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 **NEW YORK**
BOARD OF TRADE®
World Financial Center
One North End Avenue
New York, New York 10282

BY ELECTRONIC TRANSMISSION

05-38
September 15, 2005

Ms. Jean A. Webb
Secretary of the Commission
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: **Amendments to Chapter 20 -
Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6**

Dear Ms. Webb:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended, and Commission Regulation 40.6, the Board of Trade of the City of New York, Inc. ("Exchange") submits, by written certification, amendments to Chapter 20, attached as Exhibit A.

The Exchange's Arbitration Rules contain some provisions which are not reflective of the current practice for administering Exchange arbitrations. For example, Rule 20.03(a)(i) states that a prospective claimant must notify the Exchange in writing of its grievance, after which the Exchange will provide the rules and the notice of arbitration form. Today, the most common method in which claims or grievances are received by the Exchange is by telephone. Once received, the prospective claimant is either mailed an arbitration package or, more commonly, directed to the web site where the arbitration package can easily be printed out. Many of the amendments to Chapter 20 will conform out-of-date provisions to the current practice.

Amendments have also been made to Rule 20.08 which will extend to customers the expedited remedy for failure to pay an arbitration award. Rule 20.08 currently provides that, upon notice from a member that he has not been paid in accordance with an award rendered in his favor under the Rules, the Exchange may suspend the member who failed to make payment,

and if the failure continues beyond thirty days following the suspension, the Exchange may expel the member. However, a customer, who has not been timely paid an award granted in his favor,

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must wait for the conclusion of a disciplinary action taken against the member for failure to honor the terms of an Exchange arbitration award. There is no apparent reason for such a distinction between members and customers.

Finally, technical correction amendments have been made, such as capitalizing defined terms.

The Exchange certifies that the amendments comply with the requirements of the Commodity Exchange Act and the rules and regulations promulgated thereunder.

The amendments were adopted by the Exchange's Board of Governors on September 14, 2005. They will become effective for all arbitrations filed with the Exchange on or after September 19, 2005. No substantive opposing views were expressed by members or others with respect to the amendments.

If you have any questions or need further information, please contact me at jfassler@nybot.com or 212-748-4084.

Sincerely,

Jill S. Fassler
Vice President
Associate General Counsel

cc: Riva Adriance
CFTC, Division of Market Oversight
Allen Cooper
CFTC, New York Regional Office

(In the text of the amendments below, additions are underlined and deletions are bracketed and lined out.)

Rule 20.00. Quorum and Disqualification

(a) An individual shall be disqualified from taking any action as a member of the Arbitration Committee or as an arbitrator prescribed in the Arbitration Rules if such individual or an Affiliated Firm has an interest in the [e]Claim or dispute. Any member of the Arbitration Committee may disqualify himself for any reason he deems appropriate. Each member of the Arbitration Committee or arbitrator appointed to hear and determine a [e]Claim or grievance shall conduct himself in a manner consistent with the ABA/American Arbitration Association's "Code of Ethics for Arbitrators in Commercial Disputes" and shall disclose to the Chairman of the Arbitration Committee, who shall thereafter advise the parties to the arbitration, at any stage of the arbitration, any past or present, direct or indirect financial, business, professional, family or social relationship which is likely to affect an appearance or which might reasonably create an appearance of partiality or bias.

(b) If the Chairman of the Arbitration Committee is disqualified or is unavailable, the [First] Vice Chairman of the Arbitration Committee shall act as Chairman. If both the Chairman and the [First] Vice Chairman of the Arbitration Committee are disqualified or are unavailable, ~~[the Second Vice Chairman shall act as Chairman. If the Chairman, the First Vice Chairman and the Second Vice Chairman are disqualified or are unavailable,]~~ the Chairman of the Board of [Managers] Governors shall appoint another member of the Arbitration Committee to act as Chairman.

(c) The lesser of a majority or three (3) members of the Arbitration Committee shall constitute a quorum for the transaction of business. Any action taken by a vote of the majority of the Arbitration Committee members present at a meeting at which a quorum is present shall be deemed to be a valid action of the Arbitration Committee.

Rule 20.01. Definitions.

Unless otherwise indicated, the following terms shall, for the purposes of these Arbitration Rules, have the following meanings:

(a) "Claims or grievance" shall mean any dispute which arises out of any Transaction on or subject to the Rules executed by or effected through a Member or any employee of such Member, which dispute does not require for adjudication the presence of essential witnesses or third (3rd) parties over whom the Exchange does not have jurisdiction or who are otherwise not available. The term "[e]Claim or grievance" shall not include disputes arising from cash market transactions which are not a part of, or directly connected with, any Transaction.

* * *

(g) "Allowable Claim" shall mean a Claim arising directly from (i) any order or [t]Transaction for the purchase, sale, exercise or expiration of a Futures Contract or Option executed, or to be executed, on or subject to the Rules or (ii) cash market transactions which are part of, or directly connected with, any Transaction.

Rule 20.02. Jurisdiction.

(a) Any Claim or grievance by a Customer against a Member, or any employee thereof, shall, if the Customer so elects, be settled by arbitration in accordance with these Arbitration Rules. If such a Claim or grievance is made, any counterclaim permissible under [P]subparagraph (a)(ii) o[f] Rule 20.03 of these Arbitration Rules shall, if asserted by such Member or employee thereof, likewise be settled by arbitration in accordance with these Arbitration Rules.

EXHIBIT A

(b) Any Allowable Claim by a Member ~~[of the Exchange]~~ against another Member, whether originating before or during the period of time that the parties are Members, shall be settled by arbitration in accordance with these Arbitration Rules. If such an Allowable Claim is made, any Allowable Claim which may be asserted as a counter-claim under ~~[P]~~subparagraph (a)(ii) of Rule 20.03 shall likewise be settled by arbitration in accordance with these Arbitration Rules. Arbitration proceedings invoked pursuant to this paragraph shall be independent of, and shall not interfere with or delay the resolution of Customers' Claims and grievances submitted for arbitration pursuant to ~~[P]~~paragraph (a).

(c) All other disputes or controversies, regardless of their nature, between or among any two ~~(2)~~ or more parties, shall, if agreed to by all parties involved, be settled by arbitration in accordance with these Arbitration Rules. Arbitration proceedings invoked pursuant to this paragraph shall be independent of, and shall not interfere with or delay the resolution of Customers' Claims and grievances submitted for arbitration pursuant to ~~[P]~~paragraph (a).

(d) Notwithstanding the foregoing, any Panel or, in the absence of a Panel, the Arbitration Committee, in its sole and absolute discretion, may decline to take jurisdiction of, or, having taken jurisdiction may at any time decline to proceed further with, any Claim or grievance or any other dispute, controversy or counterclaim, other than such as may be asserted under ~~[P]~~paragraph (a) of this ~~[Section]~~ Rule.

Rule 20.03. Procedure.

(a) Claims Asserted Pursuant to Rules 20.02(a) and (b).

(i) A Person desiring to invoke the provisions of this ~~[P]~~paragraph (a) shall, within two ~~(2)~~ years from the time the Claim or grievance arose, ~~[notify] file with~~ the Exchange ~~[in writing of such Claim or grievance. Said Person shall thereupon be provided by the Exchange with a copy of these Arbitration Rules and]~~ a Notice of Arbitration ~~[form. Such Person shall deliver to the Exchange the Notice of Arbitration within two years from the time the Claim or grievance arose, or within thirty (30) days from the date the Exchange delivers a copy of these Arbitration Rules and a Notice of Arbitration form, whichever is later].~~ The Notice of Arbitration shall set forth the name and address of the party or parties against whom the Claim or grievance is being asserted, the nature and substance of the Claim or grievance, the relief requested and the factual and legal bases alleged to underlie such relief. In the event of a Notice of Arbitration submitted by a Customer, such Notice of Arbitration shall indicate whether the Customer elects to have the Claim or grievance heard and determined by a Mixed Panel, as provided in ~~[S]~~subparagraph ~~(a)~~(iii) of th~~e Paragraph (a)]~~is Rule. Failure to so indicate will be deemed a waiver of such election.

The Notice of Arbitration shall be accompanied by the Claimant's non-refundable check payable to the Exchange in payment of the arbitration fee. The amount of the fee shall be determined by the amount of the relief requested in the Notice of Arbitration, as follows:

Relief Requested	Amount of Fee
Up to \$5,000	3% (minimum \$100)
\$5,001 to \$10,000	\$150, plus 2% of excess over \$5,000
\$10,001 to \$15,000	\$250, plus 1% of excess over \$10,000
\$15,001 to \$100,000	\$300, plus 1% of excess over \$15,000
\$100,001 and above	\$1,150, plus 1/2% of excess over \$100,000

(ii) Upon receipt, the Exchange shall promptly deliver a copy of the Notice of Arbitration to each ~~[F]~~Respondent and to the Chairman of the Arbitration Committee. Each ~~[F]~~Respondent shall, within twenty (20) days following the delivery of such Notice, file an Answering Statement with the ~~[Chairman of the Arbitration Committee]~~ Exchange, with a copy to the Claimant, setting forth its or his position with respect to the Claimant's Claim or grievance. Any allegation in the Notice of Arbitration not denied by a ~~[F]~~Respondent in its or his Answering Statement shall be deemed admitted.

The Answering Statement may set forth one (1) or more counterclaims against the Claimant provided that any such counterclaims (A) arise out of the Transaction or occurrence that is the subject of the Claimant's claim or grievance and (B) do not require for adjudication the presence of essential witnesses, parties or third (3rd) ~~[p]~~Persons over which the Exchange does not have jurisdiction. Other counterclaims are permissible only if the Claimant agrees to the submission thereof after such counterclaims have arisen.

If an Answering Statement sets forth one (1) or more counterclaims, the Claimant shall reply to such counterclaims within twenty (20) days following delivery of the ~~[r]~~Respondent's Answering Statement. The Reply shall be filed with the ~~[Chairman of the Arbitration Committee]~~ Exchange, with a copy to the ~~[r]~~Respondent involved.

(iii) The Chairman of the Arbitration Committee, promptly after receipt by the Exchange of the Answering Statement, shall appoint a Panel of disinterested ~~[p]~~Persons to hear and determine the Claim or grievance, selecting one (1) as the Chairman of the Panel. If the amount of relief requested is less than or equal to one hundred thousand dollars (\$100,000), the Panel shall be composed of three (3) or more individuals. If the amount of relief requested is in excess of one hundred thousand dollars (\$100,000), the Panel shall be composed of five (5) or more individuals. In a case where a Customer has, in his Notice of Arbitration, elected a Mixed Panel, at least a majority of the Persons selected shall not be Members or associated with any Member of a contract market, or any employee thereof, or otherwise associated with a contract market. Promptly following such appointment, the ~~[Chairman of the Arbitration Committee]~~ Exchange shall forward copies of the Notice of Arbitration, Answering Statement and Reply, if there be one, to the ~~[Chairman of the]~~ Panel members selected.

(iv) The ~~[Chairman of the Panel]~~ Exchange shall notify the parties of ~~[his appointment and]~~ the appointment of the ~~[other]~~ members of the Panel. Any party objecting to all or any members of the Panel shall file such objection with the Chairman of the Arbitration Committee within ten (10) days of the giving of such notice by the ~~[Chairman of the Panel]~~ Exchange. The Chairman of the Arbitration Committee shall then determine whether changes in the composition of the Panel are appropriate, and if so, shall make such changes. Any vacancy occurring on the Panel for any reason shall be filled by an individual appointed by the Chairman of the Arbitration Committee. The parties shall be notified of the filling of such vacancy and may file objections to the new appointee to the Panel in accordance with the procedure set forth above.

(v) Any party may, no later than ten (10) days prior to the first (1st) hearing session, notify the Chairman of the Panel of any pertinent documents or other information it seeks from another party. Upon receipt of such request, the Chairman shall notify the party from which the documents or information are sought. The parties shall thereafter cooperate in the voluntary exchange of such documents and information. Any objection to a request for the production of documents or other information shall be resolved by the Chairman of the Panel, or his designee.

(vi) The parties shall, within a time specified by the Chairman of the Panel, furnish each other and the Panel with a statement listing the witnesses expected to be called and the documents expected to be introduced into evidence, together with copies of such documents. Unless the Panel waives compliance with this requirement, no witness may testify and no documentary evidence may be introduced at the hearing unless listed in (and, in the case of documents, furnished with) such statement.

(vii) The Panel shall establish, on not less than ten (10) days' written notice to the parties, the date, time and place of the hearing. Each Panel shall determine the procedures to be followed in any hearing before it, including the use of preliminary hearings to resolve discovery disputes, simplify the issues, and expedite the hearings, except that the following shall apply in every case:

(A) Each of the parties shall be entitled to appear personally at the hearing

(B) Each of the parties, at his own expense, shall have the right to be represented by counsel in any aspect of the proceeding.

(C) Each of the parties shall be entitled to (1) prepare and present all relevant facts in support of the Claims and grievances, defenses or counterclaims, and to present rebuttal evidence to such Claims or grievances, defenses or counterclaims made by the other parties, (2) examine the other parties, (3) examine any witnesses appearing at the hearing, and (4) examine all relevant documents presented in connection with the Claim or grievance, or any defense or counterclaim applicable thereto.

(D) The formal rules of evidence shall not apply.

(E) No verbatim record shall be made of the proceedings, unless requested by a party who shall bear the cost of such record. If such a request is made, a stenographic transcript shall be taken, but not transcribed unless requested by a party who shall bear the cost of such transcription.

(F) Ex parte contacts by any of the parties with members of the Panel shall not be permitted.

(G) The Panel shall have the power, on the request of any party or on its own motion, to require any Person to testify and/or to produce documentary evidence in the proceedings as and to the extent provided for in Rule 21.03.

(viii) The Panel shall, within sixty (60) days of the termination of the hearing, render its award in writing and deliver a copy thereof either in person or by first-class mail to each of the parties. The Panel, in its award, may grant any remedy or relief which it deems just and equitable, including, without limitation, the awarding of interest and the arbitration fee; provided, however, that any costs incurred as a result of having a Mixed Panel shall be born by the Member unless the Panel determines that the Customer acted in bad faith in initiating or conducting the proceeding. Further, in any case wherein it is alleged that the Claim or grievance arose from a violation of the Rules in the execution of a Customer order on the [f]Floor of the Exchange and the Panel determines that such violation occurred, the [p]Panel may award the Customer the actual damages proximately caused by said violation. The award of the Panel shall be final and binding upon each of the parties to the arbitration, and judgment upon such award may be entered by any court having jurisdiction. Any Member who is a [r]Respondent in an arbitration conducted pursuant to the Rules shall notify the Assistant Corporate Secretary of the Exchange of any judicial proceeding based on the award. In addition, any award, if not complied with within the time specified in the award, shall be enforceable by disciplinary proceedings pursuant to Rules.

(ix) Notwithstanding any other provision of this [Section] paragraph (a), including the right of a Customer to elect a Mixed Panel pursuant to [Arbitration] Rule [6]20.03(a)(iii), if a Notice of Arbitration sets forth Claims or grievances aggregating less than five thousand dollars (\$5,000), and the Answering Statement submitted by the [r]Respondent either does not raise counterclaims or raises one (1) or more counterclaims aggregating less than five thousand dollars (\$5,000), the Chairman of the Arbitration Committee may, on the request of any party or on his own motion, in his sole and absolute discretion, decide that there shall not be a hearing, in which case the following procedures shall apply:

(A) The Chairman of the Arbitration Committee shall notify both parties that neither the Claims or grievances nor the counterclaims, if any, aggregate to five thousand dollars (\$5,000).

(B) The Claimant shall, within twenty (20) days of such notification, submit to the [~~Chairman of the Arbitration Committee~~] Exchange, with a copy to each of the [parties] Respondents, a memorandum (together with such supporting documents, affidavits and other materials as the [~~Customer~~] Claimant deems pertinent) setting forth the bases upon which he believes he is entitled to the relief requested in the Notice of Arbitration.

(C) Each [r]Respondent shall, within twenty (20) days of its or his receipt of the Claimant's memorandum and supporting documentation, submit to the [~~Chairman of the Arbitration Committee~~] Exchange, with a copy to the Claimant, a memorandum (together with such supporting documents, affidavits and other materials as the respondent deems pertinent) setting forth the bases upon which he believes that the relief requested by the [~~customer~~] Claimant should be denied and, if said

[§]Respondent has raised counterclaims in his Answering Statement, the bases upon which he believes he is entitled to the relief requested by such counterclaims.

(D) The Chairman of the Arbitration Committee may, on the request of any party or on his own motion, in his sole and absolute discretion determine whether to allow or require the submission of reply or additional papers, unless a [§]Respondent has asserted one (1) or more counterclaims, in which case the Claimant shall be entitled to reply to such counterclaims within ten (10) days of delivery of the [§]Respondent's memorandum setting forth the bases thereof.

(E) The Chairman of the Arbitration Committee or his designee, acting as sole arbitrator, shall, within thirty (30) days of his receipt of the final papers filed, render an award in writing and deliver a copy thereof either in person or by first-class mail to each of the parties. The sole arbitrator in his award may grant any remedy or relief which he deems just and equitable, including, without limitation, the awarding of interest and the arbitration fee; provided, however, that any costs incurred as a result of a Customer requesting [having] a Mixed Panel shall be borne by the Member unless the [~~panel~~] sole arbitrator determines that the Customer acted in bad faith in initiating or conducting the proceeding. Further, in any case wherein it is alleged that the Claim or grievance arose from a violation of the Rules in the execution of a [e]Customer order on the [f]Floor of the Exchange and the [~~Panel~~] sole arbitrator determines that such a violation occurred, the [~~panel~~] sole arbitrator may award the Customer the actual damages proximately caused by said violation. The decision of the sole arbitrator shall be final and binding upon each of the parties to the arbitration, and judgment upon such award may be entered by any court having jurisdiction. In addition, any award, if not complied with within the time specified in the award, shall be enforceable by disciplinary proceedings pursuant to the Rules [~~of the Exchange~~].

(x) The failure of any party to an arbitration to comply with any of the requirements of this [~~Section~~] paragraph (a), or with any demand or request of either the Panel, the sole arbitrator or the Chairman of the Arbitration Committee shall be deemed a violation of the Rules and shall, in addition to any other action the Exchange may take for any such violation, subject such party to such action by the Panel, the sole arbitrator or the Chairman of the Arbitration Committee (including without limitation the entry of an award against such party) as it or he shall deem appropriate under the circumstances.

(xi) Notwithstanding the provisions of [S]subparagraph (x) of this [P]paragraph (a), either the Panel, the sole arbitrator or the Chairman of the Arbitration Committee, may for good cause shown extend any time limitation imposed by this [~~Section~~] paragraph (a) (except the two (2) year and the thirty (30) day limitation periods set forth in [S]subparagraph (a)(i)) or may excuse any neglect to comply therewith or with any other requirement of this [~~Section~~] paragraph (a) or demand or request of the Panel, the sole arbitrator or the Chairman of the Arbitration Committee.

(b) Other Claims Asserted Pursuant to Rule 20.02(c).

(i) Any dispute or controversy between or among any two (2) or more parties may, if all of the parties to such dispute or controversy so agree, be settled by arbitration in accordance with this [P]paragraph (b). Such dispute or controversy shall be heard and determined in accordance with the procedures set forth in [P]paragraph (a) of this [~~Section~~] Rule, except for the following:

(A) In lieu of the procedure set forth in the first sentence of subparagraph (i) of [P]paragraph (a), the provisions of this [P]paragraph (b) shall be invoked by the submission by all of the parties concerned of an agreement to submit the dispute or controversy to arbitration in accordance with this [P]paragraph (b) and to be bound by the award of the arbitrators. Following such submission, the Exchange shall forward to the party requesting relief the information set forth in subparagraph (i) of [P]paragraph (a) of this [~~Section~~] Rule, whereupon all of the other procedures set forth in said subparagraph (i) of [P]paragraph (a) shall apply.

(B) None of the limitations on counterclaims set forth in [S]subparagraph (ii) of [P]paragraph (a) shall apply.

Rule 20.04. Withdrawal of Claims

Any [H]Notice of Arbitration may be withdrawn at any time before an Answering Statement is filed in accordance with these Rules.

If an Answering Statement has been filed, any withdrawal shall require consent of the party against which the Claim or grievance is asserted.

Rule 20.05. Modification of Award

On written application to the Assistant Corporate Secretary of the Exchange by a party to an arbitration, within twenty (20) days after delivery of the award to the applicant, the ~~[arbitration p]~~Panel or sole arbitrator may modify the award if:

- (1) [F]there was a miscalculation of figures or a mistake in the description of any [p]Person, thing, or property referred to in the award; or
- (2) the ~~[arbitration p]~~Panel or sole arbitrator has awarded upon a matter not submitted to it and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
- (3) [F]the award is imperfect in a matter of form, not affecting the merits of the controversy.

Written notice of the application shall be given to the other parties to the arbitration. Written objection to the modification must be served on the ~~[panel]~~ Exchange and the other parties to the arbitration within ten (10) days of receipt of the application. The ~~[arbitration p]~~Panel or sole arbitrator shall dispose of any application made under this ~~[section]~~ Rule in writing, signed and acknowledged by the ~~[p]~~Panel or sole arbitrator, within thirty (30) days after either written objection to the modification has been served on it or the time for serving said objection has expired, whichever is earlier. The parties may in writing extend the time for such disposition either before or after its expiration.

Rule 20.06. Compensation of Arbitrators.

The parties to an arbitration shall pay the arbitrators appointed in each matter compensation in accordance with such fee schedule as the Board of Governors may from time to time determine. The arbitrators in each such matters shall determine the proportion in which such compensation shall be paid by each of the parties.

Rule 20.07. Punitive Damages

In the [C]case of a Claim or grievance arising from a violation of the Rules in the execution of a Customer order on the [f]Floor of the Exchange wherein it is determined by the ~~[arbitration p]~~Panel or the sole arbitrator that the violation was willful and intentional, punitive damages may be awarded the Customer in an amount equal to no more than two (2) times the amount of actual damages proximately caused by the violation.

Rule 20.08. Failure to Comply With Award

(a) Any Member in whose favor an award has been rendered pursuant to this Chapter shall promptly notify the Assistant Corporate Secretary of the Exchange, in writing, if the award is not complied with. Any Member, who fails to comply with the terms of an award rendered against such Member, shall be subject to the procedures set forth in this Rule. Specifically, [U]upon receipt of [such] a notice or information indicating that a Member has failed to comply with the terms of an award rendered against such Member, the Exchange shall notify the Member against whom or which the award was rendered of the Exchange's intention to suspend his or its privileges as a Member and afford the Member an opportunity to be heard by a panel of the Arbitration Committee appointed by the Chairman for the sole

purpose of proving that the award has been satisfied, provided that the Secretary of the Exchange receives a written request from the Member for such a hearing within five (5) Business Days after receipt of such notice by the Member. Failure to so request such a hearing shall be deemed an acknowledgment by the Member that the award has not been complied with. Any such hearing shall be conducted in accordance with such procedures as the Panel shall determine. The Panel shall consist of no less than three (3) members of the Arbitration Committee. Following any such hearing, the Panel shall determine whether the Member has failed to timely satisfy the award and shall promptly advise the ~~[Secretary of the]~~ Exchange, and all parties in the proceeding, of its determination.

(b) If the Panel shall find, or if a Member shall acknowledge that he or it has failed to comply with any award rendered pursuant to this Chapter when and as provided by such award, the Member shall be automatically suspended and shall remain suspended until the award is complied with and the suspended Member is reinstated, as provided in Rule 21.35.

(c) If a Member suspended pursuant to paragraph (b) of this Rule fails to comply with the arbitration award upon which such suspension was based within thirty (30) days following the effective date of the suspension:

(i) the Member shall be expelled or, in the case of a Member Firm, member privileges terminated;
and

(ii) his Membership, or in the case of a Member Firm, the Memberships of the Conferring Members, sold and the proceeds paid and applied as provided in Rule 21.36.