

# 7.3

Réglementation des bourses, des  
chambres de compensation, des OAR et  
d'autres entités réglementées

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### 7.3. RÉGLEMENTATION DES BOURSES, DES CHAMBRES DE COMPENSATION, DES OAR ET D'AUTRES ENTITÉS RÉGLEMENTÉES

#### 7.3.1 Consultation

##### **Tradition SEF, Inc., tpSEF Inc., 360 Trading Networks Inc., ICE Swap Trade, LLC, trueEX LLC et Bloomberg SEF LLC – Demandes de dispenses de reconnaissance à titre de bourse et des obligations des Règlements 21-101 et 23-101**

L'Autorité des marchés financiers (l'« Autorité ») publie les demandes de dispense (i) de reconnaissance à titre de bourse en vertu de la *Loi sur les instruments dérivés*, RLRQ, c. I-14.01, et (ii) des obligations du *Règlement 21-101 sur le fonctionnement du marché* et du *Règlement 23-101 sur les règles de négociation*, respectivement déposées par Tradition SEF, Inc., tpSEF Inc., 360 Trading Networks Inc., ICE Swap Trade, LLC, trueEX LLC et Bloomberg SEF LLC.

L'Autorité invite toutes les personnes intéressées à lui présenter leurs observations relativement à ces demandes.

(Les textes sont reproduits ci-après.)

#### **Commentaires**

Toute personne désirant soumettre des commentaires est invitée à les faire parvenir par écrit, au plus tard le 28 décembre 2016, à :

M<sup>e</sup> Anne-Marie Beaudoin  
Secrétaire générale  
Autorité des marchés financiers  
800, square Victoria, 22<sup>e</sup> étage  
C.P. 246, tour de la Bourse  
Montréal (Québec) H4Z 1G3  
Télécopieur : 514 864-6381  
Courrier électronique : [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

#### **Information complémentaire**

Pour de plus amples renseignements, on peut s'adresser à :

Corinne Lemire  
Analyste expert aux OAR  
Direction principale de l'encadrement des structures de marché  
Autorité des marchés financiers  
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##### **Bourse de Montréal Inc. (la « Bourse ») – Adoption des articles 4220 à 4224 de la Règle Quatre et abrogation de l'article 6389A de la Règle Six de la Bourse – Introduction d'un processus d'amendes pour infractions mineures**

L'Autorité des marchés financiers publie le projet, déposé par la Bourse, d'adoption des articles 4220 à 4224 de la Règle Quatre et l'abrogation de l'article 6389A. La Bourse a entrepris ce projet afin d'introduire

un processus d'amendes pour infractions mineures. Par ce projet, la Bourse vise à améliorer l'efficacité, la prévisibilité et la cohérence de la mise en application des Règles de la Bourse et accélérer le délai de traitement de certains dossiers. L'imposition d'amendes pour infractions mineures est un processus de mise en application alternatif à celui du dépôt d'une plainte disciplinaire.

### **Commentaires**

Les personnes intéressées à soumettre des commentaires peuvent en transmettre une copie, au plus tard le 23 décembre 2016, à :

M<sup>e</sup> Anne-Marie Beaudoin  
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### BY EMAIL & COURIER

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November 14, 2016

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Dear Mme. Lemire and Mr. Boisvert,

**Re: Tradition SEF, Inc. – Application for Exemptions under section 86 the *Derivatives Act* (Québec) and Related Exemptions**

We are counsel to, and hereby make this application to the *Autorité des marchés financiers* (the “AMF”) on behalf of Tradition SEF, Inc., (“TSEF” or “Tradition SEF”), for a decision of the AMF pursuant to section 86 of the *Derivatives Act* (Québec) (the “Act”) exempting TSEF from the requirement to be recognized as an exchange under section 12 of the Act and from the application of *Regulation 21-101 respecting Marketplace Operation* (“**Regulation 21-101**”) pursuant to section 15.1 of Regulation 21-101, and *Regulation 23-101 respecting Trading Rules* (“**Regulation 23-101**”) pursuant to section 12.1 of Regulation 23-101 (collectively, the “Requested Relief”).

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### BACKGROUND TO TSEF

TSEF is a corporation organized under the laws of the State of Delaware in the United States (“U.S.”) with its head office located in New York, New York, U.S.

NEW YORK

TSEF is a wholly-owned indirect subsidiary of Compagnie Financière Tradition SA (collectively with its subsidiaries “CFT” or the “Tradition Group”), a public limited company existing under the laws of Switzerland and listed for trading on the SIX Swiss

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Exchange. Together with its subsidiaries, CFT is one of the world's largest interdealer brokers of financial products. CFT facilitates transactions between financial institutions and other professional traders in respect of money market products, bonds, interest rate, currency and credit derivatives, commodities, commodity derivatives, energy, energy derivatives, equities, equity derivatives, interest rate futures and index futures.

TSEF was granted temporary registration by the U.S. Commodity Futures Trading Commission (the "CFTC") on September 25, 2013 to operate as a swap execution facility (a "SEF") and permanent registration from the CFTC on January 22, 2016. In Québec, TSEF was granted a temporary exemption order of the AMF on October 2, 2013 exempting TSEF from the requirement to be recognized as an exchange under section 12 of the Act and the requirements under Regulation 21-101 and Regulation 23-101.

TSEF operates several electronic trading and voice and hybrid intermediated platforms operating as separate order books, each of which serve the different market segments set out below (referred to individually as a "Platform" and collectively as "Platforms"). The Platforms support both request for quote ("RFQ") and a central limit order book. Cleared transactions are cleared through LCH. Clearnet Limited, ICE Clear Credit LLC, Japan Securities Clearing Corporation and the Chicago Mercantile Exchange. TSEF also supports trading in non-cleared bilateral swaps.

TSEF offers electronic, voice and hybrid trade facilitation and execution services via the Platforms for transactions in various swaps (as such term is defined in *The Dodd-Frank Wall Street Reform and Consumer Protection Act* (U.S.) (the "Dodd-Frank Act"), including, but not limited to, Canadian dollar interest rate swaps, U.S. dollar interest rate swaps, foreign exchange derivatives (foreign exchange options, non-deliverable forwards, foreign exchange swaps) in various currencies, equity derivatives, credit derivatives, and commodity and energy derivatives (collectively, the "Offered Services").

Product listings and specifications for the various products are listed on TSEF's website at [www.traditionsef.com](http://www.traditionsef.com). The product listings and specifications describe the applicable terms and references, and whether each product is required to be cleared. The swaps and options offered for trading on TSEF may be physically or financially settled, depending on product. Each product has its own specification, as described on TSEF's website, and modes of execution, which include TSEF's electronic/hybrid Trad-X Platform for interest rate swaps ("IRS"), electronic/hybrid StreamGlobal Platform for credit swaps and support voice execution and execution portals for equities and commodities. IRS include CFTC regulated IRS products, including vanilla rate products in multiple currencies, spreads, butterflies, spread-over treasury, CME/LCH switch trades and a number of other package transactions. The credit category includes a wide variety of credit derivative swaps, equities encompass a wide variety of equity broad-based security index swaps, and commodities include a wide variety of commodity based swaps, in each case, as defined by the CFTC within the tenets of the Dodd-Frank Act.

TSEF is required to offer, on a non-discriminatory basis, access to, at a minimum Eligible Contract Participants ("ECPs") as defined under section 1a (18) of the *Commodity Exchange Act* (U.S.) (the "CEA"). Customers of swap dealers that meet ECP criteria have the choice of accessing TSEF as "Participants", customers of Broker Firm Participants, customers of swap

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dealers that are Participants, or through various direct-access possibilities using the trading privileges of a Participant or Broker Firm Participant.

In the U.S., trading by persons on the Platform is limited to those persons who are ECPs at the time at which the person enters into a contract. In Québec, TSEF offers the Offered Services to a very narrow category of Québec residents who qualify as “accredited counterparties” within the meaning of section 3 of the Act.

TSEF’s jurisdiction extends to any entity that enters orders or executes transactions on TSEF as set out in Rule 312 of the TSEF Rulebook (the “**Rulebook**,” which is available at <http://www.traditionsef.com/regulatory/filter/rulebook/all/all>, and the rules under the Rulebook referred to as a “**Rule**” and collectively the “**Rules**”). Pursuant to Rule 312, a person who becomes a Participant, Customer, Authorized Trader, or Authorized Broker, or who directly or indirectly accesses TSEF or who initiates, executes or authorizes the execution of any Order or RFQ on or subject to the Rules of TSEF, or acts as Clearing Firm with respect to transactions executed on or subject to the Rules of TSEF, agrees among other things, to become subject to the jurisdiction of TSEF with respect to any and all matters arising from, related to, or in connection with, the status, actions or omissions of such person (as all such terms are defined in the Rulebook). Further, where such person’s trading privileges or ability to access TSEF, are suspended, revoked or terminated, the person remains bound by TSEF’s Rules and applicable law, in each case to the extent applicable to it, and subject to the jurisdiction of TSEF and the relevant clearing house with respect to any and all matters arising from, related to, or in connection with, the status, actions or omissions of such person prior to such suspension, revocation or termination.

Pursuant to the final rulemaking governing SEFs adopted by the CFTC on June 4, 2013 (the “**SEF Rules**”), TSEF is obliged to have requirements governing the conduct of Participants, to monitor compliance with those requirements and to discipline Participants, including by means other than exclusion from the marketplace. Given the requirement under the SEF Rules relating to the governing of the conduct of its Participants, TSEF may be considered by the AMF to be an exchange, and as TSEF has Participants located in Québec, it may be considered by the AMF to be carrying on derivatives activities in Québec and is therefore required to be recognized as an exchange pursuant to section 12 of the Act or to be exempted from that recognition requirement pursuant to section 86 of the Act. TSEF has no physical presence in Québec and does not otherwise carry on business in Québec except as described herein. To TSEF’s knowledge, there is no rule or regulation of the CFTC that would require that Participants have an establishment in Québec solely by virtue of their participation on the Platform, be registered with any U.S. governmental body or agency or be admitted as members of a self-regulatory organization or entity other than TSEF.

#### **EXEMPTION FROM THE REQUIREMENT TO BE RECOGNISED AS AN EXCHANGE UNDER SECTION 12 OF THE ACT AND FROM THE REQUIREMENTS UNDER REGULATION 21-101 AND REGULATION 23-101**

As described in Schedule “A” to this application, TSEF is subject to the CEA, including the SEF Rules, as well as oversight from the CFTC. Registration requirements to be met by SEFs such as TSEF in the U.S., its home jurisdiction, are stringent and do take into consideration

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elements such as governance, fees, fair and equitable access, regulation, market operations, systems and technology as well as clearing and settlement, as prescribed by the AMF.

TSEF submits that it does not pose a significant risk to the Québec capital markets that it is subject to an appropriate regulatory and oversight regime in a foreign jurisdiction and that granting the Requested Relief would not be prejudicial to the public interest.

TSEF notes that in the AMF's *Policy Statement Respecting the Authorization of Foreign-Based Exchanges*, No. 2005-PDG-0087 of March 30, 2005 (the "**Policy Statement**"), AMF Staff acknowledge that in the case of foreign-based stock exchanges, "uniform application of the AMF's authorization process for exchanges may involve burdensome and inefficient duplication where a foreign-based exchange is already subject to an equivalent process in its home jurisdiction (the jurisdiction in which the exchange mainly operates), particularly when the measures in place to ensure investor protection are equivalent to those in Québec".

Stringent oversight by the CFTC of TSEF, as well as the sophisticated information systems, regulations and compliance functions that TSEF has adopted pursuant to the SEF Rules will ensure that Québec Participants who have access to the Platform are adequately protected and should allay investor protection and market integrity concerns. TSEF submits that the Policy Statement provides that AMF Staff may recommend that a foreign-based exchange be granted an exemption from recognition if the exchange does not pose significant risk to Québec capital markets and is subject to an appropriate regulatory and oversight regime in a foreign jurisdiction.

TSEF submits that the Offered Services are only available to a very narrow category of Québec Participants who would qualify as "accredited counterparties" within the meaning of section 3 of the Act. From Quebec, TSEF is accessed only by Participants who are appropriately registered, exempt from registration or not required to be registered, as applicable, under Quebec securities laws or would qualify as a "permitted client" (as such term is defined in NI 31-103). Additionally, Quebec applicants are required to make certain representations during the application process on the Tradition SEF Quebec Registration Form, which can be found in the Participation section of Tradition SEF's website at <http://www.traditionsef.com/onboarding/participant/>.

Furthermore, TSEF confirms that it has the power to co-operate fully with the AMF and self-regulatory organizations in the Province of Québec, as set out in detail in Section 14 below, and to provide information and documents with respect to its operations that could be reasonably requested by the AMF.

Based on the foregoing, TSEF seeks an exemption granting the Requested Relief and submits that granting the Requested Relief would not be detrimental to the protection of investors in the Province of Québec and would not be prejudicial to the public interest.

### **AUTHORIZATION**

Enclosed at Schedule "B" to this Application is a certificate of an authorized signatory of TSEF certifying the truth and accuracy of the facts contained herein.

Yours truly,

Enclosures

A handwritten signature in black ink, appearing to read 'Jeffrey Mehan', with a large, stylized flourish at the end.

cc: Scott Fitzpatrick, Tradition SEF, Inc.  
Eric Earnhardt, Tradition SEF, Inc.  
Jeffrey Mehan, Tradition SEF, Inc.  
Scot Halvorsen, Tradition SEF, Inc.  
Simon Romano, Stikeman Elliott LLP



## Schedule "A"

### 1. A) REGULATION OF EXCHANGE IN HOME JURISDICTION

- 1.1 The Dodd-Frank Act amended the CEA to establish a new regulatory framework for swaps. Among other changes to the CEA, the Act established SEFs as a regulated market category, and required that the execution of certain swaps occur on a designated contract market or SEF. On June 4, 2013, the CFTC adopted the final rulemaking governing SEFs. The Dodd-Frank Act was enacted to reduce systemic risk, increase transparency, and promote market integrity within the financial system by, among other things: (a) providing for the registration and comprehensive regulation of swap dealers and major swap Participants; (b) imposing clearing and trade execution requirements on standardized derivative products; (c) creating rigorous recordkeeping and data reporting regimes with respect to swaps, including real-time public reporting; and (d) enhancing the rulemaking and enforcement authorities of the CFTC over all registered entities, intermediaries and swap counterparties.
- 1.2 TSEF is a SEF within the meaning of that term under the CEA, and is accordingly subject to the regulatory supervision by the CFTC, a U.S. federal regulatory agency. Accordingly, TSEF is subject to the CFTC's regulations, guidance, and acceptance practices governing the registration and operation of SEFs. This includes operating under the SEF core principles enumerated by the Dodd-Frank Act and codified into regulation by the CFTC (each a "Core Principle" and collectively the "Core Principles").
- 1.3 TSEF is a SEF within the meaning of that term under the CEA, and is accordingly subject to regulatory supervision by the CFTC. TSEF is obligated under the CEA and the SEF Rules to provide the CFTC with access to all records unless prohibited by law or due to solicitor-client privilege. The CFTC reviews, assesses and enforces TSEF's adherence to the CEA and the regulations thereunder on an ongoing basis, including the SEF core principles relating to the operation and oversight of TSEF's markets, including financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection.

These core principles are summarized below:

#### Core Principle 1 – Compliance with Core Principles

To be registered, and maintain registration as a SEF, the SEF shall comply with the core principles in the Act, and with CFTC regulation.

#### Core Principle 2 – Compliance with Rules

A SEF is expected to: establish and enforce compliance with its rules, including the terms and conditions of the swaps traded or processed on or through it, and any limitation on access to it, establish and enforce trading, trade processing, and

participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to provide market Participants with impartial access to the market and to capture information that may be used in establishing whether rule violations have occurred, establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades, and provide by its rules that when a swap dealer or major swap Participant enters into or facilitates a swap that is subject to the mandatory clearing requirement of section 2(h) of the Act, the swap dealer or major swap Participant shall be responsible for compliance with the mandatory trading requirement under the Act.

#### Core Principle 3 – Swaps not readily susceptible to Manipulation

The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.

#### Core Principle 4 – Monitoring of Trading and Trade Processing

SEFs are expected to establish and enforce rules or terms and conditions defining, or specifications detailing:

- (1) Trading procedures to be used in entering and executing orders traded on or through the facilities of the SEF;
- (2) Procedures for trade processing of swaps on or through the facilities of the SEF; and
- (3) Monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

#### Core Principle 5 – Ability to Obtain Information

SEFs are expected to establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in section 5h of the Act, provide the information to the CFTC on request and have the capacity to carry out international information-sharing agreements.

#### Core Principle 6 – Position Limits or Accountability

To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, a SEF is expected to establish and enforce as is necessary and appropriate position limitations or position limits which are set at a level no higher than the CFTC limits, and monitor positions established on or through the SEF for compliance with the limit set by the CFTC and the limit, if any, set by the SEF.

#### Core Principle 7 – Financial Integrity of Transactions

SEFs must establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the SEF, including the clearance and settlement of the swaps.

Core Principle 8 – Emergency Authority

A SEF must adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the CFTC, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap.

Core Principle 9 – Timely Publication of Trading Information

SEFs must make public timely information on price, trading volume and other trading data on swaps to the extent prescribed by the CFTC and have the capacity to electronically capture and transmit trade information with respect to transactions executed on the facility.

Core Principle 10 – Record Keeping and Reporting

SEFs must maintain records of all activities relating to the business of the facility, including a complete audit trail, report to the CFTC such information as the CFTC determines to be necessary or appropriate for the CFTC to perform the duties of the Commission under the Act and maintain any such records relating to swaps open to inspection and examination by the Securities and Exchange Commission.

The CFTC shall adopt data collection and reporting requirements for SEFs that are comparable to corresponding requirements for derivatives clearing organizations and swap data repository (“SDR”).

Core Principle 11 – Antitrust Considerations

Unless necessary or appropriate to achieve the purposes of the Act, SEFs shall not: Adopt any rules or take any actions that result in any unreasonable restraint of trade, or impose any material anticompetitive burden on trading or clearing.

Core Principle 12 – Conflicts of Interest

SEFs shall: Establish and enforce rules to minimize conflicts of interest in its decision-making process and establish a process for resolving the conflicts of interest.

Core Principle 13 – Financial Resources

SEFs are required to have adequate financial, operational, and managerial resources to discharge the responsibilities of the SEF. The financial resources of a SEF are required to exceed the total amount that would enable the SEF to cover its operating costs for a one-year period, as calculated on a rolling basis.

Core Principle 14 – System Safeguards

SEFs are required to:

- Establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls, procedures and automated systems that are reliable and secure, and have adequate scalable capacity;

- Establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the SEFs; and
- Periodically conduct tests to verify that the backup resources of the swap execution facility are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance and maintenance of a comprehensive and accurate audit trail.

#### Core Principle 15 – Designation of Chief Compliance Officer

SEFs must designate an individual to serve as Chief Compliance Officer (the “CCO”).

- 1.4 TSEF is obligated under the CEA and the SEF Rules to provide the CFTC with access to all records unless prohibited by law or such records are subject to solicitor-client privilege. The CFTC reviews, assesses and enforces TSEF’s adherence to the CEA and the regulations thereunder on an ongoing basis, including the SEF Core Principles relating to the operation and oversight of TSEF’s markets, including financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection.
- 1.5 The CEA, the SEF Rules and the Core Principles reflect standards set by the International Organization of Securities Commissions (“IOSCO”).

*Authority of the Foreign Regulator – The Foreign Regulator has the appropriate authority and procedures for oversight of TSEF. This includes regular, periodic oversight reviews of TSEF by the Foreign Regulator.*

- 1.6 The CFTC has been charged with administering and enforcing the CEA. Accordingly, the CFTC is the U.S. government agency that has direct regulatory and oversight responsibility over SEFs. To implement the CEA, the CFTC has promulgated regulations and guidelines (the “CFTC Regulations”) that further interpret the Core Principles and govern the conduct of U.S. SEFs, such as TSEF. The CFTC monitors trading on TSEF and receives daily transaction and other reports from TSEF. The CFTC also undertakes periodic in-depth audits or “rule reviews” of TSEF’s compliance with certain of the Core Principles.
- 1.7 Further, TSEF has added the following provision to its Compliance and Surveillance Manual:

#### *1.2.2 Canadian Regulations*

The Ontario Securities Commission (“OSC”) has granted TSEF permanent relief from the requirement to be recognized as an exchange in Ontario and the AMF has granted temporary relief from the requirement to be recognized as an exchange in Quebec. Both the OSC and the AMF require TSEF to provide documentation regarding Canadian Participants’ trading activity on a periodic basis throughout the year. The OSC and AMF also require TSEF to furnish quarterly financial statements and copies of any documents filed with CFTC. These reports will be prepared by the

Surveillance Officer (the “SO”) and Chief Financial Officer (the “CFO”) in formats suggested by the OSC and AMF and reviewed by the CCO, CFO, CAO, as appropriate. Specific reports provided to the CFTC include:

- (1) Daily activity files containing data surrounding all trading activity on TSEF.
  - (2) Quarterly financial statements (which are also filed with the AMF).
  - (3) Annual compliance review and report.
- 1.8 TSEF is required to demonstrate its compliance with the Core Principles which are applicable to all U.S. SEFs.
- 1.9 As a self-regulatory organization (a “SRO”), TSEF has a robust surveillance and compliance function to review the trading activity on the SEF and to enforce the Rulebook, which Rulebook is constructed to ensure TSEF and the Participants adhere to the Core Principles and other CFTC regulations. TSEF has engaged the services of the National Futures Association (“NFA”) to assist in the performance of these duties.
- 1.10 TSEF has implemented, and Participants are required to comply with a significant number of rules governing trading pursuant to the Rulebook. The applicable rules are located primarily in Chapter 4 (Obligations of Participants and Customers), Chapter 5 (Trading Practices and Business Conduct) and Chapter 6 (Disciplinary Rules). A copy of the Rulebook is available on TSEF’s website at <http://www.traditionsef.com/assets/Tradition-SEF-Rulebook>.
- 1.11 The Rulebook promotes just and equitable principles of trade. Notably, Rule 514 of the Rulebook prohibits Participants from engaging in “conduct which is inconsistent with just and equitable principles of trade”. In addition, Rules 514, 516, and 519 of the Rulebook prohibit Participants from taking fraudulent and manipulative actions, including engaging in fraud, engaging in any scheme to deceive, trick or mislead, and engaging in dishonourable or dishonest conduct.
- 1.12 Market regulation is being conducted under the supervision of the CCO by TSEF’s Market Regulation Department, which includes a full-time SO, and a market operations and trade support function, is supplemented by a Regulatory Services Agreement with NFA. The NFA provides daily surveillance and activity reports to TSEF, which assist TSEF in performing oversight under Core Principles 2, 4, 5, 6, and 7. Details of TSEF’s market regulation procedures, including in respect of conflicts of interests, are contained in the Compliance and Surveillance Manual. TSEF’s agreement with NFA provides for co-ordinated monitoring and enforcement under the Rulebook, the Core Principles and CFTC Regulations.
- 1.13 The NFA reports possible breaches and infractions to TSEF, which will determine in its capacity of self-regulatory organization whether the CFTC needs to be informed of the activity in question.

- 1.14 TSEF submissions to the NFA are daily files that include all transaction details and electronic (non-voice) orders for SEF order books and Platforms. Static data relating to all transaction counterparties, such as executing firms, clearing members and traders is included in the daily file submission. The NFA performs automated surveillance reviews of SEF data to monitor for violations such as (but not limited to) front-running, wash trades and money-passes. NFA also performs review of voice communications to ensure compliance with voice audit trail requirements. The NFA provides TSEF with reports of flagged trades which they believe requires review by our SO as they occur. The NFA also provides TSEF with a monthly summary report depicting the number of exceptions by category each month.

## **2. IOSCO PRINCIPLES**

- 2.1 IOSCO Principles – To the extent it is consistent with the laws of the foreign jurisdiction, TSEF adheres to the standards of the IOSCO including those set out in the “Principles for the Regulation and Supervision of Commodity Derivatives Markets” (2011).
- 2.2 TSEF adheres to the standards of IOSCO by virtue of the fact that they must comply with the CEA and CFTC Regulations, which reflect the IOSCO standards. TSEF is regularly examined by the CFTC and during these examinations the IOSCO standards to which they are subject are taken into account.

## **3. REGULATION OF PRODUCTS**

- 3.1 All swaps offered for trading on TSEF will be self-certified by TSEF or approved by the CFTC. Swaps generally have consistent terms and uniform specifications, and, unlike futures contracts, can be traded on multiple venues. Under CFTC rules, a SEF must submit to the CFTC a determination that each product offered for trading is not readily susceptible to manipulation under the process of Part 40 of the CFTC Regulations and in accordance with Core Principle 3. All Swaps offered to be traded on TSEF are subject to this process and subsequently subject to CFTC approval under this process either via self-certification or following a period of “public” review as may be required by the CFTC. Additionally, certain swaps that have been ruled by the CFTC to be subject to mandatory clearing may be required to trade through the SEF transaction level requirements (i.e. through an Order Book or RFQ method), depending upon whether any SEF has filed that product with the CFTC under the “made available to trade” (“MAT”) process. With respect to MAT determinations submitted to the CFTC for approval, the CFTC makes the final determination that a swap declared to be MAT by a SEF will be deemed MAT, requiring it to trade on a SEF and be subject to the transaction level requirements of CFTC regulations. All products have been self-certified or approved by the CFTC, and to date, no products have been refused by the CFTC.

TSEF does not make a policy of declaring a swap MAT under the CFTC rules pertaining to MAT. Rather, TSEF will list products that other SEFs have made a MAT determination on whether by self-certification or by approval of the CFTC. To date, TSEF’s product listing has reflected the products that TSEF’s predecessor OTC



Inter-dealer broker firms had engaged in. The decision to list these products was made by SEF management. Factors considered in assessing whether a swap is susceptible to manipulation include: a competing SEF declaring a product MAT and receiving subsequent CFTC approval, the liquidity and fundamentals of the commodity, index, currency and rate underlying each swap, the reliability and ubiquity of indexes referenced for cash settlement and the liquidity in futures markets related to the swap.

TSEF has not declared any products MAT. TSEF has listed MAT (and non-MAT) products for trading by self-certification.

The CFTC has not required Tradition to remove any product certifications for failing to comply with SEF Core Principles and CFTC Section Part 40.

*Product Specifications - The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.*

- 3.2 The terms and conditions of all swaps offered for trading on TSEF are in conformity with the usual commercial customs and practices for the trading of such products. TSEF's product listings are certified or approved by the CFTC. The products listed on TSEF can be found categorized by asset class, on <http://www.traditionsef.com/markets/irs/>.
- 3.3 Swaps listed on SEFs have uniform terms and conditions across all SEFs. Trading protocols for MAT swaps are uniform across all SEFs as the protocols are determined by the CFTC's transaction level requirements for MAT swaps. The CFTC has mandated trading protocols for swaps that are MAT and required to trade on SEFs. Those protocols are: Order Book, RFQ and Work-up. Non-MAT swaps ("**Permitted Transactions**"), may be transacted through any means of interstate commerce, which includes such customary methods as negotiation through registered "Introducing Brokers" that are Participants on TSEF who use a variety of transaction formats, including auctions, order books, and OTC equivalents of open-outcry markets to negotiate transactions, or through RFQ functions. Swap counterparties are granted more latitude in trading swaps that are not MAT and thereby subject to the MAT trading protocols. TSEF offers a variety of execution methods: fully electronic order books with streamed liquidity, "Hybrid" order books combining electronic and voice negotiated liquidity, auctions, RFQ and voice interaction.

*Risks Associated with Trading Products - TSEF maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on TSEF that may include, but are not limited to, daily trading limits, price limits, position limits, and internal controls.*

- 3.4 In compliance with Core Principle 6, TSEF is required to, as applicable, establish and enforce position limitations or position limits and monitor positions established on or through TSEF for compliance with the limit set by the CFTC and the limit, if any, set by TSEF.

## B) RECOGNITION OR AUTHORIZATION PROCESS OF REGULATOR IN HOME JURISDICTION

### 4. ORGANIZATION

- 4.1 TSEF was incorporated as Tradition Securities and Futures, Inc. on March 15, 1996 in the State of Delaware, U.S., under the Delaware General Corporation Law. Tradition Securities and Futures, Inc. changed its name to "Tradition SEF, Inc." on October 1, 2013. A copy of the constating documents (including corporate by-laws), and all subsequent amendments thereto, as applicable, were previously filed.
- 4.2 TSEF's head office is located at 255 Greenwich Street, 4<sup>th</sup> Floor, New York, New York, 10007.

### 5. OWNERSHIP

- 5.1 TSEF has one common stock issued and outstanding, which is held by Tradition America Holdings Inc. (previously Tradition (North America), Inc.), an operating company within Tradition Group that primarily provides support functions such as accounting, finance, administration, legal and human resources services to members of Tradition Group. Tradition America Holdings, Inc. is wholly-owned subsidiary of Compagnie Financière Tradition SA, the ultimate parent company of the entities within the Tradition Group.

### 6. GOVERNANCE

*The governance structure and governance arrangements of TSEF ensure:*

- (a) fair and meaningful representation on the board of directors and its committees;*
  - (b) appropriate representation by independent Directors on the board of directors and its committees; and*
  - (c) appropriate qualifications, remuneration and limitation of liability for directors and officers.*
  - (d) TSEF has appropriate conflict of interest provisions for all directors, officers, and employees.*
- 6.1 As a corporation, the business of TSEF is subject to the oversight of its Board of Directors (the "**Board**") and is implemented on a day-to-day basis by its management team.
- 6.2 The Board sets high standards for TSEF. Implicit in this philosophy is the importance of sound corporate governance. It is the duty of the Board to serve as a prudent fiduciary for the shareholder and to oversee the management of the business. TSEF's governance structures and processes reflect its commitment to its shareholders and



to the institutions and individuals who rely on TSEF to provide fair and efficient markets in some of the most widely used financial instruments in the global marketplace. TSEF's governance approach also supports TSEF's important role as a SRO, subject to oversight by the CFTC.

- 6.3 The Board has an active role, as a whole and also at the committee level, in overseeing management of TSEF's risks. The Board has three (3) standing Board committees: (1) the Nominating Committee; (2) the Participant Committee; and (3) the Regulatory Oversight Committee (the "**ROC**"). The description and role of the three standing committees is found in Rules 204 through 207 of TSEF's Rulebook (the "**Rulebook**").
- 6.4 A proper balance among the interests of the different persons or companies using the services and facilities of TSEF are achieved, in part, through the requirements relating to composition of the Board and of key committees, including requirements relating to a minimum level of representation of Public Directors and that certain committees be chaired by Public Directors. A "**Public Director**" is defined in the Rulebook as an individual who meets the TSEF's director qualification requirements and who is found, by action of the Board, to have no material relationship with TSEF. Further qualifications and considerations in respect of directors of the Board (the "Directors") are set out in Section 6.8 below. No less than 35% of the Directors on the Board shall be Public Directors. The current TSEF Board consists of three internal Directors and two Public Directors with the Public Directors comprising 40% of the Board.
- 6.5 The Nominating Committee is responsible for: (1) identifying individuals qualified to serve on the Board consistent with the criteria that the Board requires and any composition requirement that the CFTC promulgates; and (2) administering a process for the nomination of individuals to the Board. The Nominating Committee is comprised of three directors of TSEF, two of whom are Public Directors, and is chaired by a Public Director. At least 51% of the directors on the Nominating Committee shall be public directors.
- 6.6 The Participant Committee is responsible for: (1) determining the standards and requirements for initial and continuing eligibility of Participants (as defined below); (2) reviewing appeals of staff denials of Participant applications; and (3) approving rules that would result in different categories or classes of Participants receiving difference levels of access to TSEF. The Participant Committee is comprised of three Directors, two of whom are Public Directors. At least 35% of the directors on the Participant Committee shall be Public Directors.
- 6.7 The ROC is responsible for the oversight of TSEF's regulatory program on behalf of the Board. The ROC makes such recommendations to the Board that will, in its judgment, best promote the interests of TSEF. The ROC is comprised of two Public Directors and requires that its membership be composed entirely of Public Directors. The ROC prepares an annual report describing the self-regulatory program,

expenses, staffing, investigations and disciplinary actions and performance of the disciplinary committees, panels and the CCO of TSEF. The ROC has authority to:

- (a) monitor the regulatory program of TSEF for sufficiency, effectiveness, and independence; and
- (b) oversee all facets of the regulatory program, including:
  - i. 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,
  - ii. review the size and allocation of the regulatory budget and resources, and the number, hiring, termination, and compensation of regulatory personnel,
  - iii. supervise the CCO,
  - iv. recommending changes that would ensure fair, vigorous, and effective regulation, and
  - v. review all regulatory proposals prior to implementation and advising the Board as to whether and how such changes may impact regulation. The structure and duties of the ROC have been implemented. The ROC meets quarterly with the CCO, at a minimum, as required by CFTC regulation 37.1501(c)(1)(iii).

- 6.8 Directors are nominated by the Nominating Committee and appointed by the TSEF's Board in accordance with TSEF's by-laws (the "**By-laws**"). The Nominating Committee of the Board is responsible for evaluating how to maintain the appropriate expertise, industry knowledge and skills to oversee TSEF's complex business. The Board seeks Directors from diverse professional backgrounds and expertise. The qualifications of Directors are set out in TSEF's by-laws and Rule 203 of the Rulebook. Additionally, when considering candidates for the Board, the Nominating Committee considers the entirety of each candidate's credentials. Candidates are evaluated for their expertise, experience, ethics, independence, commitment to enhancing shareholder value, understanding of TSEF's business and lack of material conflicts of interest. Directors elected to the Board have open access to senior management and, as appropriate, to TSEF's outside advisors. This access enables Directors to gather input from a diverse pool of market Participants, employees, and advisors. TSEF believes its leadership structure provides a well-functioning and effective balance between management leadership and appropriate safeguards and oversight by Public Directors. To qualify as a Public Director, an individual must be found, by an action of the Board, to have no material relationship with TSEF. The Board must make such finding upon the nomination or appointment of the Director. A "material relationship" is one that could reasonably be expected to

affect the independent judgement or decision making of the Director. Further, a person shall be considered to have a “material relationship” with TSEF in certain enumerated circumstances prescribed by Rule 201(e), which include a one year look-back for certain relationships with TSEF or its affiliates. Further, pursuant to the By-laws, each Director shall be of good repute and, where applicable, have sufficient expertise in financial services and risk management and shall satisfy all fitness standards and otherwise meet all the requirements to serving as a director of a SEF under the CEA and regulations of the CFTC thereunder, including that the director is not subject to a statutory disqualification under section 8a(2) or 8a(3) of the CEA and does not have a history of disciplinary offenses as defined in 17 C.F.R. §1.63(a)(6).

- 6.9 In compliance with Core Principle 15, the CCO has been appointed by the Board and been charged with the responsibility of (a) establishing and administering the policies and procedures of TSEF to ensure compliance with the Core Principles (as defined below), the CEA, and the CFTC Regulations, (b) establishing procedures for the remediation of non-compliance issues, and (c) preparation and submission of TSEF’s annual report to the CFTC describing the compliance of TSEF with the CEA and the policies, procedures, code of ethics and conflict of interest policies of TSEF. The CCO reports directly to the Board of TSEF and meets with the ROC at least quarterly.
- 6.10 The rules, policies and activities of TSEF are designed and focused on ensuring that TSEF maintains best practices and fulfils its public interest mandate. TSEF operates on a basis consistent with applicable laws and regulations, and best practices of other SEFs.
- 6.11 As discussed in Section 6.8, to serve as a Director or officer of TSEF, individuals need to meet the qualifications as outlined in Rule 203 of the Rulebook. Rule 203(b) of the Rulebook prohibits individuals from serving as a Director or officer if they meet certain criteria, including, if the individual has committed a disciplinary offense (within the five prior years), is currently suspended from trading on a SEF, is currently subject to an agreement with the CFTC or SRO not to apply for registration with the CFTC or for membership in the SRO, or if the individual is currently, or within the past three years, subject to a revocation or suspension of registration by the CFTC. Additionally, and as mentioned above, Directors and officers of TSEF are subject to and required to comply with the terms of the Compliance and Surveillance Manual and the Code of Conduct. Further, to qualify as a Director, consideration is given to depth of industry experience, length of time each individual has held the same office or position, the Director’s other business affiliations in the derivatives and securities industry, relevant experience for any committees on which they may serve, and the Director’s regulatory history, specifically in view of a description of the matters outlined in this paragraph.
- 6.12 Members of TSEF’s management team are recruited for their particular position based upon their skills and expertise. The individual goals and performance of members of the management team are annually assessed by such member’s direct

manager as part of TSEF's performance management process. The qualifications applicable to Directors in Rule 203 of the Rulebook extend also to officers of TSEF. Remuneration for TSEF affiliated directors and officers are based on the competitive market rates for their respective roles within TSEF. Further, under the By-laws, the compensation of Public Directors and all other non-executive directors shall not be linked to the business performance of TSEF.

- 6.13 Each Director and officer of TSEF is entitled to indemnification relating to TSEF or otherwise relating to Tradition Service Holding S.A. pursuant to Rules 201(d) and 202(d) of the Rulebook. In particular, each of TSEF's Directors and Officers are entitled to full indemnification permitted by law pursuant to the TSEF Certificate of Incorporation and the Tradition SEF Bylaws, respectively, in regards to all matters relating to TSEF or otherwise relating to Tradition Americas Holdings Inc.
- 6.14 In compliance with Core Principle 12, TSEF's rules are constructed to minimize conflicts of interest in decision making. As set out in Rule 209 of the Rulebook, any person who has a "material conflict of interest" regarding their position is prohibited from participating in deliberations or votes on matters affecting their personal interest. The use and disclosure of non-public or conflicted information for personal gain by Board members, Committee members or TSEF personnel is limited by Rule 210 of the Rulebook. In addition, the ROC is made up entirely of Public Directors who, as described above, are charged with overseeing TSEF's regulatory program on behalf of the Board. The ROC assists in promoting policies and procedures aimed at minimizing actual and potential conflicts of interest.
- 6.15 Directors are required to (a) act in the best interests of TSEF, (b) disclose any potential for the Director to receive any private benefit in connection with a matter being presented to the Board, (c) not use their positions as Directors for their personal benefit and to preserve the confidentiality of information provided them, and (d) to preserve the confidentiality of information provided to them.
- 6.16 TSEF has adopted a Compliance and Surveillance Manual and a Code of Conduct that apply to all employees and which address actual and potential conflicts of interest. All Tradition personnel are required to certify that they have read the Compliance and Surveillance Manual and verify that they have done so by signing a copy. Employees are also required to certify on an annual basis that they have received and agree to abide by the provisions of the Code of Conduct.
- 6.17 TSEF believes that the combination of the Rulebook, the Compliance and Surveillance Manual, and the Code of Conduct work to appropriately mitigate conflicts of interest and provides appropriate policies and processes to address potential and actual conflicts of interests.
- 6.18 In addition to the rules above, the CCO is required to act under the authority granted to him or her to identify potential conflicts of interest and eliminate those conflicts if possible. Where it is not possible to eliminate the conflict of interest, the CCO is required to manage the conflict. The available methods for identifying conflicts include: formal committees, special audits, studying industry best practices,

and education of personnel. Management of identified conflicts could include the establishment of internal committees to review business conduct on an ongoing basis, creation of new and/or enhanced supervisory procedures, and disclosure to its Participants and potential Participants. Employees are required to report conflicts of interest to the CCO. The CCO reports conflicts of interest to the ROC or Board, as appropriate for business and personnel conflicts. Conflicts involving the CCO directly are to be disclosed to the ROC or the Board, as appropriate.

- 6.19 TSEF also has policies for addressing and minimizing other conflicts of interest that may arise, including conflicts with applicants, of directors and officers and of the CCO.
- 6.20 A member of the Board, who knows or suspects he has any conflict of interest, material or not, may not participate in deliberations or activities related to the actual or suspected conflict of interest unless given permission. To obtain permission the following process must be followed:
- (1) The material facts about the Interested Person's financial interest in the matter are disclosed or known to the Board;
  - (2) The Board determines that the participation by the Interested Person would be consistent with the public interest; and
  - (3) A majority of the Directors (excluding any Interested Persons) vote to allow the Interested Person to participate in deliberations on the matter.
- 6.21 An officer or other person who knows or suspects he has any conflict of interest may not participate in deliberations or activities related to the actual or suspected conflict of interest unless given permission. To obtain permission the following process must be followed:
- (1) The material facts about the Interested Person's financial interest in the matter are disclosed or known to the CCO; and
  - (2) The CCO determines that the participation by the Interested Person would be consistent with the public interest.
- 6.22 The CCO is also required to actively monitor for any CCO potential conflicts of interest. If a potential CCO conflict is identified by the CCO or a TSEF employee, then a prescribed process is to be followed under the authority of the ROC, which shall determine, among other things, whether an actual conflict exists and whether the CCO must recuse him or herself from addressing a matter. If the ROC determines that the CCO is actually conflicted, then the matter shall be escalated to the Board using the same process as when dealing with a director of the Board. In the event that the CCO must recuse him or herself, internal legal counsel to TSEF shall address such matter in lieu of the CCO. If a person suspects a director, officer, or other person of a conflict of interest, they are required to report this concern to the CCO for review and or escalation to the Board.

- 6.23 It is a potential conflict of interest for the SEF's CCO to be involved in matters involving the review of trading activity or conduct by an affiliated IB with trading privileges on the SEF, if the SEF's CCO is also the CCO of such affiliated IB. For the avoidance of doubt, it shall not be considered a potential conflict of interest for the CCO to be involved in designing, implementing or managing a SEF compliance or surveillance program that includes affiliated IBs.
- 6.24 In the event such potential conflict of interest involves an affiliated IB of the SEF, the matter will be referred to the SEF's non-conflicted internal legal counsel or suitably qualified and knowledgeable non-conflicted designee, who will bring such matter before the ROC (an "IB Conflict"), as appropriate, to determine, pursuant to the SEF's conflict of interest policies, if the CCO is in fact conflicted. In the event that it is determined that the CCO is conflicted, the CCO shall immediately be recused from the conflict resolution process required to address the underlying matter.
- 6.25 Anytime a potential IB Conflict is identified by anyone in the SEF's Compliance Department, or by any SEF employee, third-party regulatory service provider or SEF director, such person shall refer the matter to the SEF's non-conflicted internal legal counsel, or suitably qualified and knowledgeable non-conflicted designee, who will bring such matter before the ROC, as appropriate.
- 6.26 The SEF will maintain a record of each IB Conflict, how it was identified and how it was resolved. Such record shall be included as part of the annual compliance report as required by 37.1501(e) (5) and (g).
- 6.27 The SEF will disseminate its conflict of interest policy and procedures to all SEF employees. The SEF will also produce and disseminate to any third-party regulatory service provider, a procedure identifying the escalation procedures for potential conflicts of interest relating to named conflicted affiliated IBs, specifically those for which the SEF's CCO has a shared responsibility.
- 6.28 If a person suspects a Director, Officer, or other person of a conflict of interest, he should report this concern to the CCO for review and or escalation to the Board.
- 6.29 TSEF's Rulebook covers conflicts of interest in Rule 209. Any person who has a material conflict of interest is prohibited from participating in deliberations or votes on matters affecting their personal interest. Rule 210 also prohibits the use and disclosure of non-public or conflicted information for personal gain by Board members, Committee members, or TSEF personnel.



## 7. FEES

*TSEF has established appropriate rules and policies to ensure that:*

- (a) the process for setting fees is fair, transparent and equitable;*
- (b) fees do not constitute a barrier to access; and*
- (c) all fees imposed by TSEF are balanced to ensure the exchange has sufficient revenues to satisfy its responsibilities.*

- 7.1 Product fee determinations occur through collaboration between SEF finance, compliance and product line management teams at TSEF. Fees are differentiated at the product level by a number of different factors, including type of access desired by the Participant and activity that the Participant wishes to conduct. Fees are not published on the TSEF website; however fees for all products are made available to Participants and prospective Participants upon request to TSEF. Additionally, in the event that there is a change in fees, TSEF will distribute a notice to all Participants informing them of the change. Notices of amendments of TSEF's fee schedule are also available in the Regulatory section of the TSEF website at <http://www.traditionsef.com/regulatory/>.
- 7.2 In accordance with CFTC Regulations, all fees imposed by TSEF are equitably allocated, are commensurate with fees charged by other SEFs, do not discriminate among similarly situated Participants and do not create unreasonable conditions or limits to access by Participants to the Offered Services. TSEF's fee schedule is filed with the CFTC pursuant to its regulatory obligations with the CFTC and is subject to review by the CFTC prior to TSEF implementing any changes.
- 7.3 Prior to implementing any TSEF fee or incentive programs, such programs require various levels of internal approval. Tradition's fee structure must be approved by its CEO and CFO. TSEF does not currently offer any incentive programs, however should TSEF offer incentive programs, such programs would have been subject to the review and have received the approval of the CEO, CCO and CFO, and will conform to CFTC Regulations and will be publicly filed with the appropriate regulatory oversight bodies. Additionally, fee revisions may also be open to comment from the Participation committee.
- 7.4 TSEF's process for setting fees is fair, transparent and appropriate. Any and all fees imposed by TSEF on its Participants are equitably allocated, are balanced with the criteria that TSEF has sufficient revenues to satisfy its responsibilities. TSEF's fees are tiered depending upon the mode of access to TSEF (i.e. electronic streaming, hybrid, intermediated access).
- 7.5 TSEF has adequate financial and staff resources to carry on its activities in full compliance with its regulatory requirements and with best practices. Pursuant to Core Principle 13, TSEF is required to have adequate financial, operational and managerial resources to discharge its responsibilities. The financial resources of a SEF shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the SEF to cover the operating costs of the SEF for a one-year period, as calculated on a rolling basis, this includes unencumbered,

liquid financial assets equal to at least six months' operating costs. TSEF satisfies such a financial requirement. Internal financial reports are prepared monthly. Financial reports are also prepared and furnished to the relevant regulators in accordance with TSEF's regulatory obligations.

## 8. ACCESS TO SERVICES

*Fair and Equitable Access - TSEF has established appropriate rules to ensure:*

- (a) rules governing access to the facilities are fair, transparent and reasonable; and*
- (b) access is limited to persons who are duly registered, exempt or not subject to registration in Quebec.*

- 8.1 The CFTC requires that SEFs offer impartial access to all eligible parties. The criteria used by TSEF to determine whether an individual is eligible for admission as a Participant is objective and non-discriminatory, due to the fact that TSEF's access criteria are uniform across Participant types and access types. In addition, TSEF's fees are uniform across Participant types, as is access to SEF order books and transaction input systems. In order for TSEF to achieve its registration with the CFTC, TSEF had to demonstrate to the CFTC that TSEF offers impartial access in compliance with SEF Core Principle 11. TSEF does not discriminate among Participants. Pursuant to Core Principle 11, unless necessary or appropriate to achieve the purposes of the Dodd-Frank Act, SEFs may not adopt any rules or take any actions that result in any unreasonable restraint of trade or impose any material anticompetitive burden on trading or clearing.
- 8.2 Under Rule 302 of the Rulebook, in order to be eligible for admission as a Participant, an applicant must demonstrate to the satisfaction of TSEF that it: (1) is an "eligible contract Participant" as defined in Section 1a(18) of the CEA and CFTC Regulation 1.3(m) and that it meets the criteria for a Participant set forth in the Rulebook and any documentation published by TSEF in respect of Platforms used for a specific swap that such applicant seeks to access, including that it satisfies any other criteria that TSEF may require from a Participant from time to time; and (10) has successfully completed the Participant application process to the satisfaction of TSEF. As Participants are limited to ECPs, they are well capitalized financial institutions (including banks and registered swap dealers (as defined in Section 1a(49) of the CEA and CFTC Regulation 1.3(qqqq)) or large commercial entities engaged in hedging financial exposures. Retail investors are prohibited from transacting on SEFs. In Quebec, Participants are limited to a very narrow category of Quebec residents or would qualify as "accredited counterparties" (as such term is defined in section 3 of the Act).
- 8.3 To become a Participant, the applicant must follow Rule 303 of the Rulebook which outlines, in detail, the application process. TSEF may deny, condition or terminate the Participant status of any person if such person is unable to satisfactorily demonstrate its ability to satisfy the eligibility criteria, such person is unable to satisfactorily demonstrate its capacity to adhere to all applicable rules, or for such



cause as TSEF may reasonably determine. The application form and representations for Quebec Participants is available in the Onboarding section of the TSEF website at <http://www.traditionsef.com/onboarding/Participant/>.

TSEF does not require its Participants to restate their representations each year, however, TSEF rules do require participants to notify TSEF of changes in their representations. TSEF has also issued reminders in the form of Notices to Participants of ongoing obligations with regard to certain representations. TSEF's participants, including Quebec Participants, are all major financial institutions, thus their regulatory status is generally available from public sources. This provides TSEF with the ability to verify if each Participant is in compliance with their representations. Additionally, certain items on the representation list, such as maintaining proper clearing arrangements, are checked each time a Participant enters an order or trade on TSEF through TSEF's pre-trade credit checks.

- 8.4 As part of the on-boarding procedures, Participants are required to represent that they meet the criteria for eligibility. TSEF is required to offer access to all ECPs. Customers of swap dealers that meet ECP criteria have the choice of accessing TSEF as Participants, Customers of Broker Firm Participants, Customers of Swap Dealers that are Participants, or through various direct-access possibilities using the trading privileges of a Participant or Broker Firm Participant.
- 8.5 If TSEF decides to decline or condition an application for admission, the affected applicant will be promptly notified and given twenty days to request in writing that the Participant Committee reconsider the determination. Within twenty-eight (28) calendar days of receiving the request for reconsideration, the Participant Committee shall confirm, reverse or modify the denial, conditioning or termination. The Participant Committee may, within its discretion, schedule a hearing, request additional information, or establish any other process it believes is necessary and appropriate.
- 8.6 TSEF Rules 303 (e), (f) and (g) of the Rulebook outline the process for an applicant to request reconsideration of a decision by TSEF to decline or condition an applicant's participation on TSEF. Pursuant to these rules, if TSEF decides to decline or condition an application for admission as a Participant, or terminate a person's status as a Participant, TSEF is required to promptly notify such person in writing and such person has twenty (20) trading days to make a written request to the Participant Committee to reconsider the determination. Within twenty-eight (28) calendar days of receiving the request for reconsideration, the Participant Committee must either confirm, reverse or modify the denial, conditioning or termination of the person as a Participant, and is required to promptly notify them accordingly in writing. The Participant Committee may also, within its discretion, schedule a hearing (in-person or by teleconference), request additional information from the person, or establish any other process that it believes is necessary and appropriate to consider the request for reconsideration. As the criteria for eligibility as a Participant are objective and based on the principle of impartial access under Core Principle 2, the Participant Committee's decision in respect of any reconsideration is the final

action of TSEF and is not subject to appeal within TSEF. Once the internal appeal process is completed, a Participant does not have a right to appeal to the CFTC. However, any prospective applicant may reapply as appropriate upon addressing any deficiencies in its eligibility. Section 3.16(a)(ii) of TSEF's By-Laws also provides, in part, that in the event that the Board of Directors rejects a recommendation or supersedes an action of the Participant Committee, TSEF shall submit a written report to the CFTC detailing: (w) the recommendation or action of the Participant Committee; (x) the rationale for such recommendation or action; (y) the rationale of the Board of Directors for rejecting such recommendation or superseding such action; and (z) the course of action that the Board of Directors decided to take contrary to such recommendation or action.

- 8.7 TSEF has established and impartially enforces rules governing any decision to revoke, suspend, limit, condition, restrict, qualify or permanently bar a Participant's access to TSEF. These include circumstances where such decisions are made as a result of a disciplinary action taken by TSEF or during an occurrence or circumstance which, in the reasonable opinion of the Board, requires immediate action, and which threatens, or may threaten, the fair and orderly trading in, or the settlement or integrity of, any swap.
- 8.8 In accordance with Rule 211 of the Rulebook, it is TSEF's policy to keep complete and accurate books and records of all activities relating to the business of TSEF, including records in respect of each grant and each denial or limitation of access. These records include information in respect of TSEF's reasons for granting, denying or limiting access to an applicant or Participant, as applicable.

#### *Marketplace Participants*

- 8.9 TSEF's Participants in Québec currently consist of federally regulated financial institutions. These Participants have a variety of access methods to TSEF. Automated electronic access is available for liquid, global products such as interest rate and foreign exchange swaps and options. Access via the internet is available for relatively liquid products, and voice and instant message access is available either directly through TSEF or via intermediated access through TSEF approved swap introducing brokers.
- 8.10 No persons or entities who have applied in Québec have been denied or limited access to the Platform as of the date hereof.

## **9. REGULATION**

### *A. TSEF has established appropriate policies:*

- i. the power to set rules and ensure their fair and effective enforcement;*
- ii. rules governing the activity of participants in the exchange;*
- iii. rules to prevent fraudulent acts and practices;*

- iv. rules prohibiting unreasonable discrimination among issuers or participants;*
- v. rule transparency; and*
- vi. accessibility of public to current rules.*

## **B. MARKET OPERATIONS**

*TSEF has:*

- i. rules governing market operations;*
- ii. rules ensuring market integrity and effectiveness;*
- iii. rules promoting fair and equitable business principles;*
- iv. transparency of trading information;*
- v. agreement with a supplier of regulatory services for market or member supervision, where applicable; and*
- vi. agreement with a market operator, where applicable.*

- 9.1 Pursuant to its obligations under the CEA and more specifically, the SEF Rules, TSEF has implemented rules, policies and other similar instruments that govern the operations and activities of its Participants. Consistent with Core Principle 2 and specifically with respect to preventing unreasonable discrimination among Participants or imposing any burden on competition, these rules, policies and instruments are designed to provide market Participants with impartial access to the market, and include rules designed to prevent discrimination among Participants within the same class or category. Of particular note in this regard are Chapter 4 (Obligations of Participants and Customers), Chapter 5 (Trading Practices and Business Conduct), and Chapter 6 (Disciplinary Rules) of the Rulebook. Certain elements relating to non-discrimination and not imposing any burden on competition are also discussed in Section 8 above.
- 9.2 The rules contained in Chapter 5 (Trading Practices and Business Conduct) and Chapter 6 (Disciplinary Rules) of the Rulebook are designed to ensure that all trading is conducted in a fair and orderly fashion, as these Rules are impartially applied to all of TSEF's market Participants and are intended to facilitate trading activity on equal access platforms that promote liquid markets. Rule 525 (Withholding Customers Orders Prohibited) is designed to provide that a Participant cannot withhold or withdraw from the market any order, or any part of an order, for the benefit of any person other than for the customer for whom the Participant is placing the order. Hence, it is designed to prevent any third-party influence on the market. In addition, Rule 531 (Priority of Execution) provides the mechanism in which non-discretionary customer orders are entered into the platform, which is in the sequence in which the orders were received. This promotes fair and orderly

markets by providing a consistent impartial method for the priority of execution of such orders.

- 9.3 Consistent with a number of Core Principles, TSEF's rules and procedures have been established so as to not be contrary to the public interest, including specifically: rules designed to address Core Principle 2 with respect to establishing and enforcing trading, trade processing, and participation rules; Core Principle 7 to establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the SEF, including the clearance and settlement of the swaps; Core Principle 11 which restricts the rules from imposing any unreasonable restraint of trade or material anti-competitive burden; as well as a number of other rules and procedures designed to prevent or reduce susceptibility to manipulation, price distortion, and disruptions. In compliance with Core Principle 2, TSEF has established rules and procedures reasonably designed to ensure compliance with Section 5(h) of the CEA and the CFTC Regulations, including procedures to be used in entering, executing and posting orders. TSEF fulfills its compliance with CFTC and CEA requirements through the establishment of internal surveillance, market practices and trading operations procedures under the guidance of its CCO, ROC and Compliance Department, and through the retention of regulatory services of the NFA. TSEF is required to report to the CFTC certain violations of its rules that also breach applicable law. Such notification would be carried out by TSEF's CCO or Chief Counsel contacting the appropriate authority at the CFTC.
- 9.4 The Rulebook promotes just and equitable principles of trade. Notably, Rule 514 of the Rulebook prohibits Participants from engaging in "conduct which is inconsistent with just and equitable principles of trade". In addition, Rules 514, 516, and 519 of the Rulebook prohibit Participants from taking fraudulent and manipulative actions, including engaging in fraud, engaging in any scheme to deceive, trick or mislead, and engaging in dishonourable or dishonest conduct.
- 9.5 Implicit in all employees' relationships with Participants, and others, is the fundamental responsibility for fair dealing. The CFTC has also recognized that its regulated entities have an obligation of fair dealing in actions under the general anti-fraud provisions of the Federal laws. In addition, such activities as forgery, non-disclosure or misstatement of material facts, use of manipulative, deceptive or other fraudulent devices are also subject to the civil and criminal laws and sanctions of Federal and State governments.

*Market Operations – TSEF has an Agreement with a supplier of regulatory services for market or member supervision.*

- 9.6 TSEF has retained the services of the NFA to assist in monitoring trading on TSEF to prevent manipulation, price distortion, disruptions to the market and settlement process. Additionally, TSEF may enter into information-sharing agreements with other SEFs or designated contract markets (each, a "DCM") where similar contracts to those available to trade on TSEF or with underlying cash markets for swaps available for trading on TSEF for the purpose of monitoring activity on TSEF or to

coordinate position monitoring. CFTC rules require SEFs to set position limits as deemed necessary or appropriate.

TSEF monitors news releases from the regulatory authorities and index providers for any signs that manipulation of the underlying indexes is suspected or has been uncovered and will evaluate the potential impact on its product offerings and take appropriate action, which could include suspension of trading. TSEF attempts to mitigate the risk of limited deliverable supply by only offering swaps for delivery on global underlying commodities with liquid cash and futures markets, currencies and other liquid financial instruments. The commodity swaps offered for trading on TSEF are on such liquid commodities as oil, natural gas and gold. These commodities have robust and liquid spot and futures markets. TSEF offers physically settled swaps and options that settle into an underlying commodity, currency or financial instrument that in its judgment are not readily subject to manipulation due to deep liquidity and robustness in their underlying cash markets, or have no physical limitation on available supply, such as an interest rate, or currencies, where central banks or monetary authorities manage a nation's currency. A factor that further mitigates risk of swap delivery affecting physical supply is that most swap contracts are traded with rolling expiration, settlement or maturity dates set at intervals from the swap start date, (1-month, 2-months, 1-year, 2-years, etc.). The result is that swaps mature, expire, or settle every day, unlike futures contracts, which settle on a fixed date in a cycle. For physically settled currency options and swaps, TSEF generally relies upon central banks or monetary authorities to monitor and prevent manipulation of their respective currencies, as such institutions are statutorily mandated with managing their country's currency and such management is a sovereign right of a country issuing a currency.

- 9.7 TSEF also specifically prohibits Participants from engaging in anti-manipulative activities as set out in SEF Rules 516 through 521 under its Compliance and Surveillance Manual and in accordance with SEF Core Principle 3.
- 9.8 TSEF has adopted rules related to position limits and position accountability levels. Pursuant to Rule 532 of the Rulebook, the position limits established by TSEF will not be higher than any limit set by the CFTC for such swap.
- 9.9 TSEF does not currently have position or accountability limits on contracts listed for trading. The swaps traded on TSEF are executable on multiple competing SEFs and cleared either through independent clearing houses (cleared swaps) or bilaterally settled between the counterparts to the swap, (uncleared swaps). TSEF does not have access to transaction or position data in similar swaps trading on competing SEFs, or a Participant's overall cleared, uncleared and hedge positions to assess a Participant's position in a given swap at any point during a trading day. Similar to position limits, TSEF does not have access to information that would make position accountability meaningful.

*Regulation of Participants and Market Operations.*

- 9.10 As a SRO, TSEF has a robust surveillance and compliance function to review the trading activity on the SEF and to enforce the Rulebook. The Rulebook is designed to ensure TSEF and the Participants adhere to the Core Principles and other CFTC regulations. As discussed in Section 9.6, TSEF has engaged the services of the NFA to assist in the performance of these duties.
- 9.11 TSEF is responsible for monitoring overall activity in each market on a real time basis and has set up a full-time market operations and surveillance function to provide for real-time and post-trade monitoring of trading activity, tracking specific members and authorized traders, monitoring pricing and volume and being alerted to market messages. TSEF also provides the NFA with a real-time, view-only market access to its Platforms. While the NFA program does not include real-time market monitoring or a live help desk to aid operational procedures of the markets, NFA real-time view only access to SEF markets provide NFA staff with a context for their T+1 reviews and also act as a second set of eyes for the SEF for any abnormalities as they occur in real-time. The NFA's Market Regulation Department is primarily responsible for performing the investigatory work in accordance with the NFA Procedures Manual relating to inquiries and investigations resulting from trade practice, market surveillance, enforcement of audit trail requirements and financial surveillance.
- 9.12 The NFA reports possible breaches and infractions to TSEF, which will determine in its capacity of self-regulatory organization whether the CFTC needs to be informed of the activity in question. The CCO and SO have a conference call with NFA managers at least once a month to review outstanding inquiries and routine matters. As circumstances arise, the CCO, SO and/or other officers of TSEF will have other meetings or calls with the NFA.
- 9.13 TSEF offers uncleared swaps on all asset classes: Foreign Exchange, Rates, Credit, Commodities and Equities. TSEF makes initial and ongoing determinations to offer cleared and uncleared swaps based on CFTC mandatory clearing determinations, the availability of clearing for each swap and market conventions for each swap.
- 9.14 For required transactions, such as MAT IRS, execution methods vary from full electronic streaming into an order book, hybrid access to an order book, voice negotiation via SEF Brokers or transactions introduced to the SEF for execution by Broker Firm Participants. Non-MAT swaps can also be executed via the same combination of modes. Swaps that trade infrequently are generally introduced for SEF execution by Broker Firm Participants.
- 9.15 TSEF incorporates multiple means by which surveillance and compliance are conducted. Aside from interaction with the NFA, compliance systems include electronic monitoring of IRS trading on Trad-X platform: The Trad-X Market Operations Manager ("OM") supervises electronic trading and monitors all orders and trades being entered onto the Platform on a real time basis. The OM identifies market and system anomalies and is authorized to take mitigating action in the event



of disorderly trading and/or market disrupting events, including but not limited to, halting trading and cancelling orders. The OM reviews any potential error trades and is authorized to adjust prices and/or cancel trades in accordance with Rule 538 and Rule 511.

Electronic filters are used to alert the OM of abnormal price movements, market anomalies or system related issues. The OM is able to directly contact Participants when necessary in taking preventative and mitigating actions, or in responding to Participant inquiries/discrepancies.

Anomalies in voice trades in IRS will be picked up by the Trad-X platform for orders entered into the CLOB. Additionally, the desk manager and SO perform real-time market monitoring roles.

The SO periodically visits the SEF Execution Specialists ("SES") to, among other things, monitor for firmness of quotes during and for any potentially suspicious activity. During visits to the SES, the SO has access to all trading Platforms.

The SO has access to all SEF market systems and Platforms, which provides the SO with real time visibility across all asset classes and enables the SO to monitor for potential violations of TSEF's order handling policy.

The Desk Manager supervises all activity in Voice RFQ's, orders received via Voice and "Work-up" transactions and is responsible for ensuring that all SES follow TSEF's order handling, RFQ and Work-up procedures.

- 9.16 Participants are required to comply with a significant number of rules governing trading pursuant to the Rulebook. These rules are intended to govern market operations, ensure market integrity and effectiveness; promote fair and equitable business principles (as discussed further in section 9.34 below); and lead to transparency of trading information. The applicable rules are located primarily in Chapter 4 (Obligations of Participants and Customers), Chapter 5 (Trading Practices and Business Conduct) and Chapter 6 (Disciplinary Rules). Some of the more significant rules governing trade and TSEF's investigations and disciplinary procedures include:

- (a) Rule 403 Duties and Responsibilities of Participants the Provide Customers with Access to a Platform
- (b) Rule 405 – Inspections by TSEF
- (c) Rule 509 – Block Trades
- (d) Rule 525 – Withholding Customer Orders Prohibited
- (e) Rule 527 – Trading Against Customer Order Prohibited
- (f) Rule 528 - Disclosing Customer Orders Prohibited

- (g) Rule 529 – Prearranged, Pre-negotiated and Non-competitive Transactions Prohibited,
- (h) Rule 531 – Priority of Execution
- (i) Rule 602 – Inquiries and Investigations
- (j) Rule 606 – Notice of Charges
- (k) Rule 611 – Convening Hearings of Disciplinary Proceedings
- (l) Rule 615 – Sanctions

9.17 TSEF also publishes, from time to time, documentation setting forth the specific protocols and requirements for trading on a particular platform forming part of the Platform (each, a “Platform Supplement”). Platform Supplements are incorporated into the TSEF Rulebook by reference and are published on the SEF website at <http://www.traditionsef.com/regulatory/filter/all/all/all>. Copies of the relevant Platform Supplements (in addition to the Rulebook and user agreements) are also provided to Participants at the time of their onboarding to TSEF or to the specific platform within TSEF, as applicable.

#### *Due Process*

- 9.18 TSEF’s Market Regulation Department (the “Market Regulation Department”) is required to commence an investigation of any matter within TSEF’s jurisdiction, upon the receipt of a request from CFTC Staff or upon the discovery or receipt of information by TSEF that, in the judgment of the Market Regulation Department, indicates a possible basis for finding that a violation has occurred or will occur. TSEF is required to report to the CFTC certain violations of its rules that also breach applicable law. Notification of such a violation would be carried out by TSEF’s CCO or Chief Counsel contacting the appropriate authority at the CFTC. Records of such investigations are retained according to TSEF’s usual document retention policies (as outlined in the Record Keeping section below). TSEF rules allow for opportunities to appeal access and disciplinary decisions, including appeal to the Participant Committee regarding disciplinary matters, under Rule 616 of the Rulebook.
- 9.19 The Market Regulation Department maintains a log of all investigations and their disposition and prepares a written report of each investigation (each, an “**Investigative Report**”). Each Investigative Report will include the reasons for initiating the investigation (including a summary of the complaint, if any), all relevant facts and evidence gathered, Market Regulation Department staff’s analysis and conclusions, the Participant’s disciplinary history at TSEF, and the recommendation of the Market Regulation Department. The Market Regulation Department will make a recommendation to the CCO that such matter be referred to a Hearing Panel. The Investigative Report is then provided to the CCO for a determination as to whether the Investigative Report is complete, following which the CCO will provide the completed Investigative Report to the Hearing Panel of the



Disciplinary Panel. If the CCO authorizes disciplinary proceedings pursuant to Rule 605(a)(3) of the Rulebook, the Market Regulation Department will prepare, and serve in accordance with Rule 608, a notice of charges to the Participant in question (the “respondent”). The notice of charges will, among other things, advise the respondent of its right to a hearing.

- 9.20 After reasonable notice to each respondent, the Hearing Panel will promptly convene a hearing to conduct the disciplinary proceedings with respect to such respondent, with parties to such disciplinary proceeding including the applicable respondent and the Market Regulation Department. Prior to the commencement of a hearing, each respondent will be given the opportunity to review all books, records, documents, papers, transcripts of testimony and other tangible evidence in the possession or under the control of TSEF that the Market Regulation Department will use to support the allegations and proposed sanctions in the notice of charges or which the chair of the Hearing Panel deems relevant to the disciplinary proceedings (excepting any information protected by attorney-client privilege). If a respondent has timely filed an answer to the notice of charges in accordance with Rule 607 of the Rulebook, the respondent is entitled to attend and participate in the hearing.
- 9.21 At a hearing conducted in connection with any disciplinary proceedings, the Hearing Panel or the Market Regulation Department and each respondent may: (a) present evidence and facts determined relevant and admissible by the chair of the Hearing Panel; (b) call and examine witnesses; and (c) cross-examine witnesses called by other parties.
- 9.22 TSEF will arrange for any hearing conducted in connection with disciplinary proceedings to be recorded verbatim, or substantially verbatim, in a manner capable of accurate transcription. The respondent may request a copy of all or portions of the recording of a hearing.
- 9.23 As promptly as reasonable following a hearing, the Hearing Panel will issue a written order rendering its decision based on the weight of the evidence contained in the record of the disciplinary proceedings. TSEF will serve a copy of the order of the disciplinary proceedings on the respondent and the Market Regulation Department. The order will include, among other things, (a) findings of fact and conclusions concerning each allegation, including a complete explanation of the evidentiary and other basis for such findings and conclusions with respect to each allegation, (b) each specific Rule of TSEF and provision of applicable law that the respondent is found to have violated, (c) the imposition of sanctions, if any, including the basis for such sanctions and the effective date of each sanction, and (d) notice of the respondent’s right to appeal pursuant to Rule 616 of the Rulebook. Unless a timely notice of appeal is filed pursuant to Rule 616 of the Rulebook, the order of the disciplinary proceedings will become final upon the expiration of 20 days after the order is served on the respondent and provided to the Market Regulation Department.
- 9.24 A respondent found by the Hearing Panel to have violated a Rule of TSEF or a provision of applicable law or who is subject to any summary fine imposed pursuant to Rule 617 of the Rulebook or any summary action imposed pursuant to Rule 618

may appeal the decision within 20 days of receiving the order of the disciplinary proceedings or the notice of summary action, as the case may be, by filing a notice of appeal with the CCO.

- 9.25 On or before the 20th day after filing a notice of appeal, the appellant must file with the CCO and serve on the Market Regulation 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 Market Regulation Department. On or before the 10th day after the date on which the appellee serves its brief in opposition, the appellant must file and serve a brief in reply with the Market Regulation Department. Within 30 days after the last submission filed pursuant to the foregoing, the Board will appoint an Appeal Panel to consider and determine the appeal.
- 9.26 Within 10 days of being notified of the appointment of the Appeal Panel, an appellant may seek to disqualify any individual named to the Appeal Panel for the reasons identified in Rule 209 of the Rulebook or for any other reasonable grounds, by serving written notice on the CCO, who will decide the merits of any request for disqualification within his or her sole discretion.
- 9.27 The Appeal Panel will hold a hearing to allow parties to present oral arguments. The Appeal Panel will only consider on appeal the record before the Hearing Panel or, in the case of a summary action, the record considered by the CCO, the notice of appeal, the briefs filed in support and opposition of the appeal, and any oral arguments of the parties. After completing its review, the Appeal Panel may affirm, modify or reverse any order of the disciplinary proceedings or summary action under appeal, in whole or in part, including increasing, decreasing or eliminating any sanction or remedy imposed, imposing any other sanction or remedy authorized by the Rules, remanding the matter to the same or a different Hearing Panel for further disciplinary proceedings, or ordering a new hearing.
- 9.28 As promptly as reasonably possible following its review, the Appeal Panel will issue a written decision based on the weight of the evidence before the Appeal Panel. The decision of the Appeal Panel will include a statement of findings of fact and conclusions for each finding, sanction, remedy and cost reviewed on appeal, including each specific Rule of TSEF and provision of applicable law that the respondent is found to have violated, if any, and the imposition of sanctions, remedies and costs, if any, and the effective date of each sanction, remedy or cost.
- 9.29 The Appeal Panel's written order will be the final action of TSEF and is not expressly subject to appeal to the CFTC under TSEF rules.

#### *Coordination with other Third Parties*

- 9.30 Rule 213 of the Rulebook provides that TSEF may enter into information-sharing agreements or procedures to coordinate surveillance with other markets and provides that TSEF may: (1) provide market surveillance reports to other markets; (2)

share information and documents concerning current and former Participants with other markets; (3) share information and documents concerning ongoing and completed investigations with other markets; and/or (4) require its current or former Participants to provide information and documents to TSEF at the request of other markets with which TSEF has an information-sharing agreement or other arrangements or procedures. TSEF has not entered into information sharing agreements with other markets.

### *Trading Practices*

*TSEF's rules governing the activity of Participants in the exchange are fair, transparent and operate to ensure market integrity and effectiveness.*

- 9.31 TSEF's trading practices as set out in Chapter 5 (Trading Practices and Business Conduct) of the Rulebook are fair and not contrary to the public interest.
  
- 9.32 TSEF has retained the services of NFA to assist in monitoring trading on TSEF to prevent manipulation, price distortion and disruptions to the market and settlement process. In order to perform trade practice surveillance for TSEF, NFA utilizes an automated surveillance system to review swap order and transaction data provided by TSEF that complies with the standards for such systems established by the CFTC. TSEF retains ultimate decision-making responsibility for any functions performed by NFA. NFA reviews TSEF's trades on a routine basis to determine whether suspicious activity relating to TSEF's trading standards exists, including, without limitation, whether any potential violations of TSEF's Rules (as set out in the Rulebook) have occurred. The trades reviewed include trades executed on TSEF's matching system and, if applicable, RFQ, Work-up, block and error trades. NFA's trade practice surveillance system monitors for fraudulent trading, e.g., intentionally deceptive trading for personal financial gain, trading practices that TSEF deems to be abusive and any other manipulative or disruptive trading practices prohibited by the CEA or the CFTC Regulations, as well as the types of transactions and trade practices for both Required and Permitted Transactions as defined by the CFTC Regulations. NFA will utilize an automated system to perform market surveillance of the activity on TSEF in order to detect manipulation, price distortions and where possible, disruptions of the delivery or cash-settlement process.
  
- 9.33 TSEF also maintains both a surveillance and trade practices program to monitor for market abuses, manipulations and other disruptive practices. TSEF has disciplinary procedures and penalties for violation of its rules, which are described in greater detail above in Sections 9.18 to 9.29 (Due Process) in Schedule "A" of this application.
  
- 9.34 Rules 504 through 506 of the Rulebook, the rules contained in the various Platform Supplements, and the price/time priority of TSEF's order book ensure that order size and limits are fair and equitable to all market Participants and that the system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent. TSEF considers its order types, transaction sizes and trading protocols to be fair and equitable because they are modeled upon standard

order types and transaction sizes customary to the markets for the products traded on the respective order book. TSEF considers its order books to be transparent because transaction information is displayed non-discriminatorily to all Participants simultaneously.

- 9.35 In compliance with Core Principle 9, TSEF submits swap transaction and pricing data to CFTC registered SDRs on a timely basis. Rule 411 of the Rulebook provides that TSEF will make information regarding orders (including prices bid or offered), trades and any other matters it deems appropriate available to Participants, customers and other persons at such times and in such manner as it may consider necessary or advisable from time to time and provided that such provision of information is permitted under applicable law. Additionally, TSEF publishes trading activity to its website and submits data to the following SDRs under Rule 512:
- ICE Trade Vault, LLC
  - DTCC Data Repository (U.S.) LLC
  - Chicago Mercantile Exchange Inc.

- 9.36 All trading activity on TSEF is posted as per CFTC rules on <http://www.traditionsef.com/market-activity/> under "Daily Activity".

#### *Operations of the Marketplace*

- 9.37 TSEF operates as a swap execution facility, offering RFQ and "Work-up", voice broker interaction, auction, block trade crossing, and electronic order book functionality. TSEF offers execution services across all swap asset classes (interest rates, foreign exchange, equity, credit and commodities). The transaction platform for each asset class is designed to meet the liquidity and depth of each product or asset class. TSEF's Participants consist to a large extent of registered swap dealers under CFTC Regulations.
- 9.38 The Platform can be accessed by electronic, voice, and hybrid means, depending upon the type of Participant and the swap asset class being traded. Highly liquid asset classes such as IRS have complex electronic order books that allow for automated streaming of prices. Illiquid products may only have voice order book or swap execution portal access. TSEF does not offer co-location arrangements.
- 9.39 TSEF's hours of operation are specific to each asset class and product. Current hours of operation are posted in the TSEF Rulebook and Platform Supplements on TSEF's website.
- 9.40 TSEF provides swap execution across the asset classes referenced above and multiple products within each asset class. Summarized below are the primary platforms for each asset class and a brief description of their respective functionality:
- 9.40.1 IRS (Super-Major Currencies): Trad-X platform. Trad-X is a hybrid trading platform for OTC derivatives that enables Participants to trade IRS. Trad-X

operates on a global order-book method. Trad-X offers a flexible access methodology utilizing hybrid, voice and electronic streaming capabilities. Trad-X also provides full straight-through-processing from execution to trade confirmation, reconciliation and SDR reporting. Trad-X contains hybrid functionality as well allowing Participants to see and execute prices on certain IRS. Trad-X allows for intermediated access through a TSEF approved swap broker. The platform's confirmation function is performed by Swapswire.

#### 9.40.2 Currencies:

- (A) **Currency Options:** Volbroker Platform, through September 30, 2016. Volbroker provides full straight-through-processing from execution to trade confirmation, reconciliation and SDR reporting. Volbroker can be accessed electronically, through hybrid or voice access and intermediated access through a TSEF approved swap broker. Beginning on and after October 1, 2016 Currency Options transactions are processed through the BrokerSuite FXO platform, which provides functionality for facilitating introduction and SEF execution of pre-arranged transactions in FX Options.
- (B) **Non-Deliverable Forwards:** StreamGlobal Platform. StreamGlobal is an internal platform that supports electronic, hybrid and voice trading functionality for Currency non-deliverable forwards ("**NDF**"). The system provides confirmations via email to Participants for NDF products. StreamGlobal can be accessed directly and/or intermediated through a TSEF approved swap broker.

9.40.3 **Credit Swaps:** StreamGlobal Platform. StreamGlobal is an internal platform that supports electronic, hybrid and voice trading functionality for Credit products. The system provides confirmations via email to Participants for foreign exchange ("**FX**") NDF and Credit products. StreamGlobal can be accessed directly and/or intermediated through a TSEF approved swap broker.

9.40.4 **Commodity Swaps:** Primarily a voice access platform, supplemented by automated trade reconciliation and reporting to SDR via BrokerSuite Commodities platform.

9.40.5 **Broad Market Equity Index swaps:** Primarily a voice access platform, supplemented by automated trade reconciliation and reporting to SDR via BrokerSuite Equities platform and MarkitWire.

9.41 Although there are variations for block trades, pre-arranged trades and RFQs (as described in the Rulebook) and specific to each asset class (as described in the Platform Supplements, order book interaction is governed by Rule 505 of the Rulebook.

- 9.42 TSEF's trade reporting procedures are outlined in Rule 512 of the Rulebook.

*Compliance, Surveillance, & Enforcement*

- 9.43 As a SRO, TSEF requires that each Participant, customer and clearing firm acknowledge that it is subject to the rules of TSEF as they pertain to each category in the Rulebook, which include the jurisdiction of TSEF to set rules, and perform member and market regulation and surveillance and enforcement with respect to compliance with its rules as appropriate for the nature of, and the manner in which, the products are traded.
- 9.44 In compliance with its obligations as a SEF registered with the CFTC, TSEF maintains appropriate systems, resources and procedures for evaluating compliance with exchange and legislative requirements and for disciplining Participants. These include appropriate systems, resources and procedures for evaluating compliance with its obligations under its SEF registration including regulations, guidance, and acceptable practices governing the registration and operation of SEFs, and operating under the SEF Core Principles as outlined in Section 1. TSEF supplements its in-house compliance surveillance function through a Regulatory Services Agreement with the NFA and with guidance from outside counsel. TSEF has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory or enforcement purposes is available to the relevant regulatory authorities, including the CFTC and AMF, on a timely basis.
- 9.45 TSEF's surveillance vendor, the NFA, notifies TSEF of any trade execution exceptions identified through its surveillance program. Additionally, it audits TSEF's voice procedures and voice audit trail, prepares monthly reports/logs highlighting these potential exceptions segregated by category. TSEF's SO conducts periodic random reviews of transactions including audit trails across all asset classes. Should these reviews identify any exceptions not previously noted by the NFA's surveillance; the SO will notify the NFA so that an audit can be conducted by the NFA of its procedures to determine the reason(s) for the disparity. By rule, TSEF must conclude all investigations in a timely fashion not to exceed a year's duration. The SEF CCO must perform an annual compliance review documenting investigation activity, and certifying the adequacy of TSEF's compliance and disciplinary processes. This report must be filed with the CFTC.
- 9.46 In accordance with Core Principle 10 - Record Keeping and Reporting, TSEF is required to, among other things, report to the CFTC in the prescribed form and manner that the CFTC prescribes. TSEF has accordingly implemented appropriate policies and procedures for the collection and preparation of filings required to be made and information otherwise required to be made available to satisfy its regulatory obligations, including with respect to the AMF. Further, TSEF will maintain records of all activities related to its business for a period of five (5) years in accordance with CFTC regulations and its Participants are obliged to maintain all requisite books and records in accordance with CFTC regulations, as discussed in detail below.



- 9.47 The Compliance and Surveillance Manual also includes provisions relating to the obligations of TSEF to provide documentation regarding Canadian Participants' trading activity on a periodic basis to the AMF and the OSC throughout the year.
- 9.48 In compliance with various Core Principles, TSEF provides information to the CFTC and the AMF, as discussed in greater detail below. TSEF has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory or enforcement purposes is available to the relevant regulatory authorities, including the AMF, on a timely basis.

#### *Record Keeping*

- 9.49 TSEF has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of TSEF, audit trail information on all trades, and compliance with, and/or violations of exchange requirements. Additionally, Rule 510(b) of the Rulebook requires that Participants that provide connectivity to any Platform of TSEF are responsible for maintaining, or causing to be maintained, an order routing/front-end audit trail (an "Audit Trail") for all electronic orders, including order entry, modification, cancellation and responses to such messages, entered into the platform through any gateway to the platform.
- 9.50 As provided in Rule 211 of the Rulebook, TSEF shall keep, or cause to be kept, complete and accurate books and records of all activities relating to the business of TSEF, including, without limitation, all books and records required to be maintained pursuant to the Dodd-Frank Act and CFTC Regulations. TSEF is also required to include the unique swap identifier for a Swap in all records and Swap data reported to a SDR with respect to the Swap throughout the life of the Swap and for five (5) years thereafter in accordance with CFTC Regulation 45.5(e). TSEF keeps, or causes to be kept, such records in electronic form, or kept, or cause to be kept, in paper form, if originally created and exclusively maintained in paper form, so long as they are retrievable, and information in them is reportable, as required by CFTC Regulation 45.2.
- 9.51 TSEF retains all such books and records for at least five (5) years, and with respect to records required to be retained pursuant to CFTC Regulations 45.2 and 45.5, TSEF shall (i) retain all such records for the life of the Swap and for a period of five years following the final termination of the Swap; and (ii) make such records open to inspection upon request by any representative of the CFTC, the United States Department of Justice, or the United States Securities and Exchange Commission, or by any representative of a prudential regulator as authorized by the CFTC.
- 9.52 TSEF collects a significant amount of data on a daily basis related to its regulated activity in compliance with Core Principles 4, 5, 6, 7, 8, 9 and 10. TSEF is required to maintain records of all activities relating to its business as a SEF, including data related to enforcing rules or terms and conditions defining or related to:

- (a) trading procedures to be used in entering and executing orders traded on or through the facilities of the swap execution facility;
- (b) procedures for trade processing of swaps on or through the facilities of the swap execution facility;
- (c) data necessary to monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions;
- (d) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in Section 5h of the CEA, provide such information to the CFTC on request, and have the capacity to carry out international information-sharing agreements as required;
- (e) monitor positions established on or through the SEF for compliance with the limits set by the CFTC or by TSEF;
- (f) ensure the financial integrity of swaps entered on or through TSEF, including the clearance and settlement of the swaps pursuant to Section 2(h)(1) of the CEA;
- (g) transmit and make public timely information on price, trading volume, and other trading data on swaps transactions executed on TSEF as required by CFTC Regulation;
- (h) maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the CFTC for a period of five years;
- (i) report to the CFTC, in a form and manner acceptable to the CFTC, such information as the CFTC determines to be necessary or appropriate for the CFTC to perform its duties under the CEA; and
- (j) keep any such records relating to swaps defined in Section 1a(47)(A)(v) of the CEA open to inspection and examination by the U.S. Securities and Exchange Commission.

9.53 As discussed above, Rule 510(b) of the Rulebook requires that certain Participants keep an Audit Trail. Such Audit Trail must contain all order receipt, order entry, order modification, and response/receipt times to the highest level of precision achievable by the operating system, in accordance with CFTC requirements for electronic orders and no more than one second for non-electronic orders. These Participants must maintain Audit Trail information as required by applicable law



and must have the ability to produce this data in a standard format upon request of the Market Regulation Department.

- 9.54 Participants accessing TSEF via non-electronic means are required access TSEF in a format capable of being audited (which may include phone tapes, instant messages, emails, etc.) and must keep audit trail information as required by applicable law and must have the ability to produce this data in a standard format upon request of the Market Regulation Department.
- 9.55 TSEF has adopted an Information Classification and Handling Policy which governs the treatment of information that is collected, stored and transmitted to or on-behalf of TSEF. The policy has been implemented to assist in the safeguarding and protection of information in compliance with applicable laws. TSEF only collects basic amounts of Participant information that is used for internal and regulatory reporting purposes.
- 9.56 Participants are provided with copies of the Rulebook, documentation published by TSEF from time to time setting forth the specific protocols and requirements for trading on a particular platform forming part of the Platform (each, a "Platform Supplement"), and user agreements at the time of their onboarding to TSEF or to the specific platform within TSEF, as applicable. Copies of the Rulebook are available to the public on TSEF's website. Copies of the policies, procedures and trading manuals related to the operation of Trad-X and Volbroker were filed. A BrokerSuite FXO Exhibit has also been submitted to the CFTC. Participants on electronic platforms such as Trad-X receive training from Trad-X support and market operations staff. In addition, Participants are advised of changes to platforms or transaction processes Notices to Participants, which are issued by the market operations and/or compliance department when material changes occur and available to the public on TSEF's website.
- 9.57 To ensure marketplace Participants have knowledge of and comply with the requirements of the marketplace, TSEF as a SRO, requires all Participants, Customers and Clearing Firms to acknowledge they are subject to the rules of TSEF as they pertain to each category in the Rulebook. These requirements are outlined in Rule 302 and 304 of the Rulebook.
- 9.58 Under Core Principle 4, TSEF maintains appropriate systems, resources and procedures for evaluating compliance with exchange and legislative requirements and for disciplining Participants. TSEF supplements its in-house compliance surveillance function through a Regulatory Services Agreement with the NFA and guidance from outside counsel. TSEF has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory or enforcement purposes is reported as required to the relevant regulatory authorities, including the CFTC and AMF, on a timely basis.
- 9.59 In compliance with Core Principle 2, TSEF has established rules and procedures reasonably designed to ensure compliance with Section 5(h) of the CEA and the CFTC Regulations, including procedures to be used in entering, executing and

posting orders. TSEF fulfills its compliance with CFTC and CEA requirements through the establishment of internal surveillance, market practices and trading operations procedures under the guidance of its CCO, ROC and Compliance Department, and through the retention of regulatory services of NFA. TSEF performs real-time monitoring of bid, offer and credit parameters through automated filters on its electronic platforms. TSEF also performs real-time monitoring of voice RFQ, work-up transactions and voice transaction reporting on a SEF brokering desk level and through random visits to the SEF room by the TSEF SO. TSEF transmits required transaction data to the NFA's automated "Sophisticated Warning Analysis Profiling System", ("SWAPS" system) on T. On T+1 basis NFA surveillance analysts analyze SWAPS system-generated exception reports and alerts. SWAPS is designed to query a SEF's audit trail as part of T+1 processing to bring to the analyst's attention areas of potential violations and anomalies found in trade data. Queries are based upon SEF rules regarding the abuses prohibited by the CFTC, including: front-running, wash trading, pre-arranged trading, fraudulent trading, money passes, manipulative trading, disruptive trading, trading ahead of customer orders, trading against customer orders, accommodation trading, improper cross trading, spoofing and any other trading practices that a SEF or DCM deems to be abusive.

## 10. SYSTEMS AND TECHNOLOGY

- (a) *systems and technology for adequate performance of exchange activities; and*
- (b) *a process ensuring the integrity and reliability of systems in place.*

10.1 Each of TSEF's critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable TSEF to properly carry on its business. Critical systems are those that support the following functions:

- (a) order entry,
- (b) order routing,
- (c) execution,
- (d) trade reporting,
- (e) trade comparison,
- (f) data feeds,
- (g) market surveillance,
- (h) trade clearing, and
- (i) financial reporting.

- 10.2 TSEF is included in the Tradition Group's international technology audit program which is conducted by the Tradition Group head office. This program includes an internal audit of IT systems and a data reporting quality audit. The internal audit function is outsourced to a third-party and will include a review of chosen aspect of IT governance. A third-party is appointed as the external financial auditor. The external audit includes a review of the IT systems and controls, which includes TSEF either directly or indirectly as part of the overall audit of Tradition Group.
- 10.3 TSEF has built and maintains several trading systems with robust support and resiliency. Equipment is distributed across a number of datacenters located in the Americas and Europe. IT support staff is located in New York, Stamford, CT and London. Back-up offices are available in the US and UK. TSEF's matching engines are built to be scalable. This architecture also supports high availability failover to ensure system resiliency and integrity.
- 10.4 Various tools and procedures are used for capacity monitoring and management across TSEF's IT operations infrastructure. These include specific procedures relating to capacity monitoring, reporting and capacity stress testing. The use of monitoring alerts at pre-determined capacity levels, options to control and manage emergencies, and monitoring of monthly and annual trends to monitor longer term capacity to proactively forecast future requirements have been deployed.
- 10.5 TSEF's IT operations and controls include specific policies and procedures designed to detect and manage vulnerability and implement appropriate safeguards, including physical security and environmental controls, access controls and account procedures, network monitoring and security controls and an incident management program.
- 10.6 TSEF's IT governance framework is based on standard industry practice taking appropriate inputs from COBIT 5, ISO 27001, ITIL and other established IT governance/risk methodologies. The framework is subdivided into 10 IT domains (IT Strategy & Governance, Information Security, System Development, Operations & System Administration, Incident & Problem Management, Change & Release Management, Project Management, IT Procurement and Vendor Management, Disaster Recovery and IT Business Continuity Planning) and is used to frame specific risk assessments across each operational domain.
- 10.7 TSEF, the regulatory services provider or other authorized representatives have the right to inspect systems, equipment and software operated by the Participant in connection with SEF activity, wherever located which includes access to the systems, equipment, software, and the premises on which the systems, equipment, and software are located, and any data stored in any of the systems or equipment. Each Participant or customer shall also provide the regulatory services provider with the same access to their books and records and offices as they are required to provide under applicable law and may be required to furnish (periodically or on a particular occasion) information concerning the Participant's SEF activity. Participants that provide connectivity to any Platform are responsible for maintaining, or causing to be maintained, an order routing/front-end audit trail ("**Audit Trail**") for all

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electronic orders, including order entry, modification, cancellation and responses to such messages, entered into the Platform through any gateway to the Platform.

- 10.8 TSEF has developed and put in place a business continuity plan (the “BCP”) to facilitate its continued operations and ability to serve the execution needs of its Participants in the event of a possible business disruption. The BCP is designed to counter disruptions to TSEF’s operations ranging from temporary storm related power outages to catastrophic events resulting in TSEF’s forced relocation, both temporarily and permanently. Under the BCP, TSEF has access to facilities for the temporary relocation of its staff during a disruption and has compiled a contact list containing staff phone and email information for distribution to TSEF’s website, regulators, and critical business partners. Participants with open orders and work in progress will be contacted as soon as practicable following the occurrence of a business disruption. Participants’ financial records are guarded against loss and are recoverable through TSEF’s storage systems, those of the clearers, and SDRs.
- 10.9 A detailed analysis of TSEF’s systems and technology management in respect of: (1) organizational structure and locations; (2) system description and developmental activities; (3) functional capabilities; (4) physical security and environmental controls; (5) logical security; (6) risk assessment and other reviews; (7) internal controls for operations; (8) functional testing; (9) security testing; (10) capacity planning and testing; (11) business continuity and disaster recovery; (12) outsourcing; and (13) training have been filed with the CFTC.
- 10.10 TSEF provides extensive market integrity controls to ensure fair and efficient markets. To enforce its Rulebook, these controls include a market operations department for its electronic platforms and an in-house surveillance analyst, reporting to the CCO who has the authority to review trading activity on a live basis. TSEF’s in-house surveillance efforts are also supplemented through its regulatory Services Agreement with the NFA and guidance from outside counsel, which is described in detail in Sections 9.43 to 9.48 (Compliance, Surveillance and Enforcement) in Schedule “A” of this application.
- 10.11 An executive officer, or any other officer may take actions necessary or appropriate to respond to an emergency (as described below), including, but not limited to, the following actions: (1) suspending or curtailing trading or limiting trading to liquidation (in whole or in part) in co-ordination with the relevant Derivatives Clearing Organization (“DCO”); (2) extending, limiting or changing the trading hours; (3) temporarily modifying or suspending any provision of the TSEF rules or obligations; (4) imposing or modifying price limits; (5) imposing or modifying position limits; in accordance with the position limits described in Rule 532; and/or (6) taking such other actions as may be required or directed by the CFTC. Processes similar to that described under Section 9.15 regarding the OM and the OM’s supervisory authority and powers with respect to Trad-X exist across all other TSEF platform as well, as applicable.
- 10.12 Additionally, as discussed above in Section 10.8, TSEF has developed and put into place a BCP and has clear procedures and guidelines for identifying emergencies

and exercising authority to liquidate positions or suspend trading in any swap listed for trading on TSEF as outlined under Rule 208 of the Rulebook. Emergencies include circumstances that, in the opinion of the Board, require immediate action and which threaten or may threaten the fair and orderly trading, settlement or integrity of any swap, including failure of the clearing system, directly applicable governmental or similar action, manipulative activity or undue concentration of positions in swaps, bankruptcy, insolvency or certain other impairments in respect of a clearing firm as well as any act or occurrence generally constituting a force majeure.

## 11. CLEARING AND SETTLEMENT

*TSEF has policies and rules in place to address:*

- (a) the existence of clearing agreements with an authorized clearing agency;*
- (b) adequate oversight of the clearing agency;*
- (c) clearing of all transactions by the authorized clearing agency; and*
- (d) restrictions on foreign members respecting legislation that are not anti-competitive and do not create obstacles to access.*

- 11.1 In compliance with Core Principle 7, TSEF requires Participants to either have a clearing agreement with a registered CFTC designated DCO (being, for TSEF, LCH.Clearnet Limited, Intercontinental Exchange, Inc., Japan Securities Clearing Corporation and the Chicago Mercantile Exchange) (for cleared trades) or an ISDA Master Agreement and supporting documents, or an agreement similar to an ISDA Master Agreement for bilateral trades.

With respect to clearing and settlement agreements, TSEF has clearing agreements with authorized clearing agencies. In regard to TSEF's oversight of clearing agencies, TSEF does not have the capability to judge or oversee the adequacy of a clearing agency. TSEF relies on the CFTC to recognize clearing agencies and will only offer clearing to clearing agencies that are registered with the CFTC. Not all of SEF transactions are cleared by a clearing agency, some transactions are settled bilaterally between the counterparties to the trade. TSEF has no restrictions or rules in place that are anti-competitive restrictions or create obstacles to access for Quebec Participants.

- 11.2 TSEF ensures that Quebec Participants are members of a clearing house by requiring all Quebec Participants to execute representations to that effect. Quebec Participants are required to represent that:
- (a) they have implemented appropriate clearing arrangements for the clearing and settlement of cleared or settled trades to be effected through TSEF's; and
  - (b) the entity responsible for the clearing or settlement of the trades of the Participant on TSEF's and of which the Participant is a member has been duly

recognized or is exempted from recognition by the AMF as a clearing house or settlement system in Quebec.

- 11.3 TSEF also monitors a Participant's access, including Quebec Participants' access, to clearing through various means. Clearing Firms must be on-boarded and approved to offer clearing to Participants on TSEF. Trad-X, TSEF's electronic rates platform, contains real-time functionality that monitors for access to and limits on, clearing. Trad-x Clearing Firms must allocate credit to Participants clearing through them each day. Clearing Firms have the ability to allocate a notional-based, daily, resettable limit that controls the maximum amount of cumulative notional value of Trades which a Participant can execute through the Trad-X Platform for its own account within a given Trading Day. Participants without a credit allocation from a Clearing Firm, or who enter orders that will breach their daily limit, will be blocked from trading by the Platform. For the avoidance of doubt, if an Order is placed by a Participant which, if executed against, would breach the daily limit of such Participant, the Trad-X Platform will block such Order. TSEF monitors clearing relationships in products that are not on electronic platforms through daily interaction with the Participants and through submitting their trades to clearing. Trades won't settle unless Participants have ongoing clearing arrangements. If a rejection notice is received from a clearing firm because the Participant or customer breached its credit limit at the clearing firm, or from a DCO because a clearing firm breached its credit limit at such DCO, then a cleared swap shall be void ab initio and TSEF shall notify the relevant SDR that the cleared swap was rejected. If a cleared swap is rejected by a DCO because of a clerical or operational error or omission resulting in a mismatch of the terms of the trade, then the swap shall be void ab initio. In such case a new cleared swap, with terms and conditions that match the terms of the original swap, other than any such error and the time of execution, may be submitted for clearing without being executed. TSEF reports the swap transaction data to the relevant SDR as soon as technologically practicable after the original swap is and the parties provide the necessary information.
- 11.4 All required swaps executed on TSEF are cleared by a CFTC designated DCO or Clearing House, which are subject to CFTC Regulations, including core principles applicable to DCOs and Clearing Houses, and accordingly, TSEF is comfortable that these clearing houses have established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

TSEF does not restrict access by foreign Participants other than by requiring a foreign entity seeking access to be in a jurisdiction that allows SEF access in accordance with applicable law, not be in a jurisdiction with economic or trade sanctions programs administered by OFAC or other relevant U.S. or non-U.S. authority, and not be in jurisdictions in violation of US Bank Secrecy Act or US Patriot Act. TSEF actively screens Participant and Customer names against OFAC's list of Specially Designated Nationals and Blocked Persons.



## 12. OUTSOURCING

- 12.1 Where TSEF has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.
- 12.2 TSEF has adopted an Outsourcing Policy which specifies controls to help to reduce the risks associated with outsourcing. This policy addresses the following controls which are found in the ISO/IEC 270002:2005 and ISO/IEC 27001 standards: (1) the identification of risks related to external parties; (2) addressing security when dealing with customers; and (3) addressing security in third party agreements. TSEF outsources certain functions to both internal affiliated companies and third-party vendors. Pursuant to TSEF's policies, companies that provide such functions to the SEF require industry standard certifications, depending on service provided. TSEF also imposes additional controls and contractual provisions based on the nature of the services outsourced. These additional controls include contractual obligations imposed on service providers with respect to matters such as risk analysis, security, capacity, disaster recovery and testing, including obligations to follow generally accepted standards and best practices with respect to such matters, and the right for TSEF to monitor and audit the service provider's compliance with its contractual obligations to TSEF or employ an independent third party auditor for this purpose.
- 12.3 The Outsourcing Policy specifies that formal contracts between TSEF and the outsourcer must be submitted to TSEF's Legal Department for approval.
- 12.4 TSEF has outsourced the following key services/systems:
- (a) Regulatory Services Agreement with the NFA to assist TSEF perform its regulatory and surveillance function as an SRO;
  - (b) clearing agreements with LCH. Clearnet Limited, ICE Clear Credit LLC, Japan Securities Clearing Corporation and the Chicago Mercantile Exchange Inc.;
  - (c) technology agreements regarding order books and other trading platforms with StreamingEdge LLC, TFS-ICAP LLC, and Trad-X LLC; and
  - (d) expense sharing agreements with Tradition Group companies, Tradition America Holdings, Inc. to provide personnel, space, accounting and other administrative functions.

## 13. CUSTODY OF ASSETS

- 13.1 TSEF does not hold funds or securities of a Participant.



#### 14. (C) POWERS OF TSEF RESPECTING CO-OPERATION

- 14.1 TSEF confirms that it has the power to co-operate fully with the AMF and to provide information and documents respecting its operations, including: (a) its annual report and its quarterly and annual financial statements; (b) any amendment to the laws or regulations governing its activities in the U.S.; (c) any amendment to its internal by-laws, rules, policies or other similar instruments; (d) any change respecting its right to operate in the U.S.; (e) notice of any situation that could have an impact on its financial viability or its ability to operate and may result, in particular, from the bankruptcy or financial difficulties of a member dealer; and (f) any disciplinary or administrative action taken by Tradition SEF.
- 14.2 TSEF confirms that it has the power to co-operate and share information with a self-regulatory organization in Québec.
- 14.3 TSEF undertakes to furnish information on request of the AMF in respect of its powers. Additionally, TSEF's Compliance and Surveillance Manual outlines the procedures related to responding to governmental requests for information including the AMF.

#### 15. (D) POWERS RESPECTING CO-OPERATION OF REGULATOR IN HOME JURISDICTION

- 15.1 The CFTC has entered into memorandums of understanding ("MOU") arrangements for co-operative enforcements with foreign regulatory authorities in numerous jurisdictions. The MOUs typically provide for access to non-public documents and information already in the possession of the regulatory authorities, and often include undertakings to obtain documents and to take testimony of, or statements from, witnesses on behalf of a requesting regulatory authority. There are four (4) MOUs between the CFTC and the AMF: (1) a MOU dated July 7, 1992; (2) a financial information sharing MOU dated September 23, 1991; (3) a MOU concerning Consultation, Cooperation and the Exchange of Information of the IOSCO dated October 16, 2003; and (4) a MOU concerning cooperation and the exchange of information related to the supervision of cross-border covered entities dated March 25, 2015.
- 15.2 TSEF hereby undertakes to comply with the conditions the AMF may reasonably impose on TSEF in respect of its activities in the Province of Québec pursuant to an exemption order issued by the AMF in accordance with the Act.



November 10, 2016

Autorité des marchés financiers  
800 Victoria Square, 22<sup>nd</sup> floor  
Box 246, Tour de la Bourse  
Montréal, QC H4Z 1G3

Attention: Serge Boisvert, Regulatory Analyst, SRO Oversight  
Corinne Lemire, Senior Analyst, SRO Oversight

Dear Sirs and Mesdames:

**Exemption from Recognition of tpSEF Inc. as an Exchange under section 12 of the *Derivatives Act*, RSQ, c I-14.01.**

**Exemption from the requirements of *Regulation 21-101 Respecting Marketplace Operation*, RRQ, c V-1.1, r 5 and of *Regulation 23-101 Respecting Trading Rules*, RRQ, c V-1.1, r 6.**

We are acting as counsel to tpSEF Inc. (the “**Applicant**” or “**tpSEF**”), a swap execution facility (“**SEF**”) registered with the United States Commodities Futures Trading Commission (“**CFTC**”) pursuant to Section 5h of the United States Commodities Exchange Act, as amended (“**CEA**”), and CFTC Regulation 37.3. This application (“**Application**”) filed on behalf of tpSEF with the Autorité des marchés financiers (the “**AMF**”) seeks a decision by the AMF under section 86 of the *Derivatives Act* (Québec), as amended (the “**Act**”), exempting the Applicant from the requirement to be recognized as an exchange under section 12 of the Act and from the applicable requirements of *Regulation 21-101 Respecting Marketplace Operation* and of *Regulation 23-101 Respecting Trading Rules* (the “**Requested Relief**”).

The Act and all regulations, rules, policies and notices of the AMF made thereunder are collectively referred to as the “**Legislation**”.

### **Exemption Criteria**

AMF Staff has prescribed criteria in *Policy Statement Respecting the Authorization of Foreign-Based Exchanges* established by Decision No. 2005-PDG-0087 pronounced on March 30, 2005 (the “**Policy**”) which have been applied in applications for exemption from recognition by foreign-based stock exchanges under section 12 of the Act. For convenience, this Application is divided into the Parts listed below. Part II describes how the Applicant satisfies AMF Staff’s criteria under the Policy.

Part I Background

Part II Application of Exemption Criteria to tpSEF

1. Regulation of the Exchange

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2. Governance
3. Fees
4. Fair and Equitable Access
5. Regulation
6. Compliance, Surveillance and Enforcement
7. Record Keeping
8. Outsourcing
9. Market Operations
10. Systems and Technology
11. Financial Viability
12. Clearing and Settlement
13. Information Sharing and Oversight Arrangements

Part III Submissions

Part IV Other Matters

### **Part I – Background**

1. tpSEF is a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware with a principal place of business located at 101 Hudson Street, Jersey City, NJ 07302.
2. tpSEF is a wholly-owned subsidiary of Tullett Prebon Americas Corp. (“**TPAC**”). TPAC is a 75%-owned subsidiary of Tullett Prebon (No. 1) (“**TP No. 1**”) and a 25%-owned subsidiary of Tullett Prebon (Americas) Holdings Inc. (“**TPAHI**”). TP No. 1 is a 100%-owned subsidiary of TPAHI, which is a 100% wholly-owned indirect subsidiary of Tullett Prebon plc, the ultimate parent company and a public company organized under the laws of England and Wales.
3. In the United States, tpSEF operates under the jurisdiction of the CFTC and has obtained registration with the CFTC to operate a SEF as defined in Section 1a(50) of the CEA.
4. tpSEF is obliged under CFTC rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and to discipline participants, including by means other than exclusion from the marketplace. tpSEF’s rules (the “**tpSEF Rules**”) are set forth in the tpSEF Inc.



Rulebook (the “**tpSEF Rulebook**”), which is available on tpSEF’s website at [http://www.tullettprebon.com/swap\\_execution\\_facility/rulebook.aspx](http://www.tullettprebon.com/swap_execution_facility/rulebook.aspx).<sup>1</sup>

5. tpSEF has entered into a regulatory services agreement with the National Futures Association (“**NFA**”), a registered futures association, as a regulatory services provider to perform certain surveillance, investigative, and regulatory functions under the tpSEF Rules, and tpSEF may provide information to the NFA in connection with the performance of those functions. tpSEF retains ultimate decision-making authority with respect to, and ultimate responsibility for, any functions that are contracted to the NFA.
6. tpSEF provides an execution venue that enables its participants to execute CFTC-regulated swaps in a range of asset classes. Products currently listed for trading on tpSEF include, among others, fixed-for-floating interest rate swaps and swaptions, basis swaps, forward rate agreements, cross-currency swaps, credit default index swaps, foreign exchange options and non-deliverable foreign exchange forwards, equity index swaps, inflation swaps, and energy and other commodity swaps. Details on the products currently listed for trading on tpSEF are included in Appendix B to the tpSEF Rulebook, which is available on tpSEF’s website at [http://www.tullettprebon.com/swap\\_execution\\_facility/rulebook.aspx](http://www.tullettprebon.com/swap_execution_facility/rulebook.aspx).
7. tpSEF offers participants order execution via an anonymous order book. Orders can be entered into the order book either by a participant that has elected direct access to the order management system or by a tpSEF execution specialist acting on a participant’s instruction. Orders may be communicated by participants to execution specialists via telephone and/or via electronic modes of communication such as email and instant message. tpSEF also offers participants order execution for certain transactions through tpSEF’s Off-Book Ticket Functionality and through anonymous risk mitigation sessions. Information on tpSEF’s Risk Mitigation Procedures is included in Appendix C to the tpSEF Rulebook.
8. tpSEF has entered into clearing arrangements with six derivatives clearing organizations (“**DCOs**”). These include four DCOs that are registered with the CFTC: LCH Clearnet Limited, LCH.Clearnet, LLC, ICE Clear Credit, LLC, and the Chicago Mercantile Exchange Inc., and two DCOs that have been exempted from registration by the order of the CFTC: Japan Securities Clearing Corporation (“**JSCC**”) and ASX Clear (Futures) Pty Limited (“**ASX**”).
9. Because tpSEF has participants located in Québec (“**Québec Users**”), it is considered by the AMF to be carrying on business as an exchange in Québec and is required to be recognized as such or exempted from recognition pursuant to section 12 of the Act.
10. tpSEF has no physical presence in Québec and does not otherwise carry on business in Québec except as described above.
11. tpSEF filed an application dated October 2, 2013 with the AMF requesting an interim order pursuant to section 86 of the Act exempting tpSEF from the requirement to be recognized as an exchange under subsection 12 of the Act. Pursuant to an order dated October 2, 2013 under section 86 of the Act (the “**Interim Order**”), the AMF has exempted tpSEF on an interim basis from the requirement to be recognized as an exchange subject to the terms and conditions of the Interim Order. One of the conditions of the Interim Order was that tpSEF file a full application to the AMF for a subsequent order pursuant to section 86 of the Act exempting it from the requirement to be recognized as an exchange

<sup>1</sup> Accessibility of the public to current tpSEF Rules is an element for consideration by the AMF pursuant to criteria 5(B) iv) f) of the Policy.



under subsection 12 of the Act (the “**Subsequent Order**”). tpSEF is requesting a Subsequent Order from the AMF pursuant to this Application.

12. According to the information available to tpSEF and subject to the exercise of the powers provided by the laws and regulations of the CFTC, there are no requirements for the Québec Users to be registered with an organization or governmental agency of the United States or to become a member of a regulatory organization with respect to derivatives or another entity in the United States to exercise the activities described herein by the mere fact of being a Québec User of tpSEF.
13. tpSEF provides a daily activity summary on its website that is available to the public. The summary lists those transactions executed on tpSEF for the relevant day. This information may be accessed at [http://www.tullettprebon.com/swap\\_execution\\_facility/daily\\_activity\\_summary.aspx](http://www.tullettprebon.com/swap_execution_facility/daily_activity_summary.aspx).

## **Part II – Application of Exemption Criteria to tpSEF**

### **1. REGULATION OF THE EXCHANGE IN THE HOME JURISDICTION**

#### **1.1 Regulation of the Exchange – tpSEF is regulated in an appropriate manner in another jurisdiction by a foreign regulator.**

- 1.1.1 tpSEF is regulated as a SEF by the CFTC, the “regulator in the home jurisdiction” for the purposes of this Application. The CFTC has access to all trade information, compliance data and other operational information as it relates to tpSEF’s operations. The CFTC’s Division of Market Oversight may conduct regular reviews of tpSEF’s ongoing compliance with the CFTC regulations in order to enforce its rules, prevent market manipulation and customer and market abuses, and to ensure the recording and safe storage of trade information.

#### **1.2 Authority of the Foreign Regulator – The CFTC has the appropriate authority and procedures to ensure compliance and for oversight of the tpSEF. This includes approval of the rules and policies of tpSEF and regular, periodic oversight reviews of tpSEF by the CFTC (Criteria 5(A) i) and ii) of the Policy).**

- 1.2.1 The CFTC has been charged with administering and enforcing the CEA. Accordingly, the CFTC is the U.S. government agency that has direct regulatory and oversight responsibility over SEFs. As such, the CFTC has promulgated regulations and guidelines (the “**CFTC Regulations**”) that govern the conduct of SEFs, such as tpSEF, and that interpret the statutory core principles described in Section 5h of the CEA (the “**Core Principles**”) that are applicable to all SEFs. The CFTC monitors trading on tpSEF and receives daily transaction and other reports from tpSEF. The CFTC may also undertake periodic in-depth audits or “rule reviews” of tpSEF’s compliance with the CFTC Regulation and the Core Principles. In the last three years, the CFTC has not conducted an in-depth audit of tpSEF with the exception of a detailed review conducted as part of the process for tpSEF’s application for registration in August 2013. The review by the CFTC covered everything from rules, to compliance procedures, to technology/systems and disaster recovery and culminated with tpSEF’s final registration. In addition, on an annual basis, tpSEF must submit an annual report to the CFTC for review. This report contains a description of tpSEF’s policies and procedures, a review of the CFTC Regulations and Core Principles that identifies the tpSEF policies and procedures designed to ensure compliance therewith, an assessment of the effectiveness of tpSEF’s policies and procedures and a discussion of areas for improvement, a list of material changes to tpSEF’s policies and procedures since the last annual report, a description of



tpSEF's financial, managerial and operational resources, and a description of any material compliance matters.

- 1.2.2 tpSEF is required to demonstrate its compliance with the Core Principles. The Core Principles include requirements that tpSEF monitor and enforce compliance with its rules; only list products that are not readily susceptible to manipulation; monitor trading to prevent manipulations, price distortion and disruptions of the delivery or cash-settlement process; have the ability to obtain information necessary to perform the functions described in Section 5h of the CEA; adopt position limitations or position accountability for speculators, where necessary and appropriate; make available to the regulators, market participants and the public certain market information; provide a competitive, open and efficient mechanism for executing transactions; create and maintain necessary records; establish rules to ensure the financial integrity of its contracts; protect market participants from abusive practices; avoid anticompetitive actions and establish and enforce appropriate fitness standards; minimize conflicts of interest in the decision-making process and establish a process for resolving such conflicts.

**1.3 Investigative Power of the Foreign Regulator – The CFTC has the power to investigate and enforce the CEA including the imposition of penalties in order to ensure effective investor protection<sup>2</sup> (Criteria 5(A) iii) of the Policy).**

- 1.3.1 The CFTC has broad powers of investigation, enforcement and for initiating emergency actions. The CFTC's Division of Enforcement (the "**Division**") investigates and prosecutes alleged violations of the CEA and CFTC Regulations. For example, the Division brings enforcement actions against: individuals and firms registered with the CFTC; those who violate the CEA and/or the CFTC Regulations in connection with their trading commodity futures and options on designated domestic exchanges; those who improperly market futures and options contracts to retail investors or perpetrate Ponzi schemes; those who use manipulative or deceptive schemes in connection with commodities, futures or swaps; and those who engage in disruptive trading practices. The Division undertakes these activities under the management and direction of the Office of the Director.
- 1.3.2 The Division bases investigations on information it develops independently, as well as information provided by other CFTC Divisions, industry self-regulatory associations, state, federal, and international authorities, and members of the public. At the conclusion of an investigation, the Division may recommend that the CFTC initiate administrative proceedings or seek injunctive and ancillary relief on behalf of the CFTC in United States District Courts around the country.
- 1.3.3 The CFTC has a number of enforcement tools at its disposal including the use of administrative and civil proceedings. A wide range of sanctions can also be sought in administrative and civil proceedings, including monetary penalties, disgorgement and restitution. Administrative sanctions may include orders imposing civil monetary penalties, suspending, denying, revoking or restricting registration and exchange trading privileges, and orders of restitution. The CFTC also may obtain temporary restraining orders and preliminary and permanent injunctions in Federal court to halt ongoing violations. Other relief may include appointment of a receiver, a freeze of assets, restitution, and disgorgement of unlawfully acquired benefits. The CEA also provides that the CFTC may obtain certain temporary relief on an *ex parte* basis (that is, without notice to the other party). When those enjoined violate court orders, the Division may seek to have the offenders held in contempt. Finally, the CFTC has emergency

<sup>2</sup> Source: CFTC website <http://www.cftc.gov/LawRegulation/Enforcement/OfficeofDirectorEnforcement>.



authority powers, based on the CFTC's judgment that allows the CFTC to maintain or restore orderly trading.

**1.4 Power of the Foreign Regulator to Access Information – The CFTC has the power to obtain information from tpSEF and to carry out inspections (Criteria 5(A) iv) of the Policy).**

- 1.4.1 CFTC rules and regulations permit the CFTC to inspect all categories of regulated entities and individuals, to require information from them, and to conduct investigations into their activities for potential breach of their statutory and regulatory obligations. The CFTC also has the power to conduct market surveillance and to access information from any person, including subpoena powers over records and testimony, where a breach of law is suspected.

**1.5 Review and Approval of Products by the Foreign Regulator – The products listed for trading on tpSEF and any changes thereto are submitted to the CFTC, and are either approved by the CFTC or are subject to requirements established by the CFTC that must be met before implementation of a product or changes to a product (Criteria 5(A) v) and vi) of the Policy).**

- 1.5.1 The products listed for trading on tpSEF and the related rules are subject to review by the CFTC. When listing a swap for trading, tpSEF's Chief Compliance Officer (the "CCO") (or his/her designee) reviews the swap to determine that it is not readily susceptible to manipulation, paying special attention to the reference price used to determine the cash flow exchanges. Once a swap has been reviewed and approved by the CCO, tpSEF must submit the terms and conditions of the swap to the CFTC. To list a new swap for trading on tpSEF, tpSEF must either (i) voluntarily submit such swap for CFTC review and approval pursuant to the procedures specified in CFTC Regulation 40.3, or (ii) certify to the CFTC that such swap complies with applicable law pursuant to the procedures specified in CFTC Regulation 40.2. If a SEF determines that a listing will generally not be considered controversial or requiring special attention from the CFTC, tpSEF will self-certify the rule. Any such submission is required to be filed electronically with the CFTC and tpSEF posts the notice of the submission on its website.
- 1.5.2 A voluntary submission made pursuant to CFTC Regulation 40.3 is required to include, among other things, the product's terms and conditions, a concise explanation and analysis of the product and how it complies with applicable law and regulations, along with the documentation relied upon for such analysis or appropriate citations thereto, and a description of any agreements or contracts entered into with other parties that enable tpSEF to carry out its responsibilities.
- 1.5.3 Products that are not voluntarily submitted for prior CFTC approval must be submitted to the CFTC pursuant to CFTC Regulation 40.2 with a certification that the swap complies with applicable law. tpSEF is required to file the submission electronically with the CFTC by the open of business on the business day preceding the product's listing and must post notice of the submission on its website. The submission is required to include, among other things, the product's terms and conditions, the intended listing date, a concise explanation and analysis of the product and how it complies with applicable law and regulations, and a certification by tpSEF that it complies with the CEA and the CFTC Regulations.
- 1.5.4 In addition to the information described above, tpSEF is required to provide, if requested by CFTC staff, any additional evidence, information, or data that demonstrates that the product meets applicable requirements.





1.5.5 The CCO (or his/her designee) reviews all submissions prepared for approval or certification and to affirm that such submission meets the applicable requirements. tpSEF's Market Regulation Department ("MRD") is responsible for ensuring all required notices and website postings are made. The MRD is the department within tpSEF that regulates compliance with the tpSEF Rules and reports to the CCO.

1.5.6 All products traded on tpSEF were self-certified and there are no products that were not approved by the CFTC. tpSEF lists "Made Available to Trade" ("MAT") products, which received that status as a result of determinations by other SEFs, but has not, to date, submitted such a determination. Pursuant to CFTC Regulation 37.10, a SEF may submit a determination to the CFTC that a swap is available to trade for purposes of section 2(h)(8) of the CEA. The SEF may submit its determination under the CFTC's 40.5 rule approval process or under the CFTC's 40.6 rule self-certification process. In order for the SEF to make a swap available to trade, the SEF shall consider, as appropriate, the following factors: (i) whether there are ready and willing buyers and sellers; (ii) the frequency or size of transactions; (iii) the trading volume; (iv) the number and types of market participants; (v) the bid/ask spread; or (vi) the usual number of resting firm or indicative bids and offers. MAT products are required to be executed on a SEF or a designated contract market (as defined in the CFTC Regulations).

**1.6 Product Specifications - The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.**

1.6.1 The terms and conditions of each product listed for trading on a SEF must be submitted to the CFTC as described in Section 1.5 above. With respect to swaps, these terms and conditions include, among other things, the type of swap, notional amounts, trading hours and the listing of swaps, basis for establishing the payment obligations under the swap including, as applicable, the accrual start dates, termination or maturity dates, and, for each leg of the swap, the initial cash flow components, spreads, and points, and the relevant indexes, prices, rates, coupons, or other price reference measures, any price limits, trading halts, or circuit breaker provisions. The terms and conditions for each swap listed on tpSEF are included in Appendix B to the tpSEF Rulebook, which is available on tpSEF's website at [http://www.tullettprebon.com/swap\\_execution\\_facility/rulebook.aspx](http://www.tullettprebon.com/swap_execution_facility/rulebook.aspx).

**1.7 Risks Associated with Trading Products – tpSEF maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on tpSEF that may include, but are not limited to, daily trading limits, price limits, position limits, and internal controls (Criteria 5(B) v) b) of the Policy).**

1.7.1 After a swap commences trading on tpSEF, the CCO (or his/her designee) periodically reviews the trading in the instrument. If the CCO (or his/her designee) cannot determine that such swap is not readily susceptible to manipulation, after taking into account (i) all of the terms and conditions of the swap, (ii) the markets for the swap and any underlying commodity or commodities or security or securities and (iii) the trading in the swap, tpSEF may no longer permit the trading of such swap on tpSEF.

Participants and their clients and customers are required to comply with all CFTC requirements regarding position limits. If a tpSEF employee becomes aware of a position limit violation, the employee is required to report it to the MRD. In addition, consistent with Core Principle 6 and CFTC Regulation 37.600, the tpSEF Rules provide that to reduce the potential threat of market manipulation or congestion, tpSEF will adopt, for each of the contracts traded on tpSEF, as is necessary and appropriate,



position limitations or position accountability levels for speculators. tpSEF has not to date adopted any such position limits or position accountability levels.

Under Section 4a of the CEA, the CFTC is required to establish position limits only after it determines that such position limits are necessary and appropriate. To date, the CFTC has not made that determination for financial swaps and, as a result, has not established position limits for these products. However, even if such limits were put in place, SEFs are limited in their ability to monitor for position limits violations. SEFs can only monitor market activity for those transactions that take place on its trading system or facility and have no way of knowing whether a particular trade on the SEF adds to an existing market-wide position or whether it offsets all or part of an existing position in that swap.

- 1.7.2 tpSEF's Regulatory Oversight Committee ("**ROC**") may impose controls to reduce the potential risk of market disruption, including but not limited to market restrictions that pause or halt trading in specified market conditions. The ROC monitors market conditions and considers whether it is appropriate to implement pre-trade limits on order size, price collars or bands around the current price of a contract, message throttles, daily price limits and intraday position limits related to financial risk to participants. tpSEF's Chief Executive Officer ("**CEO**") and/or COO may also design other types of risk controls, as well as clear error-trade and order cancellation policies.

**1.8 To the extent it is consistent with the laws of the foreign jurisdiction, the exchange adheres to the standards of the International Organisation of Securities Commissions (IOSCO) including those set out in the "Principles for the Regulation and Supervision of Commodity Derivatives Markets" (2011) (Criteria 5(A) vii) of the Policy).**

- 1.8.1 tpSEF may be viewed as generally adhering to IOSCO principles by virtue of the fact that it must comply with the CEA and the CFTC Regulations.

## **2. GOVERNANCE**

### **2.1 Governance Criteria**

*The governance structure of tpSEF provides for appropriate, fair and meaningful representation on its Board and any committee thereof (Criteria 5(B) i) a) of the Policy).*

- 2.1.1 tpSEF has a Board of Directors (the "**Board**"), whose organization and constitution is governed by the Amended and Restated By-Laws of tpSEF Inc. (the "**By-Laws**") and by the tpSEF Rules set forth in the tpSEF Rulebook. Section 2 of the tpSEF Rulebook governs, among other things, the organization and constitution of the operating committees established by the Board. The Board has established the ROC that, as more fully described below, is responsible for overseeing tpSEF's regulatory program, including reviewing the size and allocation of the regulatory budget and resources and reviewing the performance of the CCO. At this time, the ROC is the only committee that has been established by the Board.
- 2.1.2 The By-Laws and the tpSEF Rules help ensure the integrity and competence of the Board, and prevent breaches of any relevant law, regulation, or code of practice. For example, the tpSEF Rules require a Board member to notify tpSEF if, among other things, he/she has been found to have committed certain disciplinary offenses, or has become subject to a revocation or suspension of registration by the CFTC. In addition, as discussed more fully below, certain Board members must also be "public directors" ("**Public Directors**").



- 2.1.3 The CFTC has the authority to review the organization and structure of tpSEF, including the By-Laws, which establish the corporate governance and composition of the Board, to ensure that tpSEF will be able to comply with CFTC Regulations. Through By-Law Articles III and V, the Board and tpSEF's officers, respectively, are empowered with all the powers and duties of a Delaware corporation and are able to delegate those powers.

***The governance structure of tpSEF provides for appropriate representation by independent directors on the Board and any committee thereof (Criteria 5(B) i) b) of the Policy).***

- 2.1.4 The CFTC is interested in ensuring that the Board is large enough to deal with conflicts as required by the Core Principles and has the ability to act independently. The CFTC has proposed, but not yet finalized, rules for minimizing conflicts of interest in decision-making by SEFs that are intended to recognize SEFs' public-interest responsibilities as self-regulatory organizations. Under these proposed rules, at least 35% of the directors of a SEF's board must qualify as "public directors". According to the CFTC, "public directors" are persons who have no "material relationship" with tpSEF, i.e., any relationship that could reasonably affect their independent judgment or decision making. Article III, Section 4 of the By-Laws and tpSEF Rule 2100 require that no less than 35% of tpSEF's directors will be Public Directors. For the purposes of the By-Laws, "Public Director" means an individual (i) that meets the requirements set forth in CFTC Regulation 1.64(b)(1)(i) – (ii), and (ii) that is found by action of the Board upon nomination or appointment and thereafter as often as necessary in light of all circumstances relevant to the particular individual, but no less than annually, to have no "material relationship" with tpSEF. A material relationship may include, among other things, if a public director is an officer or an employee of tpSEF, or an officer or an employee of an affiliate of tpSEF or is a participant or owner of tpSEF. Currently, 60% of the Board is comprised of Public Directors.
- 2.1.5 The Board is comprised of five directors, including the CEO, the Chief Financial Officer, and three directors who qualify as Public Directors. Given that 60% of tpSEF's directors are Public Directors and that all of the directors are qualified and experienced professionals in the swaps industry, we would respectfully submit that the Board provides appropriate, fair and meaningful representation to all those with an interest in the stewardship of tpSEF.
- 2.1.6 Directors of the Board must meet the qualifications set forth in the By-Laws and tpSEF Rules. Such qualifications include having prior industry (or related) experience, a strong understanding of swaps and a familiarity with rules and regulations pertaining to swaps.
- 2.1.7 The three Public Directors of the Board comprise the ROC. The ROC oversees tpSEF's regulatory program on behalf of the Board, including the following: (i) trade practice and market surveillance, audits, examinations, and other regulatory responsibilities with respect to Participants including ensuring compliance with financial integrity, financial reporting, sales practice, recordkeeping, and conducting investigations; (ii) reviewing the size and allocation of the regulatory budget and resources, and the number, hiring, termination, and compensation of regulatory personnel; (iii) reviewing the performance of the CCO and making recommendations with respect to such performance to the CEO; and (iv) recommending changes that would ensure fair, vigorous, and effective regulation. Article III, Section 10 of By-Laws and tpSEF Rule 2401 require the ROC to be composed entirely of Public Directors. The ROC meets with the CCO on a quarterly basis, or otherwise as necessary, and reviews the annual compliance report.



*The governance structure of tpSEF provides for appropriate qualifications, remuneration and limitation of liability for directors and officers (Criteria 5(B) i) c) of the Policy).*

- 2.1.8 As stated above, directors of the Board must meet the qualifications set forth in the By-Laws and tpSEF Rules. Such qualifications include having prior industry (or related) experience, a strong understanding of swaps and a familiarity with rules and regulations pertaining to swaps.
- 2.1.9 Public Directors of the Board receive an annual salary for their service on the Board. Public Directors may also receive an additional amount for meeting attendance. tpSEF does not compensate any director for his/her role on a tpSEF committee, disciplinary, appeals, or review panel. Public Directors are not compensated based on the achievement of business objectives by tpSEF.
- 2.1.10 Article VIII, Section 1 of the By-Laws includes an indemnity provision that indemnifies and holds harmless directors and officers of tpSEF to the fullest extent permissible under and pursuant to any procedures specified in the General Corporation Law of the State of Delaware.

*The governance structure of tpSEF provides for appropriate conflict of interest provisions for directors, officers and employees (Criteria 5(B) i) d) of the Policy).*

- 2.1.11 tpSEF has appropriate conflict of interest provisions for all directors, officers, and employees. A director or officer or other person authorized to exercise tpSEF's authority concerning a self-regulatory action who knowingly has a "material conflict of interest" between (i) his or her position as a director or officer, or the exercise of authority concerning a self-regulatory action and (ii) his or her personal interests may not participate in vote of the Board, a Board committee, or disciplinary panel, or exercise any authority with respect to such self-regulatory action involving his or her personal interest. A material conflict of interest includes, among others, being named as a respondent or potential respondent or a witness or potential witness in a tpSEF proceeding or emergency action or having any significant, ongoing business relationship with a respondent or potential respondent or a witness or potential witness in the self-regulatory action.
- 2.1.12 In addition, tpSEF has policies and procedures in place requiring the CCO to resolve, in consultation with the CEO and such others, including, without limitation, the Board and/or the ROC, any conflicts of interest that may arise, including: (i) conflicts between business considerations and compliance requirements; (ii) conflicts between business considerations and the requirement that tpSEF provide fair, open and impartial access as set forth in the CFTC Regulations; and (iii) conflicts between tpSEF's management and members of the Board. In accordance with this requirement, the CCO is required to keep the ROC apprised of conflicts of interest the CCO considers significant on an ongoing basis, and inform the ROC of those conflicts of interest the CCO considers less significant as part of the CCO's quarterly meetings with the ROC. In the event that the CCO or any other person becomes aware of any conflict of interest involving the CCO, tpSEF's procedures require such matter to be promptly brought to the attention of the ROC and/or CEO and resolved by the ROC and/or CEO without the involvement of the CCO.
- 2.1.13 tpSEF has also adopted a Code of Ethics and Business Conduct that sets out the requirements for all employees with respect to, among other things, conflicts of interest.

## **2.2 Appropriate Provisions for Directors and Officers – tpSEF takes reasonable steps to ensure that each officer and director is a fit and proper person.**



- 2.2.1 Directors of the Board must meet the qualifications set forth in the By-Laws and tpSEF Rules. Such qualifications include being of sufficiently good repute and having (i) prior industry (or related) experience, (ii) an understanding of swaps, (iii) a familiarity with the rules and regulations pertaining to swaps, and (iv) sufficient expertise in financial services. A director also has fiduciary duties set forth under Delaware state law. All of the current members of the Board are over the age of majority and are of sound mind, have experience in the swaps industry, and are regarded in the market as being persons with integrity and competence.
- 2.2.2 In addition, tpSEF Rules provide that an individual may not serve as a director or an officer, hold a 10% or more ownership interest in tpSEF, or serve on a committee established by the Board, review panel, disciplinary panel, appeals panel or any other disciplinary or oversight panel of tpSEF and any subcommittee thereof if the individual:
- (1) 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 government agency, tpSEF or any self-regulatory organization, to have committed a disciplinary offense;
  - (2) 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;
  - (3) 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: (i) 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 government agency, tpSEF or any self-regulatory organization,; or (ii) 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;
  - (4) is currently subject to an agreement with the CFTC, any government agency or self-regulatory organization, tpSEF or any self-regulatory organization, not to apply for registration with the CFTC or for membership in the self-regulatory organization;
  - (5) is currently, or within the past three (3) years has been, subject to a revocation or suspension of registration by the CFTC;
  - (6) has been convicted of a felony listed in Section 8a(2)(D)(ii) through (iv) of the CEA; or
  - (7) 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 U.S. Securities Exchange Act of 1934.
- 2.2.3 All employees and officers of tpSEF are also subject to pre-employment screening which is conducted by the Human Resources Department of TPAHI and includes, *inter alia*, credit review (where permitted by law), verification of academic qualifications and employment history and a review of the information supplied in support of the individual's application (including references). In addition, senior management appointees are subject to further checks on their professional memberships, qualifications and directorships and, where appropriate and permitted by law, checks of any criminal records.



### 3. FEES

#### 3.1 **Process for Setting Fees – The process is fair, transparent and appropriate (Criteria 5(B) ii) a) of the Policy).**

3.1.1 tpSEF charges participants a processing fee (“**Processing Fee**”) and a transaction fee (“**Transaction Fee**”) for each transaction executed on tpSEF. These transaction fees are reflected on the tpSEF fee schedule. Prospective participants and Participants may request a fee schedule at any time. For transactions that are communicated to tpSEF electronically to the order book and do not require intermediation by a tpSEF execution specialist, a lower Transaction Fee is typically charged than with respect to those transactions transmitted that require intermediation by a tpSEF execution specialist. Transactions requiring execution specialist involvement typically require more tpSEF involvement and, as a result, are more costly for tpSEF to process.

3.1.2 tpSEF charges comparable fees for market participants receiving comparable access to, or services from, tpSEF pursuant to the requirements of the CEA and CFTC Regulations. In addition, tpSEF’s fee schedule must be submitted to the CFTC.

#### 3.2 **Fees Do Not Constitute a Barrier To Entry – Any and all fees imposed by tpSEF on its participants are equitably allocated, do not have the effect of creating barriers to access and are balanced with the criterion that tpSEF has sufficient revenues to satisfy its responsibilities (Criteria 5(B) ii) b) of the Policy).**

3.2.1 Any and all fees imposed by tpSEF on its participants are equitably allocated, do not have the effect of creating barriers to access and are balanced with the criterion that tpSEF has sufficient revenues to satisfy its responsibilities.

#### 3.3 **Fees Are Balanced – The fees charged to participants ensure that tpSEF has sufficient revenues to meet its responsibilities (Criteria 5(B) ii) c) of the Policy).**

3.3.1 The Processing Fee covers various expenses incurred by tpSEF in the processing of transactions and the operation of its trading platform, including expenses associated with trade surveillance, clearance and third party vendors who provide services to tpSEF related to the processing of participant transactions. The Transaction Fee varies depending on the underlying product and the method by which the order is communicated to tpSEF. In establishing the amount of these fees, tpSEF considers the fees charged by other trading venues and platforms and by its affiliated interdealer broker, as well as the costs associated with the provision of services.

### 4. ACCESS

#### 4.1 **Fair and Equitable Access – The requirements of tpSEF relating to access to its facilities are fair, transparent and reasonable, and include requirements, in respect of notice, an opportunity to be heard or make representations, the keeping of records, the giving of reasons and the provisions for appeals (Criteria 5(B) iii) a) of the Policy).**





- 4.1.1 In accordance with Core Principle 2, tpSEF provides any eligible contract participant (“ECP”), as defined in Section 1a(18) of the CEA, and any independent software vendor (“ISV”) with impartial access to its market(s) and market services. tpSEF maintains (1) criteria governing such access that are impartial, transparent, and applied in a fair and non-discriminatory manner; (2) procedures whereby ECPs provide tpSEF with written or electronic confirmation of their status as ECPs prior to obtaining access; and (3) comparable fee structures for ECPs and ISVs receiving comparable access to, or services from, tpSEF.
- 4.1.2 The requirements of tpSEF relating to access to the facilities of tpSEF are fair, transparent and reasonable and include requirements in respect of notice, an opportunity to be heard or make representations, the keeping of records, the giving of reasons and the provisions for appeals. tpSEF’s access requirements are detailed in the tpSEF Rules and adhere to the CFTC’s impartial access standards that require tpSEF to grant access to any ECP and any ISV, provided the ECP or ISV, as applicable, satisfies objective criteria related to disciplinary history and financial and operational soundness. tpSEF Rules require every participant to demonstrate that it is eligible for admission as a participant. In particular, a prospective participant must be an ECP and satisfy tpSEF’s participation criteria (the “**Participation Criteria**”) that it: (1) is of good reputation and business integrity; (2) maintains adequate financial resources and credit; (3) is validly organized, in good standing, and authorized by its governing body and, if relevant, has documents of organization to trade swaps (if an entity); (4) has not filed for bankruptcy; (5) not prohibited from using the services of tpSEF for any reason whatsoever; (6) holds all registrations required under applicable law; (7) is not subject to statutory disqualification under Section 8a(2) of the CEA; and (8) satisfies any other criteria that tpSEF may require from a participant to perform its responsibilities as a self-regulatory organization, comply with applicable law or provide services, provided such criteria are impartial, transparent and applied in a fair and non-discriminatory manner. Participants are required to provide information with respect to the satisfaction of the Participation Criteria to tpSEF on the tpSEF application and must inform tpSEF in the event any information provided on the application becomes inaccurate. Final decisions in respect of acceptance of applications are made by the MRD. In addition, under the tpSEF Terms of Use, participants represent and warrant each time the participants use the services of tpSEF that they are eligible.
- 4.1.3 An ECP that wishes to become a participant of tpSEF must: (1) file with tpSEF an accurate and complete application and any applicable agreement as may be required by tpSEF from time to time; (2) provide a copy of all formation documents including any amendments thereto if requested by tpSEF; (3) if an applicant is organized or located outside of the United States, enter into a written agreement acceptable to tpSEF appointing a third party as its U.S. agent for service of process for purposes of CFTC Regulation 15.05, and provide tpSEF with a copy of the agreement; (4) provide such other information as may be requested by tpSEF; and (5) provide written or electronic confirmation of its status as an ECP. tpSEF reviews and maintains records of the foregoing in accordance with CFTC Regulations.
- 4.1.4 tpSEF also provides access to its trading platform, services and data on a fair and non-discriminatory basis to any ISV that complies with tpSEF’s documentation and eligibility requirements for ISVs as set forth in tpSEF Rules. An ISV that wishes to access tpSEF must: (1) consent to the jurisdiction of tpSEF and agree to be bound by, and comply with, the tpSEF Rules, any and all duties and responsibilities arising under each tpSEF Rule, order or procedure issued by tpSEF or other requirement implemented by tpSEF, the rules of any DCO applicable to it, and applicable law, in each case to the extent applicable to it; (2) execute an ISV participation agreement in the form supplied by tpSEF; (3) pay the monthly access fees that may be established by tpSEF from time to time, which fees will be comparable for ISVs





receiving comparable access to, or services from, tpSEF; (4) comply with the applicable technical access standards, system compatibility requirements, security protocols and technical specifications for connection to tpSEF as may be specified by tpSEF from time to time; (5) ensure that each person that uses the ISV to access tpSEF is either a participant or a client or customer of a participant; (6) in the case of any order or transaction submitted to tpSEF through the ISV, provide sufficient detail to identify the participant (and, if applicable, the participant's client or customer) as required by tpSEF; and (7) satisfy any other criteria that tpSEF may require to perform its responsibilities as a self-regulatory organization, comply with applicable law or provide services, provided such criteria are impartial, transparent and applied in a fair and non-discriminatory manner. tpSEF reviews and maintains records of the foregoing in accordance with CFTC Regulations.

- 4.1.5 As provided in tpSEF Rule 3103, tpSEF may deny, condition or terminate participant status of any person (or any prospective participant): (1) if such person is unable to satisfactorily demonstrate its ability to satisfy the eligibility criteria to become or remain a participant; (2) if such person is unable to satisfactorily demonstrate its capacity to adhere to all applicable tpSEF Rules; (3) if such person would bring the tpSEF into disrepute as determined by the tpSEF in its sole discretion; or (4) for such other cause as the tpSEF may reasonably determine. If tpSEF decides to decline or condition an application for admission as a participant, or terminate a person's status as a participant, tpSEF shall promptly notify such person ("**Affected Person**") thereof in a writing sent to the address in the tpSEF application form or maintained in the tpSEF's records. Such Affected Person may, within seven (7) calendar days, request in writing to MRD that tpSEF reconsider its determination. Within 30 days of receiving the request for reconsideration, tpSEF shall either confirm, reverse or modify the denial, conditioning or termination of the Affected Person as a participant, and shall promptly notify the Affected Person accordingly in writing. Final decisions in respect of these requests for reconsideration are made by the MRD. Any denials, conditionings or terminations implemented by tpSEF are impartially enforced. Any denial, conditioning or termination that represents a suspension, expulsion, disciplinary or access denial action or other adverse action may also be subject to review by the CFTC pursuant to Part 9 of the CFTC's Regulations. tpSEF maintains records of the foregoing as required under CFTC Regulations. In addition, tpSEF may also terminate a participant's direct electronic connection to tpSEF at any time as provided in Rule 4007, reject any order or take any other action to reduce the potential for market disruptions as provided in Rule 4008. tpSEF maintains records of any denial, approval, termination or any other disciplinary action taken against a participant or ISV.
- 4.1.6 Each participant or participant's client or customer (as applicable) must either be a clearing member of a DCO where the cleared swaps are cleared or have a clearing account with a clearing member with respect to such cleared swaps under agreements and arrangements satisfactory to tpSEF, and provide tpSEF with evidence of such relationship. As part of the tpSEF Terms of Use, participants are required to establish a clearing relationship. As provided in Rule 4017 of the tpSEF Rules, at the time of submitting an order for any cleared swap (including any cleared swap that is a leg of a package transaction) or any cleared block trade, a participant must designate a clearing member with regard to the transaction, which may be either the relevant party to the transaction if such party is self-clearing or a designated clearing firm if the relevant party to the transaction is non-self-clearing. Prior to the execution of any order for a cleared swap<sup>3</sup> (including any cleared swap that is a leg of a package

<sup>3</sup> A "cleared swap" is (i) a swap that is subject to the clearing requirement set forth in Section 2(h)(1) of the CEA, or (ii) any swap of a type that is accepted by a DCO for clearing that the parties have elected to submit for clearing, whether or not the particular swap is accepted or rejected.



transaction<sup>4</sup>) or any cleared block trade for which the relevant party is non-self-clearing, tpSEF facilitates pre-execution credit screening by or on behalf of the designated clearing firm. Upon receiving confirmation that the order or cleared block trade<sup>5</sup> satisfies the clearing firm's pre-execution limits with respect to such party, tpSEF will accept the order or cleared block trade for execution. If tpSEF does not promptly receive confirmation or receives confirmation that the order or cleared block trade does not satisfy the clearing firm's pre-execution limits with respect to such party, tpSEF will cancel the order or cleared block trade. Any party that is self-clearing with respect to a transaction is deemed to represent, by submitting an order for its proprietary account, that it has completed pre-execution screening of its internal clearing risk limits for proprietary accounts. Participants that only transact in uncleared swaps are not required to have a clearing relationship.

- 4.1.7 The CEA prohibits tpSEF, unless necessary or appropriate to achieve the purposes of the CEA, to: (a) adopt any rules or take any actions that result in any unreasonable restraint of trade; or (b) impose any material anticompetitive burden on trading or clearing. As a result, tpSEF is not permitted to adopt any rules or take any actions that result in any unreasonable restraint of trade or impose any material anticompetitive burden on trading or clearing. tpSEF has adopted procedures to request the CFTC to consider its proposed rules under the relevant anti-competition provisions of the CEA, including proposed rules related to trading protocols or policies, and including both operational rules and the terms or conditions of products listed for trading.

**4.2 Limitation of Access – In Québec as in other jurisdictions, access to tpSEF is limited to persons who are duly registered in the participant's relevant jurisdiction (Criteria 5(B) iii) b) of the Policy).**

- 4.2.1 tpSEF Rules and the tpSEF participant agreement require participants to be appropriately registered. As described above, the Participation Criteria includes the requirement for participants to hold all registrations required under applicable law, including, if applicable, Québec law. Participants are required to provide information with respect to the satisfaction of the Participation Criteria to tpSEF on the tpSEF application and must inform tpSEF in the event any information provided on the application becomes inaccurate. If an applicant does not satisfy the Participation Criteria, the applicant is denied access as a participant. In addition, under the tpSEF Terms of Use, participants represent and warrant each time the participant uses the services of tpSEF that they are eligible.

**5. REGULATION**

**5.1 Power to Set and Enforce Rules – tpSEF has the power to perform member and market regulation, including the ability to set rules, conduct compliance reviews and perform surveillance**

<sup>4</sup> A "package transaction" is a transaction involving two or more instruments: (1) that is executed between two or more counterparties; (2) that is priced or quoted as one economic transaction with simultaneous or near simultaneous execution of all components; (3) that has at least one component that is a Swap that is a Required Transaction; and (4) where the execution of each component is contingent upon the execution of all other components. No Swaps are prohibited from being executed on the SEF as part of a Package Transaction. Such facilitation is done by the SEF's providing an execution venue for the Swap legs and reference price information regarding the non-Swap legs. The reference price is made available to Participants for informational purpose only. The SEF does not execute the non-Swap legs of Package Transactions; the counterparties to any Package Transaction involving a non-Swap component must bilaterally execute such non-Swap component away from the SEF.

<sup>5</sup> A "cleared block trade" is a block trade in a cleared swap.



**and enforcement (Criteria 5(B) iv) a) of the Policy).**

- 5.1.1 As a self-regulatory organization, tpSEF has the jurisdiction to perform member and market regulation, including the ability to set rules, conduct compliance reviews and perform surveillance and enforcement as provided by Section 5h of the CEA, as enacted by section 733 of Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended (“**Dodd-Frank**”). Each participant, supervised person, sponsoring participant, sponsored participant, client and customer and any other person (i) initiating or executing a transaction on or subject to the rules of tpSEF directly or through an intermediary or (ii) for whose benefit such a transaction has been initiated or executed is subject to tpSEF’s jurisdiction and must agree to be bound by the tpSEF Rules.
- 5.1.2 The CCO and the MRD are responsible for the overall conduct of tpSEF. The MRD, in conjunction with the NFA, is responsible for monitoring compliance with tpSEF Rules. The MRD reports to the CCO. Among other things, the MRD monitors the trading activity of participants on tpSEF, reviews participant applications, initiates and oversees investigations, and conduct participant reviews.
- 5.1.3 As discussed above, tpSEF has entered into a regulatory services agreement with the NFA to perform certain surveillance, investigative, and regulatory functions under the rules of tpSEF and tpSEF provides information to the NFA in connection with the performance of those functions. Compliance staff of tpSEF holds regular meetings with the NFA to discuss ongoing investigations, trading patterns, market participants and any other matters of regulatory concern. The NFA’s responsibilities are discussed in greater detail below.
- 5.1.4 tpSEF has implemented disciplinary procedures for violations of tpSEF rules. These procedures are discussed in greater detail in Section 9.
- 5.2 Issuer/ Product Regulation – The products traded on tpSEF and listing rules are approved by the appropriate authority.**
  - 5.2.1 The products traded on tpSEF and the listing rules are subject to review by the CFTC as described in Section 1.5 above.
  - 5.2.2 The CFTC has not required tpSEF to withdraw any products to date.
- 5.3 Rules Governing Activity and Against Fraud –tpSEF Rules govern the sales practices of participants to ensure they are fair, properly supervised and not contrary to the public interest and an agreement with a regulatory services provider has been entered into for such purposes (Criteria 5(B) iv) b) and c) and 5(B) v) e) of the Policy).**
  - 5.3.1 Core Principle 2 requires tpSEF to implement measures to prevent the use of its facilities for abusive or improper purposes. Section 3 of tpSEF Rules detail the duties of participants regarding on-boarding, information provided to tpSEF and duty to keep such information current, procedures for withdrawing from tpSEF, designating authorized traders, communicating with tpSEF, informing tpSEF of material changes, and business conduct requirements. Section 5 of the tpSEF Rules sets out certain specified conduct violations of the tpSEF Rules and prohibit a participant from engaging in any fraudulent act or engaging in any scheme to defraud, deceive, trick or mislead in connection with or related to any SEF activity. The tpSEF Rules incorporate CFTC regulatory requirements, including but not limited to conflict of interest provisions, and various record keeping rules. Section 6 of the tpSEF Rules outlines



the procedures for investigating rule violations and taking disciplinary action. The tpSEF Rules and procedures for monitoring and overseeing the use of tpSEF's facilities include appropriate measures to prevent the use of its facilities for abusive or improper purposes. In addition, tpSEF has entered into a regulatory services agreement with the NFA to perform certain surveillance, investigative, and regulatory functions under the rules of tpSEF and tpSEF provides information to the NFA in connection with the performance of those functions. Under that agreement, the NFA provides tpSEF with market surveillance and trade practice surveillance.

- 5.3.2 The MRD and/or the NFA, collect and evaluate data on individual traders' market activity on an ongoing basis, monitor and evaluate general market data to prevent activity that would cause prices to not reflect forces of supply and demand, and have the capacity to conduct real-time monitoring of trading and comprehensive and accurate trade reconstitution. The MRD and/or the NFA have the capacity to detect abnormal price movements, unusual trading volumes, and impairments to market liquidity.
- 5.3.3 NFA's market surveillance program includes monitoring price movements, primary/secondary relationships, volume and open interest, clearing member positions, market information and rumors. In addition, information is gathered from a variety of other sources to perform market surveillance. System alerts are generated for each trading metric based on pre-set parameters determined by NFA staff. NFA's surveillance systems are designed with the following goals:
  1. Quickly identify unusual trading behavior for any trading instrument;
  2. Review prior trade and order data to identify patterns of activity;
  3. Accurately analyze trade data and market news to determine if investigation is needed;
  4. Easily collect, document and manage facts relating to suspicious activity;
  5. Effectively support appropriate enforcement action; and
  6. Minimally interfere with market activity.

The NFA Trade Practice and Market Surveillance reviews include:

1. Fraudulent Trading;
2. Wash Trading;
3. Pre-Arranged Trading;
4. Cross Trades;
5. Front Running;
6. Accommodation Transactions;
7. Audit Trail Requirements; and



#### 8. Messaging and Transaction Activity.

If surveillance problems are noted, an investigation will be commenced by the NFA and the appropriate tpSEF personnel will be notified.

#### 5.3.4 Daily and ongoing reviews of trading activity include the following procedures:

1. The MRD and/or the NFA reviews trading records on a daily basis to identify unusual or prohibited activity (and document such reviews) including, without limitation: (1) transactions with an unusually long period of time before a correction or cancellation was reported to, for example, delay public dissemination or evade the requirements of Part 43 of the CFTC Regulations; (2) an unusual number of trade corrections or cancellations for a participant; (3) the movement of a trade between unrelated clients or from an error account or the movement of a trade from one account to several; (4) trading in any account or group of accounts involving sizable positions in a single swap; and (5) unusual end-of-day trades or trading patterns.
2. The MRD and/or the NFA, also collect and evaluate data on individual traders' market activity on an ongoing basis, monitor and evaluate general market data to prevent activity that would cause prices to not reflect forces of supply and demand. The MRD and/or the NFA have the capacity to detect abnormal price movements, unusual trading volumes, impairments to market liquidity, and position-limit violations. In addition, the NFA continually monitors the appropriateness of the terms and conditions, including the delivery, instrument, delivery locations, location differentials, and the commodity characteristics and related differentials of any swap traded on tpSEF.
3. NFA's market surveillance program also includes monitoring price movements, primary/secondary relationships, volume and open interest, clearing member positions, market information and rumors. System alerts are generated for each trading metric based on pre-set parameters determined by NFA staff.
4. The MRD reviews all trades effected by participants through tpSEF on a real-time basis. The MRD reviews transactions for, among other things, abnormal transaction prices or quantities, duplicative or erroneous transactions, market or system malfunctions or outages and abnormal trading patterns. In conducting its review, to determine, among other things, whether a swap transaction should be modified or cancelled, the MRD considers a number of factors pertaining to the underlying instrument, overall market conditions, and the participants effecting the transaction(s). More specifically, the MRD consider, among other things, the liquidity of the instrument, the asset class, the relevant participant's trading history and any relevant market conditions or news.
5. tpSEF also has a voice audit trail surveillance program. This voice audit trail surveillance program utilizes both targeted and random reviews for voice trades in required transactions and permitted transactions. Under this program, all participants engaging in required transactions and at least one transaction from each tpSEF execution specialist will be reviewed once per calendar year by the MRD.



6. The MRD and/or the NFA would monitor the terms and conditions of physical delivery swaps as they relate to the underlying commodity market and the availability of the supply of the commodity specified by the delivery requirements of the swap. tpSEF currently does not list any physical delivery swaps. In addition, the MRD and/or the NFA monitor the pricing of the reference price used to determine cash flows or settlement for cash-settled swaps.
  7. On a periodic basis, the MRD reviews a sample of confirmations for timeliness and completeness.
- 5.3.5 The MRD conducts real-time monitoring of tpSEF transactions and will immediately report any abnormalities to the CCO. NFA, as Regulatory Services Provider, will have real-time view-only access to tpSEF's transactions to provide a second set of eyes if alerted to an abnormality by a tpSEF employee. On a T+1 basis, NFA investigators analyze system-generated exception reports and alerts produced by the NFA surveillance system. The system is designed to query tpSEF's audit trail as part of T+1 processing to bring to the investigator's attention areas of potential violations and anomalies found in trade data. Queries are based upon tpSEF's rules regarding the abuses prohibited by the CFTC, including: front-running, wash trading, pre-arranged trading, fraudulent trading, money passes, manipulative trading, disruptive trading, trading ahead of customer orders, trading against customer orders, accommodation trading, improper cross trading, and any other trading practices that tpSEF deems to be abusive.
- 5.3.6 The MRD informs the CCO of any issues identified in its review. The CCO evaluates any issues and, if necessary, take any and all appropriate action that may include, among other things, restricting or limiting a participant's access, cancelling a transaction, adjusting trade prices, suspending trading, and/or initiating Emergency Proceedings.
- 5.3.7 tpSEF verifies the accuracy of the transaction data that it collects and reports to the swap data repositories ("SDRs"). tpSEF has contractual arrangements with the following swap data repositories: DTCC Data Repository (U.S.) LLC, Chicago Mercantile Exchange, Inc. and ICE Trade Vault, LLC. Such information is generally provided to the SDRs through a middleware provider who has entered into an agreement with tpSEF to provide such information (*e.g.*, MarketWire). The CCO is responsible, through the annual compliance reviews and reports, for verifying the transaction data is accurate. To verify the accuracy of the data, the MRD will regularly review randomized samples of transaction data.
- 5.3.8 tpSEF Rules impose appropriate sanctions for breaches of any of the applicable trading rules and procedures.
- 5.4 Rules Ensure Fairness and Equity – tpSEF Rules pertaining to order size and limits are fair and equitable to all market participants and the system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent (Criteria 5(B) v) c) of the Policy).**
- 5.4.1 Once an order is entered into the order book, the order is displayed simultaneously to all participants that have established direct connectivity to tpSEF. All orders will be displayed on an anonymous basis and the order book will show, in real-time, the best price and the depth per product. For Participants that have direct connectivity to tpSEF, the order book displays all executions to all participants, and for each individual participant, its order and execution history for the trading day. Information regarding orders





on the order book will be provided upon request to any participant by an execution specialist via telephone and/or via electronic modes of communication such as email and instant message for those who have not elected direct connectivity to the order book.

5.4.2 tpSEF has set order limits by product and by instrument within a particular asset class that will pertain to all participants. The following types of order limits have been imposed: (i) order size limit (this is the maximum size allowed for any single order; any order submitted will be checked against the product/asset class's order size limit, and if the order exceeds this limit, such order will be rejected and the participant will be notified); and (ii) order price limits (this is the maximum price differential allowed for any order; any order submitted will be checked against the product/asset class's order price limit and if the order exceeds this limit, it will be rejected and the participant will be notified). For purposes of tpSEF's order price limits, the price differential is calculated as follows: (order price entered) - (instrument reference price) = price differential.<sup>6</sup> The order size and price limits are in place to prevent order entry errors and are based on industry practice. These limits apply equally to all participants and orders entered on the trading system.

5.4.3 As discussed above, tpSEF and the CFTC may also establish position limits that apply to all participants, their customers and clients.

**5.5 Transparency – Adequate provision has been made to record and publish accurate and timely trade and quotation information. This information is provided to all participants on an equitable basis (Criteria 5(B) v) d) of the Policy).**

5.5.1 tpSEF Rules and CFTC Regulations require tpSEF to record and publish accurate and timely trade and quotation information. This information is provided to all participants on an equitable basis. tpSEF's daily activity summary is available on its public website at [http://www.tullettprebon.com/swap\\_execution\\_facility/daily\\_activity\\_summary.aspx](http://www.tullettprebon.com/swap_execution_facility/daily_activity_summary.aspx).

5.5.2 tpSEF also has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory and enforcement purposes is available to the relevant regulatory authorities on a timely basis.

5.5.3 As discussed above, tpSEF has entered into contractual arrangements with several SDRs including DTCC Data Repository (U.S.) LLC, Chicago Mercantile Exchange, Inc. and ICE TradeVault, LLC. tpSEF verifies the accuracy of the transaction data that it collects and reports to the SDRs. The CCO is responsible, through the annual compliance reviews and reports, for verifying that the transaction data is accurate as part of its annual compliance review. In addition, the MRD regularly reviews randomized samples of transaction data.

**5.6 Sufficient Systems and Resources – tpSEF maintains appropriate systems and resources for conducting member regulation and market regulation, for evaluating compliance with the exchange, Foreign SRO or legislative requirements and disciplining participants.**

5.6.1 tpSEF maintains appropriate systems and resources for conducting member regulation and market

<sup>6</sup> The "Instrument Reference Price" is an estimated current price for the relevant swap, based on either current trading data for that instrument on the SEF and elsewhere, or, in the absence of current trading data for the relevant swap, implied from current trading data for other instruments.





regulation, for evaluating compliance with tpSEF and CFTC requirements and disciplining participants. tpSEF will monitor the size and workload of the MRD on a continuous basis and, on at least an annual basis, formally evaluate whether there is a need to increase tpSEF's compliance and enforcement resources and staff ("**Resources**"). In determining the appropriate level of Resources, tpSEF will consider trading volume increases, the number of new products or swaps listed for trading, any new responsibilities assigned to compliance staff, the results of any internal review demonstrating that work is not completed in an effective or timely manner, the recommendation of any authority rule enforcement review or evaluation of tpSEF and any other factors suggesting the need for increased Resources.

## **6. COMPLIANCE, SURVEILLANCE AND ENFORCEMENT**

### **6.1 Jurisdiction – tpSEF has the jurisdiction to perform member and market regulation, including the ability to set rules, conduct compliance reviews and perform surveillance and enforcement.**

6.1.1 tpSEF has the jurisdiction to perform member and market regulation, including the ability to set rules, conduct compliance reviews and perform surveillance and enforcement. By becoming a participant on tpSEF and by accessing, or entering any order or submitting any swap into tpSEF, a participant, its supervised persons and its clients and customers agree to be bound by the tpSEF Rules and to become subject to tpSEF's jurisdiction.

### **6.2 Member and Market Regulation – tpSEF maintains appropriate systems, resources and procedures for evaluating compliance with exchange and legislative requirements and for disciplining participants.**

6.2.1 tpSEF maintains appropriate systems and resources for conducting member regulation and market regulation, for evaluating compliance with tpSEF and CFTC requirements and disciplining participants. tpSEF monitors the size and workload of the MRD on a continuous basis and, on at least an annual basis, formally evaluates whether there is a need to increase tpSEF's compliance and enforcement resources and staff ("**Resources**"). The ROC reviews the size and allocation of the regulatory budget and resources, and the number, hiring, termination, and compensation of regulatory personnel. In determining the appropriate level of Resources, tpSEF considers trading volume increases, the number of new products or swaps listed for trading, any new responsibilities assigned to compliance staff, the results of any internal review demonstrating that work is not completed in an effective or timely manner, the recommendation of any regulatory authority enforcement review or evaluation of tpSEF and any other factors suggesting the need for increased Resources. For additional information regarding tpSEF's procedures for complying with applicable regulatory requirements and for disciplining participants please see Sections 4, 9, and 10 of this Application.

### **6.3 Availability of Information to Regulators – tpSEF has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory or enforcement purposes is available to the relevant regulatory authorities, including the AMF, on a timely basis.**

6.3.1 tpSEF will provide such information as may be requested from time to time by, and otherwise cooperate with regulators, including the NFA, the AMF or its staff, as appropriate and subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.



## 7. RECORD KEEPING

### 7.1 Record Keeping – tpSEF and/or the CFTC maintain adequate provisions for keeping books and records, including operations of tpSEF, audit trail information on all trades and compliance and/or violations of exchange requirements and securities legislation.

- 7.1.1 tpSEF maintains adequate provisions for keeping books and records, including operations of the exchange, audit trail information on all trades and compliance and/or violations of tpSEF requirements and securities legislation. tpSEF's records are required to be maintained in accordance with CFTC Regulations. In general, tpSEF must: (1) maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the CFTC for a period of five years (or for records of any swap, for a period of five years following the final termination of the transaction); (2) report to the CFTC, in a form and manner acceptable to the CFTC, such information as the CFTC determines to be necessary or appropriate for the CFTC to perform the duties of the CFTC; and (3) keep any such records open to inspection and examination by the Securities and Exchange Commission and the Department of Justice or by any representative of a prudential regulator as authorized by the CFTC.
- 7.1.2 tpSEF has also established and maintains accurate, time-sequenced records of all orders, and transactions that are received by, originated on, or executed on tpSEF. These records include the key terms of each order or transaction and shall document the complete life of each order or transaction on tpSEF, including any modification, cancellation, execution, or any other action taken with respect to such order or transaction. These audit trail records are maintained for a period of five years or for five years following the final termination of the swap (if applicable).
- 7.1.3 tpSEF also requires participants, customers and clients to prepare and keep all books, ledgers and other records relating to its activity on tpSEF. Such books and records must include, without limitation, records of such person's trading. Each such person shall make such books and records available, upon request, to tpSEF, tpSEF's regulatory services provider, the CFTC or the United States Department of Justice and as otherwise required by applicable law.

## 8. OUTSOURCING

### 8.1 Outsourcing – Where tpSEF has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

- 8.1.1 CFTC Regulations permit SEFs to contract with a registered futures association or another registered entity for the provision of services to assist in complying with the CEA and CFTC Regulations provided such agreement has been approved by the CFTC. Like other SEFs, tpSEF has entered into a regulatory services agreement with the NFA, a registered futures association, to perform certain surveillance, investigative, and regulatory functions under the rules of tpSEF. tpSEF retains ultimate decision-making authority with respect to any functions that are contracted to the NFA and shall remain responsible for the performance of any services under the services agreement. As part of its application to the CFTC, tpSEF has submitted the relevant agreement and procedures related to its arrangement with the NFA to the CFTC.
- 8.1.2 tpSEF also utilizes third-party vendors for issuance of confirmations and for clearing connectivity.



8.1.3 tpSEF monitors the performance of its third-party vendors. In particular, tpSEF monitors middleware providers on a real-time basis to ensure accurate and timely communications between the tpSEF and the applicable DCO. tpSEF also meets regularly with the NFA regarding the services provided by the NFA under the regulatory services agreement.

**8.2 Availability of Information to Foreign Regulator – tpSEF has mechanisms in place to ensure that information is available to the relevant regulatory authorities on a timely basis.**

8.2.1 tpSEF has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory and enforcement purposes is available to the relevant regulatory authorities on a timely basis.

8.2.2 tpSEF's books and records requirements as set forth in the Compliance Manual XVI B which provides:

1. The SEF shall retain all books and records related to a swap executed on, or pursuant to the rules of, the SEF throughout the life of the swap and for a period of at least five (5) years following the final termination of the swap and shall retain all other books and records for a period of at least five (5) years, in each case, in a form and manner acceptable to the CFTC. All books and records related to a swap executed on, or pursuant to the rules of, the SEF must be readily accessible by the SEF via real-time electronic access throughout the life of the Swap and for two (2) years following the final termination, and all other books and records shall be readily accessible via real-time electronic access during the first two (2) years of the five-year period. All books and records shall be thereafter retrievable within three (3) business days through the remainder of the required retention period. The CCO is responsible, through its annual compliance reviews and reports, for ensuring that this retention requirement is met.
2. Records may be kept in electronic form, or in paper form if originally created and exclusively maintained in paper form, so long as they are retrievable, and information in them is reportable. All electronic records must be preserved in a native, non-rewritable, non-erasable format.
3. As required by Part 1.31 of the CFTC's Regulations and in accordance with Rule 8000 in the tpSEF Rulebook, all required records maintained under this section will be open to inspection upon request by any representative of the CFTC, the United States Department of Justice or the Securities and Exchange Commission, or by any representative of a prudential regulator as authorized by the CFTC. Copies of such records will be provided either by electronic means, in hard copy, or both, as requested by the CFTC, with the sole exception that copies of records originally created and exclusively maintained in paper form may be provided in hard copy only.

8.2.3 Records are retrievable from the execution platforms and systems. tpSEF has the ability to extract data from its systems upon request in a timely manner.

**9. MARKET OPERATIONS**

**9.1 Purpose of Rules of the Exchange – tpSEF and the CFTC maintain rules, policies and other similar instruments designed to, in particular: (i) govern market operations; (ii) ensure market**



**integrity and effectiveness; and (iii) promote fair and equitable principles of trade (Criteria 5(B) v) a), b) and c) of the Policy).**

- 9.1.1 tpSEF maintains rules, policies and other similar instruments designed to: (1) ensure compliance with the rules of tpSEF; (2) prevent fraudulent and manipulative acts and practices; (3) promote just and equitable principles of trade; (4) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, the products traded on tpSEF; (5) provide for appropriate discipline; (6) ensure a fair and orderly market; (7) ensure that tpSEF business is conducted in a manner so as to afford protection to investors; and (8) provide for appropriate dispute procedures. The CCO is responsible for overseeing tpSEF participants' compliance with the rules. The MRD and NFA work with the CCO to discharge this responsibility and in doing so employ a variety of automated and manual surveillance processes to monitor participant compliance with tpSEF Rules.
- 9.1.2 tpSEF and its participants are required to comply with all provisions of the CEA and CFTC Regulations regarding the integrity of its markets. Each tpSEF participant has agreed in writing to comply with the tpSEF Rules. Section 4 of the tpSEF Rules obliges tpSEF participants to comply with CFTC Regulations that require participants to execute required transactions<sup>7</sup> (other than those exempted by the CFTC from the order book requirement) through an order book. Separately, Section 8 of the tpSEF Rules require participants to keep and maintain records and provide certain reports and other information to tpSEF. Section 5 of the tpSEF Rules makes it a violation to engage in various practices that are prohibited by the CEA. Such violations include, among other things, front-running, wash trading, pre-arranged trading, fraudulent trading, money passes, fictitious transactions, non-competitive transactions (unless otherwise exempt or excluded pursuant to the tpSEF Rules), accommodation trading, or any other trading practices that tpSEF deems to be abusive.
- 9.1.3 tpSEF has extensive disciplinary procedures set forth in its tpSEF Rules with respect to disciplining or terminating participation for violation of its tpSEF Rules. The CFTC requires tpSEF to establish and enforce disciplinary procedures that authorize tpSEF to discipline, suspend or expel members or market participants that violate the tpSEF Rules, and Core Principle 2 requires that tpSEF monitor and enforce tpSEF Rules, including the terms and conditions of any swap to be traded and any limitations on access to tpSEF (as further described in Appendix B to Part 38 of the CFTC Regulations).

tpSEF has established rules and policies and procedures relating to investigations and disciplinary proceedings. tpSEF, through the MRD and SEF Panels, will conduct inquiries and investigations, disciplinary proceedings and appeals from disciplinary proceedings, summary impositions of fines, summary suspensions or other summary actions in accordance with the rules set forth the tpSEF Rulebook.

The MRD will commence an investigation upon the receipt of a request from CFTC staff or upon the discovery or receipt of information by tpSEF, or its trading or market surveillance or review of other information or other SEF data, that, in the judgment of the MRD, indicates a possible basis for finding that a violation has occurred or will occur. The MRD will determine the nature and scope of its inquiries and investigations in its sole discretion and will inform the CCO of all inquiries.

<sup>7</sup> Required transactions are any transactions involving a swap that is subject to the trade execution requirement in section 2(h)(8) of the CEA.



Pursuant to Section 6001(d) of the tpSEF Rules, each investigation will be completed in a timely manner. Absent mitigating factors, a timely manner is no later than 12 months after the date that an investigation is opened. Mitigating factors that may reasonably justify an investigation taking longer than 12 months to complete include the complexity of the investigation, the number of firms or individuals involved as potential wrongdoers, the number of potential violations to be investigated, and the volume of documents and data to be examined and analyzed by the MRD.

Following its investigation, the MRD will prepare an investigation report that includes the reasons for initiating the investigation (including a summary of the complaint, if any), all relevant facts and evidence gathered, the MRD's analysis and conclusions, the potential respondent's disciplinary history at tpSEF, and the recommendation of the MRD. The CCO reviews each Investigation Report and either proceeds with the MRD's recommendation or forwards the matter to a Review Panel (or to the Regulatory Oversight Committee for determination regarding whether to impose a summary fine). If CCO determines to proceed with the MRD's recommendation to initiate disciplinary proceedings or a Review Panel authorizes disciplinary proceedings, the MRD will notify each potential respondent that the MRD or Review Panel has recommended formal disciplinary charges against the potential respondent.

The CCO or the NFA will appoint a Disciplinary Panel to conduct hearings in connection with any disciplinary proceedings authorized by the CCO or a Review Panel to make findings and impose sanctions. Promptly following a hearing, the Disciplinary Panel will issue a written order rendering its final decision based on the weight of the evidence contained in the record of the disciplinary proceedings.

- 9.1.4 Further, in any disciplinary action by tpSEF against a participant, the participant is given an opportunity to respond and, if necessary appeal the process. Under tpSEF Rules, tpSEF allows a potential respondent to propose a settlement of the matter or to submit a written statement explaining why a disciplinary proceeding should not be instituted or one or more of the potential charges should not be brought. In the event tpSEF elects to continue with a disciplinary proceeding against a participant, the participant is given an opportunity to answer a written notice of charges, participate in a hearing and/or enter into settlement discussions with tpSEF. Further, Rule 6015 permits a respondent to appeal a disciplinary decision.
- 9.1.5 tpSEF maintains records of any action taken against a participant including any rejection, approval, termination, or other disciplinary action.
- 9.1.6 Disputes between tpSEF and any person arising from or in connection with tpSEF Rules will be settled by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules as provided in tpSEF Rule 6027(c). The dispute will be submitted to one arbitrator who will be appointed by the AAA. Any arbitrator appointed for purposes of Rule 6027 will have experience with and knowledge of commodities, derivatives and swaps as listed on the National Roster of Arbitrators kept in the AAA's records. Judgment on the award rendered by the arbitrator will be binding on the parties and may be entered in any state or federal court sitting in New York County, New York, and tpSEF and each person shall be deemed to have consented to the personal jurisdiction of any such court. Each party to the dispute will bear its own costs and expenses in connection with any arbitration hereunder, as well as an equal share of the administrative fees and the fees of the arbitrator; provided, however, that the arbitrator will be entitled to include in any award a full reimbursement for the prevailing party's costs and expenses, such party's share of the administrative fees and the fees of the arbitrator, or any combination of any or all of the above.



**9.2 Rules Prohibiting Discrimination – The rules of tpSEF and the CFTC do not permit unreasonable discrimination among issuers or participants, and do not impose any burden on competition that is not reasonably necessary or appropriate (Criteria 5(B) iv) d) of the Policy).**

9.2.1 The rules of tpSEF do not: (1) permit unreasonable discrimination among participants; or (2) impose any burden on competition that is not reasonably necessary or appropriate. tpSEF Rules apply equally to all tpSEF participants. Specific rules apply to independent software vendors and introducing brokers. In addition, Core Principle 11 requires that unless necessary or appropriate to achieve the purposes of the CEA, tpSEF is required to endeavor to avoid: adopting any rules or taking any actions that result in any unreasonable restraints of trade; or imposing any material anticompetitive burden on trading on the contract market.

9.2.2 tpSEF may from time to time establish discounts on fees for meeting trading volume, liquidity thresholds and/or other standards as may be established by tpSEF pursuant to tpSEF Rule 3301 however, such incentives are not considered to be unreasonable or to materially impact competition.

**10. SYSTEMS AND TECHNOLOGY**

**10.1 Systems and Technology – Each of tpSEF’s critical systems has appropriate internal controls to ensure completeness, accuracy, reliability of performance, integrity and security of information, and, in addition, it has sufficient capacity and business continuity plans to enable tpSEF to properly carry on its business (Criteria 5(B) vi) b) of the Policy).**

10.1.1 tpSEF has identified as critical systems those that support the following functions: order entry; order routing; execution; trade reporting; trade comparison; data feeds; market surveillance; trade clearing; and financial reporting.

10.1.2 tpSEF has procedures and/or rules in place that: handle trading errors, trading halts and circuit breakers; ensure the competence, integrity and authority of system users; and ensure that the system users are adequately supervised.

10.1.3 tpSEF participants may connect to tpSEF by using a front-end application provided by tpSEF, by using an application provided by an ISV which has been approved and authorized by tpSEF or by developing their own programs to access tpSEF via tpSEF’s application program interface (API). All ISVs must execute an ISV agreement prior to gaining access to tpSEF.

10.1.4 tpSEF ensures the financial integrity of all transactions conducted on its systems at all times. tpSEF requires participants to comply at all times with the access rules, clear transactions as required or otherwise demonstrate the financial integrity of transactions not required to be cleared, and comply with tpSEF’s monitoring efforts. The MRD regularly monitors each participants’ compliance with tpSEF’s financial integrity requirements. Participants must also comply with all required information requests from tpSEF, including requests for required financial information.

10.1.5 tpSEF provides guidance and certain instruction manuals relating to the operation of tpSEF and operates a help desk to support customers.

10.1.6 tpSEF maintains a business continuity-disaster recovery (“BC-DR”) plan, resources, and emergency procedures that enable timely recovery and resumption of its operations and obligations as a SEF in the





event or a disaster or emergency. Such operations include, without limitation, order processing and trade matching; transmission of matched orders to a designated clearing organization for clearing, where appropriate; price reporting; market surveillance; and maintenance of a comprehensive audit trail. The BC-DR plan will generally enable resumption of trading and clearing of swaps executed on the swap execution facility during the next business day following the disruption. tpSEF maintains an infrastructure and personnel resources of its own that are sufficient to ensure timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its responsibilities and obligations as a SEF following any disruption of its operations. It may, however, be necessary to use alternative communication systems, transfer personnel or business activities to alternative office space, or transfer tpSEF's business to other financial institutions until normal operations can be resumed.

- 10.1.7 tpSEF conducts regular, periodic, objective testing and review of its BC-DR capabilities as outlined in the BC-DR plan. The testing and review verifies that the backup resources of tpSEF are sufficient to ensure continued: (i) order processing and trade matching; (ii) price reporting; (iii) market surveillance; and (iv) maintenance of a comprehensive and accurate audit trail. In addition, tpSEF regularly reviews its automated systems to ensure that they are reliable, secure, and have adequate scalable capacity.
- 10.1.8 tpSEF provides current copies of its BC-DR plan and other emergency procedures, its assessments of its operational risks, and other documents requested by the CFTC staff for the purpose of maintaining a current profile of tpSEF's automated systems. tpSEF keeps records of all such tests, and a copy of the results of the latest business continuity/disaster recovery audits are available for consultation by the AMF at its request.
- 10.1.9 The Board is responsible for determining if an emergency exists by a majority vote.<sup>8</sup> If the Board determines that an emergency exists, the Board shall immediately notify the MRD following such an affirmative vote. During an emergency, the Board, CEO or most senior officer present may implement temporary emergency procedures and rules ("**Emergency Rules**"), subject to the applicable provisions

<sup>8</sup> "Emergency" means any occurrence or circumstance that, in the opinion of the SEF, requires immediate action and threatens, or may threaten, the fair and orderly trading in, or the clearance, settlement or integrity of, any swap, including, without limitation, the following: (1) any circumstance that may materially affect the performance of the parties to a swap, including failure of a DCO; (2) any action taken by (i) any United States or foreign regulatory, self-regulatory, judicial, arbitral or governmental (whether national, state or municipal) or quasigovernmental authority, or any agency, department, instrumentality or subdivision thereof; (ii) other Person exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or (iii) any other swap execution facility, DCO, DCM, board of trade or other exchange or trade association (foreign or domestic) that may have a direct impact on trading on the SEF or the clearing and settlement of, or the legality or enforceability of, any swap; (3) any actual, attempted or threatened corner, squeeze, congestion, manipulative activity or undue concentration of positions in a swap or any related asset; (4) any circumstance that may have a severe, adverse impact upon the functions and facilities of the SEF, 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 SEF, or other system breakdowns or interruptions such as power, computer, communication or transportation systems or the Internet; (5) the imposition of any injunction or other restraint by any government agency, court or arbitrator upon a DCO which may affect the ability of a DCO to perform on a swap; (6) any circumstance in which it appears to the Board that a DCO or any other Person: (i) has failed to perform on a swap; (ii) is insolvent; or (iii) is in a financial or operational condition or is conducting business such that the DCO or Person cannot be permitted to continue in business without jeopardizing the safety of Participants, the SEF, any DCO or any other Person; (7) any other circumstance that would constitute an "emergency" within the meaning of CFTC Regulation 40.1(h); or (8) any other unusual, unforeseeable or adverse circumstance that may have an effect similar to any of the foregoing as determined by the SEF.





of the CEA and CFTC Regulations. Emergency Rules may require or authorize tpSEF, the Board, any committee of the Board, the CEO, or any other officer to take emergency action necessary or appropriate to respond to the emergency. If applicable, tpSEF may also provide for the carrying out of Emergency Actions through its agreement with the NFA.

10.1.10 Before any Emergency Rule may be adopted and enforced, a required vote of the Board must approve the enforcement of such Emergency Rule at a duly convened meeting. Directors may attend such a meeting by teleconference. If the CEO or most senior officer present determines that Emergency Rules must be implemented with respect to an emergency before a meeting of the Board can reasonably be convened, then the CEO 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 CEO must convene a meeting as soon as practicable.

10.1.11 tpSEF is required to ensure that its systems provide adequate levels of capacity, resiliency and security. To meet this requirement tpSEF: (1) conducts periodic capacity stress tests of critical systems for their ability to process transactions in an accurate, timely and efficient manner; (2) reviews and keeps current its system development and testing methodology; and (3) review the vulnerability of its systems and data center computer operations to internal and external threats, physical hazards and natural disasters. tpSEF will promptly notify the CFTC of all electronic trading halts and system malfunctions; cyber security incidents or targeted threats that actually or potentially jeopardize automated system operation, reliability, security, or capacity and any activation of the BC-DR plan when a material systems outage is detected. In the case of a material systems outage, tpSEF will notify the CFTC when remedial measures are selected to address the outage and when the outage is addressed. tpSEF will submit to the CFTC within five (5) business days of the outage a detailed written description and analysis of the outage and any remedial measures. Further, absent extraordinary circumstances, tpSEF will give the CFTC advance notice of all planned changes to automated systems that may impact the reliability, security or adequate scalable capacity of such systems and planned changes to tpSEF's program of risk analysis and oversight.

**10.2 System Capability/Scalability – For each of its systems that support order entry, order routing, execution, data feeds, trade reporting, trade comparison and system-enforced rules, tpSEF maintains a level of performance and capacity that allows it to properly carry on its business and has in place processes to ensure the integrity of each system (Criteria 5(B) vi) a) of the Policy).**

10.2.1 For each of its systems that support order entry, order routing, execution, data feeds, trade reporting, trade comparison and system-enforced rules, tpSEF maintains a level of capacity that allows it to properly carry on its business and has in place processes to ensure the integrity of each system. This includes maintaining reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.

10.2.2 tpSEF subjects its critical systems to regular stress tests based on reasonable current and future capacity estimates. tpSEF is also tested for a range of externalities which may damage or impair the operation of the system, including, but not limited to, vulnerability to internal and external threats, including physical hazards and natural disasters and safeguarded against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service.



- 10.2.3 As discussed above, tpSEF has established and maintains emergency procedures, backup facilities and a plan for disaster recovery. The CFTC may review tpSEF's systems to ensure adequate back-up systems are available in the event that the primary system fails. tpSEF leases physical space which houses a managed data centre at a recovery facility owned by a major disaster recovery services provider. At this site, tpSEF owns and maintains back-up servers to support its business applications and user desk top services and networking gear to maintain its internal and external network. In addition to the data centre, tpSEF also maintains at this location a back-up trading location to be used in the event of a disruption at the primary site.
- 10.2.4 tpSEF periodically reviews its systems to identify potential points of failure, lack of back-up, and redundant capabilities. In this regard, tpSEF maintains procedures reasonably designed to periodically review and keep current the development and testing methodology of those systems.
- 10.2.5 Core Principle 14 addresses business continuity in the event that an information technology system fails and requires tpSEF to establish and maintain emergency procedures, backup facilities and a plan for disaster recovery. The CFTC may review tpSEF's systems to ensure adequate back-up systems are available in the event that the primary system fails. tpSEF leases physical space which houses a managed data centre at a recovery facility owned by a major disaster recovery services provider. At this site, tpSEF owns and maintains back-up servers to support its business applications and user desk top services and networking gear to maintain its internal and external network. In addition to the data centre, tpSEF also maintains at this location a back-up trading floor to be used in the event of a disruption at the primary site.
- 10.3 Information Technology Risk Management Procedures – tpSEF has procedures in place that: (i) handle trading errors, trading halts and circuit breakers; (ii) ensure the competence, integrity and authority of system users; and (iii) ensure that the system users are adequately supervised (Criteria 5(B) vi) b) of the Policy).**
- 10.3.1 As discussed in response to 10.2 above, tpSEF has procedures and/or rules in place that: handle trading errors, trading halts and circuit breakers; ensure the competence, integrity and authority of system users; and ensure that the system users are adequately supervised. Also, see Section 10.1.12 for a discussion of how tpSEF provides adequate levels of capacity, resiliency and security.
- 10.3.2 tpSEF conducts periodic reviews of its systems and prepares a written report of such reviews that includes the following: (1) the name of the person who conducted the inspection and prepared the report; (2) the date of the review; (3) the areas reviewed; (4) an explanation of why areas were not included; (5) observations and exceptions regarding compliance with policies and procedures; and (6) the CCO's response regarding exceptions and corrective action.
- 10.3.3 A transaction made or purported to be made on or pursuant to the rules of tpSEF may be declared invalid by tpSEF if, taking into consideration current market conditions, tpSEF determines that a transaction has taken place at an unrepresentative price or is a breach of applicable law. tpSEF may take into account such information as it deems appropriate when determining whether to invalidate a transaction, including, without limitation, manifest error. When a transaction is declared invalid, the parties to the transaction will be notified by tpSEF of that fact and a message will be broadcast through tpSEF announcing the swap contract and price level of the invalid transaction, and the invalid transaction may be displayed on tpSEF as a cancelled transaction.



- 10.3.4 In addition to the powers described in 10.3.4, tpSEF has the authority to cancel, or adjust the price of, any transaction executed on or pursuant to tpSEF Rules, or to execute or require the execution of a new or offsetting transaction: (1) when tpSEF determines in its sole discretion such action is necessary to mitigate market disrupting events caused by the improper or erroneous use of tpSEF or by system defects; (2) at any time tpSEF determines in its sole discretion that allowing a transaction to stand as executed may have a material adverse effect on the integrity of the market; or (3) certain other circumstances, including those described below in 10.3.6 and 10.3.7.
- 10.3.5 tpSEF may determine to review a transaction's price based on its independent analysis of market activity or upon a participant's request. Any request from a participant must be made within ten (10) minutes of execution of the relevant transaction and must include, among other things, a statement of the grounds for the review. In the absence of a timely request for review, tpSEF may determine whether or not a transaction will be subject to review in its sole discretion. In either event, tpSEF may amend the terms of, or cancel, any transaction that the parties, together with the DCO, as applicable, mutually agree to amend or cancel, in the event that such amendment or cancellation is not submitted to tpSEF within the applicable review period specified above.
- 10.3.6 In addition to the foregoing, if a participant, client or customer believes that any transaction was incorrectly executed, cleared or rejected from clearing as a result of an error<sup>9</sup>, such person may, within ten (10) minutes thereafter, request a review of the transaction by, among other things, stating the grounds for the disagreement. Upon timely receipt by tpSEF of a request for a transaction review, or if tpSEF determines on its own initiative to conduct such a review, tpSEF will review its electronic audit trail and other relevant records to determine if an error occurred. If the request for review is not timely, tpSEF may, in its sole discretion, perform a review of the transaction. If transaction was incorrectly executed, cleared or rejected from clearing as a result of an error, tpSEF may cancel or adjust the transaction, or execute or require the execution of a new or offsetting transaction, as appropriate; provided, however, that tpSEF shall not take any action if such action would, in tpSEF's sole discretion, (i) adversely impact market integrity, (ii) facilitate market manipulation or other illegitimate activity or (iii) otherwise violate the CEA, CFTC Regulations or tpSEF Rules.
- 10.3.7 The ROC may also impose controls to reduce the potential risk of market disruption, including but not limited to market restrictions that pause or halt trading in specified market conditions. The ROC will monitor market conditions and will consider whether it is appropriate to implement pre-trade limits on order size, price collars or bands around the current price of a contract, daily price limits and intraday position limits related to financial risk to participants.

## 11. FINANCIAL VIABILITY

### 11.1 Financial Viability – tpSEF has sufficient financial resources for the proper performance of its functions.

<sup>9</sup> An "error" is the occurrence of any of the following: (1) a mistake made as the result of a malfunction of tpSEF or human error, including a mistake made by an execution specialist; (2) an order was incorrectly displayed and/or executed; (3) a clerical or operational error or omission made by tpSEF or a participant, sponsored participant, client or customer (or any agent of any of the foregoing) that caused a transaction to be rejected from clearing and void *ab initio*; or (4) a clearing firm or DCO rejected a leg of a package transaction for clearing because of the sequencing of submission for clearing of the legs of the applicable package transaction.



- 11.1.1 tpSEF has sufficient financial resources for the proper performance of its functions. The CEA and CFTC Regulations require that tpSEF must have adequate financial, operational, and managerial resources to discharge each of its responsibilities.
- 11.1.2 The CEA requires a SEF to demonstrate that it has adequate financial resources to discharge its responsibilities. Pursuant to CFTC Regulation 37.1306, tpSEF is required to provide financial statements and calculations each quarter to the CFTC within 40 days of the quarter end, except for the fourth quarter which must be provided within 60 days of the quarter end. Pursuant to CFTC Regulation 37.1305, the financial resources allocated by tpSEF must include unencumbered, liquid financial assets (*i.e.*, cash and/or highly liquid securities) equal to at least six months' operating costs. If any portion of such financial resources is not sufficiently liquid, tpSEF may take into account a committed line of credit or similar facility for the purpose of meeting this requirement. Pursuant to CFTC Regulation 37.1301(c), tpSEF's financial resources will be considered adequate if the value of the financial resources exceeds the total amount that would enable tpSEF to cover its operating costs for a one-year period, as calculated on a rolling basis.

## 12. CLEARING AND SETTLEMENT

### 12.1 Relationship with Clearing Agency – tpSEF has a clearing relationship with an established clearing agency (Clearing Agency) and all transactions executed on the exchange are cleared through the Clearing Agency (Criteria 5(B) vii) a) and c) of the Policy).

- 12.1.1 tpSEF has clearing relationships with four DCOs that are registered with the CFTC: LCH Clearnet Limited, LCH.Clearnet, LLC, ICE Clear Credit, LLC, the Chicago Mercantile Exchange Inc. (each a "Clearing Agency") and with two DCOs that have been exempted from registration by the order of the CFTC: JSCC and ASX (each an "Exempt Clearing Agency").<sup>10</sup> All transactions executed on tpSEF are cleared through one of these DCOs to the extent such transactions are required to be cleared under the CEA and CFTC Regulations. tpSEF has submitted its agreements with these DCOs to the CFTC for review.

### 12.2 Regulation of Clearing Agency – The Clearing Agency is subject to regulation by the Foreign Regulator that addresses risk and promotes transparency, fairness and investor protection.

- 12.2.1 Each Clearing Agency is subject to regulation by the CFTC that addresses, among other things, risk and promotes transparency, fairness and investor protection.

### 12.3 Authority of the Foreign Regulator – The CFTC has the appropriate authority and procedures for oversight of the Clearing Agency. This oversight includes regular, periodic regulatory examinations of the Clearing Agency by the CFTC (Criteria 5(B) vii) b) of the Policy).

- 12.3.1 The CFTC has the responsibility for oversight of each Clearing Agency. This oversight may include regular, periodic regulatory examinations of the Clearing Agencies. Section 5b(c)(2) of the CEA contains the Core Principles for DCOs that govern the conduct of all Clearing Agencies. The CFTC

<sup>10</sup> A copy of the Order of Exemption from registration granted to JSCC is available at <http://www.cftc.gov/idx/groups/public/@otherif/documents/ifdocs/jscdcoexemptorder10-26-15.pdf>, and a copy of the Order of Exemption from Registration granted to ASX is available at <http://www.cftc.gov/idx/groups/public/@otherif/documents/ifdocs/asxclearfutdcoexemptorder.pdf>.



subjects the risk management systems of a Clearing Agency, including policies and procedures, contingency plans, default procedures and internal controls, to the same degree of scrutiny and oversight to which the risk management systems of tpSEF are subject.

12.3.2 The CFTC has authority to oversee the Clearing Agencies. As with SEFs, the Clearing Agencies are required to register with the CFTC and are subject to the broad investigation, examination, enforcement and emergency powers of the CFTC, as described in Sections 1.1 to 1.4 of this Application.

12.3.3 With respect to each Exempt Clearing Agency, the CFTC has determined it is subject to comparable and comprehensive supervision and regulation by the appropriate government authorities in its home country.

**12.4 Clearing and Settlement Arrangements – tpSEF is satisfied that appropriate clearing and settlement arrangements are in place to provide reasonable assurance that all obligations arising out of transactions on tpSEF will be met.**

12.4.1 tpSEF is satisfied that appropriate clearing and settlement arrangements are in place to provide reasonable assurance that all applicable obligations arising out of transactions on tpSEF will be met.

12.4.2 In practice, the products (and, if cleared on multiple DCOs, the election of the parties) dictate which DCO will be used, provided that such DCO has been recognized by tpSEF. tpSEF has entered into agreements with each DCO that it currently recognizes and has included a list of those DCOs in the tpSEF Rules. tpSEF has connectivity to the DCOs via middleware providers, namely Marketwire and ICE Link. For non-cleared, bilateral transactions, a participant may enter into such a transaction only with a counterparty with which such participant has swap trading relationship documentation that meets the requirements of applicable law. In addition, tpSEF will facilitate implementation of credit lines between parties to non-cleared, bilateral transactions.

**12.5 Restrictions on Access to a Foreign Member – Any restrictions on access to the clearing system by a foreign member are adequately disclosed and justified by the legislation of the home jurisdiction, are not anti-competitive and do not unreasonably impose barriers to access (Criteria 5(B) vii) d) of the Policy).**

12.5.1 The CFTC has promulgated rules for Clearing Agencies that address, among other things, access. In particular Clearing Agencies must establish appropriate admission and continuing participation requirements for clearing members that are objective, publicly disclosed, and risk-based. The participation requirements must permit fair and open access and a Clearing Agency cannot adopt restrictive clearing member standards if less restrictive requirements that achieve the same objective and that would not materially increase risk to the Clearing Agency or clearing members could be adopted. In addition, Clearing Agencies must allow all market participants who satisfy participation requirements to become clearing members and cannot exclude or limit clearing membership of certain types of market participants unless the Clearing Agency can demonstrate that the restriction is necessary to address credit risk or deficiencies in the participants' operational capabilities that would prevent them from fulfilling their obligations as clearing members. Further, Clearing Agencies cannot require clearing members to maintain a swap portfolio of any particular size, or that clearing members meet a swap transaction volume threshold. Further, one of the Core Principles applicable to Clearing Agencies specifically



relates to system safeguards and requires a Clearing Agency to demonstrate that it (i) has established and will maintain a program of oversight and risk analysis to ensure that its automated systems function properly and have adequate capacity and security; and (ii) has established and will maintain emergency procedures and a plan for disaster recovery, and will periodically test back-up facilities sufficient to ensure daily processing, clearing and settlement of transactions.

- 12.5.2 The Orders of Exemption from Registration granted to each Exempt Clearing Agency requires it to maintain rules relating to open access. Specifically, these rules must (i) provide that all swaps with the same terms and conditions, as defined by product specifications established under the Exempt Clearing Agency's rules, submitted to the Exempt Clearing Agency for clearing are economically equivalent within the Exempt Clearing Agency and may be offset with each other within the Exempt Clearing Agency, to the extent offsetting is permitted by the Exempt Clearing Agency's rules; and (ii) provide that there must be non-discriminatory clearing of a swap executed bilaterally or on or subject to the rules of an unaffiliated electronic matching platform or trade execution facility.

**12.6 Technology of Clearing Corporation – tpSEF has assured itself that the information technology used by the Clearing Agency has been adequately reviewed and tested and provides at least the same level of safeguards as required of tpSEF.**

- 12.6.1 tpSEF has assured itself that the information technology used by each Clearing Agency and each Exempt Clearing Agency has been adequately reviewed and tested and provides at least the same level of safeguards as required of tpSEF.

- 12.6.2 tpSEF is satisfied that appropriate clearing and settlement arrangements are in place to provide reasonable assurance that all applicable obligations arising out of transactions on tpSEF will be met. In particular, participants intending to trade cleared swaps for its own account must either be (i) self-clearing with respect to the Clearing Agency or Exempt Clearing Agency where the cleared swaps it will trade are cleared, or (ii) if it is non-self-clearing, have a clearing account with a clearing firm and be listed in the clearing firm agreement as being permitted to clear such swaps at such Clearing Agency or Exempt Clearing Agency through such clearing firm. Participants that are not, or whose clients, customers or sponsored participants are not, self-clearing or do not have a relationship with a clearing firm are prohibited from entering orders or transactions in cleared swaps on tpSEF. At the time of submitting an order for a cleared swap, a participant who is not a self-clearing member must designate a clearing member to clear the transaction. As described above, tpSEF facilitates pre-execution screening by or on behalf of the designated clearing member.

- 12.6.3 The MRD regularly monitors each participants' compliance with tpSEF's financial integrity requirements. Participants must comply with all required information requests from tpSEF, including requests for required financial information. Upon receiving information indicating that a participant violated the tpSEF Rules by having failed to submit for clearing a transaction that is required to be cleared, the MRD will investigate the matter and will report the results of its investigation to the CCO, who may initiate disciplinary action.

**12.7 Risk Management of Clearing Corporation – tpSEF is aware that the Clearing Agencies must have established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.**

- 12.7.1 tpSEF has assured itself that the relevant Clearing Agencies and Exempt Clearing Agencies have





established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls. The policies and procedures for Clearing Agencies and Exempt Clearing Agencies are available on the respective websites of each (for example, in the case of the CME Group see <http://www.cmegroup.com/clearing/files/financialsafeguards.pdf> ). In addition, the Clearing Agencies have rulebooks that follow the same process as tpSEF in terms of approval from the CFTC. tpSEF indeed relies on the fact that they are regulated entities that must ensure compliance with their regulatory obligations.

- 12.7.2 As described above, tpSEF takes comfort that the CFTC subjects the risk management systems of a Clearing Agency, including policies and procedures, contingency plans, default procedures and internal controls, to the same degree of scrutiny and oversight to which the risk management systems of tpSEF is subject. Furthermore, the DCO Core Principles require that a Clearing Agency manage the risks associated with discharging the responsibilities of a Clearing Agency through the use of appropriate tools and procedures.
- 12.7.3 tpSEF also takes comfort in the fact that the Exempt Clearing Agencies are subject to and must comply with a number of conditions imposed on them by the CFTC, including that each must provide the CFTC on an annual basis a certification that it observes the CPMI-IOSCO Principles for Financial Market Infrastructures in all material respects.

### **13. INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS**

#### **13.1 Information Sharing and Oversight Agreement – Satisfactory information sharing and oversight exist between tpSEF and the CFTC.**

- 13.1.1 tpSEF is required to provide information about it and its activities to the CFTC pursuant to Section 5c(c) of the CEA and Parts 37 and 40 of the CFTC Regulations, which require that any changes to tpSEF's constitutional provisions, by-laws and rules, including trading protocols, agreements, interpretations or resolutions, must be either certified to the CFTC as being in compliance with the CEA and CFTC Regulations or submitted to the CFTC for its approval. Any emergency action of tpSEF must be reported to the CFTC, either prior to implementation (where possible) or as soon as possible afterwards. The CFTC may investigate any action of tpSEF, alter or supplement its rules, suspend or revoke its registration, direct tpSEF to take whatever action the CFTC determines is necessary to maintain or restore orderly trading in the event of an emergency and suspend, expel or discipline any member of tpSEF. These requirements ensure that tpSEF shares information openly with the CFTC and pursues CFTC enquiries diligently.

#### **13.2 Cooperation – tpSEF will cooperate by the sharing of information and otherwise with the AMF and its staff and self-regulatory organizations in Québec (Criteria 5(C) i) and ii) of the Policy).**

- 13.2.1 Pursuant to the tpSEF Rulebook, tpSEF may enter into any information-sharing arrangement with any person or body (including, without limitation, any foreign regulatory authority) if tpSEF considers such arrangement to be in furtherance of tpSEF's purpose or duties under applicable law.
- 13.2.2 tpSEF will provide such information as may be requested from time to time by, and otherwise cooperate with, the AMF or its staff or self-regulatory organizations in Québec, as appropriate and subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information. Such information may include:





1. Annual report and the quarterly and annual financial statements of tpSEF;
2. Any amendment to the laws or regulations governing the activities of tpSEF in its home jurisdiction;
3. Any amendment to the internal by-laws, rules, policies or other similar instruments of tpSEF;
4. Any change respecting the rights of tpSEF to operate in its home jurisdiction;
5. Notice of any situation that could have an impact on its financial viability or its ability to operate and may result, in particular, from the bankruptcy or financial difficulties of a participant; and
6. Any disciplinary or administrative action taken by tpSEF.

**13.3 Cooperation of Regulator – The CFTC is subject to a memorandum of understanding with the AMF which provides for cooperation and exchange of information (Criteria 5(D) of the Policy).**

13.3.1 tpSEF is not required by U.S. law to participate in international information sharing agreements. CFTC Core Principle 5 requires tpSEF have the capacity to carry out such international information-sharing agreements as the CFTC may require. Further, tpSEF Rule 5500 authorizes tpSEF to disclose information to the regulatory authority of any foreign jurisdiction if tpSEF considers such information sharing arrangement to be in furtherance of tpSEF's purpose or duties under tpSEF rules or any law or regulation. The CFTC entered into a Memorandum of Understanding with the AMF on March 25, 2014. Under this MOU, the CFTC and AMF express their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates regarding derivatives and/or securities markets particularly in the areas of: protecting investors and customers; fostering the integrity of and maintaining confidence in financial markets; and reducing systemic risk.

**Part III – Submissions**

The Applicant satisfies all criteria for exemption from recognition as an exchange set out in the Policy, as described above under "Part II – Application of Approval Criteria to tpSEF". Québec Users that participate in swap transactions would benefit from the ability to execute swaps on tpSEF as they would have access to a multi-asset SEF which offers SEF-compliant execution services in the five asset classes covered under Dodd-Frank over which the CFTC has sole regulatory authority, namely, interest rate swaps, credit swaps, foreign exchange swaps, equity swaps and other commodity swaps. tpSEF offers a transparent and efficient market for Québec Users along with various methods for order execution including an order book and request for quote system.

Stringent CFTC oversight of the Applicant as well as the sophisticated information systems, regulations and compliance functions that have been adopted by the Applicant will ensure that Québec Users of tpSEF are adequately protected in accordance with the CEA and CFTC Regulations. We therefore submit that it would be in the public interest to grant the Requested Relief.

The Applicant seeks the Requested Relief for the following reasons:



### *Exemption from Recognition as an exchange*

1. tpSEF is prohibited from carrying on business in Québec unless it is recognized or exempt from recognition under section 12 of the Act. Because tpSEF has participants located in Québec, it is considered by the AMF to be carrying on business as an exchange in Québec.
2. The Applicant is not currently recognized by the AMF as an exchange under the Act. The AMF has, however, exempted tpSEF on an interim basis from the requirement to be recognized as an exchange subject to the terms and conditions of the Interim Order. One of the conditions of the Interim Order was that tpSEF file a full application to the AMF for a Subsequent Order. tpSEF is requesting a Subsequent Order from the AMF pursuant to this Application.
3. We submit that the Requested Relief from the requirements to be recognized as an exchange under the Act is appropriate because the Applicant is regulated as a SEF in its home jurisdiction by the CFTC and is subject to the requirements of the CEA and the rules and regulations of the CFTC. AMF Staff acknowledge in the Policy that, "the uniform application of its authorization process for exchanges may involve burdensome and inefficient duplication where a foreign-based exchange is already subject to an equivalent process in its home jurisdiction (the jurisdiction in which the exchange mainly operates), particularly when the measures in place to ensure investor protection are equivalent to those in Québec". If the AMF were to recognize the Applicant as an exchange under the Act, this type of duplication and inefficiency would likely occur as the AMF would be required to oversee tpSEF to the same extent as it oversees domestic exchanges in Québec. CFTC oversight of tpSEF as well as the sophisticated information systems, regulations and compliance functions that have been adopted by tpSEF will ensure that Québec Users of tpSEF are adequately protected in accordance with the CEA and CFTC Regulations. We therefore submit that it would be in the public interest to grant the Requested Relief from the requirements to be recognized under the Act.

### **Other Matters**

Enclosed is a certificate of an officer of tpSEF certifying the truth of the facts contained herein and authorizing us to prepare and file this Application. The Applicant consents to the publication of this Application for public comment in the AMF Bulletin.

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Thank you for your assistance with this matter.

Yours very truly,

**GOWLING WLG (CANADA) LLP**

A handwritten signature in black ink, appearing to read "Bryce", written over a light blue horizontal line.

Bryce Kraeker

Enclosure

cc: Brian Donnelly, tpSEF Inc.  
Ken Kopelman, Sidley Austin LLP  
Kate Lashley, Sidley Austin LLP  
Aileen Foley, Sidley Austin LLP



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October 14, 2016

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Mr. Serge Boisvert  
Ms. Corinne Lemire  
Autorité des marchés financiers  
800, Square Victoria, 22<sup>e</sup> étage  
C.P. 246, tour de la Bourse  
Montréal (Québec) H4Z 1G3

Dear Mr. Boisvert and Ms. Lemire:

360T Trading Networks Inc. – Application

360 Trading Networks Inc. (“**360T**”) hereby requests that the Autorité des marchés financiers (the “**AMF**”) grant 360T an exemption from the recognition obligation as an exchange set forth in Article 12 of the *Derivatives Act* L.R.Q., c. 1-14.01 and from the obligations stated in *Regulation 21-101 on Marketplace Operation* R.R.Q., c. V-1.1, r. 5 and in *Regulation 23-101 on Trading Rules*, R.R.Q., c. V-1.1, r. 6.

Exemption Criteria

AMF staff have established prescribed criteria that it will apply when considering applications for exemption from the obligations listed above. These criteria are identical to the first four criteria set forth in the Policy Statement Respecting the Authorization of Foreign-Based Exchanges.

The criteria are set forth as follows:

- (A) Regulation of exchange in home jurisdiction
- (B) Recognition or authorization process of regulator in home jurisdiction
- (C) Powers of exchange respecting co-operation
- (D) Powers respecting co-operation of regulator in home jurisdiction

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## CRITERIA FOR EXEMPTION OF A FOREIGN EXCHANGE TRADING OTC DERIVATIVES FROM RECOGNITION AS AN EXCHANGE

### (A) REGULATION OF EXCHANGE IN HOME JURISDICTION

The AMF expects 360T to detail the following aspects:

- i) measures put in place by the regulator to ensure compliance and effective supervision of exchange operations;
- ii) approval of internal by-laws, rules, policies and similar instruments by the regulator;
- iii) powers of the regulator in respect of investigations and penalties to ensure effective investor protection (the reputation of the legal system in which the regulatory regime operates is considered);
- iv) power of the regulator to obtain information from the exchange and carry out inspections;
- v) approval of products traded on the exchange;
- vi) for a derivatives exchange, the existence of a process for the approval of contracts or types of contracts by the regulator;
- vii) adherence to IOSCO standards by the regulator;
- viii) any other relevant criteria.

#### Overview

360T is registered with the Commodity Futures Trading Commission (“CFTC”) as a swap execution facility (“SEF”).<sup>1</sup> As a SEF, 360T is subject to regulatory supervision by the CFTC, a U.S. federal regulatory agency. The CFTC reviews, assess and enforces a SEF’s adherence to the Commodity Exchange Act (“CEA”) and the regulations promulgated thereunder on an ongoing basis, including but not limited to, a SEF’s compliance with “Core Principles” relating to financial resources, participant and product eligibility, financial integrity of transactions, emergency authority, minimizing conflicts of interest, rule enforcement and system safeguards.

The CFTC monitors trading at 360T and receives from 360T routine reports relating to, among other things, swaps effected on 360T’s electronic trading system (the “Trading System”) and 360T’s financial profile. The CFTC also reviews an annual compliance report that is prepared and certified by 360T’s Chief Compliance Officer (the “CCO”) each year. Such annual report describes, among other things, a description of 360T’s policies and procedures (including the code of ethics and conflict of interest policies) and an assessment of 360T’s compliance with the CEA and CFTC Regulations. Additionally, the CFTC undertakes periodic in-depth audits or “rule reviews” of 360T’s compliance with the Core Principles.

The CFTC has seven major operating units. The CFTC’s Division of Market Oversight, the main operating unit examining and overseeing 360T, interacts directly with 360T. The Division of Market Oversight oversees SEFs, designated contract markets (“DCMs”) and data repositories, conducts surveillance, reviews new SEF and DCM applications and examines existing SEFs and DCMs to ensure compliance with applicable Core Principles. The Division of Market Oversight also evaluates the products that are listed for trading on 360T to ensure they are not susceptible to manipulation.

<sup>1</sup> Capitalized terms that are used but not defined in this Application have the meaning given those terms in 360T’s Rulebook. Unless otherwise noted, all references herein to “Rules” refer to the rules set forth in 360T’s Rulebook.

360T is required to provide information about it and its activities to the CFTC pursuant to Section 5c(c) of the CEA and Parts 37 and 40 of CFTC Regulations. As described in greater detail below, Parts 37 and 40 of CFTC Regulations require that any proposed changes to 360T's Rules, including interpretations or resolutions, must be either certified to the CFTC as being in compliance with the CEA and CFTC Regulations or submitted to the CFTC for approval. A proposed rule change that is certified by a SEF will become effective after ten business days thereafter unless such certification is stayed by the CFTC.

The CFTC may investigate any action of 360T, alter or supplement 360T's Rules, suspend or revoke its registration, impose fines for violations of the CEA or CFTC Regulations and direct 360T to take whatever action the CFTC determines is necessary to maintain or restore orderly trading in the event of an emergency. In addition, any emergency action of 360T must be immediately reported to the CFTC.

### **Core Principles**

As a registered SEF, 360T is required to comply with the Core Principles set forth in Section 5h(f) of the CEA as interpreted and implemented by the CFTC in Part 37 of CFTC Regulations.

The 15 Core Principles are as follows:

Core Principle 1 (Compliance with Core Principles). A SEF is required to comply with the Core Principles and any requirement that the CFTC may impose by rule or regulation. A SEF has reasonable discretion in establishing the manner of such compliance. CFTC Regulation 37.100 codifies these requirements.

Core Principle 2 (Compliance with Rules). A SEF is required to establish and enforce compliance with its rules, including the terms and conditions of the swaps traded or processed on or through the SEF and any limitation on access to the SEF. A SEF is also required to establish and enforce trading, trade processing and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to provide market participants with impartial access to the market and to capture information that may be used in establishing whether rule violations have occurred. A SEF must also establish rules governing its operations, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the SEF, including block trades. Finally, a SEF must require swap dealers and major swap participants effecting swaps through the SEF to comply with the mandatory clearing requirement set forth in CEA Section 2(h)(8). CFTC Regulations 37.200-206 codify these requirements and establish minimum requirements that a SEF must meet in order to comply with Core Principle 2.

Core Principle 3 (Swaps Not Readily Susceptible to Manipulation). A SEF is required to permit trading only in swaps that are not readily susceptible to manipulation. CFTC Regulations 37.300-301 codify this requirement and establish minimum requirements that a SEF must meet in order to comply with Core Principle 3.

Core Principle 4 (Monitoring of Trading and Trade Processing). A SEF is required to establish and enforce trading procedures for entering and executing orders traded on or through the SEF. A SEF must also establish and enforce procedures for trade processing of swaps on or through the SEF. Core Principle 4 also requires each SEF to monitor trading to prevent manipulation, price distortion and disruptions of the delivery or cash settlement process through surveillance, compliance and disciplinary practices and procedures, including methods for conducting real-

time monitoring of trading and comprehensive and accurate trade reconstructions. CFTC Regulations 37.400-408 codify these requirements and establish minimum requirements that a SEF must meet in order to comply with Core Principle 4.

Core Principle 5 (Ability to Obtain Information). A SEF is required to establish and enforce rules that allows it to obtain any necessary information to perform any of the functions described in CEA Section 5h and provide such information to the CFTC upon request. A SEF is also required to have the capacity to carry out international information-sharing agreements to the extent required by the CFTC. CFTC Regulations 37.500-504 codify these requirements and establish minimum requirements that a SEF must meet in order to comply with Core Principle 5.

Core Principle 6 (Position Limits or Accountability). A SEF is required to adopt position limits or position accountability levels for each swap listed on the SEF, as necessary or appropriate. For a swap subject to a position limit established by the CFTC, a SEF may set its position limitation at a level no higher than the CFTC's limitation. A SEF must monitor positions established on the SEF for compliance with the limits set by the CFTC and the limit, if any, set by the SEF. CFTC Regulations 37.600-601 codify these requirements and establish minimum requirements that a SEF must meet in order to comply with Core Principle 6.

Core Principle 7 (Financial Integrity of Transactions). A SEF is required to establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the SEF, including the clearance and settlement of the swaps. CFTC Regulations 37.700-703 codify these requirements and establish minimum requirements that a SEF must meet in order to comply with Core Principle 7.

Core Principle 8 (Emergency Authority). A SEF is required to adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the CFTC, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap. CFTC Regulations 37.800-801 codify these requirements and establish minimum requirements that a SEF must meet in order to comply with Core Principle 8.

Core Principle 9 (Timely Publication of Trading Information). A SEF is required to make public timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the CFTC. A SEF is also required to have the capacity to electronically capture and transmit trade information with respect to transactions executed on the SEF. CFTC Regulations 37.900-901 codify these requirements and establish minimum requirements that a SEF must meet in order to comply with Core Principle 9.

Core Principle 10 (Recordkeeping and Reporting). A SEF is required to maintain records of all activities relating to the SEF's business, including a complete audit trail, in a form and manner acceptable to the CFTC for a period of five years. A SEF is also required to report to the CFTC such information as the CFTC determines to be necessary or appropriate for the CFTC to perform its duties under the CEA. A SEF must keep any such records relating to certain security-based swaps open to inspection and examination by the Securities and Exchange Commission. Core Principle 10 also requires the CFTC to adopt data collection and reporting requirements for SEFs that are comparable to corresponding requirements for derivatives clearing organizations and swap data repositories. CFTC Regulations 37.1000-1001 codify these requirements and establish minimum requirements that a SEF must meet in order to comply with Core Principle 10.



Core Principle 11 (Antitrust Considerations). Unless necessary or appropriate to achieve the purposes of the CEA, a SEF is prohibited from adopting any rules or taking any actions that result in any unreasonable restraint of trade or imposing any material anticompetitive burden on trading or clearing. CFTC Regulations 37.1100-1101 codify these requirements and establish minimum requirements that a SEF must meet in order to comply with Core Principle 11.

Core Principle 12 (Conflicts of Interest). A SEF is required to establish and enforce rules to minimize conflicts of interest in its decision-making process. A SEF must also establish a process for resolving the conflicts of interest. CFTC Regulation 37.1200 codifies these requirements.

Core Principle 13 (Financial Resources). A SEF is required to have adequate financial, operational and managerial resources to discharge its responsibilities. Core Principle 13 also provides that the financial resources of a SEF are considered to be adequate if the value of the financial resources exceeds the total amount that would enable the SEF to cover its operating costs for a one-year period, as calculated on a rolling basis. CFTC Regulations 37.1300-1307 codify these requirements and establish minimum requirements that a SEF must meet in order to comply with Core Principle 13.

Core Principle 14 (System Safeguards). A SEF is required to establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures and automated systems, that are reliable and secure and have adequate scalable capacity. A SEF must also establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the SEF. Core Principle 14 also requires each SEF to periodically conduct tests to verify that the backup resources of the SEF are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance and maintenance of a comprehensive and accurate audit trail. CFTC Regulations 37.1400-1401 codify these requirements and establish minimum requirements that a SEF must meet in order to comply with Core Principle 14.

Core Principle 15 (Designation of Chief Compliance Officer). A SEF is required to designate an individual to serve as a CCO. Core Principle 15 also requires a SEF's CCO to (i) report directly to the board or to the senior officer of the SEF, (ii) review compliance with the Core Principles, (iii) in consultation with the board or senior officer, resolve conflicts of interest that may arise, (iv) establish and administer the policies and procedures required to be established pursuant to the CEA, (v) ensure compliance with the CEA and CFTC Regulations and (vi) establish procedures to remediate noncompliance issues found during compliance office reviews, look backs, internal or external audit findings, self-reported errors or through validated complaints. Each CCO must also design the procedures to establish the handling, management response, remediation, retesting and closing of noncompliance issues. Pursuant to Core Principle 15, each CCO is required to prepare and sign an annual report that contains a description of the SEF's compliance with the CEA and the SEF's policies and procedures, including the code of ethics and conflict of interest policies. Each CCO must certify that, under penalty of law, the report is accurate and complete, and submit the report with the appropriate financial report of the SEF. CFTC Regulations 37.1500-1501 codify these requirements and establish minimum requirements that a SEF must meet in order to comply with Core Principle 15.

### **Product and Rule Filings**

SEFs primarily self-certify new products and changes to products under CFTC Regulations 40.2 and 40.6, respectively. CFTC Regulation 40.2 requires that the CFTC receive a new product submission “by the open of business on the business day preceding the product’s listing.” CFTC Regulation 40.2 also requires that the new product submission include the following: (1) a cover sheet; (2) a copy of the new product’s rules, including all rules relating to the new product’s terms and conditions; (3) the intended listing date of the new product; (4) a certification by the SEF that the new product complies with the CEA and CFTC Regulations, including the requirement that the SEF permit trading only in swaps that are not readily susceptible to manipulation (as further described below); (5) a concise explanation and analysis of the product and its compliance with the CEA and CFTC Regulations, including documentation sufficient to substantiate such explanation and analysis; and (6) a certification that the SEF posted a copy of the new product submission on its website. If requested by the CFTC, the SEF must provide any additional evidence, information or data that demonstrates that the product meets the requirements of the CEA and CFTC Regulations.

SEFs also may elect to request prior CFTC approval of a new product under CFTC Regulation 40.3 before listing such product for trading. 360T believes that it would request such approval only in circumstances where the product it seeks to list for trading, or the rules relating to the trading of such product, raise novel or complex regulatory issues.

Proposed changes to existing products are submitted under CFTC Regulation 40.6, which requires that the CFTC receive the submission “not later than the open of business on the business day that is 10 business days prior to the registered entity’s implementation of the rule or rule amendment.” A submission under CFTC Regulation 40.6 must include the following: (1) a cover sheet; (2) a copy of the product’s rules indicating deletions and additions; (3) the date of intended implementation; (4) a certification by the SEF that the product complies with the CEA and CFTC Regulations; (5) a concise explanation and analysis of the operation, purpose and effect of the product’s rule amendment and its compliance with the CEA and CFTC Regulations; (6) a brief explanation of any substantive opposing views or a statement that no opposing views were expressed; and (7) a certification that the SEF posted a copy of the new product submission on its website. If requested by the CFTC, the SEF must provide any additional evidence, information or data that may be beneficial to the CFTC in conducting a due diligence assessment of the submission.

#### *Not Readily Susceptible to Manipulation*

As described above, a SEF is required to permit trading only in swaps that are not readily susceptible to manipulation. A SEF must determine whether a swap is readily susceptible to manipulation by assessing the potential for manipulation or distortion of the cash settlement price, as well as the reliability of that price as an indicator of cash market values. Appropriate consideration should also be given to the commercial acceptability, public availability, and timeliness of the price series that is used to calculate the cash settlement price and the cash flows of the swap.

Where an independent, private-sector third party calculates a relevant price index, the SEF also must assess whether the third party utilizes business practices that minimize the opportunity or incentive to manipulate the cash-settlement price series.

### *Made Available to Trade Determinations*

SEFs additionally may elect to make a particular swap “available for trading” within the meaning of CEA Section 2(h)(8). SEFs primarily effectuate these determinations by submitting a rule filing to the CFTC in accordance with CFTC Regulation 40.6. This rule filing must demonstrate that the SEF lists the relevant swap for trading, and must address the following factors:

- whether there are ready and willing buyers and sellers;
- the frequency or size of transactions;
- the trading volume;
- the number and types of market participants;
- the bid/ask spread; or
- the usual number of resting firm or indicative bids and offers.

No single factor is necessarily dispositive, and the SEF may consider any one factor or several factors in determining whether to make a swap available to trade. If another SEF or DCM has made a particular swap available for trading, 360T also will treat such swap as having been made available for trading.

360T has not yet submitted any made available to trade determinations to the CFTC, and has not yet adopted any quantitative or qualitative thresholds to determine whether a swap should be made available to trade. 360T notes that a swap must be subject to mandatory clearing before it can be deemed to be made available to trade. The swaps that 360T has listed for trading on its platform are not currently subject to mandatory clearing in the United States.

### *Products Listed on 360T*

360T offers trading in non-deliverable forwards (“**NDFs**”), non-deliverable swaps (“**NDS**”) and foreign exchange options. At this time, none of these products are required to be cleared under the CEA and are not voluntarily cleared by counterparties.

Each NDF is a cash-settled swap where the settlement obligations of the parties are determined by calculating the difference between the forward rate, which is agreed on between the parties at the start of the contract, and the prevailing spot exchange rate on the fixing date. This difference is then multiplied by the notional amount, which is also determined at the start of the contract. The price source for the spot exchange rate on the fixing date will be bilaterally agreed and, in the majority of cases, is determined by reference to the prices disseminated by the various central bank or by recognized commercial market data vendors.

An NDS is essentially a series of NDFs.

A foreign currency option is a contract giving the option purchaser (the buyer) the right, but not the obligation, to buy or sell a fixed amount of foreign exchange at a fixed price per for a specified time period. The foreign exchange options that will be listed for trading 360T are cash-settled.

The contract specifications are listed on 360T’s website at <http://www.360t.com/regulatory-affairs/swap-execution-facility/>.

*Review Process Prior to Listing New Products*

The terms and conditions of 360T's swaps conform to the terms and conditions of swaps traded on other SEFs registered with the CFTC. Prior to listing new products, 360T conducts a market review to confirm that there will be a proper market for a swap, including a review of the instrument in question, currency, tenor and historical volumes. Such review helps ensure that the terms and conditions of 360T's swaps are in conformity with normal business practices for trading in such products, meet the needs of the relevant market participants and have widely accepted specifications. Normal business practices for 360T's market participants generally consists of corporate end-users attempting to transact with banks with whom they have pre-existing credit arrangements via request for quote ("RFQ").

360T certified all of its listed products on September 30, 2013, and the CFTC has not required 360T to remove any of its product certifications.

**IOSCO Principles**

The IOSCO Principles are designed to help ensure that physical commodity markets serve their fundamental price discovery and hedging functions while operating free from manipulation and abusive trading schemes. 360T believes that the Core Principles set forth in the CEA are consistent with the IOSCO Principles, and that the CFTC's SEF Regulations implement these principles in an effective manner. Therefore, 360T believes that it will be adhering to the IOSCO Principles to the extent that it complies with the Core Principles and the CFTC's SEF Regulations.

**(B) RECOGNITION OR AUTHORIZATION PROCESS OF REGULATOR IN HOME JURISDICTION**

The AMF expects 360T to provide enough information to ensure that the recognition or authorization process of the regulator in the home jurisdiction took the following elements into consideration:

- i) **governance**
  - a) **fair and meaningful representation on the board of directors and its committees;**
  - b) **appropriate representation by independent directors on the board of directors and its committees;**
  - c) **appropriate qualifications, remuneration and limitation of liability for directors and officers;**
  - d) **appropriate conflict of interest provisions for directors, officers and employees.**

**Overview**

As background, 360T is a corporation that is organized under the laws of the State of Delaware. The immediate parent company to 360T is 360 Treasury Systems AG, a German joint stock company. 360 Treasury Systems AG is part of Deutsche Börse Group, with the ultimate parent company being Deutsche Börse AG, a German limited company.

360T has established an organizational and governance structure that provides for effective and efficient oversight of 360T. 360T's corporate governance arrangements are set forth in 360T's Certificate of Incorporation and Bylaws (the "**Governing Documents**"). The Governing Documents establish 360T's formal corporate decision-making powers and procedures and gives 360T's Board of Directors (the "**Board**") the sole responsibility for overseeing the management of the operations of 360T.

The Board has three members, all of whom are ultimately elected by 360T's parent company, and is responsible for the oversight of 360T. The Governing Documents provide that Directors are elected annually by 360T's parent company. According to Rule 201(c), each Director serves until his or her successor is duly appointed, or until his or her earlier resignation or removal, with or without cause.

The Board is composed of 360T's founder and two "Public Directors" (as that term is defined in the Rules), each of whom has significant and relevant industry experience. The Board is authorized to oversee the management of the day-to-day business operations of 360T in accordance with 360T's Governing Documents. Subject to the oversight of the Board, 360T shall appoint from time to time one or more individuals to serve as the Chief Executive Officer, Chief Compliance Officer and may further appoint such other officers as deemed necessary or appropriate, with such titles, duties, and authority as the 360T shall approve, to carry out its business. The officers are obliged at all times to be subject to the supervision and control of the Board and to conform to policies and programs established by the Board. The acts of the officers will bind 360T when such officers are acting within the scope of their authority. The officers are obliged to keep the Board informed as to all matters of concern to 360T.

360T is committed to operating a SEF in accordance with industry best practices and in accordance with public interest. 360T's Rules, policies, procedures and activities are designed to fulfill its public interest mandate and provide a reliable trade execution platform for market participants.

360T's public interest mandate is derived from the CEA and CFTC Regulations. Indeed, 360T's registration was contingent upon the CFTC's finding that it was in compliance with the CEA and with CFTC Regulations. Further, any business or regulatory actions that 360T takes must conform to the CEA and CFTC Regulations. In that regard, all material changes to the manner in which 360T conducts its business must be certified in advance to the CFTC, and the CFTC has the authority to stay such certifications if it believes that they are not consistent with the CEA.

#### **Independent Directors**

As noted above, the Board is currently comprised of three Directors, two of whom qualify as Public Directors. To qualify as a Public Director, an individual must be found, by action of the Board pursuant to Rule 201(d), to have no material relationship with 360T. 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 frequently than annually. For these purposes, a "material relationship" is one that could reasonably be expected to affect the independent judgment or decision-making of the Director. A Director will be considered to have a "material relationship" with 360T if any of the following circumstances exist or have existed within the past year:

- (1) such Director is or was an officer or an employee of 360T, or an officer or an employee of an affiliate of 360T;

(2) such Director is or was a Participant, or a director, officer or employee of a Participant;

(3) such Director is or was an officer of another entity, which entity has a compensation committee (or similar body) on which any 360T officer serves;

(4) such Director, or an entity of which the Director is a partner, officer, employee or director, receives or has received more than \$100,000 in combined annual payments for legal, accounting or consulting services from 360T or 360T's affiliates, any Participant or affiliate of such Participant. Compensation for services as a Director of 360T 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; or

(5) in the case of a Public Director that is a member of the ROC or the Participant Committee, such Public Director accepts or has accepted, directly or indirectly, any consulting, advisory or other compensatory fee from 360T, any of 360T's affiliates, any Participant or any affiliate of such Participant, other than deferred compensation for services rendered prior to becoming a member of the ROC or the Participant Committee, provided that such compensation is in no way contingent, conditioned, or revocable. This provision does not apply to compensation received in the Public Director's capacity as a member of the Board, the ROC, Participant Committee or any other 360T-committee or as a member of the board of directors or similar governing body of a 360T affiliate.

Any of the relationships set forth in paragraphs (1) through (5) apply to the "immediate family" (i.e., the spouse, parents, children, and siblings, in each case, whether by blood, marriage, or adoption) of such Director, or any person residing in the home of the Director or that of his or her "immediate family."

360T uses a director questionnaire as a means of ensuring that the Public Directors satisfy the requirements set forth above. 360T also reviews the information set forth in National Futures Association's ("NFA's") BASIC system and other public databases to determine whether the directors have been subject to any sanctions that would disqualify them from acting as such.

The experience and diversity of the Board has been, and continues to be, critical to 360T. The Board maintains a proper balance among the different persons or companies using 360T's services by (1) having a Nominating Committee to consider this balance in nominating board members, (2) having two Public Directors who are experienced in the industry but not actively using these services, and (3) having a Board member that is the founder of 360T and thus has significant experience in the development in its operations.

All candidates for Board membership are nominated by the Nominating Committee of the Board and are evaluated for their expertise, experience, ethics, commitment to enhancing shareholder value, understanding of 360T's business, and lack of material conflicts of interest. Directors elected to the Board have open access to senior management and also have their own access to persons that utilize 360T's services. This access enables directors to gather input from a wide variety of sources.

### **Committees of the Board**

360T has the following standing committees.



### *Nominating Committee*

The Nominating Committee of the Board consists of three Directors, two of whom are Public Directors. The Nominating Committee is 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 CFTC may promulgate and (ii) administering a process for the nomination of individuals to the Board.

The Nominating Committee also monitors and assesses the Board's independence. The Nominating Committee also ensures that nominees to fill Board vacancies possess the ability to contribute to the effective oversight and management of 360T, taking into account the needs of 360T and such factors as the individual's experience, perspective, skills and knowledge of the industry in which 360T operates.

### *Participant Committee*

The Participant Committee of the Board consists of three Directors, two of whom are Public Directors. The Participant Committee is responsible for (i) determining the standards and requirements for initial and continuing eligibility of Participants, (ii) reviewing appeals of staff denials of applications for approval as a Participant or for expanded Participant authority and (iii) approving Rules that would result in different categories or classes of Participants receiving disparate access to the Trading System. The Participant Committee may not, and may not permit 360T 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.

### *Regulatory Oversight Committee*

The Regulatory Oversight Committee (the "ROC") consists of two Public Directors. The ROC oversees 360T's regulatory program on behalf of the Board and has the authority to (i) monitor 360T's regulatory program for sufficiency, effectiveness, and independence and (ii) oversee all facets of 360T's regulatory program, including:

- (1) 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;
- (2) reviewing at each meeting of the ROC the size and allocation of 360T's regulatory budget and resources, and the number, hiring, termination and compensation of regulatory personnel;
- (3) reviewing the performance of 360T's CCO, and making recommendations with respect to such performance to the Board;
- (4) maintaining minutes and records of its meetings, deliberations and analyses, including records of all decisions made by the ROC;
- (5) recommending changes that would ensure fair, vigorous, and effective regulation;

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

(7) reviewing such other matters and performing such additional activities as the Board deems necessary or appropriate.

In addition to the standing committees, the Board has the power and authority under the Governing Documents to create special committees of the Board.

### **Qualifications and Fitness**

Directors, officers and other 360T employees are recruited for their particular positions based upon their skills and expertise. Each Director must complete a director questionnaire, and the integrity of each candidate for Director is determined primarily through an analysis of the responses received from such candidate. There is no standardized metric for determining the competence of a Director. It is in the interest of 360T to choose Directors that are sophisticated and experienced in business and legal matters.

All members of the Board and 360T officers and employees are over the age of majority and are of sound mind. All Directors and officers possess the ability to contribute to the effective oversight and management of 360T, taking into account the needs of 360T and such factors as the individual's experience, perspective, skills and knowledge of the markets in which 360T operates. This includes sufficient expertise, where applicable, in financial services and trading platform operations.

Pursuant to Rule 203, and consistent with CFTC Regulations, an individual may not serve as a Director or an officer, or serve on a Committee, a Disciplinary Panel, Review Panel or an Appeal Panel, if the individual:

- (1) within the prior three 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;
- (2) within the prior three 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;
- (3) is currently suspended from trading on any trading 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:
  - (i) 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
  - (ii) 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;
- (4) 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 any self-regulatory organization;

(5) is currently, or within the past three years has been, subject to a revocation or suspension of registration by the CFTC or has been convicted of a felony listed in Section 8a(2)(D)(ii) through (iv) of the CEA;

(6) 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, as amended; or

(7) is subject to a statutory disqualification pursuant to Section 8a(2) or 8a(3) of the CEA.

To verify that members of the Board meet these fitness standards, 360T requires each Director to provide supporting documentation such as a certification based on verifiable information, an affidavit from 360T's general counsel, registration information or other reliable proof that substantiates compliance. Upon the occurrence of an event listed above, such Director or officer is required to disclose the occurrence of such event to the CCO under Rule 203(b). In addition, 360T performs separate background checks on Directors using Employers Reference Search. This background check performs a criminal court search and social trace for each request. The social trace identifies areas where the Director has lived in the past, any AKAs and verifies the date and state of issuance for the social security number.

#### **Remuneration**

360T remunerates its Directors and officers appropriately and commensurate with each individual's position, responsibility and prevailing market levels. Compensation awarded to Public Directors is not linked to 360T's business performance.

#### **Limitation of Liability and Indemnification**

As provided in Article 8 of 360T's Certificate of Incorporation, no Director will be personally liable to 360T or its stockholders for monetary damages for breach of fiduciary duty as a Director. This provision, however, does not eliminate or limit the liability of a Director from (i) any breach of the Director's duty of loyalty to 360T or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, or (iii) any transaction from which the Director derived an improper personal benefit.

Pursuant to Article 9 of 360T's Certificate of Incorporation, each person who was or is made a party or is threatened to be made a party to or is involved (including, without limitation, as a witness) in any actual or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a Director or officer of 360T or is or was serving at the request of the corporation as a director or officer of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, whether the basis of such proceeding is alleged action in an official capacity as a director or officer or in any other capacity while serving as such a director or officer will be indemnified and held harmless by 360T to the full extent authorized by the General Corporation Law of Delaware, as the same exists or may hereafter be amended, or by other applicable law as then in effect, against all expense, liability and loss (including attorneys' fees, judgments, fines, excise taxes under the Employee Retirement Income Security Act of 1974, penalties and amounts to be paid in settlement) actually and reasonably incurred or suffered by such indemnity in connection therewith. Article 9.E also provides that 360T has the power to purchase and maintain insurance on behalf of any person who is or was or has agreed to become a

Director or officer of 360T, or is or was serving at the request of 360T as a director or officer of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him/her and incurred by him/her or on his/her behalf in any such capacity, or arising out of his/her status as such, whether or not 360T would have the power to indemnify him/her against such liability. See also Article VI, Section 7 of the Bylaws.

In accordance with these provisions, 360T purchases and maintains insurance, in amounts and with coverage at least equal to those typically maintained by similarly-situated companies, on behalf of Directors and officers.

### **Conflicts of Interest**

360T has effective mechanisms in place to manage any conflicts of interest that may arise. CFTC Regulation 1.69 requires that 360T maintain rules that have been approved by the CFTC to address the avoidance of conflicts of interest. The CFTC requires that 360T's Rules provide that a member of the Board, disciplinary committee or oversight panel must abstain from deliberations and voting involving any matter in which he or she or his or her employer has an interest. CFTC Regulation 1.69 also requires that 360T have procedures for determining whether such persons have a conflict, including disclosure of any potential conflict to 360T. CFTC Regulation 1.69 further requires 360T to document that the conflict determination procedures have been followed and the result of such determination. 360T has adopted Rule 206 pursuant to such requirements.

Additionally, Core Principle 12 (Conflicts of Interest) requires 360T to establish and enforce rules to minimize conflicts of interest in the decision-making process and establish processes for resolving any such conflicts. This requirement regulates the extent to which 360T is able to make decisions without the undue influence of a 360T member, an interested party or a trade group. Core Principle 15 requires 360T's CCO to "resolve any conflicts of interest that may arise" in consultation with the Board or other senior officer of 360T. Pursuant to CFTC Regulation 37.1501(d)(2), such conflicts of interest may include (i) conflicts between business considerations and compliance requirements, (ii) conflicts between business considerations and the requirement that 360T provide fair, open, and impartial access or (iii) conflicts between 360T's management and members of the Board. These duties indicate that 360T's CCO is more than just an advisor to management and must have the ability to enforce compliance with the CEA and CFTC Regulations. 360T's Rules and policies and procedures provide the CCO with the necessary powers and duties to ensure compliance with the aforementioned Core Principles and CFTC Regulations.

360T has established a robust set of safeguards designed to ensure that it operates free from conflicts of interest or inappropriate influence as described above. For example, Rule 902 limits the use and disclosure of material, non-public information gained in connection with a person's participation on the Board or any committee for any purpose other than the performance of his or her official duties as a member of the Board or committee. Pursuant to Rule 710 and Rule 715, a respondent in a disciplinary action may seek to disqualify any individual named to a Disciplinary Panel or an Appeal Panel due to a conflict of interest or for any other reasonable grounds.

Under Rule 206, a Director, Officer, member of any Committee, Review Panel Member, Disciplinary Panel Member or Appeal Panel Member who, in respect of a Company Proceeding or an Emergency, is subject to a "material conflict of interest" between his or her position as a Director, Officer, member of a Committee, Review Panel Member, Disciplinary Panel Member or Appeal Panel Member and his or her personal interests (any such Director, Officer, member of any Committee, Review Panel Member, Disciplinary Panel Member or Appeal Panel Member, an

**“Interested Person”**) generally may not participate in deliberations or votes of the Board, a Committee, Review Panel, Disciplinary Panel or Appeal Panel in respect of a Company Proceeding or any Emergency, or otherwise exercise any authority with respect to a Company Proceeding or Emergency that involves his or her personal interest.

Rule 206 provides that a “material conflict of interest” in respect of a Company Proceeding or an Emergency means a Director, Officer, member of a Committee, Review Panel Member, Disciplinary Panel Member or Appeal Panel Member: (1) being named as a respondent or potential respondent in such Company Proceeding; (2) being an employer, employee, fellow employee or an Affiliate of a respondent or potential respondent in such Company Proceeding; (3) having any significant, ongoing business relationship with a respondent or potential respondent in such Company Proceeding; (4) having a family relationship with a respondent or potential respondent in such Company Proceeding (including the individual’s spouse, cohabitor, former spouse, parent, step-parent, child, step-child, sibling, step-brother, step-sister, grandparent, grandchild, uncle, aunt, nephew, niece, father-in-law, mother-in-law, brother-in-law or sister-in-law); (5) having a direct and substantial financial interest<sup>3</sup> in the result of the deliberations or vote based upon trades or positions that could reasonably be expected to be affected by such Company Proceeding or Emergency; and/or (6) any other circumstance that gives rise to a conflict between the exercise of authority by the Director, Officer, member of any Committee, Review Panel Member, Disciplinary Panel Member or Appeal Panel Member concerning such Company Proceeding or Emergency and his or her personal interests.

Before considering a Company Proceeding or Emergency, an Interested Person must disclose in writing to the Chief Compliance Officer the material facts concerning his or her relationship or interest therein. An Interested Person who would otherwise be required to abstain from deliberations and voting as a result of having a direct and substantial financial interest in the result of the deliberations may participate in deliberations, prior to a vote on the Company Proceeding or Emergency, if: (1) the material facts about the Interested Person’s financial interest in the matter are disclosed or known to the Board, Committee, Review Panel, Disciplinary Panel or Appeal Panel (as applicable); (2) the Board, Committee, Review Panel, Disciplinary Panel or Appeal Panel determines that the participation by the Interested Person would be consistent with the public interest and the interests of the Company; and (3) a majority of the members of the Board, Committee, Review Panel, Disciplinary Panel or Appeal Panel (as applicable), excluding any Interested Persons, vote to allow the Interested Person to participate in deliberations on the Company Proceeding or Emergency.

If a determination is made pursuant to Rule 206 that an Interested Person may participate in deliberations prior to a vote, the minutes of the meeting of the Board, Committee, Disciplinary Panel or Appeal Panel will reflect the fact thereof and the reasons therefor.

If a determination is made that all Committee members, Review Panel Members, Disciplinary Panel Members or Appeal Panel Members are Interested Persons with respect to a matter relating to a Company Proceeding or Emergency that is subject to a vote by such Committee, such Disciplinary Panel or the Appeal Panel (as applicable), the Board shall be authorized to appoint a panel of individuals who are not Interested Persons with respect to such matter. This panel shall have the same authority and powers over such matter that the Committee, Review Panel, Disciplinary Panel or Appeal Panel (as applicable) would have if the Committee members, Review Panel Members, Disciplinary Panel Members or Appeal Panel Members were not Interested Persons with respect to such matter. The Board shall have the same power to appoint individuals who are not Interested Persons, if necessary, to permit a Committee, Review Panel, Disciplinary Panel or Appeal Panel to satisfy quorum requirements

360T also has adopted a Code of Conduct that applies to all employees, including the executive officers. The provisions of the Code of Conduct address potential and actual conflicts of interest, and all employees are instructed to comply with this Code of Conduct at all times.

**ii) fees**

- a) **fair, transparent and equitable process for setting fees;**
- b) **fees not to constitute a barrier to access;**
- c) **fees balanced to ensure the exchange has sufficient revenues to satisfy its responsibilities.**

**Fees**

CFTC Regulation 37.202 requires a SEF to provide comparable fee structures for market participants receiving comparable access to, or services from, the SEF. As provided on its website at <http://www.360t.com>, 360T charges comparable fees for all Participants that receive comparable access to the Trading System. The current fee schedule has been filed with the CFTC as part of 360T's SEF application. To the extent 360T makes any subsequent changes, it will need to file the revised fee schedule with the CFTC.

360T does not 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. Pursuant to its Charter, the Participant Committee determines the standards and requirements, including financial requirements, for initial and continuing membership eligibility. The Participant Committee must approve any provision of the Rules that would result in different categories or classes of Participants receiving disparate access. The Participant Committee will not, however, recommend that the Board restrict access or impose burdens on access to the facilities of the SEF in a discriminatory manner, within each category or class of participants or between similarly situated categories or classes of participants.

The process for setting fees is fair and appropriate. 360T's fees are established based on an ongoing consideration of the implications of such fees on its Participants and its business. 360T considers various factors in setting fees, including the fees of its competitors, 360T's own costs, the amount of volume in the applicable product and the temper and reactions of market participants.

360T operates in a highly competitive marketplace for foreign exchange transactions and establishes fees at market rates. Participants in foreign exchange markets have a wide variety of trading options from which to select, ensuring that 360T sets fees competitively.

360T believes that its fee schedule is in line with current market practice and notes that it is publicly available. These fees do not create unreasonable barriers to access because of their uniform application to all Participants.

**Financial Resources**

As background, Core Principle 13 (Financial Resources) requires a SEF to maintain financial, operational, and managerial resources exceeding the total amount that would enable the SEF to cover its operating costs for a one-year period, as calculated on a rolling basis. CFTC Regulation 37.1305 additionally requires a SEF to maintain unencumbered, liquid financial assets (i.e., cash and/or highly liquid securities) equal to at least six months' operating costs.



360T has adequate financial resources to discharge each of its responsibilities. Further, 360T charges fees that are adequately balanced to help ensure that 360T maintains sufficient financial resources.

**iii) fair and equitable access**

- a) **rules governing access to the facilities are fair, transparent and reasonable;**
- b) **access limited to persons who are duly registered in Québec.**

**Access Requirements**

360T has transparent and non-discriminatory rules based on objective criteria governing eligibility for membership, which are available to the public on 360T's website. Chapter 3 of the Rules sets out the admission and eligibility standards for all Participants, Authorized Traders and Authorized Users, all of which are designed to permit fair and open access while protecting 360T and its market participants.

Core Principle 2 (Compliance with Rules) requires 360T, inter alia, to have appropriate admission and continuing eligibility standards for members and participants. To be eligible for admission as a Participant, an applicant must demonstrate that it (as set out in Rule 302(a)):

- (1) is an Eligible Contract Participant;
- (2) has all registrations, licenses and consents required by its constituent documents and by Applicable Law to trade swaps on the Trading System and is not subject to any trading ban, prohibition or suspension issued by the CFTC or by any self-regulatory organization that is subject to the CFTC's oversight, including NFA; and
- (3) is of good reputation and business integrity, maintains adequate financial resources and credit, and satisfies such other criteria as 360T may establish from time to time.

Under Rule 303(a), applicants for Participant status must also complete the following:

- (1) complete and submit the Participant documentation;
- (2) provide such information and documentation as may be requested by 360T, and comply with the procedures established by 360T for admission;
- (3) distribute the Rules to its Authorized Traders and Authorized Users or cause the Rules to be so distributed; and
- (4) if such Person is organized or established under the laws of a country other than the United States:
  - (i) maintain a presence in the United States, either directly or through a suitable agent, whose personnel are fluent in English, are knowledgeable about the applicant's business, and can assist 360T representatives as necessary;
  - (ii) represent and certify to 360T that it is in compliance with the registration or authorization requirements of its home country, that it is regulated in its home country by a financial regulatory authority with respect to the maintenance of

relevant books and records, that it is subject to regular inspections and examinations by such home country regulator;

(iii) make such other representations as 360T deems necessary; and

(iv) upon request by 360T, submit an opinion of outside counsel on home country law and, if applicable, other relevant non-domestic law, in form and substance acceptable to 360T.

If 360T decides to admit an applicant as a Participant, it will promptly notify the applicant in writing in accordance with Rule 303(c). 360T may deny or condition an application for admission as a Participant: (i) if the applicant is unable to satisfactorily demonstrate its ability to satisfy the eligibility criteria to become or remain a Participant; (ii) if the applicant is unable to satisfactorily demonstrate its capacity to adhere to the Rules and Applicable Law; or (iii) for such other cause as 360T may reasonably determine.

Rule 303(e) provides that if 360T decides to deny or condition an application for admission as a Participant, 360T will promptly notify the applicant in writing, setting forth the reasons for the denial or conditioning of Participant status. The applicant may, within 14 days of the date of such notice, request in writing that the Participant Committee reconsider that determination. The Participant Committee may request additional information from the applicant or establish any other process that it believes is necessary and appropriate to consider the request for reconsideration. Unless extended with the consent of the applicant, the Participant Committee will confirm, reverse or modify the denial or conditioning of the application within 30 days of receiving the request for reconsideration or such longer period as may be agreed by the applicant. The Participant Committee will promptly notify the applicant of its decision in writing, and the decision of the Participant Committee will be final and not subject to appeal at 360T. However, a person who is denied admission at 360T may appeal such decision to the CFTC.

Rule 304 sets forth comparable requirements and limitations for Authorized Traders. Rule 406 sets forth certain requirements related to Customers. Any market participant, including a customer of a swap dealer, that meets the relevant criteria may become a Participant or a Customer or Authorized Trader sponsored by a Participant. Under Rule 310, 360T has jurisdiction over all Participants, Authorized Traders and Customers.

Pursuant to Rule 305, Participants and Authorized Traders may designate at least one person that is authorized to access the Trading System on its behalf as an Authorized User. Under Rule 305(d) an Authorized User must at all times:

- (1) ensure that activity conducted under the User ID assigned to such Authorized User, or any automated trading system for which the User ID is linked to such Authorized User, complies with Applicable Law and the Rules;
- (2) if such Authorized User was designated by a Participant or an Authorized Trader, have the authority, at 360T's request, to adjust or withdraw any order or RFQ submitted to the Trading System under any User ID assigned or linked to such Authorized User;
- (3) cooperate promptly and fully with 360T in any investigation, inquiry, audit, examination or proceeding regarding compliance with the Rules or any disciplinary or arbitration proceeding arising thereunder;

(4) have and maintain all necessary regulatory approvals and/or licenses to act as an Authorized User; and

(5) agree to such other terms and conditions as may be established by 360T from time to time.

### **Ongoing Monitoring**

Once an applicant has been granted access, Rule 404 provides that Participants are required to provide 360T with all financial information that 360T may request. Under the Regulatory Services Agreement (“RSA”) between 360T and NFA, NFA is responsible for reviewing this information to ensure that Participants comply with 360T’s minimum financial requirements.

Participants that are registered with, or authorized or supervised by, any government agency (e.g., the CFTC) must submit to 360T 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 regulator. In addition, Participants must notify 360T immediately upon the occurrence of certain events, including the insolvency of the Participant or any of its affiliates as well as any material changes to any information provided to 360T.

Rule 307 provides that 360T may at any time revoke, suspend, limit, restrict or qualify a Participant’s Trading Privileges, and those of its Authorized Traders and its and their Authorized Users, in accordance with the disciplinary procedures set forth in Chapter 7.

### **Equal Access**

Core Principle 11 (Antitrust Considerations) prohibits SEFs from adopting rules or taking actions that result in an unreasonable restraint of trade. 360T’s Rules and policies have been designed to avoid unreasonable restraints of trade or the imposition of any material anticompetitive burden on persons that seek to access the Trading System. 360T has not adopted any rule or taken any action with the intent or result of restraining trade. 360T will not require Participants to acquire an equity interest in 360T, and access will be available to a broad number of Participants and Authorized Traders.

The Participant Committee Charter provides that the Participant Committee must determine the eligibility standards and requirements for initial and continuing Participant status and approve Rules that would result in different categories or classes of Participants receiving access to 360T. The Participant Committee will not recommend that 360T restrict access or impose burdens on access to the Trading System in a discriminatory manner, within each category or class of market participants or between similarly situated categories or classes of market participants.

As provided on its website at <http://www.360t.com>, 360T charges comparable fees to all Participants that receive comparable access to the Trading System. 360T does not 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.

### **Quebec Securities Laws**

As noted above, an applicant that is organized or established under the laws of a country other than the United States must meet certain requirements, including (but not limited to) the following: (i) represent and certify to 360T that it is in compliance with the registration or

authorization requirements of its home country, that it is regulated in its home country by a financial regulatory authority with respect to the maintenance of relevant books and records and that it is subject to regular inspections and examinations by such home country regulator; and (ii) upon request by 360T, submit an opinion of outside counsel on home country law and, if applicable, other relevant non-domestic law, in form and substance acceptable to 360T.

An applicant must also demonstrate to 360T that it has all registrations, licenses and consents required by its constituent documents and by Applicable Law (which includes the Quebec securities laws) to trade swaps listed by 360T. Once admitted, a Participant must continue to comply with such eligibility criteria.

### **Supervision**

Rule 301(e) provides that a Participant may be held accountable by 360T for the actions and omissions of its Authorized Traders and its and their Authorized Users. Under Rule 305(c), it is the responsibility of an Authorized User and its sponsoring Participant or its sponsoring Authorized Trader, as applicable, to ensure that each such User ID is registered with 360T, and that such registration is accurate at all times.

Pursuant to Rule 401, each Participant and Authorized Trader must, and must cause its Authorized Users to:

- (1) use the Trading System in a responsible manner and not for any improper purpose;
- (2) use the Trading System only to conduct business that is subject to the Rules and in a manner consistent with the Rules and Company Requirements;
- (3) comply with the Rules and Company Requirements and act in a manner consistent with the Rules and Company Requirements;
- (4) comply with the rules of a Derivatives Clearing Organization that accepts for clearing a swap traded by the Participant, Authorized Trader or Authorized User on the Trading System, to the extent applicable to such Participant, Authorized Trader or Authorized User and such swap;
- (5) 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 360T;
- (6) not knowingly mislead or conceal any material fact or matter in any dealings or filings with 360T or in connection with a Company Proceeding;
- (7) keep all User IDs, account numbers and passwords related to the Trading System confidential; and
- (8) keep, or cause to be kept, complete and accurate books and records relating to its use of 360T as required by Applicable Law, including records of their activity in the index or instrument used as a reference price, the underlying instrument and related derivatives markets with respect to swaps, and make such books and records available for inspection by a representative of 360T or the regulatory services provider and otherwise as required by Applicable Law.

Rule 401(b) additionally provides that each Participant is responsible for all orders, RFQs and transactions effected on the Trading System by or for the account of such Participant, its Authorized Traders and Authorized Users or by any Person using its or their User IDs unless (i) the Participant has directed 360T to deactivate such User ID and 360T has had a reasonable opportunity to act upon such direction, (ii) the unauthorized use of a User ID is due to the gross negligence or willful misconduct of 360T or (iii) the transactions effected through the use of such User ID exceed the limits that 360T has agreed to establish with respect to such transactions.

### **Recordkeeping**

Core Principle 10 (Recordkeeping and Reporting) requires a SEF to maintain records of all activities relating to its business, including a complete audit trail, for a period of five years. CFTC Regulation 37.1001 similarly requires a SEF to maintain records of all activities relating to its business, including a complete audit trail for all swaps executed on or subject to the rules of the SEF, investigatory files and disciplinary files.

Rule 207(a) requires 360T to keep, or cause to be kept, all books and records required to be maintained pursuant to the CEA and CFTC Regulations for at least five years. As required by CFTC Regulations, 360T maintains complete and accurate books and records relating to its operations, audit trail information on all trades, disciplinary and enforcement actions, appeals and Participant applications, including records of each grant and each denial or limitation of access, as well as reasons for granting, denying or limiting access.

#### **iv) regulation**

- a) power to set rules and ensure their fair and effective enforcement;**
- b) rules governing the activity of participants in the exchange;**
- c) rules to prevent fraudulent acts and practices;**
- d) rules prohibiting unreasonable discrimination among issuers or participants;**
- e) rule transparency;**
- f) accessibility of public to current rules.**

#### **v) market operations**

- a) rules governing market operations;**
- b) rules ensuring market integrity and effectiveness;**
- c) rules promoting fair and equitable business principles;**
- d) transparency of trading information;**
- e) agreement with a supplier of regulatory services for market or member supervision, where applicable;**
- f) agreement with a market operator, where applicable.**

### **Rulemaking**

#### *Generally*

360T maintains a set of written rules and procedures which is publicly available on 360T's website. The Rules appropriately govern the operations and activities of market participants in the following chapters: Chapter 3 (Trading System); Chapter 4 (Business Conduct); Chapter 5

(Trading Practices); Chapter 7 (Disciplinary Rules); and Chapter 8 (Arbitration Rules). 360T believes that the Rules are consistent with applicable Quebec law.

As noted in Section (B)(iii), Core Principle 11 (Antitrust Considerations) prohibits SEFs from adopting rules or taking actions that result in an unreasonable restraint of trade or impose any material anticompetitive burdens on trading or clearing. 360T's Rules and policies have been designed to avoid unreasonable discrimination among Participants or impose any burden on competition that is not reasonably necessary or appropriate.

The CFTC undertakes periodic rule reviews of all SEFs, including 360T. All rule changes must be submitted to the CFTC and are subject to review to ensure compliance with the CEA and CFTC Regulations. SEFs are required to self-certify new rules and rule amendments in accordance with CFTC Regulation 40.6. The CFTC publishes rule certifications publicly on its website.

#### *Rules Ensure Compliance with Applicable Legislation*

Core Principle 1 (Compliance with Core Principles) requires SEFs to comply with the Core Principles and all applicable CFTC Regulations. 360T's Rules are drafted to comply with such requirements. Pursuant to Rule 310(a), each Participant, Authorized Trader and Authorized User agrees to be bound by, and comply with the Rules and Applicable Law, in each case to the extent applicable to it. By agreeing to comply with the Rules and Applicable Law, such persons are brought within the scope of the Core Principles and applicable CFTC Regulations. If a Participant, Authorized Trader or Authorized User fails to comply with the Rules or Applicable Law, 360T may at any time revoke, suspend, limit, restrict or qualify such person's Trading Privileges or pursue other sanctions in accordance with the procedures set forth in Chapter 7.

#### *Rules Set Forth Trading Procedures*

Core Principle 4 (Monitoring of Trading and Trade Processing) requires SEFs to adopt rules relating to trading procedures, and to monitoring trading to prevent manipulation and price distortion. As noted above, Chapter 5 of the Rules sets forth the trading practices on the Trading System. Rule 524 provides a summary of the execution methods available on the Trading System, including an RFQ functionality and a central limit order book (the "CLOB") that interacts with the RFQ functionality.

- Request for Quote. The RFQ process begins when a market taker sends a "request for quote stream" to one or more market makers with whom it has existing trading relationships.

After the market makers receive this request, they then determine whether and under which conditions they would be willing to trade with the market taker. These determinations are typically made automatically via pricing engines utilized by market makers. While a market maker will know the market taker's identity, it will not know the identity of the other market makers with whom it is competing.

If the market taker desires to transact with a market maker, it will send an execution request to the market maker. The market maker then may either accept or reject this execution request.

- Central Limit Order Book. The CLOB serves as a mechanism pursuant to which



Participants may post limit orders that are displayed to other Participants and which may be filled on an all-or-none basis. All limit orders must have a minimum time-in-force of not less than 15 seconds, and thus cannot expire or be canceled before this minimum time period has elapsed.

A limit order will be displayed as executable as between Participants that have established a counterparty relationship if the order is within the credit limits for such Participants as communicated to 360T. Otherwise, the limit order will be displayed as having an indicative price.

Opposing limit orders that match are not automatically executed on the CLOB. Instead, a Participant that desires to execute against a limit order displayed by another Participant must contact such Participant directly in order to consummate such execution.

The RFQ platform and CLOB interact as follows:

- If a response to an RFQ matches an executable limit order that is resting in the CLOB, then the Trading System will display that executable limit order to the market taker that initiated the RFQ. In addition, the best indicative limit order resting in the CLOB also will be displayed to the market taker.
- If a market maker provides a quote via its pricing engine in response to an RFQ which matches a limit order that it has placed on the CLOB, only the quote which is latest in time will be displayed to a market taker.

Pursuant to Rule 313, 360T provides public notice of 360T's business days and the trading hours applicable for each swap. The procedures for each execution method are fair, transparent and consistent with industry practices.

#### *Rules Govern the Activity of Participants*

360T has adopted Rules proscribing several forms of conduct and trade practices including: fraudulent acts (Rule 504); fictitious or noncompetitive transactions (Rule 505); market disruption (Rule 506); market manipulation (Rule 507); disruptive trading practices (Rule 508); misstatements (Rule 509); withholding of customer orders and priority of customer orders (Rule 512); trading against customer orders (Rule 513); front-running (Rule 513); simultaneous buying and selling orders, including crossing orders (Rule 515); wash sales (Rule 516) and pre-negotiated and noncompetitive trades, including money passes (Rule 517). The Rules also prohibit conduct inconsistent with just and equitable principles of trade or that is detrimental to the interest or welfare of 360T (Rule 503). In addition, Rule 401 sets out duties and responsibilities of Participants and Authorized Traders, including the requirement to utilize 360T's services in a responsible manner, comply with all Rules, not knowingly mislead or conceal any material fact or matter in any dealings or filings with 360T or in connection with a disciplinary proceeding, and maintain complete and accurate books and records.

#### *Rules Prevent Fraudulent and Manipulative Acts and Practices*

As noted above, 360T has adopted Rules prohibiting trade practice violations and other illicit conduct, including fraudulent acts (Rule 504), fictitious or noncompetitive transactions (Rule 505), market disruption (Rule 506), market manipulation (Rule 507) disruptive trading practices (Rule 508) and misstatements (Rule 509).

*Rules Promote Just and Equitable Principles of Trade*

Rule 503 prohibits conduct which is inconsistent with just and equitable principles of trade or that is detrimental to the interest or welfare of 360T. Similarly, Rule 401(a)(5) requires Participants to observe high standards of fair dealing and just and equitable principles of trade while conducting or seeking to conduct any business connected with or concerning 360T. Participants are also required to cause their Authorized Traders to observe such standards. Any Participant or Authorized Trader that does not observe such standards will be subject to disciplinary action in accordance with Chapter 7 of the Rules. As set forth in Rule 714, the potential sanctions available to 360T include, among other things, a warning letter, censure, suspension, expulsion and/or fine.

*Rules Ensure a Fair and Orderly Market*

Core Principle 4 (Monitoring of Trading and Trade Processing) requires SEFs to adopt rules relating to trading procedures, and to monitoring trading to prevent manipulation and price distortion. 360T has adopted Rules conforming to such requirements to ensure a fair and orderly market. Chapter 5 of the Rules sets forth certain prohibited trading practices and specifically proscribes manipulation, price distortion and disruptive trading practices. Chapter 7 of the Rules describes 360T's disciplinary and enforcement procedures, which include inquiries, investigations and disciplinary proceedings.

As described further below, the CCO, Market Regulation Department and NFA implement 360T's monitoring, surveillance and other enforcement functions, and the ROC oversees this activity. As further described below, 360T conducts real-time market monitoring, whereas NFA provides a second set of eyes on a trade day plus one (T+1) basis. In addition, NFA has developed an automated trade surveillance system known as the Sophisticated Warning Analysis Profiling System ("SWAPS") that captures all trade and order data, including modifications and cancellations, and uses that data to perform trade practice and market surveillance services. NFA is also responsible for reviewing 360T's trades on a routine basis to determine whether suspicious activity relating to applicable trading standards exists. The CCO oversees NFA's performance.

Participants are required under Rule 520(b) to maintain order routing/front-end audit trail information. The audit trail requirements facilitate 360T's ability to comprehensively and accurately reconstruct all trading on the Trading System. 360T additionally maintains its own audit trail data to accurately reconstruct all trading on the Trading System.

Pursuant to Rule 401, all Participants and Authorized Traders must maintain all records relating to their use of the Trading System as required by Applicable Law, including all records of trading activity in the underlying commodity and activity in related markets. All such books and records must be made available for inspection by 360T or NFA upon request.

As provided in Rule 524(d), the Trading System permits Participants and Authorized Traders to input and establish credit and/or risk limits on the Trading System. 360T may also require Participants and/or Authorized Traders to input and establish credit and/or risk limits on the Trading System. A person establishing credit and/or risk limits on the Trading System is solely responsible for evaluating the creditworthiness of each person for whom it establishes such limit and for ensuring that such person is in compliance with any such limits. Each Participant, Authorized Trader or Authorized User is responsible for ensuring that it is in compliance with any such credit limits. 360T has no particular rules limiting the size of an order (that is, the number of contracts in a particular buy or sell order).

### *Rules Governing Position Limits and Position Accountability Levels*

Rules 521-523 set forth 360T's position limit and position accountability rules and aggregation standards. Pursuant to Rule 521, 360T may adopt position limits for swaps and grant exemptions from position limits, as it may determine to be necessary and appropriate, in accordance with CFTC Regulations. 360T may not set its position limit for any swap that is subject to a position limit set by the CFTC at a level higher than the CFTC's limit. The CFTC has proposed, but not yet adopted, position limits for swaps.

Rule 522 allows 360T to adopt position accountability levels for swaps subject to the trade execution requirement in Section 2(h)(8) of the CEA. Upon 360T's request, persons with positions in excess of position accountability levels established by 360T will be required to provide information about their positions in excess of the relevant position accountability threshold and halt any further increases in those positions.

At this time, 360T has not listed for trading any swaps subject to the trade execution requirement in Section 2(h)(8) of the CEA. As such, 360T has not adopted position limits and position accountability levels for any of its swaps, which is consistent with the CFTC's guidance in Appendix B to Part 37 of CFTC Regulations. Notwithstanding, 360T has the right under its Rules to request position information from its Participants at any time.

### **Rule Enforcement**

#### *Background*

360T has self-regulatory obligations under the CEA, and must, among other things, monitor and enforce compliance with its Rules, including the Rules prohibiting abusive trade practices. 360T's ability to detect, investigate and take action with respect to violations of its Rules is provided by the ROC, the CCO and NFA, which is 360T's regulatory services provider. As described in further detail below, 360T is primarily responsible for real-time market monitoring, while NFA is primarily responsible for financial surveillance, daily market surveillance, daily trade practice surveillance and inquiries and investigations. NFA also performs real-time market monitoring and provides services related to disciplinary proceedings.

#### *Regulatory Oversight Committee*

360T's self-regulatory program is overseen by the ROC, which is a committee of the Board made up of two Public Directors. As noted above, the ROC's duties include monitoring 360T's regulatory program for sufficiency, effectiveness, and independence and overseeing all facets of 360T's regulatory program.

In furtherance of these duties, the ROC has considerable authority to review 360T documentation and independently consult with, and interview, staff of 360T and NFA. Additionally, the ROC also has the authority to retain independent legal counsel and other professional services.

The CCO meets with the ROC regularly to summarize the activities performed for 360T by NFA and highlight the status of any pending inquiries, investigations and disciplinary proceedings. The ROC is also responsible for reviewing the size and allocation of 360T's regulatory budget and resources and the number, hiring, termination and compensation of regulatory personnel. The CCO and ROC monitor 360T's compliance resources and will engage additional personnel as deemed necessary on a temporary or permanent basis.

*360T Responsibility*

360T has primary responsibility for real-time market monitoring, and reviews trading activity on the Trading System, including trades, RFQs and responses to RFQs. 360T will receive and review reports of any unusual trading activities on the Trading System.

Pursuant to Rule 526, 360T has authority to 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 Trading System or by a malfunction or other technical error in the Trading System. 360T may adjust trade prices or bust any trade if 360T determines that allowing the trade to stand as executed may have a material, adverse effect on the integrity of the market. 360T may determine to review a trade based on its independent analysis of market activity or upon request for review by a Participant. Upon deciding to review a trade, 360T will promptly issue an alert to all Participants via the Trading System or electronic mail indicating that the trade is under review.

Chapter 7 of the Rules sets forth 360T's disciplinary and enforcement process and demonstrates 360T's capacity to detect and investigate rule violations. The Market Regulation Department (which includes NFA), in accordance with Rule 702, has the authority to initiate and conduct inquiries and investigations, prepare investigative reports, make disciplinary recommendations and prosecute violations. Rule 702 also provides the Market Regulation Department with the authority to collect information and documents and examine Participants' books and records during an investigation.

Under Rule 702, the Market Regulation Department will commence an investigation upon the receipt of a request from CFTC staff or upon the discovery or receipt of information that indicates a reasonable basis for a finding that a violation has occurred or will occur. Pursuant to Rule 703(d), absent mitigating circumstances, all investigations must be completed within 12 months after the date the investigation is opened. No person with a conflict of interest will be permitted to participate in any 360T enforcement action or Disciplinary Panel.

Investigations may be resolved through a warning letter; however, no more than one warning letter for the same potential violation may be issued to the same potential respondent during a rolling 12-month period. See Rule 714(b)(1).

Chapter 7 of the Rules also sets out detailed procedures with respect to 360T's disciplinary proceedings, including the potential establishment of an optional Review Panel to review an investigation report (Rule 705), the preparation of a notice of charges (Rule 706), the answer to a notice of charges by a respondent (Rule 708), service of notice of charges (Rule 707), settlements (Rule 709), the establishment and operation of a Disciplinary Panel (Rule 710), the respondent's right to review evidence (Rule 711), conducting hearings of the Disciplinary Panel (Rule 712), Disciplinary Panel decisions (Rule 713), and the imposition of sanctions (Rule 714). Rule 715 sets out the procedures for filing appeals, including the creation of an Appeal Panel. 360T may also impose summary fines relating to submission of records pursuant to Rule 716. 360T also reserves the right to impose disciplinary sanctions in an emergency in accordance with Rule 717. The rights and responsibilities of a Participant, Authorized Trader or Authorized User after suspension or termination are governed by Rule 718. 360T will provide written notice of disciplinary proceedings in accordance with Rule 719.

Pursuant to Rule 403, 360T has the right to access and inspect systems, equipment, and software operated by a Participant or Authorized Trader, wherever located, access the systems, equipment, software, and the premises on which the systems, equipment, and software are located, data

stored in such systems or equipment, and copy and/or reproduce such data. In addition, Rule 702(e) requires each person in 360T's jurisdiction to produce books, records, papers, documents or other tangible evidence in such Person's possession, custody or control within the time period required by 360T.

#### *NFA Responsibility*

CFTC Regulation 37.204 allows a SEF to contract with a registered futures association to act as regulatory service provider for the SEF. Rule 720 permits 360T to enter into an agreement with a regulatory services provider to provide certain regulatory services. As noted above, 360T has entered into a RSA with NFA, pursuant to which NFA performs trade practice and market surveillance and real-time market monitoring of trading activity on the Trading System. However, 360T retains ultimate decision-making authority with respect to any powers or functions that are delegated the regulatory services provider, including exclusive authority over the issuance of disciplinary charges and any denial of access to the Trading System for disciplinary reasons. 360T has weekly calls and periodic meetings with NFA staff to ensure that NFA is effectively performing its obligations under the RSA. 360T has similar authority with respect to the other vendors it utilizes.

Pursuant to the RSA entered into between 360T and NFA, NFA performs trade practice and market surveillance using an automated surveillance system known as SWAPS. NFA uses SWAPS to monitor for certain types of suspicious transactions in connection with the time, size and percentage parameters that will be set based on the Rules or NFA's standards, which may be revised from time to time based on product offerings, market activities, trader profile information and 360T's procedures. NFA reviews all trades executed on the Trading System or otherwise pursuant to the Rules.

As noted above, real-time monitoring of trading is conducted primarily by 360T, but NFA provides a second set of eyes using a view-only market monitor screen through which it can track the activity of specific traders, monitor price and volume information and is alerted to any market messages.

NFA has primary responsibility for performing the investigatory work and any resulting inquiries and investigations. If NFA views any suspicious activity on 360T, it must undertake the following initial steps, which should be completed as soon as possible but in no case later than 15 minutes from the time that the suspicious activity is observed:

- the suspicious activity must be entered into NFA's Investigation Tracking System;
- 360T's CCO must be notified;
- the activity in question must be reviewed and a determination must be made, in accordance with guidelines established by the CCO, whether the conduct should be initially classified as either a "Routine Suspicious Activity" or "Suspicious Activity Requiring Emergency Action" or an "Emergency;" and
- it must be determined whether the suspicious activity requires additional analysis, including whether 360T should contact the Participant or Authorized Trader regarding the activity.

As provided in the RSA, NFA must notify 360T of all inquiries and investigations. 360T retains the ultimate decision-making authority with respect to any functions that are performed by NFA, including the reasons for the course of action recommended by NFA. 360T also may conduct its own inquiries and investigations, in lieu of or in conjunction with inquiries or investigations that

are being conducted by NFA. 360T expects that in the absence of unusual circumstances, most investigations will be completed within 90 days after initiation.

NFA also provides an arbitration forum for the resolution of disputes between Participants and disputes between Participants and their customers.

### **Due Process**

#### *Discipline and Enforcement*

Chapter 7 of the Rules describes 360T's disciplinary procedures. Rule 705(a) provides that after the completion of an Investigation Report and the receipt of any submission made by the proposed respondent pursuant to Rule 704(b), the CCO may establish a Review Panel pursuant to Rule 710. Within 30 days thereafter, the Review Panel must review the 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.

Under Rule 706, if the Market Regulation Department or Review Panel authorizes the initiation of disciplinary proceedings, the Market Regulation Department will prepare and serve a notice of charges. The notice of charges must: (i) state the acts, practices or conduct in which the respondent is alleged to have engaged; (ii) state each specific Rule alleged to have been violated or about to be violated; (iii) advise the respondent of its right to a hearing; (iv) advise the respondent that it has the right to be represented by legal counsel or any other representative of its choosing in all succeeding stages of the disciplinary process; (v) state the period of time within which the respondent may file an answer to, and request a hearing on, the notice of charges which will, except for good cause, not be less than 20 days after service of the notice of charges; (vi) 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 (vii) advise the respondent that any allegation in the notice of charges that is not expressly denied will be deemed to be admitted.

To answer the notice of charges, Rule 708 requires a respondent to: (i) specify the allegations that it denies or admits; (ii) specify the allegations that it does not have sufficient information to either deny or admit; (iii) specify any specific facts that contradict the notice of charges; (iv) specify any affirmative defenses to the notice of charges; (v) sign and serve the answer on the CCO; and (vi) if applicable, request a hearing before a Disciplinary Panel. If a respondent admits or fails to deny any of the allegations in the notice of charges, the Disciplinary Panel will find that the violations set forth in the allegations have been committed and will impose a sanction for each violation.

Pursuant to Rule 709, the respondent may propose in writing an offer of settlement to anticipated or instituted disciplinary proceedings. All offers of settlement must be submitted to the CCO. The CCO will forward the offer, together with his or her recommendation on whether to accept or reject the offer, to the Disciplinary Panel. The respondent or potential respondent may withdraw such offer of settlement at any time before acceptance by the Disciplinary Panel, but may not withdraw such offer at any time after acceptance by the Disciplinary Panel.

As provided in Rule 712, all disciplinary proceedings (except for summary impositions of fines) will be conducted at a hearing before a Disciplinary Panel, which is appointed by the CCO pursuant to Rule 710. Each Disciplinary Panel consists of three individuals, at least one of whom would qualify to serve as a Public Director. To the greatest extent practicable, the remaining two



members must be from diverse industry participant groups so that no group or class of industry participants dominates or exercises a disproportionate influence on the Disciplinary Panel. No employee of 360T may serve on a Disciplinary Panel. No individual may serve on a Disciplinary Panel unless that individual has agreed in writing that he or she will not publish, divulge, or make known in any manner facts or information regarding the business of any person or other information which may come to his or her attention in his or her official capacity as a member of the Disciplinary Panel, except when reporting to the Board or to a committee concerned with such information or to 360T, when requested by the CFTC or other government agency, or when compelled to testify in any judicial or administrative proceeding. The Board may, at any time, remove any member of a Disciplinary Panel for cause.

Prior to the commencement of a hearing, each respondent will be given the opportunity under Rule 711 to review certain books, records, documents, papers, transcripts of testimony and other evidence in the possession or under the control of 360T that 360T will use to support the allegations and proposed sanctions in the notice of charges or which the chairman of the Disciplinary Panel deems relevant to those charges.

Under Rule 712, 360T will present its case supporting the allegations and proposed sanctions in the notice of charges to the Disciplinary Panel. If a respondent has timely filed an answer to the notice of charges, the respondent is entitled to appear personally and participate in the hearing. At the hearing, 360T and each respondent may: (i) present evidence and facts deemed relevant and admissible by the chairman of the Disciplinary Panel; (ii) call and examine witnesses; and (iii) cross-examine witnesses called by other parties. All Participants, Authorized Traders and Authorized Users who are called as witnesses are required to appear at the hearing and, where applicable, produce evidence. 360T will make reasonable efforts to secure the presence of other persons called as witnesses whose testimony would be relevant (as determined by the chair of the Disciplinary Panel). A Disciplinary Panel may appoint an expert to attend any hearing and assist in deliberations if such expert is made subject to appropriate confidentiality requirements.

Rule 712(f) requires 360T to arrange for any hearing conducted in connection with disciplinary proceedings to be recorded verbatim, or substantially verbatim, in a manner capable of accurate transcription. If the respondent requests a copy of all or portions of the recording of a hearing, the chairman of the Disciplinary Panel may require the respondent to pay the costs for transcribing the recording of the hearing.

Pursuant to Rule 713, the Disciplinary Panel will render a written decision based on the weight of the evidence contained in the record of the disciplinary proceedings. A decision by a majority of the Disciplinary Panel will constitute the decision of the Disciplinary Panel. 360T will serve a copy of the written decision on the respondent. The written decision will include the following information: (i) the notice of charges or summary of the allegations; (ii) the answer, if any, or a summary of the answer filed by the respondent; (iii) a brief summary of the evidence introduced at the hearing or, where appropriate, incorporation by reference of the investigation report; (iv) findings of fact and conclusions concerning each allegation, including a complete explanation of the evidentiary and other basis for such findings and conclusions with respect to each allegation; (v) each specific Rule that the respondent is found to have violated; and (vi) the imposition of sanctions, if any, including the basis for such sanctions and the effective date of each sanction.

### *Appeals*

Parties to a disciplinary proceeding may appeal the decision of the Disciplinary Panel in accordance with Rule 715. Rule 715(f) provides that an Appeal Panel must be composed of three



individuals that have been appointed by the CCO, at least one of whom shall meet the “Public Member” requirements set forth in Rule 201(d)(1)-(5). To the greatest extent practicable, the remaining two members must be from diverse industry participant groups so that no group or class of industry participants dominates or exercises a disproportionate influence on the Appeal Panel. No individual may serve on the Appeal Panel for any Disciplinary Proceeding if such individual has served on the Disciplinary Panel for such Disciplinary Proceeding.

The Appeal Panel will only consider on appeal the record before the Disciplinary Panel, the notice of appeal, the briefs filed in support and opposition of the appeal, and any oral arguments of the parties. The Appeal Panel may only consider new evidence when the Appeal Panel determines that good cause exists as to why the evidence was not introduced during the disciplinary proceeding.

After completing its review, the Appeal Panel may affirm, modify or reverse any order of the Disciplinary Panel under appeal, in whole or in part, including increasing, decreasing or eliminating any sanction or remedy imposed, imposing any other sanction or remedy authorized by the Rules, remanding the matter to the same or a different Disciplinary Panel for further disciplinary proceedings, or ordering a new hearing. As promptly as reasonably possible following its review, the Appeal Panel will issue a written decision based on the weight of the evidence before the Appeal Panel.

#### *Summary Suspensions*

Under Rule 717, 360T may summarily suspend a Participant’s right to access the Trading System if 360T reasonably believes such immediate action is necessary to protect the best interests of the public or 360T. If practicable, 360T will serve the party against whom such action is contemplated with prior written notice. If prior notice is not practicable, 360T will give notice at the earliest possible opportunity to the person that is subject to such suspension.

A Participant may request a hearing with respect to such suspension. If requested, a Disciplinary Panel will promptly conduct a hearing concerning the summary suspension, and will render a written decision based on the weight of the evidence contained in the record of the proceeding. The order will include a description of the summary action taken, a summary of the evidence introduced at the hearing, a statement of findings of fact and conclusions, a description of any action taken or to be taken by 360T, and the effective date, time and duration thereof.

#### *Applications and Access*

Pursuant to Rule 303, if 360T decides to admit an applicant as a Participant, it will promptly notify the applicant in writing. 360T may, however, deny or condition an application for admission as a Participant: (i) if the applicant is unable to satisfactorily demonstrate its ability to satisfy the eligibility criteria to become or remain a Participant; (ii) if the applicant is unable to satisfactorily demonstrate its capacity to adhere to the Rules and Applicable Law; or (iii) for such other cause as 360T may reasonably determine.

If 360T decides to deny or condition an application for admission as a Participant, 360T will promptly notify the applicant in writing, setting forth the reasons for the denial or conditioning of Participant status. The applicant may, within 14 days of the date of such notice, request in writing that the Participant Committee reconsider that determination. The Participant Committee may request additional information from the applicant or establish any other process that it believes is necessary and appropriate to consider the request for reconsideration. Unless extended

with the consent of the applicant, the Participant Committee will confirm, reverse or modify the denial or conditioning of the application within 30 days of receiving the request for reconsideration or such longer period as may be agreed by the applicant. The Participant Committee will promptly notify the applicant of its decision in writing. The decision of the Participant Committee will be final and not subject to appeal at 360T.

#### *Alternative Dispute Resolution*

Chapter 8 of the Rules provides for the resolution of disputes between or among Participants, Authorized Traders and/or Authorized Users arising from a transaction made pursuant to the Rules. NFA will conduct such arbitrations pursuant to NFA's member arbitration rules. Chapter 8 of the Rules additionally provides for the resolution of disputes between Participants and customers arising from a transaction made or to be made pursuant to the Rules. NFA will conduct such arbitrations pursuant to NFA's customer arbitration rules.

#### **Transparency**

Core Principle 10 (Recordkeeping and Reporting) requires SEFs to make public timely information on price, trading volume, and other trading data on swaps. Pursuant to Rule 407, 360T publishes on its website each day information regarding volume, price ranges (based on non-cancelled bids, non-cancelled offers, and sales) subject to such prices accurately reflecting market conditions, and opening and closing prices.

In addition, 360T reports swap data to a Swap Data Repository in accordance with CFTC Regulations. As required by CFTC Regulations, Rule 903(e) prohibits 360T from providing such swap data to persons with access to the Trading System until the time it transmits such information to a Swap Data Repository.

360T also makes the following data public:

- Notices of pending product certifications and a copy of the related CFTC submission
- Pending Rulebook amendments and a copy of the related CFTC submission
- 360T SEF Rulebook
- 360T SEF User Guides
- 360T SEF Fees
- 360T SEF Contract Specifications

Pursuant to Rule 719, whenever 360T suspends, expels, fines, or otherwise disciplines or denies any person access, 360T must publicly disclose such action as required by CFTC Regulations. CFTC Regulations 9.11 and 9.12 generally require 360T to provide written notice to the respondent and the CFTC at least 15 days before any of the foregoing actions become effective. The written notice must include certain information, including (i) the respondent's name, (ii) the reasons for the action with a list of Rules that were violated or otherwise implicated, (iii) a statement of the conclusions and findings, (iv) the terms of the action, (v) the date of action and effective date and (vi) except as otherwise provided in CFTC Regulation 9.1(b), a statement informing the respondent of the availability of CFTC review of the exchange action pursuant to Section 8c of the Commodity Exchange Act and Part 9 of the CFTC's regulations. The notice must be certified as true and correct by a duly authorized officer, agent or employee of 360T.

### **Coordination with Other Third Parties**

CFTC Regulation 37.504 requires a SEF to share information with other regulatory organizations, data repositories and third-party data reporting services as required by the CFTC or as otherwise necessary and appropriate to fulfill the SEF's self-regulatory and reporting responsibilities. Appropriate information-sharing agreements can be established with such entities or the CFTC can act in conjunction with the SEF to carry out such information sharing. Under Rule 906, 360T has broad discretion to enter into information-sharing agreements to coordinate surveillance with other markets that trade financial instruments related to the swaps listed on the Trading System. 360T may enter into additional agreements or other arrangements or procedures to coordinate surveillance with domestic or foreign regulators, self-regulatory organizations, clearing organizations, exchanges, markets or other SEFs to share information and provide other forms of mutual assistance for market surveillance, audits, investigations, enforcement actions and other regulatory purposes deemed necessary or appropriate or required by law.

As noted above, 360T has entered into an RSA with NFA, pursuant to which NFA acts as 360T's regulatory services provider. To facilitate swap data reporting, 360T has entered into a repository service agreement with DTCC Data Repository (U.S.) LLC, a Swap Data Repository.

Even absent an information-sharing agreement, Rule 904 provides that 360T may share Participants' and Authorized Traders' information with certain persons, including but not limited to government agencies or the regulatory authorities or any foreign jurisdiction (including the AMF), Derivatives Clearing Organizations, Swap Data Repositories and other persons providing services to 360T. In addition, 360T's CCO actively participates in periodic meetings with the CFTC staff and in quarterly meetings with NFA staff and the CCOs of the other SEFs for whom NFA acts as regulatory services provider to discuss issues that have intermarket implications.

#### **vi) systems and technology**

- a) systems and technology for adequate performance of exchange activities;**
- b) a process ensuring the integrity and reliability of systems in place.**

### **Background**

Core Principle 14 (System Safeguards) requires SEFs to establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk by developing appropriate controls and procedures and automated systems that are reliable and secure and have adequate scalable capacity. Core Principle 14 additionally requires SEFs to establish and maintain emergency procedures, backup facilities and a disaster recovery plan and periodically conduct tests to verify that the backup resources are sufficient. 360T has developed the Trading System technology in compliance with Core Principle 14 and CFTC Regulations.

360T subjects the Trading System's critical systems to regular stress tests based on reasonable current and future capacity estimates. The Trading System is also tested for a range of externalities which may damage or impair the operation of the system, including, but not limited to, vulnerability to internal and external threats, including physical hazards and natural disasters and safeguarded against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service.

360T's critical systems are managed through its Enterprise Risk Management program, which is based on the Committee of Sponsoring Organizations of the Treadway Commission (COSO)

Enterprise Risk Management framework. The Enterprise Risk Management program is designed to identify potential events that may affect 360T, to ensure risk is within 360T's risk appetite, and to provide reasonable assurance regarding the achievement of entity objectives. The Enterprise Risk Management process is effected by the Board, management and other personnel and applied in a strategy setting across the firm.

360T's Enterprise Risk Management program includes each of the following:

- **Event Identification:** Identify internal and external events affecting the achievement of 360T's objectives.
- **Risk Assessment:** Analyze risks considering the likelihood and impact in order to determine how they should be managed.
- **Risk Response:** Decide for each identified and analyzed risk between the possible response to avoid, accept, reduce, or share the risk. Develop a set of actions to align risks with our risk tolerances and risk appetite.
- **Control Activities:** Policies and procedures are established and implemented to help ensure the risk responses are effectively carried out.
- **Information and Communication:** Relevant information is identified, captured, and communicated in a form and timeframe that enable people to carry out their responsibilities.
- **Monitoring Activities:** 360T's risk management processes are monitored and modifications made as necessary.

The components of 360T's Enterprise Risk Management program are independently audited as part of 360T's ISAE-3402 certification.

### **Business Continuity and Disaster Recovery**

In accordance with Core Principle 14, 360T maintains a Business Continuity Plan (the "BCP"). 360T's business continuity/disaster recovery program supports the continued performance of critical functions in the event the headquarters or primary data center is unavailable due to a significant business interruption. The business continuity/disaster recovery program has six objectives:

- (1) to ensure the continuity and recovery of the critical functions through the use of its secondary/disaster recovery facility;
- (2) to minimize the disruption to market participants and business partners;
- (3) to protect the firm's books and records;
- (4) to reduce the number and frequency of ad hoc decisions following a significant business interruption;
- (5) to educate employees on the contingency plans and their roles and responsibilities in executing those plans; and

(6) to comply with regulatory requirements.

360T maintains a remote site contracted from leading disaster recovery service providers to be used in the event of a disaster. The site currently used is disaster-resistant “bunkered” site, with redundant power sources, data communications and hardware. The site also has power generators that can maintain operations independent of local power availability. All electronic data (trade, positions and back office transactions) and risk management data are mirrored to the disaster recovery site in a real-time mode, so that all of the data necessary to recover the systems is available at the remote site at any given time.

Under the BCP, every combination of alternate location and business function are tested at least annually. Any identified issues are noted in the post-test report for follow up action. The BCP will be revised as needed after any significant change to services provided or systems used by 360T, but not less than annually. Component and data center level failure scenarios are tested multiple times per year.

### **Systems Changes and Testing**

360T is obligated by CFTC Regulation 37.1401 to promptly notify the CFTC of any electronic trading halts and material system malfunctions, cyber security incidents or targeted threats that actually or potentially jeopardize automated system operation, reliability, security or capacity, and activations of 360T’s business continuity-disaster recovery plan. Additionally, 360T must notify the CFTC of any material planned changes to the automated systems that are likely to have a significant impact on the reliability, security or adequate scalable capacity of such systems and planned changes to 360T’s program of risk analysis and oversight.

Senior IT management must approve all planned changes to systems, whether the result of an incident, routine maintenance, or new application or infrastructure project. All changes have documented implementation and roll-back procedures.

Application changes are monitored and tracked via an issue and project tracking system. This system tracks the progress of the development and testing of application changes. Major changes and new applications are made into projects following the formal 360T delivery method, whereas minor or routine changes need only be scrutinized and approved by technology management.

Additional measures for IT systems are planned to reinforce resiliency. By understanding the capacity of each hardware and software component, a good approximation can be developed of capacity needs and back-up facilities to support anticipated loads.

360T has an adequate information security program to protect data, assets and physical and environmental security. The goal of the information security program is to protect the confidentiality, integrity, and availability of 360T and its participants’ information systems and data. The information security program includes:

- (1) Asset Management - Asset management enables efficient, cost-effective methods for supporting, securing, and planning for upgrades, migrations, staff training, and future technology installations.
- (2) Physical and Environmental Security - The information security program enables the management of access to data centers and data and requires approval (e.g., guards, ID badge) for entry into two vendor owned centers where all production systems and data

housed. Both data centers define equipment security surrounding location, support utilities, cabling security, maintenance, and secure removal and re-use. Approval is required for the use of special software, hardware, presentation equipment and home laptop use.

(3) Authorization, Authentication and Access Control - All computer systems have access controls that require the identity of the user requesting access (User-ID) and a confidential code, which is known only by the authorized user (password). Users are required to keep passwords confidential at all times. All policies must be adhered to whether internally or remotely connecting. Access to modify production data, programs and operating system is limited and requires confidentiality on the firm's data.

(4) Internet, E-mail and Data Policy - All employees must comply with their internet and e-mail policies to ensure that confidential or non-public information is transmitted only in accordance with data policies. The information security program works to ensure that malicious computer viruses are not introduced into the environment through inappropriate internet use or the download of unauthorized software. All non-public data that traverses public networks is encrypted to ensure privacy. Data is stored on central file servers to allow offline and offsite access. Central file servers are backed-up nightly.

(5) Record Retention - 360T maintains records of transactions executed on its facility for at least five years. Customized checklists are provided based on document type (banking records, accounting records, etc.) to assist employees in determining retention requirements and directs departments on an annual purging process to ensure records are not maintained longer than required.

(6) Accountability, Compliance and Auditability - Adherence to security standards, reporting of violations and disciplinary action for non-compliant behavior is required. Logs for production system and application events are maintained and governs usage of firm equipment by requiring authorization. Policy also specifies non-disclosure of data and auditing policies (copying of proprietary data).

360T also utilizes a capacity management process that encompasses the following:

(1) Monitoring the performance and throughput of IT systems and the supporting infrastructure components using industry standard monitoring products.

(2) Undertaking tuning activities to make the most efficient use of existing resources. The performance test environment is used to identify the tuning that will be most efficient.

(3) Understanding the demands currently being made for IT systems and producing forecasts for future requirements. The performance test environment is used to evaluate future capacity requirements.

(4) Establishing, maintaining, and verifying the performance and capacity baselines, which enable IT to provide services of the quality defined in the service level agreements (the "SLAs").

(5) Utilizing the performance test environment to establish and predict the resource and capacity requirements is crucial to meeting the SLAs.



Testing is completed throughout the system development cycle, leveraging industry standard approaches on the appropriate technology platforms using standard procedures including:

- (1) Functional Testing: This focuses on new requirements and new code introduced into the system. This is the first stage of testing and is focused on ensuring new features have been implemented correctly. This type of testing is based upon both black box and white box techniques. Black box testing is defined as verifying the functionality of an application using test cases built around specifications and requirements. White box testing is defined as verifying internal structures or workings of an application as opposed to its functionality.
- (2) Regression Testing: This focuses on verification of existing functionality to ensure the introduction of new code has no adverse effects. This testing may be performed in conjunction with functional testing, although ideally begins when functional testing has completed.
- (3) Integration Testing: This focuses on verification of the integrity of the interfaces and communication between applications, both internal and external. Integration testing does not cover the full scope of application functionality, but focuses on the flow of data throughout the system and the touch points with external systems and business partners. This testing begins once all functional and regression testing is complete.
- (4) Production Parallel Testing: This typically takes place in parallel to member simulation testing, two to three weeks prior to production implementation, once functional, regression, and integration testing are complete. Production parallel testing involves replaying production activity through a quality assurance environment and comparing key system outputs at defined verification points against production outputs created for the same business day. This testing functions like a “system regression,” focused on ensuring only explainable differences are found.
- (5) Performance Testing: This focuses on analysis of responsiveness and stability of applications under a particular load. Analysis is performed on areas including, but not limited to, software, hardware, databases, networks, and messaging. Results are used as input into discussions regarding scalability, reliability, and resource usage. The role of quality assurance in this type of testing is ancillary to that of lead developers and architects.
- (6) User Acceptance Testing: This focuses on verification of business functionality exercised by 360T market participants. The effort is coordinated with internal business representatives and external members to derive structured test scenarios to be executed either by members themselves or quality assurance staff per direction of members or business representatives. The expectation is that members sign-off on test results, indicating their readiness for production launch. This testing may be structured or “open.” Structured tests could be carried out in quality assurance environments or a member test environment, such as simulation and usually have defined inputs and expected results in the form of test cases or scenarios. Open tests are generally carried out in the simulation environment, allowing members to execute scenarios of their choosing and at their convenience over a specified period of time prior to production launch.

Finally, 360T conducts regular external penetration tests via a third-party vendor to identify vulnerabilities in 360T's networks and systems and to measure the effectiveness of controls employed by 360T.

### **Information Technology Risk Management Procedures**

#### *Price Adjustments and Trade Cancellations*

Rule 526 describes 360T's procedures for adjusting trade prices or canceling (busting) trades as a result of an error. 360T has authority to 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 Trading System or by a malfunction or other technical error in the Trading System. 360T also may adjust trade prices or bust any trade if 360T determines that allowing the trade to stand as executed may have a material, adverse effect on the integrity of the market. Rule 526 also sets forth certain other procedures for adjusting trade prices and cancelling trades executed on the CLOB, through the RFQ functionality and/or as a prime broker transaction. Such procedures include, among other things, a "no-bust range" for all swaps executed on the CLOB. As set forth in Rule 526(g), the price of a swap is within the "no-bust range" if such price is not more than 10% higher or lower than the price of the last trade in such swap or, if such swap has not previously been traded on that business day, not more than 10% higher or lower than the prior business day's settlement price for such swap.

360T also has authority to 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 Trading System or by a malfunction or other technical error in the Trading System. 360T may adjust trade prices or bust any trade if 360T determines that allowing the trade to stand as executed may have a material, adverse effect on the integrity of the market. 360T may determine to review a trade based on its independent analysis of market activity or upon request for review by a Participant. Upon deciding to review a trade, 360T will promptly issue an alert to all Participants via the Trading System or electronic mail indicating that the trade is under review.

#### *Training Materials*

360T provides various training materials and instruction manuals relating to the operation of the Trading System and operates an around-the-clock help desk to support customers.

#### *Emergency Rules*

During an Emergency, the Board may implement temporary emergency procedures and rules ("**Emergency Rules**"), subject to applicable provisions of the CEA and CFTC Regulations. If the Chief Executive Officer determines that Emergency Rules must be implemented with respect to an Emergency before a meeting of the Board can reasonably be convened, the Chief Executive Officer shall have the authority, without Board action, to implement Emergency Rules with respect to such Emergency as he or she deems necessary or appropriate to respond to such Emergency. 360T also may take such other action as may be directed by the CFTC in response to an Emergency.

Emergency Rules may require or authorize 360T, the Board, any Committee, the Chief Executive Officer or any other Officer to take actions necessary or appropriate to respond to the Emergency, including: (1) suspending or curtailing trading or limiting trading to liquidation only (in whole or in part); (2) extending, limiting or changing expiration dates or trading hours for one or more

Swaps; (3) ordering the fixing of a settlement price; (4) ordering the liquidation or transfer of Swaps or the reduction of positions; (5) temporarily modifying or suspending any provision of the Rules; (6) requiring additional margin to be collected from Customers; (7) imposing or modifying price limits, position limits or intraday market restrictions; (8) in coordination with applicable Derivatives Clearing Organizations, transferring Customer Swaps and related margin and/or altering any Swap's settlement terms or conditions; and/or (9) providing for the carrying out of any actions under Rule 912(b) by the Regulatory Services Provider.

360T will use reasonable efforts to notify the CFTC prior to implementing, modifying or terminating an Emergency Rule. If such prior notification is not practicable, 360T will notify the CFTC as soon as reasonably practicable, but in all circumstances within 24 hours of the implementation, modification or termination of such Emergency Rule.

Whenever 360T takes action to respond to an Emergency it will, where practicable, ensure that prompt notice is given to Participants. When 360T determines that the Emergency has been reduced sufficiently to allow it to resume normal functioning, any such actions will be modified or terminated, as appropriate.

Upon taking any action in response to an Emergency, 360T shall document the decisions and deliberations related to such action. Such documentation will be maintained for at least five years following the date on which the Emergency ceases to exist or to affect 360T, and all such documentation will be provided to the CFTC upon request.

**vii) clearing and settlement**

- a) existence of clearing agreements with an authorized clearing agency;**
- b) adequate oversight of the clearing agency;**
- c) clearing of all transactions by the authorized clearing agency;**
- d) restrictions on foreign members respecting legislation that are not anti-competitive and do not create obstacles to access.**

CFTC Regulation 37.701 provides that transactions executed on or through a SEF that are required to be cleared under the CEA or are voluntarily cleared by the counterparties must be cleared through a derivatives clearing organization registered or exempt from registration with the CFTC. Because 360T does not trade cleared swaps, the CFTC has instructed 360T to remove clearing-related rules from its rulebook. 360T will adopt such rules prior to the time that it begins to trade cleared swaps.

**(C) POWERS OF EXCHANGE RESPECTING CO-OPERATION**

**The AMF expects 360T to confirm that it has the powers set out below and that it undertakes to furnish information on request in respect of its powers:**

- i) the power to co-operate fully with the AMF and to provide information and documents respecting its operations, including the following:**
  - its annual report and its quarterly and annual financial statements;**
  - any amendment to the laws or regulations governing its activities in its home jurisdiction;**

- any amendment to its internal by-laws, rules, policies or other similar instruments;
- any change respecting its right to operate in its home jurisdiction;
- notice of any situation that could have an impact on its financial viability or its ability to operate and may result, in particular, from the bankruptcy or financial difficulties of a member dealer;
- any disciplinary or administrative action taken by the exchange.

Core Principle 5 (Ability to Obtain Information) and CFTC Regulation 37.504 requires a SEF to enter into and abide by the terms of all appropriate and applicable domestic and international information sharing agreements in order to carry out the SEF's self-regulatory and reporting responsibilities. 360T has broad discretion under Rule 906 to enter into information-sharing agreements or other arrangements or procedures to coordinate surveillance with other markets and with clearing organizations on which swaps and related financial instruments are traded or cleared. 360T may enter into any arrangement with any person or body (including NFA, any self-regulatory organization, any exchange, market, clearing organization, or foreign regulatory authority, data repository or third-party reporting services) if 360T considers such arrangement to be in furtherance of 360T's purpose or duties under the Rules or any law or regulation.

Even absent an information-sharing agreement, 360T may, under Rule 207(b), disclose to any government agency (including the AMF), self-regulatory organization or other person information concerning or associated with a Participant or other person that 360T believes is necessary and appropriate in exercising a legal or regulatory function. Rule 905 similarly provides that 360T may share Participants' and Authorized Traders' information with certain persons, including but not limited to government agencies or the regulatory authorities or any foreign jurisdiction (including the AMF), Derivatives Clearing Organizations and other persons providing services to 360T.

In summary, 360T has the power to cooperate fully with the AMF and will provide information upon request with respect to each of the foregoing. 360T's CCO is available to respond to any information requests by the AMF. As necessary, the CCO also may utilize outside counsel as an additional resource when responding to such requests for information.

**ii) the power to co-operate and share information with a self-regulatory organization in Québec.**

As noted above, Rule 906 provides that 360T has broad discretion to enter into information-sharing agreements to coordinate surveillance with other markets that trade financial instruments related to the swaps listed on the Trading System. 360T may enter into additional agreements or other arrangements or procedures to coordinate surveillance with other self-regulatory organizations, including self-regulatory organizations in Québec, to share information and provide other forms of mutual assistance for market surveillance, audits, investigations, enforcement actions and other regulatory purposes deemed necessary or appropriate or required by law.

**(D) POWERS RESPECTING CO-OPERATION OF REGULATOR IN HOME JURISDICTION**

The AMF expects the regulator in the home jurisdiction to have the ability to co-operate and share with the AMF information respecting oversight of the activities of the exchange in its jurisdiction, including:

- i) inspection reports on the exchange;
- ii) disciplinary, civil, penal or criminal action related to activities of the exchange;
- iii) assessments respecting the financial condition of the exchange;
- iv) any amendment to the laws and regulations governing the activities of the exchange.

In this respect, the AMF considers the existence of an information-sharing and co-operation agreement respecting oversight of the activities of a foreign-based exchange (MOU), or the equivalent, with the regulator in the home jurisdiction as essential. Although the authorization to exercise activities may be granted to the exchange before such an agreement is signed, it will be conditional on reaching an agreement within an acceptable time frame.

The CFTC has entered into memorandum of understanding (“MOU”) arrangements for co-operative enforcements with foreign regulatory authorities in numerous jurisdictions. The MOUs typically provide for access to non-public documents and information already in the possession of the regulatory authorities, and often include undertakings to obtain documents and to take testimony of, or statements from, witnesses on behalf of a requesting regulatory authority. The CFTC and the AMF are current signatories to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information. Additionally, the AMF and the CFTC are parties to an MOU that was entered into as of March 25, 2014.



November 22, 2016

**Sent By E-mail**

Autorité des marchés financiers  
800 Square Victoria, 22<sup>nd</sup> Floor  
C.P. 246, Tour de la Bourse  
Montréal, Québec  
Canada, H4Z 1G3

Attention: Serge Boisvert and Corrine Lemire

**Re: ICE Swap Trade, LLC – Application for Exemption from Recognition as an Exchange**

Dear Sirs,

ICE Swap Trade, LLC (the “**Applicant**”) is requesting an order from the Autorité des marchés financiers (the “AMF”) exempting the Applicant from the following requirements:

- a decision under Section 86 of the Derivatives Act (Québec) (the “Act”) exempting the Applicant from the requirement to be recognised by the AMF as an exchange under Section 12 of the Act in relation to the operation of a marketplace in the province;
- a decision under Section 86 of the Act and Section 15.1 of Regulation 21-101 (as defined below) exempting the Applicant from Regulation 21 101 respecting Marketplace Operation (“Regulation 21 101”); and
- a decision under Section 86 of the Act and Section 12.1 of Regulation 23-101 (as defined below) exempting the Applicant from Regulation 23 101 respecting Trading Rules (“Regulation 23 101”),

(collectively, the “Exchange Relief”) in relation to the operation of a swap execution facility (“SEF”) in the province. The Applicant is currently permitted to operate its SEF under an interim exemption order dated October 2, 2013 (the “Interim Order”).

You will find below, the following information about the Applicant’s business and policies under the following headings, which comply with Part 5 of the AMF’s “*Policy Statement Respecting the Authorization of Foreign-Based Exchanges*”:

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Introduction –	Background of the Applicant
Article 1 –	Regulation of the Applicant in its Home Jurisdiction
Article 2 –	Recognition or Authorization Process of the Foreign Regulator in the Home Jurisdiction
Article 3 –	Power of the Applicant Regarding Cooperation
Article 4 –	Power of the Foreign Regulator in the Home Jurisdiction Regarding Cooperation
Article 5 –	Conditions of Compliance



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## INTRODUCTION

### 1. Description of the Applicant's Services

The Applicant operates a SEF that is regulated by the Commodity Futures Trading Commission ("CFTC"). The Applicant currently offers trading in credit default swaps (indices, sovereigns, options and tranches) and financially settled commodity swaps (including swaps for natural gas, electric power and oil). The Applicant's SEF enables participants (each, a "Participant") to engage in transactions through limit order book, block, and voice broker functionality, which are described in detail in Part II below. The Applicant provides flexible connectivity options, including access through a Direct API and independent software vendors ("ISV").

### 2. Ownership of the Applicant

The Applicant is a limited liability company organized under the laws of the State of Delaware in the United States ("U.S.") and is a wholly owned subsidiary of Intercontinental Exchange Holdings, Inc. ("ICE HoldCo"), which in turn is a wholly owned subsidiary of Intercontinental Exchange, Inc. ("ICE"), an NYSE listed company that trades under the symbol "ICE".

ICE is a leading operator of regulated global markets and clearing houses, including futures exchanges, securities exchanges, over-the-counter, or OTC, markets, derivatives clearing houses and post-trade services. ICE operates these global marketplaces for trading and clearing in a broad array of energy, environmental and agricultural commodities, credit default swaps, or CDS, equity indices, currency contracts, equities and equity options. ICE offers electronic platforms for trading in these markets together with clearing services, post-trade processing and market data. Through its widely-distributed electronic markets, ICE brings together buyers and sellers of derivative and physical commodities and financial contracts by offering a range of services to support its Participants' risk management and trading activities.

### 3. Products Traded on the Applicant's SEF

The Applicant currently offers trading in credit default swaps (indices, sovereigns, options and tranches) and financially settled commodity swaps (including swaps for natural gas, electric power and oil). The Applicant expects to offer trading in single name corporate credit default swaps upon granting of registration (temporary or otherwise) from the United States Securities and Exchange Commission ("SEC"). A list of products traded on the SEF and a description of the contract terms can be found in the SEF Rulebook ([https://www.theice.com/publicdocs/swap\\_trade/Rulebook.pdf](https://www.theice.com/publicdocs/swap_trade/Rulebook.pdf)).

The Applicant publishes on its website daily trading data, including, price and volume information, for each swap contract listed on the SEF and reports all transactions executed on the SEF to a CFTC registered swap data repository. The CFTC reviews, assesses and enforces a SEF's adherence to CFTC regulations on an ongoing basis. The following daily reports are available on the Applicant's website by product category:

Credit: <https://www.theice.com/marketdata/reports/171>

Commodities: <https://www.theice.com/marketdata/reports/158>

#### 4. SEF Participants; Jurisdiction and Access Criteria

The Applicant's SEF enables market participants to access the SEF directly or in the alternative through an introducing broker, which can place and execute orders on the SEF. The Applicant has a wide range of sophisticated customers comprised of both buy- and sell-side market participants, including commercial and investment banks, corporations, pension funds, money managers, proprietary trading firms, hedge funds and other institutional customers.

The Applicant has the following participant categories, as further defined/described in the Rulebook ([https://www.theice.com/publicdocs/swap\\_trade/Rulebook.pdf](https://www.theice.com/publicdocs/swap_trade/Rulebook.pdf)): (i) Clearing Member, (ii) Customer, (iii) Non-Participant Broker, (iv) Participant, and (v) Participant Broker. Notwithstanding the separate participant categories identified above, an entity, regardless of which participant category an entity falls into, must be an Eligible Contract Participant ("ECP"). The CFTC defines an ECP as an entity, such as a "major swaps participant, swaps dealer, major security-based swap participant, security based-swap dealer and commodity pool" that satisfies the regulatory criteria to qualify for such ECP entity type recognition by either the CFTC or SEC, as applicable. This classification permits these persons to engage in transactions (such as trading on a derivatives transaction execution facility) not generally available to non-eligible contract participants, i.e., retail customers.. As used throughout this application, the term "Participant" is intended to apply, in the broadest sense, to the actual SEF Participant. The term "customer" is intended to apply and refer to a customer of said SEF Participant.

Pursuant to Rule 301 ("Applicability of Rules; Jurisdiction") of the Applicant's Rulebook, the Applicant may assert jurisdiction over all persons that access its SEF, including all Participants, clearing members, account managers, Authorized Traders,<sup>1</sup> customers, ISV and supervised persons.

#### 5. SEF Trading Functionality

Participants engage in transactions primarily through the SEF's central limit order book and block functionality. The Applicant provides flexible connectivity options, including a proprietary Graphical User Interface ("GUI") and an Application Programming Interface ("API") and supports access by independent software vendors ("ISV"). As required by CFTC Rule 37.3(a)(2), the SEF provides the minimum trading functionality, an order book, for its markets, as well as also providing market participant with the ability to submit trades through the Applicant's block trade and voice broker provided functionality. Rule 525 ("Acceptable Orders") provides a description of the acceptable order types and the manner in which they interact with the SEF order book.

<sup>1</sup> An Authorized Trader is defined in the Rulebook as a natural person who is either employed by or is an agent of a Participant, Customer or an Account Manager and who is duly authorized by such entity to access the SEF and transact on the SEF or subject to the Rules of the SEF on behalf of such Participant, Customer or Account Manager, as applicable.

- 4 -

A Central Limit Order Book or CLOB is a transparent execution method that matches customer orders (e.g. bids and offers) on a 'price time priority' basis. The highest ("best") bid order and the lowest ("cheapest") offer order constitutes the best market of a particular swap contract listed by the SEF. Authorized Traders can see market depth or the "stack" in which Authorized Traders can view bid orders for various sizes and prices on one side vs. viewing offer orders at various sizes and prices on the other side. The CLOB is by definition fully transparent to all Authorized Traders.

The Applicant accepts trades that satisfy the definition of a block trade, as defined in Part 43 of the CFTC Regulations. Block trades are defined as a publically reportable swap transaction that (i) involves a swap that is listed on a registered SEF or DCM; (ii) occurs away from the SEF or DCM's trading system or platform and is executed pursuant to the registered SEF or DCM's rules and procedures; (iii) has a notional or principal amount at or above the appropriate minimum block size to such swap; and (iv) is reported subject to the rules set forth in Part 43. Rule 701 ("Block Trades") describes the requirements for executing a block trade on the SEF, including the appropriate minimum block size.

The Applicant also provides a trading functionality whereby a trade in a Permitted Transaction<sup>2</sup> may be arranged away from the SEF and then presented to the SEF by a Participant Broker or Non-Participant Broker in accordance with the requirements set forth in Rule 702 ("**Brokered Trades**").

## ARTICLE 1 REGULATION OF THE APPLICANT IN ITS HOME JURISDICTION

### 1.1 Regulation of the Applicant

The Applicant is regulated in an appropriate manner in another jurisdiction by a foreign regulator ("**Foreign Regulator**"). On July 21, 2010, President Obama signed the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the "**Dodd-Frank Act**"), which amended the CEA to establish a comprehensive new regulatory framework for swaps and security-based swaps. Section 721 of the Dodd-Frank Act added Section 1a(50) of the CEA, which defines a SEF. Section 723 of the Dodd-Frank Act added Section 2(h)(8) of the CEA, which requires that the execution of certain swaps, those that are subject to the mandatory clearing requirement of CEA Section 2(h), occur on a designated contract market ("**DCM**") or SEF, unless no DCM or SEF makes the swap available to trade. Section 733 of the Dodd-Frank Act added Section 5h of the CEA, which provides registration and core principle requirements for SEFs ("**SEF Core Principles**").

<sup>2</sup> Permitted transaction means any transaction not involving a swap that is subject to the trade execution requirement in section 2(h)(8) of the CEA.

The CFTC granted the Applicant permanent registration to operate a SEF in the U.S. pursuant to the CEA on January 22, 2016. The Applicant is subject to ongoing regulatory supervision by the CFTC. The Applicant is obligated to give the CFTC access to all records unless prohibited by law or such records are subject to solicitor-client privilege. The CFTC reviews, assesses and enforces the Applicant's adherence to the CEA and the regulations thereunder on an ongoing basis, including the SEF Core Principles. The SEF Core Principles relate to the operation and oversight of the SEF, including financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection.

## 1.2 Authority of the Foreign Regulator in the Home Jurisdiction

The Foreign Regulator has the appropriate authority and procedures for oversight of the Applicant. This includes regular, periodic oversight reviews of the Applicant by the Foreign Regulator.

The CFTC carries out the regulation of SEFs in accordance with certain provisions of the CEA. To implement SEF regulation, the CFTC has promulgated regulations and guidelines ("**CFTC Regulations**") that further interpret the SEF Core Principles (described below) and govern the conduct of SEFs. The CFTC also undertakes periodic in-depth audits or "rule reviews" of the Applicant's compliance with certain of the SEF Core Principles.

The Applicant is required to demonstrate its compliance with the SEF Core Principles applicable to all U.S. SEFs. Among other things, the SEF Core Principles and CFTC Regulations require SEFs to have a rulebook (the "**SEF Rulebook**") and a compliance program, including a chief compliance officer and a compliance manual.<sup>3</sup> A SEF's participant access criteria must be impartial and transparent and must be applied in a fair and non-discriminatory manner. The CFTC requires each SEF to have certain required trading protocols, including, at a minimum, the availability of a limit order book for every contract that is listed by the SEF. A SEF must publish on its website certain daily trading data, including, but not limited to price and volume information, for each swap contract listed on the SEF and must report all transactions executed on the SEF to a CFTC registered swap data repository. The CFTC reviews, assesses and enforces a SEF's adherence to CFTC Regulations on an ongoing basis.

A SEF is a self-regulatory organization under CFTC rules. A SEF is obliged under CFTC rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and to discipline participants and customers, including by means other than exclusion from the marketplace. The Applicant has contracted with ICE Futures U.S., Inc., a CFTC registered DCM and an affiliate to the SEF, to provide market supervision and certain regulatory services pursuant to a Regulatory Services Agreement.

<sup>3</sup> The Applicant's SEF Rulebook is available at [https://www.theice.com/publicdocs/swap\\_trade/Rulebook.pdf](https://www.theice.com/publicdocs/swap_trade/Rulebook.pdf).

### 1.3 Listing Criteria for Products

The products traded by the Applicant and any changes thereto are submitted to the Foreign Regulator, and are either approved by the Foreign Regulator or are subject to requirements established by the Foreign Regulator that must be met before implementation of a product or changes to a product.

17 C.F.R Section 37.4 provides the procedures for listing products on the SEF and the CFTC core principles relevant to products traded on the SEF include: Core Principle 2 – *Compliance with Rules* (“**Core Principle 2**”), Core Principle 3, Core Principle 4 – *Monitoring of Trading and Trade Processing* (“**Core Principle 4**”), Core Principle 6 – *Positions Limits or Accountability*, Core Principle 7 and Core Principle 9 – *Timely Publication of Trading Information* (“**Core Principle 9**”). In addition to compliance with these SEF Core Principles, the CFTC requires SEFs to demonstrate that new products are not susceptible to manipulation (see Core Principle 3). The Applicant maintains its own proprietary process for determining which contracts it wishes to request regulatory approval to list on the SEF’s trading platform, including, but not limited to customer demand, listings offered by competitors, volume of contracts traded, availability of pricing, whether clearing of the contract is offered by any clearing house, whether the contract meets the core principle requirements as set out above, and other factors as may be determined as relevant by Applicant’s management from time to time. Contract listings are considered a rule change/ new rule filing by the CFTC, and as such are subject to the regulatory rule change filing process as described in Part 40 of the CFTC Regulations, including a certification that the swaps listed for trading are not readily susceptible to market manipulation. The criteria for self-certification of a new swap are detailed in Part 40.2 of the CFTC Regulations, which requires an explanation and analysis of how the contract being listed complies with the SEF Core Principles. All products listed on the SEF have been self-certified with the CFTC.

The Applicant may also submit a product, prior to it being listed on the SEF’s trading system, under a voluntary request for approval by the CFTC pursuant to Part 40.3. The Applicant has not submitted any product listing under Part 40.3, which is typically reserved for novel product types that have never been traded on a SEF, DCM, or other related contract market. Pursuant to CFTC Rule 37.10, when a SEF determines to make a swap available to trade (“MAT”), it shall submit to the CFTC its determination with respect to such swap as a rule under Part 40 of the CFTC’s regulations. The CFTC will then determine whether to certify such rule and thereby allow such swap to be listed by the SEF. As of the date of this application, the Applicant has not made any MAT determinations for products listed on the SEF.

Furthermore, the terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products. Among other things, the requirement that new swaps comply with the SEF Core Principles means that they contain an analysis of the underlying cash market and the deliverable supply of the underlying product (where applicable for physically settled contracts). This ensures that the swaps listed on the Applicant’s SEF are based on deep and liquid cash markets and/or widely accepted benchmarks and indices. Platts (for Energy Contracts) and Markit (for Credit Contracts), as the administrators of the referenced indices listed on the SEF, have established comprehensive rules

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governing their price assessments and indices, which are publically available, transparent, and widely accepted and understood by market participants. Further, the contract size, listing cycle, quotation basis, final settlement and minimum price fluctuation for new swaps are common amongst related contracts listed by other SEFs and DCMs. For cash-settled swaps listed on the SEF where a third-party index serves as the reference price, the Applicant relies on the industry standard index definitions. With respect to credit default swaps listed on the SEF, such products reference indices administered by Markit and commodity swaps reference indices administered by Platts. The Markit and Platts indices are generally recognized in the industry as fair and accurate, and are published in accordance with a transparent set of rules. Bilaterally traded contracts listed on the SEF are not settled based on a published index price. Additional information on the Markit and Platts index methodologies can be found at [www.markit.com](http://www.markit.com) and [www.platts.com/methodology-specifications](http://www.platts.com/methodology-specifications), respectively.

In response to a SEF's self-certification of a new product, the CFTC may follow up with questions requesting additional information on the contract itself and the underlying market including, but not limited to: supply and demand characteristics, participant composition, market concentration, deliverable supply estimates, the relation of the swap size to the underlying market, the quality of the product across various delivery facilities and the delivery facilities used for the product. If a SEF is unable to provide satisfactory answers to the CFTC's questions, it may require the SEF to withdraw the product certification for failing to comply with the SEF Core Principles. As per CFTC Regulations, the SEF is required to perform a review of all contract listings on an annual basis to ensure ongoing conformity with listing requirements.

The Applicant also maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange that may include, but are not limited to, daily trading limits, price limits, position limits, and internal controls. At this time, the Applicant is not required to set position limits or position accountability levels for cash-settled swaps listed for trading on the Applicant's SEF.

Pursuant to CFTC Rule 37.10, when a SEF determines to make a swap available to trade, it shall submit to the CFTC its determination with respect to such swap as a rule under Part 40 of the CFTC's regulations. The CFTC will then determine whether to certify such rule and thereby allow such swap to be listed by the SEF.

The Applicant maintains several methods to manage and mitigate trading risks. These methods include maintenance of pricing two bands around the most recently identifiable trade price (the "anchor price"), which are used to warn users that an input price may be "off-market". The first band is a soft warning, meaning that the user is notified that the input price may be "off-market" but the platform will allow the user to still place the order if they acknowledge the notification and agree to continue. The second band is wider than the first, and orders outside of this band are automatically rejected without the user option to proceed and the user is notified that the order was rejected as being "off-market". In the event of a significant price movement in the market, such as a spike in price (either up or down), the platform has automatic alerts that are triggered and a market supervision team that is responsible for monitoring platform activity in real-time throughout the trading day. This team is required to close the market in a particular contract in



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accordance with the Applicant's compliance manual, the SEF Rulebook and applicable law, where appropriate.

Participants on the platform are also provided a set of risk controls that can be set by an approved person at the Participant. These controls govern the maximum size of a single order, the maximum daily amount of notional that may be traded on the platform, and the maximum number of simultaneous orders that may be live on the platform at any one time.

#### **1.4 IOSCO Principles**

To the extent it is consistent with the laws of the foreign jurisdiction, the Applicant adheres to the standards of the International Organisation of Securities Commissions ("**IOSCO**") including those set out in the "Principles for the Regulation and Supervision of Commodity Derivatives Markets" (2011).

The Applicant adheres to the standards of IOSCO by virtue of the fact that it must comply with the CEA and CFTC Regulations, which reflect the IOSCO standards. The Applicant is regularly examined by the CFTC and during these examinations the IOSCO standards to which they are subject are taken into account.

### **ARTICLE 2**

#### **RECOGNITION OR AUTHORIZATION PROCESS OF THE FOREIGN REGULATOR IN THE HOME JURISDICTION**

##### **2.1 Corporate Governance**

As a corporation, the Applicant is managed by or subject to the direction of its board of directors (the "**Board**") and such officers as are appointed by the Board, in each case in accordance with the limited liability company agreement of the Applicant, as amended from time to time (the "**Operating Agreement**"). Without limiting the rights, powers, privileges and obligations of the Board as set forth in the Operating Agreement, the Board has the power to review, and to approve, modify, suspend or overrule, any and all decisions of committees of the SEF and any officers, subject to applicable law. Qualifications for Board members are set forth in the Operating Agreement.

The Applicant's Board has adopted Conflict of Interest Rules and a Code of Business Conduct and Ethics, both of which are publicly available on the Applicant's website, at <http://ir.theice.com/investors-and-media/corporate-governance/corporate-governance-overview/default.aspx>.

The Applicant has only one class of interest (equivalent of one class of shares for a limited liability company) and is wholly owned by Intercontinental Exchange Holdings, Inc. ("ICE HoldCo"), which itself is wholly owned by ICE.



## 2.2 Board and Committee Representation

### 2.2.1 The Board of Directors

ICE HoldCo, as the sole member of the Applicant, retains the sole right to appoint the members of the Board. The Applicant has two types of directors (or managers, in the case of an LLC) – public and non-public. Both types of directors are required to be submitted by the Board's nominating committee. With respect to "**Public Directors**", such directors must satisfy the independence criteria described in CFTC Regulation 1.64(b)(1), including that the public directors are not members, employees, or primarily performing services for the Applicant and are not officers, principals or employees of a firm/participant which holds a membership at the Applicant. These criteria and requirements are also set out in the Applicant's Operating Agreement. While both Public Directors and "**Non-Public Directors**" may not be subject to statutory disqualification, Non-Public Directors are not otherwise subject to additional regulatory criteria. Additionally, there is a requirement that the number of Public Directors be the greater of 35% of the Board, or two directors, so depending upon the composition of the Board at the time that a director may be nominated, the criteria of whether the director must be a Public Director or not will depend upon the current Board composition.

Public Directors must meet the requirements for a Public Director as defined in the Proposed Rules to Part 40 of CFTC Regulations, as well as having been proven to have no material relationship with Applicant. The Board of the Applicant is required under its own rules (Rule 201) and its Operating Agreement to maintain the greater of two independent directors or a number of independent directors that ensures that at least 35% of the Board are independent directors. The Applicant has adopted governance principles for its Board, which include criteria for Board composition and requirements around independence of directors. The Board of the Applicant currently consists of six directors, three of which are independent public directors.

The Applicant's Board plays an active and important role in the oversight of all risks at the SEF. This is primarily carried out by Board members at the committee level. Each of the Board's standing committees are described in the paragraph below.

Furthermore, the Applicant is committed to ensuring the integrity of its SEF and the stability of the financial system, in which market infrastructure plays an important role. The Applicant must ensure the integrity of swaps traded on the SEF under Core Principle 7 – *Financial Integrity of Transactions* ("**Core Principle 7**"). The Applicant fulfills this requirement in part through compliance with other SEF Core Principles, such as Core Principle 3 – *Swaps Not Readily Subject to Manipulation* ("**Core Principle 3**"). Stability of the market infrastructure is enhanced through compliance with Core Principle 13 – *Financial Resources* ("**Core Principle 13**"). Core Principle 13 requires a SEF to maintain adequate financial resources to discharge its responsibilities and ensure orderly operation of the market. The rules, policies and activities of the Applicant are designed and focused on ensuring that they maintain best practices and fulfill this public interest mandate. The Applicant operates on a basis consistent with applicable laws and regulations, and best practices of other SEFs.

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### **2.2.2 Board Committees**

The Applicant has established three standing committees of the Board: the participation committee, the regulatory oversight committee (the “**ROC**”) and the nominating committee. All three committees report directly to the Board and the current membership of each committee is made up of the three Public Directors on the Board.

The participation committee consists of three directors appointed from time to time by the Board, at least two of which shall be Public Directors. The participation committee determines the standards and requirements for initial and continuing Participant eligibility, reviews appeals of staff denials of Participant applications; and reviews and approve rules that would result in different categories or classes of Participants receiving disparate access to the SEF.

The Applicant is required to establish a ROC or Regulatory Oversight Committee made up of all the Public Directors that sit on the Applicant’s Board. The role of the ROC is to monitor the regulatory program of the Applicant for sufficiency, effectiveness and independence and oversee the Applicant’s regulatory program. The ROC oversees trade practices, market surveillance, audits, examinations, compliance with financial integrity and reporting, recordkeeping, allocation of regulatory budget and compliance personnel. The Applicant provides the ROC with regular updates on ongoing and resolved regulatory matters and investigations. The Board delegates sufficient authority, dedicates sufficient resources and allows sufficient time for the ROC to fulfill its mandate.

The nominating committee consists of three directors appointed from time to time by the Board, at least two of which shall be Public Directors. One of the Public Directors will serve as chair of the nominating committee. The nominating committee: (i) identifies individuals qualified to serve on the Board as Public Directors, consistent with the criteria approved by the Board and the requirements of applicable law, and (ii) administers a process for the nomination of individuals to the Board.

The Board may from time to time constitute and appoint additional standing committees as it may deem necessary or advisable. The Applicant may also from time to time establish one or more advisory committees as it may deem necessary or advisable.

## **2.3 Director Qualifications, Remuneration and Limitation of Liability**

### **2.3.1 Director Qualifications and Fitness Standards**

The Applicant considers several factors in determining the composition of the board, including whether directors, both individually and collectively, possess the required integrity, experience, judgment, commitment, skills and expertise to exercise their obligations of oversight and guidance over a SEF. Members of the Applicant’s Board must have the following attributes:

- (a) sufficiently good reputation;

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- (b) requisite skills and expertise to fulfill their responsibilities in the management and governance of a SEF;
- (c) a clear understanding of such responsibilities; and
- (d) the ability to exercise sound judgment regarding SEF affairs.

The SEF has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person and past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity. In addition to the attributes listed above, each member of the Applicant's Board is required to comply with the Applicant's Code of Business Conduct and Ethics, and submit a certification to the Applicant that he/she is not subject to a statutory disqualification as described in Section 8a(2) of the CEA and does not have a history of disciplinary offenses as defined in CFTC Regulation 1.63(a)(6).

Pursuant to the Applicant's Operating Agreement and Rulebook, which set forth a transparent governance structure that includes the Applicant's Board, the Board serves as the Applicant's governing body, designates and authorizes specific appointed officers to act on behalf of the Board, makes and amends the rules of the Applicant, and has the power to act in emergencies.

With respect to Public Directors, on an annual basis the Applicant requires each Public Director to respond to a Public Director Questionnaire. The Public Director Questionnaire requires the respective director to answer questions relating to their and their immediate family member's relationship with the Applicant and its affiliates. The questions posed to each Public Director are intended to identify the existence of any material relationships the Public Director (or his/her immediate family member) may have with the Applicant that would otherwise disqualify the individual from serving as a Public Director on the Applicant's Board.

Finally, on an annual basis each Public Director is presented to the Applicant's Board and any questions that might indicate the existence of a material relationship are considered for a determination as to whether such director may serve as a Public Director of the Applicant. If no such relationships are found to be material in nature, the individual is found on the record to satisfy the Public Director standard.

Directors and officers of the Applicant have each been selected to assume such role by virtue of their educational and industry experience. Further, in addition to ensuring that each director and officer of the Applicant possesses the minimal skills necessary to perform his/her duties with the Applicant, all employees, regardless of position, receive background screenings prior to their employment. Background screenings may include but are not limited to: credit checks, criminal background checks, education and employment verifications. Periodic background screenings are conducted on all current employees after their fifth anniversary of employment. All potential directors are also subject to the same background checks that apply to employees.

### 2.3.2 Director Remuneration and Limitation of Liability

Members of the Applicant's management team were identified and recruited for their particular position based upon their skills and expertise in the industry in which the Applicant operates. Their individual goals and performance are regularly assessed by their direct supervisor/director as part of the Applicant's, as well as ICE's, performance management process. Employee directors do not receive compensation from the Applicant. Non-employee directors may receive compensation, as provided for in the Operating Agreement of the Applicant. Remuneration for Public Directors is established by the Compensation Committee of the Applicant's parent, Intercontinental Exchange, Inc. In making a determination as to remuneration for the Public Directors, the Compensation Committee considers several factors, such as the scope and time commitment associated with the work to be performed by such director and its' decision is not linked to the financial performance of the SEF.

Rule 1103 of the Applicant's Rulebook disclaims all liability to Persons, Participants, Clearing Members, Non-Participant Brokers, Customers, Account Managers or Authorized Traders with respect to the Applicant, as well as its representatives (which includes the Applicant's directors, officers and employees) and affiliates. However, even in the event that the Applicant, or its representatives and/or affiliates were to be found liable, such liability is capped at an aggregate amount for all claims at \$2,000,000 annually.

Also, the Operating Agreement specifically disavows any director from all company liabilities and provides indemnification to directors and officers under all circumstances, with exceptions for fraud, intentional misconduct, gross negligence, or a knowing violation of law which was material to the cause of action. There are no direct employees of the Applicant. Depending on the employee and their respective support role, each employee that provides support to the Applicant is employed by a respective affiliate of the Applicant, such as Creditex Group Inc., Creditex UK Limited, ICE Markets Limited, or Intercontinental Exchange Holdings, Inc. The employees provide support to the Applicant under a secondment agreement, entered into between the Applicant, the respective affiliate and the respective employee being so seconded. There are no specific provisions for employees beyond those that would be automatically relevant by standard limitation of liability company law in the United States.

### 2.4 Conflicts of Interest

The Applicant has policies and procedures to appropriately identify and manage conflicts of interest for all officers, directors and employees. The Applicant, through its conflicts of interest rules, policies and procedures, as well as its compliance with Core Principle 12 – *Conflicts of Interest* (“**Core Principle 12**”), has established a robust set of safeguards designed to ensure that the SEF operates free from conflicts of interest or inappropriate influence as described above. For example, independent directors are subject to rules relating to conflicts of interest of named persons, both on a day to day basis (Rule 207) and in cases where an emergency action is under discussion (Rule 209). The Applicant's SEF Rulebook defines what information must be declared to the Board or the relevant committee, and the appropriate action to be taken by the Board/committee in the event that a conflict of interest is identified. The CFTC also conducts its

own surveillance of the markets and market participants and actively enforces compliance with CFTC Regulations, including Core Principle 12. In addition to the CFTC's oversight of the markets, the Applicant has separately established and enforces rules governing the activity of all Participants and Customers in its markets.

## **2.5 Fees and Financial Viability**

All fees imposed by the Applicant are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by participants to the services offered by the Applicant. The CFTC requires that a SEF must charge comparable fees for Participants receiving comparable access to, or services from, the SEF. The Applicant complies with this requirement and therefore fees charged by the SEF do not create an unreasonable condition or limit on access by Participants.

Additionally, the process for setting fees is fair and appropriate, and the fee model is transparent. The Applicant's Participant fees are identical for all persons within a class of Participant on the platform.<sup>4</sup> Fee schedules are determined by the Applicant's management, based on company strategy, competitor fee schedules for equivalent products, and other factors as may be appropriate and relevant to consider at the time. Fee schedules require approval by senior management and compliance and legal prior to submission to the CFTC. All fee schedules require submission to the CFTC prior to implementation.

Under certain circumstances the Applicant may create liquidity provision or other incentive programs. These programs may include a variety of fee incentives in return for the provision of liquidity or similar services. Such programs require submission to the CFTC prior to implementation. The Applicant has not implemented a liquidity provision or incentive program.

Finally, the Applicant has adequate financial and staff resources to carry on its activities in full compliance with its regulatory requirements and with best practices. A SEF must submit audited financial statements to the CFTC and maintain adequate financial resources to cover its operating costs for a period of at least one year, calculated on a rolling basis, and the financial resources allocated by a SEF must include unencumbered, liquid financial assets equal to at least six months' operating costs. The Applicant maintains the current minimum capital amounts needed, and will maintain any future minimum capital amounts needed, to meet CFTC requirements. On a quarterly basis, the Applicant assesses its financial resources and provides a financial resources report to the CFTC pursuant to Core Principle 13.

## **2.6 Fair and Equitable Access**

The Applicant has established appropriate written standards for access to its services including requirements to ensure (i) that participants are appropriately registered as applicable under Québec securities laws, or exempted from these requirements, (ii) the competence, integrity and

<sup>4</sup> Currently, the Applicant has two classes of Participant on the SEF: Participants are one class and their customers (if applicable) are a second class.

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authority of systems users, and (iii) that systems users are adequately supervised. Furthermore, the access standard and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably. The Applicant does not unreasonably prohibit, condition or limit access by a person or company to services offered by it and it does not permit unreasonable discrimination among participants or impose any burden on competition that is not reasonably necessary and appropriate. Finally, the Applicant keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access, the process of which is described below.

Consistent with applicable law and relevant CFTC regulation, such as Part 37, the SEF provides access to Participants on a fair, non-discriminatory and open basis. Participant status, and access to, and usage of, the SEF in such capacity is available to all Participants that meet the criteria set forth by the Applicant in its SEF Rulebook (see Rule 303) and engage in transactions on the SEF in accordance with the SEF Rulebook. Chapter 3 of the SEF Rulebook sets out the admission and eligibility criteria that Participants are required to satisfy prior to being granted access to the SEF. Additional criteria apply to Participants that wish to trade for Customers, as described in Rule 304 of the SEF Rulebook. In general, the SEF Rulebook requires that the applicants desiring to be a Participant must be ECPs in good standing with the necessary documentation and possess relevant trading and clearing relationships (where necessary) in place in order to be able to execute the transactions that are entered into on the SEF, as well as meeting all requirements under applicable law. More specifically,

- A Participants must be an ECP at such time that it is admitted as a Participant and on an ongoing basis with respect to each transaction that it enters into either for its own account or the account of a customer, and it provides written confirmation of such status or otherwise reasonably demonstrates such status to the satisfaction of the Applicant.
- A Participant must demonstrate business integrity and sound reputation satisfactory to the Applicant.
- A Participant must demonstrate, in a manner satisfactory to the Applicant, that it has sufficient financial resources to perform its obligations in connection with an uncleared swap, or has the financial capability to ensure a cleared swap will be cleared by the Participant or by a third-party clearing member that, in either case, has sufficient financial resources to perform the obligations thereunder.
- A Participant must have the legal capacity and authority to enter into transactions.
- A Participant must be located in an authorized jurisdiction (as defined in the Applicant's rulebook). If it is organized in a jurisdiction other than the United States, it must maintain an agent for service of process in the United States suitable to the Applicant and provides such other information and makes such representations or certifications as the Applicant determines necessary.
- A Participant must not be subject to disqualification under applicable law.

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- If a Participant enters into transactions in cleared swaps for its own account, it must be either a clearing member of each relevant clearing house for such contracts, or it must have in effect an arrangement with such a clearing member to clear all such transactions (and such clearing member has so confirmed to the Applicant).
- If a Participant enters into transactions that are uncleared swaps for its own account, it must be either a swap dealer (as defined by CFTC) or it must have in effect a swap intermediation arrangement (as defined in the Applicant's rulebook) with a swap intermediary (except for commodity contracts).
- If a Participant is required to be registered in any capacity under applicable law, it must be duly registered in such capacity and such registration must be in effect and has not lapsed or been revoked, suspended or withdrawn.
- Participants must not legally or otherwise be prohibited from using the SEF or entering into transactions on the SEF or subject to the rules.
- Participants must demonstrate operational capacity to execute transactions.
- If a Participant is a swap dealer or a major swap participant (as defined by CFTC), it must be capable of complying (and will comply with) with (i) any pre-trade disclosure obligations it may owe to any other person when engaging in a transaction on the Applicant's SEF or subject to the Rules on a disclosed basis and (ii) any due diligence and analysis obligations it may owe to its counterparty.
- A Participant must not be an officer, employee or affiliate of the Applicant or one of its affiliates.
- A Participant must not be an ISV; unless such ISV participates in the SEF's market maker program.
- Participants must comply with the applicable technical access standards, security protocols and technical specifications for connection to the Applicant's electronic system as may be specified by the Applicant from time to time.
- Participants must not be subject to any economic or trade sanctions programs administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") or other relevant U.S. or non-U.S. authority, and must not be listed on OFAC's List of Specially Designated Nationals and Blocked Persons.
- A Participant must not be a swap execution facility, designated contract market or other trading facility.
- A Participant must access the SEF solely for purposes of entering into transactions for itself or for customers.



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- A Participant must satisfy such other criteria as the Applicant may specify from time to time, subject to Rule 302 and applicable law.
- A Participant shall be responsible for promptly informing the SEF of any material changes to its satisfaction of the above described eligibility criteria.
- To the extent that a Participant trades on behalf of a Customer, as detailed below, the Participant shall satisfy additional criteria pursuant to Rule 304.

A Customer is (i) an Eligible Contract Participant and is either a (ii) customer of a Participant that enters into Transactions on its behalf or authorizes it to enter into Transactions or (iii) customer of a Clearing Member from whom the Clearing Member provides clearing services for Transactions.

Pursuant to Rule 403(d), a Participant is responsible for promptly informing the SEF of any material changes to its satisfaction of the above described eligibility criteria, and for informing the SEF if it ceases to be an Eligible Contract Participant as detailed in Rule 402(c). Section 3(b) of the ICE Swap Trade SEF Participant Agreement also requires a representation by a Participant that it is and will continue to be and Eligible Contract Participant. Further, a Participant must notify the SEF of any matter required to be notified to the CFTC, SEF, or FINRA within the time and in the manner specified by the applicable regulator's rules, as required by Rule 404.

In accordance with applicable law, if the SEF denies access to anyone that applies for access, the SEF is required to document and retain, in accordance with its record-keeping policies, the reasons for denial of access. For the avoidance of doubt, the Applicant also documents and retains, in accordance with its record-keeping policies, all access requests (regardless of eventual acceptance or denial) that have been submitted to the Applicant. Any appeal is referred to the participation committee of the Board, which is responsible for reviewing staff determinations and has the authority to overturn a staff determination if the determination is not in accordance with the SEF Rulebook or applicable law. In the event that the participant committee of the Board upholds the SEF's determination to deny a SEF applicants request to become a participant of the SEF, the affected SEF applicant may thereafter file a Notice of Appeal, in the manner provided in CFTC Rule 9.20, with the CFTC requesting that the CFTC review the SEF's access denial determination.

The Applicant's rules, policies and procedures are designed to ensure fair and equal treatment consistent with the requirements contained in numerous SEF Core Principles. Rules pertaining to Participant criteria or selection must be self-certified under CFTC Regulations. The CFTC reviews all self-certifications of rules and rule amendments for compliance with the SEF Core Principles. Core Principle 11 requires that, unless necessary or appropriate to achieve the purposes of applicable law, a SEF should avoid (a) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or (b) imposing any material anticompetitive burden on trading. As such, the Applicant does not implement rules that would impose any burden on competition that is not reasonably necessary and appropriate because such rules would not meet SEF Core Principle requirements.

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With respect to participants located in Québec, the Applicant's rules and procedures are designed to ensure that participants are appropriately registered as applicable under Québec securities laws, or exempted from these requirements. Under Rule 303(e), participants located in a jurisdiction other than the United States must maintain an agent for service of process in the United States suitable to the Applicant and provide such other information and makes such representations or certifications as the Applicant determines necessary. Further, Rule 303(i) requires all participants that are required to be registered in any capacity under Applicable Law, including laws applicable to their home jurisdiction, be duly registered in such capacity and ensure that such registration is in effect and has not lapsed or been revoked, suspended or withdrawn. For participants located in Québec, this would include information confirming that the participant is appropriately registered under Québec securities laws.

## 2.7 Regulation

The Applicant is obligated to comply with the CEA, the SEF Core Principles and the CFTC Regulations (collectively, the "**U.S. SEF Regulations**"). The U.S. SEF Regulations also require that the Applicant implements rules that require compliance with the U.S. SEF Regulations by its Participants.

The Applicant's SEF Rules are subject to the standards and requirements outlined by the SEF Core Principles. At a high level, the SEF Core Principles and Applicant's SEF Rules both seek to ensure fair and orderly markets accessible to all eligible Participants. This aim is accomplished by establishing rules that reflect the SEF Core Principle criteria discussed below. Additionally, as discussed above, the SEF has established and maintains comprehensive trade practice surveillance, market surveillance and real-time market monitoring programs to ensure that trading on the SEF's markets are fair, properly supervised and not contrary to the public interest.

The rules are not contrary to the public interest and the Applicant has trading practices that are fair, properly supervised and not contrary to the public interest as well as rules pertaining to order size and limits are fair and equitable to all market participants and the system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent. Furthermore, the Applicant has adequate arrangements to record and publish accurate and timely trade and order information. This information is provided to all participants on an equitable basis.

Specifically, the rules are designed to:

- (a) **ensure compliance with applicable legislation.** SEF Core Principle 1 – *Compliance with Core Principles* requires a swaps trading facility to comply with all applicable CFTC requirements and CEA core principles to be designated a SEF and maintain such designation. The Applicant proactively ensures compliance with all applicable laws and regulations, evidenced in part by its regular dialogue with the CFTC, including public commenting on proposed regulations. Core Principle 2 requires SEFs to ensure Participants consent to SEF rules and jurisdiction prior to accessing its markets. Chapter 3 of the Applicant's SEF Rulebook governs membership requirements and establishes

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compliance with the Applicant's SEF Rules that bring market participants within the jurisdiction of the CFTC and the scope of the SEF Core Principles.

- (b) **prevent fraudulent and manipulative acts and practices.** Core Principle 2 requires a SEF to collect information, examine members' records, direct supervision of the market, maintain sufficient compliance staff, establish procedures for and conduct audit trail reviews, perform real-time market monitoring and market surveillance and establish an automated trade surveillance system. The Applicant has instituted all these controls. Core Principle 3 requires a SEF to ensure the swaps executed on its platform are not readily susceptible to manipulation. The Applicant complies with this Core Principle by listing products in accordance with the guidelines set forth in Appendix C to Part 38 of the CEA, which requires that new products are based on a deep and liquid cash market. The Applicant includes in its regulatory filing for new products a narrative description of the product terms and conditions as well as an analysis of the underlying cash market. Further, all products are subject to market surveillance by the Applicant's regulatory staff to detect and prevent attempted manipulation. Also, Chapter 5 of the Applicant's SEF Rulebook prescribes trading practices and trading conduct requirements, including prohibited trading activities and prohibitions on fictitious trades, fraudulent activity and manipulation.
- (c) **promote just and equitable principles of trade.** Core Principle 9 requires a SEF to promote transparency by making timely public disclosures of trading information. The Applicant conforms to this Core Principle by publishing volume, open, high, low and close prices for all swap contracts listed on its platform. The Applicant's systems transmit market data, including trading data to end clients and market data quote vendors through the FIX protocol. Core Principle 7 requires a SEF to ensure the financial integrity of transactions entered into on its markets. The Applicant's data and order entry feed systems offer simultaneous and equivalent access to all market participants. Core Principle 11 prohibits the imposition of unreasonable restraints or uncompetitive burdens on trade. Throughout its rulebook, the Applicant has established transparent and objective standards to prevent unreasonable restraints on trade and foster competitive and open market participation.
- (d) **foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange.** Rule 211 of the SEF Rulebook authorizes the Applicant to enter into information-sharing arrangements as it determines necessary or advisable to obtain any necessary information, to perform any monitoring of trading or trade processing, to provide information to the CFTC upon request and to carry out such international information-sharing agreements as the CFTC may require. Furthermore, the Applicant may enter into any arrangement with any other person (including the AMF, any other governmental authority, trading facility or clearing organization) where the Applicant determines such person exercises a legal or regulatory function under any applicable law or considers the arrangement to be in furtherance of the operation or duties of the Applicant under applicable law.

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- (e) **promote a framework for disciplinary and enforcement actions.** Core Principle 2 requires a SEF to adopt a rule enforcement program, disciplinary procedures and sanctions. In response to this requirement, Chapter 8 of the Applicant's SEF Rulebook sets out the Applicant's disciplinary rules and Chapter 9 prescribes the Applicant's arbitration procedures. As set forth in the Rules, the Applicant has the authority to initiate and conduct investigations and prosecute Rule violations. The Applicant keeps a record of all investigations pursuant to its record-keeping requirements, including an explanation of the investigation and its outcome.
- (f) **ensure a fair and orderly market.** Core Principle 2 requires a SEF to establish and provide impartial access to its markets and market services. Core Principle 3 requires a SEF to ensure that swaps traded on the facility are not readily subject to manipulation. Core Principle 4 requires a SEF to establish procedures for monitoring of trading and trade process. The Applicant complies with these Core Principles by prescribing trading rules (see Rule 502 on prohibited trading activity and prohibitions on fictitious transactions, fraudulent activity and manipulation), collecting and evaluating market activity data, by maintaining and auditing its real-time monitoring program, and by auditing historical data to detect trading abuses. Core Principle 9 requires timely public disclosure of trade information, all of which is published daily. SEF Core Principle 14 – *System Safeguards* requires a SEF to establish and maintain risk analysis, emergency procedure, and periodic systems testing programs. The Applicant periodically reviews its programs and procedures, including risk analysis, emergency planning, and systems testing. The Applicant has implemented a robust information security risk assessment framework, which includes, among other things, processes and procedures for identifying and responding to system threats and vulnerabilities. In addition to system level monitoring of capacity and performance of resources, the Applicant also conducts standardized application or platform capacity tests on a regular basis. This ensures the platform is well positioned to provide adequate responsiveness to customers. The data generated from these tests are used to establish present and historical benchmarks to identify performance and/or capacity hot spots or deficiencies. Additional resources are deployed where appropriate to resolve performance or capacity issues outside of the benchmark to bring performance back in line with benchmark expectation. The Applicant has further adopted a comprehensive disaster recovery plan, which was presented to the CFTC during a Core Principle 20 Hearing on September 14, 2011, with no material changes since that time. The Applicant regularly audits systems and technology tests both for technical and regulatory compliance.

## 2.8 Market Operations

The Applicant has rules, policies and other similar instruments that are designed to appropriately govern the operations and activities of participants and do not permit unreasonable discrimination among participants or impose any burden on competition that is not reasonably necessary or appropriate. Pursuant to its obligations under the CEA and the CFTC Regulations, the Applicant has implemented rules, policies and other similar instruments that govern the operations and activities of its Participants. The Applicant's rules are covered in Chapters 1

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through 13 of its SEF Rulebook, which include: Chapter 1 (Definitions), Chapter 2 (Ownership and Governance), Chapter 3 (Access), Chapter 4 (Obligations of Participants), Chapter 5 (Trading Practices and Business Conduct), Chapter 7 (Block Trades, Brokered Trades and Non-Competitive Transactions), Chapter 8 (Disciplinary Rules), Chapter 9 (Arbitration), Chapter 10 (Clearing and Financial Responsibility; Reporting), Chapter 11 (Miscellaneous), Chapter 12 (Credit Index Contracts Terms and Conditions) and Chapter 13 (Commodities Contract Terms and Conditions). The Applicant has established fair, transparent and non-discriminatory access criteria as required under the CFTC Regulations, and this criteria is applied in an impartial manner.

A SEF is a self-regulatory organization under CFTC rules. A SEF is obliged under CFTC rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and to discipline participants, including by means other than exclusion from the marketplace. To ensure that the SEF meets its regulatory obligations, the Applicant has dedicated financial, managerial and operational resources to staffing and maintaining the following functions: compliance, legal, product development, operations, corporate compliance, accounting, information security, business continuity/disaster recovery, and internal audit. The Applicant expends considerable human, technological and financial resources that are focused on the maintenance of fair, efficient, competitive and transparent markets, and the protection of all SEF Participants from fraud, manipulation and other abusive trading practices. The Applicant's staff performs all of the market surveillance duties required under the applicable CFTC rules. With respect to disciplinary actions, the Applicant has contracted with ICE Futures U.S., Inc. to provide a hearing panel pursuant to a Regulatory Services Agreement.

Participants are required to comply with a significant number of rules governing trading on the SEF pursuant to the SEF Rules. The applicable SEF Rules are primarily located in Chapter 5 (Trading Practices and Business Conduct) of the SEF Rulebook. The Applicant's daily trade monitoring activities include a broad range of interconnected efforts that include trade practice reviews, data quality assurance audits and enforcement activities. The Applicant's Market Supervision staff are responsible for supporting the operational processes of the SEF, while providing real-time monitoring of trading activity through market surveillance tools, including reviewing trade and order activity, facilitating resolution of error trades, monitoring market conditions and trading system performance. Further, the Applicant has developed and implemented automated reports for identifying aberrant trading activity and market abuses on a T+1 basis, including, but not limited to, wash trade, price spike, money-pass, and block trade violations. In the event that the Applicant's regulatory staff receives a complaint regarding trading activity in its market, the Applicant is able to recreate the order book and transaction data through its technology infrastructure and quickly respond to any events of regulatory concern. The Applicant's regulatory staff are responsible for conducting any and all market surveillance and investigations relating to any potential trade violations.

Investigating and enforcing rule violations are necessary components of regulatory safeguards. The SEF's disciplinary rules, including the conducting of investigations, prosecution of violations and imposition of sanctions are described Chapter 8 of the SEF Rulebook. The Applicant is dedicated to safeguarding the integrity of its SEF, and ensuring that it is free from

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manipulation and other abusive practices. These efforts are a necessary component of efficiently working markets, and so it is committed to ensuring that Participants and Customers are able to use the SEF with the knowledge that it remains open and transparent.

Specifically with reference to regulatory technology, the Applicant has made significant investments in this area, including staff dedicated solely to the support and continuous development of its regulatory technology infrastructure, ensuring that the Applicant's regulatory and market protection capabilities anticipate and evolve with the changing dynamics of the marketplace. The Applicant has developed an exceptionally granular audit trail of market activity and powerful and flexible data query and analytical tools that allow its regulatory staff to examine real-time and historical order, transaction and position data, maintain profiles of markets and Participants, and to detect trading patterns potentially indicative of market abuses.

All of the commodity swaps listed on the Applicant's SEF, as well as all of the credit default swaps that have not otherwise been certified by the CFTC as a "made available to trade" or a MAT swap pursuant to Section 2(h)(8) of the CEA may be traded as uncleared, bilateral swaps. As further discussed in Section 3.1.2 of this application, the CFTC determines whether a product is required to be MAT.

Core Principle 9 requires a SEF to make public timely information concerning swaps transactions executed on the SEF. The Applicant's systems transmit market data, including trading data to market participants and market data quote vendors through the FIX protocol. Additionally, the Applicant makes daily volume and price information available for download via its website for all contracts traded on the SEF. Daily reports by asset class can be found at the links below.

Credit: [https://www.theice.com/publicdocs/swap\\_trade/Credit\\_Daily\\_Market\\_Report.xls](https://www.theice.com/publicdocs/swap_trade/Credit_Daily_Market_Report.xls)

Commodities: <https://www.theice.com/marketdata/reports/158>

Further, the SEF reports all transactions subject to reporting under applicable CFTC Regulations as soon as technologically practicable in accordance with Rule 1004 to ICE Trade Vault, LLC, with respect to a cleared swap in a Credit Contract and uncleared swaps in Commodity Contracts, or DTCC Data Repository (U.S.) LLC, with respect to an uncleared swap in a Credit Contract.

## **2.9 Record Keeping**

The Applicant has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, audit trail information on all trades, and compliance with, and/or violations of exchange requirements.

The Applicant collects a tremendous amount of data on a daily basis related to its regulated activity in compliance with Core Principle 10 – Recordkeeping and Reporting. The Applicant is



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required to maintain records of all activities relating to its business as a SEF, including data related to order messaging, order execution and pricing. Data is collected from across the SEF, independent of whether the transaction was privately negotiated or matched in the central limit order book. The Applicant maintains a precise and complete data history, referred to as the audit trail, for every order entered and transaction executed across the SEF. Audit trail information for each transaction includes the order instructions, entry time, modification time, execution time, price, quantity, account identifier and parties to the transaction. On a daily basis, files of all electronic order and cleared trade information are archived to non-rewritable media, and copies are stored at multiple locations to ensure redundancy and critical safeguarding of the data. Furthermore, as a safeguard, the CFTC and the Applicant require SEF Participants to maintain all audit trail data for a minimum of 5 years.

Audit trail captures all client interactions, trade and order details and STP (straight through processing) information. Auditing is accomplished via a combination of database tables and flat log files. The database tables stores a history of all order and trade activities that occurs on the system, as well as updates to reference data tables and all incoming messages from the clients. A simple database query can be used to quickly retrieve this information. The Applicant also maintains a web-based console for auditing to retrieve order and trade information. There is also an operations interface that is available for market surveillance purposes. If a more comprehensive audit report is required, the flat log files can be used to construct a timeline of all inbound and outbound messaging activities, as well as details on the application-level processing and all inter-server communications.

## **2.10 Outsourcing**

When the Applicant has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

The Applicant has entered into outsourcing arrangements with Creditex Group Inc., Intercontinental Exchange, Inc., Creditex UK Limited, ICE Processing International Limited and ICE Markets Limited. The outsourcing arrangements cover the provision of staff, technology (provision of matching engine services, platform development and post-trade processing) and sales, marketing and business management (including finance and accounting, legal, and product management) services. Also, with respect to swap trading, the Applicant has entered into an agreement with ICE Futures U.S., Inc. whereby ICE Futures U.S., Inc. provides disciplinary, arbitration and financial surveillance services to the Applicant. Additionally, the outsourcing arrangements set for terms that allow the SEF to monitor the services provided by each entity to ensure that the SEF meets its regulatory obligations with respect to the outsourced service and that the any services are provided in accordance with industry best practices.

Specifically, Creditex Group, Inc. provides certain services relating to the provision of management, legal, marketing and compliance resources. ICE HoldCo provides services relating to the provision of administration/management, accounting, tax, corporate record keeping, insurance, payroll, human resources, information technology, legal, treasury/banking, sales and



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marketing which assists the Applicant in meeting its obligations under Core Principle 2 (“Compliance With Rules”), 14 (“System Safeguards”), and 15. Creditex UK Limited provides services relating to the provision of administration/management and sales under Core Principle 2 and 15, and ICE Markets Limited provide services related to the provision of sales, marketing and account services under Core Principle 15. Third-party services are provided by affiliates of the Applicant and are provided in accordance with term of agreements that have been entered at arm’s length. Such agreements, where appropriate, provide specific service level commitments, such the Matching and Execution Agreement entered into with the Applicant and Creditex Group, Inc. which governs the provision of the services relating to the Applicant’s trading technology. Further, other agreements entered into between Applicant and its affiliate service providers contain specific provisions relating to (i) change management procedures, governing the process for affecting changes to the terms of the agreement/services provided under the service agreements, and (ii) incident management procedures, governing the manner in which incidents are expected to be managed by the Applicant and its affiliate service provider. With respect to the contractual commitments described above, the Applicant monitors all of its third-party service providers to ensure that its obligations in accordance with applicable rules and regulations are met.

With respect to non-key functions, the Applicant may enter into outsourcing arrangements and have appropriate and formal arrangements and processes in place with respect to outsourcing of non-key functions.

## **2.11 Enforcement Rules**

The Applicant operates a SEF that is regulated by the CFTC. A SEF is a self-regulatory organization under CFTC rules and has certain obligations to monitor Participants' trading activity on the SEF in accordance with Core Principle 2 of the CFTC Regulations. Additionally, Core Principle 2 requires SEFs to ensure Participants consent to SEF rules and jurisdiction prior to accessing its markets.

Core Principle 2 requires a SEF to collect information, examine members’ records, direct supervision of the market, maintain sufficient compliance staff, establish procedures for and conduct audit trail reviews, perform real-time market monitoring and market surveillance and establish an automated trade surveillance system. The Applicant has instituted all these controls and has adequate resources available to ensure that controls are properly applied. The Applicant currently maintains a team of 10 compliance resources across the market supervision (5), compliance (2) and market regulation (2), including the chief compliance officer. Staffing levels for compliance and regulatory programs are subject to review by the ROC, which has the power to recommend increasing the resources associated with such functions. All other resources are managed through intercompany outsourcing arrangements which specify the level of services that are required to be delivered as part of the agreement. Core Principle 2 also requires a SEF to adopt a rule enforcement program, disciplinary procedures and sanctions. In response to this requirement, Chapter 8 of the Applicant’s SEF Rulebook sets out the Applicant’s disciplinary rules and Chapter 9 prescribes the Applicant’s arbitration procedures. In accordance with Core Principle 15, on an annual basis the Applicant prepares a Chief Compliance Officer Report for

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the CFTC (“Annual Report”) wherein it assesses the quality of its compliance and disciplinary program under the SEF Core Principles. In preparing the Annual Report, the Applicant conducts a comprehensive review of its compliance program, including its investigative process to ensure that investigations were conducted in accordance with the Core Principles and resolved in a timely manner. The Applicant’s Market Regulation Department ensures that investigations are completed in a timely manner pursuant to CFTC Regulation §37.203(f), which states in that, “absent mitigating factors, a timely manner is no later than 12 months after the date that an investigation is opened. Mitigating factors that may reasonably justify an investigation taking longer than 12 months to complete include the complexity of the investigation, the number of firms or individuals involved as potential wrongdoers, the number of potential violations to be investigated, and the volume of documents and data to be examined and analyzed by compliance staff”. As part of this review, the Applicant’s compliance department meets with staff members involved in the SEF’s compliance function, and implements various internal policies, procedures, and staff guidance aimed at ensuring the SEF complies with the Core Principles.

Core Principle 2 requires a SEF to adopt a rule enforcement program, disciplinary procedures and sanctions. In response to this requirement, Chapter 6 of the Applicant’s SEF Rulebook sets out the Applicant’s disciplinary rules and Chapter 7 prescribes the Applicant’s arbitration procedures.

The Applicant’s investigative procedures can be summarized as follows:

- (a) If the Applicant’s market regulation department has reasonable cause to believe that a rule violation may have been committed, or is alleged to have been committed, then it has the right to open an investigation.
- (b) If the Applicant’s market regulation department determines that there is reasonable basis to believe a violation was committed and that disciplinary action should be pursued as a result of the investigation, the person that is the subject of the investigation is provided with a copy of the investigative report and provided the opportunity to submit a written response to the compliance department.
- (c) Once the person that is subject to the investigation has been given an opportunity to respond in writing, the Applicant’s market regulation department may choose to: issue a warning letter, or negotiate and enter into a written settlement, with or without an admission of guilt, impose a summary fine, bring formal case to the disciplinary committee or close the investigation with no further action.
- (d) If the Applicant’s chief compliance officer determines that a matter should be adjudicated in a formal hearing before a disciplinary panel, the market regulation department shall serve a notice of charges on the respondent, containing: the acts, practices or conduct that the respondent is alleged to have engaged in; the rule or provision of applicable law alleged to have been violated or about to be violated; the proposed sanctions; the respondent has a right to a

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hearing; notice that the respondent has the right to be represented by legal counsel or any other representative of its choosing in all succeeding stages of the disciplinary process; the period of time within which the respondent can request a hearing on the notice of charges, which will not be less than 20 days after service of the notice of charges; 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; that the failure of the respondent to file an answer within 20 days after service of the notice of charges will be deemed an admission of all of the allegations in the notice of charges; and that any allegation in the notice of charges that is not expressly denied will be deemed to be admitted.

- (e) The respondent has 20 days to file a written response to the notice of charges, containing specific admission or denial of each charge as laid out in the notice of charges, or a statement that the respondent does not have sufficient information to be able to either admit or deny the charges.
- (f) At any time during this process the respondent may propose in writing an offer of settlement related to the anticipated or instituted disciplinary proceedings.

If it is determined that a matter should be adjudicated in a formal hearing before a disciplinary panel, then the disciplinary panel must conduct hearings in connection with any disciplinary proceedings, make findings, render decisions, and impose sanctions (other than summary fines under Rule 811) pursuant to Chapter 8 of the Applicant's SEF Rulebook. The disciplinary panel must meet the composition detailed in CFTC Regulation 1.64(c), which requires that (i) at least one member of the disciplinary panel is not a member of the SEF; (ii) more than 50% of the disciplinary panel includes persons representing membership interests other than that of the subject of the disciplinary proceeding being considered; and (iii) the disciplinary panel include sufficient different membership interests so as to ensure fairness and to prevent special treatment or preference for any person in the conduct of the disciplinary panel's responsibilities.

These formal hearing procedures can be summarized as follows:

- (a) The chief compliance officer appoints the members of the disciplinary panels. Either of the chief compliance officer or the Board may remove a member of a disciplinary panel for cause.
- (b) Disciplinary panels shall not include any members of the SEF's market regulation department or any person involved in adjudicating any other stage of the same proceeding and must meet any applicable composition requirements under Part 40 of the CFTC rules.
- (c) Prior to a hearing, the respondent shall have the right to access and review all evidence, books and records etc. that the market regulation department may rely upon in making their case during the disciplinary hearing.

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- (d) At the disciplinary hearing the market regulation department will present its case supporting the allegations and proposed sanctions to the disciplinary panel. If a respondent has filed a timely answer to the notice of charges they are entitled to attend and participate in the hearing.
- (e) At a hearing, the disciplinary panel or the market regulation department and each respondent (that is entitled to attend) may: present evidence and facts determined relevant and admissible by the chair of the disciplinary panel, call and examine witnesses, and cross-examine witnesses called by other parties.
- (f) Any person entitled, or required or called upon, to attend a disciplinary panel hearing will be given reasonable written notice. All individuals that are called as witnesses are required to appear at the hearing and, where applicable, produce evidence. The SEF will make reasonable efforts to secure the presence of all other persons called as witnesses whose testimony would be relevant.
- (g) The Applicant 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. If the respondent requests a copy of all or portions of the recording of a hearing, the chair of the disciplinary panel may within his or her sole discretion require the respondent to pay the costs for transcribing the recording of the hearing.
- (h) As promptly as is reasonable following a hearing, the disciplinary panel will issue a written order rendering its decision. A decision by a majority of the disciplinary panel will constitute the decision of the disciplinary panel. The Applicant shall serve a copy of the order of the disciplinary proceedings to both the respondent and the Market Regulation department. There is no right to appeal a decision by the disciplinary panel to the SEF. A disciplinary action may, however, be appealed to the CFTC pursuant to Part 9 of the CFTC Regulations.

Furthermore, the CFTC is the U.S. government agency that has direct regulatory and oversight responsibility over SEFs and is charged with administering and enforcing the CEA. The agency has authority to enforce the CEA and the regulations promulgated thereunder in a variety of ways. First, the CFTC has the administrative authority to conduct investigations of potential violations of law, compel the production of documents and depose witnesses to develop evidence. If it is determined to pursue formal legal action, the CFTC can commence an administrative proceeding against the respondent, which provides for a trial to be held and permits the judge to issue sanctions against the respondent, which can include a monetary fine, a bar against the respondent trading futures and options on a registered exchange, a suspension or revocation of licenses required to act as a commodity professional (such as an advisor or trader for others) and similar sanctions. In addition, the CFTC may commence legal proceedings in the U.S. courts to seek injunctions and ancillary relief (such as a freeze of assets) to halt violations of the CEA on an expedited basis.

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In the case of SEFs, the CFTC also has oversight responsibility which results in the agency having intimate knowledge of the bylaws, rules and procedures of the SEF. Specifically, all such bylaws and rules and any amendments must be filed with the CFTC before they can become effective; rules posing complex issues can be published by the CFTC for public comment and their implementation delayed pending further review; and the CFTC can commence proceedings to compel an exchange to alter its rules to render them consistent with the policies and purposes of the CEA. The CFTC staff also performs periodic reviews of the compliance of SEFs with certain of the core principles applicable to the SEFs, such as the core principles relating to financial resources, enforcement of the SEF's own rules with respect to the conduct of its members and the surveillance of trading in its markets.

## **2.12 Systems and Technology**

### **2.12.1 System Support**

The Applicant's SEF has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business.

The Applicant's multi-tiered architecture provides a robust, scalable, high throughput foundation for the Applicant's trading platform. At the core, the architecture is messaging based. Individual components communicate by interactively sending business messages between corresponding components. The business components can be spread across the application server cluster and redundancy is automatically built in by allocating the business tasks among the live servers in the cluster. In the event of an individual server failure, business components are automatically re-allocated to a live server.

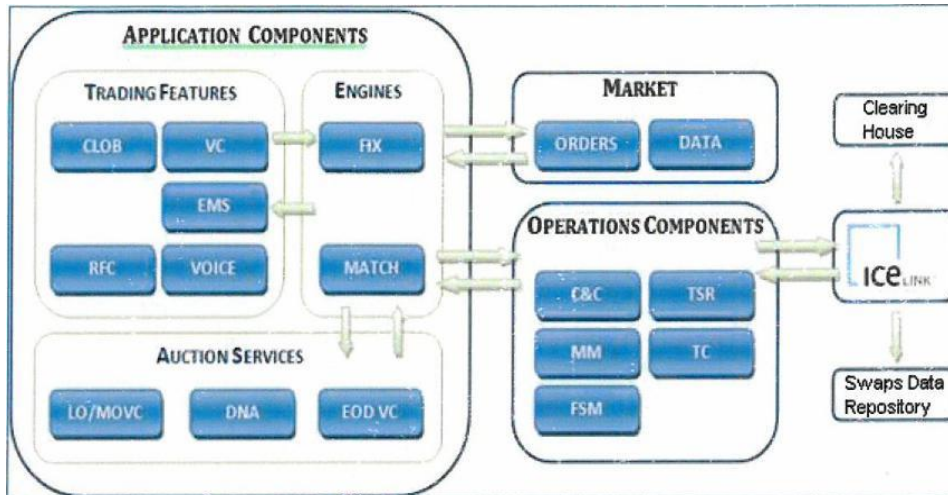
The same messaging system that empowers the server side of the service also supports client side communication. HTTP Tunneling and strong encryption ensure that connectivity into even the most secure environments is straightforward and requires minimal intervention from networking teams. The existing global private network that the Applicant has built with ICE direct lines is leveraged for connectivity into most of the global dealing community.

Behind the application servers, all data is stored in an Oracle Real Application Cluster (RAC) Database. Oracle RAC is the leading database clustering technology in the marketplace and adds both reliability and performance. Data is replicated in real-time to the global standby database in the disaster recovery datacenter over private, dedicated, redundant fibre.

It should be noted that the Applicant operates two trading platforms for credit and commodities. The system architecture and system features, including, but not limited to, backup and recovery, are generally identical across the two platforms or operate on a shared infrastructure. Where the answers to this are different for the two platforms, the different responses are separately identified below.

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### Credit System Overview Diagram



### Order Entry and Routing

Order entry and routing may be through a direct API connection, or via any one (or more) of a number of ISVs that have connected their graphical user interfaces to the Applicant's trading platform. All orders received must be marked as orders for the SEF marketplace and will be routed to the appropriate matching engine.

### Execution

The Applicant operates a matching platform that automatically matches orders in accordance with the order types and matching rules specified in Chapter 5 of the Applicant's SEF Rulebook.

### Trade Reporting

Trade reporting to swap data repositories is required of all transactions executed on the SEF under CFTC Part 43 regulations. Cleared credit transactions, and uncleared commodity transactions are reported to ICE Trade Vault, through an automated process. Uncleared credit transactions are reported through both an automated and manual process (dependant on the contract) to the DTCC Swaps Data Repository.

Trade summary reports give the market operations staff the ability to generate summary reports of trading activity for a specified market participant either automatically, or on demand. These reports can be automatically communicated to the relevant market participant. Participants generally utilize them as a recap for daily trade activity on the platform, to enhance their daily reconciliation of trades executed.

Trade confirms provides the framework to automatically deliver trade confirmations to participants who have executed a trade on the platform.



**Data Feeds**

All market data is available to SEF platform Participants and third party data vendors via a direct FIX API connection provided by the Applicant. The market data feed contains all prices at all times (i.e. there are not “top of book” or “full stack/book” options). Data published includes bids, offers and trades.

**System Capacity**

The Applicant operates and provides to Participants a robust and scalable platform. ICE system engineering operates standard system metrics monitoring on every ICE server. Standard system monitoring metrics include capacity and performance level alerts, which are communicated to both System Engineering and SEF production support and development staff. Performance and/or capacity issues are tested in a production test environment, which matches production in size and scope.

Performance levels nearing or breaching production Service Level Agreements (if applicable) trigger investigations into the issues which would result in adding additional resources or appropriate software enhancements.

In addition to system level monitoring of capacity and performance of resources, the Applicant also conducts standardized application or platform capacity tests on a regular basis. This ensures the platform is well positioned to provide adequate responsiveness to customers. The data generated from these tests are used to establish present and historical benchmarks to identify performance and/or capacity hot spots or deficiencies. Additional resources are deployed where appropriate to resolve performance or capacity issues outside of the benchmark to bring performance back in line with benchmark expectation.

**Trade Clearing**

The Applicant does not provide a clearing service itself, nor does it outsource such a function.

**2.12.2 Testing of Support System**

The Applicant conducts regular performance and capacity tests in a production test (PT) environment which matches production in its size, scope and infrastructure. These tests are conducted with 1X, 2X and sometimes 3X production load to get current and future capacity estimates. Additional resources are deployed where appropriate to resolve future capacity issues outside the benchmark.

The Applicant's Quality Assurance (QA) team runs regular stress and regression tests after new development cycles to ensure performance, capacity and accuracy of the platform are met.

The Applicant runs regular audits to keep system vulnerabilities in check. These include internal audits as well as external PEN tests.



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The ICE Information Security team maintains a list of common threat-sources that are considered for all systems. For each real threat, they look for specific applicability of the threat to the system being reviewed. After common threats are reviewed, specific threats unique to the system are considered and reviewed.

External threats such as physical hazards and natural disasters are addressed in the Applicant's Business Continuity Plan and Disaster Recovery document.

The Applicant's parent company, ICE, periodically conducts risk audits, internal physical security procedures compliance inspections and covert physical intrusion tests with independent security firms. Such tests are designed to periodically assess the operating effectiveness of physical security controls as well as to monitor internal compliance with security policies and procedures. These procedures are covered in the ICE Information Security Risk Assessment Framework and are conducted by ICE Internal Audit.

The Applicant has implemented a robust information security risk assessment framework, which includes, among other things, processes and procedures for identifying and responding to system threats and vulnerabilities. In addition to system level monitoring of capacity and performance of resources, the Applicant also conducts standardized application or platform capacity tests on a regular basis. This ensures the platform is well positioned to provide adequate responsiveness to Participants. The data generated from these tests are used to establish present and historical benchmarks to identify performance and/or capacity hot spots or deficiencies. Additional resources are deployed where appropriate to resolve performance or capacity issues outside of the benchmark to bring performance back in line with benchmark expectation. Additionally, the Applicant relies on ICE's business continuity/disaster recovery program for the overall infrastructure support of the business, and has a dedicated business continuity/disaster recovery program in place that is specific to the Applicant's business.

Configuration management is the subject of internal audits and is also included in the Applicant's quarterly Disaster Recovery tests. The Applicant performs annual failover testing pursuant to its Disaster Recovery Plan as well as quarterly system safeguard testing which evaluates information security, business continuity, capacity and performance planning, system operations and physical security in accordance with the Applicant's Compliance Manual. Further, the Applicant's internal audits program includes, but is not limited to ensuring that there are sufficient management controls for data center operations, that monitoring controls are in place and metrics are reviewed periodically by management, that physical controls around business information processing, storage and distribution facilities are housed in secure and protected areas, that environmental controls are in place, and that incident management for data center incidents are managed and resolved in a timely manner.

The Applicant employs a hybrid software development methodology drawing attributes from both the Agile and Waterfall software development methodologies. 6-week release cycles allow for efficient functionality roll out to clients, while maintaining a thoroughly tested product prior to production release. The systems development methodology consists of several functional

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groups as part of the Software Development Life Cycle (SDLC) including Product, Development, Database, Quality Assurance, and Change Management.

- (i) *Product* – The Product team is responsible for interfacing with business owners to interpret business requirements, and deliver technical specifications to the Development team.
- (ii) *Development* – The Development team is responsible for building to specification required functionality relating to business requirements, security features, and capacity/performance enhancements.
- (iii) *Database* – The Database team provides development support for new functionality similar to the Development team, but specifically related to data model and database software development and management.
- (iv) *Quality Assurance* – The Quality Assurance team maintains responsibility for thoroughly testing and vetting software before release to a production environment to ensure minimal bugs are introduced with each release, thus preventing client impact or interruption.
- (v) *Change Management* – The Change Management team independently manages software migration to the production environment from non-production. This ensures a distinct separation of responsibilities between development and software propagation. The Change Management team promotes code to production only upon approval from an independent Change Control Board.

Complete and accurate backups are stored in an approved off-site storage facility as part of the disaster recovery plan. An incremental back-up of all database file systems is performed daily and a full backup is performed weekly. This data is retained off-site for an appropriate amount of time (daily, weekly, or monthly), depending on the specific need of the application. This will ensure that there will be the most recent and the previous version available, while that oldest could be in transit.

The recovery system will be up and running at the designated alternate site at all times (hot site loaded and running the mirror image of production), the recovery system will be transaction updated every ten minutes. Data saved to tape resides in the secure facility managed by a 3rd party vendor.

The Applicant maintains and frequently reviews its business continuity plan, considering the unavailability of primary employee offices or personnel, but is not limited to the use of Disaster Recovery sites. For non-pandemic scenarios, the strategy is summarized below:

- (i) Remote work via secure Virtual Private Network (VPN) - Remote work limited to email and phone can be accomplished without VPN as described in the document.

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- (ii) Personnel at other offices – staff for many tasks such as client support, trade operations, product management, technology, IT support, systems engineering, network engineering, network operations, and human resources are split across multiple offices and can be transferred to the unaffected location in a disaster.
- (iii) Relocation – in the event that the above strategies are not sustainable for the duration of the disaster, staff may be relocated from New York to offices in Atlanta or Chicago.

In the unlikely event that the primary ICE data center becomes unavailable or inaccessible, the Applicant will initiate disaster recovery steps to activate the standby platform from the disaster recovery facility.

Customer access is automatically rerouted to the secondary data center if a changeover occurs, minimizing the need for coordinating with member plans. As applicable, the Applicant will participate in industry-wide tests, such as the annual Futures Industry Association disaster recovery test.

The Applicant maintains data centers at two facilities. The primary production data center is in Chicago, Illinois and there is a Disaster Recovery data center in Atlanta, Georgia. Both data centers are staffed from 7 am to 7 pm local time Monday through Friday. There are Datacenter engineers that report to both facilities for the purpose of supporting all physical and environmental needs. Datacenter access is restricted to a core group of staff. The Applicant maintains a recovery time objective of between 1-4 hours following an event requiring failover to resume trading, market surveillance, availability of audit trail information and trade practice surveillance.

Finally, The Applicant provides extensive market integrity controls to ensure fair and efficient markets and has implemented an Error Trade Policy to manage potential error trades. For example, the SEF sets reasonability limits which prevent the execution of Transactions outside of the stated level and no-cancellation ranges where transactions will not, under prevailing market conditions, be cancelled or price adjusted. The SEF also provides optional pre-confirmation messages, which appear prior to the execution of all orders, and an option to designate the quantity that a Participant may wish to expose to the market at one time, rather than trading the total quantity that is available to be traded at a specified price. Further, the SEF has implemented a real-time market monitoring program, as discussed in detail in Sections 2.7, 2.8, 2.11 and 2.12.1 above.

Chapter 2 of the Applicant's Rulebook and the Applicant's Compliance Manual outline the parameters for the definition, and the process for determining the procedures to be taken in the case of an Emergency. As part of an Emergency, the SEF may take certain Emergency Actions, in accordance with its Rulebook in the interest of the marketplace and participants or at the behest of the CFTC, including, but not limited to: trading halts, the imposition of price or position limits, the imposition or change of intraday market restrictions, the imposition of special margin requirements, orders for liquidation or transfer of open positions, orders fixing settlement

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prices, changes to trading day hours, changes to contract settlement terms, platform access limitations, or other such actions as directed by the CFTC.

The SEF also plans to maintain a messaging policy. The messaging policy would count the number of orders placed on a contract by each Participant and weight the count according to how far from the best bid or best offer the order was at the time of entry. The further from the best bid or offer, the more the price count would be weighted. Participants would be subject to an additional surcharge if their weighted order count exceeds certain specified thresholds.

Further, the Applicant relies on the ICE Internal Audit Department, which provides audit services to all ICE companies, including specialized IT auditors that perform audits on the Information Security Department and the Business Continuity/Disaster Recovery program. The Internal Audit department is structured in a manner that reporting lines provide for organizational independence that allows the department to perform its work in a manner that is impartial, unbiased, and that avoids conflicts of interest.

### 2.13 Clearing and Settlement

The Applicant has or requires its participants to have appropriate arrangements for the clearing and settlement of transactions for which clearing is mandatory through a clearing house. In order to trade cleared credit swaps, Participants, including those based in Quebec, must demonstrate, as part of the Applicant's onboarding process, that they are members of a clearing house or have made arrangements with a clearing member. Under Rule 303(c), a Participant is required to demonstrate that it has the financial capability to ensure that cleared swaps will be cleared by the Participant or by a third-party Clearing Member. In the event that a Participant is unable to meet this clearing obligation, or if there are any material changes to its clearing member agreement, the Participant is required to promptly notify the Applicant.

SEFs can allow trading of both "cleared" and "non-cleared" swaps. A swap is considered "cleared" if a clearing house will accept the swap for clearing, whereas a swap is "non-cleared" if no clearing house will get involved in the swap. Swaps that require clearing may be cleared at ICE Clear Credit, LLC or ICE Clear Europe Limited. Both clearing houses are registered as derivatives clearing organizations ("DCO") with the CFTC, which requires that they have established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls as discussed in Section 8.2.1 below. In the event that a trade submitted for clearing is affirmatively rejected by the DCO, the trade will be deemed *void ab initio* in accordance with Rule 1002. The Applicant defers to the CFTC to ensure the DCOs to which it has a connection meet their regulatory requirements and has appropriate disaster recovery testing in place.

The Applicant expects that Québec Eligible Contract Participants may either become clearing members of a clearing house and clear directly (provided such clearing house has obtained an exemption or interim exemption from recognition as a clearing agency in Québec) or rely on another clearing member for clearing.

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As noted above, both ICE Clear Credit LLC and ICE Clear Europe Limited are registered as DCOs with the CFTC. As a DCO, the clearing houses must comply with the DCO Core Principles, including CFTC Regulation 39.13 – *Risk management* (“**CFTC Regulation 39.13**”), CFTC Regulation 39.10 – *Compliance with rules* (“**CFTC Regulation 39.10**”), and CFTC Regulation 39.18 – *System safeguards* (“**CFTC Regulation 39.18**”). Further, the Applicant defers to the CFTC to ensure the DCOs to which it has a connection meet these regulatory requirements and has appropriate disaster recovery testing, risk management policies and procedures, contingency plans, default procedures and internal controls in place.

CFTC Regulation 39.13 mandates the appointment of a chief risk officer whose duties include implementing a Board-approved written risk management framework. CFTC Regulation 39.10 mandates the appointment of a chief compliance officer (“**CCO**”) whose duties include review of the DCO’s written policies and procedures and compliance with each DCO Core Principle, including the risk management framework implemented by the CRO under CFTC Regulation 39.13. The CCO’s review of the DCO’s policies and procedures is included in an annual compliance report submitted to the CFTC.

CFTC Regulation 39.18(b) mandates the establishment and maintenance of a program of risk analysis and oversight with respect to the DCO’s operations and automated systems. CFTC Regulation 39.18(j) further requires that a DCO’s automated systems and business continuity and disaster recovery capabilities be tested by objective, independent and qualified professionals on a periodic basis. Service Organization Control 1 and 2 audits that meet the requirements of CFTC Regulation 39.18(j) are conducted annually.

### **ARTICLE 3 POWER OF THE APPLICANT REGARDING COOPERATION**

The Applicant confirms that it has the power to co-operate fully with the AMF and self-regulatory organizations in the Province of Québec, and to provide information and documents with respect to its operations that could be reasonably requested by the AMF.

Rule 211 of the SEF Rulebook – *Information Sharing* authorizes the Applicant to enter into information-sharing arrangements as it determines necessary or advisable to obtain any necessary information, to perform any monitoring of trading or trade processing, to provide information to the CFTC upon request and to carry out such international information-sharing agreements as the CFTC may require. Rule 211 also permits the Applicant to share information with regulatory authorities other than the CFTC, such as the AMF, “to fulfill its self-regulatory and reporting responsibilities”, and the Applicant has both the personnel and technical resources necessary to furnish the required and/or requested information in a timely manner.

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**ARTICLE 4**  
**POWER OF THE FOREIGN REGULATOR IN THE HOME JURISDICTION**  
**REGARDING COOPERATION**

Satisfactory information sharing and oversight agreements exist between the AMF and the Foreign Regulator. The CFTC has entered into memorandum of understanding (“MOU”) arrangements for co-operative enforcements with foreign regulatory authorities in numerous jurisdictions. The MOUs typically provide for access to non-public documents and information already in the possession of the regulatory authorities, and often include undertakings to obtain documents and to take testimony of, or statements from, witnesses on behalf of a requesting regulatory authority. The CFTC and the AMF are parties to a MOU that was entered into by the parties on March 25, 2014.

**ARTICLE 5**  
**CONDITIONS OF COMPLIANCE**

If authorization is granted, the Applicant undertakes to provide the AMF with the following information and any other information that may be required, notably but not limited to: (i) its annual report and annual financial statements; (ii) any material amendment to the laws or regulations governing its activities; (iii) any amendment to its internal by-laws; (iv) any change respecting its right to operate or the existence of conditions respecting the performance of activities in its home jurisdiction; and (v) notice of any situation that could have an impact on its financial viability or its ability to operate.

Furthermore, the Applicant undertakes to comply with any other applicable Québec law, including *An Act respecting the legal publicity of sole proprietorships, partnerships and legal persons* (R.S.Q., c. P-45), to maintain its recognition or authorization in its home jurisdiction and to abide by any AMF decision.



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November 23, 2016

**Sent By E-mail**

Autorité des marchés financiers  
800 Square Victoria, 22<sup>nd</sup> Floor  
C.P. 246, Tour de la Bourse  
Montréal, Québec  
Canada, H4Z 1G3

Attention: Serge Boisvert and Corinne Lemire

**trueEX LLC – Application for Exemption from Recognition as an Exchange**

Dear Sirs,

trueEX LLC (the “**Applicant**”) is requesting an order from the *Autorité des marchés financiers* (the “**AMF**”) exempting the Applicant from the following requirements:

- a decision under Section 86 of the *Derivatives Act* (Québec) (the “**Act**”) exempting the Applicant from the requirement to be recognised by the AMF as an exchange under Section 12 of the Act in relation to the operation of a marketplace in the province;
- a decision under Section 86 of the Act and Section 15.1 of Regulation 21-101 (as defined below) exempting the Applicant from *Regulation 21-101 respecting Marketplace Operation* (“**Regulation 21-101**”); and
- a decision under Section 86 of the Act and Section 12.1 of Regulation 23-101 (as defined below) exempting the Applicant from *Regulation 23-101 respecting Trading Rules* (“**Regulation 23-101**”).

The Applicant is currently permitted to operate under an interim exemption order (Decision No. 2015-SMV-0060) dated December 21, 2015 (the “**Interim Order**”) and operating in Ontario under an order dated June 13, 2016



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### **BACKGROUND OF THE APPLICANT**

The Applicant operates a marketplace (the “**Facility**”) for trading swaps that is regulated by the Commodity Futures Trading Commission (“**CFTC**”) as both a designated contract market (“**DCM**”) and swap execution facility (“**SEF**”). The Applicant’s Facility offers trading of interest rate swaps (“**IRS**”), which are subject to the Made Available to Trade determinations made in accordance with the CFTC’s regulations. The two general categories of IRS available for trading on the Facility are (i) Fixed for Floating IRS Contracts and (ii) Market Agreed Coupon (“**MAC**”) IRS Contracts. Fixed for Floating IRS Contracts and MAC IRS Contracts are described in the Applicant’s rulebook (the “**Rulebook**”).

Under the Applicant’s DCM license, customers can access firm and actionable quotes through the anonymous and transparent Central Limit Order Book; and customers that need to execute and report trades of large notional, with a specific counterparty, can take advantage of the Block Trade functionality. Under the Applicant’s SEF license, customers are able to use a variety of services to manage their swap portfolios, including: Request for Quote, which allows customers to request quotes on a swap from select counterparties through the RFQ functionality; and the Cleared Portfolio Terminations and Compactions tool allows customers to unwind and remove unwanted open positions from the trade register of the relevant clearing house without the need to undertake a novation and provides options for customers to enter into new transactions to be executed on terms other than rate.

Under the terms of the Interim Order, the Applicant offers direct access to trading on its Facility to participants that are located in Québec (“**Québec Participants**”) and that satisfy criteria for an “eligible contract participants” (“**ECP**”) as defined in section 1a(18) of the *U.S. Commodity Exchange Act* (the “**CEA**”), CFTC Regulation 1.3(m) and as further described in Part III below. Québec Participants may include Canadian financial institutions, registered dealers and advisers, government entities, pension funds and other well capitalized non-regulated entities.

The Applicant has no physical presence in Québec and does not otherwise carry on business in Québec except as described herein.

Currently, the Applicant does not offer the trading of futures contracts on the Facility and is not seeking an order exempting the Applicant from the requirement to be recognized as an exchange to trade such contracts.

The Applicant is a limited liability company organized under the laws of the State of Delaware in the United States (“**U.S.**”) and is a wholly owned subsidiary of trueEX Group LLC (“**trueEX Group**”). trueEX Group is a privately held limited liability company organized under the laws of the State of Delaware in the U.S.

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The Applicant provides its customers with trading and execution services for IRS. A full list of the products traded on the Applicant's Facility can be found on the Applicant's website, at <https://www.trueex.com/product-overview>.

The Applicant enables clients to access the Facility directly or via sponsorship by a futures commission merchant's trading technology. Client can also trade through a futures commission merchant or introducing broker who can place and execute orders on the Facility on the client's behalf. Clients seeking direct access to the Facility must apply to become a "**participant**" on the Facility and enter into a Participant Agreement with the Applicant.

Participants include a wide range of sophisticated customers, including commercial and investment banks, corporations, proprietary trading firms, hedge funds and other institutional customers. Under the terms of the Interim Order, any Québec-based customer of the Applicant that wish to trade directly on the Applicant's Facility must qualify as an ECP.

Facility participant criteria is described more fully in Section 2.7 below.

### **EXEMPTION FROM SECTION 12 OF THE ACT AND FROM REGULATION 21-101 AND 23-101**

#### **Exemption from the Requirement to be Recognised as an Exchange under Section 12 of the Act**

As described in greater detail in this application, the Applicant is regulated by the CFTC and received a full registration from the CFTC on January 22, 2016 to operate a SEF in the U.S. pursuant to the CEA. Recognition requirements to be met by the SEF operated by the Applicant are stringent and do take into consideration elements such as governance, fees, fair and equitable access, regulation, market operations, systems and technology as well as clearing and settlement, as prescribed by the AMF.

Furthermore, the Applicant confirms that it has the power to co-operate fully with the AMF and self-regulatory organizations in the Province of Québec, and to provide information and documents with respect to its operations that could be reasonably requested by the AMF.

Based on the foregoing, the Applicant seeks an exemption from the requirement of Section 12 of the Act allowing it to carry on derivatives activities in the Province of Québec without being recognised by the AMF as an exchange or otherwise. We believe this exemption would not be detrimental to the protection of investors in the Province of Québec and would contribute to the trading of derivatives in Québec being more efficient.

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**Exemption from Regulation 21-101 and Regulation 23-101**

The Applicant submits to the AMF that the application of Regulation 21-101 and Regulation 23-101 regarding marketplace operation and trading rules to the Applicant would result in duplication of the U.S. regulatory framework and hereby seeks an exemption from Regulation 21-101 and Regulation 23-101.

**CONSENT AND INFORMATION**

You will find below, the following information about the Applicant's business and policies under the following headings, which comply with Part 5 of the AMF's "*Policy Statement Respecting the Authorization of Foreign-Based Exchanges*":

Article 1	Regulation of the Applicant in its Home Jurisdiction
Article 2	Recognition or Authorization Process of the Foreign Regulator in the Home Jurisdiction
Article 3	Power of the Applicant Regarding Cooperation
Article 4	Power of the Foreign Regulator in the Home Jurisdiction Regarding Cooperation
Article 5	Conditions of Compliance

If you have any questions or require anything further, please do not hesitate to contact us.

Yours very truly,

*(signed) George Sapio*

cc: Fran Kenck and Karen L. O'Connor, *trueEX LLC*  
Blair Wiley and Alexandre Martin, *Osler, Hoskin & Harcourt LLP*

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## ARTICLE 1 REGULATION OF THE APPLICANT IN ITS HOME JURISDICTION

### 1.1 Regulation of the Applicant

On January 31, 2012, the Applicant filed an application for registration on Form DCM pursuant to Section 5d of the CEA and Part 38 of the Regulations of the CFTC to operate a DCM in the U.S. The Applicant received approval from the CFTC on September 25, 2012 and the DCM began operations on September 13, 2013.

On July 15, 2013, the Applicant filed an application for registration on Form SEF pursuant to Section 5h of the U.S. Commodity Exchange Act (the “CEA”) and Part 37 of the Regulations of the CFTC to operate a SEF in the U.S. The Applicant was granted temporary registration as a SEF by the CFTC on September 20, 2013, and the SEF began operations on October 2, 2013. The Applicant was subsequently granted registration as a SEF by the CFTC on January 22, 2016.

The Applicant is subject to regulatory supervision by the CFTC. The Applicant is obligated to give the CFTC access to all records unless prohibited by law or such records are subject to solicitor-client privilege. The CFTC reviews, assesses and enforces the Applicant’s adherence to the CEA and the regulations thereunder on an ongoing basis, including the Core Principle requirements for DCMs (“**DCM Core Principles**”) and SEFs (“**SEF Core Principles**”). The SEF Core Principles relate to the operation and oversight of the Facility, including financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection. SEFs are required to have a rulebook and a compliance program, including a Chief Compliance Officer and a compliance manual. A SEF’s participant access criteria must be impartial and transparent and must be applied in a fair and non-discriminatory manner. The CFTC requires each SEF to have certain required trading protocols. A SEF must publish on its website certain daily trading data for each swap contract listed on the SEF and must report all transactions executed on the SEF to a swap data repository (“**SDR**”). In addition, as a DCM the Applicant must also comply with the stricter regulatory regime governing DCMs under CFTC regulation Part 38, set forth in 23 DCM Core Principles.

### 1.2 Authority of the Foreign Regulator

The Foreign Regulator has the appropriate authority and procedures for oversight of the exchange. This includes regular, periodic oversight reviews of the exchange by the Foreign Regulator.

The CFTC carries out the regulation of DCMs and SEFs in accordance with certain provisions of the CEA. To implement regulation, the CFTC has promulgated regulations and guidelines (“**CFTC Regulations**”) that further interpret the SEF Core Principles and

DCM Core Principles. The CFTC also undertakes periodic in-depth audits or rule reviews of the Applicant's compliance with certain of the SEF Core Principles and DCM Core Principles. The rule enforcement review conducted by the CFTC can cover all of the SEF Core Principle requirements and the DCM Core Principle requirements. Reviews are typically focused on market surveillance and trade practice, both of which are governed by SEF Core Principle 2 and DCM Core Principle 4.

For greater certainty, the CFTC has, pursuant to section 2 of the CEA, exclusive jurisdiction, with limited exceptions, to apply its regulatory powers (including powers of investigation and audit and the ability levy sanctions) to the regulation of transactions involving swaps or contracts of sale of a commodity for future delivery (including significant price discovery contracts) traded or executed on a contract market designated pursuant to section 7 of the CEA or a swap execution facility pursuant to section 7b-3 of the CEA or any other board of trade, exchange, or market, and transactions subject to regulation by the CFTCA pursuant to section 23 of the CEA.

A SEF and a DCM is each considered a self-regulatory organization under CFTC rules. For example, a SEF is obliged under CFTC rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and to discipline participants, including by means other than exclusion from the marketplace. The Applicant conducts market surveillance of the Facility to comply with CFTC regulations.

### 1.3 Regulation of Products – Review and Approval of Products

The products traded on the exchange and any changes thereto are submitted to the Foreign Regulator, and are either approved by the Foreign Regulator or are subject to requirements established by the Foreign Regulator that must be met before implementation of a product or changes to a product.

The core principles relevant to products traded on the Facility include: SEF Core Principle 2 – *Compliance with Rules* (“**SEF Core Principle 2**”), DCM Core Principle 7 – *Availability of General Information* (“**DCM Core Principle 7**”), SEF Core Principle 3, DCM Core Principle 3, SEF Core Principle 4 – *Monitoring of Trading and Trade Processing* (“**SEF Core Principle 4**”), DCM Core Principle 4 – *Prevention of Market Disruption* (“**DCM Core Principle 4**”), SEF Core Principle 6 – *Positions Limits or Accountability*, SEF Core Principle 7, DCM Core Principle 11, SEF Core Principle 9 – *Timely Publication of Trading Information* (“**SEF Core Principle 9**”) and DCM Core Principle 8 – *Reporting of Trade Information* (“**DCM Core Principle 8**”). In addition to compliance with these core principles, the CFTC requires the Applicant to demonstrate that new products are not susceptible to manipulation (see SEF Core Principle 3 and DCM Core Principle 3).

Specifications for swaps that trade on the Applicant's Facility are set forth in Chapter 10 of the Rulebook. In order to introduce new products or change existing products on the

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Facility, the Applicant must conduct an analysis of the underlying cash market and the deliverable supply of the underlying product. In response to the Applicant's process for introducing a new product or changing an existing product, as described below, the CFTC has the right to follow up with questions requesting additional information on the underlying market including, but not limited to: supply and demand characteristics, participant composition, market concentration, deliverable supply estimates, the relation of the swap size to the underlying market, the quality of the product across various delivery facilities and the delivery facilities used for the product. If the Applicant is unable to provide satisfactory answers to the CFTC's questions, they may require the Facility to withdraw the proposed product addition or change. The CFTC has never required the Applicant to withdraw a proposed addition or change. It is the Applicant's experience that the terms and conditions of most swaps that trade on the Facility are standardized, generally accepted and understood by participants.

When the Applicant wishes to add or change a product, the Applicant files changes to its Rulebook with the CFTC at least one business day prior to adding a new product or at least ten business days prior to changing a product. The CFTC may object to the rule change or stay the rule change and request further information at any time. Alternatively, the Applicant may choose to request prior CFTC approval, for example if a new product is complex or controversial, or if the product has more than one regulator and the other regulator requires pre-approval.

The decision to request prior CFTC approval is at the discretion of the Applicant. CFTC Regulation 40.2, which sets forth the procedure for DCMs and SEFs to self-certify a product, does not provide guidance as to when a product should be self-certified versus submitted to the CFTC for review and approval under CFTC Regulation 40.3. The CFTC places the onus on DCMs/SEFs to determine if a product should be submitted for CFTC review and approval because it possesses unique or controversial attributes. To date, trueEX has self-certified all products and has not submitted any products to the CFTC for review and approval.

The Applicant has determined that certain interest rate swaps that trade on the Applicant's Facility should be made available to trade ("**MAT**"). The MAT determination was made by self-certification filed with the CFTC on October 21, 2013.<sup>1</sup> In making this MAT determination, the Applicant applied the six factors set forth in CFTC Regulation 37.10(b) for SEFs (the identical six factors apply to DCMs under CFTC Regulation 38.12). These factors, set forth below, are primarily quantitative; however, certain aspects of their application may also involve a qualitative analysis.

<sup>1</sup> The MAT filing is available online at:

[https://www.trueex.com/system/notices\\_and\\_advisories/files/000/000/141/original/2013-14R-made-available-to-trade-determination-revised.pdf?1406833069](https://www.trueex.com/system/notices_and_advisories/files/000/000/141/original/2013-14R-made-available-to-trade-determination-revised.pdf?1406833069)



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- (i) Whether there are ready and willing buyers and sellers;
- (ii) The frequency or size of transactions;
- (iii) The trading volume;
- (iv) The number and types of market participants;
- (v) The bid/ask spread; or
- (vi) The usual number of resting firm or indicative bids and offers.

Additionally, the terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.

The Applicant has implemented: (i) pre-trade limits on order size, (ii) price collars or bands around the current price and (iii) message throttles. The Applicant has the power to set daily price limits, position limits and position accountability limits, as necessary, as set out in the Rulebook. To date the Applicant has not determined it necessary to set such limits. Section 2.13 of this application covers the way that the Applicant measures, manages and mitigates the trading risk associated with products traded on the Facility.

#### 1.4 IOSCO Principles

To the extent it is consistent with the laws of the foreign jurisdiction, the Applicant adheres to the standards of the International Organisation of Securities Commissions (“**IOSCO**”) including those set out in the “Principles for the Regulation and Supervision of Commodity Derivatives Markets” (2011).

The Applicant adheres to the standards of IOSCO by virtue of the fact that it must comply with the CEA and CFTC Regulations, which reflect the IOSCO standards. The Applicant is regularly examined by the CFTC and during these examinations the IOSCO standards to which they are subject are taken into account.

### ARTICLE 2 RECOGNITION OR AUTHORIZATION PROCESS OF THE FOREIGN REGULATOR IN THE HOME JURISDICTION

#### 2.1 Corporate Governance

The Applicant is a Delaware limited liability company that is member-managed pursuant to Section 18-402 of the *Limited Liability Company Act* of Delaware. The board of managers of the Applicant (the “**Board**”) is constituted in accordance with the Operating Agreement of the Applicant dated October 18, 2011 (the “**Operating Agreement**”) and manages the Applicant.

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The Board has the power by itself or through agents, and is authorized and empowered on behalf and in the name of the Applicant, to perform all acts and enter into other undertakings that it may in its discretion deem necessary or advisable in order to promote the sound and efficient operation of the Facility (except such as otherwise required by applicable law), including, but not limited to, the following:

- (i) ensuring that the Facility complies with all statutory, regulatory and self-regulatory responsibilities under the CEA;
- (ii) reviewing, approving and monitoring major strategic, financial and business activities, the Applicant's budget and financial performance;
- (iii) evaluating risks and opportunities facing the Applicant and proposing options for addressing such issues; and
- (iv) overseeing and reviewing recommendations from the Applicant's committees and the Chief Compliance Officer.

Each director of the Board (each a "director") is expected to comply with all applicable law and Applicant policies, and promote compliance by the Applicant and all of its employees. The Board discharges its responsibilities and exercise its authority in a manner, consistent with applicable legal and regulatory requirements that promotes the sound and efficient operation of the Applicant and its swap execution activities.

## **2.2 Board, Committees Representation and Employee Liability**

### **2.2.1 The Board of Directors**

The Board currently consists of four directors. Each Director of the Board holds office for a term of one year or until such Director's successor is elected by holders of a majority of the Applicant's Class A Units at the next annual meeting of the Applicant, or until such Director's earlier death, resignation or removal.

At least thirty-five (35%) percent of the directors of the Applicant must be Public Directors, as such term is defined from time to time in the rules, regulations, orders, directives or any interpretation thereof promulgated by the CFTC. Currently, two of the four directors are Public Directors. "Public Directors" must be capable of exercising independent judgment to guard against conflicts of interest and assisting the entire Board to carry out their responsibilities more effectively.

Potential directors are proposed by the Nominating Committee and must be approved by the Applicant's shareholder in order to assume office. Any vacancies caused by death, resignation or any other reason may be immediately filled by the Applicant's shareholder without a proposal from the Nominating Committee with any qualified person, who shall

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hold office for the unexpired term and until his or her successor shall be duly chosen. Any director may be removed either for or without cause at any time by the affirmative vote of a majority of the directors or by the affirmative vote of the shareholder, at the annual meeting or at a special meeting called for that purpose.

Furthermore, the Applicant is committed to ensuring the integrity of its Facility and the stability of the financial system, in which market infrastructure plays an important role. The Applicant must ensure the integrity of swaps traded on the Facility and the protection of customer funds under SEF Core Principle 7 – *Financial Integrity of Transactions* (“**SEF Core Principle 7**”) and DCM Core Principle 11 – *Financial Integrity of Transactions* (“**DCM Core Principle 11**”). The Applicant fulfills this requirement in part through compliance with SEF Core Principle 3 – *Swaps Not Readily Subject to Manipulation* (“**SEF Core Principle 3**”) and DCM Core Principle 3 – *Contracts Not Readily Subject to Manipulation* (“**DCM Core Principle 3**”). Stability of the market infrastructure is enhanced through compliance with SEF Core Principle 13 – *Financial Resources* (“**SEF Core Principle 13**”) and DCM Core Principle 21 – *Financial Resources* (“**DCM Core Principle 21**”). SEF Core Principle 13 and DCM Core Principle 21 requires the Applicant to maintain adequate financial resources to discharge its responsibilities and ensure orderly operation of the market. The rules, policies and activities of the Applicant are designed and focused on ensuring that they maintain best practices and fulfil this public interest mandate. The Applicant operates on a basis consistent with applicable laws and regulations, and best practices of other SEFs and derivatives trading facilities.

### 2.2.2 Board Committees

The Applicant’s Governance Policy contemplates three standing committees of the Board: a Nominating Committee, an Exchange Access Committee and a Regulatory Oversight Committee. The Board may from time to time constitute and appoint additional standing committees as it may deem necessary or advisable. The Applicant may also from time to time establish one or more special committees as it may deem necessary or advisable. The Applicant has established a Trading Protocol Committee as a special committee of the Board.

- (a) *Nominating Committee* – the responsibilities of the Nominating Committee are to:
  - (i) identify individuals qualified to serve on the Board, consistent with criteria specified by the Board and any composition requirements that the CFTC promulgates; and (ii) nominate individuals to the shareholder of the Applicant for designation as directors. The Applicant has established the Nominating Committee but it has remained inactive as there have been no changes to the Board since the Applicant’s inception.

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- (b) *Exchange Access Committee* – The responsibilities of the Exchange Access Committee are to: (i) determine the standards and requirements for initial and continuing Facility participation eligibility; (ii) review appeals of staff denials of Facility membership or participation applications; and (iii) approve rules that would result in different categories or classes of Participants receiving disparate access to the Facility. The Applicant has established the Exchange Access Committee but it has remained inactive to date as the Applicant has yet to grant a Participant access to the Facility.
- (c) *Regulatory Oversight Committee* - The responsibilities of the Regulatory Oversight Committee are to:
  - (i) Monitor the Facility's self-regulatory program for sufficiency, effectiveness, and independence;
  - (ii) Review the size and allocation of the Facility's regulatory budget and resources; and the number, hiring and termination, and compensation of regulatory personnel;
  - (iii) Review the performance of the Chief Regulatory Officer, and make recommendations with respect to such performance to the Board;
  - (iv) Recommend changes that would ensure fair, vigorous, and effective regulation; and
  - (v) Review all regulatory proposals prior to implementation and advise the Board as to whether and how such changes may impact regulation; and
  - (vi) Prepare an annual report to the Board and the CFTC assessing the self-regulatory program of the Facility and including a description of the program, the expenses of the program, the staffing and structure of the program, a catalog of investigations and disciplinary actions taken during the year, and a review of the performance of disciplinary committees and panels.
- (d) *Trading Protocol Committee* – The responsibilities of the Trading Protocol Committee are to: (i) designate and modify from time to time, the products eligible for execution on the Facility; (ii) establish, adopt, amend, supplement or otherwise modify from time to time, specifications for any contract, agreement, or transaction approved for trading on the Facility; (iii) consider formal recommendations provided by participants; (iv) establish and modify from time to time the rules, standards, conventions, processes or other trading protocols applicable to swaps traded on the Applicant's Facility; and (v) perform other

activities consistent with its committee charter. The Trading Protocol Committee currently consists of three directors, two of whom are Public Directors.

## 2.3 Directors Qualifications/Fitness Standards, Remuneration and Limitation of Liability

### 2.3.1 Director Qualifications and Fitness Standards

No individual may serve as a Director if either (i) a De-Registration Basis exists with respect to such individual, or (ii) such individual has committed a Serious Disciplinary Offense in the preceding three years. The terms “**Serious Disciplinary Offense**” and “**De-Registration Basis**” are defined in the Rulebook.<sup>2</sup>

In order to fulfill their responsibilities, directors (including Public Directors) are selected based on their experience, qualifications, attributes and skills and the understanding that their leadership will play an integral role in fulfilling the Applicant’s business objectives and legal obligations. In particular, directors should demonstrate sufficient experience in the Applicant’s scope or intended scope of financial services and satisfy the fitness standards described above.

<sup>2</sup> A “Serious Disciplinary Offense” means, with respect to a natural person, that such person committed any serious disciplinary offense, such as: (1) was found within the prior three years by a Final Decision of a Self-Regulatory Organization, an administrative law judge, a court of competent jurisdiction, or the CFTC to have committed a Disciplinary Offense (as defined in CFTC Regulation § 1.63(a)(6)); (2) entered into a Settlement Agreement (as defined in CFTC Regulation § 1.63(a)(7)) within the prior three years in which any of the findings, or in the absence of such findings, any of the acts charged, included a Disciplinary Offense; (3) currently is suspended from trading on any Designated Contract Market, is suspended or expelled from membership with any Self-Regulatory Organization (as defined in CFTC Regulation § 1.3(ee) and including a Derivatives Clearing Organization, is serving any sentence or probation or owes any portion of a fine imposed pursuant to either: (a) a finding by a Final Decision of a Self-Regulatory Organization, an administrative law judge, a court of competent jurisdiction or the CFTC that such person committed a Disciplinary Offense, or (b) a Settlement Agreement in which any of the findings or, in the absence 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; (4) currently is subject to an agreement with the CFTC or any Self-Regulatory Organization not to apply for registration with the CFTC or membership in any Self-Regulatory Organization; (5) currently is subject to or has had imposed on him within the prior three years a CFTC registration revocation or suspension in any capacity for any reason, or has been convicted within the prior three years of any of the felonies listed in §§ 8a(2)(D)(ii) through (iv) of the CEA; or (6) currently is subject to a denial, suspension or disqualification from serving on the disciplinary committee, arbitration panel or governing board of any “self-regulatory organization” as that term is defined in § 3(a)(26) of the Securities Exchange Act of 1934.

“De-registration Basis” means any basis upon which the CFTC could, subject to applicable procedural requirements, refuse to register, register conditionally, or suspend or place restrictions upon the registration under § 8a(2) of the CEA.

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In order to verify that each director is qualified to serve, the Applicant requires (a) a written statement from each prospective director containing the following: (x) biographical information demonstrating the prospective director's experience in the Applicant's scope and intended scope of financial services (including ancillary services valuable for the Applicant to fulfill its business purposes); and (y) representations that the prospective director has (i) no disciplinary offenses that would be disqualifying under Section 1.63(b) of the CFTC's regulations, (ii) no felony conviction in the last 10 years and (iii) no grounds for refusal to register under Section 8a(2) of the Commodity Exchange Act; and (b) each director to inform the Applicant's Chief Compliance Officer in writing if any of the information in the statement materially changes thereafter. Upon receipt of the written statement, the Applicant's Chief Compliance Officer will conduct a review to determine whether there is anything contradictory to the prospective director's statement, and will attempt to resolve any inconsistencies. The Chief Compliance Officer will report the results of this review to the shareholder and the Board prior to the election of the prospective director.

The Board reviews its performance and that of its individual directors on an annual basis. The Board, or a committee delegated such responsibility, shall establish criteria for the Board's evaluation, shall conduct the evaluation in accordance with such criteria, and shall make recommendations to improve deficiencies.

Any director failing to comply with, or certify compliance with, the governance principles, or whose conduct otherwise is likely to be prejudicial to the sound and prudent management of the Applicant, may be removed for cause at any time by the affirmative vote of a majority of the directors, other than the director whose conduct is at issue, or by the affirmative vote of a majority of the shareholders, at the Applicant's annual meeting or at a special meeting called for that purpose.

### **2.3.2 Director Remuneration**

Compensation awarded to Public Directors and other non-executive directors is not linked to the Applicant's business performance. The compensation committee of the Applicant's Board reviews compensation for Directors, both non-executive directors and Public Directors on an annual basis. Without stating any exact monetary limits, the CFTC provides general guidance on compensation of Public Directors, which states firms may not pay Directors at a level that will compromise their independence. A factor the Applicant's Board considers in determining Director compensation is the amount of time over the course of a year each Director is required to commit to support the Applicant. The Board meets at least 8 times per year and the various committees meet with the following frequency: 12 times for the regulatory oversight committee; 2 times for the trading protocols committee; and 3-4 times a year for the compensation committee. This does not include ad hoc meetings and calls. Also Directors have been called upon for unanimous written consents periodically throughout the year and to act in various

capacities as a Public Director (for example in connection with “know your client” requests). All of these factors are considered when determining a final compensation level for Directors.

### 2.3.3 Limitation of Liability

Members of the Applicant’s Management Team are recruited for their particular position based upon their skills and expertise. Their individual goals and performance are regularly assessed by their direct manager as part of the Applicant’s performance management process.

Pursuant to the Rulebook, the liability of each employee of the Applicant to third parties for obligations of the Applicant is limited to the fullest extent provided in the CEA and other applicable law. The Applicant’s Operating Agreement provide for the indemnification by the Applicant against losses or damages sustained by a person with respect to third-party actions or proceedings due to the fact that such person is a Director or other officer of the Applicant.

## 2.4 Conflicts of Interest

The Applicant, through its conflicts of interest rules, policies and procedures, as well as its compliance with SEF Core Principle 12 – *Conflicts of Interest* (“**SEF Core Principle 12**”) and DCM Core Principle 16 – *Conflicts of Interest* (“**DCM Core Principle 16**”), has established a robust set of safeguards designed to ensure that the Facility operates free from conflicts of interest or inappropriate influence as described above. The CFTC also conducts its own surveillance of the markets and market participants and actively enforce compliance with applicable regulations. In addition to this regulatory oversight, the Applicant separately establish and enforce rules governing the activity of all market participants in its market.

Each director is required to act in the best interests of the Applicant and to refrain from any conduct that would be, or gives the appearance of being, a conflict of interest. A “conflict of interest” exists when a director's private interest, including those of his or her immediate family, is inconsistent with or opposed to, or appears to be inconsistent with or opposed to, the Applicant’s interests. This includes a personal interest in a participant, vendor or other person that could be significantly and disproportionately impacted by a decision of the Board.

Prior to any deliberation or vote on the merits of any topic being considered by the Board or a committee of the Board, a director with a potential conflict of interest that does not choose to abstain from the deliberations and voting must disclose the potential conflict of interest to the Chairman of the Board or the chairman of the relevant committee. Under such circumstances, the director should consider recusing himself or herself from participating in the decision. The director is encouraged to consult with the Applicant’s



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General Counsel and any necessary external advisors in advance of the topic being discussed or voted upon. In the event that all directors may be subject to a conflict of interest with respect to any topic being considered by the Board, the Chairman of the Board shall notify the shareholder of the Applicant, which may call a special meeting of shareholder to make a determination on the topic being considered by the Board.

In addition to the general restrictions against conflicts of interest, all Public Directors are prohibited from having “material relationships” (as defined from time to time in the rules, regulations, orders, directives or any interpretation thereof promulgated by the CFTC) with the Applicant which reasonably could affect the independent judgment or decision-making of such director. “Material relationships” are currently defined to include the following:

- (i) The director, or an immediate family member of the director, may not be an officer or employee of the Applicant or its affiliate.
- (ii) The director, or an immediate family member of the director, may not be a member of the Applicant, or a director, officer or employee of an Applicant member (as defined in Section 1a(34) of the CEA and any regulation promulgated thereunder).
- (iii) The director, or an immediate family member of the director, may not be an officer of another entity, which entity has a compensation committee (or similar body) on which any officer of the Applicant serves.
- (iv) The director, or an immediate family member of the director, or an entity with which the director or such immediate family member is a partner, an officer, an employee or a director, may not receive more than \$100,000 in combined annual payments for legal, accounting, or consulting services from the Applicant, any affiliate thereof, any member of the Applicant or any affiliate of such member.

Notwithstanding the foregoing, (a) compensation for services as a director of the Applicant or as a director of an affiliate of the Applicant shall not count toward the \$100,000 threshold specified in clause (d) of the above definition, nor shall compensation for services rendered by such individual prior to becoming a director of the Applicant, so long as such compensation is or was in no way contingent, conditioned or revocable; and (b) a Public Director may also serve as a director of an affiliate of the Applicant if he or she otherwise meets the requirements set forth in clauses (a) through (d) of the above definition of “Material relationships”.

Each of the preceding disqualifying circumstances is subject to a one-year look back. Public Directors have an affirmative duty to investigate from time to time, and promptly disclose, the existence and nature of any such material relationships to the Board. The

Board must make such findings of any material relationship upon the nomination or appointment of the proposed Public Director and as often as necessary in light of all circumstances relevant to such director, but in no case less than annually.

Finally, the Applicant, through its conflicts of interest rules, policies and procedures, as well as its compliance with SEF Core Principle 12 and DCM Core Principle 16, has established a robust set of safeguards designed to ensure that the Facility operates free from conflicts of interest or inappropriate influence as described above. The CFTC also conducts its own surveillance of the markets and market participants and actively enforces compliance with applicable regulations. In addition to this regulatory oversight, the Applicant separately establishes and enforces rules governing the activity of all market participants in its market. The Applicant has done this primarily by establishing a Regulatory Oversight Committee (“**ROC**”), which is made up of independent directors of the Applicant's Board. The Chief Compliance Officer (“**CCO**”) reports to the Board and the ROC oversees all regulatory activities and actions to ensure the CCO and SEF is appropriately enforcing the SEF's own rules and CFTC regulations. The ROC meets with the CCO on at least a quarterly basis or more frequently if necessary.

## **2.5 Fees and financial viability**

All fees imposed by the Applicant are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by participants to the services offered by the Applicant. The CFTC requires that a SEF or DCM must charge comparable fees for participants receiving comparable access to, or services from, the SEF or DCM. The Applicant complies with this requirement and therefore fees charged by the Applicant do not create an unreasonable condition or limit on access to the Facility by participants.

The Applicant is required by CFTC Regulations to charge all Participants fees that are impartial, transparent and applied in a fair and non-discriminatory manner. The Board of the Applicant has the sole authority to set the times and amounts of any assessments or fees to be paid by participants. To date, the Applicant has not charged Participants any fees for using the Facility. Once the Applicant begins charging fees, it will publish its fee schedule on the Applicant's website. In order to determine fees to charge all Participants, the Applicant assembles an informal committee comprised of representatives from Management, Sales, Legal, Regulatory and Operations. This committee considers factors to establish fees that are fair and appropriate for the services offered while being competitive with competitors in the industry. Where required, fees are filed with the CFTC and prior contractual notice is provided to members. Please refer to the Applicant's “Fee Notices” for more information on current fees charged.

Finally, the Applicant has adequate financial and staff resources to carry on its activities in full compliance with its regulatory requirements and with best practices. Under

U.S. Regulations, the Applicant must submit unaudited financial statements to the CFTC on a quarterly basis and maintain adequate financial resources to cover its operating costs for a period of at least one year, calculated on a rolling basis. The Applicant maintains the current minimum financial resources required, and will maintain any future minimum financial resources required to meet CFTC requirements.

## **2.6 Transparency**

The Applicant is obligated to comply with U.S. Regulations. The U.S. Regulations also require that the Applicant implements rules that require compliance with the U.S. Regulations by its participants. The Rulebook, which address SEF and DCM trading practices, are subject to the standards and requirements outlined by the SEF Core Principles and DCM Core Principles. At a high level, the SEF Core Principles, DCM Core Principles and Rulebook both seek to ensure fair and orderly markets accessible to all eligible participants.

Rules pertaining to order size and limits are set forth in Chapter 5 of the Rulebook. As noted in the previous paragraph, the Rulebook is subject to the standards and requirements outlined by the SEF Core Principles and DCM Core Principles: the Applicant submits that its rules for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent.

SEF Core Principle 9 and DCM Core Principle 8 requires a SEF or DCM to make public timely information concerning transactions executed on the Facility. The Applicant fulfills these core principles by posting trade data to its website daily, including previous day high, low, open and close price and total volume, and by reporting swaps data to DTCC Data Repository (U.S.) LLC (“DTCC”), the SDR for the Applicant’s Facility. DTCC is a designated trade repository in Québec. As a Facility for trading swaps, the Applicant is not required to record and publish order information.

## **2.7 Fair and Equitable Access**

Consistent with applicable law, including SEF Core Principles and DCM Core Principles, the Facility provides access to participants on a fair, non-discriminatory and open basis. Participant status, and access to, and usage of, the Facility in such capacity is available to all market participants that meet the criteria set forth by the Applicant and engage in transactions on the Facility in compliance with all Facility rules. Chapter 3 of the Rulebook set out the admission and eligibility criteria that participants must meet. Among other requirements, Rulebook standards require that participants must:

- be of good financial standing and meet the financial and related reporting requirements set forth in Chapter 3 of the Rulebook.

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- upon initial application for trading privileges on the SEF, represent to the Applicant that it is an ECP. In addition, at least annually, a SEF participant must represent that it has been and continues to be as of such date, an ECP;
- notify the Applicant's CCO immediately upon becoming aware that it fails to meet its minimum financial requirements;
- demonstrate a capacity to adhere to all applicable rules of the Facility, rules of any clearing agency to which the participant submits swaps for clearing, CFTC regulations and SRO regulations, including those concerning record-keeping, reporting, financial requirements and trading procedures; and in the case of Québec participants, that they are appropriately registered, exempt from registration, or are not required to be registered, in accordance with applicable Québec laws and regulations at the time of their onboarding onto the Facility; and
- notify the Applicant immediately upon becoming aware that (i) it fails to meet its minimum financial requirements, including the requirements for ECP eligibility, (ii) it fails to meet any of the participant eligibility requirements set forth in Rule 302 of the Rulebook, or (iii) any of its traders authorized to trade on the Applicant's Facility qualify for de-registration pursuant to the Applicant's Rulebook.

SEF Core Principle 11 – *Antitrust Considerations* (“**SEF Core Principle 11**”) and DCM Core Principle 19 – *Antitrust Considerations* (“**DCM Core Principle 19**”) requires that, unless necessary or appropriate to achieve the purposes of applicable law, a SEF or DCM should avoid (a) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or (B) imposing any material anticompetitive burden on trading. As such, the Applicant does not implement rules that would impose any burden on competition that is not reasonably necessary and appropriate because such rules would not meet SEF Core Principle requirements.

The Applicant may deny the grant of trading privileges, prevent a person from becoming or remaining a participant if it would cause the Applicant to be in violation of any applicable law. Pursuant to the procedures set forth in Rule 307 of the Rulebook, any applicant who is denied trading privileges or any participant who has privileges removed may request, in writing within 7 days of receiving written notice of the Applicant's decision, reasons for the Applicant's decision. The Applicant must provide such reasons in writing within 14 days of receiving the request. Within 14 days of receiving the Applicant's written response, the applicant or participant, as the case may be, may request, in writing, that the Exchange Access Committee reconsider the Applicant's initial decision and may provide any written representations or other information that the

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applicant or participant, as the case may be, believes is relevant to the reconsideration. The Exchange Access Committee must then, within 28 days of receiving the applicant or participant's appeal request, confirm, reverse or modify the initial decision and will promptly notify the applicant or participant as the case may be, accordingly. The Exchange Access Committee may in its discretion schedule a hearing or establish any other process that it believes is necessary and appropriate to consider the request for reconsideration. Any decision by the Exchange Access Committee constitutes the final action of the Applicant with respect to the matter in question and is not subject to appeal. After an appeal to the Exchange Access Committee, there is not another appeal possible. Nor does the CFTC hear appeals. No determination to discontinue a person's trading privileges take effect until the review procedures hereunder have been exhausted or the time for review has expired.

The Applicant does not and may not offer different types of access to its platform to different types of participants. Swap dealers do not trade on behalf of their customers on the Facility, but rather they trade for their own account. Each of a swap dealer's customers (for example, buy-side firms) is a counterparty to the swap dealer in transactions executed on the Facility. As such, each trading counterparty must be a participant on the platform. The Applicant has jurisdiction over all participants who directly or indirectly access the platform in accordance with Rule 301 of the Rulebook.

## **2.8 Regulation of Participants**

Both a SEF and a DCM are considered self-regulatory organizations under CFTC rules. As a result, the Applicant is obliged under CFTC rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and to discipline participants, including by means other than exclusion from the marketplace. Participants are required to comply with a significant number of rules governing trading on the Facility pursuant to the Rulebook. The applicable rules are primarily located in Chapter 5 (Trading Practices and Business Conduct) of the Rulebook.

The Applicant expends considerable human, technological and financial resources that are focused on the maintenance of fair, efficient, competitive and transparent markets, and the protection of all Facility participants from fraud, manipulation and other abusive trading practices. The Applicant's market surveillance activities include a broad range of interconnected efforts that include trade practice reviews, data quality assurance audits and enforcement activities. To fulfill its mandate to effectively monitor and enforce the Facility's rules, the Applicant has established an automated trade surveillance system capable of detecting potential trade practice and violations of the Rulebook. The real-time market surveillance practices of the Applicant consist primarily of responding to emergency situations identified by staff of the Applicant. Responses could include, but are not limited to: (a) suspending or closing the platform, (b) addressing issues relating to the market opening or closing late, (c) suspending participants in cases of clear violation

of the Applicant's rulebook, (d) addressing trade errors or trades that fail to clear and (e) resolving trade repository reporting issues. In addition, on a T+1 basis, the Applicant reviews a series of alerts for potential abuses generated by the Applicant's automated trade surveillance system.

Participants are required to comply with a significant number of rules governing trading on the Facility pursuant to the Facility's rules. The applicable rules are primarily located in Chapter 5 (Trading Practices and Business Conduct) of the Rulebook and address topics such as fraudulent acts (Rule 504), fictitious and non-competitive transactions (Rule 505), wash sales (Rule 506), market disruption (Rule 507), market manipulation (Rule 508), misstatements (Rule 509), misuse of the platform (Rule 513), and the withholding, priority, handling and disclosure of orders (Rules 516-520). Chapter 5 of the Rulebook also addresses, among other things, pre-arranged trades, position limits, rules related to use of IDs, errors, corrects and cancellations, block trades, execution methods and record-keeping.

Investigating and enforcing rule violations are necessary components of regulatory safeguards. The Facility's disciplinary rules, including the conducting of investigations, prosecution of violations and imposition of sanctions are described Chapter 6 (Disciplinary Rules) of the Rulebook. The Applicant is dedicated to safeguarding the integrity of its Facility, and ensuring that it is free from manipulation and other abusive practices. These efforts are a necessary component of efficiently working markets, and so it is committed to ensuring that participants are able to use the Facility with the knowledge that it remains open and transparent.

Specifically with reference to regulatory technology, the Applicant has made significant investments in this area, including staff dedicated solely to the support and continuous development of its regulatory technology infrastructure, ensuring that the Applicant's regulatory and market protection capabilities anticipate and evolve with the changing dynamics of the marketplace. The Applicant has developed an audit trail of market activity and powerful and flexible data query and analytical tools that allow its regulatory staff to examine real-time and historical order, transaction and position data, maintain profiles of markets and participants, and to detect trading patterns potentially indicative of market abuses.

## 2.9 Regulation – Rulemaking

The Applicant has rules, policies and other similar instruments ("**Rules**") that are designed to appropriately govern the operations and activities of participants and do not permit unreasonable discrimination among participants or impose any burden on competition that is not reasonably necessary or appropriate. Pursuant to its obligations under the CEA and under CFTC Regulations, the Applicant has implemented rules, policies and other similar instruments that govern the operations and activities of its

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participants. The Applicant's rules are covered in Chapters 1 through 10 of its Rulebook, which include: Chapter 1 (Definitions), Chapter 2 (Exchange Ownership and Governance), Chapter 3 (Trading Privileges), Chapter 4 (Obligations of Exchange Users), Chapter 5 (Trading Practices and Business Conduct), Chapter 6 (Disciplinary Rules), Chapter 7 (Arbitration Rules), Chapter 8 (Clearing), Chapter 9 (Miscellaneous) and Chapter 10 (Interest Rate Swap Contracts). The Rulebook is available on the Applicant's website under the "Client Resources > Rules and Notices" section.

The Applicant is obligated to comply with the CEA, the SEF Core Principles, the DCM Core Principles and the CFTC Regulations (collectively, the "**U.S. Regulations**"). As a result, the Applicant must implement rules that require compliance with the U.S. Regulations by its participants.

The Rulebook is subject to the standards and requirements outlined by the SEF Core Principles and the DCM Core Principles. At a high level, the Rulebook seeks to ensure fair and orderly markets accessible to all eligible participants. This aim is accomplished by establishing rules that reflect the SEF Core Principle and DCM Core Principle criteria discussed below.

The Rules are not contrary to the public interest and are designed to:

- (i) **ensure compliance with applicable legislation.** SEF Core Principle 1 – *Compliance with SEF Core Principles* and DCM Core Principle 1 – *Designation as a Contract Market* requires the Applicant to comply with all applicable CFTC requirements and core principles to be designated a SEF and a DCM and maintain such designations. The Applicant proactively ensures compliance with all applicable laws and regulations, evidenced in part by its regular dialogue with the CFTC, including public commenting on proposed regulations. SEF Core Principle 2 and DCM Core Principle 7 requires a SEF or DCM to ensure participants consent to SEF or DCM rules and jurisdiction prior to accessing its markets. Chapter 3 of the Rulebook governs membership requirements for participants and establishes compliance with the rules that brings market participants within the jurisdiction of the CFTC and the scope of the SEF Core Principles and DCM Core Principles.
- (ii) **prevent fraudulent and manipulative acts and practices.** SEF Core Principle 2 and DCM Core Principle 2 requires a SEF or DCM to collect information, examine members' records, direct supervision of the market, maintain sufficient compliance staff, establish procedures for and conduct audit trail reviews, perform real-time market monitoring and market surveillance and establish an automated trade surveillance system. The Applicant has instituted all these controls. SEF Core Principle 3 and



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DCM Core Principle 3 requires a SEF or DCM to ensure the swaps it trades are not readily susceptible to manipulation. The Applicant complies with these core principles by including narrative descriptions of the product terms and conditions of every swap. Also, Chapter 5 of the Rulebook prescribes trading practices and trading conduct requirements, including prohibited trading activities and prohibitions on fictitious trades, fraudulent activity and manipulation.

- (iii) **promote just and equitable principles of trade.** SEF Core Principle 9 and DCM Core Principle 8 requires a SEF or DCM to promote transparency by making timely public disclosures of trading information. The Applicant conforms to these core principles by publishing daily information on settlement prices, volume, open interests, and opening and closing ranges for actively traded swaps. SEF Core Principle 7 and DCM Core Principle 11 require a SEF or DCM to ensure the financial integrity of transactions entered into on its markets. The Applicant's data and order entry systems offer simultaneous and equivalent access to all market participants. SEF Core Principle 11 and DCM Core Principle 19 prohibits the imposition of unreasonable restraints or uncompetitive burdens on trade. Throughout its rulebook, the Applicant has established transparent and objective standards to prevent unreasonable restraints on trade and foster competitive and open market participation.
- (iv) **foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange.** Rule 218 of the Rulebook authorizes the Applicant to enter into information-sharing arrangements as it determines necessary or advisable to obtain any necessary information, to perform any monitoring of trading or trade processing, to provide information to the CFTC upon request and to carry out such international information-sharing agreements as the CFTC may require. Furthermore, the Applicant may enter into any arrangement with any other person (including any governmental authority, trading facility or clearing organization) where the Applicant determines such person exercises a legal or regulatory function under any applicable law or considers the arrangement to be in furtherance of the operation or duties of the Applicant under applicable law.
- (v) **promote a framework for disciplinary and enforcement actions.** SEF Core Principle 2 and DCM Core Principle 7 requires a SEF or DCM to adopt a rule enforcement program, disciplinary procedures and sanctions. In response to this requirement, Chapter 6 of the Rulebook describes the Applicant's rule enforcement procedures.

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- (vi) **ensure a fair and orderly market.** SEF Core Principle 3 and DCM Core Principle 3 requires a SEF or DCM to ensure that swaps traded on the facility are not readily subject to manipulation. SEF Core Principle 4 and DCM Core Principle 4 requires a SEF or DCM to establish procedures for monitoring of trading and trade process. The Applicant complies with these core principles by prescribing trading rules, collecting and evaluating market activity data, by maintaining and auditing its real-time monitoring program, and by auditing historical data to detect trading abuses. SEF Core Principle 9 and DCM Core Principle 8 requires timely public disclosure of trade information, all of which is published daily. SEF Core Principle 14 – *System Safeguards* and DCM Core Principle 20 – *System Safeguards* requires a SEF or DCM to establish and maintain risk analysis, emergency procedure, and periodic systems testing programs. The Applicant periodically reviews its programs and procedures, including risk analysis, emergency planning, and systems testing. The Applicant regularly audits systems and technology tests both for technical and regulatory compliance.

## 2.10 Regulation – Record Keeping

The Applicant has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, participant applications (and denials of participant access, including reasons), audit trail information on all trades, investigations and compliance with, and/or violations of exchange requirements.

The Applicant collects data on a daily basis related to its regulated activity in compliance with SEF Core Principle 10 – *Recordkeeping and Reporting* and DCM Core Principle 18-- *Recordkeeping*. The Applicant is required to maintain records of all activities relating to its business, including data related to order messaging, order execution, and pricing. Data is collected from across the Facility, independent of whether the transaction was privately negotiated or matched in the central limit order book. The Applicant maintains a precise and complete data history, referred to as the audit trail, for every order entered and transaction executed on the Facility. Audit trail information for each transaction includes the order instructions, entry time, modification time, execution time, price, quantity, account identifier and parties to the transaction. On a daily basis, files of all electronic order and cleared trade information are archived to non-rewritable media, and copies are stored at multiple locations to ensure redundancy and critical safeguarding of the data. Furthermore, as a safeguard, the CFTC and the Applicant require participants to maintain all audit trail data for a minimum of 5 years.

## 2.11 Market Operations – Outsourcing

Where the Applicant has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

To date, the Applicant has not outsourced any of its key services or systems to a service provider, nor has it entered into any material licensing or services agreements with third parties. As described elsewhere in this Application, the Applicant has entered into agreements for the reporting of swap data and clearing agreements governing the Applicant's relationship with the clearing houses to which the Applicant submits swaps which are cleared.

## 2.12 Market Operations – Enforcement Rules

The Applicant operates a Facility that is regulated by the CFTC as a SEF and as a DCM. A Facility that is a SEF and DCM is a self-regulatory organization under CFTC rules and has certain obligations to monitor participants' trading activity on the Facility under Sections 37.203(e), 37.401, 37.402 and 37.403 of the CEA.

SEF Core Principle 2 and DCM Core Principle 7 requires a SEF or DCM to collect information, examine members' records, direct supervision of the market, maintain sufficient compliance staff, establish procedures for and conduct audit trail reviews, perform real-time market monitoring and market surveillance and establish an automated trade surveillance system. The Applicant has instituted all these controls and has adequate resources available to ensure that controls are properly applied. SEF Core Principle 2 and DCM Core Principle 7 also requires a SEF or DCM to adopt a rule enforcement program, disciplinary procedures and sanctions. Section 7 of this application describes the resources available to the Applicant to investigate and discipline participants for rule violations. Also, Chapter 6 of the Rulebook sets out the Applicant's disciplinary rules and procedures.

The Applicant is responsible for conducting an annual compliance review to assess all of the SEF Core Principles and DCM Core Principles. For the purposes of the annual review, the Exchange Regulation Department conducts periodic reviews in a number of areas to ensure compliance with the SEF Core Principles and DCM Core Principles, including, but not limited to reviews of: documentation, audit trail data, policies and procedures, testing documentation and quarterly reviews of financial resource calculation and downstream reporting to DCOs and the SDR.

SEF Core Principle 2 and DCM Core Principle 7 require the Applicant to adopt a rule enforcement program, disciplinary procedures and sanctions. In response to this requirement, Chapter 6 of the Rulebook sets out the Applicant's rules for rule enforcement.

The Applicant has the authority to initiate and conduct investigations, and prosecute violations of its Rulebook committed by participants, and to impose sanctions for such violations. It is the duty of the Applicant's Chief Compliance Officer to enforce the rules, but the Chief Compliance Officer may also delegate such authority to employees of the Applicant designated as market regulation staff ("**Market Regulation Staff**").

The Market Regulation Staff have the authority to conduct investigations of possible violations of the Rulebook, prepare written reports respecting such investigations, furnish such reports to the Applicant's review panel (the "**Review Panel**") and conduct the prosecution of such violations. An investigation must be commenced upon receipt of a request from CFTC staff or receipt of information by the Applicant that, in the judgment of the Market Regulation Staff, indicates a reasonable basis for finding that a violation has occurred or will occur.

If it is concluded that a violation may have occurred, the participant may be issued a warning letter or an investigation report concerning the matter may be filed with the Review Panel. No more than one warning letter may be issued to the same person found to have committed the same violation more than once in a rolling 12-month period. The investigation report must include the reason the investigation was initiated; a summary of the complaint, if any; the relevant facts; Market Regulation Staff's analysis and conclusions; and a recommendation as to whether disciplinary action should be pursued. The report may also include the participant's disciplinary history at the Facility, including copies of any warning letters.

The Review Panel has the power to direct that an investigation of any suspected violation be conducted by the Market Regulation Staff, and shall hear any matter referred to it by the Market Regulation Staff regarding a suspected violation. Upon receipt of an investigation report, the Review Panel shall promptly review the report and, within thirty (30) days of receipt, take one of the following actions:

- (i) If the Review Panel determines that additional investigation or evidence is needed, it shall promptly direct the Market Regulation Staff to conduct further investigation;
- (ii) If the Review Panel determines that no reasonable basis exists for finding a violation or that prosecution is otherwise unwarranted, it may direct that no further action be taken. Such determination must be in writing and must include a written statement setting forth the facts and analysis supporting the decision; or
- (iii) If the Review Panel determines that a reasonable basis exists for finding a violation and adjudication is warranted, it must direct that the participant alleged to have committed the violation be served with a notice of charges.

If the Review Panel determines that there may have been a violation but that no adjudication is warranted, the Review Panel may issue a warning letter to the participant informing it that there may have been a violation and that such continued activity may result in disciplinary sanctions. Where a violation is determined to have occurred, no more than one warning letter for the same potential violation may be issued to the same person during a rolling 12 month period.

If the Review Panel determines that a reasonable basis exists for finding a violation and adjudication is warranted, the Chief Compliance Officer shall serve a notice of charges (a “**Notice**”) on the participant alleged to have been responsible for the violation (such participant, the “**Respondent**”).

The Respondent shall serve on the Chief Compliance Officer a written answer (an “**Answer**”) to the Notice and a written request for a hearing on the charges within thirty (30) days of the date of service of the Notice. The Answer must include a statement that the Respondent admits, denies, or does not have and is unable to obtain sufficient information to deny each allegation.

Formal hearings on any Notice shall be conducted by the “**Hearing Panel**” selected by the Board. The Hearing Panel may not include any members of the Market Regulation Staff, or any person involved in adjudicating any other stage of the same proceeding. Prior to the commencement of the hearing, the Hearing Panel may accept a written offer of settlement from the Respondent, whereby the Respondent, without either admitting or denying any violations, may agree to: (1) a cease and desist order; (2) a fine for each violation plus the monetary value of any benefit received as a result of the violation (provided that in no case shall any fine exceed \$100,000 per violation); (3) restitution of any counterparty harm; and/or (4) revocation or suspension of trading privileges.

Chapter 6 of the Rulebook sets out the Applicant’s procedures for holding a hearing. After the hearing is complete, the Hearing Panel must render a written decision based upon the weight of evidence and must provide a copy to the Respondent.

Pursuant to Rule 610 of the Rulebook, the Board has the authority to appoint individuals at the recommendation of the Applicant’s CCO, each to serve for a term of one-year, subject to reappointment by the Board, as potential participants on a Disciplinary Panel. A “**Disciplinary Panel**” is a Review Panel or a Hearing Panel appointed by the Board at the recommendation of the CCO or the Chief Regulatory Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in Chapter 6 of the Rulebook, including conducting inquiries, investigations, disciplinary proceedings and appeals from disciplinary proceedings, summary impositions of fines, summary suspensions or other summary actions. When recommending individuals for a Disciplinary Panel, the CCO or the Chief Regulatory Officer must recommend at least three individuals that would satisfy the conditions for being deemed a Public Director (as

defined in Paragraph 2.1.7 above) and at least three individuals who represent the views of the applicable market participants. Each Disciplinary Panel shall be comprised of at least one individual deemed a Public Director and the remaining individuals from those representing the views of the applicable market participants, with the latter being chosen in a manner that prevents any group or class of industry participants from dominating or exercising disproportionate influence on the Disciplinary Panel being formed.

Pursuant to Chapter 7 of the Rulebook, the Applicant offers an alternative dispute resolution forum through the National Futures Association for all Persons (as that term is defined in the Rulebook), including Québec Participants, involved in disputes arising from any activity on or through the Facility.

### **2.13 Systems and Technology**

The Facility has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business.

The Applicant has put safeguards and security tools in place to protect the critical data and system components of its Facility. As discussed above, the Applicant has also established an automated trade surveillance system capable of detecting potential trade practice and violations of the Rulebook. The Applicant does not outsource its trade surveillance.

The Applicant captures and retains all audit trail data necessary to detect, investigate, and prevent customer and market abuses. Such data shall be sufficient to reconstruct all trades and trade-related activity within a reasonable period of time and to provide evidence of any violations of the rules of the Applicant. The Applicant has also developed risk monitoring tools and risk controls to prevent and reduce the potential risk of market disruptions, including but not limited to market restrictions that could pause or halt trading under market conditions prescribed by the Applicant.

The Applicant has established a Disaster Recovery and Business Continuity Policy with respect to the Facility. The Policy describes the Applicant's response to and address both small-scale and wide-scale service disruptions to the Applicant's Facility.

The Applicant operates and provides to participants a robust and scalable platform. Standard system monitoring metrics include capacity and performance level alerts. In addition to system level monitoring of capacity and performance of resources, the Applicant also conducts standardized application or platform capacity tests on a regular basis. This ensures the platform is well positioned to provide adequate responsiveness to customers. The data generated from these tests are used to establish present and historical benchmarks to identify performance and/or capacity hot spots or deficiencies. Additional

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resources are deployed where appropriate to resolve performance or capacity issues outside of the benchmark to bring performance back in line with benchmark expectation.

The Applicant does not provide a clearing service itself, nor does it outsource such a function.

The Applicant conducts regular performance and capacity tests in a production test environment which matches production in its size, scope and infrastructure. Testing is described above.

The Applicant and/or its service providers periodically conduct risk audits, internal physical security procedures compliance inspections and covert physical intrusion tests with independent security firms. Such tests are designed to periodically assess the operating effectiveness of physical security controls as well as to monitor internal compliance with security policies and procedures. External threats such as physical hazards and natural disasters are addressed in the Applicant's Disaster Recovery and Business Continuity Policy.

Configuration management is the subject of internal audits and is also included in the Applicant's Disaster Recovery tests.

The Applicant reviews and keeps current the development and testing methodology of the Systems pursuant to procedures contained in the Applicant's Compliance Manual, and Disaster Recovery and Business Continuity Policy. The Applicant's Disaster Recovery and Business Continuity Policy is designed to allow for the recovery and resumption of operations and the fulfillment of the duties and obligations of the Applicant following a disruption. The Applicant performs periodic tests to verify that the resources outlined in the Disaster Recovery and Business Continuity Policy are sufficient to ensure continued fulfillment of all duties of the Applicant under the CEA and CFTC Regulations.

The Applicant's data centers are located in Tier 1 facilities that have fully redundant power and cooling systems and full-time manned and electronic security and surveillance. The Applicant executes vulnerability scanning biweekly and penetration tests twice annually. Access to its network requires a private connection or firewall permission, which mitigates our susceptibility to service attacks. In addition, the Applicant executes a third-party risk assessment of systems and policies annually and monitors system resource usage and capacity daily. Performance tests are executed for each new software release or hardware change.

The Applicant employs a configuration management system to ensure systems are configured appropriately and to identify potential points of failure, lack of back-up and redundant capabilities. These configurations are backed-up and replicated. The Applicant compiles with the data/record retention policy defined by the CFTC.



The Applicant has developed and follows a Software Development Life Cycle to ensure proper development and testing methods are maintained for its systems.

Complete backups are stored in an approved off-site storage facility pursuant to the Applicant's Business Continuity Plan and Disaster Recovery document. This data is retained off-site for an appropriate amount of time (daily, weekly, or monthly), depending on the specific need of the application. The Applicant tests its Business Continuity and Disaster Recovery Plan three times each year: once during the industry-wide FIA Disaster Recovery Tests and twice internally.

The Applicant provides extensive market integrity controls to ensure fair and efficient markets. The Applicant uses risk monitoring tools and risk controls to prevent and reduce the potential risk of market disruptions, including the following: reasonability checks and limits (levels that provide warnings or prevents trader from entering prices outside certain limits), message throttles, functionality that cancels all orders on disconnect, the ability for a firm to suspend its own users, and the Applicant's ability to suspend users, firms and the market as a whole, in order to halt trading if warranted.

Finally, the Applicant's compliance staff conducts an annual compliance review as required by CFTC SEF Core Principle 15 to ensure it is complying with the Core Principles and related regulations. While it is an annual requirement, the Applicant's compliance staff conducts this review throughout the year. For example, the staff perform timestamp reviews at least quarterly to ensure the Applicant is in compliance with the "Straight Through Processing" requirements of the CFTC. The Annual Compliance Review is presented to the Applicant's Board, which must approve it before it is sent to the CFTC. Again, the ROC plays a critical role in the Applicant's requirement to be an SRO by supervising the CCO and overseeing all compliance requirements of the SEF.

## 2.14 Clearing and Settlement

The Applicant has or requires its participants to have appropriate arrangements for the clearing and settlement of transactions for which clearing is mandatory through a clearing house.

A SEF must submit all trades that are required to be cleared to a clearing house for clearing. The Applicant will provide direct connectivity for clearing to CME Inc. ("CME") and LCH.Clearnet Ltd. ("LCH"), both of which has obtained an exemption or interim exemption from recognition as a clearing agency in Québec and are registered as derivatives clearing organizations ("DCO") with the CFTC. Rule 301 of the Rulebook requires each participant of the Facility transacting for its own account to establish a clearing relationship with a clearing firm, or be a member of a clearing house and eligible to clear at such clearing house the contract to be executed on the Facility. The Applicant expects that Québec-based participants may either become clearing members of a clearing house and clear directly (provided such clearing house has obtained an

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exemption or interim exemption from recognition as a clearing agency in Québec) or rely on another clearing member for clearing.

If a trade is rejected by CME or LCH for any reason other than operational or clerical errors, the trade is void. If the trade fails for operational or clerical errors, the Applicant has the option of correcting the error and re-submitting the trade for clearing as provided for in CFTC No Action Letter 15-24, which is valid until June 15, 2017, unless extended by the CFTC.

As noted in the second paragraph of this 2.14, CME and LCH are registered as DCOs with the CFTC. As a DCO, the clearing houses must comply with the DCO Core Principles, including CFTC Regulation 39.13 – *Risk management* (“**CFTC Regulation 39.13**”), CFTC Regulation 39.10 – *Compliance with rules* (“**CFTC Regulation 39.10**”), and CFTC Regulation 39.18 – *System safeguards* (“**CFTC Regulation 39.18**”).

CFTC Regulation 39.13 mandates the appointment by a DCO of a chief risk officer whose duties include implementing a Board-approved written risk management framework. CFTC Regulation 39.10 mandates the appointment by a DCO of a CCO whose duties include review of the DCO’s written policies and procedures and compliance with each DCO core principle, including the risk management framework implemented by the CCO under CFTC Regulation 39.13. The CCO’s review of the DCO’s policies and procedures is included in an annual compliance report submitted to the CFTC.

CFTC Regulation 39.18(b) mandates the establishment and maintenance of a program of risk analysis and oversight with respect to the DCO’s operations and automated systems. CFTC Regulation 39.18(j) further requires that a DCO’s automated systems and business continuity and disaster recovery capabilities be tested by objective, independent and qualified professionals on a periodic basis. The Applicant participates in an annual industry-wide disaster recovery test sponsored by the Futures Industry Association and DCOs may also participate in the test.

Based on the foregoing requirements and compliance therewith by each of CME and LCH, in particular that CME and LCH are CFTC registered and therefore required to comply with Part 39 of the CFTC Regulations, the Applicant has assured itself that each clearing house has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

### ARTICLE 3 POWER OF THE APPLICANT REGARDING COOPERATION

The Applicant confirms that it has the power to co-operate fully with the AMF and self-regulatory organizations in the Province of Québec, and to provide information and documents with respect to its operations that could be reasonably requested by the AMF.

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Rule 218 of the Rulebook authorizes the Applicant to enter into information-sharing agreements or other arrangements or procedures necessary to allow the Applicant to obtain any necessary information to perform any monitoring of trading and trade processing, provide information to other markets, the CFTC or any other governmental body with jurisdiction over the Applicant upon request and which allow the Applicant to carry out such international information-sharing agreements as the CFTC may require. Also, the Applicant may enter into any information-sharing arrangement with any person or body (including the CFTC, any self-regulatory organization, any SEF, DCM, market, clearing organization or any Governmental Body). Currently, the Applicant shares information with DTCC (as a designated swap repository) and CME and LCH (as clearing houses).

The Applicant's CCO and General Counsel are responsible for ensuring that the Applicant remains in compliance with all applicable regulatory and legal requirements and responds in a timely manner to all requests for information from regulators and government authorities. The Applicant has a dedicated compliance staff led by its chief regulatory officer, who, in coordination with the Applicant's general counsel, ensures complete and timely responses to requests for information from all regulators with jurisdiction of the Applicant.

#### **ARTICLE 4**

##### **POWER OF THE FOREIGN REGULATOR IN THE HOME JURISDICTION REGARDING COOPERATION**

The CFTC has entered into memorandum of understanding ("MOU") arrangements for co-operative enforcements with foreign regulatory authorities in numerous jurisdictions. The MOUs typically provide for access to non-public documents and information already in the possession of the regulatory authorities, and often include undertakings to obtain documents and to take testimony of, or statements from, witnesses on behalf of a requesting regulatory authority. The CFTC and the AMF are parties to an MOU that was entered into by the parties on March 25, 2014.

#### **ARTICLE 5**

##### **CONDITIONS OF COMPLIANCE**

If authorization is granted, the Applicant undertakes to provide the AMF with the following information and any other information that may be required by the AMF, notably but not limited to: (i) its annual report and annual financial statements; (ii) any material amendment to the laws or regulations governing its activities; (iii) any amendment to its internal by-laws; (iv) any change respecting its right to operate or the existence of conditions respecting the performance of activities in its home jurisdiction; and (v) notice of any situation that could have an impact on its financial viability or its ability to operate.

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Furthermore, the Applicant undertakes to comply with any other applicable Québec law, including *An Act respecting the legal publicity of sole proprietorships, partnerships and legal persons* (R.S.Q., c. P-45), to maintain its recognition or authorization in its home jurisdiction and to abide by any AMF decision.



Bloomberg SEF LLC

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November 16, 2016

Autorité des marchés financiers  
800 Square Victoria, 22<sup>nd</sup> Floor  
C.P. 246, Tour de la Bourse  
Montréal, Québec  
Canada, H4Z 1G3

Attention: Madame Corinne Lemire and Monsieur Serge Boisvert

**Bloomberg SEF LLC – Application for Exemption from Recognition as an Exchange**

Dear Sirs and Mesdames,

Bloomberg SEF LLC (the “**Applicant**”) is filing this application with the *Autorité des marchés financiers* (the “**AMF**”) in order to obtain the following decisions:

- a decision under Section 86 of the *Derivatives Act* (Québec) (the “**Act**”) exempting the Applicant from the requirement to be recognised by the AMF as an exchange under Section 12 of the Act in relation to the operation of a swap execution facility (“**SEF**”) in the province;
- a decision under Section 86 of the Act exempting the Applicant from *Regulation 21-101 respecting Marketplace Operation* (“**Regulation 21-101**”); and
- a decision under Section 86 of the Act exempting the Applicant from *Regulation 23-101 respecting Trading Rules* (“**Regulation 23-101**”).

The Applicant is currently permitted to operate its SEF under an interim exemption order dated October 2, 2013 (the “**Interim Order**”). Furthermore, the Applicant is also permitted to operate its SEF under exemption orders in the Provinces of Alberta, British Columbia and Ontario.

The Applicant provides Participants with trading and execution services for swaps in credit, interest rate, foreign exchange and commodity asset classes. A full list of the products traded on the Applicant’s SEF can be found in Chapters 12-15 of the Applicant’s Rulebook, available at: <http://www.bloomberg.com/professional/sef-compliance/>.

The SEF operated by the Applicant has a wide range of sophisticated customers, including commercial and investment banks, corporations, pension funds, money managers, proprietary trading firms, hedge funds and other institutional customers. Each prospective Québec Participant (defined below) must be an “accredited counterparty” and an ECP (defined below).

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## BACKGROUND OF THE APPLICANT

The Applicant operates a SEF that is regulated by the U.S. Commodity Futures Trading Commission (“**CFTC**”). The Applicant provides participants of its SEF (“**Participants**”) access to execution services and liquidity across credit, interest rate, foreign exchange and commodity derivatives. The Applicant’s SEF enables Participants to engage in transactions as described in the Applicant’s SEF Rule 522.

Rule 522.A. provides execution methods for “**Required Transactions**”, which are transactions involving a swap that is subject to the trade execution requirement of Section 2(h)(8) of the *U.S. Commodity Exchange Act* (the “**CEA**”). Except for block trades, Participants must execute a Required Transaction using request for quote (“**RFQ**”) functionality, by sending an RFQ to at least three other unaffiliated Participants, or central limit order book (“**CLOB**”) functionality.

Rule 522.B. applies to “**Permitted Transactions**”, which are transactions involving swaps that are not Required Transactions. The following execution methods are available for Permitted Transactions:

- (a) Disclosed Order Book for Permitted Transactions in foreign exchange and commodity swaps;
- (b) Anonymous CLOB for Permitted Transactions in interest rate swaps and credit default swaps that are cleared swaps;
- (c) Disclosed CLOB for Permitted Transactions in interest rate swap and credit default swaps that are non-cleared swaps;
- (d) RFQ functionality-request for streaming quote for interest rate swaps and credit default swaps;
- (e) RFQ functionality-request for non-streaming quote for all swaps; and
- (f) Manual order ticket for Permitted Transaction interest rate swaps and credit default swaps that are cleared swaps.

Rule 522.C. provides execution methods for “**Package Transactions**”, which are transactions that involve two or more instruments, one of which is a Required Transaction.

Rule 522.E. provides execution methods for “**Block Trades**,” which are transactions above a size specified by the CFTC.

Under the terms of the Interim Order, the Applicant offers access to its SEF to Participants that are located in Québec (“**Québec Participants**”) and that satisfy criteria for an “accredited counterparty” as defined in Section 3 of the Act as well as the criteria for an “eligible contract participant” (“**ECP**”) as defined in Section 1a(18) of the CEA and as further described below. Québec Participants include Canadian financial institutions, registered dealers and advisers, government entities, pension funds and other well capitalized non-regulated entities.

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The Applicant has no physical presence in Québec and does not otherwise carry on business in Québec except as described herein.

The Applicant is a limited liability company organized under the laws of the State of Delaware in the United States and is a wholly owned subsidiary of Bloomberg L.P., a Delaware limited partnership (“BLP”). BLP and its affiliates are privately held and ultimately controlled by trusts established by Michael R. Bloomberg.

### **EXEMPTION FROM SECTION 12 OF THE ACT AND FROM REGULATION 21-101 AND 23-101**

#### **Exemption from the Requirement to be Recognised as an Exchange under Section 12 of the Act**

As described in greater detail in this application, the Applicant is subject to the requirements of the CEA as well as to oversight by the CFTC in its home jurisdiction. The CFTC’s registration requirements to be met by the SEF operated by the Applicant are stringent and do take into consideration elements such as governance, fees, fair and equitable access, regulation, market operations, systems and technology as well as clearing and settlement, as prescribed by the AMF.

Furthermore, the Applicant confirms that it has the power to cooperate fully with the AMF and self-regulatory organizations in the Province of Québec, and to provide information and documents with respect to its operations that could be reasonably requested by the AMF.

Based on the foregoing, the Applicant seeks an exemption from the requirement of Section 12 of the Act allowing it to carry on derivatives activities in the Province of Québec without being recognised by the AMF as an exchange or otherwise. We believe this exemption would not be detrimental to the protection of investors in the Province of Québec and would contribute to the efficiency of Québec’s SEF market.

#### **Exemption from Regulation 21-101 and Regulation 23-101**

The Applicant submits to the AMF that the application of Regulation 21-101 and Regulation 23-101 regarding marketplace operation and trading rules to the Applicant would result in duplication of the U.S. regulatory framework and hereby seeks an exemption from Regulation 21-101 and Regulation 23-101.

### **INFORMATION**

Enclosed is a certificate of an authorized signatory of the Applicant certifying the truth and accuracy of the facts contained herein.

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You will find below, the following information about the Applicant's business and policies under the following headings, which comply with Part 5 of the AMF's "*Policy Statement Respecting the Authorization of Foreign-Based Exchanges*":

- Article 1 – Regulation of the Applicant in its Home Jurisdiction
- Article 2 – Recognition or Authorization Process of the Foreign Regulator in the Home Jurisdiction
- Article 3 – Power of the Applicant Regarding Cooperation
- Article 4 – Power of the Foreign Regulator in the Home Jurisdiction Regarding Cooperation

If you have any questions or require anything further, please do not hesitate to contact us.

Yours very truly,

**BLOOMBERG SEF LLC**



Name: Benjamin Macdonald

Title: President, Bloomberg SEF LLC

cc: Blair Wiley, *Osler, Hoskin & Harcourt LLP*

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## ARTICLE 1 REGULATION OF THE APPLICANT IN ITS HOME JURISDICTION

### 1.1 Regulation of the Applicant

On July 21, 2010, President Obama signed into law the *Dodd–Frank Wall Street Reform and Consumer Protection Act* (the “**Dodd-Frank Act**”), which amended the CEA to establish a comprehensive new regulatory framework for swaps and security-based swaps. Section 721 of the Dodd-Frank Act added Section 1a(50) of the CEA, which defines a SEF. Section 723 of the Dodd-Frank Act added Section 2(h)(8) of the CEA, which requires that the execution of certain swaps, those that are subject to the mandatory clearing requirement of CEA Section 2(h), occur on a designated contract market (“**DCM**”) or SEF, unless no DCM or SEF makes the swap available to trade. Section 733 of the Dodd-Frank Act added Section 5h of the CEA, which provides registration and core principle requirements for SEFs (“**SEF Core Principles**”).

The Applicant is regulated in an appropriate manner in another jurisdiction by a foreign regulator, the U.S. Commodity Futures Trading Commission (the “**CFTC**” or “**Foreign Regulator**”). On July 30, 2013, the Applicant received temporary registration to operate a SEF in the United States pursuant to the CEA, and on January 22, 2016, the CFTC granted the Applicant permanent registration to operate a SEF. The Applicant is subject to regulatory supervision by the CFTC. The Applicant is obligated to give the CFTC access to all records. The CFTC reviews, assesses and enforces the Applicant’s adherence to the CEA and the regulations thereunder on an ongoing basis, including adherence to the SEF Core Principles. The SEF Core Principles relate to the operation and oversight of the SEF, including financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, and rule-making.

The Applicant is committed to providing impartial access to its services by complying with CFTC Regulation 37.202 – access requirements. The Applicant must ensure the integrity of swaps traded on the SEF under Core Principle 7 – *Financial Integrity of Transactions* (“**Core Principle 7**”). The Applicant fulfills this requirement in part through compliance with other SEF Core Principles, such as Core Principle 3 – *Swaps Not Readily Subject to Manipulation* (“**Core Principle 3**”). Stability of the market infrastructure is enhanced through compliance with Core Principle 13 – *Financial Resources* (“**Core Principle 13**”). Core Principle 13 requires a SEF to maintain adequate financial resources to discharge its responsibilities and ensure orderly operation of the market. The rules, policies and activities of the Applicant are designed and focused to ensure that they maintain best practices and fulfill this public interest mandate. The Applicant operates on a basis consistent with applicable laws and regulations, and best practices of other SEFs.

### 1.2 Authority of the Foreign Regulator in the Home Jurisdiction

The Foreign Regulator has the appropriate authority and procedures for oversight of the Applicant. This includes regular, periodic oversight reviews of the Applicant by the Foreign Regulator.

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The CFTC carries out the regulation of SEFs in accordance with certain provisions of the CEA. To implement SEF regulation, the CFTC has promulgated regulations and guidelines ("**CFTC Regulations**") that further interpret the SEF Core Principles (described below) and govern the conduct of SEFs. The CFTC also undertakes periodic in-depth audits or "reviews" of the Applicant's compliance with certain of the SEF Core Principles.

The Applicant is required to demonstrate its compliance with the SEF Core Principles. Among other things, the SEF Core Principles and CFTC Regulations require SEFs to have rules and a compliance program, including a chief compliance officer ("**CCO**") and a compliance manual. A SEF's access criteria must be impartial, transparent and applied in a fair and non-discriminatory manner. The CFTC requires each SEF to have certain required trading protocols, including, at a minimum, the availability of an order book for every contract that is listed by the SEF.

The Applicant's SEF rules are subject to the standards and requirements outlined by the SEF Core Principles. Minimum size for each swap contract is indicated in the Applicant's contract specifications, which are published in the Applicant's Rulebook. The Rulebook is available online and sets forth such minimum sizes and definitions in a transparent manner.

A SEF must publish on its website certain daily trading data, including, but not limited to price and volume information, for each swap contract listed on the SEF and must report all transactions executed on the SEF to a CFTC registered swap data repository ("**SDR**"). The CFTC reviews, assesses and enforces a SEF's adherence to CFTC Regulations on an ongoing basis.

A SEF is a self-regulatory organization under CFTC rules. A SEF is obliged under CFTC rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and to discipline participants and customers, including by means other than exclusion from the marketplace. The Applicant has contracted with the U.S. National Futures Association (the "**NFA**") as its regulatory service provider ("**Regulatory Services Provider**") to conduct market surveillance of trades executed on the Applicant's SEF.

### 1.3 Listing Criteria for Products

The swap contracts traded on the Applicant's SEF and any changes thereto must be submitted to the CFTC for certification or approval.

Prior to listing a new instrument/product on the SEF, the Applicant's business managers first assess the relative interest among Participants to list the instrument/product. If the Applicant's business managers determine that there is sufficient interest among Participants to list a new instrument/product, then the Applicant's business managers will inform the Applicant's Legal and Compliance teams of the request to list, and then the Legal and the Compliance teams will coordinate listing the new instrument/product and submitting the new swap contract to the CFTC for certification or approval.

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The process of designating a swap contract as made available to trade, or “**MAT**”, is governed by CFTC Regulation 37.10. In that regulation, the CFTC has set forth six factors that a SEF should consider, as appropriate, when designating a swap as MAT. The six factors are:

- (1) whether there are ready and willing buyers and sellers;
- (2) the frequency or size of transactions;
- (3) the trading volume;
- (4) the number and types of market participants;
- (5) the bid/ask spread; and
- (6) the usual number of resting firm or indicative bids and offers.

A SEF must consider these six factors to determine whether a swap should be designated as MAT. The swap must be listed on a SEF in accordance with the CFTC’s certification and approval rules (Rules 40.2 and 40.3) prior to the SEF’s filing of a MAT rule with respect to such swap.

Only one SEF needs to make a MAT filing under CFTC Regulation 37.10 for a swap to become “made available for trade.” After a MAT determination is final, the swap can be traded only on a SEF, but it does not need to be the SEF that made the CFTC Regulation 37.10 filing.

If the Applicant is satisfied that all mandatory CFTC conditions for MAT determination for a specific swap are met, the proposed rule will be submitted to the Applicant’s board of directors (the “**Board of Directors**”) for approval, and the Applicant will file with the CFTC a rule designating such swap as MAT under CFTC Rule 40.6.

As of the date of this letter, the Applicant has listed 13 MAT swap contracts.

SEF Core Principle 3 provides that a SEF can permit trading only for swaps that are not readily susceptible to manipulation. Specifically, CFTC Regulation § 37.301 requires a SEF, at the time it submits a new swap contract to the CFTC pursuant to Part 40 of the CFTC’s Regulations, to provide information demonstrating that the swap in question is not readily susceptible to manipulation. In order to self-certify a swap contract to be traded on the Applicant’s SEF platform, the Applicant must determine that the swap is not readily susceptible to manipulation, and demonstrate this compliance by providing the requisite information in the swap contract certification. If the Applicant is not able to determine that a new swap contract complies with CFTC requirements, the Applicant may seek prior CFTC approval of the swap contract, rather than self-certifying the swap contract. The CFTC has set forth factors for determining whether a swap is readily susceptible to manipulation in Appendix C to Part 38 of the CFTC Regulations (available here: <https://www.federalregister.gov/articles/2012/06/19/2012-12746/core-principles-and-other-requirements-for-designated-contract-markets#h-512>) (“**Appendix C to Part 38**”). As part of every self-certification of a new swap contract, the Applicant must provide the information set forth in Appendix C to Part 38 in order to demonstrate that the new swap is not readily susceptible to manipulation.

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Among the factors that the Applicant considers, as outlined in Appendix C to Part 38, are:

- the potential for manipulation or distortion of the cash settlement price;
- the reliability of the cash settlement price as an indicator of market values;
- the commercial acceptability, public availability and timeliness of the price series that is used to calculate the cash settlement price;
- whether the settlement price index is a reliable indicator of market values and conditions and is highly regarded by industry/market agents; and
- the commercial acceptability, public availability and timeliness of the price series that is used to calculate the cash flows of the swap.

When the Applicant wishes to list a swap contract for trading on its SEF, it submits the swap contract to the CFTC for “certification,” providing a certification to the CFTC that such contract complies with the CEA and with CFTC Regulations and is not susceptible to manipulation. Copies of swap contract certifications submitted by the Applicant can be found on the Applicant’s website at: <http://www.bloomberg.com/professional/sef-compliance/>. All contract listings found on the Applicant’s website under the “Resources” tab were done by self-certification, rather than by requesting CFTC approval. The CFTC has not required the Applicant to remove any product certifications for failing to comply with the SEF Core Principles or Part 40 of the CFTC Regulations. The Applicant has, however, voluntarily withdrawn and recertified certain swap contracts to amend the terms of such contracts.

The Applicant does take into consideration customary trading practices in drafting each contract for swaps that will be listed on the Applicant’s SEF as a commercial matter. However, conformity with usual trading customs and practices is not required for self-certification with the CFTC. Rather, among other things, the requirement that swaps listed by a SEF comply with the SEF Core Principles and Part 40 of the CFTC Regulations (which sets forth the requirements for listing a swap on a SEF) means that a SEF’s applications to list a swap (called the “**Part 40 Submissions**”) must contain an analysis of whether the swap is readily susceptible to manipulation.

In response to the Applicant’s process for introducing a new product or changing an existing product, as described above, the CFTC has the right to follow up with questions requesting additional information on the underlying market including, but not limited to: settlement methods, reference price, number of participants and deliverable supply estimates. If a SEF is unable to provide a satisfactory answer to the CFTC’s questions, the CFTC may require the SEF to withdraw the product certification for failing to comply with the SEF Core Principles and CFTC Part 40 Regulations.

In addition, Rule 525(a) of the Applicant’s Rulebook states that the Applicant will adopt position limits for each swap contract as necessary and appropriate. Thus far, the Applicant has not found it necessary or appropriate to adopt position limits for any swap contract. This conclusion is based in part on a statistical study conducted by the NFA in 2015 which found that accountability levels do little to reduce the potential threat of market manipulation or congestion. The Applicant continues to reassess its current

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conclusion, and will establish position limits in the future if it finds that doing so is necessary and appropriate.

#### 1.4 IOSCO Principles

To the extent it is consistent with the laws of the foreign jurisdiction and incorporated in the CFTC Regulations, the Applicant adheres to the standards of the International Organisation of Securities Commissions (“IOSCO”).

### ARTICLE 2 RECOGNITION OR AUTHORIZATION PROCESS OF THE FOREIGN REGULATOR IN THE HOME JURISDICTION

#### 2.1 Corporate Governance

As a limited liability company, the Applicant is managed by or subject to the direction of its Board of Directors and such officers as are appointed by the Board of Directors, in each case in accordance with the limited liability company agreement of the Applicant, as amended from time to time (the “**Operating Agreement**”). The Applicant’s Board of Directors has the power and authority to call for review, and to affirm, modify, suspend or overrule, any and all decisions and actions of standing committees or special committees of the Board of Directors or any panel of the officers. Also, the Applicant has established a “**Regulatory Oversight Committee**” to oversee the Applicant’s regulatory program on behalf of the Board of Directors. The authority of the Regulatory Oversight Committee is described in greater detail in Section 2.2.2 below.

#### 2.2 Board and Committee Representation

##### 2.2.1 The Board of Directors

A majority-in-interest of the member or members of the Applicant (currently BLP is the only member of the Applicant) may increase or decrease the number of directors from time to time; provided, however, that the Board of Directors shall always consist of at least five (5) directors. Pursuant to the Applicant’s Operating Agreement, the members of Bloomberg SEF are authorized to nominate and appoint directors to the Board of Directors. As indicated above, currently, BLP is the sole member of the Applicant.

At all times the Board of Directors must be composed of at least 35%, but no less than two, “**Public Directors**,” which are required to be nominated and appointed by Bloomberg SEF’s members pursuant to the Applicant’s Operating Agreement. Currently, the Board of Directors has two Public Directors. Also, the Regulatory Oversight Committee of the Board must consist only of Public Directors. Please see below for a discussion of the criteria for Public Director independence.

To qualify as a Public Director, a director must be found, by the Board of Directors on the record, to have no material relationship with the Applicant or any of its affiliates. A “material relationship” is one that reasonably could affect the independent judgment or

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decision making of such individual as a Public Director. In addition, an individual shall not be considered a "Public Director" if any of the following circumstances exist:

- (i) such director is an officer or an employee of the Applicant, or an officer or an employee of an affiliate of the Applicant;
- (ii) such director is a Participant on the Applicant's SEF, or a director, an officer or an employee of a Participant; or
- (iii) 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 Applicant or any affiliate of the Applicant. Compensation for services as a director of the Applicant or as a director of an affiliate of the Applicant does not count toward the \$100,000 payment limit, nor does deferred compensation for services rendered prior to becoming a director of the Applicant, so long as such compensation is in no way contingent, conditioned or revocable.

Currently, the Board of Directors has two Public Directors.

### **2.2.2 Board of Directors Committees**

The Board of Directors may from time to time constitute and appoint additional standing committees and advisory committees as it may deem necessary or advisable. The Applicant has established a Regulatory Oversight Committee that must consist only of Public Directors, appointed by the Board of Directors, to oversee the Applicant's regulatory program on behalf of the Board of Directors.

The Regulatory Oversight Committee has the authority to:

- (i) monitor the compliance program of the SEF operated by the Applicant for sufficiency and effectiveness;
- (ii) oversee all facets of the compliance program, including trade practice and market surveillance, audits, examinations conducted by the Regulatory Services Provider and other regulatory responsibilities with respect to Participants, Customers and Accounts (as such terms are defined in the Applicant's Rulebook) (including ensuring compliance with any financial integrity, financial reporting, sales practice, recordkeeping and other requirements), and overseeing the conduct of investigations by the Regulatory Services Provider;
- (iii) review the size and allocation of the regulatory budget and resources and the number, hiring and termination, and compensation of compliance personnel;
- (iv) recommend changes that would ensure fair, vigorous, and effective compliance; and

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- (v) review compliance proposals and advise the Board of Directors as to whether and how such changes may impact compliance.

## 2.3 Director Qualifications, Remuneration and Limitation of Liability

### 2.3.1 Director Qualifications and Fitness Standards

The SEF has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person and past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.

Rule 201(d) of the Applicant's Rulebook requires that the members of the Board of Directors, including Public Directors, shall be of sufficiently good repute and, where applicable, have sufficient expertise in financial services. Pursuant to Rule 207 of the Applicant's Rulebook, a director must meet the qualifications set forth from time to time in the Applicant's Operating Agreement. The Applicant considers several factors in determining the composition of the Board of Directors, including whether directors, both individually and collectively, possess the required integrity, experience, judgment, commitment, skills and expertise to exercise their obligations of oversight and guidance over a SEF. Members of the Applicant's Board of Directors have the following attributes:

- (i) sufficiently good reputation;
- (ii) requisite skills and expertise to fulfill their responsibilities in the management and governance of a SEF;
- (iii) a clear understanding of such responsibilities; and
- (iv) the ability to exercise sound judgment regarding SEF affairs.

As provided in the Applicant's SEF Rule 207, an individual may not serve as a director or serve on a committee established by the Board of Directors, a disciplinary panel of the SEF ("**Disciplinary Panel**") or an appeals panel ("**Appeals Panel**") of the SEF if the individual:

- (i) 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 as defined in CFTC Regulation 1.63;
- (ii) 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;
- (iii) has been 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;

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- (i) 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
- (ii) a settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense.
- (iv) 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;
- (v) is currently, or within the past three (3) years has been, subject to a revocation or suspension of registration by the CFTC;
- (vi) has been convicted of a felony listed in Section 8a(2)(D)(ii) through (iv) of the CEA; or
- (vii) is currently subject to a denial, suspension or disqualification from serving on a disciplinary committee, arbitration or appeals panel or governing board of any self-regulatory organization.

The Applicant requires all potential directors to complete a questionnaire before the Applicant will appoint such director to the Board of Directors in order to ensure that such potential director meets the criteria set forth above.

In addition, members of the Applicant's Management Team are recruited for their particular position based upon their skills and expertise. Their individual goals and performance are regularly assessed by their direct manager as part of the Applicant's performance management process.

### **2.3.2 Director Remuneration and Limitation of Liability**

The directors that are employees of Bloomberg SEF do not receive any remuneration for their services as directors, but each director is entitled to reimbursement from Bloomberg SEF for reasonable expenses incurred with respect to duties as a member of the Board of Directors or any committee. Pursuant to the Applicant's Operating Agreement, the Board of Directors may approve a fixed fee that is not tied to the Applicant's business performance to be paid to a non-employee director for attendance at each meeting of the Board of Directors or any committee. Directors' compensation is set by the Applicant at a level that reflects each director's responsibility, role and experience.

The Applicant's Operating Agreement provides for the indemnification of directors and officers by the Applicant against losses or damages sustained by a person with respect to third-party actions or proceedings due to the fact that such person is a director, officer or employee of the Applicant. The Applicant's rules limit the liability of the Applicant with respect to the Participants of the SEF operated by the Applicant.

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## 2.4 Conflicts of Interest

The Applicant has policies and procedures to appropriately identify and manage conflicts of interest for all officers, directors and employees. The Applicant, through its conflicts of interest rules, policies and procedures, as well as its compliance with SEF Core Principle 12 – *Conflicts of Interest* (“**Core Principle 12**”), has established a robust set of safeguards designed to ensure that the SEF operates free from conflicts of interest or inappropriate influence as described above. The CFTC also actively enforces compliance with CFTC Regulations, including Core Principle 12.

The Applicant’s CCO is responsible for, in consultation with the Board of Directors or the senior officer of the Applicant, resolving any conflicts of interest that may arise, including: (1) conflicts between business considerations and compliance requirements; (2) conflicts between business considerations and the requirement that the SEF operated by the Applicant provide fair, open, and impartial access as set forth in CFTC Regulation 37.202; and (3) conflicts between the Applicant’s management and members of the Board of Directors.

In addition, the Applicant’s Rulebook contains rules that address conflicts of interest in decision-making, methods to ascertain the presence of conflicts of interest and procedures for making decisions in the event of such a conflict. Rule 210 of the Applicant’s Rulebook contains rules and requirements concerning conflicts of interest for directors, officers or other persons authorized to exercise authority for the Applicant.

Specifically, Rule 210 prohibits a director, officer, panel member or other person authorized to exercise Bloomberg SEF’s authority concerning any inquiry, investigation or any disciplinary or appeals proceeding, summary suspension or other summary actions (any such action, a “**SEF Action**” and collectively, “**SEF Actions**”), or emergency actions (each such SEF Action or emergency action, a “**SEF Proceeding**”) from participating in any deliberations or vote of any committee of the Board of Directors, panel or exercise of Bloomberg SEF’s authority with respect to any SEF Proceeding when a director, officer, panel member or other authorized person has a “material conflict of interest” concerning any SEF Proceeding and his or her personal interests (each, an “**Interested Person**”) unless the procedures of Rule 210(c)-(f) (as described below) are followed.

For purposes of Rule 210, a “material conflict of interest” includes a director’s, officer’s, or other person’s:

- (a) being named as a respondent or potential respondent in a SEF Proceeding;
- (b) being an employer, employee, fellow employee or an affiliate of a respondent or potential respondent in a SEF Proceeding;
- (c) having any significant, ongoing business relationship with a respondent or potential respondent in a SEF Proceeding;

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- (d) having a family relationship with a respondent or potential respondent in a SEF Proceeding (including the individual's spouse, co-habitator, former spouse, parent, step-parent, child, step-child, sibling, step-brother, step-sister, grandparent, grandchild, uncle, aunt, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law); and/or
- (e) having a direct and substantial financial interest in the result of the deliberations or vote based upon either SEF or non-SEF positions. A direct and substantial financial interest includes positions held in swaps in the accounts of, controlled by, or affiliated with the Interested Person or any other types of direct and substantial financial positions of the Interested Person that are reasonably expected to be affected by the deliberations or vote.

Pursuant to Rule 210(c)-(f), before considering any SEF Proceeding, an Interested Person must disclose the material facts concerning his or her relationship or interest in a matter to the Board of Directors. Provided that this disclosure has been made, an Interested Person may participate in deliberations prior to a vote on a matter if (i) the material facts of the Interested Person's financial interest in the matter are disclosed or known to the Board of Directors, (ii) the Board of Directors determines that participation by the Interested Person would be consistent with the public interest, and (iii) a majority of the directors (excluding Interested Persons) vote to allow the Interested Person to participate in deliberations on the matter.

If all directors are determined to be Interested Persons with respect to a matter subject to a vote by the Board of Directors, then the President will appoint a panel of individuals who are not Interested Persons with respect to such matter, which will have the same authority and powers over such matter that the Board of Directors would have had if all directors were not Interested Persons with respect to such matter.

Rule 210 also prohibits any director, officer or member of any committee or panel established by the Board of Directors from using or disclosing any material, non-public information for any purpose other than the performance of his or her official duties and responsibilities.

The Applicant's directors must comply with a conflicts of interest policy (the "**Directors Conflicts Policy**") and a code of ethics (the "**Directors Code of Ethics**"), which is included in the Applicant's Operating Agreement. The Directors Conflicts Policy and Directors Code of Ethics cover topics such as conflicts of interest, securities insider trading, antitrust issues, document retention policies, gift and political contribution policies, etc.

The Applicant has also implemented a conflicts of interest policy for its employees and associated procedures designed to manage, minimize and resolve conflicts of interest (the "**Employee Conflicts Policy**") and a code of ethics for employees (the "**Employee Code of Ethics**"). A compliance officer designated by the Applicant will review the Directors Conflicts Policy, the Directors Code of Ethics, the Employee Conflicts Policy and the Employee Code of Ethics at least annually, and more frequently as needed.

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## 2.5 Fees and Financial Viability

The Applicant is required by CFTC Regulation 37.202 to establish access criteria, including fees, which are impartial, transparent and applied in a fair and non-discriminatory manner. The Applicant complies with this requirement, and therefore fees charged by the SEF do not create an unreasonable condition or limit on access by Participants.

All fee changes must be approved by the Applicant's Board of Directors and submitted to the CFTC as a rule certification or approval under Part 40 of the CFTC Regulation prior to their implementation. The Applicant publishes its fee schedule on the Applicant's website.

The Applicant has adequate financial and staff resources to carry on its activities in full compliance with its regulatory requirements and with best practices. Under Core Principle 13, a SEF must maintain adequate financial resources to cover its operating costs for a period of at least one year, calculated on a rolling basis, and must submit financial reports to the CFTC on a quarterly basis. A SEF must also hold liquid financial assets equal to at least six months' operating costs. The Applicant maintains the current minimum capital amounts needed, and will maintain any future minimum capital amounts needed, to meet CFTC requirements.

## 2.6 Fair and Equitable Access

The Applicant is required by CFTC Regulation 37.202 to establish access criteria that are impartial, transparent and applied in a fair and non-discriminatory manner.

Consistent with applicable law, the Applicant employs access criteria that are impartial, transparent and applied in a fair and non-discriminatory manner. Participant status, access to, and usage of, the Applicant's SEF is available to all market participants that meet the criteria set forth by the Applicant. Chapter 3 of the Applicant's Rulebook sets out the admission and eligibility criteria that Participants must meet. Any person that meets the following criteria and that complies with the remaining criteria set forth in Rule 301 of the Applicant's Rulebook, which is available at <http://www.bloomberg.com/professional/sef-compliance/>, may become a Participant:

- (a) the entity is an "eligible contract participant" as defined in the CEA, and each Account or Customer (as such terms are defined in the Applicant's Rulebook) on whose behalf it wishes to trade on the SEF is an ECP, in each case eligible to enter into the asset classes of swaps it wishes to trade on the SEF operated by the Applicant;
- (b) the entity is of good reputation and business integrity;
- (c) the entity is validly organized, in good standing, and authorized by its governing body and, if relevant, documents of organization, to trade swaps;

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- (d) the entity has not filed for bankruptcy;
- (e) is not a director, officer or employee of the Applicant (or the Applicant's Regulatory Services Provider or any individual rendering similar services to the Applicant under an administrative or similar agreement) or an agent or affiliate of the Applicant;
- (f) the entity is not prohibited from using the services of the Applicant for any reason whatsoever;
- (g) the entity holds all registrations required under any statute, law, regulation, rule or ordinance of any governmental or self-regulatory organization applicable to such person, including the CEA and CFTC Regulations ("**Applicable Law**"), if any;
- (h) the entity is not subject to statutory disqualification under Section 8a(2) of the CEA;
- (i) the entity satisfies any other criteria that the Applicant may require from a Participant to perform its self-regulatory organization responsibilities, comply with Applicable Law or provide the Applicant's services;
- (j) the entity is not an independent software vendor or an automated trading system;
- (k) for cleared swaps, the entity and its Accounts or Customers, as applicable, either is a member of a derivatives clearing organization or non-U.S. central clearing counterparty recognized or approved by the CFTC that provides clearing services with respect to any or all of the swaps traded on the SEF ("**Clearing House**") that is authorized to clear trades in any or all swaps for a Participant or its Accounts or Customers ("**Clearing Member**") of a Clearing House, or has a relationship with a Clearing Member;
- (l) the entity has established a trading account;
- (m) the entity has signed all documents required by the Applicant; and
- (n) the entity meets the additional criteria set forth in the Applicant's Rules 301, 401 and 534, as applicable.

Participants are not required to access the Applicant's SEF platform through a dealer. Participants must have trading relationships with dealers in order to transact in uncleared swaps on the Applicant's SEF platform.

The Applicant has established appropriate written standards for access to its services including requirements to ensure (i) that Participants are appropriately registered as

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applicable under Québec securities laws, or exempted from these requirements, (ii) the competence, integrity and authority of systems users, and (iii) that systems users are adequately supervised. Furthermore, the access standard and the process for obtaining, limiting and denying access are impartial, transparent and applied in a fair and non-discriminatory manner. Rules pertaining to participant criteria or selection must be self-certified by the Applicant under CFTC Regulations. The CFTC reviews all self-certifications of rules and rule amendments for compliance with the SEF Core Principles. The Applicant keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access, the process of which is described below.

Any Participant who is the subject of denial action by Bloomberg SEF or is otherwise adversely affected by any other action of Bloomberg SEF may, at any time within 30 days after notice of the adverse action, file a notice of appeal of such access denial or other adverse action with the CFTC pursuant to CFTC Regulation 9.20. The CFTC may dismiss an appeal for which a notice of appeal is not timely filed.

The Applicant supervises Participants and any natural person associated with a Participant who has trading access to the SEF and is assigned a valid trader ID (“**Authorized Traders**”) by conducting market surveillance, as described in Section 2.7 below.

In addition, in order to access the SEF all Participants located in Quebec are required to sign a Canada SEF User Acknowledgment representing that they meet the criteria set forth in the Canada SEF User Acknowledgment. The Canada SEF User Acknowledgment requires a Participant to make an ongoing representation that each time a Participant uses the SEF that it continues to meet the criteria set forth in the Canada SEF User Acknowledgment. A Participant is also required to immediately notify Bloomberg SEF if it ceases to meet any of the above criteria represented by it in the User Acknowledgment on an ongoing basis.

The Applicant may deny or condition the Participant status of any person if: (i) such person is unable to satisfactorily demonstrate its ability to satisfy the eligibility criteria listed in SEF Rule 301(a) and Section 2.6 above; (ii) such person is unable to satisfactorily demonstrate its capacity to adhere to all applicable rules in the Applicant’s Rulebook; (iii) such person would bring the Applicant into disrepute as determined by the Applicant in its sole discretion; or (iv) for such other cause as the Applicant may reasonably determine. The Applicant keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access.

As provided in SEF Rule 305, if the Applicant decides to decline or condition an application for admission as a Participant, the Applicant shall promptly notify such person (the “**Affected Person**”) of the denial or conditioning. The Affected Person may, within seven calendar days, request in writing that the Applicant provide the reasons for the denial or conditioning of Participant status. Within 14 calendar days after receiving such written request, the Applicant shall send in writing to the Affected Person the reasons for the denial or conditioning. Within 14 calendar days of receiving the

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Applicant's written response, the Affected Person may request in writing that the Applicant reconsider its determination, and may provide any relevant representations or other information. The Affected Person has no further right to appeal to the Applicant or the CFTC.

Core Principle 11 requires that, unless necessary or appropriate to achieve the purposes of applicable law, a SEF should avoid (a) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or (b) imposing any material anticompetitive burden on trading. As such, the Applicant does not implement rules that would impose any burden on competition that is not reasonably necessary and appropriate because such rules would not meet SEF Core Principle requirements.

## **2.7 Regulation of Participants, Rules Governing the Activity of Participants in the Exchange and Rules to Prevent Fraudulent Acts and Practices**

A SEF is a self-regulatory organization under CFTC Regulations. In accordance with CFTC Regulations, the Applicant adopted rules governing the conduct of Participants, to monitor compliance with those requirements and to discipline Participants, including by means other than exclusion from participation on the SEF. Pursuant to Rule 403 of the Applicant's Rulebook, the Applicant or the NFA has the right to inspect the books and records of Participants relating to SEF activity, inspect systems, equipment and software operated by the Participant in connection with SEF activity and any data stored related to SEF activity and/or to copy or reproduce any data that the Applicant has access to in order to determine whether all of the Applicant's rules are being, will be or have been complied with by the Participant.

The Applicant expends considerable human, technological and financial resources that are focused on the maintenance of efficient, competitive and transparent markets, and prevention of fraud, manipulation and other abusive trading practices. The Applicant has contracted with the NFA, the Applicant's Regulatory Services Provider, for the NFA to conduct market surveillance of trades executed on the SEF. The Applicant is responsible for monitoring activity on the SEF and uses the NFA, to conduct such monitoring on a trade plus one (T+1) basis. The NFA raises potential rule violations to the Applicant for the Applicant's review and assessment.

Investigating and enforcing rule violations are necessary components of regulatory safeguards. The SEF's disciplinary rules, including the conducting of investigations, prosecution of violations and imposition of sanctions are described in Chapter 6 (Disciplinary Rules) of the Applicant's Rulebook. See Section 2.11 for additional details.

Pursuant to Chapter 7 of the Applicant's Rulebook, Participants, Authorized Traders and any market participant that directly or indirectly effects a transaction on the SEF is required to submit to the NFA for arbitration all disputes, controversies and claims between or among themselves arising out of a swap, the use of the SEF or the Applicant's services, equipment or facilities used to support the systems or services within two years from the time that a cause of action has accrued. The NFA will conduct any and all arbitrations pursuant to the NFA's Member Arbitration Rules, as if each Participant or

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Authorized Trader to such arbitration was an “NFA Member.” Any failure by any Participant or Authorized Trader to arbitrate a case subject to arbitration or the commencement of a suit in any court prior to arbitrating a case subject to arbitration will violate the Applicant’s rules and will subject the Participant or Authorized Trader to disciplinary proceedings pursuant to Chapter 6. Additionally, the Applicant may suspend a Participant or Authorized Trader that fails to satisfy an arbitration award rendered in any arbitration conducted pursuant to Chapter 7.

The Applicant is dedicated to safeguarding the integrity of its SEF, and ensuring that it is free from manipulation and other abusive practices. These efforts are a necessary component of efficiently working markets, and so the Applicant is committed to ensuring that Participants are able to use the SEF with the knowledge that it remains open and transparent. The Applicant’s daily activities include a broad range of interconnected efforts that include real-time market surveillance, trade practice reviews and data quality assurance audits. Participants are required to comply with a significant number of rules governing trading on the SEF. The applicable SEF rules are primarily located in Chapter 5 (Trading Practices, Reporting, Clearing and Business Conduct) of the Applicant’s Rulebook. Among other acts, Chapter 5 specifically prohibits engaging in fraud, dishonorable or dishonest conduct, or in conduct which is inconsistent with just and equitable principles of trade (Rule 504). Chapter 5 also prohibits fraudulent acts (Rule 505), fictitious, wash or pre-arranged transactions (Rule 506), price manipulation of the price of a swap (Rule 508.A), disruptive practices (Rule 508.B), misstatements of material fact (Rule 509) and erroneous trade cancellation and adjustment (Rule 516.C). Pursuant to Rules 525 and 527, the Applicant may adopt for each swap contract of the SEF, position limitations for spectators in order to reduce the potential threat of market manipulation or congestion, and any person who owns or controls swaps in excess of the applicable position accountability level must provide to the Applicant upon its request any information regarding the nature of the position, trading strategy or hedging activities, and may not increase the size of any such position if so ordered by the Applicant.

To fulfill its mandate to effectively monitor and enforce the SEF rules, the Applicant has engaged NFA as its Regulatory Services Provider. The NFA has established an automated trade surveillance system capable of detecting potential trade practice and violations of the Applicant’s Rulebook. The automated trade surveillance system loads and processes daily orders and trades no later than 24 hours after the completion of the trading day. The automated trade surveillance system has the capability to detect and flag specific trade execution patterns and trade anomalies, compute, retain, and compare trading statistics, compute trade gains, losses, and swap-equivalent positions, reconstruct the sequence of market activity, perform market analyses, and support system users to perform in-depth analyses and ad hoc queries of trade-related data.

Additionally, in order to determine potential market issues, the Applicant has built and implemented a series of alerts designed to effectuate real-time surveillance. As of the date of this application, the first automated alert involves notification to the Applicant’s Compliance staff when (1) an instrument is traded at a new price (low or high); (2) a traded price rises or falls by a designated percentage against the previous trade for the

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same instrument; (3) an execution takes place at a price that is a designated percentage higher or lower than the pre-set daily average for the same instrument. As these alerts are based on executed trades they constitute a "Trading Alert".

The second automated alert notifies the Applicant's Compliance staff when the quoted price in an instrument moves more than three standard deviations from a mean based on the historical volatility for a pre-set period. As these alerts are based on quoted prices they constitute a "Price Alert". The Price Alert is designed to help the Applicant detect and address potential pricing abnormalities.

The NFA staff are responsible for conducting trade practice surveillance and market surveillance for the Applicant. This includes reviewing messages, deals and positions on an ongoing basis to determine if there are any potential violations of the Applicant's SEF rules. The NFA has developed an automated surveillance system known as Sophisticated Warning Analysis Profiling System, or "SWAPS". The NFA staff uses SWAPS to effectively and efficiently profile markets and Participants, query the Applicant's audit trail, generate automated trade exception reports and conduct daily monitoring of prices, volume, Clearing Member large trader positions and market news. In addition to the information collected automatically by SWAPS, information is gathered by NFA staff from a variety of other sources to perform surveillance. NFA investigators are grouped into investigation teams organized by the Applicant and by asset class to ensure that the NFA provides adequate staff with sufficient expertise to oversee the Applicant's market.

Specifically with reference to regulatory technology, the Applicant has made significant investments in this area, including staff dedicated solely to the support and continuous development of its regulatory technology infrastructure, ensuring that the Applicant's regulatory and market protection capabilities anticipate and evolve with the changing dynamics of the marketplace. The Applicant has developed an audit trail of market activity and powerful and flexible data query and analytical tools that allow its regulatory staff to examine real-time and historical order, transaction and position data, maintain profiles of markets and Participants, and to detect trading patterns potentially indicative of market abuses.

## **2.8 Rulemaking, Power to Set Rules and Ensure Their Fair and Effective Enforcement, Rules Prohibiting Unreasonable Discrimination Among Participants, Rule Transparency and Accessibility of Public to Current Rules**

The Applicant has rules, policies and other similar instruments that are designed to appropriately govern the operations and activities of Participants and do not permit unreasonable discrimination among Participants or impose any burden on competition that is not reasonably necessary or appropriate. Pursuant to its obligations under the CEA and the CFTC Regulations, the Applicant has implemented rules, policies and other similar instruments that govern the operations and activities of its Participants. Pursuant to the Applicant's Rulebook, Rule 315 also requires all SEF Participants to comply with all relevant provisions of the CEA and CFTC rules and regulations, including the filing of reports, maintenance of books and records, and permitting inspection and visitation by CFTC or Department of Justice representatives.

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The Applicant's rules applicable to Participants are codified in the Applicant's Rulebook. The Applicant's rules are covered in Chapters 1 through 9 of its Rulebook, which include: Chapter 2 (SEF Governance), Chapter 3 (Participants), Chapter 4 (Obligations of Participants, Account Managers, DMA Customers, Authorized Traders and Supervised Persons), Chapter 5 (Trading Practices, Reporting, Clearing and Business Conduct), Chapter 6 (Disciplinary Rules), Chapter 7 (Arbitration) and Chapter 8 (Miscellaneous rules). The Applicant's Rulebook is available on the Applicant's website at: <http://www.bloomberg.com/professional/sef-compliance/>. The Applicant believes that its rules, policies and other similar instruments that govern the operations and activities of its Participants are consistent with the rules and policies of other SEFs, and therefore do not impose any burden on competition that is not reasonably necessary or appropriate.

The Applicant's SEF rules are subject to the standards and requirements set by the SEF Core Principles. Both the SEF Core Principles and the Applicant's SEF rules seek to ensure fair and orderly markets accessible to all eligible Participants. This aim is accomplished by establishing rules that reflect the SEF Core Principle criteria discussed below.

The Applicant has also developed risk monitoring tools and risk controls to ensure fair and efficient markets. The Applicant uses risk monitoring tools and risk controls to prevent and reduce the potential risk of market disruptions, including the following: (i) price outlier detection tool; (ii) pricing change monitoring tool; (iii) trading kill switch; (iv) notional outlier size limitations; (v) Authorized Trader lists and asset class limitations; (vi) trade rejection capability; and (vii) trade cancellation capability.

As the Applicant is required by CFTC Regulations to use criteria governing access to the Applicant's SEF that are impartial, transparent and applied in a fair and non-discriminatory manner, this system must, and does, operate in such manner.

All order types are defined in Chapter 1 of the Applicant's Rulebook. The Applicant's system for accepting and distinguishing between and executing different types of orders operates according to the relevant SEF Core Principles, CFTC Regulations and the requirements set forth in the Applicant's Rulebook, all of which are available online in a transparent manner. As the Applicant is required by CFTC Regulations to have criteria governing access to the SEF platform that is impartial, transparent and applied in a fair and nondiscriminatory manner, this system must, and does, operate in a fair and equitable manner with respect to all Participants.

Specifically, the Applicant's rules are designed to:

- (i) **ensure compliance with applicable legislation.** SEF Core Principle 1 – Compliance with SEF Core Principles requires a SEF to comply with the CEA and with all applicable CFTC Regulations, including SEF Core Principles (collectively, the “**U.S. SEF Regulations**”). The Applicant ensures compliance with the U.S. SEF Regulations, evidenced in part by its continuous registration as a SEF. SEF Core Principle 2 requires SEFs to ensure that participants consent to SEF rules and jurisdiction prior to accessing its markets. Consent to the SEF's

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jurisdiction means that a participant is subject to the SEF's rules, and any execution of a swap transaction on the SEF will be governed by the SEF's rules. Rule 311 of the Applicant's Rulebook establishes compliance with the Applicant's SEF rules that bring market participants within the jurisdiction of the Applicant. In addition, the Applicant is obligated to comply with the U.S. SEF Regulations. The U.S. SEF Regulations also require that the Applicant implement rules that require its Participants to comply with the Applicant's SEF rules.

- (ii) **prevent fraudulent and manipulative acts and practices.** SEF Core Principle 2 requires a SEF to collect information, examine members' records, direct supervision of the market, maintain sufficient compliance staff, establish procedures for and conduct audit trail reviews, perform real-time market monitoring and market surveillance and establish an automated trade surveillance system. The Applicant has instituted all these controls. SEF Core Principle 3 requires a SEF to ensure the swaps executed on its platform are not readily susceptible to manipulation. The Applicant complies with this SEF Core Principle by certifying each swap contract to be listed on its SEF with the CFTC. Chapter 5 of the Applicant's Rulebook prescribes trading practices and trading conduct requirements, including prohibitions on fictitious trades, fraudulent activity and manipulation.
- (iii) **promote just and equitable principles of trade.** SEF Core Principle 2 requires a SEF to establish and enforce trading, trade processing and participation rules that deter abuses and have the capacity to detect, investigate and enforce those rules, including means to provide market participants with impartial access and to capture information that may be used in establishing whether rule violations have occurred. SEF Core Principle 9 requires a SEF to promote transparency by making timely public disclosures of trading information. The Applicant complies with this Core Principle by publishing daily information on its trading and volumes on its website and submitting all trades executed on its SEF to an SDR for real-time public dissemination. SEF Core Principle 7 requires a SEF to ensure the financial integrity of transactions entered into on its markets. SEF Core Principle 11 prohibits the imposition of unreasonable restraints or uncompetitive burdens on trade. Throughout its Rulebook, the Applicant has established transparent and objective standards to address the requirement set forth above.
- (iv) **foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange.** Rule 213 of the Applicant's Rulebook authorizes the Applicant to enter into information-sharing arrangements as it determines necessary or advisable to obtain any necessary information, to perform any monitoring of trading or trade processing, to provide information to the CFTC upon request and to carry out such international information-sharing agreements as the CFTC may require. Furthermore, the Applicant may enter into any arrangement with any other person (including any governmental authority, trading facility or clearing organization) where the Applicant determines such person exercises a legal or regulatory

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function under any applicable law or considers the arrangement to be in furtherance of the operation or duties of the Applicant under applicable law. In addition, the Applicant has entered into agreements with Clearing Houses, each registered as a derivatives clearing organization (a “**DCO**”) with the CFTC, to facilitate clearing of transactions executed on its SEF.

- (v) **promote a framework for disciplinary and enforcement actions.** SEF Core Principle 2 requires a SEF to adopt a rule enforcement program, disciplinary procedures and sanctions. In response to this requirement, Chapter 6 of the Applicant’s Rulebook sets out the Applicant’s disciplinary rules.
- (vi) **ensure a fair and orderly market.** SEF Core Principle 3 requires a SEF to ensure that swaps traded on the facility are not readily susceptible to manipulation. SEF Core Principle 4 requires a SEF to establish procedures for monitoring of trading and trade process. The Applicant complies with these SEF Core Principles by prescribing trading rules (see Chapter 5 of the Applicant’s Rulebook), collecting and evaluating market activity data, by maintaining and auditing its real-time monitoring program, and by auditing historical data to detect trading abuses. SEF Core Principle 9 requires timely public disclosure of trade information, which is published daily. Part 43 of CFTC Regulations requires the Applicant to submit reports about executed transactions to an SDR for real-time public dissemination. SEF Core Principle 14 – *System Safeguards* requires a SEF to establish and maintain risk analysis, emergency procedure, and periodic systems testing programs. The Applicant periodically reviews its programs and procedures, including risk analysis, emergency planning, and systems testing. The Applicant regularly audits systems and technology tests both for technical and regulatory compliance.

## 2.9 Record Keeping

The Applicant has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the SEF, audit trail information on all trades, and compliance with, and/or violations of SEF rules.

The Applicant collects, on a daily basis, data related to its regulated activity in compliance with SEF Core Principle 10 – Recordkeeping and Reporting. The Applicant is required to maintain records of all activities relating to its business as a SEF, including data related to order entry, order execution and pricing. Data is collected from across all SEF functionalities. The Applicant maintains a data history as required by CFTC Regulations 37.205, referred to as the audit trail, for every order entered and transaction executed on the SEF. Audit trail information for each transaction includes the order instructions, entry time, modification time, execution time, price, quantity, account identifier and parties to the transaction. On a daily basis, files of all electronic order and cleared trade information are archived to non-rewritable media, and copies are stored at secure locations to ensure redundancy and critical safeguarding of the data.

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Market participants executing transactions on the Applicant's SEF are also required to keep certain books and records relating to their activity on the Applicant's SEF pursuant to Rule 409.A. Such books and records must be made available upon request to the Applicant, the CFTC, the U.S. Department of Justice or any other governmental body, regulator or self-regulatory organization with jurisdiction over the Applicant.

## **2.10 Outsourcing and Agreement with a Supplier of Regulatory Services for Market or Member Supervision**

When the Applicant has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

BLP, the parent company of the Applicant, provides support services, including business continuity and disaster recovery support, to the Applicant pursuant to a services agreement between the Applicant and BLP (the "**Services Agreement**"). Bloomberg Finance L.P. ("**BFLP**"), an affiliate of the Applicant, provides licensed items to the Applicant pursuant to a license agreement between the Applicant and BFLP (the "**License Agreement**"). The Services Agreement and the License Agreement permit the Applicant to meet its obligations and are in accordance with industry best practices. The Applicant has the right to audit the services provided by BLP pursuant to the Services Agreement.

As described in Section 2.7 above, the Applicant has contracted with the NFA to perform certain surveillance, investigative and regulatory functions.

## **2.11 Enforcement Rules, Rules Governing Market Operations, Rules Ensuring Market Integrity and Effectiveness and Rules Promoting Fair and Equitable Business Principles**

The Applicant is obligated to comply with U.S. SEF Regulations. The U.S. SEF Regulations require that the Applicant implement rules that require compliance by its Participants with the Applicant's SEF rules. The Applicant's SEF rules, which address SEF trading practices, are subject to the standards and requirements outlined by the SEF Core Principles. At a high level, the SEF Core Principles and Applicant's SEF rules both seek to ensure fair, orderly and transparent markets accessible to all eligible Participants, which is consistent with the public interest.

The trading practices supported by the Applicant's SEF are properly supervised by the Applicant. Chapter 5 of the Applicant's Rulebook sets forth rules with respect to trading practices, and gives the Applicant the authority to investigate and take action against Participants that do not comply with the Applicant's SEF rules (see Rule 504 and Section 2.7 above). The Applicant conducts automated real-time market monitoring of the trading activity on the Applicant's SEF.

As a self-regulatory organization under CFTC rules, a SEF has obligations to monitor participants' trading activity on the SEF pursuant to Part 37 of CFTC Regulations. SEF

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Core Principle 2 requires a SEF to collect information, examine members' records, direct supervision of the market, maintain sufficient compliance staff, establish procedures for and conduct audit trail reviews, perform real-time market monitoring and market surveillance and establish an automated trade surveillance system.

As of the date of this application, the Applicant has instituted all of these controls and has adequate resources available to ensure that controls are properly applied. The CCO annually prepares and signs a compliance report (the "**Annual Compliance Report**") that includes a review of applicable CFTC Regulations and each subsection and core principle of Section 5h of the CEA that, with respect to each: (1) identifies the policies and procedures that are designed to ensure compliance with each subsection and core principle, including each duty specified in Section 5h(f)(15)(B) of the CEA; (2) provides a self-assessment as to the effectiveness of these policies and procedures; and (3) discusses areas of improvement and recommends potential or prospective changes or improvements to its compliance program and resources.

The Applicant has also adopted an internal audit function using a "co-sourced" model. The "co-sourced" provider is Deloitte & Touche LLP ("**Deloitte**"). Deloitte reports through the BLP Chief Risk Office which has appointed an internal audit liaison officer to manage the relationship with Deloitte as well as to provide day-to-day oversight and manage internal audit functions.

SEF Core Principle 2 also requires a SEF to adopt a rule enforcement program, disciplinary procedures and sanctions. In response to this requirement, Chapter 6 of the Applicant's Rulebook sets out the Applicant's disciplinary rules and Chapter 7 prescribes the Applicant's arbitration procedures (see Section 2.7 above for additional details).

The Applicant, via its Compliance Department, the Disciplinary Panel and an Appeals Panel, will conduct inquiries, investigations, disciplinary and appeals proceedings, summary impositions of fines, summary suspensions or other summary actions in accordance with Chapter 6 of the Applicant's Rulebook. As prescribed by Rule 601, the Applicant may hold a Participant liable for, and impose sanctions against a Participant, for a Participant's own acts and omissions that constitute a violation, in addition to the acts and omissions of each Authorized Trader, any director, officer, employee or agent of any Participant ("**Supervised Person**") or other person using a trader ID or login credentials linked to the Participant, or any other agent or representative of the Participant.

Pursuant to Rule 602, the Applicant's Compliance Department, with the assistance of the NFA, if necessary, will conduct inquiries and, if applicable, investigations with respect to any matter within the Applicant's jurisdiction of which it becomes aware or which the CFTC requests the Applicant to investigate. The Applicant's Compliance Department will determine the nature and scope of its inquiries and investigations within its sole discretion and will function independently of any commercial interests of the Applicant.

Pursuant to Rule 602 of the Applicant's Rulebook, the Compliance Department's investigation must be completed within 12 months of the date when the Compliance

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Department commenced its investigation unless there are mitigating factors that may reasonably justify an investigation taking longer than 12 months, including the complexity of the investigation, the number of Participants or individuals involved as potential wrongdoers, the number of potential violations to be investigated, and the volume of documents and data to be examined and analyzed by the Compliance Department.

The Applicant's Compliance Department has the authority to:

- (a) initiate inquiries and investigations;
- (b) prepare investigation reports and provide recommendations concerning initiating disciplinary proceedings;
- (c) prosecute alleged violations if a disciplinary proceeding has been authorized; and
- (d) represent the Applicant on appeals of a Disciplinary Panel decision, the summary imposition of fines, summary suspension or other summary action.

The Applicant's Compliance Department investigates matters within the Applicant's disciplinary jurisdiction of which it becomes aware. Once an investigation is complete, the Compliance Department will prepare an investigation report. The Applicant maintains records of all investigations conducted by the Applicant in accordance with its record keeping policy.

The Applicant's CCO reviews investigation reports and related documents. If the CCO decides to commence a disciplinary proceeding based on an investigation report, the Compliance Department will prepare a notice of charges to be sent to the potential respondent. The respondent must file an answer to such notice of charges within 20 days after being served; failure to respond in a timely manner will be deemed to be an admission by the respondent to the allegations in the notice.

At any time after the notice of charges has been served on the respondent, but before disciplinary proceedings have been concluded, a respondent may propose in writing an offer of settlement. The CCO of the Applicant will forward the offer to the Applicant's Disciplinary Panel with a recommendation on whether to accept or reject the offer. If the offer is not accepted, the matter will proceed as though the offer had not been made.

The Applicant's CCO may issue a warning letter to a Participant for a violation of the Applicant's rules in order to close an inquiry or investigation administratively. If the CCO authorizes disciplinary proceedings, then the Compliance Department will prepare and serve a notice of charges. The Applicant's Disciplinary Panel is responsible for adjudicating disciplinary cases pursuant to a notice of charges authorized by the CCO. See Section 2.11 below for additional details.

The Applicant has established a Disciplinary Panel to adjudicate disciplinary cases pursuant to a notice of charges. All disciplinary proceedings are conducted at a hearing before the Disciplinary Panel and such proceedings are private and confidential. The

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chairperson of the Disciplinary Panel will conduct the hearing and will determine all procedural and evidentiary matters. A respondent that has timely filed an answer to the relevant notice of charges is entitled to attend and participate in the hearing.

As prescribed by Rule 613, each Disciplinary Panel shall be composed of three individuals selected by the Applicant's CCO. Except in cases concerning the timely submission of accurate records, each Disciplinary Panel shall consist of at least one individual who would not be disqualified from serving as a Public Director and who shall chair the Disciplinary Panel. No member of the Applicant's Compliance Department or person involved in adjudicating any other stage of a proceeding shall participate in a Disciplinary Panel for such proceeding. Panel members are selected from a pool of candidates who have agreed in principle to serve on the Applicant's Disciplinary Panel. The following types of candidates may be members of the Applicant's Disciplinary Panel:

- Attorneys now or formerly at law firms with experience in issues related to CEA trading and rule enforcement protocols;
- Academics that have either industry experience or long standing relevant teaching experience;
- Former senior personnel of trading venues and market participants with backgrounds in legal, compliance or business who can bring their perspective to the Disciplinary Panel without the potential conflicts of a relevant active Participant of the Applicant's SEF; and
- Former CFTC staff and personnel.

In selecting panel members, the Applicant considers whether the composition of the panel will comply with CFTC Regulations §§ 1.59, 1.63 and 1.64. Thus, sufficient different membership interests will be represented in each panel (see Rule 613). Rule 613 requires that each Disciplinary Panel consist of at least one individual who would not be disqualified from serving as a Public Director of the Applicant. Such individual will be the chair of the Disciplinary Panel.

The Disciplinary Panel will issue an order rendering its decision based on the weight of evidence submitted in the hearing and will serve a copy of that order on the respondent. The order will include the notice of charges, the respondent's answer (if any), a summary of the evidence introduced at the hearing, findings of fact and conclusions concerning each charge, an indication of the rule that the respondent was found to have violated and a declaration of all sanctions imposed by the Applicant's Disciplinary Panel (if any).

If the respondent wishes to appeal a decision of the Disciplinary Panel, an Appeals Panel will consider an appeal. All decisions of the Appeals Panel are final.

After notice and hearing, pursuant to Rule 618, the Applicant will impose sanctions on any Participant, any person that acts as an agent and attorney-in-fact to buy or sell swaps

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via the SEF in the name and on behalf of another person, Authorized Trader, Supervised Person, Account, Customer, Clearing Member or other person using the trader ID or login credentials linked to the Participant that is found to have violated or to have attempted to violate the Applicant's rules or any statute, law, regulation, rule or ordinance of any governmental or self-regulatory organization, including the CEA and CFTC Regulations. The Applicant may impose one or more of the following sanctions or remedies under Chapter 6: (i) censure; (ii) limitation on trading privileges, trading access or other activities, functions or operations; (iii) suspension of trading privileges or trading access; (iv) fine; (v) disgorgement; (vi) termination of trading privileges or trading access; (vii) in the event of a customer harm, full customer restitution, except where the amount of restitution or to whom it should be provided cannot reasonably be determined; or (viii) any other sanction or remedy deemed to be appropriate. All sanctions, including those imposed pursuant to an accepted settlement offer, shall take into account the respondent's disciplinary history.

Any Participant who is the subject of disciplinary action by Bloomberg SEF or is otherwise adversely affected by any other action of Bloomberg SEF may, at any time within 30 days after notice of the disciplinary or other adverse action, file a notice of appeal of such disciplinary or other adverse action with the CFTC pursuant to CFTC Regulation 9.20. The CFTC may dismiss an appeal for which a notice of appeal is not timely filed.

Since the first day of the SEF's operation, in no case has the Applicant (a) denied the trading privileges of a Participant, (b) suspended, revoked, limited, restricted or qualified the trading privileges of a Participant, (c) inspected the systems, equipment or software of a Participant; or (d) prepared a notice of charges against a Participant, as that term is defined in the Applicant's Rulebook. Prior to 2016, the Applicant had not taken any disciplinary action with respect to any detected trading infractions. In 2016, the Applicant has taken disciplinary action in the form of issuing summary Notices of Fine in five instances for violations of Rule 516 (Trade Cancellation, Correction, Offset and Adjustment).

## **2.12 Systems and Technology**

CFTC Core Principle 14 requires that a SEF: (i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that are reliable, secure and have adequate capacity, (ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the SEF, and (iii) periodically conduct tests to verify that the backup resources of the SEF are sufficient to ensure continued order processing, trade matching, price reporting, market surveillance and maintenance of a comprehensive and accurate audit trail. The SEF's risk analysis and oversight program shall address each of the following categories with respect to its operations and automated systems: (i) information security, (ii) business continuity-disaster recovery planning and resources, (iii) capacity and performance planning, (iv) systems operations, (v) systems development and quality

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assurance and (vi) physical security and environmental controls. The Applicant has established policies, procedures and controls to comply with such requirements.

The Applicant has also established configuration management controls and procedures that have the following objectives:

- (i) maintain centralized control for all hardware during the testing and rollout phases of new equipment;
- (ii) ensure that hardware has sufficient capacity for both present and future operating requirements;
- (iii) limit access to the operating system on a need-to-know, job function-related basis;
- (iv) prevent unauthorized access to the systems; and
- (v) provide active performance monitoring of production server machines.

The Applicant reviews and keeps current the development and testing methodology of the systems pursuant to procedures contained in the Applicant's Compliance Manual, Technology Handbook and Business Continuity/Disaster Recovery Plan.

The Applicant has adopted a written Business Continuity/Disaster Recovery Plan, and has implemented procedures designed to regularly test and review the Business Continuity/Disaster Recovery Plan to ensure timely recovery and resumption of SEF operations and the fulfillment of the duties and obligations of the Applicant in the event of a disruption. As part of the Business Continuity/Disaster Recovery Plan, the Applicant performs period tests to verify that the resources outlined in the plan are sufficient to ensure continued fulfillment of all duties of the Applicant under the CEA or CFTC Regulations. This test of the Business Continuity/Disaster Recovery Plan is conducted in conjunction with BSDR, the SDR operated by the Applicant's affiliate BSDR LLC, but the Applicant does not conduct its test of the Business Continuity/Disaster Recovery Plan in collaboration with any DCO.

The Applicant's SEF has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business.

The Applicant has established procedures for configuration management, software change management, patch management and event and problem management. Additionally, the Applicant has established a Business Continuity/Disaster Recovery plan with respect to the critical data and system components of its SEF (the "**Systems**"). Pursuant to this plan, the Applicant has the ability to respond to and address both small-scale and wide-scale service disruptions to the Systems.

The Applicant supervises and conducts periodic stress testing of the system components of the Systems to ensure that the Systems have sufficient capacity to perform required operational tasks. The Applicant evaluates and monitors capacity requirements in order to

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anticipate capacity needs. The Applicant verifies the Systems' ability to function as intended by conducting regression testing, stress testing, and redundancy testing of the Systems.

In addition, the Applicant arranges for penetration tests to be conducted on the Systems from time to time to identify and eliminate any vulnerabilities. Testing may include one or more of the following: (i) network/host penetration testing; (ii) application penetrating testing; and (iii) web application penetration testing.

The Applicant and its service provider, BLP, periodically conduct risk audits, internal physical security procedures compliance inspections and covert physical intrusion tests with independent security firms. Such tests are designed to periodically assess the operating effectiveness of physical security controls as well as to monitor internal compliance with security policies and procedures.

As discussed above, technical staff review and test the Systems periodically to estimate and plan for future system capacity, identify potential weak points and reduce the risk of system failures and threats to system integrity. The Applicant monitors a periodic automatic redundancy test where a machine fail-over is simulated and successful startup of redundant machines are verified.

### **2.13 Emergency Processes**

The Applicant's Rulebook also prescribes emergency rules and procedures (Rule 212) that may be implemented in the event of an emergency. Any implementation of such rules is done in consultation with the CFTC, and may require or authorize the Applicant, the Board of Directors (or any committee), the President, or any other officer to take actions necessary or appropriate to respond to the emergency, including the following actions:

- (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 swaps;
- (c) ordering the fixing of a settlement price;
- (d) ordering the liquidation or transfer of an open position in any swap, or the reduction of positions;
- (e) extending, limiting or changing the Applicant's trading hours;
- (f) imposing or modifying intraday market restrictions;
- (g) transferring customer contracts and the margin in an emergency;
- (h) imposing special margin requirements;

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- (i) extending or shortening the expiration date of a swap;
- (j) altering any swap's settlement terms and conditions;
- (k) imposing or modifying price limits;
- (l) imposing, modifying or reducing position limits; and/or
- (m) temporarily modifying or suspending any provision of the Applicant's rules or obligations.

Before any emergency rule may be adopted or enforced, the Board of Directors must vote to approve the implementation of an emergency rule or if an emergency rule must be implemented prior to a vote of the Board of Directors, then the President, Vice President or CTO have the authority to implement an emergency rule as deemed necessary or appropriate to respond to such emergency. The Applicant will then notify the CFTC prior to implementing, modifying or terminating an emergency rule.

## **2.14 Clearing and Settlement**

The Applicant has or requires its Participants to have appropriate arrangements for the clearing and settlement of transactions for which clearing is mandatory through a Clearing House. Each Participant, whether based in Québec or not, is required to represent in the Applicant's Participant Agreement, with respect to cleared swaps that result from the Participant's orders entered via the SEF, that it (1) has and will have a clearing account with a member of a Clearing House that provides for clearing of trades entered into on the SEF or (2) is and will be a member of a Clearing House that clears such trades.

Each Participant must inform the Applicant whether the Participant is a member of a Clearing House, in which case the Applicant must have an arrangement in place with that Clearing House, or whether the Participant has a clearing account with a member of a Clearing House, in which case the Applicant must have an arrangement in place with that Clearing Member.

SEFs can allow trading of both "cleared" and "non-cleared" swaps. A SEF must submit all trades that are intended to be cleared to a Clearing House for clearing. The Applicant provides direct connectivity to the following Clearing Houses: Chicago Mercantile Exchange Inc., LCH.Clearnet LLC, LCH.Clearnet Limited, ICE Clear Credit LLC and ICE Clear Europe Limited. Each Clearing House is registered as a DCO with the CFTC. The Applicant expects that Québec Participants will either (a) be Clearing Members of a Clearing House and clear directly (provided such Clearing House has obtained recognition as a clearing agency in Québec or an exemption or interim exemption from recognition as a clearing agency in Québec) or (b) have a relationship with a Clearing Member on whom the Participant relies for clearing.

The Applicant will receive a notice from a DCO informing the Applicant if a trade submitted by the Applicant for clearing was accepted or rejected.

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The Applicant has agreements in place with the Clearing Houses to which the Applicant submits trades for clearing which include representations that the Clearing Houses will comply with all applicable laws and regulations. As a DCO, the Clearing Houses must comply with the “**DCO Core Principles**,” including CFTC Regulation 39.13 – *Risk management* (“**CFTC Regulation 39.13**”), CFTC Regulation 39.10 – *Compliance with rules* (“**CFTC Regulation 39.10**”), and CFTC Regulation 39.18 – *System safeguards* (“**CFTC Regulation 39.18**”). CFTC Rule 39.18(e) requires DCOs to maintain business continuity and disaster recovery plans, emergency procedures and physical, technological and personnel resources sufficient to enable the timely recovery and resumption of operations.

CFTC Regulation 39.10 mandates the appointment of a CCO whose duties include review of the DCO’s written policies and procedures and compliance with each DCO Core Principle, including the risk management framework implemented by the Chief Risk Officer under CFTC Regulation 39.13. The CCO’s review of the DCO’s policies and procedures is included in an annual compliance report submitted to the CFTC.

CFTC Regulation 39.18(b) mandates the establishment and maintenance of a program of risk analysis and oversight with respect to the DCO’s operations and automated systems. CFTC Regulation 39.18(j) further requires that a DCO’s automated systems and business continuity and disaster recovery capabilities be tested by objective, independent and qualified professionals on a periodic basis.

## 2.15 Reporting

Core Principle 9 requires a SEF to make public timely information concerning swaps transactions executed on the SEF. The Applicant is required by Part 43 of the CFTC Regulations to report certain data regarding transactions executed on the Applicant’s SEF platform to an SDR. The Applicant will timely transmit swap transaction and pricing data to a registered SDR that accepts swap data for swaps traded on the Applicant’s SEF in accordance with CFTC Regulations. SDR makes certain elements of the transaction and pricing data publicly available in the format specified by the CFTC Regulation. Currently the Applicant is connected to three SDRs: DTCC Data Repository (U.S.) LLC (“**DDR**”), ICE Trade Vault, LLC (“**ICE Trade Vault**”) and BSDR LLC (“**BSDR**”).

The SEF reports trades to an SDR as set forth below:

- (a) cleared swaps – all asset classes: the SEF reports to BSDR, except as described in subsection (iv) below;
- (b) non-cleared swaps – interest rates, credit and foreign exchange asset classes: the SEF reports to DDR;
- (c) non-cleared swaps – commodity asset class: the SEF reports to DDR or ICE Trade Vault. Unless a Participant that is the reporting counterparty or Participant acting as an agent for the reporting counterparty requests the SEF to report all

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trades in commodity asset class to ICE Trade Vault, the SEF will report all non-cleared swaps of such reporting counterparty to DDR;

- (d) package transactions where at least one leg is a non-cleared swap: the SEF reports all legs of the package transaction to DDR; and
- (e) package transactions where all swap legs are cleared swaps: the SEF reports all swap legs of the package transactions to BSDR.

SDRs are required by CFTC Regulations to make such transaction data publicly available on a website in real time in a downloadable format on a per-transaction basis. The Applicant publishes end of day data regarding the price, trading volume and other trading data of swaps traded on the Applicant's SEF at [www.data.bloombergsef.com](http://www.data.bloombergsef.com). The aggregate end-of-the-day report that the Applicant makes available to the public on its own website is not downloadable, but can be copied and pasted into a separate document by the viewer.

### **ARTICLE 3 POWER OF THE APPLICANT REGARDING COOPERATION**

The Applicant confirms that it has the power to cooperate fully with the AMF and self-regulatory organizations in the Province of Québec, and to provide information and documents with respect to its operations that could be reasonably requested by the AMF.

The Applicant's Compliance Department, as supervised by the CCO, has adequate capacity to process and will respond to requests regarding the Applicant from regulators, including the AMF, and self-regulatory organizations in a timely manner. The Applicant's Compliance Manual will be amended to incorporate the conditions of an order, and thus, such conditions will become a part of the Applicant's compliance program. Rule 213 of the Applicant's Rulebook – *Information-Sharing Agreements* authorizes the Applicant to enter into information-sharing agreements or other arrangements or procedures necessary to allow the Applicant to obtain any necessary information to perform any monitoring of trading and trade processing, provide information to other markets, the CFTC or any other governmental body with jurisdiction over the Applicant upon request and which allow the Applicant to carry out such international information-sharing agreements as the CFTC may require. Also, the Applicant may enter into any information-sharing arrangement with any person or body (including the CFTC, the NFA, any self-regulatory organization, any SEF, DCM, market, clearing organization or any governmental body) if the Applicant (i) believes that such entity exercises a legal or regulatory function under any law or regulation, or a function comprising or associated with the enforcement of a legal or regulatory function, or (ii) considers such arrangement to be in furtherance of the purpose or duties of the Applicant and the SEF operated by the Applicant under applicable law. The Applicant has entered into an information-sharing arrangement with the NFA for purposes of conducting market surveillance of the Applicant's SEF. In addition, the Applicant may enter into such agreements with regulatory authorities in various other jurisdictions where the Applicant is seeking regulatory clearance.

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**ARTICLE 4**  
**POWER OF THE FOREIGN REGULATOR IN THE HOME JURISDICTION**  
**REGARDING COOPERATION**

Satisfactory information sharing and oversight agreements exist between the AMF and the Foreign Regulator. The CFTC has entered into memorandum of understanding (“MOU”) arrangements for cooperative enforcements with foreign regulatory authorities in numerous jurisdictions. The MOUs typically provide for access to non-public documents and information already in the possession of the regulatory authorities, and often include undertakings to obtain documents and to take testimony of, or statements from, witnesses on behalf of a requesting regulatory authority. The CFTC and the AMF are parties to an MOU that was entered into by the parties on March 25, 2014, which is available at [http://www.osc.gov.on.ca/documents/en/About/mou\\_20140327\\_nmou-covered-entities.pdf](http://www.osc.gov.on.ca/documents/en/About/mou_20140327_nmou-covered-entities.pdf).

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<input checked="" type="checkbox"/> Négociation - Dérivés sur taux d'intérêt	<input checked="" type="checkbox"/> Back-office - Options
<input checked="" type="checkbox"/> Négociation - Dérivés sur actions et indices	<input checked="" type="checkbox"/> Technologie
<input checked="" type="checkbox"/> Back-office - Contrats à terme	<input checked="" type="checkbox"/> Réglementation

CIRCULAIRE 146-16

Le 22 novembre 2016

## SOLlicitation DE COMMENTAIRES

### INTRODUCTION D'UN PROCESSUS D'AMENDES POUR INFRACTIONS MINEURES

#### ADOPTION DES ARTICLES 4220 À 4224 DE LA RÈGLE QUATRE DE BOURSE DE MONTRÉAL INC. ET ABROGATION DE L'ARTICLE 6389A DE LA RÈGLE SIX DE BOURSE DE MONTRÉAL INC.

Le Comité de règles et politiques et le Comité spécial de la réglementation de Bourse de Montréal Inc. (la « **Bourse** ») ont approuvé l'adoption des articles 4220 à 4224 de la Règle Quatre de la Bourse et l'abrogation de l'article 6389A de la Règle Six de la Bourse afin d'adopter de nouvelles règles régissant les matières disciplinaires par la Division de la réglementation.

Les commentaires relatifs aux modifications proposées doivent nous être présentés dans les 30 jours suivant la date de publication du présent avis, soit au plus tard le 23 décembre 2016. Prière de soumettre ces commentaires à :

M<sup>e</sup> Sabia Chicoine  
 Chef des affaires juridiques, MX, CDCC,  
 Services des affaires juridiques  
 Bourse de Montréal inc.  
 Tour de la Bourse  
 800, rue du Square-Victoria, C.P. 61  
 Montréal (Québec) H4Z 1A9  
 Courriel : [legal@tmx.com](mailto:legal@tmx.com)

**Tour de la Bourse**  
 C. P. 61, 800, square Victoria, Montréal (Québec) H4Z 1A9  
 Téléphone : 514 871-2424  
 Sans frais au Canada et aux États-Unis : 1 800 361-5353  
 Site Web : [www.m-x.ca](http://www.m-x.ca)

Ces commentaires devront également être transmis à l'Autorité des marchés financiers (l'« **Autorité** ») à l'attention de :

M<sup>e</sup> Anne-Marie Beaudoin  
Secrétaire générale  
Autorité des marchés financiers  
800, square Victoria, 22<sup>e</sup> étage  
C.P. 246, Tour de la Bourse  
Montréal (Québec) H4Z 1G3  
**Courriel : [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)**

Veuillez noter que les commentaires reçus par un de ces destinataires seront transmis à l'autre destinataire et que la Bourse pourrait publier un résumé des commentaires qu'elle aura reçus dans le cadre du processus d'autocertification du présent projet.

#### **Annexes**

Vous trouverez en annexe le document d'analyse ainsi que le texte des articles proposés. La date d'entrée en vigueur des articles proposés sera déterminée par la Bourse conformément au processus d'autocertification, tel que prévu par la *Loi sur les instruments dérivés* (RLRQ, chapitre I-14.01).

#### **Processus de modifications réglementaires**

La Bourse est autorisée à exercer l'activité de bourse et est reconnue à titre d'organisme d'autoréglementation (« **OAR** ») par l'Autorité. Le conseil d'administration de la Bourse a délégué au Comité de règles et politiques l'approbation des règles, des politiques et des procédures, lesquelles sont par la suite soumises à l'Autorité conformément au processus d'autocertification, tel que prévu par la *Loi sur les instruments dérivés* (RLRQ, chapitre I-14.01).

À titre d'OAR, la Bourse assume des responsabilités de réglementation de marché et d'encadrement des participants agréés. L'encadrement du marché et des participants agréés relève de la Division de la réglementation de la Bourse (la « **Division** »). La Division exerce ses activités de façon autonome par rapport à la Bourse, ayant une structure administrative distincte.

La Division est sous l'autorité d'un comité spécial (le « **Comité spécial** ») nommé par le conseil d'administration de la Bourse. Le Comité spécial a le pouvoir de recommander au conseil d'administration de la Bourse d'adopter ou de modifier les Règles de la Bourse concernant certains aspects de l'encadrement des participants agréés de la Bourse. Le conseil d'administration de la Bourse a délégué au Comité de règles et politiques de la Bourse le pouvoir d'adopter ou de modifier ces règles sur recommandation du Comité spécial.



**INTRODUCTION D'UN PROCESSUS D'IMPOSITION D'AMENDES  
POUR INFRACTIONS MINEURES**

**ADOPTION DES ARTICLES 4220 À 4224 ET ABROGATION DE L'ARTICLE 6389A  
DE LA RÈGLE SIX DE BOURSE DE MONTRÉAL INC.**

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## I. RÉSUMÉ

La Division de la réglementation de Bourse de Montréal Inc. (la « **Division** ») propose d'adopter un Processus d'imposition d'amendes pour infractions mineures (le « **Processus** »). L'un des objectifs de l'adoption d'un tel Processus est d'améliorer la mise en application des Règles de Bourse de Montréal Inc. (la « **Bourse** ») par la Division. La Division a identifié des infractions pouvant être qualifiées de « mineures ». Si, suite à une enquête, la Division conclut qu'une infraction a été commise et que cette infraction est visée par le Processus, le vice-président de la Division pourra soit imposer une amende dont le montant est prédéterminé ou opter pour le dépôt d'une plainte disciplinaire qui devra être entendue par un Comité de discipline. Si l'affaire revêt des circonstances particulières, le vice-président de la Division pourra, à sa discrétion, choisir de déposer une plainte disciplinaire. Le Processus prévoit que le participant agréé ou la personne approuvée pourra faire valoir ses observations avant que l'amende ne soit imposée et, en cas de désaccord, pourra demander la tenue d'une audition devant un Comité de discipline. Dans le cadre de l'application de ce Processus, la Division publiera annuellement, sur une base anonyme, des informations relatives aux amendes imposées.

Par la présente, la Division propose d'introduire et d'adopter les articles 4220 à 4224 des Règles de la Bourse (les « **Règles** »). La Division propose également d'abroger l'article 6389A compte tenu de la mise en place de ce nouveau Processus.

## II. ANALYSE

### a. Contexte

La Division souhaite améliorer l'efficacité, la prévisibilité et la cohérence de la mise en application des Règles et accélérer le délai de traitement de certains dossiers. L'imposition d'amendes pour infractions mineures est un processus de mise en application alternatif à celui du dépôt d'une plainte disciplinaire.

L'adoption de ce Processus résulte d'un exercice de réflexion de la Division suite à une étude comparative des pratiques d'autres organisations canadiennes et étrangères (organismes d'autoréglementation, bourses et sociétés d'État). Un processus d'imposition d'amendes pour infractions mineures ou similaire apparaît être de pratique courante aux États-Unis (BOX, CBOE, CBOE Futures LLC, ICE Futures US, CME, NASDAQ, FINRA), et en Australie (ASX). Alors que cette approche semble nouvelle pour un organisme d'autoréglementation dans le secteur financier au Canada<sup>1</sup>, certaines sociétés d'État y ont recours. Plus particulièrement, l'Autorité des marchés

<sup>1</sup> L'Organisme canadien de réglementation du commerce des valeurs mobilières, l'Association canadienne des courtiers de fonds mutuels, la Chambre de la sécurité financière, la Chambre de l'assurance de dommage, Natural Gas Exchange Inc. et ICE Futures Canada, Inc. ne prévoit pas l'imposition d'amendes pour infractions mineures ou de sanctions administratives pécuniaires.



financiers<sup>2</sup> (l'« **Autorité** ») prévoit l'imposition de sanctions administratives pécuniaires pour des infractions relatives au dépôt de documents, au maintien d'assurances ou à l'obligation de déclarer. Il en va de même pour le Centre d'analyse des opérations et déclarations financières du Canada<sup>3</sup> (« **CANAFE** ») qui, en complément aux sanctions pénales, prévoit un barème de pénalités selon la gravité de la violation.

Le pouvoir d'imposer des frais ou une amende pour une infraction réglementaire n'est pas nouveau pour la Division et la Bourse. Actuellement, la Division impose des frais pour la production tardive d'avis et de rapports, par exemples, l'avis de cessation d'emploi ou le rapport relatif à l'accumulation de positions pour les instruments dérivés. Ces frais peuvent s'élever jusqu'à un montant de 5 000 \$.<sup>4</sup> Par ailleurs, depuis 2001, tout officiel de la Bourse a le pouvoir d'imposer une amende n'excédant pas 5 000 \$.<sup>5</sup> Finalement, dans le cadre d'une plainte disciplinaire, le vice-président de la Division peut accepter toute offre de règlement si la sanction imposée est une amende d'au plus 5 000 \$.<sup>6</sup>

La Division a identifié neuf infractions pour lesquelles il est possible d'en établir le ou les éléments constitutifs de manière objective et factuelle et qui peuvent être qualifiées de « mineures ». Bien que certaines infractions puissent être qualifiées de « mineures », il n'en demeure pas moins qu'elles doivent faire l'objet d'une mise en application et la Division réitère l'importance pour les participants agréés et les personnes approuvées de se conformer aux Règles. La « *Liste des amendes pour infractions mineures* » ci-jointe à l'Annexe 3 énumère ces infractions ainsi que les amendes pouvant être imposées pour chacune d'elle. Conformément aux Règles actuellement en vigueur, le montant de ces amendes n'excède pas 5 000 \$.

La Division est d'avis qu'en allégeant le processus de mise en application pour certaines infractions, cela lui permettrait de concentrer ses efforts sur les dossiers impliquant des infractions plus sévères, des situations plus complexes ou ayant un impact important sur le marché, lesquels requièrent plus d'attention.

## b. Application

La Division propose que le Processus entre en vigueur au jour de l'autocertification. La Division entend recourir à ce nouveau Processus pour la mise en application de toute infraction

<sup>2</sup> L'Autorité des marchés financiers est l'organisme mandaté par le gouvernement du Québec, pour encadrer les marchés financiers québécois.

<sup>3</sup> Le Centre d'analyse des opérations et déclarations financières du Canada est l'unité de renseignement financier du Canada.

<sup>4</sup> Voir Liste des frais – Entrée en vigueur le 1<sup>er</sup> juillet 2016

<sup>5</sup> Article 6389A de la Règle Six des Règles de la Bourse

<sup>6</sup> Article 4204 de la Règle Quatre des Règles de la Bourse



contenue à la *Liste des amendes pour infractions mineures* sans égard à la date de l'infraction. Comme plus amplement discuté ci-après, un participant agréé ou une personne approuvée pourra toujours choisir de ne pas être assujéti au Processus en demandant la tenue d'une audition devant un Comité de discipline.

### c. Description et analyses des impacts sur le marché

#### Nouvel article 4220 (Amende pour infraction mineure)

La Division propose d'introduire l'article 4220 afin de permettre au vice-président de la Division d'imposer une amende à un participant agréé ou une personne approuvée pour toute infraction incluse dans la *Liste des amendes pour infractions mineures*. Ce nouvel article précise que la Bourse maintient sa juridiction à l'égard d'anciens participants agréés ou personnes approuvées pour une période de 36 mois tout comme pour le dépôt d'une plainte disciplinaire (article 4101 b) des Règles).

Les infractions identifiées par la Division sont celles dont les éléments constitutifs peuvent être confirmés sur une base objective et factuelle :

1. Production incomplète ou inexacte du rapport relatif à l'accumulation de positions pour les instruments dérivés (article 14 102(1) des Règles)
2. Dépassement des limites de position (article 14 157 des Règles)
3. Non-respect de l'identification des ordres (articles 6366 B) 2.9) et 6376 des Règles)
4. Non-respect du délai prescrit pour rapporter un échange physique pour contrats, ou un échange d'instruments dérivés hors bourse pour contrats (EFP/EFRP) (articles 6815 et 6815A des Règles)
5. Non-respect du temps d'exposition au marché (article 6380 des Règles)
6. Défaut de ne pas transmettre un avis de non-conformité ou un avis de dépassement de limite de position (articles 4002 et 14 102(7) des Règles)
7. Usage prohibé de la fonction de liquidité cachée (article 6380 des Règles)
8. Octroi d'accès au système automatisé sans autorisation (article 6366 A) des Règles)
9. Maintien inadéquat ou incomplet des dossiers des ordres (article 6377 des Règles)

Dans tous les cas, une enquête de la Division sera nécessaire pour déterminer s'il y a eu infraction ou non. Si, après enquête, la Division conclut à la commission d'une infraction et que cette infraction est incluse à la *Liste des amendes pour infractions mineures*, la Division pourra recourir à ce Processus de mise en application pour un traitement plus rapide du dossier. Au cours des cinq dernières années, le délai moyen entre le dépôt d'une plainte disciplinaire et la décision du Comité de discipline est de 12 mois. Le Processus vise donc à réduire ce délai de



façon significative. La Division estime à deux mois le délai moyen pour le traitement d'une infraction en vertu du Processus.

Le Processus est par ailleurs moins coûteux et permet aux participants agréés et aux personnes approuvées de connaître les conséquences financières possibles pour certaines infractions.

Finalement, cet article vise également à permettre au vice-président de la Division d'opter, sur une base discrétionnaire, pour le dépôt d'une plainte disciplinaire bien qu'il s'agisse d'une infraction incluse à la *Liste des amendes pour infractions mineures*. Ce pouvoir discrétionnaire vise à permettre à la Division d'avoir recours au processus de mise en application le plus approprié compte tenu des circonstances de chaque affaire. En autres, il est possible que, en raison de circonstances particulières, l'imposition d'une amende n'ait pas l'effet dissuasif souhaité ou ne reflète pas la gravité de l'infraction. À titre d'exemples, l'infraction commise peut avoir eu un impact sur le marché, les clients ou la réputation de la Bourse, ou il s'agit d'un problème récurrent pour le participant agréé ou la personne approuvée, ou en raison de la commission de l'infraction, le participant agréé ou la personne approuvée a tiré un avantage supérieur à l'amende prévue. Dans de telles circonstances, il peut être préférable dans un objectif de protéger l'intégrité du marché de procéder au dépôt d'une plainte disciplinaire.

#### Nouvel article 4221 (Avis d'infraction mineure)

L'article 4221 prévoit la signification d'un avis d'infraction mineure au participant agréé ou à la personne approuvée en cause. Cet article énumère les éléments devant être contenus à l'avis d'infraction afin de permettre au participant agréé ou à la personne approuvée de comprendre l'infraction qui lui est reprochée et de connaître ses droits, dont celui de faire valoir ses observations avant qu'une amende ne lui soit imposée. Cet article vise à respecter le droit d'être entendu des participants agréés et des personnes approuvées.

#### Nouvel article 4222 (Observations du participant agréé ou de la personne approuvée)

À la suite de la signification d'un avis d'infraction mineure, le participant agréé ou la personne approuvée visé devra, dans les vingt jours ouvrables, décider si elle souhaite poursuivre le Processus ou procéder devant un Comité de discipline.

Si le participant agréé ou la personne approuvée opte pour l'application du Processus, elle pourra faire parvenir ses observations au vice-président de la Division. L'article 4222 précise que ces observations doivent être transmises dans un délai de vingt jours ouvrables de la signification de l'avis d'infraction mineure, qu'elles doivent confirmer ou infirmer des faits et que la défense de diligence raisonnable n'est pas admissible ni recevable. Le Processus peut



donc être qualifié en droit canadien de régime de responsabilité absolue. La Division est d'avis que ce Processus renferme plusieurs avantages pour les participants agréés et les personnes approuvées : la confidentialité, incluant l'anonymat de toute publication s'y rattachant, des coûts moindres que ceux pouvant être encourus dans le cadre d'un processus de plainte disciplinaire (dont les frais juridiques et les frais d'enquête), montant de l'amende connu et prédéterminé et rapidité de résolution de l'affaire.

Toutefois, le participant agréé ou la personne approuvée qui souhaite faire valoir une défense de diligence raisonnable peut décider de contester cet avis d'infraction devant un Comité de discipline tout comme si une plainte disciplinaire avait été déposée. Dans ce contexte, l'avis d'infraction mineure est réputé être une plainte disciplinaire en vertu de l'article 4101 des Règles. Dans ce délai de vingt jours ouvrables, le participant agréé ou la personne approuvée doit signifier au vice-président de la Division une demande pour que l'affaire soit entendue par un Comité de discipline accompagnée d'une réponse, telle que décrite à l'article 4152 des Règles.

L'article prévoit par ailleurs que si le participant agréé ou la personne approuvée omet ou fait défaut de soumettre ses observations ou de contester l'avis d'infraction mineure dans le délai prescrit, il sera réputé avoir accepté de payer l'amende et avoir renoncé à tous ses droits en vertu de la réglementation de la Bourse concernant l'audition et la contestation.

#### Nouvel article 4223 (Avis d'amende pour infraction mineure)

L'article 4223 permet au vice-président de la Division d'imposer une amende à un participant agréé ou une personne approuvée en lui signifiant un avis d'amende pour infraction mineure à l'expiration du délai prévu à l'article 4222. Si, après avoir pris connaissance des observations du participant agréé ou de la personne approuvée, le vice-président de la Division est satisfait que l'infraction décrite dans l'avis n'ait pas été commise, notamment en raison d'une erreur de fait, ce dernier peut décider de ne pas imposer d'amende et fermer le dossier.

Si le vice-président de la Division est d'avis que l'infraction a été commise, il ne dispose d'aucune discrétion quant au montant de l'amende à imposer. Il se doit d'imposer l'amende prévue à la *Liste des amendes pour infractions mineures*. Toutefois, la décision du vice-président de la Division d'imposer une amende pour infraction mineure peut être portée en appel devant le Comité spécial selon les articles 4251 et suivants des Règles. Lors de cet appel, la défense de diligence raisonnable n'est ni admissible ni recevable.

Le paiement de l'amende devient exigible dix jours ouvrables après la signification de l'avis d'amende pour infraction mineure au participant agréé ou à la personne approuvée.



#### Nouvel article 4224 (Publication d'informations relatives à l'imposition d'amendes pour infractions mineures)

Afin d'informer les participants quant aux procédures de mise en application prises au cours d'une période déterminée, la Division rendra publiques des informations relatives aux amendes imposées notamment la nature des infractions mineures, les montants des amendes imposées ainsi que toute autre information que la Division jugera pertinente. Ces informations seront publiées sur une base anonyme. Il s'agit d'une mesure incitative qui vise à favoriser une résolution accélérée de certains dossiers. À l'heure actuelle, la Division envisage une publication sous la forme d'une circulaire annuelle. Au besoin, la fréquence de la publication sera évaluée.

#### Abrogation de l'article 6389A (Imposition d'amendes)

L'article 6389A est désuet. Les situations mentionnées à l'article 6389A relèvent de la responsabilité de la Division.

#### **d. Analyse comparative**

Veuillez-vous référer à l'Annexe 1 qui détaille les pratiques d'autres organismes d'autoréglementation, bourses et sociétés d'État ayant recours à une approche d'imposition d'amendes pour infractions mineures ou de sanctions administratives pécuniaires.

#### **e. Changements proposés**

Veuillez-vous référer à l'Annexe 2 pour les modifications réglementaires proposées.

### **III. PROCESSUS DE MODIFICATION**

La Division a entrepris ce projet pour améliorer l'efficacité du processus de mise en application pour certaines infractions tout en respectant les principes d'équité procédurale. La Division est d'avis que le Processus comporte plusieurs avantages pour les participants agréés et personnes approuvées.

La Division considère que ce Processus lui permettra d'améliorer les moyens dont elle dispose pour assurer le respect des Règles dans un objectif de maintien de l'intégrité des marchés.



#### **IV. INCIDENCES SUR LES SYSTÈMES TECHNOLOGIQUES**

Aucun des articles proposés n'a d'incidence sur les systèmes technologiques de la Bourse ou ceux des participants agréés.

#### **V. OBJECTIFS DES MODIFICATIONS PROPOSÉES**

Les modifications proposées visent à :

- Améliorer l'efficacité du processus de mise en application;
- Offrir à la Division une alternative de mise en application;
- Aligner les pratiques de la Bourse avec celles d'autres organismes d'autoréglementation, dont des bourses d'instruments dérivés, et des sociétés d'État;
- Assurer la prévisibilité et la cohérence des sanctions pour certaines infractions.

#### **VI. INTÉRÊT PUBLIC**

De façon générale, ce Processus vise à améliorer la capacité de la Division à assurer ses fonctions réglementaires, dont la protection de l'intégrité des marchés. Il est dans l'intérêt public que la Division dispose de processus de mise en application adéquats et adaptés aux circonstances de chaque affaire.

#### **VII. EFFICIENCE**

L'adoption du Processus vise, entre autres, à améliorer l'efficacité et la cohérence de la mise en application des Règles de la Bourse tant pour la Division que pour les participants agréés et personnes approuvées.

#### **VIII. PROCESSUS**

L'adoption des articles 4220 à 4224 et l'abrogation de l'article 6389A sont soumises au Comité des Règles et Politiques et du Comité spécial de la Bourse aux fins d'approbation. Elles seront





également soumises à l'Autorité des marchés financiers conformément à la procédure d'autocertification et à la Commission des valeurs mobilières de l'Ontario à titre informatif.

**IX. DOCUMENTS EN ANNEXE**

- Annexe 1 : Analyse comparative
- Annexe 2 : Modifications proposées
- Annexe 3 : Liste des amendes pour infractions mineures



ANALYSE COMPARATIVE - RÉGIMES D'INFRACTIONS MINEURES D'AUTRES BOURSES				
Référence réglementaire	Période	Lien	Processus	Caractéristiques
BOX: Rule 12140		<a href="http://bmb-prod-na-eastus-eg-prod.azurewebsites.net/browse/9669e4707b431000bb9a001b7840a5b2011">http://bmb-prod-na-eastus-eg-prod.azurewebsites.net/browse/9669e4707b431000bb9a001b7840a5b2011</a>	L'amende est exigible immédiatement après la signification d'un avis. Le participant a un délai minimum de 25 jours pour contester l'avis. S'il y a contestation, l'audience est tenue devant le <i>Hearing Committee</i> .	5 000 \$ maximum par infraction. Il y a un barème spécifique pour chaque infraction.
CBOE Futures: Rule 714		<a href="https://cfe.cboe.com/publish/cferulebook/cferulebook.pdf">https://cfe.cboe.com/publish/cferulebook/cferulebook.pdf</a>	L'amende est exigible immédiatement après la signification d'un avis. Le participant a 30 jours pour contester, demander une révision, avec audience ou non, et confirmer si des représentations écrites sont suffisantes. Le <i>Business Conduct Committee</i> entend la demande de révision. CBOE Futures peut toujours procéder par plainte disciplinaire si l'infraction est intentionnelle, flagrante ( <i>egregious</i> ) ou n'est pas mineure par nature.	15 000 \$ maximum par infraction. Il y a un barème spécifique pour chaque infraction.
CBOE: Rule 17.50		<a href="http://cchwallstreet.com/CBOEtools/PlatformViewer.asp?SelectedNode=chp_1_2&amp;manual=/CBOE/rules/cboe-rules/">http://cchwallstreet.com/CBOEtools/PlatformViewer.asp?SelectedNode=chp_1_2&amp;manual=/CBOE/rules/cboe-rules/</a>	L'amende est exigible immédiatement après la signification d'un avis. Le participant a 30 jours pour contester ou payer l'amende. Le paiement de l'amende par le participant ne constitue pas une admission de l'infraction.	5 000 \$ maximum par infraction. Il y a un barème spécifique pour chaque infraction.
CME: Rule 512		<a href="http://www.cmegroup.com/rulebook/files/RA1503-5.pdf">http://www.cmegroup.com/rulebook/files/RA1503-5.pdf</a>	Le membre a 15 jours après la signification d'un avis pour fournir ses observations au <i>Chief Regulatory Officer</i> afin de le convaincre	1 000 \$ minimum à 10 000 \$ maximum. La détermination de l'amende relève de la discrétion du <i>Chief Regulatory Officer</i> .



ANALYSE COMPARATIVE - RÉGIMES D'INFRACTIONS MINEURES D'AUTRES BOURSES				
Référence réglementaire	Période	Lien	Processus	Caractéristiques
			d'annuler ou réduire le montant de l'amende. Si aucune observation n'est fournie dans le délai de 15 jours, l'amende est exigible. Le <i>Chief Regulatory Officer</i> signifie un autre avis qui confirme, annule ou réduit le montant de l'amende. Le membre a 10 jours pour en appeler de la décision du <i>Chief Regulatory Officer</i> en fournissant ses motifs. L'appel est entendu devant le <i>Business Conduct Committee</i> . La décision du <i>Business Conduct Committee</i> est finale.	
NASDAQ: Rule 9216 et NASDAQ Options Rules Chapter X Sec. 7		<a href="http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp1111&amp;manual=%2Fnasdaq%2Fmain%2Fnasdaq-equityrules%2F">http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp1111&amp;manual=%2Fnasdaq%2Fmain%2Fnasdaq-equityrules%2F</a> et <a href="http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp1110&amp;manual=%2Fnasdaq%2Fmain%2Fnasdaq-">http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp1110&amp;manual=%2Fnasdaq%2Fmain%2Fnasdaq-</a>	Le <i>Department of Enforcement</i> ou le <i>Department of Market Regulation</i> peut requérir un membre ou une personne associée de signer une lettre de reconnaissance de l'infraction, de renonciation à son droit de contestation ou d'appel et de consentement au paiement d'une amende. Cette lettre est révisée par le <i>NASDAQ Review Council</i> . La décision du <i>NASDAQ Review Council</i> est finale.	5 000 \$ maximum. Il y a un barème spécifique pour chaque infraction.



## ANALYSE COMPARATIVE - RÉGIMES D'INFRACTIONS MINEURES D'AUTRES BOURSES

Référence réglementaire	Période	Lien	Processus	Caractéristiques
		<a href="#">optionsrules%2F</a>		
ICE Futures US: Rule 21.02(e)		<a href="https://www.theice.com/publicdocs/rulebooks/futures_us/21_Disciplinary.pdf">https://www.theice.com/publicdocs/rulebooks/futures_us/21_Disciplinary.pdf</a>	Le vice-président peut imposer une amende pour infraction mineure. L'amende est finale et son paiement est exigible dans un délai de 15 jours. Le vice-président a toujours la discrétion de procéder par plainte disciplinaire. Il n'y a pas de droit d'appel de prévu dans les règles.	10 000 \$ maximum. La détermination de l'amende relève de la discrétion du vice-président.
ASX: Rule 2.4		<a href="http://www.asx.com.au/documents/rules/enforcement_rules_section_02.pdf">http://www.asx.com.au/documents/rules/enforcement_rules_section_02.pdf</a> et <a href="http://www.asx.com.au/documents/rules/enforcement_rules_guidance_note_01.pdf">http://www.asx.com.au/documents/rules/enforcement_rules_guidance_note_01.pdf</a>	Au lieu de déposer une plainte disciplinaire, ASX peut signifier une <i>Alleged Infringement Notice</i> . ASX émet un avis au participant et mentionne un délai pour se conformer. Si le participant paye la pénalité, il n'est pas réputé avoir admis ni contrevenu à l'infraction. Le participant peut en appeler la décision devant un comité de discipline.	L'ASX utilise la <i>Alleged Infringement Notice</i> pour toute infraction de catégorie <i>Minor contraventions</i> . Le délai et le montant est déterminé par ASX. Les pénalités monétaires sont entre 0 \$ et 20 000 \$.



ANALYSE COMPARATIVE - RÉGIMES D'INFRACTIONS MINEURES D'AUTRES BOURSES				
Référence réglementaire	Période	Lien	Processus	Caractéristiques
IEX: Rule 9.218		<a href="https://www.iextrading.com/docs/Investors%20Exchange%20Rule%20Book.pdf">https://www.iextrading.com/docs/Investors%20Exchange%20Rule%20Book.pdf</a>	IEX délègue sa mise en application à FINRA. FINRA peut requérir un membre ou une personne associée d'exécuter une lettre de reconnaissance de l'infraction, de renonciation à son droit de contestation ou d'appel et de consentement au paiement d'une amende. Si le membre ou la personne associée refuse d'exécuter la lettre d'acceptation, de renonciation et de consentement, la FINRA prend les mesures disciplinaires appropriées.	2 500 \$ maximum. Il y a un barème spécifique pour chaque infraction.
<b>a) LOPR</b>				
Rien pour BOX	-	-		
CBOE Futures (Rules 412B(a) and 412B(b))	Consécutif 12 mois	<a href="https://cfe.cboe.com/publish/cferulebook/cferulebook.pdf">https://cfe.cboe.com/publish/cferulebook/cferulebook.pdf</a>		1ère infraction: lettre d'avertissement, 2e infraction: 7 500 \$, 3e infraction: 15 000 \$, 4e infraction: Référence au <i>Business Conduct Committee</i>
CBOE (Rule 4.13)	Consécutif 24 mois	<a href="http://cchwallstreet.com/CBOEtools/PlatformViewer.asp?SelectedNode=chp_1_2&amp;manual=/CBOE/rules/cboe-rules/">http://cchwallstreet.com/CBOEtools/PlatformViewer.asp?SelectedNode=chp_1_2&amp;manual=/CBOE/rules/cboe-rules/</a>		1ère infraction: 500 \$, 2e infraction: 1 000 \$, 3e infraction: 2 500 \$, infractions suivantes: 5 000 \$ ou audience devant le <i>Business Conduct Committee</i>
CME (Rule 561)	Consécutif 12 mois	<a href="http://www.cmegroup.com/rulebook/CME/">http://www.cmegroup.com/rulebook/CME/</a>		1 000 \$ minimum à 10 000 \$ maximum. La détermination de l'amende relève de la



ANALYSE COMPARATIVE - RÉGIMES D'INFRACTIONS MINEURES D'AUTRES BOURSES				
Référence réglementaire	Période	Lien	Processus	Caractéristiques
		<a href="#">I/5/5.pdf</a>		discrétion du <i>Chief Regulatory Officer</i> .
NASDAQ (Chapter III Section 7-10)	Consécutif 24 mois	<a href="http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp_1_1_10&amp;manual=%2Fnasdaq%2Fmain%2Fnasdaq-optionsrules%2F">http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp_1_1_10&amp;manual=%2Fnasdaq%2Fmain%2Fnasdaq-optionsrules%2F</a>		1ère infraction: 1 000 \$, 2e infraction: 2 500 \$, 3e infraction: 5 000 \$
ICE Futures US (Rule 6.15 (a)(b))	Aucune	<a href="https://www.theice.com/publicdocs/rulebooks/futures_us/6_Regulatory.pdf">https://www.theice.com/publicdocs/rulebooks/futures_us/6_Regulatory.pdf</a>		10 000 \$ maximum. La détermination de l'amende relève de la discrétion du vice-président.
Rien pour IEX				
<b>b) Limites de positions</b>				
BOX (Rule 3120)	Consécutif 24 mois	<a href="http://bmb-prod-na-eastus-eg-prod.azurewebsites.net/browse/965df46c7b431000ada6001b7840a5b2010">http://bmb-prod-na-eastus-eg-prod.azurewebsites.net/browse/965df46c7b431000ada6001b7840a5b2010</a>		1ère infraction: 500 \$, 2e infraction: 1 000 \$, 3e infraction: 2 500 \$, infractions suivantes: 5 000 \$
CBOE Futures (Rule 412 A)	Consécutif 12 mois	<a href="https://cfe.cboe.com/publish/cferulebook/cferulebook.pdf">https://cfe.cboe.com/publish/cferulebook/cferulebook.pdf</a>		Couvre les niveaux d'imputabilité des positions toutes expirations combinées. 1ère infraction: lettre d'avertissement, 2e infraction: 7 500 \$, 3e infraction: 15 000 \$,



ANALYSE COMPARATIVE - RÉGIMES D'INFRACTIONS MINEURES D'AUTRES BOURSES				
Référence réglementaire	Période	Lien	Processus	Caractéristiques
				infractions suivantes: Audience devant le <i>Business Conduct Committee</i> .
CBOE (Rules 4.11 et 4.12)	Consécutif 24 mois	<a href="http://cchwallstreet.com/CBOEtools/PlatformViewer.asp?SelectedNode=chp_1_2&amp;manual=/CBOE/rules/cboe-rules/">http://cchwallstreet.com/CBOEtools/PlatformViewer.asp?SelectedNode=chp_1_2&amp;manual=/CBOE/rules/cboe-rules/</a>		1ère infraction: 500 \$, 2e infraction: 1 000 \$, 3e infraction: 2 500 \$, infractions suivantes: 5 000 \$ ou audience devant le <i>Business Conduct Committee</i>
Rien pour CME				
NASDAQ (Chapter III Section 7)	Consécutif 24 mois	<a href="http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp_1_1_10&amp;manual=%2Fnasdaq%2Fmain%2Fnasdaq-optionsrules%2F">http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp_1_1_10&amp;manual=%2Fnasdaq%2Fmain%2Fnasdaq-optionsrules%2F</a>		Sanctions pour la production de rapports en retard sont: 1ère infraction: 500 \$, 2e infraction: 1 000 \$, 3e infraction: 2 500 \$. Sanctions par contrats en dépassement des limites de positions applicables: 1 à 3 en deça de 5 % de la limite applicable: lettre d'avertissement, 1 à 3 au-dessus de 5 % de la limite applicable, 4 à 6 contrats: 1 \$ par contrat au-dessus de la limite, 7 ou plus: 5 \$ par contrat au-dessus de la limite.
ICE Futures US (Rule 6.13)	Aucune	<a href="https://www.theice.com/publicdocs/rulebooks/futures_us/6_Regulatory.pdf">https://www.theice.com/publicdocs/rulebooks/futures_us/6_Regulatory.pdf</a>		10 000 \$ maximum. La détermination de l'amende relève de la discrétion du vice-président.
Rien pour IEX				





ANALYSE COMPARATIVE - RÉGIMES D'INFRACTIONS MINEURES D'AUTRES BOURSES				
Référence réglementaire	Période	Lien	Processus	Caractéristiques
<b>c) Identification des ordres</b>				
Rien pour BOX				
CBOE Futures (Rule 403(a)(vii)-(viii))	Consécutif 12 mois	<a href="https://cfe.cboe.com/publish/cferulebook/cferulebook.pdf">https://cfe.cboe.com/publish/cferulebook/cferulebook.pdf</a>		Défaut de correctement identifier les types de comptes rattachés à un ordre: 1ère infraction: Lettre d'avertissement, 2e infraction: 2 500 \$, 3e infraction: 5 000 \$, 4e infraction: 7 500 \$, 5e infraction: 10 000 \$, infractions suivantes: Audience devant le <i>Business Conduct Committee</i> .
		-		Défaut de correctement identifier le compte avec le numéro de compte associé à celui-ci: 1ère infraction: Lettre d'avertissement, 2e infraction: 2 500 \$, 3e infraction: 10 000 \$, infractions suivantes: Audience devant le <i>Business Conduct Committee</i> .
Rien pour CBOE		-		
CME (Rule 536B, 536D & 576)	Consécutif 12 mois	<a href="http://www.cmegroup.com/rulebook/CME/I/5/5.pdf">http://www.cmegroup.com/rulebook/CME/I/5/5.pdf</a>		1 000 \$ minimum à 10 000 \$ maximum. La détermination de l'amende relève de la discrétion du vice-président.
Rien pour NASDAQ				
ICE Futures US (Rule 27.09 (a-b-c))	Aucune	<a href="https://www.theice.com/publicdocs/rulebooks/futures_us/27_Electronic_Trading_Rules">https://www.theice.com/publicdocs/rulebooks/futures_us/27_Electronic_Trading_Rules</a>		10 000 \$ maximum. La détermination de l'amende relève de la discrétion du vice-président.



ANALYSE COMPARATIVE - RÉGIMES D'INFRACTIONS MINEURES D'AUTRES BOURSES				
Référence réglementaire	Période	Lien	Processus	Caractéristiques
		<a href="#">pdf</a>		
IEX (Rule 11.420)	Consécutif 12 mois	<a href="https://www.iextrading.com/docs/Investors%20Exchange%20Rule%20Book.pdf">https://www.iextrading.com/docs/Investors%20Exchange%20Rule%20Book.pdf</a>		Fait référence à la règle FINRA 7440. Le participant doit correctement identifier immédiatement le type de client. 1ère infraction: 500 \$, 2e infraction: 1 000 \$, 3e infraction: 2 500 \$.
<b>d) Rapport EFP/EFR</b>				
Rien pour BOX				
CBOE Futures (Rule 414(i-j))	Consécutif 12 mois	<a href="https://cfe.cboe.com/publish/cferulebook/cferulebook.pdf">https://cfe.cboe.com/publish/cferulebook/cferulebook.pdf</a>		Défaut de se conformer aux règles relatives à l'échange de contrat pour une position liée: 1ère infraction: Lettre d'avertissement, 2e infraction: 7 500 \$, 3e infraction 15 000 \$, infractions suivantes: Audience devant le <i>Business Conduct Committee</i> .
Rien pour CBOE		-		
Rien pour CME				
Rien pour NASDAQ				
ICE Futures US (Rule 4.06)	Aucune	<a href="https://www.theice.com/publicdocs/rulebooks/futures_us/4_Trading.pdf">https://www.theice.com/publicdocs/rulebooks/futures_us/4_Trading.pdf</a>		10 000 \$ maximum. La détermination de l'amende relève de la discrétion du vice-président.
Rien pour IEX				
<b>e) Non-respect de temps d'exposition au marché</b>				
Rien pour BOX				



ANALYSE COMPARATIVE - RÉGIMES D'INFRACTIONS MINEURES D'AUTRES BOURSES				
Référence réglementaire	Période	Lien	Processus	Caractéristiques
CBOE Futures (Rule 415)	Consécutif 12 mois	<a href="https://cfe.cboe.com/publish/cferulebook/cferulebook.pdf">https://cfe.cboe.com/publish/cferulebook/cferulebook.pdf</a>		Défaut de se conformer à la taille minimale requise pour une opération en bloc: 1ère infraction: 5 000 \$, 2e infraction: 10 000 \$, 3e infraction: 15 000 \$, infractions suivantes: Audience devant le <i>Business Conduct Committee</i> . Défaut de se conformer aux exigences de production de rapport pour une opération en bloc: 1ère infraction: Lettre d'avertissement, 2e infraction: 7 500 \$, 3e infraction: 15 000 \$, infractions suivantes: Audience devant le <i>Business Conduct Committee</i> .
Rien pour CBOE		-		
Rien pour CME				
Rien pour NASDAQ				
Rien pour ICE Futures US				
Rien pour IEX				
<b>f) Défaut de ne pas transmettre un avis de non-conformité dans les délais prescrits</b>				
Rien pour BOX				
Rien pour CBOE		-		
Rien pour CBOE Futures				
Rien pour CME				



ANALYSE COMPARATIVE - RÉGIMES D'INFRACTIONS MINEURES D'AUTRES BOURSES				
Référence réglementaire	Période	Lien	Processus	Caractéristiques
Rien pour NASDAQ				
Rien pour ICE Futures US				
Rien pour IEX				
<b>g) Usage prohibé de la fonction de liquidité cachée</b>				
Rien pour BOX				
Rien pour CBOE				
Rien pour CBOE Futures				
Rien pour CME				
Rien pour NASDAQ				
Rien pour ICE Futures US				
Rien pour IEX				
<b>h) Octroi d'accès au Système automatisé de Montréal (SAM) sans autorisation</b>				
Rien pour BOX				
Rien pour CBOE				
CBOE Futures (Rule 303A)	Consécutif 12 mois	<a href="https://cfe.cboe.com/publish/cferulebook/cferulebook.pdf">https://cfe.cboe.com/publish/cferulebook/cferulebook.pdf</a>		Entrée incorrecte des identifiants d'opérateurs: 1ère infraction: Lettre d'avertissement, 2e infraction: 2 500 \$, 3e infraction: 10 000 \$, infractions suivantes: Audience devant le <i>Business Conduct Committee</i> .
CME (Rule 576)	Consécutif 12 mois	<a href="https://www.cmegroup.com/rulebook/files/">https://www.cmegroup.com/rulebook/files/</a>		1 000 \$ minimum à 10 000 \$ maximum. La détermination de l'amende relève de la



ANALYSE COMPARATIVE - RÉGIMES D'INFRACTIONS MINEURES D'AUTRES BOURSES				
Référence réglementaire	Période	Lien	Processus	Caractéristiques
		<a href="#">CME Group RA0915-5.pdf</a> et <a href="https://www.cmegroup.com/rulebook/files/CME_Group_RA0908-5.pdf">https://www.cmegroup.com/rulebook/files/CME_Group_RA0908-5.pdf</a>		discrétion du vice-président.
Rien pour NASDAQ				
ICE Futures US (Rule 27.09(c))	Aucune	<a href="https://www.theice.com/publicdocs/rulebooks/futures_us/27_Electronic_Trading_Rules.pdf">https://www.theice.com/publicdocs/rulebooks/futures_us/27_Electronic_Trading_Rules.pdf</a>		10 000 \$ maximum. La détermination de l'amende relève de la discrétion du vice-président.
Rien pour IEX				
<b>j) Maintien inadéquat ou incomplet des dossiers des ordres</b>				
Rien pour BOX				
Rien pour CBOE				
CBOE Futures (Rule 303-403)	Consécutif 12 mois	<a href="https://cfe.cboe.com/publish/cferulebook/cferulebook.pdf">https://cfe.cboe.com/publish/cferulebook/cferulebook.pdf</a>		1ère infraction: Lettre d'avertissement, 2e infraction: 2 500 \$, 3e infraction: 10 000 \$, infractions suivantes: Audience devant le <i>Business Conduct Committee</i> .
Rien pour CME				
NASDAQ Options Market (Chapter V, Sections 7 et Chapter IX, Sections 1-3)	Consécutif 24 mois	<a href="http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp">http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp</a>		Information sur la piste de vérification inadéquate: 1ère infraction: 1 500 \$, 2e infraction: 3 000 \$, infractions suivantes: 5 000 \$. Maintien des dossiers inadéquat:



## ANALYSE COMPARATIVE - RÉGIMES D'INFRACTIONS MINEURES D'AUTRES BOURSES

Référence réglementaire	Période	Lien	Processus	Caractéristiques
		<a href="#">_1_1_10&amp;manual=%2Fnasdaq%2Fmain%2Fnasdaq-optionsrules%2F</a>		1ère infraction: 2 000 \$, 2e infraction: 4 000 \$, infractions suivantes: 5 000 \$
ICE Futures US (Rule 27.12A)	Aucune	<a href="https://www.theice.com/publicdocs/rulebooks/futures_us/27_Electronic_Trading_Rules.pdf">https://www.theice.com/publicdocs/rulebooks/futures_us/27_Electronic_Trading_Rules.pdf</a>		10 000 \$ maximum. La détermination de l'amende relève de la discrétion du vice-président.
IEX (Rule 4.511 et 11.420)	Consécutif 12 mois	<a href="https://www.iextrading.com/docs/Investors%20Exchange%20Rule%20Book.pdf">https://www.iextrading.com/docs/Investors%20Exchange%20Rule%20Book.pdf</a>		1ère infraction: 500 \$, 2e infraction: 1 000 \$, 3e infraction: 2 500 \$



ANALYSE COMPARATIVE - DROIT CANADIEN				
Référence réglementaire	Période	Lien	Processus	Caractéristiques
Ville de Montréal (Règlement sur la circulation et le stationnement)		<a href="http://ville.montreal.qc.ca/sel/sypre-consultation/afficherpdf?idDoc=34&amp;typeDoc=1">http://ville.montreal.qc.ca/sel/sypre-consultation/afficherpdf?idDoc=34&amp;typeDoc=1</a>	L'amende est exigible immédiatement après la signification d'un avis et le citoyen peut en appeler de la sanction dans les 30 jours devant la Cour municipale.	Une gradation des sanctions est prévue pour des récidives en matière de remorquage. Jusqu'à 2 000 \$ par infraction.
Sûreté du Québec (Code de la Sécurité routière - Titre III Chapitre IV et Titre VIII Chapitre VII)		<a href="http://legisquebec.gouv.qc.ca/fr/showdoc/cs/C-24.2">http://legisquebec.gouv.qc.ca/fr/showdoc/cs/C-24.2</a>	L'amende est exigible immédiatement après la signification d'un avis et le citoyen peut en appeler de la sanction dans les 30 jours devant la Cour du Québec ou la Cour municipale.	Jusqu'à 27 000 \$ par infraction
Agence du Revenu du Canada (Loi de l'impôt sur le revenu - Article 162)		<a href="http://www.cra-arc.gc.ca/tx/ndvds/tpcs/ncm-tx/ntrst/menu-fra.html">http://www.cra-arc.gc.ca/tx/ndvds/tpcs/ncm-tx/ntrst/menu-fra.html</a> et <a href="http://laws.justice.gc.ca/fra/lois/i-3.3/page-195.html#h-101">http://laws.justice.gc.ca/fra/lois/i-3.3/page-195.html#h-101</a>	Un avis de cotisation est signifié directement au contribuable. Le contribuable peut contester l'avis de manière écrite au Directeur des Appels de l'ARC. Le contribuable peut en appeler de la décision du Directeur des Appels de l'ARC devant la Cour canadienne de l'impôt.	Omettre de présenter, remplir ou de produire sa déclaration d'impôt: 5% du solde impayé plus 1% du solde impayé par mois complet de retard jusqu'à un maximum de 12 mois plus l'intérêt applicable quotidiennement. Les pénalités sont plus élevées si des amendes ont déjà été imposées dans les années précédentes.
Ministère de l'environnement (QC) (Article 115.13 de la Loi sur la qualité de		<a href="http://www.mdelcc.gouv.qc.ca/lqe/renforcement/cadre-application-SAP.pdf">http://www.mdelcc.gouv.qc.ca/lqe/renforcement/cadre-application-SAP.pdf</a> et	Un avis de non-conformité est signifié à un administré. Le Ministère a la discrétion d'imposer une sanction ou non si l'administré se conforme à l'avis de non-conformité. Si le	Jusqu'à 10 000 \$ par infraction





ANALYSE COMPARATIVE - DROIT CANADIEN				
Référence réglementaire	Période	Lien	Processus	Caractéristiques
<i>l'environnement)</i>		<a href="http://legisquebec.gouv.qc.ca/fr/ShowDoc/cs/Q-2/">http://legisquebec.gouv.qc.ca/fr/ShowDoc/cs/Q-2/</a>	Ministère sanctionne un administré, le Ministère signifie un avis de réclamation à l'administré spécifiant le montant réclamé, les motifs à l'appui et le délai à compter duquel il porte intérêt. L'avis mentionne le droit à un réexamen administratif et le droit de contester devant le Tribunal administratif du Québec. L'administré possède 30 jours pour en appeler de la décision du Ministre.	
AMF - Régime de sanctions administratives pécuniaires (Articles 274.1 et 322 de la <i>Loi sur les valeurs mobilières</i> et 271.13-14-15 du <i>Règlement sur les valeurs mobilières</i> )		<a href="http://legisquebec.gouv.qc.ca/fr/showDoc/cs/V-1.1?&amp;digest= et http://www.lautorite.qc.ca/files/pdf/reglementation/valeurs-mobilières/rvm/2012-01-01-indexation/2012-01-01-rvm-indexe-fr.pdf">http://legisquebec.gouv.qc.ca/fr/showDoc/cs/V-1.1?&amp;digest= et http://www.lautorite.qc.ca/files/pdf/reglementation/valeurs-mobilières/rvm/2012-01-01-indexation/2012-01-01-rvm-indexe-fr.pdf</a>	La sanction administrative pécuniaire est exigible à la signification d'un avis par l'Autorité. L'administré peut demander la révision d'une décision de l'Autorité dans les 30 jours au Tribunal administratif des marchés financiers.	Jusqu'à 5 000 \$ par infraction
AMF - Régime de sanctions administratives pécuniaires (Article 349.1 de la <i>Loi sur les sociétés de fiducie et</i>		<a href="http://legisquebec.gouv.qc.ca/fr/ShowDoc/cs/S-29.01">http://legisquebec.gouv.qc.ca/fr/ShowDoc/cs/S-29.01</a>	La sanction administrative pécuniaire est exigible à la signification d'un avis par l'Autorité. Un appel peut être logé devant le Tribunal administratif du Québec dans les 30 jours de la décision.	Jusqu'à 1 000 000 \$ par infraction



ANALYSE COMPARATIVE - DROIT CANADIEN				
Référence réglementaire	Période	Lien	Processus	Caractéristiques
<i>les sociétés d'épargne)</i>				
AMF - Régime de sanctions administratives pécuniaires (Article 115.2 de la <i>Loi sur la distribution des produits financiers</i> )		<a href="http://legisquebec.gouv.qc.ca/fr/ShowDoc/cs/D-9.2">http://legisquebec.gouv.qc.ca/fr/ShowDoc/cs/D-9.2</a>	La sanction administrative pécuniaire est exigible à la signification d'un avis par l'Autorité. Un appel peut être logé devant la Cour du Québec.	Jusqu'à 5 000 \$ par infraction. Dépôt de documents, maintien d'assurances, etc.
CANAFE - Régime de pénalités administratives (Articles 73.1 et 73.21 de la <i>Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes</i> et <i>Règlement sur les pénalités administratives - recyclage des produits de la criminalité et le financement des activités terroristes</i> )		<a href="http://laws-lois.justice.gc.ca/eng/acts/P-24.501/page-17.html">http://laws-lois.justice.gc.ca/eng/acts/P-24.501/page-17.html</a> et <a href="http://www.fintrac.gc.ca/pen/2-fra.asp">http://www.fintrac.gc.ca/pen/2-fra.asp</a>	La pénalité est exigible immédiatement à la signification des documents et d'un avis. L'administré peut seulement en appeler des infractions qualifiées de graves et très graves devant la Cour fédérale.	Infraction mineure: 1 à 1 000 \$, infraction grave: 1 à 100 000 \$, infraction très grave: 1 à 100 000 \$ pour une personne et 1 à 500 000 \$ pour une entité



#### **D. Amende pour infraction mineure**

##### **4220 Amende pour infraction mineure (00.00.0000)**

- a) Le vice-président de la Division de la réglementation peut, conformément à la procédure prévue aux articles 4222 et suivants, pour toute infraction énumérée à la Liste des amendes pour infractions mineures publiée sur le site de la Bourse, imposer à un participant agréé ou à une personne approuvée l'amende qui y est prévue laquelle ne peut excéder 5 000 \$ par infraction.
- b) Le vice-président de la Division de la réglementation peut imposer une amende pour toute infraction énumérée à la *Liste des amendes pour infractions mineures* contre un ancien participant agréé ou une personne approuvée, à la condition de lui signifier un avis d'infraction mineure dans le délai prévu à l'article 4101 b).
- c) Nonobstant la possibilité d'imposer une amende pour toute infraction énumérée à la *Liste des amendes pour infractions mineures* en vertu des paragraphes a) et b), le vice-président de la Division de la réglementation peut, à sa discrétion, opter pour le dépôt d'une plainte disciplinaire conformément à la procédure prévue aux articles 4151 et suivants.

##### **4221 Avis d'infraction mineure (00.00.0000)**

- a) Avant d'imposer une amende, le vice-président de la Division de la réglementation doit signifier au participant agréé ou à la personne approuvée un avis d'infraction.
- b) L'avis d'infraction mineure doit :
  - i) être par écrit;
  - ii) être signé par le vice-président de la Division de la réglementation;
  - iii) contenir les éléments suivants pour chacune des infractions :
    - a) l'infraction reprochée;
    - b) l'article ou les articles de la réglementation relatifs à l'infraction reprochée;
    - c) la date de l'infraction;



- d) un énoncé sommaire des faits générateurs de l'infraction;
- e) le montant de l'amende pour l'infraction;
- f) le délai prévu à l'article 4222 dont bénéficie le participant agréé ou la personne approuvée pour soumettre ses observations ou pour signifier une demande pour que l'affaire soit entendue par un Comité de discipline;
- g) un avis indiquant que le défaut de soumettre des observations ou une réponse emporte forclusion de contester la décision d'imposer l'amende prévue.

**4222 Observations ou contestation du participant agréé ou de la personne approuvée  
(00.00.0000)**

- a) Suite à la signification d'un avis d'infraction mineure, le participant agréé ou la personne approuvée peut, dans un délai de vingt jours ouvrables :
  - i) Soumettre ses observations au vice-président de la Division de la réglementation de manière écrite. Les observations doivent confirmer ou infirmer des faits. Dans le cadre du processus d'imposition d'amendes pour infractions mineures, la défense de diligence raisonnable n'est pas admissible ni recevable; ou
  - ii) Contester l'avis d'amende pour infraction mineure en signifiant au vice-président de la Division de la réglementation une demande pour que l'affaire soit entendue par un Comité de discipline conformément aux articles 4102 et suivants, cette demande devant être accompagnée d'une réponse décrite à l'article 4152. Dans ce cas, l'avis d'infraction mineure est réputé être une plainte en vertu l'article 4101.
- b) À défaut de soumettre ses observations ou de contester l'avis d'infraction mineure dans le délai prescrit, le participant agréé ou la personne approuvée sera réputé avoir accepté de payer l'amende et avoir renoncé à tous ses droits en vertu de la réglementation de la Bourse concernant l'audition et la contestation.

**4223 Avis d'amende pour infraction mineure  
(00.00.0000)**

- a) À l'expiration du délai prévu à l'article 4222, et après avoir considéré les observations du participant agréé ou de la personne approuvée le cas échéant, le vice-président de la Division de la réglementation peut imposer au participant agréé ou à la personne approuvée l'amende prévue à la *Liste des amendes pour infractions mineures* en lui signifiant un avis d'amende pour infraction.



- b) La décision du vice-président de la Division d'imposer une amende pour infraction peut être portée en appel devant le Comité spécial conformément aux articles 4251 et suivants. La défense de diligence raisonnable demeure inadmissible et irrecevable lors de l'appel devant le Comité spécial.
- c) L'amende pour infraction mineure imposée au participant agréé ou la personne approuvée est payable dans les dix jours ouvrables suivant la signification de l'avis d'amende pour infraction mineure.

**4224 Publication d'informations relatives à l'imposition d'amendes pour infractions mineures (00.00.0000)**

La Division de la réglementation rendra publiques, mais sur une base anonyme, des informations relatives à l'imposition d'amendes pour infractions mineures notamment la nature des infractions mineures, les amendes imposées au cours de la période visée ainsi que toute autre information que la Division de la réglementation juge pertinente.

**6389A Imposition d'amendes (24.09.01, abr. 00.00.0000)**

~~Tout officiel de la Bourse, qui a été informé ou qui est témoin d'une infraction aux règles de négociation ou d'une conduite contraire à l'éthique a le pouvoir d'enquêter sur l'affaire et d'imposer une amende n'excédant pas 5 000 \$. Une telle décision doit être ratifiée par au moins deux cadres supérieurs de la Bourse avant d'être communiquée à la personne fautive. Une telle décision peut être portée en appel devant le Comité spécial de la réglementation.~~



## D. Amende pour infraction mineure

### 4220 Amende pour infraction mineure (00.00.0000)

- a) Le vice-président de la Division de la réglementation peut, conformément à la procédure prévue aux articles 4222 et suivants, pour toute infraction énumérée à la *Liste des amendes pour infractions mineures* publiée sur le site de la Bourse, imposer à un participant agréé ou à une personne approuvée l'amende qui y est prévue laquelle ne peut excéder 5 000 \$ par infraction.
- b) Le vice-président de la Division de la réglementation peut imposer une amende pour toute infraction énumérée à la *Liste des amendes pour infractions mineures* contre un ancien participant agréé ou une personne approuvée, à la condition de lui signifier un avis d'infraction mineure dans le délai prévu à l'article 4101 b).
- c) Nonobstant la possibilité d'imposer une amende pour toute infraction énumérée à la *Liste des amendes pour infractions mineures* en vertu des paragraphes a) et b) ci-devant, le vice-président de la Division de la réglementation peut, à sa discrétion, opter pour le dépôt d'une plainte disciplinaire conformément à la procédure prévue aux articles 4151 et suivants.

### 4221 Avis d'infraction mineure (00.00.0000)

- a) Avant d'imposer une amende, le vice-président de la Division de la réglementation doit signifier au participant agréé ou à la personne approuvée un avis d'infraction.
- b) L'avis d'infraction mineure doit :
  - i. être par écrit;
  - ii. être signé par le vice-président de la Division de la réglementation;
  - iii. contenir les éléments suivants pour chacune des infractions :
    - a) l'infraction reprochée;
    - b) l'article ou les articles de la réglementation relatifs à l'infraction reprochée;
    - c) la date de l'infraction;



- d) un énoncé sommaire des faits générateurs de l'infraction;
- e) le montant de l'amende pour l'infraction;
- f) le délai prévu à l'article 4222 dont bénéficie le participant agréé ou la personne approuvée pour soumettre ses observations ou pour signifier une demande pour que l'affaire soit entendue par un Comité de discipline;
- g) un avis indiquant que le défaut de soumettre des observations ou une réponse emporte forclusion de contester la décision d'imposer l'amende prévue.

**4222 Observations ou contestation du participant agréé ou de la personne approuvée  
(00.00.0000)**

- a) Suite à la signification d'un avis d'infraction mineure, le participant agréé ou la personne approuvée peut, dans un délai de vingt jours ouvrables :
  - i) Soumettre ses observations au vice-président de la Division de la réglementation de manière écrite. Les observations doivent confirmer ou infirmer des faits. Dans le cadre du processus d'imposition d'amendes pour infractions mineures, la défense de diligence raisonnable n'est pas admissible ni recevable; ou
  - ii) Contester l'avis d'amende pour infraction mineure en signifiant au vice-président de la Division de la réglementation une demande pour que l'affaire soit entendue par un Comité de discipline conformément aux articles 4102 et suivants, cette demande devant être accompagnée d'une réponse décrite à l'article 4152. Dans ce cas, l'avis d'infraction mineure est réputé être une plainte en vertu l'article 4101.
- b) À défaut de soumettre ses observations ou de contester l'avis d'infraction mineure dans le délai prescrit, le participant agréé ou la personne approuvée sera réputé avoir accepté de payer l'amende et avoir renoncé à tous ses droits en vertu de la réglementation de la Bourse concernant l'audition et la contestation.

**4223 Avis d'amende pour infraction mineure  
(00.00.0000)**

- a) À l'expiration du délai prévu à l'article 4222, et après avoir considéré les observations du participant agréé ou de la personne approuvée le cas échéant, le vice-président de la Division de la réglementation peut imposer au participant agréé ou à la personne approuvée l'amende prévue à la *Liste des amendes pour infractions mineures* en lui signifiant un avis d'amende pour infraction.
- b) La décision du vice-président de la Division d'imposer une amende pour infraction peut être portée en appel devant le Comité spécial conformément aux articles 4251 et suivants. La





défense de diligence raisonnable demeure inadmissible et irrecevable lors de l'appel devant le Comité spécial.

- c) L'amende pour infraction mineure imposée au participant agréé ou la personne approuvée est payable dans les dix jours ouvrables suivant la signification de l'avis d'amende pour infraction mineure.

**4224 Publication d'informations relatives à l'imposition d'amendes pour infractions mineures (00.00.0000)**

La Division de la réglementation rendra publiques, mais sur une base anonyme, des informations relatives à l'imposition d'amendes pour infractions mineures notamment la nature des infractions mineures, les amendes imposées au cours de la période visée ainsi que toute autre information que la Division de la réglementation juge pertinente.

**6389A Imposition d'amendes  
(24.09.01, abr. 00.00.0000)**



## Liste des amendes pour infractions mineures

**Entrée en vigueur le jj mois 2017**



La *Liste des amendes pour infractions mineures* identifie les infractions pouvant sujettes à l'imposition d'une amende par le vice-président de la Division de la réglementation de la Bourse de Montréal Inc. et contient les amendes pour chacune de ces infractions (articles 4220 à 4224 des Règles de la Bourse). Les infractions et les amendes pouvant être imposées pour chacune d'elle sont :

- a) Production incomplète ou inexacte du rapport relatif à l'accumulation de positions pour les instruments dérivés (article 14102(1) des Règles de la Bourse)

<b>Par jour ouvrable au cours d'une période consécutive de 24 mois</b>	<b>Amende</b>
Première infraction	100 \$ ou lettre de rappel
Deuxième infraction	250 \$
Troisième infraction	500 \$
De la quatrième à la dixième infraction	1 000 \$
Infractions suivantes	Plainte disciplinaire

- b) Dépassement de limites de position (article 14 157 des Règles de la Bourse)

<b>Par bénéficiaire au cours d'une période consécutive de 24 mois</b>	<b>Amende</b>
Première infraction	1 000 \$ ou lettre de rappel
Deuxième infraction	2 000 \$
Troisième infraction	3 000 \$
Quatrième et cinquième infraction	5 000 \$
Infractions suivantes	Plainte disciplinaire

- c) Non-respect de l'identification des ordres (articles 6366 B) 2.9) et 6376 des Règles de la Bourse)

<b>Par jour ouvrable au cours d'une période consécutive de 24 mois</b>	<b>Amende</b>
Première infraction	500 \$ ou lettre de rappel
Deuxième infraction	1 000 \$
Troisième infraction	2 500 \$
De la quatrième à la dixième infraction	5 000 \$
Infractions suivantes	Plainte disciplinaire



- d) Non-respect du délai pour rapporter un échange physique pour contrats, ou un échange d'instruments dérivés hors bourse pour contrats (EFP/EFRP) (article 6815 et 6815A des Règles de la Bourse)

Par transaction au cours d'une période consécutive de 24 mois	Amende
Première infraction	250 \$ ou lettre de rappel
Deuxième infraction	500 \$
Troisième infraction	1 500 \$
Infractions suivantes	3 000 \$

- e) Non-respect du temps d'exposition au marché (article 6380 des Règles de la Bourse)

Par transaction au cours d'une période consécutive de 24 mois	Amende
Première infraction	1 000 \$ ou lettre de rappel
Deuxième infraction	2 000 \$
Troisième infraction	3 000 \$
Quatrième infraction	5 000 \$
Infractions suivantes	Plainte disciplinaire

- f) Défaut de ne pas transmettre un avis de non-conformité ou un avis de dépassement de limite de position dans les délais prescrits (articles 4002 et 14102(7) des Règles de la Bourse)

Par constat au cours d'une période consécutive de 24 mois	Amende
Première infraction	500 \$ ou lettre de rappel
Deuxième infraction	1 000 \$
Troisième infraction	2 500 \$
Infractions suivantes	5 000 \$

- g) Usage prohibé de la fonction de liquidité cachée (article 6380 des Règles de la Bourse)

Par transaction au cours d'une période consécutive de 24 mois	Amende
Première infraction	1 000 \$ ou lettre de rappel
Deuxième infraction	2 000 \$
Troisième infraction	3 000 \$
Quatrième infraction	5 000 \$
Infractions suivantes	Plainte disciplinaire



- h) Octroi d'accès au système automatisé sans autorisation (article 6366 B) et 7403 des Règles de la Bourse)

Critères par personne	Amende
Nombre d'années = inscription initiale + toute année civile subséquente	500 \$ X nombre d'années
Nombre de contrats exécutés	0,10 \$ par contrat exécuté

- i) Maintien inadéquat ou incomplet des dossiers des ordres (article 6377 des Règles de la Bourse)

Par jour ouvrable au cours d'une période consécutive de 24 mois	Amende
Première infraction	500 \$ ou lettre de rappel
Deuxième infraction	1 000 \$
Troisième infraction	2 500 \$
De la quatrième à la dixième infraction	5 000 \$
Infractions suivantes	Plainte disciplinaire

### 7.3.2 Publication



## AVIS DE CONFORMITÉ

EN VERTU DE L'ARTICLE 22 DE LA *LOI SUR LES INSTRUMENTS DÉRIVÉS*

### **MODIFICATIONS APPORTÉES AUX RÈGLES, AU MANUEL DES OPÉRATIONS ET AU MANUEL DES RISQUES DE LA CORPORATION CANADIENNE DE COMPENSATION DE PRODUITS DÉRIVÉS VISANT LA PRÉSENTATION DES CONTRATS À TERME SUR ACTIONS**

La soussignée confirme que les modifications et, s'il y a lieu, les ajouts et les abrogations aux règles de la Corporation canadienne de compensation de produits dérivés ont été apportés conformément à la *Loi sur les instruments dérivés* (L.R.Q., chapitre I-14.01).

FAIT à MONTREAL le 22 novembre 20 16 .

(s) *Sabia Chicoine*

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Sabia Chicoine  
Chef des affaires juridiques, MX CDCC





## AVIS DE CONFORMITÉ

EN VERTU DE L'ARTICLE 22 DE LA LOI SUR LES INSTRUMENTS DÉRIVÉS

**MODIFICATION DES RÈGLES ET DES PROCÉDURES DE  
BOURSE DE MONTRÉAL INC.  
POUR PERMETTRE LE LANCEMENT DE CONTRATS À TERME SUR ACTIONS**

La soussignée confirme que les modifications et, s'il y a lieu, les ajouts et les abrogations aux règles, politiques et procédures de Bourse de Montréal inc. ont été apportés conformément à la *Loi sur les instruments dérivés* (RLRQ, chapitre I-14.01).

FAIT à MONTRÉAL le 15 novembre 20 16.

(s) Sabia Chicoine

Sabia Chicoine, Chefs des affaires juridiques  
BOURSE DE MONTRÉAL INC.