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OFFICE OF THE SECRETARIAT  
January 21, 2000

**VIA FACSIMILE**

Ms. Jean A. Webb  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

Re: Proposed Rulemaking Concerning Amendments to Insider Trading  
Regulation 64 FR 72587 (December 28, 1999)

Dear Ms. Webb:

The New York Mercantile Exchange ("NYMEX" or the "Exchange") appreciates the opportunity to comment, on its own behalf and on behalf of its wholly-owned subsidiary, Commodity Exchange, Inc. ("COMEX"), on the Commodity Futures Trading Commission's ("CFTC" or the "Commission") proposal to amend Commission Regulation §1.59. This rule presently requires self-regulatory organizations ("SROs") to adopt rules prohibiting employees, governing board members, and committee members from certain trading activities and from disclosing material, non-public information.

NYMEX is a not-for-profit corporation organized under the laws of the State of New York. It has been designated by the Commission as a 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. Public investors in our markets include institutional and commercial producers, processors, marketers and users of energy and metals products.

In the Federal Register release, the Commission proposed a number of technical amendments to Regulation § 1.59. First, the Commission proposed to amend the definition of "employee" so as to exclude expressly governing board members. Currently, there are two categories of individuals subject to Regulation §1.59: (1) SRO employees, including those employed by the SRO on a salaried basis and those employed on a contractual or consulting basis; and (2) SRO governing board and/or committee members. Under Regulation § 1.59, SRO employees are subject to stricter prohibitions against trading than SRO governing board or committee members. Because of the industry trend to give stipends or payments to governing board

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*The New York Mercantile Exchange 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, and the Eurotop 100® index.*

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members for their service, salaried governing board members potentially could be subject to two inconsistent insider trading restrictions: one for governing board members and another for employees. Accordingly, under the proposed technical amendment to the definition of employees, all governing board members, regardless of a salary received solely for their governing board activities, would be prohibited only from using material, non-public information for any purpose other than the performance of their official duties.

Second, the term "governing board member" is not presently defined in Regulation § 1.59. The Commission proposes to define the term to include individuals who solely perform the functions of governing board members, even if they are not technically members of the exchange's governing board. The definition thus would include those individuals serving the "functional equivalent" of governing board members.

Third, the CFTC would divide, into four subparagraphs, the paragraph containing prohibitions on SRO employees. The Commission believes that this reorganization would clarify the applicable prohibitions and would clearly distinguish the situations in which employees of SROs are absolutely prohibited from trading commodity interests from the situations in which they are prohibited from trading only if they have access to material, non-public information.

We support each of these proposed changes. We also agree with the Commission that the proposed technical amendments would clarify the scope and operation of the restrictions specified in Regulation § 1.59.

In addition to the proposed technical amendments noted above, the Commission requested public comment regarding the application of Regulation § 1.59 to paid consultants and to non-paid advisors. With regard to paid consulting, although Regulation § 1.59 already defines the term employees so as to include paid consultants within that definition, the Commission requested comment on whether Regulation § 1.59 should be amended in any way in order to clarify the treatment of such consultants. We do not believe that any additional clarification is needed at this time.

The Commission also sought comment concerning the application of Regulation § 1.59 to non-paid advisors of SRO governing boards and committees. The Commission

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noted that such individuals were not currently subject to Regulation §1.59.<sup>1</sup> The Commission requested comment on the extent to which such individuals are utilized by SRO governing boards and committees and their level of participation in these bodies' deliberations. With regard to NYMEX practice, the Exchange generally does not use unpaid advisors as advisors either to Exchange committees or to the NYMEX Board of Directors.

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NYMEX thanks the Commission for the opportunity to submit comments concerning its 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,



R. Patrick Thompson  
President

cc: Chairman William J. Rainer  
Commissioner Thomas J. Erickson  
Commissioner Barbara P. Holum  
Commissioner James E. Newsome  
Commissioner David D. Spears

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<sup>1</sup>Because these individuals are not compensated, they would not fall within the scope of the definition for "employees." In addition, they would not be actual members of an SRO governing board or committee.