

**CBOE CLEAR DIGITAL, LLC**  
**RULEBOOK**

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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) “**Access Methods**” means one or more user identifications, passwords, certificates or other access methods provided by Cboe Clear Digital for accessing the System.
- (b) “**Account**” means a Customer Account or a Member Property Account, as context requires, used in conjunction with the trading or delivery of commodity products.
- (c) “**Account Balance**” means total equity held with the Clearinghouse that is calculated as deposits minus withdrawals plus realized and unrealized profit and loss.
- (d) “**Appeal Panel**” means a panel comprised of individuals appointed by the Board or the Chief Compliance Officer to consider appeals under Rule 602.
- (e) “**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.
- (f) “**Approved Depository Institution**” means a bank, trust company or other depository that has been approved by Cboe Clear Digital as an acceptable location for depositing Clearing Member funds or Collateral, as applicable.
- (g) “**Assessment Amount**” means the total assessment amount levied by the Clearinghouse at a single time upon all the FCM Clearing Members in order for the Clearinghouse to maintain an adequate Guaranty Fund.
- (h) “**Authorized Representative**” means an individual designated by a Clearing Member and listed with Cboe Clear Digital as having authority to act on behalf of the Clearing Member.
- (i) “**Board**” means the board of directors of Cboe Clear Digital, as set forth in the LLC Agreement.
- (j) “**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.
- (k) “**Cboe Clear Digital**” means Cboe Clear Digital, LLC, a Delaware limited liability company.
- (l) “**Cboe Digital**” means Cboe Clear Digital and the Exchange collectively.
- (m) “**CEA**” means the Commodity Exchange Act, as it may be amended from time to time.
- (n) “**CFTC**” means the U.S. Commodity Futures Trading Commission.

- (o) **“CFTC Regulations”** means the rules, regulations and interpretations promulgated by the CFTC pursuant to the CEA, as in effect from time to time.
- (p) **“Clearinghouse”** means Cboe Clear Digital, LLC.
- (q) **“Clearing Member”** means an FCM Clearing 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.
- (r) **“Clearing Member Agreement”** means the agreement for clearing privileges between Cboe Clear Digital and a Clearing Member.
- (s) **“Collateral”** means U.S. dollars, U.S. Treasuries, other assets, including Virtual Currencies, that are allowed by the CEA, CFTC Regulations and Cboe Clear Digital to be accepted for deposit into clearing accounts and to meet Guaranty Fund Deposit requirements.
- (t) **“Committee”** means a committee established by the Board or otherwise, pursuant to the Rules.
- (u) **“Contract”** means, as context requires, any futures contract, options contract, swap 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 Cboe Clear Digital pursuant to these Rules.
- (v) **“Customer”** shall have the meaning set forth in CFTC Regulation 1.3.
- (w) **“Customer Account”** means an account established by an FCM Clearing Member with Cboe Clear Digital in which the FCM Clearing Member maintains trades, positions and Margin solely for Customers.
- (x) **“Default”** shall have the meaning set forth in Rule 502 (a).
- (y) **“Default Loss”** means any loss to Cboe Clear Digital or Exchange associated with the Default of a Clearing Member resulting in any deficit balance in the Clearing Member account; resulting from costs associated with the Clearing Member’s liquidation, transfer, offset, settlement, delivery; Clearing Member’s collateral losses due to the failure or insolvency of a Clearing Member’s depository or settlement bank; and any other costs related to managing the Default of a Clearing Member.
- (z) **“Direct Clearing Member”** means a Person that submits fully funded trades for clearing at Cboe Clear Digital on behalf of its own account(s), has completed a Clearing Member Agreement and has been granted clearing privileges by the Clearinghouse excluding trading on margin.
- (aa) **“Directors”** means members of the Board.
- (bb) **“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.

- (cc) **“Eligible Delivery Member”** or **“EDM”** means (a) an FCM Clearing Member that has an FCM proprietary spot account with Cboe Clear Digital that has been authorized in writing by Cboe Clear Digital to participate in the physical delivery process to make or take delivery of digital assets futures products; or (b) an FCM Customer with a proprietary spot account with Cboe Clear Digital that has been authorized in writing by the FCM Clearing Member and by Cboe Clear Digital to participate in the physical delivery process to make or take delivery of digital assets futures products.
- (dd) **“Emergency”** shall have the meaning set forth in Rule 207.
- (ee) **“Exchange”** means Cboe Digital Exchange, LLC and its respective successors.
- (ff) **“Exchange Committee”** includes the Regulatory Oversight, Exchange Member, or Exchange Practices Committees of the Exchange, and any other future or successor committee of the Exchange.
- (gg) **“Exposure-Based Guaranty Fund Requirement”** means the additional contributions by each FCM Clearing Member required by the Clearinghouse, based upon the exposure of the Clearinghouse to such FCM Clearing Member as determined by the Clearinghouse, in light of any shortfall in the Guaranty Fund resulting from the Clearinghouse’s periodic specification of a Minimum Guaranty Fund Requirement.
- (hh) **“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, including clearing contracts that are not fully collateralized or fully funded.
- (ii) **“FCM Customer”** means a Customer of an FCM.
- (jj) **“Fully Collateralized or Fully Funded”** contract means a contract cleared by Cboe Clear Digital that requires Cboe Clear Digital to hold, at all times, funds in the form of the required payment sufficient to cover the maximum possible loss that a party or counterparty could incur upon liquidation or expiration of the contract.
- (kk) **“Futures Commission Merchant”** or **“FCM”** shall have the meaning set forth in CFTC Regulation 1.3.
- (ll) **“Guaranty Fund”** refers to the fund comprised of contributions by FCM Clearing Members established by Cboe Clear Digital in accordance with Rule 504 as a guaranty of FCM Clearing Members obligations to Cboe Clear Digital.
- (mm) **“Guaranty Fund Deposit”** means the amount required to be deposited with Cboe Clear Digital by the FCM Clearing Member as a guaranty of its obligations to Cboe Clear Digital.
- (nn) **“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.

- (oo) “**Initial Margin**” means generally, a factored amount over the Maintenance Margin requirement calculated by Cboe Clear Digital.
- (pp) “**Insolvent**” and “**Insolvency**” means the Clearing Member has become the subject of a bankruptcy petition, receivership proceeding, or an equivalent proceeding.
- (qq) “**LLC Agreement**” means the Limited Liability Company Agreement of Cboe Clear Digital, as amended or restated from time to time.
- (rr) “**Margin**” means funds or the applicable amount of Collateral required to collateralize Contracts as set forth in Rule 403.
- (ss) “**Maintenance Margin**” means the minimum amount of Margin equity calculated by Cboe Clear Digital required to be maintained in an account.
- (tt) “**Member Property Account**” means an account established by a Clearing Member with Cboe Clear Digital in which the Clearing Member maintains trades, positions and Margin solely on its own behalf.
- (uu) “**Minimum Guaranty Fund Requirement**” means the base amount as established by the Clearinghouse from time to time to be deposited by all FCM Clearing Members as part of the Clearinghouse’s pre-funded financial resources for the purposes of managing FCM Clearing Members in Default.
- (vv) “**Obligations**” means all financial obligations of a Clearing Member, however arising, whether absolute or contingent, direct or indirect, due or to become due, arising under these Rules or such Clearing Member’s agreements with Cboe Clear Digital.
- (ww) “**Officer**” has the meaning set forth in Rule 204.
- (xx) “**Person**” means an individual, sole proprietorship, partnership, limited liability company, association, firm, trust, corporation or other entity, as the context may require.
- (yy) “**Regulations**” means rules, regulations, guidance, or advisories promulgated by the CFTC or any applicable state or federal agency.
- (zz) “**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 Cboe Clear Digital under or in connection with any agreement between Cboe Clear Digital 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 Cboe Clear Digital and the Clearing Member which is not remedied promptly after notice from Cboe Clear Digital; (d) a material violation of the rules of the Exchange, or (e) a Default by the Clearing Member.
- (aaa) “**Rule**” means a Rule of Cboe Clear Digital either contained in this Rulebook or in guidance or notices from Cboe Clear Digital.
- (bbb) “**Self-Regulatory Organization**” shall mean any futures or securities exchange, derivatives clearing organization, securities clearing agency, or National Futures Association.



- (ccc) “**Settlement Price**” has the meaning set forth in Rule 409.
- (ddd) “**State Regulation**” means, with respect to states in which Cboe Clear Digital is licensed to operate as a money transmitter or otherwise permitted to engage in a virtual currency business, any regulation related thereto. “**System**” means the Clearinghouse Clearing System owned and provided by Cboe Clear Digital, including all intellectual property associated therewith. The System provides Clearing Member with the ability to clear Contracts.
- (eee) “**Swap**” has the meaning set forth in CFTC Regulation 1.3.
- (fff) “**Transfer Trade**” has the meaning set forth in Rule 408.
- (ggg) “**UCC**” means the Uniform Commercial Code as in effect in the State of Illinois.
- (hhh) “**Virtual Currency**” means any digital representation of value that functions as a medium of exchange, and any other digital unit of account that is used as a form of a currency (i.e., transferred from one party to another as a medium of exchange); may be manifested through units, tokens, or coins, among other things; and may be distributed by way of digital “smart contracts,” among other structures.

## **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) Cboe Clear Digital is registered with the CFTC as a Derivatives Clearing Organization. Cboe Clear Digital operates to clear Contracts for its Clearing Members.
- (b) Cboe Clear Digital 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 Cboe Clear Digital 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 Cboe Clear Digital 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 Cboe Clear Digital 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 Cboe Clear Digital; and (b) render interpretations of the Rules, which shall be binding on all Persons having dealings with Cboe Clear Digital, 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 Default Management Committee is a permanent committee of the Risk Management Committee, appointed by and functioning under the authority of the RiskCo, responsible for overseeing Cboe Clear Digital's default management process and related policies and procedures, and its default management drills.
- (c) 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.
- (d) 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.
- (e) 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 Cboe Clear Digital or Cboe Digital Exchange.
- (f) The actions of each Committee shall be the subject to final review by the Board.

## **204. Officers**

The Board shall appoint Officers of Cboe Clear Digital, 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 Cboe Clear Digital and to establish and enforce rules and procedures for the conduct of business by Cboe Clear Digital. Any Officer may also be a director, officer, partner or employee of Cboe Clear Digital or any of its affiliates.

At all times, Cboe Clear Digital 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 fulfill 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 Cboe Clear Digital, 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 Cboe Clear Digital, 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 restriction under 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 Cboe Clear Digital 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 Cboe Clear Digital 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 Cboe Clear Digital, 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 Cboe Clear Digital, the Board, any Committee, or the Officers of Cboe Clear Digital 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 Cboe Clear Digital;
  - (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 Cboe Clear Digital 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 Cboe Clear Digital, 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 Cboe Clear Digital, 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 Cboe Clear Digital, 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 Cboe Clear Digital determines that the Emergency has been reduced sufficiently to allow Cboe Clear Digital to resume normal functioning, any such actions will be terminated.
- (d) Whenever Cboe Clear Digital 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) Cboe Clear Digital 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, Cboe Clear Digital 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, Cboe Clear Digital 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, Cboe Clear Digital 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 Cboe Clear Digital, and all such documentation will be provided to the CFTC upon request.

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

- (a) Cboe Clear Digital 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) Cboe Clear Digital 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.**

Membership in the Clearinghouse is a privilege and license granted by the Clearinghouse and may be withdrawn by the Clearinghouse for cause at any time. The Board may grant exemptions to the General Eligibility Requirements of Clearing Members set forth below for Clearing Members if the Board determines that such an exemption will not jeopardize the financial integrity of the Clearinghouse. Subject to such exemptions, each applicant for qualification as a Clearing Member must satisfy the following requirements:

- (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 Rules, as well as all rules of the Exchange, whether contained in the Exchange Rulebook, or in Exchange guidance or notices.
- (d) All Clearing Members adhere to Applicable Law and supervises persons associated with the Clearing Member as to assure compliance therewith.

- (e) 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 Cboe Clear Digital, pursuant to which it shall agree, among other things, to: (1) abide by all Applicable Law, Cboe Clear Digital Rules and to cooperate in their enforcement; (2) be responsible, even after it has withdrawn as a Clearing Member, for any violations of Applicable Law, Cboe Clear Digital 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 Cboe Clear Digital for purposes of depositing and withdrawing funds or Collateral at Cboe Clear Digital;
  - (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 Cboe Clear Digital 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 Cboe Clear Digital website; and
  - (ix) Applicant must not have filed for bankruptcy, and not be subject to a current bankruptcy proceeding.
- (f) In addition to the requirements set forth in paragraph (e), 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 Cboe Clear Digital, 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 Cboe Clear Digital;
  - (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; and
  - (iv) It shall disclose whether the FCM Clearing Member applicant: (i) is subject to a statutory disqualification under Section 8a(2) of the CEA; (ii) has an affiliate subject to a statutory disqualification under Section 8a(2) of the CEA; or (iii) has a principal, or an affiliate with a principal, subject to a statutory disqualification under Section 8a(2) of the CEA. The Clearinghouse shall not admit as an FCM Clearing Member any applicant that discloses a disqualification in (i)-(iii) of this subparagraph (f)(iv).
- (g) In addition to the requirements set forth in paragraph (e), 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.
- (h) 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 Cboe Clear Digital. Additionally, the Board, with input from the Risk Management 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 Cboe Clear Digital, financial statements and any other documentation as Cboe Clear Digital shall require and shall enter into a Clearing Member Agreement with Cboe Clear Digital.
- (b) Cboe Clear Digital 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 Cboe Clear Digital, submit statements of its financial condition and other financial records as shall be prescribed from time to time.

- (c) Cboe Clear Digital 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 its Committee 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 its Committee grants an application to become a Clearing Member, Cboe Clear Digital 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 Cboe Clear Digital such agreements and documents, and performed such undertakings as Cboe Clear Digital 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, Cboe Clear Digital denies an application to become a Clearing Member, Cboe Clear Digital shall give the applicant notice of its decision, setting forth the grounds therefor, and such decision shall be the final action of Cboe Clear Digital.
- (g) By virtue of obtaining clearing privileges, a Clearing Member shall not obtain any equity or other interest in Cboe Clear Digital, including voting rights or rights to receive any dividends or other distributions, whether arising from a dissolution, merger, consolidation involving Cboe Clear Digital or otherwise. All such rights shall be owned exclusively by the members of Cboe Clear Digital, 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 Cboe Clear Digital, 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 Cboe Clear Digital 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 Cboe Clear Digital confidential;
  - (iv) At all times maintain one or more accounts that has been approved by Cboe Clear Digital for purposes of depositing and withdrawing funds or Collateral at Cboe Clear Digital, and promptly inform Cboe Clear Digital of any changes to any of the foregoing account(s)
  - (v) Promptly review and, if necessary, respond to all communications sent by Cboe Clear Digital;
  - (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 Cboe Clear Digital or in response to any proceeding;
  - (viii) Cooperate with Cboe Clear Digital 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 Cboe Clear Digital.
- (b) In addition to the requirements in subparagraph (a), each FCM Clearing Member shall also:
- (i) Provide appropriate staff to be available during specified hours, on Business Days and otherwise, when such is deemed necessary by Cboe Clear Digital to ensure the integrity of its systems or as otherwise deemed necessary for the protection of the Cboe Clear Digital;
  - (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 Cboe Clear Digital 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:
    - 1) Monitoring the credit risks of accepting trades, including give-up trades, of its Customers;
    - 2) Monitoring the risks associated with proprietary trading;
    - 3) Limiting the impact of significant market moves through the use of tools such as stress testing or position limits;
    - 4) Maintaining the ability to monitor account activity on an intraday and overnight basis;

- 5) 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
  - 6) Defining sources of liquidity for increased settlement obligations.
- (iii) Develop and implement a written anti-money laundering compliance program approved in writing by senior management reasonably designed to achieve and monitor the Clearing Member's compliance with all applicable requirements of the Bank Secrecy Act (31 U.S.C. § 5311 et seq.), the International Emergency Economic Powers Act (50 U.S.C. § 1701 et seq. ) ("IEEPA"), the Trading with the Enemy Act (50 U.S.C. App. § 1 et seq.) ("TWEA"), and the Executive Orders and regulations issued pursuant thereto, including the regulations issued by the U.S. Department of the Treasury and, as applicable, the Commodity Futures Trading Commission.
  - (iv) File any information requested by the Clearinghouse within the time period specified in the request.
  - (v) Maintain at all times the ability to provide to the Clearinghouse in an acceptable form a complete set of equity systems reports (including, at a minimum, the equity run, open position listing, day trade listing, cash adjustments listing and performance bond call and debit equity listing). Such reports shall be available to the Clearinghouse no later than 8:00 a.m. CT on the business day following the report date.
  - (vi) Submit to the Clearinghouse on each business day, at or prior to the time and in the form and manner specified by the Clearinghouse, daily reports that include all information required by the Clearinghouse, including end-of-day gross positions by each house origin, by each customer origin and by each individual customer-level account within each customer origin. Daily reporting of individual customer-level account information pursuant to this paragraph does not oblige an FCM Clearing Member to look through an omnibus account that it clears for a carrying broker to the underlying customer account.
  - (vii) Accurately report large trader positions and, where applicable, long positions eligible for delivery consistent with required submission deadlines.
  - (viii) Submit to the Clearinghouse, at or prior to the time and in the form and manner specified by the Clearinghouse, CFTC Form 102 identifying the owner, any controlling parties and any additional required information for each reportable account.
  - (ix) By the close of trading three Business Days 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.

- (x) Report to the Clearinghouse each business day a complete and accurate inventory of all open positions carried by the FCM Clearing Member in a manner and time as determined by the Clearinghouse.
- (c) In addition to the requirements in subparagraph (a) and (b) above, an FCM Clearing Member carrying an account that is required to make or take delivery shall:
  - (i) Guarantee and assume full responsibility for the performance of all delivery requirements set forth in the Rules, including the delivery obligations of any Customers authorized as EDMs (i.e., EDM Customers).
  - (ii) Ensure that its EDM Customers comply with all delivery obligations set forth in the Rules, including but not limited to, ensuring that at all times its EDM Customers that may ultimately make or take delivery in an expiring contract have the operational capability to fully satisfy their delivery obligations.
  - (iii) Satisfy all delivery requirements set forth in Rule 410.

**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 Cboe Clear Digital. Such designations are not final. They will be reviewed by Cboe Clear Digital and accepted or declined. Each Clearing Member must provide Cboe Clear Digital 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 Cboe Clear Digital. 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) Cboe Clear Digital 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. Cboe Clear Digital shall promptly notify the Clearing Member if Cboe Clear Digital (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 Cboe Clear Digital'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 Cboe Clear Digital providing the information and complying with the procedures and requirements established by Cboe Clear Digital.
- (f) An Authorized Representative remains subject to the Rules and the jurisdiction of Cboe Clear Digital 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 Assurances**

If Cboe Clear Digital 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 Cboe Clear Digital 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 Cboe Clear Digital 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 other event(s), transpired or imminent, that may or will lead to Default.
- (b) In addition to the requirements above, an FCM Clearing Member shall promptly provide written notice to Cboe Clear Digital 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 Cboe Clear Digital’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 Cboe Clear Digital;
  - (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 Cboe Clear Digital 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 Cboe Clear Digital; or
  - (xi) Any external audit findings (including reviews by the Clearing Member's designated Self-Regulatory Organization).
  - (xii) Any default by a Customer of the FCM Clearing Member.
- (c) An FCM Clearing Member shall, unless it is impractical to do so (in which case it shall provide written notice to Cboe Clear Digital as promptly as possible), provide at least thirty days prior written notice to Cboe Clear Digital, 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, Cboe Clear Digital shall review whether the Clearing Member meets the continuing eligibility requirements. Where such notice constitutes notice of a Default, Cboe Clear Digital 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 Cboe Clear Digital 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 Cboe Clear Digital 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. Cboe Clear Digital 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. An 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 Cboe Clear Digital 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. An 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) Cboe Clear Digital 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 Cboe Clear Digital-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 Cboe Clear Digital.

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

- (a) All Customer Funds deposited by an FCM Clearing Member with Cboe Clear Digital on behalf of futures Customers are protected by CFTC Regulation 1.20 and 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 from all other funds held by Cboe Clear Digital and treated as belonging to such 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 Cboe Clear Digital.
- (b) Customer Funds deposited by FCM Clearing Member with Cboe Clear Digital on behalf of swaps Customers are protected by CFTC Regulation 22.2 and shall be held in accordance with the CEA and CFTC Regulation 22.3 in an account identified as “Cleared Swaps Customer Account.” Such Customer Funds shall be segregated from all other funds held by Cboe Clear Digital and treated as belonging to such 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 22.5 for Customer deposits held at Cboe Clear Digital.
- (c) All funds deposited by a Clearing Member with Cboe Clear Digital on behalf of the Clearing Member’s own account shall be held in a Member Property Account or with regard to funds deposited for purposes of trading in a Cleared Swaps Member Property Account. Such Clearing Member funds shall be segregated from all other funds held by Cboe Clear Digital and treated as belonging to Clearing Members.
- (d) Cboe Clear Digital 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 Cboe Clear Digital, the CFTC or other Government Agency upon request.
- (b) Without limiting the foregoing, each Clearing Member 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 Cboe Clear Digital. Such records shall be retained for at least five years, either in original form or in such other form as Cboe Clear Digital 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 Cboe Clear Digital within the time period specified in the request and shall, at all times have the ability to provide to Cboe Clear Digital 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 Cboe Clear Digital 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 Cboe Clear Digital 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 Cboe Clear Digital or its Customers. The FCM Clearing Members must perform periodic testing, including testing with Cboe Clear Digital 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 Cboe Clear Digital, provide accurate and complete information for its key personnel. An FCM Clearing Member must inform Cboe Clear Digital in a timely manner whenever a change to its key personnel is made.
- (b) Cboe Clear Digital 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 Cboe Clear Digital or the Exchange also participates.

**312. Fees.**

- (a) Cboe Clear Digital 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 Cboe Clear Digital 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.
- (b) Clearinghouse Fees. Clearing Members shall pay when and as due any fees and assessments that may be made against the Clearing Member pursuant to the Rules, including without limitation, to cover losses attributable to acts or omissions of other members of the Clearinghouse other than the Clearing Member (collectively, the "**Clearinghouse Fees**").
- (c) Taxes. Clearing Member shall be responsible for any and all taxes, levies, duties or similar charges, however designated, that may be assessed by any international, federal, state, municipal or other jurisdiction, however designated, arising out of Transactions made by or on behalf of Clearing Member or otherwise arising out of Clearing Member's use of the Services, other than any such taxes assessed or levied on the Clearinghouse in respect of income earned by 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) Cboe Clear Digital shall comply with the applicable segregation requirements of Section 4d of the CEA and CFTC Regulations with respect to Customer Funds held by Cboe Clear Digital.
- (c) As used in this Chapter 3 of this Rulebook, "Customer Funds" has the same meaning as in CFTC Regulation 1.3.

**314. Access to Cboe Clear Digital.**

- (a) System. Each Clearing Member, for as long as it is a Clearing Member in good standing, shall have a non-exclusive, non-transferable, revocable right to access the System, and to utilize any services, through such procedures as the Clearinghouse may designate from time to time to clear Products. Subject to the CEA and CFTC regulations, the Clearinghouse reserves the right, in its sole discretion, to modify or change the System or services at any time.

- (b) Access Methods. The Clearinghouse shall provide to Clearing Member Access Methods for use by Clearing Member's Authorized Representatives. Clearing Member shall notify the Clearinghouse of any change of Authorized Representatives in accordance with the Rules. Clearing Member shall not divulge, and shall not permit any other Person to divulge, any Access Methods to any Person other than an Authorized Representative. Clearing Member is and shall remain fully responsible for (i) maintaining the confidentiality of Clearing Member's Access Methods, (ii) controlling and monitoring any use of any such Access Methods, (iii) all Contracts submitted and other activities that occur through use of such Access Methods, and all charges resulting therefrom, whether or not such use is authorized by Clearing Member, except to the extent that such unauthorized use is proximately caused by the Clearinghouse's willful misconduct or gross negligence, and (iv) notifying the Clearinghouse immediately of any unauthorized use of Clearing Member's Access Methods or any other known or suspected breach of security relative to the System.
- (c) A Customer entering orders by electronic access must access Cboe Clear Digital through the systems owned or sponsored by such Customer's FCM Clearing Member.
- (d) Clearing Member shall be solely responsible for all costs and expenses associated with Clearing Member's access to and use of the System and services. Clearing Member shall access the Clearinghouse services in a form and manner prescribed by the Clearinghouse.
- (e) Authorization. Clearing Member acknowledges and agrees that all instructions issued by Clearing Member through its Access Methods, including instructions or Contracts submitted through the System as conveyed by Customers and Authorized Representatives, are duly authorized and binding, and the Clearinghouse shall have no duty to investigate the accuracy thereof or the authenticity of authority thereby authorized. Clearing Member further accepts full responsibility for: (i) any use of the System made by Clearing Member or its Authorized Representatives; and (ii) any Contract submitted in the name of Clearing Member or its Customer, notwithstanding that such Contract may have been entered into or submitted to the Clearinghouse (x) as a result of a failure of security controls, risk controls, and/or credit controls; or (y) by an unknown or unauthorized Person employing an Access Method assigned to an Authorized Representative, provided, however, that Clearing Member shall not be responsible for any Contract to the extent arising out of the Clearinghouse's gross negligence or willful misconduct.
- (f) Data Provided by Clearing Member. Clearing Member accepts sole responsibility (i) for the accuracy and adequacy of data entered into the System by Clearing Member or any other Person using Clearing Member's Access Methods, and for all results obtained from use of the System by Clearing Member or any other Person using Clearing Member's Access Methods; (ii) for implementing procedures external to the System for reconstruction of data for purposes of re-entry in the event of a System malfunction; and (iii) for implementation procedures external to the System to enable Clearing Member to comply with the audit trail applicable regulatory requirements. In the event Clearing Member becomes aware of an error in transaction data provided to the Clearinghouse or in any entry submitted through

the System by or on behalf of Clearing Member or its Customer, Clearing Member shall promptly so notify the Clearinghouse; *provided, however*, that Clearing Member shall be responsible for any such erroneous data or entry unless the Clearinghouse notifies Clearing Member otherwise.

**315. Digital Asset Collateral.**

- (a) With respect to any digital asset Collateral, including, but not limited to, Bitcoin and Ether, 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.

### **316. Swaps Collateral and Positions**

Each FCM Clearing Member shall maintain a separate Cboe Digital Account(s) for the funds, assets and positions of each of its Customers trading Swaps. When depositing funds or assets with or withdrawing funds or assets from the Clearinghouse or submitting any order to the Exchange, related to customer swaps activity, FCM Clearing Members must identify the Customer Account for which such deposit, withdrawal, or order is being made, as well as any other information required by Cboe Digital.

## **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 Cboe Clear Digital 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 Cboe Clear Digital.
- (b) If Cboe Clear Digital determines that any trade report submitted pursuant to this Rule 401 contains a material error, does not conform to the Contract specifications contained in the Exchange rulebook, or is otherwise not eligible for clearing by Cboe Clear Digital, Cboe Clear Digital 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 Cboe Clear Digital 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 Cboe Clear Digital. Upon the acceptance thereof by Cboe Clear Digital, which ordinarily shall be deemed to occur upon the receipt of matched trade data from the Exchange:
  - (i) the Contract, if a futures or option on a future, shall be novated and Cboe Clear Digital 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 Cboe Clear Digital 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; or

- (ii) the Contract, if a swap, shall be extinguished, and replaced with equal and opposite swap between Cboe Clear Digital and each Clearing Member. Upon extinguishing and replacing the original Contract, the Clearing Members shall be released from their obligations to each other, and, along with Cboe Clear Digital, shall have all rights and Obligations under the Contract that replaced the extinguished Contract, in each case as provided in the Rules.

- (b) Settlement. Clearing Member understands and agrees that all Contracts submitted to the System are binding transactions between Clearing Member or its Customer and the counterparty that must be settled between Clearing Member or its Customer and the counterparty in accordance with the Rules.
- (c) Where an FCM Clearing Member acts to clear a Contract made for the account of a Customer, the FCM Clearing Member becomes obligated to Cboe Clear Digital, and Cboe Clear Digital 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.
- (d) Notwithstanding the provisions of paragraph (a), a trade shall not be accepted for clearing, and Cboe Clear Digital shall not be substituted for a given Contract, unless the Margin for such Contract is made available to Cboe Clear Digital, by or for both Clearing Members, pursuant to Rule 403.

#### **403. Margin.**

- (a) Each FCM Clearing Member shall collect Initial Margin from its futures customers in such amount as is communicated by the Clearinghouse from time to time.
- (b) Each FCM Clearing Member shall ensure that no futures customer of such Clearing Member withdraws funds from its customer account with such Clearing Member unless the net liquidating value plus margin deposits remaining in such account after giving effect to the withdrawal are sufficient to meet the customer initial margin requirement with respect to all confirmed trades cleared for such account.
- (c) Each FCM Clearing Member shall deposit Collateral in the quantity not less than required to collateralize orders pursuant to the contract specifications (“Margin Requirements”), 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. 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 deposits, withdrawals or transfers of Collateral to or from the Clearinghouse.

- (d) The FCM Clearing Member shall transfer the Margin to the Clearinghouse or to an Approved Depository Institution for safekeeping in a Clearinghouse account and the Clearinghouse shall retain control over such Margin. All Initial and additional Margins shall be retained by the Clearinghouse in whole or in part, as Clearinghouse staff may deem necessary, until the contracts / positions for which such Margin has been deposited, have been offset, settled, delivered or otherwise closed out as determined by Clearinghouse staff.
- (e) Each FCM Clearing Member shall reimburse the Clearinghouse for all fees, expenses, charges and costs assessed by a depository against the Clearinghouse with respect to all Margin maintained in its account, and shall make deposits as may be required by the Clearinghouse by reason of any decrease in the market value of such Margin. If an FCM Clearing Member defaults to the Clearinghouse with respect to Margin, the Margin maintained in its account pursuant to this rule shall be taken over by the Clearinghouse and sold without notice and the proceeds of the Margin deposited for customers' contracts / positions shall be applied against the Margin requirements for the Clearing Members' customers' accounts, and the proceeds of Margin deposited for the house trades shall be applied against the requirements for the Clearing Member's own (so-called "house") account. The excess house funds and assets of a defaulting FCM Clearing Member shall be applied to cover losses with respect to a customer default, if the relevant customer funds and assets are insufficient to cover the shortfall.
- (f) Whenever, in the opinion of the Clearinghouse Risk Department, unstable conditions relating to one or more products exist, they may from time to time, call for additional Margin from FCM Clearing Members, which may be as much as or more than the original Margin. The Margin thus called for may be for one or more Contract(s) from one or more FCM Clearing Member(s) and on long positions, short positions or both.
- (g) In the event market conditions and price fluctuations at any time shall cause the Clearinghouse Risk Department to conclude that additional Margin is required to maintain an orderly market or to preserve fiscal integrity, the Clearinghouse may call for additional Margin to be deposited with the Clearinghouse by FCM Clearing Members during the next banking hour after demand therefor, or at such times as may be specified. Such additional Margin may be called from the longs or the shorts or from both.
- (h) When the Clearinghouse Risk Department shall be of the opinion that any FCM Clearing Member is carrying commitments or incurring risk in its proprietary or customer accounts, that are larger than is justified by the financial condition of that Clearing Member, then the Clearinghouse may require additional Margin of such Clearing Member which shall be deposited with the Clearinghouse during the next banking hour after demand therefor, or at such time as may be specified, or alternatively require that a portion of the open positions of said Clearing Member be reduced..

- (i) Subject to the terms and conditions of the Clearinghouse, FCM Clearing Members may deposit any form of Collateral which has been the Clearinghouse and communicated through Clearinghouse notices. The Clearinghouse will value margin Collateral, other than U. S. dollars, as the liquidation value of the collateral after taking into consideration haircuts, if applicable.
- (j) Collateral must be and remain unencumbered. Except as otherwise provided herein, each FCM Clearing Member posting 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 FCM Clearing Member, including without limitation such FCM Clearing Member's Member Property Accounts, the Customer Accounts of such Clearing Member's Customers, and all securities entitlements held therein. FCM Clearing Members shall execute any documents required by Cboe Clear Digital to create, perfect and enforce such lien. Each FCM Clearing Member hereby agrees that with respect to any funds or Collateral which is or may be credited to the FCM 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.
- (k) Cboe Clear Digital 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 FCM Clearing Member, as permitted by CFTC Regulations and applicable state Regulations, held in or for such FCM Clearing Member's Member Property Accounts or the Customer Accounts of such FCM Clearing Member's Customers to secure the repayment of funds that may be borrowed by Cboe Clear Digital.
- (l) FCM Clearing Members must transfer the Collateral to the Clearinghouse which will hold Collateral on behalf of the FCM Clearing Member. Cboe Clear Digital will credit to the FCM Clearing Member the Collateral that such FCM Clearing Member deposits. Collateral shall be held by the Clearinghouse until an FCM Clearing Member submits a withdrawal notification, unless otherwise stipulated by these Rules. Cboe Clear Digital will not be responsible for any diminution in value of Collateral that an FCM Clearing Member deposits with the Clearinghouse, except, in the case of U.S. dollars, 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 FCM Clearing Member. Any interest earned on FCM Clearing Member Collateral may be retained by the Clearinghouse.
- (m) If an FCM Clearing Member is in Default, Cboe Clear Digital may foreclose on and sell any of the Collateral deposited by such FCM Clearing Member without notice in accordance with Cboe Clear Digital Default Management Plan.
- (n) Cboe Clear Digital shall be empowered to invest and reinvest all or part of the Collateral. Such investments shall be for the account and risk of Cboe Clear Digital, and any income and gains on such investments and interest on such deposits shall belong to Cboe Clear

Digital and may be withdrawn from the account holding the Margin and deposited with the general funds of Cboe Clear Digital.

(o) Approved Depository Institution Authorization.

- (i) Accounts. Clearing Member shall from time to time designate in writing to the Clearinghouse its Account(s) to be debited in connection with amounts due to the Clearinghouse by Clearing Member and its Customers pursuant to these Rules. The Clearinghouse shall give instructions to the Approved Depository Institution of Clearing Member corresponding to the Accounts to debit the Accounts of Clearing Member in such amounts as the Clearinghouse may specify for the deposit with, or payment to, the Clearinghouse of initial margin, variation margin, option premiums or the purchase price of any commodity, or any other amounts as prescribed from time to time by the Clearinghouse or coming due in accordance with the Rules and to transfer such amounts so debited to such Account to accounts of the Clearinghouse as the Clearinghouse may specify.
- (ii) Effectuate Authority. Clearing Member shall execute and deliver such instruments and documents, and take such further action, as each Approved Depository Institution may reasonably request to confirm or better effectuate the authority granted to the Clearinghouse pursuant to this Rule 403.
- (iii) Authorization. The authorization granted to the Clearinghouse and each Approved Depository Institution pursuant to this Rule 403 shall remain in full force and effect unless and until expressly revoked or modified by written notice received and accepted by the Clearinghouse and each Approved Depository Institution at least five (5) Business Days prior to the day any proposed revocation or modification is to become effective. In the event such authorization should be revoked or terminated by operation of law without notification to the Clearinghouse and each Approved Depository Institution, the obligation of Clearing Member to indemnify and hold harmless the Clearinghouse and each Approved Depository Institution pursuant to this Rule 403 shall nevertheless continue in full force and effect with respect to any act or omission made in compliance with this Rulebook until such written notice has been so received.

**404. Offset and Settlement.**

- (a) Where, as the result of novation of a Contract or if the Contract has been extinguished and replaced 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 economically equivalent by the Clearinghouse, the purchase and sale will be offset by Cboe Clear Digital through the timely submission of instructions by the Clearing Member containing such information as Cboe Clear Digital 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 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 Cboe Clear Digital may be designated by Cboe Clear Digital as an Approved Depository Institution. For purposes of holding funds deposited for swaps, no depository shall be designated by Cboe Clear Digital as an Approved Depository Institution unless it meets the requirements set forth in CFTC Regulation 22.4.

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

Cboe Clear Digital 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 Cboe Clear Digital. Any amounts the Clearing Member has posted to Cboe Clear Digital 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 Cboe Clear Digital, the situation so requires and such transfer is in the best interest of Cboe Clear Digital or other Clearing Members, including Rule 601 (d) (ii) transfers.

- (b) Unless otherwise permitted by Cboe Clear Digital, 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 closing settlement price on the trade date the transfer occurs.

#### **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 Cboe Clear Digital believes that such settlement price does not reasonably reflect the value or price of the Contract, in which case Cboe Clear Digital, using its best efforts to consult with the Exchange, shall determine the official Settlement Price; provided, that Cboe Clear Digital 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 Cboe Clear Digital shall be published in a notice to the Exchange and Clearing Members.

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

- (a) For a Contract that is physically settled, delivery shall occur through an EDM subject to the requirements and pursuant to the processes set forth in this subparagraph (a) and as may be determined by the Clearinghouse. The Clearinghouse will publish a timeline of the physical delivery process set forth in this Rule 410, including times that may be determined by the Clearinghouse pursuant to this Rule 410, on the Cboe Digital website at [www.cboedigital.com/product](http://www.cboedigital.com/product).
  - (i) At least 10 Business Days prior to the contract expiry in which an FCM Clearing Member or FCM Customer wishes to participate as an EDM, such FCM Clearing Member or FCM Customer must: a) have a Spot Membership application approved by Cboe Digital; b) deposit requisite funds into a proprietary spot account that has been duly authorized by Cboe Clear Digital to participate in the physical delivery process; and c) receive final EDM status authorization.
  - (ii) Only accounts associated with an EDM shall be allowed to maintain open positions to make or take delivery in an expiring physically-settled Contract during the three Business Days prior to the last day of trading. Trading an expiring physically-settled Contract in an account not associated with an EDM is prohibited beginning the three Business Days prior to the last trading day through expiration.
  - (iii) An FCM Clearing Member carrying open positions in an account not associated with an EDM must liquidate open positions by the close of trading three Business Days prior to the last trading day.

- (iv) An FCM Clearing Member must report to the Clearinghouse all positions that will be carried to expiry two Business Days prior to the last day of trading at a time determined by the Clearinghouse. If any updates are made to positions that will be carried to expiry following this reporting period and prior to the last day of trading, an FCM Clearing Member must report to the Clearinghouse any such updates on the Business Day prior to the last day of trading at a time determined by the Clearinghouse. Any updates made on the last day of trading must be reported pursuant to subparagraph (vi) below.
  - (v) An EDM must deposit all underlying assets required to make delivery immediately upon expiration. An EDM must deposit all funds required to take delivery no later than one hour following expiration.
  - (vi) An FCM Clearing Member must submit to the Clearinghouse, at a time following expiration and in the form and manner specified by the Clearinghouse, reports for all expiring contracts that include all information required by the Clearinghouse pursuant to Rule 303(b)(vi).
  - (vii) Final delivery is performed by the Clearinghouse on the books and records of the Clearinghouse at a time determined by the Clearinghouse.
- (b) In the event an FCM Clearing Member or its EDM Customer(s) fail to fulfill any and all delivery obligations, the Clearinghouse may deem such failure to be a delivery failure of the FCM Clearing Member and may deem such failure as a default pursuant to the Rules.
- (c) Where an EDM (buyer) has failed to make full payment due in order to take delivery, the Clearinghouse shall debit the account of the FCM Clearing Member an amount sufficient to fulfill the delivery obligation.
- (d) Where an EDM (seller) has failed to meet its delivery obligations, the Clearinghouse shall make every attempt to remediate the failure by implementing the following Alternative Delivery Process (ADP) measures:
- (i) The Clearinghouse, on behalf of the EDM (seller) that has failed to deliver, shall communicate with an approved set of non-failing EDMs to obtain a price at which the failed delivery position may be liquidated or transferred to a non-failing EDM.
    - (A) In the case a position is liquidated then the Clearinghouse shall register a trade between the failing EDM (seller) and the EDM to take delivery



(buyer) at the price obtained pursuant to subparagraph (d)(i) above, such that the short position of the failing EDM (seller) and the long position of the EDM (buyer) are offset.

(B) In the case a position is transferred then the Clearinghouse shall register a trade between the failing EDM (seller) and a non-failing EDM (seller) at the price obtained pursuant to subparagraph (d)(i) above, such that the short position of the failing EDM (seller) is transferred to the non-failing EDM (seller). The new non-failing EDM (seller) must deposit the required underlying assets within one hour of the transfer.

- (ii) The Clearinghouse will include, in the settlement cycle following the final delivery process, any gain or loss resulting from a registered ADP trade in the accounts of the non-failing EDM (buyer or seller, as applicable) or failing EDM (seller), respectively.
- (iv) In the event ADP is unsuccessful, financial performance will be granted to any affected EDMs intended to take delivery and whose actions or omissions did not cause or contribute to the delivery failure. Upon determination by the Clearinghouse that ADP cannot satisfy either the liquidation or transfer of the position held by the failing EDM (seller), the Clearinghouse shall debit the account of the FCM Clearing Member that is financially liable for a delivery failure the amount of financial performance required to fulfill the delivery obligation. The Clearinghouse shall then distribute through the final delivery process the financial performance proceeds on a pro-rata basis to the affected EDMs based upon the delivery failure position relevant to the total short position at the time of delivery. For the purposes of this subparagraph (d)(iv), “financial performance” means payment of commercially reasonable costs in U.S. dollars to replace the failed delivery, but does not include physical performance or legal fees. Commercially reasonable cost will be determined using the settlement price of the underlying asset market on expiration day.
- (v) FCM Clearing Members are financially liable for delivery failures of their accounts, including Customer accounts, and must pay financial performance upon delivery failure. FCM Clearing Members are prohibited from paying any financial performance in connection with delivery failure of their accounts, including Customer accounts, with funds from non-failing Customer accounts.

(e) Should the Clearinghouse suffer a Default Loss as a result of a delivery failure, such Default Loss shall be handled in accordance with the procedures set forth in the Default Management Plan.

#### **411. Reporting.**

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

### **5. OBLIGATIONS OF CBOE CLEAR DIGITAL**

#### **501. Limitation of Liability; Indemnity.**

(a) THE LIABILITY OF CBOE CLEAR DIGITAL 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) CBOE CLEAR DIGITAL MAY ACCEPT AND RELY UPON ANY INFORMATION OR INSTRUCTION GIVEN TO CBOE CLEAR DIGITAL BY A CLEARING MEMBER OR ITS OFFICERS OR AUTHORIZED REPRESENTATIVES, WHICH REASONABLY IS UNDERSTOOD BY CBOE CLEAR DIGITAL TO HAVE BEEN DELIVERED TO CBOE CLEAR DIGITAL 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 CBOE CLEAR DIGITAL, THE INACCURACY OF THE INFORMATION CONTAINED THEREIN OR

EFFECTING TRANSACTIONS IN RELIANCE UPON SUCH INFORMATION OR INSTRUCTION.

- (d) A CLEARING MEMBER SHALL REIMBURSE CBOE CLEAR DIGITAL FOR ALL FEES, EXPENSES, CHARGES AND COSTS ASSESSED BY A DEPOSITORY AGAINST CBOE CLEAR DIGITAL WITH RESPECT TO MARGIN MAINTAINED IN SUCH CLEARING MEMBER'S ACCOUNT, AND CBOE CLEAR DIGITAL SHALL NOT HAVE ANY OBLIGATION OR RESPONSIBILITY TO PRESERVE, PROTECT, COLLECT OR REALIZE UPON, AND EXCEPT AS PROVIDED IN RULE 403(D), CBOE CLEAR DIGITAL 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 CBOE CLEAR DIGITAL 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 CBOE CLEAR DIGITAL 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 CBOE CLEAR DIGITAL SET FORTH HEREIN SHALL BE IN ADDITION TO OTHER RIGHTS THAT CBOE CLEAR DIGITAL MAY HAVE UNDER APPLICABLE LAW AND GOVERNMENTAL REGULATIONS, OTHER PROVISIONS OF THE RULES, ADDITIONAL AGREEMENTS WITH THE CLEARING MEMBER OR ANY OTHER SOURCE.
- (h) CLEARING MEMBER SHALL DEFEND, INDEMNIFY AND HOLD DISCLAIMING PARTIES HARMLESS FROM AND AGAINST ALL COSTS, CLAIMS, DEMANDS, LOSSES, EXPENSES AND LIABILITIES OF ANY NATURE WHATSOEVER (INCLUDING REASONABLE ATTORNEY'S FEES) ("LOSSES") INCURRED OR SUFFERED BY SUCH DISCLAIMING PARTIES ARISING DIRECTLY OR INDIRECTLY OUT OF, OR IN CONNECTION WITH, ANY CLAIM, DEMAND, OR

CAUSE OF ACTION (EACH, A “CLAIM”) BASED UPON OR ARISING OUT OF (I) USE OF ANY SYSTEMS OR SERVICES OF THE CLEARINGHOUSE OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, OR ANY OTHER INFORMATION OR MATERIALS PROVIDED BY THE CLEARINGHOUSE OR ACCESSIBLE THROUGH ANY SYSTEMS OR SERVICES OF THE CLEARINGHOUSE OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, BY CLEARING MEMBER OR ANY OTHER PERSON USING ANY OF CLEARING MEMBER’S ACCESS METHODS, WHETHER OR NOT AUTHORIZED, EXCEPT TO THE EXTENT SUCH LOSSES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CLEARINGHOUSE; (II) ANY ACT OR OMISSION OF ANY OF CLEARING MEMBER’S CUSTOMERS IN CONNECTION WITH THE USE OF ANY SYSTEMS OR SERVICES OF THE CLEARINGHOUSE OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES; (III) BREACH OF ANY OF CLEARING MEMBER’S OBLIGATIONS, REPRESENTATIONS, WARRANTIES OR COVENANTS UNDER THESE RULES; OR (IV) CLEARING MEMBER’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. NOTWITHSTANDING THE FOREGOING, (A) THE DISCLAIMING PARTIES SHALL HAVE THE RIGHT TO ENGAGE SEPARATE COUNSEL, AT THEIR OWN EXPENSE, TO PARTICIPATE IN THE DEFENSE OF OR ANY NEGOTIATIONS RELATIVE TO THE CLAIM, AND (B) CLEARING MEMBER MAY NOT SETTLE OR OTHERWISE COMPROMISE ANY CLAIM WITHOUT THE CLEARINGHOUSE’S WRITTEN APPROVAL OF ANY SUCH SETTLEMENT OR OTHER COMPROMISE, WHICH APPROVAL SHALL NOT BE UNREASONABLY WITHHELD. THE INDEMNIFICATION PROVIDED BY THIS SECTION 501(H) WILL NOT BE DEEMED EXCLUSIVE OF ANY OTHER RIGHTS TO WHICH A DISCLAIMING PARTY MAY BE ENTITLED UNDER ANY AGREEMENT OR OTHERWISE, AND WILL INURE TO THE BENEFIT OF THE SUCCESSORS, ASSIGNS, HEIRS, EXECUTORS AND ADMINISTRATORS OF SUCH DISCLAIMING PARTY.

**502. FCM Clearing Member Default.**

- (a) If an FCM Clearing Member (a) fails to satisfy any of its Obligations, (b) fails to deliver funds within the time established by Cboe Clear Digital, (c) is expelled or suspended from the Exchange, Cboe Clear Digital, or any Self-Regulatory Organization, (d) fails to meet the minimum capital and other financial requirements of Cboe Clear Digital, or (e) is Insolvent, the Clearinghouse may declare such Clearing Member to be in Default.
- (b) If an FCM 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 Cboe Clear Digital, may be applied by Cboe Clear Digital to discharge the Obligations of such Clearing Member to Cboe Clear Digital (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 Cboe Clear Digital on such Clearing Member), and Cboe Clear Digital 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.

- (c) If the Margin held with respect to such FCM Clearing Member's Member Property Accounts, and other of such Clearing Member's assets held by, pledged to or otherwise available to Cboe Clear Digital, including any guarantee issued pursuant to these Rules, are insufficient to satisfy the defaulting Clearing Member's Obligations to Cboe Clear Digital after giving effect to the application of such amounts pursuant to paragraph (b), such defaulting FCM Clearing Member shall continue to be liable therefor.
- (d) In closing, offsetting, transferring or otherwise resolving the Contracts of a Clearing Member as provided herein and in Rule 601, Cboe Clear Digital 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 Cboe Clear Digital from the disposition of such Contracts and any property or proceeds thereof deposited with or held by Cboe Clear Digital as Margin for such account against (y) any amounts paid by Cboe Clear Digital 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 Cboe Clear Digital 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 Cboe Clear Digital from the disposition of such Contracts, any property or proceeds thereof deposited with or held by Cboe Clear Digital as Margin for such Member Property Accounts and any other property of the Clearing Member within the possession or control of Cboe Clear Digital 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 Cboe Clear Digital 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 Cboe Clear Digital, including Obligations of the Clearing Member to Cboe Clear Digital 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 Cboe Clear Digital; 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 Cboe Clear Digital 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 Cboe Clear Digital, 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.
- (e) For purposes of this Rule, each Default by a Clearing Member will be considered a separate Default.
- (f) 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 Cboe Clear Digital 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 Cboe Clear Digital 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 Cboe Clear Digital shall be held in instruments that comply with CFTC Regulation 39.15(e).

### **504. Scope of Guaranty Fund**

- (a) The Clearinghouse shall establish and maintain a Guaranty Fund, for the purpose of remedying shortfalls that may arise in managing FCM Clearing Members in Default, in the amounts payable to the Clearinghouse by an FCM Clearing Member.
- (b) The Guaranty Fund is comprised of contributions by FCM Clearing Members. Each FCM Clearing Member shall be required to contribute to the Guaranty Fund in accordance with the procedures as determined by Cboe Clear Digital.
- (c) The form and amount of such Guaranty Fund Deposits will be determined by Cboe Clear Digital and will be reviewed periodically and communicated to the FCM Clearing Members. Guaranty Fund contributions may be applied by the Clearing House to mitigate a Default Loss.
- (d) All contributions made by an FCM Clearing Member to the Guaranty Fund remain the property of the FCM Clearing Member making such contribution unless and until such time as the funds may be needed to meet the FCM Clearing Member's or another FCM Clearing Member's shortfall to the Clearinghouse.

### **505. Guaranty Fund Contributions**

- (a) All FCM Clearing Members must deposit and maintain with the Clearinghouse the Guaranty Fund Deposit requirement as stipulated by the Clearinghouse in accordance with Rules 504 through 507 and the procedures adopted by Cboe Clear Digital.
- (b) Any shortfall in the Guaranty Fund resulting from the Clearinghouse's periodic specification of a Minimum Guaranty Fund Requirement may require an additional contributions by each FCM

Clearing Member based upon the exposure of the Clearinghouse to such FCM Clearing Member, as determined from time to time by the Clearinghouse (the “Exposure-Based Guaranty Fund Requirement”).

(c) The Clearinghouse shall establish the Minimum Guaranty Fund Requirement and the Exposure-Based Guaranty Fund Requirement, together with the Clearinghouse’s own financial resources, sufficient to enable the Clearinghouse to meet its financial obligations to Clearing Members notwithstanding the default of the two Clearing Members (including any affiliated Clearing Members) creating the largest loss to the Clearinghouse in extreme but plausible market conditions, consistent with the requirements of CFTC Regulations.

(d) Deposits to the Guaranty Fund must be made in the form of cash (USD) and subject to the limitations and minimum cash deposits, if any, adopted by the Clearinghouse, published by the Clearinghouse on its website from time to time.

(e) Guaranty Fund deposits shall be held in a settlement bank approved for the purpose by the Clearinghouse. Upon a shortfall, the Clearinghouse shall have the sole right to withdraw cash from such account(s) subject to the rights of any assignee, pledge or holder of a security interest in the Guaranty Fund or any cash therein.

(f) So long as any Person is an FCM Clearing Member and thereafter for the period until the Clearinghouse returns such Person’s Guaranty Fund deposits, the Guaranty Fund deposits of such Person may be applied by the Clearinghouse in accordance with the Cboe Clear Digital Default Management Plan.

(g) Upon a shortfall, the Clearinghouse may assign, transfer, pledge, repledge or otherwise create a lien on or security interest in the cash and other property that may be acceptable to the Clearinghouse held in the Guaranty Fund.

#### **506. Authority of the Clearinghouse**

The Clearinghouse may take any appropriate action, in its discretion, with respect to a Defaulting FCM Clearing Member’s Member Property or Customer Accounts, including but not limited to the liquidation or transfer of positions, suspension, or revocation of clearing membership, in accordance with the default management plan adopted and in effect by the Clearinghouse from time to time.



## **507. Assessments**

(a) Payment of Assessment Amounts that replenish the Guaranty Fund shall be made by FCM Clearing Members on the basis of the same proportionality at the time of the Default that resulted in the assessment. The Clearinghouse may require greater amounts than indicated of the original proportional share of the Assessment Amount due to the failure, or the announced intention of failure, by one or more FCM Clearing Members to pay its assessment.

(b) Assessments are payable to the Clearinghouse according to the normal settlement procedures on the Business Day on which the notice of assessment is delivered to FCM Clearing Members.

(c) Any FCM Clearing Member that does not satisfy an assessment shall be in Default, and shall be responsible for any Default Loss that occurs.

## **6. SUSPENSION; DISCIPLINARY PROCEEDINGS**

### **601. Suspension.**

(a) General. The Board, with input from the Risk Management 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 Cboe Clear Digital under or in connection with any agreement between Cboe Clear Digital 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 Cboe Clear Digital and the Clearing Member is not remedied promptly after notice from Cboe Clear Digital, (iv) in the event of a material violation of the Rules of the Exchange or of the Clearinghouse, or (v) if the Risk Management Committee determines, and the Board approves, that suspension is necessary for the protection of Cboe Clear Digital, 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 an FCM Clearing Member, based on the Rule 601 (a), Cboe Clear Digital 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, Cboe Clear Digital 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 Cboe Clear Digital, Cboe Clear Digital 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. Cboe Clear Digital 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 Cboe Clear Digital, 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 Cboe Clear Digital may deem fair and reasonable under the circumstances, in which event Cboe Clear Digital 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 Cboe Clear Digital pursuant to subparagraphs (i) through (v) above, Cboe Clear Digital 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 Cboe Clear Digital, including any guarantee issued pursuant to these Rules, to discharge the Obligations of such Clearing Member to Cboe Clear Digital (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 Cboe Clear Digital on such Clearing Member).
- (e) Cboe Clear Digital may delegate to specified Officers or agents of Cboe Clear Digital the authority to determine, within such guidelines, if any, as Cboe Clear Digital shall prescribe, the nature and timing of transactions of the type described in subparagraph (d). If Cboe Clear Digital 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 Cboe Clear Digital, and such other circumstances as Cboe Clear Digital 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 Cboe Clear Digital, other Clearing Members, or the general public, such positions need not be closed out.
- (f) **Protective Action.** If Cboe Clear Digital (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, Cboe Clear Digital may authorize the execution of hedging transactions from time to time for the account of Cboe Clear Digital, solely for the purpose of reducing the risk to Cboe Clear Digital resulting from the continued maintenance of such positions or the continued holding of such Margin deposits. Cboe Clear Digital may delegate to specified Officers or agents of Cboe Clear Digital the authority to determine, within such guidelines, if any, as Cboe Clear Digital shall prescribe, the nature and timing of such hedging transactions.

- (g) Reimbursement of Costs and Expenses. Any costs or expenses, including losses, sustained by Cboe Clear Digital 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 Cboe Clear Digital 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 with Cboe Clear Digital 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 on 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 Cboe Clear Digital 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 Cboe Clear Digital 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) Cboe Clear Digital 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 CEA and CFTC Regulations, Rules or its agreements with Cboe Clear Digital or the Exchange, (ii) any neglect or refusal by such Clearing Member to comply with any applicable order or direction of Cboe Clear Digital or the Exchange, (iii) any error, delay or other conduct that materially and adversely affects the operations of Cboe Clear Digital or Cboe Digital 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 Cboe Clear Digital.
- (b) Cboe Clear Digital 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, Cboe Clear Digital 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 Cboe Clear Digital 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, Cboe Clear Digital shall (unless the Respondent and Cboe Clear Digital 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 Cboe Clear Digital 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 Cboe Clear Digital.

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

- (a) If (x) a Removal Event or Rule 601 Suspension occurs with respect to a Clearing Member, or (y) Cboe Clear Digital 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 Cboe Clear Digital or cleared markets (whether or not such Clearing Member continues to meet the required minimum financial requirements, if applicable), Cboe Clear Digital may take one or more of the following actions:
  - (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 Cboe Clear Digital;
  - (iii) Limit or restrict the number of Contracts that are permitted to be maintained by such Clearing Member in any of its Accounts with Cboe Clear Digital;
  - (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 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 Cboe Clear Digital shall deem appropriate for the protection of Cboe Clear Digital and its Clearing Members;
  - (xi) Terminate the Clearing Member's membership in Cboe Clear Digital; or
  - (xii) Take any other actions it deems proper or in the best interest of the Clearinghouse or its Clearing Members.

- (b) Cboe Clear Digital 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 Cboe Clear Digital, which approval shall be granted not later than 30 days following (i) the liquidation or, with the approval of Cboe Clear Digital, transfer to another Clearing Member of all open positions in the Clearing Member's Accounts at Cboe Clear Digital, 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 Cboe Clear Digital 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 Cboe Clear Digital, 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 Cboe Clear Digital determines that all such Clearing Member's Obligations have been settled and all sums owing to Cboe Clear Digital have been paid. In addition, when a Clearing Member voluntarily withdraws from membership or its membership is terminated, Clearing Member shall:
  - (i) cease immediately all uses of the Clearinghouse services, the system and any Access Methods provided to Clearing Member,
  - (ii) upon request by the Clearinghouse, destroy or return to the Clearinghouse all tangible materials (and all copies thereof) provided by the Clearinghouse (or its third-party service providers), and, in the case of electronic records, destroy all such records to the extent reasonably feasible, and
  - (iii) upon request by the Clearinghouse, certify in writing to the Clearinghouse that such materials have been destroyed or returned and no portion thereof remain in Clearing Member's possession or control.
- (e) Notwithstanding the foregoing, (a) in the event retention of the materials and records described in subparagraph (d)(ii) above is required by Applicable Law or regulation or by a self-regulatory body with competent jurisdiction over Clearing Member, Clearing Member agrees to continue to hold such materials and records as Confidential Information pursuant to **Rule XXX** and to destroy or return such materials and records to the Clearinghouse in compliance with this **Rule 606** once retention is no longer required, and (b) with respect to any electronic records of Clearing Member not reasonably feasible to destroy, as described in clause (ii) above, Clearing Member shall continue to hold such records as Confidential Information pursuant to **Rule 703** hereof. Any disputes which arise while a Clearing Member which relate to or arise out of any transaction with Cboe Clear Digital or status of a Clearing Member in Cboe Clear Digital shall be resolved in accordance with the Rules.

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

- (a) Cboe Clear Digital shall have the authority to take any actions it deems in the best interest of the Clearinghouse or the Clearing Members.
- (b) Cboe Clear Digital 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) Cboe Clear Digital 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 Cboe Clear Digital.

**7. MISCELLANEOUS**

**701. Force Majeure.**

Notwithstanding any other provision of these Rules, Cboe Clear Digital 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 Cboe Clear Digital) or any other cause beyond Cboe Clear Digital's reasonable control (whether or not similar to any of the foregoing) or the reasonable control of any delegate. Cboe Clear Digital shall use commercially reasonable efforts to minimize the effect of such event. As applicable, Cboe Clear Digital 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 Cboe Clear Digital 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 Cboe Clear Digital may be waived, and any provision of these Rules or any interpretations or policies of Cboe Clear Digital may be suspended by Cboe Clear Digital whenever, in the judgment of the Board or the Officers, such extension, waiver or suspension is necessary or in the best interest of Cboe Clear Digital. 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 Cboe Clear Digital shall be presented to the Board at its next regular meeting.



### 703. Confidentiality.

(a) Confidential Information.

- (i) Confidential Information shall include any and all non-public information, in any form, received by Cboe Clear Digital concerning positions carried by Cboe Clear Digital 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 Cboe Clear Digital, including, without limitation, financial statements filed with Cboe Clear Digital by a Clearing Member.
- (ii) Confidential Information shall also specifically include all source code of the Cboe Clear Digital system, and all trade secrets, processes, computer software and other proprietary data, research, information or documentation related thereto.
- (iii) For purposes of this rule, Cboe Clear Digital and Clearing Members are also referred to as “Party” or “Parties.”

(b) Exclusions. Notwithstanding the foregoing, Confidential Information will not include any information that: (i) is in or becomes part of the public domain (other than by disclosure by the receiving Party or its directors, officers, employees, agents or contractors (“**Representatives**”) in violation of Rule 703); (ii) was previously known to the receiving Party free of restriction; (iii) is independently developed by the receiving Party, without reference to the Confidential Information of the disclosing Party; or (iv) is lawfully obtained by the receiving Party from a third Party having the right to furnish such information.

(c) Nondisclosure. Each Party shall hold in strict confidence the Confidential Information of the other Party, shall use the same degree of care in protecting the confidentiality of the Confidential Information as it uses in protecting its own information of a similar type, and shall not disclose Confidential Information of the other Party to any third Party or use Confidential Information of the other Party for any purpose not expressly permitted under the Rules; *except that* a Party may disclose Confidential Information of the other Party solely to those of its Representatives who have a need to know such Confidential Information in connection with the provision of the systems or services of the Clearinghouse to Clearing Member. The receiving Party will inform its Representatives of the confidential nature of the Confidential Information, will be responsible for enforcing the terms of Rule 703 as to its Representatives, and will take such action, legal or otherwise, as may be reasonably necessary to cause them to comply with the terms and conditions of Rule 703. Cboe Clear Digital may disclose Confidential Information in the following circumstances;

- (i) Where consent has been provided by the Clearing Member;
- (ii) To a Government Agency or the regulatory authority of any foreign jurisdiction, if Cboe Clear Digital is requested or legally required to do so by such Government Agency;

- (iii) Pursuant to legal process, including with respect to a subpoena or order of a court or legislative or regulatory body of a competent jurisdiction;
  - (iv) To a Self-Regulatory Organization of which such Clearing Member is a member;
  - (v) To any Person providing services to Cboe Clear Digital, subject to appropriate confidentiality requirements;
  - (vi) To the Board, any Committee, Cboe Clear Digital or the Exchange's Officers, employees, attorneys and auditors, and to agents and independent contractors that have been engaged by Cboe Clear Digital or the Exchange who require such information in connection with the discharge of their duties to Cboe Clear Digital; and
  - (vii) As otherwise permitted under the Rules.
- (d) Notifications. In the cases of permissible disclosures of Confidential Information under Rule 703(c)(ii) – (iii), the disclosing Party shall, to the fullest extent permitted by law, immediately notify the other Party of such disclosure and cooperate with such Party to obtain appropriate confidential treatment of any Confidential Information to be so disclosed. Clearing Member hereby releases Cboe Clear Digital from any and all liability by reason of disclosing such information.

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

- (a) Cboe Clear Digital 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, Cboe Clear Digital 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 Cboe Clear Digital at the request of other markets or clearing organizations with which Cboe Clear Digital has an information-sharing agreement or other arrangements or procedures.
- (b) Cboe Clear Digital may enter into an information-sharing arrangement with any Person or body (including, without limitation, any Government Authority or any Self-Regulatory Organization) if Cboe Clear Digital (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 Cboe Clear Digital's purpose or duties under applicable law. Cboe Clear Digital may disclose to any Person or body information concerning or associated with a Clearing Member or other Person that Cboe Clear Digital believes is necessary and appropriate in exercising a legal or regulatory function (including, without limitation, information concerning any aspect of the business of Cboe Clear Digital) 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 Cboe Clear Digital 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 Cboe Clear Digital shall disclose any material, non-public information obtained as a result of such Person's employment with Cboe Clear Digital 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) Cboe Clear Digital 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) Cboe Clear Digital 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 Cboe Clear Digital.
- (b) A Clearing Member or a Clearing Member's representative may execute any document to be delivered to Cboe Clear Digital or to any other Clearing Member pursuant to these Rules or any policy or practice of Cboe Clear Digital by means of a mechanically or electronically reproduced facsimile signature if it otherwise satisfies any requirements of Cboe Clear Digital for use of such facsimile signatures.

**707. Governing Law**

- (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. Any

controversy or claim arising out of or in connection with the Rules or the performance or breach hereof, shall be subject to Rule 708.

#### **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 Cboe Clear Digital 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).
- (c) Any dispute between the Clearinghouse and a Clearing Member or an affiliate of a Clearing Member arising from or in connection with the Cboe Clear Digital Rules must be brought to arbitration through the American Arbitration Association (“AAA”) arbitration program or another arbitration program permitted by Exchange Rule 1006 within two (2) years from the occurrence of the event giving rise to the dispute. This Rule shall in no way create a cause of action nor authorize an action that would otherwise be prohibited by the Cboe Clear Digital Rules. (d) Any dispute between the Clearinghouse and a Clearing Member or an affiliate of a Clearing Member arising from or in connection with the Cboe Clear Digital Rules will be settled by arbitration administered through the AAA arbitration program or another arbitration program permitted by Exchange Rule 1006. Each party to the dispute will bear its own costs and expenses in connection with any arbitration hereunder, as well as an equal share of the administrative fees and the fees of the arbitrator; provided, however, that the arbitrator will be entitled to include in any award a full reimbursement for the prevailing party’s costs and expenses, such party’s share of the administrative fees and the fees of the arbitrator, or any combination of any or all of the above. In the event that this Rule 708(c) is held to be unenforceable in connection with any dispute or in such case that breach of the Rules may threaten the non-breaching Party with imminent irreparable harm requiring immediate equitable relief, (i) exclusive jurisdiction for any such dispute will reside in any state or federal court sitting in Cook County, Illinois, (ii) the Clearinghouse and the Clearing Member or Clearing Member affiliate involved in the dispute will be presumed to have submitted to the personal jurisdiction of any such court, and (iii) an action to enforce any judgment or decision of such court may be brought in the same court or in any other court with jurisdiction or venue. Finally, all Clearing Members and Clearing Member affiliates unconditionally and irrevocably waive any and all right to trial by jury in connection with any such dispute.

#### **709. Contracts**

Cboe Clear Digital 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 Cboe Clear Digital has approved as eligible for clearing shall be posted on Cboe Clear Digital’s website and certified with or otherwise approved by the CFTC in accordance with CFTC Regulations, as necessary.

#### **710. Proprietary Rights**

As between the Clearinghouse and Clearing Member, the Clearinghouse shall own and retain ownership of all rights, title and interest in and to (i) all information, data and content, including all transaction data submitted to the Clearinghouse, displayed or distributed through the System or submitted to the Clearinghouse related to Contracts or other Clearinghouse services; (ii) the System, and all underlying technology and all materials provided by the Clearinghouse (or its third-party service providers) in connection therewith; (iii) all updates, modifications, enhancements and new versions to or of the foregoing, and all derivative works based thereon; and (iv) all copyrights, patents, trade secrets, database rights and other intellectual property associated with the foregoing (collectively, the “**Clearinghouse Property**”). Clearing Member hereby waives any and all challenges to, or claims or defenses regarding, (a) the Clearinghouse’s rights in the Clearinghouse Property, and (b) the Clearinghouse’s right to revoke the rights of access granted to Clearing Member by the Clearinghouse.