

## Memorandum

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### FEE POLICY BULLETIN

TO: Individual Members #11-01  
Chief Compliance Officers  
New Firm Approval Contacts  
Firm EFS Contacts

FROM: Audit Department, Clearing House Division

DATE: March 14, 2011

SUBJECT: Individual Members Trading on Globex®

CME Group Inc. (“CME Group”) sets the fee policies for its four subsidiary exchanges - Chicago Mercantile Exchange Inc. (“CME”), Chicago Board of Trade, Inc. (“CBOT”), New York Mercantile Exchange, Inc. (“NYMEX”) and Commodity Exchange, Inc. (“COMEX”). In response to market participant feedback, CME Group is enhancing and clarifying documentation of, and where possible harmonizing, its individual member fee policies for CME, CBOT, NYMEX and COMEX.

In August 2007, CME issued Fee Policy Bulletin (“FPB”) #07-03 regarding Individual Members Trading on Globex. CME Group is issuing this FPB to enunciate CME, CBOT, NYMEX and COMEX individual member fee eligibility policies and to update and clarify them as needed. This FPB supersedes all previous bulletins discussing fee policy issues for individual members.

CME Group has membership categories for individuals (equity member and lessee) and corporate entities (clearing member and member firm<sup>1</sup>) each with their own unique requirements and benefits. CME Group spends considerable time with market participants to understand their evolving trading operations to continually refine and clarify member fee policies to be consistent with market trends. For instance, the challenges of electronic trading is creating a growing desire by individual members to utilize employees, third parties and Automated Trading Systems (“ATs”) for execution of trades held in individual member accounts. These trends require clarification of CME Group fee policies for individual members particularly with respect to:

- Account ownership; and
- Trade execution/order submission including those resulting from the collective activities of a group/team of individuals and the utilization of ATs.

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<sup>1</sup> For clarity, member firm includes all classifications of firm memberships at CME, CBOT, NYMEX and COMEX including equity member, affiliate member, family of funds member, trading member and electronic corporate member.

CME Group distinguishes individual member trading from member firm and non-member trading based upon the presumption that the individual member is:

- Actively identifying potential trades and making trading decisions;
- Executing those trades himself or through another member in his personal account; and
- Personally realizing his trading profits and losses.<sup>2, 3</sup>

CME Group grants individual member fee privileges to electronic trades executed in this spirit. This FPB presents several examples where ownership and trade execution are consistent with this spirit and eligible for individual member fees.

Electronic trades executed inconsistently with this spirit are ineligible for individual member fees. For instance, trades executed as a result of the collective activities of a group/team of individuals, either directly or through an ATS, are inconsistent with this spirit and are more consistent with trading by member firms, Commodity Trading Advisors (“CTAs”), or money management groups.

Therefore, to treat corporate members and individual members equitably and consistently, CME Group cannot automatically consider trades for an individual member account executed by a group/team or an ATS as individual member trades for fee purposes. If, however, the group/team supported trading and/or use of an ATS is conducted in the spirit of individual member trading, CME Group, in its sole discretion, will approve eligibility of these electronic trades for reduced individual member fees.

This FPB clarifies and consolidates CME Group’s fee policies for applying reduced fees on trades for individual member accounts except those related to permitted Power of Attorney (“POA”) traders of NYMEX and COMEX individual members.<sup>4</sup> The individual member fee policies detailed in this FPB are effective July 1, 2011 and will be examined as part of clearing fee audits.

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<sup>2</sup> CME Group has also allowed other individual members of the respective exchange to have discretion over the trading of an individual member(s) account.

<sup>3</sup> In limited circumstances, individual members of CBOT may have other non-member individuals trade their account with discretion or perform order entry provided all other requirements of this FPB are met including those limiting the (1) ownership, (2) funding and contributions, (3) participation in profits and losses and (4) benefits in, share in any profitability or return earned based on the accounts performance to individual members of CBOT. Moreover, non-member individuals trading the account of or providing order entry for individual CBOT member(s) receiving compensation reported on an IRS Form 1099-B are regarded as “holders” of the positions and, as such, the account would not qualify as an individual member account.

<sup>4</sup> As stated in the Second Amended and Restated Certificate of Incorporation of New York Mercantile Exchange, Inc., individual members of NYMEX and COMEX may grant POA of electronic trading discretion to no more than three non-member individuals if owning a membership or no more than one non-member individual if leasing a membership. For complete policies and requirements regarding permitted POAs for NYMEX and COMEX individual members, refer to FPB #11-02.

## 1. Individual Member

Any adult of good moral character, reputation and business integrity, with adequate financial resources to assume the responsibilities and privileges of membership, is eligible for individual membership of CME, CBOT, NYMEX and/or COMEX.

Individual members may either purchase a membership (equity member) or lease a membership (lessee member) in the division as applicable of CME, CBOT, NYMEX and/or COMEX to receive equity member/lessee member fees in the applicable exchange and division.<sup>5, 6</sup>

In general, a benefit of individual membership is the application of member fees, within the applicable exchange and division held, to the trading:

- Conducted for the member's account and benefit,
- Entered by the member, another member or a clearing firm, and
- At the discretion and direction of an individual member.<sup>3</sup>

Detailed below are the requirements for individual member trading to be eligible for member fees including guidelines and specific instances for member fee eligibility.

## 2. Individual Member Obtaining Membership

An individual CME and CBOT member must own or lease a membership themselves; held in their own name.

- The financing to purchase a membership must be of the individual's own funds or through a bona-fide loan. An individual who finances directly or indirectly their membership purchase from a CME or CBOT member or individual/entity affiliated with a CME or CBOT member (within their respective exchange) may only be eligible for lessee rates in the division of membership held when trading an account in which the CME or CBOT member/lender has an interest or when trading their own personal account.<sup>7, 8</sup>

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<sup>5</sup> For clarity, CME, CBOT, NYMEX and COMEX are separate exchanges and each must be joined independently for membership status. Individual members refers to both individual equity members and lessee members and member fees refers to both equity member and lessee fees.

<sup>6</sup> For purposes of this FPB, individual member will imply individual membership is held within the applicable exchange and division for purposes of receiving the member fees and benefits detailed.

<sup>7</sup> In such case, the CME or CBOT member or individual/entity affiliated with the CME or CBOT member (within their respective exchange) who financed or who otherwise assisted financially in the membership's purchase in order for the individual to trade an account in which the CME or CBOT member/lender has an interest, will be considered, in essence, leasing the membership to the individual.

<sup>8</sup> CME and CBOT members may guarantee a bona-fide loan from a financial institution for an individual purchasing a membership within their respective exchange without impacting the fees for which the individual is eligible.

- An individual leasing a membership may receive financing for the lease from any third party including a CME or CBOT member. The individual lessee may be eligible for lessee rates on their trades conducted in the division of membership held.

An individual NYMEX and COMEX member must own or lease a membership themselves; held in their own name. The financing to purchase or lease the membership may be of the individual's own funds or through a bona-fide loan from any third party.

### **3. Individual Member Trading Account Ownership**

CME Group recognizes two types of account ownership as individual member accounts eligible to receive member fees due to the individual membership status of its owners:

#### **3.1 Single Individual Member Account Ownership**

- The account is 100% owned by one individual member or by a corporate entity which is owned 100% by one individual member.
- All funding of and contributions to the account must be 100% made by the individual member.
- All profits and losses of the account must be 100% allocated to and taxed to the individual member.
- Only the individual member owning the account may benefit in, share in any profitability, or earn any return based on the account's performance.<sup>9</sup>

#### **3.2 Joint Individual Member Account Ownership**

- The account is 100% jointly owned by more than one individual all of whom must be members of the respective exchange, or solely owned by a corporate entity which is jointly owned 100% by more than one individual all of whom must be members of the respective exchange.
  - Owners must be individual members.
  - A member firm cannot be an owner of a joint individual member account.<sup>10</sup>

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<sup>9</sup> CME Group allows other individual members of the respective exchange to have discretion and trade the account of another individual member(s). For fee purposes, the account will be considered a joint account of the individual member(s) account owner(s) and individual member trading with discretion. In such cases, the individual member trading with discretion may share in the profitability/earn a return based on the performance of the trading in the account through receipt of a salary, salary plus bonus, discretionary payment or profit split.

Furthermore, the account is considered a joint account of the individual member(s) account owner(s) and the individual member discretionary trader with fees based on the lowest membership status of the parties. That is, the account is considered a defacto joint account for fee purposes and should be registered as a joint account in the Exchange Fee System ("EFS").

- All funding of and contributions to the account must be 100% made by the joint account owners or joint owners of the corporate entity.
- All profits and losses of the account must be 100% allocated to and taxed to the joint account owners.
- All joint owners must share directly in the profitability of the account and are directly responsible for losses of the account.
- Only the owners of the joint account or of the corporate entity owning the joint account may benefit in, share in any profitability, or earn any return based on the account's performance.<sup>9</sup>

The joint owners must demonstrate to CME Group's satisfaction the above requirements for a joint account are met for trades in that account to be eligible for member fees based on individual membership.

#### **4. Individual Member Trade Execution/Order Submission**

Eligibility for reduced fees for trades made for an individual member account is based on how the decision to trade is made and who enters the orders.<sup>11</sup>

##### **4.1 Non-Automated Trading System Orders**

###### **4.1.1 Discretionary Trading by a Trader/Operator through a Non-ATS**

To be eligible for member fees, the individual member account may only be traded by:

- **An individual member or members.** The individual member(s) must be the sole decision-maker(s) in the submission of each order and must physically enter each order.

Orders that result from the collective activity and decision making of a group/team of individuals (not all of whom are individual members) will not be considered traded by an individual member eligible for member fees. CME Group has sole discretion to determine the universe of individuals who are part of the group/team involved in trading.

Keep in mind, an individual who finances directly or indirectly their membership purchase from a CME or CBOT member or individual/entity affiliated with a CME or CBOT member

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<sup>10</sup> If a member firm owns an account jointly with an individual member (membership held in the same exchange), the account will be considered a joint individual member/member firm account subject to the most restrictive fee policies of either individual membership or firm membership regarding ownership, eligible traders, trader compensation, and trade execution/order submission including the utilization of ATSs. In such case, discounted fees will be based on the lowest category of membership held by the parties. These accounts must be registered in EFS under the joint account owner with the lowest division of membership held. Further the account title field in EFS must identify all owners of the joint account.

<sup>11</sup> In addition, for CBOT individual members, the membership status of the individual entering the trade may impact the level of member fee charged. Please refer to the current CBOT Clearing Fee Schedule at [http://www.cmegroup.com/company/files/CBOT\\_Fee\\_Schedules.pdf](http://www.cmegroup.com/company/files/CBOT_Fee_Schedules.pdf).

(within their respective exchange) may only be eligible for lessee rates in the division of membership held when trading an account in which the CME or CBOT member/lender has an interest or when trading their own personal account.

Discretionary trading of an individual member account by a non-member such as a non-member individual, non-member employee of a member firm or CTA is not eligible for member fees.<sup>3</sup>

#### 4.1.2 Non-Discretionary Order Entry through a Non-ATS

To be eligible for member fees, orders must be at the direction of a member and may only be entered for the individual member account by:

- **An individual member or members.** Such individual member(s) who are non-owners of the individual member account may not share in the profitability of the account either directly or indirectly.
- **Bona-fide W-2 employees and 1099-MISC independent contractors of a clearing member firm.** Such employees/independent contractors may only enter orders at the direction of the individual member(s) and may not share in the profitability of the account either directly or indirectly. Individuals may not become W-2 employees/1099-MISC independent contractors of a clearing member firm simply to accommodate the trading of an individual member(s). Furthermore, W-2 employees/1099-MISC independent contractors primarily working for an individual member “on behalf” of a clearing member will be closely scrutinized with the burden of proof on the clearing member to demonstrate to CME Group’s satisfaction a bona-fide employment or contractor relationship.
- **Individuals as permitted and registered in special programs implemented by CME Group.** Such individuals must comply with all the rules and requirements governing the program.

As of the date of this FPB, registered clerks of an individual member or members of CME and CBOT owning the account who are properly registered in and in full-compliance with the Clerk for Member Program may enter orders. Such clerks may only enter orders at the direction of the CME/CBOT member. Refer to the Clerk for Member Program for details and requirements.

Orders entered by an individual sharing in the profitability of the account either directly or indirectly will be considered discretionary trades for fee purposes.

Orders that result from the collective activity and decision making of a group/team of individuals (not all of whom are individual members) will not be considered traded by an individual member eligible for member fees. CME Group has sole discretion to determine the universe of individuals who are part of the group/team involved in trading.

Individuals not identified above, such as non-members, CTAs, money managers or employees of non-clearing member firms such as execution groups, are not eligible to trade or enter orders for the accounts of individual members eligible for member fees.<sup>3</sup>

## 4.2 Automated Trading System Orders

### 4.2.1 The ATS Policy

ATSs often function for periods of time independently or with minimal oversight from a single trader/operator and, in fact, can operate like multiple traders. Additionally, ATSs, despite their occasional independence, often require substantial collective oversight of a team of individuals who influence the orders submitted by the ATS.<sup>12</sup>

As a result, CME Group cannot presume without validation for fee purposes that orders submitted by an ATS for an individual member account are the direct trading of an individual member and ensure consistency with the spirit of CME Group's fee policy that excludes the collective activities of a group/team of individuals from qualifying for individual membership rates unless all individuals of the group/team are individual members.

**Therefore, with respect to the trades of an ATS for an individual member account, the following policies will apply:**

- **ATS trades will not be automatically considered individual trades.**
  - Generally, trades from an ATS require a "corporate entity" membership status in order to be eligible for reduced rates.
  - In the case of a corporate entity owned by an individual member(s), the entity itself must maintain membership privileges versus the individual owner(s) of the entity for ATS trades to be eligible for reduced fees.<sup>13</sup>

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<sup>12</sup> CME Group has sole discretion to determine the universe of individuals who are part of the group/team involved in trading.

Generally, the utilization of an ATS suggests that there is a group/team of individuals who are (1) Developing software, strategies, and risk overlay programs; (2) Initiating and disabling particular algorithms and strategies; (3) Directing and controlling trading decisions; (4) Establishing and adjusting trading parameters, inputs, and alerts; (5) Monitoring trading performance, system performance, (e.g. network connections and latencies) and trading alerts; and/or (6) Controlling and/or monitoring trading and/or position risk.

Collectively such responsibilities are referred to as administrating, operating, controlling and monitoring the ATS; for ease, operating and supporting the ATS. The monitoring, operating, and/or supporting of an ATS is considered discretionary trading for fee purposes. Because these activities have a direct effect on the orders submitted by the ATS, orders submitted by the ATS reflect group/team trading, rather than the trading of one individual. Therefore, for fee purposes, CME Group presumes that ATS trading is not the trading of an individual member.

<sup>13</sup> For clarity, usage of an ATS by individual CBOT members in which other non-members are involved in the (1) determination of trading strategies, parameters, inputs, and alerts, (2) operation and administration of the system and (3) monitoring of trading performance, system performance and alerts will, as a general rule, require a corporate entity membership status in order to be eligible for reduced rates. Under very limited circumstances wherein the specific usage of an ATS is consistent with the spirit of individual member trading, CME Group will, in its sole discretion, grant individual member fees for trades by an ATS for an individual member account.

- **Under very limited circumstances wherein the specific usage of an ATS is consistent with the spirit of individual member trading, CME Group will grant individual member fees for trades by an ATS for an individual member account.**

#### 4.2.2. Member Developed/Operated ATS

Individual members may develop their own ATS hardware and software. Wherein CME Group determines in its sole discretion that the ATS is solely developed by individual members and is solely operated and supported by individual members, the trading activity executed through the ATS for an individual member account may be eligible for member fees.

The burden of proof will be on the individual member utilizing an ATS to provide clear evidence to CME Group's satisfaction that the member developed ATS is solely operated and supported by the individual member in order to receive member rates based on individual membership status. As such, the individual member must:

- Make all trading decisions and be solely responsible for determining all trading strategies, parameters, inputs, and alerts; and
- Be solely responsible for operating and administrating the system and for monitoring trading performance, system performance and alerts.

#### 4.2.3 Third Party ATS

Individual members may wish to utilize third party developed ATS hardware and software in their trading activities. In limited circumstances wherein such third party ATS is solely operated and supported by the individual member once acquired,<sup>14</sup> such trading activity may be eligible for member fees.

For an ATS to be considered a "third party ATS":

- The individual member cannot have any affiliation including ownership interest with the third party provider; and
- The third party developer may not receive any compensation (including any set percentage or discretionary bonus) based on the performance of the ATS.<sup>15</sup>

The burden of proof will be on the individual member utilizing an ATS to provide clear evidence to CME Group's satisfaction that the third party ATS is solely operated and supported by the individual member in order to receive member rates based on individual membership status. As such, the individual member must:

- Make all trading decisions and be solely responsible for determining all trading strategies, parameters, inputs, and alerts; and

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<sup>14</sup> For clarity, third party developers may provide data center administration, hardware, and software updates.

<sup>15</sup> To clarify, third party developers may be compensated per a set amount on a monthly, quarterly, yearly or other time period basis and/or on a set amount per trade.

- Be solely responsible for operating and administrating the system and for monitoring trading performance, system performance and alerts.

## **5. Individual Member Trading - Application of Fees**

An account owned by members and traded by members will receive member fees based on the lowest common denominator of membership held by the account owner(s) and trader/operator.<sup>3, 11</sup>

- For non-discretionary orders entered by bona-fide W-2 employees/1099-MISC independent contractors of a clearing member firm, only the membership status of the account owner(s) will impact the eligibility for member fees.<sup>11</sup>
  - To reiterate, the monitoring, operating, and/or supporting of an ATS is considered discretionary trading, not order entry, for fee purposes.
- For non-discretionary orders entered by individuals in approved special programs of CME Group, the individual's impact to the fees charged will be governed by the program.
  - For registered clerks of the individual member or members of CME and CBOT owning the account in the Clerk for Member Program, only the membership status of the account owner(s) will determine the fees assessed on non-discretionary orders.
- Keep in mind, an individual who finances directly or indirectly their membership purchase from a CME or CBOT member or individual/entity affiliated with a CME or CBOT member (within their respective exchange) may only be eligible for lessee rates in the division of membership held when trading an account in which the CME or CBOT member/lender has an interest or when trading their own personal account.

For individual member fee incentive eligibility such as tier pricing and market maker programs, refer to the requirements as outlined in the Clearing Fee Schedules and Individual Programs.

## **6. Member Firm Trading**

Firms may become member firms and clearing members. For complete requirements regarding Clearing and Globex Fees for Member Firm Accounts including the requirements for Member Firm Trading Accounts, Member Firm Traders and Member Firm Trader Compensation and Profit Splits, refer to Fee Policy Bulletin #09-01 dated June 16, 2009.

If you have any questions, please call the Audit Department at (312) 930-3230.