



Special Executive Report

S-7412

July 30, 2015

Amendments to CME, CBOT, NYMEX, and COMEX DCM Rule 537(b) and CME SEF Rule 537(b) in Connection with Data Submitted to the Exchanges and SEF for the Purpose of Fulfilling Regulatory Obligations, Effective on Trade Date Wednesday, August 13, 2015

CME, CBOT, NYMEX, and COMEX (the “Exchanges”) DCM Rule 537(b) and CME SEF Rule 537 currently preclude the Exchanges and SEF from using data submitted for the purpose of fulfilling regulatory obligations for marketing and business activities where a market participant has notified the Exchanges or SEF that it “opts out” of such use. The Exchanges and SEF have self-certified changes to DCM Rule 537 and SEF Rule 537 that will require a market participant’s clear consent in order to use data submitted for the purpose of fulfilling regulatory obligations for marketing and business activities. Pending all relevant regulatory review periods, **these changes will become effective on August 13, 2015.**

Amended DCM Rule 537 precludes the Exchanges from using regulatory data for business or marketing purposes, unless it has obtained the clear consent of the relevant market participant to do so. The current version of DCM Rule 537 provides for “opt out” consent. The amendments to DCM Rule 537 are similar to the language recently adopted by other DCMs and SEFs, including ICE Futures U.S. SEF Rule 537 is being amended to conform to the language of DCM Rule 537.

The text of Rule 537 for both the DCMs and the SEF are listed below, with additions underscored and deletions overstruck. As described at the time Rule 537 was originally filed with the CFTC in February 2014, the Rule works in conjunction with the Exchanges’ and SEF’s Confidentiality Policy, which is publicly available on the CME Group web site at the following location: http://files.shareholder.com/downloads/CME/349862097x0x835162/C6196003-0FC2-46AA-9D1C-B83D9FD2ECD6/Confidentiality_Policy.pdf.

CME, CBOT, NYMEX and COMEX Rule 537

537. TRADE DATA SUBMITTED TO THE EXCHANGE

a) Subject to each market participant's rights with respect to its own data, the Exchange shall own all rights, title and interest, database rights and trade secret rights in and to all trade data and related information submitted in connection with trading on the Exchange, and which is not collected or received for the purpose of fulfilling regulatory obligations. The Exchange has the exclusive right to use, distribute, sub-license, disclose and sell anonymized trade data and derivative works in any manner, media and jurisdiction. Market participants shall not redistribute trade data or derivative works based thereon unless licensed by the Exchange. The restriction on redistribution shall not apply to a market participant's own data.

b) Proprietary data or personal information collected or received by the Exchange for the purpose of fulfilling regulatory obligations shall not be disclosed publicly other than on an aggregated or anonymized basis, or in a manner that does not directly or indirectly identify any market participant who has submitted such data. Regulatory data may not be used by the Exchange for business or marketing purposes unless the market participant has clearly consented to the use of such data in such manner. ~~Trade data and related information that is submitted to the Exchange for the purpose of fulfilling regulatory obligations may be used by the Exchange for business or marketing purposes, unless the market participant has refused consent to such use, and either provides written notice to the~~

~~General Counsel of the Exchange at 20 South Wacker Drive, Chicago, Illinois 60606 ("Attn: Data Opt Out Request"), or provides notice by calling (855) 219-1580. Data collected or received for the purpose of fulfilling regulatory obligations shall not be disclosed publicly other than on an aggregated or anonymized basis, or in a manner that does not directly or indirectly identify any market participant who has submitted such data. Access to the Exchange will not be conditioned upon a market participant's consent to data collected or received for the purpose of fulfilling regulatory obligations being used for business or marketing purposes. Nothing in this Rule shall preclude the Exchange from disclosing data pursuant to a valid subpoena or court order, or as otherwise required by law~~

CME Swap Execution Facility Rule 537:

537. TRADE DATA SUBMITTED TO CME SEF

a) Subject to each market participant's rights with respect to its own data, CME SEF shall own all rights, title and interest, database rights and trade secret rights in and to all trade data and related information submitted in connection with trading on CME SEF, and which is not collected or received for the purpose of fulfilling regulatory obligations. CME SEF has the exclusive right to use, distribute, sub-license, disclose and sell anonymized trade data and derivative works in any manner, media and jurisdiction. Market participants shall not redistribute trade data or derivative works based thereon unless licensed by CME SEF. The restriction on redistribution shall not apply to a market participant's own data.

b) Proprietary data or personal information collected or received by CME SEF for the purpose of fulfilling regulatory obligations shall not be disclosed publicly other than on an aggregated or anonymized basis, or in a manner that does not directly or indirectly identify any market participant who has submitted such data. Regulatory data may not be used by CME SEF for business or marketing purposes unless the market participant has clearly consented to the use of such data in such manner. Access to CME SEF will not be conditioned upon a market participant's consent to data collected or received for the purpose of fulfilling regulatory obligations being used for business or marketing purposes. Nothing in this Rule shall preclude CME SEF from disclosing data pursuant to a valid subpoena or court order, or as otherwise required by law.

~~(a) CME Group owns all rights, title and interest in and to all intellectual property and other proprietary rights (including all copyright, patent, trademark or trade secret rights) in data submitted to CME SEF ("SEF Data"), and all derivative works based thereon. Authorized Brokers, Authorized Managers, Authorized Representatives, Authorized Traders, Clearing Members, Participants, and other Persons (collectively, "SEF Data Submitters") affiliated with any of the foregoing may not distribute, sell or retransmit SEF Data to any third party without the consent of CME Group, provided that each SEF Data Submitter retains such rights as it may enjoy under applicable law with respect to SEF Data prior to its submission to CME Group.~~

~~(b) Unless a SEF Data Submitter otherwise provides written, non-electronic notice to the General Counsel of the~~

~~CME Group, CME Group may use for business or marketing purposes any and all data and information that has been collected or received from a SEF Data Submitter, including proprietary data or personal information obtained for the purpose of fulfilling CME Group's regulatory obligations. Access to CME SEF will not be conditioned upon the use of such data or information for business or marketing purposes.~~

~~(c) Notwithstanding any other provision, each SEF Data Submitter hereby grants CME Group a non-exclusive, perpetual, freely transferable, irrevocable, worldwide and royalty free license to any and all rights as such SEF Data Submitter may have in and to SEF Data, including, but not limited to, the right to use, distribute, sub-license, disclose and sell SEF Data, in any manner, media and jurisdiction, for the benefit of CME Group and/or its Affiliates; provided that, except as may otherwise be permitted by Rule 536.F, in any written agreement between the CME Group and such Person, or as may be required by applicable law, CME Group shall not disclose SEF Data other than on an aggregated basis that does not directly or indirectly identify any SEF Data Submitter.~~

~~(d) Each CME Data Submitter and other Persons affiliated with any of the foregoing hereby acknowledges and agrees that CME Group owns and shall retain all right, title and interest in and to Globex, CME Direct, and CME SEF, all components thereof, including without limitation all related applications, all application programming interfaces,~~

~~user interface designs, software and source code and any and all intellectual property rights therein, including, without limitation all registered or unregistered, as applicable copyright, trade mark, service mark, trade secret, trade name, data or database rights, design rights, moral rights, (i) inventions, whether or not capable or protection by patent or registration, rights in commercial information or technical information, including know-how, research and~~

~~development data and manufacturing methods, patent, and other intellectual property and ownership rights, including applications for the grant of any of the same, in or to Globex, CME Direct, and CME SEF, and all other related proprietary rights of CME Group and/or any of its Affiliates (together, with any and all enhancements, corrections, bug fixes, updates and other modifications to any of the foregoing and any and all data or information of any kind transmitted by means of any of the foregoing, "Proprietary Information"). Each SEF Data Submitter and other Persons affiliated with any of the foregoing, further acknowledges and agrees that the Proprietary Information is the exclusive, valuable and confidential property of CME Group, and that it shall not permit its Affiliates or other affiliated Persons to reverse engineer, copy, bug fix, correct, update, transfer, reproduce, republish, broadcast, create derivative works based on or otherwise modify, in any manner, all or any part of Globex, CME Direct, CME SEF, or the Proprietary Information. Each SEF Data Submitter, further agrees to cause each of its Affiliates or other affiliated Persons to keep the Proprietary Information confidential and not to transfer, rent, lease, loan, sell or distribute, directly or indirectly, all or any portion of Globex, CME Direct, CME SEF, or any Proprietary Information.~~

Questions concerning the amendments may be directed to one of the following individuals in the Market Regulation Department:

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