

**SUBMISSION COVER SHEET**

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

Registered Entity Identifier Code (optional): 16-571 (3 of 3)

Organization: The Board of Trade of the City of Chicago, Inc. ("CBOT")

Filing as a:  DCM  SEF  DCO  SDR

Please note - only ONE choice allowed.

Filing Date (mm/dd/yy): December 15, 2016 Filing Description: Adoption of New CME and CBOT Rule 990. ("U.S. Withholding Tax")

**SPECIFY FILING TYPE**

Please note only ONE choice allowed per Submission.

**Organization Rules and Rule Amendments**

- Certification § 40.6(a)
- Approval § 40.5(a)
- Notification § 40.6(d)
- Advance Notice of SIDCO Rule Change § 40.10(a)
- SIDCO Emergency Rule Change § 40.10(h)

Rule Numbers: See filing.

**New Product**

Please note only ONE product per Submission.

- Certification § 40.2(a)
- Certification Security Futures § 41.23(a)
- Certification Swap Class § 40.2(d)
- Approval § 40.3(a)
- Approval Security Futures § 41.23(b)
- Novel Derivative Product Notification § 40.12(a)
- Swap Submission § 39.5

**Official Product Name:**

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

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

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

**Rule Numbers:**

December 15, 2016

**VIA ELECTRONIC PORTAL**

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. Adoption of CME and CBOT Rule 990. (“U.S. Withholding Tax”).  
CBOT Submission No. 16-574 (3 of 3)**

Dear Mr. Kirkpatrick:

Pursuant to Commodity Futures Trading Commission (“CFTC” or “Commission”) Regulation 40.6(a), Chicago Mercantile Exchange Inc. (“CME”) and The Board of Trade of the City of Chicago, Inc. (“CBOT”), (collectively, the “Exchanges”) hereby self-certify the adoption of CME Rule 990. (“U.S. Withholding Tax”) (“New Rule 990.”) effective on January 3, 2017.

New Rule 990. is designed to ensure that the Exchanges are not liable for U.S. withholding tax with respect to certain transactions entered into by the Exchanges’ clearing members that are treated as non-U.S. persons for purposes of U.S. federal income tax law and is intended to address the application of Section 871(m) of the Internal Revenue Code of 1986, as amended (“Section 871(m)”) and the application of the Foreign Account Tax Compliance Act (“FATCA”) to listed futures transactions executed on the Exchanges commencing on January 1, 2017. New Rule 990. appears in Exhibit A, with additions underscored.

Section 871(m), which was enacted in 2010, imposes a 30% withholding tax on “dividend equivalent” payments that are made or deemed to be made to non-U.S. persons with respect to certain derivatives (such as futures contracts) that reference equity of a U.S. issuer. In enacting Section 871(m), Congress was attempting to prevent foreign persons from using derivatives as a way to enjoy the economic benefits of owning dividend-paying stock while at the same time avoiding the withholding tax that would apply if such foreign persons actually owned the stock and the dividends were paid to them directly. For purposes of applying Section 871(m), a dividend equivalent subject to withholding is deemed to arise if a dividend is paid on a U.S. stock referenced by a derivative, such as a futures contract.

The obligation to collect withholding taxes on payments made to foreign persons ordinarily falls on the last U.S. person (the “withholding agent”) treated as having custody or control over the payment or funds before they leave the United States. Under the recently issued final Section 871 (m) regulations, in the case of a futures contract that references U.S. equities, the Exchange itself becomes the withholding agent whenever a non-U.S. Clearing member (“non-U.S. Member”) enters into a transaction on behalf of a customer or for its own account.

FATCA was also enacted in 2010 for the purpose of preventing U.S. citizens and residents from evading income tax through the use of offshore bank accounts. FATCA imposes a 30% withholding tax on U.S.-source dividends, dividend equivalents and similar payments that are made by a U.S. withholding agent to a foreign financial institution (“FFI”), such as a bank or brokerage firm, unless the FFI provides information about its U.S. account holders to the Internal Revenue Service (“IRS”).

A potential withholding agent, such as the Exchanges, can avoid the burden of reporting, collecting and remitting the withholding taxes imposed by Section 871(m) on outbound payments (including dividend equivalent payments) made or deemed to be made to a non-U.S. Member if the non-U.S. Member has entered into both a “qualified intermediary agreement” (relating to transactions executed on behalf of the non-U.S. Member’s customers) and a “qualified derivatives dealer agreement” (relating to transactions entered into for the non-U.S. Member’s own account) with the IRS whereby the non-U.S. Member essentially agrees to undertake these responsibilities. Similarly, the Exchanges can avoid the burden of reporting, collecting and remitting the withholding taxes imposed by FATCA on outbound payments (including dividend equivalent payments) made or deemed to be made to a non-U.S. Member if the non-U.S. Member has established an exemption from withholding under IRS procedures. By requiring non-U.S. Members to both enter into a qualified intermediary agreement and a qualified derivatives dealer agreement with the IRS and to establish a FATCA exemption under IRS procedures, New Rule 990. transfers the burden of complying with these withholding taxes to the non-U.S. Member whose activities make them applicable.

The Exchanges 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. DCM Core Principle 7 and CFTC Regulation 38.21(c)(7) requires that any matter relevant to participation in the clearing and settlement activities of the DCO be disclosed publicly. New Rule 990. would be made publicly available on the website for CME Group Inc. (“CME Group”).
- DCO Core Principle L – Public Information. DCO Core Principle L and CFTC Regulation 39.21(c)(7) requires that any matter relevant to participation in the clearing and settlement activities of the DCO be disclosed publicly. New Rule 990. would be made publicly available on CME Group’s website.

Pursuant to Section 5c(c) of the Act and CFTC Regulation 40.6(a), the Exchanges certify that New Rule 990. complies with the Act and regulations thereunder. There were no substantive opposing views to this proposal.

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

If you require any additional information regarding this submission, please contact me at 212.299.2200 or via e-mail at [CMEGSubmissionInquiry@cmegroup.com](mailto:CMEGSubmissionInquiry@cmegroup.com).

Sincerely,

/s/ Christopher Bowen  
Managing Director and Chief Regulatory Counsel

Attachment: Exhibit A: CME and CBOT Rule 990. (“U.S. Withholding Tax”) (blackline format)

## **EXHIBIT A**

### **CME, CBOT**

#### **Chapter 9 Clearing House and Performance Bonds**

(additions underscored)

### **TAX COMPLIANCE**

#### **990. U.S. WITHHOLDING TAX**

A. Beginning January 1, 2017, the date on which Section 871(m) of the Internal Revenue Code of 1986, as amended (for purposes of this Rule 990, the "Code"), and related Treasury regulations and other official interpretations thereof, first apply to any transactions on the Exchange:

1. No Clearing Member that is treated as a non-U.S. entity for U.S. federal income tax purposes shall conduct any transaction in equity index products on the Exchange unless:

a. such Clearing Member has entered into a qualified intermediary agreement with the Internal Revenue Service ("IRS") in which the Clearing Member has agreed to assume primary responsibility for reporting, collecting and remitting withholding taxes imposed pursuant to Chapters 3 and 4 of subtitle A, and Chapter 61 and Section 3406, of the Code with respect to any income (including dividend equivalents, as such term is defined in Section 871(m)(2) of the Code and Treasury Regulations Section 1.871-15(c) or any successor thereto) arising from transactions on the Exchange that are entered into by the Clearing Member as an intermediary, including transactions entered into on behalf of such Clearing Member's customers;

b. (i) such Clearing Member has entered into a qualified intermediary agreement with the IRS to become a qualified derivatives dealer ("Qualified Derivatives Dealer") that permits the Exchange to make payments of dividend equivalents (as such term is defined in Section 871(m)(2) of the Code and Treasury Regulations Section 1.871-15(c) or any successor thereto) or deemed payments, to such Clearing Member free from U.S. withholding taxes imposed pursuant to Chapters 3 and 4 of subtitle A, and Chapter 61 and Section 3406, of the Code arising from transactions on the Exchange that are entered into by the Clearing Member for its own account; and

(ii) such transaction entered into by the Clearing Member is within the scope of the exemption from withholding tax for dividend equivalents (as such term is defined in Section 871(m)(2) of the Code and Treasury Regulations Section 1.871-15(c) or any successor thereto) paid to Qualified Derivative Dealers pursuant to Chapters 3 and 4 of subtitle A, and Chapter 61 and Section 3406, of the Code; and

c. such Clearing Member has qualified under such procedures promulgated by the IRS as are in effect from time to time to establish an exemption from withholding under FATCA (as defined below), such that the Exchange will not be required to withhold any amount with respect to any payment made or deemed to be made to such Clearing Member under FATCA. For purposes of this subparagraph c., "FATCA" means the provisions of Sections 1471 through 1474 of the Code, which were enacted as part of the Foreign Account Tax Compliance Act (or any amendment thereto or any successor sections thereof), and related Treasury Regulations and other interpretations thereof, as in effect from time to time, and the provisions of any intergovernmental agreement to implement the FATCA as in effect from time to time between the United States and the jurisdiction of the relevant Clearing Member's residency.

2. Beginning on January 1, 2017, and on each anniversary thereafter, each Clearing Member that is treated as a non-U.S. entity for U.S. federal income tax purposes and that conducts any transaction in equity index products on the Exchange in accordance with Rule 990.A. 1, shall certify to the Exchange that such Clearing Member satisfies the requirements of Rule 990.A.1.(a) through (c) by providing to the Exchange appropriate tax documentation attesting to such Clearing Member's federal income tax status, with the first such certification being delivered to the Exchange no later than January 1, 2017. Each such Clearing Member is required to promptly update its certification to the Exchange if required by applicable law or administrative guidance or if the certification is no longer accurate.
3. Beginning on January 1, 2017, and on each anniversary thereafter, each Clearing Member that is treated as a non-U.S. entity for U.S. federal income tax purposes shall provide the Exchange with information relating to the dividend equivalents (as such term is defined in Section 871(m)(2) of the Code and Treasury Regulations Section 1.871-15(c) or any successor thereto) the Exchange pays or is deemed to pay such Clearing Member in sufficient detail and in a sufficiently timely manner to enable the Exchange to report on IRS Forms 1042 and 1042-S (or any successor forms) under Chapters 3 and 4 of subtitle A of the Code, the required amounts and other information relating to dividend equivalents (as such term is defined in Section 871(m)(2) of the Code and Treasury Regulations Section 1.871-15(c) or any successor thereto) and transactions giving rise thereto between the Exchange and the Clearing Member.
4. Each Clearing Member that is treated as a non-U.S. entity for U.S. federal income tax purposes shall promptly inform the Exchange in writing if it undergoes a change in circumstance that would affect its compliance with this Rule 990, or otherwise knows or has reason to know that it is not, or will not be, in compliance with this Rule 990, but in each case, such writing must be delivered to the Exchange no later than within two days of the Clearing Member's knowledge thereof.
5. A Clearing Member that is treated as a non-U.S. entity for U.S. federal income tax purposes shall indemnify the Exchange for any loss, liability or expense (including taxes and penalties) sustained by the Exchange as a result of such Clearing Member failing to comply with the requirements of this Rule 990.