

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions – Coordinated review – Protection of customer cleared derivatives positions – Application for relief from the requirement to hold all customer collateral in separate accounts pursuant to paragraph 30(b) of National Instrument 94-102 Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* and from the requirement to use customer collateral only as specified pursuant to 32(2) of National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*, to permit commingling of certain customer positions.

Applicable Legislative Provisions

National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* s. 49

Citation: Re Chicago Mercantile Exchange Inc., 2017 ABASC 189

Date: 20171221

In the Matter of
the Securities Legislation of
Alberta, Ontario and Quebec
(the **Jurisdictions**)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Chicago Mercantile Exchange Inc.
(the **Filer**)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**), in Alberta and in Ontario pursuant to section 49 of National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (**NI 94-102**) and in Québec pursuant to section 86 of the *Derivatives Act* (Québec), CQLR, c. I-14.01, for exemptions from the requirement to hold all customer collateral in separate accounts, as provided for under subsection 30(b) of NI 94-102, and from the requirement to use customer collateral as specified in subsection 32(2) of NI 94-102. More specifically, the Filer seeks to

- (a) commingle customer positions in Eurodollar and Treasury futures contracts and options on such futures contracts (collectively, **Interest Rate Futures**) and cleared-only interest rate swaps (**IRS**), each as further set out below in the representations at section 11, and any money, securities or property used to margin, guarantee or secure such Interest Rate Futures and IRS, in accounts subject to section 4d(f) of the United States Commodity Exchange Act (**Cleared Swaps Customer Accounts**); and
- (b) commingle customer positions in certain futures and options on such futures and swaps products, as further set out below in the representations at section 12, (**Base Guaranty Fund Products**) that are significantly and reliably correlated, and any money, securities, or property received to margin, guarantee or secure such positions, in Cleared Swaps Customer Accounts

(collectively, the **Exemptive Relief Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application):

- (a) the Ontario Securities Commission (the **OSC**) is the principal regulator for this application, and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and NI 94-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation incorporated under the laws of the State of Delaware. Its head office is located at 20 South Wacker Drive, Chicago, Illinois 60606, United States of America. It is a wholly owned subsidiary of CME Group Inc., a publicly traded for-profit corporation organized under the laws of Delaware and listed for trading on the NASDAQ National Market.

2. The Filer is registered with the U.S. Commodity Futures Trading Commission (the CFTC) as a derivatives clearing organization (a DCO) and as a designated contract market (DCM). The Filer's clearing house division is the DCO for contracts listed for trading on the Filer's DCM, being the Chicago Mercantile Exchange (CME), and its affiliates' DCMs, being the Chicago Board of Trade (CBOT), the New York Mercantile Exchange (NYMEX) and the Commodity Exchange, Inc. (COMEX). The Eurodollar futures that are a subject of this application are listed for trading on CME, and the Treasury futures that are a subject of this application are listed for trading on CBOT. The Base Guaranty Fund Products that are a subject of this application consist of exchange-traded futures or options on futures and are or will be listed on one of the Filer's or its affiliates' DCMs.
3. Each of CME, CBOT, NYMEX and COMEX is exempted from recognition as an exchange and from registration as a commodity futures exchange in Ontario. Each of CME, CBOT, NYMEX and COMEX is a foreign derivatives exchange recognized as an exchange in Alberta.
4. The Filer was granted an exemption from the requirement to be recognized as a clearing agency by the OSC on June 27, 2013. The Filer was granted an exemption from the requirement to be recognized as a clearing house by the Autorité des marchés financiers on October 31, 2014. The Filer was granted an exemption from the requirement to be recognized as a clearing agency by the Alberta Securities Commission on October 17, 2016. An affiliate of the Filer, CME Clearing Europe Limited, was granted an exemption from the requirement to be recognized as a clearing agency by the OSC on November 1, 2012.
5. The Filer is a regulated clearing agency under NI 94-102.
6. The Filer is not in any material respect in default of the Legislation and is in compliance in all material respects with applicable U.S. securities laws.
7. Pursuant to discretionary approval by the CFTC under Section 4d of the U.S. *Commodity Exchange Act* and CFTC Regulation 39.15(b)(2) of CME rules that govern portfolio margining, the Filer offers portfolio margining of (a) certain Interest Rate Futures and IRS and (b) certain Guaranty Fund Products, in each case, in Cleared Swaps Customer Accounts, in accordance with CME Rule 8G831 and CME Rule 831.

8. The Filer states that permitting local customers to portfolio-margin (a) IRS and Interest Rate Futures and/or (b) Base Guaranty Fund Products, in each case, in Cleared Swaps Customer Accounts, will not make such customers more susceptible to shortfalls in the event of an insolvency of a futures commission merchant (FCM) clearing member or impair their ability to port positions. Positions and collateral in the Cleared Swaps Customer Accounts in which swaps and commingled Interest Rate Futures and/or Base Guaranty Fund Products are held receive a greater level of protection from fellow customer risk than would ordinarily be available to positions and collateral held in customer omnibus accounts for futures. All swaps or commingled futures positions and collateral are held subject to the U.S. “legally segregated, operationally commingled” or “LSOC” regime, which is designed to minimize fellow customer risk by ensuring that the Filer and its clearing members cannot use the collateral of one customer to pay for an obligation of another customer.
9. The Filer also states that U.S. regulations require FCM clearing members to collect margin from customers at least at 100% of the exchange-set margin levels and margin all customer-level accounts on a gross basis. These requirements increase the likelihood that each customer account is fully margined at the time of a FCM clearing member’s default and therefore facilitate the rapid and successful porting of customer positions to one or more solvent FCM clearing members.
10. If the Exemptive Relief Sought is granted, the Filer will offer to local customers as defined in NI 94-102:
 - (a) portfolio-margining of Interest Rate Futures and IRS positions and related collateral, as set out below in section 11, as conducted in accordance with CME Rule 8G831, and
 - (b) portfolio-margining of Base Guaranty Fund Products positions and related collateral, as set out below in section 12, conducted in accordance with CME Rule 831.
11. If the Exemptive Relief Sought is granted, the following Interest Rate Futures will be eligible for commingling with IRS in Cleared Swaps Customer Accounts for the purpose of portfolio margining:
 - (a) *Eurodollar Futures*: The specifications for these contracts are located in Chapter 452 (Three-Month Eurodollar Futures) of the CME Rulebook;
 - (b) *Treasury Futures*:
 - (i) *U.S. Treasury Bonds*: The specifications for these contracts are located in Chapters 18 (U.S. Treasury Bond Futures) and 40 (Long-term U.S. Treasury Bond Futures) of the CBOT Rulebook;

- (ii) *2, 5 and 10-Year Treasury Notes*: The specifications for these contracts are located in Chapters 21 (Short-Term U.S. Treasury Note Futures (2-Year)), 20 (Medium-Term U.S. Treasury Note Futures (5-Year)), 26 (10-Year U.S. Treasury Note Futures) and 19 (Long-Term U.S. Treasury-Note Futures (6½ to 10-Year), respectively, of the CBOT Rulebook;
 - (iii) *30-Day Federal Funds Futures*: The specifications for these contracts are located in Chapter 22 (30-Day Federal Funds Futures) of the CBOT Rulebook;
 - (iv) *2, 5, 10 and 30-Year Interest Rate Futures*: The specifications for these contracts are located in Chapters 51 (2-Year US Dollar Interest Rate Swap Futures), 52 (5-Year US Dollar Interest Rate Swap Futures), 53 (10-Year US Dollar Interest Rate Swap Futures), and 54 (30-Year US Dollar Interest Rate Swap Futures), respectively, of the CBOT Rulebook;
- (c) any other instruments that may in the future be eligible for commingling with Interest Rate Futures and IRS in Cleared Swaps Customer Accounts for which the Filer's clearing house division has determined that commingled positions in related products suitably qualify for margin offsets in accordance with CFTC Regulation 39.13(g)(4) and for which the CFTC permits commingling.
12. If the Exemptive Relief Sought is granted, the following Base Guaranty Fund Products will be eligible for commingling in Cleared Swaps Customer Accounts for the purpose of portfolio margining:
- (a) futures, options on futures and swaps for which the Filer's clearing house division has determined that commingled positions in related products suitably qualify for margin offsets in accordance with CFTC Regulation 39.13(g)(4) and for which the CFTC has permitted commingling;
 - (b) any other instruments that may in the future be eligible for commingling with Base Guaranty Fund Products for which the Filer's clearing house division determines that commingled positions in such products suitably qualify for margin offsets in accordance with CFTC Regulation 39.13(g)(4) and for which the CFTC permits commingling.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted, provided that, in respect of any other instruments that may be eligible for portfolio margining in accordance with CME Rule 8G831 or CME Rule 831, as described in sections 11(c) and 12(b) above, as applicable, after the date of this Decision, the Filer will provide each of the Decision Makers with copies of any submission to the CFTC, any correspondence between

the Filer and the CFTC, and any notice of non-objection from the CFTC with respect to these other instruments.

“Kevin Fine”
Director, Derivatives Branch
Ontario Securities Commission