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September 5, 2008

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

RE: CME & CBOT Market Regulation Advisory Notice RA0815-3
CME & CBOT Submission No. 08-136

Dear Mr. Stawick:

Chicago Mercantile Exchange Inc. ("CME") and The Board of Trade of the City of Chicago, Inc. ("CBOT") (collectively, "the Exchanges") hereby notify the Commission that the Exchanges will issue the following Market Regulation Advisory Notice on September 8, 2008: CME & CBOT RA0815-3 ("Exchange of Futures for Related Positions"). The Advisory Notice is an updated version of CME & CBOT Advisory Notice RA0809-3 from May 1, 2008. The Advisory Notice is being reissued in connection with the transition of the CBOT Metals contracts to NYSE Liffe on September 7, 2008, for trade date September 8, 2008, and eliminates references to the Metals contracts in the answers to questions 17 and 18 contained in RA0809-3. No other changes have been made to the Advisory Notice, a copy of which is attached.

The Exchanges certify that this Advisory Notice complies with the Act and regulations thereunder.

If you have any questions regarding this matter, please contact Robert A. Sniegowski, Associate Director, Market Regulation Department, at 312.341.5991 or me at 312.648.5422. Please reference CME & CBOT Submission #08-136 in any related correspondence.

Sincerely,

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

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MARKET REGULATION ADVISORY NOTICE

Exchange	**CME & CBOT**
Subject	**Exchange of Futures for Related Positions**
Rule References	**Rule 538**
Advisory Date	**September 8, 2008**
Advisory Number	**CME & CBOT RA0815-3**

This Advisory Notice supersedes CME & CBOT Market Regulation Advisory Notice RA0809-3 from May 1, 2008, and is being updated and reissued in connection with today's transition of the CBOT Metals contracts to NYSE Liffe. The only changes appear in the answers to questions 17 and 18 (see pages 6 and 7) where former references to the Metals contracts have been eliminated.

Effective November 29, 2007, CME and CBOT adopted substantially common rule language with respect to Rule 538, which is set forth below. The only difference between the CME and CBOT rules is in Section 8 of the rule. A detailed FAQ document addressing EFRP transactions is attached to this Advisory Notice.

Member firms are strongly encouraged to ensure that all firm employees, as well as customers on whose behalf the firm clears EFRPs, are fully informed of the requirements of Rule 538.

Rule 538 – ("Exchange of Futures for Related Positions")

The following transactions shall be permitted by arrangement between parties in accordance with the requirements of this rule:

1. Exchange for Physical ("EFP") - A privately negotiated and simultaneous exchange of a futures position for a corresponding cash position.

   Exchange for Risk ("EFR") – A privately negotiated and simultaneous exchange of a futures position for a corresponding agricultural commodity swap or other OTC instrument.

   For purposes of this rule, all EFPs and EFRs shall be referred to as Exchanges of Futures for Related Positions ("EFRP").

2. Options on futures are not a permissible component of an EFRP.

3. The related position (cash, swap, or OTC derivative) must involve the commodity underlying the futures contract, or must be a derivative, by-product or related product of such commodity that has a reasonable degree of price correlation to the commodity underlying the futures contract.

4. An EFRP consists of two discrete, but related simultaneous transactions. One party must be the buyer of (or have the long market exposure associated with) the related position and the seller of the corresponding futures, and the other party must be the seller of (or have the short market exposure associated with) the related position and the buyer of the corresponding futures. However, a member firm may facilitate, as principal, the related position 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 futures position as part of the EFRP transaction.

5. The 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 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 contract, an EFRP may not be executed for the purpose of offsetting concurrent long and short positions in the expiring contract when the accounts involved in the transaction are owned by the same legal entity and when the date of the futures position being offset is not the same as the date of the offsetting transaction.

6. The quantity covered by the related position must be approximately equivalent to the quantity covered by the futures contracts.

7. An EFRP may be entered into in accordance with the applicable trading increments set forth in the rules governing such futures contracts, at such prices as are mutually agreed upon by the two parties to the transaction.

8. **CBOT** - EFRP transactions may be permitted during the contract month after termination of the contract as prescribed in the applicable product chapters. Such transactions shall not establish new futures positions.

   CME - Subject to approval by the Clearing House, EFRP transactions may be permitted during the contract month after termination of the contract. Such transactions shall not establish new futures positions.

9. Clearing firms on opposite sides of an EFRP must subsequently approve the terms of the transaction, including the clearing firm (division), price, quantity, commodity, contract month and date prior to submitting the transaction to the Clearing House. All EFRP transactions must be submitted to the Clearing House by a clearing firm acting on its own behalf or for the beneficial account of a customer who is a party to the transaction. Clearing firms are responsible for exercising due diligence as to the bona fide nature of EFRP transactions submitted on behalf of customers.

10. Each EFRP transaction shall be designated as such, and cleared through the Clearing House. Each such transaction shall be submitted to the Clearing House within the time period and in the manner specified by the Exchange.

11. The time of execution of an EFRP must be recorded on the futures order ticket, and on the record submitted to the Clearing House.

12. Parties to any EFRP transaction must maintain all documents relevant to the futures and the cash, swap, or OTC transactions, including all documents customarily generated in accordance with cash or other 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 firm to provide the requested documentation on a timely basis.

FAQ Related to CME and CBOT Rule 538

Exchange of Futures for Related Positions

Q1: What are EFRP transactions?

A1: EFRP is an acronym for Exchange of Futures for Related Positions.

Exchange of Futures for Physical ("EFP") transactions and Exchange of Futures for Risk ("EFR") transactions are collectively known as EFRP transactions.

An EFP transaction is a privately negotiated and simultaneous exchange of a futures position for a corresponding cash position in the same or a related cash instrument or physical commodity. CME previously referred to EFPs in interest rate contracts as EBF (Exchange Basis Facility) transactions, but all such transactions will now be referred to as EFPs.

An EFR transaction is a privately negotiated and simultaneous exchange of a futures position for a corresponding OTC swap or other derivative in the same or a related instrument. CBOT previously referred to EFRs in which the related position was a swap transaction as EFS (Exchange for Swap) transactions, but all such transactions will now be referred to as EFRs.

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 non-competitively outside of the central market. Such transactions are also sometimes referred to as PNTs ("Privately Negotiated Transactions"). Permissible ex-pit transactions at CME and CBOT 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: Is there a difference between EFP transactions and transactions commonly referred to as "Cash for Futures", "Versus Cash" or "Against Actuals"?

A3: No. All of the referenced terms describe transactions that CME and CBOT refer to as EFPs.

Q4: Can an EFRP be executed in any CME or CBOT futures contract?

A4: An EFRP may be executed in any CME or CBOT futures contract provided that the transaction conforms to the requirements of Rule 538.

Q5: Are options on futures a permissible component of an EFRP?

A5: No. Options on futures are not a permissible component of an EFRP.

Q6: Can there be more than two parties to an EFRP transaction?

A6: Typically, there may be only two parties involved in an EFRP transaction. One party must be the buyer of futures and the seller of the related cash or OTC instrument, and the other party must be the seller of the futures and the buyer of the related cash or OTC instrument. Multi-party EFRPs are prohibited except as provided in the following paragraph.

A member firm may facilitate, as principal, the transfer of the related position component of an EFRP transaction 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 futures position as part of the transaction.

Q7: Are there any restrictions on the permissible counterparties to an EFRP transaction?

A7: Yes. The 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 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.

The term "same beneficial ownership" refers to a parent and its wholly owned subsidiaries or subsidiaries that are wholly owned by the same parent.

If the parties to a transaction involve the same legal entity, same beneficial owner, or separate legal entities under common control, the parties must be able to demonstrate that the EFRP was a legitimate arm's length transaction.

Q8: Can an EFRP be executed to either initiate or offset a position? If so, are there any restrictions during the delivery period?

A8: Prior to the termination of trading in a contract on the last day of trading, EFRP transactions generally can be used to either initiate or offset positions. The two exceptions are described below.

On or after the first day on which delivery notices can be tendered in a physically delivered contract, an EFRP may not be executed for the purpose of offsetting concurrent long and short positions in the expiring contract when the accounts involved in the transaction are owned by the same legal entity and when the date of the futures position being offset is not the same as the date of the offsetting transaction. Where the positions are carried at different FCMs, the receiving firm is responsible for ensuring compliance with this requirement.

Additionally, after trading has ceased in an expiring contract, EFRP transactions in certain CBOT products may be permitted for a defined period of time, as prescribed in the applicable product chapters, but only for liquidating purposes. For CME products, EFRPs executed after the termination of trading in the contract are subject to prior approval by the Clearing House and are also permitted for liquidating purposes only.

Q9: Are there any restrictions on the price at which an EFRP transaction may be executed?

A9: An EFRP may be executed at any commercially reasonable price agreed upon by both parties, provided that the price of the contract conforms to the standard minimum tick increment as set forth in the rules of the relevant product chapter.

Q10: What are the hours of trading for EFRP transactions?

A10: EFRPs may be executed at any time. However, an EFRP transaction is not considered to have been accepted by the Clearing House until the transaction is matched and cleared, and the first payment of settlement variation and performance bond has been confirmed.

Q11: How quickly after execution must EFRPs be submitted to the Clearing House?

A11: For EFRPs executed between 6:00 a.m. and 6:00 p.m., firms must submit the trade to the clearing system within one hour. For EFRPs executed between 6:00 p.m. and 6:00 a.m., firms have until 7:00 a.m. to submit the trade to the clearing system.

Q12: How are EFRPs submitted to the Clearing House?

A12: For information regarding the submission of EFRPs using Front End Clearing, please contact Clearing Services at 312.207.2525, via email at ccs@cmegroup.com or go to:

http://www.cme.com/clearing/cm/apps/manuals.html, and click on CME® Front-End Clearing (FEC) User Guide (PDF).

All EFRPs must be accurately submitted to the Clearing House and the transaction(s) must be accurately designated as an EFP or EFR.

EFRP transactions designated for Average Pricing System (APS) allocation must conform to the requirements of Rules 553 and 538.

Q13: Must there be a filling broker indicated for EFRPs?

A13: No, a filling broker is not required for EFRPs.

Q14: How do I properly record the execution time and date when submitting an EFRP to the Clearing House?

A14: EFRP transactions are considered executed on the same trade date if submitted prior to 7:00 p.m. Central Time.

Rule 538 requires the submission of the execution time for each EFRP transaction. The execution time must be the actual time (in Central Time) at which the transaction was concluded by the two parties, not the time at which the trade was reported by the parties to their respective firms. Thus, if the clearing member has not acted as either principal or agent in the transaction, it must ensure that its customer provides an accurate execution time.

For additional information, please refer to the Front End Clearing Manual at http://www.cme.com/clearing/cm/apps/manuals.html, and click on CME® Front-End Clearing (FEC) User Guide (PDF)

Q15: Do the exchanges publicly disseminate EFRP transaction information?

A15: The quantity and price of the futures component of an EFRP is available through the CME Group's MERQUOTE PC/IDS Inquiry system. The total EFRP volume, by contract, is reported separately in the exchanges' volume reports.

Q16: Are contingent EFRP transactions permitted?

A16: Two parties may not execute contingent EFRPs in which the execution of one EFRP transaction is contingent upon the execution of another EFRP transaction and the cash, swap or OTC transactions related to the two EFRPs economically offset. Such transactions are considered to be prearranged futures trades that circumvent the open market execution requirement.

For example, two parties are prohibited from executing contingent March and June EFRPs to roll a position in a particular product. Similarly, two parties are prohibited from executing an EFRP on the CME or CBOT and a contingent EFRP on another exchange in which the related position transactions of the two EFRPs economically offset.

Q17: Are transitory EFRPs permitted?

A17: Transitory EFRPs in which two parties execute an EFRP and subsequently execute an economically offsetting cash, swap or OTC transaction with each other are prohibited except as noted below.

Transitory EFPs are permitted in CME Currency futures subject to the following requirements:

a) The seller of the futures contract must simultaneously purchase the cash commodity and the buyer of the futures contract must simultaneously sell the cash commodity.

b) All documents typically generated in accordance with cash market conventions must be generated and retained.

c) The execution time of the EFP must be recorded on the order ticket and, upon submission of the EFP for clearing, on the order entry screen.

d) All other Exchange and CFTC requirements regarding EFP transactions must be adhered to in connection with the transaction.

Q18: What types of instruments are considered acceptable for use as the related position side of EFRPs and what are the equivalency requirements with respect to the quantities exchanged?

A18: In general, the related position (i.e. cash, swap or other OTC derivative) must involve the product underlying the futures contract or a derivative, by-product or related product that is reasonably correlated to the futures being exchanged. Market Regulation may request that the parties to an EFRP transaction demonstrate that the related position and the futures position are reasonably correlated. Additionally, the quantity of the futures being exchanged must be approximately equivalent to the quantity of the related position being exchanged. Upon request, the parties to an EFRP transaction must be able to demonstrate such equivalency.

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

Foreign Exchange Futures: Both currency spot and forward transactions are acceptable. The related position side of an EFRP transaction in the CME$INDEX may consist of any single currency or a basket of currencies from within the index with a historical correlation to the index of 80% or greater ($r \geq .80$). Non-deliverable forwards (NDF) are an acceptable form of cash for a currency EFRP in the Russian Ruble and the Brazilian Real contracts. Exchange Traded Funds ("ETFs") are acceptable provided that the ETF mirrors the relevant Exchange currency product.
Interest Rate Futures: Fixed income instruments with risk characteristics and maturities that parallel the instrument underlying the futures contract are acceptable. Such instruments include, but are not

necessarily limited to, money market instruments, Treasuries, Agencies, investment grade corporates, forward rate agreements (FRAs), mortgage instruments including collateralized mortgage obligations (CMOs) and interest rate swaps and swaptions.

Stock Index Futures: Stock baskets must be highly correlated to the underlying index with a historical correlation to the index of 90% or greater ($r \geq .90$). Further, these stock baskets must represent at least 50% of the underlying index by weight or must include 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 futures. ETFs are acceptable provided that the ETF mirrors the relevant Exchange stock index product.

Agricultural Futures: For Dairy Products, Live Cattle, Feeder Cattle, Lean Hogs and Pork Bellies, the acceptable related position component is limited to the specific underlying commodity (e.g., Live Cattle for Live Cattle futures); although the related position need not be deliverable grade of the particular commodity, there must be a reasonable level of correlation with the associated futures. In the case of Random Length Lumber futures, the related position must be deliverable species dimension lumber, variances are permitted with respect to grade/size and tally. Additionally, with respect to Random Length Lumber, the buyer of the cash lumber must retain ownership of the transferred product for personal use or resale to customers and may not resell the product either directly or indirectly to the original seller.

For all other agricultural futures contracts, the related position must involve the commodity underlying the futures contract or a derivative, by-product or related product that is reasonably correlated to the futures being exchanged. The related position in an EFR may be an agricultural commodity swap or other agricultural OTC instrument, but in all cases must comply with any applicable regulatory requirements prescribed by the CFTC.

Commodity Index Futures: For futures based on Commodity Indexes, (*e.g.*, Goldman Sachs Commodity Index (GSCI), Dow AIG Index), acceptable related positions include ETFs provided that the ETF mirrors the relevant Commodity Index product traded on the Exchange.

As noted above, associated related position transactions must be comparable with respect to quantity, value or risk exposure to the futures utilized.

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

Q19: Does a firm that executes and/or clears an EFRP on behalf of a customer have any regulatory exposure if the EFRP does not conform to the requirements of Rule 538?

A19: A firm that executes and submits an EFRP on behalf of a customer is responsible for exercising due diligence as to the bona fide nature of the EFRP. Failure to do so may be deemed a violation of 538 by the firm. Additionally, a firm that accepts and clears a give-up EFRP may be liable for violation of Rule 538 if it accepts an EFRP that it knows, or should know, is not bona fide.

Q20: What are the documentation requirements for EFRPs?

A20: Parties to an EFRP must maintain all documents relevant to the futures and related position transactions and must provide such documents to Market Regulation upon request. Documents that may be requested include, but are not necessarily limited to, the following:

1. All documents relevant to the futures side of the trade including order tickets and account statements;
2. Documentation customarily generated in accordance with cash market or other relevant market

practices such as cash, swap or OTC contracts, cash confirmations, invoices, warehouse receipts and bills of sale, as well as documentation that demonstrates proof of payment and transfer of ownership of the related position transaction (e.g. canceled checks, bank statements, Fedwire confirms, Fixed Income Clearing Corporation documents, bills of lading etc.).

With respect to EFRPs in foreign exchange futures wherein the parties immediately offset the cash transaction ("transitory EFPs"), CME 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.

Q21: Must transactions executed as EFRPs be reflected as such on customer account statements?

A21: Yes, FCMs must identify EFRP transactions on confirmation and monthly account statements delivered to customers.

Q22: Who is responsible for submitting related position documentation when a request for such documentation is made by the Market Regulation Department?

A22: Related position documentation for an EFRP must be provided to the Market Regulation Department upon request. Market Regulation will request such information from the firm carrying the account, and the carrying firm is responsible under the rules for providing the documentation.

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

Steven Mair, Manager Market Surveillance, 312.341.7034

Sandra Valtierra, Sr. Market Surveillance Analyst, 312.347.4137

Joe Hawrysz, Associate Director, 312.341.7750

Jerry O'Connor, Associate Director, 312.341.7048