

**SUBMISSION COVER SHEET**

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

**Registered Entity Identifier Code (optional):** 24-124 (5 of 5)

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

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

**Filing Date (mm/dd/yy):** 11/08/24    **Filing Description:** Amendments to CME, CBOT, NYMEX/COMEX Rules 802.A, 804, 805, 8F006 and 8F025 Regarding Default Management; Default Management Guidelines

**SPECIFY FILING TYPE**

**Please note only ONE choice allowed per Submission.**

**Organization Rules and Rule Amendments**

- |                                     |                                     |            |
|-------------------------------------|-------------------------------------|------------|
| <input checked="" type="checkbox"/> | Certification                       | § 40.6(a)  |
| <input type="checkbox"/>            | Approval                            | § 40.5(a)  |
| <input type="checkbox"/>            | Notification                        | § 40.6(d)  |
| <input type="checkbox"/>            | Advance Notice of SIDCO Rule Change | § 40.10(a) |
| <input type="checkbox"/>            | SIDCO Emergency Rule Change         | § 40.10(h) |

**Rule Numbers:** 802, 804, 805, 8F006, 8F025, 8G802

**New Product**

**Please note only ONE product per Submission.**

- |                          |                                       |            |
|--------------------------|---------------------------------------|------------|
| <input type="checkbox"/> | Certification                         | § 40.2(a)  |
| <input type="checkbox"/> | Certification Security Futures        | § 41.23(a) |
| <input type="checkbox"/> | Certification Swap Class              | § 40.2(d)  |
| <input type="checkbox"/> | Approval                              | § 40.3(a)  |
| <input type="checkbox"/> | Approval Security Futures             | § 41.23(b) |
| <input type="checkbox"/> | Novel Derivative Product Notification | § 40.12(a) |
| <input type="checkbox"/> | Swap Submission                       | § 39.5     |

**Official Product Name:**

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

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

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

November 8, 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 Rules 802.A, 804, 805, 8F006, 8F025, and 8G802.A Regarding Default Management; Default Management Guidelines. COMEX Submission No. 24-124 (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 (i) amendments to the Exchanges’ Rules 802.A (“Protection of Clearing House - Default by Clearing Member or Other Participating Exchanges”), 804 (“Substitution”), 805 (“Open Positions”), 8F006 (“Clearing Member Default”), 8F025 (“Active Base OTC Default Management Committee”), and 8G802.A (“Protection of Clearing House - Default by IRS Clearing Member”), and (ii) the Clearing House’s Base Default Management Guidelines and IRS Default Management Guidelines (collectively, the “Rule Amendments”), effective on November 26, 2024.

**Background**

The Clearing House and Exchanges are implementing the Rule Amendments to provide for greater clarity, consistency, efficiency and transparency regarding the Clearing House’s existing powers for managing Clearing Member defaults. As described below, certain of the Rule Amendments will harmonize language in the Rulebook that describes existing default management processes for CME’s clearing services, increasing consistency and transparency. Other Rule Amendments are intended to make CME’s default management process more efficient and reduce the potential costs of liquidation, which in turn reduces the risk of losses accruing to the Clearing House and market participants, including in an unprecedented scenario involving multiple, concurrent defaults. These Rule Amendments, including the Base Default Management Guidelines and the IRS Default Management Guidelines (collectively, “Guidelines”), are also intended to bolster legal certainty with respect to actions taken in accordance with the CFTC’s Part 190 Regulations. Lastly, the Rule Amendments will provide CME flexibility regarding the decision to convene an Active Default Management Committee (“ADMC”) when managing the default of a Base OTC Clearing Member.

A. Harmonization and Transparency

Amendments to Exchange Rules 802.A.1, and CME Rules 8F006 and 8G802.A are intended to harmonize

certain provisions regarding the Clearing House's Base<sup>1</sup> and interest rate swap ("IRS") clearing services.

Current CME Rule 8G802 outlines certain commercially reasonable actions the Clearing House may take in response to a default in the IRS clearing service. Similar provisions are being added to Exchange Rule 802.A.1 and CME Rule 8F006 to enhance consistency, transparency and legal certainty across the services. Similarly, an existing reference to the IRS Default Management Guidelines in CME Rule 8G802 for the IRS clearing service will be duplicated in Rule 802.A.1 for the Base clearing service. References to the Guidelines and the actions that can be taken thereunder in the respective Base and IRS Rules will enhance transparency regarding the actions the Clearing House could take in response to a Clearing Member default.

In addition, the adoption of additional language in each of Exchange Rule 802.A.1 and CME Rule 8G802.A codifies that CME will provide Clearing Members the Guidelines on a confidential basis. These changes promote transparency by enabling Clearing Members to access additional information concerning the operating and default processes of the Clearing House. The Guidelines are filed as Exhibits A and B, under separate cover and subject to a request for confidential treatment.

#### B. Commercially Reasonable Actions, Including Book-entry Offsets and Combining Positions

Certain amendments to Exchange Rules 802.A.1 and CME Rules 8F006 and 8G802.A will more fully outline and clarify the Clearing House's authority with respect to a Clearing Member default, including the unprecedented scenario of concurrently managing multiple Clearing Members in default. In either scenario, the Clearing House may engage in any commercially reasonable transaction or action contemplated by the Rules and the relevant default management guidelines. Pursuant to the Rule Amendments, these actions are being expressed to include, without limitation, combining positions in different accounts of one or more defaulters to reduce or manage risk prior to liquidation or offsetting positions of defaulters' eligible accounts via book-entry, in addition to liquidating defaulters' positions in the open market or by auctioning a portfolio of positions.

For the Base clearing service, current Exchange Rule 802.B.6 ("Satisfaction of Clearing House Obligations – Details of Implementation") authorizes the Clearing House to liquidate open commodity contracts of any defaulting Clearing Member, including by book-entry that offsets open commodity contracts on the books of the defaulting Clearing Member. The Rule Amendments explicitly provide for use of book-entry offset in a managing default in the Base or IRS service and across multiple accounts of one or more defaulting Clearing Members should that unlikely scenario occur, i.e., book entry offset could involve offsetting positions in either the same or different accounts. Concerning a debtor Clearing Member that is a futures commission merchant ("FCM"), CFTC Regulation 190.04(e)(2) provides that the Commission may permit book-entry liquidations of open commodity contracts, and settlement on such contracts, upon application by the trustee or a DCO, as applicable.<sup>2</sup> CFTC Regulation 190.04(e)(1) further provides that a DCO may liquidate a debtor FCM Clearing Member's commodity contract positions pursuant to the DCO's rules, which may provide for liquidation other than on the open market.<sup>3</sup> These Rule Amendments align with the terms of the Commission regulations and should facilitate the Clearing House's recourse to use book-entry as appropriate when dealing with a failed FCM Clearing Member in a bankruptcy proceeding to which the CFTC Part 190 Regulations apply. The Rule Amendments will also add further transparency to the long-standing default management practice of combining or splitting portfolios of a defaulted Clearing Member for ease of managing risk or liquidating portfolios, for example, via auction.

The Clearing House's combination of positions to manage or reduce risk, or liquidation via book-entry offset, could involve positions carried in defaulted proprietary accounts, customer accounts in default and/or non-reported customer accounts. The DCO's top priorities when facing a distressed FCM Clearing Member are to reduce risk and port the firm's customer positions to one or more capable FCMs. Those priorities are not

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<sup>1</sup> The Clearing House's Base clearing service covers DCM-listed futures and options on futures as well as certain over-the-counter derivatives other than IRS.

<sup>2</sup> See 17 C.F.R. § 190.04.

<sup>3</sup> See *id.*

changing. The DCO would seek to liquidate the customer positions of a defaulted FCM Clearing Member only where porting cannot be accomplished within a reasonable amount of time, as determined by the Clearing House with reference to then-existing market conditions, feedback from potential receiving FCMs, the amount of collateral on-hand or any other relevant factors. The DCO's book-entry liquidation of positions carried in the customer account(s) of an FCM Clearing Member that is subject to the commodity broker liquidation provisions of the Bankruptcy Code will be undertaken in accordance with applicable law. For avoidance of doubt, any proprietary or customer account that is in default on a payment obligation to the Clearing House is immediately eligible for liquidation by any permitted method, including by offset or combination with other eligible positions of any defaulter.

With respect to the Clearing House combining positions or portfolios to reduce or manage risk prior to their liquidation, or with respect to book-entry liquidations, the gains and losses for such positions will be tracked and allocated using calculations based on the risk of the original portfolios. Such gains and losses will continue to accrue to the original account until the positions are finally liquidated and the Clearing House returns to a matched book. When combining eligible positions to reduce or manage risk prior to liquidation, the Clearing House will take prudent steps to manage the default involving multiple portfolios in an efficient and holistic manner to contain an issue to which the defaulted accounts have contributed. The transaction costs and losses associated with hedges are part of the default management costs that the DCO incurs, and it is reasonable for the Clearing House to allocate those losses and costs (as well as other default management costs) to those who were responsible for or caused the default. The current Rules provide, among other things, the Clearing House's method for allocating the costs associated with hedging portfolios to the portfolios of the defaulter(s) is risk-based, fair and reasonable and losses and costs associated with the hedge portfolio are the responsibility of those account owners. The Clearing House would be using settlement variation gains on the defaulted portfolio(s) to offset the payment obligations associated with that account, not to meet the obligations of another account.

Amendments to Rules 802.A.1, 804, 805, 8F006 and 8G802.A establish terms for novating the liquidations of offsetting positions to the Clearing House in order to provide legal certainty regarding those positions.

Pricing for positions subject to its default management processes will be determined at a competitively determined price to the extent feasible. Liquidations in the open market entail competitive execution. Arranged trades involve competitive determinations of value for the overall portfolio with the positions being transferred at the last good settlement price. The settlement price for book-entry liquidations or transfers will be based on the last good settlement price determined by the Clearing House in accordance with its Rules and applicable CFTC Part 190 Regulations. All Clearing Members stand to benefit from lower costs charged against the defaulted portfolio(s) due to cost efficiencies from hedging in this manner.

The Clearing House further expects that combining or offsetting eligible positions in a default scenario would reduce the time, cost and market risk associated with sourcing hedges or offsetting positions in the open market. These outcomes in turn enhance the Clearing House's efficiency in responding to a default while reducing risk to the Clearing House and the non-defaulting Clearing Members whose guaranty fund contributions are at risk of mutualization.

#### C. Base Active Default Management Committee

CME Rule 8F025 currently mandates the Clearing House to convene the Base OTC ADMC for any default of a Base OTC Clearing Member without regard to the size or complexity of the defaulter's portfolio. Amendments to CME Rule 8F025 will make it optional for the Clearing House to convene a Base OTC ADMC when managing the default of a Base OTC Clearing Member.

Because there is de minimis open interest in the Base OTC products that are potentially within the ADMC's remit, the Clearing House expects that removing this requirement would reduce unnecessary participation burdens on Base OTC Clearing Members by enabling the Clearing House to manage liquidation of a Base OTC product portfolio without assistance from the seconded traders that constitute the ADMC. This optionality is expected to enhance efficiency and effectiveness with which the Clearing House can take

steps to manage the risk associated with a Base OTC Clearing Member default in such cases where assistance from the ADMC is not considered necessary.

The Base Default Management Guidelines and the IRS Default Management Guidelines are attached under separate cover as Exhibits A and B, respectively, and are subject to a request for confidential treatment. Revisions to the Exchanges' Rulebooks are provided in Exhibit C 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" or the "Act") and identified that the Rule Amendments may have some bearing on the following Core Principles.

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

- *DCO Core Principle B - Financial Resources:* This Core Principle requires the Clearing House to have adequate financial resources to discharge its responsibilities as a DCO. The Rule Amendments will not impact the overall level of financial resources held by the Clearing House or its Clearing Members. Actions taken to combine or offset positions are expected to reduce risk in the respective portfolios, and thus reduce the likelihood that the financial resources of CME or its Clearing Members will need to be applied to cure losses resulting from a default.
- *DCO Core Principle D - Risk Management:* CFTC Regulation 39.13(f) requires each DCO to limit its exposure to potential losses from defaults by its clearing members through margin requirements and other risk control mechanisms. The Rule Amendments will enhance the Clearing House's ability to manage risks associated with its DCO responsibilities, particularly its clearance and settlement of obligations in the event of a default. Combining or liquidating positions by book-entry would be utilized to manage or reduce risk in the respective accounts of the defaulter(s). While these tools are contemplated under the existing Rules, adding specificity in the Rules for each of the clearing services will enhance certainty and further limit both the DCO's and its Clearing Members' exposure to potential losses from defaults. Novation terms are being added to ensure that the clearance and settlement aspects of those tools operate as intended, with the associated cash flows being allocated back to the original account(s). Removing the mandate to convene the ADMC is expected to enhance the Clearing House's ability to efficiently manage risk arising from the default of a Base OTC Clearing Member.
- *DCO Core Principle F - Treatment of Funds:* CFTC Regulation 39.15 requires each DCO to establish standards and procedures that are designed to protect and ensure the safety of funds and assets belonging to clearing members and their customers. CFTC Regulation 39.15(b)(1) mandates compliance with segregation requirements of section 4d of the CEA. The Rule Amendments are intended to protect and ensure the safety of funds and assets belonging to all Clearing Members and customers. Combining the positions from different accounts of one or more defaulted Clearing Members will reduce risk in each of the respective accounts. The collateral on deposit in each account will remain with the original account. Any profits and losses from the combined positions will be allocated back to the original account(s) based on the original risk of those portfolios, with losses to be satisfied first from the collateral on deposit in such account and then from the remaining Clearing House financial safeguards package thereafter.
- *DCO Core Principle G - Default Rules and Procedures:* CFTC Regulation 39.16(a) requires each DCO to establish rules and procedures to allow for the efficient, fair, and safe management of events during the insolvency or default of a clearing member. CFTC Regulation 39.16(c) requires each DCO to establish rules that set forth its default procedures. The Rule Amendments amend the established rules of the Clearing House which, in conjunction with the Clearing House's outlined processes, are intended to enable the Clearing House's efficient, fair and safe management of defaults. The

Clearing House's removal of the mandate to convene the ADMC for any default of a Base OTC Clearing Member will likewise be reflected in the CME Rulebook.

- *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. In addition, CME will release a notice to the marketplace regarding the Rule Amendments in advance of the effective date.
- *DCO Core Principle R - Legal Risk:* This Core Principle requires Clearing House to operate pursuant to a well-founded, transparent, and enforceable legal framework that addresses each aspect of its activities, including the steps it would take to address a default of a Clearing Member. The Rule Amendments add clarity and certainty regarding steps the Clearing House could take to manage defaults, including in the unprecedented scenario of concurrent defaults in multiple accounts and further including a scenario involving multiple defaulting Clearing Members. Adopting the Rule Amendments further increases the Clearing House's ex ante certainty regarding its ability to liquidate commodity contract positions in accordance with CFTC Regulation 190.04(e).

B. DCM Core Principles

- *DCM Core Principle 7 - Availability of General Information:* The Rule Amendments will be incorporated into the Exchanges' publicly available rulebooks.
- *DCM Core Principle 9 - Execution of Transactions:* This Core Principle mandates the establishment of a competitive, open, and efficient market and mechanism for executing transactions. The mechanics of a book-entry offset are similar in nature to those of transfer or office trades, which are recognized permissible exceptions to the competitive execution obligation under DCM Core Principle 9. Certification of these Rule Amendments by the DCM will add certainty regarding the DCO's authorization to establish such book-entry offsets for default management purposes.
- *DCM Core Principle 11 – Financial Integrity of Transactions.* By enhancing the Clearing House's ability to efficiently manage risk arising from the default of a Base Clearing Member, the Rule Amendments also serve to protect non-defaulting Base Clearing Members and their customers trading on the Exchanges, in furtherance of this Core Principle.

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

The Exchanges certify that this submission has been concurrently posted on the Exchanges' website at <http://www.cmegroup.com/market-regulation/rule-filings.html>.

If you require any additional information regarding this submission, please contact the undersigned at 312.466.7478 or via email at [CMEGSubmissionInquiry@cmegroup.com](mailto:CMEGSubmissionInquiry@cmegroup.com).

Sincerely,

/s/ Timothy Elliott  
Managing Director and Chief Regulatory Counsel

Attachments: Exhibit A – CME Base Default Management Guidelines (attached under separate cover and confidential treatment requested)

Exhibit B – CME IRS Default Management Guidelines (attached under separate cover and confidential treatment requested)

Exhibit C – Amendments to CME, CBOT, NYMEX/COMEX Rules 802. (“Protection of Clearing House”); 804. (“Substitution”); 805. (“Open Positions”); CME Rules 8F006. (“Clearing Member Default”); 8F025. (“Active Base OTC Default Management Committee”) and 8G802. (“Protection of Clearing House”) (blackline format)

Exhibit A

**CME Base Default Management Guidelines**

**(CONFIDENTIAL TREATMENT REQUESTED)**

**(ATTACHED UNDER SEPARATE COVER)**



**Exhibit B**

**CME IRS Default Management Guidelines**

**(CONFIDENTIAL TREATMENT REQUESTED)**

**(ATTACHED UNDER SEPARATE COVER)**

**Exhibit C**  
**Amendments to CME, CBOT, NYMEX/COMEX Rulebooks**  
(additions are underlined; deletions ~~overstruck~~)

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

**802. PROTECTION OF CLEARING HOUSE**

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

The Clearing House shall establish a guaranty fund (the “Base Guaranty Fund”) for products other than IRS Products and any positions commingled with IRS Contracts pursuant to Rule 8G831 (such products, the “Base Guaranty Fund Products” and each product, a “Base Guaranty Fund Product Class”). Each clearing member shall contribute to the Base Guaranty Fund in accordance with the requirements of Rule 816. A clearing member’s Base Guaranty Fund contribution may be applied by the Clearing House in accordance with this Rule 802 to mitigate a Loss (as defined below) to the Clearing House attributable to any cleared Base Guaranty Fund Product Class (as defined below) regardless of the Base Guaranty Fund Product Classes a clearing member clears. However, in order to accommodate differences in time frames and processes associated with the liquidation of certain Base Guaranty Fund Product Classes, Losses will be allocated among a set of Base Guaranty Fund tranches established to reflect the relative contributions of different product classes to the total Base Guaranty Fund. Notwithstanding this prioritization of the Clearing House’s recourse, ultimately the entire Base Guaranty Fund will be available if necessary to satisfy all losses regardless of Base Guaranty Fund Product Class.

1. Default by Clearing Member

If a clearing member of CME, CBOT, NYMEX, COMEX, or an OTC Clearing Member (i) fails promptly to discharge any obligation to the Clearing House or (ii) becomes subject to any bankruptcy, reorganization, arrangement, insolvency, moratorium, or liquidation proceedings, or other similar proceedings under U.S. federal or state bankruptcy laws or other applicable law, the Clearing House may declare such clearing member to be in default. For purposes of this Rule 802, each default by a clearing member will be considered a separate default event, provided that if a clearing member has been declared in default, subsequent failures to pay by such defaulting clearing member shall not be considered separate default events unless and until the original default has been fully resolved and such clearing member has been restored to good standing.

Upon a default, the Clearing House shall act promptly to mitigate any loss caused by such default. The Clearing House may engage in any commercially reasonable transaction or action contemplated by the Rules and the Base Default Management Guidelines to manage, reduce, or eliminate the risk created by the default, including but not limited to, entering into hedges, liquidating positions in the market, auctioning or selling a portion or all of the portfolio of the defaulting firm and, if applicable, its customers, and combining or offsetting by book-entry positions in eligible accounts of one or more defaulters. The Clearing House shall maintain plans for managing the default of a Base Clearing Member (including but not limited to the Base Default Management Guidelines). A Clearing Member that clears or plans to clear Base Products at the Clearing House may obtain a copy of the Base Default Management Guidelines on a confidential basis.

With respect to each hedging or liquidation transaction in a contract that the Clearing House executes via book-entry, the provisions in the second paragraph of Rule 804 shall apply as if there were a substitution.

....

[remainder of rule unchanged]

#### 804. SUBSTITUTION

Except with respect to trades made pursuant to Rules 526, 538 and 853 or as otherwise expressly provided in the Rules, the Clearing House shall, through the process of novation, be substituted as, and assume the position of, seller to the buyer and buyer to the seller of the relevant number of Exchange or Marketplace contracts upon the successful matching of trade data submitted to the Exchange by the clearing members on the long and short sides of a trade. With respect to contracts that are traded on and matched by another exchange or market, the Clearing House shall be substituted as, and assume the position of, seller to buyer and buyer to seller of the relevant number of such contracts upon matching of trade data submitted to and accepted by the Exchange.

Upon such substitution, each clearing member shall be deemed to have bought the contracts from or sold the contracts to the Clearing House, as the case may be, and the Clearing House shall have all the rights and be subject to all the liabilities of such member with respect to such transaction. Such substitution shall be effective in law for all purposes.

With regard to trades made pursuant to Rules 526, 538 and 853, the Clearing House shall be substituted at the time payment of the first settlement variation and performance bond due for such trades pursuant to Rule 814 is confirmed by the appropriate settlement bank for both members.

#### 805. OPEN POSITIONS

All contracts for the purchase or sale of any product for future delivery shall remain open and in force, and shall continue to be binding upon the original parties until liquidated by offset as provided in Rule 806 or by delivery or failure to perform as provided in Chapter 7 or until liquidated by the Clearing House in managing the default of a clearing member as contemplated in the Rules.

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

#### 8F006. CLEARING MEMBER DEFAULT

If an OTC Clearing Member fails promptly to discharge any obligation to the Clearing House, it shall be in default and the Clearing House may take all actions permitted by these Rules in the event of a default. All of the assets and collateral of an OTC Clearing Member that are available to CME including, but not limited to, its guaranty fund deposit and performance bond shall be applied by the Clearing House to discharge the obligation. The Clearing House may engage in any commercially reasonable transaction or action contemplated by the Rules and the Base Default Management Guidelines to manage, eliminate or reduce the risk created by the default, including but not limited to, entering into hedges, liquidating positions in the market, auctioning or selling a portion or all of the portfolio of the defaulting firm and, if applicable, its customers, and combining or offsetting by book-entry positions in eligible accounts of one or more defaulters. ~~and a~~ All obligations, costs and expenses incurred ~~thereby by entering into any transactions contemplated under the Rules~~ shall be an obligation of the defaulting OTC Clearing Member to the Clearing House. If the defaulting clearing member has proprietary or customer positions in contracts traded on an execution platform with which CME has a clearing services agreement, the Clearing House, acting in good faith and a commercially reasonable manner, will determine the appropriate default management approach, which may include but is not limited to the determination to close out and cash settle all open positions in contracts executed on such execution platform.

#### 8F025. ACTIVE BASE OTC DEFAULT MANAGEMENT COMMITTEE

The Active Base OTC Default Management Committee ~~shall~~may be established to provide the Clearing House with advice regarding the potential or actual default of a Base OTC Clearing Member and the management of the liquidation and/or transfer of such Base OTC Clearing Member's portfolio of OTC Derivatives, including

advice relating to the hedging of risk associated with such Base OTC Clearing Member's portfolio, the structuring of such Base OTC Clearing Member's portfolio for liquidation or transfer, and the administration of the related default auction process. The Active Base OTC Default Management Committee shall also participate in OTC Derivative default drill exercises, as required by the Clearing House.

The Active Base OTC Default Management Committee will be comprised of traders (on a rotating basis determined by the Clearing House) that are nominated by Base OTC Clearing Members in accordance with Rule 8F004 and approved by the Clearing House.

In the event of a potential or actual default of a Base OTC Clearing Member, the Active Base OTC Default Management Committee ~~shall~~ may be convened and the Clearing House will undertake a series of processes to protect itself and its counterparties (such ~~processes~~ plans, as amended from time to time in consultation with the Clearing House Risk Committee, include the "Base ~~OTC~~ Default Management ~~Plan~~ Guidelines").

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

### **8G802. PROTECTION OF CLEARING HOUSE**

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#### **8G802.A. Default by IRS Clearing Member**

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##### *1. Default by IRS Clearing Member*

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

Upon a default, the Clearing House shall act promptly to mitigate any loss caused by such default. The Clearing House may engage in any commercially reasonable transaction or action contemplated by the Rules and the IRS Default Management Guidelines, to manage, eliminate or reduce the risk created by the default, including but not limited to, entering into hedges, liquidating positions in the market, auctioning or selling a portion or all of the portfolio of the defaulting firm and, if applicable, its customers, and combining or offsetting by book-entry positions in eligible accounts of one or more defaulters. The Clearing House shall maintain ~~procedures~~ plans for managing the default of an IRS Clearing Member (~~such procedures, including the~~ "IRS Default Management Guidelines"). An IRS Clearing Member that clears or plans to clear IRS Products at the Clearing House may obtain a copy of the IRS Default Management Guidelines on a confidential basis. All information received by a Clearing Member, its affiliate or customer in connection with the Clearing House's liquidation and default management processes shall be treated as confidential.

With respect to each hedging or liquidation transaction in a contract that the Clearing House executes via book-entry, the provisions in the second paragraph of Rule 804 shall apply as if there were a substitution.

All obligations, costs and expenses incurred by entering into any transactions under the Rules shall be an obligation of the defaulted IRS Clearing Member to the Clearing House.