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OFFICE OF THE SECRETARIAT

October 31, 2005

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: Rule Certifications. New York Mercantile Exchange, Inc. Submission
#05.197: Consolidation of NYMEX and COMEX Membership Requirements**

Dear CFTC Commissioners:

The New York Mercantile Exchange, Inc. ("Exchange") is notifying the Commodity Futures Trading Commission ("Commission") that it is amending various rules in NYMEX Chapter 2 in connection with consolidation of NYMEX and COMEX membership requirements. Pursuant to Section 5c(c) of the Commodity Exchange Act ("Act") and CFTC Rule 40.6, the Exchange hereby certifies that the attached amendments of these rules comply with the Act, including regulations under the Act; these rule changes will be made effective on November 2, 2005.

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

Att.

NOTIFICATION OF AMENDMENTS TO NYMEX CHAPTER 2 ("MEMBERSHIP")

(Additions are underscored and strike-outs are deletions.)

CHAPTER 2 MEMBERSHIP RULES

Rule 2.01 ~~MEMBER FINANCIAL REQUIREMENTS~~

~~Each Non-Floor Member and each applicant for membership other than as a Floor Member shall have and, at all times shall maintain, net liquid assets of not less than twenty-five thousand dollars (\$25,000) or shall be guaranteed by a Member Firm for all obligations of such Member arising out of the transaction of business on the Exchange to the extent of twenty-five thousand (\$25,000).~~

Rule 2.02. SPONSORSHIP

To be eligible for election as a Member, an applicant for membership must be sponsored by two (2) Members of either the COMEX or NYMEX membership Division.

Rule 2.04. NOTICE OF APPLICATION; OBLIGATIONS OF MEMBERS

(A) The names of each applicant, his sponsors and employer shall be posted on the Exchange premises and on the Exchange's website and distributed electronically, where possible, ~~given to all Members~~ at least ten (10) days prior to the meeting of the Membership Committee at which such application will be considered.

(B) Each Member has the affirmative obligation to keep informed of all applications for membership and to provide the Membership Committee any adverse firsthand knowledge or information relating to an applicant's character and to an applicant's financial or business history. Any Member who willfully fails to provide the Membership Committee with such information shall have committed a major offense against the Exchange.

Rule 2.05. PROCEDURES FOR DETERMINING FITNESS OF APPLICANTS FOR EXCHANGE MEMBERSHIP

(A) The Exchange shall refer each application for membership for an independent investigation to determine and report to the Exchange any past or pending criminal actions, disciplinary proceedings or investigations.

(B) The references listed on the application, who must be Members of the Exchange, may be contacted independently for a confidential evaluation of the applicant.

(C) The applicant's financial statement may be verified by an independent inquiry of all banks scheduled as holding the applicant's assets and by requiring each applicant to provide copies of appropriate supporting documentation; ~~provided,~~ however, that any applicant for membership as an off-the-floor conferring member who is the subject of an unlimited guarantee from his Member Firm employer shall not be required to supply a personal financial statement or supporting documentation unless and until such applicant applies for floor trading privileges, at which time the Membership Committee shall review such financial information to determine compliance with the Exchange's financial requirements.

Rule 2.10. CORPORATIONS MEMBER FIRM PRIVILEGES

(A) Each firm, as a condition of obtaining and maintaining Member Firm privileges, shall be required to own and or have conferred upon it two (2) Exchange memberships in each Division in which it desires Member Firm privileges. The firm shall also be required to designate one or two individuals as its "conferring Members". Conferring Members may individually own the membership(s) and or hold such memberships via ABC Agreement.

~~Except as provided for in Rule 9.02(K), subject to the approval of the Board, the privileges of membership may be conferred upon a corporation by: one Member who owns and holds two (2) memberships or by two Members each of whom owns and holds one (1) membership.~~

(B) In the case of one conferring Member, such Member shall be an executive officer, general partner or an executive officer of a corporate general partner of the firm corporation.

(C) ~~Except as provided for in Rule 9.02(K),~~ In the case of two conferring Members, at least one member shall be an executive officer, general partner or an executive officer of a corporate general partner of the firm Corporation; the other conferring Member may need only be an executive officer, officer, director or a bona fide full time employee of the firm corporation.

(D) ~~For the purposes of this Rule 2.10, a Member who holds a membership subject to an financing ABC agreement under Rules 2.60 and 2.61 shall own a membership.~~

~~(E) As used in this Rule 2.10, an executive officer, general partner or an executive officer of a corporate general partner must have the power to direct the affairs of the firm corporation with respect to transactions executed on the Exchange or shall be the senior commodity officer of the firm corporation.~~

(E) Trades done for the account of any parent, subsidiary, affiliate, etc. of a Member Firm, if not itself a Member Firm shall be at non-Member rates; only the firm obtaining Member Firm status hereunder may receive Member rates.

(F) Firms that are registered, or required to be registered as commodity pool operators, under the Commodity Exchange Act and related Regulations, or operate as commodity pools but are exempt from registration, shall not be eligible for Member Firm status.

Rule 2.11. PARTNERSHIPS

~~(A) Subject to the approval of the Board, the privileges of membership may be conferred upon partnership by one Member who owns and holds two (2) memberships or by two Members each of whom owns and holds one (1) membership.~~

~~(B) In the case of one conferring Member, such Member shall be either a general partner or an executive officer of a corporate general partner of the firm partnership who has and exercises authority to conduct the partnership's business affairs without limitation.~~

~~(C) In the case of two conferring Members, at least one conferring Member shall be a general partner, the other conferring Member may be a general partner, limited partner or *bona fide* full time employee of the partnership.~~

~~(D) Trades done for the account of any individual or entity acting as general or limited partners, if not themselves Members shall be at non-Member rates; only the partnership obtaining Member Firm status hereunder may receive Member rates.~~

~~(E) The Membership Committee may direct the partnership to provide information regarding any of its limited partners on an application form approved by the Exchange. The partnership shall be responsible for all fees relating to investigative background checks the Exchange may perform. At all times after it obtains Member Firm status, the partnership shall immediately notify the Exchange of any and all changes in the number or status of limited partners.~~

~~(F) Partnerships that are registered, or required to be registered as commodity pool operators, under the Commodity Exchange Act and related Regulations, or operate as commodity pools but are exempt from registration, shall not be eligible for Member Firm status under this Rule 2.11.~~

~~(G) For the purposes of this Rule 2.11, a Member who holds a Membership subject to an A-B-C agreement under Rule 2.60 shall own a Membership.~~

Rules 2.11A. SOLE PROPRIETORSHIPS

(A) Subject to the approval of the Board, the privileges of membership may be conferred upon a sole proprietorship by one Member who owns and holds two (2) memberships.

~~(B) A Member who confers privileges of membership upon a sole proprietorship shall file a certificate of doing business as a sole proprietor ("d/b/a") with the Clerk of New York County, City of New York, at least five days prior to conferring membership privileges upon such sole proprietorship.~~

~~(C) A sole proprietorship upon which the Member firm privileges of membership are conferred may not obtain membership in the Clearing House of the Exchange.~~

Rule 2.12. COOPERATIVE ASSOCIATIONS

(A) Subject to the approval of the Board, the privileges of Membership may be conferred upon a cooperative association of producers of the kind referred to in Commodity Exchange Act § 5(C). As a condition of obtaining and maintaining Member Firm privileges, the association shall be required to own and or have conferred upon it two (2) Exchange memberships in each Division in which it desires Member Firm privileges. The firm shall also be required to designate one or two individuals as its "conferring Members". Conferring Members may individually own the membership(s) and or hold such memberships via ABC Agreement.~~by one Member who owns and holds two (2) memberships or by two Members each of whom owns and holds one (1) membership.~~

(B) In the case of one conferring Member, such Member shall be a duly authorized representative of such association.

(C) In the case of two conferring Members, both conferring Members shall be duly authorized representatives of the association.

~~(D) For the purposes of this Rule 2.12, a Member who holds a membership subject to an ABC agreement under Rule 2.60 shall own a membership.~~

Rule 2.13. APPLICATIONS FOR MEMBER FIRMS

Firms wishing to apply for membership privileges shall file an application in the form approved by the Board along with the following documents:

(A) an opinion, acceptable to the Exchange, of counsel to the Firm that the Firm is: (1) duly and validly organized and existing under the laws of the jurisdiction in which it was organized; (2) qualified to transact business under the laws of the jurisdiction in which it has its principal place of business; and (3) qualified to transact business in the State of New York or that such qualification is unnecessary;

(B) a copy of a resolution, duly certified by the Secretary or other authorized officer or partner of the Firm, designating an agent for service of process concerning

and limited to the Exchange-related activities and business of the Member Firm and/or employees of the Member Firm.

(C) a copy of a resolution, duly certified by the Secretary or other authorized officer or partner of the Firm, or by the governing body of the Firm, authorizing the application for membership privileges and the execution of the documents referred to above;

(D) with respect to partnerships, a statement describing the business in which it is engaged and a certified copy of its current partnership agreement. The Firm shall also file certified copies of any and all documents filed in the State of New York authorizing the partnership to conduct business in New York. All amendments to the partnership agreement shall be filed immediately with the Membership Department;

(E) a copy of the applicant firm's most recent financial statement verifying compliance with the minimum capital requirements of Rule 2.14. In addition, applicant firms registered as a Futures Commission Merchant must also submit their certified financial statement prepared as of the most recent fiscal year end; and

(F) each application for membership privileges shall be accompanied by payment of a non-refundable application fee in an amount to be fixed, from time to time, by the Board.

Rule 2.14. FINANCIAL AND REPORTING REQUIREMENTS FOR MEMBER FIRMS: REPORTS; FEES; AND CAPITAL IMPAIRMENT NOTIFICATION

(A) Unless exempted by the Board of Directors or its designee pursuant to Section (F), each Member Firm shall have and maintain working capital, (computed in accordance with generally accepted accounting principles), of not less than one hundred thousand dollars (\$100,000). ~~In computing working capital for the purposes of this Rule 2.14, not more than fifty thousand dollars (\$50,000) for each membership, held by Members who confer privileges on a Member Firm, shall be allowed as a current asset; provided however, that if the current market value of a membership is less than fifty thousand dollars (\$50,000) an amount equal to eighty percent (80%) of the current market value (based upon bids) shall be allowed as a current asset; and, provided further, that a~~ A Member Firm which provides a financial "lease" guarantee for its employee pursuant to Rule 2.23(C) shall meet the special financial requirements of Rule 2.30(B).

(B) Each Member Firm that issues a financial "lease" guarantee under Rule 2.30 ~~and/or Electronic Trader guarantee under Rule 14.05~~ shall file with the Financial Surveillance Section of the Compliance Department a financial report for each fiscal year. The report shall be prepared in accordance with generally accepted accounting and auditing principles and certified by an independent certified or licensed public

accountant. Such report is to be filed within ninety (90) days after the close of the Member Firm's fiscal year.

(C) Each Member Firm that issues a financial "lease" guarantee under Rule 2.30 ~~and/or Electronic Trader guarantee under Rule 11.05~~ shall file with the Financial Surveillance Section of the Compliance Department a financial report for the first six (6) months of its fiscal year, which report shall be executed by the conferring members and by the president of the Member Firm or by another appropriate official of the Member Firm. Such report shall be filed within forty-five (45) days after the close of the second quarter of the fiscal year of such Member Firm.

(D) Unless exempted from Subsection (A), if, for any reason, the net assets of a Member Firm decline below the level specified in this Rule 2.14 or decline by a factor of from the last report to the Exchange, the Member Firm shall give written notice of such event to the Financial Surveillance Section of the Compliance Department within 10 days of its occurrence. This "Notice of Capital Impairment" should state the date of and the applicable reason for the decline of the Member Firm's working capital. For any Member Firm that has been exempted from Section (A) pursuant to Section (F), if the financial measurement used by the Board or its designee as an alternate measure of financial soundness declines below the specified level or declines by a factor of twenty percent (20%) from the last report to the Exchange, such Member Firm also shall give written notice of that fact to the Financial Surveillance Section of the Compliance Department within ten days.

(3) Any planned reduction of a Member Firm's working capital, as defined by Rule 2.14(l) (A), of 30% or more from that last reported to the Exchange shall be prefaced at least two business days in advance of its occurrence by a formal written notice of such event(s) to the Financial Surveillance Section of the Compliance Department. Such notification should state the date of and applicable reason for the planned reduction of the Member Firm's working capital.

~~(E) A Member Firm, except a Futures Commission Merchant that is not a Clearing Member shall pay an annual fee to the Exchange in an amount fixed, from time to time, by the Board.~~

~~(F) The Board of Directors or its designee may exempt a Member Firm from the working capital requirement set forth in Section (A) if, in its sole discretion, an alternate measure of the financial soundness of such Member Firm, such as a minimum level of net worth, is more appropriate.~~

(F) Extension of Time for Submission of Financial Statements

A Member Firm may request an extension of time for the submission of a financial statement to the Exchange by filing a written request with the Vice President of the Exchange's Financial Surveillance Division prior to the date for which such financial statement is due to be submitted. The request should be signed by the Member Firm's

Chief Financial Officer and state, in reasonable detail, the reasons for and the length of time necessary for such extension. Each such request submitted pursuant to this Rule will be reviewed for adequacy and granted or denied accordingly.

(G) Additional Financial Statements

The Exchange, at its discretion, may from time to time, request additional financial information and/or statements from Member Firms.

Rule 2.15. FINANCIAL AND REPORTING REQUIREMENTS FOR MEMBER FUTURES COMMISSION MERCHANTS; REPORTS; FEES; CAPITAL IMPAIRMENT NOTIFICATION

(A) Each Member and Member Firm registered with the Commission as a futures commission merchant shall maintain an adjusted net capital equal to ~~or in excess of the greater of one hundred thousand dollars (\$100,000)~~ the amount prescribed in Commission Regulation 1.17.

(B) Each Member and Member Firm registered with the Commission as a futures commission merchant shall file with the Financial Surveillance Section of the Compliance Department such reports and other documents as are required by Commission Regulation §1.10 or otherwise or by the Exchange at such time as required by such regulation or by the Exchange.

~~(C) Each futures commission merchant, which is a Member or Member Firm, but which is not a member of the Clearing House, shall pay to the Exchange a fee in an amount to be fixed from time to time by the Board~~

(1) If, for any reason, the "Adjusted Net Capital", as defined by CFTC Regulation 1.17 (c)(5), of a Member or Member Firm registered as a futures commission merchant declines below the minimum required by Rule 2.15(I)(A), the Member or Member Firm futures commission merchant shall give immediate telephonic notice, to be confirmed by written notice of the fact by telegraphic or facsimile transmission, to the Financial Surveillance Section of the Compliance Department as noted within By-Law Section 851 (Duty to Report Emergency Event).

(2) If, for any reason, the "Net Capital", as defined by CFTC Regulation 1.17(c)(1), of a Member Firm registered as a futures commission merchant or "Tentative Net Capital" of a Member Firm also registered as a Broker-Dealer, declines by a factor of 20% or more from that last reported to the Exchange, the Member or Member Firm futures commission merchant shall give formal written notice of such event to the Financial Surveillance Section of the Compliance Department within two business days of its occurrence. This "Notice of Capital Impairment" should state the date of the decline and an applicable reason for the decline of the Member futures commission merchant's net capital.

(3) Any planned reduction of a Member futures commission merchant's "Excess Net Capital" (defined as Net Capital per CFTC Regulation 1.17(c)[1] or "Excess Net Capital" of a Member Broker-Dealer, less the minimum capital required by Rule 2.15(l)(A) of 30% or more from that last reported to the Exchange shall be prefaced, at least two business days in advance of its occurrence, by a formal written notice of such event(s) to the Financial Surveillance Section of the Compliance Department. Such notification should state the date of an applicable reason for the planned reduction of the member futures commission merchant's excess net capital.

Rule 2.16. LIMITATIONS ON CONFERRING MEMBERS

(A) Member may not confer membership privileges on more than one Member Firm at the same time unless each of the following conditions are met:

- (1) there is a direct ownership relationship between the Member Firms;
- (2) separate seat(s) are used to confer such privileges;
- (3) the Member conferring privileges concurrently maintains, for each of the Member Firms, the requisite qualifications for conferring privileges otherwise prescribed by the Rules of the Exchange; and
- (4) the firms can demonstrate, to the satisfaction of the Exchange's Compliance Department, that such conference does not constitute a conflict of interest.

(B) A Member who confers membership privileges on a Member Firm agrees to make the proceeds of the sale of his memberships available for settlement of any and all claims against such Member, and Member Firm.

Rule 2.17. CANCELLATION CESSATION AND INACTIVATION OF FIRM PRIVILEGES

~~(A) A Member Firm may relinquish or inactivate its privileges may be canceled by the conferring Member or by the Member Firm provided that:~~

(A) ~~(1) the Exchange has received written notice of the Member Firm's intention to cancel relinquish or inactivate its privileges, including the identity of any employee or principal name of each Member guaranteed by the Member Firm pursuant to Exchange Rules 2.21 and/or 2.23(C) executed by the corporation or by the Member, is given to the Exchange; and the name and number of each non-Member account guaranteed by the Member Firm pursuant to Rule 9.04(B).~~

(B) ~~(2)~~ the Exchange has given to Members at least ten (10) days ~~written~~ notice of the ~~withdrawal of the~~ Member Firm's intent to relinquish or inactivate its privileges; and

(C) ~~(3)~~ the Member Firm ~~and the conferring Member~~ delivers to the Exchange a written statement that all claims arising out of Exchange transactions against the Member Firm have been settled or discharged; and

(D) ~~(4)~~ no Member or Member Firm has filed a claim against the withdrawing Member Firm and/or any Members or non-Members it guarantees, ~~if it is a PCM, or its conferring Member.~~

Rule 2.18. TERMINATION OF MEMBER FIRM PRIVILEGES

(A) Member Firm privileges shall be suspended or terminated automatically as set forth below,

(1) If ~~any~~ the sole conferring Member dies or ceases to be an executive officer, general partner, representative, limited partner or employee of the Member Firm, ~~or sells or transfers his membership~~, the Member Firm's privileges shall be terminated ninety (90) days after the date of the occurrence of any such event unless a new conferring Member is approved for the Member Firm prior to such termination.

(2) If a sole conferring Member shall be suspended or expelled for any reason, such suspension or expulsion shall apply to the Member Firm.

(B) Member Firm privileges may be suspended, or terminated by the action of the Exchange in accordance with the By-Laws and the Rules.

Rule 2.21. QUALIFICATIONS GUARANTEE BY PRIMARY CLEARING MEMBER

(A) Each Floor Member must be guaranteed to trade on the floor by a Primary Clearing Member ("PCM"). To guarantee a Floor Member, the PCM must execute such guarantees and other documents as required by the Exchange. No Floor Trader may be guaranteed by two (2) PCMs at the same time.

(B) In order to guarantee a Floor Member, the PCM shall:

(1) agree to accept and clear all trades executed by the guaranteed Floor Member which are not otherwise accepted for clearance;

(2) agree to accept financial responsibility for the trades held in an account in the record name and for the benefit of the guaranteed Floor Member which have

been accepted for clearance by another Clearing Member authorized by the PCM to clear trades for the Floor Member pursuant to Rule 2.31, provided that the other clearing member has notified the PCM and the Compliance Department of any deficit in the guaranteed floor member's account by 12:00 P.M. on the next trading day after the deficit arose;

(3) agree to accept financial responsibility for all trades determined through the Exchange adjudication or arbitration process to have been executed by the guaranteed Floor Member, whether for his own account or for the accounts of others;

(4) execute such guarantees and other documents as the Exchange shall require in connection with the PCM's guarantee of a Floor Member and shall file said documents with the Membership Department; and

(5) comply with the financial requirements for guarantors as set forth in Rule 2.30 and in Rule 9.21.

(C) The guarantee shall be in writing, filed by the PCM with the Membership Department and may only be withdrawn by means of a written notice of revocation filed with the Exchange in accordance with the provisions of Section (A) ("Regular Trading Hours") of Rule 2.33.

Rule 2.23. FINANCIAL REQUIREMENTS OF FLOOR MEMBERS

~~(A) — Except as otherwise provided in this Rule 2.23, each Floor Member must have, and at all times maintain, fifty thousand dollar (\$50,000) equity value in a trading account with the qualifying Primary Clearing Member.~~

~~(B) — For the purposes of Rules 2.23, 2.27 and 2.30(B), the account equity value requirement of Section A of Section I of this Rule 2.23 shall be completely waived, for each membership owned and held by such Member, provided, however, that: (i) if the then current membership market value is less than fifty thousand dollars (\$50,000), account equity value requirements shall be partially waived to the extent of eighty percent (80%) of the current market value of each membership owned and held by such member; or (ii) if the membership owned by a Floor Member is security or collateral for an outstanding loan registered with the Membership Secretary, the Floor Member must have and continuously maintain with the qualifying Primary Clearing Member a trading account with an equity value in an amount equal to that required under the terms of the loan.~~

~~(C) — For the purposes of Rules 2.23, 2.27 and 2.30(B), the account equity value requirements set forth in Section (A) of Section I of this Rule 2.23 shall be completely waived:~~

~~(i) — for a Floor Member who holds a membership pursuant to an financing A-B-C agreement, under Rules 2.60 and 2.61 from a Member Firm only, on a~~

~~"fully valued Exchange membership" in form approved by the Exchange and filed with the membership secretary; or~~

~~(ii) — for a Floor Member who maintains bona fide full time employment with a Member Firm meeting the capital requirements of Rule 2.14, which agrees in form approved by the Exchange and filed with the Membership Secretary, to provide a financial "Lease Guarantee" that will guarantee any obligations of the employee Floor Member to the Exchange or otherwise arising out of the transaction of business on the Exchange.~~

~~(D) — For purposes of this Rule 2.23, a "fully valued Exchange Membership" shall be defined as: (1) one then valued at fifty thousand dollars (\$50,000); or (2) where the sum of eighty percent (80%) of the then current market value plus the equity value in the holder's trading account at a qualifying Primary Clearing Member shall equal or exceed fifty thousand dollars (\$50,000).~~

(A) There shall be no minimum financial requirements for either NYMEX or COMEX Division Floor Members other than for those individuals obtaining their membership privileges via a lease agreement or an Exchange-issued Floor Trading Permit as noted in subsection (B) below.

(B) Unless a formal guarantee is obtained as noted in Subsection (C) below, and filed with the Membership Department, each Floor Member obtaining his membership privileges via a lease agreement or an Exchange-issued, Floor Trading Permit must maintain, at all times, a minimum equity balance in a trading account with his Primary Clearing Member as follows:

- (i) NYMEX Division Floor Member: \$50,000
- (ii) COMEX Division Floor Member: \$25,000

(C) Floor Members obtaining their membership privileges via a lease agreement or an Exchange-issued trading Permit may be exempt from maintaining the minimum equity balance with their Primary Clearing Member, as required in Subsection (B) above, if a formal guarantee is obtained from a Member Firm of which he is a bona-fide, full time employee. Such guarantee shall obligate the Member Firm to:

- (1) Indemnify the Floor Member's PCM for payment any amount paid and/or incurred as a result of and allowable pursuant to its guarantee of the individual;
- (2) Assume any and all unsatisfied financial obligations of the lessee or Permit Trader to the Exchange and its Members arising out of the individual's conduct of business on the Exchange; and
- (3) Comply with the capital requirements of Rule 2.30 and reporting requirements of Rule 2.14 (B).

Rule 2.30. GUARANTEES AND QUALIFICATIONS-ADDITIONAL CAPITAL

REQUIRED FOR EMPLOYEE GUARANTEES

(A) — ~~As set forth in Rule 2.01, a Member Firm may provide a “Non-Floor Member Guarantee” guarantee, to the extent of twenty-five thousand dollars (\$25,000), the obligations of a Member other than a Floor Member that arise out of the transaction of business on the Exchange. For each such guarantee issued, the Member Firm shall be required to maintain working capital of twenty-five thousand dollars (\$25,000) in excess of that otherwise required by the Rules.~~

(B) ~~A Member Firm may issue a financial “lease” guarantee that provides a guarantee of all obligations of a bona fide employee Floor Member who has obtained his or her membership privileges via a lease agreement or of a permit holder or Electronic Trader that arise out of the transaction of business on the Exchange. For each such financial “lease” guarantee in excess of four made pursuant to Rules 2.23(I)(C), 2.74(H), 2.75(H) or 11.05, the Member Firm shall be required to maintain working capital of \$50,000 in excess of that otherwise required by those Rules.~~

(C) — ~~A Clearing Member may qualify or guarantee the obligations of a Floor Member as provided in Rule 2.21 and as further provided in Rule 9.21(I) (B), and may issue Trader Work Station Qualifications Agreements or NYMEX ACCESS® Primary Clearing Member Guarantees, as applicable, pursuant to Rule 11.04 or Rule 11.04A-1, as applicable.~~

(2) — ~~Qualifications issued by Clearing Members are subject to the following limitations.~~

~~For each qualification in excess of twenty-four (24), the Clearing Member shall be required to maintain working capital of fifty thousand dollars (\$50,000) in excess of that otherwise required by the Rules; provided, however, that no such requirement shall apply where the qualified Floor Member has net liquid assets in excess of one hundred thousand (\$100,000) and such Floor Member files with the Clearing Member an annual financial statement as of the calendar year-end and presented on a form as provided by NYMEX documenting net liquid assets in excess of one hundred thousand dollars (\$100,000).~~

~~The Clearing Member shall obtain such financial statement and supporting schedules no later than January 31 of each year and maintain these documents as part of the Clearing Members’ books and records.~~

(A) Both Member Firms and Clearing Member Firms may issue certain financial guarantees of bona-fide full time employees which, when properly prepared and filed with the Vice President of the Exchange’s Membership Department, will exempt such employees from the requirement that lease members and permit holders, and electronic traders maintain minimum equity balances with their respective Primary Clearing Member.

(B) Each Member Firm and Clearing Member Firm must maintain capital in excess of that required by Rule 2.14 and 2.15 or 9.24 for each financial guarantee issued and allowed by Subsection (A), beyond a base of four guarantees per Division, as follows:

- (i) NYMEX Division: \$50,000
- (ii) COMEX Division: \$25,000

~~(D) All guarantees must be approved by the Membership Committee.~~

~~(E) The excess capital requirements contained in Sections (A), (B) and (C) of this Rule 2.30 shall be cumulative.~~

Rule 2.32. DUTIES OF GUARANTORS AND QUALIFYING PRIMARY CLEARING MEMBERS

~~(A) Each guarantor and qualifying Clearing Member shall determine the means whereby the Floor member has satisfied the financial requirements of Rule §2.23 and shall affirmatively monitor the financial condition of each Floor Member guaranteed or qualified by that guarantor or qualifying Clearing Member.~~

~~(B) A Qualifying Clearing Member shall monitor daily the trading account equity value of each qualified Floor Member to determine that the financial requirements applicable, if any, pursuant to Rule §2.23 are satisfied, and shall promptly notify the Office of the Secretary and take steps to terminate qualification upon the discovery of insufficient trading account value. Provided, however, that if a Floor Member whose account equity value falls below \$25,000 at the end of any business day reinstates that account equity value to \$50,000 prior to the opening of trading on the following business day, or that a Floor Member whose account equity value falls between \$25,000 and \$49,999 reinstates that account equity value to \$50,000 prior to the opening of trading on the second succeeding business day, the Qualifying Clearing Member shall not be required to notify the Office of the Secretary or take steps to terminate the qualification. Provided further, however, that in the event a Floor Member whose account equity has fallen to between zero dollars and \$50,000 is unable to reinstate his account equity value to \$50,000 within the above stated periods, the Qualifying Clearing Member may, for no more than thirty calendar days, issue an unlimited guarantee covering any obligations of the Floor Member to the Exchange or otherwise arising out of the transaction of business on the Exchange. Such guarantees must be filed immediately with the NYMEX Director of Financial Surveillance.~~

~~The temporary guarantee referred to above may only be granted twice to a particular Floor Trader within any twelve (12) month period. In addition, a Clearing Member may not issue and a Floor Member may not accept consecutive temporary guarantees.~~

~~(C) A qualifying Clearing Member shall retain the account equity, if any, required by~~

~~these Rules to be maintained in a Floor Member's trading account, until a written release authorization is provided by the Office of the Secretary.~~

~~(D) A qualifying Clearing Member shall daily provide the lessor in any Class I membership lease agreement or the guaranteeing employer of any bona fide employee with a copy of the confirmation of each Exchange purchase or sale transacted by the lessee or employee; provided, however, that this obligation may be waived in writing by the lessor or employer respectively.~~

(A) Monitoring of Guaranteed Members

Each PCM shall affirmatively monitor the financial condition of each Floor Member guaranteed to determine that Floor Member's compliance with the terms and financial requirements of Rule 2.23 (lease members) and Rule 11.05 (electronic traders) and shall take steps to terminate its guarantee upon non-compliance with such requirements.

(B) Retention of Account Equity

A PCM shall retain the account equity that comprises, for purposes of Rule 2.23, the net liquidating equity, if any, required by these Rules to be maintained in a Floor Member's trading account for the greater of ten (10) days or until any and all pending claims by Members and Member Firms have been resolved.

Rule 2.33. TERMINATION OF GUARANTEES AND QUALIFICATIONS

~~(A) A Member Firm or Clearing Member that has guaranteed or qualified a Member, Floor Member or Permit Holder with respect to regular trading hours only, except as inconsistent with the requirement for revocation of qualification set forth in Rule 2.21(C), may terminate the guaranty or qualification by giving written notice of termination to the Office of the Secretary during regular business hours. With respect to any guaranty or qualification that relates wholly or partially to trading on the NYMEX ACCESS® System, a Member Firm or Clearing Member may terminate the guaranty or qualification by giving written notice of termination to the Office of the Secretary between the hours of 9:00 a.m. and 3:30 p.m. on any business day. At all other times, such notice shall be given to the NYMEX ACCESS® Control Center with a copy to the Office of the Secretary. Such notice shall indicate the effective date and time of termination. A copy of the written notice of termination shall be given to the guaranteed Member, qualified Floor Member or Permit Holder.~~

(A) A Member Firm or Clearing Member or PCM that has guaranteed Floor Member may revoke the financial "lease" guarantee or PCM guarantee, as applicable, by submitting a written Notice of Revocation during regular business hours. Such notice shall indicate the desired effective date and time of termination. Such termination of a guarantee by a PCM shall become effective

only after occurrence of all of the following events:

(1) receipt by the Membership Department of such written Notice of Revocation;

(2) notice by the PCM to the guaranteed Floor Member by providing that Floor Member with a copy of the Notice of Revocation filed with the Membership Department;

(3) posting notice of such revocation by the Membership Department; and

(4) removal of the Floor Member's trading symbol from the clearing system of the Exchange.

A PCM shall use due diligence to obtain the Trading Badge of a Floor Member whose guarantee has been terminated by that PCM.

(B) The Notice of Termination shall indicate whether the Member Firm or Clearing Member or PCM is asserting against the guaranteed Member any claims that arising out of the transaction of business on the Exchange.

(C) The suspension, expulsion, or other termination of the privileges of a Member Firm or Clearing Member or PCM shall operate to terminate all guarantees issued by such Member Firm or Clearing Member or PCM.

(D) The Membership Department promptly shall give notice to the membership of the termination of any guarantee.

Rule 2.36. APPLICATIONS FOR MEMBERSHIP BY A MEMBER OF ANOTHER DIVISION

(A) Any Member of either the NYMEX Division or the COMEX Division shall be automatically eligible for membership in the other Division upon the filing of an application, subject to the following:

- (1) The applicant must be a Member in good standing of the Division where he presently holds membership privileges at the time of the application through the time that it is considered by the Board of Directors. For the purposes of this Rule 2.36, the term "Member" shall mean an individual who currently holds a membership in his name by direct ownership, ABC agreement or lease agreement. In addition, an individual who leases his only seat shall be considered to hold a membership in his name for the purposes of this Rule 2.36.
- (2) The applicant must sign a statement on a form prescribed by the

Exchange attesting to the fact that no event has occurred, since the submission of his application to the Division where he is currently a member, which would require notification pursuant to Rule 2.42;

- (3) The applicant shall pay the cost for the Exchange to perform an independent investigation as required under Rule 2.05(A); and
- (4) The applicant shall meet all financial requirements of the Division where the applicant is seeking membership privileges.

(B) The report required under Subsection (A) (3) shall be reviewed by the Chairman of each Division's Membership Committee and the Vice President, Member Services. Satisfactory applications that have been reviewed shall be submitted for approval to the Board. In the event that the independent investigation required under Subsection (A)(3) does not confirm the attestation submitted by the applicant, the matter will be referred to the Compliance Department and the application will be processed as any other application for membership.

**Rule 2.37. APPLICATIONS FOR MEMBERSHIP BY A CLEARING MEMBER OF
ANOTHER DIVISION**

(A) Any clearing member of either the NYMEX Division Clearing House (for purposes of this rule, the "NYMEX Division") or COMEX Clearing Association, Inc., or such other Clearing House that may be established to clear COMEX Division contracts (for purposes of this rule, the "COMEX Division") shall be automatically eligible for membership in the other Division upon the filing of an application, subject to the following:

- (1) The applicant must be a member in good standing of the Division where it presently holds membership privileges at the time of the application through the time that it is considered by the Board of Directors.
- (2) The applicant must sign a statement on a form prescribed by the Exchange attesting to the fact that no event has occurred, since the submission of its application to the Division where it is currently a member, which would require notification pursuant to Rule 2.42;
- (3) The applicant shall pay the cost for the Exchange to perform an independent investigation as required under Rule 2.05(A); and
- (4) The applicant shall meet all financial requirements of the Division where the applicant is seeking membership privileges.

(B) The report required under Subsection (A) (3) shall be reviewed by the Chairman of the Membership Committee, the Vice Chairman of the Clearing House Committee and two additional Members of the Clearing House Committee. Satisfactory applications that have been reviewed shall be submitted for approval to the Board. In

~~the event that the independent investigation required under Subsection (A)(3) does not confirm the attestation submitted by the applicant, the matter will be referred to the Compliance Department and the application will be processed as any other application for membership.~~

Rule 2.41. RESPONSIBILITY OF MEMBERS AND MEMBER FIRMS FOR ACTIONS OF EMPLOYEES

(A) ~~An individual or entity maintaining any membership status on the Exchange Member, Member Firm, Permit Holder and Electronic Trader shall be responsible for, and subject to disciplinary action as a result of, the acts or omissions and for the breaches or violation of the By-Laws and Rules of its employees.~~

(B) Every Member Firm shall be responsible for, and subject to, disciplinary action as a result of, the acts and omissions, and for the breaches or violations of the By-Laws and Rules of its partners, directors, or officers.

Rule 2.42. NOTICES REQUIRED NOTICES OF MEMBERS, MEMBER FIRMS, PERMIT HOLDERS, ELECTRONIC TRADERS AND NYMEX ACCESS® OPERATORS

(A) ~~Each individual or entity maintaining any membership status on the Exchange Member, Member Firm, Permit Holder, Electronic Trader and NYMEX ACCESS® Operator shall notify the Exchange in writing immediately upon the occurrence of any of the following events:~~

(i) Any material adverse change in financial condition;

(ii) ~~Any material change in the Member's, Permit Holder's, Electronic Trader's or NYMEX ACCESS® Operator's individual or entity's relationship with the guarantor or with a Primary Clearing Member;~~

(iii) Any refusal of admission to, withdrawal of any application for membership in, any suspension, expulsion, bar, fine, censure, denial of membership, registration or license, withdrawal of any application for registration, cease and desist order, temporary or permanent injunction, denial of trading privileges, or any other sanction or discipline through an adverse determination, voluntary settlement or otherwise, by any commodity or securities exchange, related clearing organization, the National Futures Association, the National Association of Securities Dealers, Inc., or any self-regulatory organization or other business or professional association;

(iv) Any refusal of admission to, withdrawal of any application for membership in, any suspension, expulsion, bar, fine, censure, denial of membership, registration or license, withdrawal of any application for registration, cease and desist order, temporary or permanent injunction, denial of trading privileges or any other sanction or discipline through an adverse determination, voluntary settlement or

otherwise by:

(a) the Securities and Exchange Commission, the Commission or the securities commission or equivalent authority of any state, territory, the District of Columbia or foreign country; or

(b) any federal court, state court, or regulatory agency not mentioned above, quasi-governmental body;

(v) any conviction, finding of guilt, confession of guilt, plea of guilty or *nolo contendere* to a felony or misdemeanor charging misrepresentation, fraud, deceit, theft, embezzlement, gambling, conversion, abuse of a fiduciary relationship or other such act;

(vi) the commencement, by the issuance of a formal order of investigation (or its equivalent), or by the issuance or service of a written complaint (or its equivalent), of any judicial, administrative or self-regulatory proceeding, as the case may be, against such member by the Commission, the Securities and Exchange Commission, the securities commission or equivalent authority of any state, territory, the District of Columbia or foreign country, or any commodity or securities exchange or related clearing organization, or any registered futures or securities association, or any self-regulatory organization or other business or professional association.

(vii) any change in a Member Firm's liaison designated pursuant to Section (B) hereof; or

(viii) ~~if a Member, Permit Holder, Electronic Trader or NYMEX ACCESS@ Operator, is guaranteed by a Member Firm or employed by a Member, Member Firm or Electronic Trader, any revocation of such person's any guarantee and any material change in the status of such person's employment, including without limitation any termination, voluntary or otherwise, of his employment by such Member, or Member Firm or Electronic Trader.~~

(B) ~~Each Member, Member Firm, Permit Holder, Electronic Trader or NYMEX ACCESS@ Operator, individual maintaining any membership status on the Exchange shall file with the Membership Department (i) a written notice consenting to the designation of the Exchange's Assistant Secretary and/or Vice President, Member Services as the Member's, Member Firm's, Permit Holder's, Electronic Trader's or NYMEX ACCESS@ Operator's, his or its agent for service of process concerning and limited to the Member's, Member Firm's, Permit Holder's, Electronic Trader's or NYMEX ACCESS@ Operator's Exchange-related activities and business; and (ii) if a Member Firm, a written notice designating an officer, employee or partner as the Exchange liaison, whom the Exchange may contact in order to obtain additional information or documentation in connection with any matter whatsoever provided in the Rules.~~

(C) Each Member Firm shall give written notice to the Exchange of all

changes in the employment status of any of its employees who are Exchange Members and/or registered with the Exchange as trading floor personnel, in partners, whether general or limited, or in officers or directors.

(D) Each Member Firm shall give prior notice, in writing, to the Membership Department of any proposed merger, acquisition, consolidation, or sale of the Member Firm, whether into or by the Member Firm or otherwise. Such prior notice shall be supplemented by such documents or information as requested by the Vice President, Member Services.

Rule 2.50. TRANSFER OF MEMBERSHIPS

(A) A Member may transfer ownership of his membership only to another Member or Member-elect in the same Division and shall be permitted upon: (i) a sale of a membership as provided in Rule 2.52; or (ii) ~~either the effective date or termination of an ABC Agreement as set forth in Rule 2.60;~~ (iii) ~~either the effective date or termination of a lease agreement as set forth in Rule 2.70;~~ (iv) as a result of a *bona fide* gift where the donor and the donee are members of the same family (a spouse, parent, child, sibling, grandparent, or grandchild); ~~or~~ (iii) by operation of law; or (iv) as a result of a sale where the seller and purchaser are members of the same family (a spouse, parent, child, sibling, grandparent, or grandchild). The transfer in ownership of a membership shall be effective upon the execution of an assignment of registration to the transferee on the membership records of the Exchange.

(B) A Member may retain ownership of his membership and transfer, via lease or ABC Agreement, those rights and obligations specifically provided for in the lease or ABC Agreement. The transfer of such rights and obligations shall be concurrent with the effective and/or termination date of the lease or ABC Agreement

(C) The Exchange shall treat the person in whose name a membership is registered on the membership records of the Exchange as the sole owner of the membership, notwithstanding the terms and conditions of an ABC Agreement pursuant to which the person holds such membership, and, except as provided in the By-Laws and Rules, shall not be bound to recognize any claim to, or interest in, such membership, by any other person, whether or not the Exchange has notice of such purported claim or interest.

Rule 2.51. PROCEDURE FOR TRANSFER OF MEMBERSHIPS

(A) If a Member desires to transfer ownership of a membership, the transferor shall deliver to the Membership Department notification of intention to transfer, executed by the transferor or his legal representative. The notice of intention to transfer shall include the seat identification number, the date on which the transfer is intended to become effective and the name of the proposed transferee. The Membership Department, upon receipt of a Member's notice of intention to transfer a membership, shall promptly notify the membership of the Exchange, by posting for a period of ten (10) days the notice of

intention to transfer.

(B) No Member may transfer ownership of a membership or lease to another the trading privileges associated therewith unless and until the following conditions have been met:

(i) All dues, assessments, fines, penalties and any other monies (including, but not limited to, booth fees, office rent and phone charges) due and payable to the Exchange shall have been paid:

(ii) ~~(a) All claims of Members that: (1) arise out of, or in connection with, the transaction of business on the Exchange, and (2) are filed with the Membership Department within ten (10) days after the Exchange gave the membership notice of the receipt of the notice of intention to transfer have been settled or discharged.~~

~~(b) The condition in subpart (ii)(a) above shall not apply to claims of Member Firms who are the beneficial owners of the proposed transferred membership pursuant to an A-B-C Agreement financed the proposed transferor's seat pursuant to Rule 2.60, or and~~

~~(2) the lessor of a membership leased to the proposed transferor~~

(iv) (iii) Payment by the transferee to the Exchange of a transfer fee in an amount to be fixed, from time to time, by the Board; provided, however, that a Member who purchases a membership in order to transfer it to another Member or to Member-elect and files a notice of intention to transfer the membership to such other Member or to such Member-elect shall not be required to pay a transfer fee upon transfer to such other Member or Member-elect.

(C) A transfer of ownership of a membership may be effected, notwithstanding the provisions of Sections (A) and (B) hereof provided that:

(i) the transferor owns and holds more than one full membership in the Division of the transferred membership; provided, however, that the claim shall be less than the then current value of a membership; or,

(ii) the transferor deposits with the Exchange a certified check, payable to the Exchange, in an amount equal to the amount of the claim, including a reasonable amount for costs and attorney fees, for liquidated claims or such amount as may be determined by the Exchange for unliquidated claims provided that such amount shall be no higher of than the price at which a membership last sold or at which a membership was bid ~~and, files with the Exchange an affidavit which states that all of the conditions of Subsection (B) of this Rule have been satisfied.~~ The Exchange shall retain such deposit until the earlier of ten (10) days after receipt of a notice of intention to transfer ~~is received~~ or all claims filed within ten (10) days of posting such notice have been resolved, or until the transferor, as specified above, has deposited with the Exchange an amount equal to the total of all

claims filed within ten (10) days notice of such notice.

~~(D) A Member other than a lessee who is the subject of any disciplinary proceeding or investigation by the Exchange may transfer a membership notwithstanding that such Member or the Member Firm upon which such Member conferred member privileges is the subject of any investigation or proceeding by the Exchange only if the Member or Member Firm submits a written agreement, acceptable to the Board, by which the Member or Member Firm submits to the continuing jurisdiction of the Exchange.~~

~~(E) A lessee who Member and/or Member firm that is the subject of any disciplinary proceeding or investigation by the Exchange may transfer the ownership and/or rights and obligations granted pursuant to the lease or A-B-C Agreement of a membership back to a lessor upon the termination of a lease notwithstanding the existence of the disciplinary action however and subject to the following provisions:~~

~~(i) such lessee Member and/or Member firm shall remain subject to Exchange jurisdiction and be personally liable for any fines assessed in connection with the proceeding or investigation;~~

~~(ii) the lessee Member and/or Member firm shall be deemed to have consented to the jurisdiction of the courts of the State of New York in New York County for the purpose of any action brought by the Exchange to enforce its rights against such Member and/or Member firm lessee;~~

~~(iii) in the event that the lessee satisfied the financial requirements of Rule 2.23 by maintaining the required trading account equity such funds: (1) shall be frozen until the investigation is closed or proceeding concluded; (2) shall be paid to the Exchange in full or partial satisfaction of any fine; and (3) shall be released only upon written approval to the lessee's Clearing Member-PCM from the Exchange's Compliance Department.~~

~~(F)(E). A seat transfer of the rights and obligations of membership back to a lessor upon the termination of a lease shall nonetheless result in continuing Exchange jurisdiction over the lessee with respect to any pending disciplinary investigation or proceedings involving the lessee, or any proceeding arising out of the lessee's acts or omissions during or relating to such pending proceeding. Notwithstanding sSubsection (B) (i) herein, a seat may be transferred back to a lessor while a fine against the lessee remains due and payable. Lessors shall not be liable for, and shall not be responsible for the payment of, disciplinary fines assessed against lessees. Such lessees shall have continuing personal liability for all disciplinary fines arising out of such investigations or proceedings.~~

~~(G)(F) Notwithstanding Section ~~(E)~~ (D), the lessee may receive all of the funds in his trading account at the time of the seat transfer, provided that he deposits in the Membership Department a certified check, or a check drawn on a Clearing Member's account, payable to the Exchange in the amount of \$50,000 for NYMEX Division lessees and \$25,000 for COMEX Division lessees.~~

~~(H)(G) A membership that has been sold in accordance with Rule 2.52 may be transferred to the purchaser free from any claims notwithstanding that a claim may have been made under Section (B) hereof. The portion of the proceeds required in accordance~~

with Subsection (C)(ii) of this Rule shall not be distributed until resolution of any claim as provided in By-Law §858.

Rule 2.56. Exchange Financed Class A and COMEX Memberships

(A) Up to ~~sixty (60)~~ eighty (80) percent of the cost of acquisition of the first Class A membership purchased by an individual who ~~has been~~ is a Class A member via lease or ABC Agreement or a COMEX Division Member or Permit Holder on the Exchange for at least one year immediately prior to the filing of an application pursuant to this Rule 2.56 may be financed in accordance with a seat financing program sponsored by the Exchange. ~~In addition, Class A members or COMEX members who have sold their only Class A or COMEX membership, as applicable, shall be eligible to obtain up to sixty (60) percent of the cost of acquisitions of another Class A or COMEX membership provided that the individual shall have been a Class A or COMEX member for at least one year immediately prior to the filing of an application pursuant to this Rule 2.56, either leasing a Class A or COMEX membership or holding a Class A or COMEX membership subject to an A-B-C agreement under Rule 2.60.~~ To obtain such financing, an individual must complete and file with the Office of the Secretary Membership Department an application together with such documents, in support of the application, as required approved by the Exchange. Eligibility determination and approvals shall be made by the Board of Directors upon a recommendation of the Loan Review Committee. All Board Committee decisions shall be final.

(B) Upon Board Committee approval and issuance of a loan certificate, the borrower shall execute a financing agreement and related documentation on forms approved by the Exchange.

Rule 2.60. Employee Financed Membership A-B-C AGREEMENTS

(A) A-B-C Agreements - A Member Firm may finance the cost of acquisition of a membership of a *bona fide* employee or principal of such Member Firm. The financing arrangement must be made pursuant to an A-B-C agreement, which must be approved by the Membership Committee and which must be filed with the Membership Department.

(B) The A-B-C Agreement must contain, at a minimum, the following terms and conditions:

(i) The Member Firm shall subordinate any and all claims to the membership to the valid and proven claims of all other Members and Member Firms;

(ii) The Member holding the membership must agree not to sell, transfer or otherwise encumber the membership except with the consent of the financing Member Firm; and, must agree that the proceeds of any authorized sale of the membership shall be considered as assets of the financing Member Firm;

(iii) An A-B-C Agreement must terminate upon the occurrence of any one of the following events:

(a) the Member Firm ceases to be, or gives notice of intention to cease to be, a Member Firm; or

(b) the Member ceases to be an employee of the Member Firm;

(iv) An A-B-C Agreement shall not become effective until approved by the Membership Committee;

(v) An A-B-C Agreement shall set forth in detail all arrangements regarding the disposition of the membership upon termination of the A-B-C agreement; and;

(vi) An A-B-C Agreement shall provide that any and all controversies arising out of or in connection with the agreement, its negotiation, interpretation or termination shall be arbitrated in accordance with the provisions of Chapter 5 of the Rules.

Rule 2.61 — Terms of Financing Agreement

The financing agreement must contain, at a minimum, the following terms and conditions:

~~(i) The Member Firm shall subordinate any and all claims to the membership to the valid and proven claims of all other Members and Member Firms;~~

~~(ii) The Member holding the membership must agree not to sell, transfer or otherwise encumber the membership except with the consent of the financing Member Firm; and, must agree that the proceeds of any authorized sale of the membership shall be considered as assets of the financing Member Firm;~~

~~(iii) The agreement must terminate upon the occurrence of any one of the following events:~~

~~(a) the financing Member Firm ceases to be, or gives notice of intention to cease to be, a Member Firm; or~~

~~(b) the financed Member ceases to be an employee of the financing Member Firm;~~

~~(iv) The agreement shall not become effective until approved by the Membership Committee;~~

~~(v) The agreement shall set forth in detail all arrangements regarding~~

~~the disposition of the membership upon termination of the A-B-C financing agreement; and,~~

~~(vi) The agreement shall provide that any and all controversies arising out of or in connection with the agreement, its negotiation, interpretation or termination shall be arbitrated in accordance with the provisions of Chapter 5 of the Rules.~~

Rule 2.70. LEASES OF MEMBERSHIPS' TRADING PRIVILEGES

(A) A Member may lease a membership's trading privileges to another Member or to a Member-elect pursuant to an agreement in a form prescribed by the Exchange; provided that, memberships subject to outstanding seat financing agreements under Rule 2.56 shall not be leased. A copy of the lease must be delivered to the Membership Department and to the lessee's PCM.

(B) Except as provided in Rules 2.60, a lease includes any transfer of a membership by a Member where the transferring Member: retains the ownership interest in the membership; retains a right to appreciation or depreciation (or both) in the value of the membership; and retains a right to reacquire the membership.

(C) Deleted.

(D) A Member who, with respect to his last or sole membership, has leased to another his trading privileges ("lessor") shall not be entitled to member rates for trades executed for his account. A Member who, with respect to his last or sole membership on the NYMEX Division, has leased to another his NYMEX trading privileges shall not be entitled to: (i) serve on the Board of Directors, except as otherwise provided for in the by-laws or charter, (ii) receive any life insurance and/or disability insurance benefits bestowed upon NYMEX Members; however, a NYMEX Member who has leased to another any or all of his trading privileges with respect to any of his memberships shall be entitled to receive the pro rata share of any other distribution of: (i) the revenues, assets and proceeds of the Exchange; and (2) the assets of the Exchange in the event of any liquidation, dissolution or winding up the affairs of the Exchange. A Member of either Division who, with respect to his last or sole membership, has leased to another his trading privileges ("lessor") shall not, while present on the respective Division(s) trading floor, be entitled to place orders, directly with any floor member or floor clerk, for the execution of any futures or options contracts (except that, if properly registered as a clerk, such person may transmit customer orders for execution).

(E) Notwithstanding anything to the contrary in Section (D), during the term of a lease of regular trading privileges on the NYMEX Division the lessee of those privileges ("lessee of regular trading privileges") shall be entitled to serve on the Board of Directors, receive any life insurance and/or disability insurance benefits bestowed upon NYMEX Division Members, and member rates for any trades executed for his account during any

Regular Trading Hours trading session and any other trading session, as the Board may, from time to time, determine

(F) (Reserved) Section (F) applies only to COMEX Division lessees.

During the term of a lease of regular trading privileges on the COMEX Division the lessee of those privileges ("lessee of regular trading privileges") shall be entitled to receive member rates for any trades executed for his account during any Regular Trading Hours trading session, subject to all applicable surcharges as set forth in this Rule 2.70. The lessee of regular trading privileges shall not be entitled to receive any life insurance and/or disability insurance benefits bestowed upon Members, to vest and participate in any distributions from the Member Retention and Retirement Plan, or the right to vote that is set forth in the COMEX By-Laws.

In addition to the dues and assessments permitted under Section (I) of this Rule 2.70, the following fees shall be charged to the lessee of regular trading privileges on the COMEX Division:

(i) there shall be a surcharge of twelve and one-half cents (\$0.125) (twenty-five cents (\$0.25) per round-turn) on each futures contract and each option contract purchased or sold for the personal account of a lessee or for an account controlled by the lessee (customer type indicator CTI# 1). This surcharge shall apply to trades executed by all individuals elected to membership as lessees after December 1, 1992 and to trades executed by any other lessee upon lease renewal subsequent to December 1, 1992.

(ii) there shall be a surcharge of fifty cents (\$0.50) (one dollar (\$1.00) per round-turn) on each futures contract and each option contract bought or sold by a lessee for the house account of the lessee's clearing member (CTI 2), for the account of another member present on the floor or an account controlled by such other member (CTI 3), or for the account of any other type of customer (CTI 4), provided that such surcharge shall not apply to contracts traded by a lessee who is one of no more than two *bona fide* employees of a member firm leasing memberships for the purpose of executing trades for the account of the member firm and/or its customers.

(G) Lessors and lessees may serve on Exchange committees to the extent allowed by the By-Laws and Rules and as determined by the Board of Directors.

(H) All lessors and lessees shall be subject to such dues and assessments as are from time-to-time determined by the Board of Directors.

(I) Lessees of regular trading privileges shall not be entitled to any other rights of membership not specifically set forth or addressed elsewhere in this Rule 2.70. ~~Unless otherwise specified in the lease or in any ancillary agreements,~~ The lessee's guarantor(s) shall have no a right of indemnification against the lessor for any and all claims against the lessee which have been satisfied in accordance with the terms of the guarantee. The

lessor shall neither be liable for nor shall the leased membership be used to satisfy any and all claims against the lessee which have not been satisfied by the lessee and/or the lessee's guarantor(s). Lessees shall have continuing personal liability for any claims which accrued during the term of the lease which were not satisfied by the lessee's guarantor(s); for the payment of disciplinary fines assessed against the lessee which were not otherwise satisfied; and for any other financial obligations to the Exchange and or its Members that were not otherwise satisfied.

Rule 2.71. TERMS OF LEASE AGREEMENT

(A) A membership lease agreement must, and shall be deemed to, include the following minimum provisions:

(i) upon the death of the lessee, the expiration of the term stated in the agreement or any other event of termination, the agreement shall terminate and the parties shall immediately give written notice thereof to the Membership Department;

(ii) neither the lessor nor the lessee shall be permitted to sell or transfer the leased membership during the term of the lease agreement unless it is specifically provided otherwise in this agreement;

(iii) the agreement shall not be effective until the lessee is elected to membership;

(iv) the rights and obligations associated with the lease of a membership shall automatically be transferred back to the lessor from the lessee upon termination of the agreement or any event of termination notwithstanding any restrictions to such transfer pursuant to the terms of Rule 2.51;

(v) during the term of the lease, the lessor and lessee shall be entitled to only those rights of membership as are set forth in Rule 2.70;

(vi) any and all controversies arising out of, or in connection with the lease, its negotiation, interpretation or termination shall be arbitrated in accordance with the provisions of Chapter 5 of the Rules; and

(vii) Claims of the Exchange, its Members, and Member Firms that arise out of the transaction of business on the same Division as the leased membership that remain unsatisfied shall have no effect on the automatic transfer of the rights and obligations associated with the leased membership to the lessor from the lessee.

Rule 2.72. NOTICES REQUIRED OF LESSOR AND LESSEES AND DUTIES OF COMEX DIVISION LESSORS DURING NOTICE PERIOD

(A) The lessor shall give to the Membership Department written notice of any

proposed lease agreement or renewal thereof at least ten (10) business days prior to filing the initial lease agreement or any renewal thereof.

(B) A lessor or lessee of a membership who does not intend to renew the lease agreement shall give to the Membership Department and to the lessee or lessor (as appropriate) written notice of that fact at least ten (10) business days prior to the termination of the lease agreement.

Rule 2.73. LEASE OF SOLE MEMBERSHIP

~~(A) A Member who owns one membership may lease such membership at any time; however, a Member who owns one membership and confers the privileges of that membership on a Member Firm may not lease such membership at any time.~~

~~(B) A Member who has leased his sole membership and seeks to regain the rights of membership upon the termination of any such lease, shall be required to file an application for membership and, unless the Chairman of the Membership Committee decides otherwise, in his sole discretion, shall be exempt from the provisions of Rules 2.02 through 2.08.~~

(A) A membership actively being used for conferring purposes may not be leased at any time.

(Rules 2.81-2.87 pertain to COMEX Option Members)

Rule 2.81 OPTION MEMBER TRADING PRIVILEGES.

An Option Member shall be authorized to trade the following contracts on the COMEX Division of the Exchange: gold options; silver options; copper options; and aluminum futures. In addition, if and when such contracts are listed on NYMEX ClearPort(sm) Trading NYMEX ACCESS@, an Option Member shall be authorized to trade such contracts on NYMEX ClearPort(sm) Trading. NYMEX ACCESS@.