

Special Executive Report

S-4903

June 25, 2009

Revisions to CME, CBOT and NYMEX Rules 901 and 903

Effective immediately, CME, CBOT and NYMEX have adopted amendments to Rules 901 ("General Requirements and Obligations") and 903 ("Responsibility for Qualified Members") clarifying the financial obligations of clearing members with respect to the individual exchange members they qualify.

The amendments clarify that the qualifying firm's responsibility for qualified members is limited in scope to certain financial obligations and specifies those obligations the qualifying firm agrees to guarantee by virtue of its qualification. The qualifying firm financially guarantees all trades and orders executed or accepted for execution by a member it qualifies, including those which such member fails to execute negligently, fraudulently or in violation of Exchange rules.

The amendments also clarify that a clearing member is responsible for: 1) unpaid arbitration awards provided that the dispute is related to trades or orders executed or accepted for execution by the qualified member, 2) unpaid restitution orders issued by the Business Conduct Committee, Clearing House Risk Committee or a Hearing Panel of the Board of Directors, and 3) unpaid disciplinary fines if the qualified member is an employee of the qualifying firm and provided that the sanctioning disciplinary panel specifically determines the qualifying firm shall be responsible for the payment of the fine if not paid by the qualified member.

The failure by a member to pay an arbitration award or a restitution order is a violation of exchange rules, and disciplinary action may be taken against the member if he fails to make the ordered payment. Additionally, if the member owns a membership, the seat may be sold to satisfy the debt. Should these tools prove inadequate to obtain satisfaction of the ordered payment, the amended rules clarify that the qualifying firm is responsible to fulfill such obligations with respect to the members it qualifies. The qualifying firm retains the ability to independently seek redress from the qualified member. The same tools are available to enforce the payment of unpaid disciplinary fines, although as noted above the amended rules clarify the limited circumstances under which the qualifying member may be responsible for the payment of the fine.

With respect to unpaid restitution orders and disciplinary fines, the proposed revisions are complementary to the language in current Rule 444 ("Sanctions and Restitution Orders"). Rule 444 states that members and member firms may be liable, subject to a determination by the sanctioning entity, for unpaid fines or unpaid restitution orders imposed upon their employees. Therefore, in circumstances where the sanctioning entity determines that the employing member or member firm is responsible for fulfilling an unpaid restitution order, the financial liability of the qualifying clearing firm would be invoked only if the employer failed to make the required payment. Failure to make the required payment would constitute a violation of Rule 444 and the employing member or member firm would be subject to disciplinary action.

The amendments to CME/CBOT/NYMEX Rules 901 and 903 are set forth below, with additions underscored and deletions overstruck.

901. GENERAL REQUIREMENTS AND OBLIGATIONS

Membership in the Clearing House is a privilege and license granted by the Board and may be withdrawn by the Board for cause at any time. Clearing House staff may grant exemptions to the General Requirements and Obligations set forth below for Clearing Members if it is determined that such an exemption will not jeopardize the financial integrity of the Clearing House. Subject to such exemptions, each applicant for qualification as a clearing member must satisfy the following requirements:

[Sections A. – H. are unchanged.]

- I. It shall agree to guarantee and assume complete responsibility for the financial obligations attendant to: 1) all trades and orders executed or accepted for execution~~directed to be executed~~ by ~~floor brokers and traders~~ a member it qualifies, including trades and orders executed, or which such member fails to execute, negligently, fraudulently or in violation of Exchange rules; and 2) ~~all orders that floor brokers it qualifies execute or fail to execute either negligently, fraudulently or in violation of Exchange rules~~ an unpaid arbitration award issued by a panel of the Arbitration Committee against a member it qualifies in circumstances where the dispute is related to a matter described in number 1) above; 3) an unpaid restitution order issued against a member it qualifies by a panel of the Business Conduct Committee, the Clearing House Risk Committee or a hearing panel of the Board of Directors; and 4) unpaid Exchange disciplinary fines imposed upon a member it qualifies if the member is also an employee of the clearing member or its affiliate, subject to a determination by the sanctioning entity.

[The remainder of the rule is unchanged.]

903. RESPONSIBILITY FOR QUALIFIED MEMBERS

- A. A clearing member that qualifies a ~~member floor broker or trader~~ thereby guarantees and assumes complete responsibility for the financial obligations attendant to: 1) all trades and orders executed or accepted for execution~~directed to be executed~~ by such ~~member floor broker or trader~~ including trades or orders executed, or which such member fails to execute, negligently, fraudulently or in violation of Exchange rules; and 2) ~~all orders that such floor broker executes or fails to execute either negligently, fraudulently or in violation of Exchange rules~~ an unpaid arbitration award issued by a panel of the Arbitration Committee against such member in circumstances where the dispute is related to a matter described in number 1) above; 3) an unpaid restitution order issued against such member by a panel of the Business Conduct Committee, the Clearing House Risk Committee or a hearing panel of the Board of Directors; and 4) unpaid Exchange disciplinary fines imposed upon such member if the member is also an employee of the clearing member or its affiliate, subject to a determination by the sanctioning entity.

[The remainder of the rule is unchanged.]

Should you have any questions, please contact Robert Sniegowski, Associate Director, Market Regulation Department, at 312.341.5991 or Stephen Szarmack, Director & Associate General Counsel, Legal Department, at 312.648.5422.