

# SUBMISSION COVER SHEET

Exchange Identifier Code (optional) \_\_\_\_\_

Date March 13, 2006

## ORGANIZATION

New York Mercantile Exchange, Inc.

## FILING AS A:

DCM

DCO

DTEF

## TYPE OF FILING

### • Rule Amendments

Self-Certification Under Reg. 40.6(a)

Commission Approval Requested Under Reg. 40.5 or 40.4 (a)

Notification of Rule Amendment Under Reg. 40.6(c)

Non-Material Agricultural Rule Change Determination Under Reg. 40.4(b)

### • New Products

Self-Certification Under Reg. 40.2 or 41.23

Commission Approval Requested Under Reg. 40.3

## RULE NUMBERS

Amendments to the Certificate of Incorporation and to the Bylaws of the Exchange

## DESCRIPTION (Rule Amendments Only)

The amendments are being implemented in connection with a transaction under which General Atlantic LLC would invest \$160 million for a 10% equity stake in NYMEX Holdings, the parent holding company of the Exchange.

BYLAWS  
OF  
NEW YORK MERCANTILE EXCHANGE, INC.  
BYLAWS

ARTICLE 1

MEMBERSHIP

SEC. 100. Definitions.

Defined terms used herein shall have the meanings ascribed to them in Article 9.

SEC. 101. ~~SEC. 100.~~ Classes of Membership; Number of Memberships; Additional Classes of Memberships

(A) Membership shall consist of the following two classes:

- (1) Class A, and
- (2) Class B.

(B) ~~The~~ Subject to Sections 201(x), 202, 311, 500(B) or 501, the number of Class A Memberships is limited to 816 and the number of Class B Memberships is limited to one.

(C) ~~The~~ Subject to Sections 201(x), 202, 311, 500(B) or 501, the Board may create additional classes of members with such rights and limitations as the Board determines, provided however, that no such additional class of Membership, ~~other than the Class B Membership,~~ shall have voting or other rights equal to or greater than the Class A Memberships.

SEC. 102. ~~SEC. 101.~~ Eligibility Criteria and Procedures

(A) ~~The~~ Subject to Sections 201(x), 202, 311, 500(B) or 501, the Board may adopt, from time to time, Rules relating to criteria for eligibility for membership and procedures for becoming a member and any requirements or procedures for the acquisition or transfer of a membership as it may determine.

(B) ~~The~~ Subject to Sections 201(x), 202, 311, 500(B) or 501, the Board may adopt, from time to time, Rules

**Comment [c1]:** For reference, following is a brief summary of these sections:

**Section 201(x)** = Next annual meeting to elect directors must occur no later than May 1, 2006.

**Section 202** = Class A members may call a special meeting with 10% of the memberships.

**Section 311** = Trading rights protections.

**Section 500(B)** = Amendments to trading rights protections require the consent of the Class A members and not just the board of directors.

**Section 501** = Amendments to Rules require the consent of the Class A memberships and not just the board of directors.

**Comment [c2]:** Conforming amendment in connection with the provision of trading rights. Please see, in particular, Section 311(C)(3).

**Comment [c3]:** Conforming amendment in connection with the provision of trading rights. Please see, in particular, Section 311(C)(3).

**Comment [c4]:** Conforming amendment in connection with the provision of trading rights. Please see, in particular, Section 311(C)(6).

**Comment [c5]:** Conforming amendment in connection with the provision of trading rights. Please see, in particular, Section 311(C)(6).

relating to eligibility and application procedures for Floor Members as it shall determine.

~~SEC. 103. SEC. 102.~~ Financial Standards

(A) ~~The~~Subject to Sections 201(x), 202, 311, 500(B) or 501, the Board may adopt, from time to time, Rules relating to financial standards applicable to Class A Members and Member Firms as a condition to becoming a Class A Member and continuing as a Class A Member. Such financial standards may differ among different categories of memberships as determined by the Board in its discretion.

**Comment [c6]:** Conforming amendment in connection with the provision of trading rights. Please see, in particular, Section 311(C)(6).

(B) Any Class A Member who is registered with the Commission shall comply with such rules and regulations as the Commission adopts relating to financial requirements.

~~SEC. 104. SEC. 103.~~ Dues

~~The~~Subject to Sections 201(x), 202, 311, 500(B) or 501, the annual dues of Class A Members shall be fixed by the Board at any meeting of the Board and are payable at such time as the Board may determine. The Board may waive the payment of dues by all Class A Members or by individual Class A Members as it shall determine. Dues are payable by the Class A Member in whose name a membership such Class A Membership is registered as owner.

**Comment [c7]:** Conforming amendment in connection with the provision of trading rights. Please see, in particular, Section 311(C)(4).

~~SEC. 105. SEC. 104.~~ Assessments

~~From~~Subject to Sections 201(x), 202, 311, 500(B) or 501, from time to time the Board may levy such assessments as it determines to be necessary. All assessments are due and payable at such time as the Board may determine. All assessments are payable by the Member in whose name the such Membership is registered as owner.

**Comment [c8]:** Conforming amendment in connection with the provision of trading rights. Please see, in particular, Section 311(C)(4).

~~SEC. 106. SEC. 105.~~ Fees

~~From~~Subject to Sections 201(x), 202, 311, 500(B) or 501, from time to time the Board may establish fees, in such amounts as it determines, on contracts traded on the Exchange.

**Comment [c9]:** Conforming amendment in connection with the provision of trading rights. Please see, in particular, Section 311(C)(4).

~~SEC. 107. SEC. 106.~~ Failure to Pay Dues, Assessments and Fees

(A) If a Class A Member fails to pay any dues, assessments or fees when due and such failure is not cured within 30 days after written notice to the Class A Member by the Exchange that such dues, assessments or fees are due, then such Class A Member shall be suspended automatically from all rights and privileges of Membership. Such suspension shall

continue in effect until the failure is cured. The Executive Committee, upon written application received prior to the expiration of such period, may extend ~~the~~such 30 day period, in its sole discretion.

(B) If a Class A Member who is suspended under subsection (A) of this Section ~~406~~107 fails to pay any dues, assessments or fees within 30 days of the suspension, then the Class A Member shall be expelled from ~~m~~Membership. The Board or the Executive Committee, upon written application received prior to the expiration of such 30 day period, and for good cause, may extend ~~the~~such 30 day period.

(C) Any Class A Member who fails to pay any dues, assessments or fees after written notice to the Class A Member that such dues, assessments or fees are payable, shall pay a penalty, in addition to the sanctions imposed by this Section ~~406~~.107, as fixed from time to time by the Board but not less than 20% of the amount due.

SEC. 108. ~~SEC. 107.~~ Notice of Dues and Assessments

(A) Notice of all dues and assessments shall be published by the Exchange and shall be given personally by delivery to a postal box located on the Exchange premises or by first class mail, postage prepaid and addressed to the Class A Member at the address such Class A Member has filed with the Exchange. Notice, when mailed in accordance with this Section ~~107~~.108, shall be effective when mailed.

(B) Non-receipt of the notice shall not operate to relieve the Class A Member from payment, to extend the time for payment or to relieve any Class A Member from the imposition of penalties for failing to pay dues and assessments.

SEC. 109. ~~SEC. 108.~~ Effect of Suspension or Expulsion of Membership

(A) A Class A Member or Member Firm whose rights and privileges of ~~m~~Membership have been suspended shall continue to be:

- (1) subject to ~~these~~ Bylaws and ~~the~~ Rules of the Exchange;
- (2) liable for all dues, assessments, fees and fines imposed by the Exchange; and

(3) obligated to the Exchange and to its Members for all contracts, obligations and liabilities entered into or incurred before, during and after such suspension.

(B) A Class A Member or Member Firm who has been expelled from the rights and privileges of Membership shall continue to be:

(1) subject to the disciplinary and arbitration rules of the Exchange;

(2) liable for all dues, assessments, fees and fines imposed by the Exchange prior to such expulsion; and

(3) obligated to the Exchange and its Members for all contracts, obligations, liabilities, fines and penalties entered into or incurred prior to or after such expulsion.

~~SEC. 110. SEC. 109.~~ Transfer of Membership

~~Membership in the Exchange is a personal privilege, only transferable pursuant to the terms and conditions established by these Bylaws, the Rules and the Charter. No Member may transfer a membership when the Member or the Member Firm upon which such Member has conferred such membership privileges is the subject of any disciplinary proceeding or investigation by the Exchange under the Bylaws or Rules.~~

~~A Class A Member who is the subject of any disciplinary proceeding or investigation by the Exchange may transfer a membership Class A Membership pursuant to the terms and conditions established by these Bylaws, the Rules and the Charter notwithstanding that such Member or the Member Firm upon which such Member conferred such membership privileges is the subject of any investigation by the Exchange, if the Member or Member Firm submits a written agreement, acceptable to the Board, by which the Member or Member Firm submits to the continuing jurisdiction of the Exchange.~~

~~SEC. 111. SEC. 110.~~ Disclosure of Information

The Exchange shall not disclose to any person any information regarding the financial condition of a Class A Member or Member Firm or the transactions or positions of any Class A Member or Member Firm or any person except:

(1) to any committee, officer, Director, employee or agent of the Exchange authorized to receive such information within the scope of its or such person's duties;

(2) to any duly authorized representative of the Commission or other regulatory agency with jurisdiction over the Exchange requesting such information or to any duly authorized representative of any

**Comment [c10]:** To conform to the Exchange's current practice and Rules, which provide for the retention of jurisdiction over former Members even following the transfer of their Memberships. These procedures are deemed to be best handled by the Exchange's Rules rather than by the Bylaws.

other regulatory or self-regulatory organization with which the Exchange, as approved by the Board, has entered into an information sharing agreement;

(3) as required by law;

(4) when the Class A Member or Member Firm requests or consents to such disclosure; or

(5) that the Exchange may release such information in connection with any litigation involving the Exchange when, in the opinion of the Exchange, the information is relevant or the release of the information is necessary and appropriate to the conduct of such litigation.

SEC. 150. ~~SEC. 150.~~ Establishment of Associate Membership

There is hereby established a category of associate members known as ~~“Commercial Associate Members”~~ whose election to ~~membership~~ Commercial Associate Membership and whose rights, privileges and obligations shall be as set forth in Sections 150 through 155.

SEC. 151. Number of Commercial Associate Memberships

The number of Commercial Associate Members shall be limited to 28.

SEC. 152. Election

Any person who was a member in good standing of International Commercial Exchange, Inc. may be qualified as a Commercial Associate Member of the Exchange by complying with the following provisions:

(A) he shall have filed an application for ~~m~~Membership as a Commercial Associate Member in the form prescribed by the Exchange on or before December 31, 1973; and

(B) the application shall have been accompanied by a statement of the President or a Vice President of International Commercial Exchange, Inc. that the applicant was a member in good standing of said Exchange and that his application was approved.

SEC. 153. Obligations of Commercial Associate Members

A Commercial Associate Member shall be subject to all of the provisions of ~~these~~ Bylaws and ~~the~~ Rules of the Exchange applicable to Class A Members including, without limitation, the obligations for dues, assessments and fines, except the following:

5 DeltaView comparison of pcdocs://nycsr06a/556532/1 and pcdocs://nycsr06a/541227/30. Performed on 2/23/2006.

(A) those that are not applicable to the nature of his ~~m~~Membership such as the provisions respecting compliance with requirements for election to ~~m~~Membership, provisions for transfer of ~~m~~Membership and the like; and

(B) those that are inconsistent with the provisions of Sections 150 through 155.

SEC. 154. Rights and Privileges of Commercial Associate Members

A Commercial Associate Member shall have the following rights and privileges:

(A) the right to confer the ~~membership~~Commercial Associate Membership privileges on a ~~partnership or, corporation or other entity~~ in accordance with such rules as may be established for that purpose;

(B) the right to act as a ~~F~~loor ~~T~~rader in transactions in all contracts traded on the Exchange only for his own account; and

(C) the right to act as a ~~F~~loor ~~b~~roker only in transactions in contracts designated as "Commercial Associate Contracts."

SEC. 155. Limitations of Rights of Commercial Associate Members

Notwithstanding any other provision of Sections 150 through 155 and the subdivisions thereunder, a Commercial Associate Member shall not have any of the following rights or privileges:

(A) to transfer his ~~membership~~Commercial Associate Membership voluntarily (nor shall any such ~~membership~~Commercial Associate Membership be transferred by operation of law, and any purported transfer in violation of this Section 155 shall be null and void ab initio);

(B) to vote;

(C) to trade on the floor of the Exchange except as specified in Section 154;

(D) to clear contracts or to confer the right to become a ~~C~~learing ~~M~~ember on a ~~partnership or, a corporation or other entity~~;