

SUBMISSION COVER SHEET

IMPORTANT: Check box if Confidential Treatment is requested

Registered Entity Identifier Code (optional): 20-388 (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): 09/29/20 Filing Description: Amendments to CME, CBOT, NYMEX/COMEX Rulebook Chapter 8, and CME Rulebook Chapters 8F and 8G.

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: 802.A, 8F013, 8G802.A

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:

September 29, 2020

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 Rule Amendments to CME, CBOT, NYMEX/COMEX Rulebook Chapter 8, and CME Rulebook Chapters 8F and 8G.
NYMEX Submission No. 20-388 (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”) and a derivatives clearing organization (“DCO” or “CME Clearing”)—and The Board of Trade of the City of Chicago, Inc. (“CBOT”), New York Mercantile Exchange, Inc. (“NYMEX”) and Commodity Exchange, Inc. (“COMEX”) in their capacities as DCMs, (each an “Exchange” and collectively, the “Exchanges”) hereby certify to the Commission amendments to the Exchanges’ Rulebook Chapter 8 (“Clearing House and Performance Bonds”), and CME Rulebook Chapters 8F (“Over-the-Counter Derivative Clearing”) and 8G (“Interest Rate Derivative Clearing”) to establish a confidentiality requirement on recipients of information provided by CME Clearing in connection with its default management processes (“Rule Amendments”). The Rule Amendments will be effective for trade date Wednesday, October 14, 2020.

When managing a default or a liquidation CME Clearing may elect to share details of the relevant portfolio—including position data, customer names or other highly sensitive information—with potential buyers, including Clearing Members, their affiliates or customers, as part of an auction process, sale or other mechanism. The Exchanges’ rulebooks do not expressly establish a confidentiality obligation on market participants with respect to non-public information they receive from CME Clearing in connection with its default management or liquidation processes. Practical safeguards exist today, including non-disclosure agreements with Clearing Members that cover a range of service lines and activities. However, coverage of these agreements differs by firm.

Disclosure of portfolio details or trading based non-public position information received from CME Clearing could adversely impact the liquidation process and the price at which the defaulter’s positions are ultimately closed-out, which in turn raises the risk of loss mutualization to CME Clearing and its non-defaulting Clearing Members. Establishing non-disclosure agreements with all eligible participants ex ante or at the time of a default or liquidation would be burdensome and impracticable. Accordingly, the Exchanges are establishing a uniform confidentiality requirement in their rulebooks for maximum clarity and certainty. We note that these revisions are being adopted out of an abundance of caution; the Exchanges are not aware of any prior information disclosure by a market participant that would have been prohibited under the Rule Amendments.

The Rule Amendments are provided in Exhibit 1 below in blackline format.

The Exchanges reviewed the DCO Core Principles and the DCM Core Principles (collectively, the “Core Principles”) as set forth in the Commodity Exchange Act (“CEA”) and identified that the Rule Amendments may have some bearing on the following Core Principles.

DCO Core Principles

- DCO Core Principle G - Default Rules and Procedures: CME Clearing’s default management plans are designed to mitigate the adverse impacts of a Clearing Member default and contemplate the transfer or liquidation of a defaulted or liquidated Clearing Member’s portfolio(s). CME Clearing may divulge details of each portfolio to participants in order to successfully transfer or liquidate it. The Rule Amendments establish confidentiality protection of information shared in connection with these processes. Confidentiality better ensures the integrity of the portfolio’s pricing by establishing a safeguard against information leakage that could potentially result in worse pricing for the portfolio.
- DCO Core Principle L - Public Information: This Core Principle requires CME Clearing to publicly disclose its rules and procedures for defaults. The Rule Amendments codify requirements associated with CME Clearing’s default management and liquidation processes. The Rule Amendments will be incorporated into the Exchanges’ publicly available rulebook. In addition, CME Clearing will issue an advisory that will be posted on the CME Group website and outline the Rule Amendments.

DCM Core Principles

- DCM Core Principle 7 - Availability of General Information: The Rule Amendments codify requirements associated with CME Clearing’s default management and liquidation processes. The Rule Amendments will be incorporated into the Exchanges’ publicly available rulebook. CME Clearing will issue an advisory that will be posted on the CME Group website and outline the Rule Amendments.

Pursuant to Section 5c(c) of the Act and CFTC Regulation 40.6(a), the Exchanges certify that the Rule Amendments comply with the CEA and the regulations thereunder. There were no substantive opposing views to the Rule Amendments.

The Exchanges certify that this submission has been concurrently posted on the Exchanges’ 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 email at CMEGSubmissionInquiry@cmegroup.com.

Sincerely,

/s/ Christopher Bowen
Managing Director and Chief Regulatory Counsel

Attachment: Exhibit 1 – Amendments to CME, CBOT, NYMEX/COMEX Rulebook

Exhibit 1
Amendments to CME, CBOT, NYMEX/COMEX Rules
(additions underlined; deletions ~~overstruck~~)

CME, CBOT, NYMEX/COMEX Chapter 8
Clearing House and Performance Bonds

802. PROTECTION OF CLEARING HOUSE

802.A. Default by Clearing Member or Other Participating Exchanges

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6. Details of Implementation

While adherence to the provisions of this Rule 802.B shall be mandatory, the detailed implementation of the process of finalizing Losses with respect to a default, including the liquidation, auction or sale of positions or assets of the defaulting clearing member, shall be conducted by the Clearing House in consultation with the Clearing House Risk Committee, with the approval of the Board, and/or such other committee as the Board may designate.

In order to ensure that the process for liquidating open commodity contracts results in competitive pricing, to the extent feasible under market conditions at the time of liquidation, liquidation of open commodity contracts held for a house account or customer account of a defaulting clearing member may occur by one or more of the following methods: (a) book entry that offsets open commodity contracts on the books of the defaulting clearing member; (b) liquidation in the open market; and/or (c) one or more private auctions amongst qualified market participants invited by the Clearing House to submit confidential bids. The Clearing House shall have discretion to select the best bid submitted for any portfolio in an auction, based on the totality of the circumstances. All information received by a Clearing Member, its affiliate or customer in connection with the Clearing House's liquidation and default management processes shall be treated as confidential.

In the event that identical customer commodity contracts are liquidated in the open market on the same date but cannot be liquidated at the same price, unless the Clearing House determines that it would be inappropriate, a weighted average of the liquidation prices for such contracts shall be used in determining the value of the liquidated commodity contracts for each such customer. In the event that open commodity contracts of multiple customers are liquidated in a bulk auction, the net proceeds of such auction shall be allocated on a pro rata basis amongst the affected customers based upon their applicable performance bond requirements for the clearing cycle immediately prior to the default.

CME Chapter 8-F
Over-the-Counter Derivative Clearing

8F013. INSOLVENCY AND LIQUIDATION

In the event of a bankruptcy, ~~or~~ insolvency or liquidation of an OTC Clearing Member or any other clearing member carrying OTC Derivatives in its proprietary or customer accounts, the default Rules and risk management procedures of CME shall apply, including, but not limited to, the provisions in Rule 975. Upon the bankruptcy, ~~or~~ insolvency or liquidation of such a clearing member, the Clearing House will terminate, or offset, any open OTC Derivatives of the bankrupt or insolvent Clearing Member and of its customers, however, the Clearing House shall have discretion to transfer such customer positions to one or more other Clearing Members. The Clearing House may mitigate or eliminate the risks incurred by it as a result of offsetting or terminating such open OTC Derivatives by any one or more of the following means: 1) replace all or a portion of the OTC Derivatives of the defaulting clearing member by entering into a transaction with a solvent clearing member(s); 2) replace all or a portion of the OTC Derivatives of the defaulting clearing member by entering into OTC Derivatives for its own account in the open market; and/or 3) enter into OTC Derivatives (or exchange-traded contracts) to hedge the economic risks imposed on it as a result of offsetting or terminating such OTC Derivatives by any commercially reasonable means. The Clearing House may also replace any OTC Derivatives it enters into to replace or hedge economic risks from any terminated transaction by substituting a transaction with a solvent clearing member(s) that offsets the original terminated transaction. All information received by an OTC Clearing Member, its affiliate or customer in connection with the Clearing House's liquidation and default management processes shall be treated as confidential.

Any Close-out Amount incurred by the Clearing House in liquidating, transferring and establishing, adjusting and/or replacing positions resulting from the clearing member's default will be deducted from the defaulting clearing member's collateral held by CME. In the event the collateral of the defaulting clearing member is not sufficient to satisfy the Close-

Out Amount, the unsatisfied costs will be a claim by the Clearing House against the defaulting clearing member.

CME Chapter 8-G Interest Rate Derivative Clearing

8G802. PROTECTION OF CLEARING HOUSE

8G802.A. Default by IRS Clearing Member

The Clearing House shall establish a separate guaranty fund for IRS Contracts (the "IRS Guaranty Fund"). Each IRS Clearing Member shall contribute to the IRS Guaranty Fund in accordance with the requirements of Rule 8G07. A non-defaulted IRS Clearing Member's deposit to the IRS Guaranty Fund may be applied by the Clearing House in accordance with this Rule 8G802 to mitigate any loss to the Clearing House attributable to IRS Contracts and will not be applied to losses in any other product classes.

1. *Default by IRS Clearing Member*

- (i) If an IRS Clearing Member (i) fails to promptly discharge any obligation to the Clearing House or (ii) becomes subject to any bankruptcy, reorganization, arrangement, insolvency, moratorium, or liquidation proceedings, or other similar proceedings under U.S. federal or state bankruptcy laws or other applicable law, the Clearing House may declare such IRS Clearing Member to be in default. If an Affiliate of an IRS Clearing Member fails to discharge any obligation to the Clearing House and the Clearing House determines that the default by such Affiliate is likely to cause a default of the IRS Clearing Member, the Clearing House may declare such IRS Clearing Member to be in default.

Upon a default, the Clearing House shall act promptly to mitigate any loss caused by such default. The Clearing House may engage in any commercially reasonable transaction to eliminate or reduce the risk created by the default, including but not limited to, entering into hedges, liquidating positions in the market, auctioning or selling a portion or all of the portfolio of the defaulting firm and, if applicable, its customers. The Clearing House shall maintain procedures for managing the default of an IRS Clearing Member (such procedures, the "IRS Default Management Guidelines"). All information received by a Clearing Member, its affiliate or customer in connection with the Clearing House's liquidation and default management processes shall be treated as confidential.

All obligations, costs and expenses incurred thereby shall be an obligation of the defaulted IRS Clearing Member to the Clearing House.

- (ii) Defaults by different IRS Clearing Members will each be considered a separate default event. After an IRS Clearing Member has been declared in default, subsequent failures by such defaulted IRS Clearing Member to discharge any obligation shall be considered part of the same original default and shall not be considered separate default events, unless and until the original default has been fully resolved and such IRS Clearing Member has been restored to good standing or is no longer an IRS Clearing Member.

- (iii) The defaulted IRS Clearing Member shall not take any action that would interfere with the ability of the Clearing House to mitigate the loss or to apply the assets of the defaulted IRS Clearing Member to offset any loss. The defaulted IRS Clearing Member shall not file any action in any court seeking to stay the actions of the Clearing House with respect to the default.

- (iv) A defaulted IRS Clearing Member shall immediately make up any deficiencies in its IRS Guaranty Fund deposit resulting from such default and in any event no later than the close of business on the banking day following demand by the Clearing House.

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