



## **Nodal Exchange Rulebook**

**BY ACCESSING, OR ENTERING ANY ORDER INTO, THE EXCHANGE, AND WITHOUT ANY NEED FOR ANY FURTHER ACTION, UNDERTAKING OR AGREEMENT, A PARTICIPANT, AUTHORIZED USER OR AUTHORIZED BROKER AGREES (I) TO BE BOUND BY, AND COMPLY WITH, THE RULES AND APPLICABLE LAW, IN EACH CASE TO THE EXTENT APPLICABLE TO IT, HIM OR HER, AND (II) TO BECOME SUBJECT TO THE JURISDICTION OF THE EXCHANGE WITH RESPECT TO ANY AND ALL MATTERS ARISING FROM, RELATED TO, OR IN CONNECTION WITH, THE STATUS, ACTIONS OR OMISSIONS OF SUCH PARTICIPANT OR AUTHORIZED USER.**

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**SECTION I            DEFINITIONS**

- 1.1     **Account Administrator.** Either or both of a Level 1 Account Administrator and/or a Level 2 Account Administrator, as the context may require.
- 1.2     **Affiliate.** A Person who directly or indirectly, controls, is controlled by, or is under common control with another Person.
- 1.3     **Appeals Committee.** A panel comprised of a chair and two individuals appointed by the Board to consider appeals under Section VII.
- 1.4     **Applicable Law.** With respect to any Person, any statute, law, regulation, rule or ordinance of any governmental or self-regulatory authority applicable to such Person, including the CEA and CFTC Regulations.
- 1.5     **Audit Trail** has the meaning set forth in Rule 4.11.1.
- 1.6     **Authorized Broker.** A regulated intermediary approved by the Exchange to submit Block Trades accepted on behalf of Participants to clear through specific accounts set up by Clearing Members.
- 1.7     **Authorized User.** A natural person who is either employed by or is an agent of a Clearing Member, a Participant or Authorized Broker and who is authorized by the Exchange as an Authorized User in accordance with Rule 3.6.
- 1.8     **Block Trade.** A privately-negotiated transaction in a Nodal Contract that meets certain quantity thresholds and that is permitted to be executed off Exchange and reported in accordance with Rule 4.6.
- 1.9     **Board.** The Board of Directors of Nodal Exchange, LLC.
- 1.10    **Business Day.** Any day on which the Exchange is open for trading.
- 1.11    **CEA.** The Commodity Exchange Act, as it may be amended from time to time.
- 1.12    **Central Limit Order Book or CLOB.** The trading facility operated by Nodal Exchange to provide Participants with the ability to execute Transactions from the interaction of bids and offers within a predetermined, nondiscretionary automated trade matching execution algorithm.
- 1.13    **CFTC or Commission.** The Commodity Futures Trading Commission.
- 1.14    **CFTC Regulations.** The regulations of the CFTC, as they may be amended from time to time.
- 1.15    **Chairman.** The Chairman of the Board.

- 1.16** *Chief Executive Officer.* The individual appointed by the Board to serve as the Exchange’s chief executive officer.
- 1.17** *Chief Regulatory Officer.* The individual appointed by the Board to serve as the Exchange’s chief regulatory officer.
- 1.18** *Clearing House.* Nodal Clear, LLC or such additional or successor central counterparties as the Exchange may designate from time to time to provide clearing services with respect to any or all of its Nodal Contracts. A Clearing House is registered with the CFTC as a derivatives clearing organization.
- 1.19** *Clearing Member.* An entity meeting the requirements of, and approved for, clearing membership at the Clearing House that is authorized pursuant to the Clearing House Rules to clear trades in any or all Nodal Contracts. Except for those Clearing Members that clear solely for their own proprietary accounts (each, an “**Individual Clearing Member**”), all other Clearing Members must be registered with the CFTC as FCMs (each, an “**FCM Clearing Member**”).
- 1.20** *Code.* The Participant Code of Conduct set forth in Section VI of these Rules.
- 1.21** *Commodity Type.* The form of commodity price against which a Nodal Contract is settled. Commodity Type includes, but is not limited to: day ahead power (Locational Marginal Price), real time power (Locational Marginal Price), day ahead energy + congestion, real time energy and natural gas as defined in the Contract Specifications.
- 1.22** *Compliance Department* has the meaning set forth in Rule 7.2.1.
- 1.23** *Compliance Manager.* A Compliance Department unit that fulfills investigatory and disciplinary responsibilities and duties described in Rules 7.2.1 and 7.3.1.
- 1.24** *Contract Class.* A designation that informs the lot size of the Nodal Contract. Nodal Contracts on power are grouped into multiple classes, which include, but are not limited to: On-Peak and Off-Peak. These classes have variable lot sizes that are defined by each ISO and determined by the set of hours in the ISO market against which the Nodal Contract settles. Other Nodal Contracts, such as natural gas, have fixed lot sizes as specified in the Contract Specifications.
- 1.25** *Contract Location.* The location or locations against which a Nodal Contract settles. For example, the Contract Location for Nodal Contracts on power is the Contract Node against which the Nodal Contract settles.
- 1.26** *Contract Node.* For power contracts, the Nodes or Nodes against which the Nodal Contract settles.
- 1.27** *Contract Specifications.* The descriptions of the contractual items for each Nodal Contract as set forth in the document available in Appendix A. Items described in

the Contract Specifications referenced in this Rulebook include “Last Trading Day,” “Daily Settlement Price,” and “Final Settlement Price.”

- 1.28 **Contract Term.** The length of the settling period for the Nodal Contract, including, but not limited to, monthly, weekly and daily Nodal Contracts.
- 1.29 **Daily Settlement Price** has the meaning set forth in Rule 4.10.1(a).
- 1.30 **Director.** An individual serving on the Board.
- 1.31 **Disciplinary Action** has the meaning set forth in Rule 7.1.
- 1.32 **Disciplinary Panel.** Either or both of a Review Panel and a Hearing Panel, as the context requires.
- 1.33 **EFP** has the meaning set forth in Rule 4.7.1(a).
- 1.34 **EFRP** has the meaning set forth in Rule 4.7.
- 1.35 **Eligible Contract Participant** has the meaning set forth in Section 1a(18) of the CEA and in the CFTC Regulations.
- 1.36 **Emergency** means the occurrences or circumstances which, in the opinion of the Board (or Chief Executive Officer or other authorized Officer, as appropriate), require immediate action to be taken in accordance with Rule 4.1.3, and which threaten, or may threaten, the fair and orderly trading in, or the settlement or integrity of, any Nodal Contract, including, without limitation, the following:
  - (a) any circumstance that may materially affect the performance of a Nodal Contract, including failure of the Clearing House system;
  - (b) any action taken by any United States or foreign regulatory, self-regulatory, judicial, arbitral, or governmental (whether national, state or municipal) or quasi-governmental authority, or any agency, department, instrumentality, or sub-division thereof; or other Person exercising, or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or any other contract market, clearing house, board of trade, or other exchange or trade association (foreign or domestic) that may have a direct impact on trading on the Exchange or the settlement legality or enforceability of any Nodal Contract;
  - (c) any actual, attempted or threatened corner, squeeze, congestion, manipulative activity or undue concentration of positions in a Nodal Contract;
  - (d) any circumstance that may have a severe, adverse effect upon the functions and facilities of the Exchange, including, but not limited

to, acts of God, fire, flood or other natural disasters, bomb threats, acts of terrorism or war, severely inclement weather, or failure or malfunction of all or a portion of the Trading Platform, or other system breakdowns or interruptions such as power, computer, communication or transportation systems or the Internet;

- (e) the bankruptcy or insolvency of any Clearing Member or the imposition of any injunction or other restraint by any government agency, clearing house, court or arbitrator upon a Clearing Member which may affect the ability of a Clearing Member to trade in or perform on a Nodal Contract;
- (f) any circumstance in which it appears to the Board that a Clearing Member or any other Person:
  - (a) has failed to perform on a Nodal Contract;
  - (b) is insolvent; or
  - (c) is in a financial or operational condition or is conducting business such that the Clearing Member or Person cannot be permitted to continue in business without jeopardizing the safety of Participants, other Clearing Members, the Exchange or the Clearing House; or
- (g) any other unusual, unforeseeable or adverse circumstance as determined by the Exchange.

**1.37** *EPT.* Eastern Prevailing Time.

**1.38** *Exchange Official.* Any Officer or employee of the Exchange and any member of the Board, a committee established by the Board, a Disciplinary Panel or Appeals Committee.

**1.39** *Exchange Requirements.* The Rules; other requirements implemented by the Exchange pursuant to the Rules; each term of a Nodal Contract; and the participant documentation and other contractual obligations between a Participant (including its Authorized Users) and the Exchange.

**1.40** *Expiry.* A Nodal Contract with a specific date of expiration.

**1.41** *Final Settlement Price.* The price for each Nodal Contract supplied by the Exchange to the Clearing House as the final Settlement Price for the Expiry as specified in the Contract Specifications.

**1.42** *FCM.* A futures commission merchant as defined in the CEA and CFTC Regulations and registered with the CFTC as such.



- 1.43** *Governmental Authority.* Any domestic or foreign government (or political subdivision), governmental or regulatory authority, agency, court, commission or other governmental or regulatory entity (including any Self-Regulatory Organization).
- 1.44** *Hearing Panel.* A disciplinary panel that will, pursuant to the procedures set forth in Section VII, adjudicate disciplinary cases pursuant to a notice of charges and execute other duties as provided for in Section VII. The members of the Hearing Panel will be appointed in accordance with Rule 7.3.8.
- 1.45** *In-the-Money Option* shall mean an Option that has a Strike Price that is lower (in the case of a call option) or higher (in the case of a put option) than the underlying futures contract for such Option.
- 1.46** *Independent Systems Operator (ISO).* The organization that manages the power grid and sets the pricing against which Nodal Contracts settle. As used in these Rules, the term ISO also applies to regional transmission organizations (RTOs), such as PJM Interconnection, and state reliability councils, such as the Electric Reliability Council of Texas (ERCOT).
- 1.47** *Independent Software Vendor* or “*ISV*”. A Person that makes available to Participants a system or platform offering smart order routing, front-end trading applications, an aggregator platform or a combination of the foregoing but that does not provide Participants the ability to effect transactions on the Trading Platform.
- 1.48** *Individual Trading Account.* A trading account to be separately tracked and margined by a Participant’s Clearing Member.
- 1.49** *Individual Trading Mnemonic* or *ITM.* An identifying code assigned by the Exchange to each Individual Trading Account.
- 1.50** *Insolvency* and *Insolvent* means the occurrence of any of the following events with respect to a Person:
- (a) the Person is determined to be insolvent by a Government Agency or Self-Regulatory Organization;
  - (b) if the Person is a member of the Securities Investor Protection Corporation, a court of competent jurisdiction finds that the Person 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, Government Agency or other supervisory authority of competent jurisdiction (i) adjudging the Person 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 Person 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 receiver, custodian, liquidator, provisional liquidator, administrator, provisional administrator, assignee, trustee, sequestrator or other similar official for the Person or for any substantial part of its property, (iv) ordering the winding up or liquidation of the Person's affairs or (v) consenting to the institution by the Person of proceedings to be adjudicated as a bankrupt or insolvent;

- (d) the filing by the Person 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 Person to the filing of any such petition, case or proceeding or to the appointment of a receiver, custodian, liquidator, provisional liquidator, administrator, provisional administrator, assignee, trustee, sequestrator or other similar official for the Person or for any substantial part of its property, or the making by the Person of an assignment for the benefit of its creditors, or the admission by the Person in writing of its inability to pay its debts generally as they become due, or the taking of corporate or similar action by the Person in furtherance of the foregoing.

- 1.51 ***Intra-day Settlement Price*** has the meaning set forth in Rule 4.10.1(a) of these Rules.
- 1.52 ***Last Trading Day*** is the last day an Expiry may be traded and is defined in the Contract Specifications.
- 1.53 ***Level 1 Account Administrator***. An officer or employee of a Participant appointed pursuant to Rule 3.11.1.
- 1.54 ***Level 2 Account Administrator***. An officer or employee of a Participant appointed pursuant to Rule 3.11.2.
- 1.55 ***LLC Agreement***. The Limited Liability Company Agreement of the Exchange as amended or restated from time to time.
- 1.56 ***NFA***. National Futures Association.
- 1.57 ***Nodal Contract***. Any contract available on Nodal Exchange for the sale or purchase of a Commodity Type for future delivery that is settled financially and any Option thereof. Settlement is defined in terms of a specific Contract Location, Contract Term and Contract Class.

- 1.58** *Nodal Exchange or Exchange.* Nodal Exchange, LLC, a Delaware limited liability company designated by the CFTC as a contract market.
- 1.59** *Node.* A physical location or group of locations on the power network, as defined by the applicable ISO. As used in these Rules, “Node” means and includes (depending on the context), hubs, zones and similar concepts and terms as used by the relevant ISO.
- 1.60** *Officer* has the meaning given to it in Rule 2.2.1.
- 1.61** *Option* means a Transaction whereby a Participant grants to another Participant the right, but not the obligation, to buy (call option) or sell (put option) a Commodity Type for future delivery.
- 1.62** *Order* means any submission offering to buy or sell a Nodal Contract on or subject to the Rules of the Exchange.
- 1.63** *Out-of-the-Money Option* shall mean an Option which has a Strike Price that is higher or the same as (in the case of a call option) or lower or the same as (in the case of a put option) the price of the underlying futures contract for such Option.
- 1.64** *Participant.* An entity that has signed the Participant Agreement for purposes of entering into Transactions for its own account. In addition, an FCM Clearing Member that does not enter into Transactions for its own account shall be deemed a Participant hereunder solely for the purpose of accessing the Exchange in order to liquidate Transactions and any resulting positions previously submitted to the Clearing House for the account of such FCM Clearing Member on behalf of a Participant that is in default for failure to perform its obligations to the Exchange or such FCM Clearing Member (to the extent applicable).
- 1.65** *Participant Agreement.* An agreement between Nodal Exchange and a Participant which must be signed in order for a Participant to have access to Nodal Exchange for the execution of trades involving commodity derivative products and related financial instruments.
- 1.66** *Person* has the meaning set forth in Section 1a(38) of the CEA and in the CFTC Regulations.
- 1.67** *Position Transfer.* A transaction in a Nodal Contract(s) that is executed by Exchange personnel for administrative purposes outlined in Rule 4.8.1.
- 1.68** *Public Director.* A Director having the qualifications set out in Rule 2.1.5.
- 1.69** *Reference Price* has the meaning set forth in Rule 4.10.4(b).
- 1.70** *Regulatory Services Agreement.* The agreement(s) between the Exchange and the Regulatory Service Provider(s) whereby certain functions mandated under the

CEA, such as market monitoring and trade practice surveillance, are delegated to the Regulatory Services Provider(s).

- 1.71** *Regulatory Services Provider.* National Futures Association and such other organizations, if any, that provide regulatory services to the Exchange, together with any such organization’s employees and agents.
- 1.72** *Respondent.* A Participant under investigation for alleged Rule violation(s) or against which charges have been filed.
- 1.73** *Review Panel.* A disciplinary panel that will, pursuant to the procedures set forth in Section VII, review Investigation Reports submitted to it by the Chief Regulatory Officer. The members of the Review Panel will be appointed in accordance with Rule 7.3.8.
- 1.74** *Rules.* Any rule, interpretation, stated policy, or instrument corresponding to any of the foregoing, including these Rules, in each case as adopted from time to time by the Exchange.
- 1.75** *Self-Regulatory Organization* has the meaning given that term in CFTC Regulation 1.3(ee) and includes a derivatives clearing organization that is registered as such with the CFTC.
- 1.76** *Settlement Price.* The price for each Nodal Contract supplied by the Exchange to the Clearing House at mid-day (Intra-Day Settlement Price) or at the end of the trading day (Daily Settlement Price).
- 1.77** *Strike Price* shall mean the price at which the underlying futures contract may be purchased or sold pursuant to any Option thereon.
- 1.78** *Surveillance Team.* A Compliance Department unit whose enforcement function is to provide market surveillance and monitor trading activities as described in Rule 7.2.1.
- 1.79** *Trade Group.* A set of Expiries in a Block Trade designated to be checked against each Participant’s Trade Risk Limit together rather than individually.
- 1.80** *Trading Platform.* The Central Limit Order Book (CLOB).
- 1.81** *Trading Platform Lot Size.* The minimum Order volume increments allowed on the Trading Platform. The Trading Platform Lot Size will be set forth on the Nodal Exchange website at [www.nodalexchange.com](http://www.nodalexchange.com).
- 1.82** *Transaction.* Any transaction executed on or pursuant to the Rules of the Exchange.
- 1.83** *Trade Risk Limit.* A risk-based dollar amount set by a Participant’s Clearing Member.

- 1.84** *Trading Hours.* For any Business Day, the hours specified on the trading calendar at [www.nodalexchange.com](http://www.nodalexchange.com).
- 1.85** *User ID.* The unique identifier that is assigned by the Exchange to each Authorized User.

**SECTION II GOVERNANCE**

**2.1 Composition of the Board; Board Powers**

- 2.1.1 The Board is authorized to manage the day-to-day business operations of the Exchange in accordance with the LLC Agreement.
- 2.1.2 The Board will determine which Nodal Contracts are available from time to time for trading subject to the Rules, and will approve Rules containing Contract Specifications of such Nodal Contracts, provided that the Board may delegate the authority to approve such Rules to a Board Committee or one or more Officers of the Exchange, provided further that certifications or applications with respect to 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 any panel of the Exchange’s officers related to the day-to-day business operations of the Exchange.
- 2.1.4 At all times not less than thirty-five percent (35%) of the Directors, but not fewer than two individuals, shall be Public Directors.
- 2.1.5 To qualify as a Public Director, an individual must be found, by action of the Board, to have no material relationship with the Exchange. 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 Exchange to constitute a “material relationship.” A Director shall be considered to have a “material relationship” with the Exchange 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 Exchange, or an officer or an employee of an Affiliate of the Exchange;
  - (b) such Director has an ownership interest in the Exchange;
  - (c) such Director is a director, an officer, or an employee of a Participant or an entity with ownership interest in the Exchange;
  - (d) such Director, or an entity with which the Director is a partner, an officer, or a director, receives more than \$100,000 in combined annual payments for legal, accounting, or consulting services from the Exchange or its Affiliate. Compensation for services as a Director of the Exchange 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 Exchange may serve as a director of an Affiliate if they otherwise qualify as Public Directors in accordance with this Section 2.1.5.
- 2.1.6 The compensation of the Public Directors and other non-executive members of the Board shall not be linked to the business performance of the Exchange.
- 2.1.7 The Board shall have procedures, as may be further set forth in policies that the Exchange 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 Exchange.
- 2.1.8 The Board shall establish arrangements to permit consideration of Participants in connection with the functioning of the Exchange and with additions or amendments to the Rules and shall make a description of such arrangements available to the public and to the CFTC.

## 2.2 Officers

- 2.2.1 Subject to the oversight of the Board, the Exchange shall appoint from time to time one or more individuals to serve as the Chief Executive Officer, Chief Regulatory Officer and may further appoint such other officers of the Exchange or any subsidiary of the Exchange (each, an “**Officer**”) as deemed necessary or appropriate, with such titles, duties, and authority as the Exchange shall approve, to carry out the business of the Exchange or any subsidiary of the Exchange, and upon such terms and conditions as the Board shall determine.
- 2.2.2 Any Officer may also be a director, officer, partner or employee of the Exchange or of any of its Affiliates.
- 2.2.3 The Officers shall have such powers and duties in the management of the Exchange 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, or serve on a committee established by the Board, a Disciplinary Panel or an Appeals Committee, or hold a 10% or more ownership interest in the Exchange, 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, the CFTC, or any 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 a Contract Market, is suspended or expelled 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, the CFTC, or any 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 the CFTC or Self-Regulatory Organization not to apply for registration with the CFTC or for membership in the Self-Regulatory Organization;
- (e) is currently, or within the past three (3) years has been, subject to a revocation or suspension of registration by the CFTC;
- (f) has been convicted of a felony listed in Section 8a(2)(D)(ii) through (iv) of the CEA; or
- (g) is currently subject to a denial, suspension or disqualification from serving on a disciplinary committee, arbitration panel or governing board of any self-regulatory organization as that term is defined in Section 3(a)(26) of the Securities Exchange Act of 1934; or
- (h) is subject to a statutory disqualification pursuant to Section 8a(2) of the CEA.
- (i) 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, each individual shall certify he/she is not disqualified pursuant to Rule 2.3.1. Upon appointment, each member of the Board shall provide to the Exchange, where applicable, changes in registration information within 30 days and certification of compliance accordingly. In addition, each member will certify on at least an annual basis regarding their continued compliance with Rule 2.3.1. The Exchange shall verify information supporting Board compliance with eligibility criteria.
- 2.3.3 In addition, to serve as a member of the Board, an individual must possess the ability to contribute to the effective oversight and management of the Exchange, taking into account the needs of the Exchange and such factors as the individual's experience, perspective, skills and knowledge of the industry in which the Exchange operates. This shall include sufficient expertise, where applicable, in financial services, risk management, and clearing services.

## 2.4 Committees

- 2.4.1 The Board shall have at least the three following standing committees: the Nominating Committee, the Exchange Participant Committee, and the Regulatory Oversight 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 require and any composition requirement that the Commission promulgates; and (ii) administering a process for the nomination of individuals to the Board.
- 2.4.3 Exchange Participant Committee. The Exchange Participant Committee of the Board reports to the Board and shall consist of at least 35% Public Directors. The Exchange Participant Committee is responsible for (i) determining the standards and requirements for initial and continuing Participant eligibility, (ii) reviewing appeals of staff denials of Participant applications, and (iii) approving Rules that would result in different categories or classes of Participants receiving disparate access to the Exchange. The Exchange Participant Committee shall not, and shall not permit the Exchange to, restrict access or impose burdens on access in a discriminatory manner, within each category or class of Participants or between similarly-situated categories or classes of Participants.
- 2.4.4 Regulatory Oversight Committee. The Regulatory Oversight Committee of the Board shall report to the Board and consist of 100% Public

Directors. The Regulatory Oversight Committee shall oversee the Exchange's regulatory program on behalf of the Board with the authority to (i) monitor the regulatory program of the Exchange for sufficiency, effectiveness, and independence and (ii) oversee all facets of the regulatory program, including:

- (a) trade practice and market surveillance; audits, examinations, and other regulatory responsibilities with respect to Participants (including compliance with, if applicable, financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and the conduct of investigations;
- (b) reviewing the size and allocation of the regulatory budget and resources, and the number, hiring, termination, and compensation of regulatory personnel;
- (c) supervising the Chief Regulatory Officer of the Exchange, who will report directly to the Regulatory Oversight Committee;
- (d) recommending changes that would ensure fair, vigorous, and effective regulation; and
- (e) reviewing all regulatory proposals prior to implementation and advising the Board as to whether and how such changes may impact regulation.

2.4.5 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 Confidentiality**

2.5.1 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 in the Board or such committee for any purpose other than the performance of his or her official duties as a member of the Board or such committee.

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

## 2.6 Conflicts of Interest

### 2.6.1 Named Party In Interest Conflict

- (a) No member of the Board, any Disciplinary Panel or any Appeals Committee will knowingly participate in such body's deliberations or voting in any matter involving a named party in interest where such member (i) is the 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 Nodal 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, each member of the deliberating body who does not choose to abstain from deliberations and voting will disclose to the Chief Regulatory Officer whether such member has one of the relationships listed in clause (a) above with a named party in interest.
- (c) The Chief Regulatory 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: (A) information provided by such member pursuant to clause (b) above; and (B) any other source of information that is held by and reasonably available to the Exchange.

### 2.6.2 Financial Interest in a Significant Action Conflict

- (a) No member of the Board, any Disciplinary Panel, any Appeals Committee or any other disciplinary committee of the Exchange 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 clause (c) below.
- (b) Prior to consideration of any significant action, each individual who does not choose to abstain from deliberations and voting will disclose to the Chief Regulatory 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 Regulatory 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: (A) the most recent large trader reports and clearing records available to the Exchange; (B) information provided by such member pursuant to clause (b) above; and (C) any other information reasonably available to the Exchange, taking into consideration the exigency of the significant action being contemplated.

- (d) Any member of the Board, any Disciplinary Panel, any Appeals Committee or any other disciplinary committee of the Exchange who would otherwise be required to abstain from deliberations and voting pursuant to clause (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 clause (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: (A) whether such member's participation in the deliberations is necessary to achieve a quorum; and (B) whether such member has unique or special expertise, knowledge or experience in the matter being considered.

2.6.3 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 clause (d) of Rule 2.6.2 above.

## **2.7 Maintenance of Books and Records by the Exchange**

2.7.1 The Exchange shall keep, or cause to be kept, complete and accurate books and records of accounts of the Exchange, including all books and records

required to be maintained pursuant to the CEA, and the CFTC Regulations.

- 2.7.2 The Exchange shall retain all such books and records for at least five (5) years, 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.

## **2.8 Information-Sharing Arrangements**

2.8.1 The Exchange may enter into information-sharing agreements or other arrangements or procedures to coordinate surveillance with other markets on which financial instruments related to the Nodal Contracts trade. As part of any information-sharing agreements or other arrangements or procedures adopted pursuant to this Rule, the Exchange may:

- (a) provide market surveillance reports to other markets;
- (b) share information and documents concerning current and former Participants with other markets;
- (c) share information and documents concerning ongoing and completed investigations with other markets; or
- (d) require its current or former Participants to provide information and documents to the Exchange at the request of other markets with which the Exchange has an information-sharing agreement or other arrangements or procedures.

2.8.2 The Exchange may enter into any arrangement with any Person or body (including the CFTC, the NFA, any Self-Regulatory Organization, any exchange, market, or clearing organization, or foreign regulatory authority) if the Exchange considers such arrangement to be in furtherance of the Exchange's purpose or duties under the Rules or any law or regulation.

## **2.9 Regulatory Services Provider**

2.9.1 The Exchange may contract with a Regulatory Services Provider to provide certain regulatory services to the Exchange pursuant to a Regulatory Services Agreement. In accordance with the relevant Regulatory Services Agreement, a Regulatory Services Provider may perform certain surveillance, investigative, and regulatory functions under the Rules and the Exchange may provide information to such Regulatory Services Provider in connection with the performance by such Regulatory Services Provider of those functions.

2.9.2 Any of the powers or functions of the Exchange under the Rules may be delegated to a Regulatory Services Provider pursuant to the relevant Regulatory Services Agreement in such manner and on such terms as the Exchange and such Regulatory Services Provider may mutually agree; provided, however, that the Exchange shall retain ultimate decision-making authority with respect to any powers or functions that are delegated to such Regulatory Services Provider.

## **2.10 Use of Proprietary Data and Personal Information**

2.10.1 The Exchange may not use for business or marketing purposes any proprietary data or personal information collected or received, from or on behalf of any Person, for the purpose of fulfilling its regulatory obligations; provided, however, that the Exchange may use such data or information for such purposes with the consent of the Person from whom such data or information is collected or received.

2.10.2 Notwithstanding the provisions of Rule 2.10.1, the Exchange may share such proprietary data or personal information with one or more registered entities (as such term is defined in CFTC Regulations).

2.10.3 Access to the Exchange may not be conditioned upon the use of proprietary data or personal information for business or marketing purposes.

## **2.11 Reporting Requirements**

2.11.1 In the event the Board rejects a recommendation or supersedes an action of the Regulatory Oversight Committee or the Exchange Participant Committee, the Exchange shall submit a written report to the CFTC detailing: (1) the recommendation or action of the Regulatory Oversight Committee or the Participation Committee; (2) the rationale for such recommendation or action; (3) the rationale of the Board for rejecting such recommendation or superseding such action; and (4) the course of action that the Board decided to take contrary to such recommendation or action.

## **SECTION III PARTICIPATION**

### **3.1 Jurisdiction**

3.1.1 By accessing, or entering any Order into, the Exchange, and without any need for any further action, undertaking or agreement, a Participant, Authorized User or Authorized Broker agrees (i) to be bound by, and comply with, the Rules and Applicable Law, in each case to the extent applicable to it, him or her, and (ii) to become subject to the jurisdiction of the Exchange with respect to any and all matters arising from, related

to, or in connection with, the status, actions or omissions of such Participant or Authorized User.

- 3.1.2 Any Participant or Authorized User whose right to access the Exchange is revoked or terminated pursuant to these Rules will remain bound by the Rules and Applicable Law, in each case to the extent applicable, and subject to the jurisdiction of the Exchange with respect to any and all matters arising from, related to, or in connection with, the status, actions or omissions of such Participant or Authorized User prior to such revocation or termination.

## **3.2 Participants**

- 3.2.1 Each Participant will have the right to access the Exchange on a principal-to-principal basis, including the right to place Orders for each of its proprietary accounts. The access rights of a Participant hereunder may not be transferred, assigned, sold or leased.

## **3.3 Requirements for Participants**

- 3.3.1 A Participant must be admitted to the Exchange and deliver an executed Participant Agreement. To be eligible for admission, the Participant must demonstrate to the Exchange that it:
- (a) is of good reputation and business integrity;
  - (b) complies with the financial responsibility, recordkeeping and reporting requirements set out in Rule 3.4;
  - (c) is validly organized, in good standing, and authorized by its governing body and, if relevant, documents of organization, to trade Nodal Contracts;
  - (d) is not Insolvent;
  - (e) is not prohibited from using the services of the Exchange for any reason whatsoever;
  - (f) holds all registrations required under Applicable Law, if any, including any FCM, supervisory person and/or Associated Person registration, as applicable;
  - (g) is not subject to statutory disqualification under Section 8a(2) of the CEA;
  - (h) is not registered with the CFTC as an introducing broker or as a retail foreign exchange dealer; and

- (i) satisfies any other criteria that the Exchange may require from a Participant.
- 3.3.2 As part of the application procedure, the Exchange may request such information and documentation as it may reasonably require in order to determine whether the Exchange’s eligibility requirements have been satisfied. Any Participant organized or located outside of the United States shall enter into a written agreement acceptable to the Exchange appointing a third party as its U.S. agent for service of process for purposes of CFTC Regulation 15.05, and shall provide the Exchange with a copy of the agreement.
- 3.3.3 The Exchange may deny, condition, suspend, or terminate Participant status of any entity that:
- (a) is unable to satisfactorily demonstrate its ability to satisfy the eligibility criteria to become or remain compliant as a Participant;
  - (b) is unable to satisfactorily demonstrate its capacity to adhere to all applicable Rules;
  - (c) would bring the Exchange into disrepute as determined by the Exchange in its sole discretion; or
  - (d) shows such other cause as the Exchange may reasonably determine.
- 3.3.4 If the Exchange decides to deny or condition an applicant’s application, the Exchange shall promptly notify the applicant in writing to the address provided by the applicant on the Exchange application form. Any such denial or condition placed by the Exchange may be appealed by the applicant and shall be promptly considered by the Exchange Participant Committee. In each case, the Exchange Participant Committee shall determine the specific procedures to be applied, provided that the applicant shall be afforded the opportunity to present such evidence as the Committee deems relevant. The rules of evidence shall not apply and a transcript shall not be created.
- 3.3.5 If the Participant is not itself a Clearing Member, the Participant must also be party to an agreement with a Clearing Member in accordance with Rule 5.2.1.
- 3.3.6 A person approved as a Participant shall be subject to all of the Rules of the Exchange.
- 3.3.7 Each applicant and each Participant agrees (i) promptly to provide, or procure the provision of, such information and documents as the Exchange may reasonably request, and (ii) that the Exchange, without being prevented by any duty of confidentiality by any holder of information,



may obtain such information and documents from any Clearing Member or from the Clearing House.

- 3.3.8 The Exchange shall grant access to independent software vendors that meet the requirements for Participants set out in this Rule 3.3.

### **3.4 Minimum Financial, Segregation and Related Reporting Requirements**

- 3.4.1 A Participant that is not registered with the CFTC as an FCM must:

- (a) maintain total assets of not less than \$10,000,000; or
- (b) maintain a net worth (excluding personal assets) of not less than \$1,000,000. For purposes of this Rule 3.4.1(b), “net worth” means the Participant’s total assets (excluding personal assets) less total liabilities as computed by generally accepted accounting principles applied on a consistent basis.

A Participant must immediately notify the Exchange or the Regulatory Service Provider, if any, if it no longer meets the financial requirements of 3.4.1 (a) or (b) above.

- 3.4.2 Each Participant that is registered with the CFTC as an FCM and each FCM Clearing Member must:

- (a) comply with the minimum financial and related reporting requirements of Commission Regulations, including Commission Regulations 1.10, 1.12, 1.17 and 1.18;
- (b) comply with the customer funds segregation requirements of Commission Regulations 1.20 through 1.30, 1.32 and 1.49; and
- (c) file with the Exchange and the Regulatory Services Provider, if any, a copy of any notice or written report that it is required to file with the Commission pursuant to Commission Regulations 1.10 or 1.12.

- 3.4.3 A Participant that is registered with or authorized or supervised by a Governmental Authority shall comply with the rules and regulation of such Governmental Authority relating to minimum financial and related reporting and recordkeeping requirements and shall provide to the Exchange and to the Regulatory Services Provider, if any, a copy of such Participant’s regulatory capital report, reasonably contemporaneously with the filing of such report and substantially in the form such report was filed with such Governmental Authority. A Participant that is not subject to such filing requirements shall provide the Exchange with such financial information as the Exchange may require from time to time.

- 3.4.4 A Participant that is not registered with the CFTC, or registered with or authorized or supervised by a Governmental Authority other than the CFTC, shall submit to the Exchange upon its request annual audited financial statements for the Participant or, if applicable, its parent company certified by a certified independent public accountant (or by a Person having similar qualifications if the Participant's books of account are kept outside the United States) within ninety calendar days of the Participant's fiscal year-end.

### **3.5 Duties and Responsibilities of Participants**

3.5.1 Each Participant shall, and shall cause its Authorized Users to:

- (a) access the Exchange in a responsible manner and not for any improper purpose;
- (b) access the Exchange only to conduct business that is subject to the Rules and the Exchange Requirements and in a manner consistent with the Rules and the Exchange Requirements;
- (c) comply with the Rules and the Exchange Requirements and act in a manner consistent with the Rules and the Exchange Requirements;
- (d) comply with the rules of the Clearing House that accepts for clearing a Nodal Contract traded by the Participant on the Exchange, to the extent applicable to such Participant and such Nodal Contract;
- (e) observe high standards of integrity, market conduct, commercial honor, fair dealing, and just and equitable principles of trade while conducting or seeking to conduct any business connected with or concerning the Exchange;
- (f) not knowingly mislead or conceal any material fact or matter in any dealings or filings with the Exchange or in connection with a Disciplinary Action;
- (g) cooperate promptly and fully with the Exchange in any investigation, inquiry, audit, examination or proceeding regarding compliance with the Rules or any Disciplinary Action or arbitration;
- (h) comply with any order issued by the Exchange;
- (i) keep all User IDs, account numbers and passwords related to the Exchange confidential; and
- (j) keep, or cause to be kept, complete and accurate books and records, including, without limitation, all books and records required to be maintained pursuant to the Applicable Law, for at least five (5)

years, and make such books and records available for inspection by a representative of the Exchange, the CFTC or the U.S. Department of Justice.

- 3.5.2 In addition to the requirements of Rule 3.5.1, each Participant shall employ practices to monitor and enforce compliance with its internal risk limits and shall be responsible for all Orders and Transactions effected on the Exchange by or for the account of such Participant, its Authorized Users or by any Person using its or their User IDs.

### **3.6 Authorized Users**

- 3.6.1 Each Participant and Authorized Broker that is not a natural Person must designate at least one of its employees as an Authorized User.
- 3.6.2 By agreeing to become an Authorized User, an individual agrees to be bound by the duties and responsibilities of an Authorized User set out in Rule 3.7 and to be subject to, and comply with Applicable Law and the Rules.
- 3.6.3 To designate an Authorized User, a Participant must follow the procedures established by the Exchange. The Exchange may establish criteria that individuals must fulfill to become an Authorized User. Without limiting the generality of the foregoing, each Participant will ensure on an ongoing basis that (i) none of its Authorized Users is subject to a disqualification pursuant to any Applicable Law (unless an appropriate exemption has been obtained with respect thereto) and (ii) each of its Authorized Users is technically proficient and conducts its business in a fair and equitable manner.
- 3.6.4 The Exchange will promptly notify a Participant in writing of the approval of designated Authorized User(s) or if the Exchange declines to approve the nomination of an Authorized User.
- 3.6.5 The Exchange will maintain a list of all designated Authorized Users for each Participant.
- 3.6.6 The Exchange may, in its sole discretion revoke or suspend the designation of an individual as an Authorized User and shall promptly notify the Participant and its Clearing Member of such action.
- 3.6.7 To request the termination of the designation of an individual as an Authorized User, the Participant must follow the procedures established by the Exchange. The Exchange 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 Exchange considers it necessary for the protection of the Participant or in the Exchange's best interest. Based on the information provided to, and

other information gathered by, the Exchange regarding the request to terminate the registration of an Authorized User, the Exchange will determine whether to:

- (a) accept the request to terminate such registration;
- (b) postpone the effective date of termination of the registration; and/or
- (c) impose any terms or conditions before or after the effective date of termination of the registration.

### **3.7 Duties and Responsibilities of Authorized Users**

3.7.1 By agreeing to act as an Authorized User, such Person agrees to be bound by the duties and responsibilities of and Authorized User and to be subject to, and comply with, the Rules.

3.7.2 An Authorized User must:

- (a) ensure that activity conducted under the User IDs assigned to it and any of its personnel complies with Applicable Law and the Rules;
- (b) have the authority, at the Exchange's request, to adjust or withdraw any Order submitted under such User IDs;
- (c) have and maintain during all necessary regulatory approvals and/or licenses to operate as an Authorized User;
- (d) cooperate promptly and fully with the Exchange in any investigation, inquiry, audit, examination or proceeding regarding compliance with the Rules or any Disciplinary Action or arbitration proceeding;
- (e) comply with any order issued by the Exchange; and
- (f) agree to such other terms and conditions as may be established by the Exchange from time to time.

### **3.8 Clearing Members Accessing the Exchange**

3.8.1 A Clearing Member may trade an account on behalf of a Participant hereunder solely for the purpose of liquidating Nodal Contracts and any resulting positions previously submitted to the Clearing House for the account of such Clearing Member on behalf of a Participant that has failed to perform its obligations to the Exchange or such Clearing Member (to the extent applicable).

### **3.9 Independent Software Vendors**

3.9.1 A Person seeking to act as an ISV must satisfy the Exchange's technological integrity requirements and not adversely affect the Exchange's ability to comply with the CEA and CFTC Regulations.

### **3.10 Required Notices**

3.10.1 Each Participant and ISV shall immediately notify the Exchange upon becoming aware of any of the following events:

- (a) any material changes to the information provided to the Exchange by the Participant or ISV;
- (b) any damage to, or failure or material inadequacy of, the systems, facilities or equipment of the Participant or ISV used to effect Transactions on the Exchange;
- (c) any refusal of admission to, or withdrawal by the Participant or ISV of any application for membership in, any Self-Regulatory Organization;
- (d) any denial or withdrawal of an application for registration or license by or from any governmental agency, and any revocation, suspension or conditioning of a registration or license granted by any Governmental Authority;
- (e) the commencement of any judicial or administrative proceeding against the Participant or ISV by a Governmental Authority or the imposition of any fine, cease and desist order, denial of trading privileges, censure or other sanction or remedy (whether through an adverse determination, voluntary settlement or otherwise) imposed by any Governmental Authority;
- (f) the indictment or conviction of, or any confession of guilt or plea of guilty or nolo contendere by, the Participant or ISV or any of its officers for any felony or misdemeanor involving, arising from, or related to, the purchase or sale of any commodity, security, futures contract, option or other financial instrument, or involving or arising from fraud or moral turpitude; and
- (g) the Insolvency of the Participant or ISV or any of its Affiliates.

3.10.2 Each Participant or ISV that is not a natural person shall notify the Exchange at least ten business days prior to any merger, acquisition, consolidation, combination, sale or other material change of ownership.

3.10.3 Nothing in this Rule 3.9 is intended to substitute for or limit any other reporting obligations that a Participant or ISV may have to the Exchange or any regulatory agency or Self-Regulatory Organization.

### **3.11 Account Administrators**

- 3.11.1 Each Participant shall appoint at least one Level 1 Account Administrator, who shall be responsible for monitoring the Participant's access to the Exchange.
- 3.11.2 Each Participant may appoint one or more Level 2 Account Administrators, who shall be entitled to access the Exchange for risk management, audit or other back-office purposes as specified by the Exchange from time to time. Level 2 Account Administrators shall not have trading privileges on the Exchange.
- 3.11.3 A Participant shall promptly notify the Exchange of a change in the identity of any of its Account Administrators.

### **3.12 Access Requirements and Terms**

- 3.12.1 Access to the Exchange will be Internet-based. Participant accounts will be issued user names, passwords, and digital certificates for secure access. The Participant is responsible for the security of these items, and any misuse is the responsibility of the Participant.
- 3.12.2 Certificates, passwords are for the Participant's use only and shall not be shared with other parties.
- 3.12.3 A Participant must notify the Exchange immediately upon any suspicion of theft of a password or certificate, or any unauthorized access.
- 3.12.4 The Exchange may modify or suspend a Participant's access to the Exchange if the Exchange reasonably believes that such Participant's positions, when considered in light of other positions maintained by such Participant and any other factors that the Exchange reasonably deems relevant (including, as applicable, financial information provided by such Participant and the margin required for all such positions), could jeopardize the financial safety of other Participants.

### **3.13 Dues and Fees**

- 3.13.1 Exchange dues and fees are posted at [www.nodalexchange.com](http://www.nodalexchange.com) and updated from time to time.

### **3.14 Inspections by the Exchange**

- 3.14.1 The Exchange and the Regulatory Services Provider, if any, shall have the right, in connection with determining whether the Rules are being, will be, or have been complied with by the Participant, to:

- (a) inspect systems, equipment and software operated by the Participant in connection with business that is or may be subject to the Rules, wherever located;
- (b) access the systems, equipment, software, and the premises on which the systems, equipment, and software are located, any data stored in any of the systems or equipment, during the regular business hours of the Exchange, without prior notice to the Participant; and/or
- (c) copy and/or reproduce any data to which the Exchange has access under this Rule.

3.14.2 Each Participant shall provide the Regulatory Services Provider with the same access as it would be required to provide to the Exchange.

3.14.3 The Exchange may require a Participant to furnish such information concerning the Participant's business that is subject to the Rules of the Exchange as the Exchange deems necessary to enable the Exchange to perform its obligations under Applicable Law, including information relating to (i) Nodal Contracts executed on the Exchange and in related derivatives markets, including in the products underlying those Nodal Contracts, and (ii) information requested by a government agency relating to the Exchange's business as a designated contract market and/or the Exchange's compliance with Applicable Law that the Exchange believes is maintained by, or otherwise in the possession of, a Participant.

### **3.15 Liquidity Provider Program**

3.15.1 At its discretion, Nodal Exchange may offer a liquidity provider program that provides incentives to Participants willing to supply substantial numbers of bids and offers or traded volume in the market. The liquidity provider program may offer reduced fees, amongst other incentives, for qualified liquidity providers as determined by the Exchange.

### **3.16 Authorized Brokers**

3.16.1 Participants may submit Block Trades to the Exchange through an Authorized Broker acting on their behalf.

3.16.2 An Authorized Broker:

- (a) must be registered with the CFTC as an FCM or an introducing broker;
- (b) must enter into the applicable Authorized Broker Agreement with the Exchange and agree to be subject to and to comply with the Rules applicable to Authorized Brokers;

- (c) must agree to effect Block Trades on behalf of a Participant only in accordance with these Rules and procedures established by the Exchange;
- (d) must, if registered as an FCM, maintain adequate financial resources in accordance with Rule 3.4;
- (e) must file with the Exchange and the Regulatory Services Provider, if any, a copy of any notice or written report that it is required to file with the Commission pursuant to Commission Regulations 1.12; and
- (f) must agree to such other terms and conditions as may be established by the Exchange from time to time.

3.16.3 An Authorized Broker shall be responsible to the Exchange for any failure by such Authorized Broker (or its employees or agents) to comply with the Rules.

3.16.4 The Exchange will maintain a list of all designated Authorized Brokers for each Participant. The Exchange may, in its sole discretion revoke or suspend the designation of an individual as an Authorized Broker and shall promptly notify the appropriate Participants and its Clearing Member of such action.



## SECTION IV MARKET OPERATIONS

### 4.1 Market Hours and Operation

#### 4.1.1 Market Hours

The Exchange will be open for trading on all business days during the market hours specified in the trading calendar, which is available at [www.nodalexchange.com](http://www.nodalexchange.com). During non-trading hours, Exchange systems will allow users to submit, modify and cancel Orders as defined in this Section IV. Block Trades executed during non-trading hours will be queued and cleared in the order of submission when the market is next opened.

#### 4.1.2 Procedures

With respect to trading on or through the Exchange, the Exchange may adopt, without limitation, procedures relating to Transactions in Nodal Contracts and trading on the Exchange, including procedures to:

- (a) disseminate the prices of bids and offers and the prices of trades in Nodal Contracts;
- (b) record and account for Nodal Contracts;
- (c) perform market surveillance and regulation on matters affecting Nodal Contracts;
- (d) establish limits on the number and/or size of Orders that may be submitted by a Participant or Authorized User to the Exchange;
- (e) establish limits on the number of Nodal Contracts that may be traded by a Participant on the Exchange;
- (f) establish a limit on the maximum daily price fluctuations for any Nodal Contracts and provide for any related restriction or suspension of trading in such Nodal Contracts; and
- (g) require a suspended or expelled Participant, or a Participant with restricted trading rights, to cause Nodal Contracts to be executed for such Participant's account to reduce or eliminate such Participant's open positions.

#### 4.1.3 Market Suspension and Emergencies

- (a) During an Emergency, the Board may implement temporary emergency procedures and rules ("**Emergency Rules**"), subject to the applicable provisions of the CEA and CFTC Regulations. Emergency Rules may require or authorize the Exchange, the Board,

the Chief Executive Officer or, in his or her absence, any other authorized Officer to take actions necessary or appropriate to respond to the Emergency, including, but not limited to, the following actions which shall be taken, as appropriate, in consultation with the Clearing House:

- (a) suspending or curtailing trading or limiting trading to liquidation only (in whole or in part);
  - (b) extending or shortening the last trading date for Nodal Contracts;
  - (c) providing alternative settlement mechanisms;
  - (d) ordering the liquidation or transfer of Transactions, the fixing of a Settlement Price, or the reduction of positions;
  - (e) extending, limiting or changing the Trading Hours;
  - (f) temporarily modifying or suspending any provision of the Rules;
  - (g) requiring Participants to meet special margin requirements;
  - (h) alter the settlement terms or conditions for any Nodal Contract;
  - (i) imposing or modifying trading limits, price limits and/or position limits; and/or
  - (j) any other action as directed by the CFTC.
- (b) Before any Emergency Rule may be adopted and enforced, a required vote of the Board must approve the adoption of such Emergency Rule at a duly convened meeting. Directors may attend such a meeting by teleconference.
- (c) Notwithstanding paragraph (b) above, if the Chief Executive Officer, or another authorized 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 such Officer shall have the authority, without Board action, to implement any Emergency Rules with respect to such Emergency that he or she deems necessary or appropriate to respond to such Emergency. In such circumstances, the Chief Executive Officer or other Officer shall abstain from deliberating or deciding whether to implement the Emergency Rule if such Officer has a direct and substantial financial interest in the result of the

Emergency Rule, as determined by the Chief Regulatory Officer pursuant to Rule 2.6.2. As soon as practicable after the Chief Executive Officer or other Officer has implemented an Emergency Rule, the Board must convene a meeting in order to affirm, amend, revoke, suspend or modify such Emergency Rule.

- (d) Whenever the Exchange, the Board, the Chief Executive Officer or authorized Officer takes actions necessary or appropriate to respond to an Emergency, a duly authorized representative of the Exchange, where possible, will post an announcement in a notice to Participants. The Board shall terminate the actions taken in response to the Emergency once the Board determines in good faith that the Emergency has sufficiently abated to permit the affected functions of the Exchange to resume normal functioning. If the Board has not yet convened, the Chief Executive Officer or other authorized Officer shall terminate the actions taken in response to the Emergency once such Officer determines that the Emergency has sufficiently abated to permit the affected functions of the Exchange to resume normal functioning.
- (e) The Exchange will use reasonable efforts to notify the CFTC in accordance with CFTC Regulations prior to implementing, modifying or terminating an Emergency Rule. If such prior notification is not practicable, the Exchange will notify the CFTC as soon as reasonably practicable, but in all circumstances within twenty-four (24) hours of the implementation, modification or termination of such Emergency Rule. The Exchange may take any actions as directed by the CFTC.
- (f) Upon taking any action in response to an Emergency, the Exchange will document the decision-making process related to such action. Such documentation will be kept for at least five (5) years following the date on which the Emergency ceases to exist or to affect the Exchange, and all such documentation will be provided to the CFTC upon request.

## 4.2 Nodal Contracts Offered

### 4.2.1 Nodal Contracts/Expiries

- (a) Contract Specifications are set forth in Appendix A to these Rules. Contract Specifications are subject to revision or amendment from time to time. Revised Contract Specifications may be listed for trading by self-certification in accordance with CFTC Regulation 40.2, sent electronically to the CFTC for receipt by the open of business on the business day preceding the contract's listing, which shall include: (1) a description of the contract and its rules

related to its terms and conditions, (2) the intended listing date, (3) certification by the Exchange that the contract to be listed complies with the CEA and the CFTC Regulations thereunder, (4) a concise explanation and analysis of the product and its compliance with applicable provisions of the CEA, including core principles, and the CFTC Regulations thereunder, including supporting documentation, and (5) certification that the Exchange posted a notice of pending product certification with the Commission on its website with a copy of the submission, with confidential treatment requests as appropriate.

- (b) To offer new products, the Exchange may request that the CFTC approve a new product prior to listing the product for trading. The submission to the CFTC shall be filed electronically in accordance with CFTC Regulations 40.3 and include: (1) a description of the product with the rules that set forth the contract’s terms and conditions, (2) an explanation and analysis of the product and its compliance with applicable provisions of the CEA, including core principles, and the CFTC Regulations thereunder, including documentation relied upon to establish the basis for compliance with the applicable law, or incorporate information contained in such documentation, with appropriate citations to data sources, (3) description of any agreements or contracts entered into with other parties that enable the Exchange to carry out its responsibilities, (4) certification that the Exchange posted on its website a notice of its request for CFTC approval of the new product with a copy of the submission, (5) a request for confidential treatment as permitted under CFTC Regulation 40.8, if appropriate, and (6) the filing fee required in accordance with CFTC Regulations. If requested by CFTC staff, the Exchange will provide evidence, information or data demonstrating that the contract meets, initially or on a continuing basis, the requirements of the CEA, or other requirements for designation or registration under the CEA or the CFTC Regulations thereunder. The Exchange shall submit the requested information by the open of business on the date that is two business days from the date of request by CFTC staff, or at the conclusion of such extended period agreed to by CFTC staff after timely receipt of a written request from the Exchange.
- (c) Nodal Contracts on power may settle against the pricing at a single physical location (a “**Node**”) on the physical network, as defined by the ISO, or against multiple Nodes on this network. For Nodal Contracts on power which settle against a Contract Node that is the consolidation of multiple physical Nodes, the Settlement Price shall be the simple average of all the included Nodes for the duration of the Expiry period as provided in Rule 4.10 (“**Expiry Settlement**”) and the appropriate Contract Class.

- (d) Natural gas Expiries will settle against the last Settlement Price for the Expiry as determined by either an index or exchange listed contract as specified in the Contract Specification for the Nodal Contract.
- (e) Options will settle physically against the underlying futures contract as specified in the Contract Specifications.
- (f) For Nodal Contracts on power, in the event the Exchange determines that an ISO will no longer price a Node that is a component of the Contract Node, the Exchange may eliminate the Node from the Contract Node. In the event the Exchange determines that an ISO will no longer price a Node that is the whole of the Contract Node, the Exchange will substitute a successor Contract Node that, in the Exchange's judgment, is reasonably comparable to the Contract Node no longer being priced, or if no open interest exists, the Exchange will discontinue the Nodal Contract.

#### 4.2.2 Trading Status

- (a) Expiries may have four trading statuses in the market as defined below: Active, Restricted, Suspended, and Closed.
- (b) *Active.* All Expiries will have a status of Active upon being entered into the market for trading. Active Expiries are available for unrestricted trading as Block Trades and on the Trading Platform if offered.
- (c) *Restricted.* In the case where all initial Settlement Price data is available, the Expiry is set to Restricted status at the end of the day. The Restricted status allows the Exchange to capture additional ISO revisions to the components of Locational Marginal Price up to the Last Trading Day as defined by the Contract Specifications. For example, a monthly off-peak day ahead power Expiry would become Restricted at the end of the second to last day of the month – which is the day that all Settlement Price data become available for the Expiry in question. During the Restricted period, an Expiry can only be traded as a Block Trade within a narrowly defined band as determined by the Exchange (e.g., plus or minus one percent of the announced initial Settlement Price). Restricted Expiries cannot be traded on the Trading Platform.
- (d) *Suspended.* Expiries may be suspended at any time, in order to prevent further trading. This may occur on a power Nodal Contract in response to the decision of an ISO to stop providing pricing of the relevant Contract Nodes. A Suspended status may also be used to end trading within the Last Trading Day of an expiring natural gas

Expiry once trading has ceased and pricing is known on the Final Settlement Price, as detailed in the Contract Specification.

- (e) *Closed.* Upon determination of the Final Settlement Price, the Expiry is Closed, all trading is ended and the Final Settlement Price is fixed.

### 4.3 Use of User IDs

- 4.3.1 Each Participant must request one or more ITMs as needed to accommodate the nature and volume of the Participant's business.
- 4.3.2 Each Participant must have at least one Authorized User and each Authorized User must have a unique, Exchange-assigned, registered User ID.
- 4.3.3 Each Order entered will contain a system-assigned User ID that identifies the Authorized User that entered the Order.
- 4.3.4 No Person may use a User ID to place any Order except as permitted by these Rules, nor may any Person knowingly permit or assist the unauthorized use of a User ID. Each Participant and Authorized User shall ensure that no User ID is used by any Person not authorized by these Rules. Each Participant that is not an individual must have in place policies and procedures acceptable to the Exchange to ensure the proper use and protection of User IDs.
- 4.3.5 Each Participant shall ensure the accuracy of the registration information of its Authorized Users at all times.
- 4.3.6 Each Participant shall be solely responsible for controlling and monitoring the use of all User IDs issued to it and its Authorized Users.
- 4.3.7 Each Participant shall notify the Exchange promptly upon becoming aware of:
  - (a) any unauthorized disclosure or use of any User ID assigned to it or any of its Authorized Users and of any other reason for deactivating a User ID; and
  - (b) any unauthorized access to the Exchange by any Authorized User or by any Person using a User ID assigned to such Participant or Authorized User.
- 4.3.8 Each Participant and its Authorized Users shall be bound by any actions taken through the use of a User ID assigned to such Participant or Authorized User (other than any such actions resulting from the fault or negligence of the Exchange), including the submission of Orders and/or

execution of Transactions, whether or not such actions were taken or authorized by such Participant or Authorized User, as the case may be.

#### 4.4 [Reserved]

#### 4.5 Central Limit Order Book Trades

##### 4.5.1 Order Requirements

To be valid, an Order submitted to the CLOB must include the following information: Order ID, quantity, price, Expiry(ies), buy or sell designation, User ID and ITM. Orders must be submitted in increments of the Trading Platform Lot Size, which will be posted at [www.nodalexchange.com](http://www.nodalexchange.com). The maximum order size permitted by the CLOB is 1,000 lots.

##### 4.5.2 Order Types

The following types of Orders are allowed on the CLOB:

- (a) *Limit Orders.* Orders to buy or sell a stated quantity at a specified price, or at a better price, if obtainable. Unless otherwise specified, any residual volume from a Limit Order that is not withdrawn or executed is retained in the CLOB until cancelled by the Participant. All Limit Orders are removed from the CLOB at the end of the trading session.

##### 4.5.3 Submission

- (a) Submission of an Order to the CLOB constitutes a representation by the submitting Participant that it is acting as principal in respect of such Order.
- (b) Orders may be submitted to the CLOB by electronic submission to the Exchange in accordance with any procedures set forth by the Exchange from time to time and published at [www.nodalexchange.com](http://www.nodalexchange.com).

##### 4.5.4 Modification and Cancellation

Any Order that has been entered into the CLOB may be modified or cancelled unless and until it has been executed or has otherwise expired. Any such modification or cancellation requires that a modification Order or cancellation Order, as the case may be, with respect to the original Order be entered into the CLOB. Such modification or cancellation will become effective upon receipt by the CLOB of the modification Order or cancellation Order. Every Order automatically expires (i) at the end of the Trading Hours on the calendar day such Order is placed, (ii) in the event of

any suspension or curtailment of trading, or (iii) in the case of any failure of the CLOB.

4.5.5 CLOB Trade Matching

Orders entered on the CLOB will be continuously matched based on price then time priority.

4.5.6 Clearing

All matched trades generated by the CLOB will be automatically submitted to the Clearing House for registration and novation provided that it will not cause any party to the trade to exceed its Trade Risk Limit, as described in Section V of these Rules. Upon registration at the Clearing House, the Exchange will make available, via a web interface, the Participant's cleared trades. Further description of Clearing House procedures and rules can be found in the Clearing House rulebook. The Exchange reserves the right to cancel trades submitted to the Clearing House in accordance with Rule 4.9.

4.5.7 Trading Information

The Exchange shall make public daily information on Settlement Prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market. Trading information will be published on the Exchange website at the end of the day.

**4.6 Block Trades**

4.6.1 The Exchange shall designate the Nodal Contracts in which Block Trades shall be permitted and determine the minimum block size for such transactions as described herein. Appendix B to these Rules ("Minimum Block Sizes for Nodal Exchange Contracts") sets forth a listing of minimum block sizes for Nodal Contracts.

4.6.2 The following Rules shall govern Block Trades:

- (a) A Block Trade must be limited to large transactions appropriate for each listed contract, *i.e.*, a size larger than the size in which a single buy or sell order is reasonably anticipated to be able to be filled in its entirety in the CLOB without incurring a substantial price concession. Orders may not be aggregated in order to achieve the minimum transaction size unless expressly permitted under Applicable Law.
- (b) Each Participant entering into a Block Trade must be an Eligible Contract Participant.



- (c) An Authorized Broker may submit a Block Trade to the Exchange on behalf of Participants that have specified that such Block Trade was executed subject to the Rules of the Exchange.
- (d) The price at which a Block Trade is executed must be fair and reasonable in light of (i) the size of the Block Trade, (ii) the prices and sizes of other Transactions in the same contract at the relevant time, (iii) the prices and sizes of transactions in other relevant markets, including the related swap markets, at the relevant time, and (iv) the circumstances of the markets or the Participants to the Block Trade.
- (e) Block Trades shall not affect Transactions executed on the Trading Platform.
- (f) Parties to a Block Trade must ensure that each Block Trade is submitted without delay upon execution of the trade, in no event later than fifteen (15) minutes after execution via an approved submission method. The submission must include the Nodal Contract(s), contract month(s), price, quantity of the Transaction, time of execution, the respective Clearing Member accounts, as well as any other information that the Exchange may require. The Exchange shall promptly publish Block Trade price and volume information separately from the reports of Transactions executed on the Trading Platform.
- (g) Authorized Brokers and Participants involved in the execution of Block Trades must maintain written or electronic records of all such Block Trades, including an electronic timestamp reflecting the date and time each such Order was received as well as an electronic timestamp reflecting the date and time such Order was executed or cancelled.

#### 4.6.3 Trade Entry

- (a) Block Trades may be accepted from Participants or Authorized Brokers.
- (b) For Block Trades that are submitted directly by Participants, Exchange staff will facilitate trade entry via an email template, where both Participants must confirm the Block Trades, specifying the identical Expiry(s) to be traded, the volume and price, and the buyer and seller.
- (c) An Authorized Broker must specify the Expiry(s) to be traded, the volume and price, the buyer and seller and their respective Clearing Members. Both buyer and seller must be Participants.

4.6.4 Modification and Cancellation

- (a) Block Trades executed during the Exchange's Trading Hours and submitted in compliance with the Rules are subject to immediate confirmation by the Exchange and may not be modified or cancelled by either Authorized Brokers or Participants. If erroneous information has been submitted as part of a Block Trade, the Exchange should be notified as soon as the error is detected. If appropriate, the Exchange will facilitate the modification of the trade on a discretionary basis; any trade modification the Exchange agrees to submit to the Clearing House will be done during normal Trading Hours.
- (b) Block Trades executed outside of Trading Hours are queued for clearing as described in Rule 4.1.1 above, and may be cancelled directly on the web platform as long as the cancellation occurs before the Exchange reopens for regular Trading Hours.

4.6.5 Risk Limit Validation and Clearing

- (a) All Block Trades submitted by either an Authorized Broker or Participant will be subject to Trade Risk Limit verification. Upon verification that the Block Trade will not cause any party to the Block Trade to exceed its Trade Risk Limit, the Block Trade will be submitted to the Clearing House for registration and novation, as described in Section V of these Rules. Upon Clearing House registration, the Exchange will make available, via a web interface, confirmation that the Block Trade has been accepted. Further description of Clearing House procedures and rules can be found in the Clearing House rulebook.
- (b) A Participant that has exceeded its Trade Risk Limit (because of changes in the risk profile of such Participant's existing positions or otherwise) may be party to a Block Trade only if such Block Trade will reduce the Trade Risk Limit violation.

4.6.6 Front Running Prohibited

- (a) Parties involved in the solicitation or negotiation of a Block Trade and parties that are privy to nonpublic information regarding a consummated Block Trade may not disclose such information to any other party prior to the public report of the Block Trade by the Exchange and may not trade in the same product or closely-related product for the purpose of taking advantage of such information.
- (b) Pre-hedging or anticipatory hedging of any portion of a Block Trade in the same product or a closely-related product based upon a

solicitation to participate in a Block Trade is not permitted. A closely related product is a product that is highly correlated to, serves as a substitute for, or is the functional economic equivalent of the product being traded as a Block Trade. Counterparties to a Block Trade are permitted to initiate trades to hedge or offset the risk associated with the Block Trade following the consummation of the Block Trade, including during the period preceding the public report of the Block Trade by the Exchange.

#### 4.7 Exchange for Related Position (EFRP)

##### 4.7.1 Categories of EFRP

Participants may enter into the following type of Exchange for Related Position transaction (“**EFRP**”) in accordance with the provisions of this Rule:

- (a) an Exchange for Physical transaction (“**EFPP**”), which is a privately negotiated and simultaneous exchange of a futures position in a Nodal Contract for a corresponding cash position.

##### 4.7.2 EFRP Requirements

- (a) An EFRP shall consist of two discrete but related simultaneous transactions in which one Participant must be the buyer of (or the holder of the long market exposure associated with) the related position and seller of the corresponding Nodal Contract, and the other Participant must be the seller of (or the holder of the short market exposure associated with) the related position and the buyer of the corresponding Nodal Contract. The related position must involve the commodity underlying the Nodal Contract (or any derivative, by-product or related product that has a reasonable degree of price correlation to the Nodal Contract) in a quantity that is approximately equivalent to the quantity covered by the Nodal Contract.
- (b) The accounts involved in the execution of an EFRP must be:
  - (a) independently controlled with different beneficial owners; or
  - (b) independently controlled accounts of separate legal entities with the same beneficial owners, provided that the account controllers operate separate business units; or
  - (c) independently controlled accounts within the same legal entity, provided that the account controllers operate in separate business units; or

- (d) commonly controlled accounts of separate legal entities, provided that the separate legal entities have different beneficial owners.
- (c) The parties to an EFRP shall maintain all documents relevant to the Nodal Contract and the related position, including all documents customarily generated in accordance with the relevant market practices, including, as applicable, copies of the documents evidencing title to, or the contract or contracts to buy or sell, the underlying commodity (or the derivative, by-product or related product) involved in such EFRP. Any such documents and information shall be furnished to the Exchange upon request.
- (d) The price of the Nodal Contract exchanged in an EFRP must be mutually agreed, commercially reasonable and consistent with the price increments set forth in the applicable Contract Specification.

#### 4.7.3 Reporting Requirements

The parties to an EFRP shall create and maintain records that identify the transaction as an EFRP and specify the date and time of execution and shall cause the EFRP to be identified and reported to the Exchange in accordance with such procedures as are determined by the Exchange from time to time.

#### 4.7.4 Clearing Requirements

All Nodal Contracts effected as part of EFRPs shall be cleared in accordance with these Rules.

### **4.8 Position Transfers**

#### 4.8.1 Position Transfer Process

The Exchange may permit transfer trades to move positions between ITM accounts or Clearing Member accounts for administrative purposes (“Position Transfers”) where no change in ownership is involved. Participants and Clearing Members must obtain approval from the Exchange for a Position Transfer; such approval to be granted at the sole discretion of the Exchange. Position Transfers will not contribute to any reported volume, price, or trading range.

#### 4.8.2 Transfer of Positions With Change in Ownership

The Exchange may permit the transfer of positions that involves a change in ownership when the proposed transfer is in connection with, or as a result of, a merger, asset purchase, consolidation, or other similar non-recurring corporate transaction between Participants where one or more of the Participants become the successor in interest to one or more other

Participants. Participants must apply for and obtain prior written approval from the Exchange; such approval to be granted at the sole discretion of the Exchange. The transferred trades must be indicated as transfers that will not contribute to any reported volume, price, or trading range.

The Exchange may, with the consent of the Clearing Member(s) involved, permit the transfer of existing trades if, in the opinion and sole discretion of the Exchange, the situation so requires and such transfer is in the best interests of Nodal Exchange.

## **4.9 Trade Cancellations; Trade Reviews**

### **4.9.1 Trade Cancellation Authority**

The Exchange may adjust trade prices or cancel (bust) trades when such action is necessary to mitigate market disrupting events caused by the improper or erroneous use of the Exchange or by system defects or malfunctions. Notwithstanding any other provision of this Rule 4.9.1, the Exchange may adjust trade prices or cancel any trade if the Exchange determines that allowing the trade to stand as executed may have a material, adverse effect on the integrity of the market. Any decision of the Exchange with respect to an adjustment or cancellation subject to this Rule 4.9.1 shall be final.

### **4.9.2 Review of Trades**

The Exchange may review a trade based on its analysis of market conditions or a request for review by a user of the Exchange. A request for review must be made within five minutes of the execution of the trade. The Exchange shall promptly determine whether the trade will be subject to review, and upon deciding to review a trade, the Exchange will promptly issue an alert to all Participants on the Exchange indicating that the trade is under review. In the case of Nodal Contracts determined by the Exchange to be illiquid, the Exchange may initiate a review up to one hour after the execution of the trade, and has the authority, but not the obligation, to review trades reported more than one hour following execution if it determines that the trade price was significantly out of line with fair value. In the course of its review of any trade, the Exchange may, but is not obligated to, inform any of the parties to the trade of the identity and contact information of any other party to the trade.

## **4.10 Futures Expiry and Options Settlement**

### **4.10.1 Futures Expiry Daily Settlement**

- (a) The Exchange will provide the Clearing House with Settlement Prices twice per day for use by the Clearing House in settling trades and positions. The first of these Settlement Prices (the “**Intra-day**”

**Settlement Price**”) will be determined at 12:30 pm ET (absent operational delays), and the second (the “**Daily Settlement Price**”) shall be determined at the close of business each day. Settlement Prices will be calculated primarily based on that day’s Transactions as well as relevant trading in other markets, as outlined in the Contract Specifications. For power Expiries with no trades executed on the CLOB or Block Trades, the Exchange will employ an extrapolation methodology to calculate the Settlement Prices. This extrapolation methodology relies on creating a relationship, through a regression of historical price movements, of each Nodal Contract at a non-trading Contract Node and a Nodal Contract at a traded Contract Node, usually a hub or zone. For natural gas Expiries, Settlement Prices will be calculated based on that day’s Transactions as well as relevant trading in other markets.

- (b) The Exchange reserves the right to adjust Daily Settlement Prices as it deems necessary based on current market conditions or otherwise, per the Contract Specifications.
- (c) Without limiting the foregoing, the Exchange reserves the right to subject Block Trades priced more than a certain percentage set by the Exchange above or below the Settlement Price to a review pursuant to Rule 4.9.2 to determine whether the Exchange believes it is appropriate to include the Block Trade in that day’s Intra-day Settlement Price or Daily Settlement Price calculation.

#### 4.10.2 Futures Expiry Final Settlement

- (a) All power Expiries on the Exchange will ultimately settle in cash against prices in the physical markets as determined by the definitional characteristics of the Expiry (Contract Node, Commodity Type, Contract Term, Contract Class and Expiry date) and will post in dollars per megawatt-hour (\$/MWh), as specified in the relevant Contract Specifications. As such, the price for an Expiry is determined by averaging all of the applicable hours as defined in the Expiry. In the case where a Contract Node is composed of multiple physical Nodes, the prices of all the constituent Nodes are averaged together to determine final settlement pricing.
- (b) For power Expiries, the Exchange will first calculate an initial Settlement Price on the last date contained in the Contract Term. On the Last Trading Day, the Final Settlement Price will be calculated, with any adjustments to the underlying pricing data reflected in the Final Settlement Price. During the period between the last date in the Contract Term and the Last Trading Day, trading on the Expiry will be restricted, as provided in Rule 4.2.2.

- (c) Natural gas Expiries will settle against the relevant exchange listed contract or industry index as detailed in its Contract Specification, and prices shall be posted in \$/MMBtu. Natural gas Nodal Contracts will cease trading on the Last Trading Day, as outlined in the Contract Specification.

#### 4.10.3 Options Daily Settlement

- (a) The Exchange will provide the Clearing House with Settlement Prices twice per day for use by the Clearing House in settling trades and positions. The Intra-day Settlement Price will be determined at 12:30 pm ET (absent operational delays), and the Daily Settlement Price shall be determined at the close of business each day. Settlement Prices will be calculated primarily based on that day's Transactions, as well as relevant trading in other markets, as outlined in the Contract Specifications.
- (b) The Exchange reserves the right to adjust Daily Settlement Prices as it deems necessary based on current market conditions or otherwise, per the Contract Specifications.
- (c) Without limiting the foregoing, the Exchange reserves the right to subject Block Trades priced more than a certain percentage set by the Exchange above or below the Settlement Price to a review pursuant to Rule 4.9.2 to determine whether the Exchange believes it is appropriate to include the Block Trade in that day's Intra-day Settlement Price or Daily Settlement Price calculation.

#### 4.10.4 Options Exercise (Physical Settlement)

- (a) Exercise of "In-the-Money" Options is automatic on the last trading day unless the Exchange is notified by 4:30 pm on the Last Trading Day (1) to allow the "In-the-Money" Options to expire without exercise or (2) to exercise expiring "Out-of-the-Money" Options. When exercised against, option sellers will be selected on a pro-rata basis or at the Exchange's discretion.
- (b) On the Last Trading Day, the Daily Settlement Prices for Options' underlying futures contracts ("Reference Price") shall be published no later than 3:30 pm ET (absent operational delays by the Exchange) for the relevant Option Strike Prices. Reference Prices will be calculated primarily based on that day's Transactions as well as relevant trading in other markets, as outlined in the Contract Specifications for the underlying futures contracts.

### 4.11 Recordkeeping; Audit Trail

- 4.11.1 Participants shall maintain records of Nodal Contracts executed on the Exchange and in related derivatives markets, including in the products underlying those Nodal Contracts for a period of five (5) years. Participants that enter Orders into the Trading Platform through an order routing/front-end system rather than directly through the Trading Platform are responsible for maintaining or causing to be maintained audit trail information for such electronic Orders, which shall include the ITM, Order ID, Expiry, price, quantity, Order type, User ID and any other tag information for each electronic Order entered, modified or cancelled on the Exchange (the “**Audit Trail**”). Such Audit Trail shall include the time that an Order is entered, modified or cancelled. Times that are so captured must not be capable of being modified by the Person entering the Order and must reflect all necessary data fields specified by the Exchange from time to time. For executed Orders, the Audit Trail must also include the execution time of the trade and all trade data.
- 4.11.2 Participants shall maintain Audit Trail information for a minimum of five (5) years and must have the ability to produce Audit Trail data in a standard format upon request of the Exchange.

#### **4.12 Information Regarding Orders**

- 4.12.1 The Exchange will make information regarding Orders (including prices bid or offered), trades and any other matters it may deem appropriate available to Participants and other Persons at such times and in such manner (whether through the Exchange, financial information services or otherwise) as it may consider necessary or advisable from time to time.
- 4.12.2 Each Participant or other Person receiving any such information referred to in Rule 4.12.1 above shall not redistribute such information other than to the extent and in the manner as may be expressly permitted by the Exchange in writing from time to time.

#### **4.13 Disaster Recovery; Business Continuity**

- 4.13.1 Each Participant shall have written disaster recovery and business continuity policies and procedures in place to ensure it is able to perform certain basic operational functions in the event of a significant internal or external interruption to its operations. At a minimum, the following areas must be addressed in the Participant’s policies and procedures:
- (a) the Participant must have procedures in place to allow it to continue to operate during periods of stress or to transfer accounts to another fully operational Participant with minimal disruption to the Exchange.



- (b) the Participant must perform periodic testing of disaster recovery and business continuity plans, duplication of critical systems at back up sites and periodic back-up of critical information and provide the Exchange with information regarding the foregoing upon request; and
- (c) the Participant must maintain and, at the request of the Exchange, provide accurate and complete information for its key personnel. A Participant must inform the Exchange in a timely manner whenever a change to its key personnel is made.

4.13.2 The Exchange may prescribe additional and/or alternative requirements for a Participant's compliance with this Rule.

#### **4.14 Trading Information**

The Exchange shall make public daily information on Settlement Prices, volume, open interest, and opening and closing ranges for actively traded Nodal Contracts. Such trading information will be published on the Exchange website after the market close on each Business Day.

**SECTION V CLEARING****5.1 Submission to Clearing House****5.1.1 Transactions on the Trading Platform**

Immediately upon execution of a Transaction as provided in Rule 4.5, such Transaction shall be discharged and novated in accordance with the rules of the Clearing House.

**5.1.2 Block Trades**

A Block Trade executed between Participants pursuant to Rule 4.6 and submitted to the Exchange that will not cause any party to the trade to exceed its Trade Risk Limit, or in the case where the Participant already exceeds its Trade Risk Limit will reduce its Trade Risk Limit violation, will be discharged and novated in accordance with the rules of the Clearing House.

**5.1.3 EFRPs**

An EFRP executed between Participants pursuant to Rule 4.7 and submitted to the Exchange that will not cause any party to the EFRP to exceed its Trade Risk Limit, or in the case where the Participant already exceeds its Trade Risk Limit, will reduce its Trade Risk Limit violation, will be discharged and novated in accordance with the rules of the Clearing House.

**5.2 Clearing Members**

5.2.1 All Participants must be an Individual Clearing Member or have an agreement with an FCM Clearing Member that establishes an account for the Participant for the purpose of clearing the Participant's Transactions through the Clearing House. Individual Clearing Members have direct access to trade on the Exchange. All other Participants, which are not Individual Clearing Members, are granted direct access to trade authorization by the FCM Clearing Member.

5.2.2 A Clearing Member may at any time revoke any authorization granted and guarantee made by it to any Participant in accordance with Rule 5.2.1 above, by providing written notice of such revocation to the Exchange. The guarantee will remain in effect until the Participant has liquidated or transferred its positions and funds to another Clearing Member.

5.2.3 For clearing purposes, the Participant must specify Individual Trading Accounts that it wishes to be separately tracked and margined by its Clearing Member. The Exchange will give each of these accounts an ITM for use by the Clearing House and its Clearing Members.

- 5.2.4 The Clearing Member will set risk limits for each of the Participant's ITMs, and has the right to suspend trading by a Participant on the Exchange.

### **5.3 Responsibility of Participants**

- 5.3.1 Each Participant must assist its FCM Clearing Member, if any, and the Clearing House in the clearing of its Transactions in Nodal Contracts. Without limiting the generality of the foregoing, each Participant must: provide its FCM Clearing Member, if any, a telephone number so that such Participant may be reached at any time during the day in the event that there is a discrepancy in the clearing of its Transactions; if neither the Participant nor any such representative is present at the time specified above, such Participant's FCM Clearing Member, if any, will be authorized to resolve any discrepancy in the manner it deems appropriate, but such resolution will not be relevant to the determination of the liability of any party to the trade.

### **5.4 Clearing Services**

- 5.4.1 Whenever the Exchange designates a clearing organization other than the Clearing House for the clearance of Nodal Contracts with respect to which there are open positions, each Clearing Member must, as of the close of business on the second Business Day prior to the effective date of such designation, either become a clearing member of such new organization, or cause any such open Nodal Contracts carried by it either to be transferred to a clearing member of such new clearing organization or to be liquidated.

### **5.5 Rules of the Clearing House**

- 5.5.1 The clearing services provided by the Clearing House with respect to any Nodal Contract, and the rights and obligations of purchasers and sellers under cleared Nodal Contracts (including rights and obligations in respect of clearing and settlement, variation payments and performance at maturity), will be governed by the rules of the Clearing House, except as otherwise provided in the Rules or Notices issued from time to time by the Exchange.
- 5.5.2 Open positions in any Nodal Contract may only be offset by opposite Transactions in the same Nodal Contract that are executed either (A) on the Exchange or (B) through Block Trade transactions allowed under the Rules and any Notices issued from time to time by the Exchange.

### **5.6 Notice of Arbitration**

- 5.6.1 In any arbitration concerning an alleged failure of any Participant to honor a trade in any Nodal Contract, each party to such arbitration must promptly

provide copies of all documents filed or received in such arbitration by such party to the Clearing Member that guaranteed such party's Transactions in Nodal Contracts when the trade allegedly took place.

**5.7 Additional Terms Applicable to Clearing**

- 5.7.1 The Clearing House shall have the right to reject Nodal Contracts that arise from Transactions and to suspend clearing of such Transactions without notice, in accordance with the rules of the Clearing House; and
- 5.7.2 A Clearing Member may transfer a Nodal Contract to another Clearing Member only upon notice to the Exchange and in accordance with the rules of the Clearing House.

## SECTION VI PARTICIPANT CODE OF CONDUCT

### Preamble

This Participant Code of Conduct (the “**Code**”) defines and reaffirms the values, principles and internal controls that Participants, their representatives (including Authorized Users) and Authorized Brokers, as applicable, must follow in conducting their business activities on the Exchange. The Code is intended to complement the internal principles and practices of a Participant and to guide a Participant as it submits bids and offers, executes Transactions, and uses other services on the Exchange. Compliance with the Code allows Participants to assure the Exchange, regulators, the public and other market Participants that their business activities on the Exchange are, and will continue to be, conducted with integrity. In addition, compliance with the Code by Participants gives Participants assurance that unlawful and unethical trading practices are not tolerated, that public disclosures of trading information are accurate, and that they and other Participants will abide by these ethical standards and maintain sound trading practices.

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

### 6.1 Ethical Standards

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

- 6.1.1 **Regulatory Compliance.** No Participant (or any of its Authorized Users) shall engage in conduct that is a violation of the CEA or CFTC Regulations, the Rules of the Exchange or the rules of the Clearing House and will conduct its business in accordance with all applicable laws, regulations, tariffs and rules, and in good faith, with a commitment to honest dealing.
- 6.1.2 **Fraud.** No Participant (or any of its Authorized Users) shall engage, or attempt to engage in any fraudulent act or engage in any scheme to defraud, deceive, trick or mislead in connection with or related to any Exchange or Clearing House activity.
- 6.1.3 **Good Faith.** No Participant (or any of its Authorized Users) shall knowingly enter, or cause to be entered, bids or offers into the system other than in good faith for the purpose of executing bona fide transactions
- 6.1.4 **Transaction Integrity.** Participants (and their Authorized Users) shall honor the terms and conditions of the Participant Agreement and will transact in Nodal Contracts only for legitimate business purposes, such as managing business risk or that otherwise have economic substance.

- 6.1.5 **Antitrust.** No Participant (or any of its Authorized Users) shall collude with other market Participants to affect the price or supply of any commodity, allocate territories, customers or Nodal Contracts, or otherwise unlawfully restrain competition.
- 6.1.6 **Risk Management.** Participants (and their Authorized Users) shall adopt, adhere to and enforce risk management and other policies and structures that are designed to ensure that trading activities are conducted in accordance with this Code.

## 6.2 Sound Trading Practices

Commodity markets reflect the constantly changing dynamics of supply and demand. Efficient business operations in such an environment demand practices that can manage risk and discover market prices. Such practices must be consistent with the guiding Ethical Standards of this Code. Participant will act in accordance with these standards of sound trading practices with regard to its Exchange activity:

- 6.2.1 **Skills.** Each Participant is responsible for understanding all factors that influence the energy markets, in order to maintain a high level of competence in its trading. All Participants must actively and continually work to upgrade their skills, knowledge, and expertise in order to maintain a high standard of professional knowledge.
- 6.2.2 **Rules.** Nodal Exchange will provide updates to these Rules and memos regarding the application and interpretation of these Rules. It is the obligation of each Participant to ensure these documents are read and understood. It shall be prohibited for a Participant or any of its Authorized Users to violate any Rule or any agreement made with the Exchange, or to engage in fraud, dishonorable or dishonest conduct, or conduct which is inconsistent with just and equitable principles of trade.
- 6.2.3 **Price Manipulation, Fictitious, Non-Competitive or Artificial Transactions.** Any actual or attempted manipulation of the price in any Contract is prohibited. No Participant shall effect or induce the purchase or sale of any Nodal Contract for the purpose of creating or inducing a false, misleading, or artificial appearance of activity in such Nodal Contract, or for the purpose of unduly or improperly influencing the price of such Nodal Contract or for the purpose of making a price which does not reflect the true state of the market in such Nodal Contract. No Participant shall arrange and execute simultaneous offsetting buy and sell Orders in a Nodal Contract with intent to artificially affect reported revenues, trading volumes or prices.
- 6.2.4 **Market Manipulation.** No Participant shall attempt to manipulate or manipulate the market in any Nodal Contract. No Participant shall directly or indirectly participate in or have any interest in the profit of a

manipulative operation or knowingly manage or finance a manipulative operation. This includes any pool, syndicate, or joint account, whether in corporate form or otherwise, organized or used intentionally for the purposes of unfairly influencing the market price of any Nodal Contract.

- 6.2.5 **Market Disruption.** Orders entered on Nodal Exchange for the purpose of upsetting the equilibrium of the market in any Nodal Contract or creating a condition in which prices do not or will not reflect fair market values are prohibited, and any Participant who makes or assists in entering any such Order with knowledge of the purpose thereof or who, with such knowledge, in any way assists in carrying out any plan or scheme for the entering of any such Order, will be deemed to have engaged in an act detrimental to the Exchange.
- 6.2.6 **Gratuities.** Except with the prior written approval of the Chief Regulatory Officer, no Participant shall, directly or indirectly, give or permit to be given anything of value, including gifts and gratuities, to an Exchange Official in an amount that exceeds the maximum value permitted by the Exchange's gifts and entertainment policy.
- 6.2.7 **Disruptive Practices.** No Participant shall engage in any trading, practice, or conduct that constitutes a "disruptive practice," as such term is defined by the CEA or CFTC Regulations, including section 4c(5) of the CEA.
- 6.2.8 **Rumors.** No Participant shall knowingly circulate, in any manner, rumors of a character which might affect market conditions in any Nodal Contract; provided, however, that this shall not prohibit discussion of unsubstantiated information, so long as its source and unverified nature are disclosed.
- 6.2.9 **False Reports.** No Participant shall make any knowing misstatement of a material fact to the Exchange, any Exchange Official, or any Board committee or Exchange panel. No Participant shall knowingly disseminate false or misleading reports regarding Transactions, the Exchange or one or more power markets.
- 6.2.10 **Wash Sales.** No Participant shall place or accept buy and sell Orders in the same product and expiration month, where known or reasonably should know that the purpose of the Orders is to avoid taking a bona fide market position exposed to market risk (transactions commonly known or referred to as wash sales). Buy and sell Orders by Participants that are entered with the intent to negate market risk or price competition shall be deemed to violate the prohibition on wash trades. Additionally, no Participant shall knowingly execute or accommodate the execution of such Orders by direct or indirect means.

- 6.2.11 **Spoofing.** No Participant shall place bids or offers with the intent of cancelling such bids or offers before submission to the Trading Platform.
- 6.2.12 **Financial Condition.** No trading will be conducted for the purpose of misrepresenting the financial condition of the Participant.
- 6.2.13 **Acts Detrimental to the Exchange.** No Participant shall engage in any act that is detrimental to the Exchange. Misuse of Nodal Exchange is strictly prohibited. It shall be deemed an act detrimental to the Exchange to permit unauthorized use of the Exchange, to assist any Person in obtaining unauthorized access to Nodal Exchange, to trade on Nodal Exchange without an agreement and an established account with a Clearing Member, to alter the equipment associated with Nodal Exchange (except with the Exchange’s consent), to interfere with the operation of Nodal Exchange, to intercept or interfere with information provided thereby, or in any way to use Nodal Exchange in a manner contrary to the Rules.
- 6.2.14 **Supervision.** A Participant shall establish, maintain and administer reasonable supervisory procedures to monitor the compliance of Authorized Users, Authorized Brokers, and supervised persons with the Rules and any applicable provisions of the CEA or CFTC Regulations and such Participant may be held accountable for the actions of such Authorized Users or supervised persons.
- 6.2.15 **Disclosing Order Information.** No Participant shall disclose an Order to buy or sell, except to a designated Exchange Official or the CFTC or as necessary to efficiently execute the Order nor shall any Participant solicit or induce another Participant to disclose Order information. No Person shall take action or direct another to take action based on non-public Order information, however acquired. The mere statement of opinions or indications of the price at which a market may open or resume trading does not constitute a violation of this Rule.

### 6.3 Pre-Arranged Trades, “Money Passing” Prohibited

- 6.3.1 Pre-arranged trading, in which two or more Participants or Authorized Users agree to submit corresponding Orders to the Trading Platform, is not permitted except as follows:
- (a) Participants and Authorized Users may engage in pre-execution communications with regard to transactions executed or to be executed on the Trading Platform if one party (the first party) wishes to be assured that a contra party (the second party) will take the opposite side of the first party’s Order, subject to the following restrictions:



- (a) A party may not engage in pre-execution communications with other market participants on behalf of another party unless the party for whose benefit the trade is being made has previously consented to permit such communications.
- (b) Parties to, and Persons involved in, pre-execution communications shall not disclose to a non-party the details of such communications or enter an Order to take advantage of information conveyed during such communications except in accordance with this Rule.
- (c) The first party's Order must be entered into the Trading Platform first, and the second party's Order may not be entered into the Trading Platform until a period of five seconds has elapsed from the time entry of the first Order.

(b) The foregoing restriction shall not apply to Block Trades.

6.3.2 No Participant or Authorized User may enter into a Transaction the purpose of which is to enter into a Nodal Contract without a net change in either party's open positions but a resulting profit to one party and a loss to the other party, commonly known as a "money pass."

#### **6.4 Disciplinary Procedures; Termination of Connection**

6.4.1 All access denials, suspensions, expulsions and other restrictions imposed upon a Participant or any of its Authorized Users by the Exchange pursuant to a Disciplinary Action shall restrict with equal force and effect, access to, and use of, the Exchange.

6.4.2 The Exchange, at its sole discretion, shall have the right to summarily terminate the connection of any Participant or the access of any ITM or User ID to the Exchange. Additionally, the Exchange, at its sole discretion, shall have the right to direct a Participant to immediately terminate access to the Exchange any of such Participant's Authorized Users.

#### **6.5 Position Limits**

6.5.1 **Bona Fide Hedges.** The Exchange may adopt position limits for Nodal Contracts, and grant exemptions from position limits for bona fide hedging transactions and positions, in accordance with CFTC Regulations. Bona fide hedging transactions typically represent a substitute for transactions to be made, or positions to be taken, at a later time in a physical marketing channel that are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise and arise from a change in the value of the hedger's current or anticipated assets or liabilities. A Participant seeking a position limit exemption for bona fide

hedging must apply to the Compliance Department demonstrating that the purpose of the positions or transactions is to offset price risks incidental to commercial cash or spot operations and such positions are established and liquidated in an orderly manner in accordance with sound commercial practices. In order to obtain an exemption from position limits, a Participant must submit an application with the following information:

- (a) Participant's name, ITM accounts, and contact information;
  - (b) Name of the Clearing Member maintaining Participant's account;
  - (c) A description of the exemption sought, identifying the Nodal Contract(s) for the intended transaction or position seeking exemption;
  - (d) A complete and accurate explanation of the Participant's underlying exposure related to the exemption request;
  - (e) Designated ITM account(s) to be used solely for hedge transactions that will qualify for hedge exemption treatment;
  - (f) Agree to promptly provide, upon request by the Compliance Department, information or documentation regarding the Participant's financial condition;
  - (g) Agree to comply with all terms, conditions or limitations imposed by the Compliance Department with respect to the exemption;
  - (h) Agree that the Compliance Department may modify or revoke the exemption at any time;
  - (i) Agree to promptly submit a supplemental statement to the Compliance Department whenever there is a material change to the information provided in the most recent application; and
  - (j) Participant's authorized representative must certify that the intended transaction or position is economically appropriate to reduce the Participant's commercial risks and complies with all Exchange and CFTC requirements for bona fide hedging.
- 6.5.2 The CFTC may also from time to time establish position limits for Nodal Contracts traded pursuant to these Rules. For any such Nodal Contract subject to a position limit set by the CFTC, the Exchange shall not set its position limit at a level higher than the CFTC's limit.
- 6.5.3 A Participant who exceeds a position limit as a result of maintaining positions at more than one Clearing Member shall be deemed to have

waived confidentiality regarding its positions and the identity of the Clearing Members at which those positions are maintained.

- 6.5.4 A Participant intending to exceed position limits, including limits established pursuant to a previously approved exemption, must file the required application and receive approval from the Compliance Department prior to exceeding such limits.
- 6.5.5 In the event the positions in excess of the limits are not deemed to be exemption-eligible, the Participant will be in violation of position limits for the period of time in which the excess positions remained open.
- 6.5.6 The Compliance Department shall, on the basis of the application and any requested supplemental information, determine whether an exemption from position limits shall be granted. The Compliance Department may approve, deny, condition or limit any exemption request based on factors deemed by the Compliance Department to be relevant, including, but not limited to, the applicant's business needs and financial status, as well as whether the positions can be established and liquidated in an orderly manner. Hedge exemptions shall be approved at the ITM account level and must be renewed on an annual basis.
- 6.5.7 **Spread or Arbitrage Positions.** A spread or arbitrage transaction involves the simultaneous purchase and sale of identical or equivalent commodity futures contracts across two or more markets, such as location or delivery month, in order to hold a position on the discrepancy in their price relationship. For contracts subject to CFTC established position limits, spread positions or arbitrage positions between single months of a futures contract outside of the spot month, in the same year, may exceed the position limits; provided however, that such spread or arbitrage positions, when combined with any other net positions in the single month, do not exceed the all-months limit established by the CFTC. In order to exceed position limits without violating the Rules, a Participant must comply with the following procedures for identifying spreads or arbitrage positions subject to this Rule:
  - (a) Submit the spread or arbitrage positions under a single order ID number. Positions resulting from spread orders submitted under a single order ID number or block trades submitted under a single trade group ID number shall be deemed spread positions for position limit purposes;
  - (b) In the event the qualifying spread or arbitrage position cannot be submitted under a single order ID number, such as when a spread or arbitrage position is executed amongst three or more Participants, the Participant must submit a written notice to the Exchange in the form provided by the Exchange that shall include (i) a description

of the spread or arbitrage position; (ii) a statement that the position is a spread or arbitrage position; and (iii) a statement that the Participant is complying with all other Rules and requirements of the Exchange;

- (c) If neither (a) or (b) apply, the Participant must submit a written request to the Exchange in the form provided by the Exchange. The request must be received by the Exchange no later than five (5) Business Days before the position limits are in effect for the proposed spread or arbitrage position and shall include (i) a description of the size and nature of the proposed spread or arbitrage position; (ii) an explanation that neither (a) or (b) above applies to the proposed spread or arbitrage position; (iii) a statement that the intended position will be a spread or arbitrage position; and (iv) a statement that the Participant is complying with all other Exchange Rules and requirements;
- (d) Participant may not enter into any subsequent transaction to alter the spread or arbitrage position causing the Participant to exceed the position limits. In the event this occurs, the Participant may be in violation of position limits for the period of time in which the excess positions remained open; and
- (e) Participant agrees to immediately submit a supplemental statement explaining any change in circumstances affecting the spread or arbitrage position.

The Compliance Department may deny or limit any Order intended as a spread or arbitrage position based on factors deemed by the Compliance Department to be relevant, such as whether the positions can be liquidated in an orderly manner.

6.5.8 The position limit levels for those Nodal Contracts with position limits are set forth in Appendix C to these Rules.

## **6.6 Position Accountability**

6.6.1 A Participant who holds or controls aggregate positions in a Nodal Contract in excess of the position accountability levels relating to that Nodal Contract set out in Appendix C shall be subject to the following provisions:

- (a) Such Participant shall provide, in a timely manner upon request by the Compliance Department, information regarding the nature of the position, trading strategy, and hedging information if applicable.

- (b) Such Participant shall, if so ordered by the Compliance Department, acting in its discretion, liquidate or not increase further the positions that exceed such levels.
- (c) Such positions must be initiated and liquidated in an orderly manner.
- (d) This Rule shall not limit the jurisdiction of the Exchange to take action that it determines necessary or appropriate in respect of any positions on the Exchange.

### **6.7 Reports of Large Positions**

Upon request, Participants must provide the Compliance Department with information, in a form and manner acceptable to the Compliance Department, identifying the owner, any controlling parties and any additional required information for each reportable account.

### **6.8 Aggregation of Positions**

For purposes of Rule 6.5, Rule 6.6 and Rule 6.7, positions in Nodal Contracts shall be aggregated in accordance with CFTC Regulations.

### **6.9 Reporting Levels, Position Accountability Levels and Position Limits**

The reporting levels, position accountability levels and position limits for Nodal Contracts are found in Appendix C.

### **6.10 Information Disclosure and Documentation**

6.10.1 Markets depend on trust in the accuracy of market information provided by Participants and in the transparency of market behavior of all market Participants.

6.10.2 Participant will act in accordance with these practices for information disclosure and documentation with regard to its Exchange activity:

- (a) Provide information relating to Nodal Contracts to regulators in compliance with all applicable rules and requirements and continue to cooperate with regulators as reasonably necessary to assist in their understanding of the markets.
- (b) Ensure that any information disclosed to Nodal Exchange is accurate and consistent. No existing or prospective Participant shall make any false statements or misrepresentations in any application, report or other communication to the Exchange.

## 6.11 Compliance

6.11.1 Each Participant will have a compliance program commensurate with the size and scope of its trading activities on the Exchange and designed to ensure appropriate, timely and ongoing review of trading practices and compliance with this Code.

6.11.2 Participant will act in accordance with these practices for compliance and monitoring with regard to its Exchange activity:

- (a) Provide for proper training of personnel on the provisions of this Code.
- (b) Maintain internal policies and procedures to promote compliance with this Code.
- (c) Promptly disclose to the Exchange the details of any violations of this Code involving Participant's activities on the Exchange or provision of market information to the Exchange or any of its Affiliates.
- (d) Provide an environment that encourages employees within the Participant's organization to engage in safe and confidential discussions and to disclose to senior management any trading practices that might violate this Code.
- (e) Require any consultant, contractor and/or subcontractor to disclose all financial affiliations and conflict of interests with Participants, the Exchange and its affiliates. Ensure that consultants, contractors or subcontractors do not cause any disclosure of information in violation of the Code and that confidentiality agreements are in effect where appropriate.
- (f) Establish clear lines of accountability for the Participant's trading practices, including provisions relating to the responsibilities of corporate officers, with appropriate oversight by the Participant's board of directors or other senior corporate management committee.

## SECTION VII DISCIPLINE AND ENFORCEMENT

### 7.1 Disciplinary and Enforcement Procedures – General

All Participants, Authorized Brokers, Clearing Members and Authorized Users are subject to the Exchange’s jurisdiction. Any Participant, Authorized Broker, Clearing Member, Authorized User or any Person using the User ID of any Participant or Authorized User that is alleged to have violated, to have aided and abetted a violation, to be violating, or to be about to violate, any Rule or Applicable Law for which the Exchange maintains disciplinary jurisdiction is subject to this Section VII. Except as otherwise provided in the Rules, no Exchange Official will interfere with or attempt to influence the process or resolution of any inquiry, investigation, disciplinary proceeding, appeal from a disciplinary proceeding, summary imposition of fines, summary suspension or other summary action (collectively, “**Disciplinary Action**”). Any Person subject to a Disciplinary Action may be represented by counsel or any other representative of its choosing (other than an Exchange 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.

### 7.2 Process Considerations

#### 7.2.1 Compliance Department

The Compliance Department is appointed and authorized by the Chief Executive Officer to provide market surveillance and investigation of trading activities on the Exchange to ensure compliance with the Rules and Applicable Law. Any member of the Compliance Department must recuse himself or herself and notify the Chief Regulatory Officer of the recusal if such member has a relationship of a type listed in Rule 2.6.1(a) with a Respondent in any Disciplinary Action. Where the Chief Regulatory Officer member has a relationship of a type listed in Rule 2.6.1(a) with a Respondent in any Disciplinary Action, the Chief Regulatory Officer shall recuse himself or herself from such Disciplinary Action, and the Board shall appoint an individual without such conflict to serve as Chief Regulatory Officer for the specific Disciplinary Action giving rise to the conflict. The Compliance Department consists of two functions:

- (a) **Enforcement** shall be conducted by the Surveillance Team and the Compliance Manager. The Surveillance Team will monitor the market to identify exceptions that may indicate a possible basis for finding that a violation of the Rules has occurred or will occur and provide information of such exceptions to the Compliance Manager. The Surveillance Team and the Compliance Manager shall consist of Exchange employees whose interests do not conflict with their enforcement duties. The Surveillance Team and the Compliance Manager may not operate under the direction or control of any

Person(s) with trading privileges. The Compliance Manager is authorized to:

- (a) initiate and conduct investigations;
  - (b) prepare Investigation Reports and make recommendations concerning initiating disciplinary proceedings;
  - (c) prosecute alleged violations within the Exchange's disciplinary jurisdiction; and
  - (d) represent the Exchange on appeal from any disciplinary proceeding, summary imposition of fines, summary suspension or other summary action.
- (b) The **Chief Regulatory Officer**, assisted by other Compliance Department personnel and Exchange employees shall be responsible for discharging the duties allocated to it in Rule 7.3.

#### 7.2.2 Third-Party Enforcement

The Exchange may delegate any of its rights and responsibilities herein to a Regulatory Services Provider.

#### 7.2.3 Expense Liability

- (a) At the discretion of the Exchange, any Respondent found in violation of the Rules may be required to pay to the Exchange 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).
- (b) If a hearing has been held in accordance with Rule 7.3.9, 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 Department, legal and professional assistance, the hearing, and administrative and other expenses incurred by the Hearing Panel.

### 7.3 **Disciplinary Matters**

#### 7.3.1 Investigations

- (a) The Compliance Manager will investigate any enforcement matter within the Exchange's jurisdiction that is 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 Exchange 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 Exchange. 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 Exchange’s jurisdiction:
  - (a) 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;
  - (b) 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;
  - (c) may not impede or delay any Disciplinary Action.

### 7.3.2 Reports of Investigations

The Compliance Manager will submit a written report of each investigation to the Chief Regulatory 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 at the Exchange, 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 Participant during a rolling 12-month period.

### 7.3.3 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 7.3.4, the Chief Regulatory Officer will (i) review the Investigation Report or (ii) establish a Review Panel pursuant to Rule 7.3.8 and forward the Investigation Report to such Panel. The Chief Regulatory 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 Exchange’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 Exchange’s jurisdiction has occurred or is about to occur.

### 7.3.4 Opportunity to Respond

The Compliance Department may, in its discretion, 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.

7.3.5 Service of Notice of Charges

- (a) Once the Chief Regulatory Officer or Review Panel, as appropriate, authorizes disciplinary proceedings, the Compliance Department will prepare and serve a notice of charges that will provide as follows:
  - (a) state the acts, practices or conduct that the Respondent is alleged to have engaged in;
  - (b) state the Rule or provision of Applicable Law alleged to have been violated or about to be violated;
  - (c) state the proposed sanctions;
  - (d) advise the Respondent of its right to a hearing;
  - (e) 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 an Exchange Official or any person substantially related to the underlying investigation, such as a material witness or Respondent;
  - (f) 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;
  - (g) 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
  - (h) 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.

7.3.6 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:
  - (a) 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;
  - (b) specify any specific facts that contradict the notice of charges;
  - (c) specify any affirmative defenses to the notice of charges;
  - (d) sign and serve the answer on the Chief Regulatory Officer; and
  - (e) 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.

7.3.7 Settlement Offers

- (a) At any time after a notice of charges has been issued, a Respondent may at any time submit to the Compliance Department 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 7.3.8, the Chief Regulatory 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 7.3.8, determine whether 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 7.3.8, the Chief Regulatory Officer will forward his or her recommendation to the Hearing Panel for final determination.
- (c) The Chief Regulatory 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 Regulatory 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 Regulatory Officer or Disciplinary Panel, as applicable, and any sanctions imposed. If a settlement offer is accepted without the agreement of the Chief Regulatory 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 Regulatory 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.

#### 7.3.8 Disciplinary Panels

- (a) A Review Panel may be established, in the sole discretion of the Chief Regulatory Officer, pursuant to Rule 7.3.3 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 7.3.6, 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 Regulatory 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 of the Compliance Department 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 Participants 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 2.6 by serving notice to the Chief Regulatory Officer. Legal counsel, other than the Chief Regulatory 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 Regulatory 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.

### 7.3.9 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 Exchange to be used by the Compliance Department 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 Department or an employee of the Exchange 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 Department 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 Department. However, the Compliance Department 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:
  - (a) The Compliance Department shall prosecute the case.
  - (b) Formal rules of evidence do not apply.
  - (c) The Respondent has the power to cross-examine witnesses and present documentary evidence.
  - (d) the burden of proof is on the Compliance Department.
  - (e) 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 Department, 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 Regulatory 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 Department and each Respondent may:
  - (a) appear personally;
  - (b) present evidence and facts determined relevant and admissible by the chair of the Hearing Panel;
  - (c) call and examine witnesses; and
  - (d) cross-examine witnesses called by other parties.

- (e) The Exchange 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 7.3.10. The Exchange will serve a copy of the written decision on the Respondent and the Compliance Department. The written decision will include the following information:
  - (a) the notice of charges or a summary of the charges;
  - (b) the answer, if any, or a summary of the answer;
  - (c) a summary of the evidence introduced at the hearing or, where appropriate, incorporation by reference of the Investigation Report;



- (d) 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;
  - (e) an indication of each specific Rule that the Respondent was found to have violated; and
  - (f) 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 Exchange 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 7.5.1. 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 Exchange.

#### 7.3.10 Sanctions

- (a) After notice and opportunity for hearing in accordance with Exchange Rules, the Exchange will impose sanctions if any Participant, Authorized Broker, Clearing Member, Authorized User or any Person using the User ID of any Participant or Authorized User is found to have violated or to have attempted to violate a Rule of the Exchange or provision of Applicable Law for which the Exchange possesses disciplinary jurisdiction. Disciplinary sanctions imposed by the Exchange shall be commensurate with the violations committed, and shall be clearly sufficient to deter recidivism or similar violations by other Participants, Authorized Brokers, Clearing Members or Authorized Users. All sanctions must take into account the Respondent's disciplinary history. The Exchange may impose one or more of the following sanctions or remedies:
  - (a) censure;

- (b) limitation on trading privileges, ability to otherwise access Nodal Exchange, and/or other activities, functions or operations;
  - (c) suspension of trading privileges and/or ability to otherwise access the Nodal Exchange;
  - (d) fine;
  - (e) restitution or disgorgement;
  - (f) termination of trading privileges and/or ability to otherwise access Nodal Exchange; or
  - (g) any other sanction or remedy deemed to be appropriate.
- (b) The Exchange may impose a fine of up to \$1,000,000 for each violation of Exchange 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 Exchange has sole discretion to select the bank on whose quotations to base the prime rate. Participant will be responsible for paying any fine or other amount imposed on, but not paid by, any of its traders or supervisors.

## 7.4 Summary Actions

### 7.4.1 Summary Suspensions

- (a) At any time, the Chief Regulatory Officer, in consultation with the Regulatory Oversight Committee of the Board, may summarily suspend, revoke, limit, or condition a Participant's right to access the Trading Platform or the association of an Authorized User or Authorized Broker with a Participant, or suspend access to the Trading Platform or to the Exchange to any other Person subject to the Exchange's jurisdiction. The Chief Regulatory Officer must reasonably believe that immediate action is necessary to protect the best interest of the Exchange or the marketplace, based on relevant circumstances including any of the following:
  - (a) failure to satisfy requirements of Applicable Law;
  - (b) failure to pay fees or fines or arbitration awards; and/or
  - (c) any other reason or circumstance for which immediate action is necessary.

- (b) Whenever summary action pursuant to this Rule is proposed, the Respondent against whom the action is contemplated is to be notified at the earliest possible opportunity as appropriate considering the best interest of the marketplace. Such notice shall be served in accordance with Rule 7.3.5(b) and shall state:
  - (a) the exact action taken or to be taken;
  - (b) the reasons for the action; and
  - (c) the time and date the action has or is to become effective as well as the duration of the action.
- (c) The Respondent may file a notice of appeal filed pursuant to Rule 7.5.1 seeking reinstatement within twenty (20) days after the notice of action is served on the Respondent. Otherwise, the summary action becomes final twenty (20) days after the notice of action is served on the Respondent. Filing of a notice of intent pursuant to this Rule shall not stay the Chief Regulatory Officer's decision to deny access.

7.4.2 Summary Imposition of Fines

- (a) The Compliance Department may summarily impose a fine for each violation against any Participant for:
  - (a) failure to cooperate with the Compliance Department as required by the Rules;
  - (b) failure to make timely and accurate submissions to the Exchange of notices, reports or other information required by the Rules; or
  - (c) failure to keep any books and records required by the Rules.
- (b) The Compliance Department will give notice of any fine imposed that will specify:
  - (a) the violation of the Exchange Rule for which the fine is being imposed;
  - (b) the date of the violation for which the fine is being imposed; and
  - (c) the amount of the fine.
- (c) Within twenty (20) days of the service of the notice of the fine imposed, the Participant must either pay the fine or file a notice of

appeal pursuant to Rule 7.5.1. Unless timely notice of appeal is filed, the fine will become final upon expiration of twenty (20) days after the notice of fine is served on the Participant.

## 7.5 Appeal from Hearing Panel Decisions and Summary Actions

### 7.5.1 Appeal Procedures

- (a) A Respondent found by the Hearing Panel to have violated a Rule or Applicable Law pursuant to Rule 7.3.9 or who is subject to any summary action imposed pursuant to Rule 7.4 may appeal the order or decision within the time permitted in Rule 7.3.9(j) or Rule 7.4, as applicable, by filing a notice of appeal with the Chief Regulatory Officer. The Compliance Department may also appeal any order by a Hearing Panel prior to the order becoming final pursuant to Rule 7.3.9(j). Except for summary suspensions imposed pursuant to Rule 7.4.1, 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:
  - (a) the order or decision was arbitrary, capricious, an abuse of discretion, or not in accordance with the Rules; or
  - (b) the order or decision exceeded the authority or jurisdiction of the Hearing Panel or the Exchange.
- (c) The Chief Regulatory 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 Regulatory Officer and serve on the Compliance Department 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 supporting brief, the appellee must file and serve its brief in opposition with the Compliance Department.
- (d) Within 30 days after the last submission filed, the Board will appoint an Appeals Committee at the recommendation of the Chief Regulatory 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 of the Compliance Department 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 Participants 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 2.6 by serving notice to the Chief Regulatory Officer. Legal counsel, other than the Chief Regulatory 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 Regulatory 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.

#### 7.5.2 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:

- (a) the notice of charges or a summary of the charges;
  - (b) the answer, if any, or a summary of the answer;
  - (c) a summary of the evidence introduced at the hearing or, where appropriate, incorporation by reference of the Investigation Report;
  - (d) 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;
  - (e) an indication of each specific Rule that the Respondent was found to have violated; and
  - (f) 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 Exchange and will not be subject to further appeal within the Exchange.

## **7.6 Rights and Responsibilities After Suspension or Termination**

- 7.6.1 When the Participant's right to access the Exchange, or the association of an Authorized User or Authorized Broker with a Participant, is suspended for a period of twelve (12) months or less, none of its rights (including the right to hold oneself out to the public as a Participant; enter Orders into the Exchange; and receive Participant rates for fees, costs, and charges) will apply during the period of the suspension, except for the right of the Participant, Authorized User or Authorized Broker in question 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 Participant, Authorized User or Authorized Broker in question of its, his, or her obligations under the Rules to perform any Transactions entered into before the suspension, or for any Exchange fees, costs or charges incurred during the suspension. The Exchange may discipline a suspended Participant or Authorized User under this Section VII for any violation of Applicable Law committed by the Participant before, during, or after the suspension.

- 7.6.2 When the Participant's right to access the Exchange, or the association of an Authorized User or Authorized Broker with a Participant, is terminated, all of its rights will terminate, except for the right of the Participant, Authorized User or Authorized Broker in question 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 Participant or Authorized User may only seek to reinstate its right to access the Exchange by filing an application in accordance with Section III of the Rules. The Exchange will not consider the application of a terminated Participant, Authorized User or Authorized Broker if such Participant or Authorized User continues to fail to appear at Disciplinary Actions without good cause, or continues to impede the progress of Disciplinary Actions.
- 7.6.3 A suspended or terminated Participant, Authorized User or Authorized Broker remains subject to the Rules and the jurisdiction of the Exchange for acts and omissions prior to the suspension or termination, and must cooperate in Disciplinary Actions as if the suspended or terminated Participant, Authorized User or Authorized Broker still had the right to access the Exchange, or was still associated with a Participant, as the case may be.

#### **7.7 Notice to the Respondent, the CFTC, and the Public**

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

**SECTION VIII ARBITRATION****8.1 Arbitration Requirement**

- 8.1.1 Participants, Authorized Brokers, Clearing Members and Authorized Users shall arbitrate through the NFA arbitration program all disputes, controversies or claims between or among themselves that relate to or arise out of any Nodal Contract and that are based upon facts and circumstances that occurred at a time when the parties were Participants or Authorized Users.
- 8.1.2 Rule 8.1.1 does not apply to disputes between or among Participants, Authorized Brokers, Clearing Members or Authorized Users in which: (i) such Persons are required by the rules of a Self-Regulatory Organization to submit to the dispute resolution procedures of that Self-Regulatory Organization; or (ii) that such Persons have, by valid and binding agreement, committed to arbitrate or litigate in a forum other than NFA.

**8.2 Arbitration Proceedings**

- 8.2.1 Arbitration proceedings conducted pursuant to Rule 8.1 are administered for Participants through NFA pursuant to the NFA member arbitration rules, as if each Participant, Authorized Broker or Clearing Member that is party to such arbitration were an “NFA Member,” and references in such member arbitration rules to the “Associates” of an “NFA Member” shall mean and include any Authorized User and any individual who is employed by or is an agent of a Participant, Authorized Broker or Clearing Member and who has been authorized to access the Trading Platform under the Rules.
- 8.2.2 To initiate arbitration, a Person shall notify the NFA, either in writing or orally. The NFA shall maintain a record of the receipt of such notice and shall promptly provide such Person with a copy of the member arbitration rules and an Arbitration Claim form. The intent to arbitrate must be received by NFA within two years from the date when the party filing the Arbitration Claim form knew or should have known of the act or transaction that is the subject of the controversy.
- 8.2.3 The party filing a claim shall pay a hearing fee based on the amount claimed in accordance with the member arbitration rules. The arbitrators, in their discretion, may assess the entire fee against any party or divide the fee among any or all parties. Hearing fees shall be paid to NFA in advance of the hearing sessions to which they apply.



**8.3 Penalties**

- 8.3.1 Any failure on the part of a Participant, Authorized Broker, Clearing Member or Authorized User to arbitrate a dispute subject to this Section VIII, or the commencement by any such Person of a suit in any court prior to arbitrating a case subject to this Section VIII, violates the Rules and shall subject such Person to Disciplinary Action pursuant to Section VII.
- 8.3.2 The Exchange may summarily suspend, pursuant to Rule 7.4.1, a Participant that fails to timely satisfy an arbitration award rendered in any arbitration pursuant to this Section VIII.

**SECTION IX MISCELLANEOUS****9.1 Trading by Exchange Officials Prohibited; Misuse of Material, Non-Public Information**

9.1.1 Terms used in this Rule 9.1 and not otherwise defined in the Rules, shall have the meanings set forth in CFTC Regulations 1.3 and 1.59.

9.1.2 (a) No Officer or employee of the Exchange may trade, directly or indirectly, (i) any Nodal Contract traded on or subject to the Rules or any related financial instrument, or (ii) any Nodal Contract or financial instrument where such Exchange Officer or employee has access to material, non-public information concerning such Nodal Contract or financial instrument.

(b) No member of the Board, member of any committee established by the Board, or agent or independent contractor of the Exchange shall trade, directly or indirectly, in any Nodal Contract or financial instrument, on the basis of any material, non-public information obtained in connection with the performance of his or her official duties.

9.1.3 The Chief Regulatory Officer (or, in the case of the Chief Regulatory Officer, the Board) may grant exemptions from the provisions of Rule 9.1.2 to Exchange 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 Exchange Official has no direct or indirect control over Transactions effected by or for the account of the pool;
- (b) service by such Exchange Official as an executor or administrator of an estate;
- (c) service by such Exchange Official in any other fiduciary capacity, such as an officer of a charitable organization, in which such Exchange Official receives no pecuniary benefit from the trading of Nodal Contracts or other financial instruments;
- (d) trading in Nodal 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 Exchange 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 Regulatory Officer (or, in the case of the Chief Regulatory Officer, the Board) may determine.

- 9.1.4 For the avoidance of doubt, participation by an Exchange Official in a retirement plan sponsored by the Exchange shall not be deemed to constitute trading directly or indirectly in a Nodal Contract or financial instrument, notwithstanding such plan's trading of Nodal Contracts or financial instruments.
- 9.1.5 Any Exchange Official that has received an exemption under Rule 9.1.3(b) must:
- (a) furnish to the Exchange (or, in the case of the Chief Regulatory Officer, to the Board) account statements and other documents relevant to the trading activities that are so exempted; and
  - (b) inform the Chief Regulatory Officer (or, in the case of the Chief Regulatory Officer, the Board) within one business day of any material change of information that may affect such Exchange Official's qualification for such exemption.
- 9.1.6 Exchange Officials, agents and independent contractors of the Exchange are prohibited from disclosing material non-public information obtained as a result of their employment, agency relationship or engagement with the Exchange where the Exchange Official, agent or independent contractor expected or should have reasonably expected that the information disclosed may assist a Person in trading any Nodal Contract, any Nodal Contract traded on another designated contract market or other market, or any related underlying commodity or security.

## **9.2 Market Data**

- 9.2.1 Each Participant, 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 Exchange owns and shall retain all right, title and interest in and to the Exchange, 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) trade mark, (c) service mark, (d) trade secret, (e) trade name, (f) data or database rights, (g) design rights, (h) moral rights, (i) inventions, whether or not capable or 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 Exchange and all other related proprietary rights of the Exchange 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, the “**Proprietary Information**”). Each Participant, 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 Exchange. Each Participant 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 Exchange or the Proprietary Information. Each Participant further agrees to and to 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 Exchange or any Proprietary Information.

- 9.2.2 Notwithstanding any other provision of this Rule 9.2, each Participant retains such rights as it may enjoy under applicable law with respect to market data solely in the form such market data was submitted to the Exchange by such Participant and its Authorized Users.
- 9.2.3 Subject to the provisions of Rule 9.2.2, all Participants, Authorized Users and other Persons affiliated with either of the foregoing hereby acknowledge and agree that the Exchange is the owner of all rights, title and interest in and to all intellectual property and other proprietary rights (including all copyright, patent, trademark or trade secret rights) in market data, and all derivative works based thereon, and further agree not to distribute, create derivative works based on, or otherwise use or commercially exploit market data and any such derivative works, provided that Participants, Authorized Users and such other Persons may use market data for their own internal business purposes. Without limiting the generality of the foregoing, Participants, Authorized Users and other Persons affiliated with any of the foregoing may not distribute, sell or retransmit market data Exchange to any third party.
- 9.2.4 Each Participant hereby grants the Exchange a non-exclusive, perpetual, freely transferable, world-wide and royalty-free license to use, distribute, sub-license, disclose and sell market data, in any manner, media and jurisdiction, for the benefit of the Exchange and/or its Affiliates; provided that, except as may otherwise be required by law or permitted by Rule 2.8 or in any written agreement between the Exchange and such Participant, the Exchange shall not disclose market data other than on an aggregated basis that does not directly or indirectly identify individual Participants.

### 9.3 Recording of Communications

The Exchange or the Regulatory Services Provider may record conversations and retain copies of electronic communications between Exchange Officials and Participants, their Authorized Users or other agents. Any such recordings may be retained by the Exchange or the Regulatory Services Provider in such manner and for such periods of time as the Exchange may deem necessary or appropriate, including as may be required by Applicable Law.

### 9.4 Confidentiality

Except as provided in Rule 9.2, all information provided by a Participant to the Exchange shall be held in confidence and shall not be made known to any other Person except as follows:

- (a) with the consent of the Participant providing such information;
- (b) to a government agency or the regulatory authority of any foreign jurisdiction, if the Exchange is legally required to do so by such foreign authority;
- (c) to the Clearing House and, if applicable, to the Participant's Clearing Member;
- (d) subject to appropriate confidentiality requirements, to any Person providing services to the Exchange, including but not limited to the Regulatory Services Provider;
- (e) to Affiliates of the Exchange, the Board, any committee, Exchange Officials, attorneys and auditors, and to agents and independent contractors that have been engaged by the Exchange who require such information in connection with the discharge of their duties to the Exchange; and
- (f) as otherwise permitted under the Rules and the Participant Agreement.

### 9.5 Force Majeure

Notwithstanding any other provision of the Rules, the Exchange shall not be obligated to perform its obligations under the Rules or any agreement with a Participant, or to compensate any Person for losses occasioned by any delay or failure of performance, to the extent a delay or failure of performance is the result of circumstances that the Exchange determines, in its sole discretion, may have an adverse effect upon the functions and facilities of the Exchange, including, but not limited to, acts of God, fire or other natural disasters, bomb threats, acts of terrorism or war or severely inclement weather.

## **9.6 Extension or Waiver of Rules**

The Exchange may, in its sole discretion, waive, or extend the time period for performing, any act or acts designated by the Rules, but only to the extent such waiver or extension is not inconsistent with Applicable Law.

## **9.7 Notice and Effect of Amendment, Repeal or New Rule**

9.7.1 The Exchange may, in compliance with the CEA and CFTC Regulations, amend or repeal any Rule and/or adopt new Rules. The Exchange will publish a notice with respect to each amendment or repeal of any Rule or adoption of any new Rule at the time the Exchange files such Rules with the CFTC. The Exchange also will publish notice of any action taken to implement any Rule, in a form and manner that is reasonably designed to enable each Participant to become aware of and familiar with, and to implement any necessary preparatory measures to be taken by it with respect to, such addition or modification, prior to the effective date thereof. For purposes of this Rule 9.7, it will be sufficient (without limiting the discretion of the Exchange as to any other reasonable means of communication) if notice is published on the Exchange's website.

9.7.2 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 the Exchange (regardless of when any such Person became subject to the Exchange's jurisdiction) and all contracts (regardless of whether any such contract was entered into before, on or after such effective date).

## **9.8 Signatures**

Rather than rely on an original signature, the Exchange 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.

## **9.9 Governing Law; Legal Proceedings**

9.9.1 The Rules, and the rights and obligations of the Exchange and Participants 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.

9.9.2 Any action, suit or proceeding against the Exchange, its officers, directors, limited liability company members, employees, 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 Borough of Manhattan in the City of New York. Each Participant 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.

- 9.9.3 In the event that a Participant or an Affiliate of such Participant who fails to prevail in a lawsuit or other legal proceeding instituted by such Participant or such Affiliate against (i) the Exchange or (ii) any Affiliate of the Exchange or any of their respective officers, directors, equity holders, employees, agents, or any member of any committee, and related to the business of the Exchange, such Participant shall pay to the Exchange all reasonable expenses, including attorneys' fees, incurred by the Exchange in the defense of such proceeding. This Rule 9.9.3 shall not apply to Exchange disciplinary actions, appeals thereof, or an instance in which the Board has granted a waiver of the provisions hereof.

## **9.10 LIMITATION OF LIABILITY; NO WARRANTIES**

- 9.10.1 PARTICIPANT'S USE OF THE SERVICES, THE SYSTEM, THE NODAL PROPERTY AND ANY OTHER INFORMATION AND MATERIALS PROVIDED BY NODAL, IS AT PARTICIPANT'S OWN RISK, AND THE SERVICES, THE NODAL PROPERTY AND ANY OTHER INFORMATION AND MATERIALS PROVIDED BY NODAL HEREUNDER ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, BY STATUTE, COMMON LAW OR OTHERWISE INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. NODAL DOES NOT GUARANTEE THAT (i) THE NODAL PROPERTY OR THE SERVICES WILL OPERATE IN AN ERROR FREE, SECURE OR UNINTERRUPTED MANNER, OR (ii) ANY INFORMATION OR MATERIALS PROVIDED BY NODAL OR ACCESSIBLE THROUGH THE NODAL PROPERTY WILL BE ACCURATE, COMPLETE, RELIABLE, OR TIMELY, OR (iii) THE NODAL PROPERTY OR ANY ASPECTS OF THE SERVICES WILL BE FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS. NODAL SHALL HAVE NO LIABILITY FOR THE CREDITWORTHINESS OF ANY PARTICIPANT OR FOR THE ACTS OR OMISSIONS OF ANY AUTHORIZED BROKER UTILIZING THE SERVICES OR ANY ASPECT OF THE SERVICES OR SYSTEM. PARTICIPANT IS SOLELY RESPONSIBLE FOR THE SECURITY AND INTEGRITY OF THE PARTICIPANT TECHNOLOGY. PARTICIPANT ACKNOWLEDGES THAT PARTICIPANT'S

ACCESS TO THE SYSTEM AND THE SERVICES IS INTERNET-BASED AND THAT NODAL HAS NO CONTROL OVER THE INTERNET OR PARTICIPANT'S CONNECTIONS THERETO. PARTICIPANT FURTHER ACKNOWLEDGES THAT THE INTERNET, COMPUTER NETWORKS, AND COMMUNICATIONS LINKS AND DEVICES NECESSARY TO ENABLE PARTICIPANT TO ACCESS AND USE THE SYSTEM AND THE SERVICES ARE INHERENTLY INSECURE AND VULNERABLE TO ATTEMPTS AT UNAUTHORIZED ENTRY AND THAT NO FORM OF PROTECTION CAN ENSURE PARTICIPANT'S DATA, HARDWARE, OR SOFTWARE OR THE SYSTEM OR OTHER NODAL PROPERTY WILL BE FULLY SECURE. FURTHERMORE, NODAL SHALL HAVE NO OBLIGATION TO MONITOR OR VERIFY ANY INFORMATION DISPLAYED THROUGH THE SYSTEM.

9.10.2 EXCLUDING ANY LIABILITY FOR SUCH PARTY'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, AND EXCLUDING, IN THE CASE OF PARTICIPANT, PARTICIPANT'S INDEMNIFICATION OBLIGATIONS PURSUANT TO SECTION 10 OF THE PARTICIPANT AGREEMENT, EACH PARTY AGREES THAT IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, LOSS OF REVENUE, LOSS OR CORRUPTION OF DATA, TRADING LOSSES OR BUSINESS INTERRUPTION AND THE LIKE, ARISING IN ANY MANNER WHATSOEVER OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY USE (WHETHER OR NOT AUTHORIZED) OR INABILITY TO USE THE NODAL PROPERTY OR ANY OTHER INFORMATION OR MATERIALS PROVIDED TO PARTICIPANT BY NODAL OR ACCESSIBLE THROUGH THE SERVICES, INCLUDING THE ACCURACY, COMPLETENESS, RELIABILITY, TIMELINESS, QUALITY, SECURITY, PERFORMANCE, OR PRICING OF THE SERVICES OR ANY FAILURES, DEGRADATIONS OR DELAYS ASSOCIATED THEREWITH, REGARDLESS OF WHETHER SUCH DAMAGES ARISE IN TORT, CONTRACT, OR OTHERWISE, AND EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, IF A COURT OR OTHER TRIBUNAL OF COMPETENT JURISDICTION SHOULD FIND NODAL LIABLE FOR ANY LOSS, DAMAGE OR EXPENSES UNDER THIS AGREEMENT, THE AGGREGATE LIABILITY OF NODAL UNDER THE AGREEMENT, REGARDLESS OF THE FORM OF ACTION, SHALL IN NO EVENT EXCEED THE GREATER OF (i) \$10,000 AND (ii) THE TOTAL COMMISSIONS, FEES, OR OTHER AMOUNTS (EXCLUDING ANY APPLICABLE TAXES AND DUTIES) PAID TO NODAL BY PARTICIPANT DURING THE SIX



MONTHS PRECEDING THE DATE ON WHICH THE EVENTS GIVING RISE TO SUCH LIABILITY AROSE.

- 9.10.3 ANY CLAIM FOR REDRESS OR DAMAGES HEREUNDER SHALL BE FILED IN A COURT OF COMPETENT JURISDICTION WITHIN TWO (2) YEARS OF THE DATE ON WHICH SUCH CLAIM ALLEGEDLY AROSE. FAILURE TO INSTITUTE LITIGATION WITHIN SUCH TIME PERIOD SHALL BE DEEMED TO BE A WAIVER OF SUCH CLAIM AND THE CLAIM SHALL BE OF NO FURTHER FORCE OR EFFECT. THE ALLOCATIONS OF LIABILITY IN THIS RULE 9.10 REPRESENT THE AGREED AND BARGAINED FOR UNDERSTANDING OF THE PARTIES, AND EACH PARTY ACKNOWLEDGES THAT THE OTHER PARTY'S RIGHTS AND OBLIGATIONS HEREUNDER REFLECT SUCH ALLOCATIONS. THE PARTIES AGREE THAT THEY WILL NOT ALLEGE THAT THIS REMEDY FAILS ITS ESSENTIAL PURPOSE.
- 9.10.4 PARTICIPANT FURTHER AGREES THAT THE PROVISIONS OF THE RULES OF THE CLEARING HOUSE LIMITING THE LIABILITY OF THE CLEARING HOUSE TO ITS MEMBERS SHALL APPLY TO PARTICIPANT AS FULLY AS IF PARTICIPANT WERE A MEMBER OF THE CLEARING HOUSE MUTATIS MUTANDIS.

**APPENDIX A –  
CONTRACT SPECIFICATIONS**

The Contract Specifications for all Nodal Contracts are available at <http://www.nodalexchange.com>. The Contract Specifications form a part of these Rules and are incorporated herein by reference.

**APPENDIX B –  
MINIMUM BLOCK SIZES  
FOR NODAL EXCHANGE CONTRACTS**

The minimum sizes for Block Trades on Nodal Contracts are available at [www.nodalexchange.com](http://www.nodalexchange.com).

**APPENDIX C –  
REPORTING LEVELS, POSITION ACCOUNTABILITY LEVELS AND  
POSITION LIMITS**

Reporting levels, position accountability levels and position limits for Nodal Contracts are available at [www.nodalexchange.com](http://www.nodalexchange.com).

Power contracts must be in compliance with spot month position limits as of the close of trading on the trading day preceding the first day of the calendar month covered by the expiry. The Henry Hub natural gas contract must be in compliance with spot month positions at the close of trading three business days prior to the last day of trading in the NYMEX Henry Hub (NG) contract.