

February 21, 2014

**VIA E-MAIL**

Ms. Melissa Jurgens  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

**RE: CFTC Regulation 40.6(a) Certification: Revisions to Rules 770, 853 and 854.  
CME/CBOT/NYMEX/COMEX Submission No. 14-028**

Dear Ms. Jurgens:

Chicago Mercantile Exchange Inc. ("CME"), The Board of Trade of the City of Chicago, Inc. ("CBOT"), New York Mercantile Exchange, Inc. ("NYMEX"), and Commodity Exchange, Inc. ("COMEX") (collectively, the "Exchanges") are notifying the Commodity Futures Trading Commission ("CFTC" or "Commission") that they are self-certifying revisions to each Exchange's Rules 770 ("Delivery Obligation Transfer Procedures"), 853 ("Transfers of Trades and Customer Accounts"), and 854 ("Concurrent Long and Short Positions") which will become effective on Monday, March 10, 2014.

The revisions are the result of a detailed review of the above-referenced rules by the Market Regulation Department and CME Clearing and are primarily designed to increase the clarity of the rules and to add certain addition provisions as set forth below.

Rule 770: The title of the Rule is being modified to clarify that the rule pertains to the transfer of a delivery obligation and the text is being modified to clarify the manner in which CME Clearing handles such requests. We have not modified the requirement that the Rule may be invoked solely as a result of an error, omission or outtrade discovered on or after the last day of trading. Additionally, in the second paragraph, we have added language to codify a longstanding practice that permits for a cash adjustment between the parties in circumstances where one party is able to locate a second party willing to accept the delivery obligation.

Rule 853: The significant revisions include:

- Clarifying that the Rule does not apply to transfers executed pursuant to the provisions of Rule 770;
- Permitting the President or Chief Compliance Officer of the Clearing House to permit a transfer to correct an error outside of the permissible three-business day window in circumstances where he or she determines that a transfer is the most appropriate means to remedy the error provided that the transfer will not result in an impermissible offset of a concurrent long and short position pursuant to Rule 854. The new provision requires that any such request for approval be documented by the clearing member(s) involved and provided to CME Clearing, which must include a description of the circumstances surrounding the error;
- Adding a provision to allow the Chief Regulatory Officer to approve a transfer in a circumstance where the transfer is to facilitate a fund re-structuring or the consolidation of a partnership, fund or pool provided the transfer complies with three requirements as detailed in the Rule;

- Clarifying that where the Chief Regulatory Officer permits a transfer where he determines the situation so requires and it is in the best interests of the Exchange, the permission does not relieve a clearing member of its responsibility under the rules or for demonstrated claims of realized losses incurred by parties as a result of the transfer. Additionally, we have added a provision that allows for sanctions in circumstances where the permitted transfer violates the rules of the Exchange;
- Permitting the President of the Clearing House to permit a transfer of cleared-only products under a variety of circumstances as set-forth in Sections 2, 3 and 4 of Rule 853;
- Adding a provision that with respect to transfers of trades that have been average priced, the transfer may be done at the average price or the original execution price. This codifies longstanding practice in this regard;
- Adding a provision clarifying that the authority granted to the President of the Clearing House, the Chief Compliance Officer of the Clearing House, and their respective designees, does not extend to security-based swap products cleared by the Clearing House.

#### Rule 854:

With respect to parties carrying concurrent long and short positions in all physically-delivered futures contracts, we have modified the existing restriction prohibiting netting down or transferring during the delivery or spot month. The revised prohibition will apply solely to physically-delivered futures contracts during the spot month when the futures contracts are subject to spot month position limits. The purpose of prohibiting offsets of concurrent long and short positions in these futures contracts via netting down or transfer is to preserve open interest integrity at a time during the contract lifecycle where transparent and accurate open interest is most critical and used by the marketplace to assess open interest as it relates to physical deliverable supply. The current rule prohibits net downs in contracts that are not subject to spot month position limits – primarily certain CME FX contracts – and the revisions will eliminate the prohibition to netting down in these products. Given the abundant deliverable supply in these products, changes to open interest not resulting from actual trading activity will not generate significant concern in the marketplace.

Each Exchange is also modifying the provision in Rule 854 that allows for a net down of concurrent long and short positions in physically-delivered futures contracts to correct an error. The rule currently permits such a net down of up to 1% of the reported open interest. That percentage is being increased to 2% as the Market Regulation Department and CME Clearing have collectively determined that a 2% reduction in open interest without corresponding trading activity will not create an adverse impact on the marketplace. Additionally, we have added a provision to provide the Chief Regulatory Officer to allow for a transfer for offset of concurrent long and short positions in physically-delivered futures contracts during the spot month that are greater than 2% of the open interest in circumstances where the transfer will not adversely affect other market participants.

Lastly, we have added a provision that prohibits a concurrent long and short position that has been netted down from being reestablished at the Exchange as open positions and clarified that violations of the Rule in general are subject to sanctions in accordance with Rule 512 or through referral to the Probable Cause Committee for the consideration of charges.

The revisions to Rules 770, 853 and 854 appear in Exhibit A, with additions underscored and deletions ~~overstruck~~. The marketplace will be informed of the revisions via the issuance of a Special Executive Report prior to the revisions becoming effective.

The Market Regulation Department and the Legal Department collectively reviewed the designated contract market (“DCM”) core principles and the designated derivatives clearing organization (“DCO”) core principles (“Core Principles”) as set forth in the Commodity Exchange Act (“Act”).

During the review, we have identified that the revisions to Rules 770, 853 and 854 may have some bearing on the following DCM and DCO Core Principles:

## **DCM Core Principles**

Prevention of Market Disruption: Rule 770 is expressly designed to provide a mechanism for a party with a delivery obligation resulting from an error, omission or outtrade discovered on or after the last day of trading to transfer the obligation to another party willing to accept the transfer. The rule is a protection against a disruption in the delivery process for physically-delivered contracts.

Availability of General Information: As required by this Core Principle, market participants will be apprised of the revisions to Rules 770, 853 and 854 via the issuance of a Special Executive Report in advance of the revisions becoming effective.

Execution of Transactions: Core Principle 9 expressly permits a designated contract market (“DCM”) to authorize for bona fide business purposes transfer trades, and, as a result, is implicated by the revisions to Rule 853. The revisions to Rule 853 do not exceed the authority granted by the Commission to DCMs, and are being adopted to increase the clarity of the rules and to allow, in certain circumstances, for the President of Chief Compliance Officer of CME Clearing to approve transfers pursuant to the Rule.

## **DCO Core Principle**

Public Information: As required by this Core Principle, market participants will be apprised of the revisions via the aforementioned issuance of a Special Executive Report.

The Exchanges certify that the revisions to Rules 770, 853 and 854 comply with the Commodity Exchange Act (“Act”) and regulations thereunder. There were no opposing views to this proposal.

The Exchanges certify that this submission has been concurrently posted on the CME Group website at <http://www.cmegroup.com/market-regulation/rule-filings.html>.

If you have any questions regarding this submission, please contact Robert Sniegowski, Market Regulation Department, at 312-341-5991 or via e-mail at [Robert.Sniegowski@cmegroup.com](mailto:Robert.Sniegowski@cmegroup.com). Alternatively, you may contact me at 212-299-2200 or via e-mail at [Christopher.Bowen@cmegroup.com](mailto:Christopher.Bowen@cmegroup.com). Please reference CME/CBOT/NYMEX/COMEX Submission No. 14-028 in any related correspondence.

Sincerely,

/s/ Christopher Bowen  
Managing Director and Chief Regulatory Counsel

Attachment: Exhibit A – Revisions to Rules 770, 853, and 854

## **EXHIBIT A**

### **CME**

#### **770.- DELIVERY OFFSET OBLIGATION TRANSFER PROCEDURES**

A clearing member who, as the result of an error, omission or outtrade discovered on or after the last day of trading, carries a position in a contract which has expired and for which the position holder is unable to fulfill the obligation to make or take physical delivery in that contract may, with the consent of the account owner(s) or controller(s), ~~request to offset transfer~~ such position ~~against an opposite position held by~~ an account with different beneficial ownership ~~through a trade transfer~~; provided, however, that the parties to an error or outtrade must exercise the utmost diligence to resolve the error or outtrade.

~~Delivery offset requests~~ Notice of delivery obligation transfers must be made to the Clearing House. ~~Trade~~ Such transfers ~~pursuant to this Rule~~ require that the Clearing House receive acceptance from an account(s) with different beneficial ownership and confirmation of the agreed upon transfer by the ~~party~~ initiating the request party. Such confirmation must be submitted in writing on the form specified by the Clearing House. All positions transferred pursuant to this Rule shall take place at the final settlement price of the contract; ~~however this requirement does not prohibit cash adjustments between the parties to the transfer.~~

Clearing member firms representing accounts that have transferred a trade pursuant to this Rule must correctly report the change in open interest to the Clearing House pursuant to the schedule established by the Exchange.

In the event a delivery ~~offset request obligation transfer notification~~ does not result in a trade transfer, delivery shall take place as required under Exchange rules.

Nothing in this Rule relieves a clearing member of its responsibilities with respect to open positions in an expiring contract month in a physically delivered contract as set forth in Rule 716.

#### **853.- TRANSFERS OF TRADES AND CUSTOMER ACCOUNTS**

##### **853.A.- Transfers of Trades**

1. Subject to the limitations of Rule 854, existing trades may be transferred either on the books of a clearing member or from one clearing member to another clearing member provided:
  - i. The transfer ~~merely constitutes a change results in the transfer of a trade(s)~~ from one account to another account ~~provided the underlying with identical~~ beneficial ownership ~~in said accounts remains the same;~~ or
  - ii. An error has been made in the clearing of a trade(s) and the error is ~~discovered and the corrected via~~ transfer ~~is completed~~ within three Business Days after the ~~trade date~~ on which the error occurred; or
  - iii. The transfer trade is made to reconcile an error, omission or outtrade in accordance with the requirements of Rule 770.

Notwithstanding the foregoing, a transfer may be approved by the President or the Chief Compliance Officer of the Clearing House, or their respective designees, in circumstances where it is determined that a transfer trade is the most appropriate means to remedy an error that results from the good faith acts or omissions of any party and the clearing member(s) consent to such transfer, provided that such approval does not result in an impermissible transfer for offset pursuant to the provisions of Rule 854.B. Any request for approval pursuant to this paragraph requires the clearing member(s) to fully document the circumstances of the error and provide that documentation to the Clearing House.

2. Subject to the limitations of Rule 854, ~~Exchange~~ the Chief Regulatory Officer or his designee may, (and, with respect to cleared-only products, the President of the Clearing House or her designee also may) ~~staff may~~, upon request by the clearing member(s), approve a transfer of existing trades either on the books of the same clearing member, or from the books of one clearing member to the books of another clearing member if the transfer is in connection with, or as a result of, a merger, asset purchase, consolidation or similar non-recurring transaction between two or more entities where one or more entities become the successor in interest to one or more other entities.
3. ~~Exchange staff~~ Subject to the limitations of Rule 854, the Chief Regulatory Officer or his designee may, (and, with respect to cleared-only products, the President of the Clearing House or her designee also may), upon request by the clearing member(s), approve a transfer of existing trades either on the books of a clearing member or from one clearing member to another member if the transfer involves a partnership, investment fund or commodity pool and the purpose of the transfer is to facilitate a restructuring or consolidation of such partnership, fund or pool, provided that i) the managing partner or pool operator remains the same; ii) the transfer does not result in the liquidation of open positions; and iii) the pro rata allocation of positions to the new account does not result in more than a de minimis change in the value of the interest of any party.
4. Notwithstanding the foregoing, the Chief Regulatory Officer or his designee may, (and, with respect to cleared-only products, the President of the Clearing House or her designee also may), with the consent of the clearing

member(s) involved, permit the transfer and/or offset of existing trades if, in ~~staff~~his or his designee's opinion, the situation so requires and such transfer is in the best interests of the Exchange, which may include, but is not limited to, the remedying of an error resulting from the good faith acts or omissions by a party as a means of avoiding a market disruption. The foregoing does not relieve a clearing member of its responsibility under the Rules for circumstances leading to such transfer and/or offset, and the clearing member may be responsible for demonstrated claims of realized losses incurred by other parties as a result of such errors or omissions in accordance with the provisions of Chapter 6. Additionally, notwithstanding permission for the transfer being granted by the Chief Regulatory Officer or his designee, parties involved in the transfer remain responsible for any violation of Exchange rules resulting from the transfer and may either be summarily sanctioned in accordance with the provisions of Rule 512 or the matter may be referred to the Probable Cause Committee for the consideration of charges.

45. Provided that the transfer is permitted pursuant to Sections 1, ~~2 or~~ 3, or 4. above, transactions in all physically delivered futures contracts except for FX futures contracts must be recorded and carried on the books of the receiving firm at the original trade dates; all other transactions may be recorded and carried at either the original trade date or the transfer date. Futures transactions may be transferred using either the original trade price or the most recent settlement price; options transactions may be transferred using either the original trade price or a trade price of zero. Trades that have been confirmed at an average price pursuant to the provisions of Rule 553 may alternatively be transferred at the average price.

56. All transfers shall be reported to the Clearing House in a form acceptable to the Exchange for the type of transactions involved. The proper indicator must be included in the transfer such that the transactions, including the transaction(s) to reverse an error, clear as transfers. The clearing members involved shall maintain a full and complete record of all transactions together with all pertinent memoranda.

7. Any authority granted to the President of the Clearing House or the Chief Compliance Officer of the Clearing House, or their respective designees, set forth in Section A. will not extend to security-based swap products cleared by the Clearing House.

#### **853.B. Transfers of Customer Accounts**

4.—Subject to the limitations of Rule 853.A, after receipt of a signed instruction from a Clearing Member (the “Carrying Clearing Member”) to transfer all or a portion of a customer account to another Clearing Member (the “Receiving Clearing Member”), and provided that such instruction contains the customer’s name and account number (and, if the transfer is not of the entire account, a description of which portion is to be transferred), and provided that the Receiving Clearing Member agrees to accept the account, the Exchange shall promptly transfer the account (or the relevant portion thereof), without requiring any close-out or rebooking of positions in connection with the transfer, provided that:

- i1. The transferred positions will satisfy Exchange performance bond requirements at the Receiving Clearing Member; and
- ii2. Any remaining positions in the customer account at the Carrying Clearing Member will satisfy Exchange performance bond requirements.

#### **854. CONCURRENT LONG AND SHORT POSITIONS**

Set forth below are the procedures that must be followed for concurrent long and short positions and hold-open accounts.

- A. Concurrent long and short positions in the same commodity and month may be held by a clearing member at the direction of a customer or on behalf of an omnibus account; however it shall be the duty of the clearing member to ascertain whether such positions are intended for offset or to be held open prior to final transmission of position data to the Clearing House.
- B. Concurrent long and short positions in physically delivered contracts subject to spot month position limits that are held by the same owner during the ~~delivery month and two business days prior to the delivery~~spot month must be offset by transactions executed in the market, by allowable privately negotiated transactions, or fulfilled through the normal delivery process, provided however that trades may be ~~transferred for offset if the trade date of the position being transferred is the same as the transfer date. Such positions may not be~~ offset via netting, transfer, or position adjustment ~~except~~ to correct a bona fide clerical or operational error on the day the error is identified and ~~provided that~~ the quantity of the offset does not represent more than ~~one~~two percent of the reported open interest in the affected futures contract month.

##### Permissible Exceptions

##### Notwithstanding the foregoing:

1. Trades may be transferred for offset if the trade date of the position being transferred is the same as the transfer date;
2. An account that becomes concurrently long and short as a result of a futures position that results from an option assignment will be allowed one business day to net such positions; or,

~~4.3. Where the Chief Regulatory Officer or his designee determines, in their respective sole discretion, that permitting an offset via netting, transfer or position adjustment in excess of two percent of the reported open interest will not adversely impact either the affected market or any persons holding open positions in the affected market.~~

- C. Clearing members which, pursuant to this rule, carry concurrent long and short positions, must report to the Exchange both sides as open positions. When either side or both sides are reduced in accordance with Section B. of this rule, the open positions as reported to the Exchange must be reduced accordingly. Once such positions have been reduced, those positions may not subsequently be re-established as concurrent long and short positions at the Exchange.
- D. The Exchange takes no position regarding the internal bookkeeping procedures of its clearing members which, for the convenience of a customer, may "hold open" a position only on their books. However, the clearing member must accurately report to the Exchange and the Clearing House, as appropriate, large trader positions, long positions eligible for delivery and open interest.

## CBOT

### 770.- DELIVERY OFFSET OBLIGATION TRANSFER PROCEDURES

A clearing member who, as the result of an error, omission or outrade discovered on or after the last day of trading, carries a position in a contract which has expired and for which the position holder is unable to fulfill the obligation to make or take physical delivery in that contract may, with the consent of the account owner(s) or controller(s), ~~request to offset/transfer~~ such position ~~against an opposite position held by to~~ an account with different beneficial ownership ~~through a trade transfer~~; provided, however, that the parties to an error or outrade must exercise the utmost diligence to resolve the error or outrade.

~~Delivery offset requests~~ Notice of delivery obligation transfers must be made to the Clearing House. ~~Trade~~ Such transfers ~~pursuant to this Rule~~ require that the Clearing House receive acceptance from an account(s) with different beneficial ownership and confirmation of the agreed upon transfer by the ~~party~~ initiating the request party. Such confirmation must be submitted in writing on the form specified by the Clearing House. All positions transferred pursuant to this Rule shall take place at the final settlement price of the contract ~~;~~ however this requirement does not prohibit cash adjustments between the parties to the transfer.

Clearing member firms representing accounts that have transferred a trade pursuant to this Rule must correctly report the change in open interest to the Clearing House pursuant to the schedule established by the Exchange.

In the event a delivery ~~offset request~~ obligation transfer notification does not result in a trade transfer, delivery shall take place as required under Exchange rules.

Nothing in this Rule relieves a clearing member of its responsibilities with respect to open positions in an expiring contract month in a physically delivered contract as set forth in Rule 716.

### 853.- TRANSFERS OF TRADES AND CUSTOMER ACCOUNTS

#### 853.A.- Transfers of Trades

- Subject to the limitations of Rule 854, existing trades may be transferred either on the books of a clearing member or from one clearing member to another clearing member provided:
  - The transfer ~~merely constitutes a change results in the transfer of a trade(s)~~ from one account to another account ~~provided the underlying with identical~~ beneficial ownership ~~in said accounts remains the same;~~ or
  - An error has been made in the clearing of a trade(s) and the error is ~~discovered and the corrected via~~ transfer ~~is completed~~ within three Business Days after the ~~trade date~~ on which the error occurred; or
  - The transfer trade is made to reconcile an error, omission or outrade in accordance with the requirements of Rule 770.

Notwithstanding the foregoing, a transfer may be approved by the President or the Chief Compliance Officer of the Clearing House, or their respective designees, in circumstances where it is determined that a transfer trade is the most appropriate means to remedy an error that results from the good faith acts or omissions of any party and the clearing member(s) consent to such transfer, provided that such approval does not result in an impermissible transfer for offset pursuant to the provisions of Rule 854.B. Any request for approval pursuant to this paragraph requires the clearing member(s) to fully document the circumstances of the error and provide that documentation to the Clearing House.

- Subject to the limitations of Rule 854, ~~Exchange~~ the Chief Regulatory Officer or his designee may, (and, with respect to cleared-only products, the President of the Clearing House or her designee also may) staff may, upon request by the clearing member(s), approve a transfer of existing trades either on the books of the same clearing member, or from the books of one clearing member to the books of another clearing member if the transfer is in

connection with, or as a result of, a merger, asset purchase, consolidation or similar non-recurring transaction between two or more entities where one or more entities become the successor in interest to one or more other entities.

3. Exchange staff Subject to the limitations of Rule 854, the Chief Regulatory Officer or his designee may, (and, with respect to cleared-only products, the President of the Clearing House or her designee also may), upon request by the clearing member(s), approve a transfer of existing trades either on the books of a clearing member or from one clearing member to another member if the transfer involves a partnership, investment fund or commodity pool and the purpose of the transfer is to facilitate a restructuring or consolidation of such partnership, fund or pool, provided that i) the managing partner or pool operator remains the same; ii) the transfer does not result in the liquidation of open positions; and iii) the pro rata allocation of positions to the new account does not result in more than a de minimis change in the value of the interest of any party.
4. Notwithstanding the foregoing, the Chief Regulatory Officer or his designee may, (and, with respect to cleared-only products, the President of the Clearing House or her designee also may), with the consent of the clearing member(s) involved, permit the transfer and/or offset of existing trades if, in ~~staff's~~ his or his designee's opinion, the situation so requires and such transfer is in the best interests of the Exchange, which may include, but is not limited to, the remedying of an error resulting from the good faith acts or omissions by a party as a means of avoiding a market disruption. The foregoing does not relieve a clearing member of its responsibility under the Rules for circumstances leading to such transfer and/or offset, and the clearing member may be responsible for demonstrated claims of realized losses incurred by other parties as a result of such errors or omissions in accordance with the provisions of Chapter 6. Additionally, notwithstanding permission for the transfer being granted by the Chief Regulatory Officer or his designee, parties involved in the transfer remain responsible for any violation of Exchange rules resulting from the transfer and may either be summarily sanctioned in accordance with the provisions of Rule 512 or the matter may be referred to the Probable Cause Committee for the consideration of charges.
45. Provided that the transfer is permitted pursuant to Sections 1, ~~2 or~~ 3, or 4. above, transactions in all physically delivered futures contracts except for FX futures contracts must be recorded and carried on the books of the receiving firm at the original trade dates; all other transactions may be recorded and carried at either the original trade date or the transfer date. Futures transactions may be transferred using either the original trade price or the most recent settlement price; options transactions may be transferred using either the original trade price or a trade price of zero. Trades that have been confirmed at an average price pursuant to the provisions of Rule 553 may alternatively be transferred at the average price.
56. All transfers shall be reported to the Clearing House in a form acceptable to the Exchange for the type of transactions involved. The proper indicator must be included in the transfer such that the transactions, including the transaction(s) to reverse an error, clear as transfers. The clearing members involved shall maintain a full and complete record of all transactions together with all pertinent memoranda.
7. Any authority granted to the President of the Clearing House or the Chief Compliance Officer of the Clearing House, or their respective designees, set forth in Section A. will not extend to security-based swap products cleared by the Clearing House.

#### **853.B. Transfers of Customer Accounts**

- 4.—Subject to the limitations of Rule 853.A, after receipt of a signed instruction from a Clearing Member (the "Carrying Clearing Member") to transfer all or a portion of a customer account to another Clearing Member (the "Receiving Clearing Member"), and provided that such instruction contains the customer's name and account number (and, if the transfer is not of the entire account, a description of which portion is to be transferred), and provided that the Receiving Clearing Member agrees to accept the account, the Exchange shall promptly transfer the account (or the relevant portion thereof), without requiring any close-out or rebooking of positions in connection with the transfer, provided that:
  - i1. The transferred positions will satisfy Exchange performance bond requirements at the Receiving Clearing Member; and
  - ii2. Any remaining positions in the customer account at the Carrying Clearing Member will satisfy Exchange performance bond requirements.

#### **854. CONCURRENT LONG AND SHORT POSITIONS**

Set forth below are the procedures that must be followed for concurrent long and short positions and hold-open accounts.

- A. Concurrent long and short positions in the same commodity and month may be held by a clearing member at the direction of a customer or on behalf of an omnibus account; however it shall be the duty of the clearing member to ascertain whether such positions are intended for offset or to be held open prior to final transmission of position data to the Clearing House.

- B. Concurrent long and short positions in physically delivered contracts subject to spot month position limits that are held by the same owner during the ~~delivery month and two business days prior to the delivery spot~~ month must be offset by transactions executed in the market, by allowable privately negotiated transactions, or fulfilled through the normal delivery process, provided however that trades may be ~~transferred for offset if the trade date of the position being transferred is the same as the transfer date. Such positions may not be~~ offset via netting, transfer, or position adjustment ~~except~~ to correct a bona fide clerical or operational error on the day the error is identified and ~~provided that~~ the quantity of the offset does not represent more than ~~one~~two percent of the reported open interest in the affected futures contract month.

Permissible Exceptions

Notwithstanding the foregoing:

1. Trades may be transferred for offset if the trade date of the position being transferred is the same as the transfer date;
  2. An account that becomes concurrently long and short as a result of a futures position that results from an option assignment will be allowed one business day to net such positions; or,
  - 1.3. Where the Chief Regulatory Officer or his designee determines, in their respective sole discretion, that permitting an offset via netting, transfer or position adjustment in excess of two percent of the reported open interest will not adversely impact either the affected market or any persons holding open positions in the affected market.
- C. Clearing members which, pursuant to this rule, carry concurrent long and short positions, must report to the Exchange both sides as open positions. When either side or both sides are reduced in accordance with Section B. of this rule, the open positions as reported to the Exchange must be reduced accordingly. Once such positions have been reduced, those positions may not subsequently be re-established as concurrent long and short positions at the Exchange.
- D. The Exchange takes no position regarding the internal bookkeeping procedures of its clearing members which, for the convenience of a customer, may "hold open" a position only on their books. However, the clearing member must accurately report to the Exchange and the Clearing House, as appropriate, large trader positions, long positions eligible for delivery and open interest.

## NYMEX & COMEX

### 770.- DELIVERY OFFSET OBLIGATION TRANSFER PROCEDURES

A clearing member who, as the result of an error, omission or outrade discovered on or after the last day of trading, carries a position in a contract which has expired and for which the position holder is unable to fulfill the obligation to make or take physical delivery in that contract may, with the consent of the account owner(s) or controller(s), ~~request to offset/transfer~~ such position ~~against an opposite position held by to~~ an account with different beneficial ownership ~~through a trade transfer~~; provided, however, that the parties to an error or outrade must exercise the utmost diligence to resolve the error or outrade.

~~Delivery offset requests~~ Notice of delivery obligation transfers must be made to the Clearing House. ~~Trade~~Such transfers ~~pursuant to this Rule~~ require that the Clearing House receive acceptance from an account(s) with different beneficial ownership and confirmation of the agreed upon transfer by the ~~party~~ initiating the request party. Such confirmation must be submitted in writing on the form specified by the Clearing House. All positions transferred pursuant to this Rule shall take place at the final settlement price of the contract; ~~however this requirement does not prohibit cash adjustments between the parties to the transfer.~~

Clearing member firms representing accounts that have transferred a trade pursuant to this Rule must correctly report the change in open interest to the Clearing House pursuant to the schedule established by the Exchange.

In the event a delivery offset request obligation transfer notification does not result in a trade transfer, delivery shall take place as required under Exchange rules.

Nothing in this Rule relieves a clearing member of its responsibilities with respect to open positions in an expiring contract month in a physically delivered contract as set forth in Rule 716.

### 853.- TRANSFERS OF TRADES AND CUSTOMER ACCOUNTS

#### 853.A.- Transfers of Trades

1. Subject to the limitations of Rule 854, existing trades may be transferred either on the books of a clearing member or from one clearing member to another clearing member provided:
  - i. The transfer ~~merely constitutes a change results in the transfer of a trade(s)~~ from one account to another account ~~provided the underlying with identical~~ beneficial ownership ~~in said accounts remains the same;~~ or



- ii. An error has been made in the clearing of a trade(s) and the error is ~~discovered and the corrected via transfer is completed~~ within three Business Days after the ~~trade date~~, on which the error occurred, or
- iii. The transfer trade is made to reconcile an error, omission or outtrade in accordance with the requirements of Rule 770.

Notwithstanding the foregoing, a transfer may be approved by the President or the Chief Compliance Officer of the Clearing House, or their respective designees, in circumstances where it is determined that a transfer trade is the most appropriate means to remedy an error that results from the good faith acts or omissions of any party and the clearing member(s) consent to such transfer, provided that such approval does not result in an impermissible transfer for offset pursuant to the provisions of Rule 854.B. Any request for approval pursuant to this paragraph requires the clearing member(s) to fully document the circumstances of the error and provide that documentation to the Clearing House.

- 2. Subject to the limitations of Rule 854, ~~Exchange~~the Chief Regulatory Officer or his designee may, (and, with respect to cleared-only products, the President of the Clearing House or her designee also may) ~~staff may,~~ upon request by the clearing member(s), approve a transfer of existing trades either on the books of the same clearing member, or from the books of one clearing member to the books of another clearing member if the transfer is in connection with, or as a result of, a merger, asset purchase, consolidation or similar non-recurring transaction between two or more entities where one or more entities become the successor in interest to one or more other entities.
- 3. ~~Exchange staff~~Subject to the limitations of Rule 854, the Chief Regulatory Officer or his designee may, (and, with respect to cleared-only products, the President of the Clearing House or her designee also may), upon request by the clearing member(s), approve a transfer of existing trades either on the books of a clearing member or from one clearing member to another member if the transfer involves a partnership, investment fund or commodity pool and the purpose of the transfer is to facilitate a restructuring or consolidation of such partnership, fund or pool, provided that i) the managing partner or pool operator remains the same; ii) the transfer does not result in the liquidation of open positions; and iii) the pro rata allocation of positions to the new account does not result in more than a de minimis change in the value of the interest of any party.
- 4. Notwithstanding the foregoing, the Chief Regulatory Officer or his designee may, (and, with respect to cleared-only products, the President of the Clearing House or her designee also may), with the consent of the clearing member(s) involved, permit the transfer and/or offset of existing trades if, in ~~staff's~~his or his designee's opinion, the situation so requires and such transfer is in the best interests of the Exchange, which may include, but is not limited to, the remedying of an error resulting from the good faith acts or omissions by a party as a means of avoiding a market disruption. The foregoing does not relieve a clearing member of its responsibility under the Rules for circumstances leading to such transfer and/or offset, and the clearing member may be responsible for demonstrated claims of realized losses incurred by other parties as a result of such errors or omissions in accordance with the provisions of Chapter 6. Additionally, notwithstanding permission for the transfer being granted by the Chief Regulatory Officer or his designee, parties involved in the transfer remain responsible for any violation of Exchange rules resulting from the transfer and may either be summarily sanctioned in accordance with the provisions of Rule 512 or the matter may be referred to the Probable Cause Committee for the consideration of charges.
- 45. Provided that the transfer is permitted pursuant to Sections 1, ~~2~~, ~~3~~, ~~or 4~~, above, transactions in all physically delivered futures contracts except for FX futures contracts must be recorded and carried on the books of the receiving firm at the original trade dates; all other transactions may be recorded and carried at either the original trade date or the transfer date. Futures transactions may be transferred using either the original trade price or the most recent settlement price; options transactions may be transferred using either the original trade price or a trade price of zero. Trades that have been confirmed at an average price pursuant to the provisions of Rule 553 may alternatively be transferred at the average price.
- 56. All transfers shall be reported to the Clearing House in a form acceptable to the Exchange for the type of transactions involved. The proper indicator must be included in the transfer such that the transactions, including the transaction(s) to reverse an error, clear as transfers. The clearing members involved shall maintain a full and complete record of all transactions together with all pertinent memoranda.
- 7. Any authority granted to the President of the Clearing House or the Chief Compliance Officer of the Clearing House, or their respective designees, set forth in Section A. will not extend to security-based swap products cleared by the Clearing House.

#### **853.B. Transfers of Customer Accounts**

- 4.—Subject to the limitations of Rule 853.A, after receipt of a signed instruction from a Clearing Member (the “Carrying Clearing Member”) to transfer all or a portion of a customer account to another Clearing Member (the “Receiving Clearing Member”), and provided that such instruction contains the customer's name and account number (and, if the transfer is not of the entire account, a description of which portion is to be transferred), and provided that the Receiving Clearing Member agrees to accept the account, the Exchange shall promptly transfer the account (or

the relevant portion thereof), without requiring any close-out or rebooking of positions in connection with the transfer, provided that:

- i1. The transferred positions will satisfy Exchange performance bond requirements at the Receiving Clearing Member; and
- #2. Any remaining positions in the customer account at the Carrying Clearing Member will satisfy Exchange performance bond requirements.

#### 854. CONCURRENT LONG AND SHORT POSITIONS

Set forth below are the procedures that must be followed for concurrent long and short positions and hold-open accounts.

- A. Concurrent long and short positions in the same commodity and month may be held by a clearing member at the direction of a customer or on behalf of an omnibus account; however it shall be the duty of the clearing member to ascertain whether such positions are intended for offset or to be held open prior to final transmission of position data to the Clearing House.
- B. Concurrent long and short positions in physically delivered contracts subject to spot month position limits that are held by the same owner during the ~~spot~~current-delivery month must be offset by transactions executed in the market, by allowable privately negotiated transactions, or fulfilled through the normal delivery process, provided however that trades may be ~~transferred for offset if the trade date of the position being transferred is the same as the transfer date. Such positions may not be~~ offset via netting, transfer, or position adjustment ~~except~~ to correct a bona fide clerical or operational error on the day the error is identified and ~~provided that~~ the quantity of the offset does not represent more than ~~one~~two percent of the reported open interest in the affected futures contract month.

##### Permissible Exceptions

##### Notwithstanding the foregoing:

1. Trades may be transferred for offset if the trade date of the position being transferred is the same as the transfer date;
  2. An account that becomes concurrently long and short as a result of a futures position that results from an option assignment will be allowed one business day to net such positions; or,
  - 1-3. Where the Chief Regulatory Officer or his designee determines, in their respective sole discretion, that permitting an offset via netting, transfer or position adjustment in excess of two percent of the reported open interest will not adversely impact either the affected market or any persons holding open positions in the affected market.
- C. Clearing members which, pursuant to this rule, carry concurrent long and short positions, must report to the Exchange both sides as open positions. When either side or both sides are reduced in accordance with Section B. of this rule, the open positions as reported to the Exchange must be reduced accordingly. Once such positions have been reduced, those positions may not subsequently be re-established as concurrent long and short positions at the Exchange.
  - D. The Exchange takes no position regarding the internal bookkeeping procedures of its clearing members which, for the convenience of a customer, may "hold open" a position only on their books. However, the clearing member must accurately report to the Exchange and the Clearing House, as appropriate, large trader positions, long positions eligible for delivery and open interest.