

July 12, 2005

Via E-Mail

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

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CFTC.
2005 JUL 12 PM 1:12
OFC. OF THE SECRETARIAT

Re: Rule Certification. NYMEX Submission 05.119: Notification of Amendments to Exchange Rule 3.03, Disqualification from Board and Committee Service.

Dear Ms. Jean Webb:

The New York Mercantile Exchange ("NYMEX" or the "Exchange") is notifying the Commodity Futures Trading Commission ("CFTC" or "Commission") of amendments to Exchange Rule 3.03, Disqualification from Board and Committee Service.

Effective Friday, July 15, 2005, the amendments to Rule 3.03 put in place an affirmative program to determine whether a settlement offer should be considered barrable for a member's repeated failure to conform to audit trail standards. Compliance staff will make a written recommendation to the disciplinary panel regarding whether a bar from Board or disciplinary committee service is appropriate in all cases involving a member with repeated audit trail offenses. The recommendation will take into account steps taken by a respondent to correct the situation, the reputation and disciplinary history of the respondent, and whether the repeated failure to conform to audit trail standards is a serious offense. In making this determination, Staff will look for any indication that customers may have been harmed, investigations intentionally corrupted or rule violations masked by the pattern of audit trail offenses. The Department's recommendation may call for a complete bar, a recommendation of a conditioned probationary period or a recommendation for no bar. Whether or not the recommendation of Compliance Staff differs from the settlement to be reviewed by the Board, the recommendation and rationale for the recommendation will be presented to the Board for their consideration.

Pursuant to Section 5c(c) of the Commodity Exchange Act ("Act") and CFTC Rule 40.6, the Exchange hereby certifies that the attached rule amendments comply with the Act, including regulations under the Act.

Should you have any questions concerning the above, please contact Adam Wernow, Compliance Counsel, at (212) 299-2851.

Very truly yours,

Nancy M. Minett
Vice President
Compliance Department

cc: Brian Regan
Thomas LaSala

[Underlining in bold indicates additions; strikethroughs in bold indicate deletions.]

Rule 3.03, Disqualification from Board and Committee Service

The following provisions of this Rule 3.03 shall apply with regard to the Class A Member of New York Mercantile Exchange Inc.

(A) Definitions:

(1) "Self-regulatory organization" means a "self-regulatory organization" as defined in Commission regulation 1.3(ee), and includes a "clearing organization" as defined in Commission regulation 1.3(d), except as defined in paragraph (C)(6) of this section.

(2) "Disciplinary committee" means any person or committee of persons, or any subcommittee thereof or panel that is authorized by a self-regulatory organization to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions or to hear appeals thereof.

(3) "Arbitration panel" means any person or panel empowered by a self-regulatory organization to arbitrate disputes involving such organization's members or their customers.

(4) "Oversight panel" means any panel authorized by a self-regulatory organization to review, recommend or establish policies or procedures with respect to the self-regulatory organization's surveillance, compliance, rule enforcement or disciplinary responsibilities.

(5) "Disciplinary offense" means:

(i) Any violation of the rules of a self-regulatory organization except those rules related to:

- (A) Decorum or attire,
- (B) Financial requirements, or
- (C) Reporting or recordkeeping.

(ii) Any rule violation described in paragraphs (A)(5)(i)(A) through (A)(5)(i)(C) of this section which involves fraud, deceit or conversion or results in a suspension or expulsion, **or with respect to repeated violations involving reporting or recordkeeping, where a disciplinary panel has determined, pursuant to a settlement agreement or an adjudication on the merits, that the violation, in light of all relevant facts—including but not limited to evidence as to whether or not steps have been taken by a respondent to correct the situation, the reputation and disciplinary history of the respondent, and any indication that customers may have been harmed, investigations intentionally corrupted or rule violations masked by the pattern of audit trail offenses—warrant disqualification from Board or Disciplinary Committee service.**

(iii) Any violation of the Commodity Exchange Act or the regulations promulgated thereunder, or,

(iv) Any failure to exercise supervisory responsibility with respect to acts described in paragraphs (A)(5)(i) through (A)(5)(iii) of this section when such failure is itself a violation of either the rules of the self-regulatory organization, the Act or the regulations promulgated thereunder.

(v) ~~Notwithstanding anything to the contrary herein~~ **Except as provided in section (A)(5)(ii)**, violations of the following Exchange rules shall not be considered "disciplinary offenses" unless they involve fraud, deceit or conversion or result in suspension or expulsion:

(A) Decorum and Attire-NYMEX Rules 6.60 and COMEX Rules 4.03; 4.14; 4.25; 4.09; 4.05(a); or 4.70; any rule violation that results in the interference or attempt to interfere with an employee of the Exchange in the performance of his duties under COMEX Rules 4.04, 4.05 and 4.07;

(B) Financial-NYMEX Rules 2.14, 2.15, 2.23, 2.30, 2.33, 2.42, 2.72, 4.00, 4.01, 4.02, 4.03, 4.04, 4.05, 9.05, 9.20, 9.21, 140.22, 300.09 and 300.19 and COMEX Rules;

(C) Recordkeeping or Reporting-NYMEX Rules 6.07, 6.07A, 6.08A, 6.08B, 6.10, 6.11, 6.18, 6.19, 6.20, 6.21, 6.24, 6.90, 8.50, 9.04, 9.22, 9.26, 9.27, 9.32, 9.33, 9.34, 9.35, 9.36, 11.27, 11.36, 11.58, 90.08, 90.13, 100.08, 100.13, 140.15, 140.19, 140.20, 150.09, 150.13, 150.14, 150.14A, 190.09, 190.13, 190.14, 190.14A, 200.11, 200.15, 200.17, 200.20, 200.20A, 220.11, 220.14, 220.17, 220.17A, 230.12, 230.17, 230.18, 300.08, 300.11, 300.13 and 300.15 and COMEX Rules 4.80, 4.81, 4.82, 4.84, 4.85, 4.86, 4.87 or 3.11(b).

(vi) A disciplinary offense must arise out of a proceeding or action which is brought by a self-regulatory organization, the Commission, any Federal or state agency, or other governmental body.

(6) "Final decision" means:

(i) A decision of a self-regulatory organization which cannot be further appealed within the self-regulatory organization, is not subject to the stay of the Commission or a court of competent jurisdiction and has not been reversed by the Commission or any court of competent jurisdiction; or,

(ii) Any decision by an administrative law judge, a court of competent jurisdiction or the Commission which has not been stayed or reversed.

(7) "Settlement agreement" means any agreement consenting to the imposition of sanctions by a self-regulatory organization, a court of competent jurisdiction or the Commission.

(B) No person who, within the prior three years, has become subject to one of the disqualifications set forth in subsection (C) below, shall be permitted to serve on the Board of Directors, the Business Conduct Committee, the Adjudication Committee, the Bylaws Committee, the Control Committee, the Compliance Review Committee, the Floor Committee, the Appeals Committee, the Arbitration Committee, or any Delivery Committee or appeals panel established in connection with a delivery.

(C) A person shall be disqualified from serving on the Board of Directors and the Committees set forth above, if such person:

(1) Was found within the prior three years by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the Commission to have committed a disciplinary offense;

(2) Entered into a settlement agreement within the prior three years in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense;

(3) Currently is suspended from trading on any contract market, is suspended or expelled from membership with any self-regulatory organization, is serving any sentence of probation or owes any portion of a fine imposed pursuant to either:

(i) A finding by a final decision of a self-regulatory organization, and administrative law judge, a court of competent jurisdiction or the Commission that such person committed a disciplinary offense; or,

(ii) A settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense.

(4) Currently is subject to an agreement with the Commission or any agreement with the Commission or any self-regulatory organization not to apply for registration with the Commission or membership in any self-regulatory organization;

(5) Currently is subject to or has had imposed on him within the prior three years a Commission registration revocation or suspension in any capacity for any reason, or has been convicted within the prior three years of any of the felonies listed in section 8a(2)(D)(ii) through (iv) of the Act;

(6) Currently is subject to a denial, suspension or disqualification from serving on the disciplinary committee, arbitration panel or governing board of any self-regulatory organization as that term is defined in section 3(a)(26) of the Securities Exchange Act of 1934.

(D) Within thirty days of the end of each calendar year the Exchange shall submit to the Commission a certified list of any persons who have been removed from its disciplinary committees, oversight panels, arbitration panels or governing board pursuant to the requirements of this Rule during the prior year.

(E) The Exchange shall submit to the Commission a schedule listing all those rule violations which constitute disciplinary offenses as defined in paragraph (A)(5)(i) of this Rule and to the extent necessary to reflect revisions shall submit an amended schedule within thirty days of the end of each calendar year. The Exchange shall maintain and keep current the schedule required by this section, post the schedule in a public place designed to provide notice to Members and otherwise ensure its availability to the general public.

The current schedule of violations that constitute a disciplinary offense as defined in paragraph (A)(5)(i) of this Rule is set forth in Schedule A to this Rule for the Class A Member and Schedule B to this Rule for the COMEX Division.

(F) Whenever the Exchange finds by final decision that a person has committed a disciplinary offense and such finding makes such person ineligible to serve on the Exchange's disciplinary committees, arbitration panels, oversight panels or governing board, the Exchange shall inform the Commission of that finding and the length of the ineligibility in any notice it is required to provide to the Commission pursuant to either Section 17(h)(1) of the Act or Commission Regulation 9.11.

Schedule A

The current schedule of violations that constitute a disciplinary offense as defined in paragraph (A)(5)(i) of this Rule is as follows:

Bylaw Sections:

106: Failure to Pay Dues, Assessments and Fees

110: Disclosure of Information

800: Members Subject to Disciplinary Proceedings

802: Failure to Pay Fine

851: Duty to Report Emergency Event

852: Summary Suspension: Action by the President (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping ~~and/or reporting and does not result in aggregate fines exceeding \$5,000 in a calendar year~~);

853: Summary Suspension: Action of the Executive Committee (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping ~~and/or reporting and does not result in aggregate fines exceeding \$5,000 in a calendar year~~):

Exchange Rules:

2.21: Qualification by Clearing Member

2.31: Duties of Guaranteed and Qualified Members

2.32: Duties of Guarantors and Qualifying Clearing Members

2.40: Responsibility of Member for Actions of Member Firms

2.41: Responsibility of Members and Member Firms for Actions of Employees

2.74: Natural Gas Futures Permit Program

2.75: Platinum Option Permit Program

2.75A: Platinum/Palladium Permit Program
2.75B: Crack and Spread Options Permit Program
2.75C: Eurotop 100 Permit Program
2.75D: Permian Basin Natural Gas Permit Program
2.75E: Electricity Permit Program
5.36: Awards
6.02 Hours for Trading
6.05: Transactions, Bids and Offers on the Trading Floor
6.06: Transactions Made at Other Than Current Market
6.08C: NYMEX ACCESS7 Spread Transactions
6.12: Resolution of Floor Trading Disputes
6.15: Standard Forms of Orders
6.16: Obligation of Floor Brokers
6.17: Errors and Omissions in Handling Orders
6.23: NYMEX ACCESS Trading Standards
6.25: Trading Work Station Administration
6.30: ACCESS to the Trading Floor
6.31: Trading Prohibition of Certain Persons
6.32: Trading Prohibitions: Representatives of Other Clearing Members
6.37: Attendance by Representatives of Members and Member Firms under Extraordinary Circumstances
6.40: Simultaneous Buy and Sell Orders on the Exchange Trading Floor
6.41: Trading Standards for Floor Brokers
6.42: Procedures on the Exchange Floor for Simultaneous Buy and Sell Orders
6.43: Floor Broker Registration Requirements
6.43A: Broker Associations
6.44 Registration for Billing of Floor and NYMEX ACCESS Brokerage
6.61: Pre-Arranged Trades
6.92: Surrender of Trading Records for Examination
8.00: Compliance Department
8.25: Cease and Desist Order
8.52: Manipulation
8.54: Payment of Gratuity to Employees of Others
8.55: Classification of Offenses (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping ~~and/or reporting and does not result in aggregate fines exceeding \$5,000 in a calendar year~~);
8.56: Confirmations
8.57: Confidentiality of Exchange Investigations and Proceedings
8.58: Exchange Jurisdiction Over Member, Etc.,
8.60: Obligation of Employee to Respond to Compliance Department Inquiries
8.61: Obligation of Employee to Comply with Rules of Exchange
8.62: Clerk Registration
8.63: Member, Member Firm and Permit Holder Responsibility
8.64: Clerk Badges
8.65: Sanctions
8.66: Billing and Commissions
8.68: Notification of Final Disciplinary Action Involving Financial Harm to a Customer
8.69: Audit Trail Violations
8.99: Member Summary Suspension (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping ~~and/or reporting and does not result in aggregate fines exceeding \$5,000 in a calendar year~~);
8.99B: Summary Procedures for Denial of Access to Specified Alternative Electronic Trading System
9.03: Guaranty Fund
9.04B: Use of E-RAV Risk Filter for Trading on Specified Exchange Alternative Electronic Trading Systems
9.10: Trade Refused By Clearing House

- 9.11: Transfer of Trades
- 9.14: Omnibus Accounts
- 9.19: Final Day of Trading
- 9.19A: Transfer to Correct Errors Occurring on the Last Day of Trading
- 9.28: Exemptions From Position Limits, Etc.,
- 9.37: NYMEX ACCESS Administrative Work Stations
- 9.37A: Use of Common AWS Operators by Clearing Members
- 11.02: Electronic Trader Designation Requirements
- 11.03: Scope of Trading Privileges
- 11.04: Responsibilities of Electronic Traders
- 11.07: Primary Clearing Member Permission for Electronic Trader Accounts with Other Clearing Members and Additional Authorized Terminal Users and Electronic Trading Privileges
- 11.08: Non-Member Firms Designated as Electronic Traders, Commodity Trading Advisors and Commodity Pool Operators
- 11.09: Duties of Primary Clearing Members to Monitor Electronic Traders
- 11.25: Acceptance of Orders for Entry into NYMEX ACCESS
- 11.27: Type Indicator Codes for Trading on NYMEX ACCESS®
- 11.31: Electronic Trading Privileges for Exchange Alternative Electronic Trading Systems
- 11.32: Designation Requirements for Users And User Agents Of Exchange's Alternative Electronic Trading System
- 11.33: Scope of Trading Privileges for Alternative Electronic Trading System
- 11.34: Responsibilities of Users on Exchange Alternative Electronic Trading Systems
- 11.35: Acceptance of Orders for Entry into Exchange Alternative Electronic Trading Systems
- 11.36: Type Indicator Codes for Trading on NYMEX ClearPort(sm)
- 11.51: Business Day
- 11.52: Hours of Trading
- 11.53: Standard Forms of Orders for Exchange Electronic Trading Systems
- 11.54: Standard Forms of Orders for Exchange Electronic Trading Systems
- 11.55: Errors and Omissions in Handling Orders
- 11.56: Surrender of Trading Records for Examination
- 11.57: Trading Standards for Electronic Trading Systems
- 11.59: Use of Passwords
- 11.61: Limitation of Liability
- 11.62: NYMEX Personnel-Limitation of Liability
- 11.64: Trading Prohibition of Certain Persons
- 11.65: Trading Prohibitions: Representatives of other Clearing Members
- 11.66: Simultaneous Buy and Sell Orders on Electronic Trading Systems

Additional Rules (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping ~~and/or reporting and does not result in aggregate fines exceeding \$5,000 in a calendar year~~):

- 1. 6.60:
- 2. Financial - 2.14, 2.15, 2.23, 2.30, 2.33, 2.42, 2.72, 4.00, 4.01, 4.02, 4.03, 4.04, 4.05, 9.05, 9.20, 9.21, 140.22, 300.09 and 300.19;
- 3. Recordkeeping or Reporting-6.07, 6.07A, 6.08A, 6.08B, 6.10, 6.11, 6.18, 6.19, 6.20, 6.21, 6.24, 6.90, 8.50, 9.04, 9.22, 9.26, 9.27, 9.32, 9.33, 9.34, 9.35, 9.36, 90.08, 90.13, 100.08, 100.13, 140.15, 140.19, 140.20, 150.09, 150.13, 150.14, 150.14A, 190.09, 190.13, 190.14, 190.14A, 200.11, 200.15, 200.17, 200.20, 200.20A, 220.11, 220.14, 220.17, 220.17A, 230.12, 230.17, 230.18, 300.08, 300.11, 300.13 and 300.15.

Schedule B

The current schedule of violations that constitute a disciplinary offense as defined in paragraph (A)(5)(i) of this Rule is as follows:

Bylaw Sections:

- 106: Failure to Pay Dues, Assessments and Fees
- 110: Disclosure of Information
- 800: Members Subject to Disciplinary Proceedings
- 802: Failure to Pay Fine
- 851: Duty to Report Emergency Event
- 852: Summary Suspension: Action by the President (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping ~~and/or reporting and does not result in aggregate fines exceeding \$5,000 in a calendar year~~);
- 853: Summary Suspension: Action of the Executive Committee (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping ~~and/or reporting and does not result in aggregate fines exceeding \$5,000 in a calendar year~~):

Exchange Rules:

- 3.01: Compliance with Bylaws and Rules
- 3.02: Compliance with Decisions
- 3.03: Dealing with Employees of Others
- 3.04: Bucket Shops
- 3.05: False Statements
- 3.06: Manipulation
- 3.07(a): Rumors-Prohibited Dissemination
- 3.09: Branch Offices
- 3.10: Registration
- 3.13: Basis for Disciplinary Proceedings
- 3.15: Notice of Proceedings
- 4.05: Market Indication and Error Resolution Periods
- 4.12(a): Members Eligible to Trade on Floor-Full Floor Privileges
- 4.15: Trading Privileges for Guaranteed Member
- 4.16: Visitors
- 4.17: Persons Permitted to Enter Orders
- 4.21: Open Outcry
- 4.22(a): Disclosure of Customer's Order-Prohibited Disclosures
- 4.23: Solicitation of Orders
- 4.24: Crossing of Orders
- 4.26: Wash Trades
- 4.27: Prearranged Trades
- 4.29: Errors Discovered After Trading Session
- 4.31: Dual Trading
- 4.32: Discretionary Orders
- 4.33: Priority of Orders and Allocation of Trades
- 4.34: Withholding Orders
- 4.35: Trading in Current Month
- 4.36: Exchanges for Physicals
- 4.37: Ex-Pits and Transfers of Existing Futures Contracts and Futures Options
- 4.38: Execution of Straddles
- 4.40: Futures Options Not Traded on Exchange
- 4.41: Void Transactions
- 4.61: Responsibility for Reporting Transactions
- 4.62: Add-In Trades Which are Promptly Discovered
- 4.63: Add-In Trades Which are not Promptly Discovered
- 4.64: Reporting Exercise of Futures Options
- 4.69: Floor Broker Registration
- 4.80: Trading Cards
- 4.81: Order Tickets
- 4.83: Transcription of Trade Data

- 4.95: Open Contracts
- 4.96: Reporting of Positions to Committee
- 4.97: Written Record of Transactions
- 8.00: Compliance Department
- 8.25: Cease and Desist Order
- 8.52: Manipulation
- 8.54: Payment of Gratuity to Employees of Others
- 8.55: Classification of Offenses (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping and/or reporting **and does not result in aggregate fines exceeding \$5,000 in a calendar year**);
- 8.56: Confirmations
- 8.57: Confidentiality of Exchange Investigations and Proceedings
- 8.58: Exchange Jurisdiction Over Member, Etc.
- 8.60: Obligation of Employee to Respond to Compliance Department Inquiries
- 8.61: Obligation of Employee to Comply with Rules of Exchange
- 8.62: Clerk Registration
- 8.63: Member, Member Firm and Permit Holder Responsibility
- 8.64: Clerk Badges
- 8.65: Sanctions
- 8.66: Billing and Commissions
- 8.68: Notification of Final Disciplinary Action Involving Financial Harm to a Customer (Rule pending approval by the Commission)
- 8.69: Audit Trail Violations
- 8.99: Member Summary Suspension (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping and/or reporting **and does not result in aggregate fines exceeding \$5,000 in a calendar year**);

Additional Rules (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping and/or reporting **and does not result in aggregate fines exceeding \$5,000 in a calendar year**);

- 4.03: Trading Outside Trading Hours
- 4.05(a): Market Indication and Error Resolution Period-Pre-Opening Market Indication Period
- 4.09: Decorum on Floor
- 4.14: Trading Badges
- 4.25: Prohibited Bids and Offers
- 4.70: Quantity of Contracts Bid or Offered

(b) any interference or attempt to interfere with an employee of the Exchange in the performance of his duties under Rules 4.04 ("Conduct of Opening Calls"), 4.05 ("Matched Orders"), and 4.07 ("Conduct at Straddle Calls");

- 7.01: Minimum Financial Requirements for FCMs
- 7.02: Minimum Financial Requirements for Members
- 7.03: Minimum Financial Requirements for Member Firms
- 7.05: Guaranteed Members
- 7.07: Reporting Requirements
- 7.09: Additional Financial Statements