

Chapter 150 NY Harbor ULSD Futures

150100. SCOPE OF CHAPTER

This chapter is limited in application to NY Harbor ULSD futures. The procedures for trading, clearing, delivery and settlement not specifically covered herein or in Chapter 7 shall be governed by the general rules of the Exchange.

The provisions of these rules shall apply to all ULSD bought or sold for future delivery on the Exchange with delivery in New York Harbor.

The terms "seller" and "buyer" shall mean the seller of the physical product and the buyer of the physical product, respectively.

The term "contract value" shall mean the amount equal to the settlement price on the last day of trading in a futures contract times 42,000 times the number of contracts to be delivered.

For purposes of these rules, unless otherwise specified, times referred to herein shall refer to and indicate New York time.

150101. CONTRACT SPECIFICATIONS

The term "ASTM" refers to the American Society for Testing Materials.

The oil delivered shall be a pure hydrocarbon oil free from renewable fuel, biodiesel, alkali, mineral acid, grit, fibrous or other foreign matter, meeting the "Delivery" specifications of the Colonial Pipeline's Fungible Grade 62 for Ultra Low Sulfur Diesel, and being properly designated for sale in New York Harbor in accordance with U.S. Environmental Protection Agency (EPA) regulations. Delivery test results may vary by the smaller of ASTM reproducibility for a given test or any test tolerance as allowed for downstream parties by state or EPA regulations at the point of delivery. The ULSD delivered shall fully comply with specifications of the Colonial Pipeline Fungible Grade 62 for on-road ULSD, including the requirement that the on-road diesel fuel must contain no renewable diesel or biodiesel. In the event that EPA issues a temporary waiver which impacts fuel standards at Exchange-approved terminals in New York Harbor, the Exchange, in its sole discretion, will review the provisions of the waiver on a case-by-case basis to determine whether to modify the existing delivery requirements for ULSD to comply with such waiver.

150102. TRADING SPECIFICATIONS

Trading in NY Harbor ULSD futures is regularly conducted in all calendar months. The number of months open for trading at a given time shall be determined by the Exchange.

150102.A. Trading Schedule

The hours for trading shall be determined by the Exchange.

150102.B. Trading Unit

The contract unit shall be 42,000 U.S. gallons (1,000 U.S. barrels). Except for a delivery made by book transfer or stock transfer pursuant to Section 106, a loading tolerance of two percent (2%) above or below (1,020 U.S. barrels or 980 U.S. barrels) the contract unit is permitted. The volume delivered shall be determined at 60 degrees Fahrenheit using ASTM. Standard D-1250, Table 6B.

150102.C. Price Increments

The minimum fluctuation shall be \$0.0001 (0.01¢) per gallon. Prices shall be quoted in dollars and cents per gallon.

150102.D. Special Price Fluctuation Limits

At the commencement of each trading day, the contract shall be subject to special fluctuation limits as set forth in Rule 589 and in the Special Price Fluctuation Limits Table in the Interpretations & Special Notices Section of Chapter 5

150102.E. Position Limits, Exemptions, Position Accountability and Reportable Levels

The applicable position limits and/or accountability levels, in addition to the reportable levels, are set forth in the Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices Section of Chapter 5.

A Person seeking an exemption from position limits for bona fide commercial purposes shall apply to the Market Regulation Department on forms provided by the Exchange, and the Market Regulation Department may grant qualified exemptions in its sole discretion.

Refer to Rule 559 for requirements concerning the aggregation of positions and allowable exemptions from the specified position limits.

150102.F. Termination of Trading

No trades in NY Harbor ULSD futures in the expiring contract month shall be made after the last business day of the month preceding the delivery month for such expiring contract. Any contracts remaining open after the last day of trading must be either:

- (a) Settled by delivery which shall begin no earlier than the day after the fifth business day of the delivery month or later than the last day prior to the last business day of the delivery month and shall be completed no later than the last business day of the delivery month; or
- (b) Liquidated by means of a bona fide Exchange for Related Position ("EFRP") pursuant to Rule 538. An EFRP is permitted in an expired futures contract at any time before 2:00 p.m. on the first business day following termination of trading in the expired futures contract. An EFRP which establishes a futures position for either the buyer or the seller shall in an expired futures contract shall not be permitted following the termination of trading of an expired futures contract.

150103. PRODUCT IN TANK

The seller shall have a quantity and quality of product in tank at one or more eligible delivery facilities in accordance with the inspection requirements under Section 104 prior to the first day of the consecutive five-day period for initiation of delivery identified by the buyer in the Initial Delivery Instructions. The obligation to have product in tank, as prescribed in this rule, shall constitute a "material act with respect to a delivery obligation".

150104. INSPECTION

1. The buyer's clearing member shall notify the seller's clearing member in the Initial Delivery Instructions that a grade and quality or quantity inspection is requested. The seller shall initiate inspection of the product to be delivered 24 hours prior to the nominated time and date specified in the delivery instructions. The buyer's clearing member may request the tests for any or all grade and quality specifications for the stated product in accordance with Section 101. The buyer's clearing member may request a quantity inspection for all deliveries. The buyer's clearing member shall require a quantity inspection for delivery by barge, tanker or inter-facility transfer (pump-over). If the buyer's clearing member does not request a quantity inspection, the seller's clearing member may request such inspection.
2. If a buyer's clearing member requests grade and quality or quantity inspection, or if a seller's clearing member requests a quantity inspection, the inspection company listed in the Initial Delivery Instructions shall perform the inspection, unless an alternate inspection company is appointed pursuant to Section 106.A.3.
3. If the product meets grade and quality specifications, the buyer and seller shall share equally in the cost of inspection. If the product does not meet grade and quality specifications, the seller shall pay the cost of inspection. The cost of verifying the quantity of product transferred shall be shared equally by buyer and seller.
4. If the product does not meet grade and quality specifications, or if product is added to the tendered tank(s) after the inspection is conducted, the seller, at its own expense, shall initiate a second inspection, performed by the same inspection company as the initial inspection. Seller shall furnish the results of the second inspection to the buyer no later than the nominated time and date of pickup. If the product does not meet grade and quality specifications in the second inspection, within one business day of receipt of the report by the Exchange, the Exchange shall review the delivery if necessary, pursuant to the procedures set forth in Chapter 7.

5. The inspection company shall not be affiliated with the parties to the delivery. The inspection company must be capable of performing the quantity or quality tests requested by the buyer's clearing member or seller's clearing member in such a manner so as to assure that the product delivered conforms with these rules. The inspection company shall determine the quantity or quality of product transferred by using the prevailing practices of the facility transferring the product in effect at the time of delivery.
6. Upon request from the Exchange, the buyer's clearing member and the seller's clearing member shall deliver to the Exchange a copy of all reports of the inspection company when they are received.
7. The buyer, at its own discretion and expense, may request in the Initial Delivery Instructions that the seller perform an additional inspection, called pre-inspection, for quality and quantity on the total amount to be delivered in the five-day delivery period specified in the Initial Delivery Instructions. The seller shall initiate pre-inspection 24 hours prior to the first day of the consecutive five-day period for delivery. Pre-inspection shall be performed by the same inspection company as indicated in the Initial Delivery Instructions. If the product does not meet grade and quality specifications in the pre-inspection, the seller, at its own expense, shall initiate a second pre-inspection, performed by the same inspection company as the initial pre-inspection. Seller shall furnish the results of the second pre-inspection to the buyer prior to the first day of the consecutive five-day delivery period.
8. Notwithstanding the above, for purposes of this rule, the dye specification referenced in Section 101.A.14. need not be met at the time of inspection or pre-inspection. However, it must be met by seller at seller's cost and as prescribed by the Internal Revenue Service (IRS) for tax-free sales or uses of diesel fuel prior to completion of delivery.

150105. DELIVERY

Delivery shall be made free-on-board ("F.O.B.") seller's ex-shore facility in New York Harbor with all duties, entitlements, taxes, fees and other charges imposed prior to, or as a result of, delivery paid by the seller. Delivery shall be made in accordance with applicable Federal, State and local laws. Buyer shall reimburse seller for any heating oil tax as had been or will be paid by the seller. At buyer's option, such delivery shall be made by any of the following methods:

1. By delivery into buyer's barge;
2. By delivery into buyer's tanker, if buyer can take delivery in such manner at the facility used by seller;
3. By delivery into buyer's pipeline, if buyer can take delivery in such manner at the facility used by seller;
4. By stock transfer of title to the buyer; if the facility used by seller allows such transfer;
5. By book transfer if the seller agrees to such transfer;
6. By intra-facility transfer ("pump-over"), if the facility used by seller allows such transfer; or
7. By inter-facility transfer ("pump-over"), if both facilities used by seller and buyer allow such transfer.

For purposes of these rules, any seller delivering an aggregate of twenty-five (25) contracts or less in a delivery month, shall deliver all such contracts into the same facility.

On-road ULSD Designation: At the time of delivery, the seller shall provide the buyer a Product Transfer Document, and shall make available to the Exchange such documentation and any additional information as may be required by the Exchange upon request, including documentation that will verify tracking of the product from receipt at origin to seller's facility.

For the purpose of these rules, New York Harbor shall extend from the East River west of Hunts Point; Gowanus Bay west of the Hamilton Avenue Bridge; the Hudson River south of the George Washington Bridge; the Upper Bay; the Narrows; the Lower Bay west of Norton Point; the Newark Bay; the Hackensack River south of the Witt-Penn Bridge; the Passaic River south of the Pulaski Skyway Bridge; the Kill Van Kull; the Arthur Kill and the Raritan River east of the Garden State Parkway Bridge.

150106. DELIVERY PROCEDURES

150106.A. Responsibilities of Clearing Members Having Open Long Positions

1. Notice of Intention to Accept

Exchange clearing members having open long positions shall provide the Clearing House with a Notice of Intention to Accept delivery by 3:00 p.m. on the first business day of the delivery month. The Notice of Intention to Accept must be in the form prescribed by the Exchange, and must be properly completed and indicate the name(s) of the buyer(s), the number of contracts to be accepted, the names of three inspection companies and any additional information as may be required by the Exchange. The buyer may, at its option, request a preferred delivery site; such request shall not be binding upon the seller.

2. Initial Delivery Instructions

Upon receipt from the Exchange of a Notice of Intention to Deliver, but no later than 4:30 p.m. on a business day no later than the fourth business day of the delivery month, the buyer's clearing member shall provide the seller's clearing member identified in such Notice of Intention to Deliver and the Exchange with properly completed Initial Delivery Instructions in the form prescribed by the Exchange. Such Initial Delivery Instructions must include the following information:

- a. Name of seller's clearing member;
- b. Tender number;
- c. Name and location of delivery facility specified in the Notice of Intention to Deliver;
- d. Number of contracts;
- e. Method of delivery (which must conform to the normal capabilities of the facility named in the Notice of Intention to Deliver with respect to the manner and time of delivery and the quantity to be delivered);
- f. A consecutive five-day period for initiation of delivery;
- g. Name of the designated inspection company, if so required;
- h. Confirmation of verification of delivery method and inspection company in accordance with Section 106.A.3.; and,
- i. Any additional information as may be required by the Exchange.

3. Verification of Delivery Method and Inspection Company

Prior to providing the seller's clearing member and the Exchange with Initial Delivery Instructions, the buyer shall verify with and confirm in writing to the seller that the method of delivery specified conforms to the normal capabilities of the seller's delivery facility with respect to the manner of delivery and the quantity to be delivered and that the inspection company specified has been accepted by the seller. Such verification shall be confirmed in the Initial Delivery Instructions. If the buyer and seller fail to agree on one of the three inspection companies specified in the Notice of Intention to Accept, the Exchange shall appoint an inspection company which shall not be either of the three inspection companies listed in the Notice of Intention to Accept. Initial Delivery Instructions may not be amended after they have been provided to the seller's clearing member and the Exchange.

4. Delivery Instructions

The buyer's clearing member may provide the seller's clearing member with Delivery Instructions on any business day prior to 10:30 a.m. Delivery Instructions provided after 10:30 a.m. on any business day shall be deemed to have been provided on the following business day. A buyer's clearing member may not provide the seller's clearing member with Delivery Instructions on the day on which Initial Delivery Instructions are provided to the seller's clearing member pursuant to Section 106.A.2 above. The buyer's clearing member's Delivery Instructions for a delivery which is to occur during the consecutive five-day period the final day of which is the day prior to the last business day of the delivery month shall not designate such final day of the five-day period for the initiation of the delivery.

The buyer's clearing member shall provide the seller's clearing member and the Exchange with properly completed Delivery Instructions in the form prescribed by the Exchange no later than two calendar days prior to the time of the proposed delivery, or such earlier business day as is necessary to ensure that the day on which Delivery Instructions are provided is followed by a period that includes at least one business day and two subsequent calendar days ending on the day prior to the last business day of the delivery month. Except as provided in Section

106.A.6 below, Delivery Instructions must conform to the Initial Delivery Instructions provided by the buyer's clearing member to the seller's clearing member and the Exchange.

5. Form of Delivery Instructions

The Delivery Instructions must be in the form prescribed by the Exchange, and must be properly completed and contain the following information:

- a. Name of seller's clearing member;
- b. Tender number;
- c. Name and location of delivery facility specified in the Notice of Intention to Deliver;
- d. Number of contracts;
- e. Method of delivery (which must conform to the normal capabilities of the facility named in the Notice of Intention to Deliver with respect to the manner and time of delivery and the quantity to be delivered);
- f. Name of proposed carrier (i.e., Barge, Tanker or Pipeline), and the approximate size of the barge, or tanker, if any;
- g. For interfacility transfers, name of receiving facility;
- h. Date and approximate time for initiating delivery;
- i. Name of inspection company, if so required; and
- j. Any additional information as may be required by the Exchange.

6. Amendment to Initial Delivery Instructions or Delivery Instructions

Neither Initial Delivery Instructions nor Delivery Instructions may be amended after they have been provided to the seller's clearing member and the Exchange. However, upon mutual consent of the buyer's clearing member and the seller's clearing member and upon written notice to the Exchange, the buyer's clearing member and seller's clearing member may change the delivery facility named by the seller, the method of delivery named by the buyer, the five-day period for the initiation of a delivery named by the buyer, or the specific delivery date and time named by the buyer.

7. Notice of Clearance; Notice of Non-Clearance

If the buyer's clearing member receives from the seller's clearing member a Notice of Non-Clearance stating that the seller is unable to deliver in accordance with the Delivery Instructions, the buyer's clearing member shall provide the seller's clearing member and the Exchange with Revised Delivery Instructions, no later than 10:30 a.m. on the third business day following receipt of such Notice of Non-Clearance, or such earlier business day as is necessary to ensure that the day on which Revised Delivery Instructions are provided is followed by at least two subsequent calendar days ending on the day prior to the last business day of the delivery month. The Revised Delivery Instructions shall comply in all respects with the provisions of Section 106.A.5. above and shall thereafter comply with the provisions of this Section 106.A.7. as if such Revised Delivery Instructions were the original Delivery Instructions; provided, however, that such Revised Delivery Instructions may designate for delivery the final day of the consecutive five-day period immediately prior to the last business day of the month. Such Revised Delivery Instructions shall specify a delivery date and time no less than 24 hours before or after the delivery time specified in the original Delivery Instructions (whether or not such date and time is within the five-day period specified in the Initial Delivery Instructions), provided such date and time is prior to the last business day of the delivery month and at least two calendar days subsequent to the date on which such Revised Delivery Instructions are provided to the seller's clearing member and the Exchange. Revised Delivery Instructions provided after 10:30 a.m. on any day shall be deemed to have been provided on the following business day. Except as provided in Section 106.A.6, Revised Delivery Instructions may not be amended after they have been provided to the seller's clearing member and the Exchange.

8. Acceptance of Product

The buyer shall not begin to accept the product earlier than the day after the fifth business day of the delivery month or later than the last day prior to the last business day of the delivery month. The buyer shall complete receipt of product no later than the last business day of the delivery month.

150106.B. Responsibilities of Clearing Members Having Open Short Positions**1. Notice of Intention to Deliver**

Exchange clearing members having open short positions shall provide the Clearing House with a Notice of Intention to Deliver by 3:00 p.m. on the first business day of the delivery month. The Notice of Intention to Deliver must be in the form prescribed by the Exchange and must be properly completed, indicate the name of the seller(s), the name and location of the facility of the seller(s) which will supply the product, the number of contracts and any additional information as may be required by the Exchange.

2. Notice of Clearance; Notice of Non-Clearance

a. No later than 4:30 p.m. on the day on which the buyer's clearing member provides the seller's clearing member Delivery Instructions, the seller's clearing member shall provide the buyer's clearing member and the Exchange with a completed Notice of Clearance in the form prescribed by the Exchange. The Notice of Clearance must indicate that the seller is prepared to make delivery in accordance with the provisions of the buyer's clearing member's Delivery Instructions.

b. (i) In the event that the seller is unable to make delivery in accordance with the buyer's Delivery Instructions because of a good faith inability to receive clearance from the facility, the seller's clearing member shall, no later than 4:30 p.m. on the day on which the buyer's clearing member provides the seller's clearing member and the Exchange with Delivery Instructions, provide to the buyer's clearing member and the Exchange with a Notice of Non-Clearance. The Notice of Non-Clearance must state the reasons for such inability to deliver. The seller's clearing member may, at its option, in the Notice of Non-Clearance, suggest an alternate or preferred delivery site, date or time. In the event the facility nominated by the seller's clearing member asserts a minimum loading requirement for barge delivery which is an amount greater than the quantity nominated by the buyer's clearing member for lifting, the seller's clearing member may not issue a Notice of Non-Clearance to the buyer's clearing member based solely upon such loading requirement. However, in the event the facility's minimum loading requirement prevents delivery as nominated by the buyer's clearing member, the seller's clearing member may unilaterally and without the buyer's clearing member's consent, upon written notice to the buyer's clearing member and the Exchange, no later than 4:30 p.m. on the day on which the buyer's clearing member provides the seller's clearing member and the Exchange with Delivery Instructions, amend the name and location of the delivery facility set forth in the Delivery Instructions to consummate delivery as otherwise provided in the Delivery Instructions.

(ii) No later than 4:30 p.m. on the day on which the buyer's clearing member provides the seller's clearing member and the Exchange with Revised Delivery Instructions, the seller's clearing member shall provide the buyer's clearing member and the Exchange with a properly completed Notice of Clearance in the form prescribed by the Exchange. The Notice of Clearance must indicate that the seller is prepared to make delivery in accordance with the provisions of the buyer's clearing member's Revised Delivery Instructions. Revised Delivery Instructions provided after 10:30 a.m. on any day shall be deemed to have been provided on the subsequent business day. In the event that the seller is unable to make delivery in accordance with the buyer's clearing member's Revised Delivery Instructions because of force majeure, the seller's clearing member shall, no later than 4:30 p.m. on the day on which the buyer's clearing member provides the seller's clearing member with Revised Delivery Instructions, provide the buyer's clearing member and the Exchange with a Notice of Non-Clearance. The Notice of Non-Clearance must state the reasons for such inability to make delivery.

150106.C. Final Settlement Price

The final settlement price shall be the basis for delivery.

150106.D. Notice Day

The Clearing House shall allocate Notices of Intention to Deliver and Notices of Intention to Accept by matching size of positions to the extent possible. On the morning of the next business day, the Clearing House shall provide copies of the notices to the respective clearing members. The day on which the notices are provided to the clearing members shall be referred to as the Notice Day. The Notice Day shall be the second business day of the delivery month.

150106.E. Non-Transferable

The clearing member who receives a Notice of Intention to Deliver or Notice of Intention to Accept from the Clearing House shall be deemed to have agreed to accept or deliver product. Notices of Intention to Deliver and Notices of Intention to Accept are not transferable.

150106.F. Delivery Day and Payment

1. Shipment will commence when product passes the buyer's cargo intake flange, tank or pipeline connection; at such time the buyer shall bear the risk of loss.
2. The buyer's clearing member shall pay the seller's clearing member by federal funds money wire by 12:00 p.m. on the business day following the receipt of the product, or by 12:00 p.m. on the last business day of the delivery month, whichever is earlier. The amount of payment shall be based on volume delivered as determined in accordance with Section 102.B. Should the inspector, appointed under Section 104, be unable to supply quantitative results prior to the time established herein for payment of the product, a pro-forma payment based on 42,000 U.S. gallons per contract shall be made. Payment adjustments based on actual quantity delivered shall be completed by 12:00 p.m. on the first business day after receipt of inspector's report but no later than the third business day after completion of delivery of physical product.
 - (a) If the buyer requires multiple delivery dates, multiple payments shall be required for each portion of product delivered.
 - (b) The seller's clearing member, upon receipt of payment, shall provide the buyer's clearing member with a bill of lading or other quantitative certificate and any other appropriate documents necessary to transfer ownership of the product to the buyer's clearing member.In the event that the seller's clearing member receives notification that payment has not been received, the seller's clearing member shall advise the Exchange in writing by 5:00 p.m. on the business day on which payment is due. On the following business day, unless the buyer or the buyer's clearing member has advised the Exchange in writing that the seller failed to deliver, the Exchange shall liquidate the margins held and, when the liquidation is complete, shall pay the seller's clearing member which shall pay its seller. If the buyer or the buyer's clearing member has advised the Exchange in writing that the seller failed to deliver, the matter shall be deemed a failure to deliver pursuant to Rule 714.
3. The day on which the buyer receives the product shall be referred to as the Delivery Day.

150107.**SHIPMENT**

The seller's facility must be capable of making delivery by barge.

The seller's ex-shore facility must have a minimum draft of 20 feet at mean low water and a minimum access draft of 20 feet at mean low water. The seller must supply the product as soon as the barge or tanker reports readiness to load; alternatively, if delivery is to be made on shore, the seller must supply the product as soon as the buyer reports that the transfer facility is ready to accept the product.

The buyer's barge or tanker must be safely afloat at all times.

The seller shall pay all applicable demurrage charges if the shore facility is unable to deliver the product at a rate sufficient to meet normal requirements for loading a barge or tanker or is unable to deliver ex-tank or pipeline at the normal rate for such delivery. The buyer shall pay all other demurrage charges.

150108.**ALTERNATIVE DELIVERY PROCEDURES**

A seller and buyer matched by the Exchange under Section 106.D may agree to make and take delivery under terms or conditions which differ from the terms and conditions prescribed by this Chapter. In such a case, clearing members shall execute an Alternative Notice of Intention to Deliver on the form prescribed by the Exchange and shall deliver a completed and executed copy of such notice to the Exchange. The delivery of an executed Alternative Notice of Intention to Deliver to the Exchange shall release the clearing members and the Exchange from their respective obligations under the rules of this Chapter and any other rules regarding physical delivery.

In executing such notice, clearing members shall indemnify the Exchange against any liability, cost or expense the Exchange may incur for any reason as a result of the execution, delivery, or performance of such contracts or such agreement, or any breach thereof or default thereunder.

Upon receipt of an executed Alternative Notice of Intention to Deliver, the Exchange will return to the clearing members all margin monies held for the account of each with respect to the contracts involved.

150109. VALIDITY OF DOCUMENTS

The Exchange makes no representation respecting the authenticity, validity or accuracy of any inspection certificate, Notice of Intention to Deliver, Notice of Intention to Accept, bill of lading, check or any document or instrument delivered pursuant to these rules.

150110. LATE PERFORMANCE, FAILURE TO PERFORM AND FAILURE TO MAKE PAYMENT

150110.A. Definitions

The term "late performance" shall mean the failure of a buyer's clearing member or a seller's clearing member to complete a material act with respect to a delivery obligation imposed by, and within the time period established in, the rules of this Chapter. Late performance may not exceed the lesser of five continuous business days or eight consecutive calendar days.

The term "failure to perform" shall mean the failure of a buyer's clearing member or a seller's clearing member to complete a material act with respect to a delivery obligation prior to the expiration of the period allowed for the late performance of such act.

The term "Party" shall mean a buyer's clearing member or a seller's clearing member.

The term "Other Party" shall mean the corresponding buyer's clearing member when the seller's clearing member is late in performance or has failed to perform or has failed to make payment or the corresponding seller's clearing member when the buyer's clearing member is late in performance or has failed to perform or has failed to make payment.

The term "day of late performance" shall mean the twenty-four hour period commencing twelve hours after a buyer or a seller was to have performed, provided however, with respect to the obligations of buyers and sellers to submit documents to the Exchange pursuant to the rules of this Chapter, "day of late performance" shall mean the twenty-four hour period commencing immediately after the time specified in the rules of this Chapter for the submission of a document. Each subsequent day of late performance shall commence twenty-four hours after the beginning of the prior day of late performance. When a Party is late in performance, the day on which the act is performed shall be the day of late performance.

The term "failure to make payment" shall mean the failure of a buyer or a buyer's clearing member to make payment in accordance with Section 106.F.

150110.B. Responsibilities of Parties to the Delivery

1. The Parties to a delivery shall make commercially reasonable efforts to perform their respective delivery obligations at all times until a Party has failed to perform.
2. A Party which has failed to perform its obligations may no longer perform such obligations; provided, however, that a buyer or a buyer's clearing member which has failed to make a payment shall make such payment.
3. In the event that a Party has failed to perform, the Other Party shall be responsible to provide written notification to the Exchange in accordance with the Exchange rules and the rules of this Chapter.
4. When a Party has failed to perform or when a buyer or a buyer's clearing member has failed to make payment, the Party through which the delivery is effected, shall be liable to the Other Party for any damages awarded pursuant to Exchange arbitration and/or disciplinary procedures.

150110.C. Surcharges for Late Performance

1. Whenever a Party is found by the Exchange to be late in the performance of a delivery, the Chief Regulatory Officer or his designee shall have the authority to impose surcharges in accordance with Section 110.C.2. below.
2. Either one or both Parties shall be assessed a surcharge to be paid to the Exchange for each day of late performance as described below. Such surcharge shall be cumulative for each day of late performance.
 - first day of late performance – up to 3% of contract value;

- second day of late performance – up to 3% of contract value;
 - third day of late performance – up to 3% of contract value;
 - fourth day of late performance – up to 3% of contract value;
 - fifth day of late performance – up to 3% of contract value;
 - sixth day of late performance – up to 3% of contract value;
 - seventh day of late performance – up to 4% of contract value;
 - eighth day of late performance – up to 5% of contract value.
3. A Party shall have 15 days following receipt of the notice of a surcharge to present evidence to the Market Regulation Department that the surcharge should be rescinded or reduced. Absent the submission of such evidence within the designated time period, the surcharge shall be deemed final and may not be appealed.
 4. If the Chief Regulatory Officer or his designee determines that evidence submitted by a Party pursuant to Section 110.C.3. is insufficient to support the requested rescission or reduction of the surcharge, the Party may, within 10 days of the decision, file a written appeal with the Market Regulation Department. A written appeal that fails to specify the grounds for the appeal and the specific error or impropriety of the original decision shall be dismissed. The appeal shall be heard by a Panel of the Business Conduct Committee (“BCC Panel”) whose decision shall be final. The appellant shall be entitled to be represented by counsel, appear personally before the BCC Panel and present evidence that he may have in support of his appeal. The BCC Panel shall not set aside, modify or amend the appealed decision unless it determines, by a majority vote, that the decision was:
 - a. Arbitrary, capricious, or an abuse of the Exchange staff’s discretion;
 - b. In excess of the Exchange staff’s authority or jurisdiction; or
 - c. Based on a clearly erroneous application of Exchange rules.

Notwithstanding the provisions of Sections 110.C.2 and 110.C.3 above, the Market Regulation Department, may, at any time, refer matters that it deems egregious to the Probable Cause Committee.