

## Notice to Customers: Exchange for Related Positions

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Certain futures exchanges permit eligible customers to enter into privately-negotiated off-exchange futures or option on futures transactions (collectively, “futures”) known as exchange for related positions (“EFRP”). An EFRP involves the simultaneous execution of a futures transaction and an equivalent related position. A “related position” is defined to mean the cash commodity underlying the exchange contract or a by-product, a related product or an over-the-counter (“OTC”) derivative instrument of such commodity that has a reasonable degree of price correlation to the commodity underlying the exchange contract.

Types of EFRPs include:

- Exchange of Futures for Physical (“EFP”) or Against Actual (“AA”) – the simultaneous execution of a futures contract and a corresponding physical transaction or a forward contract on a physical transaction.
- Exchange of Futures for Risk (“EFR”) or Exchange of Futures for Swap (“EFS”) – the simultaneous execution of a futures contract and a corresponding OTC swap or other OTC derivative transaction.
- Exchange of Option for Option (“EOO”) – the simultaneous execution of an option contract and a corresponding transaction in an OTC option or other OTC instrument with similar characteristics.

EFRP transactions are subject to Applicable Law, as defined in the agreement between a carrying futures commission merchant (“FCM”) and its customers. Customers that engage in EFRP transactions are responsible for reviewing, understanding and complying with the relevant provisions governing EFRP transactions including, but not limited to, Rule 538 of the CME Group (CME, CBOT and NYMEX) and Rule 4.06 of ICE Futures US, and the frequently asked questions and other guidance that each exchange has issued with respect thereto.\*

Customers are subject to the jurisdiction of the exchange through which the EFRP transaction is entered into and, therefore, may be required to produce records and otherwise cooperate in any inquiry that the exchange may undertake with respect to the EFRP transaction. Moreover, customers may be sanctioned by the exchange if an EFRP transaction does not comply with the requirements of applicable exchange rules and guidance. For this reason, customers are encouraged to review these requirements with any employees that may engage in EFRP transactions on their behalf.

Certain common requirements of the rules and guidance issued by CME Group and ICE Futures US are summarized below. However, this summary is not a substitute for the customer’s obligation to review and understand such rules and related guidance in their entirety.

- The futures contract and the related position must be effected for the account of the same beneficial owner. If the customer is the seller of (or the holder of the short market exposure associated with) the related position, the customer must be the buyer of the futures contract(s) being exchanged in the EFRP; conversely, if the customer is the buyer of (or the holder of the long market exposure associated with) the related position, the customer must be the seller of the futures contract(s) being exchanged in the EFRP.
- The opposing accounts to an EFRP transaction must be: (a) independently controlled accounts with different beneficial ownership; (b) independently controlled accounts of separate legal entities with common beneficial ownership; or (c) independently controlled accounts of the same legal entity, provided the account controllers operate in separate business units. For EFRP transactions between accounts with common beneficial ownership, the parties to the trade must be able to demonstrate the independent control of the accounts and that the transaction had economic substance for each party to the trade.
- Generally, there may be only two parties to an EFRP transaction. However, a third party, acting as principal, may facilitate the related position component of an EFRP on behalf of a customer, provided the third party is able to demonstrate that the related position was passed through to the customer that received the exchange contract as part of the EFRP.

\*The CME Group’s most recent guidance with respect to EFRP transactions may be found at <http://www.cmegroup.com/rulebook/rulebook-harmonization.html>; ICE Futures US’ most recent guidance with respect to EFRPs may be found at <https://www.theice.com/futures-us/market-resources>. This guidance may be revised from time-to-time. Customers should confirm that they are reviewing the most current guidance.

- Each EFRP requires a bona fide transfer of ownership of the cash commodity between the parties or a bona fide, legally binding contract between the parties consistent with relevant market conventions for the particular related position transaction.
- Each side of an EFRP transaction must be independent. For example, confirmation of the related position may not be contingent on the acceptance of the futures transaction for clearing.
- Contingent or transitory EFRP transactions are prohibited. EFRP transactions may not be contingent upon the execution of another EFRP or related transaction that results in the offset of the related position without the incurrance of market risk that is material in the context of the related position transactions.
- Foreign currency EFPs, with immediate offset of the cash component of the transaction, are permitted, provided the parties to the transaction have acknowledged that, in the event the futures component of the transaction fails to clear, their responsibility for any resultant profit or loss associated with an offset of the cash component of the transaction.
- A party providing inventory financing for a storable agricultural, energy or metals commodity may, through the execution of an EFP, purchase the commodity and sell the equivalent quantity of futures contracts to a counterparty, and grant to the counterparty the non-transferable right, but not the obligation, to execute a second EFP during a specified time period in the future which will have the effect of reversing the original EFP.
- An EFRP may incorporate multiple exchange components with different market bias, provided the related components incur material market risk. An EFRP may incorporate multiple related position components, provided the net exposure of the related position components is approximately equivalent to the quantity of futures exchanged or, in the case of an EOO, the net delta-adjusted quantity of the OTC option components is approximately equivalent to the delta-adjusted quantity of the exchange-listed option.
- EFRP transactions may be executed at any commercially reasonable price agreed by the parties, provided the price of the exchange component of the EFRP transaction conforms to the minimum tick increment of the futures contract under exchange rules. Parties may be asked to demonstrate that EFRPs executed at prices away from the prevailing market price were executed at such prices for legitimate commercial purposes.
- The customer must maintain all records relevant to the futures transaction and the related cash, swap or derivative transaction in accordance with applicable exchange rules. Upon request, the customer must provide its FCM with documentation sufficient to verify its purchase or sale of the related position.
- EFR and EOO participants must comply with applicable Commodity Futures Trading Commission requirements governing eligibility to transact the related position component of an EFR or EOO. Generally, EFR and EOO participants must be "eligible contract participants," as defined in section 1a(18) of the Commodity Exchange Act.
- A swap that is traded on or subject to the rules of an exchange or a swap execution facility ("SEF") is ineligible to be the related position component of an EFR or EOO transaction. OTC swaps that are bilaterally negotiated and submitted for clearing-only to a DCO qualify as a related position, provided such swaps have a reasonable degree of correlation to the underlying exchange product. Such swaps should be governed by the terms and conditions of an ISDA agreement negotiated between the parties.

If you have any questions regarding this subject, please contact your account executive.