



Market Notice

TO: ErisX Members and Participants

FROM: Eris Exchange Legal Department

NOTICE: #22-11MN

DATE: August 24, 2022

SUBJECT: ErisX Spot Rulebook Changes

This Market Notice serves to notify Members of Eris Exchange, LLC (“Exchange”) of upcoming changes to Chapter 12 of the Eris Exchange Rulebook, which covers trading on the spot market, taking effect on August 25, 2022.

- The “Introduction and Notice” to Chapter 12 is amended to further clarify that other chapters of the Eris Exchange Rulebook do not apply to trading on the spot market unless explicitly referenced in Chapter 12.
- Rule 1200(a) is amended to clarify that self-certification is not required for changes made to Chapter 12.
- Rule 1200(c) is amended to provide a five (5) year limitation on the Exchange’s continuing jurisdiction over Participants in the spot market.
- Rule 1201(d) is amended to clarify that reference to “CEA”, “Act”, and “CFTC Regulations” apply to Chapter 12 only to the extent appropriate to reference authority or jurisdiction over activity in spot commodities or spot trading.
- Rule 1206 is amended to provide that Participants to a Block Trade may be entities or direct participants, and to provide certain conforming changes.
- Rule 1208(a) is amended to clarify that oral communications must be recorded between Participants and their customers.
- Rule 1208(b) is added to provide clarity that, in some circumstances, trading systems of Participants may access the Eris Trading System via the same user login, so long as appropriate recordkeeping is maintained and made available to Eris Exchange.

The redlined rulebook changes are attached hereto.

If you have any questions regarding this Exchange notice, please contact ErisX Legal Department at legal@erisx.com.



ERIS EXCHANGE LLC RULEBOOK

Effective August 25, 2022

CHAPTER 12: SPOT MARKETS

Introduction and Notice:

Trading of a spot commodity contract on the Eris Exchange Spot Markets is facilitated by Eris Exchange and Eris Clearing, together as “ErisX”, and governed by the Rules of this Chapter (“Spot Rules”). Unless otherwise specified in this Chapter [12](#), Eris Exchange Spot Market trades are [\(i\)](#) not subject to the Rules applicable to trading of other contracts offered by Eris Exchange and [\(ii\) not subject to other Chapters of this Rulebook](#). Unless otherwise indicated herein, defined terms of this Chapter [12](#) are included in the Definitions Section of the Eris Exchange Rulebook.

DISCLAIMER: ERIS EXCHANGE SPOT MARKETS ARE NOT REGISTERED WITH, OR DESIGNATED, RECOGNIZED, LICENSED OR APPROVED BY THE CFTC.

RULE 1200. General Provisions

- (a) General Provision. The Exchange has adopted these Rules, and from time to time adopts amendments and supplements to these Spot Rules, to promote a free and open market on the Eris Exchange Spot Markets and to maintain appropriate business conduct. While changes to the Eris Exchange Rulebook are generally handled by self-certification to the CFTC and concurrent notification to market participants, [self-certification is not required for the changes to the Chapter 12 of the Eris Exchange Rulebook and](#) Participants will be notified of changes to the Spot Rules prior to implementation, unless pursuant to Rule 1203. The staff of the Eris Exchange Market Regulation Department (“Market Regulation Department”) is responsible for the investigation and imposition of penalties for violations of the Spot Rules.
- (b) Incorporation of Exchange Rules. Other provisions of the Eris Exchange Rulebook identified in this Chapter 12 (the “Eris Exchange Rules”) are incorporated by specific reference through this chapter.
- (c) Direct Individuals, Direct Firms, Executing Brokers, Guaranteed Direct Members, Professional Trading Firms, and Market Makers, or any Person initiating or executing a transaction on or subject to the Spot Rules directly or through an intermediary, or any person who is authorized to access or utilize Eris Exchange or Spot Markets (“Participants”) as well as their employees, agents, contractors, and affiliates, are deemed to know, consent to, and be bound by all Spot Rules, the applicable Eris Exchange Rules, the rules of Eris Clearing, and all terms and conditions contained in all agreements executed or otherwise consented to by the Participant. Following termination of participation, for any reason, former Participants shall be subject to the continuing jurisdiction of the Exchange and the Market Regulation Department including, without limitation, the application of rules related to any conduct that occurred while a Participant [for a period of five \(5\) years.-](#)

- (d) The Chief Regulatory Officer. It is the duty of the Chief Regulatory Officer of the Market Regulation Department to enforce Spot Rules . The Chief Regulatory Officer has the authority to inspect the books and records of all parties subject to the jurisdiction of Eris Exchange and the authority to require any such party to appear before them and produce books and records and answer questions regarding alleged violations of Spot Rules, at the time, place and in the manner so designated. The Chief Regulatory Officer may also delegate authority to the staff of the Market Regulation Department.
- (e) Definitions. Unless otherwise defined, terms used in this Chapter shall have the meanings ascribed in the Eris Exchange Rules.

RULE 1201. Trading Practice and Business Conduct

- (a) Trading System.
 - (i) The Eris Trading System Central Limit Order Book (“CLOB”) uses a Price/Time algorithm (also known as the First In, First Out or FIFO method). Under the Price/Time algorithm, orders will be matched with the earliest bid or offer to arrive in the Eris Trading System at the best price. If there are multiple bids and offers that have the same price, the earliest to arrive in the Eris Trading System will be the bid or offer to which the order is matched. If the order exceeds the quantity of the bid or offer, the Participant will be filled at the next, best bid or offer for their order.
 - (ii) The Eris Trading System Request for Stream (“RFS”) allows Participants to request quote streams for a desired asset and quantity, and execute orders from bids or offers listed in the streaming quote. Orders executed utilizing RFS are cleared and settled as a block trade, subject to Rule 1206.
- (b) Information Regarding Orders. Exchange will make information available regarding Orders pursuant to **Eris Exchange Rule 410**. General Information, notices, and data is available at www.erisx.com.
- (c) Business Days and Trading Hours. Except as provided in Rule 1203 with respect to Emergencies, the Exchange shall determine and publish a Notice to Participants listing the Business Days and Holidays of the Exchange and the Trading Hours for each Contract
- (d) General Offenses. **Eris Exchange Rules 504 - 521~~3~~**, and **525(a)-(b)(1)-(2)** are applicable to all Participants and Spot Markets. Where the Eris Exchange Rules in Chapter 5 reference “CEA”, “Act”, and “CFTC Regulations”, such specific references and provisions shall apply to this Chapter 12 only to the extent appropriate to reference authority or jurisdiction over activity in spot commodities or spot trading.

RULE 1202. Disciplinary Rules

- (a) Jurisdiction and Investigations.
- (i) All Participants are subject to the jurisdiction of Eris Exchange under **Eris Exchange Rule 701**.
 - (ii) Any investigations of Participants, or initiation of proceedings against a Participant with respect to an alleged violation of the Spot Rules will be conducted in accordance with **Eris Exchange Rules 702-720**.
- (b) Sanctions. If the Market Regulation Department finds that a party, including a Participant, has violated a Spot Rules, the Market Regulation Department may take one or more of the following actions:
- (i) Order the party to cease and desist from the conduct found to be in violation of these Rules;
 - (ii) Restrict, suspend or terminate the party's access to Eris Exchange Spot Markets;
 - (iii) Impose a fine upon the party not to exceed \$1,000,000 per violation, in accordance with **Eris Exchange Rule 715(b)**;
 - (iv) Order a party to disgorge any monetary benefit resulting from a violation of the Spot Rules whether by that party or another party. For purposes of this provision benefit includes, without limitation, profit, whether realized or unrealized, and avoided losses;
 - (v) Prescribe limitations on transactions of the party as may be appropriate;
 - (vi) Order a party to make restitution to the account of anyone damaged by the conduct;
 - (vii) Order a party or its legal counsel or other representative to pay out of pocket expenses incurred by the Market Regulation Department in connection with the matter if such party or counsel engaged in vexatious, frivolous or bad faith conduct during the course of an investigation or enforcement proceeding; and/or
 - (viii) Order such action as is necessary to prevent a threat to the contract or violation of these Rules.
- (c) Summary Imposition of Fines.
- (i) The Chief Regulatory Officer may summarily impose a fine against a Participant or any employees, agents, contractors, and affiliates for:
 - (1) Failing to make timely payments of fees, cost, charges or fines to the Exchange or the Clearing House;
 - (2) Failing to make timely and accurate submissions to the Exchange of notices, reports or other information required by the Spot Rules or Eris Exchange Rules; and
 - (3) Failing to keep any books and records required by the Eris Exchange Rules.
 - (ii) The Market Regulation Department, acting on behalf of the Chief Regulatory Officer, will give notice of any fine imposed pursuant to this Rule to each Participant thereto. The notice will specify:
 - (1) the violations of the Eris Spot or Eris Exchange Rules for which the fine is being imposed;
 - (2) the date of the violation for which the fine is being imposed; and,
 - (3) the amount of the fine.

- (iii) Within 20 days of serving the notice of fine, the Participant must either pay or cause the payment of the fine or file notice of an appeal pursuant to Eris Exchange Rule 716. Unless timely notice of appeal is filed pursuant to Eris Exchange Rule 716, the fine will become final upon the expiration of 20 days after the notice of fine is served on the Participant.
- (iv) The Exchange will set the amount of any fines imposed pursuant to this Rule, with the maximum fine for each violation not to exceed \$10,000. Summary imposition of fines pursuant to this Rule will not preclude the Exchange from bringing any other action against the Participant, or any of its employees, agents, contractors, and affiliates, as the case may be.

RULE 1203. Emergency Actions

- (a) The Chief Regulatory Officer, or his designee, is authorized to determine whether an emergency exists and whether emergency action is warranted. The following events and/or conditions may constitute emergencies:
 - (i) Any actual, attempted, or threatened market manipulation;
 - (ii) Any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions;
 - (iii) Any action taken or considered by the United States or any foreign government or any state or local government body, any other contract market, board of trade, or any other exchange or trade association (foreign or domestic), which may have an impact on trading on Eris Exchange Spot Markets;
 - (iv) The actual or threatened bankruptcy or insolvency of any Participant or the imposition of any injunction or other restraint by any government agency, self-regulatory organization, court or arbitrator upon a Participant which may affect the ability of that Participant to perform on its contracts;
 - (v) Any circumstance in which it appears that a Participant or any other Person or entity has failed to perform contracts or is in such financial or operational condition or is conducting business in such a manner that such Person or entity cannot be permitted to continue in business without jeopardizing the safety of Participants or Eris Exchange Spot Markets;
 - (vi) Any other circumstance which may have a severe, adverse effect upon the functioning of Eris Exchange Spot Markets.

- (b) In the event that the Chief Regulatory Officer determines, in good faith and in consultation with the Chief Executive Officer and Chief Operating Officer, that an emergency exists, he may take any of the following emergency actions or any other action that may be appropriate to respond to the emergency:
 - (i) Suspend, curtail or terminate trading in any or all Contracts;
 - (ii) Restrict, suspend or terminate a party's access to the Spot Markets and/or Eris Exchange;
 - (iii) Modify the trading days or hours;
 - (iv) Modify conditions of delivery; and/or
 - (v) Order any other action or undertaking to address or relieve the emergency.

- (c) The Market Regulation Department shall give appropriate notice of such action. As soon as practicable, the Market Regulation Department will make any notifications of such emergency actions as required by the Eris Exchange Rules.

- (d) Trade Cancellations and Price Adjustments. Eris Exchange has authority to adjust trade prices or cancel (bust) trades when such action is necessary to mitigate market disrupting events caused by the improper or erroneous use of the Eris Trading System or by system defects. Notwithstanding any other provisions of this Rule, the Exchange may adjust trade prices or bust any trade if the Exchange determines that allowing the trade to stand as executed may have a material, adverse effect on the integrity of the market. All decisions of the Exchange shall be final.
 - (i) Review of Trades
 - (1) The Exchange may determine to review a trade based on its independent analysis of market activity or upon request for review by a Participant. A request for review must be made within 15 minutes of the execution of the trade.
 - (2) The Exchange shall determine whether or not a trade will be subject to review. In the absence of a timely request for review, during volatile market conditions, upon the release of significant news, or in any other circumstance in which the Exchange deems it to be appropriate, the Exchange may determine, in its sole discretion, that a trade shall not be subject to review.
 - (ii) Price Adjustments and Cancellations
 - (1) In reviewing a trade, the Exchange will first determine whether the trade price is within the No Bust Range for spot transactions described in Rule 1203(h).
 - (2) In applying the No Bust Range, the Exchange shall determine the fair value market price for that contract at the time the trade under review occurred ("Price"). The Exchange may consider any relevant information, including, but not limited to, the last trade price in the contract or a better bid or offer price on the Eris Trading System, a more recent price for a different maturity date, the price of the same or related contract established in another venue or another market, or the market conditions at the time of the trade.
 - (iii) Trade Price Inside the No Bust Range. If the Exchange determines that the price of the trade is inside the No Bust Range, the Exchange will not bust the trade.
 - (iv) Trade Price Outside the No Bust Range. If the Exchange determines that a trade price is outside the No Bust Range for a Contract, the trade price shall be adjusted to a price that equals the fair value market price for that contract at the time the trade under review occurred, plus or minus the No Bust Range. In the event there are multiple parties, prices and/or contracts involved in the transactions at issue, the Exchange has the authority, but not the obligation, to bust rather than price adjust such transactions. The Exchange will issue an alert regarding its decision.
 - (v) Busted trade prices and any prices that have been adjusted shall be cancelled in the Exchange's official record of time and sales. Trades that are price adjusted shall be inserted in the time and sales record at the adjusted trade price.

- (e) Alternative Resolution by Agreement of Parties
 - (i) With the approval of the Exchange, parties to a trade that is price adjusted may instead mutually agree to cancel the trade.
 - (ii) With the approval of the Exchange, parties to a trade that is busted may instead mutually agree to price adjust the trade to a price consistent with the adjustment provisions of this Rule.
 - (iii) With the approval of the Exchange, parties to a trade that is cancelled or price adjusted may mutually agree to a cash adjustment provided that such adjustments are reported to the Exchange and the parties maintain a record of the adjustment.
 - (iv) An executed trade may not be reversed via transfer except where such trade is determined by Exchange to be outside of the No Bust Range but not reported timely, subject to agreement of the parties and approval of the Exchange . Any such transfer must occur at the original trade price and quantity; however, the parties may mutually agree to a cash adjustment.

- (f) Liability for Losses Resulting from Price Adjustments or Cancellations
 - (i) A party entering an order that results in a price adjustment or trade bust shall be responsible for demonstrated claims of realized losses incurred by persons whose trade prices were adjusted or busted provided, however, that a claimant shall not be entitled to compensation for losses incurred as a result of the claimant's failure to take reasonable actions to mitigate the loss.
 - (ii) A claim for a loss pursuant to this section must be submitted to the Exchange in a manner acceptable to the Exchange within one business day of the event giving rise to the claim. The Exchange will reject any claim that is not filed in a timely manner and such decisions shall be final. Eligible claims shall be forwarded by the Exchange to the party responsible for the order(s) that resulted in a trade bust or a price adjustment. Such party shall, within ten business days of receipt of the claim, admit or deny responsibility in whole or in part. Failure to respond to the claim within ten business days shall be considered a denial of liability.
 - (iii) To the extent that liability is admitted, payment shall be made within ten business days. Unless otherwise agreed upon in writing by the parties, failure to make the payment within ten business days shall be considered a denial of liability for purposes of this rule. A copy of any such written agreement must be provided to the Exchange.
 - (iv) To the extent that liability is denied, the party making the claim may submit the claim for arbitration pursuant to Rule 1207 of the Spot Rules. Such claims must be submitted to the Exchange within ten business days of the date the party was issued notification that liability was denied.

- (g) Schedule of Administrative Fees
 - (i) When Exchange busts or price adjusts a trade, the party responsible for entering the order into the Eris Trading System that gave rise to the trade bust or price adjustment shall pay an administrative fee to the Exchange in the amount of \$500 for each such occurrence.

(h) No Bust Ranges:

Product	No Bust Range (from Price determined by Exchange under Spot Rule 1203(d)(ii)(2))
BTC	1%

ETH	1%
LTC	1%
BTH	1%

RULE 1204. Trading Qualifications

- (a) **Criteria for Becoming a Participant.** In order to be admitted as Participant on the Exchange to trade Spot Markets, an applicant must be in good standing as a Direct Individual, Direct Firm, Executing Broker, Professional Trading Firm, or Market Maker (“Participant Classification”) with the Clearing House, and must satisfy the eligibility requirements for the applicable Participation Classification identified in Rule 1204(d).
- (b) **Additional Requirements.** The Exchange may establish additional eligibility requirements for all Participants or specific Participants, in the event that the Exchange deems it in the best interest of the Exchange, Market, or other Participants.
- (c) **Participant Eligibility.** The Exchange will deny, condition, or terminate any Participant’s eligibility, or take any other actions deemed appropriate if, in the sole discretion of the Exchange:
- (i) The Participant is unable to satisfactorily demonstrate its compliance with additional eligibility requirements established in accordance with Rule 1204(b);
 - (ii) The Participant is unable to satisfactorily demonstrate its compliance with Participation Classification Requirements identified in Rule 1204(d);
 - (iii) The Participant is unable to satisfactorily demonstrate its capacity to adhere to all applicable Rules;
 - (iv) The Participant would bring the Exchange into disrepute; or
 - (v) The Participant is acting in a manner detrimental to the welfare of the Market, Exchange, or Other Participants.
- (d) **Participant Classification Requirements.** Applicants that are admitted as Participants must demonstrate compliance with the applicable Participant Classification requirements:
- (i) Direct Individuals or Direct Firms must:
 - (1) not be a Professional Trading Firm; and
 - (ii) Executing Brokers must:
 - (1) be processing orders with client where the firm is trading as a principal;
 - (iii) Guaranteed Direct Members must:
 - (1) be Direct Individuals or Direct Firms; and
 - (2) have all trades and activity related to the Contracts guaranteed by, in a manner and form acceptable to the Exchange in its sole discretion, another Participant or other third-party.
 - (iv) Professional Trading Firms must:
 - (1) certify that it has substantial trading and exchange connectivity management experience; and
 - (2) provide evidence of such experience to the Exchange upon reasonable notice.
 - (v) Market Makers must:
 - (1) be Professional Trading Firms; and

(2) must have entered into a market making agreement with the Exchange.

- (e) Admission Process. Applicants shall be deemed to have been admitted as Participants upon entering into applicable agreements with the Exchange and the Clearing House, and satisfaction of the requirements listed in Rule 1204(a) - (d) ("Requirements"). The Chief Regulatory Officer and the Market Regulation Department will be responsible for determining whether an applicant has satisfied the applicable Requirements.
- (f) Fees. Participants will be subject to fees in accordance with the rates specified by the Exchange, subject to their Participant Classification.
- (g) Audit by Exchange. The Market Regulation Department may request information from the Participant at any time to confirm the Participant's compliance with the applicable Participant Classification requirements.

RULE 1205. Clearing, Settlement, and Delivery

- (a) Clearing of Contracts. All Contracts shall be cleared through the Clearing House in accordance with the Clearing House Rules and in conformity with the Exchange rules specifically provided in this Chapter 12.
- (b) Settlement Prices. The Contracts will settle in accordance with the methodology specified in the Spot Contract Specifications contained in Rule 1210.
- (c) Minimum Trade Increment. The Contracts shall be subject to minimum order sizes as specified in the Spot Contract Specifications.

RULE 1206. Block Trading

- (a) The Exchange shall designate the Contracts in which block trades shall be permitted, the minimum quantity thresholds for such transactions, and all other rules pertaining to Block Trading of Contracts.
- (b) Block Trade Specifications
 - (i) A block trade must be for a quantity that is at or in excess of the applicable minimum size, as specified in the Block Trading Specification Table in Rule 1206(hg). Orders may not be aggregated in order to achieve the minimum transaction size.
 - (ii) Multi-legged block trades may be executed as block trades, provided that each of the Contract legs of the resultant block trade meets the prescribed Minimum Block Size for that Contract.
- (c) Block Trade Prices. The price at which a block trade is executed must be fair and reasonable in light of:
 - (i) the size of the block trade;
 - (ii) the prices and sizes of other transactions in the same contract at the relevant time;
 - (iii) the prices and sizes of transactions in other relevant markets, including without limitation the related underlying cash or futures markets, at the relevant time; and
 - (iv) the circumstances of the markets or the Participants to the block trade.

- (d) Additional Provisions and Requirements.
 - (i) Each party to a block trade must be an ~~entity~~ Participant.
 - (ii) Block trades shall not set off conditional orders (e.g., Stop Orders and MIT Orders) or otherwise affect orders in the regular market.
 - (iii) Block Trades may only be executed during Eris Exchange Spot Market trading hours.
 - (iv) ~~One of the Participants or the broker of one of the Participants to the block trade must ensure that each block trade is reported to the Exchange within the applicable time limit set forth in Rule 1206(g).~~
- (e) One of the Participants or the broker of one of the Participants to the block trade must ensure that each block trade is reported to the Exchange within the time limit set forth below:
 - (i) All block trades must be executed and reported to the Exchange on the same trade date; and
 - (ii) All block trades must be reported within fifteen (15) minutes of the transaction or prior to the end of the trade date, whichever is sooner.
- (f) Reporting Requirements. A block trade reported to the Exchange must include the information related to the block trade specified by the Exchange, including identification of parties to the block trade; product details; trade quantity, price, time, and account number(s) or Clearing Firm(s), as applicable.
- (g) Finality at Clearing. Block trades are not considered final or binding until they have been accepted by the Clearing House.
- (h) *Products designated for Block Trades can be seen on the ErisX website at <https://www.erisx.com/product/digital-assets/>.*

RULE 1207. Arbitration

- (a) Mandatory Arbitrations. Disputes between and among Participants relating to or arising out of any transactions subject to the Spot Rules or claims by Participants against the Exchange or Clearing House related to the Spot Markets are subject to mandatory arbitration in accordance with the Rules of this Chapter. The Market Regulation Department may establish any procedures not otherwise contemplated by these Rules necessary to establish a just, equitable and efficient method of resolving a particular dispute.
- (b) Waiver of Objection to Jurisdiction. Any party who submits a claim or grievance to arbitration shall be conclusively presumed to have voluntarily recognized and agreed to the jurisdiction of the arbitration panel to hear and determine the claim. A Participant who submits a claim for arbitration in accordance with these Rules consents thereby to the jurisdiction of the arbitrators and agrees to the arbitration of any counterclaims, cross-claims or third party claims by any respondent which arise out of the transaction that is the subject of the customer's claim. The claim shall comply with the requirements of this Rule.
- (c) Appointment of Arbitration Panel. Any arbitration shall be heard by an Arbitration Panel selected by the Market Regulation Department for the purpose of hearing and deciding a dispute. The Market Regulation Department may select any individual possessing, in the discretion of the Market Regulation Department, the requisite knowledge and temperament to serve on an Arbitration Panel.

(d) Request to Remove an Arbitrator.

- (i) Each party may request the removal of any arbitrator(s) from a panel for good cause shown. Such request must be made at least 7 days before the start of the first scheduled hearing. Failure of a party to timely request the removal of any arbitrator(s) will be deemed a waiver of that party's right to any further objection to the arbitrator's participation in the hearing and decision of the dispute.
- (ii) The Market Regulation Department, after considering a request to remove an arbitrator, another party's objections thereto and/or the statements of an arbitrator whose removal is sought, may deny the request or excuse the arbitrator. The decision shall be final and may not be appealed.
- (iii) If an arbitrator is excused prior to the date of the first scheduled hearing, the Market Regulation Department shall select another arbitrator to replace the excused arbitrator at the hearing. Parties may make any appropriate request for the removal of the replacement arbitrator under this Rule.
- (iv) If an arbitrator is excused on or after the date of the first scheduled hearing, the dispute may, at the election of the non-requesting party and with the consent of the Market Regulation Department be heard and decided by the remaining arbitrators.

(e) Initiating an Arbitration Claim.

- (i) In the event that a complaint is received it shall be referred to the Market Regulation Department, which shall, when appropriate, forward to the complainant a Consent Form for arbitration under this Rule. Such form shall inform the claimant, by attachment of all pertinent Rules, of his or her rights and obligations, including costs associated with arbitration. A claimant may initiate a claim by submitting a written description of the dispute along with the arbitration fee (as determined by the Market Regulation Department) with the Market Regulation Department within the period of eligibility for arbitration claims. The written claim shall include a clear description of the facts and circumstances involved in the dispute, including the transaction(s) or agreement(s) complained of, the names of the Persons and firms alleged to be responsible for any loss to the claimant, the dates of all acts or omissions relevant to the claim, a detailed calculation of the amount claimed and any other information necessary to fully describe the dispute. In the case of a request for punitive damages, the claim shall set forth the facts the party intends to present in support of the claim that the misconduct was willful and wanton. The Market Regulation Department shall reject for filing any claim that does not fully describe the dispute, is clearly filed after the period of eligibility has expired or is clearly not arbitrable under this Rule. Such a claim will be promptly returned to the filing party with a notice describing the deficiency. A claimant seeking to correct the deficiency and file an amended claim may do so within 30 days of receiving notice describing the deficiency despite any expiration of the period of eligibility prescribed by this Rule during that 30-day period. The acceptance for filing by the Market Regulation Department shall not preclude a challenge to the arbitrability of the claim nor create a presumption that the claim is arbitrable.
- (ii) Notice shall then be given by the Market Regulation Department to the party against whom the claim is asserted, who shall respond to the claim in accordance with this Rule.

(f) Answering an Arbitration Claim

- (i) Each respondent shall file a written response within twenty one (21) days after receipt of the written claim. However, if a party has timely filed a challenge to the

arbitrability of the dispute, its response shall be due twenty one (21) days after receipt of the written decision confirming the arbitrability of the dispute. The written answer must admit the claim or describe the respondent's basis for denying liability to the claimant(s). The answer may include an admission or denial of each specific allegation contained in the claim and/or the respondent's narrative description of the facts and circumstances involved in the dispute. A respondent may assert in an answer any defense that would be available in a court of law or equity, including any affirmative defense.

- (g) **Failure to Answer.** A respondent's unexcused failure to file a timely answer shall constitute an admission of the facts alleged in a claim.
- (h) **Counterclaims, Cross-Claims and Third-Party Claims.** A respondent may assert any counterclaim, cross-claim and/or third-party claim to the extent such claim would be allowable as an original claim under these Rules. Each respondent must file any counterclaim, cross-claim or third-party claim at the same time an answer to a claim is due. Initiating counterclaims, cross-claims, third-party claims and answers thereto shall conform to the requirements for initiating and answering original claims. A respondent who believes that another Participant may have a claim to any money or property which is the subject of a dispute in arbitration and that the failure of that other Participant to assert a claim in the pending arbitration could prejudice the interests of the respondent may submit a request to the Market Regulation Department to compel the participation of the other Participant. If a Participant fails to file such claim after being ordered to assert that claim in the pending arbitration, then notwithstanding any other Rule, that Participant shall be barred from asserting in the future any claim against the respondent that is based on the same transaction, occurrence or subject.
- (i) **Review of Arbitrability.** Any party may file a challenge to the arbitrability of a dispute submitted for arbitration under this Rule. A party's failure to file a timely challenge to arbitrability shall waive any right to object thereafter to the arbitrability of the dispute. A challenge to arbitrability by a claimant must be filed no later than 5 days after the claim is submitted for arbitration. A challenge to arbitrability by a respondent must be filed no later than 10 days after the respondent has received notice of the claim. The request must be in writing and state the reasons why the dispute is not arbitrable. Any other party may file a written response in support of or opposition to the challenge no later than 10 days after receiving notice of the challenge to arbitrability. The Market Regulation Department may decide the arbitrability of a dispute based on his consideration of the written submissions of the parties. The Market Regulation Department's decision shall be final and is not appealable.
- (j) **Consolidation of Arbitration Disputes.** If the Market Regulation Department receives notice that two or more arbitration disputes are related, the Market Regulation Department may order that any or all of the disputes be consolidated for purposes of conducting a hearing on the disputes. In determining whether to consolidate the disputes the Market Regulation Department may consider the efficiencies of consolidation as well as the burdens and benefits to the parties in consolidating the disputes.
- (k) **Withdrawal of Claims**
 - (i) A party may voluntarily withdraw its claim, counterclaim, cross-claim or third-party claim without prejudice at any time before an answer thereto has been filed by notifying the Market Regulation Department in writing of such withdrawal.

- (ii) After an answer to any claim, counterclaim, cross-claim or third-party claim has been filed, the claimant seeking to withdraw the claim, counterclaim, cross-claim or third-party claim must submit to the Market Regulation Department a written request to withdraw with prejudice or upon such terms and conditions as may be imposed by the Market Regulation Department. A withdrawal under this Rule shall bar the claimant from re-filing any claim based on the same acts, transactions or omissions as the dismissed claim.

- (l) Period of Eligibility for Arbitration. An arbitration must be initiated within one year of the date the claimant knew or should have known of the dispute on which the claim is based. Counterclaims, cross-claims and third-party claims must be submitted no later than the date on which the answer is due.

- (m) Parallel Proceedings. No claim will be accepted for arbitration if the Market Regulation Department receives notice that another arbitration or civil court proceeding based on the same act, transaction or omission as the arbitration claim is pending at the time of filing. No claim, counterclaim, cross-claim or third party-claim will be accepted for arbitration against a respondent if the Market Regulation Department has received notice that a stay exists due to the pendency of any bankruptcy proceeding against that respondent. If such a stay arises after a claim is accepted for arbitration or if the Market Regulation Department subsequently learns that such a stay is pending, the claim shall be dismissed without prejudice as to each respondent who is the subject of the stay. Nothing in this Rule shall prevent a claim in arbitration from proceeding against any remaining respondent.

- (n) Requests for Documents, Information or Testimony
 - (i) The initial schedule for document requests by parties and responses will be set by the Market Regulation Department. The Market Regulation Department may require any Participant or any Person employed by or associated with a Participant to produce relevant documents in his possession or control at any time after a claim has been filed. Upon the failure of a party or Participant to voluntarily produce relevant documents in its possession or control upon request by a party, the party seeking the documents may submit a written request to the Market Regulation Department for an order compelling the production of such documents. Any request for an order compelling production of documents must (1) identify each document or type of document sought with as much specificity as possible; (2) explain the relevance of each document or type of document sought; and (3) include a representation that the requesting party has attempted to obtain the documents from the responding party before resorting to a request to the Market Regulation Department.
 - (ii) The party or Participant against whom an order compelling production is sought shall (1) produce copies of the requested documents to the requesting party and the Market Regulation Department; or (2) represent in writing that the documents are not in his possession or control and explain the basis for such representation, and, if applicable, identify who is in possession or control of the requested documents; or (3) object in writing to a request and provide the basis for each objection.
 - (iii) The Market Regulation Department may require any Participant, or any Person employed by or associated with a Participant, to appear and to testify at a hearing.
 - (iv) Whenever such production or appearance results from the request of a party, all reasonable costs and expenses incurred shall be borne by the party making the

request, unless directed otherwise by the panel. A party who incurs costs and expenses recoverable under this Rule may, no later than the close of the last hearing date in the matter, submit an application to the panel for such costs and expenses. Such application shall contain a detailed explanation of amounts claimed. The panel may grant or deny all or any portion of the application.

- (v) Any Participant or employee thereof failing to appear, testify or produce documents in accordance with this Rule may be charged with a violation of the Eris Exchange Spot Rules and may be subject to disciplinary actions under Rule 1202(B).

- (o) Documents and Witnesses to be Presented at Hearing. No later than 10 business days prior to the first scheduled hearing, each party must provide every other party and the Market Regulation Department with copies of all documents that the party intends to offer into evidence and a list of the names of all witnesses, including party-witnesses, who the party intends to call at the hearing in support of a claim or defense. Parties are not required under this Rule to provide copies of those documents that they may use, or to identify any witnesses whom they may call, only in cross-examination or rebuttal.

RULE 1208. Recordkeeping

(a) Participants must keep full and complete records, whether electronic or otherwise, and all pertinent data and written material, of all transactions relating to Eris Spot Contracts. Written and electronic records must be retained for a minimum of seven years in permanent form. Oral communications between Participants and their customers must be recorded and must be retained for a minimum of one year past the date on which the oral communication occurred. All records required to be retained shall at all times be open to inspection by the Market Regulation Department or Exchange staff.

~~(a)~~(b) A Participant shall not be in violation of Eris Exchange Rule 515 if the Participant's pre-programmed algorithms access the Eris Trading System tied to the same user via a single login, so long as the Participant is able to provide an appropriate audit trail upon request of the Exchange that identifies for each order the submitting algorithm, system, or human intervenor (when human intervention is necessary).

RULE 1209. Limitation of Liability

(a) EXCEPT AS PROVIDED BELOW, ERIS EXCHANGE LLC, INCLUDING THE ERIS SPOT MARKETS (THE "EXCHANGE"), ITS RESPECTIVE SUBSIDIARIES AND AFFILIATES, ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, LICENSORS, MEMBERS, AND PARTICIPANTS (THE "EXCHANGE PARTIES") SHALL NOT BE LIABLE TO ANY PERSON FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF USE, AND DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES), ARISING FROM:

- (i) ANY FAILURE, MALFUNCTION, FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY, INTERRUPTION, TERMINATION, OR ANY OTHER CAUSE, IN CONNECTION WITH THE PERFORMANCE, OPERATION, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF ANY OF THE SYSTEMS AND SERVICES OF THE EXCHANGE OR SERVICES,