

**PORTLAND FISH EXCHANGE**  
**RULES & REGULATIONS**  
**February 2015**

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1. **ADMINISTRATION OF THE EXCHANGE**

1.1. **Purpose**

The Portland Fish Exchange provides a major, regional display-type auction facility on the Portland Fish Pier in Portland, Maine, at which any seller of seafood, able and willing to comply with these Rules, may participate as a seller, and at which seat holders, complying with these Rules may buy. It also strives to support, enhance and promote the region's seafood industry.

1.2. **Hours of Operation**

The facilities of the Exchange are open on such days of the week and at such hours as may be established by the Exchange Manager and approved by the Board of Directors, from time to time.

1.3. **Personnel**

The Exchange will hire and retain such permanent and part-time employees as may be necessary or appropriate. Conflicts with these shall be as follows:

1.3.1. Exchange Manager

An Exchange Manager shall be appointed by the Board of Directors. He/She shall be disinterested person, or shall not own nor be in the employ of any seat holder of the Exchange nor any entity owning a vessel which uses the Exchange. He/She shall be knowledgeable as to business matters generally, and the fishing industry in particular. He/She shall also be responsible for the general management of the operations of the Exchange, the enforcement of these Rules (except to the extent otherwise expressly provided herein), the collection and disbursement of funds, the preparation of an annual budget for the Exchange, and such other duties and obligations as the Board of Directors may determine.

1.3.2. Operations Manager; Office Manager

The Exchange shall employ one or more Operations Managers and an Office Manager. The Operations Managers shall be responsible for assisting the Exchange Manager in the performance of his or her duties. The Office Manager shall be responsible for supervising and managing office employees and related office matters. During all regular hours of operation, there shall be present on the Exchange premises, at least one assigned Manager on Duty.

1.3.3. Assistants, Clerks

The Exchange shall employ clerks and assistants as may be necessary or appropriate.

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1.3.4. Other Employees

The Exchange shall further employ such part-time or full-time employees, including cullers and floor personnel, as may be necessary or appropriate.

1.3.5. Auctioneer

The Exchange shall retain one or more auctioneers, in order to oversee the Exchange auction. Such auctioneers shall be qualified and licensed to conduct auctions in the State of Maine.

1.3.6. Relationships

No employees of the Exchange shall be related by blood or marriage to the Exchange Manager. No employee shall own or be in the employ of any seat holder of the Exchange or any entity owning a vessel using the exchange without the express permission of the General Manager.

**2. SEAT HOLDERS – ADMISSION OF BUYERS AND PRIVILEGES**

**2.1. Seat Holders**

All references to a “seat holder” in these Rules shall refer to a person or entity which has been duly admitted to the Exchange, in order to have buying privileges thereon, and is in good standing with the Exchange. Such persons may include any and all sellers of seafood wishing to have the right to bid on and buy either their own or others’ seafood. Seat holder memberships and privileges are non-transferable.

**2.2. Privileges**

The privileges of a seat holder include the right to admission to the auction room and other Exchange facilities, the ability to bid at Exchange auctions, and, for seat holders who have properly posted a letter of credit the right to receive credit from the Exchange, all in accordance with these Rules.

**2.3. Compliance**

Seat holders are required to comply fully with these rules at all times. Each seat holder will be required to sign 2 copies of the Rules, acknowledging his knowledge of them, and shall file this acknowledgement with General Manager.

**2.4. Purpose**

Seats on the Exchange are intending for the accommodation of all fresh seafood dealers and wholesale and retail purchasers, or good credit and business standing who have either posted letters of credit as provided in Section 7.1 hereof or are prepared to

191 provide cash-equivalent deposits and who wish to purchase seafood, discharged by  
192 vessels or trucks at the Portland Fish Exchange, in accordance with these Rules.

## 193 194 **2.5. Application Procedure**

195  
196 In order to become a seat holder on the Exchange, a person or entity shall fill out and  
197 execute an application for an Exchange Seat and shall provide such additional  
198 information to the Exchange Manager or the Board of Directors as either may require.  
199 The Board of Directors shall consider the application and vote on the admission of  
200 such applicant at a properly convened Board of Directors meeting.

201  
202 Each application for a regular seat or a shrimp seat as defined under Rule 2.6.1 shall  
203 be accompanied by a \$250.00 application fee. Said application fee will be retained by  
204 the Exchange if the applicant is accepted as a seat holder by the Exchange, and  
205 returned to the applicant if the applicant is not accepted as a seat holder.

## 206 207 **2.6. Annual Fee**

208  
209 Upon approval of the application by the Exchange, each seat holder (excepting those  
210 qualifying under Rule 2.6.1) shall incur annually recurring membership dues of  
211 \$4,000 for each 12 month period thereafter (membership period), and due on approval  
212 date and subsequent anniversary dates. Such dues will be paid by crediting charges  
213 for standard or special product handling fees incurred by the seat holder during the  
214 membership period. In no event will any portion of the membership dues be  
215 forgiven. In the likelihood that the seat holder will fail to incur enough fees during  
216 the membership period to pay the dues of \$4,000, they will be billed for the  
217 remainder owed.

### 218 219 **2.6.1. Shrimp Seat**

220  
221 In addition to the regular seats on the Exchange, as described herein above, the  
222 Exchange will issue a shrimp seat permitting holders thereof to purchase only  
223 shrimp at any auction to be held nightly or at such other times as may be  
224 determined by the Exchange Manager and approved by the Board Of Directors.  
225 Upon approval of the application by the Exchange, each seat holder shall incur an  
226 annually recurring seat holder fee of \$250.00 to cover the period from such  
227 approval for the next consecutive twelve (12) month period. In each case, \$250.00  
228 of such fee shall be credited to payment of standard or special product handling  
229 fees incurred by the seat holder during the period covered by such fee. Except as  
230 otherwise provided in Rule 2.6.1, a holder of any shrimp seat shall have all rights  
231 and obligations of a seat holder hereunder and any and all references in these  
232 Rules to as “seat holder” shall be deemed to refer as well to a holder of a shrimp  
233 seat.” The holder of a shrimp seat may, at its option, apply for a regular seat on  
234 the Exchange. Regular seat holders as well may bid at the shrimp auction.

### 235 236 **2.6.2. Temporary change in membership fee**

238 For Exchange buyer seats which come due for expiration during the period  
239 January 1 2007 – December 31 2007, the Exchange’s membership fee is changed  
240 from \$8,000 to \$6,000. The Board approved to reduce the membership fee from  
241 \$6,000 to \$4,000 in 2008.

242

### 243 **2.7. Representatives**

244

245 Seat holders may authorize individuals, or representatives, to incur charges on the  
246 seat holder’s account, or assign seafood or other items for carriage. Each  
247 representative must be identified to the Exchange. Seat holders shall give the  
248 Exchange prior notice of any change in representatives. The Exchange retains at all  
249 times the right to deny access to its premises or to a set holder’s account to any  
250 person who is unable to provide satisfactory proof that he or she is an authorized  
251 representative.

252

253 Notwithstanding any of the foregoing it is not the responsibility of the Exchange to  
254 police the representatives of either buyers or sellers on behalf of their principals. Any  
255 action taken by a person purporting to act on behalf of any buyer or seller shall,  
256 insofar as the rights of the Exchange are concerned, be deemed to be the act of such  
257 buyer or seller. The Exchange retains at all times the right to deny access to its  
258 premises to any person whose presence, in the Exchange’s judgment, is detrimental to  
259 the operation of the Exchange.

260

### 261 **2.8. Suspension**

262

263 Seat holder privileges may be suspended due to violation of these Rules by the seat  
264 holder or its representative, failure to pay the Exchange in accordance with these  
265 Rules, or for other good cause. Suspension may be implemented by action of the  
266 Board of Directors, and immediate suspension on an interim basis may be  
267 implemented by the Exchange Manager or the acting Board President. Interim  
268 suspensions shall terminate ten (10) days after the commencement thereof, unless the  
269 Board of Directors of the Exchange orders the suspension of privileges prior to such  
270 time.

271

## 272 **3. ADMISSION OF SELLERS AND SELLER REPRESENTATIVES**

273

### 274 **3.1. Sellers**

275

276 Any individual, vessel, or business whether domestic or foreign – may place seafood  
277 which meets the requirements of these Rules for sale.

278

### 279 **3.2. Agent Authorization form**

280

281 Prior to (or at the time of) the seller’s first auction an agent authorization form must  
282 be completed by the seller and provided to the Exchange. The information required is:  
283 Vessel Name, Owner’s Name, address, telephone number, country of origin,  
284 designated seller’s representative, and any other information which the Exchange  
285 may require. The agent authorization form must be accepted by the Exchange before

286 payment for the fish can occur. Payment will be made as requested on the form.  
287 Deviation from the form will require the Exchange Manager's approval.  
288

### 289 **3.3. Sellers As Their Own Representative**

290 The Exchange encourages vessel owners or captains to represent their own seafood.  
291  
292

### 293 **3.4. Seller's Representatives**

294  
295 Persons or entities wishing to operate at the Exchange in the role of Seller's  
296 Representative must apply for the privilege. A fee, as determined by the Board of  
297 Directors, will be charged for the privilege. A Seller's Representative will be  
298 interpreted as an entity not one individual person. Each Seller's Representative must  
299 be approved by the Board of Directors. The General Manager may tentatively  
300 approve a Seller's Representative pending a Board meeting. Seller's Representatives  
301 assume the function of seller in these Rules. Anyone representing a seller who is  
302 neither the seller nor in the direct employ of the seller must be a registered seller's  
303 representative.  
304

### 305 **3.5. Independent Agents**

306  
307 While Seller's Representatives must apply to the Exchange for the privilege of  
308 representative sellers at the Exchange. Seller's Representatives are representatives for  
309 the individual seller. The Exchange makes no warranty as to the ability, business  
310 practices, financial stability, or, in any way endorses, any Seller's Representative.  
311  
312

## 313 **4. PRE-AUCTION PROCEDURES**

### 314 **4.1. Types of Fish Accepted**

315  
316 The Exchange will be open to all fresh seafood species as the Board of Directors may  
317 deem acceptable. All seafood delivered to the Exchange by vessel or truck must  
318 comply with all applicable federal, state and local laws and regulations, including,  
319 without limitation, all laws and regulations relating to the size or species of seafood.  
320  
321

### 322 **4.2. Check in Trucks and Vessels**

323  
324 Upon arrival at the Exchange, the captain of a vessel, a truck driver, or his designated  
325 representative, shall check in at the office located in the auction building ("Office")  
326 where he shall provide the following information: The estimated amount, in pounds,  
327 of each species of seafood offered for sale through the Exchange, and such other  
328 information as the Board of Directors or Exchange Manager shall require.  
329

330 Each new vessel and any fish under any name other than that of a vessel with a valid  
331 agent authorization form must specify the Port of Origin, the gear type, and the  
332 general length of the trip.  
333

334 It is the responsibility of each vessel's captain or truck driver, or any designated  
335 representative, to assure that the information provided is complete and accurate. The  
336 Exchange assumes no responsibility for incomplete or inaccurate information.  
337

338 The Exchange will complete a "receive slip" for all fish arriving by truck,  
339 immediately after each individual vessel's fish are removed from the truck. The  
340 Exchange Manager may provide for alternate means of check-in of trucks and  
341 vessels.  
342

#### 343 **4.3. Execution of Rules**

344  
345 Fish will not be accepted by the Exchange on behalf of any seller who has not either  
346 himself/herself or through an authorized representative agreed to abide by these Rules  
347 by execution of an agent authorization form.  
348

#### 349 **4.4. Seafood by Species**

350  
351 Preference will be given to seafood delivered to the Exchange by vessel or truck,  
352 which is separated by species.  
353

#### 354 **4.5. Hailing by Vessels**

355  
356 All vessels should hail the Exchange at least 24 hours before arriving at the  
357 Exchange's finger piers. No hail will be accepted more than four days in advance.  
358 When hailing, such vessels must state their estimated time of arrival and the estimated  
359 amount in pounds of seafood that the vessel will unload and the amount of such  
360 seafood, if any, boxed on board and a breakdown of species, if possible. All  
361 information provided by a vessel when hailing will be made available to the public.  
362 Hails will be accepted in the order received. Unloading times and location will be  
363 determined by management.  
364

#### 365 **4.6. Culling**

366  
367 Seafood will be offered on auction in accordance with a schedule of species and sizes  
368 to be established by the Board of Directors. This cull schedule will be made available  
369 to all Exchange customers and conspicuously displayed at the culling stations.  
370

#### 371 **4.7. Prohibited Fish**

372  
373 Exchange employees will immediately return to the vessel or truck delivering  
374 seafood, all seafood that appears not to comply with federal, state or local laws and  
375 regulation which prohibit the taking, possession, or sale of certain species of seafood  
376 or of seafood outside specified size limitations, unless otherwise instructed by federal,  
377 state or local authorities. The Exchange Manager or on-duty operation manager may  
378 reject seafood that he deems contaminated or unfit for human consumption.  
379

#### 380 **4.8. Containers**



382 Seafood, other than pre-culled seafood, will be sorted in containers by Exchange  
383 employees. Each container will contain no less than a standard weight of one species  
384 and one cull of seafood (or “item”). A partial container labeled as such will be made  
385 up for each amount of the same item less than the standard weight. Alternately, any  
386 item may be chosen by the Board of Directors to utilize exact weights. Each container  
387 will be marked with its individual weight, less than the specified tare.

#### 388 389 **4.9. Tare**

390  
391 Each container of each item will contain the standard net weight of the item. If  
392 standard weights are not used, each container will be marked with the net weight of  
393 the container’s contents. The Board of Directors will establish a tare schedule to  
394 reasonably ensure that the net weight of the container contents equals its listed  
395 weight.

#### 396 397 **4.10. Lot Sizes**

398  
399 Totes containing seafood will be divided into lots by Exchange employees. The full  
400 lot will be no more than 1,200 lbs. Lot sizes small than 1,200 lbs may be specified for  
401 any species and cull by the General Manager. Each lot, whether a full lot, a partial lot,  
402 or a lot weighed using exact weights, will be tagged specifying its total net weight.

#### 403 404 **4.11. Labeling Lots**

405  
406 An Exchange employee will prepare and attach to each lot a label bearing the name of  
407 the vessel from which the seafood was obtained (or other name supplied) and the  
408 species and cull of the seafood.

#### 409 410 **4.12. Sampling of Pre-Culled/Pre-Weighed Seafood**

411  
412 When pre-culled and pre-weighed seafood is received from a seller, approximately  
413 ten (10) percent of the seafood will be selected at random by Exchange employees.  
414 The listed weight and the cull will be checked against Exchange weight and cull  
415 standards. If the Exchange deems the sample does not comply with Exchange  
416 standards, none of the pre-culled seafood may be offered for sale unless it is culled  
417 and weighed by the Exchange.

418  
419 If any of the sampled seafood appears not to comply with federal, state, or local laws  
420 and regulations which prohibit the taking, possession, or sale of certain species of  
421 seafood the seller will not be permitted to unload any other seafood of that species  
422 unless it is culled and weighed by the Exchange.

#### 423 424 **4.13. No Warranties by Exchange**

425  
426 The Exchange makes no warranties, express or implied, that any sample of seafood,  
427 whether or not labeled as such, is representative, as to weight, cull or quality, of the  
428 lot of which it is or purports to be a sample. Any oral or written representations to the  
429 contrary by any Exchange representative shall be without effect.

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#### **4.14. Hailing by Trucks**

All trucks delivering seafood for sale through the Portland Fish Exchange must hail the Exchange at least 12 (twelve) hours before arriving at the Exchange. On hailing, a truck must state its estimated time of arrival at the Exchange and reserve a time during which it will be permitted to use an unloading bay specified by the Exchange. When hailing, a truck must also state the amount, in pounds, of seafood that it will unload and the port of origin of the seafood and a breakdown of species, if possible. All information provided by a truck when hailing will be made available to the public. Trucks failing to comply with this hailing requirement will be permitted to unload their seafood at the Exchange only as time and space permit.

#### **4.15. Truck Unloading**

There will be three truck bays for unloading seafood. Each truck must deliver its seafood to the tailgate of the truck for receipt by Exchange employees.

#### **4.16. Display of Seafood**

Lots of seafood will be transported to the auction floor and arranged in a grid matrix system by seller and cull. At all times, movement of seafood onto or off the auction floor shall be a matter within the discretion of the Exchange Manager or on duty Manager.

#### **4.17. Auction Information**

There will be a computer printout (Auction Detail) that will be distributed prior to an auction containing pertinent information for that auction. The contents of this information will be determined by Board of Directors.

#### **4.18. Inspection of Seafood**

Inspection of seafood will be permitted at the first buyer's request, not to exceed three hours preceding each auction. Buyers wishing to inspect stacked totes may request that the totes be un-stacked, if time permits. After such inspection, the totes will be re-stacked by Exchange employees. Only Exchange employees may move a tote from its designated lot.

### **5. AUCTION RULES**

#### **5.1. Time of Auction**

Seafood auctions will be held on such days of the week and at such times as may be determined by the Board of Directors and notice of them will be posted on either the Exchange premises or otherwise announced by the Exchange. Special auctions may

477 be held at the discretion of the General Manager. As much advance notice as possible  
478 will be given for the buyers to prepare for these auctions.

479  
480 **5.2. Credit Availability**

481  
482 The “Open to Buy” status of all buyers shall be periodically computed during the  
483 auction. If the credit availability of such buyer is insufficient to permit the buyer to  
484 purchase even the Minimum Purchase (after taking into account all ancillary amounts  
485 payable by the buyer as described at Section 5.15 hereof), the buyer may be barred  
486 from bidding; and, if allowed, the sale may be annulled by the auctioneer who may  
487 reopen bidding on the same lot. Where the credit availability of the buyer is sufficient  
488 to purchase at least the Minimum Purchase, such buyer shall promptly determine the  
489 amount of seafood to be bought on this bid, which may not be in excess of that  
490 bidder’s remaining credit availability for that day.

491  
492 **5.3. Start of Auction**

493  
494 Unless delayed by consent of all bidders or by the Exchange Manager, the auction  
495 shall begin promptly at the designated time. The Exchange shall name any new  
496 buyers. Rules for the conduct of the auction are:

497  
498 5.3.1. All products are sold without any representations or warranties by the  
499 Exchange;

500  
501 5.3.2. The highest bidders will be acknowledged by the Exchange;

502  
503 5.3.3. The seller shall have the right to reject the final bid (that is, that the auction  
504 is “with reserve”), and that the Exchange itself reserves the right to reject  
505 any bid;

506  
507 5.3.4. The Exchange will not accept bid or other price instructions in advance of  
508 an item being offered for sale from buyers or sellers. The Exchange will not  
509 execute bid or other price instructions from buyers or sellers.

510  
511 5.3.5. The Rules and Regulations of the Portland Fish Exchange and, to the extent  
512 not inconsistent with said Rule and Regulations, the Maine Uniform  
513 Commercial Code, II M.R.S.A § 2-2328, apply to the auction;

514  
515 5.3.6. Tax, sales, use tax and customs charges may apply;

516  
517 5.3.7. Such other terms as may be prescribed by the Exchange Manager.

518  
519 **5.4. Amounts Subject to Bid**

520  
521 Seafood will be offered for sale in lots. All lots of each species or cull will be offered  
522 at one time. Upon the close of bidding, the highest bidder will be deemed to have  
523 purchased at least one lot of that cull, and in addition, may have an option to

524 purchase, at the same accepted price, additional lots up to an amount as determined  
525 by the Board of Directors.

### 527 **5.5. Bidding**

528  
529 The Exchange will announce the highest bid and may advance the bidding by any  
530 increment. No bid may be retracted by the bidder for any reason. The Exchange  
531 reserves the right to reject any bid at its discretion. Upon receiving the highest bid,  
532 the Exchange shall signal the close of bidding. Bidders are strictly prohibited from  
533 entering into any agreements intending artificially to depress bidding prices. Any seat  
534 holder or persons determined by the Exchange to be engaging in such practices may  
535 be immediately compelled to leave the Exchange premises, may be immediately  
536 barred from participating in auctions, may have their seat holder privileges suspended  
537 by the Exchange on an interim basis, and may be subject to indefinite suspension by  
538 action of the Board of Directors.

### 540 **5.6. Close of Bidding: Designation of Lots: Refusal**

541  
542 Upon the close of bidding, the high bidder shall promptly, as determined by the  
543 Exchange, so as not to delay the auction, announce which of the lots under bid, said  
544 bidder wishes to purchase. Sellers or their representatives shall promptly decide  
545 whether to refuse the bid price with respect to any of their lots under bid. In the event  
546 of a refusal by the sellers of a bid, or a lot which receives no bid, the Exchange may  
547 solicit follow-up bidding in a manner as determined by the Board of Directors.  
548 Refused or no bid fish remains the property of the seller and may be removed by the  
549 seller or left for the next auction.

### 551 **5.7. Further Sales**

552  
553 After completion of the foregoing matters, the Exchange shall than offer for bidding  
554 the balance (if any) of that item. When the entire amount of any one item has been  
555 offered, the Exchange shall proceed to the next item and shall repeat the foregoing  
556 process.

### 558 **5.8. Sale is Final**

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560 Neither the buyer nor seller may, insofar as the Exchange and its entitlement to  
561 payment is concerned, annul the sale or reject or revoke acceptance for any reason  
562 whatsoever, (The Exchange, however, may annul a sale because of insufficient credit  
563 of the buyer or for other good cause.) The opportunity of the buyer to inspect the  
564 seafood prior to the auction, as described at Section 4.19 hereof shall, insofar as the  
565 Exchange is concerned, conclusively be deemed adequate opportunity to determine  
566 any defects in the product. Thus, under no circumstances, may the buyer refuse to  
567 take any and all steps necessary to consummate the sale; and if purchasing on the  
568 Exchange's credit, to repay the Exchange in accordance with Section 7.3 hereof.  
569 However, notwithstanding the foregoing, nothing contained herein shall be deemed a  
570 waiver by any buyer or seller of any claims or causes of action that he or she may  
571 have against the other.

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**5.9. Payment of Seller**

The clerk shall determine the amount of payment due to such seller, deducting from the sale price the seller’s charge as established by the Board of Directors. Any unpaid and applicable tote or boxing charges, storage fees and any other applicable fees and charges, due and outstanding to the Exchange, will be deducted from the seller’s next settlement or billed, if such arrangements have been made with the Exchange. The Exchange shall issue, on the next following business weekday, a check to the seller for the appropriate amount.

**5.10. Removal**

No seafood shall be physically removed from the facility before the end of that day’s entire auction, unless such early removal is deemed appropriate at the discretion of the Exchange Manager.

**5.11. Shipping**

After completion of that day’s entire auction (or when deemed appropriate by the Exchange), all pallets containing sold seafood will be moved by Exchange personnel to the end of the truck loading dock. Each buyer is responsible for ensuring that his or her seafood is placed on the proper truck, and each assumes all risks of loss or of damage to the seafood. Any sold seafood remaining on the dock more than a reasonable time after the completion of the auction shall be placed in Exchange storage.

**5.12. Removal of Lobsters**

A buyer of lobsters shall have up to four (4) hours after the beginning of the auction and prior to removal of the purchase from the auction properly to inspect and accept the purchase. Any improper cull of the product that is found within the four (4) hour time period provided herein shall remain the responsibility of the seller.

**5.13. Title**

The Exchange shall not be deemed to have title to any seafood. The Exchange shall not be required to obtain any insurance for seafood or other property of any person on its premises. Upon acceptance by the seller of the bid price, title to the chosen lots shall pass to the buyer.

**5.14. Buyers Billing**

The total dollar transaction amount shown on the buyer’s invoice for any one day shall include the following:

- 5.14.1. Pounds of product purchased at bid price.

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- 5.14.2. Per pound fees.
- 5.14.3. Any minimum fees applicable.
- 5.14.4. Any additional charges (including, but not limited to those set forth below) may be billed as individual invoices either daily or weekly:
  - 5.14.4.1. Amounts owed for outstanding totes and pallets that have not been returned within a time set by the Board of Directors.
  - 5.14.4.2. Any fees assessed during the normal course of business at the Exchange;
  - 5.14.4.3. Any services or products requested after purchase and prior to shipping at a fee equal to the current posted price; and
  - 5.14.4.4. An appropriate amount for sales or use tax is applicable, except for exempt buyers.

**5.15. Disclaimer of Warranties**

The Exchange makes no warranties, express or implied, as to the title, quality, legality, merchantability or fitness for purpose of any seafood sold on its premises nor does it warrant that any sample of seafood, whether or not designated as such, is representative as tote weight, cull or quality of the lot of which it is or purports to be a sample. Any oral or written representations to the contrary by any Exchange representative shall be without effect. This section 4.13 shall not negate nor affect any warranty, express or implied, made or deemed made under law by any seller.

**5.16. Governing Authority**

The auction shall be governed by the applicable Rule and Regulations of the PFE. These Rules shall be construed in accordance with II M.R.S.A. § 2-328 of Maine’s Uniform Code and the general laws of the State of Maine.

**5.17. Posting**

Article IV of the Rules, or such abbreviated version thereof as may be approved by the Board of Directors, shall be posted in the auction room or otherwise made freely available to persons using the Exchange. Copies of the Rules shall at all times be available to buyers and sellers at the office.

**5.18. Merchants**

Each seat holder and seller participating in sales through the Exchange acknowledges and agrees that he/she is a person who deals in seafood or otherwise holds himself/herself out as having knowledge or skill peculiar to the seafood business or to the sale or purchase of seafood.

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**5.19. Buyer Responsibility**

Each buyer is responsible for his or her buyer’s invoice immediately following the auction. Buyers are also responsible for confirming lot numbers and for monitoring and staying within their own “open to buy” balance. Failure to do so will result in actions as described in 2.8 of these rules.

**6. DEFERRED DELIVERY AUCTION AGREEMENTS**

**6.1. Introduction**

This is a procedure intending to assist both buyers and sellers to enter into purchase and sale agreements prior to harvest and delivery of the product. It is available to all auction buyers and sellers. It may not be used for either speculation or trading of contracts.

Section 6 describes this procedure in which any seller may offer specifically allowed species for future delivery at an auction to all auction buyers. A Deferred Delivery Auction Agreement is required which will bind a buyer and seller to specific written terms in the form approved by the PFE.

**6.2. Seller Requirements**

6.2.1. Call in Daily

The seller is required to call either the buyer or the Portland Fish Exchange daily in order to confirm whether it will be fishing and also to indicate the estimated time of unloading. In the event that weather, illness, mechanical or net problems prohibit fishing, the operations manager shall be advised as soon as possible.

6.2.2. Obey All Auction Rules

The seller agrees to obey all auction rules, including those relating to Deferred Delivery Auction Sales Agreements. The provisions of the Deferred Delivery Auction section shall supersede any other section which may be a contradictory. The seller will be provided with a landing receipt and also with a settlement for every landing. A check (With the seller’s fee deducted) will be available to the seller at the end of the business week.

**6.3. Buyer Requirements**

6.3.1. Balance Requirements

The buyer shall maintain an adequate balance by means of an irrevocable letter of credit or other certified funds to cover 50% of undelivered current contracts.

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### 6.3.2. Obey All Auction Rules:

This is a procedure intending to assist both buyers and sellers to enter into purchase and sale agreements prior to harvest and delivery of the product. It is available to all auction buyers and sellers. It may not be used for either speculation or trading of contracts.

Section IV describes this procedure in which any seller may offer specifically allowed species for future delivery at an auction to all auction buyers. A Deferred Delivery Auction Agreement is required which will bind a buyer and seller to specific written terms in the form approved by the PFE.

### 6.3.3. Special Conditions Prior To The Offer

The buyer is required to present any special conditions that they may require (i.e. specific days fished, dock times, etc.) one day prior to the Deferred Delivery Auction (usually Tuesday).

## 6.4. **Offers for Contracts**

### 6.4.1. Contract Period

The agreement will begin and end on the dates set forth in the contract. Unless a request for an extension of time has been received in writing prior to a new contract, all future obligations will expire at the end of the specified term.

### 6.4.2. Species Available

The Board shall determine which species of fish are eligible to be the subject of a Deferred Delivery Auction Agreement. Whiting, Shrimp and Dogfish are currently eligible for this auction mechanism. Each species may have different size characteristics, as the market dictates. Any harvester may offer each specifically defined eligible species for bid on the Deferred Delivery Auction.

### 6.4.3. Maximum Duration of Contract

The maximum period that a contract may be in force is two weeks. Contracts shall end on either Thursday or on the day that a new Deferred Delivery Auction should begin, if other than on a Friday.

### 6.4.4. Completion of Previous Contract

Before a seller who is party to a DDSC may offer a new contract, any existing contract must be either satisfactorily completed or extended by mutual agreements of the parties. All contracts will be deemed to have been satisfactorily completed, unless either party should advise the auction manager in writing that a default exists or that the contract has been extended by agreement.



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**6.5. Post Auction Activity**

**6.5.1. Signing Contracts**

Immediately following the Deferred Delivery Auction, the buyer and the seller will sign a Deferred Delivery Auction Sales Contract, and provide an executed copy to the PFE contract administrator.

**6.5.2. Ownership/Payment**

Ownership of the product will be transferred from the harvester to the buyer at the time when the product is sold by the auctioneer. Payment for the seller will be on Friday for the entire week's contract.

**6.6. Defaults**

**6.6.1. Who Determines**

Either party to a DDASC may advise the General Manager in writing of a default. The General Manager will contact both parties to the contract and will make an initial determination, as set forth in the PFE Rules, Section 8, Resolution of Disputes. No notice of default will be considered which is not filed within three (3) days of the expiration of the contract, including Saturday and Sundays, but not holidays.

**6.6.2. Grounds for Default**

Any violation of the terms of the contract may constitute a breach of contract. The lack of good faith effort on the part of either the buyer or the seller to honor the terms of the contract may also constitute a default. Weather, net or mechanical problems, or the illness of the captain, which prevent either fishing or processing, may constitute extenuating circumstances, justifying a full or partial breach of the agreement.

**6.6.3. Financial Consequences**

In the event the General Manager, after a hearing, should determine that a breach has occurred, he will determine the relief to be afforded. The damages shall be the price differential between the contract price and the cost of replacement product based upon prevailing Portland prices. If a buyer should default, then the seller may sell the product on the spot market. The damages will be the difference between the contract and the sales price. For example, if 1,000 pounds are contracted @ \$.90 and sold at \$.80, then \$.10 differential X 1000 pounds will be paid to the seller.

**6.6.4. Extension of Contracts**

811 Buyers and sellers may mutually agree to extend the terms of a contract. The price  
812 of the original contract and the maximum estimation of catch in paragraph 4 will  
813 become the basis for the extension.  
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815 6.6.5. Resolution of Disputes  
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817 Disputes involving DDASC will be resolved in accordance with the provisions of  
818 these by-laws.  
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821 **7. PROVISIONAL CREDIT TO AND REPAYMENT BY BUYER**  
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823 **7.1. Letter of Credit Requirement**  
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825 As a prerequisite to becoming a seat holder able to bid at Exchange auctions and as a  
826 requirement of maintaining such status, every buyer (including sellers wishing to  
827 exercise bidding rights) shall obtain and furnish to the Exchange, from a reputable  
828 financial institution acceptable to the Exchange, an irrevocable standby letter of  
829 credit, naming as beneficiary the “Portland Fish Exchange” or a designee of the  
830 Exchange. Such letter of credit shall have terms acceptable to the Exchange and its  
831 lending bank; and  
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833 7.1.1. Shall be in an amount no less than \$15,000.00;  
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835 7.1.2. Shall recite that it is exercisable upon presentation to the issuer of one or  
836 more sight drafts, accompanied by a letter from the Exchange or its  
837 designee, stating that the seat holder is in default under Article 5 of these  
838 Rules;  
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840 7.1.3. Shall clearly indicate that it is irrevocable and that it may not be amended  
841 or modified without the written consent of the Exchange or its designee; and  
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843 7.1.4. Shall be assignable by the Exchange or its designee.  
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845 **7.2. Provisional Credit**  
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847 Credit may be extended by the Exchange for the account of any seat holder not in  
848 default under Article 5 of these Rules or in violation of any other provision of these  
849 Rules. A seat holder’s credit will consist of the principal amount of the seat holder’s  
850 properly posted letter of credit plus any cash deposits. Credit available to a seat  
851 holder shall be reduced by:  
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853 7.2.1. Any and all amounts paid or payable by the Exchange to any seller of fish  
854 and taxing and customs authorities for or on the account of such seat holder;  
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856 7.2.2. Purchase charges equal to an amount determined from time to time by the  
857 Board of Directors based in part on the pounds of fish purchased by such  
858 seat holder;

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7.2.3. Box use fees incurred by the seat holder; and

7.2.4. Such other amounts and obligations as may have been incurred by such seat holder to the Exchange;

In each case, to the extent the seat holder has not paid such amounts to the Exchange, for purposes of this Section 5.2, an amount shall be deemed not paid to the Exchange until it has been paid to the Exchange in cash or by wire transfer or bank or certified check, or by check on account of which funds have actually been finally credited (without condition or reservation) to the Exchange's account, as determined in accordance with the common banking convention utilized by the Exchange's lending bank. Such banking conventions are those proposed by the Exchange's lending bank and accepted by the Exchange's Board of Directors and shall be binding upon seat holders who will be advised of them. The General Manager, at his/her discretion, may allow a seat holder in good standing with a demonstrated two years anniversary of purchasing, to provide a business check up to \$10,000 allowable for same day buying privileges.

### 7.3. Repayment of Exchange: Defaults

Each seat holder agrees to repay to the Exchange all amounts charged to his or her account in a timely manner, in order to ensure that collected funds (as defined in Rule 7.2) are available to the Exchange at a time set by the Board of Directors from the date of invoice. If collected funds are not received within said period, the Exchange (i) may assess either a fee or late charge in such amount as the Board of Directors may from time to time prescribe; (ii) may, at its discretion, declare all amounts outstanding immediately due and owing; and (iii) may declare default hereunder. In addition, the following will constitute a default:

7.3.1. The Exchange receives notice of intent not to renew the seat holder's letter of credit, or such letter of credit will expire within sixty (60) days, or the letter of credit or the issuing financial institution becomes subject to an attachment or trustee process on account of the seat holder;

7.3.2. The seat holder, if an individual, dies or if an entity, dissolves, winds-up, liquidates or terminates its existence;

7.3.3. The Board of Directors determines that a default may be declared because of one or more violations of these Rules or because the Exchange reasonably deems itself insecure or otherwise.

### 7.4. Remedies

Upon the occurrence of any default, the Exchange may: (i) declare all obligations immediately due and payable, (ii) either itself or its lending bank may draw or cause to be drawn upon the letter of credit for any or all amounts owed by the defaulting seat holder to the Exchange; (iii) deny such seat holder access to the Exchange

907 facilities; “... (iv) suspend all seat holder privileges, subject to the limitations  
908 contained in Rule 2.8; and (v) pursue any and all of its right and remedies by any  
909 means permitted by law. Each seat holder agrees to pay to the Exchange all costs of  
910 collection arising out of any default, including reasonable attorney’s fees, and all  
911 other costs and expenses occasioned thereby. The Exchange may, in its discretion,  
912 compel any seat holder in default to enter into arbitration as provided at Section 8.3  
913 hereof.

#### 914 915 **7.5. Other Documents**

916  
917 Each seat holder covenants to execute and deliver to the Exchange or its designee  
918 upon demand such other and further documents and instruments as may from time to  
919 time be requested by the Exchange in order to accomplish the purposes of this  
920 Section 7.

### 921 922 **8. RESOLUTION OF DISPUTES; SANCTIONS**

#### 923 924 **8.1. Initial Resolution**

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926 In the event of any dispute arising on the Exchange premises during the conduct of  
927 the auction or in connection with auction, pre-auction or post-auction procedures, the  
928 Exchange Manager shall make an initial determination, which shall be binding on  
929 the persons involved in the dispute. If the Exchange Manager is absent from the  
930 premises at the time of the dispute, an Operations Manager shall be authorized to act  
931 in lieu of the Exchange Manager, and if neither is present, then the Office Manager  
932 may also act. Decisions of the Exchange Manager, Operations Manager, or Office  
933 Manager adverse to any disputant may be appealed by such disputant to the Board of  
934 Directors in accordance with Section 8.2 hereof. Notwithstanding the foregoing,  
935 matters left to the discretion of the auctioneer shall be finally determined by him/her,  
936 and may not be appealed to the Exchange Manager or the Board of Directors.

#### 937 938 **8.2. Appeal**

939  
940 Any appeal of any decision to the Board of Directors shall be in accordance with  
941 such appeal procedures as may be promulgated from time to time by the Board of  
942 Directors. Appeals shall be taken up at the earliest possible time at a duly-convened  
943 meeting of the board wherein a quorum of members is present.

#### 944 945 **8.3. Arbitration**

946  
947 Disputes in any way connected with the business or operations of the Exchange or  
948 arising between persons conducting business on Exchange premises (other than  
949 those described at Section 6.1 and disputes solely between the Exchange and its  
950 employees) of arising under these Rules, in each case by and between seat holder,  
951 sellers, or the Exchange, or by and between any two or more of them (whether or not  
952 the Exchange itself is a disputant), shall, at the option of any disputant, or the  
953 Exchange, be submitted to arbitration in accordance with the rules of the American  
954 Arbitration Association to an arbitrator selected by said Association, provided that

955 the Exchange or its lending bank may collect amounts due to them or either of them  
956 from any seat holder or under any letter of credit by civil action without reference to  
957 arbitration.

#### 958 959 **8.4. Sanctions**

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961 Seat holders, sellers and their representatives in violation of these Rules may be  
962 punished by temporary or permanent suspension of privileges to use Exchange  
963 premises. Other than interim suspensions made by the Exchange Manager pursuant  
964 to Section 2.8 hereof, decisions to suspend deny access to any seat holder or shall be  
965 made by majority vote of the Board of Directors at a duly-convened meeting.

#### 966 967 **8.5. Conclusive Effect**

968  
969 The auctioneer as to matters within his discretion, the Board of Directors as to matter  
970 appealable to them under Section 8.2, and the arbitrator(s) selected pursuant to  
971 Section 8.3 shall, in their respective areas, be deemed arbitrators for all purpose of  
972 Maine law and their decisions, in their respective areas, shall be final, conclusive and  
973 binding upon all persons, including sellers, seat holders, Portland Fish Exchange and  
974 their respective representatives, agents, heirs, personal representatives, successors  
975 and assigns.

### 976 977 **9. MISCELLANEOUS**

#### 978 979 **9.1. Totes**

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981 The Exchange will purchase a sufficient number of totes. Such totes will be issued  
982 by the Exchange through a debit/credit system whereby a buyer's account shall be  
983 charged for totes upon the purchase of seafood and shall be credited equally upon  
984 return of such totes, provided that such return is within a time set by the Board of  
985 Directors, and the totes are returned in a clean and undamaged condition. Buyers  
986 will be charged the fair market value, as established by the Exchange, for  
987 replacement of any damaged or lost totes. Totes returned in a dirty condition will be  
988 subject to a cleaning charge in an amount determined from time to time by the Board  
989 of Directors. Any totes returned late shall be deemed lost and the seat holder will be  
990 assessed a replacement charge therefore.

#### 991 992 **9.2. Storage**

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994 Any seafood, arriving onto the auction floor prior to the commencement of an  
995 auction and remaining on the floor more than a reasonable time after the conclusion  
996 of such auction, shall be deemed to have been placed in auction storage by the owner  
997 thereof. Storage fees shall thereupon commence on account of such seafood at the  
998 rate established, from time to time, by the Board of Directors. Any and all stored  
999 seafood shall be entitled to remain on the Exchange premises only until the next  
1000 succeeding auction, at which time the seafood shall either be sold, removed from the  
1001 Exchange premises by the seller (upon paying the required amounts set forth at  
1002 Section 5.11 hereof), or, failing either of the foregoing , it may, at the discretion of

1003 the Exchange, be discarded by the Exchange. The Exchange may issue a receipt to  
1004 the owner for any such seafood. The Exchange, as a not-for-profit enterprise  
1005 intended for the general benefit of fishermen, dealers, and processors alike, shall in  
1006 no event be deemed a “warehouseman” as such term is defined and used in the  
1007 Maine Uniform Commercial Code (II M.R.S.A. § 7-101, et seq); and said Article 7  
1008 shall not apply to these transactions. Notwithstanding the general inapplicability of the  
1009 provisions of the Article 7, the Exchange shall be deemed to be a “warehouseman”  
1010 with the right to assert a lien in order to enforce the obligations of owners of  
1011 seafood. The warehouseman’s lien will also secure any and all present or future  
1012 obligations of such owner to the Exchange. In the event that the owner of any stored  
1013 seafood should fail to take steps to sell such seafood at the first auction following the  
1014 commencement of the storage period, the Exchange may, without prior notice to  
1015 such owner, enforce its lien and security interest granted herein by selling such  
1016 seafood at the next auction. The proceeds of such sale will be applied: first to the  
1017 satisfaction of all obligations of the owner to the Exchange; and, any balance will be  
1018 paid or credited to the owner’s account. If it is unable to sell at such auction, the  
1019 Exchange may, in its discretion, discard the seafood (at the owner’s expense) or  
1020 attempt again to sell it at the next auction. The Exchange may discard or take other  
1021 appropriate action as to any seafood stored on its premises found to be either  
1022 contaminated or illegal.

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### 1024 **9.3. Sellers**

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1026 All sellers, and persons representing sellers, shall at all times abide by these Rules.  
1027 Sellers shall indicate their acceptance of these Rules by signing a copy of the Rules  
1028 upon their first visit to the Exchange. No more than two representatives of any seller  
1029 shall be permitted on the Exchange floor at any one time. Sellers and their  
1030 representatives may be barred from access to Exchange facilities by a vote of the  
1031 Board of Directors either for failure to abide by these Rules or because of the seller  
1032 or its representatives fail to conduct themselves in businesslike fashion, engage in  
1033 illegal practices, or poor business practices. For purposes of these Rules, the term  
1034 “seller” means persons and entities who bring or cause to be brought seafood onto  
1035 the Exchange premises for purposes of selling such seafood at an Exchange auction.  
1036 The term “seller” does not refer to the auctioneer or any other agent, employee or  
1037 representative of the Exchange.

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### 1039 **9.4. Visitors**

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1041 Visitors shall be admitted to the Exchange premises only by means of a daily pass. A  
1042 limited number of daily passes will be available from, and at the discretion of, the  
1043 Exchange Manager. Visitors will be permitted only to observe Exchange business  
1044 and may not participate in any aspect of it, including the auction.

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### 1046 **9.5. Purchases or Sales by the Exchange**

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1048 The Exchange shall not engage in the purchase or sale of seafood either on its own  
1049 account or as an agent for the account of others, except as provided by Section 7.2  
1050 hereof.

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**9.6. Discretion**

The Rules contemplate that the Exchange Manager shall retain considerable discretion in order to direct the daily operations of the Exchange. The Exchange Manager (or in his or her absence, an Operations Manager) is vested with authority to close the Exchange, alter the timing of the auctions, or otherwise cancel or suspend operations for causes deemed by him/her to be sufficient, including, without limitation, accidents, flood, storm, public health problems, acts of God, and the like. Any fees or costs provided therein may be change by the action of the Board of Directors without advance notice, but such changes will be posted conspicuously at the Exchange premises.

**9.7. Release and Indemnity**

In consideration of being allowed to participate in the activities of the Portland Fish Exchange, seat holders and sellers agree to indemnify and hold harmless the Exchange, its officers, directors, agents, and employees (hereinafter jointly and severally referred to as “Exchange”) from any claim for loss or damage of any kind, including, but not limited to, liability for personal injury, death, property damage, including any monetary loss, as well as consequential damages, incurred or suffered as the result of any act or omission of the Exchange. Without in any way limiting the generality of the foregoing, this release and indemnity, shall include claims and losses arising from any of the following:

- 9.7.1. The sale of seafood which is determined to be illegal, contaminated, or of different quality or quantity from that represented;
- 9.7.2. The sales price of seafood offered for sale is deemed to be too high, too low, or no sale shall occur;
- 9.7.3. Engaging in activity which is either illegal or prohibited by the Rules and Regulations of the Exchange; or
- 9.7.4. Loss or damage of either seafood or any other property on premises of the Exchange, except to the extent such losses may be compensable by liability insurance.

This provision shall not be deemed to waive any immunity to which the Exchange may be entitled under Maine law.

**9.8. Indemnification of Exchange**

Each seat holder and seller agrees to indemnify the Exchange against, and hold it harmless from, any loss, claim, liability, judgment, cost, and legal or other expense which the Exchange may suffer or incur as a direct or indirect consequence of any of the following:

- 1099 9.8.1. The violation of any of these Rules by such seat holder or seller;  
1100  
1101 9.8.2. Such seat holder or seller negligently or intentionally causes loss or damage  
1102 to Exchange property or to business of any other person from activities  
1103 conducted at the Exchange; and  
1104  
1105 9.8.3. The fact that any representation, warranty, acknowledgement or other  
1106 statement of fact by such seat holder or seller was untrue or incomplete  
1107 when made to the Exchange.  
1108

1109 **9.9. Statute of Limitations**  
1110

1111 All seat holders and sellers hereby agree, in accordance with Section 2-725 of the  
1112 Maine Uniform Commercial Code (11 M.R.S.A. 20725), that the Statute of  
1113 Limitations for any action brought by any seat holder or seller against any other  
1114 person or entity (including the Exchange) arising out of any sale taking place on the  
1115 Exchange shall be one year after the date of the sale in question.  
1116

1117 **9.10. Amendments**  
1118

1119 These Rules may be amended in accordance with the Bylaws of the Exchange.  
1120 Amendments may be made with or without prior notice to or consent by seat holders  
1121 or sellers, and such persons are deemed to have consented to such amendments by  
1122 virtue of their continuing use of Exchange facilities or Exchange credit. Upon  
1123 adoption of any amendment of these Rules by the Board of Directors, the Exchange  
1124 shall attempt to notify seat holders and sellers promptly of such amendment, but any  
1125 failure to do so shall not affect the enforceability of the amended or new Rule. When  
1126 deemed necessary or appropriate by the Board of Directors, the Exchange may print  
1127 and issue revised Rules or amendments and may require that all seat holders and  
1128 sellers acknowledge receipt of such revised Rules and amendments as a condition to  
1129 conduct business at the Exchange.  
1130

1131 **9.11. Separability**  
1132

1133 Wherever possible, each provision of these Rules shall be interpreted in such manner  
1134 as to be effective and valid under applicable law, but, if any provision of these Rules  
1135 should be prohibited by, unenforceable or invalid under such law, that provision will  
1136 be ineffective to the extent of such prohibition, unenforceability or invalidity,  
1137 without invalidating the remainder of such provision or the remaining provisions of  
1138 these Rules.  
1139  
1140

1141 [END]  
1142