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## Chapter 9 Clearing Members

### GENERAL

#### 900. CATEGORIES OF CLEARING MEMBERS

The Exchange may establish different 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, including Clearing FCMs, ~~Clearing Closely Held Corporate Members, Clearing Corporate Members and Sole Proprietor Clearing Members~~, unless otherwise specified.

##### 900.A. NYMEX Clearing Members

~~CBOT~~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~~CBOT~~ products, ~~and all Expanded Access Products listed for trading by CME after July 12, 2007.~~

##### 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.

#### 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Membership in the Clearing House is a privilege and license granted by the Board and may be withdrawn by the Board for cause at any time.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agree to: 1) abide by all Exchange Rules and to cooperate in their enforcement; 2) be responsible, even after it has withdrawn as a clearing member, for any violations of Exchange Rules committed by it while it was a clearing member; and 3) continue to meet all requirements applicable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;
5. Any change in the system provider used by the clearing member to process its trades; and
6. A significant increase in the number of members that a clearing member qualifies.

Additionally, a clearing member that qualifies members must provide fifteen days notice to the Exchange of any proposal to terminate such business or any material part of such business.

The Clearing House Risk 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.

- I. It shall agree to guarantee and assume complete responsibility for: 1) all trades and orders executed or directed to be executed by floor brokers and traders it qualifies; and 2) all orders that floor brokers it qualifies execute or fail to execute either negligently, fraudulently or in violation of Exchange rules.

J.-K. [Reserved]

- L. It shall submit to the Clearing House a written guarantee, on a form provided by the Clearing House, from each person or entity owning 5% or more of the equity securities of the clearing member, that shall guarantee all obligations of the clearing member to the Clearing House arising out of accounts cleared by the clearing member that are:

1. non-customer accounts, including proprietary accounts as defined by CFTC Regulation 1.3(y); and
2. accounts carried by another futures commission merchant if such accounts would be considered non-customer accounts, including proprietary accounts as defined by CFTC Regulation 1.3(y), of the clearing member, if carried directly by the clearing member.

Notwithstanding anything herein to the contrary, the guarantee required by this Rule 901.L. shall not apply to any obligations of the clearing member to pay an assessment to the Clearing House pursuant to Rule 802.B.

Each clearing member must submit and maintain with the Audit Department a current list of every person or entity which is directly, or indirectly through intermediaries, the beneficial owner of 5% or more of any class of equity security of the clearing member. If such person or entity owns the clearing member indirectly through intermediaries, all intermediaries must be listed including, if a corporation, all shareholders who own 5% or more of any class of equity security, or, if a partnership, all general and any limited or special partners who have contributed 5% or more of the partnership's capital. If the intermediary's shareholders or partners are not individuals, the clearing member must include the chain of ownership of 5% shareholders, general partners and 5% limited or special partners until individuals are listed.

If a corporation directly or indirectly owns 5% or more of the equity securities of the clearing member, the written guarantee shall be signed by an appropriate officer of the corporation, and a resolution granting such officer authority to sign the guarantee shall also be submitted to the Clearing House. Clearing House staff may also require each person or entity owning 5% or more of the equity securities of such parent corporation, or of parents of such parent corporation, to execute guarantees.

For purposes of this Rule 901.L., the term "equity security" shall include any stock, partnership interest or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security that Clearing House staff shall deem to be of similar nature and consider necessary or appropriate to treat as an equity security.

- M. It shall guarantee and assume financial responsibility for all trading activity routed through a Globex portal, [a ClearPort Trading 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 [and ClearPort Trading Users or User Agents](#), accessing, [respectively](#), the Globex system [or the ClearPort Trading 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 or ClearPort Trading Users or User Agents 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.

## 902. CLEARING MEMBERSHIP ASSIGNMENT REQUIREMENTS

(A) Subject to exceptions granted by Exchange staff, each firm, as a condition of obtaining and maintaining Clearing Member privileges, shall be required to own and or have conferred upon it two (2) Exchange memberships in each Division in which it desires Clearing Member privileges. The firm shall also be required to designate one or two individuals as its "conferring Members". Conferring Members may individually own the membership(s) and or hold such memberships via ABC Agreement. In addition, until further notice from the Exchange, each NYMEX Division Clearing Member shall at all times own or have pledged/conferred upon it at least: 8,000 shares in CME Group common stock; 12,000 shares in CME Group common stock if it is a Clearing Member at NYMEX and CME or CBOT; and 16, 000 shares in CME Group common stock if it is a Clearing Member at NYMEX, CME and CBOT.

(B) In the case of one conferring Member, such Member shall be an executive officer, general partner or an executive officer of a corporate general partner of the firm.

(C) In the case of two conferring Members, at least one member shall be an executive officer, general partner or an executive officer of a corporate general partner of the firm; the other conferring Member need only be a bona fide full time employee of the firm.

(D) As used in this Rule, an executive officer, general partner or an executive officer of a corporate general partner must have the power to direct the affairs of the firm with respect to transactions executed on the Exchange or shall be the senior commodity officer of the firm.

(E) Trades done for the account of any parent, subsidiary, affiliate, etc. of a Clearing Member, if not itself a Clearing Member shall be at non-Member rates; only the firm obtaining Clearing Member status hereunder may receive Member rates.

(F) Each Clearing Member hereby grants to the Clearing House a first priority and unencumbered lien against all memberships and any CME Group shares requires for clearing membership on the Exchange.

### 902.A. Assignment Requirement

~~Subject to exemptions granted by Exchange staff, a CBOT Clearing FCM shall have at least two Series B-1 (Full) memberships assigned, and all other CBOT clearing members shall have at least one Series B-1 (Full) membership assigned.~~

~~Subject to exemptions granted by Exchange staff, each CBOT clearing member shall assign at least the number of CME Group Class A Shares set forth in the table below:~~

~~Number of CME Group Class A Shares Needed for Clearing Membership~~

<del>Type of Membership</del>	<del>CBOT Clearing Member</del>	<del>Joint Clearing Member of CBOT and CME</del>
<del>Clearing FCMs</del>	<del>8,000</del>	<del>12,000</del>
<del>Clearing Closely Held Corporate Members</del>	<del>8,000*</del>	<del>12,000</del>

<del>Clearing Corporate Members<sup>†</sup></del>	<del>8,000*</del>	<del>12,000</del>
<del>Sole Proprietor Clearing Members</del>	<del>8,000*</del>	<del>12,000</del>

~~\*Clearing Closely Held Corporate Members, Clearing Corporate Members and Sole Proprietor Clearing Members that qualified as clearing member firms as of July 12, 2007, will have a "grandfathered" share requirement of 4,725.~~

~~Assigned Class A Shares may not be sold, pledged, hypothecated, lent, reregistered or otherwise transferred without the prior approval of the Exchange. Each clearing member assigning Class A Shares to the Clearing House hereby acknowledges that the Clearing House has control over such Class A Shares and further agrees to comply with any policies or procedures established by the Clearing House to affect control over Class A shares.~~

~~All of the memberships and Class A Shares required for clearing memberships 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 November 29, 2007.~~

~~A clearing member approved for membership on or before November 29, 2007, may continue to maintain the same number of independent membership assignments and the same ratio of independent Class A Share assignments as the clearing member held on November 29, 2007. If a clearing member approved on or before November 29, 2007, or a person with an acceptable proprietary interest in the clearing member, subsequently purchases a membership or Class A Shares and substitutes such asset for one which was previously an independent assignment, such membership or Class A Shares must thereafter be owned by the clearing member or a person with an acceptable proprietary interest.~~

~~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 CBOT memberships and Class A Shares. The proceeds from the sale of the CBOT memberships shall be used to satisfy Rule 110 obligations.~~

#### ~~902.B. [Reserved]~~

#### ~~902.C. Assignment Process~~

~~A membership and/or Class A Shares may be assigned upon the completion of an Exchange approved form. A membership and Class A Shares 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 Shareholder Relations and 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 and/or Class A Shares for an assigned membership and/or Class A Shares provided that the clearing member continues to meet the assignment requirements of this Rule.~~

~~In the event a clearing member has a valid claim against a member that it qualifies and the member's membership is assigned to another clearing member, the clearing member utilizing the membership for assignment shall have 10 business days to substitute another membership to fulfill 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 and Class A Shares~~

<sup>†</sup>~~Clearing Corporate Members that are not wholly owned by members or by members and employees of the firm must have a business purpose deemed appropriate by the Exchange, including cash grain firms, financial institutions, market makers designated by the Exchange, proprietary trading firms that are not fund management companies, pools, or hedge funds, or other forms of business approved by the Exchange.~~

~~Each clearing member hereby grants to the Clearing House a first priority and unencumbered lien against all memberships and any Class A shares required for clearing membership by the Exchange.~~

### 903. RESPONSIBILITY FOR QUALIFIED MEMBERS

- A. A clearing member that qualifies a floor broker or trader thereby guarantees and assumes complete responsibility for: 1) all trades and orders executed or directed to be executed by such floor broker or trader; and 2) all orders that such floor broker executes or fails to execute either negligently, fraudulently or in violation of Exchange rules.
- B. To qualify traders, a clearing member must have established systems in place for trade submission, clearing, and settlement/banking with the Clearing House.
- C. No member may be qualified by more than one clearing member at one time.
- D. A member may not transfer his qualification unless he has obtained a written release from the clearing member last qualifying him. A release shall not be withheld unless a member has an unsatisfied indebtedness to the clearing member last qualifying him where the indebtedness is due to a deficit arising from transactions on the Exchange or where the clearing member last qualifying him is the guarantor under an existing valid guarantee of a loan which had been made to the member exclusively for the purpose of financing the purchase of the member's membership. A member who believes his qualifying clearing member is unreasonably withholding a release necessary to permit the member to be qualified by a different clearing member may request a hearing before a Panel of the Business Conduct Committee as provided in [accordance with the provisions of Rule 408.544](#). Any other disputes between the parties shall be resolved, to the extent permitted by the rules, through the arbitration procedures set forth in Chapter 6A.
- E. A clearing member may, without prior notice, revoke a member's authorization to trade by written revocation filed with the ~~Shareholder Relations and~~ Membership Services Department. Such revocation shall be effective and the member's qualification to trade shall terminate when notice of the disqualification is posted on the Exchange floor. A member shall not appear upon the floor of the Exchange until he has been requalified.
- F. A member shall place all trades, including trades for his own account or any account which he controls, on the books of his qualifying clearing member unless written authorization to the contrary from said clearing member has been filed with the ~~Shareholder Relations and~~ Membership Services Department. Regardless of such authorization, a member in a deficit position with any clearing member shall place trades only through his qualifying clearing member. Any non-qualifying clearing member that carries a member's account in a deficit position shall promptly notify the clearing member that is qualifying such member.
- G. No clearing member shall provide Globex [or ClearPort Trading](#) access to, or clear any trade for, an employee, qualified trader or other representative of another clearing member without the written consent of such clearing member. No clearing member shall provide Globex [or ClearPort Trading](#) access to, 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 ~~Shareholder Relations and~~ Membership Services Department.
- H. In the case of a member who has Globex access [or ClearPort Trading access](#) guaranteed by a clearing member other than his qualifying clearing member, the qualifying clearing member may terminate the member's ability to place orders through Globex [or ClearPort Trading](#) by notifying the clearing member providing the member access to Globex [or ClearPort Trading](#). The clearing member providing the access to Globex [or ClearPort Trading](#) will be responsible for ensuring that the member does not place orders through Globex [or ClearPort Trading](#).

### 904.-909. [RESERVED]

## APPLICATION PROCEDURES FOR CLEARING MEMBERS

### 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 Audit 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 full membership of the Clearing

House Risk Committee shall be approved effective immediately.

An applicant that fails to receive a majority vote shall be informed by the Clearing House Risk 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 Risk Committee's decision was arbitrary, capricious or an abuse of the Committee's discretion.

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

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

A clearing member may withdraw from clearing membership upon approval of Clearing House staff, and ratification by the Clearing House Risk Committee. Clearing House staff shall base its decision on all relevant factors, including, but not limited to, whether the withdrawal is consistent with the best interests of the Exchange, the Clearing House, the membership and the public. The withdrawal shall be effective on the date that the withdrawal is posted.

#### **913.B. Release of Security Deposit, Membership and Class AB Share Proceeds and Assignments**

When a clearing member withdraws from clearing membership (whether voluntarily or involuntarily), its security deposit, the proceeds from the sale of its memberships and its Class A Shares assigned for clearing qualification or any other deposits required by the Clearing House, and any remaining assets available to the Exchange and the Clearing House including, but not limited to, memberships and Class A Shares will be released when Exchange and Clearing House staff determine that the following has occurred: (1) all contracts and obligations with the Exchange and the Clearing House 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 futures transactions cleared on the Exchange have been paid or otherwise provided for, and (4) all obligations to other members and customers arising out of other arbitration claims filed pursuant to Chapter 6A 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" contemplated by Rule 817 in accordance with the terms of the liquidity facility contemplated thereby; provided, however, that in the event that Exchange and Clearing House staff determine 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 effective date of the clearing member's withdrawal from membership in the Clearing House. Notwithstanding the above, Exchange and Clearing House staff may grant an exemption to the above restriction for good cause shown. Further, for purposes of the paragraph above, all obligations of the withdrawing clearing member to the Exchange or the Clearing House, of whatever nature or kind, shall be accelerated and become due and payable upon the effective date provided for in the Clearing House Risk Committee decision to approve the withdrawal.

### **914.-9298 [RESERVED]**

## **ACCOUNT HOLDER PERFORMANCE BOND REQUIREMENTS**

### **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 and deliverable warehouse receipts [for commodities traded on the Exchange provided that such receipts will be valued as margin at no more than 75% of the value of the commodity.](#)

Clearing members shall not accept as performance bond from an account holder securities that have been issued 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.

Bank-issued 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 shall be valued at an amount not to exceed market value less applicable haircuts as set forth in SEC Rule 240.15c3-1.

#### **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**

Clearing members may aggregate and net positions in accounts under identical ownership within the same classifications of customer segregated, customer secured, special reserve account for the exclusive benefit of 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. Hedge Positions**

Clearing members shall have reasonable support to classify positions as bona-fide hedge and risk

management positions, as defined by Rule [9A.28559](#), that are afforded hedge performance bond rates.

**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. For omnibus accounts, initial performance bond requirements shall equal maintenance performance bond requirements.
3. Clearing members shall obtain and maintain written instructions from domestic and foreign omnibus accounts for positions which are entitled to spread or hedge performance bond rates.

**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 additional performance bond from specific accounts in circumstances deemed necessary by the Clearing House.

**930.M. Customer Defined for Purposes of Rule 930**

For the purposes of performance bond requirements, the term "customer" is deemed to include all accounts with the exception of the proprietary accounts of Member Firms.

**930.N. 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.

**931. CUSTOMER MARGINS FOR SECURITY FUTURES POSITIONS HELD IN FUTURES ACCOUNTS**

~~Margin requirements associated with Security Futures positions, which result from transactions made on the Exchange on behalf of Customers, and which are held in a futures account, shall be determined and administered in accordance with the Rules and Regulations of the Exchange, and in compliance with CFTC Regulations 41.42 through 41.49 and SEC Regulations 242.400 through 242.406. With regard to such Security Futures positions, if Exchange Rules or Regulations are inconsistent with CFTC Regulations 41.42 through 41.49 and SEC Regulations 242.400 through 242.406, including any successor Regulations, the CFTC and SEC Regulations shall prevail.~~

- ~~(a) Initial and maintenance margin rates used in determining Exchange margin requirements applicable to Security Futures that are held on behalf of Customers in a futures account, shall be established at levels no lower than those prescribed by CFTC Regulation 41.45 and SEC Regulation 242.403, including any successor Regulations.~~
- ~~(b) As used in this Regulation, the term "Customer" does not include (a) an "exempted person" as defined in CFTC Regulation 41.43(a)(9) and SEC Regulation 242.401(a)(9); or (b) Market Makers as defined below.~~
- ~~(c) A Person shall be a "Market Maker" for purposes of this Rule, and shall be excluded from the requirements set forth in CFTC Regulations 41.42 through 41.49 and SEC Regulations 242.400 through 242.406, as applicable, in accordance with CFTC Regulation 41.42(c)(2)(v) and SEC Regulation 242.400(c)(2)(v), with respect to all trading in Security Futures for its own account, if such Person is an Exchange Member that is registered with the Exchange as a "Security Futures Dealer".~~

~~Each such Market Maker shall: (a) be a member of the Exchange and be registered as a floor trader or a floor broker with the CFTC under Section 4f(a)(1) of the CEA or be registered as a dealer with the SEC under Section 15(b) of the Exchange Act; (b) maintain records sufficient to prove compliance with the requirements set forth in this Regulation and CFTC Regulation 41.42(c)(2)(v) or SEC Regulation 242.400(c)(2)(v), as applicable, including without limitation, trading account statements and other financial records sufficient to detail activity; and (c) hold itself out as being willing to buy and sell Security Futures for its own account on a regular continuous basis.~~

~~A Market Maker satisfies condition (c) above if any of the following three requirements are fulfilled:~~

~~(1) The Market Maker:~~

- ~~(i) Provides continuous two-sided quotations throughout the trading day for all delivery months of Security Futures Contract representing a meaningful proportion of the total trading volume of Security Futures Contracts on the Exchange, subject to relaxation during unusual market conditions as determined by the Exchange (such as a fast market in either a Security Futures Contract or a security underlying a Security Futures Contract) at which times the Market Maker must use its best efforts to quote continuously and competitively; and~~
- ~~(ii) When providing quotations, quotes with a maximum bid/ask spread of not more than the greater of \$0.20 or 150% of the bid/ask spread in the primary market for the security underlying each Security Futures Contract.~~

~~(2) The Market Maker:~~

- ~~(i) Responds to at least 75% of the requests for quotations for all delivery months of Security Futures Contracts representing a meaningful proportion of the total trading volume of Security Futures Contracts on the Exchange, subject to relaxation during unusual market conditions as determined by the Exchange (such as a fast market in either a Security Futures Contract or a security underlying a Security Futures Contract) at which times the Market Maker must use its best efforts to quote competitively; and~~
- ~~(ii) When responding to requests for quotation, quotes within five seconds with a maximum bid/ask spread of no more than the greater of \$0.20 or 150% of the bid/ask spread in the primary market for the security underlying each Security Futures Contract.~~

~~(3) The Market Maker:~~

- ~~(i) Is assigned to a group of Security Futures Contracts listed on the Exchange that is either unlimited in nature ("Unlimited Assignment") or is assigned to no more than 20% of the Security Futures Contracts listed on the Exchange ("Limited Assignment"); and~~
- ~~(ii) At least 75% of the Market Maker's total trading activity in Exchange Security Futures Contracts is in its assigned Security Futures Contracts, measured on a quarterly basis; and~~
- ~~(iii) During at least 50% of the trading day, the Market Maker has bids or offers in the market that are at or near the best market, except in unusual market conditions as determined by the Exchange (such as a fast market in either a Security Futures Contract or a security underlying a Security Futures Contract), with respect to at least 25% (in the case of an Unlimited Assignment) or at least one (in the case of a Limited Assignment) of its assigned Security Futures Contracts; and~~
- ~~(iv) The requirements in (ii) and (iii) are satisfied on (a) at least 90% of the trading days in each calendar quarter by Market Makers who have undertaken an Unlimited Assignment; or (b) at least 80% of the trading days in each calendar quarter by Market Makers who have undertaken a Limited Assignment; or (c) on at least 80% of the trading days in each calendar quarter by Market Makers who have undertaken either an Unlimited Assignment or Limited Assignment but where the Exchange is listing four (4) or fewer Security Futures Contracts.~~

~~For purposes of clauses (1) and (2) above, beginning on 181st day after the commencement of trading of Security Futures Contracts on the Exchange, a "meaningful proportion of the total trading volume of Security Futures Contracts on the Exchange" shall mean a minimum of 20% of such trading volume.~~

~~Any Market Maker that fails to comply with the applicable Rules of the Exchange, CFTC Regulations 41.42 through 41.49 or SEC Regulations 242.400 through 242.406, as applicable, shall be subject to disciplinary action in accordance with Chapter 5. Appropriate sanctions in the case of any such failure shall include, without limitation, a revocation of such Market Maker's registration with the Exchange as a Security Futures Dealer.~~

~~(d) The Exchange shall establish initial and maintenance margin requirements applicable to Security Futures that are held in a futures account, provided that the margin requirement for any long or short position held by a member firm on behalf of a Customer shall not be less than 20% of the current market value of the relevant Security Futures Contract, or such other requirement as may be established by the CFTC and SEC for purposes of CFTC Regulation 41.45(b)(1) and SEC Regulation 242.403(b)(1), unless a lower margin level is available for such position pursuant to paragraph (e) below.~~

~~(e) Initial and maintenance margin requirements for offsetting positions involving Security Futures and related positions are provided in the schedule below, for purposes of CFTC Regulation 41.45(b)(2) and SEC Regulation 242.403(b)(2).~~

[The entirety of the schedule setting forth the initial and maintenance margin requirements for offsetting positions is also deleted however the table has been removed from this document.]

<sup>1</sup> ~~Baskets of securities or security futures contracts must replicate the securities that comprise the index, and in the same proportion.~~

<sup>2</sup> ~~Generally, for the purposes of these regulations, unless otherwise specified, stock index warrants shall be treated as if they were index options.~~

<sup>3</sup> ~~"Aggregate exercise price", with respect to an option or warrant based on an underlying security, means the exercise price of an option or warrant contract multiplied by the number of units of the underlying security covered by the option contract or warrant. "Aggregate exercise price" with respect to an index option, means the exercise price multiplied by the index multiplier. See, e.g., Amex Rules 900 and 900C; CBOE Rule 12.3; and NASD Rule 2522.~~

<sup>4</sup> ~~"Out-of-the-money" amounts shall be determined as follows:~~

- ~~(1) for stock call options and warrants, any excess of the aggregate price of the option or warrant over its current market value (as determined in accordance with Regulation T of the Board of Governors of the Federal Reserve System);~~
- ~~(2) for stock put options or warrants, any excess of the current market value (as determined in accordance with Regulation T of the Board of Governors of the Federal Reserve System) of the option or warrant over its aggregate exercise price;~~
- ~~(3) for stock index call options and warrants, any excess of the aggregate exercise price of the option or warrant over the product of the current index value and the applicable index multiplier; and~~
- ~~(4) for stock index put options and warrants, any excess of the product of the current index value and the applicable index multiplier over the aggregate exercise price of the option or warrant. See, e.g., NYSE Rule 431 (Exchange Act Release No. 42011 (October 14, 1999), 64 FR 57472 (October 22, 1999) (order approving SR-NYSE-99-03)); Amex Rule 462 (Exchange Act Release No. 43582 (November 17, 2000), 65 FR 71151 (November 29, 2000) (order approving SR-Amex-99-27)); CBOE Rule 12.3 (Exchange Act Release No. 41658 (July 27, 1999), 64 FR 42736 (August 5, 1999) (order approving SR-CBOE-97-67)); or NASD Rule 2520 (Exchange Act Release No. 43581 (November 17, 2000), 65 FR 70854 (November 28, 2000) (order approving SR-NASD-00-15)).~~

<sup>5</sup> ~~"In the money" amounts must be determined as follows:~~

- ~~(1) for stock call options and warrants, any excess of the current market value (as determined in accordance with Regulation T of the Board of Governors of the Federal Reserve System) of the option or warrant over its aggregate exercise price;~~
- ~~(2) for stock put options or warrants, any excess of the aggregate exercise price of the option or warrant over its current market value (as determined in accordance with Regulation T of the Board of Governors of the Federal Reserve System);~~
- ~~(3) for stock index call options and warrants, any excess of the product of the current index value and the applicable index multiplier over the aggregate price of the option or warrant; and~~
- ~~(4) for stock index put options and warrants, any excess of the aggregate exercise price of the option or warrant over the product of the current index value and the applicable index multiplier.~~

<sup>6</sup> ~~Two security futures will be considered "identical" for this purpose if they are issued by the same clearing agency or cleared and guaranteed by the same derivatives clearing organization, have identical contract specifications, and would offset each other at the clearing level.~~

## **932. ACCEPTABLE MARGIN FOR SECURITY FUTURES AND TREATMENT OF UNDERMARGINED ACCOUNTS**

~~Notwithstanding any other Exchange Rules or Regulations, the following provisions shall establish the acceptable margin for Security Futures Positions that are held on behalf of Customers in a futures account, and the treatment of undermargined futures accounts containing Security Futures Contracts.~~

~~(a) Member firms may accept from their Customers as margin for Security Futures held in a futures account, deposits of cash, margin securities (subject to the limitations set forth in the following sentence), exempted securities, any other assets permitted under Regulation T of the Board of Governors of the Federal Reserve System (as in effect from time to time) to satisfy a margin deficiency in a securities margin account, and any combination of the foregoing, each as valued in accordance with CFTC Regulations 41.46(e) and 41.46(f) or SEC Regulation 242.404(e) and 242.404(f), as applicable. Shares of a money market mutual fund that meet the requirements of CFTC Regulation~~

~~1.25 may be accepted as a margin deposit from a Customer for purposes of this Rule.~~

~~(b) A member firm shall not accept as margin from any Customer securities that have been issued by such Customer or an Affiliate of such Customer unless such member firm files a petition with and receives permission from the Exchange for such purpose.~~

~~(c) All assets deposited by a Customer to meet margin requirements must be and remain unencumbered by third party claims against the depositing Customer.~~

~~(d) If a Customer fails to comply with a margin call within a reasonable period of time (the member firm may deem one hour to be a reasonable period of time), the relevant member firm shall take the deduction required with respect to an undermargined account in computing its net capital under applicable CFTC and SEC Regulations.~~

~~(e) If at any time there is a liquidating deficit in an account in which Security Futures are held, the member firm shall take steps to liquidate positions in the account promptly and in an orderly manner.~~

**9313.-949. [RESERVED]**

**SALES PRACTICES AND CUSTOMER PROTECTION**

**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.

**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**

1. 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.

2. Floor Trading

No member shall execute a transaction in the trading pit for an account over which he has discretionary trading authority unless the transactions are for a) family accounts as defined in Section E.1. or b) another member of the Exchange for an account owned by such other member or proprietary accounts of member firms as set forth in Section E.2.

**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 the commodity bought or sold, the quantity, the price, the delivery month and, for options, strike price, put or call and expiration month.

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]**

**OMNIBUS AND CARRYING BROKER ACCOUNTS**

**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 9A-559](#).
- 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. 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.

**961.-969. [RESERVED]**

**FINANCIAL REQUIREMENTS AND FINANCIAL EMERGENCIES**

**970. FINANCIAL REQUIREMENTS**

- A. Subject to exceptions 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;
  - 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 Audit 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 Audit Department, if necessary, rather than the Commission.

- 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 Audit 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 [the NYMEXCBOT or COMEX](#) is the designated self-regulatory organization may request the Audit 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 Audit 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 [the NYMEXCBOT 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 Audit 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 Audit 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 Audit Department of a failure to comply with the additional accounting, reporting, financial, and/or operational requirements. The Audit 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 AND SECURED REQUIREMENTS**

- A. All clearing members must comply with the requirements set forth in CFTC Regulations 1.20 through 1.30, 1.32, and 30.7. This includes, but is not limited to, the following:
  - 1. Maintaining sufficient funds in segregation or set aside in separate accounts;
  - 2. Computing, recording and reporting completely and accurately the balances in the:
    - a. Statement of Segregation Requirements and Funds in Segregation; and
    - b. Statement of Secured Amounts and Funds Held in Separate Accounts;
  - 3. Obtaining satisfactory segregation and separate account acknowledgment letters and identifying segregated and separate accounts as such; and
  - 4. Preparing complete and materially accurate daily segregation and secured amount computations in a timely manner.
- B. Exchange staff may prescribe additional segregation and secured amount requirements.
- C. All clearing members must provide written notice to the Audit Department of a failure to maintain sufficient funds in segregation or set aside in separate accounts. The Audit Department must

receive immediate written notification when a clearing member knows or should know of such failure.

## **972. REDUCTIONS IN CAPITAL**

A clearing member must provide written notice to the Audit 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 Audit 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 Audit 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.

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 acknowledgment letter requirement of CME Rule 971.A.2., the Commodity Exchange Act, and CFTC Regulation 1.20 for customer deposits held at the Clearing House.

All customer funds deposited with the Clearing House on behalf of customers protected by SEC Regulation 15c3-3 shall be held in accordance with the Securities Exchange Act of 1934 and SEC Regulation 15c3-3 in an account identified as Special Reserve Account for the Exclusive Benefit of Customers. Such customer funds shall be segregated by the Clearing House and treated as belonging to such customers of the clearing member.

## **974. FAILURE TO MEET MINIMUM FINANCIAL REQUIREMENTS**

A. If, in the opinion of the Audit 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.H., I., J., R., or S. member firm has notified the Exchange of a bankruptcy proceeding or a definite intention to file for bankruptcy pursuant to Rule 442, or if the Exchange otherwise becomes aware of such a proceeding or intention, or if, in the opinion of the Audit Department, any non-clearing member firm that is an FCM fails to meet CFTC minimum financial requirements 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, the Chairman of the Board, or the Chief Operating Officer. 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 Audit Department of its financial responsibility or that it meets CFTC minimum financial requirements.

**975. EMERGENCY FINANCIAL CONDITIONS**

If the President of the Exchange 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 the Clearing House, 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, he or she may empanel the Chief Executive Officer, the President of the Exchange, Chairman of the Board, the Chairman of the Clearing House Risk Committee and the President of the Clearing House. 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 from the Clearing House and/or the Exchange, as applicable, (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, or (e) additional performance bond to be deposited with the Clearing House. The clearing member affected by action taken shall be notified and may request a hearing before the Board as provided 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 and the Clearing House of such insolvency. The insolvency shall be announced by the President of the Exchange or the President of the Clearing House and thereupon such clearing member shall be deemed automatically suspended from the Clearing House and/or the Exchange, as applicable. If a member of the Clearing House becomes insolvent, or for other reasons is suspended from the Clearing House or the Exchange, 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 412.

**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.

**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 of the Exchange 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 of the Exchange.

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.

### **RECORDS AND REPORTS**

#### **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 as set forth in CFTC Regulation 1.16(d)(2). This includes, but is not limited to, the following:
  1. Preparation and maintenance of complete and accurate reconciliations for all accounts; and
  2. Resolution of reconciling items in a timely manner.
- 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 YorkChicago](#) no later than [98:00 a.m. New YorkChicago](#) 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 [NYMEXCBOT](#) markets, including front end applications and network connections.

#### **981. ANTI-MONEY LAUNDERING**

Each clearing member shall develop and implement a written anti-money laundering program approved in writing by senior management reasonably designed to achieve and monitor the clearing member's compliance with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311, et. seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury and, as applicable, the Commodity Futures Trading Commission. That anti-money laundering program shall, at a minimum,

1. Establish and implement policies, procedures and internal controls reasonably designed to assure compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder;

- 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; and
- 4 Provide ongoing training for appropriate personnel.

Clearing members must also supervise and ensure that their guaranteed introducing brokers are in compliance with the anti-money laundering 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 both electronic platforms and open outcry:
  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.
- 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.

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 the Exchange, the Clearing House, 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 or the Clearing House, provide accurate and complete information for their key personnel. Clearing members must inform the Exchange and the Clearing House, as applicable, in a timely manner whenever a change to their key personnel is made.
- C. 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.

984.

#### **GIVE-UP TRADES**

A trade given up to another clearing member will be deemed to have been accepted by, and the financial obligations attendant to such trades will be the responsibility of, such clearing member if the trade is not rejected by the close of business on the business day following the trade date. The acceptance of a trade by a clearing member shall not relieve any member, member firm, or clearing member of the duty to act in good faith and with reasonable care and diligence.

In the absence of a give-up agreement whose terms and conditions govern the responsibilities/obligations of executing brokers, customers and Clearing Members, the

following provisions shall define the respective responsibilities/obligations of those parties to an order. The "executing broker" as used in this rule is the registered billing entity, Member Firm or Floor Broker to whom the order is transmitted.

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

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

A Clearing Member may, in its discretion, place trading limits on the trades it will accept for give-up for a customer's account from an executing broker, provided, however, that the executing broker receives prior written or electronic notice from the Clearing Member of the trading limits on that account. Notice must be received by the executing broker in a timely manner. A copy of such notice shall be retained by the Clearing Member.

##### **2. Trade Rejection**

A Clearing Member may reject ("DK") a trade only if: (1) the trade exceeds the trading limits established under section A.1. of this rule for that customer and it has been communicated to the executing broker as described in Section A.1.; or (2) the trade is an error for which the executing broker is responsible. If a Clearing Member has a basis for and rejects a trade, it must notify the executing broker promptly.

##### **3. Billing**

A Clearing Member will pay all floor brokerage fees incurred for all transactions by the executing broker for the customer and subsequently accepted by the Clearing Member by means of the ATOM system. Floor brokerage fees will be agreed upon in advance among the Clearing Member, customer and the executing broker.

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

##### **1. Customer Order Placement**

An executing broker will be responsible for determining that all orders are 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 a broker accepting and executing an initial order for any new customer account, the executing broker must confirm with the 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;
- (d) the customer is authorized by the Clearing Member to place orders with the executing broker for that account.

The executing broker must retain a copy of the authorization or the specifics of the telephonic confirmation, which includes opposite party, date, time and any other relevant information. The falsification of such information shall be the basis for disciplinary action.

#### 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 broker shall promptly notify the customer and the Clearing Member(s) of any such rejection.

### SPECIAL OTC CONTRACT REQUIREMENTS

#### 990. SPECIAL CAPITAL PROVISIONS FOR CLEARING MEMBERS GUARANTEEING AND CLEARING OTC CONTRACTS EXECUTED BY NYMEX FLOOR MEMBERS

- (A) Clearing Members that guarantee and clear OTC contracts, agreements or transactions pursuant to the program referenced in NYMEX Rule 992 must have and maintain at all times minimum capital of at least \$20 million.
- (B) If, during the 18-month period, a Clearing Member does not maintain capital of at least \$20 million, it must further reduce its capital in compliance with this program by 100 percent of the NYMEX margin requirements for the OTC contracts, agreements or transactions of floor brokers and floor traders that it is guaranteeing pursuant to this program. A Clearing Member must compute its capital in accordance with Exchange rules and generally accepted accounting principles consistently applied.
- (C) A Clearing Member that is subject to the provisions of paragraph (B), above shall be required to compute, on a daily basis, the total margin requirement for OTC contracts, agreements or transactions of floor brokers and floor traders that it is guaranteeing pursuant to this program. Such computations must be documented and maintained by the Clearing Member in accordance with CFTC Regulation 1.31 and be made available for inspection by Exchange representatives. Computations prepared as of financial statement filing dates must be included as part of such filing with the Exchange.
- (D) A decline in a Clearing Member's capital resulting from the application of this Rule shall be subject to the reporting requirements set forth in Rule 970.

Clearing Rules Specifically Governing Clearing Member Obligations Regarding Clearing of Options and Forwards Executed in Exchange-Designated Pari-mutuel Auctions

Note: The following subsection is intended to group together several rules that apply specifically to obligations associated with the clearing of this category of product. Clearing Members are advised that, in addition to other Chapter 9 rules that govern their duties more generally, they may wish to also consult the following Chapter 9 rules: Rules 971 and 973.

- (E) Clearing Members that guarantee and clear OTC contracts, agreements or transactions pursuant to the program referenced in NYMEX Rule 6.21G must have and maintain at all times minimum capital of at least \$20 million

#### 991. CLEARING REQUIREMENTS FOR CLEARING OF OVER-THE-COUNTER OPTION TRANSACTIONS IN EXCHANGE-DESIGNATED PARI-MUTUEL AUCTIONS

- (A) No Clearing Member shall assign an account number that would accept the entry of orders into an Exchange-designated pari-mutuel auction for or on behalf of a customer, unless such customer is first provided with an Auction Procedures document in a form approved by the Exchange and any subsequent revisions or amendments to such Auction Procedures. A Clearing Member shall obtain the agreement of each eligible customer for which it proposes to clear transactions in a pari-mutuel auction that such customer will be bound by the Auction Procedures and by applicable Exchange Rules, in connection with each such transaction. Such agreement may be obtained in any manner deemed appropriate by the Clearing Member, including without limitation through the customer's consent in its agreement with the Clearing Member to be bound by Exchange Rules, provided that such agreement can be enforced by the Exchange or an Auction Broker (as defined below) against the customer. The Auction Procedures applicable to pari-mutuel auctions and transactions are hereby incorporated into these Rules and made a part hereof to the same extent as if such Procedures were reprinted herein in their entirety.
- (B) Participation in an Exchange-designated pari-mutuel auction shall be limited to "eligible customers." For purposes of this rule, eligible customers shall be limited to individuals and entities:

(1) who qualify as an "eligible contract participant" as defined by the Commodity Exchange Act and by CFTC rule, order or other interpretation, which would include NYMEX Floor Members participating in over-the-counter markets under the conditions and requirements established by NYMEX Rule 9.38;

(2) who agree to be bound by the NYMEX Rules and by the Auction Procedures referenced in Section (C);

(3) who have established a relationship with a Clearing Member and for whom the Clearing Member has submitted information to the Exchange as provided in Section (C); and

(4) where the offer and sale of products listed in such auction to such individual or entity and the participation in such auction market by such individual or entity does not violate any law applicable to such individual or entity.

Clearing Members may only authorize customer accounts for Exchange-designated pari-mutuel auction for customers.

- (C) Before authorizing any account of an eligible customer to trade in an Exchange designated pari-mutuel auction, a Clearing Member must first submit to the Exchange in the manner provided by the Exchange the following information along with other related information that may be required by the Exchange from time to time:

(1) the account number of the eligible customer;

(2) the commodity or commodities that the Clearing Member has authorized the eligible customer to trade on the Exchange-designated pari-mutuel auction; and

(3) the maximum financial exposure that the Clearing Member is willing to accept for trading by the eligible customer on the Exchange-designated pari-mutuel auction. The limit set by the Clearing Member for the Exchange-designated pari-mutuel auction shall be unique to that auction and thus shall operate separately from the risk limits that may be applicable to that account number in connection with other Exchange services.

In addition, by agreeing to clear transactions in a pari-mutuel auction for eligible customers, and by establishing Risk Allocation Values for orders submitted by that customer, in accordance with paragraph (E) below, a Clearing Member will be deemed to

- represent and warrant that each customer for which it agrees to clear transactions is an eligible customer under these Rules and that such customer has been provided with the Auction Procedures (including any revisions or amendments) and has agreed to be bound by the Auction Procedures and these Rules. Each Clearing Member will indemnify and hold harmless the Exchange from any claims, damages, losses, costs or expenses whatsoever incurred by NYMEX or any Auction Broker arising out of any representation or warranty made by Clearing Member in this Clause (C) not being true or accurate (including any claim that an eligible customer is not bound by any Supplemental Cleared OTC Contract (defined in Section (F) below)).
- (D) Pari-mutuel transactions will be entered into through separate auctions, as set forth in the Auction Procedures. Upon the completion of an auction, each eligible customer with an executed transaction will be deemed to have entered into an over-the-counter transaction with the Exchange on the terms, and in the amount and at the price, specified with respect to the particular auction, without any further action by Exchange, the Clearing Member or the eligible customer. Immediately thereafter, the over-the-counter transaction will be given up for clearing to the Clearing Member designated by the eligible customer and shall be extinguished and replaced, by a cleared over-the-counter transaction between the Exchange and the applicable Clearing Member without any further action by the eligible customer or the Clearing Member pursuant to product specifications for such product as provided by Exchange rules.
- (E) In addition, Clearing Members must require their eligible customers to designate at least one firm through which the customer's orders will be submitted into the Exchange-designated pari-mutuel auction ("Auction Broker"). The duties of an Auction Broker will include application of the authorizations and risk limits (set by a Clearing Member pursuant to Section (C )) (hereafter "Risk Data") to the orders received from the eligible customers of the Clearing Member.
- (F) A Clearing Member agrees unconditionally to accept and to clear all trades executed for that account for which it has input information pursuant to Section (C), regardless of malfunction or non-operation of the Exchange's contracts order filter functionality, the Risk Allocation Value order filter functionality, and/or the position limit functionality, provided however that in the event of any manner of misapplication or non-application of the Risk Data by an Auction Broker that results in the execution of a transaction above the risk limit specified by the Clearing Member for an eligible customer, the Clearing Member shall be required to clear only that portion of the transaction that is within or up to such risk limit and the excess of the transaction size above such risk limit shall result in the execution of a cleared contract (a "Supplemental Cleared OTC Contract") on behalf of the relevant Auction Broker, in the amount of such excess, which shall be cleared by the Auction Broker's Clearing Member. The eligible customer that entered the order in excess of its credit limit shall reimburse the Auction Broker for any amounts that the Auction Broker is required to pay under the Supplemental Cleared OTC Contract. Conversely, the Auction Broker will pay to the eligible customer any amount that the Auction Broker receives under such Supplemental Cleared OTC Contract. A Clearing Member shall be responsible for maintaining and updating as appropriate the Risk Data on an ongoing basis and shall submit any such updates to the Risk Data pursuant to the procedures and deadlines as established by the Exchange.

**992. PARTICIPATION BY NYMEX FLOOR MEMBERS IN SPECIAL PROGRAM FOR OVER-THE-COUNTER TRADING WITH FCM GUARANTEE**

- (A) The over-the-counter (OTC) contracts, agreements or transactions must be executed pursuant to Section 2(h)(1) of the Commodity Exchange Act (Act), which in effect provides among other things that such transactions shall be subject to CFTC anti-fraud and anti-manipulation authority and also may not be entered into on a trading facility. This program generally allows a NYMEX Floor Member to enter into trading in certain OTC contracts on the basis of a FCM guarantee without needing to satisfy the total assets requirements otherwise necessary under the Act for such trading. In order to maintain

eligibility for this program, a NYMEX Floor Member must continue to satisfy all of the conditions contained in this rule.

- (B) This program is available only to NYMEX Floor Members in good standing who are properly registered with the CFTC as a floor trader and/or as a floor broker. With respect to floor brokers, this program is available only for trading executed by the floor broker for his proprietary account. In addition, each NYMEX Floor Member must notify the Exchange Compliance Department prior to any participation in this program.
- (C) Clearing. The NYMEX Floor Member must have obtained and at all times maintain a financial guarantee in writing as provided by the Exchange for the contracts, agreements or transactions from a NYMEX Clearing Member that:

  - (1) is registered with the Commission as an FCM; and,
  - (2) clears the OTC contracts, agreements or transactions thus guaranteed for such NYMEX Floor Member.
- (D) Permissible OTC contracts, agreements or transactions shall be limited to trading in a commodity that either: (1) is listed only for clearing at NYMEX or

  - (2) is listed for trading and clearing at NYMEX and NYMEX's rules provide for exchanges of futures for swaps in that contract, and
  - (3) each OTC contract, agreement or transaction executed pursuant to this NYMEX program must be cleared at NYMEX.
- (E) The NYMEX Floor Member may not enter into OTC contracts, agreements or transactions with another floor broker or floor trader as the counterparty for any contract that is listed for trading on the Exchange. However, a NYMEX Floor Member may enter into OTC contracts, agreements or transactions for such products with the Exchange in connection with options or forwards entered into through a pari-mutuel auction or, in connection with other OTC contracts, agreements or transactions, with an individual or entity that qualifies as an "eligible contract participant" pursuant to the Act.
- (F) All contracts transacted in connection with this rule must be submitted and accepted for clearing on the Exchange. This rule neither authorizes nor allows a NYMEX Floor Member to maintain an uncleared OTC position and such activity would constitute a violation of this rule.

### **993. CUSTOMER SUBSTITUTION IN THE EVENT OF CLEARING MEMBER BANKRUPTCY**

In the event that an "order for relief" as defined in CFTC Reg. 190.01(dd) has been entered in respect to a clearing member whose customer holds a futures contract or options contract that may only be liquidated by physical delivery and, as to such contract:

- (i) trading has ceased on the date of the entry of the "order for relief;"
- (ii) notice of delivery has been tendered on or before the date of the entry of the "order for relief;" or
- (iii) trading ceases before the trustee can liquidate the contract;

then the Clearing House shall allow the customer (if his identity can be readily ascertained and verified) to be directly substituted for the debtor clearing member to the extent necessary to complete delivery. None of the requirements for delivery, including notices, instructions, payment, etc., shall be waived hereby. Moreover, substitution shall in no way relieve the debtor clearing member of its obligations to the Clearing House and the opposite clearing member in regard to any claims arising out of that delivery.

(End Chapter 9)

