

**SUBMISSION COVER SHEET**

**IMPORTANT:** Check box if Confidential Treatment is requested

**Registered Entity Identifier Code (optional):** 19-284 (1 of 2)

**Organization:** New York Mercantile Exchange, Inc. ("NYMEX")

**Filing as a:**  DCM  SEF  DCO  SDR

**Please note - only ONE choice allowed.**

**Filing Date (mm/dd/yy):** 07/29/19 **Filing Description:** Amendments to NYMEX/COMEX Rule 703. ("Designations and Obligations of Metal Service Providers") and NYMEX/COMEX Rule 705. ("Metal Warrants") Relating to the Acceptance of Gold Warrants as Performance Bond by CME Clearing.

**SPECIFY FILING TYPE**

**Please note only ONE choice allowed per Submission.**

**Organization Rules and Rule Amendments**

- |                                     |                                     |            |
|-------------------------------------|-------------------------------------|------------|
| <input checked="" type="checkbox"/> | Certification                       | § 40.6(a)  |
| <input type="checkbox"/>            | Approval                            | § 40.5(a)  |
| <input type="checkbox"/>            | Notification                        | § 40.6(d)  |
| <input type="checkbox"/>            | Advance Notice of SIDCO Rule Change | § 40.10(a) |
| <input type="checkbox"/>            | SIDCO Emergency Rule Change         | § 40.10(h) |

**Rule Numbers:** See filing.

**New Product**

**Please note only ONE product per Submission.**

- |                          |                                       |            |
|--------------------------|---------------------------------------|------------|
| <input type="checkbox"/> | Certification                         | § 40.2(a)  |
| <input type="checkbox"/> | Certification Security Futures        | § 41.23(a) |
| <input type="checkbox"/> | Certification Swap Class              | § 40.2(d)  |
| <input type="checkbox"/> | Approval                              | § 40.3(a)  |
| <input type="checkbox"/> | Approval Security Futures             | § 41.23(b) |
| <input type="checkbox"/> | Novel Derivative Product Notification | § 40.12(a) |
| <input type="checkbox"/> | Swap Submission                       | § 39.5     |

**Official Product Name:**

**Product Terms and Conditions (product related Rules and Rule Amendments)**

- |                          |   |                      |
|--------------------------|---|----------------------|
| <input type="checkbox"/> | Certification   | § 40.6(a)            |
| <input type="checkbox"/> | Certification Made Available to Trade Determination     | § 40.6(a)            |
| <input type="checkbox"/> | Certification Security Futures                          | § 41.24(a)           |
| <input type="checkbox"/> | Delisting (No Open Interest)                            | § 40.6(a)            |
| <input type="checkbox"/> | Approval  | § 40.5(a)            |
| <input type="checkbox"/> | Approval Made Available to Trade Determination          | § 40.5(a)            |
| <input type="checkbox"/> | Approval Security Futures                               | § 41.24(c)           |
| <input type="checkbox"/> | Approval Amendments to enumerated agricultural products | § 40.4(a), § 40.5(a) |
| <input type="checkbox"/> | "Non-Material Agricultural Rule Change"                 | § 40.4(b)(5)         |
| <input type="checkbox"/> | Notification  | § 40.6(d)            |

**Official Name(s) of Product(s) Affected:**

**Rule Numbers:**

July 29, 2019

**VIA ELECTRONIC PORTAL**

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

**Re: CFTC Regulation 40.6(a) Certification. Notification Regarding Amendments to NYMEX/COMEX Rule 703. (“Designation and Obligations of Metal Service Providers”) and Rule 705. (“Metal Warrants”) Relating to the Acceptance of Gold Warrants as Performance Bond by CME Clearing. NYMEX Submission 19-284 (1 of 2)**

Dear Mr. Kirkpatrick:

Pursuant to Commodity Futures Trading Commission (“CFTC” or “Commission”) Regulation 40.6(a), New York Mercantile Exchange, Inc. (“NYMEX”), and Commodity Exchange, Inc. (“COMEX”), each in their capacities as a designated contract market (“DCM”) (each an “Exchange” and collectively, the “Exchanges”) hereby notify the Commission that they are self-certifying amendments to NYMEX/COMEX Rules 703. (“Designation and Obligations of Metal Service Providers”) and 705. (“Metal Warrants”) in order to facilitate the acceptance of COMEX gold warrants (“gold warrants”) by Chicago Mercantile Exchange Inc., in its capacity as a derivatives clearing organization (“DCO”) (“CME Clearing”) (collectively, the “Rule Amendments”). The Rule Amendments shall be self-certified on Monday, August 12, 2019 for trade date Tuesday, August 13, 2019 and effective and implemented later in 2019. The Exchanges will advise the marketplace and the Commission of such date closer to implementation.

In CME Submission 19-283 also dated July 29, 2019, Chicago Mercantile Exchange Inc., in its capacities as both a DCM and a DCO, The Board of Trade of the City of Chicago, Inc., (“CBOT”), NYMEX and COMEX self-certified amendments to CME, CBOT, NYMEX/COMEX Rule 820. (“Performance Bonds”) to permit clearing members to deposit COMEX gold warrants (“gold warrants”) with CME Clearing as acceptable performance bond in the House origin. In this submission, the Exchanges are self-certifying amendments to NYMEX/COMEX Rules 703. and 705. in order to facilitate the use of gold warrants as such collateral. For example, under Rule 703., metal is currently classified either as “eligible” (i.e., metal that is acceptable for delivery against a metal futures contract for which a warrant has not been issued) or “registered” (i.e., eligible metal for which a warrant has been issued). The Exchanges propose to amend Rules 703. to add a reference to “pledged” metal, and to define this term as registered metal for which the warrant that has been issued is on deposit with CME Clearing for performance bond. In addition, the Exchanges propose to amend Rule 705. to clarify that: (x) clearing members that have deposited gold warrants as performance bond with CME Clearing may not use these warrants to satisfy their delivery obligations; and (y) gold warrants that are deposited with CME Clearing as performance bond cannot be cancelled without the consent of CME Clearing.

The Exchanges reviewed the DCM core principles (collectively, the “Core Principles”) as set forth in the Commodity Exchange Act (“CEA” or “Act”) and identified that the rule amendments may have some bearing on the following Core Principles:

- DCM Core Principle 7 – Availability of General Information. The Rule Amendments will be publicly available on the CME Group website. In addition, the Exchanges will release a notice to the marketplace regarding the Rule Amendments before they become operational.

Exhibit A, which is attached hereto, sets forth the Rule Amendments with additions underlined and deletions struck through.

The Exchanges certify that the rule amendments comply with the Act and regulations thereunder. There were no substantive opposing views to this action.

Notice of this submission has been concurrently posted on CME Group's website at <http://www.cmegroup.com/market-regulation/rule-filings.html>.

If you require any additional information regarding this submission, please contact the undersigned at 212-299-2200 or via e-mail at [CMEGSubmissionInquiry@cmegroup.com](mailto:CMEGSubmissionInquiry@cmegroup.com).

Sincerely,

/s/ Christopher Bowen  
Managing Director & Chief Regulatory Counsel

Attachment: Exhibit A – NYMEX/COMEX Rules 703. (“Designations and Obligations of Metal Service Providers”) and 705. (“Metal Warrants”) (blackline format)

## EXHIBIT A

### **NYMEX/COMEX Rulebook Chapter 7 ("Delivery Facilities and Procedures")**

(additions underlined; deletions ~~struck through~~)

#### **703. Designation and Obligations of Metal Service Providers**

##### **703.A. Conditions for Approval**

Depositories for the storage of gold, silver, platinum and/or palladium, and warehouses for the storage of aluminum, copper, lead and/or zinc, (hereafter "facilities") may be declared regular for delivery with the approval of the Exchange. Persons operating facilities who desire to have such facilities made regular for delivery under the Rules of the Exchange shall make application for an initial Declaration of Regularity on a form prescribed by the Exchange prior to May 1 of an odd-numbered year, for a two-year term beginning July 1 of that year, and at any time during the current term for the balance of that term.

Applications for a renewal of regularity shall be made prior to May 1 of odd-numbered years for the respective years beginning July 1 of those years, and shall be on the same form.

Facilities that desire to increase their regular capacity during a current term shall make application for the desired amount of total regular capacity on the same form.

Initial regularity and increases in regularity for delivery against a listed futures contract shall be effective either thirty days after the Exchange posts a notice that a bona fide application has been received or the day after the application is approved by the Exchange, whichever is later.

Regular facilities that wish to have their regular capacity space decreased shall file with the Exchange a written request for such decrease and such decrease shall become effective once a notice has been posted by the Exchange.

The Exchange may establish such requirements and conditions for approval of regularity as it deems necessary. The application for regularity prescribed by the Exchange shall set forth conditions of regularity as well as other agreements with which the operator of the regular facility shall comply. In addition to any conditions and agreements contained in such application or in the relevant product chapter, the following shall constitute conditions for regularity and requirements with which the operator of a regular facility shall comply:

- (1) The facility shall provide such guarantees, bonds or other financial instruments to the Exchange as may be required to guaranty the performance of its obligations pursuant to these Rules and any conditions set forth in the conditions for approval.
- (2) On an annual basis, the facility shall provide the Exchange with copies of audited financial statements of the facility, and its parent company (as applicable) within 90 days of the firm's year end. Financial statements must be audited in accordance with U.S. Generally Accepted Accounting Principles or other international financial standards as deemed acceptable by the Exchange. Additionally, the facility must provide the Exchange with notice of any substantial reduction in capital as compared to the most recent filing of a financial report.
- (3) No depository or copper warehouse shall be declared regular for the storage of a metal unless it has in force and effect all-risk insurance against loss of the metal in such amount, issued by such insurance companies, and upon such terms and conditions as are satisfactory to the Exchange. No aluminum, lead or zinc warehouse shall be declared regular for the storage of metal unless it has in force and effect warehouseman's legal liability insurance issued by such insurance companies and upon such terms and conditions as are satisfactory to the Exchange.

All policies evidencing such facility insurance shall provide for at least ninety (90) days prior written notice, to the Exchange, of cancellation, change in the policy terms and/or premiums. The continued maintenance of such facility insurance shall be a condition to the continued declaration of regularity. On an annual basis, all facilities must provide to the Exchange documents sufficient to satisfy the Exchange that the required insurance is in full force and effect.

- (4) The facility shall be open at all times to inspection by any representative of the Exchange, the CFTC or the U.S. Department of Justice. The facilities shall make such reports, keep such records, and permit such visitation as the Exchange and/or the CFTC may prescribe. Such books and records shall be kept for a period of five (5) years from the date thereof or for a longer period if the Exchange and/or the CFTC shall so direct, and such books and records shall be available to inspection by any representative of the Exchange, the CFTC or the U.S. Department of Justice.
- (5) The facility shall permit the Exchange, at any time, to examine any and all books and records of the facility, for the purpose of ascertaining the stocks relating to metal which may be on hand. The Exchange shall have the authority

to determine the quantity of metal in the facility and to compare the books and records of the facility with the records of the Exchange.

- (6) The facility, at its sole cost and expense, shall have conducted by an independent auditor an annual audit of inventory and inventory reporting to the Exchange which shall be in compliance with the procedures established by the Exchange. Each audit report shall be filed with the Exchange within thirty (30) days of the date of the completion of the audit.
- (7) The facility shall be required to report inventory to the Exchange as prescribed herein. The inventory shall include eligible, pledged and registered metal. Eligible metal shall mean all such metal that is acceptable for delivery against the applicable metal futures contract for which a warrant has not been issued. Registered metal shall mean an eligible metal for which a warrant has been issued. Pledged metal shall mean registered metal for which the warrant that has been issued is on deposit at the Clearing House as performance bond. All information pursuant to this section shall be transmitted to the Registrar no later than 2:00 p.m. or as prescribed by the Registrar's Office. for gold stock for delivery against the Gold Kilo futures contract, 6:00 p.m. local Hong Kong time, on the business day following the day on which the facility comes into possession of relevant information. In addition to containing all relevant information for the preceding business day, notifications pursuant to this section sent by 2:00 p.m., for gold stock for delivery against the Gold Kilo futures contract, 6:00 p.m. local Hong Kong time, on a Tuesday shall include all relevant information for the last business day as well as the Saturday and Sunday immediately preceding the Tuesday on which the notification is made.

In addition, on a daily basis, the facility shall provide, in an Exchange-approved format, the following information regarding its stocks:

- a. The total quantity of registered metal stored at the facility.
  - b. The total quantity of pledged metal stored at the facility.
  - c. The total quantity of eligible metal stored at the facility.
  - d. The quantity of eligible metal and registered metal received and shipped from the facility.
- (8) All officers, directors, employees and agents of the facility shall be prohibited from revealing any information regarding customers who have dealings with the facility or regarding metal deposits or withdrawals to any persons or firms except as permitted by the Exchange.

In the event the facility or any of its respective parent, subsidiaries or affiliates, engage in any trading activity, whether directly or indirectly, in the metals contract(s) for which the facility has received approval for regularity, the facility shall institute controls to protect the confidentiality of the users of the facility.

On an annual basis, the facility, at its sole cost and expense, shall have conducted by an independent auditor acceptable to the Exchange, an annual audit of the controls in place between the regular facility and any party who engages in trading activity, whether directly or indirectly affiliated with the facility. Such audit shall be carried out in accordance with such standard as deemed acceptable by the Exchange. Such audit shall be filed with the Exchange upon completion of the audit, not to exceed 90 days from the firm's year-end.

- (9) The facility shall not engage in unethical or inequitable practices, and shall comply with all applicable federal, state and local laws and regulations and the Rules of the Exchange.
- (10) The facility is not required to own the storage space and may lease the storage space upon such terms and conditions as are satisfactory to the Exchange. The facility may also enter into a service arrangement pursuant to which an agent or contractor performs the daily operations of the storage facility upon such terms and conditions as are satisfactory to the Exchange. The facility shall be responsible for the conduct of its agents and contractors.
- (11) The depository shall provide a fully secured indoor facility for the storage of precious metal, as acceptable to the Exchange. The depository for gold, platinum and palladium must be accessible by armored car. The depository for gold deliverable against the Gold futures (GC) contract must qualify and be designated a weighmaster and must be located within a 150-mile radius of the City of New York. The depository for gold deliverable against the Gold Kilo futures (GCK) contract must be located in Hong Kong Special Administrative Region of the People's Republic of China.
- (12) The warehouse regular for delivery of copper, lead and zinc shall provide a fully secured indoor facility for the storage of copper, lead and zinc, as acceptable to the Exchange. The warehouse regular for delivery of copper must have direct unobstructed access to both a truck bay and rail. The warehouse regular for delivery of aluminum must consist of designated indoor and outdoor fully secured storage facilities. The warehouse regular for delivery of aluminum, lead and zinc must have direct unobstructed access to a truck bay and/or rail. The warehouse regular for delivery of aluminum, lead and zinc must also qualify and be designated a weighmaster.
- (13) Copper warehouses must be located in the Continental United States. Zinc, aluminum and lead warehouses can be located in the Continental United States, the European Union and/or Asia.
- (14) The facility shall promptly advise the Exchange of any damage to metal held in store by it, whenever such damage shall occur to an extent that will render the metal undeliverable.

The Exchange, in its sole discretion, may determine not to approve facilities for regularity, or for increases in regular capacity of existing regular facilities, regardless of whether such facilities meet the preceding requirements and conditions. Some factors that the Exchange may, but is not required to, consider in exercising its discretion include, among others, whether warrants issued by such facilities, if tendered in satisfaction of futures contracts, might be expected to adversely affect the price discovery function of futures contracts or impair the efficacy of futures trading in the relevant market, or whether the currently regular capacity provides for an adequate deliverable supply.

The Exchange shall designate and approve the metal brands deliverable against the metals futures contracts. Such brands must be produced by an Exchange approved producer and display the unique brand mark of the approved producer's specified facility that created such brand of metal.

The Exchange shall designate and approve metal producers whose function shall be a refiner or smelter whose products meet all Exchange brand requirements and metals specifications as prescribed herein or in the respective metal futures contract rule chapters and are acceptable for delivery against the applicable metal futures contract. A gold producer must also comply with current London Bullion Market Association (LBMA) Responsible Gold Guidance in order for such gold producer to obtain and maintain Exchange approval for delivery against any of the Exchange's physically delivered gold futures contracts.

The Exchange shall designate assayers for metals deliverable against the metals futures contracts. Exchange approved assayers shall verify the metallurgical assay of Exchange approved metal brands in order to maintain the integrity of said brands deliverable against the metal futures contracts. In the event that the metallurgical assay of any brand shall be questioned, the Exchange shall refer the matter to said assayers.

The Exchange shall designate and approve an armored car company as a carrier whose function is to provide for the secure transportation of gold, platinum and palladium and shall maintain a chain of integrity for each such metal, as described in the applicable metals futures contract rule chapters.

The Exchange shall designate and approve a weighmaster whose function is to verify the weight of registered aluminum, copper, lead, gold, silver and zinc.

A service provider shall mean an assayer, carrier, producer, depository, warehouse or weighmaster designated, approved or declared regular by the Exchange. The Exchange, in its sole discretion, may determine not to approve service providers regardless of whether such service providers meet the preceding requirements and conditions.

Service providers shall be subject to the Rules of the Exchange, the disciplinary procedures set forth in Chapter 4, and the arbitration procedures set forth in Chapter 6, and shall abide by and comply with the terms of any disciplinary decision imposed or any arbitration award issued against it pursuant to the Rules of the Exchange.

Service providers shall consent to the disciplinary jurisdiction of the Exchange for five (5) years after such regularity lapses, for conduct which occurred while the facility was regular.

The service provider shall immediately notify the Exchange, in writing of any actual change in control or ownership.

The service provider represents and warrants that all of the information in its application for approval or regularity is accurate. The service provider agrees that it has a continuing obligation to promptly notify the Exchange of any change in the information contained therein.

\* \* \*

## **705. Metal Warrants**

### **705.A. Procedures for the Issuance of Warrants**

A warrant shall mean a document of title under Article 7 of the Uniform Commercial Code ("UCC") issued by a facility demonstrating that the referenced quantity of the covered metal, stored in the facility referenced thereon, meets the specifications of the applicable metal futures contract.

All warrants issued by a facility must be issued in the name of the clearing member (warrant holder) and must be in a format approved by the Exchange. A clearing member shall retain documentation that allows the clearing member to take possession of metal and transfer possession to the owner of the metal. Warrants shall be lettered or numbered consecutively by each facility and no two warrants for the same metal shall bear an identical combination of letters and/or numbers. If letters are used, they must not exceed three (3) characters and if used in combination with numbers, they must precede the numbers. The numbers must not exceed 7 digits.

1. Within three (3) business days from receipt of any metal at a facility, the facility must (a) determine such metal's eligibility, (b) advise the owner if the metal is determined to be not eligible, and (c) if requested by the owner and provided the metal meets the contract specifications, issue a warrant. In addition, upon receipt of the 100 troy ounce gold bar by the depository for delivery against the Gold futures contract, the depository shall weigh each 100 troy ounce gold bar in the lot measured to 1/100 of a troy ounce (two decimal points). In accomplishing such measurement, each bar shall be weighed to the nearest 1/1000 of a troy ounce (three decimal points); weights of 4/1000 of a troy ounce or less shall be rounded down to the nearest 1/100 of a troy ounce and weights of 5/1000

of a troy ounce or more shall be rounded up to the nearest 1/100 of a troy ounce. If, due to capacity limitations or for any other reason, a facility is unable to meet such requirements, the facility shall notify the Exchange immediately and shall describe the reason(s) for such delay.

2. In issuing a warrant, facility shall be responsible for (a) verifying that the metal meets all of the specifications for the product in accordance with the product's terms and conditions as stated in the Exchange Rules, (b) verifying that the metal is of an approved brand, and (c) entering all applicable information into the electronic delivery system. Additionally, in issuing a warrant for delivery against the Gold Kilo futures contract, the depository must confirm that the fineness, serial number and weight inscribed on the 1 kilogram gold bar match the fineness, serial number and weight of the gold indicated on the bar list provided by the approved producer.
3. A warrant shall be an electronic document, that is a transferable record under Article 3 of the Uniform Electronic Transactions Act or any comparable applicable law, and a document of title under Article 7 of the UCC, in a form approved by the Exchange and issued in compliance with this Rule, and shall be supported by such paper or other tangible documents as specified in this Rule. The facility shall enter in the electronic delivery system a reference to each paper or other tangible document(s) that is related to the warrant as specified in this Rule.
4. Warrants shall not be issued for more than or less than one contract unit. Each contract unit shall be delivered from a single facility. A warrant issued for aluminum shall be from a single brand and shall be made up exclusively of the deliverable grades in one of the three shapes as prescribed in the Aluminum futures contract Rules. A warrant issued for copper, lead or zinc shall be from a single brand. A warrant may be issued for gold, silver, platinum or palladium that co-mingles brands, provided such co-mingled brands are stored within the same facility.
5. A warrant shall be of unlimited duration and remain valid until cancelled by the facility that issued it.
6. Notwithstanding anything to the contrary herein, any warrant that is on deposit with the Clearing House as performance bond pursuant to Rule 820 may not be used to satisfy any delivery obligations hereunder.
76. The facility shall be solely responsible for insuring that no duplicate warrants are issued, printed or released by it.
87. In the event that any paper or other tangible document that supports a warrant has been damaged, lost, stolen or destroyed, facility shall issue a replacement document upon completion of its procedures for the replacement thereof.

#### **705.B. Procedures for the Cancellation of Warrants**

A warrant may be cancelled only by the facility that issued it and only upon endorsement from the clearing member to such facility in accordance with these Rules. Notwithstanding the foregoing, a warrant that is on deposit with the Clearing House as performance bond may not be cancelled until the warrant is released back to the Clearing Member with the consent of the Clearing House.

Upon request to the clearing member by the owner of the metal for delivery of a metal, the clearing member shall endorse in the electronic delivery system with delivery instructions ("the account of") and shall, upon request by the owner, issue to the owner a physical confirmation of such endorsement.

A facility shall have and maintain in fireproof secure document storage until five (5) years following cancellation of the applicable warrant, any documentation associated with such cancelled warrant as required by the metal futures contract.