

**SUBMISSION COVER SHEET**

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

Registered Entity Identifier Code (optional): 19-313 (4 of 5)

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): August 14, 2019 Filing Description: Amendments to CME Rulebook Chapters 600 and 8-F and CME, CBOT, NYMEX/COMEX Rule 900.

**SPECIFY FILING TYPE**

Please note only ONE choice allowed per Submission.

**Organization Rules and Rule Amendments**

- Certification § 40.6(a)
- Approval § 40.5(a)
- Notification § 40.6(d)
- Advance Notice of SIDCO Rule Change § 40.10(a)
- SIDCO Emergency Rule Change § 40.10(h)

Rule Numbers: See filing.

**New Product**

Please note only ONE product per Submission.

- Certification § 40.2(a)
- Certification Security Futures § 41.23(a)
- Certification Swap Class § 40.2(d)
- Approval § 40.3(a)
- Approval Security Futures § 41.23(b)
- Novel Derivative Product Notification § 40.12(a)
- Swap Submission § 39.5

**Official Product Name:**

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

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

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

Rule Numbers:

August 14, 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 CME Rulebook Chapters 600 ("Cleared OTC Non-Deliverable Forward FX Products") and 8-F ("Over-the-Counter Derivative Clearing") and CME, CBOT, NYMEX/COMEX Rule 900. ("Categories of Clearing Members"). NYMEX Submission No. 19-313 (4 of 5)**

Dear Mr. Kirkpatrick:

Pursuant to Commodity Futures Trading Commission ("CFTC" or "Commission") Regulation 40.6(a), Chicago Mercantile Exchange Inc. ("CME"), in its capacities as both a designated contract market ("DCM") ("CME Exchange") and a derivatives clearing organization ("DCO"), The Board of Trade of the City of Chicago, Inc. ("CBOT"), New York Mercantile Exchange, Inc. ("NYMEX"), and Commodity Exchange, Inc. ("COMEX") (collectively, the "Exchanges") hereby notify the CFTC that they are self-certifying amendments to CME, CBOT, and NYMEX/COMEX Rule 900. ("Categories of Clearing Members") and CME Rulebook Chapters 600 ("Cleared OTC Non-Deliverable Forward FX Products") and 8-F ("Over-the-Counter Derivative Clearing") (collectively, the "Rule Amendments") to provide further clarity regarding over-the-counter ("OTC") clearing member categories and to be effective August 29, 2019.

CME Rule Chapter 8-F contains rules relevant to OTC Derivatives Clearing Members. CME proposes revisions to clarify the membership criteria for firms that seek to directly clear OTC FX instruments without first becoming a CME Exchange Clearing Member. Revisions to CME Rule 8F002 confirm that an applicant can become an OTC FX Clearing Member without first becoming a CME Exchange Clearing Member. This approach is consistent with CME's approach to IRS and, formerly, CDS, Clearing Member applicants. To clarify the application of CME rules to such OTC FX-only Clearing Members, further revisions to CME Rule 8F002 establish that every OTC FX Clearing Member is subject to the CME Rules, including disciplinary and arbitration provisions. The revisions to CME Rule 60002 amend the definition of "FX Clearing Member" for consistency with CME Chapter 8-F references. In addition, CME proposes revisions in Chapter 8-F to update references and terms.

Revisions to CME, CBOT, and NYMEX/COMEX Rule 900. specify, for the avoidance of doubt, the Exchanges' right to establish categories of clearing membership. These rule revisions are intended to clarify existing powers and practices and will not impact Exchange operations.

The aforementioned amendments do not substantively alter the rights, obligations or operations of the Exchanges.

The Exchanges reviewed the DCO core principles ("DCO Core Principles") and the DCM core principles ("DCM Core Principles") as set forth in the Commodity Exchange Act ("CEA" or the "Act") and identified that the Rule Amendments may have some bearing on the following principles:

- DCO Core Principle C - Participant and Product Eligibility: The Rule Amendments are consistent with the requirement to establish membership eligibility criteria that are objective and publicly disclosed.
- DCO Core Principle L – Public Information and DCM Core Principle 7 – Availability of General Information: The rulebook chapter changes will be added to the publicly available Rulebooks available on the CME Group website. In addition, the Exchanges will release a notice to the marketplace regarding the amendments in advance of the effective date which will also be posted on the CME Group website.

Exhibits A through C, which are attached hereto, set forth the Rule Amendments, with additions underscored and deletions ~~overstruck~~.

The Exchanges certify that this submission has been concurrently posted on the CME Group website at <http://www.cmegroup.com/market-regulation/rule-filings.html>. There were no substantive opposing views to the Rule Amendments.

Should you have any questions concerning the above, 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

Attachments: Exhibit A: Amendments to CME Rulebook Chapter 600 (blackline format)  
Exhibit B: Amendments to CME Rulebook Chapter 8-F (blackline format)  
Exhibit C: Amendments to CME, CBOT, and NYMEX/COMEX Rule 900. (blackline format)

**Exhibit A**

**CME Rulebook  
Chapter 600  
Cleared OTC Non-Deliverable Forward FX Products**

(additions are underscored; deletions are ~~struck through~~)

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**60002. DEFINITIONS**

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**FX Clearing Member**

An OTC FX ~~CME~~-Clearing Member that is authorized to submit FX Products to CME Clearing for clearing pursuant to these Rules.

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## Exhibit B

### **CME Rulebook Chapter 8-F Over-the-Counter Derivative Clearing**

(additions are underscored; deletions are ~~struck through~~)

#### **8F001. SCOPE OF CHAPTER**

This chapter sets forth the rules governing clearing and settlement of all products, instruments, and contracts in Over-The-Counter Derivatives, including, but not limited to, swaps and forward rate agreements, that the Clearing House has designated as eligible for clearing. OTC Clearing Members are also subject to all applicable Rules in the CME, CBOT, ~~and/or~~ NYMEX and/or COMEX Rulebooks that apply to CME, CBOT, NYMEX or COMEX Clearing Members as applicable, unless an exemption from such rule has been granted by staff or the Clearing House Risk Committee.<sup>+</sup> In the event there is a conflict between a rule in this Chapter 8-F and another rule in the Rulebooks, the Chapter 8-F Rule shall supersede the conflicting rule with respect to OTC Derivatives transactions.

#### **8F002. DEFINITIONS**

##### **BASE OTC CLEARING MEMBER**

A Base OTC Clearing Member is an entity that has been approved by CME to clear OTC Derivatives that are Base Guaranty Fund Products.

##### **OTC FX CLEARING MEMBER**

An OTC FX Clearing Member is a Clearing Member that has been approved by CME to clear OTC FX Products, as defined in CME Rule 60002. Unless an OTC FX Clearing Member is also approved to clear other Base Guaranty Fund Products, such entity is not required to own, hold or lease any Exchange membership solely as a precondition to OTC FX Clearing Membership. Notwithstanding the foregoing, an OTC FX Clearing Member that does not hold or lease one or more Exchange memberships shall continue to be responsible for violations of Exchange Rules as a Base OTC Clearing Member and agrees to have any disputes that relate to or arise out of any transaction cleared by the Exchange during the time in which the entity is approved as a Base OTC Clearing Member resolved in accordance with Exchange Rules, including but not limited to the arbitration provisions of Chapter 6. For avoidance of doubt, each OTC FX Clearing Member is a 'member' as defined at Rule 601.A.4, a Base OTC Clearing Member and an OTC Clearing Member.

##### **OTC CLEARING MEMBER**

An OTC Clearing Member is an entity that has been approved by CME to clear OTC Derivatives. An OTC Clearing Member that is not also a CME, CBOT, NYMEX or COMEX Clearing Member may not clear CME, CBOT, NYMEX or COMEX transactions, as applicable, other than OTC Derivatives.

Subject to approval by CME Clearing or the Clearing House Risk Committee, CME, CBOT, NYMEX and COMEX Clearing Members may be afforded full rights and privileges to trade and clear OTC Derivatives that are listed for clearing by CME, CBOT, NYMEX or COMEX, as applicable. Such CME, CBOT, NYMEX and COMEX Clearing Members shall then be considered "OTC Clearing Members," as applicable, for purposes of the Rules. This chapter shall be applicable to entities that are approved as "OTC Clearing Members" and CME, CBOT, NYMEX and COMEX Clearing Members approved to clear OTC Derivatives.

##### **OTC DERIVATIVES**

~~Agreements, contracts, or transactions excluded from the Commodity Exchange Act by section 2(c), 2(d), 2(f), or 2(g) of the CEA, or by U.S.C. §§27 to 27f, or exempted under section 4(c) of the CEA, or other over-the-counter derivative instruments (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. §4421(2)).~~

Agreements, contracts or transactions that the Clearing House clears as 'swaps', as that term is defined under the Commodity Exchange Act.

##### **OTC DERIVATIVE PRODUCT CATEGORY**

Each category and sub-category of OTC Derivatives as determined by the Clearing House for default management purposes.

##### **CLOSE-OUT AMOUNT**

The amount of losses and costs of the CME that are or would be incurred by the CME, net of any gains

<sup>+</sup> Revised July 2008.; December 2016

incurred in replacing, or in providing the CME the economic equivalent of the material terms of the terminated OTC Derivatives, net of any gains incurred (if such net amount is positive), including (a) the payments and deliveries that would, absent termination, have been required after the termination date, (b) any option rights in respect of the terminated transactions, (c) all unpaid amounts due to the CME under the terminated transaction ~~with the relevant Clearing Member~~ less all unpaid amounts due to ~~the Bankrupt~~~~such Clearing~~ Member under the terminated transactions and (d) all related fees, costs and expenses incurred by the CME.

**8F003. CLASSIFICATION OF POSITIONS<sup>2</sup>**

OTC Derivatives submitted for clearing by an OTC Clearing Member for its proprietary account shall be assigned to and held in a proprietary account of such Clearing Member. All collateral deposited as performance bond to support positions in the proprietary account of an OTC Clearing Member shall be deemed the property of the OTC Clearing Member and shall be subject to the Clearing House's lien and security rights as described in Rule 8F008.

OTC Derivatives submitted for clearing for the account of a Clearing Member's Cleared Swaps Customers shall be assigned and held in a Cleared Swaps Customer Account of such Clearing Member. All Clearing Members must comply with the requirements set forth in CME Rule 971 for such Cleared Swaps Customer Accounts.

Notwithstanding the foregoing, if the CFTC issues an order permitting OTC Clearing Members to commingle customer funds used to margin particular OTC Derivatives that are cleared by CME with other funds held in CEA Section 4d(a)(2) customer segregated accounts, such positions may be held in the customer segregated accounts of an OTC Clearing Member and, if so held, all collateral deposited as performance bond to support such positions and all settlement variation payments made to such accounts shall be commingled with similar property of regulated customers. All Clearing Members must comply with the requirements set forth in CME Rule 971 for such customer segregated accounts.

**8F004. OTC CLEARING MEMBER OBLIGATIONS AND QUALIFICATIONS<sup>3</sup>**

OTC Clearing Members are subject to all relevant CME, CBOT, ~~and~~ NYMEX ~~and~~ COMEX Rules and the Clearing House Manual unless an exemption has been granted by staff or the Clearing House Risk Committee. OTC Clearing Members must execute all agreements and documents required by the Clearing House. The qualifications and requirements to become an OTC Clearing Member are set forth below.

~~An OTC Clearing Member-CME, CBOT, NYMEX and COMEX Clearing Member~~ clearing OTC Derivatives must satisfy the requirements set forth below.

1. An OTC Clearing Member must be in "good standing" under each applicable regulatory regime to which it is subject at the time it applies for OTC clearing membership and it must maintain its good standing status while it is an OTC Clearing Member.
2. An OTC Clearing Member must be in compliance with all applicable regulatory capital requirements and an OTC Clearing Member must maintain minimum capital of:
  - i. \$5 million if it clears only agricultural OTC Derivatives; and
  - ii. \$50 million if it clears other OTC Derivatives, excluding ~~credit default swaps and~~ interest rate swaps.
3. [Reserved]
4. [Reserved]
5. [Reserved]
6. An OTC Clearing Member and an OTC Clearing Member applicant shall be engaged in or demonstrate immediate capacity to engage in the conduct of the business of an OTC Clearing Member.
7. [Reserved]
8. An OTC Clearing Member must comply with the financial requirements set forth in CME Rule 970. However, if the OTC Clearing Member is regulated by another regulatory authority, then it shall submit to CME annual audited financial statements as well as all unaudited financial statements provided to its primary regulator within five days after such statements are provided to its regulator. All financial statements shall be in the English language.
9. The books and records of an OTC Clearing Member regarding OTC Derivatives cleared by the Clearing House shall be made promptly available for inspection upon request by CME and such books and records shall be subject to reasonable standards of confidentiality.
10. Each OTC Clearing Member that is a Futures Commission Merchant shall keep the types of information and records that are described in Section 4g of the Commodity Exchange Act and CFTC

<sup>2</sup> ~~Revised July 2008; November 2008; October 2010.~~

<sup>3</sup> ~~Revised July 2008; January 2009; December 2009; July 2010; July 2011.~~

regulations thereunder including, but not limited to, Regulation 1.35, with respect to all OTC Derivatives submitted for clearing.

11. Each Base OTC Clearing Member shall make at least two traders (one primary and one backup) per OTC Derivative Product Category available to the Clearing House to participate in the Active Base OTC Default Management Committee immediately upon notice from the Clearing House that it is convening the Active Base OTC Default Management Committee for (i) a potential or actual default of a Base OTC Clearing Member and (ii) for OTC Derivative default drill exercises.

Upon acceptance as a Base OTC Clearing Member and upon any update request by Clearing House, each Base OTC Clearing Member shall provide a list of traders that the Base OTC Clearing Member nominates for the Active Base OTC Default Management Committee. Each Base OTC Clearing Member shall make traders available for each OTC Derivative Product Category requested by the Clearing House until the end of the relevant default management process or drill. Any such trader shall have a title at the level of Vice President (or equivalent title) and shall have the minimum level of experience prescribed by the Clearing House from time to time in the relevant OTC Derivatives.

12. Each OTC Clearing Member shall participate in OTC Derivative default drill exercises as prescribed by the Clearing House.

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**8F018. OTC FX OPTIONS INFORMATION SUBMISSIONS**

- Each OTC FX Options Clearing Member shall submit the OTC FX Options Information Submission File on each Business Day at the time specified by the Clearing House for all FX Options required by the Clearing House. The information submitted by an OTC FX Clearing Member in the OTC FX Options Information Submission File shall be consistent with the information used by the OTC FX Options Clearing Member for its internal valuation of OTC FX Options.
- During a calendar month that is not during a Base Cooling Off Period, an OTC FX Options Clearing Member will be assessed a penalty per Failed OTC FX Options Submission based on the following table:

# of Failed OTC FX Options Submissions for that month	Penalty per Failed OTC FX Options Submission
1	0
2	\$5,000
3	\$25,000
4+	\$50,000

During a Base Cooling Off Period, an OTC FX Options Clearing Member will be assessed a penalty per Failed OTC FX Options Submission based on the following table:

# of Failed OTC FX Options Submissions for that month	Penalty per Failed OTC FX Options Submission
1	0
2	\$15,000
3	\$75,000
4+	\$150,000

Penalties shall be assessed monthly and payable with the Base Guaranty Fund payment cycle. In addition, the OTC FX Options Clearing Member may be referred to the Clearing House Risk Committee for further discipline

- As used herein:

“Failed OTC FX Options Submission” means a failure to submit (i) all or a portion of an OTC FX Options Information Submission File at or prior to the time designated by the Clearing House or (ii) the OTC FX Options Information Submission File in the proper format.

“OTC FX Options Clearing Member” means an OTC FX Clearing Member clearing OTC FX Options.

“OTC FX Options Information Submission File” means the file containing the requested market data, internal price levels and such other information as specified by the Clearing House for each moneyness/expiry/currency pair combination.

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## Exhibit C

### **CME, CBOT, and NYMEX/COMEX Rulebooks Chapter 9 Clearing Members**

(additions are underscored)

#### **900. CATEGORIES OF CLEARING MEMBERS**

The Exchange may establish different clearing member categories, including but not limited to OTC Clearing Member categories, and alter the rights and responsibilities of such categories.

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