

December 4, 2013

**Submitted via CFTC Portal**

Secretary of the Commission  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

Re: *tpSEF Inc. – Regulation 40.2 Certification of USD Equity Basket Swaps (Broad Based)*

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Ladies and Gentlemen:

tpSEF Inc. (“tpSEF”) hereby notifies the Commodity Futures Trading Commission (the “Commission”) of its intent to list USD Equity Basket Swaps (Broad Based) (the “Contracts”) on its swap execution facility. tpSEF intends to list these Contracts on December 6, 2013.


Pursuant to Commission Regulation 40.2, this submission includes:

- i. A copy of the submission cover sheet in accordance with the instructions in Appendix D to Part 40 of the Commission’s regulations, attached as Exhibit A;
- ii. The intended listing date – December 6, 2013;
- iii. A certification by tpSEF that: (a) the Contracts comply with the Commodity Exchange Act, as amended, and the Commission regulations thereunder; and (b) concurrent with this submission, tpSEF posted on its website: (i) a notice of pending certification of the Contracts and (ii) a copy of this submission, attached as Exhibit B;
- iv. The Contracts’ terms and conditions, attached as Exhibit C; and
- v. An explanation and analysis of the Contracts’ compliance with applicable core principles and Commission regulations, attached as Exhibit D.

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Questions regarding this submission should be directed to Brian Donnelly, Chief Compliance Officer, at (201) 984-6956 or by email at [bddonnelly@tullettprebon.com](mailto:bddonnelly@tullettprebon.com), or to Mark Campbell, Chief Operating Officer, at (201) 557-5786 or by email at [mcampbell@tullettprebon.com](mailto:mcampbell@tullettprebon.com).

Very truly yours,



Mark Campbell

cc without enclosures:

Division of Market Oversight (Email: [dmosubmissions@cftc.gov](mailto:dmosubmissions@cftc.gov))

David Van Wagner (Email: [dvanwagner@cftc.gov](mailto:dvanwagner@cftc.gov))

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Brian Donnelly (Email: [bddonnelly@tullettprebon.com](mailto:bddonnelly@tullettprebon.com))

**EXHIBIT A**

**SUBMISSION COVER SHEET**

**Registered Entity Identifier Code** (optional)

**Date:** December 4, 2013

**IMPORTANT: CHECK BOX IF CONFIDENTIAL TREATMENT IS REQUESTED.**

**ORGANIZATION**

tpSEF Inc.

**FILING AS A:**

DCM

SEF

DCO

SDR

ECM/SPDC

**TYPE OF FILING**

• **Rules and Rule Amendments**

Certification under § 40.6 (a) or § 41.24 (a)

“Non-Material Agricultural Rule Change” under § 40.4 (b)(5)

Notification under § 40.6 (d)

Request for Approval under § 40.4 (a) or § 40.5 (a)

Advance Notice of SIDCO Rule Change under § 40.10 (a)

• **Products**

Certification under § 39.5(b), § 40.2 (a), or § 41.23 (a)

Swap Class Certification under § 40.2 (d)

Request for Approval under § 40.3 (a)

Novel Derivative Product Notification under § 40.12 (a)

**RULE NUMBERS**

Not applicable; the terms and conditions of “USD Equity Basket Swaps (Broad Based)” are attached as Exhibit C.

**DESCRIPTION**

This submission contains a self-certification by tpSEF Inc. of USD Equity Basket Swaps (Broad Based).

**EXHIBIT B**

CERTIFICATIONS PURSUANT TO SECTION 5c OF THE COMMODITY EXCHANGE  
ACT, 7 U.S.C. §7A-2 AND COMMODITY FUTURES TRADING COMMISSION  
REGULATION 40.2, 17 C.F.R. §40.2

tpSEF Inc. ("tpSEF") hereby certifies that: (i) USD Equity Basket Swaps (Broad Based) (the "Contracts") comply with the Commodity Exchange Act, 7 U.S.C. §1 *et seq.* and the Commodity Futures Trading Commission (the "Commission") regulations thereunder; and (ii) concurrent with this submission, tpSEF posted on its website: (a) a notice of pending certification of the Contracts with the Commission and (b) a copy of this submission.

TPSEF INC.

By:   
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Name: Mark Campbell

Title: Chief Operating Officer

Date: December 4, 2013

**EXHIBIT C**

**Terms and Conditions**

Summary:	This covers equity total-return swaps on broad-based baskets of equities traded in USD. For purposes of relevant CFTC and SEC regulations, such basket shall be on a broad-based index.
Limitations on Available Selections and Default Settings:	<p>The terms under which USD Equity Basket Swap (Broad Based) may be traded are shown below or in the attached tables.</p> <p>For amounts or rates, the relevant term cannot be less than the specified Minimum, must represent an even Increment and cannot exceed the Maximum; for a date, the date cannot be earlier than Earliest nor later than Latest.</p> <p>For Business Days, the defaults shall be the locations specified for the relevant currency, any additional locations specified for the relevant Floating Rate Options.</p> <p>In many cases there are normal “vanilla” terms on which the parties will transact. These are shown as “Default ” and will apply unless the parties vary them.</p> <p>In some cases, the same contract might have different terms depending on the market in which it is traded (<i>e.g.</i>, London versus NY). In that case the default settings may vary by market.</p>
Incorporated Standards:	<p>This contract description incorporates by reference the following industry standard documentation and standards:</p> <p>(a) 2006 ISDA Definitions;</p> <p>(b) 2002 ISDA Equity Derivatives Definitions; and</p> <p>(c) Annex SS to 2004 Americas Interdealer Master Equity Derivatives Confirmation (except that references therein to the 2000 ISDA Definitions shall be deemed references to the 2006 ISDA Definitions).</p> <p>For convenience, certain terms are mapped to their FpML 5.5 equivalent.</p>
<b>Product Type/ISDA OTC Taxonomy:</b>	
ISDA OTC Asset Class:	Equity
ISDA OTC Base Product:	Swap
ISDA OTC Sub-Product:	Price Return Basic Performance
ISDA OTC Transaction type:	Basket
Further Limitations:	None
Terms:	
Type of Transaction:	Share Basket Swap Transaction

Trade Date:	As agreed by the parties.
Notional Amount (“notional”):	An amount in USD agreed by the parties.
Effective Date (“effectiveDate”):	Per Annex SS, unless otherwise agreed by the parties.
Effective Date Business Days:	As specified by the parties from among the Available Business Days.
Effective Date Business Day Convention:	As specified by the parties from among the Available Business Day Conventions.
Termination Date (“terminationDate”):	Per Annex SS, unless otherwise specified by the parties.
Basket:	As specified by the parties in compliance with the rules and regulations of the CFTC and SEC applicable to broad-based indices.
Exchange(s):	As specified by the parties with respect to each Share comprised in the Basket.
Related Exchanges:	Per Annex SS, unless otherwise agreed by the parties.
Hedging Party:	As specified by the parties.
Determining Party:	As specified by the parties.
Equity Amounts:	
Equity Amount Payer (“payerPartyReference”):	As specified by the parties.
Equity Notional Amount:	As specified by the parties.
Equity Notional Reset:	Per Annex SS.
Type of Return:	Total Return
Initial Price:	As specified by the parties and adjusted in accordance with Annex SS.
Final Price:	As per Annex SS unless otherwise agreed by the parties.
Valuation Time:	As per Annex SS unless otherwise agreed by the parties.
Valuation Date:	As specified by the parties.
Floating Amount:	
Floating Rate Payer (“payerPartyReference”):	As specified by the parties.
Notional Amount (“notionalAmount”):	As per Annex SS.
Payment Dates:	As per Annex SS, unless otherwise agreed by the parties.
Floating Rate Option (“floatingRateIndex”):	As per Annex SS, unless otherwise agreed by the parties.
Designated Maturity (“indexTenor”)	As specified by the parties.
Spread:	As specified by the parties.
Day Count Fraction:	Actual/360
Reset Date (“resetDate”):	As specified by the parties.
Payment Dates Business Days:	As specified by the parties.
Business Days (Other Than Payment Dates):	As specified by the parties.
Business Day Convention (Other Than Payment Dates):	As per Annex SS, unless otherwise specified by the parties.
Settlement Terms:	
Cash Settlement:	Applicable
Settlement Currency:	USD
Dividends:	
Dividend Payment Date(s):	As per Annex SS unless otherwise agreed by the parties.
Dividend Period:	As per Annex SS unless otherwise agreed by the parties.
Dividend Amount:	As per Annex SS unless otherwise agreed by the parties.
Relevant Dividend:	If type of return is “Total Return” as per Annex SS unless otherwise agreed by the parties.
Reinvestment of Dividends:	Inapplicable
Dividend Recovery:	As per Annex SS unless otherwise agreed by the parties.
Adjustment Events:	
Method of Adjustment:	As per Annex SS unless otherwise agreed by the parties.

Options Exchange:	As agreed by the parties if “Options Exchange Adjustment” is applicable.
Consequences of Merger Events:	
Share-for-Share:	As per Annex SS unless otherwise agreed by the parties.
Share-for-Other:	As per Annex SS unless otherwise agreed by the parties.
Share-for-Combined:	As per Annex SS unless otherwise agreed by the parties.
Options Exchange:	As agreed by the parties if “Options Exchange Adjustment” is applicable.
Consequences of Tender Offers:	
Tender Offer:	As per Annex SS, unless otherwise agreed by the parties.
Share-for-Share	As agreed by the parties if Tender Offer is applicable.
Share-for-Other:	As agreed by the parties if Tender Offer is applicable.
Share-for-Combined:	As agreed by the parties if Tender Offer is applicable.
Options Exchange:	As agreed by the parties if “Options Exchange Adjustment” is applicable.
Composition of Combined Consideration:	Per Annex SS unless otherwise agreed by the parties.
Nationalization, Insolvency or Delisting:	Per Annex SS unless otherwise agreed by the parties.
Additional Disruption Events:	
Change in Law:	As per Annex SS, unless otherwise agreed by the parties.
Insolvency Filing:	As per Annex SS, unless otherwise agreed by the parties.
Hedging Disruption:	As per Annex SS.
Increased Cost of Hedging:	As per Annex SS unless otherwise agreed by the parties.
Loss of Stock Borrow:	Inapplicable
Increased Cost of Stock Borrow:	Inapplicable
Non-Reliance:	As per Annex SS unless otherwise agreed by the parties.
Agreements and Acknowledgements Regarding Hedging Activities:	As per Annex SS.
Additional Acknowledgements:	As per Annex SS unless otherwise agreed by the parties.
Index Disclaimer:	As per Annex SS unless otherwise agreed by the parties.
Mutual Early Termination Right:	As agreed by the parties.
Interest Breakage Cost:	If Mutual Early Termination Right is applicable, as specified by the parties.
Calculation Agent:	As agreed by the parties.

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Equity Index Available Business Day Conventions

ISDA Name
Following
Modified/Modified Following
No Adjustment
Preceding
FRN Convention/Eurodollar Convention



Equity Index Earliest and Latest Effective and Termination Dates

Currency	Earliest Effective Date	Latest Effective Date	Earliest Termination Date	Latest Termination Date
N/A	N/A	N/A	N/A	One Year from Effective Date

Equity Index Notional Amounts

Currency	Minimum	Increment	Maximum	Default
USD	10,000,000	1,000,000	N/A	N/A

Equity Index Requirements and Defaults

Date	Requirement	Default
Designated Maturities for Linear Interpolation		Tenors quoted next shorter and longer than the actual Calculation Period length

## **EXHIBIT D**

### EXPLANATION AND ANALYSIS OF THE CONTRACTS' COMPLIANCE WITH APPLICABLE CORE PRINCIPLES AND COMMISSION REGULATIONS

As required by Commodity Futures Trading Commission ("Commission") Regulation 40.2(a), the following analysis, in narrative form, demonstrates that USD Equity Basket Swap (Broad Based) (the "Contracts") are consistent with the requirements of the Commodity Exchange Act, as amended (the "Act"), and the Commission regulations and guidance thereunder (in particular, Appendix B to Part 37 and Appendix C to Part 38).

#### **Appendix B to Part 37—Demonstration of Compliance That a Contract Is Not Readily Susceptible to Manipulation**

##### **CORE PRINCIPLE 3 OF SECTION 5H OF THE ACT—SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION; CORE PRINCIPLE 4 OF SECTION 5H OF THE ACT—MONITORING OF TRADING AND TRADE PROCESSING**

**The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.**

#### **(a) *Guidance.***

**(1) In general, a swap contract is an agreement to exchange a series of cash flows over a period of time based on some reference price, which could be a single price, such as an absolute level or a differential, or a price index calculated based on multiple observations. Moreover, such a reference price may be reported by the swap execution facility itself or by an independent third party. When listing a swap for trading, a swap execution facility shall ensure a swap's compliance with Core Principle 3, paying special attention to the reference price used to determine the cash flow exchanges. Specifically, Core Principle 3 requires that the reference price used by a swap not be readily susceptible to manipulation. As a result, when identifying a reference price, a swap execution facility should either: Calculate its own reference price using suitable and well-established acceptable methods or carefully select a reliable third-party index.**

**(2) The importance of the reference price's suitability for a given swap is similar to that of the final settlement price for a cash-settled futures contract. If the final settlement price is manipulated, then the futures contract does not serve its intended price discovery and risk management functions. Similarly, inappropriate reference prices cause the cash flows between the buyer and seller to differ from the proper amounts, thus benefitting one party and disadvantaging the other. Thus, careful consideration should be given to the potential for manipulation or distortion of the reference price.**

The Contracts, total-return swaps on broad-based baskets of equities traded in USD, are cash-settled agreements between two counterparties, whereby one counterparty agrees to pay a floating amount calculated based on LIBOR (or another rate acceptable to the parties) and any depreciation in the value of a broad-based basket of equities, and the other counterparty agrees to pay any appreciation in the value of that basket plus any dividends on the component of that basket. The reference price for LIBOR will be USD-LIBOR-BBA, the reference price for the equity leg will generally be the closing price and the dividend leg is entirely under the control of the issuer (and thus not susceptible to manipulation). LIBOR and equity prices are more fully discussed below.

**(3) For swaps that are settled by physical delivery or by cash settlement refer to the guidance in Appendix C to Part 38 of this chapter—Demonstration of Compliance that a Contract is not Readily Susceptible to Manipulation, section b(2) and section c(4), respectively.**

Please see below.

**Appendix C to Part 38—Demonstration of Compliance That a Contract Is Not Readily Susceptible to Manipulation**

**(c) Futures Contracts Settled by Cash Settlement. (1) Cash settlement is a method of settling certain futures or option contracts whereby, at contract expiration, the contract is settled by cash payment in lieu of physical delivery of the commodity or instrument underlying the contract. An acceptable specification of the cash settlement price for commodity futures and option contracts would include rules that fully describe the essential economic characteristics of the underlying commodity (e.g., grade, quality, weight, class, growth, issuer, maturity, source, rating, description of the underlying index and index's calculation methodology, etc.), as well as how the final settlement price is calculated. In addition, the rules should clearly specify the trading months and hours of trading, the last trading day, contract size, minimum price change (tick size) and any limitations on price movements (e.g., price limits or trading halts).**

***Essential Economic Characteristics of the Contract Terms***

The terms and conditions of the Contracts are listed in Exhibit C.

***Contract Not Readily Susceptible to Manipulation***

The Contracts are not susceptible to manipulation for a number of reasons. LIBOR is a widely used benchmark rate and the basis of the interest rate swaps which the Commission has approved for mandatory clearing. The basket, and each component, is required to meet the definition of broad-based index (or, more precisely, avoid complying with the statutory definition of narrow-based index). That definition contains provisions that protect from manipulation by requiring at least a certain level of liquidity in the components through the mechanism of a floor on average daily trading volume. In addition, the price that will generally be used is the closing price of the component shares, which is broadly disseminated and has a variety of protective rules promulgated by the SEC intended to protect it from manipulation (see, e.g., 10b-18). The Commission has heretofore been sufficiently comfortable with such prices to allow Trade Index Close trading on CME and ICE. Finally, tpSEF Inc. ("tpSEF") has a robust market surveillance program that is effectively able to surveil this market, detect uncommon activity, and investigate any such activity for signs of manipulation. tpSEF staff conduct real-time market surveillance and the National Futures Association ("NFA") provides regulatory services on a T+1 basis. NFA's services include comprehensive trade practice and market surveillance services (the scope of which can be found in the Regulatory Services Agreement between NFA and tpSEF submitted to the Commission as part of tpSEF's swap execution facility application) (note that the foregoing also demonstrates compliance with Core Principle 4).

***Calculation of Cash Settlement Price***

The cash settlement price will be calculated as described above.

**(2) Cash settled contracts may be susceptible to manipulation or price distortion. In evaluating the susceptibility of a cash-settled contract to manipulation, a designated contract market should consider the size and liquidity of the cash market that underlies the listed contract in a manner that follows the determination of deliverable supply as noted above in (b)(1). In particular, situations susceptible to manipulation include those in which the volume of cash market transactions and/or the number of participants contacted in determining the cash-settlement price are very low. Cash-settled contracts may create an incentive to manipulate or artificially influence the data from which the cash-settlement price is derived or to exert undue influence on the cash-settlement price's computation in order to profit on a futures position in that commodity. The utility of a cash-settled contract for risk management and price discovery would be significantly impaired if the cash settlement price is not a reliable or robust indicator of the value of the underlying commodity or instrument. Accordingly, careful consideration should be given to the potential for manipulation or distortion of the cash settlement price, as well as the reliability of that price as an indicator of cash market values. Appropriate consideration also should be given to the commercial acceptability, public availability, and timeliness of the price series that is used to calculate the cash settlement price. Documentation demonstrating that the settlement price index is a reliable indicator of market values and conditions and is commonly used as a reference index by industry/market agents should be provided. Such documentation may take on various forms, including carefully documented interview results with knowledgeable agents.**

As noted above, the cash settlement price is not easily susceptible to manipulation or distortion as the method of determining the price is largely based on factors that are fixed at the start, and reliable reference prices. In addition, the “rules of the road” for creating the equity baskets are intended to avoid manipulation, are well tested and have served the Commission well over decades of testing.

**(3) Where an independent, private-sector third party calculates the cash settlement price series, a designated contract market should consider the need for a licensing agreement that will ensure the designated contract market's rights to the use of the price series to settle the listed contract.**

**(i) Where an independent, private-sector third party calculates the cash settlement price series, the designated contract market should verify that the third party utilizes business practices that minimize the opportunity or incentive to manipulate the cash-settlement price series. Such safeguards may include lock-downs, prohibitions against derivatives trading by employees, or public dissemination of the names of sources and the price quotes they provide. Because a cash-settled contract may create an incentive to manipulate or artificially influence the underlying market from which the cash-settlement price is derived or to exert undue influence on the cash-settlement computation in order to profit on a futures position in that commodity, a designated contract market should, whenever practicable, enter into an information-sharing agreement with the third-party provider which would enable the designated contract market to better detect and prevent manipulative behavior.**

As described above, the cash settlement price is calculated through a cash settlement method that is not easily susceptible to manipulation.

**(ii) Where a designated contract market itself generates the cash settlement price series, the designated contract market should establish calculation procedures that safeguard against potential attempts to artificially influence the price. For example, if the cash settlement price is derived by the designated contract market based on a survey of cash market sources, the designated contract market should maintain a list of such entities which all should be reputable sources with knowledge of the cash market. In addition, the sample of sources polled should be representative of the cash market, and the poll should be conducted at a time when trading in the cash market is active.**

Please see above regarding the calculation of the cash settlement price.

**(iii) The cash-settlement calculation should involve computational procedures that eliminate or reduce the impact of potentially unrepresentative data.**

**(iv) The cash settlement price should be an accurate and reliable indicator of prices in the underlying cash market. The cash settlement price also should be acceptable to commercial users of the commodity contract. The registered entity should fully document that the settlement price is accurate, reliable, highly regarded by industry/market agents, and fully reflects the economic and commercial conditions of the relevant designated contract market.**

Please see above regarding the calculation of the cash settlement price.

**(v) To the extent possible, the cash settlement price should be based on cash price series that are publicly available and available on a timely basis for purposes of calculating the cash settlement price at the expiration of a commodity contract. A designated contract market should make the final cash settlement price and any other supporting information that is appropriate for release to the public, available to the public when cash settlement is accomplished by the derivatives clearing organization. If the cash settlement price is based on cash prices that are obtained from non-public sources (e.g., cash market surveys conducted by the designated contract market or by third parties on behalf of the designated contract market), a designated contract market should make available to the public as soon as possible after a contract month's expiration the final cash settlement price as well as any other supporting information that is appropriate or feasible to make available to the public.**

The reference rates are readily available via a number of sources.

**(4) Contract terms and conditions requirements for futures contracts settled by cash settlement.**

**(i) An acceptable specification of the terms and conditions of a cash-settled commodity contract will also set forth the trading months, last trading day, contract size, minimum price change (tick size) and daily price limits, if any.**

Please see Exhibit C for the Contracts' terms and conditions.

**(A) *Commodity Characteristics*: The terms and conditions of a commodity contract should describe the commodity underlying the contract.**

The reference rates are included in the terms and conditions.

**(B) *Contract Size and Trading Unit:*** An acceptable specification of the trading unit would be a contract size that is consistent with customary transactions in the cash market. A designated contract market may opt to set the contract size smaller than that of standard cash market transactions.

The size of the Contracts are consistent with customary transaction sizes in the market.

**(C) *Cash Settlement Procedure:*** The cash settlement price should be reliable, acceptable, publicly available, and reported in a timely manner as described in paragraphs (c)(3)(iv) and (c)(3)(v) of this appendix C.

The cash settlement procedure and an explanation of how, in the context of these Contracts, it is not readily susceptible to manipulation, is described above.

**(D) *Pricing Basis and Minimum Price Fluctuation (Minimum Tick):*** The minimum price increment (tick) should be set a level that is equal to, or less than, the minimum price increment commonly observed in cash market transactions for the underlying commodity. Specifying a futures' minimum tick that is greater than the minimum price increment in the cash market can undermine the risk management utility of the futures contract by preventing hedgers from efficiently establishing and liquidating futures positions that are used to hedge anticipated cash market transactions or cash market positions.

As agreed between counterparties.

**(E) *Maximum Price Fluctuation Limits:*** Designated contract markets may adopt price limits to: (1) Reduce or constrain price movements in a trading day that may not be reflective of true market conditions but might be caused by traders overreacting to news; (2) Allow additional time for the collection of margins in times of large price movements; and (3) Provide a "cooling-off" period for futures market participants to respond to bona fide changes in market supply and demand fundamentals that would lead to large cash and futures price changes. If price-limit provisions are adopted, the limits should be set at levels that are not overly restrictive in relation to price movements in the cash market for the commodity underlying the futures contract. For broad-based stock index futures contracts, rules should be adopted that coordinate with New York Stock Exchange ("NYSE") declared Circuit Breaker Trading Halts (or other market coordinated Circuit Breaker mechanism) and would recommence trading in the futures contract only after trading in the majority of the stocks underlying the index has recommenced.

As agreed between counterparties.

**(F) *Last Trading Day:*** Specification of the last trading day for expiring contracts should be established such that it occurs before publication of the underlying third-party price index or determination of the final settlement price. If the designated contract market chooses to allow trading to occur through the determination of the final settlement price, then the designated contract market should show that futures trading would not distort the final settlement price calculation.

The last trading day will be the maturity date of each contract, which is set by the individual counterparties.

**(G) *Trading Months:*** Trading months should be established based on the risk management needs of commercial entities as well as the availability of price and other data needed to calculate the cash settlement price in the specified months. Specification of the last trading day should take into consideration whether the volume of transactions underlying the cash settlement price would be unduly limited by occurrence of holidays or traditional holiday periods in the cash market. Moreover, a contract should not be listed past the date for which the designated contract market has access to use a proprietary price index for cash settlement.

Payments are settled in accordance with the maturity date of the contract, which is a flexible term.

**(H) *Speculative Limits:*** Specific rules and policies for speculative position limits are set forth in part 150 and/or part 151, as applicable, of the Commission's regulations.

tpSEF will comply with Parts 150 and 151 of the Commission's regulations.

**(I) *Reportable Levels:*** Refer to § 15.03 of the Commission's regulations.

tpSEF will adhere to the applicable reporting levels set forth in § 15.03 of the Commission's regulations.

**(J) *Trading Hours:*** Should be set by the designated contract market to delineate each trading day.

The Contracts are traded twenty-three hours a day from Sunday to Friday Eastern Time. The Contracts are not traded between 5:30 p.m. and 6:30 p.m. Eastern Time.