



## DCO Rules

Submitter Information	
Organization Name ERIS CLEARING, LLC	
Organization Type DCO	Organization Acronym ERISCLR
Submitted By mpiracci	Email Address michael.piracci@erisx.com
Cover Sheet	
Submission Number 2002-0514-3907-93	Submission Date 2/5/2020 2:39:07 PM
Submission Type 40.6(a) Rule Certification	
Submission Description Self-Certification Pursuant to CFTC Regulation 40.6 -- Member Delivery Obligations and Alternative Delivery Procedures	
<input type="checkbox"/>	Request Confidential Treatment
Registered Entity Identifier Code	
Rule Numbers Eris Clearing Rules 303, 410, 403 and 306	
Date of Intended Implementation 2/21/2020	
Documents	
Eris Clearing 2020-01C.pdf Exhibit A 2020-01C.pdf	
Request For Confidential Treatment - Detailed Written Justification	
N/A	



February 5, 2020

By Electronic Filing

Mr. Christopher J. Kirkpatrick  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

Re: **Self-Certification Pursuant to CFTC Regulation 40.6 – Member Delivery Obligations and Alternative Delivery Procedures (Eris Clearing, LLC Submission 2020-01C)**

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Dear Mr. Kirkpatrick:

Eris Clearing, LL (“Eris Clearing” or the “Clearinghouse”), a registered derivatives clearing organization (“DCO”) under the Commodity Exchange Act, as amended (the “Act”), hereby notifies the Commodity Futures Trading Commission (the “Commission”), that pursuant to Commission Regulation 40.6 it is self-certifying revisions to the Eris Clearing Rulebook (the “Rulebook”) so as to make clear an FCM Clearing Member’s obligations as to open positions in expiring contracts, to provide for alternative delivery procedures, and to prohibit FCM Members from permitting the withdrawal of funds from an account of customer that would result in the account being lower than relevant initial margin requirement.<sup>1</sup> The Rules shall become effective on or following February 21, 2020.

**Concise Explanation and Analysis**

1. *Overview*
  - a. *Delivery*

Currently, all contracts cleared by the Clearinghouse are physically delivered. In order to assure that delivery occurs in an orderly manner, the Clearinghouse is adopting two amendments related to delivery. First, Rule 303(b)(ix) is being adopted to make clear an FCM Clearing Members obligation to assure that account owners holding positions at expiry have the ability to make or take delivery. Second, Rule 410(b) is being adopted to provide that where an account carries a deliverable position into expiry by error, the Clearing Member carrying the account may, with the agreement of the relevant account owners or controllers transfer the position to the account of a different beneficial owner.

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<sup>1</sup> Capitalized terms used in this filing, but not defined herein, have the same meaning as specified in Eris Clearing Rules.

### *b. Withdrawals from Customer Accounts*

The Clearinghouse is also adopting Rule 403(a)(ii) to make clear that an FCM Clearing Member may not permit a customer account to withdraw funds if it will result in the account being undermargined. As a practical matter, all contracts currently cleared by the Clearinghouse are fully-funded so Customer Accounts held at an FCM must always have the full amount of the contract.

### *c. FCM Financial Filings*

Finally, the Clearinghouse is adopting an amendment to Rule 306(b) to make clear that an FCM Clearing Member must provide notice to the Clearinghouse when it has a reduction in adjusted net capital of 20 percent or more from the filing of its most recent Form 1-FR or FOCUS Report. The intention of the rule was to require FCMs to require notification to the Clearinghouse consistent with the notification requirements under CFTC Rule 1.12(g)(1). As currently written, the rule could be read to require notification of any reduction in adjusted net capital, however.

## *2. Discussion of Rules*

Exhibit A contains all rule amendments showing all additions and deletions. The below is a discussion of the substantive rule amendments being certified:

Rule 303(b)(ix): This Rule is being adopted to make clear an FCM Clearing Member, absent receiving satisfactory information from an account owner that it is able to make or take delivery in a physically settled contract, is obligated to ensure that positions in physically delivered contracts are properly are liquidated in an orderly manner prior to the expiration of trading.

Rule 410(b): This Rule provides that in the event that an account carries a physically settled position past the expiry of the contract in error, the Clearing Member may still transfer the position to another account owner, so long as all relevant account owners, or persons that control those accounts, agree to the transfer and the transfer occurs between accounts with different beneficial owners. The Rule further makes clear that this does not relieve the obligations of a Clearing Member under Rule 303(b)(ix).

Rule 403(a)(ii): This Rule provides that an FCM Clearing member may not permit a Customer Account to withdraw funds or collateral if such withdrawal would place the account in a situation in which it is not meeting the relevant margin requirements.

Rule 306(b): The amendment to this Rule makes clear that an FCM Clearing Member must submit written notice to the Clearinghouse in the event of a reduction of adjusted net capital of 20 percent or more, consistent with CFTC requirements.

## **Compliance with the Act and Commission Regulations**

Eris Clearing reviewed the DCO Core Principles and determined that the following Core Principles and the relevant Commission regulations may be pertinent to these Rule amendments.

### *1. Core Principle C - Participant and Product Eligibility*

Recognizing the unique position that FCM's have within the futures industry and regulatory scheme, because of their role as intermediary for those wishing to trade futures contracts and in particular they're ongoing financial viability and the broad impact on the markets that a failure of an FCM would have, the Rules will, consistent with CFTC rules, have the practical impact of prohibiting FCMs from allowing customer accounts to become undermargined through the withdrawal of the customer's assets. Additionally, the rule amendments will provide the Clearinghouse with information about an FCM that may be experiencing financial stress through early warning notification consistent with CFTC rules.

### *2. Core Principle E - Settlement Procedures*

As discussed above, the Rules are intended to provide greater certainty that physically settled contracts result in the intended physical settlement. Specifically, the rules make clear that an FCM Clearing Member is responsible for assuring that accounts carried on its books that hold positions that may result in delivery are able to make or take delivery. If the FCM Clearing Member does not have satisfactory information to believe that is the case, they must close out the position in an orderly manner prior to expiration. Moreover, in the event that a position is held past expiry in error, rather than risk of default, the Clearing Member will have an opportunity to find an account that is willing and able to make or take delivery.

## **Certification, Opposing Views and Posting on Website**

These amendments were driven by discussions with potential FCM Clearing Members regarding delivery, their obligations around delivery and what occurs if someone were to accidentally hold a position through expiry. The amendments are consistent with similar rules of other derivatives clearing organizations. Eris Clearing has not received any substantive opposing views regarding these Rules.

Eris Clearing certifies that these Rules comply with the Act and the rules and regulations promulgated thereunder.

Eris Clearing has posted this submission concurrently on Eris Clearing's website at <https://www.erisx.com/regulation/exchange-notices/>.

In the event that you have questions or require further information regarding this submission, please do not hesitate to contact the undersigned at [michael.piracci@erisx.com](mailto:michael.piracci@erisx.com) or 646-961-4486.

Very truly yours,

/S/

Michael A. Piracci  
Chief Compliance Officer  
Eris Clearing, LLC

# Exhibit A

SEE ATTACHMENT

**ERIS CLEARING, LLC**  
**RULEBOOK**

**February ~~November~~ 2019-20**

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## 1. GENERAL

### 101. Definitions.

Unless the context clearly requires otherwise, the following terms shall have the following meanings when used in these Rules:

- (a) “**Account**” means a Customer Account or a Member Property Account, as context requires, used in conjunction with the trading or delivery of commodity products.
- (b) “**Appeal Panel**” means a panel comprised of individuals appointed by the Board or the Chief Compliance Officer to consider appeals under Rule 602.
- (c) “**Applicable Law**” means any statute, law, regulation, rule or ordinance of any governmental authority, including the CEA, CFTC Regulations, State Regulations, and the rules or regulations of any relevant Self-Regulatory Organization.
- (d) “**Approved Depository Institution**” means a bank, trust company or other depository that has been approved by Eris Clearing as an acceptable location for depositing Clearing Member funds or Collateral, as applicable.
- (e) “**Authorized Representative**” means an individual designated by a Clearing Member and listed with Eris Clearing as having authority to act on behalf of the Clearing Member.
- (f) “**Board**” means the board of directors of Eris Clearing, as set forth in the LLC Agreement.
- (g) “**Business Day**” means any day on which the Clearinghouse is open for clearing. References in these Rules to a “day” or “Business Day” shall, unless the context otherwise requires, mean the “Business Day” corresponding to the trading day of the Exchange.
- (h) “**CEA**” means the Commodity Exchange Act, as it may be amended from time to time.
- (i) “**CFTC**” means the U.S. Commodity Futures Trading Commission.
- (j) “**CFTC Regulations**” means the rules, regulations and interpretations promulgated by the CFTC pursuant to the CEA, as in effect from time to time.
- (k) “**Clearinghouse**” means Eris Clearing LLC.
- (l) “**Clearing Member**” means an FCM Member or Direct Clearing Member who has executed a Clearing Member Agreement, and to whom the Clearinghouse has granted the right to clear contracts on the Clearinghouse.
- (m) “**Clearing Member Agreement**” means the agreement for clearing privileges between Eris Clearing and a Clearing Member.

- (n) **“Collateral”** means digital assets or other assets deposited by a Clearing Member as from time to time determined by the Clearinghouse as acceptable in accordance with Rule 403(b).
- (o) **“Committee”** means a committee established by the Board or otherwise, pursuant to the Rules.
- (p) **“Contract”** means, as context requires, any futures contract, options contract, or spot contract, agreement, or transaction on a commodity (as such term is defined in the CEA or CFTC Regulations), which has been approved for clearing by Eris Clearing pursuant to these Rules.
- (q) **“Customer”** shall have the meaning set forth in CFTC Regulation 1.3(k).
- (r) **“Customer Account”** means an account established by an FCM Clearing Member with Eris Clearing in which the FCM Clearing Member maintains trades, positions and Margin solely for Customers.
- (s) **“Default”** means, with respect to a Clearing Member, if such Clearing Member (a) fails to satisfy any of its Obligations, (b) fails to deliver funds within the time established therefor by Eris Clearing, (c) is expelled or suspended from the Exchange, Eris Clearing or any Self-Regulatory Organization, (d) fails to meet the minimum capital and other financial requirements of Eris Clearing, or (e) is Insolvent.
- (t) **“Direct Clearing Member”** means a Person that submits trades for clearing at Eris Clearing on behalf of its own account(s), has completed a Clearing Member Agreement and has been granted clearing privileges by the Clearinghouse.
- (u) **“Directors”** means members of the Board.
- (v) **“Disciplinary Panel”** means a panel comprised of individuals appointed by the Board at the recommendation of the Chief Compliance Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in Chapter 6.
- (w) **“Emergency”** shall have the meaning set forth in Rule 207.
- (x) **“Eris Clearing”** means Eris Clearing, LLC, a Delaware limited liability company.
- (y) **“ErisX”** means Eris Clearing and the Exchange collectively.
- (z) **“Exchange”** means Eris Exchange, LLC and its respective successors.
- (aa) **“Exchange Committee”** includes the Regulatory Oversight, Exchange Member Committee, Nomination, or Exchange Practices Committees of the Exchange, and any other future or successor committee of the Exchange.

- (bb) **“FCM Clearing Member”** means a Person that is registered with the CFTC as a Futures Commission Merchant, has completed a Clearing Member Agreement and has been granted clearing privileges by the Clearinghouse.
- (cc) **“Futures Commission Merchant”** or **“FCM”** shall have the meaning set forth in CFTC Regulation 1.3(p).
- (dd) **“Government Agency”** means the CFTC and/or any other governmental agency or department, including State agencies or departments for purposes of spot contracts regulating the activities of a Clearing Member.
- (ee) **“Insolvent”** and **“Insolvency”** means the Clearing Member has become the subject of a bankruptcy petition, receivership proceeding, or an equivalent proceeding.
- (ff) **“LLC Agreement”** means the Limited Liability Company Agreement of Eris Clearing, as amended or restated from time to time.
- (gg) **“Margin”** means funds or the applicable amount of the deliverable asset required to collateralize Contracts as set forth in Rule 403.
- (hh) **“Member Property Account”** means an account established by a Clearing Member with Eris Clearing in which the Clearing Member maintains trades, positions and Margin solely on its own behalf.
- (ii) **“Obligations”** means all financial obligations of a Clearing Member, however arising, whether absolute or contingent, direct or indirect, due or to become to be due, arising under these Rules or such Clearing Member’s agreements with Eris Clearing.
- (jj) **“Officer”** has the meaning set forth in Rule 204.
- (kk) **“Person”** means an individual, sole proprietorship, partnership, limited liability company, association, firm, trust, corporation or other entity, as the context may require.
- (ll) **“Regulations”** means rules, regulations, guidance, or advisories promulgated by the CFTC or any applicable State or Federal agency.
- (mm) **“Removal Event”** means (a) the termination of the Clearing Member Agreement; (b) a materially false or misleading representation or warranty made by the Clearing Member to Eris Clearing under or in connection with any agreement between Eris Clearing and the Clearing Member; (c) the breach by the Clearing Member of the Rules or any of the terms or provisions of any agreement between Eris Clearing and the Clearing Member which is not remedied promptly after notice from Eris Clearing; (d) a material violation of the rules of the Exchange, or (e) a Default by the Clearing Member.
- (nn) **“Rule”** means a Rule of Eris Clearing either contained in this Rulebook or in guidance or notices from Eris Clearing.

- (oo) **“Self-Regulatory Organization”** shall mean any futures or securities exchange, derivatives clearing organization, securities clearing agency, or National Futures Association.
- (pp) **“Settlement Price”** has the meaning set forth in Rule 410.
- (qq) **“State Regulation”** means, with respect to states in which Eris Clearing is licensed to operate as a money transmitter or otherwise permitted to engage in a virtual currency business, any regulation related thereto.
- (rr) **“Transfer Trade”** has the meaning set forth in Rule 408.
- (ss) **“UCC”** means the Uniform Commercial Code as in effect in the State of Illinois.

## **102. Interpretation.**

In these Rules, unless the context clearly requires otherwise, (a) words in the singular include the plural and words in the plural include the singular, (b) any gender includes each other gender, (c) references to statutory provisions include those provisions, and any rules or regulations promulgated thereunder, as amended, and (d) all uses of the word “including” should be construed to mean “including, but not limited to.” Headings included herein are for convenience purposes only and do not form a part of these Rules.

## **103. Date and Time References.**

Unless otherwise specified, all references to dates, times or time periods shall refer to, or be measured in accordance with the time in Chicago, Illinois.

## **104. Conflicts.**

In the event of a conflict between any Rules of general application and the Rules relating to particular types of transactions, the transaction-specific Rules will prevail.

## **2. GOVERNANCE**

### **201. Purpose, Powers and Authority.**

- (a) Eris Clearing is registered with the CFTC as a Derivatives Clearing Organization. Eris Clearing operates to clear Contracts for its Clearing Members.
- (b) Eris Clearing has the power and authority to operate and regulate its clearing and settlement facilities to ensure that such facilities are not used for any improper purpose and to establish and enforce Rules and procedures to reduce systemic risk and facilitate the orderly clearing of Contracts through Eris Clearing by Clearing Members.
- (c) These Rules specify the process by which a Person may become a Clearing Member and the terms and conditions on which Eris Clearing will clear Contracts. These Rules are binding on all Clearing Members.

## **202. Board**

The Board shall have control and management of the affairs and business of Eris Clearing and shall have the powers and duties set forth in the LLC Agreement. Without limiting the generality of the foregoing, the Board shall have the power to: (a) adopt, amend, implement and repeal such Rules, as will in its judgment best promote and safeguard the interests of Eris Clearing; and (b) render interpretations of the Rules, which shall be binding on all Persons having dealings with Eris Clearing, including Direct Clearing Members, FCM Clearing Members, and their Customers.

## **203. Committees**

- (a) The Risk Management Committee is a permanent Committee of the Board.
- (b) The Board may establish such additional Committee(s) as it may from time to time deem necessary or advisable and appoint Board members or other individuals to serve on such Committees and delegate powers to one or more Committees.
- (c) A Committee shall operate in accordance with its charter or powers as otherwise delegated to it by the Board and shall take such actions as may be required by the Rules.
- (d) All information and documents provided to a Committee and all deliberations and documents related thereto shall be treated as non-public and confidential and shall not be disclosed, except as required by Applicable Law or as necessary to further the business and affairs of Eris Clearing or Eris Exchange.
- (e) The actions of each Committee shall be the subject to final review by the Board.

## **204. Officers**

The Board shall appoint Officers of Eris Clearing, as it may deem necessary or appropriate from time to time, and delegate to such Officers, subject to its oversight, the power and authority to manage the business and affairs of Eris Clearing and to establish and enforce rules and procedures for the conduct of business by Eris Clearing. Any Officer may also be a director, officer, partner or employee of Eris Clearing or any of its affiliates.

At all times, Eris Clearing shall have a Chief Risk Officer, Chief Compliance Officer, and a designated senior officer of the company (whether CEO, President, COO, or other).

## **205. Eligibility of Officers and Board Members**

No Person may serve as an Officer or a member of the Board, or any other disciplinary committee, arbitration panel or oversight panel if such Person:

- (a) Was found within the past three years by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the CFTC to have committed a substantive disciplinary offense;

- (b) Entered into a settlement agreement within the past three years in which any of the findings or, in absence of such findings, any of the acts charged included a disciplinary offense;
- (c) Is currently suspended from trading on any market subject to CEA regulation, is suspended or expelled from membership from any self-regulatory organization, is serving any sentence of probation or owes any portion of a fine imposed pursuant to either:
  - (i) 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
  - (ii) A settlement agreement in which any of the findings or, in absence of such findings, any of the acts charged included a disciplinary offense;
- (d) Is currently subject to an agreement with the CFTC or any self-regulatory organization not to apply for registration with the CFTC or membership in any self-regulatory organization;
- (e) Is currently subject to or has had imposed on him or her within the past three years a CFTC registration revocation or suspension in any capacity for any reason, or has been convicted within the past three years of any of the felonies listed in section 8a(2)(D)(ii) through (iv) of the CEA;
- (f) Is currently 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 section 3(a)(26) of the Securities Exchange Act of 1934; or
- (g) Otherwise fails to fulfil reasonable fitness standards of the Clearinghouse, as may be determined and modified at the discretion of the Clearinghouse.

Any Officer or member of the Board, disciplinary committee, arbitration panel or oversight panel, or holder of 10% or more ownership interest in Eris Clearing, and any individual nominated to serve in any such role, shall immediately notify the Chief Compliance Officer if such individual meets one or more of the criteria in Rule 205(a)-(g). For purposes of this Rule 205, the terms “self-regulatory organization,” “disciplinary committee,” “arbitration panel,” “oversight panel,” “final decision,” “disciplinary offense,” and “settlement agreement” have the meanings set forth in CFTC Regulation 1.63(a), as amended from time to time.

## **206. Conflicts of Interest and Misuse of Material, Non-Public Information.**

- (a) No Officer, Director, or member of a Committee or “disciplinary committee” or “oversight panel” (each as defined in CFTC Regulation 1.69) shall knowingly participate in the relevant body’s deliberations or voting in any matter involving an inquiry, investigation, disciplinary proceeding or any appeal from a disciplinary proceeding, summary suspension, other summary action, or any other matter appropriately the subject of the Officer’s, Director’s or member’s authorization under Rules 202, 203 and 204, as

applicable (each an “**Action**” and, collectively, “**Actions**”) or Emergency action taken pursuant to Rule 207 (each such Action or Emergency action, a “**Self-Regulatory Action**”) where such member has a “material conflict of interest” (each, an “**Interested Person**”), except as described in Rule 206(d).

- (b) For purposes of Rule 206(a), a “material conflict of interest” means an Officer, Director, or member of a Committee or disciplinary committee or oversight panel:
- (i) having a direct and substantial financial interest in the result of the deliberations or vote based upon either exchange or non-exchange positions (as referenced in CFTC Regulation 1.69), other than a direct or indirect equity or other interest in Eris Clearing, that could reasonably be expected to be affected by the Self-Regulatory Action, as determined pursuant to Rule 206(c)(i) below. A direct and substantial financial interest includes positions in Contracts in accounts of, controlled by, or affiliated with the Interested Person or in 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;
  - (ii) being named as a respondent or potential respondent in the Self-Regulatory Action;
  - (iii) being an employer, employee, fellow employee or an Affiliate of a respondent or potential respondent in the Self-Regulatory Action;
  - (iv) having any significant, ongoing business relationship with a respondent or potential respondent in the Self-Regulatory Action, excluding relationships limited to executing Contracts opposite each other or to clearing Contracts through the same Clearing Firm;
  - (v) having a family relationship with a respondent or potential respondent in a Self-Regulatory Action (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, brother-in-law or sister-in-law); and/or
  - (vi) any other circumstance that gives rise to a conflict between the Officer’s, Director’s or member’s exercise of authority concerning any Self-Regulatory Action and his or her personal interests.
- (c) Disclosure and Determination of Conflicts. Prior to consideration of any Self-Regulatory Action, each member of the deliberating body who chooses to participate in any deliberations or vote will disclose to the Chief Compliance Officer if such member has one of the relationships listed in Rule 206(b) above.
- (i) For any matter involving the relationship set forth in Rule 206(b)(i), each member of the deliberating body who chooses to participate in any deliberations or vote will disclose to the Chief Compliance Officer position information (including



information regarding positions held by such member, positions held by individuals of such member's family and positions held by a firm with which such member is affiliated) that is known to such member with respect to any particular month or months that are under consideration, and any other positions which the deliberating body reasonably expects could be affected by the significant action, as follows:

1. gross positions held at the Clearinghouse in such member's personal accounts or "controlled accounts," as defined in CFTC Regulation 1.3(j);
  2. gross positions held at the Clearinghouse in proprietary accounts, as defined in CFTC Regulation 1.17(b)(3), at such member's affiliated firm;
  3. gross positions held at the Clearinghouse in accounts in which such member is a principal, as defined in CFTC Regulation 3.1(a);
  4. net positions held at the Clearinghouse in Customer accounts, as defined in CFTC Regulation 1.17(b)(2), at such member's affiliated firm; and
  5. any other types of positions, whether maintained at the Clearinghouse or elsewhere, held in such member's personal accounts or the proprietary accounts of such member's affiliated firm, that the Clearinghouse reasonably expects could be affected by the significant action.
- (d) Procedure. The Chief Compliance Officer will determine whether any member of the relevant deliberating body who chooses to participate in any deliberations or vote in a Self-Regulatory Action is subject to a ~~conflict~~ **conflicts** restriction under this Rule 206(a).
- (i) For any matter involving the relationships listed in Rule 206(b) above, such determination will be based upon a review of the following information:
    1. information provided by such member pursuant to Rule 206(c); and
    2. any other source of information that is held by and reasonably available to the Clearinghouse.
  - (ii) In addition to the review of the information set forth in Rule 206(c)(i) above, for any matter involving the relationship set forth in Rule 206(b)(i), such determination will be based upon a review of the following information:
    1. Information provided to Eris Clearing by the Exchange, or information related to trading and clearing records from the Exchange;
    2. information provided pursuant to Rule 206(c)(i); and,
    3. any other source of information that is held by and reasonably available to Eris Clearing taking into consideration the exigency of the significant action being contemplated.

- (e) Any Interested Person who would be required otherwise to abstain from deliberations and voting pursuant to Rule 206(a) as a result of having a direct and substantial financial interest in the result of the deliberations and vote may participate in deliberations, prior to a vote on the matter, if the deliberating body, after considering the factors specified below, determines that such participation would be consistent with the public interest; provided however, that before reaching any such determination, the deliberating body will fully consider the position information specified in Rule 206(c)(i) above which is the basis of such member's substantial financial interest in the Self-Regulatory Action that is being contemplated. In making its determination, the deliberating body will consider:
  - (i) whether such member's participation in the deliberations is necessary to achieve a quorum; and;
  - (ii) whether such member has unique or special expertise, knowledge or experience in the matter being considered.
- (f) The minutes of any meeting to which the conflicts determination procedures set forth in this Rule 206 apply will reflect the following information:
  - (i) the names of all members of the relevant deliberating body who attended such meeting in person or who otherwise participated in such meeting
  - (ii) the name of any member of the relevant deliberating body who voluntarily recused himself or herself or was required to abstain from deliberations or voting on a matter and the reason for the recusal or abstention, if stated;
  - (iii) information on the position information that was reviewed for each member of the relevant deliberating body; and
  - (iv) any determination made in accordance with Rule 206(d) and (e) above.
- (g) If a determination is made that all members of the relevant deliberating body are Interested Persons with respect to a matter subject to a vote by the Board, the Chief Compliance Officer 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 Committee would have if the members were not Interested Persons with respect to such matter.
- (h) No Director, Officer or member of any committee or panel established by the Board shall use or disclose for any purpose other than the performance of his or her official duties and responsibilities as an Officer or committee or panel member any material, non-public information obtained as a result of the individual's duties and responsibilities as an Officer or committee or panel member. No Director, Officer or committee or panel member shall, directly or indirectly, disclose or use at any time, either during his or her association with Eris Clearing, or thereafter, any confidential information of which the Board member or committee or panel member becomes aware. Each Director, Officer or committee or panel member in possession of confidential information shall take all

appropriate steps to safeguard the information and to protect it against disclosure, misuse, loss and theft.

- (i) Notwithstanding Rule 206(h), a Director, Officer or committee or panel member may disclose confidential information if required by law or a court order to be revealed to the United States Department of Justice or the CFTC.
- (j) For the purposes of Rule 206(h), the terms “material information” and “nonpublic information” shall each have the meaning set forth in CFTC Regulation 1.59(a).

## **207. Emergencies.**

- (a) 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 an Officer of the Clearinghouse determines that Emergency Rules must be implemented with respect to an Emergency before a meeting of the Board can reasonably be convened, then the Officer, in consultation and with the approval of the Chief Compliance 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.
- (b) Pursuant to this Rule 207, Emergency Rules may require or authorize Eris Clearing, the Board, any Committee, or the Officers of Eris Clearing to take actions necessary or appropriate to respond to the Emergency, including, but not limited to, the following:
  - (i) Suspending or curtailing clearing or limiting clearing to liquidation only (in whole or in part);
  - (ii) Extending or shortening the expiration date and/or the last settlement date for Contracts;
  - (iii) Providing alternative settlement mechanisms;
  - (iv) Ordering the liquidation of Contracts, the fixing of a Settlement Price, or the reduction of positions;
  - (v) Extending, limiting or changing the hours of operation of Eris Clearing;
  - (vi) Temporarily modifying or suspending any provision of the Rules;
  - (vii) Changing the amount of money to be paid in connection with a Contract, whether previously or thereafter delivered; and/or
  - (viii) Requiring Clearing Members to meet special Margin requirements.
- (c) For the purposes of this Rule 207, “**Emergency**” is defined as any occurrence or circumstances which, in the opinion of the Board, an Officer, or a Committee or Exchange Committee, requires immediate action, and that threatens, or may threaten, the

fair and orderly settlement or integrity of any Contract, including, without limitation, the following:

- (i) Any circumstance that may materially affect the performance of a Contract;
  - (ii) Any action taken by the United States government, a foreign government, Government Agency, Self-Regulatory Organization, state or local governmental body, or market or exchange (foreign or domestic) that may have a material adverse effect on the clearing of Contracts through Eris Clearing or the settlement, legality or enforceability of any Contract;
  - (iii) Any actual, attempted, or threatened corner, squeeze, congestion, manipulative activity or undue concentration of positions in a Contract;
  - (iv) Any circumstance that may have a severe, adverse effect upon the functions and facilities of Eris Clearing, including, but not limited to, acts of God, pandemics, fire 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 clearing systems of Eris Clearing, or other system breakdowns or interruptions such as power, computer, communication or transportation systems or the Internet;
  - (v) The Insolvency of any Clearing Member or the imposition of any injunction or other restraint by any Government Agency, court or arbitrator upon a Clearing Member which may affect the ability of a Clearing Member to satisfy its Obligations;
  - (vi) Any circumstance in which it appears to the Board that a Clearing Member:
    1. Has failed to perform on a Contract;
    2. Is Insolvent;
    3. Is otherwise in Default;
    4. Is in such financial or operational condition or is conducting business such that the Clearing Member cannot be permitted to continue in business without jeopardizing the safety of funds of Eris Clearing, Clearing Members or the funds of Customers; or
  - (vii) Any other unusual, unforeseeable or adverse circumstance as determined by the Board or the Officers of the Clearinghouse. When Eris Clearing determines that the Emergency has been reduced sufficiently to allow Eris Clearing to resume normal functioning, any such actions will be terminated.
- (d) Whenever Eris Clearing takes action to respond to an Emergency (including, without limitation, the actions set forth in paragraph (b) above), it will, where possible, ensure that notice is timely given to Clearing Members

- (e) Eris Clearing will use reasonable efforts to notify the CFTC prior to implementing, modifying or terminating an Emergency Rule. If such prior notification is not possible or practicable, Eris Clearing will notify the CFTC as soon as reasonably practicable, but in all circumstances within twenty-four hours of the implementation, modification or termination of such Emergency Rule. In all cases, Eris Clearing will act in accordance with CFTC rules on Emergency rule certifications under CFTC Regulation 40.6.
- (f) Upon taking any action in response to an Emergency, Eris Clearing will document the decisions and deliberations related to such action. Such documentation will be kept for at least five years, consistent with the Clearinghouse Recordkeeping Policy, following the date on which the Emergency ceases to exist or to affect Eris Clearing, and all such documentation will be provided to the CFTC upon request.

### **208. Maintenance of Books and Records by the Clearinghouse**

- (a) Eris Clearing shall keep, or cause to be kept, complete and accurate books and records of accounts of the Clearinghouse, including, without limitation, all books and records required to be maintained pursuant to the CEA, CFTC Regulations, and State Regulations.
- (b) Eris Clearing shall retain all such books and records for at least five (5) years, or such longer period as may be required under Applicable Law, and shall make such books and records readily accessible for inspection by the CFTC, the United States Department of Justice or such other governmental or regulatory authority, as required under Applicable Law.

## **3. CLEARING MEMBERS**

### **301. General Eligibility Requirements of Clearing Members.**

- (a) The Clearinghouse imposes eligibility requirements for Clearing Members, and may modify these requirements in order to maintain an orderly clearing process and mitigate risk to the Clearinghouse and other Clearing Members.
- (b) All Clearing Members and prospective Clearing Members who wish to enter into a Clearing Member Agreement will be subject to Clearinghouse Anti-Money Laundering policies and procedures, designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and the regulations promulgated thereunder, or otherwise, by the Department of the Treasury or other federal agencies and bureaus.
- (c) All Clearing Members are subject to all Rules, as well as all rules of the Exchange, whether contained in the Exchange Rulebook, or in Exchange guidance or notices.
- (d) Each applicant for qualification as a Clearing Member must satisfy the following requirements at the time of application, and at all times as a Clearing Member:

- (i) Applicant must not be subject to any economic or trade sanctions programs administered by 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;
  - (ii) It shall enter into a Clearing Member Agreement with Eris Clearing, pursuant to which it shall agree, among other things, to: (1) abide by all Eris Clearing Rules and to cooperate in their enforcement; (2) be responsible, even after it has withdrawn as a Clearing Member, for any violations of Eris Clearing Rules committed by it while it was a Clearing Member; and (3) continue to meet all requirements applicable to Clearing Members, including all financial requirements provided by these Rules;
  - (iii) It shall have received all necessary approvals and consents from all applicable regulatory authorities and Government Agencies to permit it to conduct the business of a Clearing Member;
  - (iv) Applicant must have one or more accounts that has been approved by Eris Clearing for purposes of depositing and withdrawing funds or Collateral at Eris Clearing;
  - (v) It shall be engaged in or demonstrate immediate capacity to engage in the conduct of the business of a Clearing Member;
  - (vi) Applicant must not be prohibited from using the services of the Exchange for any reason whatsoever;
  - (vii) It shall continuously satisfy any minimum commercial, integrity, financial, credit, operational capability and competence standards, as may be established by Eris Clearing from time to time;
  - (viii) Applicant must maintain adequate financial resources and credit as may be determined by the Clearinghouse from time to time and published on the Eris Clearing website; and
  - (ix) Applicant must not have filed for bankruptcy, and not be subject to a current bankruptcy proceeding.
- (e) In addition to the requirements set forth in paragraph (d), each applicant for qualification as an FCM Clearing Member must satisfy the following requirements at the time of application, and at all times as an FCM Clearing Member:
- (i) It shall be a corporation, limited liability company, partnership or other entity approved by Eris Clearing, duly organized and in good standing in its state of organization;

- (ii) It shall maintain back-office facilities staffed with experienced and competent personnel or have entered into a facilities management agreement in form and substance acceptable to Eris Clearing; and
  - (iii) It shall maintain minimum regulatory capital in excess of the greater of (1) \$5,000,000 and (2) any applicable capital requirements imposed on applicant by the CFTC, another Government Agency or Self-Regulatory Organization.
- (f) In addition to the requirements set forth in paragraph (d), each applicant for qualification as a Direct Clearing Member must satisfy the following requirements at the time of application, and at all times as a Direct Clearing Member:
- (i) Have the ability to make and take delivery of any Contract in which it trades;
  - (ii) Have banking relationships sufficient to deposit U.S. dollars with the Clearinghouse settlement bank;
  - (iii) On a daily basis reconcile its records against those of the Clearinghouse;
  - (iv) Provide updated positions each business day by the time established by the Clearinghouse;
  - (v) Identify an Authorized Representative to be contacted in the event of any issues related to clearing.
- (g) The Board may, in its sole discretion, grant exemptions or guidance to the requirements set forth in this Rule 301 for Clearing Members if it determines that such an exemption will not jeopardize the financial integrity of Eris Clearing. Additionally, the Board or Risk Committee may require applicants meet additional requirements, provide additional information for evaluation, or refuse to admit any Person as a Clearing Member if, at their sole and absolute discretion, they determine that admission of such Person would undermine the financial integrity or reputation of the Clearinghouse.

### **302. Application and Approval of Clearing Member Status.**

- (a) Applicants for Clearing Member status shall submit an application in the form prescribed by Eris Clearing, financial statements and any other documentation as Eris Clearing shall require and shall enter into a Clearing Member Agreement with Eris Clearing.
- (b) Eris Clearing may review the books and records of any applicant or Clearing Member and take such other action as it may deem appropriate to investigate an applicant's or Clearing Member's qualifications. FCM Clearing Members shall, at time of application and thereafter as required by Eris Clearing, submit statements of its financial condition and other financial records as shall be prescribed from time to time.
- (c) Eris Clearing shall have the sole discretion to determine whether any applicant, or any existing Clearing Member, meets its clearing privileges qualifications. The Clearinghouse

shall have no liability to any applicant or Clearing Member who is denied or loses Clearing Member status.

- (d) The Board, or if such responsibility is delegated, then the Chief Compliance Officer or other Officer of the Clearinghouse shall have final authority to grant or deny an application to become a Clearing Member and shall deny the application of any Person which does not meet the eligibility requirements established pursuant to Rules 301, 302 and 303.
- (e) If the Board or delegated Officer grants an application to become a Clearing Member, Eris Clearing shall promptly give the applicant written notice thereof. The applicant shall thereafter become a Clearing Member at such time as the applicant has filed with Eris Clearing such agreements and documents, and performed such undertakings as Eris Clearing may require; provided, however, that if such applicant has not complied with the foregoing provisions within 30 days after the applicant was given written notice of approval of its application, the application shall be deemed to have been withdrawn.
- (f) If, in accordance with paragraph (d) of this Rule 302, Eris Clearing denies an application to become a Clearing Member, Eris Clearing shall give the applicant notice of the Board's decision, setting forth the grounds therefor, and such decision shall be the final action of Eris Clearing.
- (g) By virtue of obtaining clearing privileges, a Clearing Member shall not obtain any equity or other interest in Eris Clearing, including voting rights or rights to receive any dividends or other distributions, whether arising from a dissolution, merger, consolidation involving Eris Clearing or otherwise. All such rights shall be owned exclusively by the members of Eris Clearing, as specified in the LLC Agreement.

### **303. Duties and Responsibilities of Clearing Members.**

- (a) Any Person initiating or executing a transaction in Contracts to be cleared by Eris Clearing, and any Person for whose benefit such a transaction has been initiated or executed, expressly consents to the jurisdiction of the Clearinghouse and agrees to be bound by and comply with the Rules of the Eris Clearing in relation to such transactions and Contracts, including, but not limited to, rules requiring cooperation and participation in investigatory and disciplinary processes. Each Clearing Member shall:
  - (i) Comply with and act in a manner consistent with, and cause its Authorized Representatives and employees to comply with an act in a manner consistent with, the Rules;
  - (ii) Guarantee and assume responsibility for all Contracts submitted by it or for which it authorizes another Person to submit in its name for clearing;
  - (iii) Keep the passwords assigned by Eris Clearing confidential;



- (iv) At all times maintain one or more accounts that has been approved by Eris Clearing for purposes of depositing and withdrawing funds or Collateral at Eris Clearing, and promptly inform Eris Clearing of any changes to any of the foregoing account(s)
  - (v) Promptly review and, if necessary, respond to all communications sent by Eris Clearing;
  - (vi) Be responsible for violations of the Rules committed by it, its Authorized Representative or employees;
  - (vii) Not knowingly mislead or conceal any material fact or matter in any dealings or filings with Eris Clearing or in response to any proceeding;
  - (viii) Cooperate with Eris Clearing and any Government Agency in any inquiry, investigation, audit, examination or proceeding;
  - (ix) Observe high standards of integrity, commercial honor, fair dealing, and just and equitable principles of trade in relation to any aspect of its business connected with or concerning Eris Clearing.
- (b) In addition to the requirements in ~~303(a)(i) through 303(a)(ix) above~~, each FCM Clearing Member shall also:
- (i) Provide appropriate staff in its offices during specified hours, on Business Days and otherwise, when such is deemed necessary by Eris Clearing to ensure the integrity of its systems or as otherwise deemed necessary for the protection of the Eris Clearing;
  - (ii) Have written risk management policies and procedures in place to ensure it is able to perform certain basic risk and operational functions at all times and to make information regarding its risk management policies, procedures and practices available to Eris Clearing or the CFTC upon request. At a minimum, the following areas must be addressed in the Clearing Member's policies and procedures, taking into account the Clearing Member's business and products offered for clearing
  - (iii) Monitoring the credit risks of accepting trades, including give-up trades, of its Customers;
  - (iv) Monitoring the risks associated with proprietary trading;
  - (v) Limiting the impact of significant market moves through the use of tools such as stress testing or position limits;
  - (vi) Maintaining the ability to monitor account activity on an intraday and overnight basis;

- (vii) Ensuring order entry systems, including third party systems connected to any exchange, include the ability to set automated credit controls or position limits or requiring a firm employee to enter orders; and Defining sources of liquidity for increased settlement obligations;
- (viii) Ensuring that all trades placed by Customers of the FCM Clearing Member are fully collateralized.
- (ix) Prior to the last day of trading in any contract that is physically delivered, assess the ability of any owner of an account on its books with open positions in the expiring contract to make or take delivery. Absent evidence of receiving satisfactory information from the account owner or controller, the FCM Clearing Member is responsible for ensuring that the open positions are liquidated in an orderly manner prior to the expiration of trading.

### **304. Authorized Representative.**

- (a) Each Clearing Member shall designate one or more Authorized Representatives to sign all instruments, correct errors, perform such other duties as may be required under the Rules and transact all business in connection with the operations of Eris Clearing. Each Clearing Member must provide Eris Clearing with current contact and other requested information for each of its Authorized Representatives.
- (b) To designate an Authorized Representative, a Clearing Member must provide the information requested and conform to the procedures and requirements established by Eris Clearing. By agreeing to become an Authorized Representative, an individual agrees to be bound by the duties and responsibilities of an Authorized Representative and to be subject to, and comply with, the Rules and Obligations to the extent applicable.
- (c) Eris Clearing will promptly notify a Clearing Member of the approval of nominated Authorized Representatives and will maintain a list of all approved Authorized Representatives for each Clearing Member. Eris Clearing shall promptly notify the Clearing Member if Eris Clearing (i) declines to approve the designation, (ii) revokes the designation, or (iii) suspends the designation of an Authorized Representative.
- (d) An Authorized Representative who is suspended remains subject to the Rules and Eris Clearing's jurisdiction throughout the period of suspension.
- (e) To request the termination of the designation of an Authorized Representative, the Clearing Member or the Authorized Representative must notify Eris Clearing providing the information and complying with the procedures and requirements established by Eris Clearing.
- (f) An Authorized Representative remains subject to the Rules and the jurisdiction of Eris Clearing for acts done and omissions made while registered as such, and a proceeding relating to an individual whose designation as an Authorized Representative has been

terminated or suspended shall occur as if the Authorized Representative were still registered as such.

### **305. Adequate Resources**

If Eris Clearing has reason to believe that a Clearing Member may fail to comply with any of the Rules, it may require the Clearing Member to provide it, within such time frame, in such detail, and in such manner as Eris Clearing shall determine, with adequate assurances that the Clearing Member shall not violate any of the Rules.

### **306. Notices Required of Clearing Members.**

- (a) Each Clearing Member, if applicable, shall immediately notify Eris Clearing, orally and in writing, of:
- (i) Any Default of the Clearing Member or any failure or inability of the Clearing Member to meet its Obligations;
  - (ii) Any failure to maintain current books and records;
  - (iii) Any refusal of admission to, withdrawal of any application for membership in, any suspension, expulsion, bar, fine, censure, denial of membership, registration or license, withdrawal of any application for registration, cease and desist order, temporary or permanent injunction, denial of trading privileges or clearing privileges, or any other sanction or discipline through an adverse determination, voluntary settlement or otherwise, by the CFTC, the SEC, any commodity or securities exchange, clearing organization, any Self-Regulatory Organization or other business or professional association;
  - (iv) The imposition of any restriction or limitation on the business conducted by the Clearing Member on or with any securities or futures clearing organization or exchange (including, without limitation, any contract market, swap execution facility or other trading facility), other than restrictions or limitations imposed generally on all Clearing Members of or Clearing Members of such clearing organization or exchange;
  - (v) Any failure by such Clearing Member, or any guarantor or commonly owned or controlled Clearing Member, to perform any of its material contracts, obligations or agreements;
  - (vi) Any determination that it, or any guarantor or commonly owned or controlled Clearing Member, will be unable to perform any of its material contracts, obligations or agreements;
  - (vii) The insolvency, bankruptcy or receivership of such Clearing Member, or of any guarantor or commonly owned or controlled Clearing Member;

- (viii) The institution of any proceeding by or against the Clearing Member, any affiliate of the Clearing Member, or any 5% direct owner of the Clearing Member, under any provision of the bankruptcy laws of the United States, or under the Securities Investor Protection Act of 1970, any other statute or equitable power of a court of like nature or purpose, in which such Clearing Member or Person is designated as the bankrupt, debtor or equivalent, or a receiver is appointed, or if a receiver, trustee or similar official is appointed for the Clearing Member, such Person, or its or their property;
  - (ix) The receipt by such Clearing Member, or the filing by such Clearing Member with a Self-Regulatory Organization, of a notice of material inadequacy, including as provided in CFTC Regulation 1.16(d)(2) or SEC Rule 17a-5(g)(3), in each case as applicable to such Clearing Member;
  - (x) The receipt by such Clearing Member from its independent auditors of an audit opinion that is not unqualified;
  - (xi) The cessation by such Clearing Member of its clearing of trades for a trading privilege holder of the Exchange; or
  - (xii) Any default by a Customer of the FCM Clearing Member.
- (b) In addition to the requirements above, an FCM Clearing Member shall promptly provide written notice to Eris Clearing of:
- (i) Any reduction in adjusted net capital of 20 percent or more as reported on its Form 1-FR or net capital as reported on its FOCUS Report from the most recent filing of such report;
  - (ii) Any failure of the Clearing Member to remain in compliance with the minimum capital or “early warning” requirements of any Government Agency or Self-Regulatory Organization
  - (iii) such Clearing Member knows or has reason to believe that its adjusted net capital has fallen below Eris Clearing’s minimum capital requirements;
  - (iv) Any damage to, or failure or inadequacy of, the systems, facilities or equipment of the Clearing Member used to perform the Clearing Member’s obligations under or in connection with Contracts or Customer Accounts that is not promptly remedied;
  - (v) If such Clearing Member fails to comply with additional accounting, reporting, financial and/or operation requirements prescribed by Eris Clearing;
  - (vi) Any failure to maintain funds in any Customer Account sufficient to comply with applicable CFTC Regulations;

- (vii) Any planned material reduction in equity capital (and, in all cases, any planned reduction in equity capital that would cause a reduction in excess adjusted net capital, excess net capital or excess liquid capital of 30% or more), including the incurrence of a contingent liability which would materially affect the Clearing Member's capital or other representations contained in the latest financial statement submitted to Eris Clearing should such liability become fixed; provided that no such notice shall be required in the case of a reduction in capital resulting from (1) the repayment or prepayment of subordinated liabilities for which notice has been given pursuant to applicable CFTC or SEC requirements, or (2) any futures or securities transaction in the ordinary course of business between a Clearing Member and any affiliate where the Clearing Member makes payment to or on behalf of such affiliate for such transaction and then receives payment from such affiliate for such transaction within two Business Days from the date of the transaction;
  - (viii) Any change in the FCM Clearing Member's fiscal year or its public accountants;
  - (ix) If any Person directly or indirectly becomes a 5% direct owner of the FCM Clearing Member;
  - (x) Any changes in its name, business address, its telephone or facsimile number, electronic mail address, or any number or access code for any electronic communication device used by it to communicate with Eris Clearing; or
  - (xi) Any external audit findings (including reviews by the Clearing Member's designated Self-Regulatory Organization).
- (c) An FCM Clearing Member shall, unless it is impractical to do so (in which case it shall provide written notice to Eris Clearing as promptly as possible), provide at least thirty days prior written notice to Eris Clearing, where applicable, of:
- (i) Any proposed change in the organizational or ownership structure or management of the FCM Clearing Member, including any merger, combination or consolidation between the FCM Clearing Member and another Person;
  - (ii) The assumption or guaranty by the FCM Clearing Member of all or substantially all of the liabilities of another Person in connection with a direct or indirect acquisition of all or substantially all of that Person's assets;
  - (iii) The sale of all or a significant portion of the FCM Clearing Member's business or assets to another Person;
  - (iv) A change in the direct or indirect beneficial ownership of 20% or more of the FCM Clearing Member;

- (v) Any change in the FCM Clearing Member's systems provider or facilities manager used by the FCM Clearing Member to process transactions in Contracts; or
  - (vi) Any planned changes to the FCM Clearing Member's risk management processes or systems.
- (d) Upon the receipt of a notice of the type set forth in paragraphs (a) - (c) above, Eris Clearing shall review the continuing eligibility of the Clearing Member for clearing eligibility. Where such notice constitutes notice of a Default, Eris Clearing may take any or all of the actions as permitted by these Rules, including Rules 502 and 601.

### **307. Omnibus and Carrying Broker Accounts.**

- (a) Each FCM Clearing Member shall maintain a complete list of all omnibus and carrying broker accounts maintained on its books. Such list shall be promptly provided to Eris Clearing upon request. Information for each such account must include account name, number and address, and classification of the account as either Customer or house.
- (b) Each FCM Clearing Member carrying an omnibus account shall at all times reflect in its records the gross long and short positions held in such omnibus account.
- (c) Each FCM Clearing Member that maintains an omnibus account with another FCM Clearing Member shall also bear financial responsibility to Eris Clearing for that omnibus account.

### **308. Financial Requirements of FCM Clearing Members.**

- (a) FCM Clearing Members must at all times maintain minimum regulatory capital in excess of the greater of (i) \$5,000,000, and (ii) the capital requirements imposed by any Government Agency, Self-Regulatory Organization or other examining authority or regulator to which it is subject by statute, regulation or agreement. Eris Clearing may prescribe additional capital requirements with respect to any FCM Clearing Member.
- (b) FCM Clearing Members shall:
  - (i) Submit a monthly Form 1-FR-FCM or a FOCUS Report and supplementary information schedule, in the form prescribed by the CFTC, including an unaudited monthly Form 1-FR-FCM or FOCUS Report as of the FCM Clearing Member's fiscal year-end, within the time set forth in CFTC Regulation 1.10. A FCM Clearing Member must include with its Form 1-FR-FCM or FOCUS Report a Statement of Income (Loss) for the period between the date of the most recent 1-FR-FCM or FOCUS or, at the option of the FCM Clearing Member, the most recent certified 1-FR- FCM or FOCUS filed with Eris Clearing and the date for which the report is made;
  - (ii) Submit a certified Form 1-FR-FCM or FOCUS Report as of the Clearing Member's fiscal year-end within the time requirements set forth in CFTC

Regulation 1.10. A FCM Clearing Member must include with its certified Form 1-FR-FCM or FOCUS Report, a reconciliation from the certified Form 1-FR-FCM or FOCUS Report to the monthly Form 1-FR-FCM or FOCUS Report as of the same date or a statement that no material differences were noted.

- (c) Eris Clearing may prescribe additional accounting, reporting, and other financial and/or operational requirements, and FCM Clearing Members must comply with such requirements.
- (d) Financial statement filing requirements under this Rule must be met through Eris Clearing-approved electronic transmission, except for certified Form 1-FR-FCMs or FOCUS Reports, which shall be submitted in physical form. FCM Clearing Members must provide any reports or information pertaining to their financial resources to the CFTC upon request.
- (e) Exceptions to the financial and reporting requirements of this Rule 308 may be granted by the Board, in consultation with the Chief Compliance Officer, for good cause if it is determined that such exceptions will not jeopardize the financial integrity of Eris Clearing.

### **309. Customer Accounts and Member Property Accounts.**

- (a) All Customer funds deposited by an FCM Clearing Member with Eris Clearing on behalf of Customers protected by CFTC Regulation 1.20 shall be held in accordance with the CEA and CFTC Regulation 1.20 in an account identified as “Customer Segregated.” Such Customer funds shall be segregated by Eris Clearing and treated as belonging to the Customers of the FCM Clearing Member. Pursuant to this Rule, a Clearing Member shall satisfy the segregation acknowledgment letter requirements of the CEA and CFTC Regulation 1.20 for Customer deposits held at Eris Clearing.
- (b) All funds deposited by a Clearing Member with Eris Clearing on behalf of the Clearing Member’s own account shall be held in a Member Property Account. Such Clearing Member funds shall be segregated by Eris Clearing and treated as belonging to Clearing Members.
- (c) Eris Clearing will, upon request by a Customer, promptly transfer, from the Customer Account of one FCM Clearing Member to the Customer Account of another FCM Clearing Member, all or a portion of such Customer’s Contracts, in accordance with Rule 408(a)(i).

### **310. General Recordkeeping and Reporting Requirements for Clearing Members.**

- (a) Each Clearing Member shall prepare, maintain and keep current those books and records required by these Rules, the CEA, CFTC Regulations, and any applicable State Regulations. Such books and records shall be open to inspection and promptly provided to Eris Clearing, the CFTC or other Government Agency upon request.

- (b) Without limiting the foregoing, each Clearing Members shall make and retain records with respect to each trade showing the Contract, quantity, date, price, delivery month, the name or account identifier of any Customer for whom the trade was made and such other information as may be required by law, regulation, or by Eris Clearing. Such records shall be retained for at least five years, either in original form or in such other form as Eris Clearing may from time to time authorize.
- (c) Each FCM Clearing Member shall maintain an adequate accounting system, internal accounting controls, and procedures for safeguarding Customer and firm assets, where applicable. This includes, but is not limited to, the following:
  - (i) Preparation and maintenance of complete and accurate reconciliations for all accounts; and
  - (ii) Resolution of reconciling items in a timely manner; and
  - (iii) Prevention of a material inadequacy as defined in CFTC Regulation 1.16(d)(2).
- (d) An FCM Clearing Member shall file any information requested by Eris Clearing within the time period specified in the request and shall, at all times have the ability to provide to Eris Clearing in an acceptable form a complete set of back-office system reports (including, at a minimum, the equity run, open position listing, day trade listing, cash adjustments listing and debit equity listing, if applicable). Such reports shall be available to Eris Clearing no later than 8:00 a.m. Chicago time on the Business Day following the report date.
- (e) Each FCM Clearing Member shall at all times have the ability to provide promptly to Eris Clearing upon request a listing of each of its Customers' method of access to the Exchange, including front end applications and network connections.

### **311. Disaster Recovery and Business Continuity FCM Clearing Members**

- (a) Each FCM Clearing Member shall have written disaster recovery and business continuity policies and procedures reasonably designed to ensure it is able to perform certain basic operational functions in the event of a significant internal or external interruption to its operations. At a minimum, the following areas must be considered in the FCM Clearing Member's policies and procedures:
  - (i) The FCM Clearing Member must have procedures in place to allow it to continue to operate during periods of stress with minimal disruption to either Eris Clearing or its Customers. The FCM Clearing Members must perform periodic testing, including testing with Eris Clearing when so requested, of disaster recovery and business continuity plans, duplication of critical systems at back up sites and periodic backup of critical information; and
  - (ii) The FCM Clearing Member must maintain and, at the request of Eris Clearing, provide accurate and complete information for its key personnel. An FCM



Clearing Member must inform Eris Clearing in a timely manner whenever a change to its key personnel is made.

- (b) Eris Clearing may prescribe additional and/or alternative requirements for FCM Clearing Members' compliance with this Rule.
- (c) FCM Clearing Members must participate in coordinated testing of their disaster recovery and business continuity policies and procedures at least annually. An FCM Clearing Member can fulfill this requirement by participating in an industry-wide testing event in which Eris Clearing or the Exchange also participates.

### **312. Fees.**

Eris Clearing shall have the right to invoice clients and accept payment via check, wire, or money transfer, or to offset any fees, charges or other amounts (other than fines or penalties) due to Eris Clearing or due to the Exchange against a Clearing Member's Margin balance, and shall have the right to instruct an Approved Depository Institution, if applicable, to debit the Account maintained by an Clearing Member to offset any amounts due the Clearinghouse.

### **313. Segregation of Customer Funds and Assets for FCM Clearing Members.**

- (a) Each FCM Clearing Member must comply with the requirements of the CEA and CFTC Regulations regarding segregation of customer funds from the FCM Clearing Member's own funds or assets, including, but not limited to, CFTC Regulations 1.20 through 1.30, 1.32, and 30.7.
- (b) Eris Clearing shall comply with the applicable segregation requirements of Section 4d of the CEA and CFTC Regulations with respect to customer funds held by Eris Clearing.
- (c) As used in this Rule 315, "customer funds" has the same meaning as in CFTC Regulation 1.3.

### **314. Access to Eris Clearing.**

A Customer entering orders by electronic access must access Eris Clearing through the systems owned or sponsored by such Customer's FCM Clearing Member.

### **315. Digital Asset Collateral.**

- (a) With respect to any digital asset Collateral, including, but not limited to, Bitcoin, which is or may be credited to any Clearing Member's Member Property Account, the following terms and conditions shall apply:
  - (i) For purposes of creating a "security entitlement" as such term is defined in Section 8-102(a)(17) of the UCC, the Clearinghouse and the Clearing Member agree that: (1) the digital asset Collateral shall be treated as a "financial asset" as such term is defined in Section 8-102(a)(9) of the UCC; and (2) each Clearing

Member shall be treated as an “entitlement holder” as such term is defined in Section 8-102(a)(7) of the UCC.

- (ii) Each Clearing Member acknowledges that the Clearinghouse is a “securities intermediary” as such term is defined in Section 8-102(a)(14) of the UCC.
  - (iii) Any digital asset Collateral which a Clearing Member desires be credited to such Clearing Member’s Member Property Account shall be transferred to a digital asset wallet designated by the Clearinghouse and upon such transfer the Clearinghouse shall indicate by book entry that such digital asset Collateral, less applicable transfer costs and fees, has been credited to such Member Property Account.
- (b) With respect to any digital asset Collateral, including, but not limited to, Bitcoin, which is or may be credited to any Customer Account, the following terms and conditions shall apply:
- (i) For purposes of creating a “security entitlement” as such term is defined in Section 8-102(a)(17) of the UCC, the Clearinghouse and the Customer and the relevant FCM Clearing Member all agree that: (1) the digital asset Collateral shall be treated as a “financial asset” as such term is defined in Section 8-102(a)(9) of the UCC; and (2) each FCM Clearing Member shall be treated as an “entitlement holder” as such term is defined in Section 8-102(a)(7) of the UCC.
  - (ii) Each Customer and each FCM Clearing Member acknowledges that the Clearinghouse is a “securities intermediary” as such term is defined in Section 8-102(a)(14) of the UCC.
  - (iii) Any digital asset Collateral which an FCM Clearing Member desires be credited to any of such FCM Clearing Member’s Customer Accounts shall be transferred to a digital asset wallet designated by the Clearinghouse and upon such transfer the Clearinghouse shall indicate by book entry that such digital asset Collateral, less applicable transfer costs and fees, has been credited to any of such Customer Accounts.
- (c) The Clearinghouse shall have only such duties and obligations with respect to each Member Property Account and Customer Account as are set forth in Article 8 of the UCC or otherwise mandated by Applicable Law. Each Clearing Member, including each FCM Clearing Member, and each Customer acknowledges and agrees that the Clearinghouse is not a fiduciary for any Clearing Member, including any FCM Clearing Member, or Customer.
- (d) The State of Illinois is the “securities intermediary’s jurisdiction” within the meaning of Section 8-110(e) of the UCC for all purposes of the UCC.

## **4. CLEARING, SETTLEMENT, AND DELIVERY OF CONTRACTS**

### **401. Submission of Trades.**

- (a) Upon matching of a trade effected on or pursuant to the rules of the Exchange, the Exchange shall promptly submit to Eris Clearing a trade report generated by the electronic trading system of the Exchange. The report shall show for each trade (i) the identity of each Clearing Member, (ii) whether bought or sold, (iii) quantity, (iv) delivery month, (v) the price, (vi) whether for house, Customer, or non-Customer account, and (vii) such other information as may be required by Eris Clearing.
- (b) If Eris Clearing determines that any trade report submitted pursuant to this Rule 401 contains a material error or is otherwise not eligible for clearing by Eris Clearing, Eris Clearing may reject such trade and notify the Exchange of such rejection, setting forth the basis of such objection.

### **402. Clearance and Substitution.**

- (a) The submission of a Contract to Eris Clearing by or on behalf of the buying and selling Clearing Members shall constitute a request, by such Clearing Members, for the clearing of such Contract by Eris Clearing. Upon the acceptance thereof by Eris Clearing, which ordinarily shall be deemed to occur upon the receipt of matched trade data from the Exchange, the Contract shall be novated and Eris Clearing shall be substituted as, and assume the position of, seller to the Clearing Member buying such Contract and buyer from the Clearing Member selling such Contract. Upon such substitution, such buying and selling Clearing Members shall be released from their obligations to each other, and Eris Clearing shall be deemed to have succeeded to all the rights, and to have assumed all the Obligations, of the Clearing Members that were party to such Contract, in each case as provided in the Rules.
- (b) Where an FCM Clearing Member acts to clear a Contract made for the account of a Customer, the FCM Clearing Member becomes obligated to Eris Clearing, and Eris Clearing becomes obligated to the FCM Clearing Member, with respect to such Contract in the same manner and to the same extent as if the Contract were for the account of the FCM Clearing Member.
- (c) Notwithstanding the provisions of paragraph (a), a trade shall not be accepted for clearing, and Eris Clearing shall not be substituted for a given Contract, unless the Margin for such Contract is made available to Eris Clearing, by or for both Clearing Members, pursuant to Rule 403.

### **403. Margin.**

- (a) (i) Each Clearing Member shall deposit funds or Collateral in the form of the applicable quantity of the deliverable underlying commodity required to fully collateralize orders pursuant to the contract specifications contained in the Exchange rulebook, including payment of premiums, payment in exchange for delivery or to fulfill delivery obligations,

as applicable, prior to submission of such orders to the Exchange. Fund and Collateral transfers made by a Clearing Member to the Clearinghouse or by the Clearinghouse to a Clearing Member are irrevocable and unconditional when effected. The Clearing Member shall be responsible for all fees associated with wires or transfers of Collateral to the Clearinghouse.

- (b) (ii) An FCM Clearing Member may not permit the withdrawal of funds or Collateral from a Customer Account if such withdrawal will result in the account having less than the margin required under Rule 403(a)(i).
- (c) Subject to the terms and conditions of the Clearinghouse, Clearing Members may deposit the following as Margin: (1) cash; (2) the underlying commodity; and (3) any other form of Collateral deemed acceptable by the Risk Management Committee upon the Risk Management Committee's approval of such Collateral as communicated through Clearinghouse notices. The Clearinghouse will value margin Collateral as it deems appropriate.
- (d) Funds and Collateral must be and remain unencumbered. Except as otherwise provided herein, each Clearing Member posting funds or Collateral hereby grants to the Clearinghouse a first priority security interest in and unencumbered lien against any Margin, Contracts, positions and other funds, property and any other Collateral deposited with the Clearinghouse by the Clearing Member, including without limitation such Clearing Member's Member Property Accounts, the Customer Accounts of such Clearing Member's Customers, and all securities entitlements held therein. A Clearing Member shall execute any documents required by Eris Clearing to create, perfect and enforce such lien. Each Clearing Member hereby agrees that with respect to any funds or Collateral which is or may be credited to the Clearing Member's Member Property Account or Customer Account, as applicable, the Clearinghouse shall have control pursuant to Section 9-106(a) and 8-106(e) of the UCC and a perfected security interest pursuant to Section 9-314(a) of the UCC.
- (e) Eris Clearing may assign, pledge, repledge or otherwise create a lien on or security interest in, and enter into repurchase agreements involving, Margin, Contracts, positions and other funds, property and any other Collateral deposited with the Clearinghouse by the Clearing Member, as permitted by CFTC Regulations and applicable State Regulations, held in or for such Clearing Member's Member Property Accounts or the Customer Accounts of such Clearing Member's Customers to secure the repayment of funds that may be borrowed by Eris Clearing.
- (f) Clearing Member must transfer the funds and Collateral to the Clearinghouse which will hold funds and Collateral on behalf of the Clearing Member. Eris Clearing will credit to the Clearing Member the funds and Collateral that such Clearing Member deposits. Funds and Collateral shall be held by the Clearinghouse until a Clearing Member submits a withdrawal notification, unless otherwise stipulated by these Rules. Eris Clearing will not be responsible for any diminution in value of funds or Collateral that a Clearing Member deposits with the Clearinghouse, except, in the case of cash, the diminution of

value is as a direct result of investment activity of the Clearinghouse, such activity having been conducted in full compliance with CFTC Regulations and applicable State Regulations. Any fluctuation in markets is the risk of each Clearing Member. Any interest earned on Clearing Member funds or Collateral may be retained by the Clearinghouse.

- (g) If a Clearing Member is in Default, Eris Clearing may foreclose on and sell any of the Margin deposited by such Clearing Member without notice.
- (h) Eris Clearing shall be empowered to invest and reinvest all or part of the funds constituting Margin. Such investments shall be for the account and risk of Eris Clearing, and any income and gains on such investments and interest on such deposits shall belong to Eris Clearing and may be withdrawn from the account holding the Margin and deposited with the general funds of Eris Clearing.

#### **404. Offset and Settlement.**

- (a) Where, as the result of novation under Rule 402, a Clearing Member has bought and sold a Contract on or subject to the Rules of the Exchange with the same expiration, or otherwise deemed equivalent by the Clearinghouse, the purchase and sale will be offset by Eris Clearing through the timely submission of instructions by the Clearing Member containing such information as Eris Clearing may require in accordance with its procedures. A Clearing Member shall be required to pay the loss or entitled to collect the profit, as the case may be, upon such offsetting transactions, and shall have no further rights or be under any further obligation with respect thereto. For purposes of this Rule 404, the first Contracts made shall be deemed the first Contracts offset.
- (b) Contracts made and designated by the Clearing Member as for the Clearing Member's Customer Account shall not be offset under this Rule 405 against Contracts designated by the Clearing Member as for the Clearing Member's own Member Property Account.

#### **405. Approved Depository Institutions.**

A bank, trust company or other depository that meets such financial and other requirements of Eris Clearing may be designated by Eris Clearing as an Approved Depository Institution.

#### **406. Statement of Trades and Contracts.**

Eris Clearing shall in the manner and at the time that it determines from time to time make available to a Clearing Member an accounting of trades and Contracts for each Business Day on which such Clearing Member has trades to be cleared or Contracts open with Eris Clearing. Any amounts the Clearing Member has posted to Eris Clearing under Rule 403 shall be indicated on this statement.

#### **407. Confirmation to Customers.**

An FCM Clearing Member servicing Customer Accounts shall confirm to the Customer every transaction made for the Customer no later than the following Business Day. Such confirmation

shall be in electronic or written form and shall show the Contract bought or sold, the quantity, the price, and delivery month.

#### **408. Transfer Trades.**

- (a) Trades and positions may be transferred on the books of a Clearing Member or from one Clearing Member to another Clearing Member provided that:
  - (i) the transfer constitutes a change from one account to another account where the underlying beneficial ownership in such accounts remains the same;
  - (ii) an error has occurred in the clearing of a trade and a transfer to correct such error is undertaken and is completed within two Business Days after the trade date;
  - (iii) the transfer is in connection with, or as a result of, a merger, asset purchase, consolidation or similar non-recurring transaction between two or more entities where one or more entities become the successor in interest to one or more other entities; or
  - (iv) if, in the judgment of Eris Clearing, the situation so requires and such transfer is in the best interest of Eris Clearing.
- (b) Unless otherwise permitted by Eris Clearing, a transfer that is permitted pursuant to this Rule 408 (a “**Transfer Trade**”) shall be recorded and carried on the books of the receiving Clearing Member at the original trade dates and prices.

#### **409. Settlement Prices**

As used in the Rules, the term “**Settlement Price**” means the settlement price for a Contract for which positions remain open, as determined, intra-day and at the close of regular trading hours, by the Exchange in accordance with its rules, except in the case of manifest error or where Eris Clearing believes that such settlement price does not reasonably reflect the value or price of the Contract, in which case Eris Clearing, using its best efforts to consult with the Exchange, shall determine the official Settlement Price; provided, that Eris Clearing shall in such circumstances promptly notify the Exchange and Clearing Members, and the reasons for that determination and the basis for the Settlement Price determined by Eris Clearing shall be published in a notice to the Exchange and Clearing Members.

#### **410. Delivery.**

#### **411. ¶**

After trading ceases for a Contract that is physically settled, the Clearinghouse shall transfer the underlying to the Account of the Clearing Member that is required to accept delivery, from the Account of the Clearing Member obligated to make delivery, such full collateralization having been transferred to the Clearinghouse’s custody at the inception of the trade. Deliveries will occur on the

Clearinghouse's books and records unless otherwise specified in the Exchange contract specifications.

- (a) If, due to any party's error, omission or outrade discovered on or after the last day of trading, a Clearing Member carries a position in a physically delivered contract that has expired, the Clearing Member may, with the consent of the account owners or the persons authorized to control trading in the relevant account(s), transfer such position to an account with different beneficial ownership; provided, however, that the parties to an error or outrade must exercise the utmost diligence to resolve the error or outrade. Notice of delivery obligation transfers must be made to the Clearinghouse the same day. Such transfers require that the Clearinghouse receive acceptance from an account(s) with different beneficial ownership and confirmation of the agreed upon transfer by the initiating party. Such confirmation must be submitted in writing on the form specified by the Clearing House. All positions transferred pursuant to this Rule shall take place at the original trade price of the contract; however this requirement does not prohibit cash adjustments between the parties to the transfer. In the event a delivery obligation transfer notification does not result in a trade transfer, delivery shall take place as required by the Exchange and the Clearinghouse Rules. This Rule does not relieve an FCM Clearing Member of its obligations regarding open positions in an expiring contract month as set forth in Rule 303(b)(ix).

#### **412. Reporting.**

Clearing Members shall make such reports in respect of trades, Contracts, settlements and deliveries as may be as prescribed by Eris Clearing.

### **5. OBLIGATIONS OF ERIS CLEARING**

#### **501. Limitation of Liability.**

- (a) THE LIABILITY OF ERIS CLEARING RELATING TO OR ARISING OUT OF CONTRACTS SHALL BE LIMITED TO LOSSES RESULTING FROM THE NOVATION OF THE CONTRACTS IN ACCORDANCE WITH THE RULES. SUBJECT TO THE FOREGOING, NEITHER THE CLEARINGHOUSE, NOR ANY AFFILIATE OF THE CLEARINGHOUSE, NOR ANY OF THEIR RESPECTIVE MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES, EQUITY HOLDERS, AGENTS, CONSULTANTS OR SERVICE PROVIDERS (INCLUDING, WITHOUT LIMITATION, ANY REGULATORY SERVICES PROVIDER), NOR ANY MEMBER OF ANY COMMITTEE OR OTHER GOVERNING BODY OF ANY AFFILIATE OF THE CLEARINGHOUSE (EACH OF THE FOREGOING, AS APPLICABLE, THE "DISCLAIMING PARTY" AND, COLLECTIVELY, "DISCLAIMING PARTIES") SHALL BE RESPONSIBLE FOR ANY ACTION TAKEN, OR ANY DELAY OR FAILURE TO TAKE ANY ACTION, HEREUNDER OR OTHERWISE TO FULFILL A

DISCLAIMING PARTY'S OBLIGATIONS TO CLEARING MEMBERS, OTHER THAN FOR LOSSES CAUSED DIRECTLY BY A DISCLAIMING PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AND SHALL NOT BE LIABLE FOR ANY OTHER OBLIGATIONS, INCLUDING BUT NOT LIMITED TO OBLIGATIONS OF A CLEARING MEMBER, OBLIGATIONS OF A CLEARING MEMBER TO A CUSTOMER OR OTHER NON-CLEARING MEMBER OR OBLIGATIONS OF A CLEARING MEMBER TO ANOTHER CLEARING MEMBER THAT IS ACTING FOR IT AS BROKER; NOR SHALL A DISCLAIMING PARTY BECOME LIABLE TO MAKE DELIVERIES TO OR ACCEPT DELIVERIES FROM CLEARING MEMBERS OR CUSTOMERS. UNDER NO CIRCUMSTANCES WILL A DISCLAIMING PARTY BE LIABLE FOR (1) THE ACTS, DELAYS, OMISSIONS, BANKRUPTCY, OR INSOLVENCY, OF ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, ANY DEPOSITORY, CUSTODIAN, SUBCUSTODIAN, CLEARING OR SETTLEMENT SYSTEM UNLESS THE DISCLAIMING PARTY WAS GROSSLY NEGLIGENT OR ENGAGED IN WILLFUL MISCONDUCT OR (2) THE PERFORMANCE OR OPERATION (OR NON-PERFORMANCE OR NON-OPERATION) OF ANY DIGITAL ASSET OR RELATED DISTRIBUTED LEDGER ("ANCILLARY DL") ATTRIBUTABLE DIRECTLY OR INDIRECTLY TO THE DESIGN OF THE DIGITAL ASSET OR ANCILLARY DL. UNDER NO CIRCUMSTANCES WILL A DISCLAIMING PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY LOSS OR DAMAGE (INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, LOSS OF PROFITS, TRADING LOSSES, LOSS OF OPPORTUNITY AND LOSS OF USE) HOWSOEVER SUFFERED OR INCURRED, REGARDLESS OF WHETHER THE DISCLAIMING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR WHETHER SUCH DAMAGES OTHERWISE COULD HAVE BEEN FORESEEN OR PREVENTED. THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY REGARDLESS OF WHETHER A CLAIM IS BASED ON BREACH OF CONTRACT, TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE (OTHER THAN GROSS NEGLIGENCE), STRICT LIABILITY, NEGLIGENT MISREPRESENTATION, RESTITUTION, BREACH OF STATUTORY DUTY, BREACH OF WARRANTY OR OTHERWISE, AND WHETHER THE CLAIM IS BROUGHT DIRECTLY OR AS A THIRD-PARTY CLAIM.

- (b) THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS PROVIDED BY THE CLEARINGHOUSE OR ANY OTHER DISCLAIMING PARTY RELATING TO ANY SYSTEMS OR SERVICES OF THE CLEARINGHOUSE OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, AND THE CLEARINGHOUSE HEREBY SPECIFICALLY DISCLAIMS, OVERRIDES AND EXCLUDES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, CONDITIONS, OTHER CONTRACTUAL TERMS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES WITH RESPECT TO



THE SERVICES, WHETHER EXPRESS, IMPLIED OR STATUTORY, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY THE CLEARINGHOUSE OR ANY OTHER DISCLAIMING PARTY OR OTHERWISE (INCLUDING BUT NOT LIMITED TO, AS TO TITLE, SATISFACTORY QUALITY, ACCURACY, COMPLETENESS, UNINTERRUPTED USE, NON-INFRINGEMENT, TIMELINESS, TRUTHFULNESS, SEQUENCE AND ANY IMPLIED WARRANTIES, CONDITIONS AND OTHER CONTRACTUAL TERMS ARISING FROM TRANSACTION USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE) RELATING TO ANY SYSTEMS OR SERVICES OF THE CLEARINGHOUSE OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES.

- (c) ERIS CLEARING MAY ACCEPT AND RELY UPON ANY INFORMATION OR INSTRUCTION GIVEN TO ERIS CLEARING BY A CLEARING MEMBER OR ITS OFFICERS OR AUTHORIZED REPRESENTATIVES, WHICH REASONABLY IS UNDERSTOOD BY ERIS CLEARING TO HAVE BEEN DELIVERED TO ERIS CLEARING BY THE CLEARING MEMBER AND SUCH CLEARING MEMBER SHALL INDEMNIFY THE DISCLAIMING PARTIES AND CLEARING MEMBERS AGAINST ANY LOSS, LIABILITY OR EXPENSE AS A RESULT OF ANY ACT DONE IN RELIANCE UPON THE AUTHENTICITY OF ANY INFORMATION OR INSTRUCTION RECEIVED BY ERIS CLEARING, THE INACCURACY OF THE INFORMATION CONTAINED THEREIN OR EFFECTING TRANSACTIONS IN RELIANCE UPON SUCH INFORMATION OR INSTRUCTION.
- (d) A CLEARING MEMBER SHALL REIMBURSE ERIS CLEARING FOR ALL FEES, EXPENSES, CHARGES AND COSTS ASSESSED BY A DEPOSITORY AGAINST ERIS CLEARING WITH RESPECT TO MARGIN MAINTAINED IN SUCH CLEARING MEMBER'S ACCOUNT, AND ERIS CLEARING SHALL NOT HAVE ANY OBLIGATION OR RESPONSIBILITY TO PRESERVE, PROTECT, COLLECT OR REALIZE UPON, AND EXCEPT AS PROVIDED IN RULE 403(D), ERIS CLEARING SHALL NOT BE LIABLE FOR, ANY LOSS OR DIMINUTION IN VALUE OR DEPRECIATION IN MARGIN DEPOSITED BY CLEARING MEMBERS. CLEARING MEMBERS THAT DEPOSIT MARGIN WITH AN APPROVED DEPOSITORY INSTITUTION PURSUANT TO THE RULES SHALL HOLD ERIS CLEARING HARMLESS FROM ALL LIABILITY, LOSSES AND DAMAGES WHICH MAY RESULT FROM OR ARISE WITH RESPECT TO THE CARE AND SALE OF SUCH MARGIN.
- (e) ANY OBLIGATION OF ERIS CLEARING TO A CLEARING MEMBER ARISING FROM A CONTRACT OR FROM ANY PROVISION OF THE RULES SHALL BE SUBJECT TO ALL THE TERMS OF THE RULES, INCLUDING THE SETOFF AND OTHER RIGHTS SET FORTH HEREIN.
- (f) EXCEPT IN ANY CASE WHERE A DISCLAIMING PARTY HAS BEEN FINALLY ADJUDICATED TO HAVE ENGAGED IN FRAUD OR WILLFUL OR WANTON MISCONDUCT, IN NO EVENT SHALL THE DISCLAIMING PARTIES' TOTAL

COMBINED AGGREGATE LIABILITY FOR ALL CLAIMS, OTHER THAN THOSE ARISING UNDER RULE 501(F), EXCEED \$100,000 FOR ALL LOSSES SUFFERED FROM ALL CAUSES ON A SINGLE CALENDAR DAY; \$200,000 FOR ALL LOSSES SUFFERED FROM ALL CAUSES IN A SINGLE CALENDAR MONTH; AND \$1,000,000 FOR ALL LOSSES SUFFERED FROM ALL CAUSES IN A SINGLE CALENDAR YEAR. IF THE NUMBER OF ALLOWED CLAIMS ARISING OUT OF ANY FAILURES OR MALFUNCTIONS ON A SINGLE DAY, SINGLE MONTH OR SINGLE YEAR CANNOT BE FULLY SATISFIED BECAUSE OF THE ABOVE DOLLAR LIMITATIONS, ALL SUCH CLAIMS SHALL BE LIMITED TO A PRO RATA SHARE OF THE MAXIMUM AMOUNT FOR THE RESPECTIVE PERIOD.

- (g) THE RIGHTS OF ERIS CLEARING SET FORTH HEREIN SHALL BE IN ADDITION TO OTHER RIGHTS THAT ERIS CLEARING MAY HAVE UNDER APPLICABLE LAW AND GOVERNMENTAL REGULATIONS, OTHER PROVISIONS OF THE RULES, ADDITIONAL AGREEMENTS WITH THE CLEARING MEMBER OR ANY OTHER SOURCE.

#### **502. Clearing Member Default.**

- (a) If a Clearing Member is in Default, Margin held with respect to such Clearing Member's Member Property Accounts, and any other of such Clearing Member's assets held by, pledged to or otherwise available to Eris Clearing, may be applied by Eris Clearing to discharge the Obligations of such Clearing Member to Eris Clearing (including any costs and expenses associated with the liquidation, transfer or management of Contracts held in or for the Member Property Accounts of such Clearing Member, and any fees, assessments or fines imposed by Eris Clearing on such Clearing Member), and Eris Clearing may cause all Contracts of such Clearing Member (whether or not carried in a Customer Account) to be closed or offset, transferred to any other Clearing Member, or otherwise resolved as provided in these Rules.
- (b) If the Margin held with respect to such Clearing Member's Member Property Accounts, and other of such Clearing Member's assets held by, pledged to or otherwise available to Eris Clearing, including any guarantee issued pursuant to these Rules, are insufficient to satisfy the defaulting Clearing Member's Obligations to Eris Clearing after giving effect to the application of such amounts pursuant to paragraph (a), such defaulting Clearing Member shall continue to be liable therefor.
- (c) In closing, offsetting, transferring or otherwise resolving the Contracts of a Clearing Member as provided herein and in Rule 601, Eris Clearing shall have the right:
  - (i) With respect to Contracts in a Customer Account of such FCM Clearing Member, to set off (x) any proceeds received by Eris Clearing from the disposition of such Contracts and any property or proceeds thereof deposited with or held by Eris Clearing as Margin for such account against (y) any amounts paid by Eris Clearing in the disposition of such Contracts, including any commissions or other losses or expenses incurred in connection therewith or in connection with the liquidation of Margin deposits in such Customer Account and any other amounts

owed to Eris Clearing as a result of transactions in the Customer Account or otherwise lawfully chargeable against such Customer Account;

- (ii) With respect to the Contracts in any Member Property Accounts of such Clearing Member, to set off (x) any proceeds received by Eris Clearing from the disposition of such Contracts, any property or proceeds thereof deposited with or held by Eris Clearing as Margin for such Member Property Accounts and any other property of the Clearing Member within the possession or control of Eris Clearing other than property that has been identified by such Clearing Member as required to be segregated pursuant to the CEA and CFTC Regulations, against (y) any amounts paid by Eris Clearing in the disposition of such Contracts, including any commissions or other losses or expenses incurred in connection therewith or in connection with the liquidation of Margin deposits in such Member Property Accounts, and any other Obligations of the Clearing Member to Eris Clearing, including Obligations of the Clearing Member to Eris Clearing remaining after the setoffs referred to in paragraph (i) above, and any Obligations arising from any other Member Property Accounts maintained by the Clearing Member with Eris Clearing; and
  - (iii) To defer closing or otherwise settling such trades and Contracts if, in its discretion, it determines that the closing out of some or all of the suspended Clearing Member's trades or Contracts would not be in the best interests of Eris Clearing or other Clearing Members, taking into account the size and nature of the positions in question, market conditions prevailing at the time, the potential market effects of such liquidating transactions as might be directed by Eris Clearing, and such other circumstances as it deems relevant; or
  - (iv) take any action the Clearinghouse deems proper or in the best interest of the Clearinghouse or its Clearing Members.
- (d) For purposes of this Rule, each Default by a Clearing Member will be considered a separate Default.
  - (e) A Clearing Member shall take no action, including but not limited to attempting to obtain a court order, that would interfere with the ability of Eris Clearing to exercise its rights under the Rules and its agreements with such Clearing Member.

### **503. Investment of Customer Funds**

Funds and assets belonging to Customers that are invested by Eris Clearing shall be held in instruments that comply with CFTC Regulations 1.25 and 39.15(e), and in accordance with any applicable State Regulations. Non-Customer funds and assets belonging to Clearing Members that are invested by Eris Clearing shall be held in instruments that comply with CFTC Regulation 39.15(e).

## 6. SUSPENSION; DISCIPLINARY PROCEEDINGS

### 601. Suspension.

- (a) General. The Board, Risk Management Committee, or any Exchange Committee may summarily suspend any Clearing Member (i) if the Clearing Member is in Default, (ii) upon the discovery of a materially false or misleading representation or warranty made by the Clearing Member to Eris Clearing under or in connection with any agreement between Eris Clearing and the Clearing Member, (iii) if a breach by the Clearing Member of the Rules or any of the terms or provisions of any agreement between Eris Clearing and the Clearing Member is not remedied promptly after notice from Eris Clearing, (iv) in the event of a material violation of the Rules of the Exchange or of the Clearinghouse, or (v) if the Board or the Risk Management Committee determines that suspension is necessary for the protection of Eris Clearing, other Clearing Members, or the general public (whether or not such Clearing Member continues to meet the required minimum financial requirements pursuant to the Rules).
- (b) Notice of Suspension to Clearing Members. Upon the suspension of a Clearing Member, Eris Clearing shall as soon as possible notify all Clearing Members of the suspension. Such notice shall state to the extent practicable in general terms how pending transactions, open positions and other pending matters will be affected and what steps are to be taken in connection therewith.
- (c) Pending Transactions. Notwithstanding any other provision of the Rules, Eris Clearing shall have no obligation to accept any transaction of a suspended Clearing Member that was effected after the time at which the Clearing Member was suspended. In the event a transaction of a suspended Clearing Member is rejected by Eris Clearing, Eris Clearing shall provide notice of such rejection to the other party thereto and such transaction shall be closed by the other party thereto in accordance with the rules of the Exchange.
- (d) Open Positions. Eris Clearing shall have the right to cause open positions in Contracts in any of the accounts of a suspended Clearing Member:
  - (i) To be closed in such manner as deemed practicable by Eris Clearing, in its sole discretion;
  - (ii) To be transferred to the account of one or more other Clearing Members;
  - (iii) To be offset against each other and, to the extent of any remaining imbalance, against the Contracts of other Clearing Members; or
  - (iv) To be settled at the Settlement Price for such Contracts, or at such other price or prices as Eris Clearing may deem fair and reasonable under the circumstances, in which event Eris Clearing may cause Contracts in the accounts of other Clearing Members to be settled at such price or prices; or

- (v) Take any other action with respect to open positions it deems in the best interest of the Clearinghouse or Clearing Members.
- (vi) In connection with any action undertaken by Eris Clearing pursuant to subparagraphs (i) through (v) above, Eris Clearing shall have the right to apply the Margin of the applicable Clearing Member and any other assets of such Clearing Member held by, pledged to or otherwise available to Eris Clearing, including any guarantee issued pursuant to these Rules, to discharge the Obligations of such Clearing Member to Eris Clearing (including any costs and expenses associated with the liquidation, transfer or management of Contracts held in or for the accounts of such Clearing Member, and any fees, assessments or fines imposed by Eris Clearing on such Clearing Member).
- (e) Eris Clearing may delegate to specified Officers or agents of Eris Clearing the authority to determine, within such guidelines, if any, as Eris Clearing shall prescribe, the nature and timing of transactions of the type described in subparagraph (d). If Eris Clearing shall determine, taking into account the size and nature of a suspended Clearing Member's positions, market conditions prevailing at the time, the potential market effects of liquidating transactions that might be directed by Eris Clearing, and such other circumstances as Eris Clearing deems relevant, that the closing out of some or all of the suspended Clearing Member's positions would not be in the best interests of Eris Clearing, other Clearing Members, or the general public, such positions need not be closed out.
- (f) Protective Action. If Eris Clearing (i) is unable, for any reason, to close out in a prompt and orderly manner any positions or to convert to cash any Margin deposits of a suspended Clearing Member, or (ii) elects pursuant to paragraph (d) of this Rule not to close out any such positions, Eris Clearing may authorize the execution of hedging transactions from time to time for the account of Eris Clearing, solely for the purpose of reducing the risk to Eris Clearing resulting from the continued maintenance of such positions or the continued holding of such Margin deposits. Eris Clearing may delegate to specified Officers or agents of Eris Clearing the authority to determine, within such guidelines, if any, as Eris Clearing shall prescribe, the nature and timing of such hedging transactions.
- (g) Reimbursement of Costs and Expenses. Any costs or expenses, including losses, sustained by Eris Clearing in connection with transactions effected for its account pursuant to this Rule shall be charged to the suspended Clearing Member, and any gains realized on such transactions shall be credited to such Clearing Member; provided, however, that costs, expenses, and gains allocable to the hedging of positions in a Customer Account shall be charged or credited, as the case may be, to the Customer Account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Clearing Member. Reasonable allocations of costs, expenses, and gains among accounts made by Eris Clearing for the purpose of implementing the proviso to the preceding sentence shall be binding on the Clearing

Member and any persons claiming through the Clearing Member and their respective successors and assigns.

## **602. Right of Appeal.**

- (a) A Clearing Member suspended pursuant to Rule 601 shall be entitled, upon request within five Business Days after the date of its suspension, to a written statement of the grounds for its suspension and shall have the right to appeal its suspension in accordance with the following procedure:
- (i) A suspended Clearing Member may appeal its suspension by filing a written notice of appeal within five Business Days after the date of its receipt of a written statement of the grounds for its suspension.
  - (ii) Appeals shall be considered and decided by the Appeal Panel. Appeals shall be heard as promptly as possible, and in no event more than five Business Days after the filing of the notice of appeal. The appellant shall be notified of the time, place and date of the hearing not less than three Business Days in advance of such date. At the hearing, the appellant shall be afforded an opportunity to be heard and to present evidence in its own behalf, and may, if it so desires, be represented by counsel. As promptly as possible after the hearing, the Appeal Panel shall, by the vote of a majority of its members, affirm or reverse the suspension or modify the terms thereof. The appellant shall be notified in writing of the Appeal Panel's decision; and if the decision shall have been to affirm or modify the suspension, the appellant shall be given a written statement of the grounds therefor.
  - (iii) Any decision by the Appeal Panel to affirm or modify a suspension shall be reviewable by the Board on its own motion or on written demand by the appellant filed with Eris Clearing within three Business Days after receipt of notice of the Appeal Panel's decision. The Board may afford the appellant a further opportunity to be heard or to present evidence. The appellant shall be notified in writing of the decision of the Board; and if the decision shall have been to affirm or modify the suspension, the appellant shall be given a written statement of the grounds therefor.
  - (iv) The filing of an appeal pursuant to this Rule shall not impair the validity or stay the effect of the suspension appealed from. The reversal or modification of a suspension shall not invalidate any acts of Eris Clearing taken pursuant to such suspension prior to such reversal or modification, and the rights of any person which may arise out of any such acts shall not be affected by such reversal or modification.
  - (v) A record shall be kept of any hearing held pursuant hereto. The cost of the transcript may, in the discretion of the body holding the hearing, be charged in whole or in part to the suspended Clearing Member in the event that the suspension is finally affirmed.

### **603. Sanctions from Disciplinary Proceedings.**

- (a) Eris Clearing may censure, suspend, expel or limit the activities, functions or operations of, and/or impose a fine on (each a “sanction”), a Clearing Member for (i) a violation of the Rules or its agreements with Eris Clearing or the Exchange, (ii) any neglect or refusal by such Clearing Member to comply with any applicable order or direction of Eris Clearing or the Exchange, (iii) any error, delay or other conduct that materially and adversely affects the operations of Eris Clearing or Eris Exchange, (iv) a violation of the rules of the Exchange, or (v) a failure to provide adequate personnel or facilities, where applicable, for its transactions with Eris Clearing.
- (b) Eris Clearing shall provide prompt notice to the CFTC of any action taken in accordance with this Rule 603.

### **604. Procedures for Disciplinary Proceedings.**

- (a) Before any sanction is imposed pursuant to Rule 603, Eris Clearing shall furnish the person against whom the sanction is sought to be imposed (“Respondent”) with a concise written statement of the charges against the Respondent. The Respondent shall have ten Business Days after the service of such statement to file with Eris Clearing a written answer thereto. The answer shall admit or deny each allegation contained in the statement of charges and may also contain any defense which the Respondent wishes to submit. Allegations contained in the statement of charges which are not denied in the answer shall be deemed to have been admitted, and any defense not raised in the answer shall be deemed to have been waived. If an answer is not filed within the time prescribed above or any extension thereof granted pursuant to paragraph (d) of this Rule, the allegations contained in the statement of charges shall be deemed to have been admitted, and the sanction specified in the final request shall be imposed without further proceedings and the Respondent shall be notified thereof in writing. If an answer is timely filed, Eris Clearing shall (unless the Respondent and Eris Clearing shall have stipulated to the imposition of an agreed sanction) schedule a hearing before the Disciplinary Panel. The Respondent shall be given not less than three Business Days advance notice of the place and time of such hearing. At the hearing, the Respondent shall be afforded the opportunity to be heard and to present evidence in its behalf and may be represented by counsel. A record of the hearing shall be prepared and the cost of the transcript may, in the discretion of the Disciplinary Panel, be charged in whole or in part to the Respondent in the event any sanction is imposed on the Respondent. As soon as practicable after the conclusion of the hearing, the Disciplinary Panel shall furnish the Respondent and the Board with a written statement of its decision. If the decision shall have been to impose a disciplinary sanction, the written statement shall set forth (i) any act or practice in which the Respondent has been found to have engaged, or which the Respondent has been found to have omitted; (ii) the specific provisions of the Rules which any such act, practice or omission has been deemed to violate; and (iii) the sanction imposed and the reasons therefor.

- (b) In the event that (i) the Disciplinary Panel censures, fines, suspends, expels or limits the activities, functions or operations of a Respondent, or (ii) determines not to impose any disciplinary measures on a Respondent, the Respondent, in the case of (i) above, or the President, in the case of (ii) above, may apply for review to the Board, by written motion filed with Eris Clearing within five Business Days after issuance of the Disciplinary Panel's written statement of its decision.
- (c) The granting of any such motion shall be within the discretion of the Board. In addition, the Board may determine to review any such action by the Disciplinary Panel on its own motion. Review by the Board shall be on the basis of the written record of the proceedings in which the sanction was imposed, but the Board may, in its discretion, afford the Respondent a further opportunity to be heard or to present evidence. A record shall be kept of any such further proceedings. Based upon such review, the Board may affirm, reverse or modify, in whole or in part, the decision of the Disciplinary Panel. The Respondent shall be notified in writing of the decision of the Board and if the decision shall have been to affirm or modify the imposition of any disciplinary sanction, the Respondent shall be given a written statement setting forth (i) any act or practice in which the Respondent has been found to have engaged, or which the Respondent has been found to have omitted; (ii) the Rules which any such act, practice or omission has been deemed to violate; and (iii) the sanction imposed and the reasons therefor.
- (d) Any time limit set forth in this Rule may be extended by the body having jurisdiction over the matter in respect of which the time limit is imposed.
- (e) Any action taken by the Disciplinary Panel hereunder shall be deemed to be final upon (i) expiration of the time provided for the filing of a motion for review, or any extension thereof granted pursuant to paragraph (d) hereof; or (ii) if a motion for review is timely filed, when the Respondent is notified of the denial of the motion or the decision of the Board on review, as the case may be; or (iii) if the Board shall determine on its own motion to review the action by the Disciplinary Panel, when the Respondent is notified of the decision of the Board on review.
- (f) The summary suspension of a Clearing Member pursuant to Rule 601 shall not be deemed to be a "sanction" within the meaning of this Rule, and the provisions of this Rule shall be inapplicable to any such summary suspension.

**605. Discipline by Other Self-Regulatory Organizations.**

- (a) At the discretion of the Clearinghouse, any suspected violation of these Rules may be referred to the enforcement staff of the Exchange.
- (b) Any inquiry, investigation or disciplinary action resulting from a suspected violation of these Rules may be handled by Clearinghouse personnel, Exchange personnel, or personnel that serve in roles at both the Clearinghouse and the Exchange.



- (c) Nothing in this Chapter 6 shall affect the right of any Self-Regulatory Organization to discipline its members pursuant to the provisions of its rules for a violation of the Rules of Eris Clearing.

**606. Restriction on or Termination of Clearing Privileges.**

- (a) If (x) a Removal Event occurs with respect to a Clearing Member, or (y) Eris Clearing determines that the financial or operational condition of a Clearing Member or one of its affiliates is such that to allow the Clearing Member to continue its operation as a Clearing Member could adversely affect Eris Clearing or cleared markets (whether or not such Clearing Member continues to meet the required minimum financial requirements, if applicable), Eris Clearing may:
  - (i) Allow such Clearing Member (in the case of an FCM Clearing Member handling Customer Accounts) to submit Contracts for clearing solely for its Member Property Account;
  - (ii) Limit or restrict the type of Contracts that may be cleared by such Clearing Member in any of its Accounts with Eris Clearing;
  - (iii) Limit or restrict the number of Contracts that are permitted to be maintained by such Clearing Member in any of its Accounts with Eris Clearing;
  - (iv) Decline to accept new trades or positions in Contracts for the Accounts of the Clearing Member;
  - (v) Increase such Clearing Member's Margin requirements and/or require such Clearing Member to deposit the same in cash or Eligible Securities in proportions different than those that are applicable to Clearing Members generally;
  - (vi) Allow such Clearing Member to submit Contracts for liquidation only;
  - (vii) Prohibit such Clearing Member from withdrawing excess Original Margin;
  - (viii) Cause open Contracts in the Member Property Account or Customer Account of the Clearing Member to be transferred to another Clearing Member;
  - (ix) Cause open Contracts to be settled in cash or liquidated;
  - (x) Impose such additional capital, Margin, financial reporting or other requirements as Eris Clearing shall deem appropriate for the protection of Eris Clearing and its Clearing Members;
  - (xi) Terminate the Clearing Member's membership in Eris Clearing; or
  - (xii) Take any other actions it deems proper or in the best interest of the Clearinghouse or its Clearing Members.

- (b) Eris Clearing has no obligation to clear trades made on the Exchange or any other trading facility where such Clearing Member does not have trading privileges or is not approved for the clearing privileges by the relevant facility.
- (c) A Person once qualified as a Clearing Member may voluntarily withdraw from Clearing Member status and terminate its clearing privileges upon the approval of Eris Clearing, which approval shall be granted not later than 30 days following (i) the liquidation or, with the approval of Eris Clearing, transfer to another Clearing Member of all open positions in the Clearing Member's Accounts at Eris Clearing, and (ii) the satisfaction of all Obligations of the withdrawing Clearing Member; provided, however that such Person shall remain subject to, and responsible for any violation of, the Rules, interpretations and policies of Eris Clearing committed by such Person while a Clearing Member, notwithstanding any termination of clearing privileges and Clearing Member status.
- (d) When a Clearing Member voluntarily withdraws from membership or its membership is terminated, all Obligations of the Clearing Member to Eris Clearing, of whatever nature or kind, shall be accelerated and become due and payable upon the effective date of such withdrawal or termination. The Clearing Member's funds, Collateral and other deposits will not be released until Eris Clearing determines that all such Clearing Member's Obligations have been settled and all sums owing to Eris Clearing have been paid.
- (e) Any disputes which arise while a Clearing Member which relate to or arise out of any transaction with Eris Clearing or status of a Clearing Member in Eris Clearing shall be resolved in accordance with the Rules.

**607. Just and Equitable Principles of Trade; Acts Detrimental to the Clearinghouse.**

- (a) Eris Clearing shall have the authority to take any actions it deems in the best interest of the Clearinghouse or the Clearing Members.
- (b) Eris Clearing shall have the power to suspend or revoke clearing privileges or authorize the assessment of fines or charges against Clearing Members for engaging in conduct inconsistent with just and equitable principles of trade.
- (c) Eris Clearing shall have the power to suspend or revoke clearing privileges or authorize the assessment of fines or charges against Clearing Members for engaging in acts detrimental to the interest or welfare of Eris Clearing.

**7. MISCELLANEOUS**

**701. Force Majeure.**

Notwithstanding any other provision of these Rules, Eris Clearing shall not be obligated to perform its obligations under these Rules or any agreement with a Clearing Member relating to Contracts, or to compensate any Person for losses occasioned by any delay or failure of performance, to the extent such delay or failure is the result of acts of God, lightning, earthquake,

fire, epidemic, landslide, drought, storm, explosion, flood, nuclear radiation, act of a public enemy, terrorist activity, act of state or blockade, insurrection, riot or civil disturbance, strike or labor disturbance, power or communications failure, performance or operation (or non-performance or non-operation) of any digital asset or Ancillary DL in a manner adverse to the Clearinghouse or more than one Clearing Member attributable directly or indirectly to the design of the digital asset or Ancillary DL (as determined by Eris Clearing) or any other cause beyond Eris Clearing's reasonable control (whether or not similar to any of the foregoing). If Eris Clearing shall, as a result of any of the above-described events, fail to perform any of its obligations, such failure shall be excused for a period equal to the period of delay caused by such event. In such an event, Eris Clearing shall give written notice thereof to the Exchange or such Clearing Member, as the case may be, as soon as it is reasonably practicable and attempt diligently to remove such condition. Eris Clearing complies with CFTC rules requiring systems and procedures be in place to meet a recovery time objective of no later than the next business day following a disruption.

### **702. Suspension of Rules.**

The time frames fixed by these Rules, interpretations or policies of Eris Clearing for the doing of any act or acts may be extended, or the doing of any act or acts required by these Rules or any interpretations or policies of Eris Clearing may be waived, and any provision of these Rules or any interpretations or policies of Eris Clearing may be suspended by Eris Clearing whenever, in the judgment of the Board or the Officers, such extension, waiver or suspension is necessary or in the best interest of Eris Clearing. Any such extension or waiver may continue in effect after the event or events giving rise thereto but shall not continue in effect for more than thirty calendar days after the date thereof unless it shall be approved by the Board within such period of 30 calendar days. A written report of any such extension or waiver, stating the pertinent facts and the reason such extension or waiver was deemed necessary or in the best interest of Eris Clearing shall be presented to the Board at its next regular meeting.

### **703. Confidentiality.**

- (a) All information received by Eris Clearing concerning positions carried by Eris Clearing or any other clearing organization for a Clearing Member or deliveries made by or to a Clearing Member, and any other information provided by a Clearing Member to Eris Clearing, including, without limitation, financial statements filed with Eris Clearing by a Clearing Member, shall be held in confidence by Eris Clearing and shall not be made known to any other Person except as follows:
  - (i) With the consent of the Clearing Member;
  - (ii) To a Government Agency or the regulatory authority of any foreign jurisdiction, if Eris Clearing is requested or legally required to do so by such Government Agency;
  - (iii) Pursuant to legal process;

- (iv) To an exchange (including, without limitation, any contract market, swap execution facility or other trading facility) of which such Clearing Member is a member, provided that information relating to positions, margin payments and deliveries that is furnished to an exchange shall relate solely to contracts traded on that exchange;
- (v) To a Self-Regulatory Organization of which such Clearing Member is a member;
- (vi) To any Person providing services to Eris Clearing, subject to appropriate confidentiality requirements;
- (vii) To the Board, any Committee, Eris Clearing or the Exchange's Officers, employees, attorneys and auditors, and to agents and independent contractors that have been engaged by Eris Clearing or the Exchange who require such information in connection with the discharge of their duties to Eris Clearing; and
- (viii) As otherwise permitted under the Rules.

#### **704. Information-Sharing Agreements**

- (a) Eris Clearing may enter into information-sharing agreements or other arrangements or procedures to coordinate surveillance with the Exchange and with other markets or clearing organizations on which Contracts or financial instruments related to Contracts trade or are cleared. As part of any information sharing agreements or other arrangements or procedures adopted pursuant to this Rule, Eris Clearing may, among other things:
  - (i) provide market surveillance reports to other markets and clearing organizations;
  - (ii) share information and documents concerning current and former Clearing Members with other markets and clearing organizations;
  - (iii) share information and documents concerning ongoing and completed investigations with other markets and clearing organizations; and/or
  - (iv) require its Clearing Members to provide information and documents to Eris Clearing at the request of other markets or clearing organizations with which Eris Clearing has an information-sharing agreement or other arrangements or procedures.
- (b) Eris Clearing may enter into an information-sharing arrangement with any Person or body (including, without limitation, any Government Authority or any Self-Regulatory Organization) if Eris Clearing (i) believes that such Person or body 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 Eris Clearing's purpose or duties under applicable law. Eris Clearing may disclose to any Person or body information concerning or associated with a Clearing Member or other Person that Eris Clearing believes is necessary and appropriate in exercising a legal or regulatory function (including, without limitation, information

concerning any aspect of the business of Eris Clearing) whether or not a formal arrangement governing the disclosure exists or a request for information was made.

**705. Trading by Officers and Employees Prohibited.**

- (a) No Officer or employee of Eris Clearing shall trade or participate directly or indirectly in any transaction in any futures, option, or swap traded on any U.S. designated contract market, that are closely related to the Contracts cleared by the Clearinghouse, except to the extent necessary to carry out the provisions of the Rules or as otherwise permitted pursuant to an exemption granted in accordance with this Rule; or
- (b) No Officer, Director, or employee of Eris Clearing shall disclose any material, non-public information obtained as a result of such Person's employment with Eris Clearing where the Officer or employee has or should have a reasonable expectation that the information disclosed may assist another Person in trading any commodity interest; provided, that an employee is not prohibited from making disclosures in the course of the employee's duties, or to another Self-Regulatory Organization, court of competent jurisdiction or representative of any agency or department of the federal or state government acting in his or her official capacity.
- (c) Eris Clearing may adopt certain exemptions from the trading prohibition contained in paragraph (a)(i), provided that any such exemptions shall be consistent with CFTC Regulations and applicable State Regulations.
- (d) All terms used in this Rule shall be construed consistently with the definitions appearing in CFTC Regulation 1.59.

**706. Forms; Facsimile Signatures.**

- (a) Eris Clearing shall prescribe the form, method and time of delivery of any application, list, notice or other document required pursuant to these Rules or the policies or practices of Eris Clearing.
- (b) A Clearing Member or a Clearing Member's representative may execute any document to be delivered to Eris Clearing or to any other Clearing Member pursuant to these Rules or any policy or practice of Eris Clearing by means of a mechanically or electronically reproduced facsimile signature if it otherwise satisfies any requirements of Eris Clearing for use of such facsimile signatures.

**707. Governing Law; Legal Proceedings.**

- (a) These Rules, the Clearing Member Agreement and all rights and obligations under the foregoing (including the creation of security interests in margin and guaranty fund deposits), shall be governed by and construed in accordance with the internal laws of the State of Illinois, without giving effect to the conflict of law provisions thereof.
- (b) Any action, suit or proceeding against Eris Clearing, its Officers, directors, limited liability company members, employees, or agents, must be brought within one (1) year

from the time that a cause of action has accrued. Any such action, suit or proceeding shall be brought in the State or Federal courts located within Chicago, Illinois. Each Clearing Member expressly consents, for itself and its Authorized Representatives, to the jurisdiction of any such court, waives any objection to venue therein, and waives any right it may have to a trial by jury.

- (c) In the event that a Clearing Member or an affiliate of such Clearing Member fails to prevail in a lawsuit or other legal proceeding instituted by such Clearing Member against (i) Eris Clearing or (ii) any affiliate of Eris Clearing or any of their respective officers, directors, equity holders, employees, agents, or any member of any Committee, and related to the business of Eris Clearing, such Clearing Member shall pay to Eris Clearing all reasonable expenses, including attorneys' fees, incurred by Eris Clearing in the defense of such proceeding. This paragraph (c) shall not apply to Eris Clearing disciplinary actions, appeals thereof, or an instance in which the Board or the Officers have granted a waiver of the provisions hereof.

#### **708. Dispute Resolution**

- (a) All Clearing Members shall be required to arbitrate all disputes between or among themselves that relate to or arise out of any transaction submitted for clearing to Eris Clearing in accordance with Exchange Rule 801. For these purposes, each Clearing Member shall be deemed a "Member" for purposes of Exchange Rule 801.
- (b) Disputes involving Customers may be arbitrated in accordance with Exchange Rule 801(c).

#### **709. Contracts**

Eris Clearing may approve as eligible for clearing contracts with terms and conditions matching the terms and conditions in the Exchange rulebook for such contracts and to the extent permissible under Applicable Law. Any new contract that Eris Clearing has approved as eligible for clearing shall be posted on Eris Clearing's website and certified with or otherwise approved by the CFTC in accordance with CFTC Regulations, as necessary.