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**Written Statement of
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New York Mercantile Exchange**

**Public Hearing of the Commodity Futures Trading Commission
on Self-Regulation and Self-Regulatory Organizations
in the U.S. Futures Industry**

February 15, 2006

Introduction

The New York Mercantile Exchange (NYMEX or Exchange) is pleased to participate in the Commodity Futures Trading Commission's (CFTC) public hearing on self-regulation and self-regulatory organizations (SRO) in the U.S. futures industry. This written statement supplements the Exchange's previous response, dated January 23, 2006, to the CFTC's request for comment on the same topic, and the Exchange's oral statements presented on February 15, 2006 at the CFTC's public hearing.

NYMEX is a for-profit corporation organized under the laws of the State of Delaware. It is the chief operating subsidiary of NYMEX Holdings, Inc., ("NYMEX Holdings"). NYMEX Holdings' shares are not listed on a national market or exchange but are registered with the Securities and Exchange Commission ("SEC"), and as such, are subject to the rules and regulations of the SEC. As a designated contract market and a registered derivatives clearing organization, NYMEX is the largest exchange in the world for trading futures and options contracts on physical commodities.

Board Composition in an Evolving Futures Industry

NYMEX believes that the existing structure in place at NYMEX reflects our market participants and also promotes diversity of membership on the Exchange's Board of Directors. The Certificate of Incorporation of NYMEX Holdings, Inc. (Certificate) states that its board will be composed of 25 directors including a Chairman and Vice Chairman and that the directors will be divided into the following categories of members: Floor Broker, Futures Commission Merchant ("FCM"), Trade, Local, Equity Holder and At-Large Members. In addition, the Certificate stipulates that the Board of Directors shall have five Public Directors. The Public Director must be a person knowledgeable of

futures trading or financial regulation or otherwise capable of contributing to the deliberations of the Board. The Public Director may not be a member of the Exchange or affiliated with any member of the Exchange or an employee of the Exchange. The independence of our Public Directors is of great value to our Board and its decision-making process. Through these diverse qualification categories, the Exchange has a mechanism in place that effectively permits the views of the various segments of the NYMEX community to be heard and considered.

It has been our experience that this ratio of public directors to affiliated directors on our governing board has served the Exchange very well. NYMEX believes that this balance of interests between public directors and our other categories of directors can be more effective on SRO issues than a board composed solely of non-affiliated directors. Public Directors, along with the other Board member categories, promote diversity of membership on the Board and effectively provide the Board with diverse interests in its decision-making process.

Under the New York Stock Exchange (“NYSE”) listing standards, NYMEX’s Public Directors would qualify as independent directors. The purpose of the NYSE listing standards on independence is to ensure that the company’s directors are independent from and not subject to the influences of the management of that company. Thus, because the emphasis is on independence from management of the listed company, it is possible for markets subject to these listing standards to conclude that exchange members qualify as independent directors.

Some have suggested, with respect to public companies functioning as SROs, that there is a need to ensure that the business interests do not conflict with the regulatory

interests. Consistent with the CFMA's flexible core principles approach to SRO regulation, NYMEX believes that the internal corporate structure of an SRO should be individualized and determined by the SRO itself. Thus, when considering the independence of an SRO board, the SRO is best suited to determine the appropriate qualifications for an independent director and to ensure that the business interests do not conflict with the regulatory interest.

It is important to have a Board comprised of a sufficient number of persons with the expertise to make valuable contributions to the Board's deliberations. Commodity trading is a specialized business and to restrict the boards of futures markets to non-members and persons independent of members, member firms and the exchange itself potentially would have a negative effect on the governing board's decision-making abilities.

Alternative Regulatory Structures – Regulatory Oversight Committees (ROC) and Third Party Regulatory Providers

The NYMEX Compliance Department and the Exchange's reporting lines have been structured to provide the Compliance Department and its management with direct reporting to the NYMEX President. Although this traditional reporting structure may have generated some concerns in the industry, NYMEX does not believe that its regulatory programs have been compromised in any way, as proven by routine CFTC reviews of our SRO functions. It is also important to note that NYMEX and its member firms have significant reputational (and consequently commercial) interests in ensuring the quality and integrity of the Exchange's self-regulatory programs. However, NYMEX also believes that any corporation, particularly SROs, should engage in periodic

ongoing self-examination and, to the extent the results suggest that the process could be improved, should make appropriate changes.

An ROC as an independent body overseeing regulatory functions may provide one approach to clearer lines between the business and regulatory functions of exchanges. Another approach is to establish an ROC that ultimately advises and reports to the SRO's Board of Directors. While we have no direct experience with either of these regulatory models, we note that several U.S. futures exchange have adopted the latter approach. It is our understanding that the exchanges using this particular model have found it to be satisfactory. However, rather than focusing on the merits of any one particular model, NYMEX believes that it is crucial to remember the intent of Congress, as reflected in the structure of the CFMA, that the decisions as to how best to comply with the core principles remain with the regulated entity.

NYMEX believes that a third-party regulatory services provider should be subject to conflicts of interest standards. Registered futures associations (RFAs) typically have board members who are industry participants and who have relationships with individuals in the industry and affiliations with firms and other futures entities, such as DCMs. These relationships potentially put RFA board members in possession of material non-public information that could raise conflicts in their decision-making. In addition, their capacity as directors could provide them access to such information, which also could compromise the integrity of their decision-making.

The CFMA also gives DCMs the ability to delegate full regulatory functions to an RFA, including the disciplinary action and appeals processes. Although this scenario may present fewer conflicts given the independence of the service provider, there may be

situations where conflicts could arise. NYMEX believes that in the interest of effective self-regulation and in order to ensure that the decision-making process of an independent service provider is not compromised, conflicts of interest standards similar to those applied to DCMs should be applied to RFAs.

Enhancing Self-Regulation Through Increased SRO Transparency and Disclosure

NYMEX believes strongly that transparency and public disclosure by SROs help to increase public and industry confidence in the self-regulatory process. It is important to the continued success of any business concern, particularly an SRO, that information concerning the governance, regulatory and compensation policies and procedures are readily available to the public and to regulators. Transparency through the disclosure of pertinent SRO information provides many benefits, including enhanced public perception of the efforts devoted to ensuring the integrity of our markets.

NYMEX makes a considerable amount of information on governance, regulatory structure and compensation available to the public. NYMEX bylaws and rules are available to the public on the Exchange's website, including rules on board composition, board nomination and election procedures, regulatory structure and committee composition. The Shareholder Relations link on the Exchange's website displays the Exchange's SEC filings, the 10-K annual report and the quarterly 10-Q filings, which contain extensive information on budget and staffing. This link also includes Exchange notices to members addressing a broad variety of topics. Annual proxy statements, which contain executive compensation and other disclosures required by SEC rules, are available on the Exchange's website, as well. A new link under the Shareholder Relations section entitled Corporate Governance includes the code of ethics for the

Exchange's principal executive officer and senior financial officer, the whistleblower complaint procedures, among other things. As an SRO and a public company, NYMEX believes that its current disclosures provide useful information on the Exchange's governance, self-regulatory activities and compensation.

Any decision to increase the amount of transparency through additional disclosures should be considered carefully. In particular, careful consideration should be given to determining the type of information that would be most relevant and appropriate for public dissemination, beyond what is already made available. An open dialogue between the Commission and the futures industry is essential to achieving the best results.

Conclusion

NYMEX thanks the Commission for the opportunity to submit a written statement for inclusion in the record of this very important public hearing on self-regulation and self-regulatory organizations in the futures industry. We look forward to working with the Commission as it completes its study of these issues.