



March 28, 2016

Via Air Courier and E-mail (http://www.osc.gov.on.ca/en/SecuritiesLaw_forms_index.htm)

Secretary
Ontario Securities Commission
22nd Floor
20 Queen Street West
Toronto ON M5H 3S8
Attention: Market Regulation Branch, Ontario Securities Commission

Re: SwapEx, LLC – Application for Exemption from Recognition as an Exchange

Dear Secretary,

SwapEx, LLC ("**SwapEx**") is filing this application with the Ontario Securities Commission ("OSC") for a decision under section 147 of the Securities Act (Ontario) ("OSA") exempting SwapEx from the requirement to be recognized as an exchange under subsection 21(1) of the OSA.

OSC Staff has prescribed criteria that it will apply when considering applications by foreign-based swap execution facilities for registration (or exemption from registration) under Section 21(1) of the OSA. These criteria are prescribed in OSC Staff Notice 21-702 *Regulatory Approach for Foreign Based Stock Exchanges*, as updated, ("**Staff Notice 21-702**") in relation to applications for recognition (or exemption from recognition) by foreign exchanges under Section 21 of the OSA.

For convenience, the application is divided into the following Parts I to V, Part III of which describes how SwapEx satisfies OSC Staff's criteria for exemption as a foreign exchange trading over the counter ("**OTC**") derivatives from recognition as an exchange under subsection 21(1) of the OSA consistent with the criteria in Staff Notice 21-702:

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1. Submissions Concerning the Requested Relief

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1. Consent to Publication

Questions regarding the application should be directed to the attention of Brian J. Regan, SwapEx's Chief Compliance Officer, at BJRegan@statestreet.com or at (312) 798-6517.

Sincerely,



Brian J. Regan
Chief Compliance Officer

cc: Timothy Baikie
Alex Petro
OSC, Market Regulation

Justin A. McCormack
David Newns
SwapEx, LLC

INTRODUCTION

1. SwapEx Services to Ontario Residents

- 1.1 SwapEx operates an electronic trading platform (the "**Trading System**") for the trading of certain derivative products by users in the United States and certain foreign jurisdictions.
- 1.2 SwapEx does not have and does not intend to have any offices or maintain other physical installations in Ontario or any other Canadian province or territory.
- 1.3 SwapEx offers access to the Trading System to users located in Ontario ("**Ontario Users**"). To obtain direct access to the Trading System, an Ontario User must either be: (i) a firm or individual that has registered directly with SwapEx and executed the SwapEx Participant Agreement ("**Participant**") or (ii) an Authorized Trader ("**Authorized Trader**") whose direct access to the Trading System is sponsored by a Participant and who has registered directly with SwapEx and executed an appropriate schedule to the SwapEx Participant Agreement. Participants and Authorized Traders are referred to collectively herein as "**SwapEx Users**" and each, individually, as a "**SwapEx User**." Furthermore, a Participant or Authorized Trader may use the Trading System to execute transactions on behalf of a third party (a "**Customer**"). Such Customer may either be (1) an eligible contract participant (as defined in Section 3.1 of Part II of this application) that has authorized a Participant or Authorized Trader transact on the Trading System for its account or (2) a DMA Customer. A "**DMA Customer**" is an eligible contract participant who is authorized by a Participant to submit orders or requests for quotes ("**RFQs**") electronically on the Participant's system or platform for onward transmission to the Trading System through the user ID assigned to an Authorized User of the Participant. (The terms "Participant", "Authorized Trader" and "Customer" are defined in the SwapEx Rulebook.)
- 1.4 SwapEx obtains a representation from each Ontario User seeking direct access to the Trading System that they are appropriately registered under Ontario securities laws to use the Trading System or are exempt from or not subject to such registration requirements with respect to its use of the Trading System and such representation is deemed repeated each time the Ontario User makes use of the Trading System.

2. Background to the Application

- 2.1 On October 8, 2013, SwapEx submitted an application to the Ontario Securities Commission (the "**OSC**") for temporary exemption from the requirement to be recognized as an exchange under section 21(1) of the *Securities Act* (Ontario) (the "**OSA**"). The OSC granted the order (the "**Interim Order**") effective October 29, 2013 with a termination date on the earlier of (i) the 180th day following the date on which the Applicant is granted permanent registration as a SEF by the CFTC (July 20, 2016) and (ii) the effective date of a subsequent order exempting SwapEx from the requirement to be recognized as an exchange pursuant to section 147 of the OSA. SwapEx currently carries on business in Ontario pursuant to the Interim Order.

PART II BACKGROUND WITH RESPECT TO SWAPEX

1. Ownership of SwapEx

- 1.1 SwapEx is a Delaware limited liability company formed on March 27, 2012 and is a wholly-owned direct subsidiary of SwapEx Limited ("**SwapEx Ltd**"), a private company limited by shares organized under the laws of England and Wales. SwapEx Ltd. is a wholly-owned direct subsidiary of State Street Corporation ("**SSC**"), which is a Massachusetts corporation and public company with shares listed on the New York Stock Exchange (NYSE:STT). SSC is also the parent company of State Street Bank and Trust Company ("**State Street Bank**"), which is a Massachusetts chartered trust company and a bank listed in Schedule III of the *Bank Act*

(Canada). SwapEx is located at 1230 Avenue of the Americas, New York, NY 10020.

2. Products Traded on the Exchange

- 2.1 SwapEx is registered as a swap execution facility (“SEF”) with the U.S. Commodity Futures Trading Commission (the “CFTC”). SwapEx obtained its grant of full registration as a SEF on January 22, 2016 and previously had operated under temporary registration status which was granted on September 13, 2013.
- 2.2 SwapEx currently lists for trading certain foreign exchange non-deliverable forwards (“NDFs”) that are not presently listed for clearing by a clearing agency (i.e., they are settled bilaterally) as well as other NDFs that are listed for clearing on a voluntary basis for which the LCH.Clearnet Limited (“LCH Limited”) acts as a clearinghouse. SwapEx has also entered into agreements for clearing services with the Chicago Mercantile Exchange Inc. (“CME”). However, SwapEx has not yet listed any NDF products for trading on the Trading Platform that are cleared by CME. SwapEx may support the trading of NDFs that are cleared at additional clearinghouses in the future.
- 2.3 The CFTC, a U.S. federal regulatory agency, has mandated that all swap markets that are registered with the CFTC as SEFs must, at a minimum, make available an order book for trading of every instrument listed on the SEF. The CFTC has also permitted SEFs to make (i) RFQ trading available to its participants and (ii) for swaps that have not been designated as required to be cleared and made available for trading by the CFTC, any other means of execution available to its participants. SwapEx offers both order book and RFQ trading for all instruments listed for trading on its platform. There are two types of RFQ execution styles supported by SwapEx: Traditional RFQ and Reverse RFQ. These types of execution styles are summarized here; additional details can be found in SwapEx Rule 524 (Operation of the Trading System). Under Traditional RFQ, SwapEx allows any subscriber to initiate an RFQ, which will be delivered to selected liquidity providers, who may provide liquidity back to the requestor. Under Reverse RFQ, SwapEx allows participants to provide continuous liquidity on a set of pre-determined instruments to the liquidity takers of their choosing, who can in turn act on those quotes.

3. SwapEx Participants

- 3.1 Pursuant to the CFTC’s Regulation 37.202, SwapEx can only provide access to its Trading Facility to persons who qualify as eligible contract participants (“**eligible contract participants**”), as defined under Section 1a(18) of the U.S. Commodity Exchange Act (as amended, the “CEA”) and SwapEx must provide impartial access to all such persons.

PART III APPLICATION OF EXEMPTION CRITERIA TO SWAPEX

The following is a discussion of how SwapEx meets the relevant criteria for exemption of a foreign exchange trading OTC derivatives from recognition as an exchange under subsection 21(1) of the OSA.

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 In the U.S., swap markets are regulated under the CEA. The CEA was substantially revised by the Dodd-Frank Wall Street Reform and Customer Protection Act (the “**Dodd-Frank Act**”), which was signed into law in 2010. The Dodd-Frank Act amended the CEA to establish the requirement for certain swap markets to register as SEFs and to set forth certain core principles (the “**SEF Core Principles**”) with which SEFs must comply. The SEF Core Principles are set

forth in subsection 5h of the CEA and are interpreted and implemented through the CFTC in Part 37 (*Swap Execution Facilities*) ("**Part 37**") of its regulations¹. The CFTC has been charged with administering and enforcing the CEA. Accordingly, the CFTC is the U.S. government agency that has direct regulatory and oversight responsibility over SEFs.

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 SwapEx is a fully registered SEF within the meaning of that term under the CEA and, as such, is subject to regulatory supervision by the CFTC.

1.2.2 The CFTC's criteria for SEF registration include demonstrating that the swap market has the capacity to prevent market manipulation; can ensure fair and equitable trading; has the capacity to detect, investigate and discipline any person that violates its rules; can ensure the financial integrity of transactions entered into through its facilities; and has the authority to obtain any necessary information to perform its regulatory functions, including the capacity to carry out international information-sharing agreements.

1.2.3 SwapEx is obligated under the CEA to give the CFTC access to all records unless prohibited by law or such records are subject to solicitor-client privilege. The CFTC has access to records of transactions executed on SwapEx (which SwapEx must report to a swap data repository that is registered with the CFTC) and receives daily trading reports from SwapEx pursuant to the reporting requirements set forth in Part 16 of the CFTC's rules. The CFTC has the jurisdiction to perform reviews and assess and enforce SwapEx's adherence to the CEA and the regulations thereunder on an ongoing basis, including elements of the SEF Core Principles: adherence to requirements that the SEF monitor and enforce compliance with its rules; only list contracts that are not readily susceptible to manipulation; monitor trading to prevent manipulation, price distortion and disruptions of the delivery or cash-settlement process; make available to the regulators, market participants and the public certain market information; create and maintain necessary records; establish rules to ensure the financial integrity of its contracts; minimize conflicts of interest in the decision-making process and establish a process for resolving such conflicts; and avoid anti-competitive actions.

1.2.4 The Chief Compliance Officer (the "**Chief Compliance Officer**") of SwapEx is responsible for providing the Board of Directors (the "**Board**") of SwapEx with an annual report summarizing the activities of the SwapEx Market Regulation Department (see Section 5 of Part III of this application for additional information on the role of the Market Regulation Department). These annual reports are then filed by the Chief Compliance Officer with the CFTC. The reports provide the CFTC with visibility into the functioning and decision making of SwapEx's Regulatory Oversight Committee (see Sections 2.1.7-2.1.11 of Part III of this application for additional information on the role of the Regulatory Oversight Committee). The CFTC also has the authority to request Regulatory Oversight Committee minutes and other materials, and meet independently with the Regulatory Oversight Committee as needed (e.g., in the form of executive sessions).

2. Corporate Governance

2.1 Fair Representation – The governance structure and arrangements of the Exchange ensure:

(a) Effective oversight of the exchange

¹ 78 Fed. Reg. 33476 (June 4, 2013).

2.1.1 In accordance with the Board's mandate, the Board has authority over the business and affairs of SwapEx, subject to any power and authority delegated by the Board to officers of SwapEx. The Board has delegated authority for implementation of the business of SwapEx on a day-to-day basis to SwapEx's officers and management team. The business of SwapEx remains subject to oversight by the Board. The Board has also delegated authority to three standing Board-level committees: Regulatory Oversight Committee; Nominating Committee and Participant Committee (see Section 2.1.6-2.1.13 of Part III of this application for additional information regarding the authority delegated to each of these committees). Pursuant to the SwapEx Board Code of Ethics, each director on the Board has a responsibility to:

- be reasonably well informed about the activities of SwapEx and exercise independent judgment on all decisions;
- read the information provided for Board and, as applicable, committee meetings sufficiently in advance of the meeting to provide an opportunity for reflection and/or request additional information should such be needed;
- regularly attend meetings of the Board and of the committees on which the director sits; and
- as discussed in more detail in Sections 2.1.16-2.1.27 of Part III of this application, deal with any conflicts of interest in accordance with the requirements of the SwapEx Board Code of Ethics.

2.1.2 The Board sets high standards for SwapEx. Implicit in this philosophy is the importance of sound corporate governance. SwapEx's governance structures and processes reflect its commitment to the institutions and individuals who rely on it to provide fair and efficient markets. SwapEx's governance approach also supports its important role as a self-regulatory organization subject to oversight by the CFTC.

2.1.3 SwapEx's sole member is SwapEx Limited and it elects all of SwapEx's directors. Pursuant to Rule 203(a) of the SwapEx Rulebook², no member of the Board or any committee thereof shall be eligible to serve on the Board or any such committee if the individual has committed a "disciplinary offense" as defined by the SwapEx Rulebook or if such individual would be otherwise ineligible pursuant to such rule.

Director Nominations

2.1.4 With respect to director nominations, SwapEx seeks candidates with a variety of talents and expertise to ensure that the Board as a whole is operating effectively and is focused on creating long-term value while ensuring the integrity of the markets. In furtherance of the foregoing, SwapEx requires its Board to establish a sub-committee of the Board, the Nominating Committee, to recommend candidates for election to the Board.

Director Qualifications

2.1.5 With respect to director qualifications, SwapEx's Nominating Committee recommends candidates for election to the Board. In considering candidates for the Board, the Nominating

² The rules set forth in the SwapEx Rulebook are referred to herein, collectively, as the "SwapEx Rules" and, individually, each as a "SwapEx Rule". The current version of the SwapEx Rulebook can be found at <http://www.swapex.com/swapex/rules-policies-and-notice/rulebook/>.

Committee considers the entirety of each candidate's credentials, including, without limitation, the candidate's experience, perspective, skills and knowledge, both as an absolute matter and relative to the experience and skill of other directors. With respect to the nomination of continuing directors for re-election, the individual director's contributions to the Board are also considered. As part of proposed regulations with respect to governance of SEFs, the CFTC has proposed certain requirements for representation of public directors (as defined by the CFTC) on SEF boards and certain SEF board-level committees. However, these proposed regulations have not been finalized. As discussed in more detail below, the Board and each of its current standing committees include one member who is an "Independent Director" as defined by SwapEx rules. Specifically, for purposes of the SwapEx rules, an Independent Director is a Director who is not:

- (1) an Officer or employee of SwapEx, or an officer or employee of an Affiliate of SwapEx; or
- (2) a Participant, Authorized Trader, or a director, officer or employee of a Participant or Authorized Trader.

Any of the relationships set forth above also apply to the "immediate family" of such Director (i.e., spouse, parents, children and siblings).

Board Committees

- 2.1.6 The Board has three active standing committees that are Board-level committees: Regulatory Oversight Committee; Nominating Committee and Participant Committee. Each committee has a written charter that sets forth its responsibilities in more detail.

Regulatory Oversight Committee

- 2.1.7 Under its charter, the Regulatory Oversight Committee is responsible for oversight of SwapEx's regulatory program, including monitoring the SwapEx's regulatory program for sufficiency, effectiveness and independence. The Regulatory Oversight Committee reviews the size and allocation of the regulatory budget and regulatory staff on an annual basis. The Regulatory Oversight Committee is also apprised of the hiring, termination and compensation of key regulatory personnel. Under SwapEx Rule 204, the Director serving as the Chair of the Regulatory Oversight Committee must have been found by the SwapEx Board on the record to meet the conditions of serving as an Independent Director.
- 2.1.8 The Regulatory Oversight Committee meets at least quarterly, and the Chief Compliance Officer provides updates to the Committee at those meetings. During those meetings, the Committee is provided an opportunity to raise any issues, questions or concerns. The Regulatory Oversight Committee has a standing agenda item for each meeting to consider any potential conflicts of interests related to SwapEx operations.
- 2.1.9 Additionally, the Chairman of the Regulatory Oversight Committee meets with the Chief Compliance Officer periodically via teleconference or in person outside of the context of regularly scheduled meetings. We believe that this enables an appropriate level of independent oversight to allow the Regulatory Oversight Committee to determine that the Chief Compliance Officer is able to implement the Market Regulation Department's self-regulatory responsibilities free from improper interference or influence. The Regulatory Oversight Committee receives regular reports from SEF staff to ensure that it is fulfilling its oversight role including:
 - regular status reports of any on-going investigations and other regulatory activities, including statistical information on the overall number of investigations and disciplinary actions being taken; and

- reports on industry issues that may have an impact on the roles performed by the Market Regulation Department.
- 2.1.10 Under SwapEx Rule 710, the Chairman of the Regulatory Oversight Committee has the additional responsibility of deciding the merits of any request for disqualification of a person appointed to a disciplinary panel. The Chair determines such requests within his or her sole discretion and such decision is not subject to appeal.
- 2.1.11 Pursuant to SwapEx Rule 204(e), if the Board rejects a recommendation or supersedes an action of the Regulatory Oversight Committee, SwapEx shall submit a written report to the CFTC detailing: (i) the recommendation of or action proposed to be taken by the Regulatory Oversight Committee; (ii) the rationale for such recommendation or action; (iii) the rationale of the Board for rejecting such recommendation or superseding such action; and (iv) the course of action that the Board decided to take contrary to such recommendation or action.

Nominating Committee

- 2.1.12 Under its charter, the Nominating Committee is responsible for (i) identifying qualified individuals to serve on the Board and on Board and non-Board committees, consistent with criteria approved by the Board and any requirements promulgated by the CFTC and (ii) administering the process by which individuals are nominated to serve on the Board.

Participant Committee

- 2.1.13 Under its charter, the Participant Committee is responsible for (i) determining the standards and requirements for initial and continuing eligibility of SwapEx's Participants, (ii) reviewing appeals of staff denials of prospective applicants for Participant status, and (iii) approving rules that would result in different categories or classes of Participants receiving disparate access to the Trading System. Pursuant to SwapEx Rule 204(e), if the Board rejects a recommendation or supersedes an action of the Participant Committee, SwapEx shall submit a written report to the CFTC detailing: (i) the recommendation of or action proposed to be taken by the Participant Committee; (ii) the rationale for such recommendation or action; (iii) the rationale of the Board for rejecting such recommendation or superseding such action; and (iv) the course of action that the Board decided to take contrary to such recommendation or action.

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

- 2.1.14 The rules, policies and activities of SwapEx are designed and focused on ensuring that it maintains best practices and fulfills this public interest mandate. SwapEx operates on a basis consistent with applicable laws and regulations, and best practices of other SEFs.
- 2.1.15 SEFs were created by the Dodd-Frank Act in part to ensure that a broader universe of market participants receive market information on a pre-trade and post-trade basis. The Dodd-Frank Act and associated regulations were intended to implement a comprehensive regulatory framework, including registration, operation, and compliance requirements for SEFs. The Dodd-Frank Act sets forth a broad registration provision for facilities operated for the trading of swaps. As per the Dodd-Frank Act and associated regulations, SwapEx has been granted registration and must maintain its status as a SEF, which is included in the definition of "self-regulatory organization" in the CFTC's regulations. To do so, SwapEx must comply with fifteen enumerated Core Principles and any requirement that the Commission may impose by rule or regulation. SwapEx has certified its compliance with the requirements of the Dodd-Frank Act, including the Core Principles and the related CFTC rules. As a result, SwapEx has and must maintain programs that provide for: fair and equal access to markets and information, orderly markets not subject to manipulation, monitoring of trading and trade processing, record keeping

and authority to obtain information, timely publication of information and the authority to conduct investigations, enforce rules, act in cases of emergency and avoid conflicts of interest.

(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,

2.1.16 The Board maintains a proper balance among the interests of different persons or companies using the services or facilities of SwapEx by (1) having a Nominating Committee to consider this balance in nominating board members and (2) including an Independent Director who is experienced in the industry but not actively using the services serve on both the Board and the standing Board-level committees. Additionally, the current members serving on the Board provide a diverse array of professional experiences to the Board, separately emphasizing expertise in banking, finance and accounting, FX derivatives trading and CFTC oversight of regulated derivatives markets. The qualifications for members of the board are described in more detail in Section 2.1.5 of Part III of this application, All candidates for Board membership are nominated by the Nominating Committee and are evaluated, in accordance with the Nominating Committee charter, their experience, perspective, skills and knowledge, both as an absolute matter and relative to the experience and skills of other members of the Board. All of the members of each of the three standing Board-level committees (the Regulatory Oversight Committee, the Nominating Committee and the Participant Committee) are also members of the Board.

2.1.17 At this time, as previously noted, the CFTC Regulations do not require SEFs to maintain diverse representation on their boards or board committees. However, the SwapEx board currently includes one Independent Director. The Independent Director is the Chair of the Regulatory Oversight Committee and also serves as a member of the Nominating Committee and the Participant Committee.

2.1.18 Based on the above, there is a clear basis for concluding that there is fair, balanced, meaningful and diverse representation on the Board and each of its standing Board-level committees.

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

2.1.19 In order to ensure that the Board effectively avoids or minimizes conflicts of interests and quickly resolves any that arise, the Board has adopted a conflicts of interest policy as part of its Board Code of Ethics. In addition, SwapEx officers and directors are subject to the broader State Street Code of Conduct, which functions as a code of ethics.

2.1.20 The Board's Code of Ethics sets out standards for identifying conflicts of interest and then describes procedures and processes for the disclosure, evaluation and resolution of actual, apparent or potential conflicts of interest.

2.1.21 In accordance with these policies, members of the Board are required to act honestly, in good faith and in the best interests of the organization, disclose any potential for the director to receive any private benefit in connection with a matter being presented to the Board, not use their positions for their personal benefit and preserve the confidentiality of information provided to them.

- 2.1.22 As noted, the State Street Code of Conduct applies to all SwapEx personnel, including the executive officers of SwapEx. The provisions of the State Street Code of Conduct address potential and actual conflicts of interest. On an annual basis, SwapEx personnel are required to certify that they have received and agree to abide by the provisions of the State Street Code of Conduct.
- 2.1.23 Under the SwapEx compliance procedures, the CCO is responsible for resolving conflicts of interest that may arise in connection with the operations of SwapEx. Such conflicts of interest may arise in a variety of circumstances and may implicate a number of different considerations. For example, conflicts may arise between the commercial interests of SwapEx and the statutory and regulatory obligations imposed on SwapEx, such as the obligation that a SEF provide fair and open access to products and participants. With the exception of conflicts identified in the context of a particular disciplinary proceeding, the CCO otherwise will resolve conflicts of interest in consultation with the SwapEx Board or the chief executive officer of SwapEx. Any person who believes that their circumstances may give rise to a conflict must notify the CCO, in writing as soon as they become aware of the situation. With respect to Board matters, the CCO shall act in consultation with the SwapEx Board or the SwapEx chief executive officer, as applicable.
- 2.1.24 In accordance with SwapEx Rule 206, a director, officer, member of any Committee, member of any Disciplinary Panel (as defined in Section 7.1.9 of Part III of this application) or member of any Appeal Panel Member (as described in Section 7.1 of Part III of this application) who has a material conflict of interest (as defined in SwapEx Rule 206(b)) would be prohibited from participating in deliberations and voting on the matter that is the source of the conflict, except that such person may participate in deliberations prior to a vote in respect of such disciplinary matter only if:
- (1) the Board, committee, Disciplinary Panel or Appeal Panel, as applicable, evaluating the conflicts disclosure determines that participation by such person in such deliberations would be consistent with the public interest and the interests of SwapEx;
 - (2) a majority of the disinterested members of the Board, committee, Disciplinary Panel or Appeal Panel evaluating the conflicts disclosure vote to allow such person to participate in such deliberations; and
 - (3) the minutes of the meeting of the Board, committee, Disciplinary Panel or Appeal Panel evaluating the conflicts disclosure reflect such vote and the reasons therefor.
- 2.1.25 In the event that the Board or CEO does not accept or otherwise adopt the CCO's recommendation(s) on a matter involving a potential conflict of interest, the CCO will provide formal written notification of this divergence in a report to the Regulatory Oversight Committee and will similarly document this outcome in the CCO's next annual report to the CFTC.
- 2.1.26 The Regulatory Oversight Committee is responsible for, among other things, monitoring SwapEx's regulatory program for independence, reviewing the performance of the Chief Compliance Officer and making recommendations to the Board with respect to changes to the regulatory program and the performance of the Chief Compliance Officer. The Board can reject a recommendation of the Regulatory Oversight Committee, as the Board retains ultimate decision making authority for all matters. To date, the Board has not rejected a Regulatory Oversight Committee decision. Pursuant to SwapEx Rule 204(e) (Standing Committees), if the Board rejects a recommendation or supersedes an action of the Regulatory Oversight Committee, SwapEx shall submit a written report to the CFTC detailing: (i) the recommendation of or action proposed to be taken by the Regulatory Oversight Committee; (ii) the rationale for such recommendation or action; (iii) the rationale of the Board for rejecting such recommendation or superseding such action; and (iv) the course of action that the Board decided to take contrary to such recommendation or action.

2.1.27 SwapEx, through its Board Code of Ethics and conflicts of interest policies, the State Street Code of Conduct, the exercise of oversight by its Chief Compliance Officer and Regulatory Oversight Committee and its compliance with CFTC Regulations, has established a robust set of safeguards designed to ensure directors, officers and personnel fulfill their duties free from conflicts of interest or inappropriate influence as described above. The CFTC also conducts its own surveillance of the markets and market participants and actively enforces compliance with the CEA and CFTC Regulations, including SEF Core Principle 12 – *Conflicts of interest*. In addition to the CFTC's oversight of the markets, SwapEx separately establishes and enforces rules governing the activity of all market participants on its Trading System.

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

2.1.28 Please refer to Sections 2.1.1-2.1.3 and 2.2 of Part III of this application for information regarding the qualifications of directors and officers of SwapEx.

2.1.29 Only the Independent Director receives any remuneration from SwapEx for serving in the role of director.

2.1.30 Officers and personnel of SwapEx are employed and compensated by State Street Bank. At present, there are no personnel employed directly by SwapEx. Instead, the services of State Street Bank staff are made available to SwapEx under inter-company service agreements.

State Street Bank employees who provide compliance services to SwapEx are, with respect to any matters regarding SwapEx or its swap execution facility operations, (i) required to report to the SwapEx Chief Compliance Officer or, in the case of the Chief Compliance Officer to the chief executive officer, president or board of directors of SwapEx (as provided in the organizational documents of SwapEx) and (ii) subject to the oversight of the board of directors and regulatory oversight committee of SwapEx in accordance with the organizational documents, rules and policies and procedures of SwapEx. Furthermore, the Regulatory Oversight Committee is responsible for reviewing the size and allocation of regulatory budgets and resources and the number, hiring, termination and compensation of the personnel of the Market Regulation Department (excluding personnel of NFA as the regulatory services provider) and the Board will determine the compensation of the Chief Compliance Officer.

2.1.31 None of its directors or officers will be liable to SwapEx or any of its owners for any act performed by such director or officer within the scope of authority conferred on such officer or director, except in the event of such director's or officer's gross negligence, fraud, bad faith or a material breach of applicable duties.

2.1.32 SwapEx is required, to the fullest extent permitted under Delaware law, to indemnify and hold harmless its directors and officers from and against any losses suffered or sustained by a director or officer as a result of his or her acts or omissions on behalf of SwapEx or in furtherance of the interests of SwapEx or by reason of the fact that the person was a director or officer of SwapEx, unless the acts or omissions were a result of the director's or officer's gross negligence or were performed or omitted fraudulently or in bad faith or constituted a material breach of applicable duties.

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 As noted above, SwapEx has established a Nominating Committee which recommends candidates for election after consideration of each candidate's credentials, including, without

limitation, the candidate's experience, perspective, skills and knowledge, both as an absolute matter and relative to the experience and skill of other directors. The Board appoints the officers of SwapEx.

- 2.2.2 SwapEx Rule 203 prohibits any person from acting as an officer or director if he or she meets certain disqualifying criteria, including, without limitation, if he or she has committed certain criminal or disciplinary offenses, is subject to certain restrictions on registration with the CFTC or has had such registration suspended or revoked or is subject to certain statutory disqualifications under the CEA.
- 2.2.3 In addition, each existing director of SwapEx must, on an annual basis, and each nominee for director must, prior to serving on the Board, complete a questionnaire which includes questions relating to potential related party transactions and eligibility requirements under SwapEx Rule 203(a) (including, without limitation, the requirements that such person has not committed a "disciplinary offense" as defined by the SwapEx Rulebook). Each executive officer of SwapEx must, on an annual basis, and each potential candidate for executive office must, prior to taking an executive office position, complete a certification that such person will inform the Chief Compliance Officer of SwapEx with respect to certain conflict of interest and if such person meets any of the disqualification criteria set forth in Rule 203.

3. Regulation of Products

- 3.1 **Review and Approval of Products – The products traded on the exchange and any changes thereto are reviewed by 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 In accordance with the CFTC's Part 37 regulations, under CFTC Regulation 37.4, SEFs must submit the terms and conditions, including any amendments thereto, of the products it lists for trading to the CFTC in accordance with Part 40 (*Provisions Common to Registered Entities*) ("**Part 40**") of the CFTC's regulations.
 - 3.1.2 Part 40 includes rules concerning the process for review of new products traded on SEFs. Part 40 requires that all new products and changes to products be either self-certified to the CFTC (under CFTC Regulations 40.2 and 40.6, respectively) or submitted to the CFTC for review and approval (under CFTC Regulations 40.3 and 40.5, respectively). A SEF has discretion as to whether to self-certify the new product or amendment or to submit the same for approval. SwapEx typically would utilize the self-certification process for most filings of new products or amendments. Historically, derivatives markets regulated by the CFTC have typically sought approval from the CFTC with respect to introduction of new products with especially novel product terms. SwapEx would consider submitting a proposed new product on a voluntary basis for review and approval by the CFTC if the terms of such product were novel in the SEF marketplace.
 - 3.1.3 With respect to new products and product amendments that are not voluntarily submitted for review and approval of the CFTC, under CFTC Regulation 40.2 and CFTC Regulation 40.6, respectively, they must be submitted to the CFTC and posted on the SEF's website in advance of their listing date or effective date, as applicable, and must include an explanation and analysis of the product or amendment and its compliance with the CEA and its implementing regulations. In particular, with respect to new product listings, CFTC Regulation 40.2 requires that the CFTC receive new product submissions "by the open of business on the business day preceding the product's listing". In addition, CFTC Regulation 40.2 requires that the new product submission contain a "[c]oncise explanation and analysis of the product and its compliance with the applicable provisions of the [CEA], including its core principles, and the [CFTC's] regulations thereunder". The CFTC has the right to request additional information with respect to such self-certification filing.

- 3.1.4 The CFTC SEF Core Principles relevant to products traded on SwapEx include: SEF Core Principle 2 – *Compliance with Rules*; SEF Core Principle 3 – *Swaps Not Readily Susceptible to Manipulation*; SEF Core Principle 4 – *Monitoring of Trading and Trade Processing*; SEF Core Principle 5 – *Positions Limits or Accountability*; and SEF Core Principle 9 – *Daily Publication of Trading Information*.
- 3.1.5 In accordance with SEF Core Principle 3, the CFTC requires SEFs to demonstrate that new products are not readily susceptible to the threat of manipulation. The CFTC’s final rules for Part 37 also include Appendix B to Part 37 - *Guidance on, and Acceptable Practices in, Compliance with Core Principles*. The guidance provided for SEF Core Principle 3 includes a cross-reference to Appendix C to Core Principle 3 – *Demonstration of Compliance That a Contract is Not Readily Susceptible to Manipulation* (“**Appendix C**”) of the CFTC’s regulations with respect to designated contract markets (“**DCMs**”), and the discussion of swap products applies both to swaps listed for trading on SEFs as well as on DCMs. Appendix C outlines general product requirements as well as requirements by derivative type (i.e., futures, swaps, and options). Appendix C also contains varied and numerous requirements specific to each derivative type and settlement method, such as swaps. These specific requirements seek to foreclose the potential for price manipulation unique to each derivative type and settlement method.
- 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 Among other things, the requirement that new products comply with the SEF Core Principles means that they underwent an analysis of the related underlying market. As part of each product certification, the CFTC requires SEFs to include an analysis with respect to SEF Core Principle 3 - *Swaps Not Readily Susceptible to Manipulation* and Core Principle 4 - *Trading and Trade Processing*. As part of such analysis, the SwapEx reviews product terms to ensure that the terms would not render the product susceptible to manipulation, price distortion or disruptions of the delivery process. For products to be listed for trading that could be submitted to a clearinghouse on a voluntary basis for clearing, SwapEx staff ensures that the product terms are consistent with the product specifications for clearing set forth by the clearinghouse. In response to a SEF’s self-certification of a new product, the CFTC may follow up with questions requesting additional information on the underlying market.
- 3.2.2 Also, during the product development process, SwapEx product and business development staff reviewed the terms of existing products currently trading in other forums so that the terms and conditions of SwapEx’s listed products would be in conformity with the usual commercial customs and practices for the trading of such products.
- 3.2.3 In some instances, existing commercial terms have been incorporated by reference into our product terms. As an example, for a Non-Deliverable Foreign Exchange Forward (USD Settlement Currency) (Uncleared) Contract, SwapEx has incorporated by reference in its product terms certain of the template terms of the relevant Emerging Markets Trade Association (“**EMTA**”) Template in the currency pair that is the subject of the relevant contract .
- 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 including, but not limited to, daily trading limits, price limits, position limits, and internal controls.**
- 3.3.1 While clearing member firms have the direct regulatory obligation to conduct pre-trade screening, the CFTC staff has issued guidance indicating that “the SEF should make it possible for [clearing member firms] to screen in accordance with Regulation 1.73 on an order-by-order

basis. This is also consistent with the obligations of a SEF to provide impartial access under Regulation 37.202.³ In accordance with this guidance, SwapEx offers pre-trade credit screening functionality for each order and RFQ request that is submitted into the system. SwapEx also has in place various internal system controls to manage and mitigate the risks associated with trading products on the Trading System. For example, Section 9.3.1 below discusses an internal system control utilized by SwapEx to manage order messaging activity. Section 9.3.2 below notes a quantity check that may be utilized by system users. In addition, to mitigate the risks associated with trading products on the Trading System, users have the ability to set (or alternatively to turn off) permissioning for various transaction types, such as for example market orders or stop loss orders. In addition, users may utilize various protection alerts, such as an alert that can notify a user when a market price is moving away from an earlier transaction made by them on the Trading System.

- 3.3.2 Core Principle 6 requires that SEFs, for each contract and as necessary and appropriate, adopt position limitation or position accountability levels. For any transaction involving a swap that is subject to the trade execution requirement under subsection 2(h)(8) of the CEA (a "**Required Transaction**"), a SEF may demonstrate compliance with § 37.600 by setting and enforcing position limitations or position accountability levels only with respect to trading on the SEF's own market. For any transaction not involving a swap subject to the trade execution requirement under subsection 2(h)(8) of the CEA (a "**Permitted Transaction**"), a SEF may demonstrate compliance with § 37.600 by setting and enforcing position accountability levels or sending the CFTC a list of the swaps underlying Permitted Transactions traded on the SEF. With respect to swaps listed on the SEF that underlie Permitted Transactions, SwapEx has provided the CFTC with a list of such swaps. Given current levels of trading activity at SwapEx, we have concluded that the implementation of position accountability levels would be neither necessary nor appropriate.
- 3.3.3 In addition, SwapEx notes that, with regard to derivatives markets regulated by the CFTC, the historical record of utilization of daily trading limits and price limits as applied to purely electronic markets generally has not been successful in mitigating market volatility, particularly where the product alternatively can be traded on other electronic markets or bilaterally in over-the-counter markets. All products currently listed by SwapEx can currently also be traded either bilaterally off-SEF or on other electronic markets.

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,

- 4.1.1 SwapEx requires each Ontario User to execute an Addendum to the SwapEx Participant Agreement which requires such Ontario User to represent that it is, with respect to its use of the Trading System in Ontario, appropriately registered as applicable under Ontario securities laws or is exempt from, or not subject to, such registration requirements.

(ii) the competence, integrity and authority of systems users, and

³ CFTC Staff Guidance on Swaps Straight-Through Processing issued September 26, 2013.

4.1.2 CFTC regulation 37.202(a) requires SEFs to provide impartial access to persons who qualify as "eligible contract participants", as defined by the CEA and by CFTC regulations, and to independent software vendors ("ISVs") and to maintain comparable fee structures for eligible contract participants and ISVs receiving comparable access to, or services from, the SEF.

4.1.3 The eligibility requirements for Participants are set forth in SwapEx Rule 302(a). SwapEx Rule 302(a) provides that that an applicant to become a Participant must demonstrate to the satisfaction of SwapEx that it:

(i) is an eligible contract participant, and, if applicable, is in compliance with CFTC Regulation 1.17;

(ii) is located in, and will access and use the Trading System solely from within, the United States or a jurisdiction in which SwapEx is permitted by applicable law to offer the Trading System and, if the applicant is organized or established under the laws of a country other than the United States or intends to access and use the Trading System from a jurisdiction other than the United States, the applicant shall submit, upon request by SwapEx, an opinion of appropriately qualified and reputable outside counsel on home country law and, if applicable, other relevant non-domestic law, in form and substance acceptable to SwapEx;

(iii) has all registrations, licenses and consents required by its constituent documents and by Applicable Law to execute transactions on the Trading System and is not subject to any trading ban, prohibition or suspension issued by the CFTC or by any self-regulatory organization that is subject to the CFTC's oversight;

(iv) with respect to transactions that are to be cleared by a CFTC-registered derivatives clearing organization (a "DCO"), (i) is a member of a DCO that is authorized to clear such transactions for its own account and, if applicable, for the account(s) of its Customers, Authorized Traders and its and their Customers or (ii) has delivered to SwapEx evidence satisfactory to SwapEx, in its sole discretion, that at least one clearing member has agreed to accept transactions for clearing into the account of such Participant and/or, if applicable, its Authorized Traders and its and/or their Customers; and

(v) is of good reputation and business integrity, maintains adequate financial resources and credit, and satisfies such other criteria as SwapEx may establish from time to time.

4.1.4 The eligibility requirements for an Authorized Trader are set forth in SwapEx Rule 304(c). SwapEx Rule 304(c) provides that that an Authorized Trader must all times:

(i) be an eligible contract participant, and, if applicable, be in compliance with CFTC Regulation 1.17;

(ii) be located in, and access and use the Trading System solely from within, the United States or a jurisdiction in which SwapEx is permitted by applicable law to offer the Trading System;

(iii) ensure that activity conducted under the user IDs assigned to it and its Authorized Users complies with the Rules;

(iv) have the authority, at the SwapEx's request, to adjust or withdraw any order or RFQ submitted under such user IDs;

(v) have and maintain all necessary regulatory approvals and/or licenses to operate as an Authorized Trader and not be subject to any trading ban, prohibition or suspension issued by the CFTC or by any self-regulatory organization that is subject to the CFTC's

oversight; and

(vi) satisfy such other criteria as SwapEx may establish from time to time.

4.1.5 The eligibility requirements for an Authorized User are set forth in SwapEx Rule 305(d). SwapEx Rule 305(d) provides that that an Authorized User must all times:

(i) ensure that activity conducted under the user ID assigned to such Authorized User, or any automated trading system for which the user ID is linked to such Authorized User, complies with the SwapEx Rules;

(ii) if such Authorized User was designated by a Participant or an Authorized Trader, have the authority, at SwapEx's request, to adjust or withdraw any order, indication of interest or RFQ submitted to the Trading System under any user ID assigned or linked to such Authorized User;

(iii) have and maintain all necessary regulatory approvals and/or licenses to act as an Authorized User; and

(iv) agree to such other terms and conditions as may be established by SwapEx from time to time.

4.1.6 Under SwapEx Rule 406, a Participant or an Authorized Trader who accesses the Trading System on behalf of a Customer is deemed to have made the following representations and warranties each time it makes use of the Trading System on behalf of a Customer:

(i) Such Customer is an eligible contract participant;

(ii) such Customer consents to the jurisdiction of SwapEx with respect to all matters arising from or related to any order or RFQ submitted on, or transmitted to, the Trading System on such Customer's behalf or for such Customer's benefit ;

(iii) with respect to transactions that are to be cleared by a DCO, that either (a) such Participant or the Participant who designated such Authorized Trader, as applicable, is a member of a DCO that is authorized to clear transactions for the account(s) of such Customer or (b) such Participant or the Participant who designated such Authorized Trader, as applicable, has delivered to SwapEx evidence satisfactory to SwapEx, in its sole discretion, that at least one clearing member has agreed to accept transactions for clearing into the account of such Customer;

(iv) to the extent that a DMA Customer submits any order or RFQ on the Participant's system or platform for onward transmission to the Trading System, such DMA Customer is located in, and will access and use the Participant's system or platform solely from, the United States or another jurisdiction in which SwapEx is permitted by applicable law to offer the Trading System.

4.1.7 SEF Core Principle 7 – *Financial Integrity of Transactions* requires SEFs to establish and enforce rules and procedures to ensure the financial integrity of transactions entered into through their facilities and rules to ensure the financial integrity of participants that are registered with the CFTC as futures commission merchants (“FCMs”) and introducing brokers. As discussed, above, SwapEx requires that all Participants, Authorized Traders and Customers be eligible contract participants and, if they are trading swaps that are mandated or are intended to be cleared, that they have represented that and provided SwapEx with evidence that they have established the necessary clearing relationship. Additionally, under SwapEx Rule 404, SwapEx requires each Participant and Authorized Trader to comply with any applicable laws relating to minimum financial and related recordkeeping and reporting

requirements, including, without limitation, a requirement that any FCM accessing its Trading System satisfies the minimum financial requirements set forth in CFTC regulation 1.17.

(iii) systems users are adequately supervised.

- 4.1.8 Under SwapEx Rules 302(b), 304(e) and 305(f), respectively, SwapEx requires that each Participant, Authorized Trader and Authorized User continues to meet its eligibility requirements under SwapEx Rules 302(a), 304(c) and 305(d), respectively, and that it immediately notify SwapEx, in writing, if it ceases to meet any such eligibility requirements.
- 4.1.9 Additionally, each Participant is responsible for conducting adequate supervision of its designated Authorized Traders and Authorized Users and each Authorized Trader is responsible for conducting adequate supervision of its designated Authorized Users. Under SwapEx Rules 301(d) and 301(e), Participants are responsible for establishing and maintaining appropriate credit and/or risk controls for, and may be held accountable for actions and omissions of, its Authorized Traders and Authorized Users. SwapEx Rule 304(e) requires Participants to notify SwapEx upon becoming aware that any of their Authorized Traders cease to meet the eligibility requirements for Authorized Traders set forth in SwapEx Rule 304(c) and SwapEx Rule 305(f) requires each Participant, Authorized Trader and Clearing Firm, as applicable, to notify SwapEx in writing if it becomes aware that any of its Authorized Users ceases to meet any of the eligibility requirements set forth in SwapEx Rule 305(d). Under SwapEx Rule 402, each Participant and Authorized Trader is required to notify SwapEx upon the occurrence of certain events that may have a material effect on such Participant's or Authorized Trader's or any of their respective Authorized Users' ability to continue to meet SwapEx's eligibility criteria.

(b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

- 4.1.10 A firm may obtain direct access to the Trading Systems (i) by applying to be a Participant or (ii) by being designated an Authorized Trader of a Participant. A Participant or Authorized Trader shall authorize its individual employees or agents ("**Authorized Users**") to access the Trading System pursuant to SwapEx Rule 305. A firm may obtain access to the Trading System as a Customer by authorizing a Participant or an Authorized Trader to access the Trading System and execute transactions thereon on its behalf. To apply to become a Participant, an applicant must complete a Participant Agreement and submit the required know your customer documentation and onboarding information to SwapEx. To access the Trading System as an Authorized Trader, a Participant must designate the person as an Authorized Trader on a schedule to the Participant Agreement and the Authorized Trader must agree to the terms and conditions regarding its access set forth in that schedule. SwapEx staff reviews and approves applicants based upon impartial admission criteria established by the Participant Committee.
- 4.1.11 Chapter 3 of the SwapEx Rulebook sets forth the requirements for Participants, Authorized Traders, Customers and ISVs to obtain access to the Trading System and Chapters 4, 5, 6, 7, 8 and 9 set forth the ongoing requirements for continued access. The SwapEx Rulebook and any amendments thereto must be filed with the CFTC and are publicly available on the CFTC's website and the SwapEx website.
- 4.1.12 SwapEx requires Participants, Authorized Traders and ISVs to sign standard documentation prior to being permitted to access the Trading System. The documentation is not publicly available but it, along with the amendments thereto, has been filed with the CFTC. Due to the impartial access requirements under CFTC Regulation 37.202(a), SwapEx cannot make material changes to the documentation unless such changes apply to all similarly-situated

Participants, Authorized Traders and/or ISVs, as applicable.

- 4.1.13 Pursuant to SwapEx Rules 303(c) and 303(e), SwapEx must promptly notify an applicant to be a Participant of its decision to admit, deny or condition such applicant's application to be a Participant. SwapEx Rule 303(d) clarifies that SwapEx may only deny or condition an application to be a Participant: (i) if the applicant is unable to satisfactorily demonstrate its ability to satisfy the eligibility criteria to become or remain a Participant, (ii) if the applicant is unable to satisfactorily demonstrate its capacity to adhere to the SwapEx Rules and applicable law and/or (iii) for such other cause as SwapEx may reasonably determine. The applicant can appeal such denial or conditioning of its application to the Participant Committee in accordance with SwapEx Rule 303(e). The decision of the Participant Committee is final and not subject to further appeal within SwapEx, but may be reviewed by the CFTC pursuant to section 8c of the CEA or part 9 of the CFTC Regulations.
- 4.1.14 Under SwapEx Rule 304(d), SwapEx must promptly notify a Participant of SwapEx's decision to approve or refuse to approve such Participant's designation of an Authorized Trader.
- 4.1.15 SwapEx is required to provide notice to Participants, Authorized Traders and Authorized Users of any amendment to the SwapEx Rules in accordance with SwapEx Rule 308.

(c) The exchange does not unreasonably prohibit, condition or limit access by a person or company to services offered by it.

- 4.1.16 Subject to Board approval, the Participant Committee establishes admission criteria for access to the Trading System. The admission criteria of SwapEx are objective and fully comply with the impartial access requirements of CFTC Regulation 37.202, which provides that a SEF must provide any eligible contract participant and any ISV with impartial access to its market(s) and market services, including any indicative quote screens or any similar pricing data displays and further requires that the SEF has criteria governing such access that are impartial, transparent, and applied in a fair and nondiscriminatory manner. The Participant Committee can recommend that the Board adopt rules that would result in different categories or classes of Participants receiving disparate access to the SwapEx facilities, but cannot recommend that the Board restrict access or impose burdens on access to the SwapEx facilities in a discriminatory manner, within each category or class of Participants or between similarly-situated categories or classes of Participants.
- 4.1.17 SwapEx rules, policies and procedures are designed to ensure impartial access consistent with the requirements contained in numerous SEF Core Principles. All rules, including those pertaining to access criteria, must be either voluntarily submitted to the CFTC for approval under CFTC Regulation 40.5 or self-certified under CFTC Regulation 40.6. All self-certifications of rules and rule amendments under CFTC Regulation 40.6 are subject to review by the CFTC for compliance with the SEF Core Principles. Access rules that are unreasonably discriminatory or access and fee rules that unreasonably discriminate among participant classes would not meet SEF Core Principle requirements and could not be certified to the CFTC.

(d) The exchange does not

(i) permit unreasonable discrimination among participants, or

- 4.1.18 Please see the response in Sections 4.1.10-4.1.16 in Part III of this application.

(ii) impose any burden on competition that is not reasonably necessary and appropriate.

4.1.19 SEF Core Principle 11 – *Antitrust Considerations* from subsection 5h of the CEA applies to SEFs and states that “[u]nless necessary or appropriate to achieve the purposes of this Act, the SEF shall not — (A) adopt any rules or take any actions that result in any unreasonable restraint of trade; or (B) impose any material anticompetitive burden on trading or clearing”. While SwapEx does not have specific rules stating that they will not impose any burden on competition that is not reasonably necessary and appropriate, all rules implemented by SwapEx are subject to CFTC review. As such, SwapEx does not implement rules that would impose any burden on competition that is not reasonably necessary and appropriate because such rules would not meet SEF Core Principle requirements and thus could not be certified by SwapEx to the CFTC as complying with the SEF Core Principles.

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

4.1.20 SwapEx maintains records of its Participant applications and any denial or limitation of access for any Participant, Authorized Trader or Authorized User, including reasons for granting, denying or limiting access. Complete records are maintained for each Participant, Authorized Trader and Authorized User in accordance with the recordkeeping requirements under SEF Core Principle 10 – *Recordkeeping and Reporting*.

5. Regulation of Participants on the Exchange

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

5.1.1 As a registered swap execution facility and a self-regulatory organization (as defined under CFTC Regulation 1.3(ee)), SwapEx has both the regulatory authority and obligation to establish rules governing conduct of its participants, to monitor their conduct in order to detect and to deter rule violations and to appropriately discipline its market participants for violations of SwapEx's rules.

5.1.2 The SwapEx market regulation department (“**Market Regulation Department**”) is responsible for, among other things, monitoring the adherence of SwapEx with all relevant regulations (including CFTC Regulations), establishing and administering SwapEx's rule enforcement program, administering disciplinary proceedings and monitoring trading.

5.1.3 The Market Regulation Department includes SwapEx's regulatory services provider, the National Futures Association (“**NFA**”). NFA has provided regulatory services to designated contract markets on a contractual basis for more than ten years. NFA, based on its demonstrated ability to provide these types of regulatory services for regulated markets, now offers similar services to a majority of the SEFs that are registered with the CFTC. NFA requires that each SEF enter into a Regulatory Services Agreement with NFA. Please refer to Section 14.1.1 of Part III of this application for additional information on the Regulatory Services Agreement.

5.1.4 In order for the Market Regulation Department to accomplish its mission, SwapEx expends considerable human, technological and financial resources that are focused on the maintenance of fair, efficient, competitive and transparent markets, and the protection of all SwapEx market participants from fraud, manipulation and other abusive trading practices.

5.1.5 To fulfill its mandate to effectively monitor and enforce the SwapEx Rules, the Market Regulation Department conducts real time, daily (T+1) and long-term surveillance of trading in SwapEx markets. The Market Regulation Department's efforts are focused on identifying and remediating market anomalies, trading abuses and other actions that have the potential to

undermine the fair and orderly operation of SwapEx markets. The Market Regulation Department's daily activities include a broad range of interconnected efforts that include trade practice reviews and enforcement activities. The Market Regulation Department also develops and maintains surveillance and regulatory systems.

- 5.1.6 The Market Regulation Department strives to make compliance with the SwapEx Rules as straightforward as possible. The Market Regulation Department personnel make themselves available to field questions about the SwapEx Rules. The Market Regulation Department is available and willing to field calls and emails concerning activity in SwapEx markets, or requests for guidance on the application of the SwapEx Rules.
- 5.1.7 Investigating and enforcing rule violations are necessary components of the regulatory safeguards that the Market Regulation Department provides. When the Market Regulation Department determines or suspects that there has been activity in SwapEx markets that appears to violate the SwapEx rules, the Market Regulation Department's team of experienced and skilled investigators and analysts work to ensure that the matter is thoroughly investigated. The investigative process includes the analysis of trade data, account statements and other trade related documents, and may, as appropriate, be accompanied by a review of trade reconstructions, relevant audio recordings and subject and witness interviews. If, after a thorough investigation, the Market Regulation Department has reason to believe that a SwapEx rule has been violated, the matter is prosecuted pursuant to SwapEx disciplinary processes and procedures. Additionally, the Market Regulation Department has been granted the authority to summarily restrict access to the SwapEx platform where it determines that such immediate action is necessary to protect the best interests of the SwapEx market. Section 7.1 of Part III of this application provides a discussion regarding the processes for bringing an investigation through the disciplinary process.
- 5.1.8 The Market Regulation Department is dedicated to safeguarding the integrity of SwapEx's markets, and ensuring that they are free from manipulation and other abusive practices. These efforts are a necessary component of efficiently working markets. SwapEx is committed to ensuring that its markets are open and transparent.
- 5.1.9 The Market Regulation Department has an internal staff of 2 compliance professionals - the Chief Compliance Officer and a trade analyst who is dedicated to compliance coverage for SwapEx. The Market Regulation Department also includes the staff of the NFA that is responsible for, with the supervision of the Chief Compliance Officer, assisting with a broad array of varied surveillance and enforcement responsibilities.
- 5.1.10 Market Regulation Department investigators regularly review pre-programmed and ad hoc reports to identify specific patterns of trading behavior. Such reports identify potential rule violations including money pass, wash trading, front-running, improper cross-trading, settlement issues, aberrant block trades and trade correction issues. Further, SwapEx's markets are reviewed by market surveillance analysts at NFA who search individual products or product groups for unusual or manipulative trading patterns.
- 5.1.11 In addition to its role, as part of the Market Regulation Department, in surveilling and investigating potential trade practice rule violations, the NFA conducts routine and annual audits of Participants to verify compliance with SwapEx's audit trail and recordkeeping requirements. SwapEx may sanction, in accordance with the procedures set forth in Chapter 7 of the SwapEx Rules, any Participant in connection with any deficiencies identified in these reviews. Moreover, under SwapEx Rule 717 (Summary Suspension and Other Action), the Chief Compliance Officer may, after consultation with the Regulatory Oversight Committee if practicable, summarily suspend, revoke, limit, condition, restrict or qualify a Participant's Trading Privileges and/or ability to otherwise access the Trading System, and may take other summary action against a Participant, Authorized Trader, Authorized User or Customer in accordance with the SwapEx Rules if the Chief Compliance Officer reasonably believes that

immediate action is necessary to protect the best interests of the public or SwapEx.

- 5.1.12 When conducting an investigation, Market Regulation Department staff may request and access all trading records maintained pursuant to the SwapEx Rules, including account documentation and statements, instant messages and emails pertaining to customer order information, as well as order tickets and trading records. The Market Regulation Department staff has the authority to compel Participants, Authorized Traders, employees of Participants and Authorized Traders and Customers to participate in investigative interviews.
- 5.1.13 Specifically with reference to technology to support compliance and regulatory obligations, SwapEx ensures that there are sufficient investments in this area. Additional resources to accommodate growing levels of activity are addressed in system planning as well as in the contract that SwapEx has executed with NFA. Regular interaction among Market Regulation Department personnel including SwapEx personnel and NFA staff helps to ensure that SwapEx's regulatory and market protection capabilities anticipate and evolve with the changing dynamics of the marketplace.

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.

- 6.1.1 Pursuant to its obligations under the CEA and CFTC Regulations, SwapEx has implemented rules and policies that govern the operations and activities of its market participants. The SwapEx Rules are covered in the SwapEx Rulebook which includes: Chapter 1 (Definitions), Chapter 2 (Governance), Chapter 3 (Trading System), Chapter 4 (Business Conduct), Chapter 5 (Trading Practices), Chapter 6 (Block Trades), Chapter 7 (Disciplinary Rules), Chapter 8 (Arbitration Rules), Chapter 9 (Miscellaneous), Chapter 10 (Clearing) and Chapter 11 (Contract Specifications). Chapter 10 (Clearing) includes rules that govern the activities of SwapEx participants that trade for their own account or the account of any customer in any products that are required to be cleared or that are voluntarily cleared through a DCO. The SwapEx platform does not currently support the execution of block trades.
- 6.1.2 As discussed in Section 4.1.19 of Part III of this application, SwapEx is not permitted to implement rules that would impose any burden on competition unless they are reasonably necessary and appropriate because such rules would not meet SEF Core Principle requirements.

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

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

(vi) ensure a fair and orderly market.

6.1.3 SwapEx is obligated to comply with the CEA and the CFTC Regulations. Section 3 (Findings and Purpose) of the CEA states that the purpose of the CEA is to serve the national public interest. Accordingly, the laws and regulations promulgated by the CFTC have been determined by the CFTC to be consistent with and not contrary to that public interest. These laws and regulations require SEFs to implement rules that require compliance with the CEA and CFTC Regulations (including, the SEF Core Principles) by their market participants. SwapEx Rules are recorded in the SwapEx Rulebook, which was reviewed by the CFTC for SwapEx's SEF registration to ensure compliance with the CEA and CFTC Regulations. Changes to the SwapEx Rulebook must be either voluntarily submitted to the CFTC for review pursuant to CFTC Regulation 40.5 or self-certified to the CFTC pursuant to CFTC Regulation 40.6, which requires the SEF to provide certification and explanatory analysis that the amended SwapEx Rules comply with the CEA and CFTC Regulations, including the SEF Core Principles. SwapEx meets this requirement by complying with SEF Core Principle 1 – *Compliance with Core Principles*, primarily through the application and enforcement of its rules.

6.1.4 SwapEx Users are required to comply with a significant number of rules governing trading on SwapEx pursuant to the SwapEx Rules. The applicable SwapEx Rules are primarily located in Chapter 5 (Trading Practices), with other rules being located in Chapters 3 (Trading System), 4 (Business Conduct), 6 (Block Trades), 7 (Disciplinary Rules) and 10 (Clearing). Some of the most significant rules governing trading in SwapEx include:

- Rule 301. Access to the Trading System
- Rule 302. Participant Eligibility Requirements
- Rule 304. Authorized Traders
- Rule 305. Authorized Users
- Rule 307. Limitations on Access to the Trading System
- Rule 308. Notices and Other Communications
- Rule 310. Application of the Rules; Jurisdiction of the Company
- Rule 401. Duties and Responsibilities of Participants and Authorized Traders
- Rule 402. Required Notices
- Rule 404. Financial and Related Reporting Requirements
- Rule 405. Restrictions on Activity
- Rule 406. Customers
- Rule 503. Just and Equitable Principles of Trade; Acts Detrimental
- Rule 504. Fraudulent Acts Prohibited
- Rule 505. Fictitious or Noncompetitive Transactions Prohibited
- Rule 506. Market Manipulation Prohibited
- Rule 507. Disruptive Trading Practices Prohibited
- Rule 508. Prohibition of Misstatements
- Rule 509. Misuse of the Trading System
- Rule 511. Withholding of Customer Orders Prohibited; Priority of Customer Orders
- Rule 513. Disclosing Orders and Requests for Quotes Prohibited
- Rule 514. Wash Sales Prohibited
- Rule 515. "Moneypassing," Prearranged, Pre-Negotiated and Noncompetitive Transactions Prohibited
- Rule 516. Responsibility for Customer Orders
- Rule 517. Discretionary Customer Orders
- Rule 518. Recordkeeping; Audit Trail
- Rule 519. Position Accountability
- Rule 520. Position Limits
- Rule 521. Position Information
- Rule 525. Confirmation of Transactions

- Rule 526. Trade Cancellations, Error Correction and Price Adjustments
- Rule 528. Swap Data Reporting
- Rule 529. Updating Reportable Swap Data
- Rule 601. Block Trades
- Rule 701. General (Disciplinary Rules)
- Rule 702. Inquiries and Investigation
- Rule 703. Reports of Investigations
- Rule 706. Notice of Charges
- Rule 710. Disciplinary Panel
- Rule 712. Hearings
- Rule 713. Decision of Hearing Panel
- Rule 714. Sanctions
- Rule 716. Summary Imposition of Fines
- Rule 717. Summary Suspensions and Other Summary Actions
- Rule 720. Regulatory Services Provider
- Rule 1003. Clearing Firm Representation

6.1.5 Chapter 5 of the SwapEx Rules includes important provisions to prevent the commission of fraudulent and manipulative acts and practices, including but not limited to prohibitions on:

- engaging in any fraudulent act or engaging in any scheme to defraud, deceive or mislead another person in connection with any contract traded on the Trading System (SwapEx Rule 504),
- engaging in fictitious or non-competitive trading (except, with respect to non-competitive trades, certain permitted pre-arrangement of trades and crossing of customer orders) (SwapEx Rule 505),
- attempting to manipulate or manipulating markets (SwapEx Rule 506),
- engaging in disruptive trading practices, as such term is described in subsection 4c(a)(5) of the CEA or in interpretive guidance issued by the CFTC (including, without limitation, "banging the close" and "spoofing") (SwapEx Rule 507),
- making misstatements of material fact to SwapEx or SwapEx's regulatory service provider(s) (SwapEx Rule 508), and
- engaging in wash sales (SwapEx Rule 514).

Thus, the SwapEx Rules are clearly designed to prevent fraudulent and manipulative acts and practices.

6.1.6 The SwapEx Rules promote just and equitable acts and practices. SwapEx Rule 503 prohibits "engag[ing] in conduct inconsistent with just and equitable principles of trade".

6.1.7 Under SwapEx Rule 905, SwapEx is authorized to share information with (i) any U.S. government agency or foreign regulatory authority (including the OSC) to the extent requested or legally required to do so, (ii) with a DCO of which a Participant is a member or in connection with the clearing of a transaction executed on SwapEx, (iii) to a swap data repository and (iv) pursuant to an information-sharing agreement in accordance with SwapEx Rule 907. SwapEx Rule 907 authorizes SwapEx to enter into information-sharing agreements that are in furtherance of SwapEx's purpose or duties under the SwapEx Rules or any law or regulation applicable to its operation as a SEF with, among others, other self-regulatory organizations, exchanges, markets, clearing organizations, foreign regulatory authorities (including, the OSC) and data repositories or third-party reporting services.

- 6.1.8 Chapter 7 (Disciplinary Rules) of the SwapEx Rules provides a framework for SwapEx to take disciplinary and enforcement actions. For more information on SwapEx's powers in this regard, refer to Sections 5 – Regulation of Participants on the Exchange and 7 – Due Process in Part III of this application. These sections address SwapEx's surveillance, investigation and disciplinary powers.
- 6.1.9 Chapters 4 (Business Conduct), 5 (Trading Practices) and 6 (Block Trades) of the SwapEx Rules are designed to ensure that all trading on SwapEx is conducted in a fair and orderly fashion. See Sections 6.1.3, 6.1.4 and 6.1.5 above for a more detailed discussion of the fair and orderly market requirements and bans on prohibited activity.
- 6.1.10 SEF Core Principle 4 – *Monitoring of Trading and Trade Processing* requires SEFs to monitor trading to prevent disruption of the market. SwapEx conducts real time monitoring of trading activity and has engaged NFA to provide T+1 monitoring and surveillance of market activity in order to detect anomalies and to ensure the operation of an orderly market.

7. Due Process

- 7.1 **Due Process – For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:**
- (a) **parties are given an opportunity to be heard or make representations, and**
 - (b) **it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.**

Admission of Applicants

- 7.1.1 With respect to the process for decisions to admit or deny or condition admission of applicants to be Participants or Authorized Traders, please see Sections 4.1.13 and 4.1.14 of Part III of this application.

Disciplinary Proceedings

- 7.1.2 Chapter 7 (Disciplinary Rules) of the SwapEx Rules provides a framework for SwapEx to take disciplinary and enforcement actions against, pursuant to SwapEx Rule 701, any person subject to the jurisdiction of SwapEx, which includes, without limitation, any Participant and any Authorized Trader, with respect to any alleged violation of a SwapEx Rule.

Inquiries and Investigation

- 7.1.3 Under SwapEx Rule 702, the Market Regulation Department commences an investigation if it has "reason to believe that the [SwapEx] Rules have been or may be violated or upon receipt of request from the CFTC."
- 7.1.4 As provided by SwapEx Rule 703, the Market Regulation Department maintains a log of all investigations and their disposition. The Market Regulation Department prepares a written report of each investigation (the "**Investigation Report**"), regardless of whether the evidence gathered during an investigation forms a reasonable basis to believe that a violation within SwapEx's jurisdiction has occurred or is about to occur or whether the evidence gathered results in closing the matter without further action or through summary action. The Investigation Report must include the reasons for initiating the investigation (including a summary of the complaint, if any), all relevant facts and evidence gathered, Market Regulation Department staff's analysis and conclusions and the recommendation of the Market Regulation Department

(closing the investigation, resolving the investigation through an informal disposition, imposing a summary fine or sanction, commencing preparation of a notice of charges and recommended sanctions if a violation is found to have occurred or entering into a negotiated settlement). The Investigation Report must be provided to the Chief Compliance Officer for a determination as to whether the Investigation Report is complete.

Opportunity to Respond

- 7.1.5 Pursuant to SwapEx Rule 704, after completing its Investigation Report, the Market Regulation Department shall, where applicable and with the authorization of the Chief Compliance Officer, notify each potential respondent that the Market Regulation Department has recommended formal disciplinary charges against the potential respondent. The Market Regulation Department shall allow a potential respondent to submit a written statement explaining why a disciplinary proceeding should not be instituted and/or one or more of the potential charges should not be brought. The potential respondent shall submit any written statement within twenty (20) days or as otherwise established by the Market Regulation Department.

Review of Investigation Reports

- 7.1.6 As provided by SwapEx Rule 705, after the completion of the Investigation Report and the receipt of any submission made by the proposed respondent, the Chief Compliance Officer shall decide whether to refer the Investigation Report to the Market Regulation Department for further review or to establish and appoint a review panel (comprised of external representatives) (a "**Review Panel**"). The Market Regulation Department or Review Panel, as appropriate, shall determine whether further investigation is needed and whether adjudication is warranted and, if so, direct the issuance of notice of charges and/or warning letter.

Notice of Charges

- 7.1.7 As provided by SwapEx Rule 706, if the Market Regulation Department or Review Panel, as appropriate, authorizes disciplinary proceedings pursuant to SwapEx Rule 705, it will prepare, and serve, a notice of charges which specifies the alleged conduct and each SwapEx Rule alleged to have been violated and advises the respondent of its right to a hearing and right to be represented by legal counsel (or another representative) of its choosing and provides instruction as to responding to the charges and requesting a hearing on the charges.

Answer to Notice of Charges

- 7.1.8 As provided by SwapEx Rule 708, if the respondent determines to answer a notice of charges, the respondent shall file its answer within twenty (20) days after being served with such notice, or within such other reasonable time period as may be determined by the Chief Compliance Officer. If a respondent admits or fails to specifically deny any of the allegations in the notice of charges, a Hearing Panel (as described in Section 7.1.16 of Part III of this application) shall find that the violations set forth in such allegations have been committed and shall impose a sanction for such violations. The Hearing Panel shall promptly notify the respondent in writing of any sanction imposed pursuant to SwapEx Rule 708 and advise the respondent that the respondent may request, in writing, a hearing on such sanction within twenty (20) days of respondent being served with such notice. Any failure by the respondent to timely request a hearing with respect to a notice of sanctions will be deemed to be an acceptance of the sanctions in such notice and a waiver of any right to appeal such sanctions.

Disciplinary Panels

- 7.1.9 The responsibilities of a Review Panel are set forth in Section 7.1.6 of Part III of this application. A Hearing Panel shall conduct hearings in connection with any disciplinary proceedings (except for summary impositions of fines pursuant to SwapEx Rule 716), to make findings, render

decisions, and impose sanctions. Review Panels and Hearing Panels are referred to collectively in this application as "Disciplinary Panels".

- 7.1.10 In accordance with SwapEx Rules 705 and 710, members are appointed to Disciplinary Panels by the Chief Compliance Officer. Under SwapEx Rule 710, the members of a Disciplinary Panel must, to the greatest extent practicable, be from diverse industry participant groups "so that no group or class of industry participants dominates or exercises a disproportionate influence on the Disciplinary Panel" and the Disciplinary Panel membership "shall include sufficient different membership interests so as to ensure fairness and prevent special treatment or preference for any Person in the conduct of the Disciplinary Panel's responsibilities." No employee of SwapEx may serve on a Disciplinary Panel. Additionally, members of the Disciplinary Panel cannot be Interested Persons (as defined in the SwapEx Rules) with respect to the matter to be decided in the hearing and cannot serve if they meet any of the disqualification criteria under SwapEx Rule 203(a). Respondents have an opportunity, in accordance with SwapEx Rule 710, to seek removal of a member of the Disciplinary Panel who the respondent alleges is an Interested Person. Any such request is reviewed and decided on the merits by the Chief Compliance Officer.
- 7.1.11 SwapEx Rule 710 requires all information, records, materials and documents provided to a Disciplinary Panel and all deliberations, testimony, information, records, materials and documents related thereto to be treated as non-public and confidential and not to be disclosed, except as necessary to further a SwapEx investigation or as otherwise required by law.

Respondent's Review of Evidence

- 7.1.12 As provided by SwapEx Rule 711, prior to the commencement of a hearing, each respondent will be given the opportunity, subject to the restrictions set forth in Sections 7.1.13 and 7.1.14 below, to review all books, records, documents, papers, transcripts of testimony and other tangible evidence in the possession or under the control of SwapEx that the Market Regulation Department will use to support the allegations and proposed sanctions in the notice of charges or which the chair of the Hearing Panel otherwise deems relevant to the disciplinary proceedings. Unless determined otherwise by the chair of the Hearing Panel, all such requests for access to information must be made not less than ten (10) days prior to the scheduled hearing date.
- 7.1.13 Notwithstanding the foregoing, a respondent shall not have the right to review, and SwapEx shall have no obligation to disclose, information that (i) is protected by attorney-client privilege or attorney work product; (ii) was prepared by an employee of SwapEx but will not be offered in evidence in the disciplinary proceedings; (iii) may disclose a technique or guideline used in examinations, investigations or enforcement proceedings; or (iv) discloses the identity of a confidential source.
- 7.1.14 The Market Regulation Department may redact, edit or code data and information before furnishing it to the respondent if books, records, documents, papers, transcripts of testimony or other tangible evidence that would otherwise be required to be provided to a respondent contain data or information that could adversely affect the competitive position of the person providing such data or information or if such data or information might compromise other investigations being conducted by the Market Regulation Department. For purposes of SwapEx Rule 711, data and information that could adversely affect a person's competitive position include positions in swaps listed on SwapEx, trading strategies, the identity of any Participant, Authorized Trader or Authorized User and the finances of the person providing the information. However, under SwapEx Rule 711, the Market Regulation Department is prohibited from redacting, editing or coding competitive or investigative data or information contained in documents in a manner that materially impairs the respondent's ability to defend against the allegations or proposed sanctions in the notices of charges and shall provide the respondent with reasonable access to the information and portions of the documents that the Market

Regulation Department intends to rely on to support the allegations or proposed sanctions in the notice of charges.

- 7.1.15 The respondent is required, under SwapEx Rule 711, to treat as confidential all data and information provided to it pursuant to SwapEx Rule 711, and not to disclose any such data or information, except as necessary to the respondent's defense of notice of charges and any appeal of the decision of the Hearing Panel.

Hearings

- 7.1.16 As provided by SwapEx Rule 712, all disciplinary proceedings (except for summary impositions of fines pursuant to SwapEx Rule 716) will be conducted at a hearing before a Hearing Panel, which will be convened promptly after reasonable notice to each respondent. Parties to a disciplinary proceeding shall include each respondent and the Market Regulation Department. At a hearing conducted in connection with any disciplinary proceeding, the Market Regulation Department will present its case supporting the allegations and proposed sanctions in the notice of charges to the Hearing Panel. If a respondent has timely filed an answer to the notice of charges in accordance with SwapEx Rule 708, the respondent shall be entitled to attend and participate in the hearing. All hearings will be conducted privately and confidentially. At a hearing conducted in connection with disciplinary proceedings, the Market Regulation Department and each respondent entitled to participate in such hearing may:

- present evidence and facts determined relevant and admissible by the chair of the Hearing Panel;
- call and examine witnesses; and
- cross-examine witnesses called by other parties.

- 7.1.17 If the respondent fails to file an answer, has filed a general denial, or if any or all of the allegations in the notice of charges are not expressly denied in the respondent's answer, the chair of the Hearing Panel may limit evidence concerning any allegations not expressly denied in determining the sanctions to impose. If, in such a case, the respondent appears at the hearing, the respondent may not participate in the hearing with respect to such allegations that the respondent failed to properly deny (unless such hearing is a hearing conducted at the request of respondent with respect to sanctions imposed on the respondent for failure to deny charges) by calling or cross-examining witnesses, testifying in defense, presenting evidence concerning the notice of charges or otherwise, unless the respondent's failure to properly deny the allegations was solely the result of respondent's failure to timely file an answer and the Hearing Panel determines that the respondent had a compelling reason for failing to timely file an answer. If the Hearing Panel determines that the respondent had a compelling reason for failing to timely file an answer, the Hearing Panel shall adjourn the hearing and direct the respondent to promptly file a written answer in accordance with SwapEx Rule 708. SwapEx will arrange for any hearing conducted in connection with disciplinary proceedings to be recorded verbatim, or substantially verbatim, in a manner capable of accurate transcription. If the respondent requests a copy of all or portions of the record, the chair of the Hearing Panel may require the respondent to pay the costs of preparing such transcript.

- 7.1.18 The chair of the Hearing Panel may continue, adjourn or otherwise conduct the hearing as he or she may deem appropriate. The chair of the Hearing Panel will determine all procedural and evidentiary matters, including the admissibility and relevance of any evidence proffered. In determining procedural and evidentiary matters, the chair of the Hearing Panel may be counseled by SwapEx's legal advisors and shall not be bound by evidentiary or procedural rules of law. Once admitted during the hearing, the Hearing Panel may consider, and attach the weight it believes appropriate to, evidence or other materials. Except for procedural and evidentiary matters decided by the chair of the Hearing Panel, unless each respondent

otherwise consents, the entire Hearing Panel must be present in person during the entire hearing and must be present, in person or by telephone, during any related deliberations. The Hearing Panel may summarily impose sanctions on any Participant, Authorized Trader or Authorized User who impedes, delays or substantially disrupts the progress of a hearing.

Decision of Hearing Panel

7.1.19 As provided by SwapEx Rule 713, as promptly as reasonable following a hearing, the Hearing Panel will issue a written order rendering its decision based on the weight of the evidence contained in the record of the disciplinary proceedings. A decision by a majority of the Hearing Panel will constitute the decision of the Hearing Panel. SwapEx will provide a copy of the order of the Hearing Panel to the respondent and the Market Regulation Department. The order will include:

- the notice of charges or summary of the allegations;
- the answer, if any, or a summary of the answer filed by the respondent;
- a brief summary of the evidence introduced at the hearing or, where appropriate, incorporation by reference of the Investigation Report;
- findings of fact and conclusions concerning each allegation, including a complete explanation of the evidentiary and other basis for such findings and conclusions with respect to each allegation;
- each specific SwapEx Rule that the respondent is found to have violated; and
- the imposition of sanctions, if any, including the basis for such sanctions and the effective date of each sanction.

7.1.20 In accordance with SwapEx Rule 714, SwapEx can impose one or more of the following sanctions:

- A warning letter, provided that no more than one (1) warning letter may be issued to the same respondent found to have committed the same rule violation within a rolling twelve (12) month period;
- Censure;
- Limitation, restriction or qualification of trading privileges on SwapEx, ability to otherwise access the SwapEx platform and/or other activities, functions or operations;
- Suspension, for a period not to exceed twelve (12) months, of trading privileges and/or ability to otherwise access the Trading System;
- termination of Trading Privileges and/or ability to otherwise access the Trading System;
- Expulsion;
- A fine (up to \$100,000 per rule violation);
- Restitution or disgorgement; or
- Any other sanction deemed to be appropriate.

- 7.1.21 Pursuant to SwapEx Rule 713, unless a timely notice of appeal is filed pursuant to SwapEx Rule 715, the order of the Hearing Panel will become final upon the expiration of twenty (20) days after the order is served on the respondent and the Market Regulation Department.

Appeal from Hearing Panel Decisions and Summary Actions

- 7.1.22 As provided by SwapEx Rule 715, in the event that a respondent is found by a Hearing Panel to have violated or to have attempted to violate a rule:
- such respondent may appeal the decision within twenty (20) days of receiving the order of the Hearing Panel by filing a written notice of appeal with the Chief Compliance Officer;
 - the Market Regulation Department may appeal all or any part of a decision of the Hearing Panel, including any sanctions that may or may not have been imposed by the Hearing Panel, within twenty (20) days of receiving the order of the Hearing Panel by filing a notice of appeal with the Chief Compliance Officer; and/or
 - an Appeal Panel (as described below) may, on its own initiative, order a review of any aspect of a decision by the Hearing Panel within twenty (20) days of the order of the Hearing Panel by filing a notice of appeal with the Chief Compliance Officer.
- 7.1.23 In accordance with SwapEx Rule 715, members are appointed to Appeal Panels by the Chief Compliance Officer. Under SwapEx Rule 715, the members of an Appeal Panel must, to the greatest extent practicable, be from diverse industry participant groups “so that no group or class of industry participants dominates or exercises a disproportionate influence on the Disciplinary Panel.” No individual can serve on an Appeal Panel for a disciplinary proceeding if such individual served on the Hearing Panel for such disciplinary proceeding. Additionally, under SwapEx Rule 715, the members of an Appeal Panel cannot be Interested Persons (as defined in the SwapEx Rules) with respect to the matter to be decided on appeal and cannot serve if they meet any of the disqualification criteria under SwapEx Rule 203(a). Respondents have an opportunity, in accordance with SwapEx Rule 715, to seek removal of a member of the Appeal Panel who the respondent alleges is an Interested Person. Any such request is reviewed and decided on the merits by the chair of the Regulatory Oversight Committee.
- 7.1.24 While an appeal is pending, the effect of the order of the Hearing Panel (including any sanctions, remedies or costs imposed thereby) shall be suspended, except with respect to any denial or limit on Trading Privileges or ability to otherwise access the Trading System. The notice of appeal must state in writing the grounds for appeal, including the findings of fact, conclusions or sanctions to which the respondent objects. A respondent may appeal the order of the Hearing Panel on the grounds that:
- the order was arbitrary, capricious, an abuse of discretion or not in accordance with the SwapEx Rules; or
 - the order exceeded the authority or jurisdiction of the Hearing Panel, the Chief Compliance Officer or SwapEx.
- 7.1.25 SwapEx will forward copies of any notice of appeal received by it to all parties to the hearing before the Hearing Panel except the appellant. On or before the twentieth (20th) day after filing a notice of appeal, the appellant must file with the Chief Compliance Officer and serve on all other parties a brief supporting the notice of appeal and documents supporting the brief. On or before the twentieth (20th) day after the date on which the appellant serves supporting brief, the appellee must file and serve its brief in opposition with the Market Regulation Department. On or before the tenth (10th) day after the date on which the appellee serves its brief in opposition, the appellant must file and serve a brief in reply with the Market Regulation Department. In

connection with any appeal, SwapEx will furnish to the Chief Compliance Officer and to the respondent/appellant a transcript of the hearing, any exhibits introduced at the hearing, the notice of appeal and briefs filed to support and oppose the appeal.

- 7.1.26 SwapEx Rule 715 requires all information, records, materials and documents provided to the Appeal Panel and all deliberations, testimony, information, records, materials and documents related thereto to be treated as non-public and confidential and not to be disclosed, except as necessary to further a SwapEx investigation or as otherwise required by law.
- 7.1.27 The Appeal Panel may hold a hearing to allow parties to present oral arguments. Any hearing will be conducted privately and confidentially. Notwithstanding the confidentiality of hearings, the Appeal Panel may appoint an expert to attend any hearing and assist in the deliberations if such individuals agree to be subject to appropriate confidentiality agreements. In determining procedural and evidentiary matters, the Appeal Panel will not be bound by evidentiary or procedural rules or law. As promptly as reasonably possible following its review, the Appeal Panel will issue a written decision based on the weight of the evidence before the Appeal Panel. The decision of the Appeal Panel shall meet the informational requirements of SwapEx Rule 713 (as described above). The Appeal Panel's written order will be the final action of the SwapEx and will not be subject to appeal within SwapEx.

Appeal to the CFTC of SwapEx Action

- 7.1.28 A respondent may appeal a final SwapEx disciplinary or access denial action to the CFTC.

Summary Imposition of Fines

- 7.1.29 As provided by SwapEx Rule 716, the Chief Compliance Officer may summarily fine a Participant, Authorized Trader or Authorized User for failing to make timely and accurate submissions to SwapEx of notices, reports or other information required by the SwapEx Rules or to keep books and records required by the SwapEx Rules. The Market Regulation Department, acting on behalf of the Chief Compliance Officer, will give notice of any fine imposed pursuant to SwapEx Rule 716 to each Participant, Authorized Trader or Authorized User subject thereto. The notice will specify the violations of the SwapEx Rules for which the fine is being imposed and the amount of the fine. The Participant, Authorized Trader, Authorized User or Customer, as the case may be, shall pay or cause the payment of the fine within twenty (20) days of the date of notice. Appeals of the summary imposition of fines imposed pursuant to SwapEx Rule 716 shall be heard by the Appeal Panel. The appellant shall be advised of its right to a prompt hearing before the Appeal Panel and its right to be represented, at its own cost, by legal counsel or any other representative at such hearing. The appellant may present evidence in support of its appeal. The Appeal Panel's decision shall be final. The Appeal Panel shall not set aside, modify or amend the summary fines imposed unless the Appeal Panel determines by a majority vote that the decision to impose the fine was either:

- arbitrary, capricious, an abuse of the Chief Compliance Officer's discretion; or
- in excess of the Chief Compliance Officer's authority or discretion.

Summary Suspensions and Other Summary Actions

- 7.1.30 As provided by SwapEx Rule 717, notwithstanding anything in the SwapEx Rules to the contrary, the Chief Compliance Officer may, after consultation with the Regulatory Oversight Committee if practicable, summarily suspend, revoke, limit, condition, restrict or qualify a Participant's Trading Privileges and/or ability to otherwise access the Trading System, and may take other summary action against a Participant, Authorized Trader, Authorized User or Customer in accordance with the SwapEx Rules (including any imposition of a fine under

SwapEx Rule 716) if the Chief Compliance Officer reasonably believes that immediate action is necessary to protect the best interests of the public or SwapEx. Where practicable, SwapEx shall provide prior written notice to the party against whom action in accordance with SwapEx Rule 717 is to be taken. If prior notice is not practicable, SwapEx will give notice at the earliest possible opportunity. Any such notice shall describe the action taken or to be taken by SwapEx, the reasons therefor, the effective date, time and duration thereof, and advise the recipient of the notice of its right to a prompt hearing before a Hearing Panel and its right to be represented by legal counsel or other representative at such hearing.

- 7.1.31 A request by a Participant or other person for such a hearing shall not delay the effectiveness of the summary action. At the request of SwapEx, a respondent against whom a summary action is brought pursuant to SwapEx Rule 717 shall provide books and records over which the respondent has access or control and shall furnish information to, or appear or testify before, the Market Regulation Department and a Hearing Panel in connection with the enforcement of any rule. As promptly as reasonably possible after the hearing, the Hearing Panel will issue to the respondent a written order. The order will include a description of the summary action taken, a summary of the evidence introduced at the hearing, a statement of findings of fact and conclusions, a description of any action taken or to be taken by SwapEx, and the effective date, time and duration thereof.

Notice of Disciplinary Proceedings

- 7.1.32 As provided by SwapEx Rule 719, SwapEx will provide written notice of final decisions in disciplinary proceedings to the parties to the disciplinary proceeding consistent with applicable CFTC Regulations and the SwapEx Rules. Whenever SwapEx suspends, expels, fines or otherwise disciplines or denies any person access to SwapEx, SwapEx will make any public disclosures required by CFTC Regulations with respect thereto.

Recordkeeping

- 7.1.33 SwapEx maintains records of its Participant applications, disciplinary actions and any denial or limitation of access for any Participant, Authorized Trader or Authorized User, including reasons for granting, denying or limiting access in accordance with the recordkeeping requirements under SEF Core Principle 10 – *Recordkeeping and Reporting*.

8. Clearing and Settlement

8.1 Clearing Arrangements – The exchange has appropriate arrangements for the clearing and settlement of transactions through a clearing house.

- 8.1.1 SwapEx currently lists only products that are not yet subject to a CFTC clearing mandate.
- 8.1.2 At present, none of the products listed for trading by SwapEx is required to be cleared. All transactions in products that are intended to be voluntarily cleared by the counterparties to the transaction must be submitted for clearing through a DCO (see SwapEx Rule 1002). SwapEx will submit such transactions to a DCO on behalf of the counterparties to the transaction.
- 8.1.3 With respect to any transaction executed by a Participant or Authorized Trader on SwapEx in a product that is mandated to be cleared by a registered DCO or that is intended to be voluntarily submitted for clearing to a DCO, SwapEx requires, under SwapEx Rule 302(a)(4), that the Participant (or sponsoring Participant in the case of an Authorized Trader) (i) is a member of a DCO that is authorized to clear contracts for its own account and, if applicable, for the account(s) of its Authorized Traders and its and their Customers or (ii) has delivered to SwapEx evidence satisfactory to SwapEx, that at least one clearing member has agreed to accept transactions for clearing into the account of such Participant and/or, if applicable, its Authorized Traders and/or its or their Customers. Furthermore, under SwapEx Rule 1003 and in

accordance with CFTC requirements, Participants that are not themselves clearing members are required, upon request from SwapEx, to deliver to SwapEx evidence satisfactory to SwapEx, that at least one clearing member has, subject to such clearing member's credit limits and/or risk controls, guaranteed to the relevant DCO the transactions to be cleared that are executed for the account(s) of the Participant, its Authorized Trader(s) and/or its or their Customers, as applicable.

In general, if a transaction executed on SwapEx is submitted to, but not accepted for clearing by, a DCO, such transaction shall be deemed to be *void ab initio* following receipt of a clearing rejection notice from the DCO. Consequently, neither of the parties nor SwapEx shall have any further responsibility for such transaction under the SwapEx Rules.

However, pursuant to CFTC staff no-action relief and as further detailed in SwapEx Rule 526 (Trade Cancellations, Error Correction and Price Adjustments), if SwapEx determines that a transaction is rejected from clearing by a DCO because of a clerical or operational error or omission by SwapEx or by one of the counterparties to the transaction or its agent, a new transaction, with terms and conditions that match the terms and conditions of the original transaction, other than any such error or omission and time of execution, may be executed and submitted for clearing pursuant to the process set forth in Rule 526.

8.1.4 SwapEx has entered into agreements for clearing services with CME and LCH Limited. Each is registered with the CFTC as a DCO. CME has been exempted from recognition as a clearing agency by the OSC. LCH Limited has been recognized as a clearing agency by the OSC.

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 As stated above, SwapEx has entered into agreements for clearing services with CME and LCH Limited. Each is registered with the CFTC as a DCO and, as such, each must comply with the Core Principles for DCOs under the CEA and the CFTC regulations implementing such core principles, including CFTC Regulation 39.13 – *Risk management*), CFTC Regulation 39.10 – *Compliance with rules*, and CFTC Regulation 39.18 – *System safeguards*.

8.2.2 SwapEx notes further that the CME has been designated as a systemically important Financial Market Utility by the Financial Stability Oversight Council. As a result, the CME is subject to enhanced oversight by the CFTC. This enhanced oversight includes the following:

- heightened standards for boards of directors;
- comprehensive risk management framework expectations;
- expanded recovery and resolution plan requirements;
- rules and procedures requirements for liquidity shortfalls;
- broader risk management requirements; and
- enhanced disclosure requirements for financial market infrastructures.

8.2.3 Based on the above, SwapEx has assured itself that the relevant clearinghouses have established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

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 SwapEx strives to provide the most flexible architecture in terms of bringing new technology, innovations and solutions to the market. The SwapEx electronic trading platform is accessible nearly twenty-four (24) hours a day throughout the trading week. Each of SwapEx’s critical systems has appropriate internal controls designed to ensure completeness, accuracy, integrity and security of information, and, in addition, has appropriate capacity and business continuity and disaster recovery (“BCDR”) plans to enable SwapEx to properly carry on its business. Moreover, SwapEx provides a highly scalable and robust system.

9.1.2 The Audit Trail (“AT”) file contains a number of messages and fields that contain message information regarding orders, trades, instruments and other pertinent information. AT maintains a complete electronic record of all orders entered and transactions executed, including all messages entered into the system, the terms of each order, all order modifications, all matched trades, and the time of each message. This record enables SwapEx to reconstruct electronic trading efficiently and effectively.

9.1.3 At the system level, AT matches every customer generated (inbound) message with corresponding match engine generated acknowledgement (outbound) message. The matched inbound and outbound messages are then consolidated into one message; the trade message is retained as is. The consolidated messages are then formatted as per customer need. This application runs daily as a batch process after the end of each SwapEx trading day.

9.1.4 The primary focus at SwapEx for incidents is rapid service restoration. Critical incidents are required to be documented.

Recovery Procedures

9.1.5 All critical applications are tested at minimum once per year.

- (a) Electronic Trading: The recovery time objectives for the SwapEx electronic trading

platform is twelve (12) hours or less if there is a disruption in the datacenter where SwapEx's production facilities are housed. There will be no recovery time needed if the disruption occurs in the data center where the SwapEx production facilities are not housed. In that case, the SwapEx markets shall remain open.

- (b) All Other Business Processes: The recovery time objectives for recovering all other business processes shall be determined as part of the process and shall be incorporated into the Resumption and Recovery component of the BCDR plan.

- 9.1.6 SwapEx currently has extensive monitoring on hardware, applications and software for anomalies and alert notification to prompt a failover to backup or automatic failover for minimal disruption to business and customers. Alerts are recorded and appropriate escalation and recovery is addressed to the team that is the central point for crisis management of all technology issues and recordation in addition to follow up for incident reviews (lessons learned) from customer impacting events.
- 9.1.7 The SwapEx platform has various security features in place to protect trade data from disclosure, disruption, spoofing, non-repudiation, and denial of service prevention.
- 9.1.8 The SwapEx platform uses passwords to limit access to systems. To log onto any environment, Authorized Users are required to enter their user ID and the associated password. Passwords must be a minimum length and complexity and expire periodically. User IDs are disabled after a set number of failed log in attempts. In addition to the user ID and associated password, all Authorized Users of the SwapEx are required to have a digital certificate installed on their machine in order to access the SwapEx Trading System.
- 9.1.9 To protect against accidental or deliberate disclosure, customer data is isolated to that specific customer using network and application controls.
- 9.1.10 To prevent disruption of service, the Trading System application programming interface ("API") and the trading engine validate all data to ensure it complies with FIX Protocol and message format. The host operating systems of all Trading System servers are updated as necessary in an effort to prevent openings for viruses and other malware.

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 centre computer operations to internal and external threats, including physical hazards and natural disasters;**
- (d) ensures that safeguards that protect a system against unauthorized access, 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 As per SEF Core Principle 14 – *System Safeguards*, SwapEx policies and procedures related to information technology, including system safeguards, form part of a wider program of risk analysis and oversight in place at State Street Bank and Trust Company, which follows generally accepted standards and best practices with respect to the development, operation, reliability, security and capacity of automated systems. Our Corporate Information Security (“CIS”) Program adapts to changing security needs by identifying, monitoring, managing and mitigating the risks associated with information assets. The CIS Program and underlying controls cover every aspect of our information risk environment, including architecture, networks, information systems, data, organizational structure, risk mitigation, communications and training. This program follows the ISO 27001/27002 controls framework: an internationally recognized standard for security program design and operation.

Specific Requirements.

- (a) makes reasonable current and future capacity estimates;

9.2.2 The current capacity of SwapEx’s systems is sufficient for present levels of trading activity. However, the system is scalable and on a continual basis the SwapEx business team makes periodic assessments of current and future capacity needs.

- (b) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;

9.2.3 State Street staff conducts routine, periodic stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner. Staff may also conduct stress tests on occasion in the context of quality assurance reviews related to system or product changes. For example, for major releases, SwapEx staff conducts a stress test designed to ensure that every major release is able to cope with simulated production volume. Moreover, in terms of ongoing monitoring, all servers are monitored individually for capacity (cpu, memory and disk) on a real time basis. In addition, staff tracks capacity trends over time and will add capacity on an as-needed basis.

- (c) reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;

9.2.4 CIS creates security control requirements for our applications based on its internal risk assessment process. With that process, State Street has a standardized, automated approach for managing information security for business applications, with risk management processes that identify, qualify and mitigate security exposures.

9.2.5 State Street’s Application Security Management Program also provides a defined set of services and tools our software developers, quality assurance staff, application owners and information security officers can use to identify risks within our internally developed applications. Factors like application criticality ratings, Internet accessibility and client requests are considered as we establish priority.

- (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;

9.2.6 Access to our physical space is controlled and secured by our Global Security group, who protect our worldwide locations with multiple layers of security, from security guards to card access readers and biometric technology.

9.2.7 Many of our facilities and high-level security areas use positive control entry devices like turnstiles, revolving doors and security access portals. And access and egress from buildings and high-security areas are monitored and recorded on video systems. We operate a state-of-the-art security control center and have on-site security personnel to respond to local incidents

9.2.8 State Street engages third parties to periodically test our network. The results of these tests are reviewed, and we develop and use remediation plans and re-testing strategies. Penetration tests, which are more limited in scope and focus on secure implementation of application code, are also used to assess key applications.

9.2.9 Please also see responses in Sections 9.1.5-9.1.10.

(e) ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;

9.2.10 Please see responses in Section 9.1.6-9.1.10; 9.2.1 and 9.2.12.

(f) maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and

9.2.11 Controls are continually reviewed and modified in response to evolving security threats and regulations. These controls are considered minimum requirements; high-risk situations may require that we implement additional controls.

(g) maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.

9.2.12 SwapEx maintains and regularly updates BCDR policies, may participate in industry-wide BCDR exercises organized by the Futures Industry Association and submits information relating to material changes to its automated systems to the CFTC Division of Market Oversight. Each Participant is required, under SwapEx Rule 408, to have written BCDR procedures in place to ensure it is able to operate in the event of a significant internal or external interruption to its operations.

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 circuit breakers.

9.3.1 SwapEx provides extensive market integrity controls to ensure fair and efficient markets. As noted previously, the historical record of utilization of procedures such as trading halts and limits for CFTC-regulated markets generally has not involved successful instances of mitigating market volatility. At present, noting that SwapEx's volume is transacted only in individually

negotiated RFQ transactions, SwapEx has made a business determination that a circuit breaker procedure based on price is not necessary at this time. This judgment can be revisited in the event of changes in our business activity. That stated, extraordinary and excessive messaging rates generated by a client system can negatively impact all market participants. The messaging volume controls are designed to address this risk by:

- Supporting valid trading activity; and
- Preventing a malfunctioning Trading System from impacting the markets.

Accordingly, SwapEx's message throttle systems and procedures attach not only to messages input via a FIX connection but also set messaging limits in connection with the overall operation of the Trading System in order to ensure its ongoing effective operation.

- 9.3.2 In furtherance of preventing trading errors, SwapEx offers pre-trade credit screening functionality, as described in Section 3.3.1 of Part III of this application. A SwapEx User can also establish order quantity limits ("fat finger limits") for trades that its Authorized Users place on the Trading System.
- 9.3.3. Under SwapEx Rule 526, SwapEx has the authority to review (either upon a SwapEx User's request or upon SwapEx's independent analysis of market activity) any trade executed on its Trading System and to adjust or cancel (bust) certain trades that are outside of a "No-Bust Range" as set forth in the rule. SwapEx also has authority to adjust trade prices or cancel (bust) trades when such action is necessary to mitigate market-disrupting events caused by the improper or erroneous use of the Trading System or by a malfunction or other technological error in the Trading System.
- 9.3.4 Finally, SwapEx has broad authority to declare an "Emergency" and take action when necessary, and the term "Emergency" is generally defined under the SwapEx rules to mean any occurrences or circumstance which, in the opinion of the Board, the Chairman or the Chief Executive Officer, requires immediate action. An Emergency thus can include any circumstance that may have a severe, adverse effect upon the functions and facilities of SwapEx. Accordingly, under sufficiently severe market circumstances, SwapEx potentially could declare an Emergency and then declare a trading halt.

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 SwapEx has adequate financial and staff resources to carry on its activities in compliance with its regulatory requirements.
- 10.1.2 Pursuant to SEF Core Principle 13 - *Financial Resources*, each SEF in general must have adequate financial, operational and managerial resources to discharge each responsibility of the SEF. Under CFTC Regulation 37.1301, a SEF will be considered to maintain adequate financial resources 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 37.1305 additionally provides that the financial resources allocated by the SEF to meet the requirements of CFTC Regulation 37.1301 shall include unencumbered, liquid financial assets (i.e., cash and/or highly liquid securities) equal to at least six (6) months' operating costs. SwapEx is in compliance with these requirements and such requirements are taken into consideration as part of the budgeting process.

11. Trading Practices

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

11.1.1 As detailed more fully in the response to Section 6 of Part III of this application, trading practices at SwapEx are fair, properly supervised and not contrary to the public interest. The SwapEx rules establish prohibitions on abusive or other improper trading practices. These rules have been filed with the CFTC along with a certification by SwapEx that the rules are in compliance with the CEA and CFTC regulations, which are affected in accordance with a public interest.

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 order is fair, equitable and transparent.

11.2.1 As required by the CFTC, SwapEx will impose position accountability levels with respect to swaps underlying Required Transactions executed on its Trading System. At present, SwapEx does not list any products for trading that have been designated as Required Transactions. However, as described in Section 3.3.2 of Part III of this application, position accountability levels would be set forth in the SwapEx Rules and, if triggered by the listing by SwapEx of a Required Transaction, would be enforced on an impartial basis.

11.2.2 SwapEx Rule 524 describes the execution styles available on the Trading System. These execution styles are available to all Participants and Authorized Traders.

11.2.3 SwapEx's Central Limit Order Book functionality uses a price/time algorithm to match orders that are eligible to be matched. Whether an order is eligible to be matched depends on a number of factors including, the order type and expiry type and, if applicable, credit and/or risk limits established for transactions effected through the Trading System. Reliance on a best price/best time algorithm is an established approach in regulated derivatives markets to ensure fairness and transparency. Consequently, this system is fair, equitable and transparent.

11.2.4 The rules governing trade practices on the Trading System are set forth in Chapter 5 of the SwapEx Rulebook and such rules are enforced on an impartial basis with respect to all SwapEx Users.

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

11.3.1 SEF Core Principle 9 – *Timely Publication of Trading Information* requires a SEF to make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts. SwapEx posts that information to its publicly available website for each trading day.

11.3.2 SwapEx is also required to report data for each transaction executed on Trading System to a swap data repository as soon as technologically practicable after execution, in accordance with Parts 43 (*Real-Time Public Reporting of Swap Transaction Data*) and 45 (*Swap Data Recordkeeping and Reporting Requirements*) of the CFTC's regulations. SwapEx has designated DTCC Data Repository (U.S.) LLC ("**DTCC**") as the swap data repository, to which it will report reportable swap data in accordance with CFTC Regulations.

11.3.3 Pursuant to CFTC Regulation 49.15 (Real-time public reporting of swap data), swap data repositories regulated by the CFTC have a duty to maintain systems and use such systems to

accept and publicly disseminate real-time swap data submitted to meet the real-time public reporting obligations of part 43 of the CFTC's Regulations. Any electronic systems established for this purpose must be capable of accepting and ensuring the public dissemination of all data fields required by part 43 of the CFTC's Regulations.

- 11.3.4 Consequently, swap data repositories such as the DTCC are responsible for disseminating the information specified in Table A1 of Appendix A to part 43 of the CFTC's Regulations, to the extent relevant. Specified information may be masked for certain transactions, e.g., the exact notional amount of a large swap (the notional may be reported as an amount in excess of the relevant cap size).

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 Please see the responses to Sections 5 and 7 of Part III of this application.

- 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 Please see the responses to Sections 5 and 7 of Part III of this application.

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

12.3.1 The SwapEx Rules ensure that SwapEx is able to obtain all information necessary to perform its regulatory obligations. Under SwapEx Rule 302, each Participant is obligated to provide SwapEx with information supporting its compliance with the eligibility criteria of SwapEx. Under SwapEx Rules 302, 304 and 402, each Participant and Authorized Trader is required to notify SwapEx upon the occurrence of certain events that may have a material effect on such Participant's or Authorized Trader's ability to continue to meet SwapEx's eligibility criteria. SwapEx (or its regulatory services provider) also has the right to conduct inspections pursuant to Rule 403.

12.3.2 As described in Section 6.1.7 of Part III of this application, SwapEx has the right to share information regarding SwapEx Users with any U.S. government agency or foreign regulatory authority, including the OSC, to the extent requested or legally required to do so and to share information pursuant to information-sharing agreements. Furthermore, under SwapEx Rule 310, each Participant, Authorized Trader and Authorized User agrees to assist SwapEx in complying with SwapEx's legal and regulatory obligations, to cooperate with SwapEx in any inquiry, investigation, audit, examination or proceeding and to authorize SwapEx to provide information regarding such Participant, Authorized Trader or Authorized User to regulators to the extent necessary or appropriate where SwapEx is exercising a legal or regulatory function.

12.3.3 SwapEx has policies and procedures relating to transaction reporting, including Part 16 reporting, real-time public reporting, data reporting, and material event reporting procedures.

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 requirements.

- 13.1.1 SwapEx collects data on a daily basis related to its regulated activity in compliance with SEF Core Principle 10 – *Recordkeeping and Reporting*. SwapEx is required to maintain records of all activities relating to its business as a SEF, including data related to order messaging, order execution, and pricing. SwapEx maintains a precise and complete data history, referred to as the audit trail, for every order and RFQ that is entered into the system and for every transaction executed. Audit trail information for each transaction includes the order/ RFQ instructions, entry time, modification time, execution time, price, quantity, account identifier and parties to the transaction. Detailed information on all order and RFQ trade activity on SwapEx is timed precisely to the thousandth of a second. SwapEx maintains a computerized trade reconstruction system. All electronic order and cleared trade information is archived to non-rewritable media, and copies are stored at multiple locations to ensure redundancy and critical safeguarding of the data.
- 13.1.2 SwapEx Rule 207 requires SwapEx to keep, or cause to be kept, complete and accurate books and records required to be maintained pursuant to the CEA and CFTC Regulations. Such books and records must be retained for at least five (5) years following execution of a swap and shall be made readily available for inspection by the CFTC, the U.S. Securities and Exchange Commission or the Department of Justice.
- 13.1.3 Participants must be able to account for the state of every electronic communication from the moment an electronic system first receives such communication until it is communicated to SwapEx, as well as any related communications returned from SwapEx. This includes any automated system that is under the legal or practical control of the Participant or its system provider. Under SwapEx Rule 518, SwapEx requires Participants to maintain, or to cause their Authorized Traders, DMA Customers or other third parties to whom they have provided connectivity to the Trading System to maintain, audit trail data in the form and manner required by the CFTC. The CFTC requires firms to maintain all audit trail data for a transaction for a minimum of five (5) years. Currently SwapEx has its own internal audit trail review program but may determine in the future to engage NFA to conduct reviews to assess and ensure the accuracy and completeness of the audit trails maintained by Participants.

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 SwapEx is obliged under CFTC regulations 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. SwapEx has a Chief Compliance Officer who monitors its compliance with all regulatory, legal, and internal rules, policies and procedures and is also responsible for supervising SwapEx's self-regulatory obligations. In addition, SwapEx has entered into a Regulatory Services Agreement with the NFA, pursuant to which NFA will provide certain regulatory compliance services to SwapEx, including responsibility for SwapEx's on-going market surveillance functions on a T+1 basis, as well as for the core trade practice surveillance and investigation duties.
 - 14.1.2 SwapEx, through its Market Regulation Department headed by the Chief Compliance Officer, will conduct real-time market surveillance activities. Although SwapEx is outsourcing certain work duties to the NFA, SwapEx will retain the full regulatory obligation to the CFTC for all of its self-regulatory functions and requirements.
 - 14.1.3 SwapEx also has appropriate and formal arrangements in place with affiliates to handle certain

non-regulatory obligations.

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 in the services offered by the exchange.**
- (b) **The process for setting the fees is fair and appropriate, and the fee model is transparent.**

- 15.1.1 CFTC Regulation 37.202 concerns impartial access to a SEF by SEF members and market participants and subsection (a)(3) of that regulation provides that a SEF must maintain comparable fee structures for eligible contract participants and ISVs receiving comparable access to, or services from, the SEF. The CFTC has further clarified that a SEF may establish different categories of market participants seeking access to, or services from, the SEF, but may not discriminate with respect to fees within a particular category.
- 15.1.2 SwapEx currently charges transaction-based fees and connection fees for access to its Trading System. The fees vary depending on the method of execution. SwapEx may amend its fee schedule from time to time, but it will remain subject to the requirements of CFTC regulation 37.202(a)(3) and has a continuing regulatory requirement to submit amendments to its fee schedule to the CFTC.
- 15.1.3 Prior to finalizing any amendment of the SwapEx fee schedule, the fee amendments would be reviewed by SwapEx legal and compliance staff to ensure that the fee schedule as amended is consistent with applicable regulatory requirements. As a result, the process for setting the fees is fair and appropriate, and the fee model is transparent to the regulator as well as to SwapEx participants.
- 15.1.4 Under the terms of its Participant Agreement, SwapEx must provide prior notice to Participants of any amendment or modification of the fees charged to such Participant.
- 15.1.5 In certain circumstances, SwapEx may create market making or other incentive programs that provide Participants with financial or other incentives for meeting trading volume, liquidity or other thresholds as may be established by SwapEx. Such programs may include a variety of fee incentives. The criteria for qualification for such incentives must be applied impartially.

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 Commission, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.**
 - 16.1.1 Pursuant to its SEF registration, SwapEx is subject to CFTC SEF Core Principle 5 - *Ability to Obtain Information*, which requires, among other requirements, that a SEF shall “establish and enforce rules that will allow the [SEF] to obtain any necessary information to perform any of the functions described in this subsection [5h of the CEA], including the capacity to carry out such international information-sharing agreements as the [CFTC] may require”. As described in Section 12.3 of Part III of this application, SwapEx has authority to obtain information from its Participants, Authorized Traders and Authorized Users.
 - 16.1.2 As noted in Section 6.1.7 of Part III of this application, SwapEx Rule 907 authorizes SwapEx to enter into information-sharing agreements that are in furtherance of SwapEx’s purpose or

duties under the SwapEx Rules or any law or regulation applicable to its operation as a SEF with, among others, other self-regulatory organizations, exchanges, markets, clearing organizations and foreign regulatory authorities (including, without limitation, the OSC) and data repositories or third-party reporting services.

- 16.1.3 SwapEx is considering joining the Joint Compliance Committee, which was originally established by regulated futures exchanges, to the extent it extends membership to include SEFs as well. The Joint Compliance Committee has established formal information-sharing agreement, to which SwapEx would be required to become a party in order to join the committee.
- 16.1.4 SwapEx currently participates in one informal association of SEF markets which focuses on joint compliance reviews and discussions among SEFs with respect to compliance matters. This informal association is expected to create an information-sharing agreement similar to the agreements employed by the Joint Compliance Committee, and SwapEx anticipates that it would become a party to any such information-sharing agreement.

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

- 16.2.1 The CFTC has entered into memorandum of understanding (“MOU”) arrangements for cooperative enforcements with foreign regulatory authorities in numerous jurisdictions. The MOUs typically provide for access to non-public documents and information already in the possession of the regulatory authorities, and often include undertakings to obtain documents and to take testimony of, or statements from, witnesses on behalf of a requesting regulatory authority. The CFTC and the Commission entered into a memorandum of understanding for cooperative enforcement on March 25, 2014.

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 Securities Commissions (IOSCO) including those set out in the “Principles for the Regulation and Supervision of Commodity Derivatives Markets” (2011).

- 17.1.1 The CEA, the CFTC Regulations and particularly the SEF 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.
- 17.1.2 SwapEx adheres to the standards of IOSCO in that it must comply with the CEA and CFTC Regulations, which reflect the IOSCO standards. Like the other firms that have received SEF registration, SwapEx will be closely examined by the CFTC staff in the context of their review for full registration and in subsequent “rule enforcement reviews” of our SEF, and during these examinations the IOSCO standards to which we are subject are taken into account.

PART IV SUBMISSIONS BY SWAPEX

1. Submissions Concerning the Requested Relief

- 1.1 OSC Staff Notice 21-707 Swap Execution Facilities – Exemption from Requirement to be Recognized as an Exchange states:

“Because SEFs have self-regulatory responsibilities, they are considered ‘exchanges’ under Ontario securities law. If a SEF provides access to participants in Ontario, it is considered to be

doing business in Ontario and must be recognized as an exchange or obtain an exemption from recognition.”

SwapEx seeks to provide Ontario market participants with direct access to trading in swaps listed on SwapEx and, accordingly, is seeking an exemption from the requirement to be recognized as an exchange under the OSA.

- 1.2 The products traded on SwapEx are “derivatives” as defined in the OSA to be “an option, swap, futures contract, forward contract or other financial or commodity contract or instrument whose market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to or based on an underlying interest”, except as excluded.
- 1.3 SwapEx satisfies the criteria for exemption of a foreign exchange trading OTC derivatives from recognition as an exchange, as set out by OSC Staff, as described under Part III of this application. Ontario market participants that trade in NDFs would benefit from the ability to trade on SwapEx as they would have access to a range of exchange-traded products that may not be otherwise available in Ontario. SwapEx offers a transparent, efficient and liquid market for Ontario market participants to trade in NDFs. Stringent CFTC oversight of SwapEx as well as the sophisticated information systems, regulations and compliance functions that have been adopted by SwapEx will ensure that Ontario users of SwapEx are adequately protected in accordance with international standards set by IOSCO. We therefore submit that it would be in the public interest to grant the Requested Relief.
- 1.4 We submit that the relief requested from the requirement to be recognized as an exchange under the OSA is appropriate because SwapEx is registered as a SEF with the CFTC, the regulator in its home jurisdiction. OSC staff acknowledges in OSC Staff Notice 21-702 Regulatory Approach for Foreign-Based Stock Exchanges that, in the case of foreign exchanges, “[f]ull regulation, similar to that applied to domestic exchanges, may be duplicative and inefficient when imposed in addition to the regulation of the home or another jurisdiction.” If the OSC were to recognize SwapEx as an exchange under the OSA instead of exempting it from recognition, this type of duplication and inefficiency would occur because SwapEx would then be subject to oversight by the OSC similar to the OSC’s oversight of domestic exchanges. Oversight of SwapEx by the CFTC as well as the sophisticated information systems, regulations and compliance functions that have been adopted by SwapEx, will ensure that users of SwapEx in Ontario are adequately protected in accordance with international standards as reflected in the IOSCO principles. We therefore submit that it would not be prejudicial to the public interest to grant the relief requested from the requirement to be recognized under the OSA.

PART V OTHER MATTERS

1. Consent to Publication

- 1.1 SwapEx consents to the publication of this application for public comment.