



Special Executive Report

S-8049

December 5, 2017

Amendments to CME/CBOT/NYMEX/COMEX Rule 853. **("Transfers of Trades and Customer Accounts")**

Effective Tuesday, December 19, 2017, and pending all relevant CFTC regulatory review periods, 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") will adopt amendments to Rule 853. ("Transfers of Trades and Customer Accounts") to permit a transfer to be submitted to CME Clearing at the prior day's trade date and settlement price.

Under the current process, when a transfer is submitted with the prior day's settlement price, but with the current day's trade date, the result is an inconsistency between the trade price and the trade date on the customer's statement, which may result in balancing and reconciliation errors in the firm's back-office. Exchange Clearing Member Firms prefer a full overnight clearing and bookkeeping cycle to be completed as a means of determining the final trades that need to be transferred. Using the prior day's settlement price and trade date allows for the seamless closing of the trades in one account as of the prior date, and a seamless opening of the same trades in a new account on the next business date, and is responsive to requests from several Exchange Clearing Member Firms.

The amendments to Rule 853. appear below, with additions underscored and deletions overstruck.

Chapter 8 **Clearing House and Performance Bonds**

(Additions are underscored; Deletions are ~~overstruck~~.)

CME

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 results in the transfer of a trade(s) from one account to another account with identical beneficial ownership; or
 - ii. An error has been made in the clearing of a trade(s) and the error is corrected via transfer within three Business Days after the 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 of the Clearing House 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, the Chief Regulatory Officer or his designee may, (and, with respect to cleared-only products, the President of the Clearing House or his designee also 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.
3. 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 his 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 his designee also may), with the consent of the clearing member(s) involved, permit the transfer and/or offset of existing trades if, in 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.
- 5.

Provided that the transfer is permitted pursuant to Sections 1., 2., 3., or 4. above:

- i. 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, with either the original trade price, the current Business Day's settlement price or the prior Business Day's settlement price.
- ii. All other future and futures-style option transactions may be recorded and carried at:
 - (1). the original trade date or the date the transfer is submitted to the Clearing House, with either the original trade price, the current Business Day's settlement price or the prior Business Day's settlement price; or
 - (2). the Business Day prior to the date the transfer is submitted to the Clearing House, with either the original trade price or the prior Business Day's settlement price.
- iii. Premium-style options transactions may be recorded and carried at the original trade date, the date the transfer is submitted to the Clearing House, or the Business Day prior to the date the transfer is submitted to the Clearing House, with either the original trade price, the current Business Day's settlement price, the prior Business Day's settlement 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.

6. 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.

[The remainder of the rule is unchanged.]

CBOT

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 results in the transfer of a trade(s) from one account to another account with identical beneficial ownership; or
 - ii. An error has been made in the clearing of a trade(s) and the error is corrected via transfer within three Business Days after the 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 of the Clearing House 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, the Chief Regulatory Officer or his designee may, (and, with respect to cleared-only products, the President of the Clearing House or his designee also 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.
3. 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 his 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 his designee also may), with the consent of the clearing member(s) involved, permit the transfer and/or offset of existing trades if, in 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.

- 5.

Provided that the transfer is permitted pursuant to Sections 1., 2., 3., or 4. above:

- i. Transactions in all physically delivered futures contracts must be recorded and carried on the books of the receiving firm at the original trade dates, with either the original trade price, the current Business Day's settlement price or the prior Business Day's settlement price.
- ii. All other future and futures-style option transactions may be recorded and carried at:
 - (1). the original trade date or the date the transfer is submitted to the Clearing House, with either the original trade price, the current Business Day's settlement price or the prior Business Day's settlement price; or
 - (2). the Business Day prior to the date the transfer is submitted to the Clearing House, with either the original trade price or the prior Business Day's settlement price.
- iii. Premium-style options transactions may be recorded and carried at the original trade date, the date the transfer is submitted to the Clearing House, or the Business Day prior to the date the transfer is submitted to the Clearing House, with either the original trade price, the current Business Day's settlement price, the prior Business Day's settlement 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.

6. 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.

[The remainder of the rule is unchanged.]

NYMEX and COMEX

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 results in the transfer of a trade(s) from one account to another account with identical beneficial ownership; or
 - ii. An error has been made in the clearing of a trade(s) and the error is corrected via transfer within three Business Days after the 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 of the Clearing House 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 requirements 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, the Chief Regulatory Officer or his designee may, (and, with respect to cleared-only products, the President of the Clearing House or his designee also 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.
3. 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 his 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 his designee also may), with the consent of the clearing member(s) involved, permit the transfer and/or offset of existing trades if, in his designees 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.

5.

Provided that the transfer is permitted pursuant to Sections 1., 2., 3., or 4. above:

- i. Future and futures-style option transactions may be recorded and carried at:

- (1). the original trade date or the date the transfer is submitted to the Clearing House, with either the original trade price, the current Business Day's settlement price or the prior Business Day's settlement price; or

- (2). the Business Day prior to the date the transfer is submitted to the Clearing House, with either the original trade price or the prior Business Day's settlement price.

- ii. Premium-style options transactions may be recorded and carried at the original trade date, the date the transfer is submitted to the Clearing House, or the Business Day prior to the date the transfer is submitted to the Clearing House, with either the original trade price, the current Business Day's settlement price, the prior Business Day's settlement 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.

6. 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.

[The remainder of the rule is unchanged.]

If you have any questions regarding the amendments, please contact one of the following individuals:

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