

**SUBMISSION COVER SHEET**

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

**Registered Entity Identifier Code (optional):** 17-008R (1 of 2)

**Organization:** Chicago Mercantile Exchange Inc. ("CME")

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

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

**Filing Date (mm/dd/yy):** 05/18/17 **Filing Description:** Notification Regarding Amendments to CME Rule 743. ("Delivery Infractions") to Adopt New CME Rule 743.C. ("Final Settlement Finality Rule Applicable in Delivery Obligation Failure") for FX Delivery  
**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:** CME Rule 743

**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:**

**Rule Numbers:**

May 18, 2017

**VIA ELECTRONIC PORTAL**

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

**RE: CFTC Regulation 40.6(a) Certification. Notification Regarding Amendments to CME Rule 743. (“Delivery Infractions”) to Adopt New CME Rule 743.C. (“Final Settlement in Delivery Obligation Failure”) for Foreign Exchange (“FX”) Delivery.  
CME Submission No. 17-008R (1 of 2)**

Dear Mr. Kirkpatrick:

Pursuant to Commodity Futures Trading Commission (“CFTC” or “Commission”) Regulation 40.6(a), Chicago Mercantile Exchange Inc. (“CME”) hereby notifies the Commission that it is self-certifying amendments to CME Rule 743. (“Delivery Infractions”) to adopt CME Rule 743.C. (“Final Settlement Delivery Obligation Failure”) (the “Rule Amendments”) for CME’s foreign exchange (“FX”) products. The Rule Amendments will be effective on Monday, June 5, 2017.

Please note that CME Submission No. 17-008R revises a cross-reference within the Rule Amendments to better clarify the obligations of a clearing member to notify CME in the event of a default. There are no other amendments being made to the original submission (CME Submission No. 17-008).

CME Rule 702. (“Clearing Member Duties to the Clearing House”) provides that in the event of 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”)...’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.” This process is operationally achieved via a swap whereby the Affected Clearing Member swaps with CME the currency owed to them by CME for the counter-currency the Affected Clearing Member would have delivered to CME. Adoption of CME Rule 743.C. will further clarify this operational process.

The Rule Amendments provide that in the event of an FX paired delivery failure, the delivery obligations between paired counterparties are terminated and concurrently the non-defaulting clearing member and the Clearing House are deemed to have entered into fully offsetting transactions. Operation of the rule results in the non-defaulting clearing member swapping with the Clearing House the currency owed to it by its paired delivery counterparty for the counter-currency it would have delivered to that counterparty.

The Rule Amendments will not otherwise impact CME’s final settlement process for FX deliveries. The defaulting clearing member remains liable under CME rules for losses caused by its default. The non-defaulting clearing member remains entitled to replacement cost reimbursement, based on the differential

between the expiration settlement price of the underlying paired currency delivery obligation and the spot price at which the failed currency is, or is reasonably able to be, sourced.

The Rule Amendments will permit participants to better manage bilateral risk resulting from a paired counterparty default as delivery exposures are immediately terminated and offset. Additionally, the Rule Amendments better enable the Clearing House to discharge its responsibility to ensure same-day settlement where a clearing member defaults on its paired FX delivery obligation to its counterparty.

### **Core Principle Review**

CME reviewed the designated contract market core principles (“DCM Core Principles”) and the derivatives clearing organization core principles (“DCO Core Principles”) as set forth in the Commodity Exchange Act (“CEA” or “Act”) and identified that the Rule Amendments may have some bearing on the following principles:

- DCM Core Principle 7 – Availability of General Information. The Rule Amendments will be posted publicly on the CME Group website in satisfaction of this Core Principle. In addition, CME will release a notice to the marketplace regarding the amendments in advance of the effective date.
- DCO Core Principle E –Settlement Procedures. The Rule Amendments are consistent with the Clearing House’s obligations to identify and manage risks associated with physical delivery and to ensure final settlement of its FX delivery obligations on the value date. Clearing House rules providing for a guarantee of replacement costs and liability of the defaulter are not impacted. As such the CME rules continue to clearly state that clearing members must indemnify the clearing house for losses incurred in a delivery failure.
- DCO Core Principle J – Reporting. In accordance with its obligations under this Core Principle the Clearing House will continue to notify the Commission with respect to material adverse changes in the financial conditions of any clearing member and provide other required notifications with respect to the termination swaps to the Commission, as necessary.
- DCO Core Principle L – Public Information. The Rule Amendments will be added to the publicly available CME Rulebook available on the CME Group website. In addition, CME will release a notice to the marketplace regarding the amendments in advance of the effective date.
- CFTC Regulation 39.33 – Financial Resource Requirements for SIDCOs. Upon expiration of the contract, the Clearing House matches clearing members that are long with clearing members that are short to complete the delivery process. In the event a matched clearing member fails to meet its delivery obligations to the non-defaulting clearing member, the termination swap extinguishes the non-defaulting clearing member’s obligation to the Clearing House. At this point, the non-defaulting clearing member has received the currency it was originally to deliver and no longer has any delivery or liquidity obligation to the Clearing House.

Exhibit A, which is attached hereto, sets forth the Rule Amendments in blackline format.

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

CME certifies that this submission has been concurrently posted on the CME Group website at <http://www.cmegroup.com/market-regulation/rule-filings.html>.

If you require any additional information regarding this submission, please e-mail [CMEGSubmissionInquiry@cmegroup.com](mailto:CMEGSubmissionInquiry@cmegroup.com) or contact John McKinlay at 312-930-3028 or via email at [John.McKinlay@cmegroup.com](mailto:John.McKinlay@cmegroup.com).

Sincerely,

/s/Christopher Bowen  
Managing Director and Chief Regulatory Counsel

Attachment: Exhibit A –Amendments to CME Rule 743. (blackline format)

## **Exhibit A**

### **CME Rulebook**

#### **Chapter 7**

#### **Delivery Facilities and Procedures**

(additions underlined)

#### **743. DELIVERY INFRACTIONS**

##### **743.A. Late or Inaccurate Delivery**

1. If a clearing member with a Delivery Commitment to pay funds pursuant to Rules 731, 732, 737 or 738 fails to deposit such funds in order to make timely payment on the date required in those rules, the Clearing House may impose a fine upon the clearing member pursuant to the schedule of fines maintained by the Clearing House or any other compensation due to the late or inaccurate delivery.

If by 9:30 a.m. Chicago time on the day following the date required in Rules 731, 732, 737 and 738, such deposit is not made, the failure shall be deemed a delivery obligation failure of the clearing member and the matter shall be acted upon pursuant to Section B of this Rule.

Funds deposited pursuant to Rules 731, 732, 737 and 738 earlier than the required date of deposit shall not earn interest for the early time period.

2. If the information contained in either the Buyer's CLS on Non-CLS Delivery Commitment or the Seller's CLS or Non-CLS Delivery Commitment is inaccurate so that delivery cannot be accomplished in a timely manner, fines or damages may be assessed as in Section B below.

##### **743.B. Delivery Obligation Failure**

A clearing member with a CLS or Non-CLS Delivery Commitment who fails to perform all acts required by this chapter, or whose actions or inactions have been deemed a delivery obligation failure shall be liable for any loss sustained, which loss shall be computed, without duplication, as follows:

1. The President of the Clearing House or his designee shall determine the change, if any, from the final settlement price on the last day of trading to the spot rate on the first day on which the transaction could be consummated on the spot market. The spot market rate for purposes of this computation shall be the mean of the spot rates between a group of Chicago, Illinois banks selected for this purpose by Exchange staff at the earliest time it is determined the transaction can be completed in the spot market.
2. The related charges suffered by the other party at any of its designated banks, the related charges suffered by the Clearing House and any financial performance paid by the Clearing House pursuant to Rule 702.
3. A sum not to exceed 1% of the U.S. dollar value of the contract. Such amount shall be set by the President of the Clearing House or his designee, acting in his sole discretion, and shall be binding upon both parties to the contract, except no such sum shall be assessed where a delivery obligation failure is occasioned by the circumstances delineated in Rule 701.

##### **743.C. Final Settlement in Delivery Obligation Failure**

Upon notification to the Clearing House of a paired foreign currency delivery obligation failure in accordance with Rule 744702, in order to better ensure settlement finality, automatically and without any further action the following shall occur simultaneously with respect to each such failure:

1. the defaulting clearing member and Affected Clearing Member shall be released from their original paired currency delivery obligations to each other;
2. the Clearing House shall be deemed to have entered into a contract with the Affected Clearing Member on terms consistent with the failed contract the Affected Clearing Member had with the defaulting clearing member ("Temporary Contract");
3. the Clearing House and Affected Clearing Member shall be deemed to have entered into a contract with obligations that are opposite to those of the Temporary Contract ("Termination Swap"); and
4. the Clearing House's and Affected Clearing Member's obligations under the Temporary Contract and the Termination Swap will completely offset and net such that the parties shall have no obligation to deliver currencies to each other.

Notwithstanding the provisions above, a clearing member that fails to fully perform its paired foreign currency delivery obligation remains liable for losses and damages as provided in Rules 714 and 743.B.