

Chapter 7B

Delivery Facilities and Procedures

7B02. CLEARING MEMBER DUTIES TO THE CLEARING HOUSE

Every clearing member carrying open long or short positions shall present to the Clearing House each business day an accurate inventory of such open positions. The inventory of open long and short positions shall be reported to the Clearing House in such manner and at such times as the Clearing House may prescribe.

A clearing member, carrying an account that is required to make or accept delivery, agrees to guarantee and assume complete responsibility for the performance of all delivery requirements set forth in the rules.

In the event a clearing member fails to perform its delivery obligations to the Clearing House, such failure may be deemed a default pursuant to Rule 802. In a delivery default, the Clearing House shall seek to ensure the financial performance with respect to the delivery. In this regard, the Clearing House powers will include, but will not be limited to, the right to sell or liquidate the commodity subject to delivery and to distribute the proceeds as appropriate.

7B12. METALS INVENTORY REPORT

Each Clearing Member shall report to the Exchange in the form required by the Clearing House the quantity of deliverable metal warrants, and any changes thereto, owned by the Clearing Member, or held for customers. A report of a change in such information shall be made to the Exchange within one (1) business day of such change.

7B13. DELIVERY PROCEDURES

Commodities bought or sold on Exchange contracts or on Dubai Mercantile Exchange Limited ("DME") contracts shall be delivered and accepted in accordance with the provisions of Chapter 8, the rules and delivery procedures of the Exchange and/or of the DME applicable to individual commodities. Any question affecting the handling or delivery or any commodity which is not specifically covered by the Rules may be referred to the Clearing House Committee for determination. All deliveries in fulfillment of Exchange contracts and DME contracts shall be made through the Clearing House in accordance with applicable Rules.

7B14. FAILURE TO DELIVER

In the event a clearing member fails to fulfill its specific delivery obligations pursuant to Exchange rules, in connection with a product listed for trading and clearing or for clearing-only by the NYMEX Division or the COMEX Division, the sole obligation of the Clearing House is to pay reasonable damages proximately caused by such delivery obligation failure, in an amount which shall not exceed the difference between the delivery price of the specific commodity and the reasonable market price of such commodity at the time delivery is required according to the rules of the Exchange. The Clearing House shall not be obligated to: (1) make or accept delivery of the actual commodity; or (2) pay any damages relating to the accuracy, genuineness, completeness, or acceptableness of certificates, instruments, warehouse receipts, shipping certificates, or other similar documents; or (3) pay any damages relating to the failure or insolvency of banks, depositories, warehouses, shipping stations, or similar organizations or entities that may be involved with a delivery.

Notwithstanding any provision of the rules, with respect to products where delivery obligations are fulfilled directly between clearing members, the Clearing House has no obligation or liability to any clearing member or any other person relating to a failure to fulfill a delivery obligation unless it is notified by the clearing member that did perform, or was in a position to perform its delivery obligations, that a failure occurred, as soon as possible, but in no event later than sixty minutes after the time the delivery obligation was to have been fulfilled according to the rules of the Exchange.

If a clearing member does not fulfill its delivery obligations to another clearing member, it shall be responsible to the Clearing House for any damages incurred by the Clearing House as a result of such delivery obligation failure.

A failure by a clearing member carrying a short futures position to notify the Clearing House on or before the time specified by, and in the manner prescribed by, the Clearing House on the last day on which such notice is permitted shall be deemed a violation of this rule, except that the President of the Clearing House may, for good cause, extend the time to present such notice.

716. DUTIES OF CLEARING MEMBERS

Prior to the last day of trading in a physically delivered contract, each clearing member shall be responsible for assessing the account owner's ability to make or take delivery for each account on its books with open positions in the expiring contract. Absent satisfactory information from the account owner, the clearing member is responsible for ensuring that the open positions are liquidated in an orderly manner prior to the expiration of trading.

770. DELIVERY OFFSET 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 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 outrade must exercise the utmost diligence to resolve the error or outrade.

Delivery offset requests must be made to the Clearing House. Trade 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. 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.

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 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.