

February 3, 2005

Via E-Mail and US Mail

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

2005 FEB -3 PM 3:53

RECEIVED
C.F.T.C.

Re: Rule Certification. NYMEX Submission 05.17 – Notification of Amendments to NYMEX Division Rules 6.21G and 9.41.

Dear Ms. Jean Webb:

The New York Mercantile Exchange, Inc. (“NYMEX” or the “Exchange”) hereby notifies the Commodity Futures Trading Commission (“CFTC”) of amendments to NYMEX Rules 6.21G, Participation by NYMEX Floor Members in Special Program for Over-the-Counter Trading with FCM Guarantee, and 9.41, Special Capital Provisions for Clearing Members Guaranteeing and Clearing OTC Contracts Executed by NYMEX Floor Members.

Effective Friday, February 4, 2005, the amendments extend the provisions of Rule 6.21G through February 4, 2006, and eliminate outdated start-up provisions contained in Rule 9.41. These amendments reflect an extension granted by the CFTC, effective February 4, 2005, to its Order allowing NYMEX Floor Members to trade in OTC markets under specified conditions. Pursuant to Section 5c(c) of the Commodity Exchange Act (“Act”) and CFTC Rule 40.6, the Exchange hereby certifies that the new amendments comply with the Act, including regulations under the Act.

Should you have any questions concerning the above, please contact the undersigned at 212-299-2940.

Very truly yours,

Nancy M. Minett
Vice President
Compliance Department

Attachments

cc: Thomas LaSala
Brian Regan

AMENDMENTS TO NYMEX RULES 6.21G and 9.41
(Underlining in bold indicates additions; strike-outs indicate deletions.)

Rule 6.21G, Participation by NYMEX Floor Members in Special Program for Over-the-Counter Trading with FCM Guarantee

(A) This program is effective until February 4, 2005~~6~~, or until such other date as announced by the Exchange. The over-the-counter (OTC) contracts, agreements or transactions must be executed pursuant to Section 2(h)(1) of the Commodity Exchange Act (Act), which in effect provides among other things that such transactions shall be subject to CFTC anti-fraud and anti-manipulation authority and also may not be entered into on a trading facility. This program generally allows a NYMEX Floor Member to enter into trading in certain OTC contracts on the basis of a FCM guarantee without needing to satisfy the total assets requirements otherwise necessary under the Act for such trading. In order to maintain eligibility for this program, a NYMEX Floor Member must continue to satisfy all of the conditions contained in this rule.

(B) This program is available only to NYMEX Floor Members in good standing who are properly registered with the CFTC as a floor trader and/or as a floor broker. With respect to floor brokers, this program is available only for trading executed by the floor broker for his proprietary account. In addition, each NYMEX Floor Member must notify the Exchange Compliance Department prior to any participation in this program.

(C) Clearing. The NYMEX Floor Member must have obtained and at all times maintain a financial guarantee in writing as provided by the Exchange for the contracts, agreements or transactions from a NYMEX Clearing Member that:

- (1) is registered with the Commission as an FCM; and,
- (2) clears the OTC contracts, agreements or transactions thus guaranteed for such NYMEX Floor Member.

(D) Permissible OTC contracts, agreements or transactions shall be limited to trading in a commodity that either:

- (1) is listed only for clearing at NYMEX or
- (2) is listed for trading and clearing at NYMEX and NYMEX's rules provide for exchanges of futures for swaps in that contract, and
- (3) each OTC contract, agreement or transaction executed pursuant to this NYMEX program must be cleared at NYMEX.

(E) The NYMEX Floor Member may not enter into OTC contracts, agreements or transactions with another floor broker or floor trader as the counterparty for any contract that is listed for trading on the Exchange. However, a NYMEX Floor Member may enter into OTC contracts, agreements or transactions for such products with another individual or entity that qualifies as an "eligible contract participant" pursuant to the Act.

(F) All contracts transacted in connection with this rule must be submitted and accepted for clearing on the Exchange. This rule neither authorizes nor allows a NYMEX Floor Member to maintain an uncleared OTC position and such activity would constitute a violation of this rule.

Rule 9.41, Special Capital Provisions for Clearing Members Guaranteeing and Clearing OTC Contracts Executed by NYMEX Floor Members

(A) Clearing Members that guarantee and clear OTC contracts, agreements or transactions pursuant to the program referenced in NYMEX Rule 6.21G must have and maintain at all times minimum working capital of at least \$20 million. ~~; provided, however, that during the first 18 months following commencement of this program, a Clearing Member must have and maintain minimum working capital of at least:~~

- a) \$5 million during the first twelve months of the two-year period; and
- b) \$10 million during the thirteenth through eighteenth months of the two-year period.

~~(B) If, during the 18-month period, a Clearing Member does not maintain working capital of at least \$20 million, it must further reduce its working capital in compliance with this program by 100 percent of the NYMEX margin requirements for the OTC contracts, agreements or transactions of floor brokers and floor traders that it is guaranteeing pursuant to this program. A Clearing Member must compute its working capital in accordance with Exchange rules and generally accepted accounting principles consistently applied.~~

~~(C) A Clearing Member that is subject to the provisions of paragraph (B), above shall be required to compute, on a daily basis, the total margin requirement for OTC contracts, agreements or transactions of floor brokers and floor traders that it is guaranteeing pursuant to this program. Such computations must be documented and maintained by the Clearing Member in accordance with CFTC Regulation 1.31 and be made available for inspection by Exchange representatives. Computations prepared as of financial statement filing dates must be included as part of such filing with the Exchange.~~

~~(D)~~ **(B)** A decline in a Clearing Member's working capital resulting from the application of this Rule shall be subject to the reporting requirements set forth in Rule 9.22.