

**SUBMISSION COVER SHEET**

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

Registered Entity Identifier Code (optional): 21-198 (4 of 5)

Organization: New York Mercantile Exchange, Inc. ("NYMEX")

Filing as a:  DCM  SEF  DCO  SDR

Please note - only ONE choice allowed.

Filing Date (mm/dd/yy): 04/16/21 Filing Description: Amendments to CME, CBOT, NYMEX/COMEX Rule 702. ("Clearing Member Duties to the Clearing House") of Chapter 7 ("Delivery Facilities and Procedures")

**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: 702

**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:

April 16, 2021

**VIA ELECTRONIC PORTAL**

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

**Re: CFTC Regulation 40.6(a) Certification. Notification Regarding Amendments to CME, CBOT, NYMEX/COMEX Rule 702. (“Clearing Member Duties to the Clearing House”) of Chapter 7 (“Delivery Facilities and Procedures”). NYMEX Submission No. 21-198 (4 of 5)**

Dear Mr. Kirkpatrick:

Pursuant to Commodity Futures Trading Commission (“CFTC” or “Commission”) Regulation 40.6(a), Chicago Mercantile Exchange Inc. (“CME”), in its capacities as both a designated contract market (“DCM”) and a derivatives clearing organization (“DCO” or “CME Clearing”), and The Board of Trade of the City of Chicago, Inc. (“CBOT”), New York Mercantile Exchange, Inc. (“NYMEX”) and Commodity Exchange, Inc. (“COMEX”), in their capacities as DCMs, (each an “Exchange” and collectively, the “Exchanges”) hereby certify to the Commission amendments to the Exchanges’ Rule 702. (“Clearing Member Duties to the Clearing House”) of Chapter 7 (“Delivery Facilities and Procedures”) to codify long-standing delivery margin obligations (collectively, the “Rule Amendments”) effective for trade date Monday, May 3, 2021.

CME Clearing charges margin for delivery obligations resulting from the expiry of deliverable futures contracts. Clearing Members typically meet these obligations on behalf of house and customer accounts. Where permitted customers may meet the obligation directly by depositing delivery collateral with CME Clearing, typically in the form of a standby delivery letter of credit. The Clearing Member’s guarantee of a customer’s obligation is identical in both cases.

CME Clearing reviewed its delivery margin rules in connection with forthcoming revisions to the Commission’s Part 190 rule framework applicable to commodity broker bankruptcy proceedings.<sup>1</sup> Delivery margin requirements and related processes are established in product-specific rule chapters of the Exchange Rulebooks. To expressly address Clearing Member obligations where a customer posts delivery margin collateral directly to CME Clearing, a scenario which is not generally addressed in product-specific rule chapters, the Exchanges are amending Rule 702. to expressly state that Clearing Members assume responsibility with respect to the performance of all customer delivery margin obligations to the Clearing House. The Rule Amendments simply codify a long-standing Clearing Member guarantee and do not impact Clearing Member obligations, operations or risk management. The Rule Amendments also include technical conforming edits to harmonize the text of Rule 702. across the Exchanges’ Rulebooks.

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<sup>1</sup> See *Final Rule: Bankruptcy Regulations*, 86 Fed. Reg. 19324 (Apr. 13, 2021) (for effective date May 13, 2021).

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

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

#### **DCO Core Principles**

- **DCO Core Principle E – Settlement Procedures**: This Core Principle requires CME Clearing to ensure that enumerated risks associated with physical delivery obligations are identified and managed. The Rule Amendments codify long-standing obligations of Clearing Members with respect to delivery margin requirements, which exist so the DCO can manage and mitigate risk arising from the delivery process. The Exchanges are not aware of any past Clearing Member default on a delivery margin obligation. The Rule Amendments are being adopted to enhance certainty for CME Clearing and its Clearing Members when managing risks associated with the physical delivery process.
- **DCO Core Principle L - Public Information**: This Core Principle requires CME Clearing to publicly disclose its rules and procedures. The Rule Amendments codify requirements associated with CME Clearing’s delivery processes. The Rule Amendments will be incorporated into the Exchanges’ publicly available rulebook. CME Clearing will issue an advisory that will be posted on the CME Group website and outline the Rule Amendments.

#### **DCM Core Principles**

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

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

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

If you require any additional information regarding this submission, please contact the undersigned at 212.299.2200 or via email at [CMEGSubmissionInquiry@cmegroup.com](mailto:CMEGSubmissionInquiry@cmegroup.com).

Sincerely,

/s/ Christopher Bowen  
Managing Director and Chief Regulatory Counsel

Attachment: Exhibit 1 – Amendments to CME, CBOT, NYMEX/COMEX Rule 702. (“Clearing Member Duties to the Clearing House”) (blackline format)

## EXHIBIT 1

### CME, CBOT, NYMEX/COMEX RULEBOOKS

#### CME Rulebook

##### Chapter 7

##### ("Delivery Facilities and Procedures")

(additions are underscored; deletions overstruck)

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#### 702. CLEARING MEMBER DUTIES TO THE CLEARING HOUSE

Every clearing member carrying open long or short positions shall present to the Clearing House each business day an accurate inventory of such open positions. The inventory of open long and short positions shall be reported to the Clearing House in such manner and at such times as the Clearing House may prescribe.

A clearing member, carrying an account that is required to make or accept delivery, agrees to guarantee and assume complete responsibility for the performance of all delivery requirements set forth in the ~~rules~~Rules, including the requirement that delivery margin must be deposited with the Clearing House in such amounts and in such form as required by the Exchange.

In the event a clearing member fails to perform its delivery obligations to the Clearing House, such failure may be deemed a default pursuant to Rule 802. In a delivery failure, the Clearing House shall ensure the financial performance to the clearing member whose actions or omissions did not cause or contribute to the delivery failure (the "Affected Clearing Member"). In this regard, the Clearing House powers will include, but will not be limited to, the right to sell or liquidate the commodity subject to delivery and to distribute the proceeds as appropriate. "Financial performance" means payment of the commercially reasonable costs of the Affected Clearing Member related to replacement of the failed delivery and includes any related fines, penalties and fees incurred by the Affected Clearing Member and does not include physical performance or legal fees.

An Affected Clearing Member seeking financial performance from the Clearing House shall provide prompt notice to the Clearing House of the delivery failure and a good faith estimate of any financial performance being sought no later than 1 hour after the delivery deadline for the respective product, which may be extended upon request by the Affected Clearing Member by the President of the Clearing House or the President's designee due to extenuating circumstances. As soon as reasonably practicable thereafter, the Affected Clearing Member seeking financial performance shall provide to the Clearing House a detailed statement, with supporting documentation, of all amounts sought.

[End of Rule 702.]

#### CBOT Rulebook

##### Chapter 7

##### ("Delivery Facilities and Procedures")

(additions are underscored)

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[End of Rule 702.]

**NYMEX/COMEX Rulebook**  
**Chapter 7**  
**("Delivery Facilities and Procedures")**  
(additions are underscored)

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[End of Rule 702.]