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December 2, 2003

BY EMAIL AND AIRBORNE EXPRESS

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

Re: Rule Certification. NYMEX Submission 03-164: Notification of New COMEX Rule 4.36B, "Exchange of Futures for, or in Connection with Swap Transactions" for the Grade 1 Copper Futures Contract.

Dear CFTC Commissioners:

The New York Mercantile Exchange, Inc. ("NYMEX" or the "Exchange") is notifying the Commodity Futures Trading Commission ("CFTC" or "Commission") of a new rule to be implemented effective Thursday, January 1, 2004. The approved new COMEX Rule 4.36B, "Exchange of Futures for, or in Connection with Swap Transactions" permits the execution of swap transactions in the Grade 1 Copper Futures Contract in the thirteenth (13th) to twenty-fourth (24th) contract months. The rule will continue in effect for an initial term of three years from the effective date or until terminated by the Board of Directors or its designee.

Pursuant to Section 5c(c) of the Commodity Exchange Act ("Act") and CFTC Rule 40.6, the Exchange hereby certifies that the attached rule amendment complies with the Act, including regulations under the Act. This new rule will go into effect on Thursday, January 1, 2004.

Should you have any questions concerning the above, please contact Albert J. Getz at (212) 299-2608.

Very truly yours,

Robert A. Levin
Senior Vice President - Research

Attachment: Approved COMEX Rule 4.36B, "Exchange of Futures for, or in Connection with, Swap Transactions."

Approved COMEX Rule 4.36B

Rule 4.36B Exchange of Futures for, or in Connection with, Swap Transactions

- (A) (1) An exchange of futures for, or in connection with, a swap (EFS) consists of two discrete, but related, transactions; a swap transaction and a futures transaction. At the time such transaction is effected, the buyer and seller of the futures must be, respectively, the seller and the buyer of the swap. The swap component shall involve the commodity underlying the futures contract (or a derivative, by-product or related product of such commodity). The quantity covered by the swap must be approximately equivalent to the quantity covered by the futures contracts. The swap component of an EFS transaction must comply with the applicable CFTC swap regulatory requirements. The initial term of the pilot program shall be three years from the effective date of this Rule 4.36B. Termination of the pilot program shall not void or otherwise affect EFS transactions entered into prior to such termination of the pilot program.
- (2) The EFS program in Copper futures will continue in effect until terminated by the Board of Directors or its designee.
- (B) (1) The report of an EFS transaction shall be given on the Floor of the Exchange during the hours of futures trading.
- (2) EFS transactions are permitted until the close of trading on the last trading day in the expiring contract month of the applicable contract(s). Such transactions are currently permissible in the following contracts and contract months: Copper Futures – 13th to 24th contract months.
- (C) A report of such EFS transaction shall be submitted to the Exchange by each Clearing Member representing the buyer and/or seller. Such report shall identify the EFS as made under this Rule and shall contain the following information: a statement that the swap component of the EFS complied with the applicable CFTC swap regulatory requirements at the time the EFS was entered into between the buyer and seller, a statement that the EFS has resulted or will result in a change of payments or other such change, the kind and quantity of the futures, the price at which the futures transaction is to be cleared, the names of the Clearing Members and customers and such other information as the Exchange may require. Such report (form) shall be submitted to the Compliance Department by 12:00 noon, no later than two (2) Exchange business days after the day of posting the EFS on the Floor of the Exchange.
- (D) (1) Each buyer and seller must satisfy the Exchange, at its request, that the transaction is a legitimate EFS transaction. Upon the request of the Exchange, all documentary evidence relating to the EFS, including a master swap agreement and any supplements thereto,

shall be obtained by the Clearing Members from the buyer or seller and made available by the Clearing Members for examination by the Exchange. Additionally, if the buyer or seller is a Member/Member Firm, the Exchange may obtain the information directly from such person(s).

(2) Failure by a buyer or seller, or its Clearing Member to satisfy the Exchange that an EFS transaction is bona fide shall subject such buyer or seller, if a Member/Member Firm, or the Clearing Member to disciplinary action. Such disciplinary action, depending on the gravity of the offense, may be deemed to be a major offense of the Exchange's rules. Further, if the buyer or seller is not a Member/Member Firm, the Exchange may conduct a hearing before the Business Conduct Committee to limit, condition or deny access to the market.

(E) Each EFS transaction shall be posted by the Floor Members and cleared through the Exchange in accordance with normal procedures, and by the Clearing Members involved.

(F) All omnibus accounts and foreign brokers shall submit a signed EFS reporting agreement in the form prescribed by the Exchange to the Exchange's Compliance Department. Such Agreement shall provide that any omnibus account or foreign broker identified by a Clearing Member (or another omnibus account or foreign broker) as the buyer or seller of an EFS pursuant to Rule 4.36B(C), shall supply the name of its customer and such other information as the Exchange may require. Such information shall be submitted to the Exchange's Compliance Department by 12:00 noon no later than two (2) Exchange business days after the day of posting the EFS on the Floor of the Exchange. Failure by an omnibus account or foreign broker to submit either the agreement or the particular EFS information to the Exchange may result in a hearing by the Business Conduct Committee to limit, condition or deny access of such omnibus account or foreign broker to the market.