

**SUBMISSION COVER SHEET**

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

Registered Entity Identifier Code (optional): 17-318 (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): October 9, 2017 Filing Description: Amendments to Rule 817 ("Liquidity Facility")

**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:

October 9, 2017

**VIA ELECTRONIC PORTAL**

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

**RE: CFTC Regulation 40.6(a) Certification. Amendments to Rule 817 (“Liquidity Facility”)  
NYMEX Submission No. 17-318 (4 of 5)**

Dear Mr. Kirkpatrick:

Pursuant to Commodity Futures Trading Commission (“CFTC” or “Commission”) Regulation 40.6(a), Chicago Mercantile Exchange Inc. (“CME”), 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 Commodity Futures Trading Commission (“CFTC” or “Commission”) that they are self-certifying amendments to CME/CBOT/NYMEX/COMEX Rule 817 (“Liquidity Facility”), effective on November 2, 2017, consistent with the renewal of the Exchanges’ 364-day committed liquidity facility.

The revisions that the Exchanges are making are intended to clarify existing Rule 817 as follows. First, existing Rule 817 currently provides that the Exchanges may pledge the performance bond deposited by Clearing Members to secure their obligations to lenders under its liquidity facility. While this language is sufficiently broad to include house performance bond and customer performance bond, the Exchanges are clarifying Rule 817 to explicitly provide that their rights under Rule 817 apply to customer segregated and customer cleared swaps collateral, and that such collateral can only be used to obtain liquidity necessary to satisfy customer-related obligations in each respective origin.

Second, existing Rule 817 also provides that performance bond and guaranty fund assets from each product class may only be used to secure liquidity to satisfy obligations relating to the corresponding product class. CFTC regulations do not require this separation by product class to be reflected in the Exchanges’ rulebooks or in their liquidity facility documentation. Instead, the Exchanges track and maintain separate collateral pools by product class on its books and records before and after a draw on the liquidity facility. The Exchanges are therefore deleting sub clauses (x), (y) and (z) from existing Rule 817 so that they may delete this separation mechanism from their liquidity facility documentation, thus permitting them to streamline the manner in which the liquidity facility operates.

Third, the Exchanges are revising existing Rule 817 to describe the movement of customer collateral to the liquidity facility as a “transfer” of collateral, rather than a “pledge.” This terminology is more appropriate with respect to the movement of customer collateral because the Exchanges’ liquidity facility arrangements provide that a lien on such collateral does not attach at the time such collateral is transferred to the liquidity facility lenders but rather at the time such lenders make funds available to the Exchanges in connection with such transfer.

Finally, the Exchanges are revising existing Rule 817 to explicitly state when Clearing Member collateral may be used to obtain liquidity. These circumstances include when a Clearing Member: (x) is unable to

promptly to discharge any obligation to the Clearing House or (y) is suspended or becomes subject to any bankruptcy, reorganization, arrangement, insolvency, moratorium, liquidation or other similar proceedings under U.S. federal or state bankruptcy laws or other applicable law, the Exchanges may use the collateral to obtain liquidity to the same extent that they are permitted to use the collateral to meet any obligation to the Exchanges under Chapters 8, 8F, 8G, 8H, and 9 of their rules. Additionally, the Exchanges are clarifying that guaranty fund collateral may be used to obtain liquidity consistent with Exchange Rules 802.B, 8G802.B, and 8H802.B.

The Exchanges have reviewed the designated contract market and derivatives clearing organization core principles (“Core Principles”) as set forth in the Commodity Exchange Act (“CEA”) and identified the following Core Principles as potentially being impacted:

DCM Core Principle 7 – Availability of General Information: The rule amendments will be posted publicly on the CME Group website in satisfaction of this core principle.

DCM Core Principle 11-Financial Integrity of Transactions: The proposed revisions will ensure the financial integrity of the transactions executed through Exchange facilities and cleared by CME.

DCO Core Principle B – Financial Resources: The proposed revisions clarify the manner in which CME maintain sufficient financial resources and manages their liquidity risks.

DCO Core Principle G – Default Rules and Procedures: The proposed revisions more clearly state the process by which CME would operate to manage events when a clearing member is suspended, insolvent or otherwise defaults on its obligations to the DCO.

DCO Core Principle R – Legal Risk: The proposed revisions enhance CME’s legal framework by clarifying that CME will use customer performance bond in a manner which is consistent with Sections 4d(a) and 4d(f) of the CEA.

The amendments to CME/CBOT/NYMEX/COMEX Rule 817 are reflected in Exhibit A, which sets forth the proposed amendments in blackline format with additions underscored and deletions ~~overstruck~~.

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

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>.

If you require any additional information regarding this submission, please e-mail [CMEGSubmissionInquiry@cmegroup.com](mailto:CMEGSubmissionInquiry@cmegroup.com) or contact Timothy J. Maher at 312-930-2730 or via email at [timothy.maher@cmegroup.com](mailto:timothy.maher@cmegroup.com). Please reference NYMEX Submission No. 17-318 (4 of 5) in any related correspondence.

Sincerely,

/s/Christopher Bowen  
Managing Director and Chief Regulatory Counsel

Attachment: Exhibit A –CME/CBOT/NYMEX/COMEX Rule 817 (blackline format)

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## Exhibit A

### CME/CBOT/NYMEX/COMEX Rulebook Chapter 8

#### Clearing House and Performance Bond

(additions underlined, deletions ~~struckthrough~~)

#### 817. LIQUIDITY FACILITY

~~Assets deposited by a clearing member in satisfaction of guaranty fund deposits and performance bond requirements may also be used to directly secure the Exchange's obligations to its lenders under any The Exchange may enter into liquidity facility entered into by facilities (each a "Liquidity Facility") to convert collateral to cash in any case where the Clearing House can use the Exchange for collateral, pursuant to Chapters 8, 8F, 8G, 8H, and 9 of the purpose Rules of providing liquidity to the Exchange; provided that assets pledged from (x) Base Guaranty Fund deposits, and performance bond associated with Base Guaranty Fund Product Classes shall only be used under this Rule use the cash proceeds to secure meet an obligation to the Clearing House.~~

If a clearing member of CME, CBOT, NYMEX, COMEX or OTC Clearing Member (a) is unable to promptly to discharge any obligation to the Clearing House or (b) is suspended or becomes subject to any bankruptcy, reorganization, arrangement, insolvency, moratorium, liquidation or other similar proceedings under U.S. federal or state bankruptcy laws or other applicable law, collateral deposited by the clearing member in satisfaction of its performance bond and guaranty fund requirements may be used to obtain liquidity to satisfy the clearing member's obligations to the Clearing House as follows: (1) performance bond collateral relating to a clearing member's proprietary account may be used to obtain liquidity to meet obligations arising from Base Guaranty Fund Product Classes, (y) IRS Guaranty Fund deposits and relating to the clearing member's proprietary account, customer segregated account or cleared swaps customer account; (2) performance bond associated with IRS Products shall collateral relating to a clearing member's customer segregated account may only be used under this Rule to secure obtain liquidity with respect to satisfy obligations arising from IRS Products, of such account; and (z) CDS Guaranty Fund deposits and (3) performance bond associated with CDS Products shall deposits relating to a clearing member's cleared swaps customer account may only be used under this Rule to secure obtain liquidity to satisfy obligations arising from CDS Products; provided further that performance bond deposits of a non-defaulting clearing member may only with respect to such account; and (4) guaranty fund collateral may be pledged under this used in the order prescribed by Rules 802.B, 8G802.B and 8H802.B.

In any case where the Rules of the Exchange permit the Clearing House to secure liquidity for amounts assessed against such use guaranty fund collateral deposited by clearing member- members who have not failed to meet an obligation to the Clearing House, the Clearing House may convert collateral held in that Guaranty Fund to cash by means of a Liquidity Facility.

By delivering assets to the Exchange in satisfaction of guaranty fund deposit and performance bond requirements, each clearing member is hereby deemed: (i) to agree that its assets (or its customers' assets, as provided above) may be used transferred by the Exchange to ~~directly secure the Exchange's obligations to obtain liquidity from~~ the Exchange's liquidity lenders and that its assets may become subject to a lien in favor of the Exchange's liquidity lenders or otherwise guarantee the Exchange's obligations and; (ii) to authorize the Exchange, and appoint the Exchange (such appointment being coupled) with an interest as such clearing member's attorney-in-fact, to enter into agreements on its behalf in connection with its assets ~~servicing as security for the Exchange's obligations~~ (or its customers' assets, as provided

above) being transferred to the Exchange's liquidity lenders: and (iii) to acknowledge that the obligations of the Exchange to its ~~the Exchange's~~ liquidity lenders may be greater, and extend for periods of time longer, than the obligations, if any, of such clearing member to the Exchange.

The Exchange, as each clearing member's attorney-in-fact, will have authority to enter into agreements on behalf of each clearing member and in each clearing member's name for the purpose of causing the clearing member's assets ~~to directly secure the Exchange's obligations (or its customers' assets, as provided above)~~ to be transferred to the Exchange's liquidity lenders. Any agreement entered into by the Exchange on behalf of clearing members pursuant to this Rule 817 shall bind each clearing member and will contain provisions, including representations, warranties and covenants, required by lenders under any liquidity facility.

If there is a default under any such liquidity facility, the assets of ~~the clearing members pledged transferred to secure such the Exchange's~~ liquidity facility ~~lenders~~ may be foreclosed upon by ~~the Exchange's~~ liquidity ~~such~~ lenders and applied against the obligations of the Exchange under the related liquidity facility. ~~The clearing~~ Clearing members shall take no action, including but not limited to attempting to obtain a court order, that would interfere with the ability of such liquidity lenders to receive the benefit of their contractual remedies in connection with any such foreclosure or that would controvert or assert the invalidity of any provision of these rules. Each clearing member agrees to sign any document or agreement requested by the Exchange to further document the power of attorney set forth and established by these rules.

The foregoing provisions shall apply without regard to whether a clearing member has been declared to be in default under the Rules.