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## Advisory Notice

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TO: Eris Exchange Market Participants

FROM: Eris Exchange Control Center and Market Regulation Department

ADVISORY: #12-06

DATE: October 1, 2012

SUBJECT: Notification of Eris Exchange Rule Self-Certification for the amendment of the Eris Exchange Rulebook related to compliance with the new Commission Regulations for Designated Contract Markets and participant requirements.

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### Background

This Advisory Notice serves to notify Participants of Eris Exchange, LLC (“Eris Exchange” or “Exchange”) that:

- I. The Exchange is amending Rules 101, 215, 216, 301, 401, 404, 408, 902, and 904 related to compliance with the new Commission Regulations for Designated Contract Markets (the “New Regulations”). See 17 CFR §§ 1, 16, and 38 (June 19, 2012) (the “Commission’s Regulations”).
- II. The Exchange is amending Rules 101, 301, 302, 306, 902, and 903 related to certain requirements related to participants, specifically, that Participants are not required to be Eligible Contract Participants, as defined in the Commodity Exchange Act.
- III. The Exchange has filed a notification with the Commodity Futures Trading Commission to amend the aforementioned rules (the “Amendments”). **These Amendments will be effective on October 17, 2012.**

### Summary

Summarized below are the specific Amendments to the Rulebook. The Exchange has attached the text of the Rules, including all additions and deletions. See Exhibits A and B of the Advisory, attached hereto as Attachment 1.

#### ***(1) Rules 401(a)(13) and 401(b)(11) (Duties and Responsibilities of Participants)***

The Exchange has amended Rules 401(a)(13) and 401(b)(11) to require Participants to keep, or cause to be kept records of and documents related to data submitted by the market Participant to an index to which an Exchange contract settles.

**(2) Rule 902 (Criteria for Becoming a Clearing Firm); Rule 903 (Clearing Firm Application Process and Obligations); Rule 904 (Clearing House Rules); Rule 404 (Minimum Financial and Related Reporting Requirements); Rule 301 (Criteria for Becoming a Participant Firm); Rule 408 (Treatment of Customer Funds and Securities); Rule 215 (Information Sharing Agreements)**

The Exchange has amended Rule 902(b) and Rule 903(b) to further clarify the minimum financial standards required under Applicable Law for Clearing Firms and the Exchange's monitoring of those minimum financial standards.

Rule 904(b) has been added to state in the Rulebook the services that the Clearing House provides to the Exchange; specifically that the Clearing House provides clearing and settlement services for the Contracts, including risk management infrastructure.

Similarly, Rule 404(a) and Rule 301(a) have been amended to make explicit that Participants (*i.e.*, Clearing Firms and other market participants such as Introducing Brokers) must comply with and produce records related to the Participant's minimum financial and related reporting requirements under Applicable Law upon the Exchange's request. Rule 404(c) and Rule 301(b) have been added to state that the Exchange conducts surveillance related to Rule 404.

Rule 408 related to the treatment of customer funds has been amended to specify that Clearing Firms comply with the regulations and rules of the Clearing House related thereto.

**(3) Rule 401 (Duties and Responsibilities of Participants); Rule 301 (Criteria for Becoming a Participant Firm); Rule 304 (Limitations on Access to the Eris Trading System); Rule 101 (Participant Firm)**

Rule 401 has been amended to explicitly state the Exchange's requirement that Clearing Firms use the Exchange's pre-trade controls that enable the Clearing Firm to implement appropriate financial risk limits for Participants on the Exchange. Rules 101, 301, and 304 have made conforming changes to this requirement.

**(4) Rule 216 (Services Agreement with a Regulatory Services Provider)**

Rule 216 has been amended to make clear that the Exchange conducts reviews to verify that the Regulatory Services Provider has the capacity and resources necessary to provide timely and effective regulatory services, including adequate staff and automated surveillance systems.

**(5) Rule 101 (Definitions: Broker Firm; Clearing Firm; Customer; Participant Firm); Rule 301 (Criteria for Becoming a Participant Firm); Rule 306(d) (Broker Firm Requirements); Rule 902 (Criteria for Becoming a Clearing Firm); Rule 903 (Clearing Firm Application Process and Obligations)**

Rule 902(c) and 903(b) have deleted language which required the Clearing Firm both to be an Eligible Contract Participant ("ECP"), as defined by the Act, and to confirm that the Participants or Customers it effects transactions and/or provides clearing services for is an ECP. Similarly, Rule 301 has been amended to remove the requirement that Participant Firms are ECPs and Rule 306(d) makes a similar amendment for Broker Firms and their customers. Conforming



changes have been made to Rule 101 and the Participant Documentation (available at <http://www.erisfutures.com>). The only exception to this requirement is that participants to block trades must be ECPs as set forth in Rule 601.

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## Exhibit A

### RULE 101. DEFINITIONS

“Broker Firm” means a person ~~described in Section 1a(12)(B) of the Commodity Exchange Act (“CEA”), as amended (“CEA”),~~ who is acting as a broker or performing an equivalent agency function on behalf of another person ~~described in Section 1a(12)(A) or 1a(12)(C) of the CEA.~~ The Clearing Firm is responsible for approving Broker Firms for such person pursuant to the applicable User ID Request Form-Schedule 2 to the Eris Exchange Clearing Firm Agreement.

“Clearing Firm” or “Clearing Member” means an entity meeting the requirements of, and approved for, clearing membership at the ~~e~~Clearing House that is authorized pursuant to the Clearing House Rules to clear trades in any or all of the Contracts and that meets the qualification of the Exchange pursuant to Rule 902. A Clearing Firm is authorized to access Eris Exchange to effect transactions ~~and, in such cases, is a person described in Section 1a(12)(A) of the CEA and/or a person described in Section 1a(12)(B) of the CEA.~~ A Clearing Firm may trade for its own proprietary account or an account on behalf of its Customer (e.g., as a broker). A Clearing Firm may trade on behalf of a Customer with an account at a different Clearing Firm acting as a broker or performing an equivalent agency function ~~pursuant to Section 1a(12)(B) of the CEA.~~ The different Clearing Firm is responsible for approving the Clearing Firm for such Customers pursuant to the applicable form to ~~Schedule 2 of~~ the Eris Exchange Clearing Firm Agreement. The term “Clearing Firm” collectively refers to all Authorized Traders of a Clearing Firm authorized to utilize Eris Exchange. A Clearing Firm is typically a FCM.

“Customer” means a person who is ~~an Eligible Contract Participant and includes,~~ but is not limited, to a customer of a Clearing Firm, Participant Firm, or Broker Firm.

“Joint Audit Committee” means a voluntary, cooperative organization comprised of representatives of U.S. futures exchanges and regulatory organizations, including the Exchange. The Joint Audit Committee’s primary responsibility is to oversee the implementation and functioning of all terms and conditions of the Joint Audit Agreement and to determine the practices and procedures to be followed by each Designated Self-Regulatory Organization in the conduct of audits and financial reviews of FCMs.

“Joint Compliance Committee” means an information sharing organization whose members include compliance officials from all U.S. Designated Contract Markets, including the Exchange.

“Participant Documentation” means the agreements (together with any applicable schedules, exhibits or appendices thereto required by the Exchange) in form and substance acceptable to the Exchange, that are required to be executed and delivered to the Exchange before a Person may access the Eris Trading System, including, but not limited to the Eris Exchange ~~Participant Firm Connection~~ Agreement; Eris Exchange Clearing Firm Agreement; the Eris Exchange Broker Firm Access Agreement; the User ID Request Form; and, the Eris Exchange User License Agreement, as applicable and amended from time to time by the Exchange.

“Participant Firm” means a person that is authorized under an Eris Exchange Connection Participant Firm Agreement (the “Participant Firm Connection Agreement”) to have direct access to Eris Exchange (i.e., a customer of a Clearing Firm enters orders directly into the Exchange’s trade matching system for execution through the use of a user identification in the Participant Firm’s name) and is a person described in Section 1a(12)(A) of the CEA and/or a person described in Section 1a(12)(B) of the CEA. A Participant Firm may trade for its own proprietary account. In certain cases, a Participant Firm may trade for ~~or~~ an account on behalf of its Customer. A Participant Firm may also trade on behalf of a Customer with an account at a Clearing Firm other than the Participant Firm’s Clearing Firm acting as a broker or performing an equivalent agency function ~~pursuant to Section 1a(12)(B) of the CEA.~~ The Clearing Firm is responsible for approving Participant Firms for such Customers pursuant to the applicable form to Schedule 2 of the Eris Exchange Clearing Firm Agreement. The term “Participant Firm” collectively refers to all Participants and Authorized Traders of a Participant Firm authorized to utilize Eris Exchange.

#### **RULE 215. Information-Sharing Agreements**

- (a) The Exchange may enter into information-sharing agreements or other arrangements or procedures to coordinate surveillance with other markets on which financial instruments related to the Contracts trade. As part of any information-sharing agreements or other arrangements or procedures adopted pursuant to this Rule, the Exchange may:
- (1) provide market surveillance reports to other markets;
  - (2) share information and documents concerning current and former Participants with other markets;
  - (3) share information and documents concerning ongoing and completed investigations with other markets; and/or
  - (4) require its current or former Participants to provide information and documents to the Exchange at the request of other markets with which the Exchange has an information-sharing agreement or other arrangements or procedures.
- (b) The Exchange may enter into any arrangement with any Person or body (including, without limitation, the CFTC, the NFA, any Self-Regulatory Organization, any exchange, market, or clearing organization, ~~or~~ foreign regulatory authority, the Joint Audit Committee, or the Joint Compliance Committee) if the Exchange considers such arrangement to be in furtherance of the Exchange’s purpose or duties under the Rules or any law or regulation. ~~(1) considers such arrangement to be in furtherance of the Exchange’s purpose or duties under the Rules or any law or regulation.~~
- (c) The Exchange may disclose to any Person or entity information concerning or associated with a Participant or other Person that the Exchange believes is necessary and appropriate in exercising a legal or regulatory function, whether or not a formal arrangement governing the disclosure exists or a request for information was made.

**RULE 216. Services Agreement with a Regulatory Services Provider**

- (a) The Exchange may contract with a Regulatory Services Provider to provide certain regulatory services to the Exchange pursuant to a Services Agreement. In accordance with a Services Agreement, the Regulatory Services Provider may perform certain surveillance, investigative, and regulatory functions under the Eris Exchange Rules and the Exchange may provide information to the Regulatory Services Provider in connection with the performance by the Regulatory Services Provider of those functions. The Exchange conducts reviews to verify that the Regulatory Services Provider has the capacity and resources necessary to provide timely and effective regulatory services, including adequate staff and automated surveillance systems.
- (b) The Exchange shall retain ultimate decision-making authority with respect to any functions that are contracted to a Regulatory Services Provider.

**RULE 301. Criteria for Becoming a Participant Firm**

- (a) To be eligible for admission as a Participant Firm, an applicant must demonstrate to the satisfaction of the Exchange that it:
- ~~(1) is an Eligible Contract Participant;~~
  - ~~(2)~~ (1) is of good reputation and business integrity;
  - ~~(3)~~ (2) maintains adequate financial resources and credit;
  - ~~(4)~~ (3) is of the age of majority in the individual's state of residence (if an individual);
  - ~~(5)~~ (4) is validly organized, in good standing, and authorized by its governing body and, if relevant, documents of organization, to trade Contracts (if an entity);
  - ~~(6)~~ (5) has not filed for bankruptcy;
  - ~~(7)~~ (6) is not prohibited from using the services of the Exchange for any reason whatsoever;
  - ~~(8)~~ (7) holds all registrations, including any Introducing Broker, Futures Commission Merchant, Supervisory Person and/or Associated Person registration and meets the minimum financial standards required under Applicable Law, including, but not limited to the requirements set forth in 17 CFR 1.17 any Introducing Broker, Futures Commission Merchant, Supervisory Person and/or Associated Person registration, as applicable if any;
  - ~~(9)~~ (8) is not subject to statutory disqualification under Section 8a(2) of the CEA; and
  - ~~(10)~~ (9) satisfies any other criteria that the Exchange may require from a Participant.
- (b) Once admitted, the Participant Firm shall continue to comply with all applicable eligibility criteria in Rule 301(a). The Exchange evaluates and monitors a Participant Firm's compliance with the criteria set forth in this Rule 301.

- (c) To the extent a Participant Firm is a Participant on Eris Exchange that is or was an Exempt Board of Trade subject to the CFTC's jurisdiction, then such Participant Firm shall be a Participant Firm on Eris Exchange, as long as such Participant Firm complies with Rule 301(b).
- (d) Each Participant Firm must establish a clearing relationship with a Clearing Firm and shall immediately notify Eris Exchange if it ceases to be a clearing customer of such Clearing Firm. Participant understands that it will be denied access to the Eris Trading System unless Participant has obtained and delivered to Eris the applicable documentation from an authorized signatory officer of such Clearing Firm. Participant Firm also understands that Eris may restrict, suspend or terminate Participant Firm's access to Eris or the Eris Trading System at the direction of the Clearing Firm. Participant Firm also understands that it may be permitted direct electronic access (i.e., a customer of a Clearing Firm enters orders directly into the Exchange's trade matching system for execution through the use of a user identification in the Participant Firm's name) and the Exchange provides the Clearing Firm with and requires the Clearing Firm to use pre-trade controls that enable the Clearing Firm to implement appropriate financial risk limits.

#### **RULE 302. Participant Firm Application Process**

- (a) Any Person who desires to become a Participant Firm shall:
- (1) enter into a Participant Firm Connection Agreement;
  - (2) enter into an Eris Exchange User License Agreement;
  - (3) establish a clearing relationship with a Clearing Firm;
  - (4) ensure that a Clearing Firm has submitted such documentation as set forth in Rule 902;
  - (5) enter into a User License Agreement with the Clearing House, if applicable;
  - (6) agree to abide by the Rules and Applicable Law;
  - (7) provide such information and documentation as may be requested by the Exchange, and follow the procedures established by the Exchange for admission; and,
  - (8) any Participant Firm organized or located outside of the United States shall enter into a written agreement acceptable to the Exchange appointing a third party as its U.S. agent for service of process for purposes of CFTC Regulation 15.05, and shall provide the Exchange with a copy of the agreement.
- (b) In considering an application from a potential Participant Firm, the Exchange may require additional information from the applicant, or conduct an investigation to verify information submitted by the applicant, or both.
- (c) If the Exchange decides to admit an applicant as a Participant Firm, it shall promptly notify the applicant and state in such notice the date on which the applicant shall become a Participant Firm.



- (d) The Exchange may deny, condition or terminate Participant Firm status of any Person:
- (1) If such Person is unable to satisfactorily demonstrate its ability to satisfy the eligibility criteria to become or remain a Participant Firm;
  - (2) If such Person is unable to satisfactorily demonstrate its capacity to adhere to all applicable Rules;
  - (3) If such Person would bring the Exchange into disrepute as determined by the Exchange in its sole discretion; or,
  - (4) for such other cause as the Exchange may reasonably determine.
- (e) If the Exchange decides to decline or condition an application for admission as a Participant Firm, or terminate a Person's status as a Participant Firm, the Exchange shall promptly notify such Person (the "Affected Person") thereof in a writing sent to the address provided by the applicant in the Exchange application form or maintained in the Exchange registry of Participant Firms. Such Affected Person may, within seven (7) calendar days, request in writing that the Exchange provide the reasons for the denial, conditioning or termination of Participant Firm status. Within fourteen (14) calendar days after receiving such written request, the Exchange shall send a written response to the Affected Person setting forth the reasons for the denial, conditioning or termination. Within fourteen (14) calendar days of receiving the Exchange's written response, the Affected Person may request in writing that the Exchange Participant Committee reconsider the determination.
- (f) Within twenty-eight (28) calendar days of receiving either the request for reconsideration, the Exchange Participant Committee shall either confirm, reverse or modify the denial, conditioning or termination of the Affected Person as a Participant Firm, and shall promptly notify the Affected Person accordingly in writing. The Exchange Participant Committee may, within its discretion, schedule a hearing (in-person or by teleconference); request additional information from the Affected Person; or, establish any other process that it believes is necessary and appropriate to consider the request for reconsideration.
- (g) The Exchange Participant Committee's decision is the final action of the Exchange and is not subject to appeal within the Exchange.

#### **RULE 304. Limitations on Access to the Eris Trading System**

- (a) The Exchange may at any time revoke, suspend, limit, condition, restrict or qualify a Participant's Trading Privileges and/or ability to access the Eris Trading System, if in the sole discretion of the Exchange, such action is in the best interests of the Exchange. Specifically, the Exchange may revoke, suspend, limit, condition, restrict or qualify a Participant's Trading Privileges and/or ability to access the Eris Trading System, if the Participant fails to meet the criteria set forth in Rule 301.



- (b) A Clearing Firm may at any time revoke the authorization of any Participant guaranteed by it with or without prior notice to such Participant. For purposes of the relationship between the relevant Clearing Firm and the Exchange, and the obligations of such Clearing Firm to the Exchange, any such revocation shall become effective upon the receipt of written notice thereof by the Exchange. Upon such receipt, the Trading Privileges of the Participant subject thereto shall be automatically terminated, and such Participant must obtain another guarantee from a Clearing Firm before its Trading Privileges will be reinstated.

#### **RULE 306. Authorized Traders and Authorized Brokers**

- (a) Each Participant who is not a natural Person shall designate one or more Authorized Trader(s) or Authorized Broker (s), who will be responsible for Exchange Activity conducted on behalf of the Participant. An Authorized Trader may also be a Participant in his or her individual capacity, but may not knowingly act as a counterparty in any capacity to any Order that he or she has placed as an Authorized Trader or Authorized Broker on behalf of another Participant or in his or her individual capacity.
- (b) By agreeing to become an Authorized Trader, an individual agrees to be bound by the duties and responsibilities of an Authorized Trader and to be subject to, and comply with, the Eris Exchange Rules and Obligations. Among other duties and responsibilities that the Exchange may impose, an Authorized Trader must:
- (1) have the authority, at the Exchange's request, to adjust or withdraw any Order submitted under any user ID assigned to him or her; and
  - (2) ensure that any Exchange Activity conducted under any user ID assigned to him or her complies with all Eris Exchange Rules and Obligations.
- (c) To designate an Authorized Trader or Authorized Broker, a Participant must follow the procedures established by the Exchange. The Exchange may establish criteria that individuals must fulfill to become an Authorized Trader.
- (d) By agreeing to become a Broker Firm that person agrees to be bound by the duties and responsibilities of a Broker Firm, agrees to be subject to, and comply with, the Eris Exchange Rules and Obligations, agrees that it will obtain an agreement from each other Authorized Broker that it will comply with and be subject to, the Eris Exchange Rules when accessing Eris Exchange, and Broker Firm shall be responsible to Eris Exchange for any failures to comply with Eris Exchange Rules by any Authorized Broker, to the same extent that Broker Firm would be liable. Among other duties and responsibilities that the Exchange may impose, a Broker Firm:
- ~~(1) must enter into the applicable Participant Documentation;~~
  - ~~(2) must only act on behalf of Participant(s) or Customers that are "eligible contract participant(s)" be approved by the Participant's Clearing Firm to act on behalf of the Participant;~~

- ~~(3)~~ (2) must agree to effect transactions for the account of a Participant or Customer in Contracts via the Eris Trading System;
  - ~~(4)~~ (3) must have the authority, at the Exchange's request, to adjust or withdraw any Order submitted under any user ID assigned to him or her;
  - ~~(5)~~ (4) must ensure that any Exchange Activity conducted under any user ID assigned to him or her complies with all Eris Exchange Rules and Obligations;
  - ~~(6)~~ (5) must have and maintain during all necessary regulatory approvals and/or licenses to operate as Broker Firm or as an Authorized Broker on Eris Exchange, including any Introducing Broker, Futures Commission Merchant, Supervisory Person and/or Associated Person registration s and compliance with the minimum financial standards required under Applicable Law, as applicable; and,
  - ~~(7)~~ (6) agree to such other terms and conditions as may be established by Eris Exchange from time to time.
- (e) The Exchange will promptly notify a Participant Firm or Clearing Firm in writing of the approval of designated Authorized Trader(s) or Authorized Broker(s) or if the Exchange declines to approve the nomination of an Authorized Trader or Authorized Broker.
- (f) The Exchange will maintain a list of all designated Authorized Traders, Broker Firms or Authorized Brokers for each Participant Firm.
- (g) The Exchange may, in its sole discretion revoke or suspend the designation of an individual as Authorized Trader, Authorized Broker, or Broker Firm and shall promptly notify the Participant or Clearing Firm of such action.
- (h) To request the termination of the designation of an individual as Authorized Trader or , Authorized Broker, or Broker Firm , the Participant must follow the procedures established by the Exchange. The Exchange may, in its sole discretion, refuse to accept a request to terminate the registration of an Authorized Trader , Authorized Broker, or Broker Firm, or may postpone the effective date of the termination of registration if the Exchange considers it necessary for the protection of Participant's or in the Exchange's best interest. Based on the information provided to, and other information gathered by, the Exchange regarding the request to terminate the registration of an Authorized Trader , Authorized Broker, or Broker Firm, the Exchange will determine whether to:
- ~~(1)~~ accept the request to terminate the designation
  - ~~(2)~~ postpone the effective date of termination of the designation, and/or
  - ~~(3)~~ impose any terms or conditions before or after the effective date of termination of the designation.

#### **RULE 310. Communications between the Exchange and Participants**

- (i) All communications made to Participant Broker Firms shall also be deemed to have been made to all Authorized Brokerss.

**RULE 401. Duties and Responsibilities of Participants**

- (a) Each Participant (i.e., Participant Firm and Clearing Firm) shall (and shall cause all of its Authorized Traders, Authorized Brokers, and Supervised Persons):
- (1) use the Eris Trading System in a responsible manner and not for any improper purpose;
  - (2) use the Eris Trading System only to conduct Exchange Activity;
  - (3) conduct all Exchange Activity in a manner consistent with the Eris Exchange Rules and Obligations;
  - (4) comply with all Eris Exchange Rules and Obligations and act in a manner consistent with each Rule of the Exchange and Obligation;
  - (5) comply with all Clearing House Rules, to the extent applicable to it, and act in a manner consistent with the Clearing House Rules, to the extent applicable;
  - (6) comply with all NFA Rules, to the extent applicable to it, and act in a manner consistent with the NFA Rules, to the extent applicable;
  - (7) observe high standards of integrity, market conduct, commercial honor, fair dealing, and just and equitable principles of trade while conducting or attempting to conduct any Exchange Activity, or any aspect of any business connected with or concerning the Exchange;
  - (8) not knowingly mislead or conceal any material fact or matter in any dealings or filings with the Exchange or in response to any Exchange Proceeding;
  - (9) keep ~~the~~ any User IDs, account numbers and passwords related to the Eris Trading System confidential;
  - (10) be fully liable for: all trading losses, all Orders, all transactions in Contracts effected by Participant, all transactions effected on Eris Exchange and for any use of the Eris Trading System made by Participant or Participant's Authorized Traders, and all trades even if the Orders received via the Eris Trading System: (1) were entered as a result of a failure in the security controls and/or credit controls, other than due to the gross negligence of Eris Exchange, or (2) were entered by an unknown or unauthorized user;
  - (11) use the Exchange's pre-trade controls that enable the Clearing Firm to implement appropriate financial risk limits for Participants;
  - (12) ~~(11)~~ employ practices to monitor and enforce compliance with risk limits;
  - (13) ~~(12)~~ be responsible for promptly informing the Exchange of any material changes to the information provided to the Exchange by the Participant pursuant to Rule 301; and,
  - (14) ~~(13)~~ keep, or cause to be kept, complete and accurate books and records, including, without limitation, trading records in underlying commodity and derivatives markets related to the Eris Contract, records of and documents related to data submitted by the Market Participant or Affiliate to an instrument or index to which an Exchange contract settles, all books and records required to be maintained pursuant to the CEA, the CFTC Regulations or the Eris Exchange Rules, for at least five (5) years, and make such books and records readily accessible for inspection by a representative of the

Exchange, the CFTC or the United States Department of Justice during the first two (2) years of such five-year period.

(b) Each Broker Firm shall (and shall cause all of its Authorized Brokers to) ~~shall~~:

- (1) use the Eris Trading System in a responsible manner and not for any improper purpose;
- (2) use the Eris Trading System only to conduct Exchange Activity;
- (3) conduct all Exchange Activity in a manner consistent with the Eris Exchange Rules and Obligations;
- (4) comply with all Eris Exchange Rules and Obligations and act in a manner consistent with each Rule of the Exchange and Obligation;
- (5) comply with all Clearing House Rules, to the extent applicable to it, and act in a manner consistent with the Clearing House Rules, to the extent applicable;
- (6) comply with all NFA Rules, to the extent applicable to it, and act in a manner consistent with the NFA Rules, to the extent applicable;
- (7) observe high standards of integrity, market conduct, commercial honor, fair dealing, and just and equitable principles of trade while conducting or attempting to conduct any Exchange Activity, or any aspect of any business connected with or concerning the Exchange;
- (8) not knowingly mislead or conceal any material fact or matter in any dealings or filings with the Exchange or in response to any Exchange Proceeding;
- (9) keep ~~the~~ any User IDs, account numbers and passwords related to the Eris Trading System confidential;
- (10) be responsible for promptly informing the Exchange of any material changes to the information provided to the Exchange by the Participant pursuant to Rule 307; and,
- (11) keep, or cause to be kept, complete and accurate books and records, including, without limitation, trading records in underlying commodity and derivatives markets related to the Eris Contract, records of and documents related to data submitted by the Market Participant or Affiliate to an instrument or index to which an Exchange contract settles, all books and records required to be maintained pursuant to the CEA, the CFTC Regulations or the Eris Exchange Rules, for at least five (5) years, and make such books and records readily accessible for inspection by a representative of the Exchange, the CFTC or the United States Department of Justice during the first two (2) years of such five-year period.

#### **RULE 404. Minimum Financial and Related Reporting Requirements**

- (a) Each Participant that is registered with any Government Agency, including the CFTC and the U.S. Securities and Exchange Commission, or a Self-Regulatory Organization shall comply with the provisions of Applicable Law, including but not limited to the rules and regulation such Government Agency imposes on a Participant relating to minimum financial

and related reporting and recordkeeping requirements. Upon request by the Exchange, Participant shall produce such records related to this Rule 404(a).

(b) A copy of any notice or written report that a Participant is required to file with the CFTC pursuant to CFTC Regulation §1.12 shall be concurrently provided to the Exchange.

(c) The Exchange conducts surveillance related Rule 404.

(d) ~~(e)~~ A Participant violates the aforementioned CFTC Regulation shall be deemed to have violated this Rule 404.

#### **RULE 408. Treatment of Customer Funds and Securities**

Each Participant that is required to be registered with any Government Agency, including the CFTC and the U.S. Securities and Exchange Commission, or Self-Regulatory Organization shall comply with the provisions of Applicable Law, including but not limited to the rules and regulation such Government Agency imposes on a Participant relating to the treatment of Customer funds and the maintenance of books and records with respect thereto. Specifically, each Clearing Firm must comply with the regulations of the applicable Government Agency and the rules of the Clearing House, including, but not limited to rules related to the protection of customer funds, including the segregation of customer and proprietary funds, the custody of customer funds, the investment standards for customer funds, intermediary default procedures and related recordkeeping. The Exchange conducts surveillance related this Rule 408, including through its membership in the Joint Audit Committee. Any Participant that violates any of the aforementioned CFTC Regulations shall be deemed to have violated this Rule 408.

#### **RULE 902. Criteria for Becoming a Clearing Firm**

(a) Any Clearing Firm of the Clearing House authorized by the Clearing House under the Clearing House Rules may apply as a Clearing Firm of the Exchange.

(b) Applicants for Clearing Firms of the Exchange must satisfy the following criteria:

- (1) be a Clearing Firm of the Clearing House in good standing;
- (2) meet the minimum capital requirement of \$50 million or such other amount, as determined by the Clearing House and,
- (3) ~~(2)~~ satisfy the Clearing Firm provisions set forth in Rule 903.

(c) A Clearing Firm that seeks to effect transactions on the Eris Trading System for its own account or the account of its Customer must satisfy the provisions set forth in Rule 903 following criteria, in addition to those set forth in Rule 902(b):

- ~~(1) be an Eligible Contract Participant and, if applicable, act as a broker or agent on the Exchange only for Customers that are Eligible Contract Participants and~~
- ~~(2) satisfy the provisions set forth in Rule 903~~

- (d) The Exchange evaluates and monitors a Clearing Firm's compliance with the criteria set forth in this Rule 902. The Exchange, through its membership in the Joint Audit Committee evaluates and monitors a Clearing Firm's compliance with the criteria set forth in this Rule 902.
- (e) ~~(d)~~ The Clearing House may assist the Exchange in evaluating and monitoring a Clearing Firm's compliance with these criteria. By becoming a Clearing Firm, a Clearing Firm and its Supervised Persons agree to cooperate with the Exchange in any such monitoring.
- (f) ~~(e)~~ Clearing Firms shall have the right to clear Contracts in accordance with the Clearing House Rules and the Eris Exchange Rules, as applicable.

### **RULE 903. Clearing Firm Application Process and Obligations**

- (a) A Clearing Firm of the Clearing House that desires to become a Clearing Firm shall apply using the Exchange application form, providing the information, and following the procedures established by the Exchange.
- (b) A Clearing Firm that clears Contracts on behalf of a Participant(s) and that effects transactions for the Clearing Firm account and/or the Customer(s) of the Clearing Firm must:
  - (1) Register with the Exchange by submitting a Clearing Firm Agreement;
  - (2) Enter into an Eris Exchange User License Agreement;
  - (3) Enter into a User License Agreement with the Clearing House, if applicable;
  - (4) Agree in writing to abide by the Rules of Eris Exchange and Applicable Law;
  - (5) Agree to act as a Clearing Firm for such Participant(s);
  - (6) Agrees that it will be financially responsible for (i) any transactions effected on Eris and for any use of the Eris Trading System made by Clearing Firm, Clearing Firm's Authorized Traders, Participant Firm or Participant Firm's Authorized Traders (ii) all Participant orders that are entered using User IDs assigned by Eris Exchange and for clearing any trades that are matched as a result of such orders. Clearing Firm will be responsible to clear such trades even if the orders received via the Eris Trading System: (a) exceeded Clearing Firm's credit parameters, (b) were entered as a result of a failure in the security controls and/or credit controls, other than due to the gross negligence of Eris, (c) were entered by an unknown or unauthorized user.
  - (7) Agree that it will accept full responsibility for any transactions effected on Eris Exchange and for any use of the Eris Trading System made by Clearing Firm or Clearing Firm's Authorized Traders.
  - ~~(8) Confirm that each Participant or Customer for which it effects transactions and/or provides clearing services is an Eligible Contract Participant;~~
  - ~~(9) Confirm that Clearing Firm is an Eligible Contract Participant.~~
  - (8) ~~(10)~~ Maintain all required and necessary regulatory approvals and/or licenses to operate as a Clearing Firm or Authorized Trader on Eris Exchange, including any Introducing Broker, Futures Commission Merchant, Supervisory Person and/or Associated Person



registrations and compliance with the minimum financial standards required under Applicable Law, as applicable.

- (9) ~~(11)~~ Employ practices to monitor and enforce compliance with risk limits for Participants; and,
  - (10) ~~(12)~~ Provide such information and documentation as may be requested by the Exchange, and follow the procedures established by the Exchange, including any requirements set forth in Chapter 9. Additionally, any Clearing Firm organized or located outside of the United States shall enter into a written agreement acceptable to the Exchange appointing a third party as its U.S. agent for service of process for purposes of CFTC Regulation 15.05, and shall provide the Exchange with a copy of the agreement.
- (c) If the Exchange decides to admit an applicant as a Clearing Firm, it shall promptly notify the applicant and state in such notice the date on which the applicant shall become a Clearing Firm.
- (d) The Exchange may deny, condition or terminate the Clearing Firm status of any Person:
- (1) If such Person is unable to satisfactorily demonstrate its ability to satisfy the eligibility criteria to become or remain a Clearing Firm;
  - (2) If such Person is unable to satisfactorily demonstrate its capacity to adhere to all applicable Rules;
  - (3) If such Person would bring the Exchange into disrepute as determined by the Exchange in its sole discretion; or,
  - (4) for such other cause as the Exchange may reasonably determine.
- (e) If the Exchange decides to decline or condition an application for admission as a Clearing Firm, or terminate a Person's status as a Clearing Firm, the Exchange shall promptly notify such Person (the "Affected Person") thereof in a writing sent to the address provided by the applicant in the Exchange application form or maintained in the Exchange registry of Clearing Firm. Such Affected Person may, within seven (7) calendar days, request in writing that the Exchange provide the reasons for the denial, conditioning or termination of Clearing Firm status. Within fourteen (14) calendar days after receiving such written request, the Exchange shall send a written response to the Affected Person setting forth the reasons for the denial, conditioning or termination. Within fourteen (14) calendar days of receiving the Exchange's written response, the Affected Person may request in writing that the Exchange Participant Committee reconsider the determination.
- (f) Within twenty-eight (28) calendar days of receiving either the request for reconsideration, the Exchange Participant Committee shall either confirm, reverse or modify the denial, conditioning or termination of the Affected Person as a Participant Firm, and shall promptly notify the Affected Person accordingly in writing. The Exchange Participant Committee may, within its discretion, schedule a hearing (in-person or by teleconference); request additional



information from the Affected Person; or, establish any other process that it believes is necessary and appropriate to consider the request for reconsideration.

- (g) The Exchange Participant Committee's decision is the final action of the Exchange and is not subject to appeal within the Exchange.
- (h) In the event of a default that occurs or has occurred in relation to a Clearing Firm with open positions in any Contract in a proprietary or customer account, each other Clearing Firm shall cooperate with the Clearing House, on a best-efforts basis, to accept the transfer of positions in such Contracts.

#### **RULE 904. Clearing House Rules**

(a) The clearing services provided by the Clearing House with respect to any Contract, and the rights and obligations of purchasers and sellers under cleared Contracts (including without limitation rights and obligations in respect of clearing and settlement, variation payments and performance at maturity), shall be governed by the Clearing House Rules, as applicable.

(b) The Clearing House provides clearing and settlement services for the Contracts, including the risk management infrastructure. The Exchange conducts surveillance related to this Rule 904.

~~(b)~~ (c) The Exchange will establish performance bond requirements from time as published by the Exchange in a Notice to Participants. Participants must call for Performance Bond from their Customers and post performance bond with the Clearing House as set forth in the Clearing House Rules. All performance bond collateral must be in a form acceptable to the Clearing House pursuant to Clearing House Rules.

~~(c)~~ (d) The Clearing House Rules shall prevail in the event of any conflict or inconsistency between the Rules and the Clearing House Rules with respect to any Clearing Member responsibilities or obligations under the Clearing House Rules. All Clearing Members are bound by the Clearing House Rules.

## **Exhibit B**

### **RULE 101. Definitions**

“Broker Firm” means a person who is acting as a broker or performing an equivalent agency function on behalf of another person. The Clearing Firm is responsible for approving Broker Firms for such person pursuant to the applicable User ID Request Form.

“Clearing Firm” or “Clearing Member” means an entity meeting the requirements of, and approved for, clearing membership at the Clearing House that is authorized pursuant to the Clearing House Rules to clear trades in any or all of the Contracts and that meets the qualification of the Exchange pursuant to Rule 902. A Clearing Firm is authorized to access Eris Exchange to effect transactions. A Clearing Firm may trade for its own proprietary account or an account on behalf of its Customer (e.g., as a broker). A Clearing Firm may trade on behalf of a Customer with an account at a different Clearing Firm acting as a broker or performing an equivalent agency function. The different Clearing Firm is responsible for approving the Clearing Firm for such Customers pursuant to the applicable form to the Eris Exchange Clearing Firm Agreement. The term “Clearing Firm” collectively refers to all Authorized Traders of a Clearing Firm authorized to utilize Eris Exchange. A Clearing Firm is typically a FCM.

“Customer” means a person who is, but is not limited to, a customer of a Clearing Firm, Participant Firm, or Broker Firm.

“Joint Audit Committee” means a voluntary, cooperative organization comprised of representatives of U.S. futures exchanges and regulatory organizations, including the Exchange. The Joint Audit Committee's primary responsibility is to oversee the implementation and functioning of all terms and conditions of the Joint Audit Agreement and to determine the practices and procedures to be followed by each Designated Self-Regulatory Organization in the conduct of audits and financial reviews of FCMs.

“Joint Compliance Committee” means an information sharing organization whose members include compliance officials from all U.S. Designated Contract Markets, including the Exchange.

“Participant Documentation” means the agreements (together with any applicable schedules, exhibits or appendices thereto required by the Exchange) in form and substance acceptable to the Exchange, that are required to be executed and delivered to the Exchange before a Person may access the Eris Trading System, including, but not limited to the Eris Exchange Connection Agreement; Eris Exchange Clearing Firm Agreement; the Eris Exchange Broker Firm Access Agreement; the User ID Request Form; and, the Eris Exchange User License Agreement, as applicable and amended from time to time by the Exchange.

“Participant Firm” means a person that is authorized under an Eris Exchange Connection Agreement (the “Connection Agreement”) to have access to Eris Exchange (e.g., a customer

of a Clearing Firm enters orders directly into the Exchange's trade matching system for execution through the use of a user identification in the Participant Firm's name). A Participant Firm may trade for its own proprietary account. In certain cases, a Participant Firm may trade for an account on behalf of its Customer. A Participant Firm may also trade on behalf of a Customer with an account at a Clearing Firm other than the Participant Firm's Clearing Firm acting as a broker or performing an equivalent agency function. The Clearing Firm is responsible for approving Participant Firms for such Customers pursuant to the applicable form to the Eris Exchange Clearing Firm Agreement. The term "Participant Firm" collectively refers to all Participants and Authorized Traders of a Participant Firm authorized to utilize Eris Exchange.

#### **RULE 215. Information-Sharing Agreements**

- (a) The Exchange may enter into information-sharing agreements or other arrangements or procedures to coordinate surveillance with other markets on which financial instruments related to the Contracts trade. As part of any information-sharing agreements or other arrangements or procedures adopted pursuant to this Rule, the Exchange may:
  - (1) provide market surveillance reports to other markets;
  - (2) share information and documents concerning current and former Participants with other markets;
  - (3) share information and documents concerning ongoing and completed investigations with other markets; and/or
  - (4) require its current or former Participants to provide information and documents to the Exchange at the request of other markets with which the Exchange has an information-sharing agreement or other arrangements or procedures.
- (b) The Exchange may enter into any arrangement with any Person or body (including, without limitation, the CFTC, the NFA, any Self-Regulatory Organization, any exchange, market, or clearing organization, foreign regulatory authority, the Joint Audit Committee, or the Joint Compliance Committee) if the Exchange considers such arrangement to be in furtherance of the Exchange's purpose or duties under the Rules or any law or regulation.
- (c) The Exchange may disclose to any Person or entity information concerning or associated with a Participant or other Person that the Exchange believes is necessary and appropriate in exercising a legal or regulatory function, whether or not a formal arrangement governing the disclosure exists or a request for information was made.

#### **RULE 216. Services Agreement with a Regulatory Services Provider**

- (a) The Exchange may contract with a Regulatory Services Provider to provide certain regulatory services to the Exchange pursuant to a Services Agreement. In accordance with a Services Agreement, the Regulatory Services Provider may perform certain surveillance, investigative, and regulatory functions under the Eris Exchange Rules and the Exchange may provide information to the Regulatory Services Provider in connection with the performance by the Regulatory Services Provider of those functions. The Exchange conducts reviews to verify that the Regulatory Services Provider has the capacity and resources necessary to provide timely and effective regulatory services, including adequate staff and automated surveillance systems.
- (b) The Exchange shall retain ultimate decision-making authority with respect to any functions that are contracted to a Regulatory Services Provider.

#### **RULE 301. Criteria for Becoming a Participant Firm**

- (a) To be eligible for admission as a Participant Firm, an applicant must demonstrate to the satisfaction of the Exchange that it:
  - (1) is of good reputation and business integrity;
  - (2) maintains adequate financial resources and credit;
  - (3) is of the age of majority in the individual's state of residence (if an individual);
  - (4) is validly organized, in good standing, and authorized by its governing body and, if relevant, documents of organization, to trade Contracts (if an entity);
  - (5) has not filed for bankruptcy;
  - (6) is not prohibited from using the services of the Exchange for any reason whatsoever;
  - (7) holds all registrations, including any Introducing Broker, Futures Commission Merchant, Supervisory Person and/or Associated Person registration and meets the minimum financial standards required under Applicable Law, including, but not limited to the requirements set forth in 17 CFR 1.17 any Introducing Broker, Futures Commission Merchant, Supervisory Person and/or Associated Person registration, as applicable if any;
  - (8) is not subject to statutory disqualification under Section 8a(2) of the CEA; and
  - (9) satisfies any other criteria that the Exchange may require from a Participant.
- (b) Once admitted, the Participant Firm shall continue to comply with all applicable eligibility criteria in Rule 301(a). The Exchange evaluates and monitors a Participant Firm's compliance with the criteria set forth in this Rule 301.
- (c) To the extent a Participant Firm is a Participant on Eris Exchange that is or was an Exempt Board of Trade subject to the CFTC's jurisdiction, then such Participant Firm shall be a Participant Firm on Eris Exchange, as long as such Participant Firm complies with Rule 301(b).

- (d) Each Participant Firm must establish a clearing relationship with a Clearing Firm and shall immediately notify Eris Exchange if it ceases to be a clearing customer of such Clearing Firm. Participant understands that it will be denied access to the Eris Trading System unless Participant has obtained and delivered to Eris the applicable documentation from an authorized signatory of such Clearing Firm. Participant Firm also understands that Eris may restrict, suspend or terminate Participant Firm's access to Eris or the Eris Trading System at the direction of the Clearing Firm. Participant Firm also understands that it may be permitted direct electronic access (i.e., a customer of a Clearing Firm enters orders directly into the Exchange's trade matching system for execution through the use of a user identification in the Participant Firm's name) and the Exchange provides the Clearing Firm with and requires the Clearing Firm to use pre-trade controls that enable the Clearing Firm to implement appropriate financial risk limits.

#### **RULE 302. Participant Firm Application Process**

- (a) Any Person who desires to become a Participant Firm shall:
- (1) enter into a Connection Agreement;
  - (2) enter into an Eris Exchange User License Agreement;
  - (3) establish a clearing relationship with a Clearing Firm;
  - (4) ensure that a Clearing Firm has submitted such documentation as set forth in Rule 902;
  - (5) enter into a User License Agreement with the Clearing House, if applicable;
  - (6) agree to abide by the Rules and Applicable Law;
  - (7) provide such information and documentation as may be requested by the Exchange, and follow the procedures established by the Exchange for admission; and,
  - (8) any Participant Firm organized or located outside of the United States shall enter into a written agreement acceptable to the Exchange appointing a third party as its U.S. agent for service of process for purposes of CFTC Regulation 15.05, and shall provide the Exchange with a copy of the agreement.
- (b) In considering an application from a potential Participant Firm, the Exchange may require additional information from the applicant, or conduct an investigation to verify information submitted by the applicant, or both.
- (c) If the Exchange decides to admit an applicant as a Participant Firm, it shall promptly notify the applicant and state in such notice the date on which the applicant shall become a Participant Firm.
- (d) The Exchange may deny, condition or terminate Participant Firm status of any Person:
- (1) If such Person is unable to satisfactorily demonstrate its ability to satisfy the eligibility criteria to become or remain a Participant Firm;

- (2) If such Person is unable to satisfactorily demonstrate its capacity to adhere to all applicable Rules;
  - (3) If such Person would bring the Exchange into disrepute as determined by the Exchange in its sole discretion; or,
  - (4) for such other cause as the Exchange may reasonably determine.
- (e) If the Exchange decides to decline or condition an application for admission as a Participant Firm, or terminate a Person's status as a Participant Firm, the Exchange shall promptly notify such Person (the "Affected Person") thereof in a writing sent to the address provided by the applicant in the Exchange application form or maintained in the Exchange registry of Participant Firms. Such Affected Person may, within seven (7) calendar days, request in writing that the Exchange provide the reasons for the denial, conditioning or termination of Participant Firm status. Within fourteen (14) calendar days after receiving such written request, the Exchange shall send a written response to the Affected Person setting forth the reasons for the denial, conditioning or termination. Within fourteen (14) calendar days of receiving the Exchange's written response, the Affected Person may request in writing that the Exchange Participant Committee reconsider the determination.
- (f) Within twenty-eight (28) calendar days of receiving either the request for reconsideration, the Exchange Participant Committee shall either confirm, reverse or modify the denial, conditioning or termination of the Affected Person as a Participant Firm, and shall promptly notify the Affected Person accordingly in writing. The Exchange Participant Committee may, within its discretion, schedule a hearing (in-person or by teleconference); request additional information from the Affected Person; or, establish any other process that it believes is necessary and appropriate to consider the request for reconsideration.
- (g) The Exchange Participant Committee's decision is the final action of the Exchange and is not subject to appeal within the Exchange.

#### **RULE 304.    Limitations on Access to the Eris Trading System**

- (a) The Exchange may at any time revoke, suspend, limit, condition, restrict or qualify a Participant's Trading Privileges and/or ability to access the Eris Trading System, if in the sole discretion of the Exchange, such action is in the best interests of the Exchange. Specifically, the Exchange may revoke, suspend, limit, condition, restrict or qualify a Participant's Trading Privileges and/or ability to access the Eris Trading System, if the Participant fails to meet the criteria set forth in Rule 301.
- (b) A Clearing Firm may at any time revoke the authorization of any Participant guaranteed by it with or without prior notice to such Participant. For purposes of the relationship between the relevant Clearing Firm and the Exchange, and the obligations of such Clearing Firm to the Exchange, any such revocation shall become effective upon the receipt of written notice thereof by the Exchange. Upon such receipt, the Trading Privileges of the Participant

subject thereto shall be automatically terminated, and such Participant must obtain another guarantee from a Clearing Firm before its Trading Privileges will be reinstated.

**RULE 306. Authorized Traders and Authorized Brokers**

- (a) Each Participant who is not a natural Person shall designate one or more Authorized Trader(s) or Authorized Broker (s), who will be responsible for Exchange Activity conducted on behalf of the Participant. An Authorized Trader may also be a Participant in his or her individual capacity, but may not knowingly act as a counterparty in any capacity to any Order that he or she has placed as an Authorized Trader or Authorized Broker on behalf of another Participant or in his or her individual capacity.
- (b) By agreeing to become an Authorized Trader, an individual agrees to be bound by the duties and responsibilities of an Authorized Trader and to be subject to, and comply with, the Eris Exchange Rules and Obligations. Among other duties and responsibilities that the Exchange may impose, an Authorized Trader must:
  - (1) have the authority, at the Exchange's request, to adjust or withdraw any Order submitted under any user ID assigned to him or her; and
  - (2) ensure that any Exchange Activity conducted under any user ID assigned to him or her complies with all Eris Exchange Rules and Obligations.
- (c) To designate an Authorized Trader or Authorized Broker, a Participant must follow the procedures established by the Exchange. The Exchange may establish criteria that individuals must fulfill to become an Authorized Trader.
- (d) By agreeing to become a Broker Firm that person agrees to be bound by the duties and responsibilities of a Broker Firm, agrees to be subject to, and comply with, the Eris Exchange Rules and Obligations, agrees that it will obtain an agreement from each other Authorized Broker that it will comply with and be subject to, the Eris Exchange Rules when accessing Eris Exchange, and Broker Firm shall be responsible to Eris Exchange for any failures to comply with Eris Exchange Rules by any Authorized Broker, to the same extent that Broker Firm would be liable. Among other duties and responsibilities that the Exchange may impose, a Broker Firm:
  - (1) must enter into the applicable Participant Documentation;
  - (2) must agree to effect transactions for the account of a Participant or Customer in Contracts via the Eris Trading System;
  - (3) must have the authority, at the Exchange's request, to adjust or withdraw any Order submitted under any user ID assigned to him or her;
  - (4) must ensure that any Exchange Activity conducted under any user ID assigned to him or her complies with all Eris Exchange Rules and Obligations;
  - (5) must have and maintain during all necessary regulatory approvals and/or licenses to operate as Broker Firm or as an Authorized Broker on Eris Exchange, including any



- Introducing Broker, Futures Commission Merchant, Supervisory Person and/or Associated Person registrations and compliance with the minimum financial standards required under Applicable Law, as applicable; and,
- (6) agree to such other terms and conditions as may be established by Eris Exchange from time to time.
- (e) The Exchange will promptly notify a Participant Firm or Clearing Firm in writing of the approval of designated Authorized Trader(s) or Authorized Broker(s) or if the Exchange declines to approve the nomination of an Authorized Trader or Authorized Broker.
- (f) The Exchange will maintain a list of all designated Authorized Traders, Broker Firms or Authorized Brokers for each Participant Firm.
- (g) The Exchange may, in its sole discretion revoke or suspend the designation of an individual as Authorized Trader, Authorized Broker, or Broker Firm and shall promptly notify the Participant or Clearing Firm of such action.
- (h) To request the termination of the designation of an individual as Authorized Trader or , Authorized Broker, or Broker Firm , the Participant must follow the procedures established by the Exchange. The Exchange may, in its sole discretion, refuse to accept a request to terminate the registration of an Authorized Trader , Authorized Broker, or Broker Firm, or may postpone the effective date of the termination of registration if the Exchange considers it necessary for the protection of Participant's or in the Exchange's best interest. Based on the information provided to, and other information gathered by, the Exchange regarding the request to terminate the registration of an Authorized Trader , Authorized Broker, or Broker Firm, the Exchange will determine whether to:
- (1) accept the request to terminate the designation
  - (2) postpone the effective date of termination of the designation, and/or
  - (3) impose any terms or conditions before or after the effective date of termination of the designation.

#### **RULE 310. Communications between the Exchange and Participants**

- (i) All communications made to Broker Firms shall also be deemed to have been made to all Authorized Brokers.

#### **RULE 401. Duties and Responsibilities of Participants**

- (a) Each Participant (i.e., Participant Firm and Clearing Firm) shall (and shall cause all of its Authorized Traders, Authorized Brokers, and Supervised Persons):
- (1) use the Eris Trading System in a responsible manner and not for any improper purpose;
  - (2) use the Eris Trading System only to conduct Exchange Activity;

- (3) conduct all Exchange Activity in a manner consistent with the Eris Exchange Rules and Obligations;
  - (4) comply with all Eris Exchange Rules and Obligations and act in a manner consistent with each Rule of the Exchange and Obligation;
  - (5) comply with all Clearing House Rules, to the extent applicable to it, and act in a manner consistent with the Clearing House Rules, to the extent applicable;
  - (6) comply with all NFA Rules, to the extent applicable to it, and act in a manner consistent with the NFA Rules, to the extent applicable;
  - (7) observe high standards of integrity, market conduct, commercial honor, fair dealing, and just and equitable principles of trade while conducting or attempting to conduct any Exchange Activity, or any aspect of any business connected with or concerning the Exchange;
  - (8) not knowingly mislead or conceal any material fact or matter in any dealings or filings with the Exchange or in response to any Exchange Proceeding;
  - (9) keep any User IDs, account numbers and passwords related to the Eris Trading System confidential;
  - (10) be fully liable for: all trading losses, all Orders, all transactions in Contracts effected by Participant, all transactions effected on Eris Exchange and for any use of the Eris Trading System made by Participant or Participant's Authorized Traders, and all trades even if the Orders received via the Eris Trading System: (1) were entered as a result of a failure in the security controls and/or credit controls, other than due to the gross negligence of Eris Exchange, or (2) were entered by an unknown or unauthorized user;
  - (11) use the Exchange's pre-trade controls that enable the Clearing Firm to implement appropriate financial risk limits for Participants;
  - (12) employ practices to monitor and enforce compliance with risk limits;
  - (13) be responsible for promptly informing the Exchange of any material changes to the information provided to the Exchange by the Participant pursuant to Rule 301; and,
  - (14) keep, or cause to be kept, complete and accurate books and records, including, without limitation, trading records in underlying commodity and derivatives markets related to the Eris Contract, records of and documents related to data submitted by the Market Participant or Affiliate to an instrument or index to which an Exchange contract settles, all books and records required to be maintained pursuant to the CEA, the CFTC Regulations or the Eris Exchange Rules, for at least five (5) years, and make such books and records readily accessible for inspection by a representative of the Exchange, the CFTC or the United States Department of Justice during the first two (2) years of such five-year period.
- (b) Each Broker Firm shall (and shall cause all of its Authorized Brokers to):
- (1) use the Eris Trading System in a responsible manner and not for any improper purpose;
  - (2) use the Eris Trading System only to conduct Exchange Activity;

- (3) conduct all Exchange Activity in a manner consistent with the Eris Exchange Rules and Obligations;
- (4) comply with all Eris Exchange Rules and Obligations and act in a manner consistent with each Rule of the Exchange and Obligation;
- (5) comply with all Clearing House Rules, to the extent applicable to it, and act in a manner consistent with the Clearing House Rules, to the extent applicable;
- (6) comply with all NFA Rules, to the extent applicable to it, and act in a manner consistent with the NFA Rules, to the extent applicable;
- (7) observe high standards of integrity, market conduct, commercial honor, fair dealing, and just and equitable principles of trade while conducting or attempting to conduct any Exchange Activity, or any aspect of any business connected with or concerning the Exchange;
- (8) not knowingly mislead or conceal any material fact or matter in any dealings or filings with the Exchange or in response to any Exchange Proceeding;
- (9) keep any User IDs, account numbers and passwords related to the Eris Trading System confidential;
- (10) be responsible for promptly informing the Exchange of any material changes to the information provided to the Exchange by the Participant pursuant to Rule 307; and,
- (11) keep, or cause to be kept, complete and accurate books and records, including, without limitation, trading records in underlying commodity and derivatives markets related to the Eris Contract, records of and documents related to data submitted by the Market Participant or Affiliate to an instrument or index to which an Exchange contract settles, all books and records required to be maintained pursuant to the CEA, the CFTC Regulations or the Eris Exchange Rules, for at least five (5) years, and make such books and records readily accessible for inspection by a representative of the Exchange, the CFTC or the United States Department of Justice during the first two (2) years of such five-year period.

#### **RULE 404. Minimum Financial and Related Reporting Requirements**

- (a) Each Participant that is registered with any Government Agency, including the CFTC and the U.S. Securities and Exchange Commission, or a Self-Regulatory Organization shall comply with the provisions of Applicable Law, including but not limited to the rules and regulation such Government Agency imposes on a Participant relating to minimum financial and related reporting and recordkeeping requirements. Upon request by the Exchange, Participant shall produce such records related to this Rule 404(a).
- (b) A copy of any notice or written report that a Participant is required to file with the CFTC pursuant to CFTC Regulation §1.12 shall be concurrently provided to the Exchange.
- (c) The Exchange conducts surveillance related Rule 404.

- (d) A Participant violates the aforementioned CFTC Regulation shall be deemed to have violated this Rule 404.

#### **RULE 408. Treatment of Customer Funds and Securities**

Each Participant that is required to be registered with any Government Agency, including the CFTC and the U.S. Securities and Exchange Commission, or Self-Regulatory Organization shall comply with the provisions of Applicable Law, including but not limited to the rules and regulation such Government Agency imposes on a Participant relating to the treatment of Customer funds and the maintenance of books and records with respect thereto. Specifically, each Clearing Firm must comply with the regulations of the applicable Government Agency and the rules of the Clearing House, including, but not limited to rules related to the protection of customer funds, including the segregation of customer and proprietary funds, the custody of customer funds, the investment standards for customer funds, intermediary default procedures and related recordkeeping. The Exchange conducts surveillance related this Rule 408, including through its membership in the Joint Audit Committee. Any Participant that violates any of the aforementioned CFTC Regulations shall be deemed to have violated this Rule 408.

#### **RULE 902. Criteria for Becoming a Clearing Firm**

- (a) Any Clearing Firm of the Clearing House authorized by the Clearing House under the Clearing House Rules may apply as a Clearing Firm of the Exchange.
- (b) Applicants for Clearing Firms of the Exchange must satisfy the following criteria:
- (1) be a Clearing Firm of the Clearing House in good standing;
  - (2) meet the minimum capital requirement of \$50 million or such other amount, as determined by the Clearing House; and,
  - (3) satisfy the Clearing Firm provisions set forth in Rule 903.
- (c) A Clearing Firm that seeks to effect transactions on the Eris Trading System for its own account or the account of its Customer must satisfy the provisions set forth in Rule 903, in addition to those set forth in Rule 902(b).
- (d) The Exchange evaluates and monitors a Clearing Firm's compliance with the criteria set forth in this Rule 902. The Exchange, through its membership in the Joint Audit Committee evaluates and monitors a Clearing Firm's compliance with the criteria set forth in this Rule 902.
- (e) The Clearing House may assist the Exchange in evaluating and monitoring a Clearing Firm's compliance with these criteria. By becoming a Clearing Firm, a Clearing Firm and its Supervised Persons agree to cooperate with the Exchange in any such monitoring.
- (f) Clearing Firms shall have the right to clear Contracts in accordance with the Clearing House Rules and the Eris Exchange Rules, as applicable.

**RULE 903. Clearing Firm Application Process and Obligations**

- (a) A Clearing Firm of the Clearing House that desires to become a Clearing Firm shall apply using the Exchange application form, providing the information, and following the procedures established by the Exchange.
- (b) A Clearing Firm that clears Contracts on behalf of a Participant(s) and that effects transactions for the Clearing Firm account and/or the Customer(s) of the Clearing Firm must:
  - (1) Register with the Exchange by submitting a Clearing Firm Agreement;
  - (2) Enter into an Eris Exchange User License Agreement;
  - (3) Enter into a User License Agreement with the Clearing House, if applicable;
  - (4) Agree in writing to abide by the Rules of Eris Exchange and Applicable Law;
  - (5) Agree to act as a Clearing Firm for such Participant(s);
  - (6) Agrees that it will be financially responsible for (i) any transactions effected on Eris and for any use of the Eris Trading System made by Clearing Firm, Clearing Firm's Authorized Traders, Participant Firm or Participant Firm's Authorized Traders (ii) all Participant orders that are entered using User IDs assigned by Eris Exchange and for clearing any trades that are matched as a result of such orders. Clearing Firm will be responsible to clear such trades even if the orders received via the Eris Trading System: (a) exceeded Clearing Firm's credit parameters, (b) were entered as a result of a failure in the security controls and/or credit controls, other than due to the gross negligence of Eris, (c) were entered by an unknown or unauthorized user.
  - (7) Agree that it will accept full responsibility for any transactions effected on Eris Exchange and for any use of the Eris Trading System made by Clearing Firm or Clearing Firm's Authorized Traders.
  - (8) Maintain all required and necessary regulatory approvals and/or licenses to operate as a Clearing Firm or Authorized Trader on Eris Exchange, including any Introducing Broker, Futures Commission Merchant, Supervisory Person and/or Associated Person registrations and compliance with the minimum financial standards required under Applicable Law, as applicable.
  - (9) Employ practices to monitor and enforce compliance with risk limits for Participants; and,
  - (10) Provide such information and documentation as may be requested by the Exchange, and follow the procedures established by the Exchange, including any requirements set forth in Chapter 9. Additionally, any Clearing Firm organized or located outside of the United States shall enter into a written agreement acceptable to the Exchange appointing a third party as its U.S. agent for service of process for purposes of CFTC Regulation 15.05, and shall provide the Exchange with a copy of the agreement.
- (c) If the Exchange decides to admit an applicant as a Clearing Firm, it shall promptly notify the applicant and state in such notice the date on which the applicant shall become a Clearing Firm.
- (d) The Exchange may deny, condition or terminate the Clearing Firm status of any Person:

- (1) If such Person is unable to satisfactorily demonstrate its ability to satisfy the eligibility criteria to become or remain a Clearing Firm;
  - (2) If such Person is unable to satisfactorily demonstrate its capacity to adhere to all applicable Rules;
  - (3) If such Person would bring the Exchange into disrepute as determined by the Exchange in its sole discretion; or,
  - (4) for such other cause as the Exchange may reasonably determine.
- (e) If the Exchange decides to decline or condition an application for admission as a Clearing Firm, or terminate a Person's status as a Clearing Firm, the Exchange shall promptly notify such Person (the "Affected Person") thereof in a writing sent to the address provided by the applicant in the Exchange application form or maintained in the Exchange registry of Clearing Firm. Such Affected Person may, within seven (7) calendar days, request in writing that the Exchange provide the reasons for the denial, conditioning or termination of Clearing Firm status. Within fourteen (14) calendar days after receiving such written request, the Exchange shall send a written response to the Affected Person setting forth the reasons for the denial, conditioning or termination. Within fourteen (14) calendar days of receiving the Exchange's written response, the Affected Person may request in writing that the Exchange Participant Committee reconsider the determination.
- (f) Within twenty-eight (28) calendar days of receiving either the request for reconsideration, the Exchange Participant Committee shall either confirm, reverse or modify the denial, conditioning or termination of the Affected Person as a Participant Firm, and shall promptly notify the Affected Person accordingly in writing. The Exchange Participant Committee may, within its discretion, schedule a hearing (in-person or by teleconference); request additional information from the Affected Person; or, establish any other process that it believes is necessary and appropriate to consider the request for reconsideration.
- (g) The Exchange Participant Committee's decision is the final action of the Exchange and is not subject to appeal within the Exchange.
- (h) In the event of a default that occurs or has occurred in relation to a Clearing Firm with open positions in any Contract in a proprietary or customer account, each other Clearing Firm shall cooperate with the Clearing House, on a best-efforts basis, to accept the transfer of positions in such Contracts.

#### **RULE 904. Clearing House Rules**

- (a) The clearing services provided by the Clearing House with respect to any Contract, and the rights and obligations of purchasers and sellers under cleared Contracts (including without limitation rights and obligations in respect of clearing and settlement, variation payments and performance at maturity), shall be governed by the Clearing House Rules, as applicable.

- (b) The Clearing House provides clearing and settlement services for the Contracts, including the risk management infrastructure. The Exchange conducts surveillance related to this Rule 904.
- (c) The Exchange will establish performance bond requirements from time as published by the Exchange in a Notice to Participants. Participants must call for Performance Bond from their Customers and post performance bond with the Clearing House as set forth in the Clearing House Rules. All performance bond collateral must be in a form acceptable to the Clearing House pursuant to Clearing House Rules.
- (d) The Clearing House Rules shall prevail in the event of any conflict or inconsistency between the Rules and the Clearing House Rules with respect to any Clearing Member responsibilities or obligations under the Clearing House Rules. All Clearing Members are bound by the Clearing House Rules.