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March 29, 2016

Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, ON M5H 3S8

Attention: Secretary

Dear Sirs and Mesdames:

Re: tpSEF Inc. – Application for Exemption of a Foreign Exchange Trading OTC Derivatives from Recognition as an Exchange

We are acting as counsel to tpSEF Inc. (the “**Applicant**” or “**tpSEF**”), a swap execution facility (“**SEF**”) registered pursuant to Section 5h of the United States Commodities Exchange Act (“**CEA**”) and the Commodities Futures Trading Commission (“**CFTC**”) Regulation 37.3(b). We are filing this application (“**Application**”) with the Ontario Securities Commission (the “**OSC**” or the “**Commission**”) on behalf of tpSEF for a decision under section 147 of the *Securities Act* (Ontario), as amended (the “**Act**”), exempting the Applicant from the requirement to be recognized as an exchange under subsection 21(1) of the Act (the “**Requested Relief**”).

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

Exemption Criteria

OSC Staff has prescribed criteria in a document named *Criteria for Exemption of a Foreign Exchange Trading OTC Derivatives from Recognition as an Exchange* (“**Exemption Criteria**”) in relation to applications for exemption from recognition by foreign exchanges trading over-the-counter (“**OTC**”) derivatives under section 21 of the Act. For convenience, this Application is divided into the Parts listed below. Part II describes how the Applicant satisfies the criteria for exemption which are set out in the Exemption Criteria.

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Part I - Background

1. tpSEF is a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware with a principal place of business located at 101 Hudson Street, Jersey City, NJ 07302.
2. tpSEF is a wholly-owned subsidiary of Tullett Prebon Americas Corp. (“**TPAC**”). TPAC is a 75%-owned subsidiary of Tullett Prebon (No. 1) (“**TP No. 1**”) and a 25%-owned subsidiary of Tullett Prebon (Americas) Holdings Inc. (“**TPAHI**”). TP No. 1 is a 100% owned subsidiary of TPAHI, which is a 100% wholly-owned indirect subsidiary of Tullett Prebon plc, the ultimate parent company and a public company organized under the laws of England and Wales.
3. In the United States, tpSEF operates under the jurisdiction of the CFTC and has obtained registration with the CFTC to operate a SEF as defined in Section 1a(50) of the CEA.

4. tpSEF is obliged under CFTC rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and to discipline participants, including by means other than exclusion from the marketplace.
5. Because tpSEF regulates the conduct of its participants, it is considered by the Commission to be an exchange.
6. tpSEF has entered into a regulatory services agreement with the National Futures Association (“**NFA**”), a registered futures association, as a regulatory services provider to perform certain surveillance, investigative, and regulatory functions under the rules of tpSEF and tpSEF may provide information to the regulatory services provider in connection with the performance of those functions. tpSEF retains ultimate decision-making authority with respect to, and ultimate responsibility for, any functions that are contracted to the NFA.
7. tpSEF provides an execution venue that enables its participants to execute CFTC-regulated swaps in a range of asset classes. tpSEF provides execution services for interest rate swaps, credit default index swaps, foreign exchange options, cross-currency swaps, equity index swaps, commodity swaps and other swaps subject to CFTC regulation. Products traded on tpEF include, among others, agricultural options, basis swaps, deliverable and non-deliverable interest rate swaps and physically-settled swaptions, CDS index contracts, barrier options, foreign exchange options, equity index swaps, fixed for floating swaps and swaptions, forward rate agreements, inflation swaps, and natural gas swaps. tpSEF offers participants order execution via an anonymous order book. tpSEF currently lists the products included in Appendix B to the tpSEF Rulebook. Orders can be entered into the order book either by a participant that has elected direct access to the order management system or by an execution specialist acting on a participant’s instruction. Orders may be communicated by participants to execution specialists via telephone and/or via electronic modes of communication such as email and instant message.
8. tpSEF has entered into clearing arrangements with four registered derivatives clearing organizations (“**Clearing Agencies**”): LCH Clearnet Limited, LHC Clearnet LLC, ICE Clear Credit LLC and the Chicago Mercantile Exchange Inc..
9. Because tpSEF has participants located in Ontario (“**Ontario Users**”), it is considered by the Commission to be carrying on business as an exchange in Ontario and is required to be recognized as such or exempted from recognition pursuant to Section 21 of the Act.
10. tpSEF has no physical presence in Ontario and does not otherwise carry on business in Ontario except as described above.
11. tpSEF filed an application dated September 30, 2013 with the Commission requesting an interim order pursuant to section 147 of the Act exempting tpSEF from the requirement to be recognized as an exchange under subsection 21(1) of the Act. Pursuant to an order dated October 1, 2013 under section 147 of the Act (the “**Interim Order**”) and the Variation to Interim Order dated September 30, 2014 (“**Variation to Order**”), the Commission has exempted tpSEF on an interim basis from the requirement to be recognized as an exchange subject to the terms and conditions of the Interim Order and Variation to Order. One of the conditions of the Interim Order and Variation to Order was that tpSEF file a full application to the Commission for a subsequent order pursuant to Section 147 of the Act exempting it from the requirement to be recognized as an exchange under subsection 21(1) of the Act.

12. The Applicant does not require relief under section 80 of the *Commodity Futures Act* (Ontario), as amended (the “CFA”), exempting the Applicant from the requirement to be registered as a commodity futures exchange under Section 15 of the CFA as the products traded on tpSEF are not commodity futures contracts as defined in the CFA and tpSEF is not considered to be carrying on business as a commodity futures exchange in Ontario.
13. tpSEF provides a daily activity summary on its website that is available to the public. The summary lists those transactions executed on tpSEF for the relevant day. This information may be accessed at http://www.tullettprebon.com/swap_execution_facility/daily_activity_summary.aspx.

Part II - Application of Exemption Criteria to tpSEF

1. REGULATION OF THE EXCHANGE

1.1 Regulation of the Exchange – The exchange is regulated in an appropriate manner in another jurisdiction by a foreign regulator (Foreign Regulator).

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

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

1.2.1 The CFTC has been charged with administering and enforcing the CEA. Accordingly, the CFTC is the U.S. government agency that has direct regulatory and oversight responsibility over SEFs. As such, the CFTC has promulgated regulations and guidelines (the “**CFTC Regulations**”) that govern the conduct of SEFs, such as tpSEF, and interpret the statutory core principles described in Section 5h of the CEA (the “**Core Principles**”) that are applicable to all SEFs. The CFTC monitors trading on tpSEF and receives daily transaction and other reports from tpSEF. The CFTC may also undertake periodic in-depth audits or “rule reviews” of tpSEF’s compliance with certain of the Core Principles. In addition, on an annual basis, tpSEF must submit an annual report to the CFTC for review. This report contains a description of tpSEF’s policies and procedures, a review of the CFTC Regulations and Core Principles with respect to tpSEF’s policies and procedures, an assessment of the effectiveness of the policies and procedures, areas of improvement, material changes to the procedures, a description of tpSEF’s financial, managerial and operational resources, and a description of any material compliance matters.

1.2.2 As part of its application to register as a swap execution facility, tpSEF is also required to demonstrate its compliance with the Core Principles. The Core Principles include requirements that tpSEF monitor and enforce compliance with its rules; only list products that are not readily susceptible to manipulation; monitor

trading to prevent manipulations, price distortion and disruptions of the delivery or cash-settlement process; have the ability to obtain information necessary to perform the functions described in Section 5h of the CEA (Section 5h includes registration, operation, and compliance requirements for SEFs and fifteen core principles that SEFs must comply with as a condition of obtaining and maintaining registration as a SEF); adopt position limitations or position accountability for speculators, where necessary and appropriate; make available to the regulators, market participants and the public certain market information; provide a competitive, open and efficient mechanism for executing transactions; create and maintain necessary records; establish rules to ensure the financial integrity of its contracts; protect market participants from abusive practices; avoid anticompetitive actions and establish and enforce appropriate fitness standards; minimize conflicts of interest in the decision-making process and establish a process for resolving such conflicts.

2. GOVERNANCE

2.1 Governance – The governance structure and governance arrangements of the exchange ensure:

- (a) effective oversight of the exchange;**
- (b) that business and regulatory decisions are in keeping with its public interest mandate;**
- (c) fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:**
 - i. appropriate representation of independent directors; and**
 - ii. a proper balance among the interests of the different persons or companies using the services and facilities of the exchange;**
- (d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest for all officers, directors and employees; and**
- (e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.**

2.1.1 tpSEF has a Board of Directors (the “**Board**”), whose organization and constitution is governed by the tpSEF Inc. by-laws (the “**By-Laws**”) and by tpSEF’s rules governing the operation of tpSEF (the “**tpSEF Rules**”). The tpSEF Rules, including appendices thereto, are available on tpSEF’s website at http://www.tullettprebon.com/swap_execution_facility/rulebook.aspx. Section 2 of the tpSEF Rules governs, among other things, the organization and constitution of the operating committees established by the Board. The Board has established the Regulatory Oversight Committee (“**ROC**”) that, as more fully described below, is responsible for overseeing the tpSEF regulatory program including reviewing the performance of the Chief Compliance Officer (“**CCO**”). At this time, the ROC is the only committee that has been established by the Board.

- 2.1.2 The tpSEF Rules help ensure the integrity and competence of the Board, and prevent breaches of any relevant law, regulation or code of practice. tpSEF Rules require Board members to notify tpSEF if, among other things, he/she has been found to have committed certain disciplinary offenses, or has become subject to a revocation or suspension of registration by the CFTC. As discussed more fully below, certain Board members must also be “public directors”. The foregoing requirements help ensure the integrity and competence of the Board.
- 2.1.3 The CFTC has the authority to review the organization and structure of tpSEF, including the By-Laws, which establish the corporate governance and composition of the Board, to ensure that tpSEF will be able to comply with CFTC Regulations. Through By-Law Articles III and V, the Board and tpSEF’s officers, respectively, are empowered with all the powers and duties of a Delaware corporation and are able to delegate those powers.
- 2.1.4 The CFTC is interested in ensuring that the Board is large enough to deal with conflicts as required by the Core Principles and has the ability to act independently. The CFTC has proposed practices for minimizing conflicts of interest in decision-making by SEFs that are intended to recognize the SEFs’ public-interest responsibilities as self-regulatory organizations. These practices currently require that at least 35% of the directors of a SEF’s board must qualify as “public directors”. According to the CFTC, “public directors” are persons who have no “material relationship” with tpSEF, *i.e.*, any relationship that could reasonably affect their independent judgment or decision making. Article III, Section 4 of the By-Laws and tpSEF Rule 2100 require that no less than 35% of tpSEF’s directors will be Public Directors. For the purposes of the By-Laws, “Public Director” means an individual (i) that meets the requirements set forth in CFTC Regulation 1.64(b)(1)(i) and (ii), and (ii) that is found by action of the Board upon nomination or appointment and thereafter as often as necessary in light of all circumstances relevant to the particular individual, but no less than annually, to have no “material relationship” with tpSEF. 60% of the Board is currently comprised of Public Directors. A material relationship may include, among other things, if a public director is an officer or an employee of tpSEF, or an officer or an employee of an affiliate of tpSEF or is a participant or owner of tpSEF.
- 2.1.5 The Board is comprised of five directors, including the Chief Financial Officer of tpSEF, the Chief Executive Officer of TPAHI and three directors who qualify as Public Directors. Given that 60% of tpSEF’s directors are Public Directors and that all of the directors are qualified and experienced professionals in the swaps industry, we would respectfully submit that the Board provides appropriate, fair and meaningful representation to all those with an interest in the stewardship of tpSEF.
- 2.1.6 Directors of the Board must meet the qualifications set forth from time to time in the By-Laws and tpSEF Rules. Such qualifications include having prior industry (or related) experience, a strong understanding of swaps and a familiarity with the rules and regulations pertaining to swaps.
- 2.1.7 Certain members of the Board also comprise the ROC. The ROC oversees the tpSEF’s regulatory program on behalf of the Board. The ROC is comprised entirely of public directors appointed by the Board. Article III, Section 10 of By-

Laws and tpSEF Rule 2401 require the ROC to be composed entirely of public directors. The ROC periodically meets with the CCO, imposes controls on tpSEF to the risk of market disruption, and reviews the annual compliance report.

- 2.1.8 Public directors of the Board receive an annual salary for their service on the Board. Public directors may also receive an additional amount for meeting attendance. tpSEF does not compensate any director for his/her role on a tpSEF committee, disciplinary, appeals, or review panel.
- 2.1.9 Article VIII, Section 1 of the By-Laws includes an indemnity provision that indemnifies and holds harmless directors and officers of tpSEF to the fullest extent permissible under and pursuant to any procedures specified in the General Corporation Law of the State of Delaware.
- 2.1.10 tpSEF has appropriate conflict of interest provisions for all directors, officers and employees. A director or officer or other person authorized to exercise tpSEF's authority concerning a self-regulatory action who knowingly has a "material conflict of interest" between his or her position as a director or officer, or the exercise of authority concerning a self-regulatory action and his or her personal interests may not participate in vote of the Board (which includes a Board committee), or disciplinary panel, or exercise any authority with respect to such self-regulatory action involving his or her personal interest. A material conflict of interest includes, among others, being named as a respondent or potential respondent or a witness or potential witness in a tpSEF proceeding or emergency action or having any significant, ongoing business relationship with a respondent or potential respondent or a witness or potential witness in the self-regulatory action. Conflicts of interest are overseen by the CCO in consultation with the ROC as necessary.

2.2 Fitness – The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person and past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.

- 2.2.1 A director also has fiduciary duties set forth under Delaware state law. All of the members of the Board are over the age of majority and are of sound mind. All of the members of the Board have experience in the swaps industry, and are regarded in the market as being persons with integrity and competence.
- 2.2.2 In addition, tpSEF Rules provide that an individual may not serve as a director or an officer, hold a 10% or more ownership interest in tpSEF, or serve on a committee established by the Board, review panel, disciplinary panel, appeals panel or any other disciplinary or oversight panel of tpSEF and any subcommittee thereof if the individual:
 - 1) within the prior three (3) years has been found, by a final decision in any action or proceeding brought in a court of competent jurisdiction, the CFTC or any government agency, to have committed a disciplinary offense;

- 2) within the prior three (3) years has entered into a settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged, included a disciplinary offense;
- 3) is currently suspended from trading on a contract market, is suspended or expelled from membership in a self-regulatory organization, is serving any sentence or probation, or owes any portion of a fine or penalty related to either: (i) a finding of a disciplinary offense by a final decision in any action or proceeding brought in a court of competent jurisdiction, the CFTC or any government agency; or (ii) a settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense;
- 4) is currently subject to an agreement with the CFTC, any government agency or self-regulatory organization not to apply for registration with the CFTC or for membership in the self-regulatory organization;
- 5) is currently, or within the past three (3) years has been, subject to a revocation or suspension of registration by the CFTC;
- 6) has been convicted of a felony listed in Section 8a(2)(D)(ii) through (iv) of the CEA; or
- 7) is currently subject to a denial, suspension or disqualification from serving on a disciplinary committee, arbitration panel or governing board of any self-regulatory organization as that term is defined in Section 3(a)(26) of the CEA.

2.2.3 As discussed above, it is the responsibility of the CCO to resolve any conflicts of interest that may arise, including: (i) conflicts between business considerations and compliance requirements; (ii) conflicts between business considerations and the requirement that tpSEF provide fair, open and impartial access as set forth in the CFTC Regulations; and (iii) conflicts between tpSEF's management and members of the Board. In accordance with this requirement, the CCO shall keep the ROC apprised of conflicts of interest the CCO considers significant on an ongoing basis, and shall inform the ROC of those conflicts of interest the CCO considers less significant as part of the CCO's quarterly meetings with the ROC. In the event that the CCO or any other person becomes aware of any conflict of interest involving the CCO, tpSEF's procedures require such matter to be promptly brought to the attention of the ROC and/or CEO and resolved by the ROC and/or CEO without the involvement of the CCO.

2.2.4 All employees and officers of tpSEF are also subject to pre-employment screening which is conducted by the Human Resources Department of TPAHI and includes, inter alia, credit review (where permitted by law), verification of academic qualifications and employment history and a review of the information supplied in support of the individual's application (including references). In addition, senior management appointees are subject to further checks on their professional memberships, qualifications and directorships and, where appropriate, checks of any criminal records.

3. REGULATION OF PRODUCTS

3.1 Review and Approval of Products – The products traded on the exchange and any changes thereto are submitted to the Foreign Regulator, and are either approved by the Foreign Regulator or are subject to requirements established by the Foreign Regulator that must be met before implementation of a product or changes to a product.

3.1.1 The products traded on tpSEF and the related rules are subject to review by the CFTC. When listing a swap for trading, the CCO (or his/her designee) reviews the swap to determine that it is not readily susceptible to manipulation, paying special attention to the reference price used to determine the cash flow exchanges. Once a swap has been reviewed and approved by the CCO, tpSEF must submit the terms and conditions of the swap to the CFTC. To list a new swap for trading on tpSEF, tpSEF must either (i) voluntarily submit such swap for CFTC review and approval pursuant to the procedures specified in CFTC Regulation 40.3, or (ii) certify to the CFTC that such swap complies with applicable law pursuant to the procedures specified in CFTC Regulation 40.2. If a SEF determines that a listing will generally not be considered controversial or requiring special attention from the CFTC, the SEF will self-certify the rule. Any such submission is required to be filed electronically with the CFTC and tpSEF posts the notice of the submission on its website.

A voluntary submission is required to include, among other things, a concise explanation and analysis of the product and how it complies with applicable law and regulations, along with the documentation relied upon for such analysis or appropriate citations thereto and a description of any agreements or contracts entered into with other parties that enable tpSEF to carry out its responsibilities;

New swaps that are not voluntarily submitted for prior CFTC approval must be submitted to the CFTC with a certification that the swap complies with applicable law. tpSEF is required to file the submission electronically with the CFTC by the open of business on the business day preceding the product's listing and must post notice of the submission on its website. The submission is required to include, among other things, an explanation and analysis of the product and how it complies with applicable law and regulations, along with the documentation relied upon for such analysis or appropriate citations thereto.

3.1.2 In addition to the information required above, tpSEF is required to provide any additional evidence, information, or data requested by the CFTC that demonstrates that the swap meets applicable requirements.

3.1.3 The CCO (or his/her designee) reviews all submissions prepared for approval or certification and initial and date a copy of each submission to affirm that such submission meets the applicable requirements. The Market Regulation Department (“**MRD**”) is responsible for ensuring all required notices and website postings are made. The MRD is the department within tpSEF that regulates compliance with the tpSEF Rules and reports to the CCO.

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

3.2.1 The terms and conditions of each swap traded on a SEF must be submitted to the CFTC. With respect to swaps, these terms and conditions include, among other things, the type of swap, notional amounts, any applicable premiums or discounts for delivery of non-par products, trading hours and the listing of swaps, pricing basis for establishing the payment obligations under, and mark-to-market value of, the swap including, as applicable, the accrual start dates, termination or maturity dates, and, for each leg of the swap, the initial cash flow components, spreads, and points, and the relevant indexes, prices, rates, coupons, or other price reference measures, any price limits, trading halts, or circuit breaker provisions, and procedures for the establishment of daily settlement prices, and life cycle events. The terms and conditions for each swap made available to trade on tpSEF are available on tpSEF's website as an appendix to the tpSEF Rulebook.

3.2.2 The NFA also continually monitors the appropriateness of the terms and conditions, including, for example, the delivery, instrument, delivery locations, and the commodity characteristics and related differentials of any swap traded on tpSEF.

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

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

Participants and their clients and customers are required to comply with all CFTC requirements regarding position limits. If a tpSEF employee becomes aware of a position limit violation, the employee is required to report it to the MRD. In addition, the CCO establishes, in coordination with the COO and the MRD, for each of the swaps traded on tpSEF, as is necessary and appropriate, position limits or position accountability levels for any speculators. For any contract that is subject to a position limit established by the CFTC, the CCO shall set its position limitation at a level no higher than the CFTC limitation. Consistent with Core Principle 6 and CFTC Regulation 37.600, tpSEF's rules provide that to reduce the potential threat of market manipulation or congestion, tpSEF will adopt, for each of the contracts traded on tpSEF, as is necessary and appropriate, position limitations or position accountability levels for speculators. tpSEF has not to date adopted any such position limits or position accountability levels.

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

- 3.3.2 The ROC may impose controls to reduce the potential risk of market disruption, including but not limited to market restrictions that pause or halt trading in specified market conditions. The ROC monitors market conditions and considers whether it is appropriate to implement pre-trade limits on order size, price collars or bands around the current price of a contract, message throttles, daily price limits and intraday position limits related to financial risk to participants.

4. ACCESS

4.1 Fair Access –

- (a) The exchange has established appropriate written standards for access to its services including requirements to ensure:**
- i. participants are appropriately registered as applicable under Ontario securities laws, or exempted from these requirements;**
 - ii. the competence, integrity and authority of systems users; and**
 - iii. systems users are adequately supervised.**
- (b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.**
- (c) The exchange does not unreasonably prohibit, condition or limit access by a person or company to services offered by it.**
- (d) The exchange does not:**
- i. permit unreasonable discrimination among participants; or**
 - ii. impose any burden on competition that is not reasonably necessary and appropriate.**
- (e) The exchange keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access.**

- 4.1.1 In accordance with Core Principle 2, tpSEF provides any eligible contract participant (“**ECP**”), as defined in Section 1a(18) of the CEA, and any independent software vendor (“**ISV**”) with impartial access to its market(s) and market services.

tpSEF maintains (1) criteria governing such access that are impartial, transparent, and applied in a fair and non-discriminatory manner; (2) procedures whereby ECPs provide tpSEF with written or electronic confirmation of their status as ECPs prior to obtaining access; and (3) comparable fee structures for ECPs and ISVs receiving comparable access to, or services from, tpSEF.

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

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

4.1.5 As provided in Rule 3103, tpSEF may deny, condition or terminate participant status of any person (or any prospective participant): (1) if such person is unable to satisfactorily demonstrate its ability to satisfy the eligibility criteria to become or remain a participant; (2) if such person is unable to satisfactorily demonstrate its capacity to adhere to all applicable tpSEF Rules; (3) if such person would bring the tpSEF into disrepute as determined by the tpSEF in its sole discretion; or (4) for such other cause as the tpSEF may reasonably determine. If tpSEF decides to decline or condition an application for admission as a participant, or terminate a person's status as a participant, tpSEF shall promptly notify such person ("**Affected Person**") thereof in a writing sent to the address in the tpSEF application form or maintained in the tpSEF's records. Such Affected Person may, within seven (7) calendar days, request in writing to MRD that tpSEF reconsider its determination. Within 30 days of receiving the request for reconsideration, tpSEF shall either confirm, reverse or modify the denial, conditioning or termination of the Affected Person as a participant, and shall promptly notify the Affected Person accordingly in writing. Any denials, conditionings or terminations implemented by tpSEF are impartially enforced. Any denial, conditioning or termination that represents a suspension, expulsion, disciplinary or access denial action or other adverse action may also be subject to review by the CFTC pursuant to Part 9 of the CFTC's Regulations. tpSEF maintains records of the foregoing as required under CFTC Regulations. In addition, tpSEF may also terminate a participant's direct electronic connection to tpSEF at anytime as provided in Rule 4007, reject any order or take any other action to reduce the potential for market disruptions as provided in Rule 4008. tpSEF maintains records of any denial, approval, termination or any other disciplinary action taken against a participant or ISV.

4.1.6 Each participant or participant's client or customer (as applicable) must either be a clearing member of a Clearing Agency where the cleared swaps are cleared or have a clearing account with a clearing member with respect to such cleared swaps under agreements and arrangements satisfactory to tpSEF, and provide tpSEF with evidence of such relationship. As part of the tpSEF Terms of Use, participants are required to establish a clearing relationship. As provided in Rule 4017 of the tpSEF Rules, at the time of submitting an order for any cleared swap (including any cleared swap that is a leg of a package transaction) or any cleared block trade, a participant must designate a clearing member with regard to the transaction, which may be either the relevant party to the transaction if such party

is self-clearing or a designated clearing firm if the relevant party to the transaction is non-self-clearing. Prior to the execution of any order for a cleared swap¹ (including any cleared swap that is a leg of a package transaction²) or any cleared block trade for which the relevant party is non-self-clearing, tpSEF facilitates pre-execution credit screening by or on behalf of the designated clearing firm. Upon receiving confirmation that the order or cleared block trade³ satisfies the clearing firm's pre-execution limits with respect to such party, tpSEF will accept the order or cleared block trade for execution. If tpSEF does not promptly receive confirmation or receives confirmation that the order or cleared block trade does not satisfy the clearing firm's pre-execution limits with respect to such party, tpSEF will cancel the order or cleared block trade. Any party that is self-clearing with respect to a transaction is deemed to represent, by submitting an order for its proprietary account, that it has completed pre-execution screening of its internal clearing risk limits for proprietary accounts. Participants that only transact in uncleared swaps are not required to have a clearing relationship.

4.1.7 tpSEF provides direct access in Ontario to only those persons who are duly registered or licensed under Ontario laws or are exempt from or not subject to those requirements. Ontario participants are required to execute a certification representing and warranting to tpSEF that they are appropriately registered under applicable Ontario securities laws or are exempt from or not subject to those requirements. In addition, such participants are required to immediately notify tpSEF if their registration under Ontario securities laws has been revoked, suspended, or amended by the OSC or if they are no longer exempt from or become subject to those requirements. In such an event, tpSEF may, in its sole discretion, terminate, restrict or suspend their access to tpSEF.

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

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

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

³ A "cleared block trade" is a block trade in a cleared swap.

protocols or policies, and including both operational rules and the terms or conditions of products listed for trading.

5. REGULATION OF PARTICIPANTS ON THE EXCHANGE

5.1 Regulation – The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

5.1.1 As a self-regulatory organization, tpSEF has the jurisdiction to perform member and market regulation, including the ability to set rules, conduct compliance reviews and perform surveillance and enforcement as provided by Section 5h of the CEA, as enacted by section 733 of Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended (“**Dodd-Frank**”). Each clearing firm, participant, supervised person, sponsored participant, client and customer and any other person (i) initiating or executing a transaction on or subject to the rules of tpSEF directly or through an intermediary or (ii) for whose benefit such a transaction has been initiated or executed is subject to tpSEF’s jurisdiction and agrees to be bound by the tpSEF Rules.

5.1.2 The CCO and the MRD are responsible for the overall conduct of tpSEF. The MRD, in conjunction with the NFA, is responsible for monitoring compliance with tpSEF Rules. The MRD reports to the CCO. Among other things, the MRD, monitors the trading activity of participants on tpSEF, reviews participant applications, initiates and oversees investigations, and conduct participant reviews.

5.1.3 As discussed above, tpSEF has entered into a regulatory services agreement with the NFA to perform certain surveillance, investigative, and regulatory functions under the rules of tpSEF and tpSEF provides information to the regulatory services provider in connection with the performance of those functions. Compliance staff of tpSEF holds regular meetings with the NFA to discuss ongoing investigations, trading patterns, market participants and any other matters of regulatory concern. The NFA’s responsibilities are discussed in greater detail below.

5.1.4 tpSEF has implemented disciplinary procedures for violations of tpSEF rules. These procedures are discussed in greater detail in Section 7.

6. RULEMAKING

6.1 Purpose of Rules –

- a) The exchange has rules, policies and other similar instruments (Rules) that are designed to appropriately govern the operations and activities of participants and do not permit unreasonable discrimination among participants or impose any burden on competition that is not reasonably necessary or appropriate.**

b) The Rules are not contrary to the public interest and are designed to:

- i. ensure compliance with applicable legislation;**
- ii. prevent fraudulent and manipulative acts and practices;**
- iii. promote just and equitable principles of trade;**
- iv. foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange;**
- v. provide a framework for disciplinary and enforcement actions; and**
- vi. ensure a fair and orderly market.**

6.1.1 tpSEF maintains rules, policies and other similar instruments designed to: (1) ensure compliance with the rules of tpSEF; (2) prevent fraudulent and manipulative acts and practices; (3) promote just and equitable principles of trade; (4) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, the products traded on tpSEF; (5) provide for appropriate discipline; (6) ensure a fair and orderly market; (7) ensure that tpSEF business is conducted in a manner so as to afford protection to investors; and (8) provide for appropriate dispute procedures. The CCO is responsible for overseeing tpSEF participants' compliance with the rules. The MRD and NFA work with the CCO to discharge this responsibility and in doing so employ a variety of automated and manual surveillance processes to monitor participant compliance with tpSEF Rules.

6.1.2 tpSEF and its participants are required to comply with all provisions of the CEA and CFTC Regulations regarding the integrity of its markets. Each tpSEF participant has agreed in writing to comply with the tpSEF Rules. Section 4 of the tpSEF Rules obliges tpSEF participants to comply with CFTC Regulations that require participants to execute required transactions⁴ (other than those exempted by the CFTC from the order book requirement) through an order book. Separately, Section 8 of the tpSEF Rules require participants to keep and maintain records and provide certain reports and other information to tpSEF. Section 5 of the tpSEF Rules makes it a violation to engage in various practices that are prohibited by the CEA. Such violations include, among other things, front-running, wash trading, pre-arranged trading, fraudulent trading, money passes, fictitious transactions, non-competitive transactions (unless otherwise exempt or excluded pursuant to the tpSEF Rules), accommodation trading, or any other trading practices that tpSEF deems to be abusive.

⁴ Required transactions are any transactions involving a swap that is subject to the trade execution requirement in section 2(h)(8) of the CEA.

- 6.1.3 Section 5 of the tpSEF Rules prohibit a participant from engaging in any fraudulent act or engaging in any scheme to defraud, deceive, trick or mislead in connection with or related to any SEF activity.
- 6.1.4 tpSEF has extensive disciplinary procedures set forth in its tpSEF Rules as described in Section 7 of this Application with respect to disciplining or terminating participation for violation of its tpSEF Rules. The CFTC requires tpSEF to establish and enforce disciplinary procedures that authorize tpSEF to discipline, suspend or expel members or market participants that violate the tpSEF Rules, and Core Principle 2 requires that tpSEF monitor and enforce tpSEF Rules, including the terms and conditions of any swap to be traded and any limitations on access to tpSEF (as further described in Appendix B to Part 38 of the CFTC Regulations).
- 6.1.5 tpSEF, through the MRD, review panels and disciplinary panels conduct inquiries, investigations, disciplinary proceedings and appeals from disciplinary proceedings, summary impositions of fines, summary suspensions or other summary actions. In addition, the NFA and its staff may, in coordination with the MRD, conduct investigations and inquiries, prepare investigation reports and make recommendations to initiate disciplinary proceedings, prosecute alleged violations, and represent tpSEF on summary imposition of fines, summary suspension or other summary action. tpSEF, however, retains ultimate legal responsibility for, and control of, such functions. Any disciplinary action taken by the NFA against an Ontario Participant is done so on behalf of, and under the jurisdiction of tpSEF.
- 6.1.6 Any dispute between tpSEF and any person arising from or in connection with tpSEF Rules will be settled by the American Arbitration Association as provided in tpSEF Rule 6027(c).
- 6.1.7 The rules of tpSEF do not: (1) permit unreasonable discrimination among participants; or (2) impose any burden on competition that is not reasonably necessary or appropriate. tpSEF Rules apply equally to all tpSEF participants. Specific rules apply to ISVs, introducing brokers, sponsoring participants and other specific classes of person. In addition, Core Principle 11 requires that unless necessary or appropriate to achieve the purposes of the CEA, tpSEF is required to endeavor to avoid: adopting any rules or taking any actions that result in any unreasonable restraints of trade; or imposing any material anticompetitive burden on trading on the contract market.

7. DUE PROCESS

7.1 Due Process – For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:

- a) parties are given an opportunity to be heard or make representations; and**
- b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.¹⁷**

- 7.1.1 As described in 4.1.5 above, in the context of submitting an application to become a participant of tpSEF, tpSEF may deny or condition a prospective participant's application only upon certain circumstances, subject to the due process limitations described in 4.1.5 above.
- 7.1.2 Further, in any disciplinary action by tpSEF against a participant, the participant is given an opportunity to respond and, if necessary appeal the process. Under tpSEF Rules, tpSEF allows a potential respondent to propose a settlement of the matter or to submit a written statement explaining why a disciplinary proceeding should not be instituted or one or more of the potential charges should not be brought. In the event tpSEF elects to continue with a disciplinary proceeding against a participant, the participant is given an opportunity to answer a written notice of charges, participate in a hearing and/or enter into settlement discussions with tpSEF. Further, Rule 6015 permits a respondent to appeal a disciplinary decision.
- 7.1.3 tpSEF maintains records of any action taken against a participant including any rejection, approval, termination, or other disciplinary action.

8. CLEARING AND SETTLEMENT

8.1 Clearing Arrangements – The exchange has or requires its participants to have appropriate arrangements for the clearing and settlement of transactions for which clearing is mandatory through a clearing house.⁵

- 8.1.1 tpSEF has clearing relationships each Clearing Agency and all transactions executed on tpSEF are cleared through these Clearing Agencies to the extent such transactions are required to be cleared under the CEA or the parties elect to voluntarily clear them. tpSEF has submitted its agreements with the Clearing Agencies to the CFTC for review.
- 8.1.2 Each Clearing Agency is subject to regulation by the CFTC that addresses, among other things, risk and promotes transparency, fairness and investor protection.
- 8.1.3 The CFTC has the responsibility for oversight of each Clearing Agency. This oversight may include regular, periodic regulatory examinations of the Clearing Agencies. To implement the CEA, the CFTC has promulgated the Clearing Agency Core Principles that govern the conduct of all Clearing Agencies.
- 8.1.4 The CFTC has promulgated rules for Clearing Agencies that address, among other things, access. In particular Clearing Agencies must establish appropriate admission and continuing participation requirements for clearing members that are objective, publicly disclosed, and risk-based. The participation requirements must permit fair and open access and a Clearing Agency cannot adopt restrictive clearing member standards if less restrictive requirements that achieve the same objective and that would not materially increase risk to the Clearing Agency or clearing members could be adopted. In addition, Clearing Agencies must allow all market participants who satisfy participation requirements to become clearing

⁵ For the purposes of these criteria, "clearing house" also means a "clearing agency".

members and cannot exclude or limit clearing membership of certain types of market participants unless the Clearing Agency can demonstrate that the restriction is necessary to address credit risk or deficiencies in the participants' operational capabilities that would prevent them from fulfilling their obligations as clearing members. Further, Clearing Agencies cannot require clearing members to maintain a swap portfolio of any particular size, or that clearing members meet a swap transaction volume threshold. Further, one of the Clearing Agency Core Principles specifically relates to system safeguards and requires a Clearing Agency to demonstrate that it (i) has established and will maintain a program of oversight and risk analysis to ensure that its automated systems function properly and have adequate capacity and security; and (ii) has established and will maintain emergency procedures and a plan for disaster recovery, and will periodically test back-up facilities sufficient to ensure daily processing, clearing and settlement of transactions.

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

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

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

8.2 Risk Management of Clearing House – The exchange has assured itself that the clearing house has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

8.2.1 tpSEF has assured itself that the relevant Clearing Agencies have established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

- 8.2.2 As described above, tpSEF takes comfort that the CFTC subjects the risk management systems of a Clearing Agency, including policies and procedures, contingency plans, default procedures and internal controls, to the same degree of scrutiny and oversight to which the risk management systems of tpSEF is subject. Furthermore, Clearing Agency Core Principles requires that a Clearing Agency manage the risks associated with discharging the responsibilities of a Clearing Agency through the use of appropriate tools and procedures.

9. SYSTEMS AND TECHNOLOGY

- 9.1 **System and Technology – Each of the exchange’s critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business. Critical systems are those that support the following functions:**

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

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

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

- 9.1.3 The MRD and/or the NFA reviews trading records on a daily basis to identify unusual or prohibited activity (and document such reviews) including, without limitation: (1) transactions with an unusually long period of time before a correction or cancellation was reported to, for example, delay public dissemination or evade the requirements of Part 43 of the CFTC Regulations; (2) an unusual number of trade corrections or cancellations for a participant; (3) the movement of a trade between unrelated clients or from an error account or the movement of

a trade from one account to several; (4) trading in any account or group of accounts involving sizable positions in a single swap; and (5) unusual end-of-day trades or trading patterns.

- 9.1.4 The MRD and/or the NFA, also collect and evaluate data on individual traders' market activity on an ongoing basis, monitor and evaluate general market data to prevent activity that would cause prices to not reflect forces of supply and demand. The MRD and/or the NFA have the capacity to detect abnormal price movements, unusual trading volumes, impairments to market liquidity, and position-limit violations. In addition, the NFA continually monitors the appropriateness of the terms and conditions, including the delivery, instrument, delivery locations, location differentials, and the commodity characteristics and related differentials of any swap traded on tpSEF.
- 9.1.5 NFA's market surveillance program also includes monitoring price movements, primary/secondary relationships, volume and open interest, clearing member positions, market information and rumors. System alerts are generated for each trading metric based on preset parameters determined by NFA staff.
- 9.1.6 The MRD, or its designee, reviews all trades effected by participants through tpSEF on a real-time basis. The MRD reviews transactions for, among other things, abnormal transaction prices or quantities, duplicative or erroneous transactions, market or system malfunctions or outages and abnormal trading patterns. In conducting its review, to determine, among other things, whether a swap transaction should be modified or cancelled, the MRD considers a number of factors pertaining to the underlying instrument, overall market conditions, and the participants effecting the transaction(s). More specifically, the MRD consider, among other things, the liquidity of the instrument, the asset class, the relevant participant's trading history and any relevant market conditions or news.
- 9.1.7 tpSEF also has a voice audit trail surveillance program. This voice audit trail surveillance program utilizes both targeted and random reviews for voice trades in required transactions and permitted transactions. All participants engaging in required transactions and at least one transaction from each tpSEF execution specialist will be reviewed once per calendar year by the MRD.
- 9.1.8 The MRD and/or the NFA monitor the terms and conditions of physical delivery swaps as they relate to the underlying commodity market and the availability of the supply of the commodity specified by the delivery requirements of the swap. In addition, the MRD and/or the NFA monitor the pricing of the reference price used to determine cash flows or settlement for cash-settled swaps.
- 9.1.9 On a periodic basis, the MRD reviews a sample of confirmations for timeliness and completeness.
- 9.1.10 tpSEF ensures the financial integrity of all transactions conducted on its systems at all times. tpSEF requires participants to comply at all times with the access rules, clear transactions as required or otherwise demonstrate the financial integrity of transactions not required to be cleared, and comply with tpSEF's monitoring efforts. The MRD regularly monitors each participants' compliance with tpSEF's financial integrity requirements. Participants must also comply with

all required information requests from tpSEF, including requests for required financial information.

- 9.1.11 The tpSEF Rules impose appropriate sanctions for breaches of any of the applicable trading rule and procedures.
- 9.1.12 tpSEF provides guidance and certain instruction manuals relating to the operation of tpSEF and operates a help desk to support customers.
- 9.1.13 tpSEF maintains a business continuity-disaster recovery (“BC-DR”) plan, resources, and emergency procedures that enable timely recovery and resumption of its operations and obligations as a SEF in the event of a disaster or emergency. Such operations include, without limitation, order processing and trade matching; transmission of matched orders to a designated clearing organization for clearing, where appropriate; price reporting; market surveillance; and maintenance of a comprehensive audit trail. The BC-DR plan will generally enable resumption of trading and clearing of swaps executed on the swap execution facility during the next business day following the disruption. tpSEF maintains an infrastructure and personnel resources of its own that are sufficient to ensure timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its responsibilities and obligations as a SEF following any disruption of its operations. It may, however, be necessary to use alternative communication systems, transfer personnel or business activities to alternative office space, or transfer tpSEF’s business to other financial institutions until normal operations can be resumed.
- 9.1.14 tpSEF conducts regular, periodic, objective testing and review of its BC-DR capabilities as outlined in the BC-DR plan. The testing and review verifies that the backup resources of tpSEF are sufficient to ensure continued: (i) order processing and trade matching; (ii) price reporting; (iii) market surveillance; and (iv) maintenance of a comprehensive and accurate audit trail. In addition, tpSEF regularly reviews its automated systems to ensure that they are reliable, secure, and have adequate scalable capacity. tpSEF shall keep records of all such tests, and make all test results available to the Commission upon request.
- 9.1.15 The Board is responsible for determining if an emergency exists by a majority vote.⁶ If the Board determines that an emergency exists, the Board shall

⁶ “Emergency” means any occurrence or circumstance that, in the opinion of the SEF, requires immediate action and threatens, or may threaten, the fair and orderly trading in, or the clearance, settlement or integrity of, any swap, including, without limitation, the following: (1) any circumstance that may materially affect the performance of the parties to a swap, including failure of a DCO; (2) any action taken by (i) any United States or foreign regulatory, self-regulatory, judicial, arbitral or governmental (whether national, state or municipal) or quasigovernmental authority, or any agency, department, instrumentality or subdivision thereof; (ii) other Person exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or (iii) any other swap execution facility, DCO, DCM, board of trade or other exchange or trade association (foreign or domestic) that may have a direct impact on trading on the SEF or the clearing and settlement of, or the legality or enforceability of, any swap; (3) any actual, attempted or threatened corner, squeeze, congestion, manipulative activity or undue concentration of positions in a swap or any related asset; (4) any circumstance that may have a severe, adverse impact upon the functions and facilities of the SEF, including, but not limited to, acts of God, fire, flood or other natural disasters, bomb threats, acts of terrorism or war, severely inclement weather or failure or malfunction of all or a portion of the SEF, or other system breakdowns or interruptions such as power, computer, communication or transportation systems or the Internet; (5) the imposition of any injunction or other restraint by any government agency, court or arbitrator upon a DCO which may affect the ability of a DCO to perform on a swap; (6) any circumstance in which it appears to the Board that a DCO or any other Person: (i) has failed to perform on a swap; (ii) is insolvent; or (iii) is in a financial or operational condition or is conducting

immediately notify the MRD following such an affirmative vote. During an emergency, the Board, CEO or most senior officer present may implement temporary emergency procedures and rules (“**Emergency Rules**”), subject to the applicable provisions of the CEA and CFTC Regulations. Emergency Rules may require or authorize tpSEF, the Board, any committee of the Board, the CEO, or any other officer to take emergency action necessary or appropriate to respond to the emergency. If applicable, tpSEF may also provide for the carrying out of Emergency Actions through its agreement with the NFA.

9.1.16 Before any Emergency Rule may be adopted and enforced, a required vote of the Board must approve the enforcement of such Emergency Rule at a duly convened meeting. Directors may attend such a meeting by teleconference. If the CEO or most senior officer present determines that Emergency Rules must be implemented with respect to an emergency before a meeting of the Board can reasonably be convened, then the CEO or such officer shall have the authority, without Board action, to implement any Emergency Rules with respect to such emergency that he or she deems necessary or appropriate to respond to such emergency. In such circumstances, the CEO must convene a meeting as soon as practicable.

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

9.2 System Capability/Scalability – Without limiting the generality of section 9.1, for each of its systems supporting order entry, order routing, execution, data feeds, trade reporting and trade comparison, the exchange:

a) makes reasonable current and future capacity estimates;

business such that the DCO or Person cannot be permitted to continue in business without jeopardizing the safety of Participants, the SEF, any DCO or any other Person; (7) any other circumstance that would constitute an “emergency” within the meaning of CFTC Regulation 40.1(h); or (8) any other unusual, unforeseeable or adverse circumstance that may have an effect similar to any of the foregoing as determined by the SEF.

- b) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;**
- c) reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;**
- d) ensures that safeguards that protect a system against unauthorized access, and ongoing audit which should include the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans;**
- e) ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;**
- f) maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and**
- g) maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.**

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

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

9.2.3 As discussed above, tpSEF has established and maintains emergency procedures, backup facilities and a plan for disaster recovery. The CFTC may review tpSEF's systems to ensure adequate back-up systems are available in the event that the primary system fails. tpSEF leases physical space which houses a managed data centre at a recovery facility owned by a major disaster recovery services provider. At this site, tpSEF owns and maintains back-up servers to support its business applications and user desk top services and networking gear to maintain its internal and external network. In addition to the data centre, tpSEF also maintains at this location a back-up trading location to be used in the event of a disruption at the primary site.

9.2.4 tpSEF periodically reviews its systems to identify potential points of failure, lack of back-up, and redundant capabilities. In this regard, tpSEF maintains procedures reasonably designed to periodically review and keep current the development and testing methodology of those systems.

9.3 Information Technology Risk Management Procedures – The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and respond to market disruptions and disorderly trading.

9.3.1 As discussed in response to 9.2 above, tpSEF has procedures and/or rules in place that: handle trading errors, trading halts and circuit breakers; ensure the competence, integrity and authority of system users; and ensure that the system users are adequately supervised. Also, see Section 9.1.17 for a discussion of how tpSEF provides adequate levels of capacity, resiliency and security.

9.3.2 tpSEF conducts periodic reviews of its systems and prepares a written report of such reviews that includes the following: (1) the name of the person who conducted the inspection and prepared the report; (2) the date of the review; (3) the areas reviewed; (4) an explanation of why areas were not included; (5) observations and exceptions regarding compliance with policies and procedures; and (6) the CCO's response regarding exceptions and corrective action.

9.3.3 A transaction made or purported to be made on or pursuant to the rules of tpSEF may be declared invalid by tpSEF if, taking into consideration current market conditions, tpSEF determines that a transaction has taken place at an unrepresentative price or is a breach of applicable law. tpSEF may take into account such information as it deems appropriate when determining whether to invalidate a transaction, including, without limitation, manifest error. When a transaction is declared invalid, the parties to the transaction will be notified by tpSEF of that fact and a message will be broadcast through tpSEF announcing the swap contract and price level of the invalid transaction, and the invalid transaction may be displayed on tpSEF as a cancelled transaction.

9.3.4 In addition to the powers described in 9.3.4, tpSEF has the authority to cancel, or adjust the price of, any transaction executed on or pursuant to tpSEF Rules, or to execute or require the execution of a new or offsetting transaction: (1) when tpSEF determines in its sole discretion such action is necessary to mitigate market disrupting events caused by the improper or erroneous use of tpSEF or by system defects; (2) at any time tpSEF determines in its sole discretion that allowing a transaction to stand as executed may have a material adverse effect on the integrity of the market; or (3) certain other circumstances, including those described below in 9.3.6 and 9.3.7.

9.3.5 tpSEF may determine to review a transaction's price based on its independent analysis of market activity or upon a participant's request. Any request from a participant must be made within ten (10) minutes of execution the relevant transaction and must include, among other things, a statement of the grounds for the review. In the absence of a timely request for review, tpSEF may determine whether or not a transaction will be subject to review in its sole discretion. In either event, tpSEF may amend the terms of, or cancel, any transaction that the parties, together with the Clearing Agency, as applicable, mutually agree to amend or

cancel, in the event that such amendment or cancellation is not submitted to tpSEF within the applicable review period specified above.

9.3.6 In addition to the foregoing, if a participant, client or customer believes that any transaction was incorrectly executed, cleared or rejected from clearing as a result of an error⁷, such person may, within ten (10) minutes thereafter, request a review of the transaction by, among other things, stating the grounds for the disagreement. Upon timely receipt by tpSEF of a request for a transaction review, or if tpSEF determines on its own initiative to conduct such a review, tpSEF will review its electronic audit trail and other relevant records to determine if an error occurred. If the request for review is not timely, tpSEF may, in its sole discretion, perform a review of the transaction. If transaction was incorrectly executed, cleared or rejected from clearing as a result of an error, tpSEF may cancel or adjust the transaction, or execute or require the execution of a new or offsetting transaction, as appropriate; provided, however, that tpSEF shall not take any action if such action would, in tpSEF's sole discretion, (i) adversely impact market integrity, (ii) facilitate market manipulation or other illegitimate activity or (iii) otherwise violate the CEA, CFTC Regulations or tpSEF Rules.

9.3.7 The ROC may also impose controls to reduce the potential risk of market disruption, including but not limited to market restrictions that pause or halt trading in specified market conditions. The ROC will monitor market conditions and will consider whether it is appropriate to implement pre-trade limits on order size, price collars or bands around the current price of a contract, message throttles, daily price limits and intraday position limits related to financial risk to participants. The CEO and/or COO may also design other types of risk controls, as well as clear error-trade and order cancellation policies.

10. FINANCIAL VIABILITY

10.1 Financial Viability – The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

10.1.1 tpSEF has sufficient financial resources for the proper performance of its functions. tpSEF must have adequate financial, operational, and managerial resources to discharge each of its responsibilities. If the CFTC determines that tpSEF has insufficient financial resources to ensure the financial integrity of its marketplace, it will not approve its application.

10.1.2 The CEA requires a SEF to demonstrate that it has adequate financial resources to discharge its responsibilities. The financial resources allocated by tpSEF must include unencumbered, liquid financial assets (*i.e.*, cash and/or highly liquid securities) equal to at least six months' operating costs. If any portion of such financial resources is not sufficiently liquid, tpSEF may take into account a committed line of credit or similar facility for the purpose of meeting this

⁷ An "error" is the occurrence of any of the following: (1) a mistake made as the result of a malfunction of tpSEF or human error, including a mistake made by an execution specialist; (2) an order was incorrectly displayed and/or executed; (3) a clerical or operational error or omission made by tpSEF or a participant, sponsored participant, client or customer (or any agent of any of the foregoing) that caused a transaction to be rejected from clearing and void ab initio; or (4) a clearing firm or DCO rejected a leg of a package transaction for clearing because of the sequencing of submission for clearing of the legs of the applicable package transaction.

requirement. tpSEF's financial resources will be considered adequate if the value of the financial resources exceeds the total amount that would enable tpSEF to cover its operating costs for a one-year period, as calculated on a rolling basis.

11. TRADING PRACTICES

11.1 Trading Practices – Trading practices are fair, properly supervised and not contrary to the public interest.

11.1.1 Core Principle No. 2 requires tpSEF to implement measures to prevent the use of its facilities for abusive or improper purposes. Section 3 of tpSEF Rules detail the duties of participants regarding on-boarding, information provided to tpSEF and duty to keep such information current, procedures for withdrawing from tpSEF, designating authorized traders, communicating with tpSEF, informing tpSEF of material changes, and business conduct requirements. Section 5 of the tpSEF Rules sets out certain specified conduct violations of the tpSEF Rules. tpSEF Rules incorporate CFTC regulatory requirements, including but not limited to conflict of interest provisions, and various record keeping rules. Section 6 of the tpSEF Rules outlines the procedures for investigating rule violations and taking disciplinary action. tpSEF Rules and procedures for monitoring and overseeing the use of tpSEF's facilities include appropriate measures to prevent the use of its facilities for abusive or improper purposes. In addition, tpSEF has entered into a third party regulatory services agreement with the NFA. Under that Agreement, the NFA provides tpSEF with market surveillance and trade practice surveillance.

11.1.2 The MRD and/or the NFA, collect and evaluate data on individual traders' market activity on an ongoing basis, monitor and evaluate general market data to prevent activity that would cause prices to not reflect forces of supply and demand, and have the capacity to conduct real-time monitoring of trading and comprehensive and accurate trade reconstitution. The MRD and/or the NFA have the capacity to detect abnormal price movements, unusual trading volumes, impairments to market liquidity, and position-limit violations. In addition, the NFA continually monitors the appropriateness of the terms and conditions, including, among other things, the delivery, instrument, delivery locations, and the commodity characteristics and related differentials of any swap traded on tpSEF.

11.1.3 NFA's market surveillance program includes monitoring price movements, primary/secondary relationships, volume and open interest, clearing member positions, market information and rumors. In addition, information is gathered from a variety of other sources to perform market surveillance. System alerts are generated for each trading metric based on preset parameters determined by NFA staff. NFA's surveillance systems are designed with the following goals:

1. Quickly identify unusual trading behavior for any trading instrument;
2. Review prior trade and order data to identify patterns of activity;
3. Accurately analyze trade data and market news to determine if investigation is needed;
4. Easily collect, document and manage facts relating to suspicious activity;

5. Effectively support appropriate enforcement action; and
6. Minimally interfere with market activity.

The NFA Trade Practice and Market Surveillance reviews include:

1. Fraudulent Trading;
2. Wash Trading;
3. Pre-Arranged Trading;
4. Cross Trades;
5. Front Running;
6. Accommodation Transactions;
7. Audit Trail Requirements;
8. Messaging and Transaction Activity; and
9. Position Limit Monitoring.

- 11.1.4 If surveillance problems are noted, an investigation will be commenced by the NFA and the appropriate tpSEF personnel will be notified.
- 11.1.5 The MRD, or its designee, conducts real-time monitoring of tpSEF transactions and will immediately report any abnormalities to the CCO. NFA, as Regulatory Services Provider, will have real-time view-only access to tpSEF's transactions to provide a second set of eyes if alerted to an abnormality by a tpSEF Employee.
- 11.1.6 The MRD, or its designee, will review all trades effected by participants through tpSEF on a real-time basis. The MRD reviews transactions for, among other things, abnormal transaction prices or quantities, duplicative or erroneous transactions, market or system malfunctions or outages and abnormal trading patterns. In conducting its review, to determine, among other things, whether a swap transaction should be modified or cancelled, the MRD considers a number of factors pertaining to the underlying instrument, overall market conditions, and the participants effecting the transaction(s). More specifically, the MRD will consider, among other things, the liquidity of the instrument, the asset class, the relevant participant's trading history and any relevant market conditions or news.
- 11.1.7 The MRD, or its designee, informs the CCO of any issues identified in its review. The CCO evaluates any issues and, if necessary, take any and all appropriate action that may include, among other things, restricting or limiting a participant's access, cancelling a transaction, adjusting trade prices, suspending trading, and/or initiating Emergency Proceedings.
- 11.1.8 tpSEF has also implemented a voice audit trail surveillance program. This voice audit trail surveillance program will utilize both targeted and random reviews for voice trades in required transactions and permitted transactions. All participants

engaging in required transactions and at least one transaction from each tpSEF execution specialist will be reviewed once per calendar year.

- 11.1.9 tpSEF verifies the accuracy of the transaction data that it collects and reports to the swap data repositories (“**SDRs**”). tpSEF has contractual arrangements with the following swap data repositories: DTCC Data Repository (U.S.) LLC, CME Swap Data Repository and ICE TradeVault. Such information is generally provided to the SDRs through a middleware provider who has entered into an agreement with tpSEF to provide such information (e.g., MarketWire). The CCO is responsible, through the annual compliance reviews and reports, for verifying the transaction data is accurate. To verify the accuracy of the data, the MRD will regularly review randomized samples of transaction data.

11.2 Rules pertaining to order size and limits are fair and equitable to all market participants and the system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent.

- 11.2.1 Once an order is entered into the order book, the order is displayed simultaneously to all participants that have established direct connectivity to tpSEF. All orders will be displayed on an anonymous basis and the order book will show, in real-time, the best price and the depth per product. For Participants that have direct connectivity to tpSEF, the order book displays all executions to all participants, and for each individual participant, its order and execution history for the trading day. Information regarding orders on the order book will be provided upon request to any participant by an execution specialist via telephone and/or via electronic modes of communication such as email and instant message.

- 11.2.2 tpSEF has set order limits by product and by instrument within a particular asset class that will pertain to all participants. The following types of order limits have been imposed: (i) order size limit: this is the maximum size allowed for any single order. Any order submitted will be checked against the product/asset class’s order size limit, and if the order exceeds this limit, such order will be rejected and the participant will be notified; and (ii) order price limits: This is the maximum price differential allowed for any order. Any order submitted will be checked against the product/asset class’s order price limit and if the order exceeds this limit, it will be rejected and the participant will be notified. The price differential is calculated as follows: (order price entered) - (instrument reference price) = price differential.⁸ The order size and price limits are in place to prevent order entry errors and are based on industry practice. These limits apply equally to all participants and orders entered on the trading system.

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

⁸ The “Instrument Reference Price” is an estimated current price for the relevant swap, based on either current trading data for that instrument on the SEF and elsewhere, or, in the absence of current trading data for the relevant swap, implied from current trading data for other instruments.

11.3 Transparency – The exchange has adequate arrangements to record and publish accurate and timely information as required by applicable law or the Foreign Regulator. This information is also provided to all participants on an equitable basis.

11.3.1 tpSEF Rules and CFTC Regulations require tpSEF to record and publish accurate and timely trade and quotation information. This information is provided to all participants on an equitable basis. tpSEF also provides a daily activity summary on its website at http://www.tullettprebon.com/swap_execution_facility/daily_activity_summary.aspx.

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

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

12. COMPLIANCE, SURVEILLANCE AND ENFORCEMENT

12.1 Jurisdiction – The exchange or the Foreign Regulator has the jurisdiction to perform member and market regulation, including the ability to set rules, conduct compliance reviews and perform surveillance and enforcement.

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

12.2 Member and Market Regulation – The exchange or the Foreign Regulator maintains appropriate systems, resources and procedures for evaluating compliance with exchange and legislative requirements and for disciplining participants.

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

suggesting the need for increased Resources. For additional information regarding tpSEF's procedures for complying with applicable regulatory requirements and for disciplining participants please see Sections 4, 7, and 11 of this Application.

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

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

13. RECORD KEEPING

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

13.1.1 tpSEF maintains adequate provisions for keeping books and records, including operations of the exchange, audit trail information on all trades and compliance and/or violations of tpSEF requirements and securities legislation. tpSEF's records are required to be maintained in accordance with CFTC Regulations. In general, tpSEF must: (1) maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the CFTC for a period of five years (or for records of any swap, for a period of five years following the final termination of the transaction); (2) report to the CFTC, in a form and manner acceptable to the CFTC, such information as the CFTC determines to be necessary or appropriate for the CFTC to perform the duties of the CFTC; and (3) keep any such records relating to swaps defined in section 1a(47)(A)(v) of the CEA open to inspection and examination by the Securities and Exchange Commission.

13.1.2 tpSEF has also established and maintains accurate, time-sequenced records of all orders, requests for quotations, responses, quotations, other trading interest, and transactions that are received by, originated on, or executed on tpSEF. These records include the key terms of each order, request for quotation, response, quotation, other trading interest, or transaction and shall document the complete life of each order, request for quotation, response, quotation, other trading interest, or transaction on tpSEF, including any modification, cancellation, execution, or any other action taken with respect to such order, request for quotation, response, quotation, other trading interest, or transaction. These audit trail records are maintained for a period of five years or for five years following the final termination of the swap (if applicable).

13.1.3 tpSEF also requires participants, customers and clients to prepare and keep all books, ledgers and other records relating to its activity on tpSEF. Such books and records must include, without limitation, records of such person's trading. Each

such person shall make such books and records available, upon request, to tpSEF, tpSEF's regulatory services provider, the CFTC or the United States Department of Justice and as otherwise required by applicable law.

14. OUTSOURCING

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

14.1.1 CFTC Regulations permit swap execution facilities to contract with a registered futures association or another registered entity for the provision of services to assist in complying with the CEA and CFTC Regulations provided such agreement has been approved by the Commission. Like other SEFs, tpSEF has entered into a regulatory services agreement with the NFA, a registered futures association, to perform certain surveillance, investigative, and regulatory functions under the rules of tpSEF. tpSEF retains ultimate decision-making authority with respect to any functions that are contracted to the NFA and shall remain responsible for the performance of any services under the services agreement. As part of its application to the CFTC, tpSEF has submitted the relevant agreement and procedures related to its arrangement with the NFA to the CFTC for review and approval.

14.1.2 tpSEF also utilizes third party vendors for issuance of confirmations and for clearing connectivity.

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

15. FEES

15.1 (a) All fees imposed by the exchange are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by participants to the services offered by the exchange.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

15.1.1 tpSEF charges comparable fees for market participants receiving comparable access to, or services from, tpSEF. Any and all fees imposed by tpSEF on its participants are equitably allocated, do not have the effect of creating barriers to access and are balanced with the criterion that tpSEF has sufficient revenues to satisfy its responsibilities. In addition, tpSEF's fee schedule must be submitted to the CFTC for review.

- 15.1.2 tpSEF charges participants a processing fee (“**Processing Fee**”) and a transaction fee (“**Transaction Fee**”) for each transaction executed on tpSEF. The Processing Fee covers various expenses incurred by tpSEF in the processing of transactions and the operation of its trading platform, including expenses associated with trade surveillance, clearance and third party vendors who provide services to tpSEF related to the processing of participant transactions. The Transaction Fee varies depending on the underlying product and the method by which the order is communicated to tpSEF. In establishing the amount of these fees, tpSEF considers the fees charged by other trading venues and platforms and by its affiliated interdealer broker, as well as the costs associated with the provision of services. For transactions that are communicated to tpSEF electronically, a lower Transaction Fee is typically charged than with respect to those transactions transmitted that require intermediation by a tpSEF execution specialist which transactions involve a voice component. Voice transactions typically require more tpSEF involvement and, as a result, are more costly for tpSEF to process. The transaction fees are reflected on the tpSEF fee schedule. Prospective participants and Participants may request a fee schedule at any time.

16. INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS

- 16.1 Information Sharing and Regulatory Cooperation – The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.**

- 16.2 Oversight Arrangements – Satisfactory information sharing and oversight agreements exist between the Commission and the Foreign Regulator.**

- 16.2.1 tpSEF is required to share information with the CFTC as required under applicable law. In addition, when instructed by the CFTC, or as otherwise necessary or appropriate to fulfill its self-regulatory and reporting responsibilities, the MRD is responsible for sharing non-privileged information regarding tpSEF with other regulatory organizations including the OSC, data repositories, and reporting services as required by the CFTC.

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

- 16.2.3 CFTC Core Principle 5 requires tpSEF have the capacity to carry out such international information-sharing agreements as the CFTC may require. Further,

tpSEF Rule 5500 authorizes tpSEF to disclose information to the regulatory authority of any foreign jurisdiction if tpSEF considers such information sharing arrangement to be in furtherance of tpSEF's purpose or duties under tpSEF rules or any law or regulation. The CFTC entered into a Memorandum of Understanding with the Commission on March 25, 2014. Under this MOU, the CFTC and the Commission express their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates regarding derivatives and/or securities markets particularly in the areas of: protecting investors and customers; fostering the integrity of and maintaining confidence in financial markets; and reducing systemic risk.

17. IOSCO PRINCIPLES

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

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

Part III – Submissions

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

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

The Applicant seeks the Requested Relief for the following reasons:

Exemption from Recognition as an Exchange

1. Because tpSEF has participants located in Ontario and regulates the conduct of its participants, it is considered by the OSC to be an exchange under Ontario securities laws and is prohibited from carrying on business in Ontario unless it is recognized or exempt from recognition under section 21 of the Act.
2. The Applicant is not currently recognized by the OSC as an exchange under the Act. The Commission has, however, exempted tpSEF on an interim basis from the requirement to be recognized as an exchange subject to the terms and conditions of the Interim Order and the Variation to Order.

3. We submit that the Requested Relief from the requirements to be recognized as an exchange under the Act is appropriate because the Applicant is regulated as a SEF in its home jurisdiction by the CFTC and is subject to the requirements of the CEA and the rules and regulations of the CFTC. OSC Staff acknowledge in OSC Staff Notice 21-702 *Regulatory Approach for Foreign-Based Stock Exchanges* that, in the case of foreign-based exchanges, “[f]ull regulation, similar to that applied to domestic exchanges, may be duplicative and inefficient when imposed in addition to the regulation of the home or another jurisdiction.” If the OSC were to recognize the Applicant as an exchange under the Act, this type of duplication and inefficiency would likely occur as the OSC would be required to oversee tpSEF to the same extent as it oversees domestic exchanges in Ontario. CFTC oversight of tpSEF as well as the sophisticated information systems, regulations and compliance functions that have been adopted by tpSEF will ensure that Ontario Users of tpSEF are adequately protected in accordance with the CEA and CFTC Regulations. We therefore submit that it would be in the public interest to grant the Requested Relief from the requirements to be recognized under the Act.

Other Matters

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

Thank you for your assistance with this matter.

Sincerely,

Gowling WLG (Canada) LLP



Bryce A. Kraeker

BAK:jv

Encl.

cc: Brian Donnelly, tpSEF Inc.
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