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March 18, 2004

**VIA FACSIMILE AND ELECTRONIC MAIL**

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

**Re: Rule Certification. New York Mercantile Exchange, Inc. Submission #04.38:  
Amendments to NYMEX Rule 9.04A**

Dear CFTC Commissioners:

The New York Mercantile Exchange, Inc. ("Exchange") is notifying the Commodity Futures Trading Commission ("Commission") that it is implementing amendments to NYMEX Rule 9.04A. Pursuant to Section 5c(c) of the Commodity Exchange Act ("Act") and CFTC Rule 40.6, the Exchange hereby certifies that the amendments comply with the Act, including regulations under the Act. The amendments will be implemented effective for trade date, Monday, March 22, 2004.

Should you have any questions concerning the above, please contact the undersigned at (212) 299-2207.

Very truly yours,

Brian J. Regan  
Vice President and Counsel

## APPROVED AMENDMENTS TO NYMEX RULE 9.04A

(Underlining in bold indicates additions; strike-outs in bold indicate deletions.)

### **9.04A NYMEX ClearPortsm Clearing: Use of EFS and EFP Procedures for Trade Submission**

(A) Scope of this Rule. This rule governs transactions not executed on the Exchange ("Transactions") that are submitted to NYMEX for clearing in connection with a contract that is listed for clearing only or listed for trading and clearing on the Exchange. In submitting such a transaction or in allowing a transaction to be submitted to the Exchange, the two parties to the Transaction shall be deemed to have mutually agreed to initiate a process to substitute their transaction for a standardized futures contract listed for clearing only or listed for trading and clearing on the Exchange. For purposes of this rule, the two principals in the transaction shall be referenced as the "Parties to the Transaction."

(B) Transactions: Compliance with Regulatory Exemptions and Exclusions. Each of the Parties to the Transaction shall be responsible for ensuring that the Transaction complies with CFTC regulatory requirements as applicable for such transaction, including as appropriate compliance with the terms of a statutory exemption or exclusion under the Commodity Exchange Act from other CFTC regulation relied upon by the Parties to the Transaction.

(C) Substitution of NYMEX Futures for the Transaction. The process of substitution of a NYMEX futures contract for a Transaction shall not be deemed to have been completed unless and until the Parties to the Transaction have successfully concluded the submission of the Transaction to the Exchange as an exchange of futures for physicals (EFP) or as an exchange of futures for swaps (EFS), as applicable, pursuant to the respective provisions of NYMEX Rule 6.21 or Rule 6.21A and the provisions of this rule. For forward transactions involving deferred delivery of the physical commodity to be submitted to the Exchange, the Parties to the Transaction shall utilize the EFP procedure, and for swap transactions to be submitted to the Exchange, the Parties to the Transaction shall utilize the EFS procedure.

(D) Trade Submission Procedures. All transactions submitted to the Exchange pursuant to this rule must be submitted in accordance with the procedures established by the Board of Directors for this purpose, as amended from time to time. The Parties to the Transaction and

any OTC Broker authorized to submit executed transactions on their behalf to the Exchange and authorized for related activities shall be exclusively responsible, both individually and jointly, for accurately confirming the details of the Transaction to the Exchange. Once submitted, all such transactions, subject to the rules for trade adjustments set forth in Section (G) of this Rule, shall be deemed final. Neither the Exchange nor a Clearing Member carrying the account of either party will have any responsibility in the confirmation of trade terms for the EFP or EFS transaction.

(E) Registration of Eligible Participants, Eligible Accounts and Authorized OTC Brokers. Each Clearing Member must register with the Exchange in the manner provided any customer authorized by the Clearing Member to submit transactions to the Exchange pursuant to this rule, and must also register with the Exchange the applicable account numbers for each such customer. For each such account, the Clearing Member carrying that account also must submit to the Exchange in the manner provided the name of any OTC Broker(s) who has registered with the Exchange for services provided by the Exchange, and who is authorized by the customer to act on its behalf in the submission of executed transactions to the Exchange and related activity.

For any such OTC Brokers authorized by the customer and submitted to the Exchange by the Clearing Member, such submission by the Clearing Member will not constitute an endorsement or ratification of the customer's authorization of the OTC Broker. Moreover, submission of OTC Brokers authorized by the customer will not mean that the Clearing Member is in privity with, has a relationship with and/or is otherwise standing behind any of the customer's authorized OTC Brokers, and the Clearing Member will have no responsibility for any such OTC Brokers selected by the customer and no duty or obligation to supervise the activities of any such OTC Brokers.

(F) Establishment of Authorized Commodities and Total Risk Value. For each account number that has been registered with the Exchange pursuant to Section (E) of this rule, a Clearing Member also must input into the Exchange's Risk Allocation Value "E-RAV" system authorization indicating the specific commodities for which a Transaction may be submitted to the Exchange pursuant to this rule and the risk value(s) assigned by the Clearing Member for Transactions for that account.

(G) Trade Deletion Procedures for Transactions Submitted via NYMEX Web Interface. Following submission of the trade details to the web interface by an OTC Broker (or by Exchange staff as mutually agreed by the Parties to

the Transaction), an e-mail will be transmitted to the Parties to the Transaction notifying them that they have been listed as counterparties in a Transaction that has been submitted to the Exchange. Following such submission, a buyer or seller may not unilaterally reject the trade terms previously submitted to the Exchange. However, in order to correct an error resulting from the good faith actions of the OTC Broker or Exchange staff, as applicable, and upon mutual consent of the Parties to the Transaction, an OTC Broker or Exchange staff, as applicable, may void the transaction provided, however, that this void response is received by the Exchange within sixty (60) minutes of the time of the initial submission of the transaction to the Exchange.

**Following such period of time after the initial submission of the Transaction, OTC brokers are prohibited from transmitting voids on submitted trades; instead, following this cut-off time, trades may only be voided by Exchange staff in the Exchange's Customer Service Call Center at the request of both parties. The determination for trades to be voided in the system by Exchange staff will be made at the sole discretion of the Exchange based upon applicable facts and circumstances known at that time.**

Following the posting of the transaction on the Exchange, the Parties to the Transaction shall have no recourse or remedy under Exchange rules and procedures against any OTC Brokers and/or Clearing Members in connection with that transaction and instead would need to pursue such private remedies as would be otherwise available under existing law.

(H) Entry of Clearing Orders. For a Transaction submitted to the Exchange pursuant to this rule, such transaction first will be routed to the Exchange's E-RAV Credit Check system. The time of entry of a Clearing Order into the Exchange's E-RAV system will be recorded by the system and will be used by the Exchange as the time that an E-RAV Credit Check was conducted pursuant to Section (I) below.

(I) Use of E-RAV Credit Check System. The Exchange will conduct an E-RAV Credit Check for each Clearing Order. The E-RAV Credit Check will confirm whether the Clearing Member carrying that account has authorized that account for transactions submitted pursuant to this rule in the commodity involved in the Clearing Order, and confirm whether the entry of the Clearing Order into clearing would fall within the OTC risk value(s) established by the Clearing Member.

At all times until both Clearing Orders have successfully cleared the E-RAV Credit Check, a transaction submitted to the Exchange pursuant to this rule shall remain as an uncleared, bilateral OTC transaction wherein the Parties to the Transaction continue as principals in that transaction.

In the event that either Clearing Order is rejected as a result of the ERAV Credit Check test, the EFS or EFP procedure would be deemed to have been terminated, and the Parties to the Transaction and their respective Clearing Members would be informed accordingly. Thereafter, any determination as to further action with respect to the OTC Transaction would be resolved by the Parties to the Transaction independently of the their Clearing Members and/or the Exchange.

(J) Trade Submission Deadlines. Transactions that are submitted, confirmed and accepted for clearing, as further provided by Section (K) of this rule, prior to ~~2:30~~ **2:40** p.m. Eastern **Prevailing Standard Time** on an Exchange business day will be included by the Exchange for clearing for that business day. The Exchange reserves the right to modify these business hours without notice at any time.

**Except as may otherwise be provided by the Exchange, such as for Exchange holidays,** (The hours for electronic submission via the NYMEX website shall be from 7:00 p.m. Sunday evening through ~~2:30~~ **2:40** p.m. Friday afternoon, except for the period from ~~2:30~~ **2:40** p.m. to 3:15 p.m. (Monday-Thursday). The NYMEX facilitation desk **generally** will be available to assist users from 7:30 a.m. to 5:00 p.m. **Eastern Prevailing Time** (Monday-Friday.)

(K) Clearance by Both Clearing Orders of Credit Check. Upon clearance by both Clearing Orders of the E-RAV Credit Check, the transaction shall be deemed to have been accepted for clearing and will be routed automatically to the Exchange's clearing system. Consequently, the EFS or EFP procedure also shall be deemed to have been completed, and futures contracts thereafter will effectively be substituted for the Transaction that is thus extinguished between the Parties to the Transaction.

Notwithstanding the above, a Clearing Member also shall be responsible for accepting and clearing a position for a Clearing Order entered into the Exchange's clearing system for clearing following any non-operation of the Exchange's E-RAV Credit Check functionality for the applicable account carried by the Clearing Member.