



C.F.T.C.  
OFFICE OF THE SECRETARIAT  
2009 JUN 26 PM 12 49

June 26, 2009

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

**RE:   CBOT Rule 539 ("Prearranged, Pre-Negotiation and Noncompetitive  
      Trades Prohibited")  
      CBOT Submission No. 09-123**

Dear Mr. Stawick:

The Board of Trade of the City of Chicago, Inc. ("CBOT" or "Exchange") hereby notifies the Commodity Futures Trading Commission that it is amending Rule 539 ("Prearranged, Pre-Negotiated and Noncompetitive Trades Prohibited") to allow for pre-execution communications with respect to CBOT Ethanol and Dow options trades on Globex beginning on July 6, 2009. As of March 30, 2009, CBOT adopted amendments permitting pre-execution communications with respect to CBOT interest rate options products and CBOT is now expanding the list of options products to include Ethanol and Dow options. Pre-execution communications will remain prohibited in all CBOT futures contracts and all agricultural options contracts. Based on the amendments, CME and CBOT will issue new Market Regulation Advisory Notice RA0907-3 ("Pre-Execution Communications")

The text of the rule amendments is attached, with additions underscored and deletions overstruck. The Advisory Notice is also included in this submission.

CBOT certifies that these rule changes and Market Regulation Advisory Notice comply with the Commodity Exchange Act and regulations thereunder.

If you have any questions regarding this matter, please contact Robert Sniegowski, Associate Director, Market Regulation Department, at 312.341.5991 or me at 312.648.5422. Please reference CBOT Submission No. 09-123 in any related correspondence.

Sincerely,

/s/ Stephen M. Szarmack  
Director and Associate General Counsel

**539. PREARRANGED, PRE-NEGOTIATED AND NONCOMPETITIVE TRADES PROHIBITED**

[Sections A. and B. are unchanged.]

**539.C. Pre-Execution Communications Regarding Globex Trades in Interest Rate, Ethanol and Dow Options**

Parties may engage in pre-execution communications with regard to Interest Rate, Ethanol and Dow options transactions executed on the Globex platform where one party wishes to be assured that a contra party will take the opposite side of the order under the following circumstances:

1. A party may not engage in pre-execution communications with other market participants on behalf of another party unless the party for whose benefit the trade is being made has previously consented to permit such communications.
2. Parties to pre-execution communications shall not (i) disclose to a non-party the details of such communications or (ii) enter an order to take advantage of information conveyed during such communications except in accordance with this rule.
3. Reserved.
4. A pre-execution communication must be preceded by the submission of a Request for Quote ("RFQ").

Subsequent to such RFQ, a trade intended for execution for which there has been a pre-execution communication requires the entry of an additional RFQ; thereafter, a Request for Cross ("RFC") order which contains both the buy and the sell orders must be entered no less than fifteen (15) seconds and no more than thirty (30) seconds after the entry of the additional RFQ in order to proceed with the trade, except in equity options where the RFC must be entered no less than five (5) and no more than thirty (30) seconds after the additional RFQ. The RFQs and the RFC order must be entered within the same trading session. Failure to enter the RFC order within 30 seconds after the entry of the additional RFQ will require a new RFQ to be entered prior to the entry of the RFC order, which must be entered in accordance with the time parameters described above in order to proceed with the trade.

## MARKET REGULATION ADVISORY NOTICE

---

Exchange	CME & CBOT
Subject	Pre-Execution Communications
Rule References	Rule 539
Advisory Date	June 30, 2009
Advisory Number	CME & CBOT RA0907-3
Effective Date	July 6, 2009

**CBOT TO PERMIT PRE-EXECUTION COMMUNICATIONS FOR  
ETHANOL OPTION AND DOW OPTION TRADES ON CME GLOBEX,  
EFFECTIVE JULY 6, 2009**

This Advisory Notice supersedes CME & CBOT Market Regulation Advisory Notice RA0904-3 from March 9, 2009. It is being reissued based on changes to CBOT Rule 539 being implemented on July 6, 2009, which will permit pre-execution communications with respect to CBOT Ethanol option and Dow option trades executed on CME Globex.

Pre-execution communications are permitted in all CME products traded on CME Globex pursuant to the requirements of CME Rule 539.C. ("Pre-Execution Communications Regarding Globex Trades"), and, effective July 6, will be permitted in CBOT Ethanol options and Dow options traded on Globex pursuant to the requirements of CBOT Rule 539.C. ("Pre-Execution Communications Regarding Globex Trades in Interest Rate, Ethanol and Dow Options"). CBOT recently approved pre-execution communications with respect to CBOT interest rate options trades on CME Globex.

**CBOT Rule 539 will continue to prohibit pre-execution communications in all CBOT futures products and all agricultural options products trading on CME Globex. Additionally, both CME and CBOT Rule 539 expressly prohibit pre-execution communications in connection with pit transactions executed on the trading floor.**

With respect to electronic trading of all CME options and CBOT interest rate options products and, beginning July 6, 2009, CBOT Ethanol and Dow options (including options spreads and combinations and options/futures spreads), pre-execution communications must be preceded by the entry of a Request for Quote ("RFQ"). Subsequent to the entry of the RFQ, any trade intended for execution pursuant to a pre-execution communication requires the entry of an additional RFQ followed by the entry of a Request for Cross ("RFC") order, an order which contains both the buy and sell orders.

With the exception of CME and CBOT equity options, the RFC order must be entered no less than 15 seconds and no more than 30 seconds after the entry of the additional RFQ. In CME and CBOT equity options, the RFC order must be entered no less than 5 seconds and no more than 30 seconds after the entry of the additional RFQ. The RFQs and the RFC must be entered within the same trading session and failure to enter the RFC order within the time parameters set forth above requires a new RFQ to be entered prior to the entry of the RFC order. In all cases, the entry of the RFC order must comply with the time parameters set forth in CME & CBOT Rule 539.

Numerous Independent Software Vendors support the RFQ and RFC functionality. For market participants using the Exchange-provided CME EOS Trader application, functionality built in to the application will prevent the entry of the RFC message if it is entered outside of the allowable time periods for the entry of such messages. For example, with respect to an RFC in Eurodollar options, the system will preclude the entry of the RFC message if it is entered less than 15 seconds or more than 30 seconds after the entry of the second RFQ. This functionality was added to facilitate compliance with the relevant entry time requirements. The requirements detailed above ensure transparency and competitive execution by requiring solicitation of interest from all market participants via an RFQ prior to submission of the cross request.

The requirements with respect to engaging in pre-execution communications in CME options and CBOT interest rate, Ethanol and Dow options contracts trading on CME Globex appear in Sections 1-3, while the requirements with respect to engaging in pre-execution communications in CME futures products appear in Section 4.

Questions and answers regarding prohibited pre-execution communications in CBOT futures and CBOT agricultural options appear in Section 5.

The text of CME Rule 539 appears on page 7 and the text of CBOT Rule 539 appears on page 8 of this Advisory Notice.

In products where pre-execution communications are allowed, such communications may occur only when the party for whose benefit the trade is being made has previously consented to such communications. **Additionally, parties who have been involved in a pre-execution communication may not disclose the details of that communication to other parties, nor may a party place any order to take advantage of the information conveyed in such communications except to facilitate the trade in accordance with the rule.**

**1. Requirements for Pre-Execution Communications in CME Options and CBOT Interest Rate, Ethanol and Dow Options Trading on CME Globex**

- a) **Prior** to engaging in pre-execution communications involving CME options and CBOT interest rate, Ethanol and Dow options (or any spread or combination involving such options), the market participant must submit a Request for Quote ("RFQ").
- b) Subsequent to submitting the RFQ and engaging in pre-execution communications, a trade to be executed pursuant to such communications requires the market participant to issue an additional RFQ.
- c) In all CBOT interest rate, Ethanol and Dow options and all CME options, a trade to be executed pursuant to pre-execution communications **must** be initiated by the entry of an RFC order, a submission which includes both the buy and sell orders; in all CME and CBOT options other than Equity options, the RFC order **must** be initiated no less than 15 seconds and no more than 30 seconds after issuing the additional RFQ. In CME and CBOT Equity options, the RFC order must be entered no less than 5 seconds and no more than 30 seconds after issuing the additional RFQ. The RFC matching algorithm is summarized in Section 2. below.
- d) If an RFC order is not entered within 30 seconds after the additional RFQ, any subsequent trade to be executed pursuant to pre-execution communications must be preceded by the entry of a new RFQ and, thereafter, the RFC order must be entered in accordance with the time parameters set forth in c) above.

**2. RFC Matching Algorithm for CME Options and CBOT Interest Rate, Ethanol and Dow Options Trading on CME Globex**

- a) The RFC price improves **both** the best bid and best offer in the order book or there is no bid/offer in the order book.

If the RFC price improves both the best bid and best offer in the order book or if there is no bid/offer in the order book, 100% of the RFC quantity will match at the RFC price immediately upon submission of the RFC.

**b) The RFC price matches or is outside the best bid or best offer in the order book.**

- If the RFC price matches or is outside the best bid or offer in the market, the applicable side of the RFC order will immediately match against the orders in the market at a price better than or equal to the RFC price. The balance of the RFC will be matched as follows:

All CBOT Interest Rate and Ethanol Options and All CME Options Other than Equity Options

- Immediately thereafter, 60% of the smaller quantity remaining on one side of the RFC will match against the order on the opposite side of the RFC at the RFC price;
- Any remaining unmatched portion on the RFC will then be available for matching against other incoming orders for five (5) seconds;
- Any match-eligible quantity remaining on the RFC will then match at the RFC price;
- Any unmatched balance on one side of the RFC will either be cancelled or remain in the order book depending on the instructions submitted with the RFC.

CME & CBOT Equity Options

- Immediately thereafter, 100% of the smaller quantity remaining on one side of the RFC will match against the order on the opposite side of the RFC at the RFC price;
- Any unmatched balanced on one side of the RFC will either be cancelled or remain in the order book depending on the instructions submitted with the RFC.

**3. Questions and Answers Regarding Pre-Execution Communication Requirements in CME Options and CBOT Interest Rate, Ethanol and Dow Options Executed on CME Globex**

- a) Is a client's consent to pre-execution communications necessary? Yes.
- b) May the parties involved in pre-execution communications disclose the details of those communications to other parties?  
No.
- c) If a party has participated in a pre-execution communication where non-public information has been disclosed about an order or a potential order and the party does not agree to take the other side of the trade, may the party subsequently enter an order into the market to take advantage of the non-public information?  
No.
- d) Is an RFQ required to be submitted prior to engaging in pre-execution communications? Yes.
- e) Is the RFQ referenced in d) above required if the system is showing current bids and/or offers in the contract(s) that will be the subject of a pre-execution communication?  
Yes.

- f) After the first RFQ is submitted and a pre-execution communication has taken place, is an additional RFQ required to be submitted prior to entering a Request for Cross ("RFC") in order to proceed with the transaction?  
Yes.
- g) In all CBOT interest rate and Ethanol options and all CME options other than equity options, must the RFC be entered no less than 15 seconds and no more than 30 seconds after issuing the additional RFQ?  
Yes.
- h) In CME & CBOT equity options, must the RFC be entered no less than 5 seconds and no more than 30 seconds after issuing the additional RFQ?  
Yes.
- i) Are the quantity and price of the orders on the RFC displayed to the marketplace upon submission of the RFC?  
No.
- j) Must both RFQs and the RFC be entered within the same trading session? Yes.
- k) If the RFC is not entered within the time parameters set forth in g) and h) above after issuing the additional RFQ, is a new RFQ required to be issued prior to entering the RFC?  
Yes.
- l) May an RFC ever be entered outside the time parameters set forth in g) and h) above after entry of the required RFQ?  
No.
- m) If a call is made to solicit the improvement of a CBOT Interest Rate, Ethanol or Dow options or any CME options market posted on CME Globex, must an RFQ be entered prior to making the call regardless of whether the parties discuss price, quantity or the side of market with respect to any potential trade?  
Yes.
- n) If the call described in m) above results in the parties agreeing to trade opposite each other, must the requirements of f) and, depending on the option product, g) or h) be followed in order to proceed with the trade?  
Yes.

#### **4. Requirements for Pre-Execution Communications in CME Futures Products**

For transactions in CME futures products which involve pre-execution communications, the order of the party who initiated the pre-execution communication must be the first order entered into CME Globex. No RFQ or RFC is required. At least 5 seconds must elapse after the entry of the first order before the opposing order can be entered.

#### **5. Questions and Answers Regarding Pre-Execution Communication Requirements in CME Futures Products Executed on CME Globex**

- a) Is a client's consent to pre-execution communications necessary? Yes.

- b) May the parties involved in pre-execution communications disclose the details of those communications to other parties?  
No.
- c) If a party has participated in a pre-execution communication where non-public information has been disclosed about an order or a potential order and the party does not agree to take the other side of the trade, may the party subsequently enter an order into the market to take advantage of the non-public information?  
No.
- d) Is an RFQ required to be issued prior to engaging in pre-execution communications? No.
- e) If pre-execution communications have occurred, must the order of the initiator of the pre-execution communication be entered prior to the entry of the opposing order?  
Yes.
- f) Must a minimum of 5 seconds elapse after the entry of the first order before the entry of the second order?  
Yes.
- g) Is the entry of an RFC required? No.

**6. Questions and Answers Regarding Prohibited Pre-Execution Communications in All CBOT Futures Products and CBOT Agricultural Options Products Trading on CME Globex**

- a) What is a pre-execution communication?  
Pre-execution communications are communications between market participants for the purpose of discerning interest in the execution of a transaction prior to the exposure of the order to the market. Pre-execution communications involving CBOT products are prohibited at all times with respect to transactions executed in either the open outcry or electronic venue, with the exception of CBOT interest rate, Ethanol and Dow options executed on CME Globex which must be executed in accordance with CBOT Rule 539.C. ("Pre-Execution Communications Regarding Globex Trades in Interest Rate Options"). The prohibition does not apply to privately negotiated transactions executed outside of the central market (i.e. EFP, EFR and Block trades).
- b) If a customer has an interest in a particular transaction and requests a market, how can the salesperson obtain a market for the customer?  
In the open outcry venue, a market would be requested from the trading pit. In the electronic venue, the salesperson identifies the bid/offer and depth of market posted on CME Globex. If the posted bid/offer is deemed too wide or insufficiently deep, it is recommended that a Request for Quote ("RFQ") be submitted. This action will typically generate additional interest and, in the case of products supported by a market-maker program, market makers are obliged to respond to a specified percentage of RFQs.
- c) What if an RFQ is submitted and there is no response or an inadequate response in terms of the tightness or depth of the market?  
In this circumstance, another RFQ should be submitted. With an active RFQ, it is also permissible to contact potential counterparties (i.e. market makers), alert them to the RFQ and ask them to submit a market or to tighten/deepen the existing market. An RFQ is considered active for 60 seconds following submission. To ensure that such communications do not become prohibited

pre-execution communications, only the information disclosed via the RFQ may be disclosed in such communications.

- e) If an order has been submitted on CME Globex, are there any restrictions on communicating with potential counterparties?

With a resting order exposed on CME Globex, it is permissible to contact potential counterparties to solicit interest in trading against the order. In any such communications, no non-public information (i.e. information not represented in the terms of the order exposed to the market) may be disclosed. For example, if the represented offer is for 250 contracts, it would be a violation of the rules to disclose that there are an additional 500 contracts to sell because that information has not been disclosed to the market.

- f) Is it permissible to contact other market participants to obtain general market color?

Communications to obtain general market color are permissible provided there is no express or obviously implied arrangement to execute a specified trade and no non-public information is communicated regarding an order.

- g) How should an order for a spread or combination not supported by CME Globex be handled?

CME Globex supports a wide array of strategies covering most of the spreads and combinations participants commonly trade. There are, however, some types of spreads or combinations that are not supported by CME Globex. Orders for an unsupported spread or combination must be legged on CME Globex or entered in the open outcry venue. RFQs can be submitted for the legs of the strategy to ascertain the levels at which the spread could possibly be legged.

- h) Under what circumstances can orders be crossed on CME Globex?

In accordance with CBOT Rule 533 ("Simultaneous Buy and Sell Orders for Different Beneficial Owners"), *independently initiated* orders on opposite sides of the market for different beneficial account owners that are immediately executable against each other may be entered without delay provided that the orders did not involve pre-execution communications and that each of the orders is entered immediately upon receipt.

Opposite orders for different beneficial accounts that are simultaneously placed by a party with discretion over both accounts may be entered provided that one order is exposed on CME Globex for a minimum of 5 seconds in the case of futures orders and a minimum of 15 seconds in the case of orders involving options.

An order allowing for price and/or time discretion, if not entered immediately upon receipt, may be knowingly entered opposite a second order entered by the same firm only if the second order has been entered immediately upon receipt and has been exposed on CME Globex for a minimum of 5 seconds for futures orders and a minimum of 15 seconds for orders involving options.

- i) Assuming there have been no pre-execution communications, is it permissible for a firm to knowingly trade for its proprietary account against a customer order entered by the firm?

Yes, provided that in accordance with CBOT Rule 531 ("Trading Against Customers' Orders Prohibited") the customer order has been entered immediately upon receipt and has first been exposed on CME Globex for a minimum of 5 seconds for futures orders and a minimum of 15 seconds for orders involving options.

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

Kathleen Zaino, Associate Director, 312.435.3577  
Robert Sniegowski, Associate Director, 312.341.5991



**CME 539. PREARRANGED, PRE-NEGOTIATED AND NONCOMPETITIVE TRADES PROHIBITED**

**539.A. General Prohibition**

No person shall prearrange or pre-negotiate any purchase or sale or noncompetitively execute any transaction, except in accordance with Sections B. and C. below.

**539.B. Exceptions**

The foregoing restriction shall not apply to block trades pursuant to Rule 526 or Exchange of Futures for Related Position transactions pursuant to Rule 538.

**539.C. Pre-Execution Communications Regarding Globex Trades**

Parties may engage in pre-execution communications with regard to transactions executed on the Globex platform where one party (the first party) wishes to be assured that a contra party (the second party) will take the opposite side of the order under the following circumstances:

1. A party may not engage in pre-execution communications with other market participants on behalf of another party unless the party for whose benefit the trade is being made has previously consented to permit such communications.
2. Parties to pre-execution communications shall not (i) disclose to a non-party the details of such communications or (ii) enter an order to take advantage of information conveyed during such communications except in accordance with this rule.
3. In the case of futures orders, the first party's order must be entered into the Globex platform first and the second party's order may not be entered into the Globex platform until a period of 5 seconds has elapsed from the time of entry of the first order.
4. In the case of options orders, a pre-execution communication must be preceded by the submission of a Request for Quote ("RFQ").

Subsequent to such RFQ, a trade intended for execution for which there has been a pre-execution communication requires the entry of an additional RFQ; thereafter, a Request for Cross ("RFC") order which contains both the buy and the sell orders must be entered no less than fifteen (15) seconds and no more than thirty (30) seconds after the entry of the additional RFQ in order to proceed with the trade, except in equity options where the RFC must be entered no less than five (5) seconds and no more than thirty (30) seconds after the entry of the additional RFQ. The RFQs and the RFC order must be entered within the same trading session. Failure to enter the RFC order within 30 seconds after the entry of the additional RFQ will require a new RFQ to be entered prior to the entry of the RFC order, which must be entered in accordance with the time parameters described above in order to proceed with the trade.

**CBOT 539. PREARRANGED, PRE-NEGOTIATED AND NONCOMPETITIVE TRADES PROHIBITED**

**539.A. General Prohibition**

No person shall prearrange or pre-negotiate any purchase or sale or noncompetitively execute any transaction, except in accordance with Sections B. and C. below.

**539.B. Exceptions**

The foregoing restrictions shall not apply to block trades pursuant to Rule 526 or Exchange of Futures for Related Position transactions pursuant to Rule 538.

**539.C. Pre-Execution Communications Regarding Globex Trades in Interest Rate, Ethanol and Dow Options**

Parties may engage in pre-execution communications with regard to Interest Rate, Ethanol and Dow options transactions executed on the Globex platform where one party wishes to be assured that a contra party will take the opposite side of the order under the following circumstances:

1. A party may not engage in pre-execution communications with other market participants on behalf of another party unless the party for whose benefit the trade is being made has previously consented to permit such communications.
2. Parties to pre-execution communications shall not (i) disclose to a non-party the details of such communications or (ii) enter an order to take advantage of information conveyed during such communications except in accordance with this rule.
3. Reserved.
4. A pre-execution communication must be preceded by the submission of a Request for Quote ("RFQ"). Subsequent to such RFQ, a trade intended for execution for which there has been a pre-execution communication requires the entry of an additional RFQ; thereafter, a Request for Cross ("RFC") order which contains both the buy and the sell orders must be entered no less than fifteen (15) seconds and no more than thirty (30) seconds after the entry of the additional RFQ in order to proceed with the trade, except in equity options where the RFC must be entered no less than five (5) seconds and no more than thirty (30) seconds after the additional RFQ. The RFQs and the RFC order must be entered within the same trading session. Failure to enter the RFC order within 30 seconds after the entry of the additional RFQ will require a new RFQ to be entered prior to the entry of the RFC order, which must be entered in accordance with the time parameters described above in order to proceed with the trade.