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New York, NY 10038

March 28, 2016

Ontario Securities Commission  
20 Queen Street West, 22<sup>nd</sup> Floor  
Toronto, ON  
Canada M5H 3S8  
Attn: Secretary

**Re: BGC Derivatives Markets, L.P. Application for Exemption from Recognition as an Exchange**

I am writing on behalf of BGC Derivatives Markets, L.P. ("BGCDM") to request an order pursuant to section 147 of the Securities Act (Ontario) exempting BGCDM from the requirement to be recognized as an exchange under subsection 21(1) of the Act. As such, we respectfully submit the following information to the Ontario Securities Commission (the "OSC"):

For your convenience, this application will consist of a background and an application of approval criteria for exemption from registration:

**BACKGROUND**

BGCDM is a subsidiary of BGC Partners, Inc. ("BGC"), a global brokerage company servicing the wholesale financial and real estate markets. BGCDM was incorporated on November 21, 2011 in the state of Delaware and operates out of 199 Water Street, New York, NY 10038, BGC's main office. BGCDM received permanent registration from the U.S. Commodity Futures Trading Commission ("CFTC") to operate a Swap Execution Facility ("SEF") on January 22, 2016. BGCDM had commenced operations with temporary registration on October 2, 2013. BGCDM provides swap market participants with flexible, tailored approaches to electronic execution and clearing of derivatives trades. BGCDM's technology infrastructure includes fully-compliant execution methodologies such as anonymous Central Limit Order Book ("CLOB"), name disclosed Request for Quote ("RFQ") system, Intra-day Electronic Auctions, Indications of Interest, and Voice Managed Orders for Blocks and Non-Blocks. Market participants will be able to utilize BGCDM's platform to segregate US entity/non-US entity transactions on both a graphical user interface ("GUI") and application programming interface ("API") via instrument choice and contra-counterparty filtering. BGCDM offers market participants access to the following asset classes: Commodity, Currency, Equity, Foreign Exchange and Interest Rate as defined by the BGCDM contract specifications located on the BGCDM website at [www.bgcsef.com](http://www.bgcsef.com).

BGCDM makes the following representations to the OSC:

- In the United States, BGCDM operates under the jurisdiction of the CFTC and has obtained permanent registration with the CFTC to operate a Swap Execution Facility;
- BGCDM 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;
- Because BGCDM regulates the conduct of its participants, it is considered by the OSC to be an exchange;
- Because BGCDM has participants located in Ontario, it is considered by the OSC 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;
- BGCDM has no physical presence in Ontario and does not otherwise carry on business in Ontario except as described in the application;
- BGCDM will not provide access to an Ontario User trading in products other than swaps, as defined in section 1a of the United States Commodity Exchange Act (“CEA”), without prior OSC approval; and
- BGCDM submits that it does not pose a significant risk to the Ontario capital markets and is subject to an appropriate regulatory and oversight regime in a foreign jurisdiction.

In addition to the aforementioned description and representations, BGCDM formally submits the following request to the OSC:

- The BGCDM received an interim exemption on October 1, 2013 and now requests that the OSC grant a full exemption from section 21 of the Act;
- The BGCDM finds that granting this exemption is not prejudicial to the public interest; and
- The BGCDM acknowledges that this application will be published as a public document.

For more information on the structure, Officers, and Board members of BGCDM, please refer to documents posted by BGCDM on the CFTC web portal at the following link:

<http://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=SwapExecutionFacilitiesAD&Key=26202>

## **APPLICATION:**

### **APPLICATION OF EXEMPTION CRITERIA**

#### **PART 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 BGC Derivatives Markets, L.P. (“BGCDM”) is a registered Swap Execution Facility (“SEF”) within the meaning of that term finalized under the CEA. BGCDM is subject to regulatory supervision by the CFTC, a U.S. federal regulatory agency. BGCDM is obligated under the CEA to give the CFTC access to all records unless prohibited by law or if such records are subject to solicitor-client privilege. The CFTC reviews, assesses and enforces BGCDM’s adherence to the CEA and the regulations thereunder on an on-going basis, including the SEF core principles (“SEF Core Principles”) relating to the operation and oversight of BGCDM’s markets, including financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection.

1.1.2 The CFTC carries out the regulation of the futures markets in accordance with the provisions of the CEA and the U.S. Commodity Futures Modernization Act of 2000 (“CFMA”). The CFTC is subject to reauthorization by the U.S. Congress every five years.

1.1.3 BGCDM is regulated as a SEF by the CFTC, which results in BGCDM being subject to extensive regulation by the CFTC under its principles-based approach and requires BGCDM to satisfy the requirements of the SEF Core Principles relating to BGCDM’s activities as a SEF.

##### **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 is 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. To implement the CEA, the CFTC has promulgated regulations and guidelines (“CFTC Regulations”) that further interpret the SEF Core Principles (described below) and govern the conduct of the U.S. The CFTC monitors trading on the SEF and receives daily transaction and other reports from the SEF. The CFTC also undertakes periodic in-depth audits or “rule reviews” of the SEF’s compliance with certain statutory core principles.

- 1.2.2 The CEA, CFTC Regulations, CFMA and particularly BGCDM's Core Principles reflect standards set by the International Organization of Securities Commissions ("IOSCO"), such as "Objective and Principles of Securities Regulation" (1998 and 2002) and "Report on Co-operation between Market Authorities and Default Procedures" as well as the "Standards for Regulated Markets" published by the Forum of European Securities Commissions in December 1999.
- 1.2.3 BGCDM is obligated by the CEA to give the CFTC access to all records unless prohibited by law or if such records are subject to solicitor-client privilege. The CFTC reviews and assesses BGCDM's adherence to the CEA and the regulations thereunder on an on-going basis, including the SEF Core Principles relating to financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection. The CFTC's Division of Market Oversight, Market Compliance Section conducts regular in-depth reviews of each SEF's on-going compliance function with CFTC regulations in order to enforce their rules, prevent market manipulation and customer and market abuses, and to ensure the recording and safe storage of trade information.

## **PART 2 GOVERNANCE**

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

#### **(a) effective oversight of the exchange,**

- 2.1.1 BGCDM is subject to the oversight of the Board of Directors. The Board of Directors shall have all the powers and authority permitted by law, BGCDM Rules and its formation Partnership Agreement. The Board of Directors shall be appointed by the general partner of BGCDM. The Board is selected with the goal of ensuring that BGCDM achieves the highest level of operational success while fully complying with its statutory, regulatory, and self-regulatory obligations under the CEA and CFTC Regulations. The Board appoints a Regulatory Oversight Committee ("ROC") and a Disciplinary Committee ("DC"), both sub-Committees comprised of Board Members to handle risk management and the regulatory surveillance program for BGCDM. The Board consists of 5 members, with one member being an independent Public Director.

Director Requirements are as follows:

- **Prospective Director Must Have Sufficient Industry Expertise**

In addition to possessing a strong reputation and the capacity to exercise sound judgment, a prospective Director must have sufficient relevant industry experience. Particularly initially, the Board requires deep experience with swaps trading facilities and swap trading services, in order to effectively guide and support the creation and operation of the

regulated entity. In general, relevant experience includes positions at another trading facility, such as a designated contract market or derivatives clearing organization, or in financial services, risk management, or clearing services. Also relevant is experience in operations, compliance, legal, trading, position limits, transactions, recordkeeping and reporting, and financial resources, as well as experience in executive roles.

- **Prospective Director Must be in Good Standing**

Each prospective Director is required to certify that he or she is not subject to statutory disqualification, which would disqualify the prospective Director from serving as a Director of BGCDM. An annual questionnaire addresses whether the prospective Director is statutorily disqualified from registering with the CFTC under Section 8a(2) of the Act due to, among other things, suspension or revocation of registration, certain court orders prohibiting action in the capacity of a registrant under the Act, certain felony convictions, or findings of violation of the Act or certain other Federal statutes. BGCDM will also disqualify a prospective Director if the person has a history of serious disciplinary offenses, including violations of self-regulatory organization rules, the CEA, or CFTC Regulations.

- **Public Director**

Each Public Director must be knowledgeable of futures trading, financial regulation or are otherwise capable of contributing to governing board deliberations; and,

- A. Are not members of the self-regulatory organization,
- B. Are not currently salaried employees of the self-regulatory organization,
- C. Are not primarily performing services for the self-regulatory organization in a capacity other than as a member of the self-regulatory organization's governing board, or
- D. Are not officers, principals or employees of a firm which holds a membership at the self-regulatory organization either in its own name or through an employee on behalf of the firm.

To maintain effective oversight, the Board utilizes BGCDM's written policies and procedures to ensure compliance with applicable laws and regulations. The BGCDM Rulebook outlines all of the rules Participants and Employees must comply with in order to comport with the Core Principles and CFTC regulations. The Rulebook is provided to each Participant and is posted on BGCDM's website, along with the Contract Specifications outlining the products traded on the SEF.

2.1.2 The officers of BGCDM shall have all the powers and authority provided in the formation Partnership Agreement and these Rules and such other additional duties and powers as the Board may confer on them or any of them. The officers of BGCDM shall consist of the Chief Executive Officer (“CEO”), Chief Financial Officer (“CFO”), General Counsel (“GC”), Chief Compliance Officer (“CCO”) and such other officers as the Board may appoint.

**(b) that business and regulatory decisions are in keeping with its public interest mandate,**

2.1.3 As stated above, the Board of BGCDM appoints the ROC, a sub-committee of the Board of Directors of BGCDM, which is composed of three directors in order to comply with its public interest mandate.

2.1.4 The role of the ROC is to:

(1) monitor the regulatory program of the registered entity for sufficiency, effectiveness, and independence;

(2) oversee the regulatory program, including trade practice surveillance, market surveillance and regulatory responsibilities with respect to members;

(3) review the size and allocation of the regulatory budget and the performance of the CCO; and

(4) review all regulatory proposals and recommend changes to the program.

**(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,**

2.1.5 As defined in Part 2: (Governance) of the BGCDM Rulebook,

The Board, which is composed of five members, shall have all the powers and authority permitted by law, BGCDM’s Rules and its formation Partnership Agreement. The Board of Directors shall be appointed by the general partner of BGCDM. The officers of BGCDM shall have all the powers and authority provided in the formation Partnership Agreement, these Rules and such other additional duties and powers as the Board may confer on them or any of them. The Board of Directors is composed in accordance with the standards set forth in

CFTC Rule 1.64(b)(1) and (b)(3). In accordance with BGCDM's filings as a SEF with the CFTC, twenty percent (20%) of the Board members must be a public director. BGCDM's Board is comprised of five members of whom one appointee or Board member is a public director representing twenty percent as defined by CFTC Rule 1.64(b)(1), this ensures proper balance among the interests of the Participants and Customers using the services and facilities of BGCDM. BGCDM adheres to CFTC Rule 1.64(b)(3), which requires that the Board's membership includes a diversity of membership interests, diversity of interests of BGCDM, and is otherwise consistent with the CFTC's composition requirements.

The criteria for public directors are stated in 2.1.1 above.

As stated in 2.1.3 and 2.1.4 above, the Regulatory Oversight Committee ("ROC") is a subcommittee appointed by the Board of Directors, and consists of three directors. The ROC monitors and oversees the full regulatory program for BGCDM.

The Disciplinary Committee ("DC") is the second sub-committee of BGCDM, which consists of three directors. The Disciplinary Committee is authorized to determine whether violations of the SEF Rulebook have been committed, to accept offers of settlement, to set and impose appropriate penalties, and to exercise such other power and duties in conjunction with the BGCDM's disciplinary proceedings. At least one member of the Disciplinary Committee, who shall be chair, must be a public participant in order to maintain a fair and diverse representation of the committee. Furthermore, to ensure the proper balance among the interests of the different persons or companies using the services and facilities of the exchange, the current and future Chairman of the DC is a public director. The members of the Disciplinary Committee also constitute BGCDM's Review Panel(s) and Hearing Panel(s). The Disciplinary Committee may also include, as members BGCDM officers and employees. However, no employee of the Compliance Department of BGCDM may serve on the Disciplinary Committee. A member of a Hearing Panel may not serve as a member of the Review Panel in the same matter and each Hearing Panel and each Review Panel must include a member that is not a Participant of BGCDM.

**(d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest for all officers, directors and employees, and**

2.1.6 Rule 209 provides information relating to conflicts of interest. Conflicts of interest are addressed to include "family relationship of a Person," the "Board," "member's affiliated firms," "named party in interest," "significant action" and "financial interest." The rule is written to prohibit the CCO and/or Board

member(s) from deliberating or voting on matters relating to a Participant if they have a conflict of interest. Disclosure and recusal is required based on material relationships that present conflict. Prior to consideration of any matter involving a named party in interest, each member of the deliberating body shall disclose to the CEO, or the designee, whether such member has or believes that he or she may have one of the relationships listed under Rule 209(b)(i), with a named party in interest and the CCO will manage the conflict. If the CCO has a conflict then he or she may (i) authorize a third party service provider to conduct an investigation due to the conflict, (ii) recuse themselves if a conflict arises during an investigation, and/or (iii) recuse themselves from BGCDM if there are disciplinary proceedings against a participant where there is a conflict, or a result from a disciplinary proceeding that ends in an appeal or Hearing Panel review. Upon recusal, the Board will appoint an individual who meets all the requirements of the CCO to serve as the CCO for the specific matter giving rise to the conflict.

**(e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.**

2.1.7 Rule 1205 provides information relating to appropriate qualifications (*see* §2.1.1), remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange. Except in instances where there has been a finding of fraud or wilful or wanton misconduct, BGCDM (including directors, officers and employees) shall not be liable to any person, including without limitation any customer, for any loss, damage or cost whether direct, indirect, special, incidental, consequential, lost profits or otherwise of any kind, regardless of whether any of them has been advised or is otherwise aware of the possibility of such damages. BGCDM does not remunerate the Board of Directors for their work as a Director for BGCDM, including the Independent Director.

2.1.8 BGCDM's insurance program provides professional indemnity and director's and officers' coverage to all directors and executive officers of BGCDM.

2.1.9 BGCDM's Rulebook includes limitations of liability provisions. Liability is provided to BGCDM under Rule 1205, except in instances where there has been a finding of fraud or willful or wanton misconduct, in which case the party found to have engaged in such conduct cannot avail itself the protections, BGCDM shall not be liable to any person including without limitation any customer, for any loss, damage or cost. The liability provisions provided to BGCDM within Rule 1205, shall in no way limit the applicability of any provision of the CEA or CFTC Regulations.

**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 BGCDM Rule 207 defines eligibility to serve on boards and committees. This excludes parties who have:
- (i) been found to have committed a disciplinary offence by a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the CFTC;
  - (ii) entered into settlement;
  - (iii) are currently suspended or expelled from trading any contract market;
  - (iv) are currently subject/revocation or suspension to an agreement with the CFTC or any self-regulatory organization; or
  - (v) are currently subject to denial, suspension or disqualification from serving on a disciplinary committee, arbitration panel or governing board of any self-regulatory organization; within the prior three years.

Furthermore, any person who is a member of the Board or any committee of BGCDM shall immediately notify the CEO of any information or occurrence which subjects such person to disqualification.

To ensure fitness, BGCDM requires that all Directors fill out a Director Statutory Disqualification Questionnaire and Representation. The CCO shall determine whether a member of the Board of Directors or a committee is subject to the restrictions contained in BGCDM's rules.

## **PART 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 CFTC reviews and approves new products that trade through BGCDM. Section 723 of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires SEFs to submit any determination of all new products and changes to products to the CFTC for approval or self-certification. BGCDM shall permit trading only in swaps that are not readily susceptible to manipulation. Prior to listing new swap contracts for trading, BGCDM will submit new contracts for certification or approval by the CFTC. Certifications must be submitted to the CFTC by the open of business on the day prior to listing. The certification shall include supporting documentation as set forth in 17 C.F.R. 38, Appendix C. Additionally, BGCDM may under CFTC Regulation 40.6, file a submission to the

CFTC followed by a 10 business day review period before it can be deemed certified and can be made effective. The CFTC can grant approval after the 10 business day review period after deeming the products effective or the CFTC may not opine at all, whereby after the 10 business day review period the products are self-certified. The CFTC may also stay certification for 90 days, during which the CFTC must provide a 30 day public comment period.

### **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 Interest Rate Contracts**

(1) *Summary of BGCDM Interest Rate Swap.* BGCDM offers for trading Interest Rate Swaps (“IRS”), which are contracts in which two parties agree to exchange cash flows in the same or two different currencies, based on a notional amount, from fixed to floating or from one floating rate to another (though in some cases, such as zero coupon Inflation Swaps, there is only one exchange of cash flows at maturity). The fixed rate is typically reset monthly, quarterly, semi-annually or annually.

(2) *BGCDM IRS Swap Contracts.* BGCDM offers the following IRS (including Options): Interest Rate Swap (IRS), Fixed/Float, Overnight Index Swap (OIS), Fixed/Float, Currency Basis Swap, Float/Float, Cross-Currency Basis Swap, Float/Float, Cross-Currency Swap, Fixed/Fixed, Cross-Currency Swap, Fixed/Float, Non-Deliverable IRS, Fixed/Float, Inflation Swap, Fixed/Float, Constant Maturity Swap (CMS), Float/Float, Constant Maturity Swap, Fixed/Float, Forward Rate Agreement (FRA), DTCC GCF Repo Swaps, Fixed/Float, Interest Rate Swaption, Cancellable Swap, Interest Rate Option and Interest Rate Option - IR/Inflation Cap/Floor.

(3) *Options.* The details of the options, including the option style, strike price, and underlying contract are included in each contract’s specifications.

#### **3.2.2 Commodities – Metal Options**

(1) *Summary of BGCDM Metal Options.* BGCDM offers options on metals. An option is the purchase or sale of the right -- but not the obligation --to buy from, or to sell to, the seller (or grantor) of the option, an agreed quantity of the metal at an agreed price (the strike price) up to or on an agreed date in the future (the expiration date). The buyer of the option may exercise his rights under the option up to that date. In the case where the seller of the option sells, or grants, the buyer of the option the right to buy the underlying asset, the option is termed a call option. If the seller of the option grants the buyer of the option the right to sell to him the underlying asset, it is termed a put option. The underlying asset of BGCDM’s metal option can be: (1) precious metals – gold, silver, platinum, or

palladium; or (2) base metals – aluminum, aluminum alloy, NASAAC, copper, lead, nickel, tin or zinc.

### 3.2.3 Credit Derivatives

(1) *Summary of BGCDM Credit Derivatives Swaps Contracts.* BGCDM offers two types of Credit Derivative Swap Contracts: (1) credit default swap indices; and (2) credit default index options. A credit default swap index is a contract between two participants, a “Protection Buyer” and a “Protection Seller.” Under the contract, the buyer pays a regular premium to the seller who, in exchange, agrees to compensate the buyer for losses on a standard reference index of underlying credit default swaps, if a “Credit Event” occurs (the definition of a credit event is specified under ISDA 2009). At such an occurrence, the contract terminates and a cash settlement is made to the buyer in accordance with ISDA CDS credit event auction guidelines.

A credit default index swaption gives the option buyer the right, but not the obligation to enter into a credit default swap index (i.e., exercise the option at the specified option expiry date). The option exercise is generally restricted to the expiry date (“European style”), or less commonly, may be executed at any time up to expiry (“American Style”).

BGCDM’s credit derivative contracts are based on two main index families, which are based on geographical location: (1) CDX indices: broad based indexes comprising single credits from North America and Emerging Markets; and (2) iTraxx broad based indices comprising single credits from Europe, Asia and the other areas of the world.

(2) *BGCDM Credit Derivatives Swap Contracts.* BGCDM offers credit derivatives contracts in which counterparties are able to choose to base the credit default swap index or credit default index swaption on any of the following on the run indices:

CDX.NA.IG, CDX.NA.HiVol, CDX.NA.HY, CDX.NA.EM, CDX.NA.EM Diversified, iTraxx Europe, iTraxx Crossover, iTraxx HiVol, iTraxx Senior Financials, iTraxx Sub Financials, CDX.NA.EM, LatAm Corp, MCDX, Sov X Western Europe, SOVX EXEU, CEEMEA CORPX, CDX.NA.HY.BB, CDX.NA.HY.B, CDX.NA.IG.CON, CDX.NA.IG.ENRG, CDX.NA.IG.FIN, CDX.NA.IG.INDU and CDX.NA.IG.TMT and MCDX.

(3) *Settlement Process for BGCDM Credit Derivatives Swaps.* The settlement process is not readily susceptible to manipulation as it is consistent with customary, widely accepted market practice. For the credit index swaption, settlement is physical, into a credit default index swap. The specific terms of the option, including style, strike price, trading conventions are clearly outlined in the contract specifications document.

### 3.2.4 Non Deliverable Forwards

(1) *Summary BGCDM Non-Deliverable Forwards.* BGCDM offers Non-Deliverable Forwards (“NDF”) for execution, which are foreign exchange forward contracts on a notional amount where no physical settlement of the two currencies takes place at maturity. Instead a net cash settlement is made by one party to another based on the difference of the two FX rates. The settlement is done using a pre-determined currency, typically USD, and is determined at an agreed fixing date, typically 1 or 2 days prior to settlement, using spot fixing rates. There is no exchange of principal or upfront payments on these contracts.

(2) The terms of BGCDM’s contracts are consistent with customary market practice, and the data necessary to compute the cash settlement price is available from reliable, widely accepted sources. At the settlement date – which is determined by the parties – the difference between the Spot FX and the traded NDR rate is paid, usually one or two business days after the Fixing Date depending on the currency. For uncleared trades, the procedure is as agreed to by the Participants. For cleared trades, it is as agreed to by the clearing venue for trades subsequently novated for clearing.

### 3.2.5 Currency Options

(1) *Summary of BGCDM Currency Options.* BGCDM offers an FX option and a non-deliverable FX option. The FX option is the right, but not the obligation, to buy or sell an agreed amount of one currency in exchange for an agreed amount of another currency at a specified future exchange rate (the strike price). An FX option may be either "European," whereby the right to exchange may occur only on a single date (the expiry date) or "American," whereby the right to exchange may occur on any date up to and including the expiration date as determined by the option buyer. Settlement of an "in-the-money" option is typically 1 or 2 days following the agreed expiry date. Settlement may be physical where a spot transaction at the strike price is executed or also cash, where participants exchange the net cash difference between the prevailing spot rate and the strike price.

(2) Similarly, BGCDM’s Non-Deliverable FX option (“NDO”) offers the right, but not the obligation, to buy or sell an agreed amount of one currency in exchange for an agreed upon amount of another currency at a specified future exchange rate (the strike price), but using a net cash settlement made by one party to another based on the difference of the two FX rates (strike price rate and fixing expiry rate).

(3) *Cash Settlement Process for Currency Options.* As is customary for products of this type, the settlement process for the FX Option is as determined by the Participants. For the non-deliverable FX option, the cash settlement price is determined by calculating the difference between the Spot FX and the strike price of the Currency Option for the purposes of the option buyer ascertaining if the option expires with creation of an underlying FX Spot trade at expiry (or cash settlement using a particular FX fixing source as agreed between Participants).

The specifics of this settlement procedure are, as agreed by the Participants, for non-cleared trades.

**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.**

BGCDM Rule 1305 provides BGCDM, in its discretion, to take any action to reduce the potential for market disruption, including, but not limited to restricting or halting trading, restricting or halting order entry, and/or other actions determined by BGCDM if in the best interest of the swap market. Moreover, BGCDM may impose a similar risk control action taken by another market trading a Swap that is fungible with, or a substitute for, a Swap traded on the SEF.

BCGDM has delegated certain monitoring and enforcement functions to the National Futures Association (“NFA”) for Swaps traded on BGCDM as its designated regulatory service provider. BGCDM has executed a Regulatory Services Agreement with the NFA (the “Regulatory Service Agreement”) to perform trade practice surveillance, market surveillance, investigations, disciplinary actions, audit trail review, dispute resolution and reporting with respect to Participants. In practice, the NFA reviews all price and execution information including, but not limited to front running, money pass, wash trades as well as execution procedures on a daily basis. This surveillance encompasses all relevant data and is not limited to a random sample. Exceptions and issues are escalated by NFA staff by telephone and electronic communication to BGCDM Compliance for further investigation and audit.

In addition, BGCDM Compliance surveillance and oversight ensures contracts are not readily susceptible to manipulation. BGCDM is staffed with a designated group of employees who are responsible for market operations, real-time market monitoring, customer support with respect to technical issues and surveillance (“Control Desk”). BGCDM employs an application entitled “Max price range check” available to the Control Desk personnel to ensure that Swaps traded are not readily susceptible to manipulation by monitoring the changes in new order prices from last accepted prices. For each Swap instrument traded electronically, the Control Desk may set a percentage move from the last accepted price for that day (including indicative orders entered by BGCDM’s analytical pricing systems), which will control the lowest bid and highest offer that can be entered into the system. The range thus dynamically adjusts each day based on the last accepted order. If there are any questionable issues, the Control Desk will immediately raise the issue to Compliance for a full review.

Rules 704 (a)(i) and (b) of the BGCDM Rulebook outline the risk management processes for all regulated products. This process is performed when an order is accepted either electronically by BGCDM’s internal push engine or via Traiana,

functions of the trading system, or manually by an execution specialist via Traiana ping.

- 3.3.1 *BGCDM IRS Contracts are Not Readily Susceptible to Manipulation.* These Contracts are not readily susceptible to manipulation for a number of reasons. First, the fixed leg is determined at the start of the Contract and remains unchanged throughout the life of the swap. Second, the floating leg is based on an index, chosen by the Participants, from a specified list of Market Fixing Indices. All of the specified reference indices are calculated using clear, transparent and comprehensive rules, which require that constituents of the index meet specified criteria. The calculations for each index are in Articles 6 and 7 of the ISDA Definitions and 2008 ISDA Inflation Derivatives Definitions. Third, interest rate products are very liquid – the market is very large and deep, making manipulation very difficult to achieve. And fourth, BGCDM has a robust market surveillance program through its contracting with the NFA as a Regulatory Services Provider and through its own resources that are effectively able to survey the market, detect uncommon activity, and investigate any such activity for signs of manipulation.
- 3.3.2 *BGCDM Metal Options are Not Readily Susceptible to Manipulation.* The Options on metals are not readily susceptible to manipulation. Generally, these options are held throughout their life. The terms and conditions of the Contract, as reflected in the contract specifications document, adhere closely to cash market practices, including grade, contract unit size and other trade conventions and the precious and base metals markets are extremely liquid, making manipulation very difficult to achieve.
- 3.3.3 *BGCDM Credit Derivatives Contracts are Not Readily Susceptible to Manipulation.* These Contracts are not readily susceptible to manipulation for a number of reasons. First, all of the specified reference indices, which are administered by Markit Partners, are calculated using clear, transparent and comprehensive rules. These rules include specified procedures regarding how constituents are selected, how constituents are weighted, and how Roll Dates are performed. Also, the indices adhere to ISDA standard protocols – specifically ISDA 2009, and calculations for each index are in Articles 6 and 7 of the ISDA Definitions and 2008 ISDA Inflation Derivatives. Second, the underlying indices are highly liquid – and thus widely accepted by market participants. And last, BGCDM has a robust market surveillance program making use of both NFA’s and its own resources that effectively will survey trading in BGCDM market, detect uncommon activity, and investigate any such activity for signs of manipulation.
- 3.3.4 *BGCDM NDF Swap Contract is Not Readily Susceptible to Manipulation.* The Contract is not readily susceptible to manipulation for a number of reasons. The foreign exchange market is an extremely liquid market with massive volume and open interest, making manipulation very difficult to achieve. As such, the

reference price is the prevailing Spot FX Rate on the date / time in which the parties agree that the comparison will be made (i.e., Fixing Date), which will be available from a number of reliable, widely available sources.

3.3.5 *BGCDM Currency Options are Not Readily Susceptible to Manipulation.* The Contract is not readily susceptible to manipulation for a number of reasons. First, the foreign exchange market is an extremely liquid market with massive volume, making manipulation very difficult to achieve. Second, the reference price, the Spot FX Rate is very reliable and widely available, and used by numerous market participants. Third, the terms of the option contracts, including strike price, expiry and exercise options adhere to customary cash market practices.

3.3.6 **Speculative Limits and Reportable Levels:** For the Contracts, BGCDM complies with CFTC Rule 37.600 and the associated guidance in Appendix B of Part 37. As permitted under Appendix B, this list of Permitted Transaction Swaps is being submitted in fulfillment of Rule 37.600. The guidance in Appendix B to Part 37 provides that;

(a) Guidance. Until such time that compliance is required under part 151 of this chapter, a SEF should have reasonable discretion to comply with §37.600, including considering part 150 of this chapter. . . .

To reduce the potential threat of market manipulation or congestion, BGCDM may adopt for each of the contracts, as is deemed necessary and appropriate by BGCDM, position accountability levels for speculators. BGCDM on an on-going basis monitors positions established on or through BGCDM for unusual activity, including but not limited to, unusual volumes, patterns or concentrations of transactions.

Moreover, the Trading System has a functionality specifically designed to monitor for compliance with position limits. The “Positions Monitor” is an application used by BGCDM’s Control Desk and Compliance Department to view in real-time intraday positions. The Positions Monitor shows when a particular User ID acquires a net position that meets or exceeds a specified threshold for any prescribed limits for any particular Swap and then shows if the net position meets or exceeds BGCDM’s established Position Accountability Levels for that Swap market sector.

Finally, the Trading System has the functionality to establish a notional hard limit: a single order per instrument limit at the entity and user level and soft limit: a single user per instrument limit.

## **PART 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.**

4.1.1 Consistent with Core Principle 2, BGCDM's Rulebook limits access only to persons that satisfy the eligibility requirements in Rule 302. To be registered with BGCDM as Participants or otherwise granted access to the Trading System, a Participant must meet the following standards:

- (i) the Applicant satisfies the definition of Eligible Contract Participant ("ECP") under CFTC Regulation 1(a)(18);
- (ii) if a natural person, the Applicant shall have attained the age of majority and shall be of good character;
- (iii) if an Entity, the Applicant shall be duly organized, existing and in good standing under the laws of its jurisdiction of organization;
- (iv) the Applicant shall have good commercial standing and business experience;
- (v) the Applicant shall have adequate financial resources and credit as reasonably determined by BGCDM;
- (vi) the Applicant shall, where relevant, be registered, licensed or otherwise permitted by the appropriate Governmental Agency to conduct business on the Trading System or subject to the rules of BGCDM;
- (vii) the Applicant shall have such operational capabilities (including without limitation such hardware, software, communications systems and staffing) as BGCDM may from time to time determine is appropriate in view of Person's anticipated type and level of activity on the Trading System or subject to the rules of BGCDM;
- (viii) the Applicant shall meet any other criteria that BGCDM may from time to time prescribe.

BGCDM will not provide direct access to a participant in Ontario (“Ontario User”) unless the Ontario User is appropriately registered as applicable under OSC laws or is exempt from or not subject to those requirements, and qualifies as an ECP under the CEA.

BGCDM may reasonably rely on a written representation from the Ontario User that specifies either that it is appropriately registered as applicable under OSC laws or is exempt from or not subject to those requirements, provided BGCDM notifies such Ontario User that this representation is deemed to be repeated each time it enters an order, request for quote or response to a request for quote on BGCDM.

To be registered as a Participant, and adhere to Rule 302, the Participant must among other things, have adequate financial resources and credit. BGCDM will provide access to all qualifying Participants and employees of a Participant, and an employee of a Participant’s affiliate provided the Participant maintains supervisory authority over such employee (“Authorized Traders”). Part 3 of the SEF Rulebook ensures the competence, integrity and authority of systems users. Supervision of systems users is addressed with Rule 403(g) requires the Participant to supervise all activities of its employees relating to transactions effected on the SEF or subject to the rules of the SEF.

In addition, Trading Participants may permit Authorized Customers and their respective employees (Authorized Traders) with access. BGCDM will provide all Introducing Brokers (“IBs”) with impartial access; however, BGCDM will have available to it certain information from IBs that are an affiliate of the SEF and, for that administrative efficiency reason, such IBs will be required to provide less information to BGCDM. Access is further conditioned upon the Participant or Authorized Customer having in place appropriate financial and clearing arrangements. In the case of cleared Swaps, Participants are required to provide evidence to BGCDM that it has established either (i) a relationship with a member of a Designated Clearing Organization (“DCO”) that will be responsible for the clearance and settlement of the Swaps; or (ii) that the Participant itself is a member of a DCO. With respect to uncleared Swaps that are traded on or subject to the rules of BGCDM, Participants are required to provide evidence to BGCDM that it has the necessary credit documentation to enter into bilateral Swaps. BGCDM will also offer impartial access to independent software vendors (“ISVs”). ISVs offer systems or platforms for aggregation, front end trading software, smart order routing systems connectivity to Participants or Customers. BGCDM does not limit access to its trading systems or platforms to only certain types of ECPs and ISVs.

Rule 402 requires each Participant to notify BGCDM in writing as soon as reasonably practical (but in no event later than 21 days) after becoming aware of certain specified events, including any refusal of admission to, or involuntary

withdrawal of any membership or Clearing membership in any SRO; any expulsion, suspension or fine in excess of \$100,000 (whether through an adverse determination, voluntary settlement or otherwise) imposed by any SRO related to trading activities on BGCDM or to products listed for trading on the SEF; and any denial or withdrawal of any application for any registration or license by or from any Governmental Agency.

In addition to notifications, BGCDM permits the right of termination of participation at any time after reasonable notice and an opportunity to be heard, that such Participant no longer meets any one or more of the eligibility standards set forth in Rule 302; *provided however*, nothing in that section shall limit BGCDM's right to summarily suspend any Person having Trading Privileges under Rule 1015(a).

A Participant may terminate voluntarily its status upon written notice to BGCDM, specifying the effective date of termination, which shall be (1) not less than 30 days following the date of giving of such notice or (2) such other date as may be approved by BGCDM. Notwithstanding the 30 day notification period, a Participant may voluntarily suspend its Participant status immediately upon notice to BGCDM and cessation of trading activities. The Participant shall incur no new liability during the period of its voluntary suspension.

Notwithstanding any termination of its membership, a Participant shall remain subject to the jurisdiction of BGCDM after the effective date of termination with respect to any investigation or proceeding against the Person pursuant to Part 10 of the Rules or any claim in arbitration filed against the Person pursuant to Part 11 of the Rules that is commenced by BGCDM within two years of the effective date of termination.

Any Participant whose participation has been terminated shall immediately notify BGCDM of any change in its address, as most recently reported to the SEF, for a period of one year following the effective date of termination.

BGCDM does not unreasonably prohibit, condition or limit access by a person or company to services offered by it. BGCDM provides trading privileges in Rule 301, to all applicants upon approval by the BGCDM as Eligible Participants, subject to limitation and the rules of BGCDM.

BGCDM does not permit unreasonable discrimination among participants, or impose any burden on competition that is not reasonably necessary and appropriate consistent with Rule 908, which prohibits abusive trading practices. Specifically, Rule 908 requires that no participant, authorized customer or customer may engage in front-running, wash trading, pre-arranged trading, fraudulent trading, money passes, accommodation trading, any other manipulative activity prohibited by the CFTC, or enter into non-competitive transaction on or subject to the rules of BGCDM.

Any rules pertaining to membership criteria or selection must be self-certified under CFTC Regulation 40.6. CFTC Regulation 40.6 requires BGCDDM to provide certification and explanatory analysis that the revised Rules comply with the CEA, CFTC Regulations and the SEF Core Principles. The CFTC reviews all self-certifications of rules and rule amendments under CFTC Regulation 40.6 to ensure compliance with the SEF Core Principles. Core Principles 11 and 12 requires exchanges to establish and enforce rules that protect market participants from fraudulent, noncompetitive or unfair actions committed by any party, and further, to discipline such behavior under Core Principle 3. Membership rules that are unreasonably discriminatory or fee rules that unreasonably discriminate among participant classes would not meet SEF Core Principle requirements, and would therefore not be certified by the CFTC.

**(e) The exchange keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access.**

4.1.2 BGCDDM may deny the application of any Person (or a Person associated with the applicant) to become a Participant if the Person does not meet one or more of the standards of eligibility set forth in Rule 302. This includes having been convicted of any felony or misdemeanor, fine, cease and desist order, denial of trading privileges, censure or other sanction or discipline (whether through an adverse determination, voluntary settlement or otherwise) and statutory disqualification involving, arising from, or related to, the purchase or sale of any Commodity, security, futures contract, option or other financial instrument, or involving or arising from fraud or moral turpitude, or is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction or any Governmental Agency or SRO. BGCDDM maintains all records of all applications including approvals, denials or limitations of access.

4.1.3 In the event that an application for membership is denied by BCGDDM, the Applicant shall have an opportunity to be heard upon the specific grounds for the denial. An Applicant who has been denied membership may challenge the denial by filing with the Secretary a petition for review of the denial of membership by BCGDDM's Appeals Committee. The petition shall be filed within thirty calendar days of the date upon which BGCDDM's decision was mailed to the Applicant. Hearings shall be conducted in a manner that will give the Person an opportunity to present fully and fairly to BGCDDM the Person's reasons why the application should be granted. The Appeals Committee will be comprised of the Board of Directors.

## **PART 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.**

In conjunction with BGCDM compliance, the NFA monitors all activity conducted on BGCDM and reports breaches and infractions to BGCDM.

- 5.1.1 BCGDM enforces compliance with its rules in a number of ways. As outlined below, BGCDM has authority and jurisdiction over all transactions executed on the SEF. BGCDM is a Self-regulatory Organization (“SRO”), which are Exchanges that enforce financial and sale practice requirements for their members. The jurisdiction for BGCDM as an SRO is stated in Rule 301. Within Rule 301 and 303, BGCDM requires acknowledgement of jurisdiction by the Applicant in all matters arising under the Rules. Secondly, BGCDM has a process in place to discipline any potential violation of BGCDM’s Rules. Lastly, BGCDM, along with the NFA, will actively monitor all transactions executed on or through BGCDM for compliance with its Rules and Applicable Law. The Participant Application provides that by accessing BGCDM, a Participant agrees to abide by the Rules of BGCDM. Specifically, Rule 410 provides that each Participant, Authorized Trader, and Authorized Customers who places an Order to have agreed to: (i) be bound by the Rules of BGCDM; (ii) be subject to the jurisdiction of BGCDM; (iii) comply with all applicable Rules of BGCDM; and (iv) comply with Applicable Law. It is an offense for any Participant or Authorized Customer, or their respective Authorized Traders, to violate or fail to conform to the Rules and procedures of BGCDM; or with any decision or order of a committee of BGCDM; or any order of any officer, employee or agent of BGCDM when acting within his or her or its jurisdiction.
- 5.1.2 In the event a Participant violates a Rule of BGCDM, the Participant would be subject to disciplinary proceedings as governed by Part 10 of the Rules. An investigation of potential rule violations will be initiated pursuant to Rule 1001. Rule 1001 provides that the Enforcement Staff of the Compliance Department and its designees are responsible for investigating possible violations of the Rules upon request from the CFTC staff or upon the discovery or receipt of information which indicates a possible basis for finding that a violation has occurred or will occur. After an investigation is completed, an Investigation Report will be prepared. Upon completion of the Investigation Report, the Enforcement Staff either may make a recommendation as to whether the Disciplinary Committee should proceed with the matter, or to issue a warning letter to the person being investigated. If the Disciplinary Committee elects to proceed, notices of charges will be provided to the person pursuant to Rule 1005. BGCDM notes that Rule 1005 satisfies the recommended criteria set forth by the CFTC in Appendix B to § 37.15. The person subject to the disciplinary action, (the Respondent), has the right to respond to the notice of charges, as provided in Rule 1007, and has a reasonable period to respond. Additionally, the Respondent has the right to

representation by legal counsel or any other representative of the Respondent's choosing.

- 5.1.3 Although it retains ultimate responsibility, BGCDM delegates certain parts of its monitoring and enforcement functions to the NFA for most of the Swaps traded on BGCDM. The NFA provides BGCDM with market and trade practice surveillance and ongoing surveillance of the financial and operational status of Participants and Authorized Traders. BGCDM's Compliance Department coordinates with the NFA to address market actions deemed inappropriate as a result of NFA's ongoing market surveillance activities. The NFA has the authority to investigate any potential rule violations and to submit investigation reports to BGCDM's Compliance Department. In addition, BGCDM conducts monitoring and enforcement functions directly for certain very low volume contracts. These contracts are anticipated to be Permitted Transactions, any transactions not involving a swap that is subject to the trade execution requirement by the CFTC in Section 2(h)(8), that trade infrequently. BGCDM has a dedicated compliance officer to assist the CCO with all matters related to BGCDM. The compliance officer's primary function is to manage BGCDM's compliance and surveillance program which encompasses trade reconstructions on a total of 5 trades per week chosen on a selectively random basis. The procedure for these reviews will consist of transaction reviews including, but are not limited to, a review of all pricing information, voice recordings, Bloomberg and electronic communications. BGCDM has adequate resources to ensure regulation as detailed in §12.2.
- 5.1.4 BGCDM believes the joint efforts of Control Desk, BGCDM compliance, ROC and Disciplinary Committee provide appropriate systems, resources and procedures for evaluating compliance with exchange and legislative requirements and for disciplining participants.

## **PART 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.**

In accordance with Core Principle 2, BGCMD has enacted rules that are designed to appropriately govern the operation and activities of participants and do not permit unreasonable discrimination among participants or impose on competition as described in §4.1.1.

Pursuant to its obligation under the CEA and CFTC Regulations, BGCMD maintains adherence to Core Principle of Section 5h. In so doing, these Rules are consistent with the OSC criteria and applicable Ontario law.

**Commodity Exchange Act Core Principles include:**

1. Comply with SEF core principles.
2. Enforce compliance with all SEF rules.
3. Permit trading only in swaps not readily susceptible to manipulation.
4. Establish and enforce trading and trade monitoring procedures.
5. Facilitate information sharing with the CFTC.
6. Adopt position limits or position accountability rules as necessary.
7. Ensure the financial integrity of transactions.
8. Adopt rules enabling the exercise of emergency authority.
9. Make public timely swap trading information.
10. Maintain comprehensive business records.
11. Avoid unreasonable restraints of trade.
12. Minimize conflicts of interest.
13. Maintain adequate financial resources to comply with all SEF requirements.
14. Maintain systems for minimizing operational risk.
15. Designate a CCO.

- 6.1.1 Rules may be adopted, amended or repealed by BCGDM as provided in the Rules. However, no Rule and no amendment or repeal of a Rule shall apply to any Swap or Swap entered into prior to the adoption thereof if such Rule, amendment or repeal would affect the amount of money to be paid, or would affect the specifications of the Swap or Underlying Commodity to be delivered, under such Swap, unless emergency action has been taken pursuant to Rule 1204.

The CEO is authorized by the Board of BGCMD under Rule 1204 to issue an

- opinion on behalf of the Board that any occurrence or circumstance is an Emergency that requires immediate action because it threatens fair and orderly trading in any Swap or the liquidation of or delivery pursuant to any Swap. The CEO is authorized to delegate this authority to an officer of BGCDM to act on behalf of the CEO in the absence of the CEO.
- 6.1.2 Unless a Rule is adopted, amended or repealed as an emergency action pursuant to Rule 1204, or it is otherwise impracticable under the circumstances, BCGDM shall: (1) post on its website the submission to the CFTC certifying or requesting approval of such Rule, Rule amendment or Rule repeal for a period of not less than five business days prior to filing the submission with the CFTC; (2) notify Participants of the posting of the submission when it is first posted; and (3) accept comments on the submission from Participants and the public from the time of posting until the conclusion of the CFTC's review period.
- 6.1.3 In order to ensure compliance with applicable legislation, BGCDM has enacted Rule 401, which requires each Participant, Authorized Trader, Authorized Customer, Customer or Broker shall, by making application for a User ID or by placing any Order directly or indirectly, shall have agreed to: (i) be bound by the Rules of the BGCDM; (ii) be subject to the jurisdiction of the BGCDM; (iii) comply with all applicable Rules of BGCDM; and (iv) comply with Applicable Law.
- 6.1.4 In accordance with Core Principle 3 to prevent fraudulent and manipulative acts and practices, BGCDM enacted Rule 1306 (only list Swaps for trading that are not readily susceptible to manipulation), Rule 905 (prohibiting any person from manipulating, or attempt to manipulate, the price of, or to corner, any Swap executed on BGCDM, or in connecting therewith the underlying commodity) and Rule 908 (prohibits any manipulative activity prohibited by the CFTC, or enter into non-competitive transactions). Furthermore, in order to ensure that BGCDM promotes just and equitable principles of trade, BGCDM adopted Rule 909 which prohibits any person from engaging in conduct or practice inconsistent with just and equitable principles of trade or conduct or practices detrimental to the best interests of the BGCDM; consequently, this is discussed in further detail in §11.2. BGCDM also gives the duty to each participant to have procedures for performing day-to-day monitoring of its Authorize Traders, other Supervised Persons and Authorized Customers to ensure that each will conduct its business in a fair and equitable manner and in accordance with Rule 306(g).
- 6.1.5 To foster cooperation and coordination amongst its member participants BGCDM requires Participants to be a clearing member or make a written representation to BGCDM to clear on their behalf in accordance with Rule 305.
- 6.1.6 Pursuant to Core Principle 2 and 4, BGCDM has established compliance and disciplinary rules and framework. The framework for disciplinary actions is provided in Part 7.

6.1.7 Pursuant to Core Principle 2, BGCDM has adopted rules to ensure a fair and orderly market. This is highlighted in Rule 308, BGCDM has contracted with the NFA to perform market, trade practice, financial, and audit trail surveillance and related investigations and disciplinary proceedings in order to ensure a fair and orderly market. Additionally, emergency powers have been provided to the CCO within Rule 1204, to issue an opinion on behalf of the Board that any occurrence is an Emergency that requires immediate action if it threatens fair and orderly trading in any swap or delivery pursuant to any swap.

## **PART 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.**

All Participants and applicants are given the opportunity to be heard or make representation for purposes of access to BGCDM, business conduct, customer disputes and/or disciplinary proceedings. The formats for the purposes above involve an investigation by the Enforcement Staff of the Compliance Department and its designees who are responsible for investigating possible infringements. Nonetheless, BGCDM retains ultimate responsibility of any hearings or investigations. These proceedings shall be conducted in a manner that will give the Participant or applicant an opportunity to present fully and fairly. After conducting a hearing or investigation, the Compliance Department shall prepare a written report including the reason for initiating the hearing or investigation, a summary of the relevant issue(s), if any, the relevant facts, conclusions, analysis and recommendations as to whether disciplinary action or denial of admission should be pursued. This written report shall be produced within twelve months following the initiation of the investigation. If the Enforcement Staff has determined that a reasonable basis exists for a finding, it shall make a recommendation as to whether the Disciplinary Committee should proceed with the matter. The investigation report shall become part of the investigation file, which shall be maintained by the Compliance Department for a period of not less than five years after the completion of such report.

7.1.1 Pursuant to BGCDM Rulebook 1005: with respect to the BGCDM's Disciplinary Proceedings. A full outline of the Disciplinary Proceedings is enclosed in part 7.1.4 below.

- 7.1.2 *Choice of Law.* The law of the State of New York shall govern any dispute arising between BGCDDM and a Participant without giving effect to the provisions, policies or principles of any state law relating to choice or conflict of laws.
- 7.1.3 *Arbitration Required.* Any dispute arising between BCGDM and a Participant must be brought to arbitration within one year from the occurrence of the event giving rise to the dispute. Any such dispute shall be settled by arbitration administered in New York, NY by the American Arbitration Association (the “AAA”) under its Commercial Arbitration Rules. The dispute will be submitted to an arbitrator that has experience with and knowledge of commodities, derivatives and Swaps as listed on the National Roster of Arbitrators, and who is appointed by the AAA. Judgment on the award rendered by the arbitrator will be binding on the parties and may be entered in any state or federal court sitting in New York, New York and the parties shall be deemed to have consented to the personal jurisdiction of any such court. Each party to the arbitration shall bear its own costs and expenses, as well as an equal share of the administrative and arbitrator fees. However, the arbitrator may reimburse the prevailing party for its costs and expenses in any award. If for any reason this Arbitration provision is unenforceable, the parties consent to the venue and jurisdiction of the federal and state courts located in New York, New York, and waive any objection thereto. Each Party waives its right to trial by jury in any such action.
- 7.1.4 Disciplinary & Enforcement Protocols, Tools and Procedures are defined by BGCDDM Part 10, specifically Rule 1002 with regards to investigations. The Enforcement Staff of the Compliance Department and its designees are responsible for investigating possible violations of the Rules upon request from CFTC staff or the discovery or receipt of information which, in their judgment, indicates a possible basis for finding that a violation has occurred or will occur.

Investigations shall be conducted by the Enforcement Staff in accordance with these Rules. BCGDM may contract for the performance of specified functions assigned by these Rules to the Enforcement Staff of the Compliance Department. BGCDDM retains ultimate responsibility of the investigations.

After conducting an investigation, the Enforcement Staff shall prepare a written report including the reason the investigation was initiated, a summary of the complaint, if any, the relevant facts, the Enforcement Staff’s conclusions, analysis and recommendation as to whether disciplinary action should be pursued. The report shall be produced within twelve months following the initiation of the investigation. If there is a reasonable basis exists for finding a violation, the Enforcement Staff shall make a recommendation to the Disciplinary Committee if they proceed with the matter. The Enforcement Staff may issue a warning letter to the Person being investigated or forward the matter to the Review Panel of the Disciplinary Committee a recommendation that it issue a warning letter.

Pursuant to Rule 1005, a written notice of charges must be served to the Respondent by the Enforcement Staff. The notice of the charges will: (1) state the acts, practices or conduct which the Respondent is alleged to have engaged; (2) state the provision of the Rules that have been violated; (3) state the predetermined penalty (if any); (4) state that the Respondent is entitled to a hearing on the charges upon written request served upon the Compliance Department within 30 days of service, failure to request a hearing, except for good cause shown, within 30 days constitutes a waiver; and (5) state that the Respondent is entitled to serve an answer to the Compliance Department within 30 days of service of notice of charges and failure to answer shall be deemed to be an admission of such allegation or charge.

In accordance with Rule 1007, if the Hearing Panel imposes a penalty, the Respondent and the Compliance Department shall be promptly served with a written notice of any penalty to be imposed and shall advise the Respondent that he or she may request a hearing on the penalty, provided that a written request for a hearing must be served upon the Compliance Department within 30 days following service of the notice and filed with the Hearing Panel. However, no hearing shall be permitted on a penalty that is less than or equal to the predetermined penalty, except for good cause shown. If the Respondent fails to request a hearing within 30 days following service of the notice, the Respondent shall be deemed to have accepted the penalty, and the decision of the Hearing Panel shall be the final action of the BGCDM.

Rule 1010 describes that promptly following the hearing, the Hearing Panel of the Disciplinary Committee shall render a written decision based upon the weight of the evidence contained in the record of the proceeding and shall serve a copy of its decision upon the Compliance Department and the Respondent.

The decision shall be the final action of BGCDM and shall not be subject to appeal within BCGDM. The decision shall include: (i) the notice of charges or a summary of the charges; (ii) the answer, if any, or a summary of the answer; (iii) a brief summary of the evidence produced at the hearing or, where appropriate, incorporation by reference of the investigation report; (iv) a statement of findings and conclusions with respect to each charge, a complete explanation of the evidentiary and other basis for such findings and conclusions with respect to each charge and basis for imposing sanctions, and an indication of each specific Rule which the Respondent is found to have violated; and (v) a declaration of any penalty imposed and the effective date of such penalty.

With regard to penalties, the Hearing Panel of the Disciplinary Committee may impose against any Person that is subject to the jurisdiction of BGCDM, including but not limited to, any Participant, Clearing Participant or Customer any one or more of the following penalties for violating the Rules: (i) a censure or reprimand; (ii) suspension of trading privileges; (iii) termination as a Participant or its acceptability as a Clearing Participant; (iv) a fine of up to \$100,000 per violation;

or (v) such other penalty as the Hearing Panel in its discretion shall deem appropriate.

In the case of any penalty imposed on a Respondent denying access in whole or in part to BGCDM's market, the Hearing Panel shall issue an order to all Participants prohibiting them from granting such access, directly or indirectly, to the Respondent and any knowing violation of such an order shall constitute a violation of the Rules.

Any penalty imposed under Rule 1011, 1012, 1013, 1014, 1015 or 1016 shall commensurate with the violation committed, take into account the respondent's disciplinary history and where applicable and include full customer restitution, except where the amount of restitution or to whom it should be provided cannot be reasonably determined.

The Hearing may be appealed to the CFTC pursuant to Section 8c or Part 9 of the CEA. The investigation report, investigation file and documents maintained in accordance with the Disciplinary Proceeding(s) shall be maintained by the Compliance Department for a period not less than five years after the completion of the report.

## **PART 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.<sup>1</sup>**

#### **CLEARING AND FINANCIAL INTEGRITY OF CONTRACTS**

8.1.1 BGCDM requires that Participants make representations concerning and/or provide evidence of clearing and settlement arrangements, for cleared products prior to gaining access. In the event of termination or change in clearing and settlement arrangements, BGCDM requires that notice shall be given as promptly and provided in writing no more than twenty-four hours after being given by any other means.

A Swap executed on or subject to the rules of BGCDM that is intended to be cleared will be forwarded by BGCDM to the Clearing Organization selected by the Participant or its Authorized Customer directly to the Clearing Organization or via a Straight-Through-Processing (“STP”) hub. If more than one Clearing Organization is available for clearing the Swap, each Participant and Authorized Customer may designate its choice of Clearing Organization for selected transactions by designating a specific Clearing Organization for each

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<sup>1</sup> For the purposes of these criteria, “clearing house” also means a “clearing agency”.

Order or RFQ.

BGCDM Designated Clearing Organizations:

Swap	Clearing Organization
Credit Default Swap Indices	ICE Clear Credit LLC
Interest Rate Swaps	LCH. Clearnet Ltd., LCH.Clearnet LLC, CME, Inc.

In the event that a Swap is rejected by the Clearing Organization to which it has been submitted, BGCDM will so inform the Participants or Authorized Customers that are the counterparties to the trade. A trade for which BGCDM has received a rejection notice from the Clearing Organization is void ab initio. Transactions rejected by the Clearing Organization due to operational or clerical errors can be resubmitted as “new trade, old terms” no later than one hour from the issuance of notice.

Disputes arising from or in connection with the clearance, delivery or settlement of positions shall be resolved pursuant to the Bylaws, Rule and procedures of the DCO.

BGCDM Rule 807 outlines the establishment of daily and final settlement prices. BGCDM shall calculate a daily settlement price for all Swaps listed for trading and priced on that trade date via either firm or indicative orders. Such daily settlement prices shall be calculated in the same manner and shall be published to BGCDM’s website, [www.bgcsef.com](http://www.bgcsef.com).

BGCDM will only calculate daily settlement prices for Swaps receiving Bids or Offers through a given Business Day. Swaps listed for specific a Clearing Organization that do not receive any executable or indicative Bids and Offers in the order book on any particular day will not have daily settlement prices calculated.

- 8.1.2 Part 8 of the BGCDM Rule Book sets out the framework for the clearing and financial integrity of contracts of trades transacted through BGCDM. Rules 802 and 803 shall apply to Required Transactions. Rule 804 shall apply to Permitted Transactions. Rules 805, 806 and 807 shall apply to both Required and Permitted Transactions.
- 8.1.3 The Bylaws and Rules of the DCOs shall be applicable to the clearing of Swaps which are Required Transactions traded on or subject to the rules of BGCDM. Every Swap executed on or subject to the rules of BGCDM that is a Required

Transaction will be forwarded by the SEF to the Clearing Organization selected by the Participant or its Authorized Customer directly to the Clearing Organization or via a Straight-Through-Processing (“STP”) hub.

- 8.1.4 If more than one Clearing Organization is available for clearing the Swap, each Participant and Authorized Customer may designate its choice of Clearing Organization for selected transactions by designating a specific Clearing Organization for each Order or RFQ.
- 8.1.5 Every cleared trade executed on the Trading System or subject to the rules of BGCDM shall be cleared through a Clearing Participant authorized by the DCO for the given product. BGCDM rules mandate that every Trading Participant must establish a relationship with a Clearing Participant, if they are not one, and obtain the Customer Authorization. Evidence of an agreement between the Clearing Participant and its Trading Participant or between the Clearing Participant and an Authorized Customer must be provided to BGCDM in the form and manner requested by BGCDM; additionally, the agreement must be a specific request to the products covered thereunder.

BGCDM Rule 402 details Participants obligation to notify, in writing, as soon as reasonably practical (but in no event later than 21 days) after becoming aware of any refusal of admission to, or involuntary withdrawal of any membership or Clearing membership in any SRO.

- 8.1.6 A Clearing Participant may terminate at any time its authorization of a Trading Participant or of an Authorized Customer by informing BGCDM and as applicable the Trading Participant and the Authorized Customer. Notice shall be given promptly and shall be provided in writing no more than twenty-four hours after being given by any other means.
- 8.1.7 The BGCDM Rulebook also provides information relating to the financial integrity for Permitted Transactions (Rule 804), trades not accepted for clearing (Rule 805), disputes related to clearing (Rule 806) and the establishment of daily and final settlement prices (Rule 807).

## **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 BGCDM works with third party vendors and has performed due diligence reviews for connectivity to various clearing organizations, such as ICE Clear Credit LLC for the clearing of products related to credit default swap indices. BGCDM utilizes third party vendors, such as Markit for connectivity to clearing organizations LCH Clearnet Ltd., LCH Clearnet LLC and CME, Inc. for the clearing of products related to interest rate swaps. As the need arises, BGCDM will perform additional due diligence reviews with regard to the addition of new

clearing organizations being added to the platform. Each of the DCO's are registered with the CFTC and each must comply with Core Principles as DCO under the CEA section 5b(c)(2) and CFTC Regulation §17 C.F.R. 39. Because the DCO's adhere to CFTC Rules and Regulations, BGCDM is satisfied that the exchange has appropriate arrangements. In accordance with Core Principle 14 (CFTC Regulations §37.1400-37.1401), BGCDM has adopted adequate risk management measures. BGCDM is governed by a comprehensive regulatory scheme and in accordance with those rules has met the applicable risk management requirements.

- 8.2.2 BGCDM believes that each DCO has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

## **PART 9        SYSTEMS AND TECHNOLOGY**

**9.1        Systems 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 BGCDM operates the Trading System with two geographically dispersed data centers. The centers are fully operational and in a perpetual state of readiness to address hardware and software failures. A dedicated team operates the data centers constantly (around the clock); the team is responsible for all day-to-day operational procedures, control of access to the data center and maintenance of the monitoring technology.

Redundancy is built into each aspect of the Trading System, encompassing network providers, network gear, server hardware, and so forth. BGCDM believes that resilience and redundancies are a prerequisite component for necessary technology solutions. BGCDM exercises its business continuity procedures as part of normal daily operations. Consequently, BGCDM utilizes all redundant systems as part of its mainline operation and therefore does not solely rely on backup components only in a state of emergency.

BGCDM utilizes one of the most robust disaster recovery infrastructures and support regimes available. BGCDM has separate disaster recovery sites that are in a constant state of “readiness.” BGCDM anticipates that the general return to operational status for any Participant would be no longer than the time necessary to “log in” to the Trading System. In the case of an extreme failure, such as the loss of BGCDM’s primary data center, the Trading System will be restored and operational within minutes from the alternate data center. Additionally, committed transactions, or completed transactions, are replicated immediately “as they happen” and back-ups are generated each night and stored off-site. BGCDM can constantly check “back-ups” during the operational day. All reference data is stored in backup facilities. There are daily incremental back-ups of all data and weekly snap shots. As noted previously, all data is maintained in secure storage facilities.

BGCDM periodically conducts tests to verify that the backup resources of BGCDM are sufficient. BGCDM notes that the Trading System frequently runs in production from a disaster recovery site. The primary site is used as the back-up during these sessions. These tests are done on a quarterly basis. BGCDM also participated in a Futures Industry Association (FIA) industry wide system test in October 2015 through which connectivity was successfully failed over to a secondary data center.

The BGCDM Control Desk has the responsibility for monitoring the technical functioning of the trading system and for real-time surveillance of the market. Control Desk staff are involved more in a technical production support role. They will immediately notify Compliance of any irregularities.

BGCDM’s Control Desk monitors trading activities in real-time. To facilitate monitoring and surveillance, the Trading System captures trade data in real-time. The Trading System has a number of functionalities and applications designed to assist the Control Desk with surveillance and monitoring trade activity in real-time. This includes, but is not limited to monitoring orders, market price, max price range, intra-entity activity and maximum transaction size.

The BGCDM Execution Desk performs functions such as: (i) engaging with the trading community to facilitate transactions between counterparties; (ii) maintaining a Central Limit Order Book (“CLOB”); (iii) managing Request for Quotes (“RFQs”); (iv) processing of trades through the BGCDM system; (v)

corrections and trade amendments; and (vi) escalate any irregularities to the Control Desk and/or Compliance.

**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;**
- (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 center computer operations to internal and external threats, including physical hazards and natural disasters;**
- (d) ensures that safeguards that protect a system against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service are subject to an independent 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 The architecture of the BGCDM System provides inherent scalability in the basic design principles of the system. Scalability is easily achieved in the terms of user growth and product expansion. With respect to load balancing, price dissemination and customer growth, the system dynamically distributes loads across the distribution layer. As new distribution layer devices are introduced to the available pool of access points, the system announces their presence and the client distribution layer dynamically discovers these new paths of access without reconfiguration of the client devices.

BGCDM System makes reasonable current and future capacity estimates and conducts stress tests to determine the ability of the system to process the transaction in an accurate, timely and efficient manner. In conjunction with BGCDM, NFA uses SWAPS technology to ensure NFA investigators have the capacity to detect BGCDM Rule violations.

BGCDM reviews the vulnerability of the system and data center computer operations to threats, by maintaining an active business continuity plan and coordinating reviews between the relevant Compliance and Information Technology (“IT”) staff. The business continuity plan is physically tested at least annually and quarterly for systems review. BGCDM has adequate back up procedures and business continuity plan as detailed in §9.1.

In reviewing the potential vulnerability of the system, Compliance and IT staff members coordinate to review to identify potential points of failure, lack of back-up and redundant capabilities. The findings by Compliance and/or IT are then forwarded onto the Chief Operating Office (“COO”) for review.

Pursuant to Rule 302, BGCDM ensures safeguards to protect the system by monitoring access to Participants, while delegating the duty to surveil access to its Participants. Additionally, in adherence to the CFTC’s Core Principles, BGCDM maintains a system that allows for error correction in order to limit improper disclosures, modification, or destruction of service.

BGCDM maintains procedures to review and keep current the development and testing of the systems. The Designee of the CCO performs surveillance to ensure that counterparties are properly transacting on the platform. In conjunction with the COO, the Designee ensures that the systems are kept up to date and any issues remediated as necessary.

Product growth is achieved by distributing load across transaction servers that reside within the matching engine resilient cluster. Increased transaction capacity can be further achieved by distributing actual instruments within a product group amongst transaction servers.

### **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 BGCDM Rule 515(d) provides Participant and Customer consent to BGCDM for the correction of error trades under the procedures of Rule 515. In the event that an error comes to the attention of a BGCDM employee, BGCDM may correct obvious errors without the consent or knowledge of the counterparties to the transaction. In the event that BGCDM is unable to determine how to correct an Error Trade on its face, BGCDM shall inform the counterparties to the trade and request their assistance in determining the nature and the substance of the error. BGCDM may not correct such non-obvious errors unless the parties to the transaction agree.

BGCDM Rule 403(b) covers corrections of any errors or omissions in a swap

transaction and pricing data that were publicly disseminated in real-time, those transactions shall be corrected as follows: (i) If a party to the Swap becomes aware of an error or omission in the Swap transaction and pricing data reported with respect to such swap, such party shall promptly notify the other party of the error and/or correction; (ii) If a Reporting Party to a swap becomes aware of an error or omission in the swap transaction or pricing data which BGCDM reported to a Swap Data Repository (“SDR”), or such error is reported to it by the other party, the Reporting Party shall promptly submit corrected data to BGCDM in writing, in the form and manner specified by BGCDM. BGCDM shall promptly submit corrected data to the SDR to which the transaction and pricing data was first reported for those errors of which BGCDM becomes aware or that are reported to it.

BGCDM Rule 1305 outlines risk controls for trading. BGCDM, in its discretion, may take any action to reduce the potential for market disruption, including, but not limited to restricting or halting trading or other actions determined by the BGCDM if in the best interest of the swap market. BGCDM may impose a similar risk control action taken by another market trading a Swap that is fungible with, or a substitute for, a Swap traded on BGCDM.

Pursuant to Core Principle 8 of the CFTC, BGCDM maintains policies and procedures for its emergency authority. Under Rule 1204, The CEO is authorized to issue an opinion on behalf of the Board that any occurrence or circumstance is an Emergency that requires immediate action because it threatens fair and orderly trading in any Swap or the liquidation of or delivery pursuant to any Swap. An occurrence or circumstance that is an Emergency are detailed in Rule 1204(b), that include trading errors, trading halts and responses to market disruptions and disorderly trading. If an Emergency is determined under Rule 1204, the CEO or designee may take any or all of the actions listed in Rule 1204(c).

If the CEO shall determine that there is a malfunction in the system for transmitting orders or other communications from or through any Participant into the Trading System and that such malfunction may impair, delay or otherwise adversely affect the operation of the Trading System, the CEO may instruct such Participant to discontinue transmissions to the Trading System from any source and may cause such steps to be taken as will disconnect such Participant from the Trading System, until such time as such malfunction shall have been resolved in a manner satisfactory to the CEO in his or her sole discretion. The CEO or designee must document the decision-making process and the reasons for taking such action. All Participants and their customers and all transactions will be subject to the Emergency powers.

## **PART 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 BGCDM has adequate financial and staff resources to carry on its activities in full compliance with its regulatory requirements and with best practices.
- 10.1.2 Pursuant to CFTC Regulations, BGCDM has adequate financial, operational and managerial resources to discharge its responsibilities.
- 10.1.3 Pursuant to Core Principle 13, BGCDM maintains “adequate financial, operational, and managerial resources to discharge each responsibility” of the SEF and states that the “financial resources of a SEF shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the SEF to cover the operating costs of the SEF for a one-year period, as calculated on a rolling basis.” CFTC Regulation 37.1301(a) (General Requirements) requires that a SEF “shall maintain financial resources sufficient to enable it to perform its functions in compliance with core principles set forth in section 5h of the Act. Regulation 37.1301(c) states that “financial resources shall be considered sufficient if their value is at least equal to a total amount that would enable the SEF to cover its operating costs for a period of a least one year, calculated on a rolling basis.”

Further, CFTC Regulation 37.1303 requires a SEF to make a reasonable calculation every fiscal quarter of its projected operating costs over a 12-month period in order to determine the amount needed to meet the financial resources requirements. As such, BGCDM maintains separate account well in excess of the minimum amounts, which is tracked quarterly by BGCDM’s financial control group. In the event more capital is required, the general partner will provide cash for the entity to comply with CFTC requirements.

Consistent with CFTC Regulation 37.1305(a), BGCDM maintains financial resources to meet Core Principle 13, which includes unencumbered, liquid financial assets equal to at least six months’ operating costs.

BGCDM maintains the current minimum capital amounts needed, and will maintain any future minimum capital amounts needed, to meet CFTC requirements.

## **PART 11 TRADING PRACTICES**

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

- 11.1.1 The BGCDM Rule Book establishes the appropriate business conduct and trading practices for the Employees, Participants and Authorized Customers of BGCDM.
- 11.1.2 It is prohibited for any Participant or Authorized Customer to violate or fail to conform to applicable provisions of the CEA, CFTC’s Regulations or any other

- law applicable to trading on BCGDM. BCGDM performs surveillance in order to ensure compliance with the rules as described in §5.1.3.
- 11.1.3 It is prohibited for any Participant or Authorized Customer to violate or fail to conform to the Rules and procedures of BCGDM or with any decision or order of a committee or any order of any officer, employee or agent of BCGDM when acting within its jurisdiction.
- 11.1.4 The BCGDM Rule Book prohibits persons from transferring trading privileges (Rule 903), disseminating false, misleading or knowingly inaccurate information (Rule 904), manipulating the prices of any swaps executed on BCGDM (Rule 905), furnishing false or misleading information or failing to furnish information relating to anything associated with BCGDM (Rule 906) and knowingly carrying an account, enter an order or effect any transaction for any employee of BCGDM, the Clearing Organization or any other Participant without the prior written consent of the employer (Rule 907).
- 11.1.5 The BCGDM Rule Book states that no Participant or Authorized Customer shall engage in front-running, wash trading, pre-arranged trading, fraudulent trading, money passes or enter into non-competitive transactions on or subject to the Rules of BCGDM except as otherwise authorized by the Rules, or execute any such Order on behalf of another with such knowledge of its nature.
- 11.1.6 No person shall engage in conduct or practices inconsistent with just and equitable principles of trade or conduct or practices detrimental to the best interests of BCGDM. BCGDM Rule 205 grants the Compliance Department power and authority to regulate its facilities to ensure that the facilities are not used for any improper purpose and to establish and enforce rules and procedures to ensure fair and equitable trading through its facilities. Similarly, BCGDM is authorized to conduct and to oversee surveillance, investigation and rule enforcement activities. The CCO is in charge of the Compliance Department
- 11.1.7 BCGDM Rule 306 ensures that each of its Authorized Traders, other Supervised Persons (as applicable) and Authorized Customers will be technically proficient in respect of the use of the Trading System. Each Participant shall have procedures for performing day-to-day monitoring of its Authorized Traders, other Supervised Persons and Authorized Customers to ensure that each will conduct its business in a fair and equitable manner and in accordance with the Rules of BCGDM.
- 11.2 Orders - 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 BCGDM will make information regarding Orders (including prices bid or offered), trades and any other matters it may deem appropriate available to Participants, Authorized Traders, other Supervised Persons and Authorized

Customers at such times and in such manner (whether through the Trading System, a ticker, financial information service or otherwise) as it may consider necessary or advisable from time to time. BGCDM defines rules to be fair and equitable as those which are not unjust or arbitrary and do not unduly restrain or discriminate against Participants and their customers from transacting on the BGCDM or unduly burden the BGCDM from offering such transactions. Additionally, due process is implicitly within the definition of ‘fair and equitable’, and the due process rights available to Participants and Clients under BGCDM’s rules are described in Part 7, § 7.1.2 – 7.1.4. BGCDM’s due process rules respect all legal rights afforded to Participants in accordance with the CFTC.

11.2.2 Each Participant, Authorized Trader, other Supervised Person or Authorized Customer receiving any such information through the Trading System may redistribute such information only to such extent and in such manner as may be permitted by BCGDM from time to time. Employees and agents of BGCDM on reasonable notice under the circumstances shall have access to the offices of any Participant, Authorized Trader, other Supervised Person or Authorized Customer during regular business hours upon reasonable prior notice to such Person and subject to such person’s reasonable security policies in order to observe the compliance by such person.

11.2.3 Information regarding orders can be found in various sections in Parts 5, 6 and 7 of the BGCDM Rule Book.

BGCDM Rule 501 covers required transactions, except for Block Trades which are traded in accordance with Rule 510, are matched via the Electronic Order Book in accordance with the provisions of Rule 602, through Voice Functionality in accordance with Rule 702, or through the Request for Quote System in accordance with the provisions of Rule 702a.

BGCDM Rule 505 pertains to pre-execution and cross trades under which no person shall enter a pre-discussed Required Transaction through BGCDM for illegal or improper purposes or for a Required Transaction knowingly assume on its own behalf or on behalf of a Customer Account the opposite side of its own Order or its Customer’s Order (a “Cross Trade”), except as provided in the rule.

BGCDM Rule 506 outlines allocation and priority of orders. Each Participant shall ensure that Orders are allocated to the appropriate accounts. A Participant shall not withhold, cancel or withdraw from the Trading System any Order, or any part of an Order, for the benefit of any other Customer. No Participant shall enter an Order into the Trading System or submit an Order to an Execution Specialist for its own account, an account in which it has a direct or indirect financial interest or a Discretionary Account, including, without limitation, an Order allowing discretion as to time and price, when such Participant is in possession of any Order for the benefit of a Customer that the Trading System is capable of

accepting or which is capable of being traded in a Voice Trading Session, as applicable.

Transactions executed on BCGDM may be matched on the Trading System through any of Trading Sessions provided on either a voice functionality covered under Rule 702 or an electronic order book under Rule 602.

**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 BCGDM Rule 511 outlines public disclosures of data to a SDR. BCGDM shall disclose to all Participants data regarding price, size and side of a Swap transaction executed via the Electronic Order Book (inclusive of CLOB and RFQ), and may disclose such information for a transaction executed via Voice Functionality, upon transmittal of, or causing transmittal of, such information to the SDR. Price, side and size are fully transparent to all participants on the CLOB and RFQs must be directed to 3 or more participants. All executions are submitted to the SDR, which makes the transaction details transparent to the viewing public. In addition to SDR reporting, BCGDM publishes on its website, [www.BGCSEF.com](http://www.BGCSEF.com), daily information regarding volume, price ranges, open interest and settlement prices provided that such prices reflect market conditions accurately. BCGDM connects to The Depository Trust & Clearing Corporation (“DTCC”) and Intercontinental Exchange (“ICE”) as their SDR’s.

Furthermore, BCGDM Rule 403 outlines record-keeping and reporting requirements under which, BCGDM will report each transaction to a SDR chosen by BCGDM as soon as technologically practicable after execution. The Reporting Party for each Swap executed on or subject to the Rules shall be established pursuant to CFTC Regulation 45.8.

**PART 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 BCGDM has the power and authority to regulate its facilities to ensure that the facilities are not used for any improper purpose and to establish and enforce rules and procedures to ensure fair and equitable trading through its facilities. BCGDM is authorized to conduct and oversee surveillance duties, investigations and rule enforcement activities. The CCO is in charge of the Compliance Department. The personnel of the Compliance Department may not operate under the direction or control of a Participant. BCGDM has contracted with the NFA for the

performance of market, trade practice, financial, audit trail surveillance and related investigations and disciplinary proceedings with respect to Participants.

- 12.1.2 Each Participant, Authorized Trader, Authorized Customer or Broker shall, by making an application for a User ID and by placing any Order, to have agreed to: (i) be bound by the Rules of BCGDM; (ii) be subject to the jurisdiction of BCGDM; (iii) comply with all applicable Rules of BCGDM; and (iv) comply with Applicable Law.

**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 Core Principle 2 (Compliance with Rules) requires a SEF to establish and enforce trading, trade processing and participation rules that will deter abuses and have the capacity to detect, investigate and enforce those rules, including means to provide market participants with impartial access to the market and to capture information that may be used in establishing whether rule violations have occurred. CFTC Regulations require each SEF to maintain arrangements and sufficient compliance staff and resources to ensure that it can effectively enforce its rules as outlined in CFTC Regulations 37.203(b) and (c) and 37.206(a).

In accordance with Core Principle 2 and CFTC Regulations, BCGDM has made appropriate arrangements to ensure that it has appropriate systems, resources and procedures for evaluating compliance with the Rules and legislative requirements as well as for disciplining market participants. The CCO and ROC monitor BCGDM's compliance resources and will engage additional personnel as deemed necessary. BCGDM's ability to detect, investigate and take action with respect to violations of its Rules will be provided by the ROC, the CCO and NFA.

BCGDM is staffed with a designated group of employees who are responsible for market operations, real-time market monitoring, customer support with respect to technical issues and surveillance conducted by the Control Desk. Additionally, BCGDM has a dedicated compliance officer to assist the CCO with all matters related to BCGDM. This compliance officer's primary function is to manage the daily compliance and surveillance program to ensure compliance with the Core Principles.

BCGDM believes the joint efforts of Control Desk, BCGDM Compliance, ROC and Disciplinary Committee provides appropriate systems, resources and procedures for evaluating compliance with exchange and legislative requirements and for disciplining participants as noted in §5.1.

**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 OSC, on a timely basis.**

12.3.1 BGCMDM has the ability to obtain any needed information and to carry out information-sharing agreements as the OSC may require. Pursuant to Rule 403, Participants are required to make their books and records available for inspection by, and deliver copies thereof to, BGCMDM, the NFA, the CFTC, the Department of Justice and their respective authorized representatives upon request. Additionally, as previously noted, each Participant and Authorized Trader has agreed to be subject to the jurisdiction of BGCMDM pursuant to Rule 410. Each person subject to the jurisdiction of BGCMDM is required to respond to interrogatories and furnish documentary materials and other information requested by the Exchange in connection with disciplinary investigations. Rule 405 requires that each Participant cooperate with any investigation of BGCMDM, its designee, the CFTC or the SEC.

## **PART 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 BGCMDM's recordkeeping practices, procedures and rules are consistent with the CFTC's requirements. BGCMDM must keep records for at least five years and in accordance with CFTC Regulations Part 45 and §1.35. The Trading System captures and makes a record of every message processed. Additionally, the Trading System utilizes a functionality entitled "Electronic Information Services" ("EIS"), which generates ad-hoc real-time reports and records of trading activities and affords a view into Customer Static Data required by CFTC regulations. The Trading System records and maintains "backup" records of all trading activity, including a complete audit trail. Additionally, Participants acknowledge and consent to the BGCMDM's right and power to record conversations between employees, officers and agents of the SEF and Participants and Authorized Customers and, their employees, officers and agents. Participants and Authorized Customers shall inform their employees and agents of the SEF's right and power to record conversations and shall obtain their consent thereto. BGCMDM shall retain any such recordings under the terms and conditions BGCMDM may prescribe from time to time.

BGCMDM notes that compliance with the CFTC's recordkeeping and reporting requirements is audited regularly by its external auditors. Furthermore, BGCMDM enforces written policies for compliance with all document retention requirements.

BGCDM will report to the CFTC any information the CFTC determines to be necessary or appropriate. BGCDM will also provide any information requested on a non-routine basis by the CFTC.

Each Participant shall make and file reports relating to BGCDM in accordance with (and in the manner and form and at such times as may be prescribed by) CFTC Regulations.

- CFTC Reporting Requirement for Swaps. BGCDM will report each Transaction to a SDR chosen by BCGDM as soon as technologically practicable.
- CFTC Recordkeeping Requirements. Each Participant shall keep all records relating to BGCDM that are required by the Commission and Applicable Law to be kept, in such form and manner and for such period, as required by CFTC Rule and Applicable Law.
- BGCDM Reporting Requirements. Each Participant shall make and file reports with BGCDM at the time, in the form, and containing such information relating to BGCDM as it may prescribe from time to time.
- BCGDM Recordkeeping Requirements. Each Participant and as applicable, Broker, shall make such records relating to orders received, transactions effected and positions carried relating to BGCDM, and shall maintain such records in such form and manner and for such time, as required by CFTC Rule and Applicable Law. Such records shall at all times be open to inspection by BGCDM upon reasonable notice and subject to Participant's reasonable security policies.

Responding to Information Requests. Each Participant, and as applicable, Broker, shall timely furnish the information relating to BCGDM as may from time to time be requested by any representative of BGCDM acting within the scope of the jurisdiction and in the course of its, his or her duties, including the NFA acting in its capacity as a regulatory services provider, except to the extent prohibited by Applicable Law.

## **PART 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 BGCDM does not outsource any of their key functions, other than to the NFA as described below. To assist with some of the functions, BCGDM may enter into an arrangement with a third party to meet its regulatory obligations as permitted

- by the CFTC. With respect to non-key functions, BGCDM may enter into outsourcing arrangements and have appropriate and formal arrangements and processes in place with respect to out-sourcing functions.
- 14.1.2 BGCDM has contracted with the NFA for the performance of market, trade practice, financial, and audit trail surveillance, related investigations and disciplinary proceedings with respect to Participants. BGCDM retains ultimate responsibility for the oversight of each Participant.
- 14.1.3 BGCDM coordinates with the NFA to address market actions deemed inappropriate as a result of NFA's ongoing market surveillance activities. BGCDM has quarterly meetings with the NFA in order to ensure compliance with surveillance rules and regulations. The NFA provides a quarterly report to BGCDM detailing the number and type of investigations done by the NFA, the parties involved and the resolution of the matter. Both internal and external reports allow BGCDM and NFA to monitor NFA's activity as well as activity on BGCDM's market. BGCDM also has a Control Desk, a Compliance Department, and a Disciplinary Committee, each of which serve to enhance the trade practice surveillance and oversight in conjunction with the services of the NFA.
- 14.1.4 Depending upon product the being transacted, Markitwire and Thomson Reuters Trade Notification provide STP connectivity and ICE Clear Credit LLC, LCH Clearnet Ltd., LCH Clearnet LLC and CME, Inc. provide clearing and settling services to BGCDM.

## **PART 15 FEES**

### **15.1 Fees**

- (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 BGCDM, in its discretion and with reasonable written notice, may impose fees, charges and assessments upon Participants and Brokers. All Participants and Brokers are subject to the same fee schedule. Given the highly competitive nature of OTC swaps market as well as market forces, the fees, charges and assessments do not pose a barrier to entry nor limit access to the services offered by BGCDM.

## **PART 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 cooperate with the OSC, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.**

16.1.1 Pursuant to BGCDM’s SEF registration, BGCDM will share information and cooperate with the CFTC, OSC, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

16.1.2 BGCDM may participate when necessary for information sharing and oversight arrangements in formal agreements with other domestic and foreign regulatory authorities and clearing and self-regulatory authorities.

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

16.2.1 The CFTC has required that BGCDM sign on to the Declaration on Co-operation and Supervision of International Futures Exchanges and Clearing Organizations as amended, March 1998 (commonly known as the “Boca Declaration”) and the CFTC is a signatory to the Boca Declaration.

16.2.2 The CFTC has entered into memorandum of understanding (“MOU”) arrangements for co-operative enforcements actions with foreign regulatory authorities in numerous instances. The MOUs typically provide for access to non-public documents and information already in the possession of the regulatory authorities. This often includes the undertaking to obtain documents and to take testimony of, or statements from, witnesses on behalf of a requesting regulatory authority. The CFTC and the OSC are parties to a MOU that was entered into by the parties on March 25, 2014.

## **PART 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 BGCDM adheres to the standards of IOSCO by virtue of the fact that they must comply with the CEA and CFTC Regulations, which reflect the IOSCO standards. BGCDM is regularly examined by the CFTC and during these examinations the IOSCO standards to which they are subject are taken into account.

This application and exhibits herein constitute BGCDM's full application to be exempted from listing as an exchange. For the reasons set out in this application BGCDM submits that it meets the criteria for exemption and that it would not be prejudicial to the public interest for the OSC to grant the exemption.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Sulfaro", written in a cursive style.

Michael C. Sulfaro  
Chief Compliance Officer