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OFC. OF THE SECRETARIAT

**VIA FACSIMILE AND E-MAIL**

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

**Re: Amended Rule Certification. New York Mercantile Exchange, Inc.  
Submission 05.50 - New Market Maker Incentive Program for Floor  
Trading at NYMEX Branch Trading Floor in Dublin**

Dear CFTC Commissioners:

The New York Mercantile Exchange, Inc. ("Exchange") is notifying the Commodity Futures Trading Commission ("Commission") that it will be implementing the terms of the Tiered Volume Market Maker Program, a new incentive program at its branch trading floor in Dublin, Ireland. Pursuant to Section 5c(c) of the Commodity Exchange Act ("Act") and CFTC Rule 40.6, the Exchange hereby certifies that the attached incentive program complies with the Act, including regulations under the Act; this additional program will be implemented effective on Tuesday, March 29, 2005. This Rule Certification was amended on March 28, 2005, and deleted the reference to a proposed draft for Notice to Members cited on page 2 of the certification. This current amended Rule Certification is sent to correct a typo on the attached Notice to Members regarding Tier 2 User Volume Requirement: Average of 500-799 sides/day in Brent should have correctly stated 500-~~999~~ sides/day.

Further, attached is a brief summary of our Wash Trade Surveillance procedures which we plan to have in effect to monitor this program.

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

Attachments

**Notice to Members - Reminder on Application Deadline for NYMEX Europe Market Maker Program and Notice on Revised Terms**

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The Exchanges wishes to remind interested persons that the registration deadline (for the new Brent market-maker program) is 5:00 PM (New York time) on Monday, March 21, 2005.

Following consultation with the applicable regulator for the Exchange's branch trading floor in Dublin, please be advised that the Exchange has determined to make one modification in the terms for this new program by slightly increasing the number of applicable contracts required for Tier 1 from a daily average (over a month) of at least 800 sides to a daily average of at least 1,000 sides.

A description of the program as revised is as follows:

Name of Program: **Tiered Volume Market Maker Program**

Registration Deadline: March 21, 2005, 5 PM (New York)

Commencement Date: March 29, 2005

Eligibility: Number of participants will be limited to applicants who register for the program by March 21, 2005.

Participation will be limited to persons/entities who: (i) have a demonstrated past commitment to the NYMEX Europe Brent contract; (ii) must demonstrate continuous market-making presence on the Dublin trading floor; and (iii) upon request, make a bid/ask market for 25 contracts on either side of the market. The satisfaction of these criteria is determined by NYMEX Europe staff in its sole discretion.

Term: The market maker program will continue for the duration that Brent futures are traded at the NYMEX Europe facility in Dublin as further limited by the financial cap in the limitations section below.

Any extension of the market maker program to apply following the launch of the NYMEX Europe Limited trading floor in London will be subject to Board of Directors discretion and regulatory review and/or approval. In this regard, please note that any establishment of an extension of the program to London would be subject to a separate regulatory review and approval by another regulator.

Types of Trades: This program is available only for trading for a trader's or trading firm's own proprietary account and is not available for the execution of customer

orders. In addition, this program is available only for trading executed via open outcry in Dublin and is not available for transactions in Brent executed on NYMEX ACCESS®, the Exchange's applicable electronic trading platform or for EFP or EFS transactions.

Description  
of Program:

All persons/entities who register and qualify for the program will be eligible for the following payments as follows:

Tier 1 User

Payment: \$100,000/month

Volume requirement: Average of 1,000 sides/day in Brent for each business day of the relevant month.

Tier 2 User

Payment: \$50,000/month

Volume requirement: Average of 500 – 999 sides/day in Brent for each business day of the relevant month.

Tier 3 User

Payment: \$15,000/month

Volume requirement: Average of 250 – 499 sides/day in Brent for each business day of the relevant month.

Limitations:

Program is capped at a total of \$15,000,000. In the event that this cap should be approached prior to the termination of the program such that the full amount of the incentive payments would not be available for the most recent month of trading volume, the Exchange would disburse payments for that month on a pro-rata basis up to the level of the cap.

N.B.

March 2005 payments will be pro-rated based on number of business days in the month.

All expressions of interest should be sent via e-mail to Dawn Lowe, Vice President, Membership Services, at [dlowe@nymex.com](mailto:dlowe@nymex.com) by the March 21, 2005 deadline set forth above.

Implementation of all market maker programs are subject to regulatory review and/or approval by the applicable regulators and, as noted, any extension of the program in London would be subject to separate review by another regulatory agency.

## **Attachment - Wash Trade Surveillance**

In connection with the upcoming NYMEX Europe volume incentive program, NYMEX Trade Practice and Market Surveillance will have several review tools in place to monitor wash and accommodation trading. At the most basic level, Trade Practice presently reviews a wash trade exception report which looks at back and forth trading for one account or for related accounts (as determined by information in our large trader system) which result in a wash or pass out trade. This report tracks specific trading events. Another report, which is presently in production, will look at proprietary trading. Presently, across all our markets, on average 28.8% of all CTI code type 1 trades on NYMEX are executed opposite type 1 trades. Trade Practice will have access to an exception reports which will detect type 1 trading which is "out of proportion" indicating that the member's trading should be further reviewed. Market Surveillance will also be able to review intraday volume by trader and break down the review to rank the trader who has done the highest volume of type 1 to type 1 trades.

Another project which is presently in production will find clusters or groupings of CTI type 1 trades opposite customer trades. Beyond the accommodation type trading which is presently reviewed (customer opposite type 1 local--type 1 local opposite type 1 customer's broker), type 1 trades opposite sets of orders, either executed opposite another broker or opposite the same member (in accordance with the NYMEX Europe cross trade rule) will be reviewed to see whether it appears that volume is being artificially inflated where intermediated pass-outs have been interposed in an instance where a set of orders would normally have been crossed by the broker.

All registrants will be reviewed, both by Market Surveillance and by Trade Practice Surveillance, to determine whether their trading falls into expected norms or if it appears that any noncompetitive or prearranged trading is inflating volume figures for traders in the group. Further, Senior Compliance Analyst David Greenberg, who has been observing trading in Dublin since NYMEX Europe began trading there, will personally speak to all registrants to remind them of their responsibilities under Exchange rules.