 3.35 the Defaulted Obligation has not been satisfied, and if the Defaulting Clearing Member fails to pay the Clearing House

the amount of the deficiency on demand, such Defaulting Clearing Member shall continue to be liable therefor, but the amount of the deficiency, until collected from the Defaulting Clearing Member, shall be met from the following sources of funds, in the following order of priority, each of which shall be fully utilized before the next following source is applied:

(i) such portion, if any, of the surplus of the Clearing House as the Board determines to be available for such purpose;

(ii) if the President, with the concurrence of the Chairman, or, in the absence of the Chairman, any Director with voting authority, or in the absence of the President then any two Directors with voting authority, so determines, a loan or repurchase agreement or similar transaction on such terms and conditions as they may determine to be necessary or appropriate (including without limitation granting an assignment, pledge or other lien on or security interest in the Guaranty Fund or the cash and securities held in the Guaranty Fund or applying such cash and securities as provided in Rule 3.34.6);

(iii) the Clearing House Contribution;

(iv) subject to Rule 3.34.6 and the last paragraph of this Rule 3.35(b), the Guaranty Fund; in the following priority allocated on a pro rata basis where possible:

(a) That portion of the Guaranty Fund allocated to an Exchange Contract Segment with a Defaulted Obligation that has not been satisfied (but only to the extent the unsatisfied Defaulted Obligation is associated with an Exchange Contract Segment);

(b) The entirety of the Guaranty Fund not applied under 3.35(b)(iv)(a);

(v) insurance proceeds, if any, received by the Clearing House in connection with the Monetary Default giving rise to the Defaulted Obligation; and

(vi) assessments levied by the Clearing House upon all the Clearing Members (other than the Defaulting Clearing Member) as provided in this Rule 3.35 ("**Assessments**").

The total amount to be assessed at any one time pursuant to clause (vi) of this paragraph (b) is hereinafter called an "**Assessment Amount**." For the avoidance of doubt, the

Clearing House may at any time following the occurrence of a Monetary Default and in anticipation of any charge against the Guaranty Fund require Clearing Members to post Assessments, subject to the limitations set forth in these Rules in respect of such Assessments.

As used herein, the "**Clearing House Contribution**" represents the obligation of the Clearing House to provide funds, in an amount not to exceed $20 million, to be applied pursuant to paragraph (b)(iii). If the Clearing House Contribution is so applied, the Clearing House will have no obligation to provide additional funds to replenish such contribution or otherwise provide additional funds in respect thereof.

The amount of a Replenishment that each Clearing Member must deposit in the Guaranty Fund to satisfy its obligation, pursuant to Rule 3.34.7(b), to restore the Guaranty Fund deficiency in the event of the application of some part or all of the Guaranty Fund pursuant to paragraph (b)(iv) (the total Guaranty Fund amount so applied referred to herein as the "**Aggregate Guaranty Fund Deficiency**"), shall be determined by multiplying the Aggregate Guaranty Fund Deficiency by a fraction, the numerator of which shall be the amount of the Clearing Member's Guaranty Fund Deposit Requirement as of the time immediately prior to the Monetary Default that resulted in the Replenishment, and the denominator of which shall be the total of the Guaranty Fund Deposit Requirements as of such time for all Clearing Members (other than defaulting Clearing Members). The resulting product shall constitute the amount of the Replenishment that each Clearing Member must restore to the Guaranty Fund pursuant to Rule 3.34.7 as a result of the application of the Guaranty Fund pursuant to paragraph (b)(iv).

(c) The amount of any Assessment shall be computed by multiplying the Assessment Amount by a fraction, the numerator of which shall be the amount of the Clearing Member's Guaranty Fund Deposit Requirement as of the time immediately prior to the Monetary Default that resulted in the Assessment, and the denominator of which shall be the total of the Guaranty Fund Deposit Requirements as of such time for all Clearing Members (other than Defaulting Clearing Members) being assessed. The resulting product shall constitute the amount of the Assessment to be levied on such Clearing Member pursuant to this paragraph (c).

(d) If the Assessment as determined pursuant to paragraph (c) of this Rule 3.35 would exceed the maximum set forth in paragraph (e) of this Rule 3.35, or if the amount assessed against any Clearing Member shall exceed the amount paid by such Clearing Member, the excess shall be assessed against the other Clearing Members (other than the Defaulting Clearing Member and any Clearing Member that shall have been assessed the maximum permitted by paragraph (e)) in accordance with such paragraph (c), as if the excess were the Assessment Amount. Assessments pursuant to this paragraph (d) shall be repeated until the entire Assessment Amount shall have been assessed, subject to the maximum limitations on Assessments set forth herein.

(e) Notwithstanding anything to the contrary herein, no Clearing Member (other than a Defaulting Clearing Member) shall be liable to provide Assessments as a result of charges or applications against the Guaranty Fund in respect of a single Monetary Default of another Clearing Member in an amount exceeding 200% of its Guaranty Fund Deposit Requirement immediately prior to the occurrence of the Monetary Default.

(f) If in any case, because of the limitations contained in paragraph (e), the maximum permitted Assessments are less than the Assessment Amount, the Board shall determine what if any further action to take, provided that under no circumstances may the Board levy Assessments on any Clearing Member that would exceed such limitations.

(g) A Person that withdraws as a Clearing Member shall be subject only to Assessments imposed to meet:

(i) Monetary Defaults occurring prior to the Clearing Member's Withdrawal Date, subject to the limitations contained in paragraph (e); and

(ii) Assessments levied under Rule 3.34.9 prior to the Clearing Member's Withdrawal Date.

(h) All Assessments shall be due and payable within such time as the Clearing House may prescribe, which shall be no later than the normal end of day settlement time for the Business Day on which such Assessment is levied. If any Person shall not pay any Assessment when due, such Person shall continue to be liable therefor, but the Clearing House may assess the Clearing Members (other than such Person, the Defaulting Clearing Member and any Clearing Member that shall have been assessed the maximum amount permitted by paragraph (e)) for the unpaid amount in

accordance with paragraphs (c) and (d), subject to the limitations set forth herein.

(i) If, after making any Assessments to meet any Defaulted Obligation owing by a Defaulting Clearing Member as referred to in paragraph (b), or to meet any Assessment not paid as referred to in paragraph (h), the Clearing House collects the amount of such Defaulted Obligation or such unpaid Assessment in whole or in part from the Person or Persons liable therefor, the Clearing House shall refund the amount so collected (net of any expenses, including without limitation any legal fees incurred in connection therewith) pro rata to the Clearing Members that had been assessed to meet such Defaulted Obligation or nonpayment and had paid the amount so assessed.

(j) For clarity, Variation Margin Gains Haircutting provided for in Rule 3.40 and Tear-Ups provided for in Rule 3.41 are not Assessments and are therefore not subject to the Assessment limits provided in Rule 3.35(e), Rule 3.35.1, or Rule 3.37.7.

(k) The Clearing House shall exercise the same degree of care in the administration, enforcement and collection of any claims against a Defaulting Clearing Member, any related guarantor, or its or their insolvency estate with respect to any Defaulted Obligation, unpaid Assessment or other deficiency of the Defaulting Clearing Member to the Clearing House (such claims, "Defaulting Clearing Member Claims") as it exercises with respect to its own assets that are not subject to allocation pursuant to paragraph (i) above. In furtherance of the foregoing, the Clearing House may determine, in its reasonable discretion, whether or not to commence, continue, maintain, sell, dispose of or settle or compromise any litigation, arbitration or other action with respect to any Defaulting Clearing Member Claim, without the consent of any Clearing Member or other person. The Clearing House shall not be liable for losses arising from any error in judgment or for any action taken or omitted to be taken by it with respect to Defaulting Clearing Member Claims, except for such losses that result from the Clearing House's gross negligence or willful misconduct. The Clearing House may, in its discretion, assign to Clearing Members any Defaulting Clearing Member Claim, in whole or in part, and such assignment shall satisfy in full the Clearing House's obligations under Rule 3.35(i) and (k) with respect to any such claim (or portion thereof) or recoveries therefrom.

(l) The Clearing House shall prioritize the use of Assessments collected from Clearing Members participating in an Exchange Contract

Segment with a Defaulted Obligation to meet the Defaulted Obligation associated with that Exchange Contract Segment.

3.35.1 Cooling-off Periods

(a) The following terms shall have the following meanings:

The term "**Cooling-off Period**" shall mean the period commencing on the date of the Cooling-off Period Trigger Event and terminating 30 Business Days thereafter. A Cooling-off Period shall be automatically extended if a subsequent Cooling-off Period Trigger Event occurs 30 or fewer Business Days after the previous Cooling-off Period Trigger Event, in which case the Cooling-off Period will be extended until the date falling 30 Business Days after such subsequent Cooling-off Period Trigger Event.

The term "**Cooling-off Period Trigger Event**" shall mean any call for an Assessment to be made pursuant to paragraph (c) of Rule 3.35 arising from a Monetary Default or Monetary Defaults; or (ii) the occurrence of a Sequential Guaranty Fund Depletion.

The term "**Sequential Guaranty Fund Depletion**" shall mean, in respect of a particular Clearing Member that is not a Defaulting Clearing Member, the occurrence of circumstances in which: (i) there have been two or more Monetary Defaults relating to different Clearing Members within a period of 30 or fewer Business Days; (ii) contributions to the Guaranty Fund from non-Defaulting Clearing Members have been applied in respect of at least two such Monetary Defaults; and (iii) the total amount of Replenishments that the Clearing Member has as a result paid to the Clearing House to replenish its contributions to the Guaranty Fund exceeds its Guaranty Fund Deposit Requirement prior to the first such Monetary Default.

(b) Upon the occurrence of any Cooling-off Period Trigger Event, the Clearing House shall issue a notice to Clearing Members of the commencement of the Cooling-off Period, setting out the date on which such period is scheduled to end.

(c) From the commencement of, and solely for the duration of, the Cooling-off Period:

(i) The obligation to provide Replenishments under Rule 3.34.7 and Rule 3.35(b) shall continue to apply to a Clearing Member during the Cooling-off Period, subject to Rule 3.35.1(c)(ii);

(ii) The aggregate of all Assessments due under Rule 3.35(c) from a Clearing Member for all Monetary Defaults occurring or declared during the Cooling-off Period (or resulting in the Cooling-off Period) and all Replenishments due under Rule 3.34.7 and paragraph (b) of Rule 3.35 shall not exceed 550% of the amount of the Clearing Member's Guaranty Fund Deposit Requirement immediately prior to the occurrence of the Monetary Default or Monetary Defaults as a result of which the Cooling-off Period commenced (with any Assessments or Replenishments levied in respect of the Monetary Default or Monetary Defaults as a result of which the Cooling-off Period commenced being counted towards such maximum amount) (the "Maximum Aggregate Cooling-off Period Contribution"). A Clearing Member that has provided Assessments and/or Replenishments in such maximum amount in respect of a Cooling-off Period shall not be liable for any further Replenishments of its contributions to the Guaranty Fund or Assessments in respect of any Monetary Default or Monetary Defaults occurring or declared during such Cooling-off Period, regardless of how many additional Monetary Defaults take place in such period;

(iii) For the avoidance of doubt, the per Monetary Default cap on Assessments set forth in Rule 3.35(e) shall apply in respect of each Monetary Default occurring or declared during the Cooling-off Period; and

(iv) During the Cooling-off Period, the Clearing House may rebalance, re-set or recalculate Guaranty Fund Deposit Requirements to the Guaranty Fund or the total required contribution amount for purposes of determining liability for Replenishments or Assessments during the Cooling-off Period; provided that such adjustments will not affect the Maximum Aggregate Cooling-off Period Contribution or the other limitations provided in Rule 3.35.1);

provided, further, that the limits set out in this 3.35.1 shall only apply with respect to a Clearing Member if such Clearing Member continues during the Cooling-off Period to pay the Clearing House all other amounts when owed by it in all material respects (subject to the limitations set out in this paragraph (c) of Rule 3.35.1).

(d) At the end of the Cooling-off Period, the restrictions and requirements of Rule 3.35.1(c) shall cease to apply (other than the

limitation on Assessments for Monetary Defaults occurring or declared during the Cooling-off Period).

(e)

(i) Nothing in this Rule 3.35.1 shall alter the Clearing House's right to call for Margin from any Clearing Member.

(ii) In addition to any Margin otherwise required by the Clearing House under the Rules, if during the Cooling-off Period a Clearing Member has provided Replenishments and/or Assessments in the aggregate equal to its Maximum Aggregate Cooling-off Period Contribution, then if such Clearing Member would, but for the provisions of Rule 3.35.1(c), at any time be required to provide a Replenishment, such Clearing Member shall provide to the Clearing House, by the open of business on the Business Day following request by the Clearing House and maintain with the Clearing House during the remainder of the Cooling-off Period, additional Initial Margin (in addition to the Initial Margin otherwise required with respect to its open positions) in an amount determined by the Clearing House based on the amount of additional Initial Margin needed for the Clearing House to maintain compliance with applicable minimum regulatory financial resources requirements during the remainder of the Cooling-off Period. Such additional Initial Margin shall be calculated separately with respect to each of the house account and the customer account, on a net basis in each case, but in both cases shall be charged to the house account.

3.36 Liquidity Event

In the event the Clearing House requires liquidity to enable it to promptly meet all of its payment obligations to Clearing Members, the Clearing House will first attempt to obtain liquidity through the sale of any pledged securities, followed by the application of any uncommitted funding arrangements, and then through the use of its committed lines of credit, if any. In the event the Clearing House is unable to obtain sufficient funds and liquidity to promptly effect settlement and payment through such means, the Clearing House may declare the occurrence of a Liquidity Event. In such an event, the Clearing House has the authority in its sole discretion to take the following actions, in the order listed, to secure same day liquidity:

(a) *Substitution of Guaranty Fund Cash*. The Clearing House may substitute cash deposited by one or more Clearing Members in the Guaranty Fund with Treasury Securities deposited by any Clearing Member(s) that is(are) the initiating cause of the Liquidity Event.

The amount of cash substituted shall be equivalent to the market value of such Treasury Securities (determined by the Clearing House as of the latest mark, using a recognized third-party source, after the application of haircuts). Any Treasury Securities transferred pursuant to this paragraph (a) shall be applied as a Guaranty Fund deposit on behalf of any such Clearing Member whose cash was substituted and will be allocated pro rata among Clearing Members with cash deposits who are not the initiating cause of the Liquidity Event. For any substitution of Treasury Securities for cash in the Guaranty Fund, the Clearing House will replace the cash within twenty-nine (29) Business Days of the date of the substitution.

(b) *Substitution of Initial Margin Cash*. The Clearing House may substitute the cash deposited by one or more Clearing Members as Initial Margin with Treasury Securities held as Collateral by the Clearing House. The amount of cash substituted shall be equivalent to the market value of such Treasury Securities (determined by the Clearing House as of the latest mark, using a recognized third-party source, after the application of haircuts). Any Treasury Securities transferred pursuant to this paragraph (b) shall be applied as an Initial Margin deposit on behalf of any such Clearing Member whose cash was substituted and will be allocated pro rata among Clearing Members with cash deposits. For any substitution of Treasury Securities for cash as Initial Margin, the Clearing House will replace the cash within twenty-nine (29) Business Days of the date of the substitution.

(c) *Payment in Kind – Variation Margin and Outstanding Exposure*. The Clearing House may satisfy Variation Margin and/or Outstanding Exposure obligations to any Clearing Member that is a primary dealer (or that has an Affiliate that is a primary dealer) with Treasury Securities held as Collateral by the Clearing House at market value (determined by the Clearing House as of the latest mark, using a recognized third-party source, after the application of haircuts). To the extent that the Clearing House pays its Variation Margin and/or Outstanding Exposure obligations in Treasury Securities, if the receiving Clearing Member notifies the Clearing House the same day of the settlement that it will return the securities to the Clearing House on the next Business Day, then the Clearing House will pay on the next Business Day cash equal to the original value of the Clearing House's Variation Margin and/or Outstanding Exposure obligation.

(d) *Payment in Kind – Portfolio Auction, Sale, or Transfer*. In lieu of satisfying a payment owed from any auction, sale, or transfer of an Insolvent, Defaulted, or suspended Clearing Member's House

Account or Customer Account in cash to an auction winner, purchaser, or transferee, the Clearing House may satisfy such payment owed by transferring Treasury Securities at market value (determined by the Clearing House as of the latest mark, using a recognized third-party source, after the application of haircuts), equal to the amount of such obligation.

3.37 Withdrawal of Clearing Members; Termination

3.37.1 The following terms will have the indicated meanings:

(a) The term "**Withdrawal Close-Out Deadline Date**" shall mean: (i) in the case of a Clearing Member whose status as a Clearing Member has been involuntarily terminated by the Clearing House, the date so designated by the Clearing House; and (ii) in the case of a Clearing Member that has delivered a Withdrawal Notice, the date falling 30 Business Days after such Clearing Member's Withdrawal Notice Date or such later date as the Clearing House may in its discretion permit and notify in writing to the affected Clearing Member, provided such date is not in excess of the earlier of the end of the most recent Cooling Off Period existing as of the Withdrawal Notice Date or six months from the Withdrawal Notice Date.

(b) The term "**Withdrawal Date**" shall mean in respect of the termination of Clearing Member status for a withdrawing Clearing Member, the later of: (i) where applicable, the Withdrawal Close-Out Deadline Date; and (ii) the date as of which all of the withdrawing Clearing Member's open positions in respect of its House Account and Customer Account have been terminated or closed out in full and all obligations of the withdrawing Clearing Member in respect thereof have been satisfied and performed in full.

(c) The term "**Withdrawal Notice Date**" shall mean the date on which a Clearing Member delivers a Withdrawal Notice to the Clearing House.

(d) The term "**Withdrawal Notice**" shall mean a notice served by the Clearing Member on the Clearing House under the Rules indicating that such Clearing Member intends to withdraw from being a Clearing Member (and thereby becomes a withdrawing Clearing Member).

3.37.2 Notwithstanding any other provision of the Rules, a Clearing Member that has delivered a Withdrawal Notice pursuant to Rule 3.37 or whose status as a Clearing Member has been terminated by the Clearing House pursuant

to Section V shall be subject to the following requirements, obligations and provisions:

(a) it must use all reasonable endeavors to close out or transfer all open positions in its House Account and Customer Account prior to the Withdrawal Close-Out Deadline Date;

(b) after the Withdrawal Notice Date, it shall only be entitled to submit transactions for clearing which it can demonstrate have the overall effect of reducing open positions or risks to the Clearing House, whether by hedging, transferring, terminating, liquidating or otherwise closing out Exchange Contracts;

(c) the Clearing House may call for additional Initial Margin until such time as all such open positions have been terminated or transferred, and such Clearing Member shall provide to the Clearing House such additional Initial Margin as is requested in a timely manner;

(d) except as provided in paragraph (e), there shall be no rebalancing, resetting or recalculation of the Guaranty Fund Deposit Requirement or the liability limits set forth in 3.35(e) or 3.35.1(c)(ii) of Replenishments or Assessments of a Clearing Member that has served a Withdrawal Notice;

(e) if it has any open positions with the Clearing House (whether in the House Account or the Customer Account) after the Withdrawal Close-Out Deadline Date, the Clearing Member shall as from the Withdrawal Close-Out Deadline Date until its Withdrawal Date:

(i) become liable to make any Replenishments or Assessments that would have fallen due but have not been paid and become liable to have applied any contribution to the Guaranty Fund that would have been applied but was not so applied, in each case to the extent that the same would have been payable or applied but for its service of a Withdrawal Notice and in each case in respect of any Monetary Default affecting a Clearing Member that has occurred subsequent to the Withdrawal Notice Date;

(ii) become liable for further obligations to have any contributions to the Guaranty Fund applied or pay Assessments in the same way as any other Clearing Member in respect of any Monetary Default occurring prior to the Withdrawal Date; and

(iii) be subject to the Clearing House exercising rights under Rule 3.31 to liquidate or transfer the open positions of the Clearing Member and otherwise deal with the Clearing

Member's Exchange Contracts and property in the same way as if the Clearing Member were a Defaulting Clearing Member.

(f) following termination of all open positions to which a withdrawing Clearing Member was party in relation to its House Account and Customer Account and satisfaction in full by such withdrawing Clearing Member of all obligations in respect thereof, the Clearing House shall return the withdrawing Clearing Member's unused contributions to the Guaranty Fund and any unused Withdrawal Deposit, as well as any other assets of the withdrawing Clearing Member not previously returned on the date that is sixty (60) days after the withdrawing Clearing Member's Withdrawal Date, or such earlier date as is determined by the Clearing House.

3.37.3 Notwithstanding anything in these Rules:

(a) the Clearing House may at its discretion return amounts due to the withdrawing Clearing Member by way of transfer or return of Treasury Securities to the withdrawing Clearing Member; and

(b) the Clearing House may make partial payment of any amounts due, excluding the withdrawing Clearing Member's Guaranty Fund contribution, prior to the time specified in this Rule 3.37.

3.37.4 Any Withdrawal Notice issued by a Clearing Member shall be irrevocable by the Clearing Member and membership may only be reinstated pursuant to a new application for membership following the close-out or transfer of all open Exchange Contracts in its House Account and Customer Account.

3.37.5 A Clearing Member whose membership has terminated shall, following the Withdrawal Date, cease to be liable for Replenishments or Assessments under Rules 3.35 in respect of Monetary Defaults that occur after the Withdrawal Date.

3.37.6 This Rule 3.37 shall not apply to a Defaulting Clearing Member.

3.37.7 In the event of an Emergency, or otherwise at the discretion of the Board, a Clearing Member that gives a Withdrawal Notice may be required by the Clearing House immediately upon delivery of the Withdrawal Notice to provide Assessments in an amount not to exceed 550% of its Guaranty Fund Deposit Requirement (as in effect immediately prior to the Withdrawal Notice Date), such amounts to be held by the Clearing House until the Withdrawal Date and applied only as permitted in accordance with these Rules (a "**Withdrawal Deposit**"). Any references in these Rules to Assessments being called or to Guaranty Fund Deposit Requirements to the Guaranty Fund being replenished or applied, in respect of a Clearing Member which has provided such a Withdrawal

Deposit, shall be interpreted as a reference to such Withdrawal Deposit being applied as necessary in satisfaction of such requirements, and a Clearing Member that has served a Withdrawal Notice and made such Withdrawal Deposit shall not be liable for any further Assessments, regardless of how many Monetary Defaults take place.

3.38 Close-Out Netting

3.38.1 *Insolvency of the Clearing House*. If at any time the Clearing House: (i) institutes or has instituted against it a proceeding seeking a judgment of bankruptcy or insolvency or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation, and, in the case of any such proceeding or petition presented against it, such proceeding or petition results in a judgment of bankruptcy or insolvency or the entry of an order for relief or the making of an order for the Clearing House's winding-up or liquidation, or (ii) approves resolutions authorizing any proceeding or petition described in clause (i) above (collectively, a "**Bankruptcy Event**"), all open positions in the Clearing House shall be closed promptly.

3.38.2 *Default of the Clearing House*. If at any time the Clearing House fails to comply with an undisputed obligation to pay money or deliver property to a Clearing Member that is due and owing in connection with a transaction cleared by the Clearing House, for a period of thirty days from the date that the Clearing House receives notice from the Clearing Member of the past due obligation, the Clearing Member's open proprietary and Customer positions at the Clearing House shall, at the election of that Clearing Member, be closed promptly.

3.38.3 *Wind-Up of Exchange Contracts*. If at any time the Board determines, by virtue of the number of withdrawing Clearing Members or otherwise, that a winding up (offset) of all outstanding positions at the Clearing House is prudent, then all open positions at the Clearing House shall be closed promptly.

3.38.4 *Netting and Close-Out*. At such time as a Clearing Member's positions are closed, the obligations of the Clearing House to a Clearing Member in respect of such Clearing Member's House Account, all Collateral and positions therein and deposits to the Guaranty Fund shall be netted, in accordance with the Bankruptcy Code, the CEA and CFTC Regulations against the obligations of that Clearing Member in respect of its House Account, all Collateral and positions therein, its obligations as guarantor of the performance of its Customers and its then-matured obligations to the Guaranty Fund, to the Clearing House and to the Exchange. For the avoidance of doubt, all of the property in a Clearing Member's House Account on deposit with the Clearing House shall be deemed to be subject to a single master netting agreement with the result that any excess which

is on deposit with the Clearing House shall be applied to reduce any deficiency or obligation of the Clearing Member. All obligations of the Clearing House to a Clearing Member in respect of such Clearing Member's Customer Account and all positions and Collateral therein shall be separately netted against the positions, accounts and Collateral of such Clearing Member's Customers in accordance with the requirements of the Bankruptcy Code, the CEA and CFTC Regulations. At the time a Bankruptcy Event takes place, the authority of the Clearing House, pursuant to Rule 3.35, to make new assessments and/or require a Clearing Member to cure a deficiency in its Guaranty Fund deposit, arising after the Bankruptcy Event, shall terminate. All positions open immediately prior to the close-out shall be valued in accordance with the procedures of Rule 3.38.5.

3.38.5 *Valuation*. As promptly as reasonably practicable, but in any event within thirty (30) days of: (i) the Bankruptcy Event; (ii) if a Clearing Member elects to have its open positions closed as described in Rule 3.38.2, the date of the election; or (iii) the determination by the Board to wind-up all outstanding positions as described in Rule 3.38.3, the Clearing House shall fix an amount (the "**Close-Out Amount**") to be paid to or received from the Clearing House by each Clearing Member, after taking into account all applicable netting and offsetting pursuant to Rule 3.38.4. The Clearing House shall value open positions subject to close-out by using the market prices for the relevant market (including without limitation any over-the-counter or other futures markets) at the time that the positions were closed out, assuming the relevant markets were operating normally at such time. If the relevant markets were not operating normally at such moment, the Clearing House shall exercise its discretion, acting in good faith and in a commercially reasonable manner, in adopting methods of valuation expected to produce reasonably accurate substitutes for the values that would have been obtained from the relevant market if it were operating normally. In determining a Close-Out Amount, the Clearing House may consider any information that it deems relevant, including, but not limited to, any of the following:

(a) prices for underlying interests in recent transactions, as reported by the market or markets for such interests;

(b) quotations from leading dealers in the underlying interest, setting forth the price (which may be a dealing price or an indicative price) that the quoting dealer would charge or pay for a specified quantity of the underlying interest;

(c) relevant historical and current market data for the relevant market, provided by reputable outside sources or generated internally; and

(d) values derived from theoretical pricing models using available prices for the underlying interest or a related interest and other relevant data.

Amounts stated in a currency other than U.S. dollars shall be converted to U.S. dollars at the current rate of exchange, as determined by the Clearing House. If a Clearing Member has a negative Close-Out Amount, it shall promptly pay that amount to the Clearing House.

3.38.6 *Interpretation in Relation to FDICIA*. The Clearing House intends that certain provisions of this Rule 3.38 be interpreted in relation to certain terms (identified by quotation marks) that are defined in the Federal Deposit Insurance Corporation Improvement Act of 1991 ("**FDICIA**"), as amended, as follows:

(a) The Clearing House is a "clearing organization."

(b) An obligation of a Clearing Member to make a payment to the Clearing House, or of the Clearing House to make a payment to a Clearing Member, subject to a netting agreement, is a "covered clearing obligation" and a "covered contractual payment obligation."

(c) An entitlement of a Clearing Member to receive a payment from the Clearing House, or of the Clearing House to receive a payment from a Clearing Member, subject to a netting contract, is a "covered contractual payment entitlement."

(d) The Clearing House is a "member," and each Clearing Member is a "member."

(e) The amount by which the covered contractual payment entitlements of a Clearing Member or the Clearing House exceed the covered contractual payment obligations of such Clearing Member or the Clearing House after netting under a netting contract is its "net entitlement."

(f) The amount by which the covered contractual payment obligations of a Clearing Member or the Clearing House exceed the covered contractual payment entitlements of such Clearing Member or the Clearing House after netting under a netting contract is its "net obligation."

(g) The Rules of the Clearing House, including this Rule 3.38, are a "netting contract."

3.39 Settlement Price

As used in the Rules, "**Settlement Price**" means the settlement price for each Exchange Contract, as determined by the Exchange in accordance with Exchange Rules, except in the case of manifest error or where the Clearing House believes that such settlement price does not reasonably reflect the value or price of the Exchange Contract, in which case the Clearing House, using its best efforts to consult with the Exchange, shall determine the official settlement price; provided, that the Clearing House shall in such circumstances promptly notify the Exchange and Clearing Members, and the reasons for that determination and the basis for the settlement price determined by the Clearing House shall be published in a notice to the Exchange and Clearing Members.

Solely with respect to Security Futures Products, the Clearing House shall have the authority to determine a final settlement price for such Security Futures Product pursuant to CFTC Regulation 41.25(c)(3).

3.40 Variation Margin Gains Haircutting

3.40.1 If at any time following a Monetary Default of a Clearing Member: (i) the assets available to cover the Defaulted Obligation under Rule 3.35 are insufficient to satisfy the Defaulted Obligation and obligations of the Clearing House to Clearing Members as a result of such default; or (ii) less than 25% of Maximum Aggregate Cooling-off Period Contribution is available to cover the Defaulted Obligation or the Clearing House's obligations to Clearing Members, then the Clearing House shall, in a manner that is consistent with the requirements of the Commodity Exchange Act and the regulations adopted thereunder, conduct its next settlement cycle as described in Rule 3.40.2.

If the Defaulted Obligation is associated with an Exchange Contract Segment, the settlement cycle described in Rule 3.40.2 will be conducted for only the Exchange Contract Segment associated with the Defaulted Obligation, unless otherwise determined by the Chief Risk Officer.

3.40.2 The Clearing House shall provide notice to Clearing Members, such notice to be provided on the Clearing House's website, and conduct a settlement cycle to determine settlement prices for all Exchange Contracts and the Variation Margin for each Clearing Member and its Customers, in accordance with the following:

(a) The net Variation Margin the Clearing House owes to a Clearing Member (a "**Variation Margin Gain**"), or the net Variation Margin the Clearing Member owes to the Clearing House (a "**Variation Margin Loss**") shall be determined separately for: the Clearing Member's House Account ("**House Account Variation Margin Gain**" or "**House Account Variation Margin Loss**"), and the

Clearing Member's Customer Accounts ("**Customer Account Variation Margin Gain**" or "**Customer Account Variation Margin Loss**").

(b) The Risk Management Committee may determine a maximum amount of position liquidation expenses that may be subtracted from Clearing Members' Variation Margin Gains, based upon then existing facts and circumstances, that it deems appropriate to mitigate further disruptions to the markets.

(c) The Clearing House shall then notify each Clearing Member of the amount of its remaining Assessment and each Clearing Member shall pay to the Clearing House all such amounts no later than the time required for the relevant settlement cycle. If a Clearing Member does not pay all such amounts to the Clearing House, the Clearing House shall determine such Clearing Member to be in Default.

(d) If the Variation Margin Loss payments received by the Clearing House exceed the Variation Margin Gains, the Clearing House shall calculate reimbursements of, and distribute, the excess funds in the reverse order of their collection by the Clearing House.

(e) If the Variation Margin Gains exceed the amount of Variation Margin Loss payments received by the Clearing House:

(i) the Clearing House shall notify Clearing Members and provide an opportunity for Clearing Members and their customers to make voluntary contributions to the Clearing House;

(ii) If the amount of Variation Margin Gains continues to exceed the amount of Variation Margin Loss payments received by the Clearing House, after the Clearing House adds any voluntary contributions from Rule 3.40.2(e)(i) to the Variation Margin Loss payments, then the Clearing House shall apply Variation Margin Gains Haircuts (as defined below) to the House Variation Margin Gains and Customer Variation Margin Gains for the current settlement cycle and each successor settlement cycle on the current Business Day and, unless a Bankruptcy Event has occurred, each of the next two Business Days, in accordance with the following:

(a) House Variation Margin Gains and Customer Variation Margin Gains each shall be reduced on a pro rata basis according to the amount of such gains, to result in the aggregate amount necessary

for Variation Margin Loss payments received by the Clearing House to equal Variation Margin Gains payments (such process, a "Variation Margin Gains Haircut").

(b) Customer Variation Margin Gains shall be haircut by the Clearing House at the Customer Account level of each Clearing Member.

(iii) The Risk Management Committee may instruct the Clearing House to extend or reduce the number of days during which Variation Margin Gains Haircuts are applied, provided that in no circumstance may the Clearing House conduct settlement cycles in which Variation Margin Gains Haircuts are applied for longer than five Business Days; and

(iv) The Clearing House shall notify Clearing Members prior to each settlement cycle where Variation Margin Gains Haircuts will be applied. Where the Clearing House determines that Variation Margin Gains Haircuts are no longer necessary, it shall notify Clearing Members and specify the final date of Variation Margin Gains Haircuts as well as the date that normal settlement cycles will resume. After the end of Variation Margin Gains Haircuts the Clearing House shall resume calculating, collecting and paying Variation Margin in the ordinary course.

3.41 Partial Tear-Ups and Full Tear-Ups

3.41.1 The Clearing House may, at any time following a Default of a Clearing Member, notify Clearing Members and provide an opportunity for Clearing Members to voluntarily agree to have their House positions or, with a Customer's consent, to agree to have each such Customer's positions, extinguished by the Clearing House.

3.41.2 If House or Customer positions in Exchange Contracts of a Defaulting Clearing Member remain open (the "**Open Defaulter Positions**") following the last settlement cycle conducted pursuant to Rule 3.40.2(c), the Clearing House shall extinguish the Open Defaulter Positions through a partial tear-up process ("**Partial Tear-Up**") or a full tear-up process ("**Full Tear-Up**") of House and Customer positions of non-defaulted Clearing Members and non-defaulted Customers of the Defaulting Clearing Member in accordance with the following:

(a) The Risk Management Committee shall determine the appropriate scope of each Partial Tear-Up or shall determine that a Full Tear-Up

is appropriate. In making such determination, the Risk Management Committee shall consider then existing known facts and circumstances, any recommendations made by the Risk Advisory Committee, the furtherance of the integrity of the Clearing House and the stability of the financial system and the legitimate interests of Clearing Members and market participants.

(b) A Partial Tear-Up may include, but need not be limited to, the following methods:

(i) Line-by-Line Tear-Up against the Open Defaulter Positions to proportionately extinguish Exchange Contracts held by non-defaulted Clearing Members, their non-defaulted customers and the non-defaulted customers of the defaulted Clearing Member that are opposite to the Open Defaulter Positions and relative to the size of the Open Defaulter Positions; and

(ii) Tear-Up of All Positions in Exchange Contracts within a product or combination of products. Extinguish all open positions in Exchange Contracts for a product or combination of products.

(c) A Full Tear-Up would involve the extinguishment of all open positions in Exchange Contracts.

(d) The price for Full or Partial Tear-Up (the "**Tear-Up Price**") shall equal the latest Settlement Price (which could be established at either an intra-day or end of day settlement) as of the date and time of such tear-up ensuring that the position subject to tear-up does not generate any Variation Margin obligations.

3.42 Non-Petition

No Clearing Member and no Customer of a Clearing Member shall institute against, or join any other person in instituting against, the Clearing House or the Exchanges any bankruptcy, reorganization, arrangement, insolvency, moratorium, liquidation or examinership proceedings, or other similar proceedings under U.S. federal or state bankruptcy laws or other applicable law arising out of any claimed default by the Clearing House on an Exchange Contract as a result of the extinguishment, partial extinguishment, or Variation Margin Gains Haircut, of such Exchange Contract and related payments in accordance with these Rules.

3.43 Reimbursement of Recovered Losses

Losses caused by a Defaulting Clearing Member are amounts due to the Clearing House from such Defaulting Clearing Member, and shall remain legal obligations thereof notwithstanding the Clearing House's recourse to the loss-mutualization

provisions of Rules 3.35 – 3.41, and the Clearing House shall exercise the same degree of care as it exercises with respect to its own assets in the administration and collection of such amounts (including claims submitted in an insolvency or resolution proceeding). If any portion of these amounts is subsequently recovered by the Clearing House, the net amount of such recovery shall be credited to non-defaulted Clearing Members (whether or not they are still clearing members at the time of recovery) in the following order on a pro rata basis based on (1) the amount of their (and their Customers', if applicable) voluntary contributions with respect to such default, (2) the amount of their (and their Customers', if applicable) Variation Margin Gains Haircuts with respect to such default, (3) the amount of their Assessments utilized by the Clearing House with respect to such default, and (4) the amount of their Guaranty Fund contribution utilized by the Clearing House with respect to such default, each in the order listed, and then to the Clearing House for the amount of the Clearing House Contribution utilized by the Clearing House with respect to such default.

3.44 Adjustments for Corporate Actions

The Clearing House shall process position adjustments, price adjustments, restatements, or other resulting adjustments arising from Corporate Actions affecting Security Futures Products in accordance with Exchange Rules and Contract Specifications.

SECTION IV CODE OF CONDUCT

Preamble

This Code of Conduct defines and reaffirms the values, principles and internal controls that Clearing Members and Authorized Users, as applicable, must follow in conducting their Clearing Activities. The Code of Conduct supplements other requirements of the Rules and is intended to complement the internal principles and practices of Clearing Members and their Authorized Users and to guide Clearing Members and their Authorized Users as they use the services of the Clearing House. Compliance with the Code of Conduct allows Clearing Members to assure the Clearing House, Governmental Authorities, the public, other Clearing Members and Approved Financial Institutions that their business activities on the Clearing House are, and will continue to be, conducted with integrity. In addition, compliance with the Code of Conduct gives assurance that unlawful and unethical trading practices are not tolerated, that public disclosures of information are accurate, and that Clearing Members will abide by these ethical standards and maintain sound practices.

Violations of this Code of Conduct may result in penalties including, but not limited to, temporary or permanent loss of access to the Clearing House.

4.1 Ethical Standards

Conducting activities in an honorable and principled manner consistent with the Code of Conduct is the essence of ethical conduct with respect to the Clearing House. Each Clearing Member shall act, and shall cause its Authorized Users to act, in accordance with these standards of ethics with regard to its Clearing House activity:

4.1.1 **Regulatory Compliance**. No Clearing Member (or any of its Authorized Users) shall engage in conduct that is a violation of these Rules and will conduct its business in accordance with Applicable Law and in good faith.

4.1.2 **Fraud**. No Clearing Member (or any of its Authorized Users) shall engage in any fraudulent act or engage in any scheme to defraud, deceive, trick or mislead in connection with or related to any Exchange Contract or the business and affairs of the Clearing House.

4.1.3 **Good Faith**. No Clearing Member (or any of its Authorized Users) shall knowingly use the Clearing System other than for its intended and legitimate business purpose in good faith.

4.1.4 **Antitrust**. No Clearing Member (or any of its Authorized Users) shall engage in any activity to collude or otherwise unlawfully restrain competition.

4.2 Termination of Connection

The Clearing House, in its sole discretion, shall have the right to summarily terminate the connection of any Clearing Member or the access of any User ID to the Clearing House. Additionally, the Clearing House, in its sole discretion, shall have the right to direct a Clearing Member to immediately terminate any Authorized User's access to the Clearing House.

4.3 Information Disclosure and Documentation

4.3.1 Markets depend on trust in the accuracy of market information provided.

4.3.2 Clearing Members must: (i) provide information relating to the Clearing House in compliance with Applicable Law and continue to cooperate with the Clearing House as reasonably necessary to assist in its understanding of the markets; and (ii) ensure that any information disclosed to the Clearing House is accurate and consistent.

4.3.3 No existing or prospective Clearing Member shall make any false statements or misrepresentations in any application, report or other communication to the Clearing House.

4.4 Compliance

Each Clearing Member must have a compliance program commensurate with the size and scope of its Clearing House activities that is designed to achieve appropriate, timely and ongoing compliance with the Rules and this Code of Conduct.

SECTION V DISCIPLINE AND ENFORCEMENT; CLEARING MEMBER EMERGENCIES

5.1 Disciplinary and Enforcement Procedures – General

5.1.1 All Clearing Members and their Authorized Users are subject to the jurisdiction of the Clearing House. Except for (i) Rule violations that result in summary fines as described in Rule 5.2 and (ii) summary actions taken by the Clearing House pursuant to Rule 5.3, a Clearing Member, Authorized User or Person using the User ID of an Authorized User that is alleged to have violated or to have aided and abetted a violation of any Rule will be subject to the disciplinary and enforcement procedures set forth in this Rule 5.1. Investigatory and disciplinary responsibilities and duties are conducted by employees who are authorized by the Chief Executive Officer to provide investigation of clearing activities to ensure compliance with the Rules and Applicable Law ("**Compliance Manager**"). Matters will be referred by the Chief Compliance Officer or his/her designee to the Compliance Manager, which will act on behalf of the Clearing House in connection with the matter. Any employee within the office of the Compliance Manager must recuse himself or herself and notify the Chief Compliance Officer of the recusal if such employee has a relationship of a type listed in Rule 2.7 with a Person subject to any Disciplinary Action, whereby the Chief Compliance Officer and the Board shall appoint a Compliance Manager without such conflict for the specific Disciplinary Action giving rise to the conflict. Any inquiry, investigation, disciplinary proceeding, appeal from a disciplinary proceeding, summary imposition of fines, summary suspension or other summary action except as described in Rule 5.2 and Rule 5.3, (collectively, "**Disciplinary Action**") shall be governed by this Rule 5.1.

5.1.2 Except as otherwise provided in the Rules, no Clearing House Official will interfere with or attempt to influence the process or resolution of any Disciplinary Action. Any Person subject to a Disciplinary Action may be represented by counsel or any other representative of its choosing (other than a Clearing House Official or any person substantially related to the underlying investigation, such as a material witness or Respondent), at its own expense, in all stages of such Disciplinary Action.

5.1.3 At the discretion of the Clearing House, any Respondent found in violation of the Rules may be required to pay to the Clearing House any and all expenses incurred as a result of the investigation of the violation and prosecution of such Respondent. This assessment is in addition to any monetary fines imposed for the Rule violation(s).

5.1.4 If a hearing has been held in accordance with Rule 5.1.13, the Hearing Panel may order a Respondent to pay some or all of the costs associated with the disciplinary proceedings, including costs that the Hearing Panel

believes were unnecessarily caused by the Respondent, regardless of the outcome of any disciplinary proceeding. Costs may include costs associated with the inquiry or investigation, the prosecution by the Compliance Manager, legal and professional assistance, the hearing, and administrative and other expenses incurred by the Hearing Panel.

5.1.5 Investigations.

(a) The Compliance Manager will investigate any enforcement matter within the Clearing House's jurisdiction that is referred by the Chief Compliance Officer or otherwise brought to the attention of the Compliance Manager. The Compliance Manager will commence an investigation upon the receipt of a request from Commission staff or upon the discovery or receipt of information by the Clearing House that, in the judgment of the Compliance Manager, indicates a possible basis for a finding that a violation has occurred or will occur. The Compliance Manager shall determine the nature and scope of the investigations in his or her sole discretion and will operate independently of the commercial interests of the Clearing House. Absent mitigating circumstances, the Compliance Manager must complete an investigation within twelve (12) months after the date the investigation is opened. Permissible mitigating circumstances include the complexity of the investigation, the number of firms or individuals involved as potential respondents, the number of potential violations to be investigated and the volume of documentation and data that must be analyzed.

(b) Upon request by the Compliance Manager, each Person subject to the Clearing House's jurisdiction:

(i) is obligated to appear and testify and respond in writing to inquiries within the time period required by the Compliance Manager in connection with:

(a) any Rule;

(b) any inquiry or investigation; or

(c) any preparation by and presentation during a Disciplinary Action;

(ii) is obligated to produce books, records, papers, documents or other tangible evidence in its, his or her possession, custody or control within the time period required by the Compliance Manager in connection with:

(a) any Rule;

(b) any inquiry or investigation; or

(c) any preparation by and presentation during a Disciplinary Action;

(iii) may not impede or delay any Disciplinary Action.

5.1.6 Reports of Investigations.

The Compliance Manager will submit a written report of each investigation to the Chief Compliance Officer and maintain a log of all investigations and their disposition. The written report of the investigation (the "**Investigation Report**") will include the reasons for initiating the investigation, all relevant facts and evidence gathered, analysis and conclusions, the Respondent's disciplinary history, and will consist of one of the following recommendations:

(a) closing the investigation without further action;

(b) negotiating a settlement;

(c) entering into a summary action;

(d) preparing and serving a notice of charges to initiate a disciplinary proceeding; or

(e) resolving the investigation through an informal disposition, including the issuance of a warning letter. An informal disposition (including the issuance of a warning letter) will not constitute a finding of a violation or a sanction, however, the investigative report must include a copy of any warning letter and no more than one warning letter for the same potential violation may be issued to the same Respondent during a rolling 12-month period.

5.1.7 Review of Reports of Investigations.

After the completion of the Investigation Report and the receipt of any submission made by the Respondent pursuant to Rule 5.1.8, the Chief Compliance Officer will (i) review the Investigation Report or (ii) establish a Review Panel pursuant to Rule 5.1.8 and forward the Investigation Report to such Panel. The Chief Compliance Officer or Review Panel, as appropriate, will review an Investigation Report promptly after receipt and determine for each Respondent whether to authorize:

(a) the informal disposition of the investigation (by issuing a warning letter or otherwise) because disciplinary proceedings are unwarranted;

(b) the closing of the investigation without any action because no reasonable basis exists to believe that a violation within the Clearing House's jurisdiction has occurred or is about to occur; or

(c) the commencement of disciplinary proceedings because a reasonable basis exists to believe that a violation within the Clearing House's jurisdiction has occurred or is about to occur.

5.1.8 Opportunity to Respond.

The Compliance Manager may, upon the approval of the Chief Compliance Officer, notify the Respondent(s) that formal disciplinary charges are recommended and allow the Respondent to submit, within a specified time period, an offer of settlement or a written statement explaining why disciplinary proceedings should not be instituted or why one or more of the charges should not be brought.

5.1.9 Service of Notice of Charges.

(a) Once the Chief Compliance Officer or Review Panel, as appropriate, authorizes disciplinary proceedings, the Compliance Manager will prepare and serve a notice of charges that will provide as follows:

(i) state the acts, practices or conduct that the Respondent is alleged to have engaged in;

(ii) state the Rule or provision of Applicable Law alleged to have been violated or about to be violated;

(iii) state the proposed sanctions;

(iv) advise the Respondent of its right to a hearing;

(v) advise the Respondent that he has the right to be represented by legal counsel or any other representative of its choosing in all succeeding stages of the disciplinary process, other than a Clearing House Official or any person substantially related to the underlying investigation, such as a material witness or Respondent;

(vi) state the period of time within which the Respondent can request a hearing on the notice of charges, which will not be less than twenty (20) days after service of the notice of charges;

(vii) 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

(viii) advise the Respondent that any allegation in the notice of charges that is not expressly denied will be deemed to be admitted.

(b) The service of notice upon the Respondent shall be deemed complete either personally or by leaving the notice at his or her place of business; by deposit in the United States mail, postage prepaid, via registered or certified mail addressed to the Respondent at the Respondent's last known place of business or residence. Service shall also be deemed complete via electronic mail to the Respondent's last known electronic mail address.

5.1.10 Answer to Service of Notice of Charges.

(a) If the Respondent determines to answer a notice of charges, the Respondent must file a written answer within twenty (20) days after being served with such notice, or within such other time period as stated in such notice of charges. The Respondent must answer the notice of charges in writing as follows:

(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 Compliance Manager; and

(v) if applicable, request a hearing before a Hearing Panel.

(b) Failure by the Respondent to timely serve an answer to the notice of charges will be deemed to be an admission to the allegations in such notice. Any allegation in a notice of charges that the Respondent fails to expressly deny will be deemed admitted. A general denial by the Respondent, without more, will not satisfy the requirements herein.

5.1.11 Settlement Offers.

(a) At any time after a notice of charges has been issued, a Respondent may at any time submit to the Chief Compliance Officer a written offer of settlement related to anticipated or instituted disciplinary proceedings. If the Respondent submits the settlement offer any time before the Hearing Panel is formed pursuant to Rule 5.1.12, the Chief Compliance Officer will, in his or her discretion, (i) determine whether to accept or reject the settlement offer or (ii) if a Review Panel has been established in accordance with Rule 5.1.12, determine whether to recommend to accept or reject the offer and forward the basis for its recommendation to the Review Panel for final determination.

(b) If the Respondent submits the settlement offer any time after the Hearing Panel is formed pursuant to Rule 5.1.12, the Chief Compliance Officer will forward his or her recommendation to the Hearing Panel for final determination.

(c) The Chief Compliance Officer or Disciplinary Panel, as applicable, may permit the Respondent to settle disciplinary proceedings without admitting or denying the Rule violations if the Respondent consents to the entry of findings and sanctions imposed. When accepting the settlement offer, the Chief Compliance Officer or Hearing Panel may not alter the terms of the offer unless the Respondent agrees. The offer of settlement must detail the Rule violations, including the basis for the conclusions of the Chief Compliance Officer or Disciplinary Panel, as applicable, and any sanctions imposed. If a settlement offer is accepted without the agreement of the Chief Compliance Officer, the decision should adequately support the Disciplinary Panel's acceptance of the settlement. If applicable, the decision must also include a statement that the Respondent has accepted the sanctions imposed without either admitting or denying the Rule violations.

(d) The acceptance of a settlement offer by either the Chief Compliance Officer or Hearing Panel, as applicable, constitutes a waiver of the Respondent's right to notice, opportunity for a hearing and review, and appeal under the Rules. If the settlement offer is not accepted, fails to become final, or is withdrawn by the Respondent, the matter will proceed without prejudice as if the offer had not been made and the offer and all documents related to it will not become part of the record.

5.1.12 Disciplinary Panels.

(a) A Review Panel may be established, in the sole discretion of the Chief Compliance Officer, pursuant to Rule 5.1.7 to review a completed Investigation Report and determine whether a reasonable

basis exists for finding a violation of the Rules and authorizing the issuance of a notice of charges.

(b) If a Respondent requests a formal hearing on charges denied in the answer to the notice of charges per Rule 5.1.10, a Hearing Panel shall be convened and a hearing will commence within sixty (60) days.

(c) Each Disciplinary Panel, appointed by the Board at the recommendation of the Chief Compliance Officer, shall be composed of not less than three individuals from among individuals with knowledge and experience in the electric power or financial markets, who are not members within the office of the Compliance Manager or involved in any other stage of the same proceeding or the conduct giving rise to the alleged Rule violations. No group or class of Clearing Members may dominate or exercise disproportionate influence on the Disciplinary Panel. The chair of the Disciplinary Panel will be an individual qualified to be a Public Director.

(d) Within ten (10) days of being notified of the appointment of the Disciplinary Panel, either party may seek to disqualify any individual named to the Disciplinary Panel for any grounds provided in paragraph (c) above or Rule 2.7 by serving notice to the Chief Compliance Officer. Legal counsel, other than the Chief Compliance Officer, will decide the merits of any request for disqualification within his or her sole discretion. Such decision will be final and not subject to appeal. Legal counsel, other than the Chief Compliance Officer, may also remove any member of the Disciplinary Panel for cause. Unless otherwise disqualified or removed for cause, the individuals on the Disciplinary Panel will serve until the related proceedings are completed. If a vacancy shall occur on a Disciplinary Panel after it has begun its proceedings, the remaining members shall complete consideration and disposition of the matter.

5.1.13 Hearings.

(a) Prior to the commencement of the hearing, the Respondent will be given the opportunity to review all books, records, documents, transcripts of testimony and other tangible evidence in the possession or under the control of the Clearing House to be used by the Compliance Manager to support the allegations and proposed sanctions in the notice of charges, except for any information that (i) is protected by attorney-client privilege or the work-product doctrine, (ii) was prepared by the Compliance Manager or an employee of the Clearing House but will not be offered in evidence

in the disciplinary proceedings, (iii) may disclose a technique or guideline used in examinations or Disciplinary Actions or (iv) discloses the identity of a confidential source. The Compliance Manager may redact, edit or code 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 Compliance Manager. However, the Compliance Manager may not redact, edit or code information that would impair the Respondent's ability to defend against allegations or proposed sanctions in the notice of charges.

(b) The following Rules shall apply in each case presented before the Hearing Panel:

(i) The Compliance Manager, with legal counsel as appropriate, shall prosecute the case.

(ii) Formal rules of evidence do not apply.

(iii) The Respondent has the power to cross-examine witnesses and present documentary evidence.

(iv) The burden of proof is on the Compliance Manager.

(v) A majority vote of the Hearing Panel is needed to find a violation of the Rules.

(c) No Person shall serve on the Hearing Panel unless that Person has agreed in writing that he or she will not publish, divulge, or make known in any manner, any facts or information regarding the business of any person or any other information which may be obtained while serving as a member of the Hearing Panel, except for disclosures when reporting to the Board, the Compliance Manager, the Chief Compliance Officer, upon request by the Commission or other governmental agency, or when compelled to testify in a judicial or administrative proceeding. The hearing will be conducted privately and confidentially. Notwithstanding the confidentiality of the hearings, the Hearing 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.

(d) The chair of the Hearing Panel shall conduct the hearing as he or she may deem appropriate. The chair of the Hearing Panel will determine all procedural and evidentiary matters, including the admissibility and relevance of any evidence proffered. Legal counsel, other than the Chief Compliance Officer, will provide guidance to the chair of the Hearing Panel on the conduct of the

hearing. At the hearing, the Hearing Panel or the Compliance Manager and each Respondent may:

(i) appear personally;

(ii) present evidence and facts determined relevant and admissible by the chair of the Hearing Panel;

(iii) call and examine witnesses; and

(iv) cross-examine witnesses called by other parties.

(e) The Clearing House will require persons within its jurisdiction that are called as witnesses to appear at the hearing and produce evidence, and will make reasonable efforts to secure the presence of all other persons called as witnesses whose testimony would be relevant.

(f) 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 chair of the Hearing 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 Hearing Panel determines that the Respondent had a compelling reason for failing to timely file an answer. If the Hearing Panel determines that the Respondent had a compelling reason for failing to timely file an answer, the Hearing Panel will adjourn the hearing and direct the Respondent to promptly file a written answer.

(g) Reasonable notice, confirmed in writing, specifying the date, time, and place of the hearing will be given to persons entitled or required to appear before the Hearing Panel. The Hearing Panel may impose sanctions on any person that impedes or delays the progress of the hearing. Interlocutory appeals of rulings by the Hearing Panel or the chair of the Hearing Panel are not permitted.

(h) Promptly following a hearing, the Hearing Panel will render a written decision based on the weight of the evidence contained in the record of the disciplinary proceedings. Pursuant to the written decision, the Hearing Panel may take the following actions or impose the following sanctions against the Respondent: (i) a warning letter, which shall indicate each specific Rule that the Respondent was found to have violated; (ii) a cease and desist order; and/or (iii) any sanctions or remedies prescribed in Rule 5.1.14. The

Hearing Panel will serve a copy of the written decision on the Respondent, the Compliance Manager, and the Chief Compliance Officer. The written decision will include the following information:

(i) the notice of charges or a summary of the charges;

(ii) the answer, if any, or a summary of the answer;

(iii) a summary of the evidence introduced at the hearing or, where appropriate, incorporation by reference of the Investigation Report;

(iv) a statement of findings and conclusions with respect to each charge, and a complete explanation of the evidentiary and other bases for such findings and conclusions with respect to each charge;

(v) an indication of each specific Rule that the Respondent was found to have violated; and

(vi) a declaration of all actions taken or sanctions imposed against the Respondent, including the basis for such sanctions and the effective date of such sanctions.

(i) The Clearing House 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, and a copy of such recordings shall become a part of the record of such proceedings. If the Respondent requests a copy of all or portions of the recording of a hearing, the chairman of the Hearing Panel may, within his or her sole discretion, order the Respondent to pay the costs for transcribing the recording of the hearing.

(j) The Respondent may appeal the Hearing Panel decision within twenty (20) days of receiving the order by filing a written notice of appeal pursuant to Rule 5.1.15. The order of the Hearing Panel's decision will become final upon expiration of twenty (20) days after the order is served on the Respondent, and such final order will not be subject to appeal within the Clearing House.

5.1.14 Sanctions.

(a) After notice and opportunity for hearing in accordance with the Rules, the Clearing House will impose sanctions if any Respondent is found to have violated or to have attempted to violate a Rule of the Clearing House or provision of Applicable Law for which the

Clearing House possesses disciplinary jurisdiction. Disciplinary sanctions imposed by the Clearing House shall be commensurate with the violations committed, and shall be clearly sufficient to deter recidivism or similar violations by other Clearing Members, Authorized Users or any Persons using the User ID of an Authorized User. All sanctions must take into account the Respondent's disciplinary history. The Clearing House may impose one or more of the following sanctions or remedies:

(i) censure;

(ii) limitation on clearing privileges, ability to otherwise access Nodal Clear, and/or other activities, functions or operations;

(iii) suspension of clearing privileges and/or ability to otherwise access Nodal Clear;

(iv) fine;

(v) restitution or disgorgement;

(vi) termination of clearing privileges and/or ability to otherwise access Nodal Clear; or

(vii) any other sanction or remedy deemed to be appropriate.

(b) The Clearing House may impose a fine of up to $1,000,000 for each violation of the Rules or a provision of Applicable Law. 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 percent. The Clearing House has sole discretion to select the bank on whose quotations to base the prime rate. Clearing Member will be responsible for paying any fine or other amount imposed on, but not paid by, any of its Authorized Users or Persons using the User ID of an Authorized User.

5.1.15 Appeal Procedures.

(a) A Respondent found by the Hearing Panel to have violated a Rule or Applicable Law pursuant to Rule 5.1.13 or who is subject to any summary action imposed pursuant to Rule 5.2 may appeal the order or decision within the time permitted in Rule 5.1.13(j) or Rule 5.2, as applicable, by filing a notice of appeal with the Chief Compliance Officer. The Chief Compliance Officer may also appeal any order by a Hearing Panel prior to the order becoming final pursuant to Rule 5.1.13(j). Except for summary suspensions imposed pursuant

to Rule 5.3.1, Hearing Panel orders and summary imposition of fines shall be suspended while the appeal is pending.

(b) 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. The Respondent may give notice of appeal on the grounds that:

(i) the order or decision was arbitrary, capricious, an abuse of discretion, or not in accordance with the Rules; or

(ii) the order or decision exceeded the authority or jurisdiction of the Hearing Panel or the Clearing House.

(c) 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 Compliance Manager 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 the supporting brief, the appellee must file and serve its brief in opposition with the Chief Compliance Officer.

(d) Within 30 days after the last submission filed, the Board will appoint an Appeals Committee at the recommendation of the Chief Compliance Officer, which shall be composed of not less than three individuals from among individuals with knowledge and experience in the electric power or financial markets, who are not members within the office of the Compliance Manager or involved in any other stage of the same proceeding or the conduct giving rise to the alleged Rule violations. No group or class of Clearing Members may dominate or exercise disproportionate influence on the Appeals Committee. The chair of the Appeals Committee will be an individual qualified to be a Public Director.

(e) Within ten (10) days of being notified of the appointment of the Appeals Committee, either party may seek to disqualify any individual named to the Appeals Committee for any grounds provided in paragraph (d) above or Rule 2.7 by serving notice to the Chief Compliance Officer. Legal counsel, other than the Chief Compliance Officer, will decide the merits of any request for disqualification within his or her sole discretion. Such decision will be final and not subject to appeal. Legal counsel, other than the Chief Compliance Officer, may also remove any member of the Appeals Committee for cause. Unless otherwise disqualified or

removed for cause, the individuals on the Appeals Committee will serve until the related proceedings are completed. If a vacancy shall occur on an Appeals Committee after it has begun its proceedings, the remaining members shall complete consideration and disposition of the matter.

5.1.16 Review by the Appeals Committee.

(a) The Appeals Committee will hold a hearing before all the members of such Appeals Committee to allow parties to present oral arguments. Any hearing will be conducted privately and confidentially. Notwithstanding the confidentiality of hearings, the Appeals Committee may appoint individuals 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 Committee will not be bound by any evidentiary or procedural rules or law. Except for good cause shown, the review by the Appeals Committee shall only consider the record before the Hearing Panel, the written exceptions filed by the parties, and the oral and written arguments of the parties.

(b) Upon completing its review, the Appeals Committee may affirm, modify or reverse the Hearing Panel decision or summary action under appeal. Modifications by the Appeals Committee may include increasing, decreasing or eliminating any sanction or remedy imposed, imposing any other sanction or remedy authorized by the Rules, remanding the matter to the same or a different Hearing Panel for further disciplinary proceedings, or ordering a new hearing.

(c) As promptly as reasonably possible following its review, the Appeals Committee will issue a written decision based on the weight of the evidence before the Appeals Committee. To the extent that the Appeals Committee reaches a different conclusion from that of the Hearing Panel, the written decision will include the following information:

(i) the notice of charges or a summary of the charges;

(ii) the answer, if any, or a summary of the answer;

(iii) a summary of the evidence introduced at the hearing or, where appropriate, incorporation by reference of the Investigation Report;

(iv) a statement of findings and conclusions with respect to each charge, and a complete explanation of the evidentiary and

other bases for such findings and conclusions with respect to each charge;

(v) an indication of each specific Rule that the Respondent was found to have violated; and

(vi) a declaration of all sanctions imposed against the Respondent, including the basis for such sanctions and the effective date of such sanctions.

(d) The order by the Appeals Committee will be the final action of the Clearing House and will not be subject to further appeal within the Clearing House.

5.2 Summary Fines

5.2.1 The Clearing House may publish a schedule of fines for Clearing Members that fail to make timely and accurate submissions to the Clearing House of notices, reports, or other information required under the Rules of the Clearing House and other minor violations of the Rules. The minimum fine shall be not less than $1,000 for any one violation.

5.2.2 The Chief Compliance Officer may summarily impose a fine against a Clearing Member as provided in Rule 5.2.1. The Chief Compliance Officer shall, in such event, provide written notice to the Risk Management Committee and Clearing Member that specifies: (i) the date of the Rule violation(s); (ii) the amount of the fine; and (iii) the provision(s) of the relevant Rule(s).

5.2.3 Within ten (10) days of the Chief Compliance Officer's notice, the Clearing Member must pay the fine. There shall be no right to appeal to the Board.

5.3 Clearing Member Emergencies; Summary Actions

5.3.1 Emergency Procedures

In the event the Chief Executive Officer or, in his or her absence, the Chief Risk Officer or the Board, determines that an Emergency exists or may exist with respect to a Clearing Member, the Chief Executive Officer or, in his or her absence, the Chief Risk Officer or the Board, may suspend, or take any other action against one or more Clearing Members as the Chief Executive Officer or, in his or her absence, the Chief Risk Officer or the Board, may deem necessary or appropriate including, but not limited to, ordering such Clearing Member(s) to deposit additional Margin or transfer Exchange Contracts to one or more Clearing Members as appropriate.

5.3.2 Emergency Hearing

(a) Any action taken against any Clearing Member pursuant to this Rule shall be taken after notice and opportunity to be heard, unless the Clearing Member waives the right to such notice and opportunity or Chief Executive Officer or, in his or her absence, the Chief Risk Officer or the Board, determines that such notice or opportunity to be heard before taking action is not practicable under the circumstances and there is reason to believe that immediate action is necessary to protect the best interests of the Clearing House. In the event such immediate action is taken, the Clearing House will give the Clearing Member(s) notice and an opportunity to be heard by the Board promptly thereafter. Such notice, to be provided no less than one (1) hour before the hearing, will state the action that has been taken, the reasons therefor, and the effective date, time, and anticipated duration thereof.

(b) The Board will not be bound by formal rules of evidence and shall conduct the hearing in a manner it deems best suited to obtain and address the information necessary to achieve a fair and impartial hearing. The Chief Risk Officer or his or her designee shall present evidence to demonstrate that an Emergency exists or that substantial question that an Emergency exists regarding the Clearing Member. The Clearing Member may present evidence to demonstrate that no such Emergency or substantial question exists. The Clearing Member may be represented by legal counsel or other appropriate representative. A substantially verbatim record of the hearing shall be made, but need not be transcribed unless the Clearing Member or the CFTC so requests or the Clearing House so determines.

(c) The Board shall issue a written decision, with a copy to the Chief Risk Officer and the Clearing Member, that will include a copy of any transcript of the hearing (if previously transcribed) and citations, as appropriate, to any documents presented at the hearing. The Board decision shall state: (i) the Board's determination as to whether an Emergency exists or there is a substantial question as to whether an Emergency exists regarding the Clearing Member; and (ii) the Board's decision whether to affirm, modify, or reverse any action theretofore taken and the effective date and duration of the action. The Board's decision shall be the final action of the Clearing House and will not be subject to appeal within the Clearing House.

5.3.3 Any action or decision that may or is required to be taken or made by the Board pursuant to this Rule 5.3 may be taken or made by the Risk Management Committee or by a committee of the Board that has been specially constituted for that purpose. Voting and quorum requirements imposed by the Rules or Applicable Law shall not apply to the Board, the

Risk Management Committee or any such committee in relation to the discharge of its authority and duties under this Rule 5.3.

5.4 Rights and Responsibilities After Suspension or Termination

5.4.1 When a Clearing Member's right to access the Clearing House is suspended, none of its rights (including the right to hold oneself out to the public as a Clearing Member) shall apply, except for the right of the Clearing Member to assert claims against others as provided in the Rules. Any such suspension will not affect the rights of creditors under the Rules or relieve the Clearing Member in question of its obligations under the Rules, or for any fees, costs or charges incurred during the suspension.

5.4.2 When a Clearing Member's right to access the Clearing House is terminated, all of its rights will terminate except for the right of the Clearing Member to assert claims against others as provided in the Rules. Any such termination will not affect the rights of creditors under the Rules. A terminated Clearing Member may only seek to reinstate its right to access the Clearing House by filing an application in accordance with Rule 3.3. The Clearing House will consider the application of a terminated Clearing Member at its sole discretion.

5.4.3 A suspended or terminated Clearing Member or Authorized User remains subject to the Rules and the jurisdiction of Clearing House for acts and omissions prior to the suspension of termination, and must cooperate with requests by the Clearing House as if the suspended or terminated Clearing Member or Authorized User still had the right to access the Clearing House or was still associated with a Clearing Member.

5.5 Notice to the Parties, the CFTC and the Public

The Clearing House will provide written notice of Disciplinary Actions to the parties and the CFTC consistent with CFTC Regulations. Whenever the Clearing House suspends, expels, fines, or otherwise disciplines, or denies any Person access to the Clearing House, Clearing House will make public disclosures as required by CFTC Regulations.

SECTION VI RESERVED

SECTION VII MISCELLANEOUS

7.1 Trading by Clearing House Officials Prohibited; Misuse of Material, Non-Public Information

7.1.1 Terms used in this Rule 7.1 and not otherwise defined in the Rules shall have the meanings set forth in CFTC Regulations 1.3 and 1.59.

7.1.2 No Officer or employee of the Clearing House may trade, directly or indirectly: (i) any Exchange Contract or commodity interest cleared by the Clearing House or any related financial instrument; or (ii) any Exchange Contract or related commodity interest where such Officer or employee has access to material, non-public information concerning such Exchange Contract or related commodity interest.

7.1.3 No member of the Board, member of any committee established by the Board, or agent or independent contractor of the Clearing House shall trade, directly or indirectly, in any Exchange Contract or commodity interest cleared by the Clearing House or any related financial instrument where such Person has access to any material, non-public information obtained in connection with the performance of his or her official duties.

7.1.4 The Chief Compliance Officer (or, in the case of the Chief Compliance Officer, the Board) may grant exemptions from the provisions of Rule 7.1.2 or Rule 7.1.3 to Clearing House Officials on a case-by-case basis under circumstances which are not contrary to the purposes of this Rule and CFTC Regulation 1.59. Such circumstances may include, but are not necessarily limited to:

(a) participation in pooled investment vehicles where such Clearing House Official has no direct or indirect control over transactions effected by or for the account of the pool;

(b) service by such Clearing House Official as an executor or administrator of an estate;

(c) service by such Clearing House Official in any other fiduciary capacity, such as an officer of a charitable organization, in which such Clearing House Official receives no pecuniary benefit from the trading of Exchange Contracts or other financial instruments;

(d) trading in Exchange Contracts or financial instruments executed on or subject to the rules of a swap execution facility, a designated contract market or a national securities exchange under circumstances in which such Clearing House Official's access to material non-public information in respect of such financial instruments is sufficiently minimal or attenuated so as to be insignificant; and

(e) such other circumstances as the Chief Compliance Officer (or, in the case of the Chief Compliance Officer, the Board) may determine.

7.1.5 For the avoidance of doubt, participation by a Clearing House Official in a retirement plan sponsored by the Clearing House or any of its Affiliates shall not be deemed to constitute trading directly or indirectly in an Exchange Contract or financial instrument, notwithstanding such plan's trading of Exchange Contracts or financial instruments.

7.1.6 Any Clearing House Official that has received an exemption under Rule 7.1.4 must:

(a) furnish to the Clearing House (or, in the case of the Chief Compliance Officer, to the Board) account statements and other documents relevant to the trading activities that are so exempted; and

(b) inform the Chief Compliance Officer (or, in the case of the Chief Compliance Officer, the Board) within one (1) Business Day of any material change of information that may affect such Clearing House Official's qualification for such exemption.

7.2 Market Data

Each Clearing Member, on behalf of itself and each of its Affiliates, Authorized Users and other Persons affiliated with any of the foregoing, hereby acknowledges and agrees that the Clearing House owns and shall retain all right, title and interest in and to the Clearing System, 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 (a) copyright, (b) trademark, (c) service mark, (d) trade secret, (e) trade name, (f) data or database rights, (g) logo and design rights, (h) moral rights, (i) inventions, whether or not capable of protection by patent or registration, (j) rights in commercial information or technical information, including know-how, research and development data and manufacturing methods, (k) patent, and (l) other intellectual property and ownership rights, including applications for the grant of any of the same, in or to the Clearing House and all other related proprietary rights of the Clearing House 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, including, without limitation, the market data of the Clearing House, the "**Proprietary Information**"). Each Clearing Member, on behalf of itself and each of its Affiliates, Authorized Users and other Persons affiliated with any of the foregoing, further acknowledges and agrees that the Proprietary Information is the exclusive, valuable and confidential property of the Clearing House. Each Clearing Member acknowledges and agrees that it shall not and shall

not permit its Affiliates, Authorized Users and other Persons affiliated with any of the foregoing to, 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 Clearing House or the Proprietary Information. Each Clearing Member further agrees that it will and will cause each of its Affiliates, Authorized Users and other Persons affiliated with any of the foregoing 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 Clearing System or any Proprietary Information.

7.3 Recording of Communications

The Clearing House may record conversations and retain copies of electronic communications between Clearing House Officials and Clearing Members, their Authorized Users or other agents. Any such recordings may be retained by the Clearing House in such manner and for such periods of time as the Clearing House may deem necessary or appropriate, including as may be required by Applicable Law. The Clearing House may use such recordings as evidence in any Disciplinary Action or legal proceeding.

7.4 Force Majeure

Notwithstanding any other provision of the Rules, the Clearing House shall not be obligated to perform its obligations under the Rules or any agreement with a Clearing Member, or to compensate any Person for losses occasioned by any delay or failure of performance, to the extent such delay or failure of performance is the result of circumstances that may have a material adverse effect upon the functions and facilities of the Clearing House, including, but not limited to, acts of God, fire or other natural disasters, bomb threats, acts of terrorism or war or severely inclement weather. If the Clearing House shall, as a result of any of the above-described events, fail to perform any of its obligations, such failure shall be excused for a period equal to the period of delay caused by such event. In such an event, the Clearing House shall give written notice thereof to affected Clearing Members as soon as reasonably practicable and shall attempt diligently to remediate such condition.

7.5 Extension or Waiver of Rules

The performance of any act required by the Rules or the time fixed by the Rules for the performance thereof may be waived or extended by the Clearing House if such waiver or extension is necessary or in the best interest of the Clearing House. A written report of any such waiver or extension, stating the pertinent facts and the reason such waiver or extension was deemed necessary or expedient, shall be presented to the Board at its next regular meeting.

7.6 Notice and Effect of Amendment, Repeal or New Rule

7.6.1 The Clearing House may, in compliance with the CEA and CFTC Regulations, amend or repeal any Rule and/or adopt new Rules. The Clearing House will publish a notice with respect to each amendment or repeal of any Rule or adoption of any new Rule at the time the Clearing House files such Rules with the CFTC. The Clearing House also will publish notice of any action taken to implement any Rule, in a form and manner that is reasonably designed to enable Clearing Members to become aware of and familiar with, and to implement any necessary preparatory measures to be taken with respect to, such addition or modification, prior to the effective date thereof. For purposes of this Rule 7.6, it will be sufficient (without limiting the discretion of the Clearing House as to any other reasonable means of communication) if notice is published on the Clearing House's website.

7.6.2 Any 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 Clearing House (regardless of when any such Person became subject to Clearing House's jurisdiction) and all Exchange Contracts (regardless of whether any such Exchange Contract was entered into before, on or after such effective date).

7.7 Signatures

Rather than rely on an original signature, Clearing House may elect to rely on a signature that is transmitted, recorded or stored by any electronic, optical, or similar means (including but not limited to 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.

7.8 Governing Law; Legal Proceedings

7.8.1 The Rules, and the rights and obligations of the Clearing House and Clearing Members under the 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.

7.8.2 Any action, suit or proceeding against the Clearing House, its limited liability company members, Clearing House Officials, agents, or any member of any committee must be brought within one (1) year from the time 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 Clearing Member expressly

consents, for itself and its Authorized Users, 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.

7.8.3 In the event that a Clearing Member or an Affiliate of such Clearing Member fails to prevail in a lawsuit or other legal proceeding related to the business of the Clearing House that is instituted by such Clearing Member or such Affiliate against the Clearing House, any Affiliate of the Clearing House, or any of their respective officers, directors, equity holders, employees, agents, or any member of any committee (each such Persons, a "**Clearing House Party**"), such Clearing Member shall pay to the affected Clearing House Parties all reasonable expenses, including attorneys' fees, incurred by such Clearing House Parties in the defense of such proceeding.

7.9 LIMITATION OF LIABILITY; NO WARRANTIES

7.9.1 EXCEPT AS OTHERWISE PROVIDED IN THIS RULE 7.9, AND EXCEPT IN INSTANCES IN WHICH THE DISCLAIMING PARTY (DEFINED BELOW) HAS BEEN FINALLY ADJUDICATED TO HAVE BEEN GROSSLY NEGLIGENT OR TO HAVE ENGAGED IN FRAUD OR WILLFUL OR WANTON MISCONDUCT, IN WHICH CASE THE DISCLAIMING PARTY FOUND TO HAVE ENGAGED IN SUCH CONDUCT CANNOT AVAIL ITSELF OF THE PROTECTIONS IN THIS RULE 7.9, NEITHER THE CLEARING HOUSE, NOR ANY AFFILIATE OF THE CLEARING HOUSE, NOR ANY OF THEIR RESPECTIVE MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES, EQUITY HOLDERS, AGENTS, CONSULTANTS OR SERVICE PROVIDERS, NOR ANY MEMBER OF ANY COMMITTEE OR OTHER GOVERNING BODY OF ANY AFFILIATE OF THE CLEARING HOUSE (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:

(a) 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 ANY OF THE SYSTEMS AND SERVICES OF THE CLEARING HOUSE, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS AND SERVICES, AND ANY AND ALL TERMINALS, COMMUNICATIONS NETWORKS, CENTRAL COMPUTERS, SOFTWARE, HARDWARE AND FIRMWARE RELATING THERETO; OR

(b) 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 CLEARING HOUSE, 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

(c) ANY ERRORS OR INACCURACIES IN INFORMATION PROVIDED BY THE CLEARING HOUSE OR ANY OF THE CLEARING HOUSE'S SYSTEMS, SERVICES OR FACILITIES; OR

(d) ANY UNAUTHORIZED ACCESS TO OR UNAUTHORIZED USE OF ANY OF THE CLEARING HOUSE'S SYSTEMS, SERVICES, EQUIPMENT OR FACILITIES BY ANY PERSON; OR

(e) IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF ANY REGISTRY, REGISTRY OPERATOR, OR EMTS.

THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY WHETHER A CLAIM IS BASED ON BREACH OF CONTRACT, TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE (OTHER THAN GROSS NEGLIGENCE), STRICT LIABILITY, NEGLIGENT MISREPRESENTATION, RESTITUTION, BREACH OF STATUTORY DUTY, BREACH OF WARRANTY OR OTHERWISE AND WHETHER THE CLAIM IS BROUGHT DIRECTLY OR AS A THIRD-PARTY CLAIM.

7.9.2 THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS PROVIDED BY THE CLEARING HOUSE OR ANY OTHER DISCLAIMING PARTY RELATING TO ANY SYSTEMS OR SERVICES OF THE CLEARING HOUSE OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, AND THE CLEARING HOUSE 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 CLEARING HOUSE 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 CLEARING HOUSE OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES.

7.9.3 NOTWITHSTANDING ANY OTHER PROVISION OF THESE RULES, IN NO EVENT SHALL ANY PERSON BRING ANY LEGAL ACTION, REGARDLESS OF WHETHER LIABILITY IS BASED ON BREACH OF CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, STRICT LIABILITY, NEGLIGENT MISREPRESENTATION), RESTITUTION, BREACH OF STATUTORY DUTY,

BREACH OF WARRANTY OR OTHERWISE AND REGARDLESS OF WHETHER THE CLAIM IS BROUGHT DIRECTLY OR AS A THIRD-PARTY CLAIM, FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND (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, AND REGARDLESS OF WHETHER THE PARTY FROM WHOM SUCH DAMAGES WOULD BE SOUGHT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR WHETHER SUCH DAMAGES OTHERWISE COULD HAVE BEEN FORESEEN OR PREVENTED. THE PROVISIONS OF THIS RULE 7.9.3 SHALL NOT APPLY TO THE EXTENT THAT THE PERSON FROM WHICH DAMAGES ARE SOUGHT HAS BEEN FINALLY ADJUDICATED TO HAVE ENGAGED IN FRAUD OR WILLFUL OR WANTON MISCONDUCT.

7.9.4 EXCEPT IN ANY CASE WHERE A DISCLAIMING PARTY HAS BEEN FINALLY ADJUDICATED TO HAVE ENGAGED IN FRAUD OR WILLFUL OR WANTON MISCONDUCT, IN NO EVENT SHALL THE DISCLAIMING PARTIES' TOTAL COMBINED AGGREGATE LIABILITY FOR ALL CLAIMS EXCEED $100,000 FOR ALL LOSSES SUFFERED FROM ALL CAUSES ON A SINGLE CALENDAR DAY; $200,000 FOR ALL LOSSES SUFFERED FROM ALL CAUSES IN A SINGLE CALENDAR MONTH; AND $1,000,000 FOR ALL LOSSES SUFFERED FROM ALL CAUSES IN A SINGLE CALENDAR YEAR. IF THE NUMBER OF ALLOWED CLAIMS ARISING OUT OF ANY FAILURES OR MALFUNCTIONS ON A SINGLE DAY, SINGLE MONTH OR SINGLE YEAR 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.

7.10 Indemnification Obligations of Clearing Members

A Clearing Member or former Clearing Member shall indemnify and hold harmless the Clearing House and its Affiliates, and its and their equity holders, officers, directors, employees, and agents (collectively, the "**Indemnified Parties**"), for any and all losses, damages, costs and expenses (including attorneys' fees) incurred by the Indemnified Parties as a result (direct or indirect) of such Clearing Member's violation or alleged violation of the Rules or Applicable Law.

7.11 Large Trader Reports

The Clearing House will obtain copies of all reports that are required to be filed by Clearing Members pursuant to Part 17 and Part 20 of the CFTC Regulations from Clearing Members or the Exchange. A Clearing Member shall provide such reports to the Clearing House as directed by the Clearing House.

7.12 Public Information

The Clearing House shall make public the terms and conditions of each Exchange Contract, all fees charged by the Clearing House, the Margin-setting methodology used by the Clearing House, the size and composition of the Guaranty Fund, and Settlement Prices, volume and open interest for each Exchange Contract. The Clearing House will also make its Rulebook, list of Clearing Members and daily trading information available on the Clearing House website. The Clearing House will provide public notice of a Default on the Clearing House website.

7.13 Confidential Information

Any and all non-public information, in any form, obtained by Clearing Members or the Clearing House arising out of or related to the provision or use of the Clearing System, services of the Clearing House, or other property of the Clearing House shall be deemed to be "**Confidential Information**." Without limiting the generality of the foregoing, the Clearing House's Confidential Information shall specifically include all source code of the Clearing System, and all trade secrets, processes, computer software and other proprietary data, research, information or documentation related thereto. Notwithstanding the foregoing, "Confidential Information" does not include any information that: (i) is in or becomes part of the public domain (other than by disclosure by the recipient or its directors, officers, employees, agents or contractors ("**Representatives**") in violation of the Rules); (ii) was previously known to the recipient free of restriction; (iii) is independently developed by the recipient, without reference to the Confidential Information of the disclosing party; or (iv) is lawfully obtained by the recipient from a third party having the right to furnish such information.

The Clearing House and the Clearing Member (each, a "**Party**" and, collectively, the "**Parties**") shall hold in strict confidence the Confidential Information of the other Party, shall use the same degree of care in protecting the confidentiality of the Confidential Information as it uses in protecting its own information of a similar type, and shall not disclose Confidential Information of the other Party to any third party or use Confidential Information of the other Party for any purpose not expressly permitted in the Rules; *except that* a Party may disclose Confidential Information of the other Party solely to those of its Representatives who have a need to know such Confidential Information to facilitate compliance with the Rules. The receiving Party will inform its Representatives of the confidential nature of the Confidential Information, will be responsible for protecting the confidentiality of the Confidential Information as to its Representatives, and will take such action, legal or otherwise, as may be reasonably necessary to cause them to protect the confidentiality of the Confidential Information. Notwithstanding the foregoing, Confidential Information may be disclosed: (i) by the Clearing House in accordance with the Rules relating to the use of Confidential Information; (ii) to the extent required by Applicable Law or regulation or the rules of a Self-Regulatory Organization of competent jurisdiction; (iii) by the Clearing House upon request by the CFTC, the Federal Energy Regulatory Commission, Government Authority,

any regulatory or self-regulatory body, or any other organization, in each case having competent jurisdiction over the Clearing House; (iv) by the Clearing Member upon request from any federal or state agency, any regulatory or self-regulatory body, or any other organization, in each case having competent jurisdiction over such Clearing Member; and (v) pursuant to a subpoena or order of a court or legislative, regulatory or self-regulatory body of competent jurisdiction, provided that, in the case of clauses (iv) and (v) above, to the extent the disclosure is not in connection with a Routine Request, the disclosing Party shall, to the fullest extent permitted by law, immediately notify the other Party of such disclosure and cooperate with such Party to obtain appropriate confidential treatment of any Confidential Information to be so disclosed.

SECTION VIII RULES IN SATISFACTION OF EUROPEAN COMMISSION CONDITIONS

8.1 House Account Minimum Liquidation Period

With respect to Clearing Member House Account positions, the Clearing House shall ensure Initial Margin requirements are calculated and collected using a liquidation period of not less than two (2) days calculated on a net basis.

8.2 Funded Financial Resources

The Clearing House shall maintain funded financial resources sufficient to enable the Clearing House to meet its financial obligations to Clearing Members notwithstanding a default by the two Clearing Members creating the largest combined loss to the Clearing House in extreme but plausible market conditions. If a Clearing Member controls another Clearing Member or is under common control with another Clearing Member, the affiliated Clearing Members shall be deemed to be a single Clearing Member for financial resources calculations under this rule.

8.3 Measures to Mitigate Procyclicality

The Clearing House shall establish Initial Margin requirements designed to limit the likelihood of procyclical changes in Initial Margin requirements and mitigate costly and disruptive adjustments to Initial Margin requirements in periods of high market volatility. Specifically, the Clearing House shall ensure that the Initial Margin model meets Option (b) as listed in Article 28 (Procyclicality) of Delegated Regulation (EU) No. 153/2013, which reads: “assigning at least 25% weight to stressed observations in the lookback period in accordance with Article 26.”

SECTION IX PHYSICAL SETTLEMENT AND DELIVERY

9.1 Clearing Member Duties to the Clearing House

9.1.1 A Clearing Member carrying an account, House or Customer, that is required to make or accept delivery agrees to guarantee and assume complete responsibility for the performance of all delivery obligations set forth in the Rules and the Exchange Rules.

9.1.2 In the event a Clearing Member fails to guaranty performance of a delivery obligation pursuant to Physically Settled Exchange Contracts, such failure may be deemed a Default pursuant to Rule 3.29.

9.1.3 In a Delivery Failure, the Clearing House shall ensure financial performance to the Clearing Member whose actions or omissions did not cause or contribute to the Delivery Failure (the "Affected Clearing Member"). In this regard, the Clearing House powers will include, but will not be limited to, the right to sell or liquidate the commodity subject to delivery and to distribute the proceeds as appropriate. "Financial Performance" means payment of commercially reasonable costs of the Affected Clearing Member related to replacement of the failed delivery and includes any related fines, penalties and fees and does not include physical performance or legal fees. An Affected Clearing Member seeking Financial Performance from the Clearing House shall provide prompt notice to the Clearing House of the delivery failure and a good faith estimate of any Financial Performance being sought no later than 1 hour after the delivery deadline for the respective Physically Settled Exchange Contract, which may be extended upon request by the Affected Clearing Member by the Chief Executive Officer of the Clearing House or the Chief Executive Officer's designee due to extenuating circumstances. As soon as reasonably practicable thereafter, the Affected Clearing Member seeking Financial Performance shall provide to the Clearing House a detailed statement, with supporting documentation, of all amounts sought.

9.1.4 A seller and buyer matched by the Clearing House pursuant to a Physically Settled Exchange Contract may agree to make and take delivery under terms or conditions which differ from the terms and conditions of such Physically Settled Exchange Contract. In such instances, the Clearing Member(s) of the matched parties shall execute an Alternative Delivery Notice ("ADN") in the form and manner prescribed by the Clearing House and shall deliver a properly completed and executed copy of such notice to the Clearing House. The delivery of an executed ADN to the Clearing House shall release the Clearing Members and the Clearing House from their respective obligations under the rules of this Section IX and any other Clearing House rules and requirements regarding physical delivery. In executing such notice, Clearing Members shall indemnify the Clearing House against any liability, cost, or expense the Clearing House may incur,

for any reason, as a result of the execution, delivery or performance of such contract or such agreement, or any breach thereof or default thereunder. Clearing House must receive a properly completed and executed ADN by the Delivery Deadline provided in Rule 9.~~5~~4 and the Clearing Members executing the ADN shall confirm delivery as completed via the Clearing System consistent with Rule 9.3.4. Payments will be processed as part of the midday Margin run on the same day as the delivery confirmation or the next Business Day if the Clearing House receives such delivery confirmation after 11:45 Eastern Prevailing Time.

9.2 Reports and Notifications

The Clearing House will issue Tenders and invoices via email to relevant parties and Clearing Members. Unless otherwise specified, the Clearing House will make the reports and confirmations it issues as part of the delivery processes available to the Clearing Members electronically via the Clearing System.

9.3 Delivery Procedures for Nodal Deliverable US Environmental Contracts

9.3.1 These delivery procedures apply to all Physically Settled Exchange Contracts based on environmental products specified in the relevant Contract Specifications ("Nodal Deliverable US Environmental Contracts").

9.3.2 The following additional definitions apply to these Rule 9.3 delivery procedures:

(a) "Allowance" means an instrument, certificate, permit, asset, security, right, contract, credit or allowance that is designated as a deliverable instrument for a Nodal Deliverable US Environmental Contract in the relevant Contract Specifications.

(b) "Registry" means a registry, custodian, depository or other system used for physical delivery of Allowances pursuant to the Contract Specifications of a Nodal Deliverable US Environmental Contract.

(c) "Registry Operator" means the operator of a Registry.

(d) "Tender" means a notice given pursuant to these delivery procedures and/or Rules, of an obligation to make or take delivery of a Deliverable.

9.3.3 Deliveries pursuant to Nodal Deliverable US Environmental Contracts are effected by the transfer of required Allowances directly from a seller to a buyer through a Registry.

9.3.4 Delivery under a Nodal Deliverable US Environmental Contract is based on open positions after expiration of the relevant Physically Settled

Exchange Contract. Delivery is a three Business Day process, as provided in the table below:

All times are to U.S. Eastern Prevailing Time			
T	**Last Trading Day of the Exchange Contract**	**COB**	The Clearing House will make delivery assignments, matching buyers to sellers for the purposes of Physical Settlement. The Clearing House will calculate Initial Margin for Nodal Deliverable US Environmental Contracts for each buyer and seller and include it in the end of day ("EOD") Margin requirements of their Clearing Members.
T+1	**Notice Day**		Initial Margin is collected as part of the EOD Margin run for T. It is held in each subsequent Margin run (midday and EOD) until Physical Settlement. The Clearing House will issue Tender and Invoice notices to matched buyers and sellers, as well as their responsible Clearing Members. Buyer's information of the account at the Registry, to which Allowances are to be transferred, will be provided to seller.
T+3	**Delivery & Payment Day**	**Delivery Deadline provided in Rule 9.4**	The Clearing Member shall ensure that the seller has electronically submitted the transfer instructions in respect of all Allowances required to be transferred pursuant to the Nodal Deliverable US Environmental Contract to the relevant Registry. After fulfilling its delivery obligations, the Clearing Member for the seller must confirm delivery as completed via the Clearing System.
		Confirmation	Following the delivery confirmation by the Clearing Member for the seller, the buyer's Clearing Member must provide delivery confirmation via the Clearing System or reject

			the delivery in writing to the Clearing House no later than 17:00 on Delivery and Payment Day. Confirmation will constitute a representation and warranty from the Clearing Member to the Clearing House that the buyer has received delivery of all required Allowances pursuant to the Nodal Deliverable US Environmental Contract, and that the Clearing Member is not aware of any dispute relating to the Allowances that have been delivered.
		Following Confirmation	Following confirmation by the respective Clearing Member(s) for the seller and the buyer that delivery has been completed, payments will be processed as part of the midday Margin run on the same day as the delivery confirmation. If the Clearing House receives delivery confirmation after 11:45 on the Delivery & Payment Day, it will be treated as if it were received on the next Business Day and payments to the Clearing Member for the seller shall be delayed accordingly.

9.4 Delivery Deadline by Contract Type

All times are to U.S. Eastern Prevailing Time	
Contract Type	**Delivery Deadline**
California Carbon Allowance Specific Vintage Future	14:00
California Carbon Allowance Future	14:00
California Carbon Offset 0 Future	14:00
California Carbon Offset 0 with Direct Environmental Benefits (DEBS) Future	14:00
California Carbon Offset 8 Future	14:00
California Low Carbon Fuel Standard Future	14:00
D3 Renewable Identification Numbers Future	14:00
D4 Renewable Identification Numbers Future	14:00
D5 Renewable Identification Numbers Future	14:00
D6 Renewable Identification Numbers Future	14:00
Verified Emission Reduction - CORSIA-Eligible Future	14:00
All other Physically Settled Exchange Contracts	13:00