

**SUBMISSION COVER SHEET**

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

Registered Entity Identifier Code (optional): 24-275 (3 of 4)

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): 06/28/24 Filing Description: Issuance of CME Group Market Regulation Advisory Notice RA2403-5 Concerning Supervisory Responsibilities for Employees and Agents

**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:

June 28, 2024

**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. Issuance of CME Group Market Regulation Advisory Notice RA2403-5 Concerning Supervisory Responsibilities for Employees and Agents.  
NYMEX Submission No. 24-275 (3 of 4)**

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”) are certifying to the Commission the issuance of CME Group Market Regulation Advisory Notice (“MRAN”) RA2403-5 (“RA2403-5”) which provides guidance to parties subject to the jurisdiction of the Exchange concerning their supervisory obligations under Rule 432.W. (“General Offenses”). The MRAN also incorporates through reference Exchange Rules 418. (“Consent to Exchange Jurisdiction”), 433. (“Strict Liability for the Acts of Agents”), 444. (“Payments of Disciplinary Fines, Disgorgement Orders and Restitution”), 501. (“Employees of Members”), and 574. (“Globex Access Restrictions”). This submission shall become effective on July 16, 2024.

Upon a comprehensive routine review of the MRAN on supervisory responsibilities, the Exchanges identified opportunities for clarification of the guidance in connection with market participants’ responsibility to diligently supervise their employees and agents. As such, the following amendments are incorporated into RA2403-5:

- Clarification that parties have a duty to develop and diligently enforce supervisory programs that are reasonably designed to detect and deter violations of Exchange rules;
- Clarification that there is an expectation that market participants’ supervisory programs be commensurate with the party’s business model, organizational structure, geographical coverage, and other factors including the size and complexity of the party’s Exchange-related activities; and
- Addition of a new Frequently Asked Questions (“FAQ”) section that elaborates upon the Exchanges’ expectations of market participants related to their supervisory programs and procedures.

The issuance of RA2403-5 is intended to address common questions regarding regulatory requirements and guidance in connection with supervisory responsibilities. RA2403-5 is attached in Appendix A.

The Exchanges reviewed the designated contract market core principles (“Core Principles”) as set forth in the Commodity Exchange Act (“CEA” or “Act”) and identified that RA2403-5 may have some bearing on the following Core Principles:

**Compliance with Rules:** The Market Regulation Advisory Notice being issued is intended to provide guidance regarding parties’ obligations to supervise their employees and agents as set forth in the Exchanges’ Rules,

**Availability of General Information:** As required by this Core Principle, the Exchanges are publicly issuing RA2403-5 ensure that market participants have updated guidance and information attendant to Rule 432.W. RA2403-5 will also be available on the CME Group website.

Pursuant to Section 5c(c) of the Act and CFTC Regulation 40.6(a), the Exchanges certify that the issuance of RA2403-5 complies with the Act and regulations thereunder. There were no substantive opposing views to this proposal.

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 312.466.7478 or via email at [CMEGSubmissionInquiry@cmegroup.com](mailto:CMEGSubmissionInquiry@cmegroup.com).

Sincerely,

/s/ Timothy Elliott  
Managing Director and Chief Regulatory Counsel

Attachment:      Appendix A      CME Group Market Regulation Advisory Notice RA2403-5

## Appendix A

### MARKET REGULATION ADVISORY NOTICE

<b>Exchange</b>	<b>CME, CBOT, NYMEX &amp; COMEX</b>
<b>Subject</b>	<b>Supervisory Responsibilities for Employees and Agents</b>
<b>Rule References</b>	<b>Rules 418, 432.W., 433, 444, 501 and 574</b>
<b>Advisory Date</b>	<b>July 1, 2024</b>
<b>Advisory Number</b>	<b>CME Group RA2403-5</b>
<b>Effective Date</b>	<b>July 16, 2024</b>

Effective on trade date July 16, 2024, and pending all relevant CFTC regulatory review periods, this Market Regulation Advisory Notice will supersede CME Group Market Regulation Advisory Notice RA2114-5 from August 30, 2021. It is being issued to provide additional guidance on how parties must discharge their supervisory duties, and the factors Market Regulation will consider when assessing a potential violation of Rule 432.W. This Advisory Notice also establishes a new Frequently Asked Question section.

Pursuant to Rule 432.W. (“General Offenses”), it is an offense for any party to fail to diligently supervise its employees and agents in the conduct of their business relating to the CME Group Exchanges. For the avoidance of doubt, agents include any automated trading system (“ATS”), both fully- and semi-automated, operated by the party. Additionally, pursuant to Rule 433 (“Strict Liability for the Acts of Agents”), parties are strictly liable for the acts, omissions, or failures of any officials, agents or employees acting for the party within the scope of their employment or office.

**All parties subject to the jurisdiction of the Exchange pursuant to Rule 418 (“Consent to Exchange Jurisdiction”) must take reasonable measures to prevent violations of Exchange rules. Such parties have a duty to develop and diligently enforce supervisory programs that are reasonably designed to detect and deter violations of Exchange rules. The supervisory programs must be commensurate with the party's business model, organizational structure, geographical coverage, and other factors including the size and complexity of the party's Exchange-related activities.**

The pertinent text of Rules 432.W. is set forth below.

#### CME, CBOT, and NYMEX/COMEX

#### **432. GENERAL OFFENSES**

It shall be an offense:

W. for any party to fail to diligently supervise its employees and agents in the conduct of their business relating to the Exchange;

Questions regarding this Advisory Notice may be directed to one of the following individuals in Market Regulation:

Erin Middleton, Director, Rules & Regulatory Outreach, 312.341.3286

Paige Gawrys, Senior Specialist, Rules & Regulatory Outreach, 312.872.5078

Aaron Smith, Executive Director, Investigations, 312.435.3754

Natalie Petric, Director, Enforcement Counsel, 312.435.3496

For media inquiries concerning this Advisory Notice, please contact CME Group Corporate Communications at 312.930.3434 or [news@cmegroup.com](mailto:news@cmegroup.com).

### FAQ Related to Supervisory Responsibilities

**Q1: What does Market Regulation consider in assessing whether a party failed to diligently supervise its employee or agent?**

A1: In assessing whether a party failed to diligently supervise its employees or agents, Market Regulation expects that all parties, at a minimum, endeavor to take reasonable measures designed to prevent rule violations from occurring; take reasonable measures to detect violative conduct should it occur; and take reasonable corrective action to address identified instances of noncompliance. Market Regulation will consider, among other things, the size and nature of a party's Exchange-related business when assessing the party's supervisory program.

Market Regulation has taken disciplinary actions on supervisory failures including, but not limited to, the failure to diligently, adequately, effectively, or sufficiently:

- supervise employees and agents in a manner to ensure conduct was consistent with Exchange rules
- provide training to employees designed to prevent potential violation of Exchange rules
- take remedial action when aware of conduct inconsistent with Exchange rules either through independent identification or through notice from the Exchange, including through Exchange inquiries, letters of warning, summary fines, or administrative surcharges
- proactively monitor employees' market activity for potential violation of Exchange rules
- monitor employees' market activity after having been notified or alerted of potential conduct inconsistent with Exchange rules
- impose measures designed to prevent violations after having been notified or alerted of potential conduct inconsistent with Exchange rules
- implement policies and procedures regarding the monitoring, detection, and evaluation of account change requests
- enforce or follow internal policies or procedures
- have a process in place designed to prevent a suspended trader/customer from accessing Exchange markets
- monitor an employee's personal trading activity while also permitting the employee to handle customer orders
- ensure complete, accurate, and timely responses are provided to Market Regulation, including responsive information provided by outside counsel
- have supervisory procedures pertaining to the creation, maintenance, and monitoring of Globex Operator IDs assigned to clients, including clients within omnibus account structures
- perform testing and simulation of an ATS prior to deploying it into the market
- correct known issues with an ATS prior to deploying it into the market
- implement internal controls or alerts to inform and/or or stop noncompliant behavior from an ATS
- monitor an ATS or allowing it to operate unattended
- prevent a trader from manually overriding safeguards that had disabled an ATS
- adhere to existing policies and procedures when deploying an ATS that ultimately experienced a malfunction
- have processes designed to prevent re-deploying an ATS that experienced a malfunction without determining and remediating the root cause

**Q2: What are reasonable supervisory measures to prevent rule violations from occurring?**

A2: Reasonable measures to prevent rule violations include, but are not limited to, training employees and agents involved in Exchange-related activities on Exchange-specific rules, rule amendments, Market Regulation Advisory Notices, Special Executive Reports, and Notices of Disciplinary Action; maintaining records of attendance logs for such training; and maintaining records of communications to employees and agents that contain training on Exchange rules. Although having standing policies requiring compliance with Exchange rules is useful, such policies alone, in and of themselves, do not reasonably prevent rule violations from occurring. As such, Market Regulation expects parties engaged in specific Exchange-related activities to also be trained on the Exchange-specific rules. For instance, a party engaged in block trading should be trained specifically on Exchange block trading rules, advisories, and notices. Further, to the extent the party engages in block trading across different product groups, the party should receive training on differences between the rules pertinent to those products, such as block reporting time requirements that may differ between products. Supervisors of those parties should similarly be trained.

Further, while training on all Exchange rules pertinent to the party's market activity is expected at minimum, additional training based on observations from the party's own compliance monitoring and inquiries from regulators may be warranted.

**Q3: What are reasonable supervisory measures to detect rule violations?**

A3: Market Regulation understands that the reasonableness of any surveillance program will depend on the size and nature of a party's Exchange activity. Market Regulation will consider the type, substance, and breadth of surveillance and/or monitoring program(s) employed, as well as its success in identifying violative conduct. In assessing the success of monitoring and/or surveillance programs, Market Regulation will examine items such as the duration of violative conduct and the scope and breadth of the conduct (e.g., the number of employees or agents involved, their responsibilities in the firm and role in the conduct). Market Regulation will also consider if a party learned of the potentially violative activity through its own surveillance and monitoring, or whether it was first notified of the activity by Market Regulation or other regulatory agencies.

**Q4: What are reasonable corrective actions to address identified instances of noncompliance?**

A4: Market Regulation considers reasonable corrective action to address identified instances of noncompliance within the greater context of the noncompliant or potentially violative activity. Market Regulation will examine measures taken by a party to ensure that the violative, noncompliant conduct does not recur. This may include substantive changes to the subject trading strategy, surveillance and/or monitoring systems if applicable, enhanced training and education of employees, substantive staff changes that address the type of noncompliance, and internal disciplinary action against those involved in violative activity. Market Regulation will take a holistic view of the efforts taken to address the potentially violative or noncompliant activity. Additionally, Market Regulation may consider the lack of recurrence of violative or noncompliant activity as evidence that the corrective action was sufficient. Conversely, Market Regulation may consider the recurrence of violative or noncompliant activity as evidence that the corrective supervisory action was not sufficient.

**Q5: Does a party's obligation to diligently supervise require the employment of compliance staff?**

A5: Market Regulation will consider the size and nature of activity of the firm, and expect corresponding resources dedicated to their supervisory and compliance activities.

Notwithstanding the forgoing, all parties are required to diligently supervise their employees and agents.

**Q6: Who is considered an “agent” in the context of Rule 432.W. and this Advisory Notice?**

A6: Market Regulation may consider a party’s third-party vendors, outside counsel, and other persons acting for the party within the scope of their employment or office to be agents for the purpose of this rule. Market Regulation also considers an ATS to be the agent of the party operating the ATS.

**Q7: What are the additional supervisory responsibilities of parties operating ATSs?**

A7: Any party engaged in automated trading on or subject to the rules of the Exchange is required to monitor and supervise the activity of the ATS or strategy while in operation and shall take immediate and reasonable corrective action in the event of a disruption or any violative, or potentially violative, activity associated with the ATS.

To the extent a party develops, designs, or has the ability to modify the functionality or operation of an ATS or strategy, that party must take reasonable steps to prevent and mitigate the risk the ATS or strategy may cause a market disruption, or disrupt the systems of the Exchange or other market participants. Parties engaged in automated trading must also take reasonable steps to prevent rule violations and remediate any issues.

**Q8: Would a party be expected to apply varying levels of supervision to systems that utilize more sophisticated technology?**

A8: Regardless of the technology used in an ATS, parties must have in place adequate supervisory processes and controls, in addition to risk controls. It may be necessary for these processes and controls to be tailored to specific technologies used by the system or strategy. Through these processes and controls, a party must be able to trace and reconstruct the decisions made or actions taken by the system regardless of the technology in use, which, at the discretion of the party, may require enhanced supervision to comply with Exchange rules.

**Q9: What are the supervisory responsibilities of an intermediary, including clearing member firms, futures commission merchants, introducing brokers, and foreign brokers, if their client or prospective client is the subject of a disciplinary action that suspends or bars them from CME Group markets?**

A9: Exchange Rule 435., which applies to all parties subject to the jurisdiction of the Exchange under Rule 418, provides that a suspended or expelled party shall not be entitled to any of the privileges of membership during the period of such suspension or expulsion, including, but not limited to, the right to direct and indirect access to any Designated Contract Market, Derivatives Clearing Organization or Swap Execution Facility owned or controlled by CME Group. Exchange Rule 432.S. similarly provides that it is a violation of Exchange rules to fail to comply with an order of the Board, Exchange staff or any hearing committee.

Upon receiving notice from the Exchange that a party has been suspended or barred from CME Group markets, intermediaries are expected to take appropriate action consistent with the notice, including terminating or causing to be terminated the subject party’s access to CME Group markets. Intermediaries should have appropriate supervisory procedures and controls to ensure suspended or barred participants are not permitted to access CME Group markets. With respect to omnibus accounts carried by a clearing member firm on an undisclosed basis, a clearing member firm should have appropriate policies, procedures, and controls to ensure the clearing member firm's omnibus client does not permit a customer within the omnibus account to access CME Group markets in contravention to a notice from the Exchange.

As a reminder, Exchange Rule 576 and its associated Market Regulation Advisory Notice provide that a clearing member firm must be able to either obtain and provide the identity or require the omnibus client to obtain and provide the identity of a person assigned to each Globex Operator ID within the undisclosed omnibus account immediately upon request by Market Regulation. The failure or inability to do so may give rise to a violation of Rule 432.W.

To the extent an intermediary has a current or prospective client whose name or identity potentially matches that of a suspended or barred party, the intermediary is encouraged to take further steps to verify the standing of their client or prospective client, including contacting the Market Regulation Department for additional information concerning the subject party.

**Q10: Are there additional supervisory responsibilities for parties who provide access to CME Group markets?**

**A10:** Exchange Rule 418 provides that any futures commission merchant, introducing broker, associated person, or foreign Person performing a similar role that charges a commission or fee in connection with transactions on or subject to the rules of the Exchange is subject to the Exchange's jurisdiction. While Rule 432.W. does not require these parties, or intermediaries more generally, to supervise or monitor the trading activity of their customers, these parties must nevertheless take reasonable measures to prevent violations of Exchange rules when on notice that their customer may have violated an Exchange rule. Failure to take any reasonable measures may result in disciplinary action.

**Q11: What are the supervisory expectations when a firm receives an inquiry letter?**

**A11:** Market Regulation routinely sends inquiry letters to market participants. Parties are expected to respond to an inquiry letter in a complete, accurate, and timely manner. Additionally, parties involved in collecting the responses (e.g., clearing firms, introducing brokers, foreign brokers, etc.) are expected to take measures to ensure that the responses are complete. Additionally, parties are reminded that pursuant to Rule 574 ("Globex Access Restrictions"), if a clearing member has actual or constructive notice of a violation of Exchange rules in connection with the use of Globex by any Person for which it has authorized a direct connection and the clearing member fails to take appropriate action, the clearing member may be found to have committed an act detrimental to the interest or welfare of the Exchange.

**Q12: What are the supervisory responsibilities of members with employees who have been granted access to the CME trading floor?**

**A12:** Pursuant to CME Rule 501 ("Employees of Members"), Members, who have registered with the Exchange persons whom they employ on the trading floor, are responsible for ensuring that their registered employees comply with all exchange rules. This supervisory duty applies even if the employee also works for other Members on the trading floor.