

Advisory Notice

Clearing House

08-191

TO: Clearing Member Firms
Back Office Managers

FROM: CME Clearing

SUBJECT: **CME Rule 802, CBOT Rule 802, and NYMEX Rule 923**

DATE: August 21, 2008

In connection with CME Group's merger with NYMEX Holdings, several rule changes will become effective on Monday, August 25, 2008, pending final approval by the Exchange on Friday, August 22, 2008. Generally, NYMEX Chapter 9 (Clearing Rules) will be revised to conform to CME Group governance and operating standards. The complete text of the revised NYMEX Rules including the amendments to NYMEX Chapter 9 ("Clearing Rules") are available on www.nymex.com. Additionally, attached are the proposed amendments to CME and CBOT Rules 802 ("Protection of Clearing House").

Specifically, amendments to CME and CBOT Rules 802 and NYMEX Rule 9.23 ("Protection of Clearing House") are being made with the following objectives in mind:

- In the near term, NYMEX Clearing will retain its Guarantee Fund, administered separately from the CME Clearing Security Deposit;
- However, as revised CME Rule 802, CBOT Rule 802, and NYMEX Rule 9.23 make clear, one default safeguards system will be maintained from this date going forward.

Further information concerning the broader harmonization of NYMEX financial safeguards and NYMEX Rules with existing CME Group financial safeguards and CME and CBOT Rules will be forthcoming as these changes are rolled out.

Questions can be directed to Tim Doar at 312-930-3162 or Dale Michaels at 312-930-3062.

CME

802. PROTECTION OF CLEARING HOUSE

802.A. Default by Clearing Member and Other Participating Exchanges

1. Default by Clearing Member

If a clearing member of CME, CBOT, NYMEX or COMEX fails promptly to discharge any obligation to the CME or NYMEX Clearing Houses, it shall be in default. If a clearing member is in default, its security deposit (pursuant to Rule 816), its performance bonds on deposit with the Clearing House, the proceeds of the sale of any membership and Class A Shares assigned to it for clearing qualification, and any other assets held by, pledged to or otherwise available to the Clearing House, shall be applied by the Clearing House to discharge the obligation. For purposes of this rule, each default by an individual clearing member will be considered a separate default event.

For purposes of this Rule, the positions in the cross-margin account of a Participating Clearing Member or its Cross-Margining Affiliate at a Cross-Margining Clearing Organization, and the performance bond thereon, shall be considered assets of the Participating Clearing Member available to the Exchange to the extent provided in the Cross-Margining Agreement between the Exchange and such Cross-Margining Clearing Organization. A clearing member in default shall immediately make up any deficiencies in its security deposit resulting from such default prior to the close of business on the next banking day.

The clearing member shall take no action, including but not limited to, attempting to obtain a court order, that would interfere with the ability of the Clearing House to so apply such assets and proceeds.

If the security deposit, performance bond and other assets of a clearing member available to the Exchange are insufficient to satisfy all of its obligations to the Clearing House, including all claims against the Clearing House by reason of its substitution for that clearing member pursuant to Rule 804, the Clearing House shall nonetheless pay all such claims, which shall be deemed a loss to it and which shall be a liability of the defaulting clearing member to the Exchange, which the Exchange may collect from any other assets of such clearing member or by process of law.

2. Default by Other Participating Exchanges.

If a Participating Exchange fails to promptly discharge any obligation to the Clearing House arising out of its obligations to the Exchange, such Participating Exchange's letters of credit, performance bonds and other assets available to the Exchange shall be applied by the Clearing House to discharge the obligation.

802.B. Satisfaction of Clearing House Obligations

If the Clearing House is unable to immediately satisfy all claims against it including, but not limited to, costs associated with the liquidation, transfer and managing of positions, arising out of: 1) its substitution (pursuant to Rule 804) for a defaulting clearing member or a defaulting Participating Exchange, or a defaulting Partner Clearinghouse; 2) a shortfall in a cross-margining program; 3) the failure of a depository, exchange or market apart from the Exchange but whose transactions are cleared pursuant to the provisions of Chapters 8B, 8C, 8D, ~~or~~ 8E or 8F; 4) for any other cause, then such claim or obligation shall be met and made good promptly by the use and application of funds from the following sources in the order of priority hereafter listed. Each source of funds set forth below shall be completely exhausted, to the extent practicable, before the next following source is applied.

1. Surplus funds of the Exchange in excess of funds necessary for normal operations.
2. The amount of security deposit required under Rule 816 from all classes of clearing members shall be applied toward meeting said loss, in direct proportion to the total security deposit requirement of each clearing member. In addition, solely for purposes of satisfying a clearing member default described in this rule, the CME security deposit pool of funds shall be combined with the proceeds in the New York Mercantile Exchange, Inc. (NYMEX) Guaranty Fund (as described in NYMEX Rule 903) to establish a single security deposit/Guaranty Fund pool of funds. Notwithstanding the above, the initial draw under this section 2 of the rule shall be in an amount up to any applicable insurance policy deductible then in place with the Exchange;
3. Proceeds from any default insurance maintained by the Exchange to the extent that such proceeds are available in a timely manner to be applied towards the default.
4. In the event a shortfall continues to exist after the application of the insurance proceeds in number 3 above, any remaining unused proceeds from the security deposit/Guaranty Fund pool set forth in number 2 above shall then be applied;
- ~~45.~~ The balance of the Clearing House loss remaining after application of the above funds shall be assessed against all clearing members (excluding any insolvent or defaulting clearing member). Each clearing member (excluding any insolvent or defaulting clearing member) shall be subject to an assessment up to an amount that does not exceed 275 per cent of such clearing member's security deposit requirement.
- ~~56.~~ All amounts assessed by the Exchange against a clearing member pursuant to this Rule, during the hours in which the Federal Reserve's wire transfer system (Fedwire) is in operation, shall be paid to the Exchange by such clearing member prior to the close of Fedwire on such day. All amounts assessed within one (1) hour prior to the close of Fedwire shall be paid to the Exchange within one (1) hour after Fedwire next opens. While such application of funds shall be mandatory, the detailed implementation of Rule 802.B. shall be the responsibility of the Clearing House Risk Committee with the approval of the Board.

Any clearing member that does not satisfy an assessment, made pursuant to paragraphs ~~45~~ or ~~56~~ above, shall be in default. Any Clearing House loss that remains as a result of such default shall be assessed pursuant to paragraph ~~54~~.

If a clearing member (i) makes payment of all amounts assessed against it pursuant to paragraph ~~45~~ or ~~56~~ above, (ii) replenishes any deficiency in its security deposit in accordance with Rule 802.D., and (iii) satisfies all other conditions for withdrawal, it may, within five (5) business days of such payments, apply to withdraw from clearing membership pursuant to Rule 913. Immediately after the Exchange approves the clearing member's withdrawal, the withdrawing clearing member shall not be subject to any other assessment pursuant to this Rule. Further, upon the approval of the clearing member's request to withdraw, the security deposit that it has restored shall not be used or applied towards meeting any claim or obligation of the Clearing House pursuant to this Rule and shall be released in accordance with Rule 913.

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

To the extent that, and irrespective of the fact that, the Exchange has default insurance coverage in effect at the time of an event of default, the Exchange may nevertheless continue to utilize the resources under the priority outlined in

Rule 802.B.1, B.2, and B.54. for immediate liquidity while awaiting any insurance proceeds. Any insurance proceeds so recovered by the Exchange, to the extent not required by the Exchange to cure a default, will be applied to the credit of the non-defaulting clearing members.

802.C. Rights of Exchange for Recovery of Loss

If a loss for which clearing members or their security deposits have been assessed is subsequently recovered by the Exchange in whole or in part, the net amount of such recovery shall be credited to such persons or firms (whether or not they are clearing members at the time of recovery) in proportion to the amount of the assessment.

802.D. Security Deposits to be Restored

In the event it shall become necessary to apply all or part of the security deposits to meet obligations to the Clearing House pursuant to Rule 802, clearing members shall immediately make good any such deficiency in security deposits prior to the close of business on the next banking day.

CBOT

802. PROTECTION OF CLEARING HOUSE

802.A. Default by Clearing Member and Other Participating Exchanges

1. Default by Clearing Member

If a clearing member of CBOT, CME, NYMEX or COMEX fails promptly to discharge any obligation to the CME or NYMEX Clearing Houses, it shall be in default. If a clearing member is in default, its security deposit (pursuant to Rule 816), its performance bonds on deposit with the Clearing House, the proceeds of the sale of any membership and Class A Shares assigned to it for clearing qualification, and any other assets held by, pledged to or otherwise available to the Clearing House, shall be applied by the Clearing House to discharge the obligation. For purposes of this rule, each default by an individual clearing member will be considered a separate default event.

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

The clearing member shall take no action, including but not limited to, attempting to obtain a court order, that would interfere with the ability of the Clearing House to so apply such assets and proceeds.

If the security deposit, performance bond and other assets of a clearing member available to the Clearing House are insufficient to satisfy all of its obligations to the Clearing House, including all claims against the Clearing House by reason of its substitution for that clearing member pursuant to Rule 804, the Clearing House shall nonetheless pay all such claims, which shall be deemed a loss to it and which shall be a liability of the defaulting clearing member to the Clearing House, which the Clearing House may collect from any other assets of such clearing member or by process of law.

2. Default by Other Participating Exchanges.

If a Participating Exchange fails to promptly discharge any obligation to the Clearing House arising out of its obligations to the Clearing House, such Participating Exchange's letters of credit, performance bonds and other assets available to the Clearing House shall be applied by the Clearing House to discharge the obligation.

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