

**TEMPLUM MARKETS  
ATS RULEBOOK  
EFFECTIVE MARCH 2021**

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## INTRODUCTION

Templum Markets LLC (“Templum Markets”) operates an alternative trading system (the “ATS” or the “Platform”), which is registered with the U.S. Securities and Exchange Commission (“SEC”). The Platform trades securities including, but not limited to, debt, equity, profit participation interests, and limited partnership interests that in most cases are not registered under the Securities Act or Section 12(g) of the Securities Exchange Act of 1934 (the “Exchange Act”), and in all cases that are not listed on a registered national securities exchange such as the New York Stock Exchange, or the Nasdaq. The Platform facilitates trades in securities representing interests in, or obligations of, private issuers which may be in the form of limited partnership interests, interests in limited liability companies, or in corporations, including debt securities (collectively, the “Securities”).

All individuals and entities are subject to satisfactory completion of a know-your-customer, anti-money laundering and compliance review, which includes a review of disciplinary history, prior to gaining access to the Platform (“Compliance Process”). Any individual or entity that successfully completes the Compliance Process and enters into, or acknowledges and consents to, a Subscriber Agreement (the “Subscriber Agreement”), with Templum Markets, is provided access to the Platform and is referred to as a subscriber (“Subscriber”). Subscriber personnel that use the Platform on behalf of a Subscriber are collectively referred to as an Authorized User (“Authorized User”, or collectively, “Authorized Users”).

In some cases, a Subscriber may enter into and maintain customer agreements with one or more of its clients (“Sponsored Subscribers”) establishing proper relationships and accounts through which the Sponsored Subscriber may participate on the Platform. In such cases, the sponsoring Subscriber (“Sponsor”) will complete a compliance review for each Sponsored Subscriber (and any applicable Sponsored Subscriber’s Authorized Users) and provide an attestation of such to Templum Markets. Sponsored Subscribers are customers of the Sponsor and the Sponsor is responsible for all activity of its Sponsored Subscribers on the Platform, including adherence to the rules and procedures outlined in this document.

This document (the “ATS Rulebook”) sets forth the rules and procedures that govern the use of the Platform for all Subscribers and their respective Authorized Users.

## CHAPTER 1 ATS

### 101 Access to the ATS

(a) Subscribers shall adopt, implement and enforce control procedures that, at a minimum: (i) prevent unauthorized access to, use or misuse of the ATS, and (ii) limit access to the ATS to its Authorized Users. Subscribers' Authorized Users shall be solely responsible for any breach or failure of their respective control procedures and may not rely on control procedures implemented by the Company.

(b) Subscribers shall not knowingly introduce or permit the introduction of any Viruses or other software routines or hardware components designed to permit unauthorized access or to disable, erase or otherwise harm the ATS. Each Subscriber is solely responsible for ensuring the security of its Authorized Users' connection to the ATS, and is solely responsible for any Losses that may be incurred as a result of errors made by, or the failure of, or delays caused by, the software, hardware or equipment that is used by such Subscriber (and its Authorized Users) to access the ATS, and which is not provided by the Company.

(c) Except as otherwise expressly permitted by the Company, each Subscriber shall be responsible for ensuring that it does not grant access to the ATS to any Person located in a country that is not an Authorized Jurisdiction.

(d) A Person's access and use of the ATS (itself or through an Authorized User and whether or not on behalf of a Sponsored Subscriber) constitutes an agreement by such Person to be bound by the terms of the Subscriber Agreement, and these Rules as a Subscriber and, if accessing and using the ATS on behalf of a Sponsored Subscriber, an agreement by such Person on behalf of such Sponsored Subscriber to bind such Sponsored Subscriber to the terms of the Subscriber Agreement and these Rules. If a Person is unwilling to accept and abide by either the terms of the Subscriber Agreement or the Rules as a Subscriber, such Person should immediately cease all use of the ATS and should request that the Company disable all Access Codes assigned to it or its Authorized Users.

### 102 Qualifications of Subscribers

To be eligible for admission as a Subscriber, an applicant must:

- (i) be organized in an Authorized Jurisdiction and, if it is organized in a jurisdiction other than the United States, appoint and maintain an agent for service of process in the United States that is acceptable to the Company;
- (ii) be in compliance with any financial responsibility, recordkeeping and reporting requirements set forth under Applicable Law or Rule 202; and
- (iii) agree to abide by the Rules, consent to the Company's monitoring with respect to ATS trading activities, and cooperate promptly and fully with the Company in any investigation, inquiry, audit, or examination regarding compliance with the Rules.

### **103 Trading Privileges**

Subject to the requirements and procedures set forth in this Chapter 1 and any Subscriber Agreement, Trading Privileges shall be offered to Subscribers, subject to any limitation, restriction or revocation from time to time imposed on a Subscriber or its Authorized Users by the Company. Trading Privileges are non-transferable, non-assignable and may not be sold or leased.

### **104 Application of Rules and Jurisdiction**

(a) Any Person initiating or executing a transaction pursuant to the Rules, directly or through a Subscriber, consents to abide by the decisions of the Company in accordance with these Rules.

(b) Any Subscriber or Authorized User whose right to access the ATS is revoked or terminated will remain bound by the Rules and Applicable Law, in each case and to the extent applicable, with respect to any and all matters arising from, related to, or in connection with, the status, actions or omissions of such Subscriber or Authorized User in respect of or arising out of its use of the ATS prior to such revocation or termination.

### **105 Trading Fees**

(a) Each Subscriber or Sponsored Subscriber, as applicable, shall pay such transaction-based fees to the Company as are in effect from time to time (the "Trading Fees") in conjunction with the execution of transactions on the ATS. Such Trading Fees shall be in the form of percentage of transaction value or a fixed value and will be prominently displayed to Subscriber at the time immediately prior to Order entry. Trading Fees may vary for each Product and side of a trade, and a minimum Trading Fee may also apply. The Company may, at any time, modify any or all of the Trading Fees with or without notice to Subscribers; the modified Trading Fee will become effective immediately for all trades executed on the ATS after the fee modification, but will not be applicable to trades executed prior to the time of the fee change.

(b) The Company shall not be responsible for, nor have any obligation with respect to, the payment of any sales, use, goods and services, value added, transfer, property or other taxes, any tax in the nature of a withholding tax, and any duty or duties payable in respect of Trading Fees or any part thereof and/or the provision of the ATS, or otherwise (excluding any taxes imposed on the net income of the Company).

### **106 Modifications to ATS**

The Company shall have sole discretion and control over, and the right to modify at any time, the ATS' functionality, configuration, appearance and content, including without limitation: (i) the selection of Products or transactions generally available on the ATS; (ii) the parameters and protocols by which Orders are placed, routed, matched or otherwise processed by the ATS; and (iii) the availability of the ATS with respect to particular Products or transactions at any particular times or locations. The Company shall endeavor to provide reasonable advance notice to the Subscribers in the event that such a modification requires technological, operational or systems changes by the Subscribers.

## CHAPTER 2 BUSINESS CONDUCT

### 202 Duties and Responsibilities of Subscribers and Authorized Users

- (a) Each Subscriber and each Authorized User shall:
  - (i) use the ATS and effect transactions in Products in a responsible manner and not for any improper purpose;
  - (ii) use the ATS only to conduct business that is subject to the Rules and in a manner consistent with the Rules and Company Requirements;
  - (iii) comply with the Rules and Company Requirements and act in a manner consistent with the Rules and Company Requirements at all times while using the ATS;
  - (iv) observe high standards of fair dealing and just and equitable principles of trade while conducting or seeking to conduct any business on or with respect to the ATS;
  - (v) not knowingly mislead or conceal any material fact or matter in any dealings or filings with the Company;
  - (vi) cooperate promptly and fully with the Company in any investigation or inquiry by the Company regarding compliance with the Rules; and
  - (vii) keep all Access Codes, account numbers and passwords related to the ATS confidential.
  
- (b) No Subscriber or Authorized User shall:
  - (i) take action or direct another to take action based on nonpublic information regarding Orders, however acquired; provided that the mere statement of opinions or indications of the price at which a market may open or resume trading does not constitute a violation of this Rule; make any fraudulent or misleading communications or engage in any fraudulent act or any scheme to defraud, deceive, trick or mislead in connection with or related to its use of the ATS;
  - (ii) manipulate or attempt to manipulate the market in any Product in connection with or related to its use of the ATS;
  - (iii) engage in conduct in violation of the Rules or the rules of any Regulatory Authority in connection with or related to its use of the ATS;
  - (iv) knowingly enter, or cause to be entered, Orders into the ATS other than in good faith for the purpose of executing bona fide transactions;
  - (v) make any knowing misstatement of a material fact to the Company or any

officer of the Company; or

- (vi) use any information contained within the ATS to facilitate or execute a transaction with regard to any listed Product listed on a venue other than the ATS provided by the Company.

(c) Each Subscriber shall employ practices to monitor and enforce compliance with both with the rules and procedures of the ATS Rulebook and with rules of its internal policies, including but not limited to any internal risk limits. Subject to the limitations set forth in any Error Trade Policy, each Subscriber or Sponsored Subscriber, as applicable, shall be responsible for all Orders and transactions effected on the ATS by or for the account of such Subscriber or Sponsored Subscriber. Each Subscriber shall be responsible for all Orders and transactions effected on the ATS by any of its Authorized Users.

### **203 Minimum Financial and Related Reporting Requirements**

Each Subscriber must notify the Company immediately upon becoming aware that it fails to satisfy minimum financial requirements applicable to such Subscriber and established pursuant to Applicable Law. A Subscriber that is unable to demonstrate to the Company that it is in compliance with such minimum financial requirements shall not engage in transactions subject to the Rules except for the purpose of closing open positions.

### **204 Information Regarding Orders**

Each Subscriber or other Person receiving any information through the ATS shall not redistribute such information other than to the extent and in the manner as may be expressly permitted by the Company in writing from time to time. The foregoing limitation shall not apply, with respect to a particular Subscriber, to its Subscriber Data.

## **CHAPTER 3 TRADING PRACTICES**

### **301 Acts Detrimental to Company Prohibited**

No Subscriber or any of its Authorized Users shall intentionally engage in any act that could reasonably be expected to be detrimental to the Company, the ATS and / or Platform, or access the ATS in any way which could reasonably be expected to bring disrepute upon the Company. Without limiting the generality of the foregoing, it shall be deemed an act detrimental to the Company to

- (i) permit unauthorized use of the ATS;
- (ii) assist any Person in obtaining unauthorized access to the ATS;
- (iii) trade on the ATS without an agreement and an established account with a Person;
- (iv) alter the equipment associated with the ATS (except with the Company's consent);



- (v) interfere with the operation of the ATS;
- (vi) intercept or interfere with information provided thereby; or
- (vii) in any way use the ATS in a manner contrary to the Rules.

### **302 Violative Pre-Execution Communication Prohibited**

No Subscriber or Authorized User may engage in any pre-execution communication for an illegal purpose or in violation of Applicable Law.

### **303 Risk-Based Limits**

The Company has the right, at its sole discretion, to implement Risk-Based Limits to orders placed in the ATS by Subscribers and its Authorized Users. This includes, but is not limited to, restricting sell orders up to the quantity of the Subscriber or Authorized User's holdings for any given Product, less any outstanding open sell orders; as well as restricting buy orders to a value less than or equal to the available cash balance in the Subscriber or Authorized User's associated third-party account. These restrictions may be adjusted by the Company at any time as deemed appropriate by the Company. The Risk-Based Limits in the ATS will be electronically communicated to the Authorized Traders through the user interface at the time of order placement.

### **304 Trade Notifications**

The economic terms specific to a transaction agreed by Subscribers or Authorized Users, for itself or on behalf of its Sponsored Subscribers, shall be reflected in an electronic communication (the "**Trade Notifications**") sent to each such Subscriber or Authorized User by the Company.

### **305 Trade Cancellations and Adjustments**

(a) Trade Cancellations or Adjustments. The Company may cancel or adjust any trade that it determines would be detrimental to market integrity. All determinations of the Company to cancel or adjust a trade, or to decline to cancel or adjust a trade, shall be final, and the Company shall not have any liability for Loss arising out of determinations made by the Company pursuant to this Rule, notwithstanding the limitations on liability otherwise set forth in Rule 607.

(b) Determination to Review a Trade. The Company may determine to review a trade based on its independent analysis of market activity or upon request for review by a Subscriber. A request for review should be made within twenty-four (24) hours of the execution of the trade, and the Company shall determine whether to review a trade promptly after such request has been received. In the absence of a timely request for review, during volatile market conditions, upon the release of significant news, or in any other circumstance in which the Company deems it to be appropriate, the Company may determine, in its sole discretion, that a trade shall not be subject to review. Upon deciding to review a trade, the Company will promptly issue an alert to involved Subscribers indicating that the trade is under review. If the Company accepts a request for review, the Company shall complete such review within a commercially reasonable amount of time after it accepts such request unless it notifies involved Subscribers that it is unable to complete its review. The Company is not required to adjust or cancel a trade based on a Subscriber's request to review a trade or from the Company's findings in reviewing a trade.

(c) Liability for Losses. A Person responsible for an Order that results in a cancelled or adjusted trade may be liable for the reasonable out-of-pocket Losses incurred by a Person whose trade was cancelled or adjusted.

(d) Trade Cancellation and Adjustment Procedures. Upon a determination by the Company that a trade shall be cancelled or adjusted, that decision will be implemented. The cancelled or adjusted trade shall be reflected as cancelled or adjusted in the Company's official records and, if applicable, shall be reported by the Company to the applicable Person.

(e) ATS Malfunctions and Employee Errors. If a Subscriber believes that an Order was incorrectly displayed, executed and/or reported, it may request review of the Order and any resulting transaction. Upon receipt of such a request for review, the Company will review its records to determine if the Order was correctly displayed and/or executed by the ATS. If, as a result of that review, the Company determines that a mistake occurred as a result of a malfunction in the ATS or as a result of an error by an employee of the Company, the transaction will be cancelled or adjusted, as appropriate, but the Company shall not be liable therefor except as provided in Rule 607. The Company will document in writing all requests for review, the time and manner in which it reviewed its electronic audit trail and other information in response to the request, the outcome of that review, and any action taken by the Company in response to that review. A decision by the Company to cancel or adjust a trade will be made as soon as practicable, and the Company shall notify Subscribers and the applicable Person of any such decision.

(f) Alternative Resolution by Agreement of Parties.

- (i) With the approval and through the facilitation of the Company, parties to a trade that is under review may instead mutually agree to cancel or adjust the price of the trade.
- (ii) Subject to clause (i) and through the facilitation of the Company, parties to a trade that is cancelled or that has had its price adjusted may mutually agree to a cash adjustment.
- (iii) Any cancellation or adjustment made pursuant to this paragraph (f) shall be reported immediately to the applicable Subscribers by the Company. The parties shall maintain a record of such cancellation or adjustment.

### **306 Delays and Trading Halts**

The Company may, in its reasonable judgment and without liability to any Subscriber, Authorized Trader or other party, delay the commencement of any Trading Period or halt an ongoing Trading Period if news or events warrant such action. Any such delay or halt of a Trading Period shall be electronically communicated as soon as is practicable, to the extent possible, to all Authorized Traders. The halting of a Trading Period shall be referred to as a "Trading Halt" and may be enacted at any time at the discretion of the Company, either for a particular Product, or for all Products, available on the ATS. A Trading Halt for a Product, or all Products, will cancel open orders, which will be electronically communicated as soon as practicable, to the extent possible, to all relevant Authorized Traders that had existing open orders for the applicable Product. Orders executed prior to the Trading Halt will remain valid and are the sole liability of the relevant Authorized Traders. The Company will resume the Trading Period for the Product, or all Products,

at a time it deems appropriate.

The Company or the Issuing Party may, in its reasonable judgement and without liability to any Subscriber, Authorized Trader, or other Person, issue a Post-Only Period during which orders may be placed for the relevant Product, or all Products, but no trades will be executed. The Company or Issuing Party may issue a Post-Only Period for a Product, or all Products, if news, events, or other activity warrants such action. The Company or Issuing Party may issue the Post-Only Period and subsequently resume the Trading Period for a Product, or all Products, at its sole discretion, without limitation or advance notice to Authorized Traders, Subscribers, or other Persons. The Company or Issuing Party will notify Authorized Traders about such a period electronically as soon as is practicable, to the extent possible.

### **307 Trade Settlement Process**

The process to settle executed trades within the ATS is referred to as the Trade Settlement Process, which may vary by Product or Issuing Party, and may change without advance notice at the discretion of the Company or Issuing Party. Failure to comply with the Trade Settlement Process will result in the cancellation or adjustment of the trade as deemed appropriate by the Company. The Company may electronically communicate the Trade Settlement Process to Subscribers as soon as is practicable and to the extent possible.

## **CHAPTER 4 TERMINATION, LIMITATION, OR SUSPENSION OF ACCESS**

### **401 Determinations of the Company**

The Company may decide to suspend, limit or terminate a Subscriber's or Authorized User's right to access the ATS at any time and for any reason, in its sole, reasonable discretion. Any such decision by the Company shall be made in a non-discriminatory manner, and the Company will notify the Subscriber and/or such Authorized User of such decision in a commercially reasonable amount of time.

### **402 Responsibilities after Termination**

When the right of a Subscriber or Authorized User to access the ATS is terminated, all of its rights will terminate. Any suspension or termination of access rights will not relieve the Subscriber (as to itself or any Sponsored Subscriber, as applicable) or any Authorized Trader of its obligations under the Rules to perform any transactions entered into before the suspension, or for any Company fees, costs, or charges incurred prior to termination.

## **CHAPTER 5 DATA**

### **501 Proprietary Data and Information; Confidentiality**

Each Subscriber and the Company shall maintain the other Person's Proprietary Data and Information in strict confidence and not disclose such information to third parties or use such information for any purpose whatsoever other than for the use or provision of the ATS. Subscriber

and the Company each agrees to advise its employees, officers, directors or agents who may receive access to Proprietary Data and Information of their obligations to keep such information confidential, will enter into agreements with its employees, officers, directors or agents restricting the disclosure of such Proprietary Data and Information, and each Subscriber and the Company shall be responsible for any unauthorized disclosures by its respective employees, officers, directors or agents.

## **502 Permitted Disclosures**

Each Subscriber, on one hand, and the Company, on the other hand, may disclose the Proprietary Data and Information of the other Person (i) with the consent of such other Person, (ii) to the extent required pursuant to any Applicable Law, (iii) pursuant to a subpoena, court order, audit or inquiry by a Regulatory Authority, (iv) as requested or legally required by any Regulatory Authority, (v) that such Person deems it advisable to provide to such Regulatory Authority, (vi) that is reasonably necessary to defend itself against any claim or proceeding brought against such Person or its Affiliates, or (vii) as otherwise permitted under these Rules and the applicable Subscriber Agreement; provided, that in the case of disclosure pursuant to clause (iii), prior notice of such disclosure shall be provided to the non-disclosing Person (if legally permitted) as soon as practicable in order to permit the non-disclosing Person to seek a protective order or take other appropriate action to safeguard the Proprietary Data and Information (it being agreed that if the non-disclosing Person is unable to obtain or does not seek a protective order and the receiving Person is legally compelled to disclose Proprietary Data and Information, such disclosure shall be permitted hereunder). Each Person may also disclose Proprietary Data and Information, subject to appropriate confidentiality requirements, (x) to its Affiliates and (y) to its managing members (or equivalent), officers, attorneys, auditors, other professional advisors, agents, suppliers and independent contractors to whom the provision of such information is reasonably required for purposes of performance of obligations under these Rules and the applicable Subscriber Agreement or, solely with respect to the Company, the operation of the ATS; provided, that in each instance, the relevant Person shall be responsible for any unauthorized disclosures by its Affiliates, managing members (or equivalent), officers, attorneys, auditors, other professional advisors, agents, suppliers and independent contractors.

## **503 Permitted Use**

The Company will not use any Proprietary Data and Information of any Subscriber other than for the purpose of fulfilling its regulatory obligations, to perform its obligations under these Rules, and to operate the ATS; provided, however, that the Company may use Proprietary Data and Information of a Subscriber for business or marketing purposes if the Subscriber consents to the Company's use of such Proprietary Data and Information. The Company may use and disclose to other Persons information (other than any Subscriber's identity or Proprietary Data and Information) that is displayed to all Subscribers in the ordinary course in the operation of the ATS.

## **504 Termination**

Upon termination of a Subscriber's Subscriber Agreement, each of such Subscriber and its Sponsored Subscribers (if any) shall promptly return to the Company all Proprietary Data and Information of the Company if applicable; provided, that the Subscriber may retain such Proprietary Data and Information solely for its records if such party is required to do so by Applicable Law and

continues to comply with the rules of this Chapter 5 with respect to such materials or documents.

#### **505 No Duty to Disclose**

The Company shall have no duty to disclose to any Subscriber or Sponsored Subscriber any information, matter or fact relating to the use of the ATS by any other Subscriber, other than as required by Applicable Law.

#### **506 Company Ownership of Data**

Subject to each Subscriber's rights in its Subscriber Data, the Company owns all Intellectual Property Rights in Transaction Data, and all derivative works (excluding Subscriber Data) based thereon. Subscribers and other Persons affiliated with any of the foregoing (including Sponsored Subscribers) may not distribute, sell or retransmit Transaction Data to any third party without the consent of the Company; provided that (i) each Subscriber retains such rights as it may enjoy under Applicable Law with respect to Subscriber Data solely in the form such Subscriber Data was submitted to the Company by such Subscriber and (ii) a Subscriber shall be entitled to disseminate Subscriber Data through the normal course of business in a manner commonly practiced by like Persons as of the effective date of these Rules.

#### **507 License of Subscriber Data**

Notwithstanding any other provision of the rules of this Chapter 5, each Subscriber hereby grants the Company a non-exclusive, perpetual, irrevocable, transferable, world-wide and royalty-free license (without warranties of any kind, express or implied) to any and all rights as such Subscriber may have in and to Subscriber Data, including, but not limited to, the right to use Subscriber Data, in any manner, media and jurisdiction, for the benefit of the Company and/or its Affiliates, and to disclose Subscriber Data, in any manner, media and jurisdiction, solely on an aggregated basis that does not directly or indirectly identify any Subscriber, Authorized User, Sponsored Subscriber or counterparty. Except as may otherwise be permitted by the rules of this Chapter 5, in any written agreement between the Company and such Person, or as may be required by Applicable Law, the Company shall not otherwise disclose Subscriber Data.

#### **508 Company Intellectual Property**

Each Subscriber hereby acknowledges and agrees, on behalf of itself and each of its Affiliates, that the Company owns and shall retain all right, title and interest in and to the ATS, any other systems or services provided by the Company, or any services, equipment or facilities used to support such systems or services and all components thereof, including without limitation all related applications, all application programming interfaces, Subscriber interface designs, software and source code and any and all Intellectual Property Rights therein, including without limitation all Intellectual Property Rights in or to the ATS and all other related proprietary rights of the Company and/or any of its Affiliates (collectively, with any and all enhancements, corrections, bug fixes, updates and other modifications to any of the foregoing and any and all data or information of any kind, other than Proprietary Data and Information and Subscriber Data, transmitted by means of any of the foregoing, "**Company Intellectual Property**"). Each Subscriber, on behalf of itself and each of its Affiliates, further acknowledges and agrees that the Company Intellectual Property is the exclusive, valuable and confidential property of the Company. Each Subscriber acknowledges and agrees that it shall not, and shall not permit its Affiliates to, reverse engineer, copy, bug fix, correct,

update, transfer, reproduce, republish, broadcast, create derivative works based on or otherwise modify, in any manner, all or any part of the ATS or the Company Intellectual Property. Each Subscriber, further agrees to, and to cause each of its Affiliates to, keep the Company Intellectual Property confidential and not to transfer, rent, lease, loan, sell or distribute, directly or indirectly, all or any portion of the ATS or any Company Intellectual Property.

## **CHAPTER 6 MISCELLANEOUS**

### **601 Use of Third-Party Providers**

From time to time a Subscriber may request or send instructions to the Company authorizing the Company to deliver or transmit, or the Company may by nature of its third-party relationships which facilitate the operation of the ATS deliver or transmit, Subscriber's data (including Subscriber Data) and the data of its Sponsored Subscribers, if applicable, to certain designated third-party providers of such Subscriber or the Company. In either event, such Subscriber acknowledges and agrees that the Company shall have no liability whatsoever to such Subscriber or any third party in respect of such delivery or transmission or such providers' possession, access, use, misuse or protection of such data.

### **602 Extension or Waiver of Rules**

The Company may, in its sole discretion, waive, or extend the time period for performing, any act or acts designated by the Rules, but only to the extent such waiver or extension is not inconsistent with Applicable Law.

### **603 Effect of Amendment, Repeal or New Rule**

The Company may amend or repeal any Rule and/or adopt new Rules. Any such amendment or repeal of a Rule or adoption of a new Rule, shall, upon the effective date of such amendment, repeal or adoption, as applicable, be binding on all Persons doing business with the Company and, unless otherwise required by Applicable Law, all Products transactions entered into after such effective date. The Company will provide commercially reasonable notice, through electronic communication, to each Subscriber of any such amendment, repeal or adoption. Subscribers are responsible for keeping informed of all such additions, modifications or clarifications when and as posted and notified.

### **604 Signatures**

Rather than rely on an original signature, the Company may elect to rely on a signature that is transmitted, recorded or stored by any electronic, optical, or similar means (including but not limited to electronic signature service providers, telecopy, imaging, photocopying, electronic mail, or electronic data interchange) as if it were (and the signature shall be considered and have the same effect as) a valid and binding original.

### **605 Governing Law; Legal Proceedings**

(a) The Rules, and the rights and obligations of the Company and all other Persons under the Rules shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed and performed wholly within the State of New York

without regard to any provisions of New York law that would apply the substantive law of a different jurisdiction.

(b) Subject to Rule 607, and consistent with the terms relating to arbitration in the Subscriber's Subscriber Agreement, any action, suit or proceeding against the Company, its officers, directors, limited liability company members, employees, or agents, must be brought within one year from the time that a cause of action has accrued, and any such action, suit or proceeding, shall be required to be arbitrated under the auspices of FINRA, and shall be brought in the State or Federal courts located within the Borough of Manhattan in the City of New York. Each Subscriber expressly consents to the jurisdiction of any such court, waives any objection to venue therein, and waives any right it may have to a trial by jury. The Company and the Subscribers agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in the Rules or in such other manner as may be permitted by Applicable Law shall be valid and sufficient service thereof.

(c) In the event that a Subscriber, Authorized User or an Affiliate of any of the foregoing fails to prevail in any proceeding instituted by such Person against the Company or any Affiliate of the Company or any of their respective officers, directors, equity holders, employees, agents, or any member of any committee, and related to the business of the Company, such Person shall pay to the Company or to such Affiliate all reasonable expenses, including attorneys' fees and expenses, incurred by the Company in the defense of such proceeding.

(d) Any breach by a Subscriber of its obligations under the Rules may cause the Company irreparable harm and damage and therefore agrees that, in addition to any other rights or remedies that may be available to the Company at law or in equity, the Company shall be entitled to seek appropriate injunctive relief, without the posting of any bond or security.

## **606 Emergencies**

During an Emergency, the Company may implement temporary emergency procedures and rules ("**Emergency Rules**"), subject to Applicable Law. If the Chief Executive Officer or his designee determines that Emergency Rules must be implemented with respect to an Emergency, the Chief Executive Officer or his designee shall have the authority to implement Emergency Rules with respect to such Emergency as he deems necessary or appropriate to respond to such Emergency, and the Company shall circulate such Emergency Rules in a communication to Subscribers.

## **607 LIMITATION OF LIABILITY; NOWARRANTIES**

(a) EXCEPT AS PROVIDED BELOW OR OTHERWISE AGREED BY THE COMPANY AND A SUBSCRIBER IN SUCH SUBSCRIBER'S SUBSCRIBER AGREEMENT, AND EXCEPT IN INSTANCES IN WHICH THE DISCLAIMING PARTY (DEFINED BELOW) HAS BEEN FINALLY ADJUDICATED BY A COURT OF COMPETENT JURISDICTION OR, IF APPLICABLE, FINRA ARBITRATION PANEL TO HAVE ENGAGED IN FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN WHICH CASE THE DISCLAIMING PARTY FOUND TO HAVE ENGAGED IN SUCH CONDUCT CANNOT AVAIL ITSELF OF THE PROTECTIONS IN THIS RULE 607, NEITHER THE COMPANY, NOR ANY AFFILIATE OF THE COMPANY, NOR ANY OF THEIR RESPECTIVE MANAGING MEMBERS, OFFICERS, EMPLOYEES, EQUITY HOLDERS, AGENTS, CONSULTANTS OR SERVICE

PROVIDERS, NOR OTHER GOVERNING BODY OF THE COMPANY OR ANY AFFILIATE OF THE COMPANY (EACH OF THE FOREGOING, AS APPLICABLE, THE “**DISCLAIMING PARTY**”), SHALL BE LIABLE TO ANY PERSON FOR ANY LOSSES ARISING OUT OF OR IN CONNECTION WITH:

- (i) ANY FAILURE, MALFUNCTION, FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, ERROR, INACCURACY, INTERRUPTION, TERMINATION, OR ANY OTHER EVENT, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OPERATION, MAINTENANCE, USE OF OR INABILITY TO USE, OR THE UNINTENDED AND UNFORESEEN RESULTS OBTAINED BY ANY PERSON RESULTING FROM SUCH USE, ALL OR ANY PART OF ANY OF THE SYSTEMS AND SERVICES OF THE COMPANY, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS AND SERVICES, INCLUDING WITHOUT LIMITATION, ELECTRONIC ORDER ENTRY AND DELIVERY, TRADING THROUGH ANY MEANS, ELECTRONIC COMMUNICATION OF TRANSACTION DATA OR INFORMATION, WORKSTATIONS USED BY SUBSCRIBERS OR AUTHORIZED USERS, PRICE REPORTING SYSTEMS AND ANY AND ALL TERMINALS, COMMUNICATIONS NETWORKS, CENTRAL COMPUTERS, SOFTWARE, HARDWARE AND FIRMWARE RELATING THERETO; OR
- (ii) ANY FAILURE OR MALFUNCTION, FAULT IN DELIVERY DELAY, OMISSION, SUSPENSION, INACCURACY, INTERRUPTION OR TERMINATION, OR ANY OTHER EVENT, OF ANY SYSTEM OR SERVICE OF THE COMPANY, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, CAUSED BY ANY THIRD PARTIES INCLUDING, BUT NOT LIMITED TO, INDEPENDENT SOFTWARE VENDORS AND NETWORK PROVIDERS; OR
- (iii) ANY ERRORS OR INACCURACIES IN INFORMATION PROVIDED BY THE COMPANY OR ANY OF THE COMPANY’S SYSTEMS, SERVICES OR FACILITIES; OR
- (iv) ANY FAILURE OF ANY SUBSCRIBER TO PERFORM ITS OBLIGATIONS UNDER ANY TRANSACTION; OR
- (v) ANY FAILURE TO MAINTAIN THE ATS OR TO SUPPLY ANY CORRECTIONS, UPDATES OR RELEASES IN CONNECTION THEREWITH; OR
- (vi) ANY ALTERATION, UNAUTHORIZED ACCESS TO OR UNAUTHORIZED USE OF ANY OF THE COMPANY’S SYSTEMS, SERVICES, EQUIPMENT OR FACILITIES BY ANY PERSON.

THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY WHETHER A CLAIM IS BASED ON BREACH OF CONTRACT, TORT, INCLUDING, WITHOUT



LIMITATION, NEGLIGENCE, STRICT LIABILITY, NEGLIGENT MISREPRESENTATION, RESTITUTION, BREACH OF STATUTORY DUTY, BREACH OF WARRANTY OR OTHERWISE AND WHETHER THE CLAIM IS BROUGHT DIRECTLY OR AS A THIRD-PARTY CLAIM.

(b) EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COMPANY DISCLAIMS, OVERRIDES AND EXCLUDES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL WARRANTIES, CONDITIONS, GUARANTIES OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THOSE AS TO MERCHANTABILITY, SATISFACTORY QUALITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, CORRECTNESS, ACCURACY, COMPLETENESS, SECURITY, RELIABILITY, PERFORMANCE, PRICING, CONTINUED AVAILABILITY, TITLE, NON-INFRINGEMENT, TIMELINESS, TRUTHFULNESS, SEQUENCE, ANY IMPLIED WARRANTIES, CONDITIONS AND OTHER CONTRACTUAL TERMS ARISING FROM TRANSACTION USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE, ALL OTHER WARRANTIES, CONDITIONS, OTHER CONTRACTUAL TERMS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES WITH RESPECT TO THE ATS, SYSTEMS AND SERVICES PROVIDED BY THE COMPANY, SERVICES PROVIDED BY ANY THIRD-PARTY PROVIDER, WHETHER EXPRESS, IMPLIED OR STATUTORY, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY THE COMPANY OR ANY OTHER DISCLAIMING PARTY OR OTHERWISE, OR AS TO THE PARTICIPATION IN THE ATS BY OTHER SUBSCRIBERS. THE COMPANY SHALL HAVE NO RESPONSIBILITY FOR THE FAILURE OF ANY CONNECTION OR COMMUNICATION SERVICE TO PROVIDE OR MAINTAIN ACCESS TO THE ATS, OR FOR ANY INTERRUPTION OR DISRUPTION OF ACCESS TO THE ATS. THE COMPANY MAKES, AND EACH SUBSCRIBER ACKNOWLEDGES AND AGREES THAT THE COMPANY MAKES, NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, THAT THE ATS WILL MEET SUCH SUBSCRIBER'S REQUIREMENTS, BE ERROR FREE, OR OPERATE WITHOUT INTERRUPTION. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY THE COMPANY OR ITS REPRESENTATIVES OR AGENTS SHALL CREATE ANY WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF THE COMPANY'S OBLIGATIONS HEREUNDER. EACH SUBSCRIBER ACKNOWLEDGES AND AGREES THAT (I) THE TRANSMISSION OF INFORMATION THROUGH THE INTERNET OR ANY OTHER ELECTRONIC COMMUNICATIONS NETWORK MAY NOT BE SECURE, RELIABLE OR TIMELY, AND THE LATENCY INHERENT IN INTERNET OR OTHER NETWORKS EVEN DURING NORMAL OPERATION MAY RESULT IN ORDERS BEING MATCHED AND/OR CONFIRMED TO A SUBSCRIBER AT A TIME WHEN THE MARKET LEVELS MAY HAVE CHANGED FROM THE TIME WHEN THE ORDER WAS ORIGINALLY SUBMITTED BY A SUBSCRIBER, AND (II) THE COMPANY MAKES NO WARRANTY REGARDING, AND SHALL NOT BE RESPONSIBLE TO ANY SUBSCRIBER OR ANY OTHER PERSON FOR, (A) ANY LOSS, CORRUPTION, MODIFICATION, SECURITY BREACH OR TRANSMISSION OR PERFORMANCE INTERRUPTIONS OR DELAYS RELATING TO ANY INFORMATION, PROPRIETARY DATA AND INFORMATION, SUBSCRIBER DATA, OR TRANSACTION DATA, OR (B) ANY SUBSCRIBER'S CONTINUED ACCESS TO AND USE OF THE ATS OR ANY PORTION THEREOF.

(c) THE COMPANY IS NOT SOLICITING ANY ACTION BASED UPON ACCESS

TO OR USE OF THE ATS. EACH SUBSCRIBER IS SOLELY RESPONSIBLE FOR CONFIRMING THE ACCURACY, QUALITY, COMPLETENESS AND ADEQUACY OF INFORMATION ON THE ATS AND THE RESULTANT OUTPUT THEREOF.

(d) NOTWITHSTANDING THE FOREGOING, THE COMPANY MAY ASSUME RESPONSIBILITY FOR DIRECT, OUT-OF-POCKET LOSSES DIRECTLY CAUSED BY THE GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT OF A DISCLAIMING PARTY. EXCLUDING THE COMPANY'S INDEMNIFICATION OBLIGATIONS UNDER RULE 607(e), THE COMPANY'S TOTAL COMBINED AGGREGATE LIABILITIES TO ANY PERSON AND SUCH PERSON'S OWNERS, MANAGERS, DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, AGENTS AND OTHER REPRESENTATIVES, AND THEIR RESPECTIVE AFFILIATES, SHALL NOT IN SUCH CIRCUMSTANCES EXCEED U.S. \$10,000.

(e) NOTWITHSTANDING ANY OTHER PROVISION OF THESE RULES, THE COMPANY SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS SUBSCRIBER AND ITS AFFILIATES AND ANY OF ITS OR THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES (EACH, A "**SUBSCRIBER INDEMNITEE**") AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES, INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS FEES AND EXPENSES AND COURT COSTS (COLLECTIVELY, "**LOSSES**") TO THE EXTENT SUCH LOSSES ARISE DIRECTLY FROM ANY CLAIM, PROCEEDING, OR CAUSE OF ACTION INITIATED BY A THIRD PARTY OTHER THAN AN AFFILIATE OF SUCH SUBSCRIBER INDEMNITEE (EACH, A "**THIRD-PARTY CLAIM**") ALLEGING THAT ANY COMPANY INTELLECTUAL PROPERTY INFRINGES OR OTHERWISE VIOLATES ANY PATENTS, COPYRIGHTS, TRADE SECRETS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY PERSON; PROVIDED THAT THE COMPANY SHALL NOT HAVE ANY OBLIGATION UNDER THIS SENTENCE TO THE EXTENT THE ALLEGED VIOLATION RESULTS FROM (I) ANY MODIFICATION OF ANY COMPANY INTELLECTUAL PROPERTY BY OR ON BEHALF OF SUBSCRIBER INDEMNITEE NOT APPROVED IN WRITING BY AN AUTHORIZED OFFICER OF THE COMPANY, (II) ANY COMBINATION OF ANY COMPANY INTELLECTUAL PROPERTY WITH ANY DATA, INFORMATION OR MATERIALS NOT PROVIDED BY OR ON BEHALF OF THE COMPANY, OR (III) ANY MISUSE OR UNAUTHORIZED USE OF ANY COMPANY INTELLECTUAL PROPERTY OR OTHER VIOLATION OF THESE RULES OR THE SUBSCRIBER AGREEMENT BETWEEN A SUBSCRIBER AND THE COMPANY. EACH SUBSCRIBER INDEMNITEE SHALL GRANT TO THE COMPANY THE SOLE CONTROL OF THE DEFENSE AND SETTLEMENT OR OTHER COMPROMISE OF THE THIRD-PARTY CLAIM AND NOTIFY THE COMPANY IN WRITING OF ANY SUCH THIRD-PARTY CLAIM WITHIN THIRTY DAYS FOLLOWING SUCH SUBSCRIBER INDEMNITEE BECOMING AWARE OF SUCH THIRD-PARTY CLAIM. THE COMPANY SHALL NOT NEGOTIATE A COMPROMISE OR SETTLEMENT OF ANY THIRD-PARTY CLAIM WITH RESPECT TO A SUBSCRIBER INDEMNITEE WITHOUT THE PRIOR WRITTEN CONSENT OF SUCH SUBSCRIBER INDEMNITEE (SUCH CONSENT NOT TO BE UNREASONABLY DELAYED OR WITHHELD) UNLESS SUCH COMPROMISE OR SETTLEMENT INCLUDES AN UNCONDITIONAL RELEASE OF SUCH SUBSCRIBER INDEMNITEE FROM ALL LIABILITY ARISING OUT OF SUCH THIRD-PARTY CLAIM AND DOES NOT CONTAIN AN ADMISSION OF WRONGDOING OR LIABILITY ON BEHALF OF SUCH SUBSCRIBER INDEMNITEE.

(f) SOLELY WITH RESPECT TO A SUBSCRIBER TRADING ON ITS OWN BEHALF (AND NOT ON BEHALF OF A SPONSORED SUBSCRIBER), NOTWITHSTANDING ANY OTHER PROVISION OF THESE RULES, SUCH SUBSCRIBER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE COMPANY AND ITS AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS (EACH, A “**COMPANY INDEMNITEE**”), FROM AND AGAINST ALL LOSSES BASED UPON, ARISING OUT OF, OR RELATING TO ANY THIRD-PARTY CLAIM, DEMAND, ACTION, SUIT OR PROCEEDING OF ANY NATURE (A “**PROCEEDING**”) AGAINST A COMPANY INDEMNITEE, THAT ARISES OUT OF OR RELATES TO, (I) ANY ACCESS, USE, UNAUTHORIZED USE, INACTION OR MISUSE OF THE ATS BY SUCH SUBSCRIBER, OR BY ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AUTHORIZED USERS, INCLUDING ANY BREACHES OF THE SECURITY OF THE ATS OR ANY ACCESS OR ENTRY INTO ANY OF THE COMPANY’S OR ITS AFFILIATES’ OTHER SYSTEMS; (II) SUCH SUBSCRIBER’S BREACH OF OR FAILURE TO COMPLY WITH THE TERMS OF ANY TRANSACTION; (III) SUCH SUBSCRIBER’S BREACH OF ANY RULE OR SUCH SUBSCRIBER’S SUBSCRIBER AGREEMENT, INCLUDING ANY BREACH OF THE REPRESENTATIONS AND WARRANTIES OF SUCH SUBSCRIBER CONTAINED HEREIN AND THEREIN; (IV) ANY VIOLATION OF OR NONCOMPLIANCE WITH APPLICABLE LAW BY SUCH SUBSCRIBER OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AUTHORIZED USERS; OR (V) ANY OTHER ACTS OR OMISSIONS OF SUCH SUBSCRIBER OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AUTHORIZED USERS; PROVIDED, IN EACH CASE, THAT SUCH LOSSES DO NOT RESULT FROM THE COMPANY INDEMNITEE’S FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(g) SOLELY WITH RESPECT TO A SUBSCRIBER TRADING ON BEHALF OF A SPONSORED SUBSCRIBER, NOTWITHSTANDING ANY OTHER PROVISION OF THESE RULES, (I) SUCH SUBSCRIBER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS EACH COMPANY INDEMNITEE, FROM AND AGAINST ALL LOSSES BASED UPON, ARISING OUT OF, OR RELATING TO ANY PROCEEDING AGAINST A COMPANY INDEMNITEE, THAT ARISES OUT OF OR RELATES TO ANY OF THE FOLLOWING SUBCLAUSES, AND (II) A SPONSORED SUBSCRIBER REFERRED TO IN ANY OF THE FOLLOWING SUBCLAUSES SHALL, JOINTLY TOGETHER WITH SUCH SUBSCRIBER AND SEVERALLY, DEFEND, INDEMNIFY AND HOLD HARMLESS EACH COMPANY INDEMNITEE FROM AND AGAINST ALL SUCH LOSSES WHEN SUCH LOSSES RELATE TO SUCH SPONSORED SUBSCRIBER’S: (A) ACCESS, USE, UNAUTHORIZED USE, INACTION OR MISUSE OF THE ATS BY SUCH SUBSCRIBER OR SUCH SUBSCRIBER’S DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AUTHORIZED USERS, INCLUDING WHEN ACTING ON BEHALF OF SUCH SPONSORED SUBSCRIBER, AND INCLUDING ANY BREACHES OF THE SECURITY OF THE ATS OR ANY ACCESS OR ENTRY INTO ANY OF THE COMPANY’S OR ITS AFFILIATES’ OTHER SYSTEMS; (B) SUCH SPONSORED SUBSCRIBER’S BREACH OF OR FAILURE TO COMPLY WITH THE TERMS OF ANY TRANSACTION; (C) SUCH SUBSCRIBER’S BREACH OF ANY RULE OR SUCH SUBSCRIBER’S SUBSCRIBER AGREEMENT, INCLUDING ANY BREACH OF THE REPRESENTATIONS AND WARRANTIES OF SUCH SUBSCRIBER OR SUCH CUSTOMER CONTAINED HEREIN AND THEREIN AND ANY BREACH OF ANY RULE OR SUCH SUBSCRIBER’S SUBSCRIBER AGREEMENT BY SUCH SUBSCRIBER WHEN ACTING ON BEHALF OF SUCH CUSTOMER; (D) ANY VIOLATION OF OR NONCOMPLIANCE WITH

APPLICABLE LAW BY SUCH SUBSCRIBER OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AUTHORIZED USERS, INCLUDING WHEN ACTING ON BEHALF OF SUCH SPONSORED SUBSCRIBER; OR (E) ANY OTHER ACTS OR OMISSIONS OF SUCH SUBSCRIBER, SUCH SPONSORED SUBSCRIBER, ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, OR ANY AUTHORIZED USER; PROVIDED, IN EACH CASE THAT SUCH LOSSES DO NOT RESULT FROM THE COMPANY INDEMNITEE'S FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(h) Under no circumstances shall the Company, any other Disclaiming Party or a Subscriber be liable for any indirect, special, incidental, consequential, exemplary loss or punitive damages of any kind, regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranties or otherwise, including, without limitation, any loss of revenue, loss of actual or anticipated profits, trading losses, loss of contracts, loss of the use of money, loss of anticipated savings, loss of business, loss of opportunity, loss of market share, loss of goodwill, loss of reputation or loss of, damage to or corruption of data, cost of substitute products or cost of capital, loss of opportunity or loss of use however suffered or incurred, regardless of whether the Company, such Disclaiming Party or such Subscriber has been advised of the possibility of such damages or whether such damages otherwise could have been foreseen or prevented.

(i) Under no circumstances shall the Company be liable to a Subscriber or any of its Sponsored Subscribers in connection with the failure by any counterparty or Person to a transaction entered into by such Subscriber to perform such transaction or the failure of any Subscriber to comply with the Rules or its agreements with the Company regarding access to or use of the ATS. Each Subscriber shall, and shall ensure that each of its Sponsored Subscribers, proceed solely against the applicable counterparty or Person, and not against the Company, to collect or recover any amounts or assets owing to it or to enforce any of its rights in connection with any transaction executed on the ATS.

(j) Except as otherwise required by Applicable Law, the Company shall be under no obligation to ensure that Products are successfully settled and shall have no liability with respect to a Product that fails to settle for any reason.

(k) Any dispute arising out of the use of the systems or services of the Company or services, equipment, or facilities used to support such systems or services, including, without limitation, the ATS, in which one or more Disclaiming Parties is a party shall be arbitrated under the auspices of FINRA Dispute Resolution, and references to a "Subscriber" shall, to the extent relevant, be deemed for such purpose to mean and include the Disclaiming Parties. Unless otherwise agreed by the Company and a Subscriber in a Subscriber Agreement, any such claim against a Disclaiming Party shall be brought within one year from the time that a cause of action has accrued. This paragraph (k) shall in no way be construed to create a cause of action and shall not authorize an action that would otherwise be prohibited by the Rules. If for any reason a court of competent jurisdiction finds that a dispute is not arbitrable, such dispute may be litigated only in accordance with Rule 605.

## **608 Communications To and From the Company**

Communications from the Company to Subscribers may be transmitted electronically including, but not limited to, through electronic mail or the Company's website. Communications

made to a Subscriber shall also be deemed to have been made to its Authorized Users and other employees and agents, and each Subscriber and Authorized User shall be responsible for conveying such communications to such Persons as appropriate

#### **609 Force Majeure**

Notwithstanding any other provision of the Rules, the Company shall not be liable for any failure or delay in the performance of any of its obligations under the Rules or any agreement with a Subscriber, or to compensate any Person for Losses occasioned by any delay or failure of performance, to the extent due to causes beyond its reasonable control (as determined by the Company in its sole discretion), including but not limited to industrial disputes of any nature, work stoppages, civil disobedience, riots, rebellions, accidents, explosions, acts of God, bomb threats, war, acts of a public enemy, embargo or other action of a Regulatory Authority, interruptions or imperfections of telecommunications, electrical failures, sabotage, public health crisis and/or pandemic, terrorism, pestilence, lightning or electromagnetic disturbances, brown-outs or black-outs, earthquakes, storms, floods, fires or other casualty, or the imposition of any new Applicable Law or the change of any Applicable Law (including the manner in which such laws are applied) making performance of any material obligation under this Agreement illegal or otherwise impossible (each, a “**Force Majeure Event**”). In the event of a Force Majeure Event, the Company shall give notice to the Subscribers and Authorized Users, and the Company shall take commercially reasonable measures in order to mitigate the impact of such Force Majeure Event. Notwithstanding the foregoing, nothing in this Rule 609 shall affect a Subscriber’s, Authorized User’s or Sponsored Subscriber’s obligations under the Rules or the applicable Subscriber Agreement.

#### **610 Conflicts**

To the extent that any of the terms contained in the ATS Rulebook conflict with the terms contained in the Subscriber Agreement, the terms of the Subscriber Agreement shall govern.

### **CHAPTER 7 DEFINITIONS**

#### **701 Definitions**

Unless otherwise specifically provided in the Rules or the context otherwise requires, the terms defined in this Chapter 6 have the meanings specified herein for all purposes of the Rules.

“**Access Code**” means the unique password or other identifier that is created by the Authorized User or Company to access the ATS.

“**Affiliate**” means an “Affiliate” of, or a Person “Affiliated” with, another Person is a Person who, directly or indirectly, Controls, is Controlled by, or is under common Control with, such other Person.

“**Applicable Law**” means, with respect to any Person, any statute, law, regulation, rule or ordinance of any Regulatory Authority applicable to such Person, including the SEA, SEC Regulations and guidance thereunder, the FINRA Rules, and, to the extent applicable to such

Person, similar foreign laws or regulations.

“**ATS**” means the alternative trading system of the Company on which the Platform is operated.

“**Authorized Jurisdiction**” means the United States and such other jurisdictions in which the Company may be authorized by Applicable Law to provide services from time to time.

“**Authorized User**” means, with respect to each Subscriber and/or Sponsored Subscriber, an employee or agent of such Subscriber and/or Sponsored Subscriber who has been authorized to access one or more Platforms on the ATS in accordance with a Subscriber Agreement as applicable.

“**Authorized Trader**” means an Authorized User that is permitted to place Orders and execute transactions on one or more Platforms on the ATS in accordance with a Subscriber Agreement as applicable and such fair and reasonable criteria established by the Company from time-to-time.

“**Business Day**” means any day on which the ATS is open for trading.

“**Chief Executive Officer**” means the Company’s chief executive officer.

“**Company**” means Templum Markets LLC, any and all Affiliates, or any successor thereto.

“**Company Requirements**” means (i) the Rules, (ii) other requirements implemented by the Company under the Rules, (iii) the Subscriber documentation and other contractual obligations between a Subscriber (including its Authorized Users) and the Company, and (iv) any additional rules, guidance, and / or guidelines implemented by the Company from time-to-time.

“**Control**” means (i) the ownership, directly or indirectly, of fifty percent (50%) or more of the voting equity share capital of a specific Person or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. “Controlling”, “Controls” and “Controlled” shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person of which it owns, directly or indirectly, a majority of the ownership or voting interests.

“**Emergency**” means any occurrence or circumstance which threatens or may threaten such matters as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any Product, or the timely collection and payment of funds in connection with clearing and settlement of a transaction, and which, in the opinion of the Chief Executive Officer or his designee, requires immediate action, including: any manipulative or attempted manipulative activity; any circumstances that may materially affect the performance of Products traded pursuant to the Rules, including failure of the payment system or the bankruptcy or insolvency of any Subscriber or any other Person; and any other circumstance which may have a severe, adverse effect upon the functioning of the Company.

“**Error Trade Policy**” means such error trade policy applicable to a Product as may be adopted by the Company from time to time.

**“FINRA”** means the Financial Industry Regulatory Authority, Inc.

**“FINRA Rules”** means the rules adopted by FINRA or its predecessor, the National Association of Securities Dealers, Inc., and approved by the SEC, as in effect at any given time.

**“Intellectual Property Rights”** means all title, interests and other proprietary rights in and to: (i) trademarks, service marks, brand names, certification marks, trade dress, trade names and other indications of origin, and the goodwill associated with the foregoing; (ii) inventions, discoveries and ideas, whether or not capable of protection by patent or registration; (iii) patents and all reissues, divisions, continuations-in-part, renewals and extensions thereof; (iv) trade secrets; (v) writings and other works, whether or not protectable by copyright or other law; (vi) copyrights, data or database rights, or mask works; (vii) know-how, research and development data, manufacturing methods, commercial information, technical information, design rights, processes, practices and systems, whether or not protectable by patent, copyright, trade secret or other law; (viii) moral rights and (ix) any other intellectual property or similar proprietary rights or interests which may exist in any jurisdiction, in each case, including all registrations thereof, applications therefor and renewals, modifications, translations and extensions thereof, in any jurisdiction, and any claims or causes of action arising out of or related to any infringement or misappropriation of any of the foregoing.

**“Issuing Party”** means the Person designated as the Issuer of a Product on the ATS.

**“Order”** means any bid or offer to buy or sell a Product pursuant to the Rules and includes any modification to such a bid or offer.

**“Person”** means any individual, partnership, corporation, association, trust, limited liability company, joint venture, unincorporated organization or other entity, including for the avoidance of doubt, any Sponsored Subscriber.

**“Platform”** means the electronic trading platform administered by or on behalf of the Company for the trading of specified Products on the ATS pursuant to the Rules and includes any modification to such a bid or offer.

**“Post-Only Period”** means the period during which orders for a Product on the ATS will be collected, but not matched or executed.

**“Product”** means securities including, but not limited to, debt, equity, profit participation interests, and limited partnership interests that in most cases are not registered under the Securities Act or Section 12(g) the Securities Exchange Act of 1934, and in all cases that are not listed on a registered national securities exchange such as the New York Stock Exchange, or the Nasdaq.

**“Proprietary Data and Information”** means, as to any Person, proprietary data or personal information that separately discloses business transactions, market positions or trade secrets of such Person, but does not include Transaction Data and shall, with respect to the Company, include all information regarding the ATS.

**“Regulatory Authority”** means any domestic or foreign government (or political subdivision), governmental or regulatory authority, agency, court, commission or other governmental or regulatory entity (including any self-regulatory authority or Self-Regulatory Organization) with authority or jurisdiction over the trading of, or Persons engaged in the trading of

securities or other financial instruments.

**“Risk-Based Limits”** means, as applicable, limits that may be established the Company with respect to Products, based on buying power, order quantity or value, or similar factors that the Company may determine in its reasonable discretion from time to time.

**“Rule”** means any Rule adopted or amended, from time to time, by the Company related to or in respect of transactions in Products or the operation of or business conducted on the ATS or otherwise pursuant to these Rules.

**“SEA”** means the Securities Exchange Act of 1934, as amended.

**“SEC”** means the Securities and Exchange Commission.

**“SEC Regulations”** means the rules, regulations and orders promulgated by the SEC and in effect at any given time

**“Self-Regulatory Organization”** has the meaning given that term in Section 3(a)(26) of the SEA.

**“Sponsored Subscriber”** means a Person who has granted investment discretion or trading authority to a Subscriber to trade on its behalf and may be party to a Subscriber Agreement.

**“Subscriber”** means a Person that has been authorized by the Company to have access to the Platforms and to permit its Authorized User(s) to have access to such Platform(s) on the ATS. For the avoidance of doubt, “Subscriber” may include without limitation, an individual, an investment advisor, bank, savings and loan association, insurance company, registered investment company, broker or broker dealer, or other Person acting on its own behalf or as agent for another Person, including a Sponsored Subscriber.

**“Subscriber Agreement”** means the agreement entered into by and between a Subscriber and the Company relating to such Subscriber’s access to and use of the ATS

**“Subscriber Data”** means any and all Transaction Data submitted or otherwise reported by the Company with respect to a Subscriber regarding any and all transactions entered into by such Subscriber.

**“Trade Settlement Process”** means the process by which a trade is settled between Authorized Traders as set by the Issuing Party, which may include, but is not limited to, signature of documents, payment, and/or approval by the Issuing Party, and may also include additional services provided by third-parties.

**“Trading Halt Period”** means the period during which trading is halted for a Product on the ATS. Authorized Traders cannot submit new orders, existing orders will be cancelled, and no orders will be matched or executed.

**“Trading Privileges”** means the right granted to a Subscriber and its Authorized Traders to access one or more Platforms on the ATS pursuant to the Rules.

**“Trading Period”** means the time period specified from time to time by the Company



during which Subscribers may enter Orders for Products on the ATS.

**“Transaction Data”** means pending or executed Orders, bids, offers and other information (excluding Proprietary Data and Information) concerning Products executed pursuant to the Rules, including information and content contained in, displayed on, generated by or derived from the ATS.

**“Viruses”** means computer viruses, worms, bombs, Trojan horses, trap/back doors, stop codes, protect codes, morphic code, time releasing, tunneling or other harmful, malicious or destructive codes.