



## Special Executive Report

---

S-7353

May 8, 2015

### **Amendments to Rule 110 (“Claims Against Membership, Application of Proceeds”)**

Pending all relevant regulatory review periods, effective May 22, 2015, CME, CBOT, NYMEX and COMEX (collectively, the “Exchanges”) will amend Rule 110 (“Claims Against Membership, Application of Proceeds”) to adopt 1) a definition of “Transactions on the Exchange” and 2) various other minor amendments to increase the clarity of the Rule.

In order to more clearly reflect the longstanding application of the Rule to a member’s wholly-owned entities that benefit from the membership for preferential fee purposes, the Rule is being amended to adopt a definition of “Transactions on the Exchange.” The definition includes transactions receiving preferential clearing fees as a result of the membership, regardless of the entity entitled to receipt of such preferential fees. Further, the amendment to Rule 110(e) makes clear that any public customers of a member’s wholly-owned entities receiving preferential fees may file claims against the sale of the membership to satisfy certain claims arising out of Transactions on the Exchange for which that entity is responsible for the execution of customer orders.

Additionally, the Exchanges are adopting several other revisions to clarify and harmonize the rules across the Exchanges, most notably:

- codifying the current practice of utilizing the proceeds of the sale of a membership to pay outstanding tax liens at the request of the selling member; and
- replacing language throughout the rule vesting decision-making authority in the “Market Regulation Department and the [Membership] Department” to instead vest that authority in “authorized Exchange staff.”

The amendments to each Exchange’s Rule 110 appear below, with additions underscored and deletions overstruck.

#### CME

#### **110. CLAIMS AGAINST MEMBERSHIP, APPLICATION OF PROCEEDS**

For the purposes of this rule "sale" shall include a sale made pursuant to Rule 104 or a transfer made in accordance with the provisions of Rule 106; "seller" shall include owners of a membership and firms that have membership privileges pursuant to Rules 106. F., G., H., I., J., N., R. or S.; and “claim” shall be limited to claims involving incidents that occurred prior to the sale of the membership and which arose in connection with ~~†~~Transactions on the Exchange or membership in the Exchange. For the purposes of this Rule, “Transactions on the Exchange” shall include, but are not limited to, transactions receiving preferential clearing fees as a result of the membership, regardless of the party entitled to receipt of such preferential fees. Claims resulting from conduct subsequent to the sale of a membership may not be asserted against that membership or its proceeds. All claims against the ~~seller’s~~ membership or ~~its~~

## Special Executive Report S-7353

May 8, 2015

Page 2 of 5

proceeds resulting from the sale of the membership shall be submitted in writing to the Department within 20 days of the posting of notice of the sale of said membership. At the conclusion of the 20-day claim filing period, ~~the authorized Exchange staff~~Market Regulation Department and the Department shall conduct an investigation of all claims properly filed against the ~~seller's~~ membership sale or its proceeds. This investigation shall be completed within 20 days unless the investigation cannot be resolved within that period.

The total proceeds of the sale, or in the case of a transfer, the value at the mid-point of the bid-offer spread as of the date of the transfer, of the membership shall be applied to the following purposes and in the following order of priority:

- a. Payment of all 1) debts owed to the Clearing House, if the membership transferred was assigned to the Clearing House pursuant to Rule 902; and 2) dues, fines, contributions, charges and other indebtedness owed due to the Exchange, the CME Gratuity Fund or GFX Corporation;
- b. Payment of any indebtedness to the clearing member who last qualified the selling member prior to the sale arising out of: (i) a pledge of such membership as collateral security on such indebtedness, or (ii) a deficit which ~~authorized the~~ Exchange staff determines to have arisen directly out of Transactions on the Exchange or transactions with GFX Corporation;
- c. Payment of amounts due to other clearing members on claims filed which ~~authorized the~~ Exchange staff determines to have arisen directly out of Transactions on the Exchange;
- d. Payment of amounts due to members and member firms on claims filed which ~~authorized the~~ Exchange staff determines to have arisen directly out of Transactions on the Exchange;
- e. Payment of amounts due to public customers of the seller or public customers of any party receiving preferential clearing fees as a result of the membership based on claims filed by such customers or based on reports of the Market Regulation Department, which claims are determined by ~~authorized the~~ Exchange staff to be based upon misappropriation of customer funds, improperly executed transactions, unpaid credit balances, or other similar matters, directly related to Transactions on the Exchange.

No other claims against the proceeds of the sale of a membership shall be recognized and administered by the Exchange except where the seller gives the Exchange permission to use the proceeds to pay an outstanding tax lien, but the creditors of the seller of a membership not falling in the foregoing categories may pursue other legal means of securing payment of their obligations.

~~Authorized The~~ Exchange staff shall make a final determination of all claims filed in time or reported by the Market Regulation Department and the Department against the proceeds of the sale of a membership.

Except as provided in Rule 913 or where Exchange staff is aware of an outstanding tax lien, ~~the~~ Exchange staff shall make a distribution of such proceeds within 40 days after receiving notification and confirmation of the sale of the membership, unless claims to the proceeds are not resolved within that period. If, however, at such time an Exchange disciplinary proceeding is pending against the seller or any party receiving preferential clearing fees as a result of the membership, or, based upon a pending investigation, is highly probable, or if a legal proceeding, in respect to which the indemnification provisions of Rule 439 would operate, is pending, has been announced or is highly probable, then the Exchange staff shall retain so much of the proceeds as determined by staff in order to satisfy such obligations until such time as the pending matter is concluded.

Distribution of proceeds shall be made by the payment of claims in the categories listed in this rule to the extent the proceeds from the sale are sufficient to meet those obligations. If the proceeds of the sale of a membership are insufficient to pay all amounts determined to be due under the categories listed in this rule, the proceeds shall be applied to pay the full amounts determined to be due under subparagraphs a, b, c, d and e in the priority named. If the proceeds are insufficient to pay the amounts determined to be due under any priority, the claims due under that priority shall be paid pro rata, and the remaining priorities shall be left unpaid. In determining the amount of any claim, the Exchange staff shall first deduct the fair cash value of any collateral held by that claimant. Creditors of the seller of a membership whose obligations are not fully satisfied pursuant to this paragraph may pursue other legal means of securing payment of their obligations.

The surplus, if any, shall be paid to the person whose membership was sold or his legal representative or a 106.A.-B. grantee, as applicable, upon the execution of a satisfactory release. The Exchange staff's determination and allowance of claims hereunder shall be final. The death, incompetence, expulsion, suspension, insolvency or bankruptcy of a member shall not affect the rights of claimants under this rule.

CBOT

### 110. CLAIMS AGAINST MEMBERSHIP, APPLICATION OF PROCEEDS

For the purposes of this rule: "sale" shall include a sale made pursuant to Rule 104 or a transfer made in accordance with the provisions of Rule 106; "seller" shall include owners of a membership and firms that have membership

## Special Executive Report S-7353

May 8, 2015

Page 3 of 5

privileges pursuant to Rules 106. F., G., H., I., J., R. or S.; and "claim" shall be limited to claims involving incidents that occurred prior to the sale of the membership and which arose in connection with ~~tr~~ transactions on the Exchange or membership in the Exchange. For purposes of this Rule, "Transactions on the Exchange" shall include, but are not limited to, transactions receiving preferential clearing fees as a result of the membership, regardless of the party entitled to receipt of such preferential fees. Claims resulting from conduct subsequent to the sale of a membership may not be asserted against that membership or its proceeds. All claims against the ~~seller's~~ membership or ~~its~~ proceeds resulting from the sale of the membership shall be submitted in writing to the Department within 20 days of the posting of notice of the sale of said membership. At the conclusion of the 20-day claim filing period, ~~the Market Regulation Department and the Department~~ authorized Exchange staff shall conduct an investigation of all claims properly filed against the ~~seller's~~ membership sale or its proceeds. This investigation shall be completed within 20 days unless the investigation cannot be resolved within that period.

The total proceeds of the sale, or in the case of a transfer, the value at the mid-point of the bid-offer spread as of the date of the transfer, of the membership shall be applied to the following purposes and in the following order of priority:

- a. Payment of all 1) debts owed to the Clearing House, if the membership transferred was assigned to the Clearing House pursuant to Rule 902; and 2). ~~With respect to any other membership, the Exchange shall have the first priority for the payment of all~~ dues, fines, contributions, charges and other indebtedness ~~owed due~~ to the Exchange, ~~and the Clearing House shall have the second priority with respect to such debts or GFX Corporation;~~
- b. Payment of any indebtedness to the clearing member who last qualified the selling member prior to the sale arising out of (i) a pledge of such membership as collateral security on such indebtedness, or (ii) a deficit which ~~authorized~~ the Exchange staff determines to have arisen directly out of ~~tr~~ transactions on the Exchange;
- c. Payment of amounts due to other clearing members on claims filed which ~~authorized~~ the Exchange staff determines to have arisen directly out of ~~tr~~ transactions on the Exchange;
- d. Payment of amounts due to members and member firms on claims filed which ~~authorized~~ the Exchange staff determines to have arisen directly out of ~~tr~~ transactions on the Exchange;
- e. Payment of amounts due to public customers of the seller or public customers of any party receiving preferential clearing fees as a result of the membership based on claims filed by such customers or based on reports of the Market Regulation Department, which claims are determined by ~~authorized~~ the Exchange staff to be based upon misappropriation of customer funds, improperly executed transactions, unpaid credit balances, or other similar matters, directly related to ~~tr~~ transactions on the Exchange.

No other claims against the proceeds of the sale of a membership shall be recognized and administered by the Exchange except where the seller gives the Exchange permission to use the proceeds to pay an outstanding tax lien, but the creditors of the seller of a membership not falling in the foregoing categories may pursue other legal means of securing payment of their obligations.

~~Authorized~~ The Exchange staff shall make a final determination of all claims filed in time or reported by the Market Regulation Department and the Department against the proceeds of the sale of a membership.

Except as provided in Rule 913 or where Exchange staff is aware of an outstanding tax lien, ~~the~~ Exchange staff shall make a distribution of such proceeds within 40 days after receiving notification and confirmation of the sale of the membership, unless claims to the proceeds are not resolved within that period. If, however, at such time an Exchange disciplinary proceeding is pending against the seller or any party receiving preferential clearing fees as a result of the membership, or, based upon a pending investigation, is highly probable, or if a legal proceeding, in respect to which the indemnification provisions of Rule 439 would operate, is pending, has been announced or is highly probable, then the Exchange staff shall retain so much of the proceeds as determined by staff in order to satisfy such obligations until such time as the pending matter is concluded.

Distribution of proceeds shall be made by the payment of claims in the categories listed in this rule to the extent the proceeds from the sale are sufficient to meet those obligations. If the proceeds of the sale of a membership are insufficient to pay all amounts determined to be due under the categories listed in this rule, the proceeds shall be applied to pay the full amounts determined to be due under subparagraphs a, b, c, d and e in the priority named. If the proceeds are insufficient to pay the amounts determined to be due under any priority, the claims due under that priority shall be paid pro rata, and the remaining priorities shall be left unpaid. In determining the amount of any claim, the Exchange staff shall first deduct the fair cash value of any collateral held by that claimant. Creditors of the seller of a membership whose obligations are not fully satisfied pursuant to this paragraph may pursue other legal means of securing payment of their obligations.

The surplus, if any, shall be paid to the person whose membership was sold or his legal representative or a 106.A.-B. grantee, as applicable, upon the execution of a satisfactory release. The Exchange staff's determination and allowance of claims hereunder shall be final. The death, incompetence, expulsion, suspension, insolvency or bankruptcy of a member shall not affect the rights of claimants under this rule.

NYMEX/COMEX

110. CLAIMS AGAINST MEMBERSHIP, APPLICATION OF PROCEEDS

For the purposes of this rule "sale" shall include a sale made pursuant to Rule 104 or a transfer made in accordance with the provisions of Rule 106; "seller" shall include owners of a membership and firms that have membership privileges pursuant to Rules 106. F., G. or J.; and "claim" shall be limited to claims involving incidents that occurred prior to the sale of the membership and which arose in connection with ~~the~~ transactions on the Exchange or membership in the Exchange. For purposes of this Rule, "Transactions on the Exchange" shall include, but are not limited to, transactions receiving preferential clearing fees as a result of the membership, regardless of the party entitled to receipt of such preferential fees. Claims resulting from conduct subsequent to the sale of a membership may not be asserted against that membership or its proceeds. All claims against the ~~seller's~~ membership or its proceeds resulting from the sale of the membership shall be submitted in writing to the Department within 20 days of the posting of notice of the sale of said membership. At the conclusion of the 20-day claim filing period, authorized Exchange staff~~the Market Regulation Department and the Department~~ shall conduct an investigation of all claims properly filed against the seller's membership or its proceeds. This investigation shall be completed within 20 days unless the investigation cannot be resolved within that period.

The total proceeds of the sale, or in the case of a transfer, the value at the mid-point of the bid-offer spread as of the date of the transfer, of the membership shall be applied to the following purposes and in the following order of priority:

- a. Payment of all 1) debts owed to the Clearing House, if the membership transferred was assigned to the Clearing House pursuant to Rule 902; and 2) dues, fines, contributions, charges and other indebtedness owed~~due~~ to the Exchange, ~~the CME Gratuity Fund~~ or GFX Corporation;
- b. Payment of any indebtedness to the clearing member who last qualified the selling member prior to the sale arising out of: (i) a pledge of such membership as collateral security on such indebtedness, or (ii) a deficit which ~~authorized~~the Exchange staff determines to have arisen directly out of ~~the~~ transactions on the Exchange;
- c. Payment of amounts due to other clearing members on claims filed which ~~authorized~~the Exchange staff determines to have arisen directly out of ~~the~~ transactions on the Exchange;
- d. Payment of amounts due to members and member firms on claims filed which ~~authorized~~the Exchange staff determines to have arisen directly out of ~~the~~ transactions on the Exchange; and
- e. Payment of amounts due to public customers of the seller or public customers of any party receiving preferential clearing fees as a result of the membership based on claims filed by such customers or based on reports of the Market Regulation Department, which claims are determined by ~~authorized~~the Exchange staff to be based upon misappropriation of customer funds, improperly executed transactions, unpaid credit balances, or other similar matters, directly related to ~~the~~ transactions on the Exchange.

No other claims against the proceeds of the sale of a membership shall be recognized and administered by the Exchange except where the seller gives the Exchange permission to use the proceeds to pay an outstanding tax lien, but the creditors of the seller of a membership not falling in the foregoing categories may pursue other legal means of securing payment of their obligations.

~~Authorized~~The Exchange staff shall make a final determination of all claims filed in time or reported by the Market Regulation Department and the Department against the proceeds of the sale of a membership.

Except as provided in Rule 913 or where Exchange staff is aware of an outstanding tax lien, ~~the~~ Exchange staff shall make a distribution of such proceeds within 40 days after receiving notification and confirmation of the sale of the membership, unless claims to the proceeds are not resolved within that period. If, however, at such time an Exchange disciplinary proceeding is pending against the seller or any party receiving preferential clearing fees as a result of the membership, or, based upon a pending investigation, is highly probable, or if a legal proceeding, in respect to which the indemnification provisions of Rule 439 would operate, is pending, has been announced or is highly probable, then the Exchange staff shall retain so much of the proceeds as determined by staff in order to satisfy such obligations until such time as the pending matter is concluded. Distribution of proceeds shall be made by the payment of claims in the categories listed in this rule to the extent the proceeds from the sale are sufficient to meet those obligations. If the proceeds of the sale of a membership are insufficient to pay all amounts determined to be due under the categories listed in this rule, the proceeds shall be applied to pay the full amounts determined to be due under subparagraphs a, b, c, d and e in the priority named. If the proceeds are insufficient to pay the amounts determined to be due under any priority, the claims due under that priority shall be paid pro rata, and the remaining priorities shall be left unpaid. In determining the amount of any claim, the Exchange staff shall first deduct the fair cash value of any collateral held by that claimant. Creditors of the seller of a membership whose obligations are not fully satisfied pursuant to this paragraph may pursue other legal means of securing payment of their obligations.

The surplus, if any, shall be paid to the person whose membership was sold or his legal representative or a 106.A.-B. grantee, as applicable, upon the execution of a satisfactory release. The Exchange staff's determination and

**Special Executive Report S-7353**

**May 8, 2015**

**Page 5 of 5**

allowance of claims hereunder shall be final. The death, incompetence, expulsion, suspension, insolvency or bankruptcy of a member shall not affect the rights of claimants under this rule.

Questions concerning the amendments may be directed to:

Robert Krewer, Director, Memberships, at 312.435.3473

Robert Sniegowski, Executive Director, Market Regulation, at 312.341.5991

For media inquiries concerning this Special Executive Report, please contact CME Group Corporate Communications at 312.930.3434 or [news@cmegroup.com](mailto:news@cmegroup.com).