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OFC. OF THE SECRETARIAT

**BY EMAIL AND FACSIMILE**

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

**Re: Rule Certification. NYMEX Submission 05-121: Notification of Amendment to Exchange Rule 104.36A, "Exchange of Aluminum Futures for, or in Connection with Swap Transactions."**

Dear CFTC Commissioners:

The New York Mercantile Exchange, Inc. ("NYMEX" or the "Exchange") is notifying the Commodity Futures Trading Commission ("CFTC" or "Commission") of a certain rule change to be implemented effective Monday, July 18, 2005. The approved amendment to Exchange Rule 104.36A, "Exchange of Aluminum Futures for, or in Connection with Swap Transactions" extends the EFS program in aluminum until it is terminated by the NYMEX Board of Directors or its designee. Exchange Rule 104.36A, approved by the Commission, was originally submitted to the Commission on November 8, 2000 under Exchange Submission No. 00-134. It was subsequently amended on October 1, 2003 under Exchange Submission No. 03-133.

Pursuant to Section 5c(c) of the Commodity Exchange Act ("Act") and CFTC Rule 40.6, the Exchange hereby certifies that the attached rule amendment complies with the Act, including regulations under the Act. These changes will go into effect on Monday, July 18, 2005.

Should you have any questions concerning the above, please contact Nancy Minett at 212-299-2940, or Albert J. Getz at (212) 299-2608.

Very truly yours,

Robert A. Levin  
Senior Vice President - Research

Attachment: Approved rule amendment.

cc: Christopher Bowen, Esq.  
Nancy Minett

## APPROVED RULE AMENDMENT

Underlining indicates additions. Strikethrough indicate deletions.

### EXCHANGE RULE 104.36A

#### **Rule104.36A. EXCHANGE OF ALUMINUM FUTURES FOR, OR IN CONNECTION WITH SWAP TRANSACTIONS**

- (a) (1) An exchange of Aluminum futures for, or in connection with, a swap (EFS) consists of two discrete, but related transactions; a swap transaction and a futures transaction. At the time such transaction is effected, the buyer and seller of the futures must be, respectively, the seller and the buyer of the swap.
- (2) The program is available only to commercial market participants. For purposes of this rule, a "commercial market participant" shall include a person or entity that transacts business in the normal channels of commerce in the cash commodity or related commodity underlying the EFS posted on the Exchange and also shall include an entity that regularly maintains a book of and acts as a dealer in swap transactions.
- (b) The swap component shall involve the commodity underlying the futures contract (or a derivative, by-product or related product of such commodity). The quantity covered by the swap must be approximately equivalent to the quantity covered by the futures contracts. The swap component of an EFS transaction must comply with the applicable CFTC Swap Regulatory requirements. ~~The term of the program shall be five years from the effective date of this Rule 4.36A.~~ The EFS program will continue in effect until terminated by the Board of Directors or its designee.
- (c) (1) The report of an Aluminum EFS transaction shall be given on the Floor of the Exchange during the hours of futures trading.
- (2) Aluminum EFS transactions are permitted until 12:00 p.m. on the day following the last day of trading of an expiring futures contract.
- (d) A report of such Aluminum EFS transaction shall be submitted to the Exchange by each Clearing Member representing the buyer and/or seller. Such report shall identify the EFS as made under this Rule and shall contain the following information: a statement that the swap component of the EFS complied with the applicable CFTC Swap Regulatory requirements at the time the EFS was entered into between the buyer and seller, a statement that the EFS has resulted or will result in a change of payments or other such change, the kind and quantity of the futures, the price at which the futures transaction is to be cleared, the names of the Clearing Members and customers and such other information as the Exchange may require. Such report (form) shall be submitted to the Compliance

Department by 12:00 noon, no later than two (2) Exchange business days after the day of posting the EFS on the Floor of the Exchange.

- (e) Each buyer and seller must satisfy the Exchange, at its request, that the transaction is a legitimate Aluminum EFS transaction. Upon the request of the Exchange, all documentary evidence relating to the EFS, including a master swap agreement and any supplements thereto, shall be obtained by the Clearing Members from the buyer or seller and made available by the Clearing Members for examination by the Exchange. Additionally, if the buyer or seller is a Member/Member firm, the Exchange may obtain the information directly from such persons.
- (f) A report of each Aluminum EFS transaction shall be given, and notice thereof shall be posted on the Floor of the Exchange, on the day that the transaction thereto was made, or if such agreement was made after the close of trading, then on the next business day. EFS transactions shall be cleared through the Exchange in accordance with normal procedures, shall be clearly identified and marked in the same manner as EFP transactions, and shall be recorded by the Exchange and by the Clearing Member involved.
- (g) All omnibus accounts and foreign brokers shall submit a signed EFS reporting agreement in the form prescribed by the Exchange to the Exchange's Compliance Department. Such Agreement shall provide that any omnibus account or foreign broker identified by a Clearing Member (or another omnibus account or foreign broker) as the buyer or seller of an EFS pursuant to this rule, shall supply the name of its customer and such other information as the Exchange may require. Such information shall be submitted to the Exchange's Compliance Department by 12:00 noon no later than two (2) Exchange business days after the day of posting the EFS on the Floor of the Exchange. Failure by an omnibus account or foreign broker to submit either the agreement or the particular EFS information to the Exchange may result in a hearing by the Business Conduct Committee to limit, condition or deny access of such omnibus account or foreign broker to the market.