

**CHAPTER 9  
CLEARING MEMBERS**

**GENERAL**

- 900. CATEGORIES OF CLEARING MEMBERS**
  - 900.A. NYMEX Clearing Members**
  - 900.B. COMEX Clearing Members**
- 901. GENERAL REQUIREMENTS AND OBLIGATIONS**
- 902. CLEARING MEMBERSHIP ASSIGNMENT REQUIREMENTS**
  - 902.A. Assignment Requirement**
  - 902.B. [RESERVED]**
  - 902.C. Assignment Process**
  - 902.D. Assignment Substitutions**
  - 902.E. Assignment Withdrawal Disputes**
  - 902.F. Lien on Memberships**
- 903. RESPONSIBILITY FOR QUALIFIED MEMBERS**
- 904. FUNDS IN TRADING ACCOUNTS CARRIED BY CLEARING MEMBERS**
- 905. CHOICE OF LAW**
- 906-909. [RESERVED]**
  - APPLICATION PROCEDURES FOR CLEARING MEMBERS**
- 910. APPLICATION FORMS**
- 911. SCREENING PROCEDURES**
- 912. APPROVAL**
- 913. WITHDRAWAL FROM CLEARING MEMBERSHIP**
  - 913.A. Voluntary Withdrawal**
  - 913.B. Release of Guaranty Fund Deposit, Membership Proceeds and Assignments**
- 914.-929. [RESERVED]**
  - ACCOUNT HOLDER PERFORMANCE BOND REQUIREMENTS**
- 930. PERFORMANCE BOND REQUIREMENTS: ACCOUNT HOLDER LEVEL**
  - 930.A. Performance Bond System**
  - 930.B. Performance Bond Rates**
  - 930.C. Acceptable Performance Bond Deposits**
  - 930.D. Acceptance of Orders**
  - 930.E. Calls for Performance Bond**
  - 930.F. Release of Excess Performance Bond**
  - 930.G. Loans to Account Holders**

- 930.H. Aggregation of Accounts and Positions
- 930.I. Risk Profile of Accounts
- 930.J. Omnibus Accounts
- 930.K. Liquidation of Accounts
- 903.L. Clearing House Authority to Require Additional Performance Bond
- 930.M. Failure to Maintain Performance Bond Requirements
- 930.N. OTC Derivatives Undermargined Capital Charge
- 931.-948. [RESERVED]
- 949. CREDIT CONTROLS

**SALES PRACTICES AND CUSTOMER PROTECTION**

- 950. SUPERVISION
- 951. DISCLOSURE REQUIREMENTS
- 952. SALES COMMUNICATIONS
- 953. PROMOTIONAL MATERIAL
- 954. CUSTOMER COMPLAINTS
- 955. ASSIGNMENT AND NOTIFICATION OF EXERCISE NOTICES
- 956. DISCRETIONARY, CONTROLLED AND MANAGED ACCOUNTS
  - 956.A. Requirements
  - 956.B. Presumption of Authority
  - 956.C. Supervision and Trading of Discretionary Trading Accounts
  - 956.D. Position Limits
  - 956.E. Exceptions
- 957. CONFIRMATIONS TO CUSTOMERS
- 958. BRANCH OFFICES, GUARANTEED INTRODUCING BROKERS, AND ASSOCIATED PERSONS
- 959. [RESERVED]

**OMNIBUS AND CARRYING BROKER ACCOUNTS**

- 960. OMNIBUS AND CARRYING BROKER ACCOUNTS
- 961.-969. [RESERVED]

**FINANCIAL REQUIREMENTS AND FINANCIAL EMERGENCIES**

- 970. FINANCIAL REQUIREMENTS
- 971. SEGREGATION, SECURED AND CLEARED SWAPS CUSTOMER ACCOUNT REQUIREMENTS
- 972. REDUCTIONS IN CAPITAL
- 973. CUSTOMER ACCOUNTS WITH THE CLEARING HOUSE

- 974. SUSPENSION OF MEMBER FIRM PRIVILEGES
- 975. EMERGENCY FINANCIAL CONDITIONS
- 976. SUSPENSION OF CLEARING MEMBERS
- 977. SUSPENSION OF OFFICERS OR PARTNERS
- 978. OPEN TRADES OF SUSPENDED CLEARING MEMBERS
- 979. SUSPENDED OR EXPELLED CLEARING MEMBERS

#### RECORDS AND REPORTS

- 980. REQUIRED RECORDS AND REPORTS
- 981. ANTI-MONEY LAUNDERING AND ECONOMIC SANCTIONS COMPLIANCE
- 982. RISK MANAGEMENT
- 983. DISASTER RECOVERY AND BUSINESS CONTINUITY

## Chapter 9 Clearing Members

### 900. CATEGORIES OF CLEARING MEMBERS

The Exchange may establish different clearing member categories, including but not limited to OTC Clearing Member categories, and alter the rights and responsibilities of such categories.

The term "clearing member" as used in the Rules, shall include all clearing member categories established by the Exchange unless otherwise specified.

#### 900.A. NYMEX Clearing Members

NYMEX Clearing Members shall have all applicable rights, responsibilities and privileges attendant thereto, subject to the provisions of these rules and shall be qualified to clear transactions for all NYMEX products and any COMEX products for which cross-divisional trading privileges have been granted by the Board.

NYMEX Clearing Members receive non-member fees. NYMEX Clearing Members with shares are those clearing members that maintain CME Group Class A shares in accordance with NYMEX Rule 106.J. Member Firm requirements in order to receive member rates.

#### 900.B. COMEX Clearing Members

COMEX Clearing Members shall have all applicable rights, responsibilities and privileges attendant thereto, subject to the provisions of these rules and shall be qualified to clear transactions for all COMEX products and any NYMEX products for which cross-divisional trading privileges have been granted by the Board.

### 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:

A. It shall be a corporation (defined by the Rules of the Exchange to include a limited liability company), partnership or other entity approved by Exchange staff. It shall agree to: 1) abide by all Exchange Rules and to cooperate in their enforcement; 2) be responsible, even after it has withdrawn as a clearing member, for any violations of Exchange Rules committed by it while it was a clearing member; and 3) continue to meet all requirements applicable to clearing members, including all financial requirements provided by these rules;

B. It shall have an authorized representative (i.e., officer, principal, or partner) who shall represent the clearing member before the Exchange and its committees. Such authorized representative shall be responsible to the Exchange for any representations made to the Exchange as if such person were a member as defined by Rule 400.

C. It shall be qualified to do business in the State of Illinois or the State of New York or have a valid agency agreement with an entity qualified to do business in the State of Illinois or the State of New York;

D. It shall be engaged in or demonstrate immediate capacity to engage in the conduct of the business of a clearing member;

E. It shall demonstrate such fiscal and moral integrity as would justify the Clearing House's assumption of the risks inherent in clearing its trades;

F. It shall demonstrate financial capitalization commensurate with Exchange requirements as set by the Clearing House Risk Committee;

G. If any person directly or indirectly controls, owns 10% or more of, or has the right to 10% or more of the profits of two or more clearing members, then each such clearing member shall guarantee the obligations of the others to the Clearing House and shall execute a written guarantee to the Clearing House on a form approved by the Clearing House.

H. It shall notify the Exchange prior to any significant business transaction or significant change in operations which shall include, but is not limited to the following:

1. The merger, combination or consolidation between the clearing member and another person or

entity;

2. The assumption or guarantee by the clearing member of all or substantially all of the liabilities of another in connection with a direct or indirect acquisition of all or substantially all of that person's or entity's assets;

3. The sale by the clearing member of a significant part of its business and/or assets to another person or entity;

4. A change in the direct or indirect beneficial ownership of 20% or more of the clearing member; and

5. Any change in the system provider used by the clearing member to process its trades.

The relevant committee or Exchange staff, upon such notice, may disapprove or approve, subject to certain conditions, such changes in structure or operations if it determines that the proposed change could jeopardize the financial or operational integrity of the Exchange or the Clearing House. For purposes of this Rule, the Clearing House Oversight Committee shall be the relevant committee with respect to corporate organization and structure changes and the Clearing House Risk Committee shall be the relevant committee with respect to all other changes.

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 by a member it qualifies, including trades and orders executed, or which such member fails to execute, negligently, fraudulently or in violation of Exchange rules; 2) 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 Exchange discontinued use of the term "qualifies a member" effective at the close of business on November 30, 2018. A clearing member's responsibility for a member it qualifies on or prior to the effective date shall continue in accordance with this Rule.

J. It shall notify the Financial and Regulatory Surveillance Department in a timely manner of any material change in key personnel who are responsible to act on behalf of the clearing member.

K. [Reserved]

L. [Reserved]

M. It shall guarantee and assume financial responsibility for all trading activity routed through a Globex portal, or routed through any other electronic trading system to CME for clearing of such transactions. Such activity is guaranteed to CME by the clearing member via any connection, terminal, link, telecommunications hub or handheld unit provided by the clearing member to a third party as well as any other applicable electronic trading systems and terminals that the clearing member provides to a third party to enter orders.

N. It shall be responsible for the acts of Globex terminal operators accessing the Globex system through its connections, including direct connections or other connections that it provides to firms that are under common ownership with it. It shall be the duty of the clearing member to supervise its employees and agents acting as Globex terminal operators to ensure such employees and agents comply with Exchange rules, and any violation of Exchange rules by such terminal operators shall be considered a violation by the clearing member.

O. [Reserved]

P. Each clearing member shall use systems and appropriate procedures to track accurately, and to provide to the Clearing House accurately, the positions and collateral of each of its cleared swaps customers.

Q. Requirement to Establish Uncommitted Repo. Each clearing member that is a U.S. Government Securities Broker-Dealer or has a U.S. Government Securities Broker-Dealer affiliate shall enter into (or arrange for such affiliate, or an affiliate that is a bank, to enter into) a master repurchase agreement with CME on terms substantially similar to those set out by the Clearing House. Each clearing member that has entered into such master repurchase agreement shall (or shall cause its affiliate that has entered into such master repurchase agreement to) periodically test repurchase transactions with the Clearing House when requested by the Clearing House.

R. Reserved

S. The obligation of a clearing member to pay settlement variation during each settlement cycle is

satisfied when all required cash is credited as a settlement variation payment into the correct CME bank account at the relevant settlement bank. The obligation of a clearing member to post performance bond during each settlement cycle is satisfied when all required assets are deposited as performance bond into the correct CME bank account at the relevant custodial bank.

## **902. CLEARING MEMBERSHIP ASSIGNMENT REQUIREMENTS**

### **902.A. Assignment Requirement**

Subject to exemptions granted by Exchange staff, each clearing member shall have at least two Exchange memberships in each Division in which it desires clearing member privileges assigned to the Clearing House.

At least one membership required for clearing membership pursuant to this rule must be owned by the clearing member or a person, including a parent company, with an acceptable proprietary interest in such clearing member, if such clearing member was approved for membership after July 1, 2009. The second membership may be independently assigned.

A clearing member approved for membership on or before July 1, 2009, may continue to maintain the same number of independent membership assignments as the clearing member held on July 1, 2009. If a clearing member approved on or before July 1, 2009, or a person with an acceptable proprietary interest in the clearing member, subsequently purchases a membership and substitutes such asset for one which was previously an independent assignment, such membership must thereafter be owned by the clearing member or a person with an acceptable proprietary interest if necessary to meet the minimum requirements of the previous paragraph.

Upon default of a clearing member in meeting its obligations to the Clearing House or upon the Clearing House Risk Committee's determination that a clearing member's financial position jeopardizes the financial integrity of the Clearing House, the Clearing House may direct the sale of any or all of the clearing member's assigned memberships. The proceeds from the sale of the memberships shall be used to satisfy Rule 110 obligations.

### **902.B. [Reserved]**

### **902.C. Assignment Process**

A membership may be assigned upon the completion of an Exchange-approved form. A membership may be assigned on behalf of only one clearing member and may not be subject to any Rule 110 claims at the time of assignment. Upon submitting an assignment form to the Membership Services Department, the membership shall be notified of the assignment. Parties will have ten days after the notification of the assignment to submit any Rule 110 claims against the membership being assigned. After all Rule 110 claims have been resolved to the satisfaction of the Exchange, the membership shall be assigned.

### **902.D. Assignment Substitutions**

A clearing member may substitute a membership for an assigned membership provided that the clearing member continues to meet the assignment requirements of this Rule.

### **902.E. Assignment Withdrawal Disputes**

In the event a member wants to withdraw his assigned membership over the objection of the clearing member to which the membership is assigned, such member must request permission to do so from Clearing House staff. The request must be in writing with a copy delivered to the clearing member to which the membership is assigned.

### **902.F. Lien on Memberships**

Each Clearing Member hereby grants to the Clearing House a first priority and unencumbered lien against all memberships required for clearing membership by the Exchange.

## **903. RESPONSIBILITY FOR QUALIFIED MEMBERS**

A. A clearing member that qualifies a member thereby guarantees and assumes complete responsibility for the financial obligations attendant to: 1) all trades and orders executed or accepted for execution by such member, including trades or orders executed, or which such member fails to execute, negligently, fraudulently or in violation of Exchange rules; 2) 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 Exchange

discontinued use of the term “qualifies a member” effective at the close of business on November 30, 2018. A clearing member’s responsibility for a member it qualifies on or prior to the effective date shall continue in accordance with this Rule.

B.-F. [Reserved]

G. No clearing member shall provide access to Globex or ClearPort, or clear any trade for, an employee or other representative of another clearing member without the written consent of such other clearing member. No clearing member shall provide access to Globex or ClearPort, or clear any trade for, a person in a partnership with another clearing member without the written consent of all partners. Such written consent shall be filed with the Membership Services Department.

#### **904. FUNDS IN TRADING ACCOUNTS CARRIED BY CLEARING MEMBERS**

If a Member (as defined in Rule 400) trades in excess of written limits prescribed by his guaranteeing clearing member without sufficient funds in his account to margin the position, or if the Member is alleged to have engaged in reckless and unbusinesslike dealing inconsistent with just and equitable principles of trade, and such trades are profitable, the disposition of any and all funds in the applicable trading account(s) may be suspended by the carrying clearing member. The claim of a carrying clearing member to such profits shall be submitted to arbitration pursuant to the provisions of Chapter 6. The Member may request a hearing to be held as soon as practicable before a Chairman of the Arbitration Committee to determine the amount of any profits that should remain subject to a continued suspension pending an arbitration hearing on the full merits of the claim.

#### **905. CHOICE OF LAW**

(a) THE RULES OF THE EXCHANGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, WITHOUT GIVING EFFECT TO ITS CONFLICT-OF-LAW PRINCIPLES. EXCEPT AS OTHERWISE PROVIDED IN CHAPTERS 4, 5 AND 6 OF THE RULEBOOK, ANY ACTION, CLAIM, DISPUTE OR LITIGATION OF ANY KIND BETWEEN THE CLEARING MEMBER AND THE EXCHANGE ARISING FROM THE CLEARING MEMBER’S MEMBERSHIP IN THE EXCHANGE SHALL BE ADJUDICATED IN A FEDERAL OR STATE COURT IN CHICAGO, ILLINOIS. CLEARING MEMBERS CONSENT TO THE JURISDICTION OF SUCH COURT AND TO SERVICE OF PROCESS BY ANY MEANS AUTHORIZED BY ILLINOIS OR U.S. FEDERAL LAW, AND SHALL NOT SEEK TO TRANSFER THE VENUE OF SUCH LITIGATION.

(b) EACH CLEARING MEMBER IRREVOCABLY WAIVES, WITH RESPECT TO ITSELF AND ITS REVENUES AND ASSETS, ANY IMMUNITY ON THE GROUND OF SOVEREIGNTY OR OTHER SIMILAR GROUNDS FROM SUIT, JURISDICTION OF ANY COURT, INJUNCTIVE RELIEF, ORDER FOR SPECIFIC PERFORMANCE OR FOR RECOVERY OF PROPERTY, ATTACHMENT OF ASSETS, AND EXECUTION OR ENFORCEMENT OF ANY JUDGMENT TO WHICH IT OR ITS REVENUES OR ASSETS MIGHT OTHERWISE BE ENTITLED IN ANY PROCEEDINGS IN THE COURTS OF ANY JURISDICTION, AND IRREVOCABLY AGREES THAT IT WILL NOT CLAIM ANY SUCH IMMUNITY IN ANY PROCEEDINGS.

#### **906.-909. [RESERVED]**

#### **910. APPLICATION FORMS**

Applicants for clearing membership shall submit an application, financial statements and other documentation as Clearing House staff shall require.

#### **911. SCREENING PROCEDURES**

Upon receipt of an application, the Financial and Regulatory Surveillance Department shall investigate the applicant’s qualifications, which may include an examination of the books and records of the applicant.

#### **912. APPROVAL**

An applicant for clearing membership receiving a majority vote of the Clearing House Oversight Committee shall be approved effective immediately.

An applicant that fails to receive a majority vote shall be informed by the Clearing House Oversight Committee chairman and shall have 10 days thereafter to file an appeal to the Board seeking further consideration. The Board may approve the applicant by a majority vote if it is satisfied that

the Clearing House Oversight Committee's decision was arbitrary, capricious or an abuse of the Clearing House Oversight Committee's discretion.

### **913. WITHDRAWAL FROM CLEARING MEMBERSHIP**

#### **913.A. Voluntary Withdrawal**

A clearing member that intends to withdraw from clearing membership for Base Guaranty Fund Products shall provide written notice of such intent to the Clearing House and the Clearing House Oversight Committee. A clearing member's withdrawal shall be effective on the earlier of (i) the date Clearing House Staff approves such withdrawal or (ii) the 10th Business Day following the date of the clearing cycle in which the withdrawing clearing member liquidates or transfers to an appropriate clearing member all of its open customer and house positions in Base Guaranty Fund Products (such earlier date, the "Base Withdrawal Date"); provided that the withdrawing clearing member shall remain liable for Base Guaranty Fund contributions and assessments in accordance with Rule 913.B. Promptly following the Base Withdrawal Date, the Clearing House shall post a notice of the clearing member's withdrawal.

#### **913.B. Release of Guaranty Fund Deposit, Membership Proceeds and Assignments**

When a clearing member withdraws from clearing membership for Base Guaranty Fund Products (whether voluntarily or involuntarily), its Base Guaranty Fund deposit, the proceeds from the sale of its memberships assigned for clearing qualification or any other deposits required by the Clearing House, and any remaining assets available to the Clearing House associated with Base Guaranty Fund Products including, but not limited to, memberships will be released when Clearing House staff determines that the following has occurred: (1) all contracts and obligations with the Exchange have been settled and paid, (2) all sums owing to the Exchange have been paid, (3) all obligations to other members and customers arising out of claims directly related to Base Guaranty Fund Products cleared on the Exchange have been paid or otherwise provided for, (4) all obligations to other members and customers arising out of other arbitration claims for Base Guaranty Fund Products filed pursuant to Chapter 6 have been paid or otherwise provided for and (5) the requisite liquidity providers for the Exchange have released the security interest in such clearing member's "assets" associated with the clearing of Base Guaranty Fund Products in accordance with the terms of the liquidity facility described in Rule 817; provided, however, that in the event that Exchange staff determines that all of the foregoing other than (4) have occurred, the Clearing House Risk Committee may in its discretion authorize the release of such property.

Generally, no such property shall be released prior to the 60th day following the posting of the notice of the clearing member's withdrawal. Notwithstanding the above, Clearing House staff may grant an exemption to the above restriction for good cause shown. Further, for purposes of the paragraph above, if the withdrawing clearing member will not remain a clearing member in any other capacity with the Exchange, all obligations of the withdrawing clearing member to the Exchange, of whatever nature or kind, shall be accelerated and become due and payable upon the effective date of withdrawal. If the clearing member will remain a clearing member for other product classes other than Base Guaranty Fund Products, the foregoing sentence shall apply only to obligations related to the clearing of Base Guaranty Fund Products.

For purposes of Rules 802 and 816, the Base Guaranty Fund contributions and assessments of a non-defaulted clearing member that has withdrawn shall not be accessible by the Clearing House to satisfy any losses in respect of the default of another clearing member where such default occurred after the Base Cooling Off Period as of which the withdrawing clearing member had liquidated or transferred all of its open customer and house positions in Base Guaranty Fund Products. For the avoidance of doubt, a withdrawing clearing member shall be subject to assessments for all defaults occurring during the Base Cooling Off Period in which such clearing member withdraws.

### **914-929. [RESERVED]**

### **930. PERFORMANCE BOND REQUIREMENTS: ACCOUNT HOLDER LEVEL**

#### **930.A. Performance Bond System**

The Standard Portfolio Analysis of Risk (SPAN®) Performance Bond System is the performance bond system adopted by the Exchange. SPAN-generated performance bond requirements shall constitute Exchange performance bond requirements. All references to performance bond within the rules of the Exchange shall relate to those computed by the SPAN system.

Performance bond systems other than the SPAN system may be used to meet Exchange



performance bond requirements if the clearing member can demonstrate that its system will always produce a performance bond requirement equal to or greater than the SPAN performance bond requirements.

#### **930.B. Performance Bond Rates**

Clearing House staff shall determine initial and maintenance performance bond rates used in determining Exchange performance bond requirements. The Board reserves the right to change or modify any performance bond levels determined by Clearing House staff.

#### **930.C. Acceptable Performance Bond Deposits**

Clearing members may accept from their account holders as performance bond cash currencies of any denomination, readily marketable securities (as defined by SEC Rule 15c3-1(c)(11) and applicable SEC interpretations), money market mutual funds allowable under CFTC Regulation 1.25, bank-issued letters of credit, fully collateralized pass-through letters of credit allowable under the Clearing House's collateral acceptance programs, warrants, warehouse receipts and shipping certificates that are registered as deliverable for commodities traded on Chicago Mercantile Exchange Inc., Chicago Board of Trade Inc., New York Mercantile Exchange, Inc. or Commodity Exchange, Inc., and "London Good Delivery" gold, as defined by the London Bullion Market Association.

Clearing members shall not accept as performance bond from an account holder securities that have been issued, sponsored or otherwise guaranteed by the account holder or an affiliate of the account holder unless the clearing member files a petition with and receives permission from Clearing House staff.

Unless permitted (either not restricted or specifically authorized) by the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") and/or any Sanctioning Body, as applicable, Clearing members may not accept from their account holders as performance bond any debt or equity issued by Sanctioned Parties as defined in Rule 543, assets in which Sanctioned Parties have an interest, or any other assets that are or would be subject to blocking restrictions or sectoral sanction restrictions imposed by OFAC or are subject to similar restrictions imposed by another Sanctioning Body.

Bank-issued letters of credit and fully collateralized pass through letters of credit must be in a form acceptable to the Clearing House. Such letters of credit must be drawable in the United States. Clearing members shall not accept as performance bond from an account holder letters of credit issued by the account holder, an affiliate of the account holder, the clearing member, or an affiliate of the clearing member.

All assets deposited by account holders to meet performance bond requirements must be and remain unencumbered by third party claims against the depositing account holder.

Except to the extent that Clearing House staff shall prescribe otherwise, cash currency performance bond deposits shall be valued at market value. All other performance bond deposits other than letters of credit, warrants, warehouse receipts and shipping certificates shall be valued at an amount not to exceed market value less applicable haircuts as set forth in SEC Rule 240.15c3-1. Warrants, warehouse receipts and shipping certificates shall be valued at an amount not to exceed the market value of the commodities represented by the warrants, warehouse receipts or shipping certificates, less a deduction in the same amount as the inventory haircut specified in Commission Regulation 1.17(c)(5)(ii).

#### **930.D. Acceptance of Orders**

Clearing members may accept orders for an account provided sufficient performance bond is on deposit in the account or is forthcoming within a reasonable time.

For an account which has been subject to calls for performance bond for an unreasonable time, clearing members may only accept orders that reduce the performance bond requirements of existing positions in the account.

Clearing members may not accept orders for an account that has been in debit an unreasonable time.

#### **930.E. Calls for Performance Bond**

1. Clearing members must issue calls for performance bond that would bring an account up to the initial performance bond requirement: a) when performance bond equity in an account initially falls below the maintenance performance bond requirement; and b). subsequently, when performance bond equity plus existing performance bond calls in an account is less than the maintenance

performance bond requirement.

Such calls must be made within one business day after the occurrence of the event giving rise to the call. Clearing members may call for additional performance bond at their discretion. Notwithstanding the foregoing, a clearing member is not required to call for or collect performance bond for day trades.

2. Clearing members shall only reduce a call for performance bond through the receipt of performance bond deposits permitted under subsection C. of this rule. Clearing members may cancel a call for performance bond through: a) the receipt of performance bond deposits permitted under subsection C. of this rule only if such deposits equal or exceed the amount of the total performance bond call; or b) inter-day favorable market movements and/or the liquidation of positions only if performance bond equity in the account is equal to or greater than the initial performance bond requirement. Clearing members shall reduce an account holder's oldest outstanding performance bond call first.

3. Clearing members must maintain written records of all performance bond calls issued and satisfied in whole or in part.

#### **930.F. Release of Excess Performance Bond**

Subject to exceptions granted by Clearing House staff, clearing members may only release performance bond deposits from an account if such deposits are in excess of initial performance bond requirements.

#### **930.G. Loans to Account Holders**

Clearing members may not make loans to account holders to satisfy their performance bond requirements unless such loans are secured as defined in CFTC Regulation 1.17(c)(3). The proceeds of such loans must be treated in accordance with CFTC Regulation 1.30.

#### **930.H. Aggregation of Accounts and Positions<sup>1</sup>**

Clearing members may aggregate and net positions in accounts under identical ownership within the same classifications of customer segregated, customer secured, Cleared Swaps Customers, and nonsegregated for performance bond purposes. Clearing members may compute performance bond requirements on identically owned concurrent long and short positions on a net basis.

#### **930.I. Risk Profile of Accounts**

A Clearing Member must determine a risk profile for each account it carries, consistent with its risk management policies and procedures and the requirements of Rule 982.A.7, and collect performance bond in an amount commensurate with the account's risk profile. Each account that the Clearing Member determines to have a heightened risk profile shall be subject to initial performance bond requirements established by the Exchange. For each account that does not have a heightened risk profile the initial performance bond requirement shall equal the maintenance performance bond requirement established by the Exchange. A Clearing Member may call for additional performance bond at its discretion as set forth in this Rule.

#### **930.J. Omnibus Accounts**

1. Clearing members shall collect performance bond on a gross basis for positions held in domestic and foreign omnibus accounts.

2. Clearing members shall obtain and maintain written instructions and/or documentation from domestic and foreign omnibus accounts for positions which are entitled to available performance bond offsets or credits.

#### **930.K. Liquidation of Accounts**

If an account holder fails to comply with a performance bond call within a reasonable time (the clearing member may deem one hour to be a reasonable time), the clearing member may close out the account holder's trades or sufficient contracts thereof to restore the account holder's account to required performance bond status. Clearing members shall maintain full discretion to determine when and under what circumstances positions in any account shall be liquidated.

#### **930.L. Clearing House Authority to Require Additional Performance Bond**

The Clearing House, in its sole discretion, has the authority to require clearing members to collect

---

<sup>1</sup> Revised October 2010.

additional performance bond from specific account holders in circumstances deemed necessary by the Clearing House.

#### **930.M. Failure to Maintain Performance Bond Requirements**

If a clearing member fails to maintain performance bond requirements for an account in accordance with this rule, the Exchange or the Clearing House may direct such clearing member to immediately liquidate all or part of the account's positions to eliminate the deficiency.

#### **930.N. OTC Derivatives Undermargined Capital Charge<sup>1</sup>**

Clearing members must compute an OTC derivatives undermargined capital charge for customer and noncustomer accounts containing cleared swap positions when performance bond calls on the accounts have been outstanding for more than three business days. The OTC derivatives undermargined capital charge is calculated as the amount of funds required in such account to meet maintenance performance bond requirements less account equity and acceptable performance bond collateral. Provided, to the extent a deficit is excluded from current assets in the net capital computation, such amount shall not also be deducted under this rule.

#### **931-948. [RESERVED]**

#### **949. CREDIT CONTROLS**

Clearing Members shall comply with all credit control policies developed by the Exchange for customer and proprietary transactions. Such credit control policies may include, but not be limited to, registration of credit control administrators with the Exchange, definition of credit control limits, and maintenance of written procedures verifying compliance with Exchange credit control requirements. For general reference purposes, credit control functionality that may be developed for Globex is a system or service pursuant to Rule 578. Any credit control functionality required by the Exchange shall be in addition to a clearing member's internal risk monitoring and credit control procedures.

#### **950. SUPERVISION**

Each clearing member shall adopt and enforce written procedures pursuant to which it will supervise in accordance with the requirements of these Rules and the CEA and CFTC Regulations thereunder, each customer's account(s), including, but not limited to, the solicitation of any such account(s). For purposes of this rule, the term "customer" does not include another futures commission merchant.

#### **951. DISCLOSURE REQUIREMENTS**

Each clearing member must comply with all disclosure requirements set forth in applicable CFTC and NFA Rules and Regulations.

#### **952. SALES COMMUNICATIONS**

No clearing member shall make fraudulent or high-pressure sales communications relating to the offer or sale of commodity futures and options.

#### **953. PROMOTIONAL MATERIAL**

No clearing member shall use any promotional material which is likely to deceive or mislead the public. Each clearing member shall maintain a copy of all written and electronic promotional material at the clearing member's principal place of business and shall make such promotional material available to the Exchange upon request.

#### **954. CUSTOMER COMPLAINTS**

Each clearing member shall retain all written customer complaints, and make and retain a record of the date each complaint was received, the associated person who serviced the account, a general description of the matter complained of, and what, if any, action was taken by the clearing member regarding the complaint. With respect to verbal complaints, each clearing member shall develop and implement a written program approved by senior management that requires clearing member staff to direct individuals with verbal complaints to place such complaints in written form and submit such complaints to the Compliance Officer of the clearing member. Such complaints and related records must be maintained at the clearing member's principal place of business.

---

<sup>1</sup> Adopted October 2010.

**955. ASSIGNMENT AND NOTIFICATION OF EXERCISE NOTICES**

A. Each clearing member shall adopt written procedures pursuant to which it shall allocate option exercise notices in a fair and non-preferential manner.

B. Upon notification from the Clearing House of assignment of an exercise notice, the clearing member shall promptly notify the option grantor to whom the notice has been allocated.

**956. DISCRETIONARY, CONTROLLED AND MANAGED ACCOUNTS**

**956.A. Requirements**

1. Power of Attorney

No clearing member shall accept or carry an account over which a person other than the account owner exercises discretionary trading authority or control (hereinafter referred to as a discretionary, controlled, or managed account) without first obtaining a written power of attorney, trading authorization, or similar document (hereinafter referred to as a power of attorney). Such power of attorney must be signed and dated by the account owner and clearly designate the person to whom discretionary trading authority has been granted.

The power of attorney shall remain in effect until it is terminated by a written revocation signed and dated by the account owner or by the death or incapacity of the account owner. Written revocation may also be made by the person to whom discretionary trading authority has been granted.

2. Discretionary Account Listing

A clearing member must clearly identify each discretionary trading account it carries and promptly provide the Exchange with a complete and accurate list of such accounts upon request.

**956.B. Presumption of Authority**

Except where specifically indicated by the phrase "discretion not exercised" written on the order ticket, and subsequently confirmed to the customer as such, every trade in a discretionary trading account shall be presumed to have been made pursuant to the power of attorney and subject to the requirements of this rule.

**956.C. Supervision and Trading of Discretionary Trading Accounts**

Discretionary Trading Account Activity

Each clearing member shall have a supervisory employee (other than the person granted discretionary trading authority) supervising activity in discretionary trading accounts. The supervision shall include, but is not limited to, a review of excessive trading in amount or frequency in relation to account equity. This requirement shall only apply to discretionary trading accounts controlled by an employee of the clearing member or the clearing member's guaranteed introducing brokers.

**956.D. Position Limits**

A person with discretionary trading authority over one or more discretionary trading accounts shall not execute or order the execution of trades for such accounts where such trades, by themselves or in addition to his personal trades, exceed the limits prescribed in these rules regarding total positions in any contract.

A husband, wife and dependent children are presumed to be a single entity and, as such, must adhere to the position limits as prescribed by the Exchange rules unless otherwise approved by Exchange staff upon written application.

**956.E. Exceptions**

The provisions of Sections B. and C.1. of this rule shall not apply to the following accounts:

1. Family Accounts

Accounts controlled or managed by persons for their own family. For purposes of this rule, members of one's family shall include a spouse, parent, child, grandparent, grandchild, brother, sister, aunt, uncle, nephew, niece or in-law.

2. Member and Proprietary Accounts

Accounts of members or proprietary accounts as defined by CFTC Regulation 1.3(y).

**957. CONFIRMATIONS TO CUSTOMERS**

A clearing member shall confirm to the customer every transaction made for the customer no later than the following business day. Such confirmation shall be in electronic or written form and shall show facts relevant to the economic terms of the transaction, such as the product bought or sold, the quantity, the price, the expiration, maturity date or contract month/year (as applicable), and, for options, strike price, put or call and expiration.

**958. BRANCH OFFICES, GUARANTEED INTRODUCING BROKERS, AND ASSOCIATED PERSONS**

A. Each clearing member must maintain a complete and accurate list of all branch offices, guaranteed introducing brokers, and the associated persons of the clearing member and its guaranteed introducing brokers. Such list shall be promptly provided to the Exchange upon request.

B. Branch offices, guaranteed introducing brokers, and the associated persons of the clearing member and its guaranteed introducing brokers must comply with Exchange rules. Each associated person of the clearing member or its guaranteed introducing brokers shall be bound by Exchange rules to the same extent as if such person were a member.

C. Each clearing member must diligently supervise its branch offices, guaranteed introducing brokers, and the associated persons of the clearing member and its guaranteed introducing brokers.

D. Each clearing member shall be responsible for the acts or omissions of its branch offices, guaranteed introducing brokers, and the associated persons of the clearing member and its guaranteed introducing brokers. Any violation of an Exchange rule by any such person may be considered a violation by the clearing member.

**959. [RESERVED]**

**960. OMNIBUS AND CARRYING BROKER ACCOUNTS**

A. All clearing members must maintain a complete list of all omnibus and carrying broker accounts maintained on their books. Such list shall be promptly provided to the Exchange upon request. Information for each such account must include account name, number and address, and classification of the account as either customer or house. Additionally, the identities and positions of the beneficial owners of any omnibus account must be immediately disclosed to the Exchange upon request.

B. A clearing member carrying an omnibus account shall have the responsibility for ensuring that each person carried in the account does not exceed speculative limits unless granted an exemption pursuant to Rules in Chapter 9.

C. Each clearing member carrying an omnibus account must at all times reflect in its records the gross long and short positions held in such omnibus account.

Prior to the first delivery day in a contract month or as otherwise required by the Clearing House, each clearing member carrying an omnibus account must maintain a complete and accurate list of the purchase and sale dates of all open positions held in such omnibus account for that contract month. Such list must be current throughout the contract month to ensure that the delivery procedure is not impaired.

D. Clearing members may only carry omnibus accounts for entities that have received a notice from the clearing member (i) expressly prohibiting the omnibus account from acting for customers of the Exchange, directly or indirectly, that are Sanctioned Parties as defined by Rule 543 and (ii) requiring it to send a similar notice to its omnibus customers.

E. Each clearing member that maintains an omnibus account with another clearing member shall also bear financial responsibility to the Exchange and the Clearing House for that omnibus account.

F. Clearing members may only carry omnibus accounts for entities that have received a notice from the clearing member (i) notifying the omnibus account of the EU Retail Customer restrictions contained in Rule 570 and (ii) requiring it to send a similar notice to its omnibus customers.

**961-969. [RESERVED]**

**970. FINANCIAL REQUIREMENTS**

A. Subject to exemptions granted by Exchange staff, all clearing members, including non-FCMs, must comply with the requirements set forth in CFTC Regulations 1.10, 1.12, 1.17 and 1.18. This includes, but is not limited to, the following:

1. Maintenance of minimum capital requirements of at least \$5 million except that a clearing member that is a bank must maintain minimum Tier I Capital (as defined in accordance with regulation applicable to the relevant bank) of at least \$5 billion;
2. Submission of a Form 1-FR, FOCUS Report or other requested information within the specified period of time;
3. Notification requirements when a clearing member:
  - a. Fails to maintain minimum capital requirements;
  - b. Fails to maintain early warning capital requirements;
  - c. Fails to maintain current books and records; or
  - d. Determines the existence of a material inadequacy as specified in CFTC Regulation 1.16(d)(2);
  - e. Changes its fiscal year; or
  - f. Changes its public accountant;

In addition to the notifications required by CFTC regulations, all clearing members must provide written notice to the Financial and Regulatory Surveillance Department of the above events.

4. Completely and accurately computing and recording the balances in the net capital computation including capital requirements;
5. Subordination agreement requirements, including the filing of such agreements; and
6. Preparation of a monthly computation of adjusted net capital and minimum financial requirements.

B. For non-FCMs, all filing, notification, and approval requirements set forth in CFTC Regulations 1.10, 1.12, 1.17 and 1.18 and in the rules of the Exchange must be submitted to or obtained from the Financial and Regulatory Surveillance Department, if necessary, rather than the Commission. Non-FCM clearing members shall make available to the CFTC, upon the CFTC's request, copies of financial reports required to be submitted to the Financial and Regulatory Surveillance Department under this Rule.

C. In conjunction with the requirements set forth in CFTC Regulations 1.10, 1.12, 1.17, and 1.18, clearing members must comply with the following requirements:

1. Submit a monthly Form 1-FR or FOCUS Report and the Exchange Supplementary Information schedule including an unaudited monthly Form 1-FR or FOCUS Report as of the clearing member's fiscal year-end, within the time requirements set forth in CFTC Regulation 1.10. A clearing member must include with its Form 1-FR or FOCUS Report a Statement of Income (loss) for the period between the date of the most recent financial statement or, at the option of the clearing member, the most recent certified financial statement filed with the Financial and Regulatory Surveillance Department and the date for which the report is made.

2. Submit a certified Form 1-FR or FOCUS Report as of the clearing member's fiscal year-end within the time requirements set forth in CFTC Regulation 1.10. A clearing member must include with its certified Form 1-FR or FOCUS Report, a reconciliation from the certified Form 1-FR or FOCUS Report to the monthly Form 1-FR or FOCUS Report as of the same date or a statement that no differences were noted.

3. A clearing member for which NYMEX or COMEX is the designated self-regulatory organization may request the Financial and Regulatory Surveillance Department's permission to change its fiscal year. Such request will only be granted for good cause and in accordance with the requirements of CFTC Regulation 1.10(e)(2). The Financial and Regulatory Surveillance Department's grant of the change in fiscal year will fulfill the approval requirements of CFTC Regulation 1.10(e)(2).

4. A clearing member for which NYMEX or COMEX is the designated self-regulatory organization may request an extension of time to file a monthly Form 1-FR, monthly FOCUS Report, certified Form 1-FR or certified FOCUS Report from the Financial and Regulatory Surveillance Department. Such extension will only be granted for good cause and in accordance with the requirements of CFTC Regulations 1.10(f) and 1.16(f). The Financial and Regulatory Surveillance Department's grant of an extension will fulfill the approval requirements of CFTC Regulations 1.10(f) and 1.16(f).

D. Exchange staff may prescribe additional accounting, reporting, and other financial and/or operational requirements and clearing members must comply with such requirements. All clearing members must provide notice to the Financial and Regulatory Surveillance Department of a failure to comply with the additional accounting, reporting, financial, and/or operational requirements. The Financial and Regulatory Surveillance Department must receive immediate written notification when a clearing member knows or should know of such failure.

E. Financial statement filing requirements under this Rule must be met through Exchange-approved electronic transmissions, except for certified Form 1-FRs or FOCUS Reports.

Personal Identification Numbers (PINs) must be submitted by authorized signers of the Form 1-FR or FOCUS Report. The PIN will constitute and become a substitute for the manual signature of the authorized signer to the electronically filed Form 1-FR or FOCUS Report. The PIN is a representation by the authorized signer that, to the best of his or her knowledge, all information contained in the statement being transmitted under the PIN is true, correct and complete. The unauthorized use of a PIN for electronic attestation by an unauthorized party is expressly prohibited.

F. Exchange staff may grant exceptions to the financial and reporting requirements of Rule 970 for good cause if it is determined that such exceptions will not jeopardize the financial integrity of the Exchange.

## **971. SEGREGATION, SECURED AND CLEARED SWAPS CUSTOMER ACCOUNT REQUIREMENTS**

A. All clearing members must comply with the requirements set forth in CFTC Regulations 1.20 through 1.30, 1.32, 1.49 and 30.7, and Part 22 of the CFTC Regulations. This includes, but is not limited to, the following:

1. Maintaining sufficient funds at all times in segregation, secured 30.7 and Cleared Swaps Customer accounts;
2. Computing, recording and reporting completely and accurately the balances in the:
  - a. Statement of Segregation Requirements and Funds in Segregation;
  - b. Statement of Secured Amounts and Funds Held in Separate Accounts; and
  - c. Statement of Segregation Requirements and Cleared Swaps Customer Collateral Held in Cleared Swaps Customer Accounts.
3. Obtaining satisfactory segregation, secured 30.7 and Cleared Swaps Customer account acknowledgment letters and identifying segregated, secured 30.7 and Cleared Swaps Customer accounts as such; and
4. Preparing complete and materially accurate daily segregation, secured 30.7 and Cleared Swaps Customer amount computations in a timely manner.

B. All FCM clearing members must submit a daily segregated, secured 30.7 and Cleared Swaps Customer amount statement, as applicable, through Exchange-approved electronic transmissions by 12:00 noon on the following business day.

C. In addition to complying with all applicable CFTC regulations, in order for each of an FCM clearing member's customer segregated, secured 30.7 and Cleared Swaps Customer accounts held at a depository to be included as segregated and secured 30.7 funds and Cleared Swaps Customer Collateral in their respective origin and calculation:

1. The FCM clearing member must provide the Financial and Regulatory Surveillance Department with access to the account information, in a form and manner prescribed by the Financial and Regulatory Surveillance Department; and
2. The depository must allow the FCM clearing member to provide the Financial and Regulatory Surveillance Department with access to the account information, in a form and manner prescribed by the Financial and Regulatory Surveillance Department.

D. All FCM clearing members must submit a report of investments in a manner as prescribed through Exchange-approved electronic transmissions as of the 15<sup>th</sup> of the month (or the following business day if the 15<sup>th</sup> is a holiday or weekend) and last business day of the month by the close of business on the following business day. The report of investments shall be prepared and shall identify separately for segregated and secured 30.7 funds and Cleared Swaps Customer Collateral held:

1. The dollar amount of funds held in cash and each permitted investment identified in CFTC Regulation 1.25(a); and
2. The identity of each depository holding funds and the dollar amount held at each depository.

E. All disbursements not made for the benefit of a customer from a segregated, secured 30.7 or Cleared Swaps Customer account which exceed 25% of the FCM clearing members excess segregated, secured 30.7 or Cleared Swaps Customer of the respective origin must be pre-approved in writing by the clearing member's Chief Executive Officer, Chief Financial Officer or their authorized representative with knowledge of the firm's financial requirements and position.

1. In determining if a disbursement exceeds the 25% level, such disbursement must be:
    - a. Compared to the most recent calculation of excess segregated, secured 30.7 and Cleared Swaps Customer amounts; and
    - b. A single disbursement must be reviewed individually and in the aggregated with all other disbursements not made for the benefit of a customer of the respective segregated, secured 30.7 or Cleared Swaps Customer origin since the last calculation of excess funds.
  2. Upon approval of a single disbursement or the disbursement which in the aggregated exceeds the 25% level as defined in Rule 971.E.1., the FCM clearing member must provide immediate notification to the Financial and Regulatory Surveillance Department through Exchange-approved electronic transmissions. Such notification shall include:
    - a. Confirmation that the FCM clearing member's Chief Executive Officer, Chief Financial Officer or authorized representative with knowledge of the firm's financial requirements and position pre-approved in writing the disbursement(s);
    - b. The amount(s) and recipient(s) of such disbursement(s); and
    - c. A description of the reasons for the single or multiple transaction(s) that resulted in the disbursement(s).
  3. The FCM clearing member's Chief Executive Officer and Chief Financial Officer will remain responsible for the pre-approvals by their authorized representative and for compliance with this rule.
- F. All clearing members must provide written notice to the Financial and Regulatory Surveillance Department of a failure to maintain sufficient funds in segregation, secured 30.7 or Cleared Swaps Customer accounts. The Financial and Regulatory Surveillance Department must receive immediate written notification when a clearing member knows or should have known of such failure.
- G. Each statement and report filing required under this Rule must be submitted by the Chief Executive Officer, Chief Financial Officer or their authorized representative as approved by CME using their assigned User Identification ("User ID"). The User ID will constitute and become a substitute for the manual signature of the authorized signer to the electronically submitted daily segregated, secured 30.7 and Cleared Swaps Customer amount statements. The User ID is a representation by the authorized signer that, to the best of his or her knowledge, all information contained in the statement being transmitted under the User ID is true, correct and complete. The unauthorized use of a User ID for electronic attestation by an unauthorized party is expressly prohibited.
- H. Exchange staff may prescribe additional segregation, secured 30.7 and Cleared Swaps Customer amount requirements.

## **972. REDUCTIONS IN CAPITAL**

A clearing member must provide written notice to the Financial and Regulatory Surveillance Department as set forth below of any substantial reduction in capital as compared to the most recent filing of a financial report.

1. If any event or series of events, including any withdrawal, advance, loan or loss would cause, on a net basis, a reduction in net capital as reported on the Form 1-FR, or in tentative net capital as reported on the FOCUS Report for broker/dealers, of 20% or more, notice must be provided within two business days of the event or series of events causing the reduction; and
2. If equity capital of the clearing member or a subsidiary or a consolidated affiliate would be withdrawn by action of a stockholder or a partner or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, or an unsecured advance or loan would be made to a stockholder, partner, sole proprietor, employee or affiliates, such that the withdrawal, advance or loan would cause, on a net basis, a reduction in excess net capital of 30% or more, notice must be provided at least two business days prior to the withdrawal, advance or loan that would cause the reduction.
  - a. In the event that the capital of any non-FCM clearing member at any time falls below the minimum required capital, such clearing member shall give immediate written notice of the fact to the Financial and Regulatory Surveillance Department.
  - b. In the event that the capital of any non-FCM clearing member at any time declines by 20% or more from the capital last reported to the Exchange, the clearing member shall give formal written notice of such event to the Financial and Regulatory Surveillance Department within



two (2) business days of its occurrence. Such "Notice of Capital Impairment" shall state the date of and applicable reason(s) for the decline.

3. A clearing member that is a bank must provide notice if any event or series of events, including any withdrawal, advance, loan or loss would cause, on a net basis, a reduction in Tier I capital as reported on the most recent filing of a financial report, of 20% or more. Notice must be provided within five business days of the event or series of events causing the reduction or when the clearing member knows or should know of the reduction in Tier I capital.

The foregoing shall not apply in the case of a reduction in capital resulting from (1) the repayment or prepayment of subordinated liabilities for which notice has been given in accordance with Rule 970 or (2) any futures or securities transaction in the ordinary course of business between a clearing member and any affiliate where the clearing member makes payment to or on behalf of such affiliate for such transaction and then receives payment from such affiliate for such transaction within two business days from the date of the transaction.

### **973. CUSTOMER ACCOUNTS WITH THE CLEARING HOUSE**

All customer funds deposited with the Clearing House on behalf of customers protected by CFTC Regulation 1.20 shall be held in accordance with the Commodity Exchange Act and CFTC Regulation 1.20 in an account identified as Customer Segregated. Such customer funds shall be segregated by the Clearing House and treated as belonging to the customers of the clearing member. Pursuant to this rule, a clearing member shall satisfy the segregation acknowledgement letter requirement of CME Rule 971.A.3., the Commodity Exchange Act, and CFTC Regulation 1.20 for customer deposits held at the Clearing House. A clearing member fully authorizes the Clearing House to comply with all requirements of CFTC Regulation 1.20 with regards to its Customer Segregated account.

All Cleared Swaps Customer Collateral deposited with the Clearing House on behalf of Cleared Swaps Customers shall be held in accordance with Part 22 of the CFTC Regulations in an account identified as a Cleared Swaps Customer Account. Such Cleared Swaps Customer Collateral shall be segregated by the Clearing House and treated as belonging to such customers of the clearing member. Pursuant to this rule, a clearing member shall satisfy the Cleared Swaps Customer Account acknowledgement letter requirement of CME Rule 971.A.3, the Commodity Exchange Act, and CFTC Regulation 22.5 for customer deposits held at the Clearing House. A clearing member fully authorizes the Clearing House to comply with all requirements of CFTC Regulation 22.5 with regards to its Cleared Swaps Customer account.

### **974. SUSPENSION OF MEMBER FIRM PRIVILEGES**

A. If, in the opinion of the Financial and Regulatory Surveillance Department, a clearing member fails to meet the minimum financial requirements as prescribed herein or neglects to promptly furnish a statement upon request, a recommendation may be made to the Clearing House Risk Committee to suspend the privileges of the clearing member. Upon such recommendation, the Clearing House Risk Committee shall conduct a hearing and such clearing member shall show cause why its privileges should not be suspended. Upon finding that the minimum financial requirements are being violated, the Clearing House Risk Committee may suspend the privileges of such clearing member in accordance with the provisions of Chapter 4 of these rules. The CFTC shall be immediately notified of any clearing member which fails to meet the minimum financial requirements. Any suspended clearing member may appeal the decision of the Clearing House Risk Committee to the Board.

B. If any Rule 106.J. Member Firm :

- has notified the Exchange or the Exchange otherwise becomes aware of a significant event as defined in Rule 442; or
- that is an FCM fails to meet CFTC minimum financial requirements in the opinion of the Financial and Regulatory Surveillance Department; or
- neglects to promptly furnish a statement upon request,

the membership privileges of the member firm may be suspended, subject to approval of any two of the following individuals: the Chief Executive Officer, the President, the President of the Clearing House, or the Chairman of the Board. Any two of these individuals may reinstate the membership privileges of such a suspended member firm, in their discretion, if the suspended member firm provides evidence satisfactory to the Financial and Regulatory Surveillance Department of its financial responsibility or that it meets CFTC minimum financial requirements.

## **975. EMERGENCY FINANCIAL CONDITIONS**

If the President or the President of the Clearing House determines that the financial or operational condition of a clearing member or one of its affiliates is such that to allow that clearing member to continue its operation would jeopardize the integrity of the Exchange, or negatively impacts the financial markets by introducing an unacceptable level of uncertainty, volatility or risk, whether or not the clearing member continues to meet the required minimum financial requirements, either may empanel the Chief Executive Officer, President, Chairman of the Board, Chairman of the Clearing House Risk Committee, and President of the Clearing House. (“Emergency Financial Committee”) Such panel shall be duly authorized and, upon a unanimous vote of the panel, be empowered to order (a) an immediate position limitation, (b) an immediate suspension of the clearing member, (c) that all open trades of said clearing member be for liquidation only, (d) the liquidation or transfer of all or a portion of the open positions of the clearing member, (e) additional performance bond to be deposited with the Clearing House and/or (f) any other action necessary to protect the financial integrity of the Clearing House. The clearing member affected by action taken shall be notified and may request a hearing before the Board pursuant to the procedures set forth in Rule 412. In the event of suspension, the Chief Executive Officer shall, promptly after a suspension, set the matter for hearing before the Board for final determination. To the extent that the panel orders that all open trades of a clearing member be for liquidation only, or the panel orders the liquidation or transfer of all of the open positions of a clearing member, Rule 913.B. shall apply and the clearing member shall be treated as a withdrawing clearing member.

## **976. SUSPENSION OF CLEARING MEMBERS**

If a clearing member becomes insolvent, the clearing member must immediately notify the Exchange of such insolvency. The insolvency shall be announced by the President or the President of the Clearing House and thereupon such clearing member shall be deemed automatically suspended. If a member of the Clearing House becomes insolvent, or for other reasons is suspended from the Clearing House, the officers, owners or partners who are members of the Exchange may also be suspended from the Exchange.

A clearing member shall be deemed insolvent:

1. If it files a voluntary petition in bankruptcy or is adjudicated as bankrupt;
2. If it fails to fulfill or promptly adjust all of its Exchange obligations; or
3. If satisfactory proof is made to the Clearing House Risk Committee that it is unable to pay its debts as they fall due in the ordinary course of business.

A clearing member may be suspended by the Clearing House Risk Committee pursuant to Rule 403 if it fails to meet the capital requirements of the Exchange, the Clearing House, or the CFTC, or if its financial condition, or the financial condition of one of its affiliates, is such that its continued operation would jeopardize the integrity of the Exchange or the Clearing House. Members and clearing members suspended in accordance with this rule shall be notified and may request a hearing before the Board as provided in Rule 419.

## **977. SUSPENSION OF OFFICERS OR PARTNERS**

Whenever an officer, owner or partner of a clearing member is suspended or expelled, the respective clearing member may be suspended or expelled for a like term. Members and clearing members affected by this rule shall be notified and may request a hearing before the Board as provided in Rule 412.F.

## **978. OPEN TRADES OF SUSPENDED CLEARING MEMBERS**

When a clearing member, having open trades, is suspended or expelled, it may designate a clearing member to close out such transactions through designated personnel and in a manner acceptable to the Clearing House.

When a clearing member that has open positions, defaults to the Clearing House in the deposit of performance bonds or settlements, or is suspended for insolvency, the President or the President of the Clearing House, or their delegates, may appoint a clearing member to which all such open positions shall be transferred for liquidation, or may appoint a clearing member to liquidate such positions on behalf of such defaulted or suspended clearing member. If open positions are transferred, all supporting performance bond associated with the positions and any settlement payments due or collected must be delivered to the Clearing House, to be entrusted to the clearing member designated to liquidate the positions. The clearing member appointed to liquidate the

positions shall have the right, under the direction of the President of the Clearing House, to buy or sell for the account of the suspended clearing member such contracts as may be necessary to clear the suspended clearing member's contracts with the Clearing House; the clearing member shall also have the right under the direction of the President of the Clearing House to make or take delivery.

**979. SUSPENDED OR EXPELLED CLEARING MEMBERS**

In the event a clearing member has been suspended or expelled, the clearing member shall comply with all orders of the Board, the Clearing House Risk Committee, the President of the Clearing House, or the President.

In the event of refusal by a clearing member to comply with any order placed upon it, the Clearing House or the Exchange may take whatever means necessary to effect the order.

A clearing member or any member suspended due to a clearing member's insolvency may be reinstated upon affirmative proof to the Clearing House Risk Committee of such clearing member's financial responsibility. A member may withdraw from the clearing member and may apply for reinstatement to membership in the Exchange provided that the insolvency of the clearing member was not caused by such member's willful, reckless or unbusinesslike conduct.

**980. REQUIRED RECORDS AND REPORTS**

- A. Each clearing member shall prepare, maintain and keep current those books and records required by the rules of the Exchange, the Commodity Exchange Act and the Regulations thereunder. Such books and records shall be open to inspection and promptly provided to the Exchange upon request.
- B. Each clearing member shall maintain an adequate accounting system, internal accounting controls, and procedures for safeguarding customer and firm assets. This includes, but is not limited to, the following:
  1. Preparation and maintenance of complete and accurate reconciliations for all accounts;
  2. Resolution of reconciling items in a timely manner; and
  3. Prevention of a material inadequacy as defined in CFTC Regulation 1.16(d)(2).
- C. A clearing member must file any information requested by the Exchange within the time period specified in the request.
- D. Each clearing member shall maintain at all times the ability to provide to the Exchange in an acceptable form a complete set of equity system reports (including, at a minimum, the equity run, open position listing, day trade listing, cash adjustments listing and performance bond call and debit equity listing). Such reports shall be available to the Exchange in New York no later than 9:00 a.m. New York time on the business day following the report date.
- E. Each clearing member shall maintain at all times the ability to provide to the Exchange a listing of each customer's method of access to NYMEX markets, including front end applications and network connections.
- F. Exchange staff may impose administrative fees upon clearing members for late submissions of reports and other information required to be submitted to the Financial and Regulatory Surveillance Department by Exchange Rules. The administrative fees permitted by this Rule 980.F. shall not exceed \$1,000 for the initial late submission, plus \$1,000 for each additional business day that such report or information is not submitted. Where the late submission of reports or other information may be due to insufficient internal accounting controls or procedures, the Clearing House Risk Committee may impose disciplinary sanctions in lieu of, or in addition to, the administrative fees.
- G. Each Clearing Member must submit daily reports that include all information required by the Clearing House, including but not limited to legal entity identifiers, where available, and end-of-day gross positions by each house origin, by each customer origin and by each individual customer-level account within each customer origin. Daily reporting of individual customer-level account information pursuant to this paragraph does not oblige a clearing FCM to look through an omnibus account that it clears for a carrying broker to the underlying customer account.

**981. ANTI-MONEY LAUNDERING AND ECONOMIC SANCTIONS COMPLIANCE**

Each clearing member shall develop and implement a written compliance program approved in writing by senior management reasonably designed to achieve and monitor the clearing member's

compliance with all applicable requirements of the Bank Secrecy Act (31 U.S.C. § 5311 et seq.), the International Emergency Economic Powers Act (50 U.S.C. § 1701 et seq. ) ("IEEPA"), the Trading with the Enemy Act (50 U.S.C. App. § 1 et seq.) ("TWEA"), and the Executive Orders and regulations issued pursuant thereto, including the regulations issued by the U.S. Department of the Treasury and, as applicable, the Commodity Futures Trading Commission. That compliance program shall, at a minimum,

1. Establish and implement policies, procedures and internal controls reasonably designed to prevent the financial institution from being used for money laundering or the financing of terrorist activities and to achieve compliance with all applicable provisions of the Bank Secrecy Act, IEEPA, TWEA, and all applicable Executive Orders and regulations issued pursuant thereto;
2. Provide for independent testing for compliance to be conducted by clearing member personnel or by a qualified outside party;
3. Designate an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program;
4. Provide ongoing training for appropriate personnel; and
5. Include appropriate risk-based procedures for conducting ongoing customer due diligence, including, but not limited to:
  - a. understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and
  - b. conducting ongoing monitoring to identify and report suspicious transactions, and, on a risk basis, to maintain and update customer information, including the information regarding the beneficial owners of legal entity customers.

Clearing members must also supervise and ensure that their guaranteed introducing brokers are in compliance with the provisions contained in this Rule.

## **982. RISK MANAGEMENT**

All clearing members must have written risk management policies and procedures in place to ensure they are able to perform certain basic risk and operational functions at all times. At a minimum, the following areas must be considered in the firm's policies and procedures, depending on the firm's size and its business and product mix.

A. Trade Submission and Account Monitoring. Clearing members must have procedures in place to demonstrate compliance in the following areas for trades executed through electronic platforms:

1. Monitoring the credit risks of accepting trades, including give-up trades, of specific customers.
2. Monitoring the risks associated with proprietary trading.
3. Limiting the impact of significant market moves through the use of tools such as stress testing or position limits.
4. Maintaining the ability to monitor account activity on an intraday basis, including overnight.
5. Ensuring order entry systems include the ability to set automated credit controls or position limits or requiring a firm employee to enter orders.
6. Defining sources of liquidity for increased settlement obligations.
7. Determining a risk profile for each account it carries, including whether such account presents a heightened risk profile.

B. Additional and/or Alternative Requirements. Exchange or Clearing House staff may prescribe additional and/or alternative requirements in order for clearing members to comply with this Rule.

C. Each clearing member shall promptly provide to Clearing House staff, upon request, information and documents regarding its risk management policies, procedures and practices, including, without limitation, information and documents relating to the liquidity of its financial resources, settlement procedures and operational issues.

D. Each clearing member shall make information and documents regarding its risk management policies, procedures and practices available to the CFTC upon the CFTC's request.

In addition, all FCM clearing members must *comply with* the risk management requirements set forth in CFTC Regulation 1.11: *Risk Management Program for futures commission merchants*.

## **983. DISASTER RECOVERY AND BUSINESS CONTINUITY**

All clearing members must have written disaster recovery and business continuity policies and

procedures in place to ensure they are able to perform certain basic operational functions in the event of a significant internal or external interruption to their operations. At a minimum, the following areas must be considered in the firm's policies and procedures, depending on the firm's size and its business and product mix:

- A. Clearing members must have procedures in place to allow them to continue to operate during periods of stress or to transfer accounts to another fully operational clearing member with minimal disruption to either the Exchange or their customers. In order to satisfy this requirement, clearing members must perform:
  - 1. Periodic testing of disaster recovery and business continuity plans.
  - 2. Duplication of critical systems at back up sites.
  - 3. Periodic back-up of critical information.
- B. Key Staff Contacts. Clearing members must maintain and, at the request of the Exchange, provide accurate and complete information for their key personnel. Clearing members must inform the Exchange in a timely manner whenever a change to their key personnel is made.
- C. Additional and/or Alternative Requirements. Exchange staff may prescribe additional and/or alternative requirements in order for clearing members to comply with this Rule.

#### **984. CLEARING MEMBER ACCEPTANCE OF EXECUTED CUSTOMER TRADES**

The following provisions define the minimum responsibilities and obligations of those parties to the clearance of a customer trade.

The term "executing broker" as used in this Rule is the Member Firm or broker to whom the order is transmitted.

##### **984.A. Responsibilities and Obligations of Clearing Members**

The acceptance for clearance of a trade by a Clearing Member shall not relieve any party to the solicitation, handling, execution or clearance of such trade from the duty to act in good faith and with reasonable care and diligence.

##### **1. Acceptance or Rejection of an Allocated Trade**

A Clearing Member that has been allocated a customer trade may only reject such trade in accordance with the provisions of section A.3 of this Rule.

If after accepting an allocated trade a Clearing Member determines that such trade is an error or exceeds limits which have been communicated to an executing broker and his Primary Clearing Member ("PCM") in accordance with section A.3 of this Rule, the Clearing Member may reject such trade.

##### **2. Limits Placed by Clearing Member**

A Clearing Member may place trading limits or impose a complete cessation on the trades it will accept for clearance for a customer's account from an executing broker, provided, however, that both the executing broker and his respective PCM receive prior written, telephonic or electronic notice from the Clearing Member of the applicable trading limits or trading cessation imposed on that customer account. Such notice must be given to all applicable executing brokers that within the prior 90 days have executed trades on behalf of said customer and allocated such trades to the applicable Clearing Member, and to such executing brokers' PCMs.

A copy of any and all correspondence evidencing any notice required by section A.2 of this Rule shall be retained as part of the books and records of the Clearing Member, the executing broker and his PCM.

##### **3. Trade Rejection**

A Clearing Member may only reject a trade that has been given up to it for clearance if: (1) the trade exceeds the trading limits established in accordance with section A.2 of this Rule for that customer and such limits have been communicated to the executing broker and his PCM in accordance with section A.2 of this Rule; or (2) the trade is an error for which the executing broker is responsible. If a rejected trade, or an unclaimed but pending trade, was allocated to the Clearing Member by the executing broker beyond the time period required under Rule 536.A, that fact shall be taken into consideration in any dispute between such Clearing Member and executing broker regarding such trade that is governed by Exchange Rules.

##### **984.B. Responsibilities and Obligations of Executing Brokers**

#### 1. Customer Order Placement

An executing broker will be responsible for determining that all orders received on behalf of a customer's account have been placed or authorized by the customer. Once an order has been accepted, a broker or the broker's clerk must:

- (a) confirm the terms of the order with the customer;
- (b) accurately execute the order according to its terms;
- (c) confirm the execution of the order to the customer as soon as practicable; and,
- (d) transmit such executed order to the Clearing Member as soon as practicable in accordance with Exchange Rules and procedures.

#### 2. Use of Other Persons

Unless otherwise agreed in writing, the executing broker is allowed to use the services of another broker in connection with the broker's obligations under these Rules. The executing broker remains responsible to the customer and Clearing Member under these Rules.

#### 3. Executing Broker Responsibility for Verifying Clearing Member Authorization

Prior to accepting and executing an initial order for any new customer account, the executing broker must confirm with such customer's Clearing Member by telephonic, electronic or written means that:

- (a) the customer has a valid account with the Clearing Member;
- (b) the account number;
- (c) the brokerage rate; and
- (d) the customer is authorized by the Clearing Member to place orders with the executing broker for that specific account.

The executing broker shall retain as part of his books and records a copy of the authorization received from the Clearing Member, or the specifics of the telephonic confirmation, which includes the name of the Clearing Member representative, date, time and any other relevant information. The falsification of such information shall be the basis for disciplinary action.

In the absence of a written give-up agreement among the executing broker, the Clearing Member and the customer, and if applicable, the customer's authorized trader, if a broker has neither executed trades on behalf of a particular customer nor allocated that customer's trades to a specific Clearing Member within the past 90 days, the broker shall not execute any trade for that customer for allocation to the Clearing Member without first confirming with the Clearing Member that the customer remains active and that the broker continues to be authorized to execute trades on behalf of the customer.

Each executing broker shall ensure that every Clearing Member to which he allocates trades: (1) has received current telephonic and electronic contact information for the executing broker and his PCM; and (2) is immediately informed of any change in the broker's PCM.

For purposes of providing any notice required under this Rule, a Clearing Member may rely upon the most recent telephonic and electronic contact information it received from the executing broker.

#### 4. Rejection of Customer Order

Where an executing broker has confirmed Clearing Member authorization to execute orders on behalf of a customer in accordance with this Rule 984, the broker may, in the broker's discretion, reject an order that the customer transmits to the broker for execution. The executing broker shall promptly notify the customer and the Clearing Member(s) of any such rejection.

### **985. DISBURSEMENTS TO CUSTOMERS PROHIBITED**

Clearing members are prohibited from disbursing cash to any of their customers. For the purpose of this rule, "customer" is deemed to include any person or entity maintaining a trading account with the clearing member.

### **986.-992. [RESERVED]**

### **993. RESOLUTION OF THE BOARD OF DIRECTORS TO ESTABLISH AND MAINTAIN A PERMANENT RETAIL CUSTOMER PROTECTION MECHANISM**

The Board of Directors, upon consideration of a pending CFTC Order, hereby:

RESOLVES, to establish and maintain a permanent retail customer protection mechanism supported by a commitment of not less than \$10 million which shall be available at all times to promptly reimburse retail customers trading on NYMEX whose original margin funds are lost in the unlikely result of a default by another customer of the same FCM in any contract cleared by NYMEX and where such customer default of a NYMEX contract results in a default of that FCM clearing member to NYMEX and where NYMEX uses customer margin funds of that FCM clearing member to address the default. For the purposes of this resolution and said CFTC order, the term "Retail Customer" shall be defined to include all natural persons who do not otherwise qualify as an "eligible contract participant" under the requirements of Section 1a(18) of the Commodity Exchange Act, provided however, that such definition of Retail Customer shall not include any NYMEX floor traders or floor brokers and additionally shall not include family members of NYMEX floor traders and floor brokers who maintain accounts at the same FCM where such NYMEX floor trader or floor broker maintains an account.

RESOLVES FURTHER, that in the event of a FCM default to NYMEX caused by a customer default as described above where the total loss of all Retail Customers at such FCM from such default exceeds the amount of the Exchange's then current commitment, authorizes Exchange staff to compensate such Retail Customers on a pro rata basis.

RESOLVES FURTHER, that this resolution shall become effective as of the effective date of the order from the Commodity Futures Trading Commission.