

November 1, 2013

**VIA E-MAIL**

Ms. Melissa Jurgens  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

**RE: CFTC Regulation 40.5(a) Request for Approval.  
Amendments to Rule 538 and the Issuance of Market Regulation Advisory  
Notice RA1311-5  
CME/CBOT/NYMEX/COMEX/KCBT Submission No. 13-526**

Dear Ms. Jurgens:

Pursuant to Commission Regulation 40.5(a), Chicago Mercantile Exchange Inc. (“CME”), the Board of Trade of the City of Chicago, Inc. (“CBOT”), New York Mercantile Exchange, Inc. (“NYMEX”), Commodity Exchange, Inc. (“COMEX”) and the Board of Trade of Kansas City, Missouri, Inc. (“KCBT”) (each an “Exchange” and collectively, the “Exchanges”) request approval from the Commodity Futures Trading Commission (“CFTC” or “Commission”) to amend Rule 538 (Exchange for Related Positions) in each Exchange’s rulebook and to issue Market Regulation Advisory Notice RA1311-5 (“RA1311-5”) applicable to each of the Exchanges. The Exchanges request that the Commission post the filing for notice and public comment.

The Exchanges will disseminate RA1311-5, which includes the text of amended Rule 538 and interpretative guidance in the form of Frequently Asked Questions and answers (the “FAQ”) to the marketplace upon Commission approval. The effective date for amended Rule 538 and RA1311-5 shall be no more than 20 business days following approval by the Commission.

As set forth in amended Rule 538 and the FAQ, the Exchanges are seeking approval to eliminate the use of transitory Exchange for Related Positions transactions (“EFRPs”)—except for transitory EFRPs in the Exchanges’ FX markets—wherein the execution of an EFRP is contingent upon the execution of another EFRP or related position transaction between the parties and where the transactions result in the offset of the related positions without the incurrence of market risk that is material in the context of the related position transactions. Questions 13-17 in the FAQ provide additional context and guidance in this regard.

The Exchanges also are seeking approval to amend and/or clarify certain recordkeeping and other compliance obligations relating to non-transitory EFRPs, and to incorporate aspects of the existing guidance on EFRPs set forth in CME Group Market Regulation Advisory Notice RA1006-5 from June 11, 2010, into the text of the Rule. These changes are summarized below:

- EFRP definitions have been clarified in Rule 538 and FAQ, and the FAQ further clarifies that if the related position component of the EFRP is an instrument defined as a swap pursuant to federal regulations, the transaction should be submitted as an EFR or EOO, as applicable;
- Rule 538 has been amended to clarify that parties to EFR and EOO transactions must comply with all relevant CFTC regulations governing eligibility to participate in the related position component of such transactions;
- Rule 538 and FAQ have been amended to require in all circumstances that the opposing accounts to an EFRP be independently controlled;
- The language in the current FAQ prohibiting use of a futures contract or an option on futures contract as the related position component of an EFRP has been codified in Rule 538;
- Rule 538 has been amended to allow the use of EFRPs in connection with inventory financing of storable energy or metals commodities in addition to storable agricultural commodities;
- Rule 538 and FAQ codify that EFRPs may not be priced to facilitate the transfer of funds between parties for any purpose other than as a consequence of legitimate commercial activity;
- The recordkeeping section of Rule 538 and FAQ have been amended to clarify that in the case of brokered EFRP transactions, brokers must maintain all records corresponding to their facilitation of the transactions;
- Rule 538 and FAQ clarify the requirements with respect to submission of EFRPs to the Clearing House and incorporate language from Rule 808.C. regarding acceptance of EFRPs by the Clearing House; the FAQ also provides additional guidance regarding EFRP posting requirements;
- The FAQ provides more comprehensive and consistent examples of acceptable related position instruments by asset class; and,
- The FAQ provides additional guidance regarding the responsibilities of firms that execute or clear EFRPs on behalf of customers.

The Market Regulation Department and the Legal Department collectively reviewed the designated contract market core principles (“Core Principles”) as set forth in the Commodity Exchange Act (“CEA” or the “Act”). During the review, the Exchanges identified that amended Rule 538 and the issuance of RA1311-5 may have some bearing on the following Core Principles:

- Compliance with rules: Consistent with Core Principle 2, the Market Regulation Advisory Notice proposed to be issued provides comprehensive guidance to the marketplace regarding the regulatory requirements attendant to EFRPs. Pursuant to Exchange rules, the Market Regulation Department has the authority to obtain records related to EFRP transactions and has a surveillance program in place to appropriately monitor and enforce compliance with the amended Rule and Advisory Notice.
- Availability of general information: As required by Core Principle 7, the Exchanges intend to publicly issue RA1311-5 to ensure that market participants have updated guidance and information attendant to EFRPs. RA1311-5 will also be made available on the CME Group website.

- Execution of transactions: Core Principle 9 permits designated contract markets (“DCMs”) to authorize, for bona fide business purposes, transactions executed away from the DCM’s centralized marketplace. The amendments to Rule 538 and to the associated Market Regulation Advisory Notice comprehensively detail the requirements for EFRP transactions authorized by CME Group DCMs consistent with this core principle.

The Exchanges certify that amended Rule 538 and the issuance of RA1311-5 comply with the Act and regulations thereunder. Transitory EFRPs have long been permitted and utilized in CME Group’s energy, metals and FX markets, as well as in markets offered by other DCMs and FBOTs, and have been addressed in public comments filed in connection with a number of CFTC proposed rulemakings. Based on this public comment history and further anecdotal feedback from customers, the Exchanges believe that some market participants are opposed to the prohibition of transitory EFRPs contained in this amended Rule 538. Blackline revisions to the Exchanges’ Rule 538 are included as Exhibit A. RA1311-5 is included as Exhibit B.

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

If you have any questions regarding this submission, please contact Christal Lint, at 312-930-4527 or via email at [Christal.Lint@cmegroup.com](mailto:Christal.Lint@cmegroup.com). Alternatively, you may contact me at 212-299-2200 or [Christopher.Bowen@cmegroup.com](mailto:Christopher.Bowen@cmegroup.com), and reference CME/CBOT/NYMEX/COMEX/KCBT Submission No. 13-526 in any related correspondence.

Sincerely,

/s/ Christopher Bowen  
Managing Director and Chief Regulatory Counsel

Attachments: Exhibit A – Amendments to Rule 538  
Exhibit B – Amended RA1311-5

## EXHIBIT A

### CME/CBOT/NYMEX/COMEX/KCBT: Amended Rule 538

(additions underlined and deletions ~~overstruck~~)

#### Rule 538. Exchange for Related Positions

An Exchange for Related Position ("EFRP") transaction involves a privately negotiated off-exchange execution of an Exchange futures or options contract and, on the opposite side of the market, the simultaneous execution of an equivalent quantity of the cash product, by-product, related product, or OTC derivative instrument corresponding to the asset underlying the Exchange contract.

The following types of EFRP transactions ~~shall be~~ permitted ~~by arrangement between parties to be executed outside of the Exchange's centralized market~~ in accordance with the requirements of this rule:

Exchange of Futures for Physical ("EFP") – ~~A privately negotiated and the~~ simultaneous ~~exchange execution~~ of an Exchange futures ~~position for contract and~~ a corresponding ~~cash position~~ physical transaction or a forward contract on a physical transaction.

Exchange of Futures for Risk ("EFR") – ~~A privately negotiated and the~~ simultaneous ~~exchange execution~~ of an Exchange futures ~~position for contract and~~ a corresponding OTC swap or other OTC ~~instrument, derivative transaction.~~

Exchange of Options for Options ("EOO") – ~~A privately negotiated and the~~ simultaneous ~~exchange execution~~ of an Exchange option ~~position for contract and~~ a corresponding transaction in an OTC option ~~position~~ or other OTC instrument with similar characteristics.

For purposes of this rule, ~~an EFP, EFR or EOOF~~ EFPs, EFRs and EOOs shall collectively be referred to as ~~an Exchange for Related Position ("EFRP").~~ EFRP transactions.

#### **538.A. Nature of an EFRP Parties to an EFRP**

~~An EFRP consists of two discrete but related simultaneous transactions.~~ One party to the EFRP must be the buyer of the Exchange contract and the seller of (or the holder of the short market exposure associated with) the related position; the other party to the EFRP must be the seller of the Exchange contract and the buyer of (or the holder of the long market exposure associated with) the related position ~~and the seller of the corresponding Exchange contract.~~ The other party to the EFRP must be the seller of (or the holder of the short market exposure associated with) the related position and the buyer of Exchange contract and the corresponding Exchange contract, related position must be executed for accounts with the same beneficial ownership.

~~However,~~ Notwithstanding the foregoing, a member firm may facilitate, as principal, the related position component of an EFRP on behalf of a customer, provided that the member firm can demonstrate that the related position was passed through to the customer who received the Exchange contract ~~position~~ as part of the EFRP.

Parties to an EFR or EOO transaction must comply with all relevant CFTC regulations governing eligibility to participate in the ~~The~~ related position component of such transactions.

#### **538.B. Related Positions Independently Controlled Accounts**

The opposing accounts to an EFRP transaction must be (a) independently controlled accounts with different beneficial ownership; (b) independently controlled accounts of separate legal entities with common beneficial ownership; or (c) independently controlled accounts of the same legal entity, provided that the account controllers operate in separate business units.

For EFRP transactions between accounts with common beneficial ownership, the parties to the trade must be able to demonstrate the independent control of the accounts and that the transaction had economic substance for each party to the trade.

#### **538.C. Related Position**

The related position component of an EFRP must be the cash, OTC swap, OTC option, or other OTC derivative) must involve the commodity underlying the Exchange contract, or must be a derivative, by-product, or a related product or an OTC derivative instrument of such commodity that has a reasonable degree of price correlation to the commodity underlying the Exchange contract. The related position component of an EFRP may not be a futures contract or an option on a futures contract.

Each EFRP requires a bona fide transfer of ownership of the underlying asset between the parties or a bona fide, legally binding contract between the parties consistent with relevant market conventions for the particular related position transaction.

Except as provided in paragraphs D, and K., below, the execution of an EFRP transaction may not be contingent upon the execution of another EFRP or related position transaction between the parties where the transactions result

in the offset of the related position without the incurrence of market risk that is material in the context of the related position transactions.

#### **538.C-D. EFPs in Connection with Inventory Financing of Storable, Non-Financial Commodities**

A party providing inventory financing for a storable agricultural, energy or metals commodity may, through the execution of an EFP, purchase the commodity and sell the equivalent quantity of futures contracts to a counterparty, and grant to the counterparty the non-transferable right, but not the obligation, to execute a second EFP during a specified time period in the future which will have the effect of reversing the original EFP.

#### **538.E. Quantity Equivalence**

The quantity covered by the related position component of the EFRP must be approximately equivalent to the quantity covered by the Exchange contracts component of the EFRP. Appropriate hedge ratios between the Exchange and related position components of the EFRP may be used to establish equivalency.

#### **538.D-F. Prices and Price Increments**

The Exchange component of the EFRP transaction may be entered into in accordance with the applicable futures price increments or option premium increments as set forth in the rules governing the Exchange contract.

EFRPs may be transacted at such commercially reasonable prices as are mutually agreed upon by the two parties to the transaction. EFRPs may not be priced to facilitate the transfer of funds between parties for any purpose other than as the consequence of legitimate commercial activity.

#### **538.E. Date and Time of Transaction**

The date and time of execution of all EFP transactions must be denoted on the record of the transaction required to be created pursuant to Rule 536.E. Notwithstanding the preceding sentence, EFRP transactions entered into CME ClearPort do not need a separate record of the transaction or time of execution provided that such transactions are entered immediately after the relevant terms have been determined, but in no event later than the earlier of the start of the next business day or the end of the permissible posting period for EFRP transactions following the expiration of the underlying futures contract.

#### **538.F.G. EFRPs Following the Termination of Trading in Exchange Contracts**

EFRP transactions in certain Exchange contracts may be permitted after executed for a defined period of time following the termination of trading in expiring Exchange contracts, as prescribed in accordance with the applicable product rules governing each Exchange contract. Such transactions shall not establish new may be executed only to liquidate Exchange positions.

#### **538.GH. Identification Recordkeeping**

Parties to an EFRP transaction must maintain all records relevant to the Exchange contract and the related position transaction, including order tickets, records customarily generated in accordance with relevant market practices, records reflecting payments between the parties and, where appropriate, transfer of title, as well as any other records required to be kept pursuant to CFTC Regulation 1.35. Brokers who facilitate EFRP transactions must maintain all records corresponding to their facilitation of the transactions.

Records related to EFRP transactions must be provided to the Exchange upon request. It shall be the responsibility of the carrying clearing member firm to obtain and submit the requested records of their clients to the Exchange on a timely basis.

#### **538.I. Submission to the Clearing House**

Each EFRP transaction shall be designated as such and shall be cleared through the Clearing House. Each such EFRP transaction shall be submitted to the Clearing House within the time period and in the manner specified by the Exchange. Clearing member firms are responsible for exercising due diligence as to the bona fide nature of EFRP transactions submitted on behalf of customers, and the Clearing House. In all cases, the record submitted to the Clearing House must reflect the correct EFRP transaction type and must reflect the accurate date and time at which the relevant terms of the transaction were agreed upon by the parties to the trade.

An EFRP transaction submitted to the Clearing House shall not be considered accepted by the Clearing House until the transaction has cleared and the first payment of settlement variation and performance bond has been confirmed.

#### **538.H. Documentation**

Parties to any EFRP transaction must maintain all documents relevant to the Exchange contract and the cash, OTC swap, OTC option, or other OTC derivatives, including all documents customarily generated in accordance with relevant market practices and any documents reflecting payment and transfer of title. Any such documents must be provided to the Exchange upon request, and it shall be the responsibility of the carrying clearing member firm to provide such requested documentation on a timely basis.

#### **538.I. Account Requirements**

~~The accounts involved in the execution of an EFRP transaction must be (a) independently controlled accounts with different beneficial ownership; or (b) independently controlled accounts of separate legal entities with the same beneficial ownership, provided that the account controllers operate in separate business units; or (c) independently controlled accounts within the same legal entity, provided that the account controllers operate in separate business units; or (d) commonly controlled accounts of separate legal entities, provided that the separate legal entities have different beneficial ownership.~~

~~However, on or after the first day on which delivery notices can be tendered in a physically delivered Exchange futures contract, an EFRP transaction may not be executed for the purpose of offsetting concurrent long and short positions in the expiring Exchange futures contract when the accounts involved in such transaction are owned by the same legal entity and when the date of the Exchange futures position being offset is not the same as the date of the offsetting transaction.~~

**538.J. EFRP Volumes Required to be Reported with Daily Large Trader Requirements for EFRP Transactions-Positions**

Each clearing member, omnibus account and foreign broker responsible for submitting daily large trader positions in accordance with Rule 561 must submit for each reportable account the EFRP volume bought and sold in the reportable instrument, ~~by contract month, and additionally for EOs, by put and call strike.~~ The This information must be included in the daily Large Trader report to the Exchange.

**538.K. Transitory EFPs in Foreign Currency Futures**

With respect to EFPs in foreign currency futures wherein the parties immediately offset the cash transaction ("transitory EFPs"), the Exchange would expect to see confirmation statements issued by the bank/foreign exchange dealer party to the Transaction. These confirmation statements should be the type normally produced by the bank/foreign exchange dealer for confirmation of currency deals and should indicate, by name, the identity of the counter party principal to the Transaction. However, in circumstances where the EFP Transaction is between a bank/foreign exchange dealer and a CTA, account controller, or other Person acting on behalf of a third party (such as a commodity pool or fund), the cash side confirmation statement must identify, at minimum, the name of the third party's Carrying Clearing Member and the third party's account number (or other account specific designation), but need not identify the third party by name.

## MARKET REGULATION ADVISORY NOTICE

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<b>Exchange</b>	<b>CME, CBOT, NYMEX, COMEX &amp; KCBT</b>
<b>Subject</b>	<b>Exchange for Related Positions</b>
<b>Rule References</b>	<b>Rule 538</b>
<b>Advisory Date</b>	<b>TBD</b>
<b>Advisory Number</b>	<b>CME Group RA1311-5</b>
<b>Effective Date</b>	<b>Pending CFTC Approval</b>

This Advisory Notice, upon its effective date, shall supersede CME Group Market Regulation Advisory Notice RA1006-5 issued on June 11, 2010. The Advisory Notice is being issued to advise market participants of amendments to CME Group Exchanges' Rule 538 ("Exchange for Related Positions") and associated interpretative guidance which govern the execution of Exchange for Physical (EFP), Exchange for Risk (EFR) and Exchange of Options for Options (EOO) transactions - collectively referred to as Exchange for Related Position ("EFRP") transactions.

All market participants involved in the execution or clearing of EFRP business should ensure that they are fully informed regarding all of the requirements of Rule 538 and the associated guidance in the FAQ.

Amended Rule 538 is presented in its entirety beginning on page 3 of this document and the associated FAQ begins on page 6.

Market participants should take particular note of the following aspects of the amended rule and guidance:

### **Prohibition on Transitory EFRPs in NYMEX and COMEX Energy and Metals Products**

Upon the effective date of this Advisory, the execution of transitory EFRPs, which have previously been permitted in NYMEX energy products and COMEX and NYMEX metals products will no longer be permitted. Transitory EFRPs will continue to be permitted in CME foreign exchange products.

As defined in amended Rule 538, transitory EFRPs are EFRPs in which the execution of an EFRP is contingent upon the execution of another EFRP or related position transaction between the parties and where the transactions result in the offset of the related positions without the incurrence of market risk that is material in the context of the related position transactions. Questions 13-17 in the FAQ provide additional guidance in this regard.

### **Recordkeeping and Submission Requirements**

Market participants should be attentive to all recordkeeping, clearing submission, and reporting requirements with respect to EFRP transactions. These requirements are addressed in detail in questions 18-25 in the FAQ.

CME Group RA1311-5

TBD

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Questions regarding this Advisory Notice may be directed to the following individuals in Market Regulation:

**For NYMEX and COMEX Products**

Lisa Halpern, Senior Analyst, 212.299.2902

Ryne Toscano, Manager, 212.299.2879

Chris Reinhardt, Director, 212.299.2882

**For CME, CBOT and KCBT Products**

Nicole Pecyna, Lead Analyst, 312.341.7713

Michael Joubert, Supervisor, 312.341.7714

William Lange, Senior Director, 312.341.7757

For media inquiries concerning this Advisory Notice, please contact CME Group Corporate Communications at 312.930.3434 or [news@cmegroup.com](mailto:news@cmegroup.com).



### **Text of Amended Rule 538 – (“Exchange for Related Positions”)**

An Exchange for Related Position (“EFRP”) transaction involves a privately negotiated off-exchange execution of an Exchange futures or options contract and, on the opposite side of the market, the simultaneous execution of an equivalent quantity of the cash product, by-product, related product, or OTC derivative instrument corresponding to the asset underlying the Exchange contract.

The following types of EFRP transactions are permitted to be executed outside of the Exchange’s centralized market in accordance with the requirements of this rule:

Exchange of Futures for Physical (“EFP”) – the simultaneous execution of an Exchange futures contract and a corresponding physical transaction or a forward contract on a physical transaction.

Exchange of Futures for Risk (“EFR”) – the simultaneous execution of an Exchange futures contract and a corresponding OTC swap or other OTC derivative transaction.

Exchange of Option for Option (“EOO”) – the simultaneous execution of an Exchange option contract and a corresponding transaction in an OTC option or other OTC instrument with similar characteristics.

For purposes of this rule, EFPs, EFRs and EOOs shall collectively be referred to as EFRP transactions.

#### **538.A. Parties to an EFRP**

One party to the EFRP must be the buyer of the Exchange contract and the seller of (or the holder of the short market exposure associated with) the related position; the other party to the EFRP must be the seller of the Exchange contract and the buyer of (or the holder of the long market exposure associated with) the related position. The Exchange contract and the corresponding related position must be executed for accounts with the same beneficial ownership.

Notwithstanding the foregoing, a member firm may facilitate, as principal, the related position component of an EFRP on behalf of a customer provided that the member firm can demonstrate that the related position was passed through to the customer who received the Exchange contract as part of the EFRP.

Parties to an EFR or EOO transaction must comply with all relevant CFTC regulations governing eligibility to participate in the related position component of such transactions.

#### **538.B. Independently Controlled Accounts**

The opposing accounts to an EFRP transaction must be (a) independently controlled accounts with different beneficial ownership; (b) independently controlled accounts of separate legal entities with common beneficial ownership; or (c) independently controlled accounts of the same legal entity, provided that the account controllers operate in separate business units.

For EFRP transactions between accounts with common beneficial ownership, the parties to the trade must be able to demonstrate the independent control of the accounts and that the transaction had economic substance for each party to the trade.

#### **538.C. Related Position**

The related position component of an EFRP must be the cash commodity underlying the Exchange contract or a by-product, a related product or an OTC derivative instrument of such commodity that has a reasonable degree of price correlation to the commodity underlying the Exchange contract. The related position component of an EFRP may not be a futures contract or an option on a futures contract.

Each EFRP requires a bona fide transfer of ownership of the underlying asset between the parties or a bona fide, legally binding contract between the parties consistent with relevant market conventions for the particular related position transaction.

Except as provided in paragraphs D. and K., below, the execution of an EFRP transaction may not be contingent upon the execution of another EFRP or related position transaction between the parties where the transactions result in the offset of the related position without the incurrence of market risk that is material in the context of the related position transactions.

#### **538.D. EFPs in Connection with Inventory Financing of Storable, Non-Financial Commodities**

A party providing inventory financing for a storable agricultural, energy or metals commodity may, through the execution of an EFP, purchase the commodity and sell the equivalent quantity of futures contracts to a counterparty, and grant to the counterparty the non-transferable right, but not the obligation, to execute a second EFP during a specified time period in the future which will have the effect of reversing the original EFP.

#### **538.E. Quantity Equivalence**

The quantity of the related position component of the EFRP must be approximately equivalent to the quantity of the Exchange component of the EFRP. Appropriate hedge ratios between the Exchange and related position components of the EFRP may be used to establish equivalency.

#### **538.F. Prices and Price Increments**

The Exchange component of the EFRP transaction must be priced in accordance with the applicable futures price increments or option premium increments as set forth in the rules governing the Exchange contract.

EFRPs may be transacted at such commercially reasonable prices as are mutually agreed upon by the parties to the transaction. EFRPs may not be priced to facilitate the transfer of funds between parties for any purpose other than as the consequence of legitimate commercial activity.

#### **538.G. EFRPs Following the Termination of Trading in Exchange Contracts**

EFRP transactions in certain Exchange contracts may be executed for a defined period of time following the termination of trading in accordance with the applicable product rules governing each Exchange contract. Such transactions may be executed only to liquidate Exchange positions.

#### **538.H. Recordkeeping**

Parties to an EFRP transaction must maintain all records relevant to the Exchange contract and the related position transaction, including order tickets, records customarily generated in accordance with relevant market practices, records reflecting payments between the parties and, where appropriate, transfer of title, as well as any other records required to be kept pursuant to CFTC Regulation 1.35. Brokers who facilitate EFRP transactions must maintain all records corresponding to their facilitation of the transactions.

Records related to EFRP transactions must be provided to the Exchange upon request. It shall be the responsibility of the carrying clearing member firm to obtain and submit the requested records of their clients to the Exchange on a timely basis.

### **538.I. Submission to the Clearing House**

Each EFRP transaction shall be submitted to the Clearing House within the time period and in the manner specified by the Exchange and the Clearing House. In all cases, the record submitted to the Clearing House must reflect the correct EFRP transaction type and must reflect the accurate date and time at which the relevant terms of the transaction were agreed upon by the parties to the trade.

An EFRP transaction submitted to the Clearing House shall not be considered accepted by the Clearing House until the transaction has cleared and the first payment of settlement variation and performance bond has been confirmed.

### **538.J. EFRP Volumes Required to be Reported with Daily Large Trader Positions**

Each clearing member, omnibus account and foreign broker responsible for submitting daily large trader positions in accordance with Rule 561 must submit for each reportable account the EFRP volume bought and sold in the reportable instrument. This information must be included in the daily Large Trader report to the Exchange.

### **538.K. Transitory EFPs in Foreign Currency Futures**

With respect to EFPs in foreign currency futures wherein the parties immediately offset the cash transaction ("transitory EFPs"), the Exchange would expect to see confirmation statements issued by the bank/foreign exchange dealer party to the Transaction. These confirmation statements should be the type normally produced by the bank/foreign exchange dealer for confirmation of currency deals and should indicate, by name, the identity of the counter party principal to the Transaction. However, in circumstances where the EFP Transaction is between a bank/foreign exchange dealer and a CTA, account controller, or other Person acting on behalf of a third party (such as a commodity pool or fund), the cash side confirmation statement must identify, at minimum, the name of the third party's Carrying Clearing Member and the third party's account number (or other account specific designation), but need not identify the third party by name.

## **FAQ Related to Rule 538** **Exchange for Related Positions**

**Q1: What are EFRP transactions?**

A1: EFRP is an acronym for Exchange for Related Position, and EFRPs are one of the permitted exceptions to the requirement that futures and options on futures be executed openly and competitively on the Exchange.

An EFRP transaction involves the off-exchange execution of an Exchange futures or options on futures contract and, on the opposite side of the market, the simultaneous execution of an equivalent quantity of the cash product, by-product, related product or OTC derivative instrument corresponding to the asset underlying the Exchange contract.

**Q2: What is the difference between EFRP transactions and "Ex-Pit" transactions?**

A2: The term "Ex-Pit Transaction" refers broadly to transactions that Exchange rules permit to be executed outside of the Exchange's centralized market. Permissible Ex-Pit transactions include EFRPs, block trades and transfer trades. EFRPs are addressed in Rule 538; block trades are addressed in Rule 526, and transfer trades are addressed in Rule 853.

**Q3: What are the different types of EFRPs permitted by CME Group Exchanges?**

A3: The following types of Exchange for Related Position ("EFRP") transactions are permitted to be executed outside of the Exchange's centralized market in accordance with the requirements of Rule 538, the application guidance in this advisory, and any applicable CFTC regulations.

Exchange of Futures for Physical ("EFP") – the simultaneous execution of an Exchange futures contract and a corresponding physical transaction or a forward contract on a physical transaction.

Exchange of Futures for Risk ("EFR") – the simultaneous execution of an Exchange futures contract and a corresponding OTC swap transaction or other OTC derivative transaction.

Exchange of Option for Option ("EOO") – the simultaneous execution of an Exchange option contract and a corresponding transaction in an OTC option or other OTC instrument with similar characteristics.

The related position component of an EFRP may not be a futures contract or an option on a futures contract.

Where the related position component of an EFRP is a physical transaction, a forward contract that is not otherwise defined as a swap under federal regulations, an Exchange Traded Fund ("ETF") or an Exchange Traded Note ("ETN"), the transaction should be submitted for clearing as an EFP transaction type.

Where the related position component of an EFRP is an instrument defined as a swap pursuant to federal regulations, or is another OTC derivative transaction, the transaction must be submitted as an EFR or an EOO transaction type, as applicable, and must be reported as required under Parts 43 and 45 of Commodity Futures Trading Commission Regulations. For further information regarding CFTC/SEC product definitions, market participants should reference the August 13, 2012 Federal Register release (77 FR 48207) that defines swaps and the scope of the forward contract exclusion.

A swap that is traded on or subject to the rules of a designated contract market (“DCM”) or a swap execution facility (“SEF”) is ineligible to be the related position component of an EFR or EOO transaction executed pursuant to Rule 538.

The above-referenced exclusion does not apply to swaps that are bilaterally negotiated and submitted for clearing-only to a DCO provided such swaps have a reasonable degree of correlation to the underlying CME Group Exchange product.

**Q4: Can EFRPs be executed in any of the CME Group Exchanges’ futures and options contracts?**

A4: EFRPs may be executed in any of the CME Group Exchanges’ futures and futures options contracts provided that the transaction conforms to the requirements of Rule 538 and any associated advisories, as well as with any applicable CFTC regulations.

**Q5: Are there specified trading hours during which EFRP transactions may be executed?**

A5: EFRPs may be executed at any time. However, an EFRP transaction submitted to the Clearing House shall not be considered to have been accepted by the Clearing House until the transaction has cleared and the first payment of settlement variation and performance bond has been confirmed.

**Q6: Can an EFRP be executed after trading has ceased in an expiring contract?**

A6: EFRP transactions in certain Exchange contracts may be executed for a defined period of time following the termination of trading only to liquidate Exchange positions and only in accordance with the applicable product rules governing each Exchange contract. The applicable product chapter of the relevant Exchange’s rulebook will specify if such transactions are permitted and, if so, the time period following the cessation of trading during which such transactions are eligible to be executed.

**Q7: Are there restrictions on who may participate in EFRP transactions?**

A7: EFP Transactions – There are no specific eligibility requirements for participation in an EFP transaction.

EFR and EOO Transactions – Participants to EFR and EOO transactions must comply with applicable CFTC requirements governing eligibility to transact the related position component of an EFR or EOO, and participants should consult with counsel as appropriate to determine eligibility. In this regard, market participants should be mindful of all eligibility standards applicable to related positions, including, where applicable, CFTC Regulations Part 32-Regulation of Commodity Option Transactions and Part 35-Swaps In An Agricultural Commodity.

**Q8: May EFRPs be executed between affiliated accounts?**

A8: The opposing accounts involved in the execution of an EFRP must be:

- a) independently controlled accounts with different beneficial ownership; or
- b) independently controlled accounts of separate legal entities with common beneficial ownership; or
- c) independently controlled accounts of the same legal entity provided that the account controllers operate in separate business units.

Accounts with the same beneficial ownership include accounts owned by the same person or entity, accounts of a parent and its wholly owned subsidiaries, and accounts of subsidiaries that are wholly owned by the same parent. Common beneficial ownership is more inclusive and includes not only accounts with the same beneficial ownership, but also accounts with common beneficial ownership that is less than 100%.

Parties to an EFRP transaction involving the same legal entity or common beneficial owner must be able to demonstrate the independent control of decision making for the respective accounts and that the EFRP had economic substance for each party to the trade.

**Q9: Are multi-party EFRP transactions permitted?**

A9: Typically, there may be only two parties involved in an EFRP transaction. One party to the EFRP must be the buyer of the Exchange contract and the seller of (or the holder of the short market exposure associated with) the related position; the other party to the EFRP must be the seller of the Exchange contract and the buyer of (or the holder of the long market exposure associated with) the related position. The Exchange contract and corresponding related position of an EFRP must be executed for accounts with the same beneficial ownership.

Notwithstanding the foregoing, a member firm may facilitate, as principal, the related position component of an EFRP on behalf of an eligible customer provided that the member firm can demonstrate that the related position was passed through to the customer who received the Exchange contract as part of the EFRP.

**Q10: Are there restrictions on the price at which an EFRP transaction may be executed?**

A10: EFRPs may be transacted at such commercially reasonable prices as are mutually agreed upon by the parties to the transaction, provided that the price conforms to the applicable futures price increments or option premium increments set forth in the product chapter rules for the relevant Exchange contract.

EFRPs may not be priced to facilitate the transfer of funds between parties for any purpose other than as a consequence of legitimate commercial activity. Market participants may be required to demonstrate that EFRPs executed at prices away from prevailing market prices were executed at such prices for legitimate purposes.

**Q11: Can EFRPs be average priced?**

A11: Yes. EFRP transactions designated for average pricing must conform to the requirements of Rule 553 ("Average Price System") and Rule 538.

**Q12: Are the prices and quantities of EFRP transactions publicly reported?**

A12: The price of the Exchange leg of an EFRP transaction is not publicly reported. EFRP volumes are reported daily, by instrument, on the CME Group website.

Parties to an EFR or EOO transaction should consult CFTC regulations regarding the swap reporting requirements associated with their execution of the related position transaction.

**Q13: Are transitory EFRPs permitted in any products listed on CME Group exchanges?**

A13: Yes, transitory EFRPs are permitted solely in CME foreign exchange futures. Transitory EFRs and EOOs in CME foreign exchange products are prohibited, as are transitory EFRPs in all other products listed on the CME Group Exchanges.

Transitory EFRPs are EFRPs in which the execution of an EFRP is contingent upon the execution of another EFRP or related position transaction between the parties and where the transactions result in the offset of the related positions without the incurrence of market risk that is material in the context of the related position transactions.

The time period between the transactions is a factor considered in assessing whether the EFRP is a transitory EFRP; however, the legitimacy of the transactions will be evaluated based on whether the transactions have integrity as independent transactions exposed to market risk that is material in the context of the transactions.

Where economically equivalent futures products trade on a CME Group Exchange and another exchange, the contingent execution between two parties of equal and opposite EFRPs on each exchange where the related position components offset and are not subject to market risk shall be considered a prohibited transitory EFRP at the applicable CME Group Exchange.

**Q14: Can a swap be negotiated to settle via an EFR?**

A14: Parties to a swap may agree to settle the swap via an EFR provided that the determination of the settlement value of the swap (floating price) is subject to market risk that is material in the context of the transaction. For example, parties may negotiate a swap to settle via EFR on a specific date in the future at the futures settlement price or the average settlement price over a prescribed time period.

**Q15: Can an EFRP incorporate multiple legs on the Exchange component of the transaction or incorporate multiple legs on the related position component of the EFRP?**

A15: An EFRP may incorporate multiple Exchange components provided that all of the Exchange components have the same market bias (long or short). For example, a Eurodollar futures strip versus equivalent exposure in an interest rate swap may be executed as an EFR.

EFRP transactions incorporating multiple Exchange components with different market biases (long and short) are permitted only where the Exchange components are legs of a recognized intercommodity spread involving a product and its by-products. For example, a party may execute an EFR buying crude oil futures and selling gasoline and heating oil futures versus a crack spread swap, or an EFR buying soybean futures and selling soybean oil and soybean meal futures versus a soybean crush swap.

An EFRP may incorporate multiple related position components provided that the net exposure of the related position components is approximately equivalent to the quantity of futures exchanged or, in the case of an EOO, the net delta-adjusted quantity of the OTC option components is approximately equivalent to the delta-adjusted quantity of the Exchange-listed option.

**Q16: Can EFRPs be utilized to facilitate inventory financing in storable non-financial commodities?**

A16: EFR transactions entered into for the purpose of obtaining inventory financing for storable agricultural, metals and energy commodities are permitted in accordance with the following: A

party providing inventory financing for a storable, non-financial commodity may, through the execution of an EFP, purchase the commodity and sell the equivalent quantity of futures contracts to a counterparty, while simultaneously granting to the counterparty the non-transferable right, but not the obligation, to execute a second EFP that reverses the original EFP during a specified time period in the future.

**Q17: What types of instruments are considered acceptable for use as the related position side of EFRPs?**

A17: The related position component of the EFRP must involve the product underlying the Exchange contract or a by-product, related product or OTC derivative instrument that is reasonably correlated to the corresponding Exchange instrument.

The related position component of an EFRP may not be a futures contract or an option on a futures contract.

Where the risk characteristics and/or maturities of the related position differ from the instrument underlying the Exchange contract, the parties to the EFRP may be required to demonstrate the correlation between the products and the methodology used in equating the futures to the related position. In all cases, the related position transaction must be comparable with respect to quantity, value or risk exposure of the corresponding Exchange contract.

Each EFRP requires a bona fide transfer of ownership of the cash commodity between the parties or a bona fide, legally binding contract between the parties consistent with relevant market conventions for the particular related position transaction.

Where the related position component of an EFRP is a physical transaction, a forward contract that is not otherwise defined as a swap under federal regulations, an Exchange Traded Fund ("ETF") or an Exchange Traded Note ("ETN"), the transaction should be submitted for clearing as an EFP transaction type.

Where the related position component of an EFRP is an instrument defined as a swap pursuant to federal regulations, or is another OTC derivative transaction, the transaction must be submitted as an EFR or an EOO transaction type, as applicable, and must be reported as required under Parts 43 and 45 of Commodity Futures Trading Commission Regulations. For further information regarding CFTC/SEC product definitions, market participants should reference the August 13, 2012 Federal Register release (77 FR 48207) that defines swaps and the scope of the forward contact exclusion.

Generally acceptable related position instruments for EFRPs in the following product groups include, but are not limited to, the following:

Foreign Exchange Contracts: Instruments acceptable as the related position component of an FX EFRP transaction include spot, forwards, non-deliverable forwards ("NDFs"), swaps and swaptions, cross-currency basis swaps, OTC FX options, non-deliverable options ("NDOs"), currency baskets, ETFs and ETNs.

Interest Rate Contracts: Instruments acceptable as the related position component of an interest rate EFRP include Treasuries, Agencies, investment grade corporates, money market instruments, interest rate swaps and swaptions, forward rate agreements (FRAs), mortgage instruments including collateralized mortgage obligations, OTC interest rate options, ETFs and ETNs.

Equity Index Contracts: Instruments acceptable as the related position component of a stock index EFRP include stock baskets provided the basket has a historical correlation to the index of 90% or



greater and, further, that the basket represents at least 50% of the underlying index by weight or includes at least 50% of the stocks in the underlying index. The notional value of the basket must be approximately equal to the value of the corresponding exchange contract. Other acceptable instruments include equity index swaps and swaptions, OTC equity index options, ETFs and ETNs.

Agricultural Contracts: Instruments acceptable as the related position component of an EFRP in agricultural products include the commodity underlying the futures contract or a by-product or related product that is reasonably correlated to the futures being exchanged, physical forwards, cash-settled forwards, agricultural commodity swaps or swaptions, OTC agricultural options, ETFs and ETNs.

Commodity Index Contracts: Instruments acceptable as the related position component of an EFRP involving an Exchange contracts based on a commodity index (e.g., S&P GSCI, Dow UBS Index) include a corresponding commodity index swap or swaption, ETFs or ETNs.

Energy Contracts: Instruments acceptable as the related position component of an EFRP in energy products include the commodity underlying the futures contract or a by-product or related product that is reasonably correlated to the futures being exchanged, physical forwards, cash-settled forwards, energy commodity swaps or swaptions, OTC energy options, ETFs and ETNs.

Metals Contracts: Instruments acceptable as the related position component of an EFRP in metals products include related spot transactions, physical forwards, cash-settled forwards, swaps and swaptions, OTC metals options, ETFs and ETNs.

Questions regarding the acceptability of related position instruments may be addressed to the Market Regulation contacts listed in this Advisory Notice.

**Q18: What are the recordkeeping requirements for EFRPs?**

A18: Parties to an EFRP must maintain all records relevant to the Exchange contract and the corresponding related position transaction, including any records required to be kept pursuant to CFTC Regulation 1.35. Upon request, such records must be provided to Market Regulation in a timely manner.

Records that may be requested include, but are not limited to, the following:

- A. All order tickets, trade blotters, e-mails, instant messages, telephone recordings or other records related to the order placement, negotiation, execution and/or confirmation of the EFRP.
- B. All cash confirmations and signed contracts corresponding to the cash or derivative component of the EFRP. The documentation must contain all of the relevant terms of the transaction and counterparty information.
- C. For EFPs, third party proof of payment evidencing settlement and documentation representing the transfer of ownership of the commodity. For EFPs involving forward contracts, such information may be requested if the forward contract has settled at the time of the request.
- D. Futures account statement reflecting confirmation of the EFRP.
- E. Records reflecting the booking of the cash or derivative transaction in the firm's internal bookkeeping systems.

**Q19: Who is responsible for submitting EFRP records when a request for such records is made by the Market Regulation Department?**

A19: Upon request, related position documentation for an EFRP must be provided on a timely basis and in the form and manner requested, to the Market Regulation Department. The clearing firm carrying the account shall be responsible for obtaining relevant EFRP records from its client and submitting the records to Market Regulation.

Pursuant to Rule 418 (“Consent to Exchange Jurisdiction”), any party initiating or executing a transaction subject to the rules of the Exchange, or for whose benefit such transaction has been executed, is subject to the jurisdiction of the Exchange and may be required by Market Regulation to produce records and cooperate fully with any investigation.

Pursuant to Rule 512 (“Reporting Infractions”), Market Regulation may assess summary fines of up to \$10,000 per offense against members and non-member firms for the failure to provide requested records in a complete or timely manner. Repeated or egregious failures to provide requested records in a complete or timely manner may result in referral to the Probable Cause Committee for consideration of charges under Rule 432.L. (“General Offenses”).

**Q20: Must transactions executed as EFRPs be designated as EFRPs on customer account statements?**

A20: FCMs must accurately identify EFRP transactions as such on all customer statements. It is not acceptable to designate the trades as “Ex-Pit” or “ClearPort” trades as such terms may reflect transaction types other than EFRPs.

**Q21: How are EFRPs submitted to the Clearing House?**

A21: EFRPs may be submitted to the Clearing House via Front-End Clearing (“FEC”), via CME ClearPort (“CPC”), or, for EFRPs entered from the NYMEX or COMEX trading floor, via the Clearing System Broker User Interface.

For information regarding the submission of EFRPs using Front End Clearing, please contact Clearing Services at 312.207.2525 or via email at [ccs@cmegroup.com](mailto:ccs@cmegroup.com).

For information regarding the submission of EFRPs using CME ClearPort, please contact CME ClearPort Market Operations at 1-800-438-8816 or via email at [CustCare@cmegroup.com](mailto:CustCare@cmegroup.com)

**Q22: How soon after execution must the EFRP be submitted to the Clearing House?**

A22: CME, CBOT and KCBT Products

For EFRPs executed between 6:00 a.m. and 6:00 p.m. Central Time, the trades must be submitted within one hour after the relevant terms have been determined. For EFRPs executed between 6:00 p.m. and 6:00 a.m., Central Time, the trades must be submitted no later than 7:00 a.m. Central Time.

NYMEX and COMEX Products

For EFRPs executed between 7:00 a.m. and 5:45 p.m. Eastern Time, the trades must be submitted within one hour after the relevant terms have been determined. For EFRPs executed between 5:45 p.m. and 7:00 a.m., Eastern Time, the trades must be submitted prior to 8:00 a.m. Eastern Time.

The relevant terms of the EFRP are considered to have been determined at the time the price and quantity of the Exchange contract and the corresponding related position component of the transaction are agreed upon by the parties to the EFRP. However, where the actual delivery

quantity may not be precisely determined by the parties until the time of delivery, the parties may contractually agree to submit the transaction to the Clearing House within the required reporting period following the time at which the actual delivery quantities are determined, rather than reporting the EFRP at the time of pricing. Absent such contractual arrangement, the transaction must be reported at the time of pricing.

Notwithstanding the foregoing, EFRPs may not, under any circumstances, be submitted for clearing later than the end of the permissible posting period for EFRP transactions following the expiration of the underlying futures contract as specified in the relevant product chapter of the applicable Exchange rulebook.

**Q23: Must the execution date and time be submitted for EFRPs?**

A23: The date and time of execution must be accurately submitted for each EFRP transaction. The execution date and time to be submitted are the date and time at which the relevant terms of the transaction were determined by the parties to the trade as described in Q22.

The execution time for EFRPs entered by members and their employees on the NYMEX/COMEX trading floor via the Clearing System Broker User Interface must be entered in Eastern Time. In all other cases, the execution time for EFRPs must be entered in Central Time.

**Q24: Must a broker be specified when submitting EFRPs to the Clearing System?**

A24: Direct entry of an EFRP into Front-End Clearing does not require the entry of a broker for the transaction.

Entry of EFRPs through CME ClearPort Clearing by a registered user requires that the "Broker Firm" and "Broker Name" fields be populated.

Entry of EFRPs by members and their employees on the NYMEX trading floor via the Clearing System Broker User Interface require information identifying the party entering the transaction.

**Q25: What information regarding EFRPs must be submitted in a reporting firm's daily Large Trader position file?**

A25: A firm's daily Large Trader position file must include for each reportable account the EFRP volume bought and sold in the reportable instrument.

**Q26: What are the responsibilities of firms in connection with EFRPs executed or cleared on behalf of a customer?**

A26: Firms that execute or clear EFRPs on behalf of customers are responsible for ensuring that their customers who execute EFRPs are fully informed regarding Exchange EFRP requirements. Upon request by the Market Regulation Department, firms carrying accounts that execute EFRPs are responsible for obtaining and submitting records of their clients' EFRP transactions in a timely and complete manner.

Firms that execute or clear EFRPs on behalf of customers should establish, document and execute controls that are reasonably designed to prevent and detect the execution of non-bona fide EFRPs. If a clearing member has actual or constructive notice or knowledge of the execution of non-bona fide EFRPs by its customer and the clearing member fails to take appropriate action,

the clearing member may be found to have committed an act detrimental to the welfare of the Exchange.