

**SUBMISSION COVER SHEET**

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

**Registered Entity Identifier Code (optional):** 24-406 (5 of 5)

**Organization:** Commodity Exchange, Inc. ("COMEX")

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

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

**Filing Date (mm/dd/yy):** 09/18/24 **Filing Description:** Amendments to CME, CBOT, NYMEX/COMEX Chapter iii, and Rules 130, 400, 401, 402, 403, 406, 407, 408, 411, 412, 413, 417, 432, 444, 852, 8F018, 8G04, 8G07, 8G18, 8G27, 8G24, 8G975, 901, 903, 911, 974, 975 and 980 in Connection with the Harmonization of the Clearing and Market Regulation Disciplinary Process

**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:** Definitions, 130, 400-403, 406-408, 411-413, 417, 432, 444, 852, 8F018, 8G04, 8G07, 8G18, 8G27, 8G24, 8G975, 901, 903, 911, 974, 975, 980.

**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 18, 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, D.C. 20581

**Re: CFTC Regulation 40.6(a) Certification. Amendments to CME, CBOT, NYMEX/COMEX Chapter iii, and Rules 130, 400, 401, 402, 403, 406, 407, 408, 411, 412, 413, 417, 432, 444, 852, 8F018, 8G04, 8G07, 8G18, 8G27, 8G24, 8G975, 901, 903, 911, 974, 975 and 980 in Connection with the Harmonization of the Clearing and Market Regulation Disciplinary Process.  
COMEX Submission No. 24-406 (5 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 “Clearing House”), 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 with CME, the “Exchanges”), hereby certify to the Commission amendments to the Exchanges’ Chapter iii (“Definitions”), Rules 130. (“Required Notices by Member Firms and Suspension of Member Firm Privileges”), 400. (“General Provisions”), 401. (“The Chief Regulatory Officer”), 402. (“Business Conduct Committee”), 403. (“Clearing House Risk Committee”), 406. (“Issuance of Charges”), 407. (“Investigation, Charging Memorandum and Notice of Charges”), 408. (“Conduct of Hearings”), 411. (“Appeal to a Hearing Panel of the Board of Directors”), 412. (“Summary Actions”), 413. (“Summary Access Denial Actions”), 417. (“Prohibited Communications”), 432. (“General Offenses”), 444. (“Payments of Disciplinary Fines, Disgorgement Orders and Restitution”), 852. (“Surcharges for Errors, Delays and Omissions”), 8F018. (“OTC FX Options Information Submissions”), 8G04. (“IRS Clearing Member Obligations and Qualifications”), 8G07. (“IRS Financial Safeguards and Guaranty Fund Deposit”), 8G18. (“IRS Swaptions Membership”), 8G27. (“IRS Risk Committee”) 8G824. (“Additional IRS Performance Bond”), 8G975. (“IRS Emergency Financial Conditions”), 901. (“General Requirements and Obligations”), 903. (“Responsibility for Qualified Members”), 911. (“Screening Procedures”), 974. (“Suspension of Member Firm Privileges”), 975. (“Emergency Financial Conditions”), and 980. (“Required Records and Reports”) (collectively, the “Rule Amendments”) effective on October 3, 2024.

**Background**

Following feedback from both the Clearing House Risk Committee and industry participants, Clearing House management, in conjunction with the Financial and Regulatory Surveillance (“FRS”), Market Regulation and Legal Departments, undertook a review of the Clearing House disciplinary process. The assessment was undertaken following feedback from the Clearing House Risk Committee (“CHRC” or the “Committee”) that enforcement matters were taking up an increasing proportion of its agenda. With recent regulatory initiatives from the CFTC on DCO governance and risk management, the Clearing House determined that the CHRC and the IRS Risk Committee (“IRSRC”) (collectively, the “Risk Committees”) may have heightened responsibilities regarding their risk-based input and increased documentation obligations. In addition, there is now increased customer participation on the Risk Committees and market

participants serving on new risk working groups which will be providing risk-based feedback to the Risk Committees for consideration and documentation.

As a result, Clearing House management determined to harmonize the disciplinary process across the Clearing House and the Exchanges. Specifically, the Clearing House and Exchanges will fold the existing Clearing House disciplinary process, and the Risk Committees' roles in that process, into the Business Conduct Committee ("BCC") process currently utilized by the Exchanges.

The Clearing House and the Exchanges believe this approach makes sense for a number of reasons. First, it allows the Risk Committees to focus on CME Clearing's risk agenda, new initiatives, and risk policies and to consider and document feedback from the risk working groups. Second, it eliminates perceived commercial concerns, which may become more acute with the participation of customers on the Risk Committees, where they may hear of disciplinary matters involving their clearing member before other customers or involving clearing members at which customers may be considering opening an account. Third, it better leverages the skills and expertise of FRS and Market Regulation in the disciplinary process. Finally, it builds around the existing BCC process, which is both well established and familiar to market participants.

Clearing House management does not believe this change has any significant impact to the risk profile of the Clearing House nor any material effect on the performance of duties by either the Clearing House or the Exchanges. FRS will continue to report to the Global Head of Clearing and Post-Trade Services and perform its role as a designated self-regulatory organization in conducting risk-based examinations and financial surveillance of clearing members for compliance with Exchange rules. Clearing House staff will continue to monitor for and investigate non-compliance with clearing-related Exchange rules that are outside the purview of FRS. No changes to the Market Regulation Department are anticipated at this time. Clearing Members are familiar with the BCC process and nothing will change with respect to their interaction and participation in this process.

In summary, the Rule Amendments reflect the changes necessary to insert the Business Conduct Committee into the disciplinary process in place of the Risk Committees, define what documents constitute the investigative file and make some typographical and clerical changes to clean up duplicative, ambiguous or ungrammatical language.

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

## **Core Principle Analysis**

The DCO reviewed the DCO Core Principles and the Exchanges reviewed 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.

### **A. DCO Core Principles**

*DCO Core Principle H – Rule Enforcement:* This Core Principle requires the Clearing House to maintain adequate arrangements for rule enforcement. The resources dedicated to this effort will not change and the Rule Amendments will harmonize the enforcement process into a single, well-known process and eliminate any potential confusion by market participants.

*DCO Core Principle L - Public Information:* This Core Principle requires the Clearing House to publicly disclose its rules and procedures. The Rule Amendments will be incorporated into the Exchanges' publicly available rulebooks. The Clearing House will release a Clearing House Advisory Notice ("CHAN") to the marketplace regarding the Rule Amendments.

B. DCM Core Principles

*DCM Core Principle 7 - Availability of General Information:* The Rule Amendments will be incorporated into the Exchanges' publicly available rulebooks. The Exchanges will release a Special Executive Report ("SER") regarding the Rule Amendments to ensure notification to market participants.

*DCM Core Principle 11 – Financial Integrity of Transactions:* The Rule Amendments do not alter existing Exchange rules that are designed to ensure the financial integrity of transactions, the financial integrity of any futures commission merchant or introducing broker, or the protection of customer funds. The financial surveillance program will continue to comply with the requirements of CFTC Regulation 1.52.

*DCM Core Principle 13 – Disciplinary Procedures:* The Rule Amendments incorporate changes to the disciplinary process for matters previously considered by the Risk Committees.

Pursuant to Section 5c(c) of the Act and CFTC Regulation 40.6(a), the Exchanges and the Clearing House 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 (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: Exhibit 1 – Amendments to CME, CBOT, NYMEX/COMEX Chapter iii, and Rules 130, 400-403, 406-408, 411-413, 417, 432, 444, 852, 8F018, 8G04, 8G07, 8G18, 8G27, 8G24, 8G975, 901, 903, 911, 974, 975 and 980

## Exhibit 1

### **CME, CBOT, NYMEX/COMEX Rulebooks**

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

### **CME, CBOT, NYMEX/COMEX Rulebooks**

#### **Chapter iii DEFINITIONS**

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#### **INVESTIGATIVE AND HEARING COMMITTEES**

The investigative and hearing committees of the Exchange are the Business Conduct Committee, or Hearing Panels of the Business Conduct Committee, ~~the Clearing House Risk Committee~~, the Floor Conduct Committee, Hearing Panels of the Board of Directors and such other committees created for this purpose by the Board.

[Remainder of Definitions are unchanged.]

### **CME and CBOT Rulebooks**

#### **Chapter 1 MEMBERSHIP**

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#### **130. REQUIRED NOTICES BY MEMBER FIRMS AND SUSPENSION OF MEMBER FIRM PRIVILEGES**

Rule 106.H., I., J., N., R., and S. member firms shall notify the Financial and Regulatory Surveillance Department prior to any proposed merger, acquisition, consolidation, combination, sale, or any other change of ownership involving such Rule 106.H., I., J., N., R., or S. firm.

Rule 106.H., I., J., N., R., and S. member firms shall notify the Financial and Regulatory Surveillance Department in a timely manner of any material change in key personnel who are responsible to act on behalf of the member firm.

If any Rule 106.H., I., J., N., R., or S. firm:

- has notified the Exchange or the Exchange otherwise becomes aware of a significant event as defined in Rule 442; or
- that is an FCM fails to meet CFTC minimum financial requirements in the opinion of the Financial and Regulatory Surveillance Department; or
- neglects to promptly furnish a statement upon request,

~~the membership privileges of the Rule 106.H., I., J., N., R., or S. firm may be suspended, subject to the procedures set forth in Rule 974.B.~~ approval of any two of the following individuals: the Chief Executive Officer, Global Head of Clearing & Post-Trade Services, or the Chairman of the Board. Any two of these individuals may reinstate the membership privileges of such a suspended member firm, in their discretion, if the suspended member firm provides evidence satisfactory to the Financial and Regulatory Surveillance Department of its financial responsibility or that it meets CFTC minimum financial requirements.

[Remainder of Rule is unchanged.]

**NYMEX/COMEX Rulebook**  
**Chapter 1**  
**MEMBERSHIP**

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**130. REQUIRED NOTICES BY MEMBER FIRMS AND SUSPENSION OF MEMBER FIRM PRIVILEGES**

Rule 106.J. member firms shall notify the Financial and Regulatory Surveillance Department prior to any proposed merger, acquisition, consolidation, combination, sale, or any other change of ownership involving the Rule 106.J. firm.

Rule 106.J. member firms shall notify the Financial and Regulatory Surveillance Department in a timely manner of any material change in key personnel who are responsible to act on behalf of the member firm.

If any Rule 106.J. firm:

- has notified the Exchange or the Exchange otherwise becomes aware of a significant event as defined in Rule 442; or
- that is an FCM fails to meet CFTC minimum financial requirements in the opinion of the Financial and Regulatory Surveillance Department; or
- neglects to promptly furnish a statement upon request

the membership privileges of the Rule 106.J. firm may be suspended, subject to ~~the procedures set forth in Rule 974.B~~ approval of any two of the following individuals: the Chief Executive Officer, Global Head of Clearing & Post-Trade Services, or the Chairman of the Board. Any two of these individuals may reinstate the membership privileges of such a suspended member firm, in their discretion, if the suspended member firm provides evidence satisfactory to the Financial and Regulatory Surveillance Department of its financial responsibility or that it meets CFTC minimum financial requirements.

[Remainder of Rule is unchanged.]

**CME, CBOT, NYMEX/COMEX Rulebooks**  
**Chapter 4**  
**ENFORCEMENT OF RULES**

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**400. GENERAL PROVISIONS**

The Board has adopted Rules, and from time to time adopts amendments and supplements to such Rules, to promote a free and open market on the Exchange, to maintain appropriate business conduct and to provide protection to the public in its dealings with the Exchange and its Members. The Board has created committees to which it has delegated responsibility for the investigation, hearing and imposition of penalties for violations of Exchange Rules. The Board has also delegated responsibility for the investigation and imposition of penalties for violations of certain Exchange Rules to Exchange staff as set forth in the Rules. The delegation of such responsibility and authority shall in no way limit the authority of the Board with respect to all Rule violations.

For purposes of Chapter 4, the term "Member" shall mean: 1) members and clearing members of the Exchange, including retired members with floor access privileges and individuals and entities described in Rule 106; 2) associated persons ("APs") and affiliates of clearing members and member firms of the Exchange; 3) guaranteed introducing brokers of clearing members and member firms of the Exchange and their APs; 4) Exchange permit holders and any Person or entity that has been granted cross-exchange trading privileges; 5) employees, authorized representatives, contractors, and agents of a Member in regard to the Exchange related activities

of such individuals or entities; 6) regular firms; 7) any Person subject to the jurisdiction of the Exchange pursuant to Rule 418; 8) individuals and entities that have agreed in writing or via electronic signature to comply with the Rules of the Exchange; and 9) CBOT members and other individuals who have access to the Trading Floor.

Members are deemed to know, consent to and be bound by all Exchange Rules. Former Members shall be subject to the continuing jurisdiction of the Exchange, including, without limitation, the application of Rule 432.L., with respect to any conduct that occurred while a Member.

For the purposes of Chapter 4, "Respective Department" shall mean each of the Market Regulation Department, the Financial and Regulatory Surveillance Department or the Clearing House and "Investigation" shall mean any inquiry into a potential rule violation including, but not limited to, inquiries arising out of routine surveillance, notifications or examinations.

[Remainder of Rule is unchanged.]

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#### **401. THE CHIEF REGULATORY OFFICER**

It shall be the duty of the Chief Regulatory Officer to enforce Exchange Rules, and ~~he~~ they shall have available to ~~him~~ them at all times the resources of the Market Regulation Department, the Financial and Regulatory Surveillance Department and such other Exchange resources and departments as may be necessary to conduct investigations of potential or alleged Rule violations and market conditions. The Chief Regulatory Officer shall have the authority to inspect the books and records of all parties subject to the jurisdiction of the Exchange pursuant to Rule 418 and the authority to require any such party to appear before ~~him~~ the Chief Regulatory Officer and produce ~~his~~ their or its books and records and answer questions regarding alleged violations of Exchange Rules, at the time, place and in the manner the Chief Regulatory Officer ~~he~~ designates. The Chief Regulatory Officer shall be authorized to issue charges at the request of the Respective Department ~~Market Regulation Department~~ pursuant to the provisions of Rule 406. The Chief Regulatory Officer may also delegate ~~his~~ their authority to staff of the Market Regulation Department.

[Remainder of Rule is unchanged.]

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#### **402. BUSINESS CONDUCT COMMITTEE**

##### **402.A. Jurisdiction and General Provisions**

The Business Conduct Committee ("BCC") shall have: 1) jurisdiction over any party subject to the jurisdiction of the Exchange, including any Member, with respect to matters relating to business conduct, trading practices, sales practices, trading ethics and market manipulations or other actions that threaten the integrity of the market; (2) jurisdiction over any party subject to the jurisdiction of the Exchange, including Members, with respect to matters relating to the clearing of transactions or products at the Clearing House, the requirements and obligations of membership in the Clearing House or other actions that threaten the integrity of the Exchange or Clearing House; ~~2) 3) the authority, pursuant to Rule 402.C., to take emergency actions; 3) 4) the authority, pursuant to Rule 413.B., to conduct hearings on denials of access pursuant to Rule 413.A., 4) 5) the authority to conduct hearings, proceedings and appeals on all matters over which it has jurisdiction; and 5) 6) the authority to make findings on Rule violations against any party~~

subject to the jurisdiction of the Exchange, including any Member.

With respect to subject matter set forth in clause (1) above, the BCC shall act through a Panel ("Panel", "BCC Panel", or "Hearing Panel") comprised of a Hearing Panel Chair, two exchange members or employees of member firms and two non-members. At least one of the exchange members or employees of member firms must be from the designated contract market where the case originated. A quorum of a Panel shall consist of a majority of the panel, but must include at least the Hearing Panel Chair, one exchange member or employee of a member firm from the designated contract market where the case originated and one non-member.

With respect to subject matter set forth in clause (2) above, the BCC shall act through a BCC Panel comprised of at least one Hearing Panel Chair that is not an employee of a clearing member, two employees of clearing member firms and two non-members. A quorum of a BCC Panel shall consist of a majority of the panel, but must include at least the Hearing Panel Chair, one employee of a clearing member firm and one non-member.

Any BCC Panel that conducts a hearing or proceeding shall consist of panelists who possess the requisite level of industry knowledge and experience and with sufficiently diverse interests so as to ensure fairness in the hearing or proceeding.

No Person shall serve on the BCC unless they have ~~he~~ has agreed in writing that they ~~he~~ will not publish, divulge, or make known in any manner, any facts or information regarding the business of any Person or any other information which may come to ~~their~~ his attention in ~~their~~ his official capacity as a member of the BCC, except when reporting to the Board or to a committee concerned with such information or to the Legal Department or Market Regulation Department, when requested by the CFTC or other governmental agency or when compelled to testify in any judicial or administrative proceeding.

All information, records, materials and documents provided to the BCC and all deliberations, testimony, information, records, materials and documents related thereto shall be treated as non-public and confidential and shall not be disclosed, except as necessary to further an Exchange investigation or as required by law.

#### **402.B. Sanctions**

If the Panel finds that a party, including a Member, has violated a Rule, the Panel may take one or more of the following actions:

1. Order the party to cease and desist from the conduct found to be in violation of these Rules or from conduct which would violate the rules of any Designated Contract Market, Derivatives Clearing Organization, or Swap Execution Facility owned or controlled by CME Group, or the Commodity Exchange Act;
2. Order a party to liquidate such portion of the open contracts in the party's proprietary or customers' accounts, or both, as the Panel deems appropriate to ensure the integrity of Exchange contracts or to ensure an orderly and liquid market;
3. Order a party or its customer to deposit such additional performance bonds with the Clearing House as the Panel deems appropriate to protect the integrity of open contracts;
4. Prescribe such additional capital or other financial requirements as it deems appropriate;
5. Restrict the ability of the party to have a business affiliation with, be employed by or have a financial or beneficial interest in a Member or broker association;
6. Restrict, suspend or terminate the party's 1) access to the Trading Floor, 2) direct and/or indirect access to any Designated Contract Market, Derivatives Clearing Organization, or Swap Execution Facility owned or controlled by CME Group, or 3) right to supervise the entry of any orders by others into CFTC-regulated entities owned or controlled by CME Group;
7. Restrict the party's ability to trade, place, enter, accept or solicit orders in any or all products of any Designated Contract Market, Derivatives Clearing Organization, or Swap Execution



Facility owned or controlled by CME Group;

8. Suspend any or all of the Member's privileges of membership as defined in Rule 121;
9. Expel the Member from membership in any Designated Contract Market, Derivatives Clearing Organization, or Swap Execution Facility owned or controlled by CME Group;
10. Impose a fine upon the party not to exceed \$5,000,000 per violation;
11. Order a party to disgorge any monetary benefit resulting from a violation of an Exchange Rule whether by that party or another party. For purposes of this provision, benefit includes, without limitation, profit, whether realized or unrealized, and avoided losses;
12. Prescribe limitations on positions of the party as may be appropriate, including issuing an order that no Clearing Member accept new positions on behalf of any such party;
13. Impose advertising restrictions upon the Member pursuant to these Rules;
14. Order a party to make restitution to the account of anyone damaged by the conduct, or to the Clearing Member who has previously made restitution to the account of such party;
15. Order a party or its legal counsel or other representative to pay out of pocket expenses incurred by the exchange in connection with the matter if such party, counsel or representative engaged in vexatious, frivolous or bad faith conduct during the course of an investigation or enforcement proceeding;

[Remainder of Rule is unchanged.]

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#### **403. CLEARING HOUSE RISK COMMITTEE**

##### **403.A. Jurisdiction and General Provisions**

The Clearing House Risk Committee (or any subcommittee thereof) (collectively, "CHRC"), shall review each applicant's qualifications for status as a Clearing Member and refer each such application for Clearing Membership along with the CHRC's feedback to the Clearing House Oversight Committee for approval. The CHRC may adopt regulations regarding qualifications for admission to membership in the Clearing House, which regulations, when approved by the Board, shall have the same effect as Rules of the Exchange. The CHRC shall review any changes to the Clearing Membership requirements and new types of clearing membership and shall approve all substantive changes and recommend them to the Clearing House Oversight Committee for its approval.

~~In addition to the responsibilities set forth in these Rules, the CHRC shall have the composition, responsibilities and other characteristics as set forth in its Charter. have at least two co-chairmen, who shall be members of the Board, and at least seven additional individuals, five who shall be Clearing Member representatives and at least one who shall be a non-member.~~

~~The CHRC may conduct investigations, issue charges and consider offers of settlement on its own initiative or by referral from Exchange staff, the Chief Regulatory Officer, or the BCC. Hearings on charges issued by the CHRC will be conducted by the BCC pursuant to the provisions of Rule 408.~~

If the CHRC determines that a Clearing Member is in a financial condition which jeopardizes or may jeopardize the integrity of the Exchange, the CHRC may, by majority vote:

1. Order the Clearing Member or its customers to deposit such additional performance bond with the Clearing House as deemed appropriate to protect the integrity of open contracts;
2. Prescribe such additional capital or other financial requirements as it deems appropriate;
3. Impose position limits on Clearing Members based on their regulatory capital and such other criteria as it deems appropriate;
4. Suspend a Clearing Member, subject to approval of any two of the following individuals: the

Chief Executive Officer, the Global Head of Clearing & Post-Trade Services, the Chairman of the Board, Chairman of the CHRC, or the Chairman of the Clearing House Oversight Committee;

5. Order the Clearing Member to cease and desist from the conduct found to be contrary to the best interests of the Exchange; and/or
6. Any other circumstance which may have a severe, adverse effect upon the functioning of the Exchange, except that declarations of Force Majeure and actions taken with respect to such declarations will be governed by the provisions of Rule 701.

No Person shall serve on the CHRC unless they have ~~he has~~ agreed in writing that they ~~he~~ will not publish, divulge, or make known in any manner, any facts or information regarding the business of any Person or entity or any other information which may come to their ~~his~~ attention in their ~~his~~ official capacity as a member of the CHRC, except when reporting to the Board or to a committee concerned with such information or to the Legal Department, Financial and Regulatory Surveillance Department or Market Regulation Department, when requested by the CFTC or other governmental agency or when compelled to testify in any judicial or administrative proceeding.

All information and documents provided to the CHRC and all deliberations and documents related thereto shall be treated as non-public and confidential and shall not be disclosed, except as necessary to further an Exchange investigation or as required by law.

~~The CHRC shall have jurisdiction to enforce Rules pertaining to the following:~~

- ~~1. Financial integrity of Clearing Members; and~~
- ~~2. Business conduct of and compliance with Exchange Rules by Clearing Members and by any Member who is an officer or a principal or who has assigned his membership on behalf of a Clearing Member, in connection with such Clearing Member's activities, except insofar as jurisdiction over matters relating to conduct, trading practices, trading ethics and certain sales practices of Members, and market manipulations or other actions that threaten the integrity of the market are within the purview of the BCC.~~

~~Notwithstanding anything to the contrary herein, the jurisdiction of the CHRC shall not extend to IRS Products or IRS Clearing Members in such capacity when clearing IRS Products. The IRS Risk Committee shall have jurisdiction over IRS Products and IRS Clearing Members in such capacity when clearing IRS Products pursuant to the IRS Risk Committee's charter.~~

#### **~~403.B. Offers of Settlement~~**

~~A respondent that is the subject of an investigation or charges may submit for consideration by the CHRC a written offer of settlement in disposition of such investigation or charges. A respondent may submit an offer of settlement without admitting or denying the Rule violations upon which the penalty is based; provided, however, that an offer must include a consent to entry of findings by the CHRC regarding the conduct and Rule violations at issue and to the penalty to be imposed.~~

~~If the Financial and Regulatory Surveillance or Market Regulation Department does not oppose the respondent's offer of settlement, the respondent's written offer of settlement and the Financial and Regulatory Surveillance or Market Regulation Department's supporting statement shall be submitted to the CHRC for consideration.~~

~~If the Financial and Regulatory Surveillance or Market Regulation Department opposes an offer of settlement, the respondent's written offer and the Financial and Regulatory Surveillance or Market Regulation Department's written opposition shall be submitted to the CHRC. The CHRC's consideration of the offer of settlement shall be based upon the written offer and opposition filings, as well as the evidence presented to the CHRC in determining to issue the charges.~~

~~The respondent may withdraw his offer at any time prior to final acceptance of the offer by the CHRC. If the CHRC accepts the offer, a written decision setting forth the CHRC's findings and sanction shall be issued, and written notice of the decision shall be given to the respondent.~~

~~If the CHRC rejects the offer, the respondent will be notified of the rejection and the offer will be deemed withdrawn. If an offer is withdrawn or rejected by the CHRC, the respondent shall not be deemed to have made any admissions by reason of the offer and shall not otherwise be prejudiced~~

~~by having submitted the offer. The CHRC chairman may decline to convene the CHRC to consider an offer of settlement.~~

~~In submitting an offer of settlement, the respondent waives his right to a hearing and to appeal the CHRC's decision if the offer is accepted; the respondent also waives any claim of bias or prejudgment on the part of the CHRC. If a respondent submits an offer within 14 days of a scheduled BCC hearing on the charges, or after the BCC hearing has begun, the offer shall not stay the BCC hearing unless otherwise determined by the BCC Hearing Panel Chair. Any offer of settlement submitted within 14 days of a scheduled BCC hearing will be directed to the BCC in the first instance. The BCC may determine to accept or reject the offer of settlement, or the BCC may refer the offer of settlement to the CHRC, in which case the CHRC will determine whether to accept or reject the offer.~~

#### **403.BC. Emergency Actions**

1. The CHRC is authorized to determine whether an emergency exists and whether emergency action is warranted. The following events and/or conditions may constitute emergencies:
  - a. Any circumstances which may materially affect the performance of contracts traded on the Exchange, including failure of the payment system;
  - b. Any action taken by the United States or any foreign government or any state or local government body, any other contract market, board of trade, or any other exchange or trade association (foreign or domestic), which may have a direct impact on trading on the Exchange;
  - c. The actual or threatened bankruptcy or insolvency of any Member or the imposition of any injunction or other restraint by any government agency, court or arbitrator upon a Member of the Exchange which may affect the ability of that Member to perform on its contracts;
  - d. Any circumstance in which it appears that a Member or any other Person or entity has failed to perform contracts, is insolvent, or is in such financial or operational condition or is conducting business in such a manner that such Person or entity cannot be permitted to continue in business without jeopardizing the safety of customer funds, Members, and/or the Exchange; and/or
  - e. Any other circumstance which may have a severe, adverse effect upon the functioning of the Exchange, except that declarations of Force Majeure and actions taken with respect to such declarations will be governed by the provisions of Rule 701.
2. In the event that the CHRC determines, in the good faith exercise of its sole discretion, that an emergency exists, it may take any of the following emergency actions or any other action that may be appropriate to respond to the emergency:
  - a. Order the Clearing Member or its customer to deposit such additional performance bond with the Clearing House as deemed appropriate to protect the integrity of open contracts;
  - b. Prescribe such additional capital requirements as it deems appropriate;
  - c. Prescribe such position limitations as it deems appropriate;
  - d. Order special or advance performance bond or funds to be deposited with the Clearing House from Members or from longs, shorts or both;
  - e. Order such performance bond changes as it deems appropriate; and/or
  - f. Order any other action or undertaking to address or relieve the emergency.

All actions taken pursuant to this subsection shall be by majority vote of the committee members present. A Member affected by the action taken shall be notified in writing of such action. As soon as practicable, the Board and the CFTC shall be promptly notified of the emergency action in accordance with CFTC regulations. Nothing in this section shall in any way limit the authority of the Board, other committees, or other appropriate officials to act in an emergency situation as defined by these Rules.

#### **403.D. Appeal of Administrative Fines**

~~Appeals of administrative fines in excess of \$25,000, imposed pursuant to Rule 852, shall be~~

~~heard by a panel comprised of a co-chairman and three members of the CHRC. The panel's decision shall be final. The appellant shall be advised of its right to appear at the hearing and of its right to be represented, at its own cost, by legal counsel or a member of the Exchange, other than a member of any Exchange disciplinary committee, a member of the Board or an employee of CME Group. The appellant may present evidence in support of its appeal. The panel shall not set aside, modify or amend the decision appealed from unless the panel determines by a majority vote that the decision was:~~

- ~~1. Arbitrary, capricious, or an abuse of Exchange staff's discretion;~~
- ~~2. In excess of Exchange staff's authority or jurisdiction; or~~
- ~~3. Based on a clearly erroneous application or interpretation of Exchange Rules.~~

[Remainder of Rule is unchanged.]

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#### **406. ISSUANCE OF CHARGES**

The Chief Regulatory Officer shall receive and review investigation reports, including examination and surveillance reports and other notices of non-compliance from each of the Respective Departments ~~the Market Regulation Department~~ when ~~the Market Regulation Department~~ the Respective Department has reasonable cause to believe a violation of an Exchange Rule has occurred warranting disciplinary action.

The ~~Market Regulation~~ Respective Department is not required to provide a respondent notice of its intent to request the Chief Regulatory Officer to issue charges.

No ~~party or subject of an investigation person~~ shall have the right to appear before the Chief Regulatory Officer or make any written submission on their ~~his~~ behalf.

The Chief Regulatory Officer shall take one of the following actions:

- A. If the Chief Regulatory Officer determines that a reasonable basis exists for finding that a violation of an Exchange Rule may have occurred which warrants disciplinary action, the Chief Regulatory Officer ~~he~~ shall issue appropriate charges.
- B. If the Chief Regulatory Officer determines that no reasonable basis exists for finding that a violation of an Exchange Rule may have occurred, the Chief Regulatory Officer ~~he~~ shall direct that no further action be taken.
- C. Direct that the Respective ~~Market Regulation~~ Department investigate the matter further.

The Chief Regulatory Officer shall direct the Market Regulation Department to give notice of the charges to the respondent in accordance with Rule 407.B.

All information, records, materials and documents provided to the Chief Regulatory Officer and all information, records, materials and documents related thereto shall be treated as non-public and confidential and shall not be disclosed, except as necessary to further an Exchange ~~i~~nvestigation or as required by law.

[Remainder of Rule is unchanged.]

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#### **407. INVESTIGATION, CHARGING MEMORANDUM AND NOTICE OF CHARGES**

~~The Market Regulation Department~~ Each Respective Department shall investigate potential or alleged Rule violations. Investigations, investigation reports, risk-based examination reports and

responses, work papers, correspondence and all information and documents obtained during the course of an investigation shall be treated as non-public and confidential and shall not be disclosed by any party, except as necessary to further an Exchange investigation or as required by law. ~~At the request of the Respective Department,~~ The Market Regulation Department is authorized to take recorded interviews pursuant to an Exchange ~~investigation.~~ Parties and witnesses being interviewed shall have the right to representation, at their own cost, by legal counsel or anyone other than a member of any Exchange disciplinary committee, a member of the Board, an employee of CME Group or a Person related to the investigation. The failure to appear at a scheduled interview or to answer all of the questions posed during that interview may, in the discretion of the BCC Panel Chair, result in the Person being prohibited from testifying in a subsequent hearing on the matter.

Upon conclusion of an investigation, the ~~Market Regulation Department~~ Respective Department may issue a warning letter to any party as a result of the investigation. Such letter shall not constitute either the finding of a Rule violation or a penalty.

#### **407.A. Investigation File**

~~Each of the Respective Departments~~ The Market Regulation Department shall maintain a file once an investigation is initiated. The file shall include any materials in the possession of the ~~Market Regulation Department~~ Respective Department that are relevant to the conduct being investigated.

#### **407.B. Notice of Charges; Opportunity for Hearing**

Where the Chief Regulatory Officer has issued charges for an alleged Rule violation, the Market Regulation Department shall issue a charging memorandum to the respondent with a brief statement of factual allegations that identifies the charged Rule violation(s). In addition, the Market Regulation Department will send a notice of charges to the respondent. The notice of charges shall set forth the Rule(s) alleged to have been violated, and shall advise the respondent regarding the submission of a responsive answer to each charge in accordance with Rule 407.C. Further, the notice of charges shall advise the respondent that the matter will be heard by a BCC Panel and of the time and place for the hearing, if known. The respondent shall also be advised of their ~~his~~ right to appear personally at the hearing and of their ~~his~~ right to be represented, at their ~~his~~ own cost, by legal counsel or a member of the Exchange, other than a member of any exchange disciplinary committee, a member of the Board, an employee of CME Group or a Person related to the investigation.

A respondent may waive their ~~his~~ right to a hearing at any time after receipt of the notice of charges. A respondent who elects to waive their ~~his~~ right to a hearing on the charges will be notified of the date on which the BCC Panel will render its decision. Upon a finding of guilt on any charge, the BCC Panel will promptly determine what penalties, if any, are to be imposed and their effective date. A respondent who has waived their ~~his~~ right to a hearing and/or admitted the charges against them ~~him~~ will be advised of their ~~his~~ right to participate in the hearing solely with respect to the penalty.

#### **407.C. Answer to Charges**

The respondent shall have 21 days after notice to submit a written answer to the charges. The Market Regulation Department and the respondent may agree in writing to an extension of the period of time to submit an answer to such charges. Absent such agreement, upon a showing of good cause, the BCC Hearing Panel Chair may extend the period of time in which the respondent is required to submit their ~~his~~ answer. The answer must state that the respondent admits, denies, or lacks sufficient knowledge to admit or deny each charge. A statement of lack of sufficient knowledge shall be deemed a denial.

If a respondent fails to answer the charges in accordance with this Rule, the Market Regulation Department may seek a default finding and sanctions in accordance with Rule 408.F.

#### **407.D. Amendment to Charging Memorandum; Non-Prosecution of Charges**

The issuance of charges shall not prevent the ~~Market Regulation Department~~ Respective Department from continuing to investigate the activity underlying the charges or investigating or examining for other potential violations by the respondent. The Market Regulation Department

reserves the right to modify the charging memorandum. Notwithstanding the prior sentence, no charges may be added to the charging memorandum absent the consent of the Chief Regulatory Officer. The Respondent shall have 21 days from notice of an amended charging memorandum to file an answer to any new or modified charges in the amended memorandum.

The Market Regulation Department may, in its sole discretion, decline to prosecute any one or more of the charges previously issued by the Chief Regulatory Officer. If the Market Regulation Department declines to prosecute any previously issued charge after the Respondent has received a Notice of Charges, the Market Regulation Department shall provide notice to the Respondent of such decision. Further the Market Regulation Department may, in its sole discretion, resolve a previously issued charge through issuance of a letter of warning.

[Remainder of Rule is unchanged.]

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## **408. CONDUCT OF HEARINGS**

### **408.A. General**

All disciplinary proceedings conducted before a panel of the BCC or before a hearing panel of the Board of Directors (~~collectively~~, each a "Panel" or "Hearing Panel") shall be conducted in accordance with the following procedures.

Hearings shall be fair. The respondent shall have the right to appear personally at the hearing and to be represented at ~~their~~ his own cost by legal counsel or anyone other than a member of any exchange disciplinary committee, a member of the Board, an employee of CME Group or a Person related to the investigation. The Panel or the Hearing Panel Chair shall have the power to compel any party subject to its jurisdiction, including any Member, to attend, testify and/or produce evidence in connection with the hearing. The Market Regulation Department shall make reasonable efforts to secure the presence of all other persons called as witnesses whose testimony would be relevant.

### **408.B. Pre-Hearing**

#### **1. Procedural Matters**

Prior to the hearing, but subsequent to the timely filing of an answer, a party charged with a violation of an Exchange rule may examine all evidence in the investigation file that is relevant to the violation(s) charged and all evidence which is to be relied upon by the Market Regulation Department during the hearing. However, the respondent shall not be entitled to examine protected attorney work product, attorney-client communications or investigative work product, including, but not limited to, the investigation report, work papers, financial and reporting surveillance records, internal communications and any exception reports. The respondent may obtain a copy of all such evidence, and any copying costs shall be the sole responsibility of the respondent. The Market Regulation Department is not required to produce or obtain any documents that are not in its possession. A respondent who seeks documents that are not in the possession of the Market Regulation Department may request the documents from the custodian of such documents. Upon a showing of good cause, the respondent may petition the Hearing Panel Chair, in writing, for an order compelling the production of documents by a custodian, provided that the custodian is subject to the jurisdiction of the Exchange, the custodian has refused voluntarily to provide the documents and the documents are relevant to the charges. The Market Regulation Department or the custodian may object, in whole or in part, to any such petition.

#### **2. Appointment of a Panel for a Contested Hearing**

The Market Regulation Department shall, in writing, notify the respondent of the names of the individuals originally appointed to the Panel for a contested hearing at least 28 days in advance of the originally scheduled hearing date. Within seven days of such notice, parties

to the hearing may request the Hearing Panel Chair to strike any panelist for good cause shown. The Hearing Panel Chair may then excuse such panelist and direct that an alternate panelist be appointed. In the sole discretion of the Panel Chair, the hearing may be conducted with less than a full Panel provided a quorum exists.

In the event any panelist is added, the Market Regulation Department shall provide all parties reasonable notice regarding the new panelist. The addition of a new panelist will not delay the scheduled hearing date unless the panelist is added less than five days in advance of the scheduled hearing and a party can demonstrate good cause for the requested delay.

Notwithstanding the foregoing, any party to a contested hearing may, following the filing of an answer to the charges, request the appointment of a Hearing Panel Chair prior to the time period set forth above for the purpose of resolving pre-trial disputes. The matters that may be raised before the Hearing Panel Chair include, without limitation:

- a. scope and timing of fact discovery;
- b. scope and timing of expert discovery;
- c. allocation of discovery costs;
- d. use and disclosure of demonstratives;
- e. requests to alter timing requirements set forth in these Rules; or
- f. scheduling of the contested hearing

The Hearing Panel Chair may hold a pre-trial conference to address these issues or may, in their ~~his~~ discretion, resolve them on written submissions by the parties.

The Hearing Panel Chair shall have the authority to issue non-monetary sanctions against any party or legal counsel or other representative who fails to comply with an order of the Chair or who engages in vexatious, frivolous or bad faith conduct. Such sanctions may include drawing adverse inferences or excluding legal argument, evidence or other submissions. Sanctions may not include entry of a default judgment. The Hearing Panel Chair must allow both parties to make written submissions on the issue prior to imposing any sanction.

### 3. Submission of Documents and Identification of Witnesses

At least 28 days in advance of a contested hearing, the respondent shall submit to the Market Regulation Department, and the Market Regulation Department shall submit to the respondent, copies of all books, documents, records and other tangible evidence, which each plans to rely on or refer to during its direct case at the hearing, and provide a list of the names and titles of witnesses that each plans to call on its direct case at the hearing. The Panel may refuse to consider any books, records, documents or other tangible evidence which was not made available to, or witnesses whose names and titles were not submitted to, the other party pursuant to this section.

To the extent Market Regulation or the respondent intends to call any expert witness at the hearing then such party shall provide to the other, 28 days prior to the date of the hearing, a summary of the expert's opinions to be offered at the hearing and the basis and/or methodology underlying such opinions. In addition, the expert's credentials (e.g., a *curriculum vitae*) and all documents or other materials on which the expert relied in forming their ~~his~~ opinions shall be produced to the other party at the same time. For purposes of this provision, staff in the Market Regulation Department or other CME Group employee shall not be considered experts. The Panel may decline to consider any expert testimony beyond the scope of the submitted summary.

### 4. Additional Discovery

Absent an order of the Hearing Panel Chair or consent of the parties, no discovery beyond that set forth in Rules 407 and 408 shall be permitted.

### 5. Motions

The Hearing Panel Chair shall have the authority to decide all procedural and evidentiary matters and all pre-hearing motions, and the Hearing Panel Chair's decision shall be final. Notwithstanding the preceding sentence, no motions to dismiss any or all of the charges or any other dispositive motion may be filed.

Any pre-hearing motion must be submitted in writing to the parties and BCC's counsel at least 21 days in advance of the scheduled hearing. The opposing party shall submit a response, if any, within ~~7~~ seven days of receipt of any pre-hearing motion. No reply papers are permitted. The Hearing Panel Chair, in their ~~his~~ sole discretion, may hold oral argument on any motion or may decide any motion on the written submissions of the parties.

#### **408.C. Offers of Settlement**

A respondent that is the subject of an investigation, which has been referred to the Market Regulation Department Enforcement Group for prosecution by a Respective Department as provided in this Chapter, may submit for consideration by the Panel a written offer of settlement in disposition of such matter. Such submission may be made at any time prior to the Panel commencing deliberations at a contested hearing of the case. No offer of settlement may be submitted by a respondent to the Panel unless the Market Regulation Department supports the offer.

A respondent may submit an offer of settlement without admitting or denying the Rule violations or factual findings upon which the penalty is based; provided, however, that an offer must include a consent to entry of findings by the Panel regarding the conduct and Rule violations at issue, to the penalty to be imposed and to the effective date of the penalty.

The respondent's written offer of settlement and the Market Regulation Department's supporting statement shall be submitted to the Panel for consideration.

The Market Regulation Department shall, in writing, notify the respondent of the names of the individuals originally appointed to the Panel to consider respondent's settlement offer at least seven days in advance of the originally scheduled hearing date. Parties to the hearing may request the Hearing Panel Chair to strike any panelist for good cause shown. The Hearing Panel Chair may then excuse such panelist and direct that an alternate panelist be appointed. In the sole discretion of the Panel Chair, the hearing may be conducted with less than a full Panel provided a quorum exists.

In the event any panelist is added, the Market Regulation Department shall provide all parties reasonable notice regarding the new panelist. The addition of a new panelist will not delay the scheduled hearing date unless the panelist is added less than five days in advance of the scheduled hearing and a party can demonstrate good cause for the requested delay.

A respondent may withdraw an offer of settlement at any time prior to the start of the hearing on the proposed settlement before the Panel. If the Panel accepts the offer, a written decision setting forth the Panel's findings and sanction shall be issued, and written notice of the decision shall be given to the respondent. If the offer of settlement is accepted, the BCC's decision shall be final on the date it is signed by the Hearing Panel Chair and, unless otherwise ordered by the Panel, it shall become effective two business days after it becomes final.

If the Panel rejects an offer of settlement, the respondent will be notified of the rejection and it will be deemed withdrawn. If an offer is withdrawn or rejected by the Panel, the respondent shall not be deemed to have made any admissions by reason of the offer and shall not otherwise be prejudiced by having submitted the offer. No statements made or documents exchanged by the parties solely in the context of a withdrawn or rejected offer of settlement or during any settlement negotiations shall be admissible in any contested hearing.

Any subsequent offers of settlement shall be heard by the same Panel; however, alternate panelists may be appointed in the event of scheduling conflicts. Any contested hearing following an offer of settlement not accepted by the Panel will be heard by a new Panel.

In submitting an offer of settlement, the respondent waives their ~~his~~ right to a contested hearing and to appeal the Panel's decision if the offer is accepted; the respondent also waives any claim of bias or prejudice on the part of the Panel.

#### **408.D. Contested Hearings**

The Market Regulation Department shall be a party to the contested hearing and shall present evidence in support of the charged Rule violation(s). The Market Regulation Department and the members of the Panel may question any witness and examine all the evidence stipulated to or presented at the hearing. The respondent shall be entitled to appear personally, testify,



produce evidence, call witnesses on ~~their~~ his behalf and cross-examine any witness. The Hearing Panel Chair may exclude any witness, other than a party or other essential Person, during the opening statements or during the testimony of any other witness.

The Market Regulation Department bears the burden of establishing the basis for a finding of guilt on any charge by a preponderance of the evidence. Formal rules of evidence shall not apply. The parties may offer such evidence as is relevant to the charges at issue. The Hearing Panel Chair shall determine the admissibility of evidence offered and may exclude evidence that ~~they~~ he deems irrelevant or cumulative. The Hearing Panel Chair has the discretion to vary the structure and presentation of evidence to make the hearing as efficient as possible. The parties may submit stipulated facts in order to make the hearing more efficient.

The hearing may proceed in the absence of a respondent who, after due notice, fails to appear. However, the failure to appear is not a default if the respondent has filed a written answer denying the charges issued. Accordingly, Market Regulation still bears the burden of proof and must present evidence to meet that burden.

All testimony and documents produced in connection with a disciplinary hearing shall be deemed non-public and confidential and shall not be disclosed except in connection with proceedings resulting from that hearing or as required by law. A recording or other substantially verbatim record of the hearing shall be made by Market Regulation or a court reporter hired by Market Regulation and become part of the record of the proceeding. If a respondent requests a transcript, ~~he~~ the respondent shall be solely responsible for the cost of producing the transcript. No other means of recording the proceedings will be permitted absent written agreement of the parties or pursuant to an order of the Hearing Panel Chair.

A majority vote of the Panel is required for a finding of guilt. A respondent that is found not guilty shall not again be charged with or tried for the same underlying conduct. In the event of a finding of guilt, the Panel, in a separate sanctioning phase, must allow both parties to present arguments and information regarding the appropriate nature and amount of a sanction prior to determining such sanction. In the absence of exceptional circumstances, as determined by the Hearing Panel Chair, the sanctioning phase shall proceed immediately upon the conclusion of the evidence and determination of the committee.

The BCC's decision shall be final on the date it is signed by the Hearing Panel Chair. -The BCC's decision shall become the final decision of the Exchange after the appeal period has lapsed.

#### **408.E. Decisions**

Promptly following a hearing, BCC Panel shall issue to the Market Regulation Department and to respondent a written decision of the Panel's findings, which shall include: the notice of charges (or a summary thereof); the answer to the charges, if any (or a summary thereof); a brief summary of the evidence produced at the hearing; a statement of findings and reasoned conclusions with respect to each charge, including the specific Rules which the respondent is found to have violated; a declaration of any penalty imposed and the effective date of such penalty; and the availability, if any, of an appeal of the decision within the Exchange or to the Commodity Futures Trading Commission.

#### **408.F. Default Proceedings**

If a respondent fails to submit a written answer to the charges pursuant to Rule 407.C., or answers but fails to deny the charges, Market Regulation may serve the respondent with a motion for default and a request for sanctions. The motion for default shall request that a BCC Panel Chair find that the respondent is deemed to have admitted the charges, and the request for sanctions shall request that a BCC Panel impose sanctions on the admitted charges. A copy of the motion for default and request for sanctions shall also be filed with the CME Group Legal Department, which serves as counsel to the BCC Panel.

The Respondent shall have 21 days from notice to respond to the motion for default and request for sanctions. Thereafter, the respondent will be provided at least seven days' notice of the date of a hearing to consider the motion for default and request for sanctions. The respondent shall have the right to be represented at the hearing at ~~his~~ their own cost by legal counsel or anyone other than a member of a disciplinary committee, a member of the Board, an employee of CME

Group or a Person related to the investigation.

At the hearing, based on the written filings of the parties, except where the BCC Panel Chair determines that oral argument is necessary, the BCC Panel Chair will first decide if the respondent has failed to answer the charges in accordance with Rule 407.C., and, if so, the respondent shall be deemed to have admitted the charges. If the BCC Panel Chair finds that the respondent has admitted the charges, the respondent will be deemed to have waived their ~~his~~ right to a hearing on the merits of the charges, the BCC Panel shall find that the violations alleged in the charging memorandum have been committed, and the BCC Panel will then determine the sanctions, if any, to be imposed, after permitting both parties to present arguments and information regarding the appropriate nature and amount of any such sanctions.

If an answer contains both an admission to one or more charges and a denial of one or more charges, the BCC Panel will consider the penalties which may be imposed for the admitted charges at the same time that the charges denied by the respondent are considered.

If the BCC Panel Chair does not find that the respondent has failed to answer the charges, no further action on the charges will occur at the hearing.

Decisions on the Motion for Default and the sanctions imposed shall be issued in accordance with Rule 408.E.

[Remainder of Rule is unchanged.]

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#### **411. APPEAL TO A HEARING PANEL OF THE BOARD OF DIRECTORS**

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A notice of appeal must specify the grounds for the appeal and the specific error(s) or impropriety of the original decision. Upon receiving the notice of appeal the parties, in conjunction with the Exchange Legal Department shall determine a briefing schedule for the appeal. If agreement on the schedule cannot be reached the Appellate Panel Chair shall set the schedule. The Appellate Panel Chair shall determine, in their ~~his~~ sole discretion, whether to hold oral argument on the appeal or whether to decide the appeal on the papers submitted by the parties.

The appellate hearing shall be limited to the record from the appealed proceeding. The Appellate Panel shall not entertain any new evidence or new legal theory not raised in the prior proceeding except upon a clear showing by the appellant that such new evidence or new legal theory did not exist or was not ascertainable by due diligence at the time of the proceeding, and that there was insufficient time within the intervening period prior to the hearing of the Appellate Panel for the appellant to bring such new evidence or legal theory to the attention of the BCC.

No member of the Board may serve on a particular Appellate Panel if ~~they~~ ~~he~~ participated on the BCC Panel that issued the decision, or if they have ~~he has~~ a personal, financial, or other direct interest in the matter under consideration or is a member of the same broker association as the respondent or potential respondent.

[Remainder of Rule is unchanged.]

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#### **412. SUMMARY ACTIONS**

In cases of action taken against a Member pursuant to Rules 975, 976, or 977 or 8G975, the Member affected shall be notified in writing of such action. The notice shall state: the action taken; the reason for the action; and the effective time, date and duration thereof.

The Member may, within two business days following receipt of notice of action taken, request a hearing before a hearing panel of the Board ("Panel"). The hearing shall be conducted within 60

days of such request, in accordance with the requirements of Rule 408, unless the Hearing Panel Chair determines that good cause for an extension has been shown, but shall not stay any action taken pursuant to Rules ~~975, 976 or 977~~ or 8G975.

Following the hearing, if any, the Panel shall cause to be prepared a written decision containing: a description of the summary action; the reasons for such action; a description of the evidence produced at the hearing; findings and conclusions; a determination that the summary action should be affirmed, set aside, modified or amended and the reasons therefor; and the effective date and duration, if any, of subsequent or continuing actions. The Panel shall not set aside, modify or amend the summary action taken against a Member unless it determines, by a majority vote, that the summary action taken was:

- A. Arbitrary, capricious, or an abuse of ~~the committee's~~ discretion; or
- B. In excess of the committee's authority or jurisdiction.

[Remainder of Rule is unchanged.]

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#### **413. SUMMARY ACCESS DENIAL ACTIONS**

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##### **413.C. Hearing**

Parties shall have the right to representation, at their own cost, by legal counsel or anyone other than a member of any Exchange disciplinary committee, a member of the Board, an employee of CME Group or a Person related to the linvestigation. The Panel shall conduct a de novo hearing solely on the issue of the denial of access in accordance with the procedures in Rule 408.A. Filing of a notice of intent pursuant to Rule 413.B. shall not stay the Chief Regulatory Officer's decision to deny access.

[Remainder of Rule is unchanged.]

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#### **417. PROHIBITED COMMUNICATIONS**

##### **417.A. *Ex Parte* Communications**

Unless on notice and opportunity for all parties to participate:

1. No subject or respondent (or any counsel to or representative of a subject or respondent) or the Financial and Regulatory Surveillance Department (or any counsel to or representative of the Financial and Regulatory Surveillance Department) or the Market Regulation Department (or any counsel to or representative of the Market Regulation Department) shall knowingly make or cause to be made an ex parte communication relevant to the merits (which shall not include scheduling and procedural matters) of an linvestigation or a proceeding to a member of a charging, adjudicatory, or appeal committee or panel with respect to that matter or proceeding.
2. No member of a charging, adjudicating, or appeal committee or panel that is participating in a decision with respect to an linvestigation or a proceeding shall knowingly make or cause to be made to a subject or respondent (or any counsel to or representative of a subject or respondent) or the Financial and Regulatory Surveillance Department (or any counsel to or representative of the Financial and Regulatory Surveillance Department) or the Market Regulation Department (or any counsel to or representative of the Market Regulation Department) an ex parte communication relevant to the merits (which shall not include scheduling and procedural matters) of that matter or proceeding.

#### **417.B. Communications with Panelists**

No Person shall attempt to influence disciplinary matters pending before a charging, adjudicatory, or appeal committee by discussing, or attempting to discuss, such pending matters with a member of such committee or any member of the Board.

#### **417.C. Disclosure**

Any Person who receives, makes or learns of any communication which is prohibited by this Rule shall promptly give notice of such communication and any response thereto to the Market Regulation Department or the Financial and Regulatory Surveillance Department, as applicable, and all parties to the proceeding to which the communication relates. A Person shall not be deemed to have violated this Rule if the Person refuses an attempted communication concerning the merits of an investigation or proceeding as soon as it becomes apparent that the communication concerns the merits.

[Remainder of Rule is unchanged.]

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### **432. GENERAL OFFENSES**

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- L. 1. to fail to appear before the Board, Exchange staff or any investigative or hearing committee at a duly convened hearing, scheduled staff interview or in connection with any investigation;
2. to fail to fully answer all questions or produce all books and records at such hearing or in connection with any Investigation, or to make false statements;
3. to fail to produce any books or records requested by duly authorized Exchange staff, in the format and medium specified in the request, within 10 days after such request is made or such shorter period of time as determined by the Market Regulation Department in exigent circumstances;

[Remainder of Rule is unchanged.]

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### **444. PAYMENTS OF DISCIPLINARY FINES, DISGORGEMENT ORDERS AND RESTITUTION**

Disciplinary fines, disgorgement, and restitution amounts levied pursuant to Exchange rules must be submitted to the Market Regulation Department no later than the date specified in the notice of decision, ~~except that fines issued by the Clearing House Risk Committee shall be paid to the Financial and Regulatory Surveillance Department.~~ An individual or entity who fails to provide proof of payment within the time prescribed shall not be entitled to direct or indirect access to any Designated Contract Market, Derivatives Clearing Organization, or Swap Execution Facility owned or controlled by CME Group until the payment has been received. Any party that fails to make the required payment shall immediately forfeit eligibility for any Exchange incentive or rebate program until the amount is paid in full. Any party that fails to pay a disciplinary fine, disgorgement order, or restitution amount within the prescribed time period may also be subject to sanctions pursuant to Rule 432.S.

Parties may, subject to a determination by the sanctioning entity, be liable for unpaid fines or unpaid disgorgement orders and restitution amounts imposed upon their employees.

[Remainder of Rule is unchanged.]

**CME, CBOT, NYMEX/COMEX Rulebooks**  
**Chapter 8**  
**CLEARING HOUSE AND PERFORMANCE BONDS**

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**852. SURCHARGES FOR ERRORS, DELAYS AND OMISSIONS**

Exchange staff may establish, and from time to time revise, schedules of surcharges to be imposed upon clearing members for errors, delays and omissions with respect to trade data and certain other information required to be provided to the Clearing House. These surcharges are to be collected by the Clearing House and are in addition to any disciplinary sanctions that may be imposed by Market Regulation ~~or~~ the BCC ~~or~~ CHRC for the violation of Exchange rules.

Appeals of administrative surcharges in excess of \$25,000 imposed herein shall be filed with the Market Regulation Department within 10 business days. A written appeal that fails to specify the grounds for the appeal and the specific error or impropriety of the original decision shall be dismissed. The appeal shall be heard by a Panel of the Business Conduct Committee (“BCC Panel”) whose decision shall be final and not subject to Rule 411. The appellant shall be entitled to be represented by counsel, appear personally before the BCC Panel and present evidence that they may have in support of their appeal. The BCC Panel shall not set aside, modify or amend the appealed decision unless it determines, by a majority vote, that the decision was:

1. Arbitrary, capricious, or an abuse of discretion; or
2. Based on a clearly erroneous application of Exchange rules.

Notwithstanding the provisions herein, Exchange staff may, at any time, refer matters to the Chief Regulatory Officer where there is a reasonable cause to believe disciplinary action is warranted.

[Remainder of Rule is unchanged.]

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

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

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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~~ Chief Regulatory Officer for potential issuance of charges and further disciplinary action in accordance with Chapter 4 of this Rulebook-

[Remainder of Rule is unchanged.]

**CME Rulebook**  
**Chapter 8-G**  
**Interest Rate Derivative Clearing**

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#### **8G04. IRS CLEARING MEMBER OBLIGATIONS AND QUALIFICATIONS**

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7. Each IRS Clearing Member shall participate in each IRS Liquidity Poll (“Poll”) for each IRS Product currency in which the IRS Clearing Member has open interest, unless exempted by the Clearing House for that currency. A Clearing Member’s failure to provide required Poll submissions by the deadline established by the Clearing House may result in the IRS Clearing Member being assessed a monetary penalty up to \$50,000 and/or referred to the ~~IRS Risk Committee~~ Chief Regulatory Officer for potential disciplinary action, in accordance with established CME Clearing procedures. Assessed penalties shall be added to the CME IRS Contribution within the IRS Priority of Payments as outlined at CME Rule 8G802.B.

[Remainder of Rule is unchanged.]

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#### **8G07. IRS FINANCIAL SAFEGUARDS AND GUARANTY FUND DEPOSIT**

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(iii) Notwithstanding CME Rule 8G802.H, any IRS Clearing Member whose trader fails to attend during an Active IRS Default Management Committee related to a potential or actual default will have its IRS Guaranty Fund contribution requirement increased by the Specified Attendance Failure Amount for the 12-month period commencing the date upon which the trader was originally expected to attend the Active IRS Default Management Committee. Such increased amount will be available to be used pursuant to CME Rule 8G802 for any IRS Losses occurring during such 12-month period (including any IRS Losses related to the default for which the relevant Active IRS Default Management Committee was convened). In addition, the IRS Clearing Member may be referred to the ~~IRS Risk Committee~~ Chief Regulatory Officer for potential issuance of charges and further disciplinary action in accordance with Chapter 4 of this Rulebook. Clearing House staff may grant an exception to the increase of an IRS Clearing Member’s IRS Guaranty Fund contribution provided by this Rule 8G07.1(iii) for good cause shown by the affected IRS Clearing Member.

[Remainder of Rule is unchanged.]

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#### **8G18. IRS SWAPTIONS MEMBERSHIP**

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Penalties shall be assessed monthly and payable with the IRS Guaranty Fund payment cycle. In addition, the IRS Swaptions Clearing Member may be referred to the ~~IRS Risk Committee~~ Chief Regulatory Officer for potential further disciplinary action. Penalties from Failed IRS Swaptions Submissions shall become part of the IRS Priority of Payments as additional CME IRS Contribution to the IRS Priority of Payments pursuant to CME Rule 8G802 and shall be applied to IRS Losses on a pro rata basis with other CME IRS Contribution.

[Remainder of Rule is unchanged.]

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#### **8G27. IRS RISK COMMITTEE**

There shall be an IRS Risk Committee which shall serve to provide guidance to the

Clearing House on general matters relating to IRS Products including risk management policies and practices. In addition to the responsibilities set forth in these Rules, the IRS Risk Committee shall have the composition, responsibilities and other characteristics as set forth in its Charter.

~~The IRS Risk Committee may conduct investigations, issue charges and consider offers of settlement with respect to violations of these Rules as relate to IRS Clearing on its own initiative or by referral from Clearing House staff.~~

If the IRS Risk Committee determines that a IRS Clearing Member fails to meet the requirements for being an IRS Clearing Member or is in a financial or operational condition which jeopardizes or may jeopardize the integrity of the Clearing House, the IRS Risk Committee may, by majority vote:

1. Order the IRS Clearing Member or its customers to deposit such additional performance bond with the Clearing House as deemed appropriate to protect the integrity of open contracts;
2. Prescribe such additional capital or other financial requirements as it deems appropriate;
3. Impose position limits on IRS Clearing Members based on their regulatory capital and such other criteria as it deems appropriate;
4. Suspend an IRS Clearing Member, subject to approval of any two of the following individuals: the Chief Executive Officer, the Global Head of Clearing & Post-Trade Services, the Chairman of the Board, a Chairman of the IRS Risk Committee or the Chairman of the Clearing House Oversight Committee;
5. Order the IRS Clearing Member to cease and desist from the conduct found to be contrary to the best interests of the Clearing House; and/or
6. Order the liquidation or transfer of all or a portion of the open positions of the IRS Clearing Member; provided that all costs associated with any such liquidation and/or transfer shall solely be obligations of the IRS Clearing Member.

No person shall serve on the IRS Risk Committee unless ~~he~~ they ~~has~~ have agreed in writing that ~~he~~ they will not publish, divulge, or make known in any manner, any facts or information regarding the business of any person or entity or any other information which may come to ~~his~~ their attention in ~~his~~ their official capacity as a member of the IRS Risk Committee, except when reporting to the Board or to a committee concerned with such information or to the Legal Department, Financial & Regulatory Surveillance Department or Market Regulation Department, when requested by the CFTC or other governmental agency or self-regulatory organization or when compelled in any judicial or administrative proceeding.

All information and documents provided to the IRS Risk Committee and all deliberations and documents related thereto shall be treated as non-public and confidential and, subject to the provisions in the previous paragraph, shall not be disclosed, except as necessary to further a Clearing House investigation or as required by law.

~~The IRS Risk Committee shall have jurisdiction to enforce Rules pertaining to the following:~~

- ~~1. Financial integrity of IRS Clearing Members; and~~
- ~~2. Business conduct of and compliance with Rules by IRS Clearing Members.~~

[Remainder of Rule is unchanged.]

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#### **8G824. ADDITIONAL IRS PERFORMANCE BOND**

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In the event market conditions and price fluctuations at any time shall cause the IRS Risk Committee, the President of Global Operations, Technology & Risk or the Global Head

of Clearing & Post-Trade Services or, in ~~his~~ their absence, ~~his~~ their delegate, to conclude that additional performance bond collateral is required to maintain an orderly market or to preserve fiscal integrity the IRS Risk Committee or the Global Head of Clearing & Post-Trade Services or their delegate may call for additional performance bond collateral to be deposited with the Clearing House during the next banking hour after demand therefor, or at such times as may be specified. Such additional performance bond collateral may be called from the longs or the shorts or from both.

[Remainder of Rule is unchanged.]

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#### **8G975. IRS EMERGENCY FINANCIAL CONDITIONS**

If the Global Head of Clearing & Post-Trade Services determines that the financial or operational condition of an IRS Clearing Member or one of its Affiliates is such that to allow that IRS Clearing Member to continue its operation would jeopardize the integrity of the Exchange, or negatively impacts the financial markets by introducing an unacceptable level of uncertainty, volatility or risk, whether or not the IRS Clearing Member continues to meet the required minimum financial requirements, ~~he~~ they may empanel the Chief Executive Officer, Chairman of the Board, Chairman of the IRS Risk Committee, and Global Head of Clearing & Post-Trade Services (the "IRS Emergency Financial Committee"). Such committee shall be duly authorized and, upon a unanimous vote of the panel, be empowered to order (a) an immediate position limitation, (b) an immediate suspension of the IRS Clearing Member, (c) that all open trades of said clearing member be for liquidation only, (d) the liquidation or transfer of all or a portion of the open positions of the clearing member, (e) additional performance bond to be deposited with the Clearing House and/or (f) any other action necessary to protect the financial integrity of the Clearing House. The IRS Clearing Member affected by action taken shall be notified and may request a hearing before the Board as provided in Rule 412. ~~In the event of suspension, the Chief Executive Officer shall, promptly after a suspension, set the matter for hearing before the Board for final determination.~~ To the extent that the IRS Emergency Financial Committee orders that all open trades of a clearing member be for liquidation only, or the panel orders the liquidation or transfer of all of the open positions of an IRS Clearing Member, Rule 8G913.B. shall apply and the clearing member shall be treated as a withdrawing clearing member.

[Remainder of Rule is unchanged.]

### **CME, CBOT, NYMEX/COMEX Rulebooks Chapter 9 CLEARING MEMBERS**

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#### **901. GENERAL REQUIREMENTS AND OBLIGATIONS**

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- I. It shall agree to guarantee and assume complete responsibility for the financial obligations attendant to: 1) all trades and orders executed or accepted for execution by a member it qualifies, including trades and orders executed, or which such member fails to execute, negligently, fraudulently or in violation of Exchange rules; 2) an unpaid arbitration award issued by a panel of the Arbitration Committee against a member it qualifies in circumstances where the dispute is related to a matter described in number 1) above; 3) an unpaid restitution order issued against a member it qualifies by a panel of the Business Conduct Committee, ~~the Clearing House Risk Committee~~ or a hearing



panel of the Board of Directors; and 4) unpaid Exchange disciplinary fines imposed upon a member it qualifies if the member is also an employee of the clearing member or its affiliate, subject to a determination by the sanctioning entity.

[Remainder of Rule is unchanged.]

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**903. RESPONSIBILITY FOR QUALIFIED MEMBERS**

- A. A clearing member that qualifies a member thereby guarantees and assumes complete responsibility for the financial obligations attendant to: 1) all trades and orders executed or accepted for execution by such member, including trades or orders executed, or which such member fails to execute, negligently, fraudulently or in violation of Exchange rules; 2) an unpaid arbitration award issued by a panel of the Arbitration Committee against such member in circumstances where the dispute is related to a matter described in number 1) above; 3) an unpaid restitution order issued against such member by a panel of the Business Conduct Committee, ~~the Clearing House Risk Committee~~ or a hearing panel of the Board of Directors; and 4) unpaid Exchange disciplinary fines imposed upon such member if the member is also an employee of the clearing member or its affiliate, subject to a determination by the sanctioning entity.

[Remainder of Rule is unchanged.]

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**911. SCREENING PROCEDURES**

Upon receipt of an application, the Financial and Regulatory Surveillance Department and the Clearing and Post-Trade Services Department shall investigate the applicant's qualifications, which may include an examination of the books and records of the applicant.

[Remainder of Rule is unchanged.]

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**974. [RESERVED] ~~SUSPENSION OF MEMBER FIRM PRIVILEGES~~**

- A. ~~If, in the opinion of the Financial and Regulatory Surveillance Department, a clearing member fails to meet the minimum financial requirements as prescribed herein or neglects to promptly furnish a statement upon request, a recommendation may be made to the Clearing House Risk Committee to suspend the privileges of the clearing member. Upon such recommendation, the Clearing House Risk Committee shall conduct a hearing and such clearing member shall show cause why its privileges should not be suspended. Upon finding that the minimum financial requirements are being violated, the Clearing House Risk Committee may suspend the privileges of such clearing member in accordance with the provisions of Chapter 4 of these rules. The CFTC shall be immediately notified of any clearing member which fails to meet the minimum financial requirements. Any suspended clearing member may appeal the decision of the Clearing House Risk Committee to the Board.~~
- B. ~~If any Rule 106.H., I., J., N., R., or S. member firm:~~
- ~~• has notified the Exchange or the Exchange otherwise becomes aware of a significant event as defined in Rule 442; or~~
  - ~~• that is an FCM fails to meet CFTC minimum financial requirements in the opinion of the Financial and Regulatory Surveillance Department; or~~
  - ~~• neglects to promptly furnish a statement upon request,~~

~~the membership privileges of the member firm may be suspended, subject to approval of any two of the following individuals: the Chief Executive Officer, Global Head of Clearing & Post-Trade Services, or the Chairman of the Board. Any two of these individuals may reinstate the membership privileges of such a suspended member firm, in their discretion, if the suspended member firm provides evidence satisfactory to the Financial and Regulatory Surveillance Department of its financial responsibility or that it meets CFTC minimum financial requirements.~~

[Remainder of Rule is unchanged.]

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#### **975. EMERGENCY FINANCIAL CONDITIONS**

If the Global Head of Clearing & Post-Trade Services determines that the financial or operational condition of a clearing member or one of its affiliates is such that to allow that clearing member to continue its operation would jeopardize the integrity of the Exchange, or negatively impacts the financial markets by introducing an unacceptable level of uncertainty, volatility or risk, whether or not the clearing member continues to meet the required minimum financial requirements, ~~they he~~ may empanel the Chief Executive Officer, ~~the~~ Chairman of the Board, ~~a~~ Chairman of the Clearing House Risk Committee, and the Global Head of Clearing & Post-Trade Services. (“Emergency Financial Committee”). Such panel shall be duly authorized and, upon a unanimous vote of the panel, be empowered to order (a) an immediate position limitation, (b) an immediate suspension of the clearing member, (c) that all open trades of said clearing member be for liquidation only, (d) the liquidation or transfer of all or a portion of the open positions of the clearing member, (e) additional performance bond to be deposited with the Clearing House and/or (f) any other action necessary to protect the financial integrity of the Clearing House. The clearing member affected by action taken shall be notified and may request a hearing before the Board pursuant to the procedures set forth in Rule 412. ~~In the event of suspension, the Chief Executive Officer shall, promptly after a suspension, set the matter for hearing before the Board for final determination.~~ To the extent that the panel orders that all open trades of a clearing member be for liquidation only, or the panel orders the liquidation or transfer of all of the open positions of a clearing member, Rule 913.B. shall apply and the clearing member shall be treated as a withdrawing clearing member.

[Remainder of Rule is unchanged.]

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#### **980. REQUIRED RECORDS AND REPORTS**

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F. Exchange staff may impose administrative fees upon clearing members for late submissions of reports and other information required to be submitted to the Financial and Regulatory Surveillance Department by Exchange Rules. The administrative fees permitted by this Rule 980.F. shall not exceed \$1,000 for the initial late submission, plus \$1,000 for each additional business day that such report or information is not submitted. Where the late submission of reports or other information may be due to insufficient internal accounting controls or procedures, the ~~Clearing House Risk Committee~~ Business Conduct Committee may impose disciplinary sanctions in lieu of, or in addition to, the administrative fees.

[Remainder of Rule is unchanged.]