



New York Mercantile Exchange

NYMEX/COMEX. Two divisions, one marketplace

COMMENT

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May 6, 2003 2003 MAY 13 PM 4: 20

Ms. Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission
One Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

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Re: Account Identification for Eligible Bunched Orders

Dear Ms. Webb:

The New York Mercantile Exchange, Inc. ("NYMEX" or the "Exchange")¹ appreciates the opportunity to comment on behalf of itself and its wholly-owned subsidiary, Commodity Exchange, Inc. ("COMEX"), to the Commodity Futures Trading Commission ("CFTC" or "Commission") on the proposed amendments to CFTC Regulation 1.35(a-1)(5), 68 Fed. Reg. 12319 (March 14, 2003) (hereafter, the "Release"). As detailed below, the Exchange supports the amendments as they would permit account managers to better serve the interests of their clients while clarifying the obligations of registrants, regulators and self-regulatory organizations with regard to the acceptance and handling of orders eligible for post-execution allocation.

In particular, the Exchange strongly supports the proposed approach of placing the primary recordkeeping obligations upon the account managers who are actually allocating the trading among their eligible customers. The proposed amendment thus would rectify what has long been regarded as an ambiguity in the existing rule. Specifically, the certification and recordkeeping requirements of the current rule have caused confusion as to the responsibility of a Futures Commission Merchant ("FCM"), and possibly a Floor Broker, in their respective roles as executing brokers for ensuring equitable allocation. Elimination of the certification requirement would resolve this confusion and confirm that the Eligible Account Manager alone bears this responsibility, while a FCM would remain responsible to monitor accounts subject to post-execution allocation for unusual activity in the same manner in which it must monitor all customer accounts. Responsibility for auditing the allocation programs of Eligible Managers would rest with the National Futures Association for managers who are registered Commodity Trading Advisors.²

¹ NYMEX is a for-profit corporation organized under the laws of the State of Delaware. It is a designated contract market for the trading of numerous commodity futures and commodity futures option contracts. NYMEX is the largest exchange in the world for the trading of futures and option contracts based on physical commodities. In 2002, more than 133 million contracts were traded at the Exchange. Public investors in our markets include institutional and commercial producers, processors, marketers and users of energy and metals products.

² As noted by the Commission in the Release, the Commission would retain authority over all Eligible Account Managers under the Commodity Exchange Act's antifraud provisions.

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The New York Mercantile Exchange, Inc., is composed of two divisions. The NYMEX Division offers trading in crude oil, heating oil, unleaded gasoline, natural gas, electricity, propane, platinum and palladium. The COMEX Division offers trading in gold, silver, copper, aluminum, and the FTSE Eurotop 100[®] index, and the FTSE Eurotop 300[®] index.

Ms. Jean A. Webb

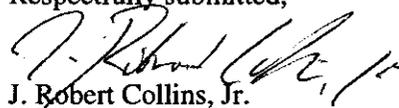
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Bunching of orders for execution can greatly benefit customers by giving multiple customer accounts traded by account managers the ability to have their orders executed in shorter periods of time, avoiding price slippage. The current rule that enables the use of bunched orders, however, contains burdensome recordkeeping and oversight requirements that have deterred account managers from using them and added little in the way of practical customer protection. The proposed amendments would remove many of these obstacles, bring welcome clarity to intermediaries and self-regulatory organizations regarding their respective responsibilities, and engender a more practical approach to ensuring fairness in allocations.

NYMEX thanks the Commission for the opportunity to submit comments concerning this rule proposal and would be pleased to furnish additional information in this regard. If you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,



J. Robert Collins, Jr.

President

cc: Chairman James E. Newsome
Commissioner Barbara P. Holum
Commissioner Sharon Brown-Hruska
Commissioner Walter L. Lukken