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July 13, 2011

VIA E-MAIL

Mr. David Stawick  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
11555 21st Street, N.W.  
Washington, D.C. 20581

**RE: Amendment to CME Rules 802, 816, 817 and 818.  
CME Submission No. 11-281**

Dear Mr. Stawick:

Chicago Mercantile Exchange Inc. ("CME") hereby notifies the Commodity Futures Trading Commission of amendments to Rules 802, 816, 817 and 818.

Summary of Amendments

- Rule 802 is being amended to address concerns regarding clearing member liability to CME in the event of cascading clearing member default events and the potential related assessment obligations under the base financial safeguards package. These amendments will provide non-defaulting firms with certainty of assessment liability during the time they analyze the impact to their capital and contemplate withdrawal from membership by providing for a 5 business day "cooling off period" during which a clearing firm's Base Assessment obligations are capped at 550% of its Guaranty Fund contribution. Each cooling off period would begin upon a clearing member default and continue for 5 business days, provided that should an additional default or defaults occur during such 5 business days, the cooling off period would be extended for additional 5 business day periods until a 5 business day period concludes without any additional clearing member defaults. In addition, Rules 802 and 816 include technical changes relating to the creation of a separate financial safeguards package for CDS products, including the elimination of the CDS Tranche in the base financial safeguards
- Commensurate with the establishment of separate financial safeguards for CDS and IRS, Rule 817 (Liquidity Facility) is being amended to provide that liquidity received from the pledge of assets pledged to the liquidity providers be used within the financial safeguards from which the assets were sourced;
- Rule 818 (Close-Out Netting) is being amended to provide additional alignment with the Bankruptcy Code in the event of a CME insolvency and to provide for a 5 business day grace period for a Clearing House failure to pay.

CME received a letter from the Futures Industry Association requesting that the base cooling off period be extended to at least 10 business days. In evaluating the request, CME concluded on the basis of sound risk management that a 5 business day period is more prudent, which is reflected in the proposed rule.

The text of the rule amendments are attached, with additions underscored and deletions lined-out. The amendments will be made effective on Friday, July 15, 2011.

CME certifies that the amendments comply with the Commodity Exchange Act and regulations thereunder. There were no substantive opposing views to this proposal.

If you have any question, please contact Tim Doar, Managing Director, Risk Management, at (312) 930-3162 or me at (212) 299-2228. Please reference CME Submission No. 11-281 in any related correspondence.

Sincerely,

/s/ Jason Silverstein  
Director & Associate General Counsel

## Rule 802. PROTECTION OF CLEARING HOUSE

### 802.A. Default by Clearing Member or Other Participating Exchanges

The Clearing House shall establish a ~~single-guaranty fund~~ (the "Base Guaranty Fund") for ~~products other than CDS Products and IRS Products (such products, the "Base Guaranty Fund Products" and each product, a "Base Guaranty Fund Product Class")~~. Each clearing member shall contribute to the ~~guaranty fund~~Base Guaranty Fund in accordance with the requirements of Rule 816. A clearing member's ~~guaranty fund~~Base Guaranty Fund contribution may be applied by the Clearing House in accordance with this Rule 802 to mitigate a Loss (as defined below) to the Clearing House attributable to any cleared Base Guaranty Fund Product Class (as defined below) regardless of the Base Guaranty Fund Product Classes a clearing member clears. However, in order to accommodate differences in time frames and processes associated with the liquidation of certain Base Guaranty Fund Product Classes, Losses will be allocated among a set of ~~guaranty fund~~Base Guaranty Fund tranches established to reflect the relative contributions of different product classes to the total ~~guaranty fund~~. For example, ~~to the extent that a loss to the Clearing House is attributable to CDS positions, the guaranty fund contributions related to CDS risks will be subject to application prior to guaranty fund contributions allocated to other tranches.~~Base Guaranty Fund. Notwithstanding this prioritization of the Clearing House's recourse, ultimately the entire ~~guaranty fund~~Base Guaranty Fund will be available if necessary to satisfy all losses regardless of Base Guaranty Fund Product Class.

#### 1. Default by Clearing Member

If a clearing member of CME, CBOT, NYMEX, COMEX, or an OTC Clearing Member, fails promptly to discharge any obligation to the Clearing House, it shall be in default. For purposes of this Rule 802, each default by a clearing member will be considered a separate default event, provided that if a clearing member has been declared in default, subsequent failures to pay by such defaulting clearing member shall not be considered separate default events unless and until the original default has been fully resolved and such clearing member has been restored to good standing.

#### 2. Defaulting Clearing Member's Collateral

If a clearing member defaults, its ~~guaranty fund~~Base Guaranty Fund contribution (pursuant to Rule 816), its performance bonds on deposit with the Clearing House relating to the Base Guaranty Fund Product Classes, the proceeds of the sale of any membership assigned to it for clearing qualification, and any of its other assets held by, pledged to or otherwise available to the Clearing House, shall be applied by the Clearing House to discharge the clearing member's obligation to the Clearing House. The defaulting clearing member shall take no action, including but not limited to, attempting to obtain a court order, that would interfere with the ability of the Clearing House to so apply such assets and proceeds.

If the ~~guaranty fund~~Base Guaranty Fund contribution, performance bond relating to Base Fund Products and other assets of a clearing member available to the Clearing House are insufficient to satisfy all of its obligations to the Clearing House, including all claims against the Clearing House by reason of its substitution for that clearing member pursuant to Rule 804 or Rule 8F05, the Clearing House shall nonetheless pay all such claims, which payments by the Clearing House shall be deemed a loss to it (hereinafter "Loss") and which shall be a liability of the defaulting clearing member to the Clearing House, which the Clearing House may collect from any other assets of such clearing member or by process of law.

For purposes of this Rule, the positions in the cross-margin account of a Participating Clearing Member or its Cross-Margining Affiliate at a Cross-Margining Clearing Organization, and the performance bond thereon, shall be considered assets of the Participating Clearing Member available to the Clearing House to the extent provided in the Cross-Margining Agreement between the Clearing House and such Cross-Margining Clearing Organization. A clearing member in default shall immediately make up any

deficiencies in its ~~guaranty fund~~Base Guaranty Fund contribution resulting from such default and in any event no later than the close of business on the banking day following demand by the Clearing House.

### 3. Default by Other Participating Exchanges or Partner Clearinghouses

If a Participating Exchange or Partner Clearinghouse fails to promptly discharge any obligation to the Clearing House arising out of its obligations to the Exchange, such Participating Exchange's or Partner Clearinghouse's letters of credit, performance bonds and other assets available to the Clearing House shall be applied by the Clearing House to discharge the obligation, pursuant to the procedures set forth below in Rule 802.A.5 with respect to a defaulting clearing member. If such resources are insufficient to satisfy the Participating Exchange's or Partner Clearinghouse's obligations to the Clearing House, the deficiency shall be considered a Loss that is subject to satisfaction pursuant to Rule 802.B.

### 4. Allocation of Base Guaranty Fund into Tranches

The ~~guaranty fund~~Base Guaranty Fund shall be composed of the required ~~guaranty fund~~Base Guaranty Fund contributions of clearing members pursuant to Rule 816, or any comparable security deposit contributions from a Participating Exchange or Partner Clearinghouse. The Clearing House shall allocate the ~~guaranty fund~~Base Guaranty Fund into tranches as follows:

i. ~~The~~

i. ~~Base Tranche. Base Guaranty Fund Product Class. Product classes~~Classes that are not associated with the ~~CDS Tranche or an Alternate Tranche~~ as described below shall comprise the Base Product Class. The first 80% of ~~guaranty fund~~Base Guaranty Fund amounts contributed with respect to the Base Product Class shall be the "Base Tranche".

ii. ~~The CDS Product Class. CDS products described in Chapter 80000 shall comprise the CDS Product Class. The first 80% of guaranty fund amounts contributed with respect to the CDS Product Class shall be the "CDS Tranche".~~

iii.

ii. [Reserved]

iii. ~~Alternate Product Classes~~Class Tranches. Any other product class approved by the Clearing House Risk Committee to support a product-specific ~~guaranty fund~~Base Guaranty Fund tranche hereunder shall comprise an Alternate Product Class. The first 80% of ~~guaranty fund~~Base Guaranty Fund amounts contributed with respect to each such an Alternate Product Class shall be an "Alternate Tranche".

iv.

iv. Commingled Tranche. The remaining 20% of ~~guaranty fund~~Base Guaranty Fund amounts contributed with respect to all of the foregoing Product Classes shall be the "Commingled Tranche".

As set forth below in 802.B, if the collateral of the defaulting clearing member, as described in Rule 802.A.2, Participating Exchange or Partner Clearinghouse is insufficient to satisfy its obligation to the Clearing House, the Tranche associated with a particular Base Guaranty Fund Product Class will be the Tranche first applied to reimburse the Clearing House for Losses attributable to that Base Guaranty Fund Product Class, as determined in accordance with Rule 802.A.5, (i.e., the Base Tranche will first be applied to Losses attributed to the Base Product Class, and the ~~GDS~~Alternate Tranche will first be applied to Losses attributed to the ~~CDS~~an Alternate Product Class). The ~~guaranty fund~~Base Guaranty Fund requirements of clearing members for purposes of allocation of such amounts into the Tranches shall be the required amounts in effect for each clearing member at the time of the default.

### 5. Apportionment Among Base Guaranty Fund Product Classes; Application of Defaulting Clearing Member's Collateral

Upon a default, the Clearing House shall apply the defaulting clearing member's collateral to the deficiency in accordance with the following procedures:

i.

i. Initial Allocation of Assets to Base Guaranty Fund Product Classes. Subject to the provisions of 802.G, as of the cycle in which the default occurs, the Clearing House shall allocate assets of the defaulting clearing member to the different Base Guaranty Fund Product Classes in which the clearing member has open positions as follows: (a) the defaulting clearing member's guaranty fund Base Guaranty Fund requirement associated with each Base Guaranty Fund Product Class shall be attributed to such Class, (b) the defaulting clearing member's required performance bond amounts for each Base Guaranty Fund Product Class as of the prior clearing cycle shall be allocated to such Class, (c) any CME shares (whether common shares or class B shares) or any cash posted in lieu of such shares, and (d) any of the defaulting clearing member's other assets held by, pledged to or otherwise available to the Clearing House shall be divided among the Base Guaranty Fund Product Classes in proportion to the defaulting clearing member's guaranty fund Base Guaranty Fund requirement.

ii.

ii. Management of Obligations for Cycle of Default. As of the cycle in which the default occurs, the Clearing House shall aggregate the following assets: any excess guaranty funds Base Guaranty Fund Funds, any excess performance bond from the prior clearing cycle for Base Guaranty Fund Product Classes, any partial payment by the clearing member for the default cycle, and any other available assets of the clearing member that are not specific to a Base Guaranty Fund Product Class. Such unassigned assets shall be allocated first to any net settlement variation payment obligation of the defaulting clearing member to the Clearing House relating to Base Guaranty Fund Product Classes, pro rata across account classes relative to the net settlement variation payment obligation for each account class. If the unassigned funds so allocated are sufficient to satisfy the clearing member's immediate settlement variation payment obligations, for Base Guaranty Fund Product Classes, any remaining unassigned funds shall be divided among the Base Guaranty Fund Product Classes, pro rata in proportion to the size of the performance bond requirements for each Base Guaranty Fund Product Class for the clearing cycle immediately prior to the default. If the unassigned funds are not sufficient to satisfy the clearing member's settlement variation payment obligations for Base Guaranty Fund Product Classes for the default cycle, then (i) the Clearing House shall apply the unassigned funds to such obligations, pro rata relative to the size of such obligations on a per-Base Guaranty Fund Product Class basis, and within each Base Guaranty Fund Product Class, pro rata across account classes, and (ii) the remaining settlement variation payment obligations for such clearing cycle shall be satisfied on a per-Base Guaranty Fund Product Class basis only from the assets allocated to the relevant Base Guaranty Fund Product Class pursuant to 802.A.5.i. If the Clearing House is unable to satisfy a settlement variation payment obligation attributable to any Base Guaranty Fund Product Class from such assets, the deficiency shall be a Loss that the Clearing House shall satisfy pursuant to the procedures in Rule 802.B. For the avoidance of doubt, as set forth in 802.G, the Clearing House shall not use performance bond amounts or other collateral in any customer account class of the defaulting clearing member to satisfy a payment obligation to the Clearing House in respect of the defaulting clearing member's proprietary account.

iii.

iii. Payment Obligations as Losses are Finalized. During any subsequent clearing cycles in which the Clearing House is managing and/or liquidating open positions in respect of the defaulting clearing member, the Clearing House shall satisfy any settlement variation payment obligations owed by the defaulting Clearing member to the Clearing House, or other realized losses of or expenses to the Clearing House with respect to the default, on a per-Base Guaranty Fund Product Class basis, only from the assets allocated to the relevant Base Guaranty Fund Product Class pursuant to 802.A.5.i. Any settlement variation gain to the defaulting clearing member in any Base Guaranty Fund Product Class during such subsequent clearing cycles shall be added to collateral allocated to such Product Class pursuant to 802.A.5.i. Any additional assets of the defaulting clearing member obtained by the Clearing House during subsequent clearing cycles (including amounts from CDS Products and IRS Products made available to Base Guaranty Fund

Product Classes) shall be divided among the Base Guaranty Fund Product Classes pro rata in proportion to the size of the performance bond requirements for each Base Guaranty Fund Product Class for the clearing cycle immediately prior to the default. The Clearing House shall apply such collateral to such payment obligations for all account classes, giving priority to customer account classes (i.e., customer accounts and proprietary accounts). If the Clearing House is unable to satisfy a settlement variation payment obligation to the Clearing House, or other realized loss or expense to the Clearing House, from the defaulting clearing member's collateral as set forth in this paragraph, the deficiency shall be a Loss that the Clearing House shall satisfy pursuant to the procedures in Rule 802.B. For the avoidance of doubt, as set forth in 802.G, the Clearing House shall not use performance bond amounts or other collateral in any customer account class of the defaulting clearing member to satisfy a payment obligation to the Clearing House in respect of the defaulting clearing member's proprietary account.

iv.

- iv. Final determination of gain or deficiency for each Product Class. When the Clearing House determines the final net deficiency for a Base Guaranty Fund Product Class, it shall apply any remaining collateral of the defaulting clearing member with respect to such Base Guaranty Fund Product Class to satisfy the deficiency. If the Clearing House achieves a final gain, or if any excess collateral remains following satisfaction of a deficiency, the Clearing House shall allocate such excess funds to the defaulting clearing member's collateral for Base Guaranty Fund Product Classes within the same account class as to which a final gain or deficiency is yet to be determined, pro rata in proportion to the size of the performance bond requirements for such Base Guaranty Fund Product Classes for the clearing cycle immediately prior to the default. For the avoidance of doubt, as set forth in 802.G, the Clearing House shall not use performance bond amounts or other collateral in any customer account class of the defaulting clearing member to satisfy a payment obligation to the Clearing House in respect of the defaulting clearing member's proprietary account. Any gains or excess collateral within a segregated customer account class following final determination of the defaulting clearing member's losses shall remain segregated to the relevant customer account class, where it may be used to satisfy payment obligations arising from such account class in other Product Classes, but shall not be added to the clearing member's collateral generally.

Any remaining unsatisfied obligations of the defaulting clearing member shall become Losses to the Clearing House that shall be satisfied as set forth below.

#### **802.B. Satisfaction of Clearing House Obligations**

If the Clearing House is unable, using the defaulting clearing member's collateral as set forth in Rule 802.A, to satisfy all of the clearing member's obligations to the Clearing House then such obligations shall be met and made good promptly by the Clearing House pursuant to this Rule 802.B. Such obligations include, but shall not be limited to, costs associated with the liquidation, transfer and managing of positions, arising out of: 1) its substitution (pursuant to Rule 804 or Rule 8F05) for a defaulting clearing member a defaulting Participating Exchange, or a defaulting Partner Clearinghouse; 2) a shortfall in a cross-margining program; 3) the failure of a depository, exchange or market apart from the Exchange but whose transactions are cleared pursuant to the provisions of Chapters 8B, 8C, 8D, 8E or 8F; or 4) any other cause. All of the foregoing shall be deemed Losses to the Clearing House, which shall be apportioned by the Clearing House to Loss categories associated with the Base Guaranty Fund Product Class producing the Loss. Losses that cannot readily be attributed to a specific Base Guaranty Fund Product Class shall be apportioned by the Clearing House across all Base Guaranty Fund Product Classes in proportion to relative size of the Tranches (excluding the Commingled Tranche). Losses shall be satisfied by the Clearing House in the order of priority hereafter listed. Non-defaulting clearing members shall take no actions, including but not limited to attempting to obtain a court order, that would interfere with the ability of the Clearing House to collect and apply assets and proceeds in accordance with this Rule 802.B. For purposes of this Rule 802.B, a default by a Participating Exchange or a Partner Clearinghouse shall be managed in the same manner as a default by a clearing member.

1. If Losses Are Limited to the Base Product Class

- i. CME Surplus Funds (as defined below).
- ii. The Base Tranche.
- iii. The Commingled Tranche.
- iv. The CDS Tranche and any Alternate Tranche, pro rata in accordance with the relative size of such Tranches.
- v. The balance of any Losses remaining after the application of the above funds shall be assessed against all clearing members (excluding any insolvent or defaulting clearing members). Each clearing member (excluding any insolvent or defaulting clearing member) shall be subject to an assessment up to an amount that does not exceed (A) a total of 275 per cent of such clearing member's guaranty fund Base Guaranty Fund requirements attributable to all Base Guaranty Fund Product Classes at the time of the default with respect to Losses attributed to a single defaulted clearing member and (B) a total of 550 per cent of such clearing member's Base Guaranty Fund requirements attributable to all Base Guaranty Fund Product Classes at the time of the default with respect to Losses attributed to all defaulted clearing members during a Base Cooling Off Period. Assessed amounts shall be divided among clearing members pro rata in proportion to the size of the Clearing House's assessment authority with respect to each clearing member. If after satisfaction of any assessments up to foregoing maximum, a non-defaulting clearing member withdraws as set forth in 802.B.5, the clearing member shall not be subject to any further assessment in respect of Losses attributable to the default.

2. If Losses Are Limited to the CDS Product Class:

- i. CME Surplus Funds.
- ii. The CDS Tranche.
- iii. The Commingled Tranche.
- iv. The Base Tranche and any Alternate Tranche, pro rata in accordance with the relative size of such Tranches.
- v. The balance of any Losses remaining after the application of the above funds shall be assessed against all clearing members (excluding any insolvent or defaulting clearing members). Each clearing member (excluding any insolvent or defaulting clearing member) shall be subject to an assessment up to an amount that does not exceed a total of 275 per cent of such clearing member's guaranty fund requirements attributable to all Product Classes at the time of the default. Assessed amounts shall be divided among clearing members pro rata in proportion to the size of the Clearing House's assessment authority with respect to each clearing member. If after satisfaction of any assessments up to foregoing maximum, a non-defaulting clearing member withdraws as set forth in 802.B.5, the clearing member shall not be subject to any further assessment in respect of Losses attributable to the default.

3. If Losses Are Limited to an Alternate Product Class:

- i. CME Surplus Funds.
- ii. The Alternate Tranche.
- iii. The Commingled Tranche.
- iv. The Base Tranche, the CDS [Reserved]

3. If Losses Are Limited to an Alternate Product Class:

- i. CME Surplus Funds.
- ii. The Alternate Tranche.
- iii. The Commingled Tranche.
- iv. The Base Tranche and any other Alternate Tranche, pro rata in accordance with the relative size of such Tranches.

v. The balance of any Losses remaining after the application of the above funds shall be assessed against all clearing members (excluding any insolvent or defaulting clearing members). Each clearing member (excluding any insolvent or defaulting clearing member) shall be subject to an assessment up to an amount that does not exceed (A) a total of 275 per cent of such clearing member's guaranty fund ~~Base Guaranty Fund~~ requirements attributable to all Base Guaranty Fund Product Classes at the time of the default with respect to Losses attributed to a single defaulted clearing member and (B) a total of 550 per cent of such clearing member's Base Guaranty Fund requirements attributable to all Base Guaranty Fund Product Classes at the time of the default with respect to Losses attributed to all defaulted clearing members during a Base Cooling Off Period. Assessed amounts shall be divided among clearing members pro rata in proportion to the size of the Clearing House's assessment authority with respect to each clearing member. ~~If after satisfaction of any assessments up to foregoing maximum, a non-defaulting clearing member withdraws as set forth in 802.B.5, the clearing member shall not be subject to any further assessment in respect of Losses attributable to the default.~~

#### 4. If Losses Are Apportioned Among Multiple Product Classes:

Because of differences in the timeframes and processes associated with the liquidation of certain product types, the Clearing House may finalize Loss amounts associated with different Base Guaranty Fund Product Classes at different points in time. Notwithstanding this, the Clearing House will act with all possible speed to satisfy the Losses as they are finalized, in the order of priority and per the schedule set forth below.

i. CME Surplus Funds shall be applied. CME Surplus Funds shall be divided by the Clearing House into separate segments in proportion to the size of each Tranche except for the Commingled Tranche. Each segment of CME Surplus Funds shall be applied first to Losses associated with the applicable Base Guaranty Fund Product Class for such segment, and only at such time as one or more Losses associated with such Tranche are finalized. Subject to paragraph 802.C if any CME Surplus Funds remain after such initial application, such funds shall be reserved to be later applied to Losses associated with other Product Classes as set forth in paragraph 802.B.4.v.

ii. ~~The Base Tranche shall be applied to Losses associated with the Base Product Class, the CDS Tranche shall be applied to Losses associated with the CDS Product Class, and any Alternate Tranche shall be applied to Losses associated with the applicable Alternate Product Class, in each case when one or more Losses associated with such Tranche are finalized.~~ Subject to paragraph 802.C, if the Tranche is not exhausted, any remaining funds shall be held in such Tranche and may later be applied to other Losses as set forth in paragraph 802.B.4.v.

iii. The Commingled Tranche funds shall be applied to remaining Losses associated with any Base Guaranty Fund Product Class immediately as such Losses are finally determined by the Clearing House, in the order that the amounts of such Losses are finalized. Consequently, the application of Commingled Tranche funds to Losses associated with one Base Guaranty Fund Product Class may occur prior to the finalization of Losses associated with other Base Guaranty Fund Product Classes (i.e., prior to the completion of the processes set forth in paragraphs 802.B.4.i and 802.B.4.ii with respect to Losses associated with another Base Guaranty Fund Product Class-)). If Losses associated with more than one Base Guaranty Fund Product Class are to be finalized pursuant to auction processes being conducted concurrently, then any remaining Commingled Tranche funds shall be divided and allocated to such auctions during the auction process, pro rata in proportion to the relative sizes of the mark-to-market losses for such Base Guaranty Fund Product Classes.

iv. Any Losses remaining after the application of the processes set forth above shall be assessed against all clearing members (excluding any insolvent or defaulting clearing members) up to an amount that does not exceed (A) a total of 275 per cent of the aggregate guaranty fund requirements across all clearing members (excluding any insolvent or defaulting clearing



members) at the time of the default with respect to the Base Guaranty Fund Product Class with which the Loss is associated; with respect to Losses attributed to a single defaulted clearing member and (B) a total of 550 per cent of the aggregate guaranty fund requirements across all clearing members (excluding any insolvent or defaulting clearing members) at the time of the default with respect to the Base Guaranty Fund Product Class with which the Loss is associated and all defaulted clearing members during a Base Cooling Off Period. Such assessments shall occur on a per- Base Guaranty Fund Product Class basis as Losses associated with each Base Guaranty Fund Product Class are finalized by the Clearing House. Consequently, the application of an assessment against clearing members with respect to Losses associated with one Base Guaranty Fund Product Class may occur prior to the finalization of Losses associated with other Base Guaranty Fund Product Classes. Assessed amounts shall be divided among clearing members pro rata in proportion to the size of the Clearing House's assessment authority with respect to each clearing member, without regard to the Base Guaranty Fund Product Classes cleared by such clearing member or the proportion to which such Base Guaranty Fund Product Classes contribute to such clearing member's maximum assessment exposure. (For example, a clearing member that clears only CDS Alternate Tranche products and that is subject to a maximum \$1 billion assessment because of that clearing activity will be subject to assessment of up to \$500 million for a Loss associated with the Base Product Class if 50% of the Clearing House's aggregate assessment powers are generated by guaranty fund Base Guaranty Fund requirements with respect to the Base Product Class.) Any remaining unused assessment authority associated with Base Guaranty Fund Product Classes as to which Losses are fully satisfied shall be reserved and later may be applied to Losses associated with other Product Classes as set forth in paragraph 802.B.4.v below. ~~For the avoidance of doubt, each clearing member (excluding any insolvent or defaulting clearing member) shall be subject to assessment up to a maximum amount of 275 per cent of such clearing member's aggregate guaranty fund requirements with respect to all Product Classes at the time of the default. If after satisfaction of any assessments up to foregoing maximum, a non-defaulting clearing member withdraws as set forth in 802.B.6, the clearing member shall not be subject to any further assessment in respect of Losses attributable to the default.~~

v. ~~Reserved~~ (a) collateral Collateral of the defaulting clearing member, (b) CME Surplus Funds, (c) ~~Base Tranche funds, CDS Tranche funds or Alternate Tranche funds,~~ and (d) assessment powers shall be applied to remaining Losses as they are finalized with respect to each Base Guaranty Fund Product Class and in such order, provided that if at the time of any such application, Losses associated with another Base Guaranty Fund Product Class remain to be finalized, the Clearing House shall continue to reserve a portion of such remaining funds or assessment powers, pro rata in proportion to the size of the Tranches originally supporting such Base Guaranty Fund Product Classes, until such remaining Losses are finalized. When all Losses have been finalized by the Clearing House, any remaining reserved funds and assessment powers of any kind may be applied to satisfy such Losses, pro rata relative to the size of the remaining losses for the Base Guaranty Fund Product Classes.

#### 5. Fedwire and Satisfaction of Assessment

All amounts assessed by the Clearing House against a clearing member pursuant to this Rule, during the hours in which the Federal Reserve's wire transfer system (Fedwire) is in operation, shall be paid to the Exchange by such clearing member prior to the close of Fedwire on such day; provided, however, that all amounts assessed within one (1) hour prior to the close of Fedwire shall be paid to the Exchange within one (1) hour after Fedwire next opens.

Any clearing member that does not satisfy an assessment, made pursuant to this paragraph 802.B.5 or paragraphs 802.B.1.v, 802.B.2.v, 802.B.3.v, 802.B.4.iv or 802.B.4.v above, shall be in default. Any Loss that occurs as a result of such default shall itself be assessed by the Clearing House to non-defaulting clearing members pursuant to the applicable paragraph.

If a clearing member (i) has made payment of all amounts assessed against it pursuant to this Rule 802.B in connection with any single default and any related default by any other clearing member with respect to its own assessment, (ii) has replenished any deficiency in its ~~guaranty fund~~Base Guaranty Fund contribution in accordance with Rule 802.D, and (iii) within five (5) business days after making such payments, has satisfied the other conditions for withdrawal set forth in Rule 913.A, it may provide written notice of its application to withdraw from clearing membership pursuant to Rule 913. Upon receipt of such notice, provided that the foregoing conditions have been satisfied, the withdrawing clearing member shall not be subject to any residual assessment to cover ~~Losses on an open unresolved default, nor any other assessment pursuant to this Rule in respect of~~ defaults occurring ~~on or after the date upon which notice is received~~related Base Cooling Off Period. Further, the ~~guaranty fund~~Base Guaranty Fund contribution that it has restored shall not be used or applied towards meeting any claim or obligation of the Clearing House pursuant to Rule 802.B that arises with respect to defaults occurring ~~on or after the date upon which notice is received~~related Base Cooling Off Period, and the withdrawing clearing member's ~~guaranty fund~~Base Guaranty Fund contribution shall be released in accordance with Rule 913.

After payment of an assessment pursuant to Rule 802.B, a clearing member shall charge other clearing members for whom it clears contracts or carries positions on its books to recover their proportional share of the assessment. Such other clearing members shall promptly pay the charge.

#### 6. Details of Implementation

While adherence to the provisions of this Rule 802.B shall be mandatory, the detailed implementation of the process of finalizing Losses with respect to a default, including the liquidation, auction or sale of positions or assets of the defaulting clearing member, shall be conducted by the Clearing House in consultation with the Clearing House Risk Committee, with the approval of the Board, and/or such other committee as the Board may designate. ~~With respect to a default occurring in the CDS Product Class, the finalization of Losses with respect to the defaulting clearing member's CDS positions shall be conducted in consultation with the CDS Default Management Committee.~~

#### 7. Surplus Funds

CME Surplus Funds for purposes of this Rule 802 shall be the amount by which funds held by the Exchange at the time of a default exceed (i) the amount of funds previously determined by the Exchange to be necessary for normal operations on an ongoing basis ~~and~~, (ii) any amount of such funds that is designated by the Exchange for satisfaction of the CME IRS Contribution requirement set forth in Rule 8G802.B-

~~- and (iii) any amount of such funds that is designated by the Exchange for satisfaction of the CME CDS Contribution requirement set forth in Rule 8H802.B.~~

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1. Revised December 2008

#### **802.C. Application of Funds to Avoid Clearing House Insolvency**

Notwithstanding any requirements to reserve funds set forth in Rule 802.A or Rule 802.B, if at any point following a default, the Clearing House will be unable to timely fulfill its obligations following application of the funds described above in the priority described above, such that the Clearing House is in imminent danger of defaulting on its obligations or being declared insolvent, then the Clearing House shall be entitled to apply to such obligation any available funds reserved from the defaulting clearing member's collateral, surplus funds or any Tranche (other than the Commingled Tranche, which shall have been exhausted pursuant to paragraph 802.B.4.iii), in the foregoing order of priority, if necessary to avoid a default by the Clearing House or a declaration of its insolvency. Such use of reserved funds may only be made (i) if the Clearing House reasonably concludes that there is a reasonable expectation that (A) the

use of such funds will satisfy the immediate obligation and avoid a default or insolvency and (B) that the remaining funds in the overall financial safeguards package (including assessment powers) will be sufficient to satisfy the finalized Losses with respect to all Base Guaranty Fund Product Classes, and (ii) the Clearing House reaches such conclusion in consultation with the Clearing House's primary regulator as to the specific facts, circumstances and estimates of Losses supporting such conclusion. In such case, the Clearing House shall restore the funds so employed to the reserved collateral segments, surplus funds segments or Tranches from which they were drawn promptly following receipt by the Clearing House of assessment payments or any other amounts that become available to it in respect of obligations arising out of the defaulted clearing member's default.

#### **802.D. Restoration of Funds Following Final Determination of Losses**

If after the default of a clearing member is finally resolved, the Clearing House determines that collateral of the defaulting clearing member, surplus funds, Tranche funds other than the Commingled Tranche, or assessment powers were employed in a manner different from what would have occurred had all assets been secured and liquidated immediately and all Losses finalized simultaneously, then the Clearing House shall make appropriate (i) distributions to the non-defaulting firms whose ~~guaranty funds~~Base Guaranty Funds were applied or who were assessed and/or (ii) rebalancing allocations among ~~fund~~Base Guaranty Fund tranches.

#### **802.E. Rights of Exchange for Recovery of Loss**

Losses caused by the default of a clearing member, Participating Exchange or Partner Clearinghouse are amounts due to the Clearing House from such clearing member, exchange or clearing house and shall remain legal obligations thereof notwithstanding the Clearing House's recourse to the loss-mutualization provisions of this Rule 802, which amounts the Clearing House shall take commercially reasonable steps to recover (including claims submitted in bankruptcy court). If a Loss for which clearing members or their ~~guaranty fund~~Base Guaranty Fund contributions have been assessed is subsequently recovered by the Exchange in whole or in part, the net amount of such recovery shall be credited to such clearing members (whether or not they are still clearing members at the time of recovery) in proportion to the amount of the assessment.

#### **802.F. Guaranty Fund Contributions to be Restored**

In the event it shall become necessary to apply all or part of the ~~guaranty fund~~Base Guaranty Fund contributions to meet obligations to the Clearing House pursuant to this Rule 802, clearing members shall restore their contribution to the ~~guaranty fund~~Base Guaranty Fund to previously required level prior to the close of business on the next banking day.

#### **802.G. Default Management Across Account Classes**

The procedures set forth in 802.A and 802.B shall be conducted separately by the Clearing House with respect to open positions and associated performance bond contributions for different account classes. Upon a default, the Clearing House may act immediately to attempt to transfer to alternate clearing members all customer positions and associated collateral with respect to any customer account class in which there is no default on payment obligations or shortfall in required collateral, and in such cases the Clearing House shall not apply segregated customer collateral to any payment obligations or Losses arising from a default in any proprietary account or a different customer account class. If a default occurs in a customer account, the Clearing House has the right to liquidate and apply toward the default all open positions and customer performance bond deposits in the associated customer account class. Accordingly, positions and performance bonds deposited by customers not causing the default are at risk if there is a default in the applicable customer account class of their clearing member. If the Clearing House liquidates positions and/or collateral in a customer account class, any collateral remaining after application to Losses in respect of such account class shall be reserved to such customer account class in order to satisfy the claims of non-defaulting customers in accordance with applicable law.

Upon liquidating the defaulting clearing member's proprietary account, any remaining collateral may be applied by the Clearing House to Losses remaining in the defaulting clearing member's customer

account classes, provided that such collateral shall be divided among the Product Classes as described above. If the defaulting clearing member has more than one customer account class that has been declared to have defaulted, proceeds from the defaulting clearing member's proprietary account for each relevant Product Class shall be divided by the Clearing House pro rata among such customer account classes, based on their applicable performance bond requirements for the clearing cycle immediately prior to the default.

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**8H802.H. Base Cooling Off Period and Multiple Defaults**

The provisions set forth in Rule 802.A and 802.B shall apply with respect to each default by a clearing member. If more than one clearing member default occurs at a time or in close sequence, including a default that occurs by reason of a clearing member's failure to satisfy an assessment demand, the Clearing House shall manage the defaults separately. Upon any default, non-defaulted clearing members shall be subject to a maximum obligation during the relevant Base Cooling Off Period to contribute to the Base Guaranty Fund and to fund assessments as set forth in Rule 802.B. This maximum shall apply from the date of the original default until the later of (i) the 5th Business Day thereafter and (ii) if another clearing member defaults during the 5 Business Days following the initial or any subsequent default, the 5th Business Day following the last such default (such period, the "Base Cooling Off Period"), regardless of the number of defaults that occur during such Base Cooling Off Period.

The aggregate maximum contribution for the Base Cooling Off Period shall be based upon each clearing member's Base Guaranty Fund requirement and assessment exposure in effect at the commencement of the Base Cooling Off Period. The maximum does not limit clearing members' obligations to restore their Guaranty Fund contributions as set forth in Rule 802.F, except that if the clearing member's required Guaranty Fund contribution would exceed such maximum, the clearing member's Base Guaranty Fund requirement shall be reduced accordingly for the remainder of the Base Cooling Off Period. Following a Base Cooling Off Period, the Clearing House shall notify each clearing member of its Base Guaranty Fund deposit obligation and its assessment exposure.

## Rule 816. GUARANTY FUND DEPOSIT

Each clearing member shall make a Base Guaranty Fund deposit with the Exchange as security for its obligations to the Clearing House. The minimum ~~guaranty fund~~ Base Guaranty Fund deposit of a clearing member, shall equal the greater of (a) an amount specified by the Clearing House Risk Committee or (b) the clearing member's proportionate share of the "Aggregate Guaranty Fund Deposit," which shall be an amount determined by the Clearing House Risk Committee.

Each clearing member's proportionate share of the Aggregate Guaranty Fund Deposit shall consist of:

(i) a specified percentage of the Aggregate Guaranty Fund Deposit multiplied by the clearing member's proportionate share (including the total risk performance bond requirement in respect of positions in its cross-margin accounts and any applicable short option value) of the average aggregate risk performance bond requirement (including the risk performance bond requirement in respect of positions in all cross-margin accounts and any applicable short option value) for the preceding three months; plus

(ii) (A) a specified percentage of the Aggregate Guaranty Fund Deposit multiplied by the clearing member's proportionate share of the total number of contracts executed on the Exchange and any applicable exchange or market during the preceding three months; ~~or plus~~

~~(B) for CDS products, a specified percentage of the Aggregate Guaranty Fund Deposit multiplied by the clearing member's proportionate share of the gross notional amount of open interest cleared by the Clearing House during the preceding three months; plus~~

~~(iii) a specified percentage of the Aggregate Guaranty Fund Deposit multiplied by the clearing member's proportionate share of foreign currency settlements for the preceding three months.~~

The percentages in (i) through (iii) above shall be determined and modified by the Clearing House Risk Committee as appropriate. Some contracts may be weighted more heavily than others in order to reflect the greater risk associated with those contracts. ~~The average aggregate risk performance bond requirement, the total number of contracts executed, the gross notional amount of open interest cleared and each clearing member's proportionate share of each will be calculated by the Clearing House, and a report setting forth such information and the clearing member's required Base Guaranty Fund deposit will be given to the clearing member each quarter, and the Clearing House may provide such reports on an interim basis at any time during the quarter as the Clearing House staff shall determine. On a quarterly basis, if such report indicates that the clearing member's current Base Guaranty Fund deposit with the Clearing House is smaller than the amount required, the clearing member shall increase its amount within five business days. If such report indicates that the clearing member's current Base Guaranty Fund deposit with the Exchange is larger than the amount required, the clearing member may withdraw the excess amount. If, prior to the issuance of the quarterly report, the Clearing House determines that an increase in the Base Guaranty Fund deposit is necessary to protect the financial integrity of the Clearing House, the clearing member, upon demand of the Clearing House, shall increase its Base Guaranty Fund deposit amount within five business days.~~

A clearing member's Base Guaranty Fund deposit may be in a form as set forth in the Manual. Such Base Guaranty Fund deposit forms and amounts shall be subject to the terms and conditions as approved by Exchange staff.

## Rule 817. LIQUIDITY FACILITY

Assets deposited by a clearing member in satisfaction of guaranty fund ~~deposit~~ deposits and performance bond requirements may also be used to directly secure the Exchange's obligations to its lenders under any liquidity facility entered into by the Exchange for the purpose of providing liquidity to the Exchange; provided that assets pledged from (x) Base Guaranty Fund deposits and performance bond associated with Base Guaranty Fund Product Classes shall only be used under this Rule to secure liquidity to satisfy obligations arising from Base Guaranty Fund Product Classes, (y) IRS Guaranty Fund deposits and performance bond associated with IRS Products shall only be used under this Rule to secure liquidity to satisfy obligations arising from IRS Products, and (z) CDS Guaranty Fund deposits and performance bond associated with CDS Products shall only be used under this Rule to secure liquidity to satisfy obligations arising from CDS Products; provided further that performance bond deposits of a non-defaulting clearing member may only be pledged under this Rule to secure liquidity for amounts assessed against such clearing member. By delivering assets to the Exchange in satisfaction of guaranty fund deposit and performance bond requirements, each clearing member is hereby deemed: (i) to agree that its Aassets may be used by the Exchange to directly secure the Exchange's obligations to the Exchange's liquidity lenders and that its Aassets may become subject to a lien in favor of the Exchange's liquidity lenders or otherwise guarantee the Exchange's obligations and; (ii) to authorize the Exchange, and appoint the Exchange (such appointment being coupled with an interest) as such clearing member's attorney-in-fact, to enter into agreements on its behalf in connection with its Aassets serving as security for the Exchange's obligations to the Exchange's liquidity lenders; and (iii) to acknowledge that the obligations of the Exchange to its liquidity lenders may be greater, and extend for periods of time longer, than the obligations, if any, of such clearing member to the Exchange. The Exchange, as each clearing member's attorney-in-fact, will have authority to enter into agreements on behalf of each clearing member and in each clearing member's name for the purpose of causing the clearing member's Aassets to directly secure the Exchange's obligations to the Exchange's liquidity lenders. Any agreement entered into by the Exchange on behalf of clearing members pursuant to this Rule 817 shall bind each clearing member and will contain provisions, including representations, warranties and covenants, required by lenders under any liquidity facility. If there is a default under any such liquidity facility, the Aassets of the clearing members pledged to secure such liquidity facility may be foreclosed upon by the Exchange's liquidity lenders and applied against the obligations of the Exchange under the related liquidity facility. The clearing members shall take no action, including but not limited to attempting to obtain a court order, that would interfere with the ability of such liquidity lenders to receive the benefit of their contractual remedies in connection with any such foreclosure or that would controvert or assert the invalidity of any provision of these rules. Each clearing member agrees to sign any document or agreement requested by the Exchange to further document the power of attorney set forth and established by these rules.

## Rule 818. CLOSE-OUT NETTING

### 818.B. Default of the Exchange

If at any time the Exchange fails to comply with an undisputed obligation to pay money or deliver property to a Clearing Member that is due and owing in connection with a transaction on the Exchange or cleared by the Exchange, for a period of ~~thirty days~~ five Business Days from the date that the Exchange receives notice from the Clearing Member of the past due obligation, the Clearing Member's open proprietary and customer (including, for this rule, CFTC Regulation Section 30.7 secured and Cleared OTC Derivatives Customers) positions at the Clearing House shall, at the election of that Clearing Member, be closed promptly.

### 818.C. Netting and Offset

At such time as a Clearing Member's positions are closed, the obligations of the Clearing House to a Clearing Member in respect of all of its proprietary positions, accounts, collateral and deposits to the guaranty fund shall be netted, in accordance with the Bankruptcy Code, the Commodity Exchange Act and the regulations adopted thereunder in each case, against the obligations of that Clearing Member in respect of ~~both its proprietary and its customers' positions, accounts, collateral,~~ its obligations as guarantor of the performance of its customers and its then matured obligations to the guaranty fund to the Clearing House and to the Exchange. For clarity all of the property in a Clearing Member's proprietary account or accounts on deposit with the Clearing House, shall be deemed to be subject to a single master netting agreement with the result that any excess which is on deposit with respect to any product category shall be applied to reduce any deficiency of the Clearing Member in any other product category. All obligations of the Clearing House to a Clearing Member in respect of its customer positions, accounts, and collateral shall be separately netted against the positions, accounts and collateral of its customers without regard to product category in accordance with the requirements of the Bankruptcy Code, the Commodity Exchange Act and the Regulations adopted thereunder in each case. At the time a Bankruptcy Event takes place, the authority of the Clearing House, pursuant to Rule 802, to make new assessments and/or require a clearing member to cure a deficiency in its guaranty fund deposit, arising after the Bankruptcy Event, shall terminate. All positions open immediately prior to the close-out shall be valued in accordance with the procedures of Paragraph D of this Rule.