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March 3, 2005

**Via E-Mail**

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

**Re: Rule Certification. NYMEX Submission 05.37 – Notification of  
Amendments to NYMEX Division Rules 8.02, 8.04, 8.57A and 8.59.**

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 Division Rule 8.02, 8.04, 8.57A and 8.59.

Effective March 7, 2005, the amendments clearly define all of the methods of service of process upon an investigation Subject or Respondent, as well as clarifying notice of retention of jurisdiction, and changing the length of time within which such notice must be served on a former Member from 90 days to one year. 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

(Additions are in bold and underlined; strikethroughs indicate deletions.)

#### **NYMEX Rule 8.02, Business Conduct Committee**

(A) Each Panel of the Business Conduct Committee shall have the power to direct the Compliance Department to investigate any suspected Rule violation within its jurisdiction.

(B) A Panel of the Business Conduct Committee shall meet at least monthly to review Investigative Reports. A member of a Panel of the Business Conduct Committee shall excuse himself from such review where he, or any person with whom he is affiliated, has a direct financial, personal or other interest in the matter under consideration.

(C) Each Panel of the Business Conduct Committee shall permit the Member, Member Firm or employee of any of the foregoing **or any other person that is a subject of** ~~under~~ investigation (**collectively, "Subjects"**) to present evidence on his or its behalf. Such presentation shall be conducted pursuant to the following procedures: the Investigative Report shall be provided by the Compliance Department to the Member, ~~Member Firm or employee of any of the foregoing or other~~ **Subject named in** that is the subject of the report. The **Subject** ~~Member, Member Firm or employee of any of the foregoing~~ may submit to the Panel a written statement together with any supporting documentation which is relevant to the investigation. Such statement shall be submitted to the Panel through the Compliance Department not later than 5 business days following service of the Investigative Report from the Compliance Department. Service **on a Subject** shall be complete when either personally delivered to the **Subject** ~~Member, Member Firm or employee of any of the foregoing~~ named in the Investigative Report; or by first class **or certified mail, or by use of a generally recognized overnight delivery service** to the **Subject** ~~Member, Member Firm, or employee of any of the foregoing~~ at the last address filed with the Exchange. Filing with the Exchange shall be complete when either personally delivered to the **offices of the Compliance Department** ~~Exchange~~ or when actually received by the **Compliance Department** ~~Exchange~~ if sent by first class mail to the Exchange.

(D) The Compliance Department shall be present during the Panel's review of an Investigative Report, and shall respond to all inquiries of the Panel. Members, Member Firms or employees of any of the foregoing who have submitted a written response to the Panel in the manner set forth in Section (C) of this Rule, may, after the presentation of the Compliance Department's report and before deliberations of the Panel, personally appear before the Panel with the Compliance Department present, either with or without counsel, to make an oral presentation relevant to the Panel's review of the investigative report, and may answer any questions posed by the Panel provided, however, that the presentation be limited to matters raised in the written response submitted pursuant to Section (C) of this Rule.

(E) If the Panel concludes that a reasonable basis exists for finding a Rule violation occurred, it shall direct the Compliance Department to advise the Member, Member Firm or employee of any of the foregoing of that fact and take any one of the following actions:

- (i) refer the matter to the Compliance Department with instructions for further action;
- (ii) issue a warning letter to the Member, Member Firm or employee of any of the foregoing; or
- (iii) direct the Compliance Department to issue a complaint

#### **NYMEX Rule 8.04 Complaint**

(A) If a Panel of the Business Conduct Committee issues a complaint, the complaint shall be served either: (1) personally to the **Respondent (as defined in paragraph (C) below)** ~~Member, Conferring~~

~~Member of a Member Firm or employee of any of the foregoing~~ named in the complaint or, (2) by first class **or certified** mail to the ~~Member, Member Firm or employee of any of the foregoing~~ **Respondent** named in the complaint **or, (3) by use of a generally recognized overnight delivery service** at the last address **for the Respondent** filed with the Exchange. Service of the complaint is complete when it is so mailed or personally delivered, as provided in Rule 8.02(C). The Compliance Department shall also file a copy of the Complaint with the Hearing Registrar (Legal Department).

(B) The Complaint shall (1) set forth the acts, practices or conduct in which the **Respondent** ~~Member, Member Firm or employee~~ is alleged to have engaged; and, (2) state the Rules alleged to have been, or about to be, violated.

(C) The term "Respondent" means a Member or Member Firm, as defined in Rule 8.00(A), or employee of any of the foregoing against which a complaint has been filed.

(D) The Compliance Department shall also notify the Respondent that the Respondent (1) is entitled to a hearing on the charges; (2) must request, in writing, a hearing and that failure to request a hearing within ten (10) business days after service of the complaint will operate as a waiver of a right to a hearing, unless good cause to the contrary is shown by the Respondent; (3) must file an answer to the complaint with the Compliance Department and the Hearing Registrar within ten (10) business days of service of the complaint; and (4) will have deemed to admit the allegations in the complaint if he does not so file an answer.

#### **NYMEX Rule 8.57A Retention of Jurisdiction over Former Members and Member Firms**

(A) Notwithstanding the sale of a membership or the termination of a lease (license) agreement, the Exchange shall, subject to the provisions of this Rule 8.57A, retain jurisdiction over each former Member and Member Firm with respect to any proceedings, matter which occurred prior to the termination of membership privileges and/or NYMEX ACCESS® trading privileges ("termination of Exchange privileges") of such Member or Member Firm whether through the transfer of a membership or the termination of a lease (license) agreement or otherwise. **If the former Member or Member Firm has not previously been notified in writing or in a recorded interview, that he/she/it is the Subject of an investigation or Respondent in a hearing,** ~~the~~ Vice President of Compliance or his designee, **or** the Hearing Registrar, **as applicable,** shall notify a **such** former Member or Member Firm of an investigation or hearing pursuant to this Chapter 8 in connection with any matter which occurred prior to the termination of Exchange privileges of such former Member or Member Firm. Such notice shall be in writing and shall be **served on** ~~mailed to~~ the former Member or Member Firm no later than **one year** ~~ninety (90) days~~ after the effective date of the termination of Exchange privileges by registered or certified mail, return receipt requested, **or by use of a generally recognized overnight delivery service** at **the** his last address as shown on the books and records of the Exchange **for the former Member or Member Firm.**

(B) At any time after notice in accordance with the requirements of this Rule 8.57A, the President or his designee may, in connection with any matter specified in such notice, request in writing that the former Member or Member Firm furnish books, records and copies of documents, supply written or oral statements under oath, or appear and testify at any hearing. The former Member or Member Firm shall comply with such request as promptly as possible.

(C) At any time within two (2) years after notice in accordance with the requirements of this Rule 8.57A, the former Member or Member Firm may be charged with any violation of the Bylaws and Rules relating to any matter specified in such notice, including any failure to comply with a request pursuant to this Rule 8.57A or any subsequent violation of the Exchange's Bylaws or Rules arising from the conduct of the former Member or Member Firm during the investigation. Any such former Member or Member Firm shall be subject to discipline as though his membership privileges and/or NYMEX ACCESS® trading privileges had not been terminated.

**NYMEX Rule 8.59 Extent of Jurisdiction**

Employees of Members and Member Firms having access to the trading floor or to NYMEX ACCESS® or any part of the Exchange premises, **or other persons subject to the Exchange's disciplinary jurisdiction**, shall remain subject to Exchange jurisdiction for the purposes of Chapter 8 of these Rules **following the termination of such person's employment or other relationship giving rise to Exchange jurisdiction. If the employee or other Subject has not previously been so notified in writing or in a recorded interview, the Vice President of Compliance or his/her designee shall**, if, within a period of one year of such employee's termination of employment with any Member and Member Firm, ~~the Compliance Department~~ advises such person in writing, by certified and first class mail **or by use of a generally recognized overnight delivery service** to the employee's last known residence address as reflected in Exchange records or the records of the Member and Member Firms that it is conducting an investigation of possible Rule violations during the period of his employment.