

Cantor Futures Exchange, L.P.
CFTC Rule 40.6 Submission #2016-2
January 22, 2016

1. The text of the FAQ, which constitutes a rule interpretation and is a rule change under CFTC Rule 40.1, is found in Attachment 1. The full text is an addition. There are no deletions. Capitalized terms, unless otherwise defined herein shall possess the meaning(s) ascribed in the Cantor Futures Exchange, L.P. Rulebook.
2. The proposed effective date is ten business days after receipt by the Commodity Futures Trading Commission of this submission.
3. Attached, please find a certification that: (1) these rules comply with the Commodity Exchange Act, and the Commission's regulations thereunder; and (2) concurrent with this submission, Cantor Futures Exchange, L.P. posted on its website: (i) a notice of pending certification of the rule submissions with the Commission; and (ii) a copy of this submission.
4. A concise explanation and analysis of the operation, purpose, and effect of the amended rule appears below.
5. There were no opposing views expressed regarding these amended rules.

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**CONCISE EXPLANATION AND ANALYSIS OF THE OPERATION, PURPOSE, AND
EFFECT OF THE CERTIFIED RULE AND ITS COMPLIANCE WITH APPLICABLE
PROVISIONS OF THE ACT, INCLUDING CORE PRINCIPLES AND THE COMMISSION'S
REGULATIONS THEREUNDER**

Pursuant to Commission Rule 40.6(a)(7)(vi), the following is a concise explanation and analysis of the operation, purpose, and effect of the amended rules.

FAQ--Commodity Pools and Other Participants That Are an Entity

CX has been asked whether commodity pools and other entities may become a CX Participant. Related questions that have arisen include whether the pooled investment vehicle or its investment manager would be considered to be the Participant, how does the exchange treat a trading manager or advisor trading with discretion on behalf of a Participant, must such a third-party Authorized Trader be registered through the National Futures Association, and whether Participants that are natural persons may trade through a joint account or appoint a third party to trade their account.

It should be noted that CX is not promulgating amendments to its Rulebook regarding these issues. This FAQ provides guidance relating to existing rules, which have not been amended

since the time that CX was first designated as a contract market or shortly thereafter. Moreover, the FAQs do not change or amend CX interpretation of the applicable rules. They merely clarify and memorialize the long-standing CX understanding of its rules.

The FAQ provides guidance that Participants may be natural persons, associations, partnerships, limited liability companies, joint ventures, trusts or corporations. Thus it is clear from CX rules that in the case of a commodity pool, which generally is a limited partnership or other form of corporate organization, it is the pool and not its organizer or manager that is the CX Participant. Moreover, the FAQ makes clear that the Authorized Trader will be a natural person that is an employee or agent of the manager, commodity pool operator or commodity trading advisor, respectively if the foregoing is itself an entity. The FAQ does not purport to give legal advice on whether such individuals are required to be registered in order to act in the capacity of Authorized Trader. However, it is possible, if not likely, that such third-party Authorized Traders will be registered as a commodity pool operator, a commodity trading advisor or possibly an Associated Person of the foregoing.

The FAQ also makes clear that Participants who are natural persons may also appoint an Authorized Trader other than himself or herself. Such a third party Authorized Trader may exercise trading discretion under a power of attorney. In addition, the FAQ makes clear that spouses may establish a joint account. In such an instance, each spouse will be required to become a Participant of the Exchange. Generally, unrelated natural persons that trade through a joint account will be treated by the Exchange as a partnership. Finally, the FAQ makes clear that only an independent third-party Authorized Trader may trade on behalf of more than one Participant.

Analysis

CX reviewed the FAQ in respect of the Core Principles for Designated Contract Markets under section 5(d) of the Act. The following are potentially applicable to this rule: Core Principle (1) Designation as a Contract Market; Core Principle (4) Prevention of Market Disruption; and Core Principle (9) Execution of Transactions.

An analysis of how the FAQ explaining the meaning and functions of “Authorized Traders” is consistent, and in accordance, with the CX designation as a Contract Market follows.^{1/}

The Commission’s Order designating CX as a Contract Market states that,

^{1/} The analysis provided here is similar to a prior analysis of this issue provided to the Commission. CX in Advisory # 2015-2 gave notice to members that it had certified to the Commodity Futures Trading Commission (“CFTC” or “Commission”) under CFTC rule 40.6 amendments to Rule I and Rule III. These amendments establish rules in respect of “Referring Participants.” As part of that notice, CX analyzed how the role of “Referring Participant” is in accordance with CX’s Order of Designation, which describes CX as a “non-intermediated market.” See, # 2015-2 (2015-01-29) <http://www.cantorexchange.com/getdoc/e1edf1d9-1bb4-42d4-9e2a-c3eb490b9ead/Notices-to-Participants.aspx>.

IT IS FINALLY ORDERED, in consideration of Cantor's status as a *non-intermediated* market, that this designation as a contract market shall be subject to Cantor's compliance with representations it made to the Commission in its application.^{2/}

This statement is followed by ten specific undertakings of the Exchange. The Commission's Designation Letter stated similarly that the Exchange "will operate as a *non-intermediated market* and that its members will also be members of the Cantor Clearinghouse."^{3/}

"Intermediation" is undefined in the Commodity Exchange Act or Commission rules. However, in common usage, "intermediation" is thought to refer to the carrying of a customer account. The intermediated customer does not have a direct relationship with the exchange or the clearinghouse; instead the customer gains access to the exchange or clearinghouse through its intermediary agent. Thus, an intermediated market is one where a customer's position on the exchange and at the clearinghouse is carried by another person and its legal relationship to the exchange or clearinghouse is indirect.

The structure of the CX rules provides that in each and every instance, the Participant maintains its account directly with the exchange and clearinghouse. An "Authorized Trader" as provided for under CX Rules and as explicated under the FAQs does not affect the direct relationship between the Participant and the exchange or clearinghouse and therefore is fully in accordance with the Designation Order.^{4/} Entities have no choice but to carry out trading in their account through natural persons. Such natural persons are "Authorized Traders." The fact that an entity operates through natural persons who are its Authorized Traders does not alter the fact that the account is directly owned by the Participant, who has a direct legal relationship to the exchange and to the clearinghouse. No person is able to have its CX positions or account held for it indirectly as a customer of a Participant member, which is the essence of intermediation.

That this is the case is amply evidenced by the CX rule providing for "Authorized Traders" which was approved by the Commission in April 2010 at the time that CX was designated as a Contract Market. Specifically, Rule III-(2)(a) provided for third-party Authorized Traders for Participants that are natural persons. That rule provided that:

- (a) Each Participant that is an Entity shall be required to appoint one or more individuals to act as its Authorized Trader or Authorized Traders, as applicable. Participants that are natural persons may act as their own Authorized Trader or may appoint a third party as his or her Authorized Trader, pursuant to a power of attorney or other

^{2/} Order of Designation Of Cantor Futures Exchange, L.P. as a Designated Contract Market, (April 20, 2010) , found at <http://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=TradingOrganizationsAD&Key=16669> ("Designation Order") at page 4 (emphasis added).

^{3/} The specific conditions are not relevant to the role of Authorized Traders on CX and are not discussed herein. For a general discussion of the conditions, see Submission #2015-2, supra n. 1.

^{4/} It also is in accordance with the Order Registering Cantor Clearing House as a Derivatives Clearing Organization, which provides that "Funds held in Participant Clearing Accounts shall be considered Member Property, as such term is defined in the Bankruptcy Code." See, "In the Matter of the Application of Cantor Clearinghouse, L.P. For Registration as a Derivatives Clearing Organization; Amended Order of Registration," at <http://www.cftc.gov/stellent/groups/public/@requestsandactions/documents/ifdocs/cantoramdordercoreg.pdf>, p.2.

instrument, in a form prescribed or approved by the Exchange, providing such third party with discretionary trading authority with respect to the Participant's Trading Account.

Because third parties that trade for another with discretion may be required to be registered as a CTA, it is possible to conclude that CX Rule II-2(a) is inconsistent with CX Rule III-3(h), which provides that, "Futures commission merchants or other intermediaries shall not be permitted to submit trades in Contracts for execution on behalf of customers." Such a conclusion would follow if one were to conclude that a third-party Authorized Trader is an "intermediary" within the meaning of CX rules. However, both rules (which were adopted at the same time) can be read together and given effect by concluding that CX did not intend for third-party Authorized Traders trading with or without discretion, including CTAs, to be considered to be "intermediaries." This is also consistent with an understanding that unlike third-party Authorized Traders, FCMs may trade on behalf of customers using an omnibus account structure.

Shortly thereafter, in October 2010, CX clarified any ambiguity of the meaning of the two rules by further clarifying the role of "Authorized Trader" on the exchange, making it clear that third parties could be appointed as an Authorized Trader by any Participant, regardless of whether the Participant is a natural person or an entity. Specifically, CX amended CX Rule III-2 by adding subparagraph (c), explicitly providing that Participants that are entities may appoint third parties as Authorized Traders.^{5/} This provision maintained the same structure as the rule approved in April 2010 and simply extended its scope to entities. At that time, CX also amended the rule to make clear that a third-party Authorized Trader could exercise trading discretion for more than one Participant, and in so doing, would be required to allocate trades fairly.^{6/} CX explained in its CFTC Rule 40.6 submission that the "effect of this rule is to provide an administrative route for commodity pool operators/commodity trading advisors to be able to trade accounts on behalf of a pool or managed account customer."^{7/} Clearly, the role of Authorized Trader as contemplated by exchange rules, and approved by the Commission, at the time of CX's designation, and later clarified in a rule amendment certified under CFTC Rule 40.6, is consistent with the terms of its Designation Order. The FAQ does not modify the meaning, operation or purpose of the rules and simply memorializes CX's longstanding interpretation and understanding of its rules.

Finally, the FAQ does not impact CX's ability to perform trade practice and market surveillance of its market as required by Core Principles 1 and 4, nor does it make any change which would affect order execution on CX. See Core Principle 9.

^{5/} See CX Submission 2010-2 (October 6, 2010) at <http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/ru100610cantor002.pdf>.
^{6/} <http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/ru100610cantor002.pdf>
^{7/} *Id.*

**CERTIFICATIONS PURSUANT TO SECTION 5c OF THE COMMODITY
EXCHANGE ACT, 7 U.S.C. §7a-2 AND COMMODITY FUTURES TRADING
COMMISSION RULE 40.6, 17 C.F.R. §40.6**

I hereby certify that the foregoing rule amendments (including a related advisory FAQ) comply with the Commodity Exchange Act, 7 U.S.C. §1 *et seq.* and regulations thereunder.



By: Nolan Glantz

Title: COO

Dated: 1/22/2016

I hereby certify that a copy of this filing was posted on the Cantor Futures Exchange, L.P. website the day of its submission to the Commission.



By: Nolan Glantz

Title: COO

Dated: 1/22/2016

ATTACHMENT 1

Frequently Asked Questions

Commodity Pools, Other Participants That Are Entities and the Relationship of Authorized Traders to Natural Person Participants

Thank you for your interest as a Commodity Pool or other entity in becoming a Cantor Exchange Participant. Below we have compiled a list of frequently asked questions relating to how such entities may become Participants and trade under Cantor Exchange rules and the relationship of Authorized Traders to Participants that are natural persons.

Are Commodity Pools or other entities permitted to become CX Participants?

The Cantor Exchange (“CX”) Rulebook defines a “Participant” as a “Person” that has been granted Trading Privileges. “Person” is defined as meaning “any natural person, association, partnership, limited liability company, joint venture, trust or corporation.” Accordingly, it is clear that entities, such as partnerships, limited liability companies and other forms of entities may become Participants.

Who may trade for such entities?

CX Rule III-2 requires that a Participant that is an entity must appoint one or more individuals to act as its Authorized Trader or Authorized Traders. CX defines the term “Authorized Trader” as “any natural person who is authorized by a Participant to place Orders on the Cantor Direct System.” CX Rule III-2(c) makes clear that an Authorized Trader may be either an employee or a third-party and that an Authorized Trader may be granted trading discretion by the Participant.

Who may be an Authorized Trader for a Commodity Pool?

An Authorized Trader must be a natural person. Accordingly, a commodity pool, acting through its operator, could appoint as its Authorized Trader(s) the pool operator him or herself, if the pool operator is a natural person, or an employee or agent of the pool operator if the pool operator is an entity. Alternatively, the commodity pool through its operator may appoint a commodity trading advisor that is a natural person to exercise trading discretion on behalf of the commodity pool. If the commodity trading advisor is an entity, such as a partnership or a limited liability company, the pool through its operator would appoint as the pool’s Authorized Trader an employee (or other agent) of the commodity trading advisor.

Would a third-party Authorized Trader be required to be registered through the National Futures Association in any capacity?

A third-party Authorized Trader for a commodity pool has trading discretion over the commodity pool's account. Unless exempt from registration, typically, the Authorized Trader of a commodity pool or other entity would be registered through the National Futures Association or would be an employee of a registrant. Parties should consult their counsel whether registration of such individuals is required.

May CX Participants who are natural persons appoint a third-party Authorized Trader?

Yes. CX Rule III-2(b) makes clear that a Participant that is a natural person is not required to act as his or her own Authorized Trader and may appoint a third-party Authorized Trader, acting either on a discretionary or a non-discretionary basis.

Who may be an Authorized Trader for an Individual?

As discussed above, a Participant that is a natural person may appoint another natural person(s) to be his or her Authorized Trader and may grant such a third-party Authorized Trader discretion. Such a third-party Authorized Trader may be a commodity trading advisor himself or herself or the employee or agent of a commodity trading advisor that is an entity.

Are joint accounts permitted on CX?

Generally, natural persons that wish to establish a joint account should do so as a Partnership, Limited Liability Company, or other such entity. In that case, it is the entity which will be the Participant and not its owners. However, spouses may establish a joint account. In such an instance, each spouse will be required to become a Participant of the Exchange. One or both spouses may be appointed as Authorized Traders for the account, or they may jointly appoint a third-party as Authorized Trader for the account.

In addition, "investment clubs" that qualify for exemption from registration as a commodity pool operator and that have not formed a partnership or other entity to trade on behalf of the club, may operate through a joint account. In that case, each member would be required to become a Participant of the Exchange. One or more natural persons may be appointed as the Authorized Trader on behalf of each of the joint account holders.

May more than one Participant appoint the same third-party Authorized Trader?

Yes. CX Rule III-2(e) provides that each Authorized Trader that is an employee of a third-party with discretionary trading authority may exercise Trading Privileges for more than one Participant, and is required to allocate contracts fairly and in an equitable manner among the multiple Participants for which the Authorized Trader trades.