

**SUBMISSION COVER SHEET**

**IMPORTANT:** Check box if Confidential Treatment is requested

Registered Entity Identifier Code (optional): 21-373 (5 of 5)

Organization: Commodity Exchange, Inc. ("COMEX")

Filing as a:  DCM  SEF  DCO  SDR

Please note - only ONE choice allowed.

Filing Date (mm/dd/yy): 08/11/21 Filing Description: Amendments to CME, CBOT, NYMEX/COMEX Rule 853. ("Transfer of Trades and Customer Accounts")

**SPECIFY FILING TYPE**

Please note only ONE choice allowed per Submission.

**Organization Rules and Rule Amendments**

- Certification § 40.6(a)
- Approval § 40.5(a)
- Notification § 40.6(d)
- Advance Notice of SIDCO Rule Change § 40.10(a)
- SIDCO Emergency Rule Change § 40.10(h)

Rule Numbers: 853

**New Product**

Please note only ONE product per Submission.

- Certification § 40.2(a)
- Certification Security Futures § 41.23(a)
- Certification Swap Class § 40.2(d)
- Approval § 40.3(a)
- Approval Security Futures § 41.23(b)
- Novel Derivative Product Notification § 40.12(a)
- Swap Submission § 39.5

**Official Product Name:**

**Product Terms and Conditions (product related Rules and Rule Amendments)**

- Certification § 40.6(a)
- Certification Made Available to Trade Determination § 40.6(a)
- Certification Security Futures § 41.24(a)
- Delisting (No Open Interest) § 40.6(a)
- Approval § 40.5(a)
- Approval Made Available to Trade Determination § 40.5(a)
- Approval Security Futures § 41.24(c)
- Approval Amendments to enumerated agricultural products § 40.4(a), § 40.5(a)
- "Non-Material Agricultural Rule Change" § 40.4(b)(5)
- Notification § 40.6(d)

**Official Name(s) of Product(s) Affected:**

**Rule Numbers:**



Christopher Bowen  
Managing Director and Chief Regulatory Counsel  
Legal Department

August 11, 2021

**VIA ELECTRONIC PORTAL**

Mr. Christopher J. Kirkpatrick  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

**Re: CFTC Regulation 40.6(a) Certification. Amendments to CME, CBOT, NYMEX/COMEX Rule 853. ("Transfer of Trades and Customer Accounts") COMEX Submission No. 21-373 (5 of 5)**

Dear Mr. Kirkpatrick:

Pursuant to Commodity Futures Trading Commission ("CFTC" or "Commission") Regulation 40.6(a), Chicago Mercantile Exchange Inc. ("CME"), in its capacities as both a designated contract market ("DCM") and a derivatives clearing organization ("DCO" or "CME Clearing"), and The Board of Trade of the City of Chicago, Inc. ("CBOT"), New York Mercantile Exchange, Inc. ("NYMEX") and Commodity Exchange, Inc. ("COMEX"), in their capacities as DCMs, (each an "Exchange" and collectively, the "Exchanges") hereby certify to the Commission amendments to the Exchanges' Rule 853. ("Transfer of Trades and Customer Accounts") (collectively the "Rule Amendments") effective on August 26, 2021.

Specifically, the Rule Amendments adopt an additional provision under which a clearing member that wishes to manage the liquidation and hedging of a defaulting customer within its house account and require the clearing member to have a contractual right to transfer the position.

The Rule Amendments are provided in Exhibit 1 below in blackline format.

The Exchanges and CME Clearing reviewed the DCO Core Principles and the DCM Core Principles (collectively, the "Core Principles") as set forth in the Commodity Exchange Act ("CEA") and identified that the Rule Amendments may have some bearing on the following Core Principles.

## DCO Core Principles

- **DCO Core Principle D - Risk Management**: This Core Principle requires CME Clearing to limit the exposure of CME Clearing to potential losses from defaults by members. The Rule Amendments are consistent with this Core Principle in that they allow CME Clearing and the Exchanges to assist clearing members in minimizing losses from a defaulting customer which could in turn cause significant losses to either the clearing member's customer origin or the clearing member itself.
- **DCO Core Principle L - Public Information**: This Core Principle requires CME Clearing to publicly disclose its rules and procedures. The Rule Amendments will be incorporated into the Exchanges' publicly available rulebook. CME Clearing will issue an advisory notice that will be posted on the CME Group website and outline the Rule Amendments

## DCM Core Principles

- **DCM Core Principle 7 - Availability of General Information**: The Rule Amendments will be incorporated into the Exchanges' publicly available rulebook. The Exchanges will issue a Special Executive Report that will be posted on the CME Group website and outline the Rule Amendments.
- **DCM Core Principle 9 – Execution of Transactions**: Core Principle 9 expressly permits DCMs to authorize, for bona fide business purposes, transfer trades and, as a result, is implicated by the Rule Amendments. The Rule Amendments are being adopted to allow, in certain circumstances, a clearing member to efficiently manage open positions of a defaulting customer.

Pursuant to Section 5c(c) of the Act and CFTC Regulation 40.6(a), the Exchanges certify that the Rule Amendments comply with the CEA and the regulations thereunder. There were no substantive opposing views to the Rule Amendments.

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

If you require any additional information regarding this submission, please contact the undersigned at 212.299.2200 or via email at [CMEGSubmissionInquiry@cmegroup.com](mailto:CMEGSubmissionInquiry@cmegroup.com).

Sincerely,

/s/ Christopher Bowen  
Managing Director and Chief Regulatory Counsel

Attachment: Exhibit 1 – Amendments to CME, CBOT, NYMEX/COMEX Rule 853. (“Transfers of Trades and Customer Accounts”) (blackline format)

## EXHIBIT 1

### CME Rulebook

(additions underscored; deletions ~~overstuck~~)

#### Chapter 8

#### ("Clearing House and Performance Bonds")

### 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 outrade 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. 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, approve a transfer of existing trades on the books of the clearing member from the account of a defaulting customer to a proprietary or non-customer account on the books of the clearing member, subject to the following:
  - i. The clearing member must represent to the Chief Regulatory Officer or his designee that (1) the customer is in default, subject to an event of default, or has indicated that it is unable to meet its obligations under the agreement (or agreements) between the clearing member and customer relating to the customer's account; (2) the clearing member is permitted under such agreement(s) to transfer the trades as a result of the customer's default and is acting in accordance with such agreement(s); and (3) the clearing member is permitted under applicable law (including, as applicable, any bankruptcy, insolvency, resolution or similar law) to transfer the trades and is acting in accordance with applicable law; and
  - ii. The clearing member must provide the Chief Regulatory Officer and the President of the Clearing House, or their respective designees, with satisfactory evidence that such an event has occurred and the harm that would arise from such an event, and with any additional evidence, documentation, assurances (including indemnities) or explanations including, without limitation, the nature and extent of any harm, as the Chief Regulatory Officer and President of the Clearing House or their respective designees may, in their sole discretion, require.

The Exchange or Clearing House shall have no liability for any losses or costs that the clearing member or its customer may incur arising out of any transfer of trades or rejection of a request to transfer pursuant to this Rule.

54. 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 Chief Regulatory Officer for the consideration of charges.

65. Provided that the transfer is permitted pursuant to Sections 1., 2., 3. 4. or 54. 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 futures 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.

76. 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 member(s) involved shall maintain a full and complete record of all transactions together with all pertinent memoranda.

87. 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.

[Section B. is unchanged.]

#### CBOT Rulebook

(additions underscored; deletions ~~overstuck~~)

#### Chapter 8

#### ("Clearing House and Performance Bonds")

### 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. 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, approve a transfer of existing trades on the books of the clearing member from the account of a defaulting customer to a proprietary or non-customer account on the books of the clearing member, subject to the following:
  - i. The clearing member must represent to the Chief Regulatory Officer or his designee that (1) the customer is in default, subject to an event of default, or has indicated that it is unable to meet its obligations under the agreement (or agreements) between the clearing member and customer relating to the customer's account; (2) the clearing member is permitted under such agreement(s) to transfer the trades as a result of the customer's default and is acting in accordance with such agreement(s); and (3) the clearing member is permitted under applicable law (including, as applicable, any bankruptcy, insolvency, resolution or similar law) to transfer the trades and is acting in accordance with applicable law; and
  - ii. The clearing member must provide the Chief Regulatory Officer and the President of the Clearing House, or their respective designees, with satisfactory evidence that such an event has occurred and the harm that would arise from such an event, and with any additional evidence, documentation, assurances (including indemnities) or explanations including, without limitation, the nature and extent of any harm, as the Chief Regulatory Officer and President of the Clearing House or their respective designees may, in their sole discretion, require.

The Exchange or Clearing House shall have no liability for any losses or costs that the clearing member or its customer may incur arising out of any transfer of trades or rejection of a request to transfer pursuant to this Rule.

54. 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 Chief Regulatory Officer for the consideration of charges.
65. Provided that the transfer is permitted pursuant to Sections 1., 2., 3. 4., or 54. 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 futures 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.

76. 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 member(s) involved shall maintain a full and complete record of all transactions together with all pertinent memoranda.

87. 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.

[Section B. is unchanged.]

#### **NYMEX/COMEX Rulebook**

(additions underscored; deletions ~~overstuck~~)

#### **Chapter 8**

#### **("Clearing House and Performance Bonds")**

### **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-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. 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, approve a transfer of existing trades on the books of the clearing member from the account of a defaulting customer to a proprietary or non-customer account on the books of the clearing member, subject to the following:

- i. The clearing member must represent to the Chief Regulatory Officer or his designee that (1) the customer is in default, subject to an event of default, or has indicated that it is unable to meet its obligations under the agreement (or agreements) between the clearing member and customer relating to the customer's account; (2) the clearing member is permitted under such agreement(s) to transfer the trades as a result of the customer's default and is acting in accordance with such agreement(s); and (3) the clearing member is permitted under applicable law (including, as applicable, any bankruptcy, insolvency, resolution or similar law) to transfer the trades and is acting in accordance with applicable law; and
- ii. The clearing member must provide the Chief Regulatory Officer and the President of the Clearing House, or their respective designees, with satisfactory evidence that such an event has occurred and the harm that would arise from such an event, and with any additional evidence, documentation, assurances (including indemnities) or explanations including, without limitation, the nature and extent of any harm, as the Chief Regulatory Officer and President of the Clearing House or their respective designees may, in their sole discretion, require.

The Exchange or Clearing House shall have no liability for any losses or costs that the clearing member or its customer may incur arising out of any transfer of trades or rejection of a request to transfer pursuant to this Rule.

54. 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 Chief Regulatory Officer for the consideration of charges.

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

- i. Futures 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.

76. 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 member(s) involved shall maintain a full and complete record of all transactions together with all pertinent memoranda.

87. 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.

[Section B. is unchanged.]