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OFFICE OF THE SECRETARIAT

October 12, 2006

VIA 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
#06.119: Changes to NYMEX Chapter 3 and COMEX Bylaws**

Dear CFTC Commissioners:

The New York Mercantile Exchange, Inc. ("Exchange") is notifying the Commodity Futures Trading Commission ("Commission") that is self-certifying the changes attached with this submission to Changes to NYMEX Chapter 3 and COMEX Bylaws. Pursuant to Section 5c(c) of the Commodity Exchange Act ("Act") and CFTC Rule 40.6, the Exchange hereby certifies that all of the attached rule changes comply with the Act, including regulations under the Act; these changes will be made effective on October 13, 2006.

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.

- 3.00 Rules of Order; Committee Composition
- 3.01 Powers of Committees to Question Members
- 3.02 Restrictions on Governing Board Members, Committee Members, Consultants, and Other Persons Who Possess Material, Non-Public Information
- 3.03 Disqualification from Board and Committee Service
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3.00 Rules of Order; Committee Composition

(A) Each committee shall have the authority to make rules governing its own conduct and its proceedings unless otherwise provided in the Bylaws and Rules. ~~In the absence of such rules, all meetings of committees and subcommittees shall be conducted in accordance with the then current edition of Robert's Rules of Order.~~

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(B) For Committees comprised of specifically designated percentages of Class A Member and COMEX Division representation, the following requirements shall apply:

(1) Where allocation of the specified percentages results in a requirement to round-off a fraction, the adjustment shall be accomplished in favor of the Membership division with minority representation;

(2) The Membership division with minority representation (through the Board of Directors or the COMEX Governors Committee, as the case may be) may object to the assignment of any dual member to the minority group.

(3) The COMEX Governors Committee shall be permitted to make recommendations to the Chairman and/or the Board as to the COMEX Division members to be appointed.

(C) In the event that any non-Exchange Members are added to any committee subject to specifically designated percentages of Class A Members and COMEX Division representation, the specifically designated percentages shall be changed to a ratio of the same proportion, so that, for example, a committee with specifically designated percentages of 70% Class A Members and 30% COMEX Division Members would then have a seven to three ratio requirement.

(D) In the event that any committee: 1) succeeds to all or any part of the functions of a committee subject to specifically designated percentages of Class A Members and COMEX Division representation ("Established Committee"); or 2) is created with responsibility for functions that significantly impact the COMEX Division ("New Committee"); COMEX Division Members shall be represented on the committee, in the case of a committee succeeding to the functions of an Established Committee, to the same extent they are represented on an Established Committee and, in the case of a New Committee, in a ratio of seven Class A Members to three COMEX Division Members.

(E) The specifically designated percentages of Class A Members and COMEX Division representation as specified in these rules shall be treated as a Term Sheet Rule as defined in the Bylaws of the COMEX Division.

3.01 Powers of Committees to Question Members

The Board of Directors and any Committee, when engaged in the examination of any subject over which it has jurisdiction, has the power to summon and examine any Member of the Exchange and any employee, officer or partner of a Member or Member Firm. The Board or any Committee may require such Member or other individual to submit a sworn statement of his information. Members and Member Firms shall comply with the foregoing provisions.

3.02 Restrictions on Governing Board Members, Committee Members, Consultants, and Other Persons Who Possess Material, Non-Public Information

(A)(1) No member of the Board of Directors or any Committee of the Exchange or any Consultant shall use or disclose, for any purpose other than the performance of such person's official duties relating to the Board, Committee, or as a Consultant, material non-public information obtained as a result of such person's participation on the Board, Committee, or as a Consultant.

(2) No person shall trade for such person's own account, or for or on behalf of any other account, in any commodity interest, on the basis of any material, non-public information that such person knows was obtained in violation of Subsection (A)(1) of this rule from a governing board member, committee member, or consultant.

(B) The terms "material information" and "non-public information" shall have the same meaning as defined for those terms in Commission Regulation 1.59, as it may be in effect from time to time.

(C) Definitions:

(1) "Governing board member" means a member, or functional equivalent thereof, of the board of governors of a self-regulatory organization.

(2) "Committee member" means a member, or functional equivalent thereof, of any committee of a self-regulatory organization.

(3) "Consultant" means a person who serves in the capacity of a consultant for either the Board of Directors or the Exchange.

(D) Additionally, the following items shall be kept confidential if the Board's majority deems the item confidential at the time of a Board meeting and the same is reflected in the minutes of the meeting:

- (1) Deliberations and discussions;
- (2) Votes, including the number and identity of the voters; and
- (3) Issues requested to be included in future Board meeting agendas.

3.03 Disqualification from Board and Committee Service

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

(A) Definitions:

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

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

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

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

(5) "Disciplinary offense" means:

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

- (A) Decorum or attire,
- (B) Financial requirements, or
- (C) Reporting or recordkeeping unless resulting in fines aggregating more than \$5,000 within any calendar year.

(ii) Any rule violation described in paragraphs (A)(5)(i)(A) through (A)(5)(i)(C) of this section which involves fraud, deceit or conversion or results in a suspension or expulsion, or with respect to repeated violations involving reporting or recordkeeping, where a disciplinary panel has determined, pursuant to a settlement agreement or an adjudication on the merits, that the violation, in light of all relevant facts--including but not limited to evidence as to whether or not steps have been taken by a respondent to correct the situation, the reputation and disciplinary history of the respondent, and any indication that customers may have been

harmed, investigations intentionally corrupted or rule violations masked by the pattern of audit trail offenses — warrant disqualification from Board or Disciplinary Committee service.

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

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

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

(A) Decorum and Attire-NYMEX Rules 6.60 and COMEX Rules 104.03; 104.14; 104.25; 104.09; 104.05(a); or 104.70; any rule violation that results in the interference or attempt to interfere with an employee of the Exchange in the performance of his duties under COMEX Rules 104.04, 104.05 and 104.07;

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

(C) Recordkeeping or Reporting-NYMEX Rules 6.07, 6.07A, 6.08A, 6.08B, 6.10, 6.11, 6.18, 6.19, 6.20, 6.21, 6.24, 6.90, 8.50, 9.04, 9.22, 9.26, 9.27, 9.32, 9.33, 9.34, 9.35, 9.36, 11.27, 11.36, 11.58, 90.08, 90.13, 100.08, 100.13, 140.15, 140.19, 140.20, 150.09, 150.13, 150.14, 150.14A, 190.09, 190.13, 190.14, 190.14A, 200.11, 200.15, 200.17, 200.20, 200.20A, 220.11, 220.14, 220.17, 220.17A, 230.12, 230.17, 230.18, 300.08, 300.11, 300.13 and 300.15 (only to the extent that such rules relate to recordkeeping and/or reporting and do not result in aggregate fines exceeding \$5,000 in a calendar year) and COMEX Rules 104.80, 104.81, 104.82, 104.84, 104.85, 104.86, or 104.87.

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

(6) "Final decision" means:

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

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

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

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

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

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

(2) Entered into a settlement agreement within the prior three years in which any of the findings or, in the

absence of such findings, any of the acts charged included a disciplinary offense;

- | (3) Currently is suspended from trading on any contract market, is suspended or expelled from membership with any self-regulatory organization, is serving any sentence of probation or owes any portion of a fine imposed pursuant to either:
 - | (i) A finding by a final decision of a self-regulatory organization, and administrative law judge, a court of competent jurisdiction or the Commission that such person committed a disciplinary offense; or,
 - | (ii) A settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense.
- | (4) Currently is subject to an agreement with the Commission or any agreement with the Commission or any self-regulatory organization not to apply for registration with the Commission or membership in any self-regulatory organization;
- | (5) Currently is subject to or has had imposed on him within the prior three years a Commission registration revocation or suspension in any capacity for any reason, or has been convicted within the prior three years of any of the felonies listed in section 8a(2)(D)(ii) through (iv) of the Act;
- | (6) Currently is subject to a denial, suspension or disqualification from serving on the disciplinary committee, arbitration panel or governing board of any self-regulatory organization as that term is defined in section 3(a)(26) of the Securities Exchange Act of 1934.
- | (D) Within thirty days of the end of each calendar year the Exchange shall submit to the Commission a certified list of any persons who have been removed from its disciplinary committees, oversight panels, arbitration panels or governing board pursuant to the requirements of this Rule during the prior year.
- | (E) The Exchange shall submit to the Commission a schedule listing all those rule violations which constitute disciplinary offenses as defined in paragraph (A)(5)(i) of this Rule and to the extent necessary to reflect revisions shall submit an amended schedule within thirty days of the end of each calendar year. The Exchange shall maintain and keep current the schedule required by this section, post the schedule in a public place designed to provide notice to Members and otherwise ensure its availability to the general public.
- | The current schedule of violations that constitute a disciplinary offense as defined in paragraph (A)(5)(i) of this Rule is set forth in Schedule A to this Rule for the Class A Member and Schedule B to this Rule for the COMEX Division.
- | (F) Whenever the Exchange finds by final decision that a person has committed a disciplinary offense and such finding makes such person ineligible to serve on the Exchange's disciplinary committees, arbitration panels, oversight panels or governing board, the Exchange shall inform the Commission of that finding and the length of the ineligibility in any notice it is required to provide to the Commission pursuant to either Section 17(h)(1) of the Act or Commission Regulation 9.11.

Schedule A

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

Bylaw Sections:

- | 106: Failure to Pay Dues, Assessments and Fees
- | 110: Disclosure of Information
- | 800: Members Subject to Disciplinary Proceedings
- | 802: Failure to Pay Fine
- | 851: Duty to Report Emergency Event

852: Summary Suspension: Action by the President (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping and/or reporting);
853: Summary Suspension: Action of the Executive Committee (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping and/or reporting);

Exchange Rules:

- 2.21: Qualification by Clearing Member
- 2.31: Duties of Guaranteed and Qualified Members
- 2.32: Duties of Guarantors and Qualifying Clearing Members
- 2.40: Responsibility of Member for Actions of Member Firms
- 2.41: Responsibility of Members and Member Firms for Actions of Employees

- 5.36: Awards
- 6.02 Hours for Trading
- 6.05: Transactions, Bids and Offers on the Trading Floor
- 6.06: Transactions Made at Other Than Current Market
- 6.08C: NYMEX ACCESS7 Spread Transactions
- 6.12: Resolution of Floor Trading Disputes
- 6.15: Standard Forms of Orders
- 6.16: Obligation of Floor Brokers
- 6.17: Errors and Omissions in Handling Orders
- 6.23: NYMEX ACCESS Trading Standards
- 6.25: Trading Work Station Administration
- 6.30: ACCESS to the Trading Floor
- 6.31: Trading Prohibition of Certain Persons
- 6.32: Trading Prohibitions: Representatives of Other Clearing Members
- 6.37: Attendance by Representatives of Members and Member Firms under Extraordinary Circumstances
- 6.40: Simultaneous Buy and Sell Orders on the Exchange Trading Floor
- 6.41: Trading Standards for Floor Brokers
- 6.42: Procedures on the Exchange Floor for Simultaneous Buy and Sell Orders
- 6.43: Floor Broker Registration Requirements
- 6.43A: Broker Associations
- 6.44 Registration for Billing of Floor and NYMEX ACCESS Brokerage
- 6.61: Pre-Arranged Trades
- 6.92: Surrender of Trading Records for Examination
- 8.00: Compliance Department
- 8.25: Cease and Desist Order
- 8.52: Manipulation
- 8.54: Payment of Gratuity to Employees of Others
- 8.55: Classification of Offenses (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping and/or reporting);
- 8.56: Confirmations
- 8.57: Confidentiality of Exchange Investigations and Proceedings
- 8.58: Exchange Jurisdiction Over Member, Etc.,
- 8.60: Obligation of Employee to Respond to Compliance Department Inquiries
- 8.61: Obligation of Employee to Comply with Rules of Exchange
- 8.62: Clerk Registration
- 8.63: Member, Member Firm and Permit Holder Responsibility
- 8.64: Clerk Badges
- 8.65: Sanctions
- 8.66: Billing and Commissions
- 8.68: Notification of Final Disciplinary Action Involving Financial Harm to a Customer
- 8.69: Audit Trail Violations
- 8.99: Member Summary Suspension (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping and/or reporting);
- 8.99B: Summary Procedures for Denial of Access to Specified Alternative Electronic Trading System
- 9.03: Guaranty Fund
- 9.04B: Use of E-RAV Risk Filter for Trading on Specified Exchange Alternative Electronic Trading Systems
- 9.10: Trade Refused By Clearing House

Deleted: 2.74. Natural Gas Futures Permit Program
2.75: Platinum Option Permit Program
2.75A: Platinum/Palladium Permit Program
2.75B: Crack and Spread Options Permit Program
2.75C: Eurotop 100 Permit Program
2.75D: Permian Basin Natural Gas Permit Program
2.75E: Electricity Permit Program

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

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11G: NYMEX Electronic Trading Rules for Globex® Trading System

Additional Rules (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping and/or reporting):

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

Schedule B

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

Bylaw Sections:

- 106: Failure to Pay Dues, Assessments and Fees

110: Disclosure of Information
 800: Members Subject to Disciplinary Proceedings
 802: Failure to Pay Fine
 851: Duty to Report Emergency Event
 852: Summary Suspension: Action by the President (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping and/or reporting);
 853: Summary Suspension: Action of the Executive Committee (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping and/or reporting):

Exchange Rules:

104.05: Market Indication and Error Resolution Periods
 104.12(a): Members Eligible to Trade on Floor-Full Floor Privileges
 104.15: Trading Privileges for Guaranteed Member
 104.16: Visitors
 104.17: Persons Permitted to Enter Orders
 104.21: Open Outcry
 104.22(a): Disclosure of Customer's Order-Prohibited Disclosures
 104.23: Solicitation of Orders
 104.24: Crossing of Orders
 104.26: Wash Trades
 104.27: Prearranged Trades
 104.29: Errors Discovered After Trading Session
 104.31: Dual Trading
 104.32: Discretionary Orders
 104.33: Priority of Orders and Allocation of Trades
 104.34: Withholding Orders
 104.35: Trading in Current Month
 104.36: Exchanges for Physicals
 104.37: Ex-Pits and Transfers of Existing Futures Contracts and Futures Options
 104.38: Execution of Straddles
 104.40: Futures Options Not Traded on Exchange
 104.41: Void Transactions
 104.61: Responsibility for Reporting Transactions
 104.62: Add-In Trades Which are Promptly Discovered
 104.63: Add-In Trades Which are not Promptly Discovered
 104.64: Reporting Exercise of Futures Options
 104.69: Floor Broker Registration
 104.80: Trading Cards
 104.81: Order Tickets
 104.83: Transcription of Trade Data
 104.95: Open Contracts
 104.96: Reporting of Positions to Committee
 104.97: Written Record of Transactions
 8.00: Compliance Department
 8.25: Cease and Desist Order
 8.52: Manipulation
 8.54: Payment of Gratuity to Employees of Others
 8.55: Classification of Offenses (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping and/or reporting):
 8.56: Confirmations
 8.57: Confidentiality of Exchange Investigations and Proceedings
 8.58: Exchange Jurisdiction Over Member, Etc.
 8.60: Obligation of Employee to Respond to Compliance Department Inquiries
 8.61: Obligation of Employee to Comply with Rules of Exchange
 8.62: Clerk Registration
 8.63: Member, Member Firm and Permit Holder Responsibility
 8.64: Clerk Badges
 8.65: Sanctions
 8.66: Billing and Commissions

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 3.01: Compliance with Bylaws and Rules
 3.02: Compliance with Decisions
 3.03: Dealing with Employees of Others
 3.04: Bucket Shops
 3.05: False Statements
 3.06: Manipulation
 3.07(a): Rumors-Prohibited Dissemination
 3.09: Branch Offices
 3.10: Registration
 3.13: Basis for Disciplinary Proceedings
 3.15: Notice of Proceedings

- 8.68: Notification of Final Disciplinary Action Involving Financial Harm to a Customer (Rule pending approval by the Commission)
- 8.69: Audit Trail Violations
- 8.99: Member Summary Suspension (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping);

Additional Rules (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping and/or reporting);

- 104.03: Trading Outside Trading Hours
- 104.05(a): Market Indication and Error Resolution Period-Pre-Opening Market Indication Period
- 104.09: Decorum on Floor
- 104.14: Trading Badges
- 104.25: Prohibited Bids and Offers
- 104.70: Quantity of Contracts Bid or Offered

(b) any interference or attempt to interfere with an employee of the Exchange in the performance of his duties under Rules 104.04 ("Conduct of Opening Calls"), 104.42 ("Matched Orders"), and 104.24 ("Crossing of Orders");

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- Deleted: 05
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- 7.01: Minimum Financial Requirements for FCMs
- 7.02: Minimum Financial Requirements for Members
- 7.03: Minimum Financial Requirements for Member Firms
- 7.05: Guaranteed Members
- 7.07: Reporting Requirements
- 7.09: Additional Financial Statements

3.04 Voting By Board and Committee Members on Certain Matters

This Rule 3.04 shall apply to the Board of Directors of the New York Mercantile Exchange Inc., the COMEX Governors Committee and to each Disciplinary Committee and Oversight Panel when the Board, the Governors Committee, or any such Disciplinary Committee or Oversight Panel takes any significant action as defined by this Rule 3.04 or has under consideration a matter as to which a member of the Board, the Governors Committee, a Disciplinary Committee or Oversight Panel, as the case may be, is, or is related to, a named party in interest.

The decision that any action is subject to this Rule may be made by the Chairman of the Board or the Governors Committee or the Chairman of the affected Disciplinary Committee or Oversight Panel or by a third of the Board, Governors Committee, Disciplinary Committee or Oversight Panel members present.

(A) Definitions: For purposes of this Rule:

(1) "Disciplinary Committee" means any person or committee of persons, or any subcommittee thereof, that is authorized to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions, or to hear appeals thereof in cases involving any violation of the rules of the Exchange except those cases where the person or committee is authorized summarily to impose minor penalties for violating rules regarding decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions or other similar activities. The term "Disciplinary Committee" shall include but is not limited to the Adjudication Committee, the Business Conduct Committee, the Control Committee, the Appeals Committee and the Floor Committee.

(2) A person's "family relationship" means the person's spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.

(3) "Board" means the Board of Directors of the New York Mercantile Exchange, Inc. or any subcommittee thereof.

(4) "Governors Committee" means the COMEX Governors Committee or any subcommittee thereof.

(5) "Oversight Panel" means any panel, or any subcommittee thereof, authorized by the Exchange to recommend or establish policies or procedures with respect to the self-regulatory organization's surveillance, compliance, rule enforcement, or disciplinary responsibilities. The term Oversight Panel shall include, but is not limited to, the Compliance Review Committee.

(6) "Member's affiliated firm" is a firm in which the member is a "principal," as defined in Commission Regulation §3.1(a), or an employee.

(7) "Named party in interest" means a person or entity that is identified by name as a subject of any matter being considered by the Board, Governors Committee, Disciplinary Committee, or Oversight Panel.

(8) "Significant action" includes any of the following types of actions or rule changes that can be implemented by the Exchange without the Commission's prior approval:

(a) any actions or rule changes which address an "emergency" as defined in Commission Regulation §1.41(a)(4)(i) through (iv) and (vi) through (viii); and,

(b) any changes in margin levels that are designed to respond to extraordinary market conditions such as an actual or attempted corner, squeeze, congestion or undue concentration of positions, or that otherwise are likely to have a substantial effect on prices in any contract traded or cleared at the Exchange but does not include any rule not submitted for prior Commission approval because such rule is unrelated to the terms and conditions of any contract traded at the Exchange.

(B) Relationship with a Named Party in Interest

(1) A Member of the Board, the Governors Committee, a Disciplinary Committee or Oversight Panel must abstain from any deliberations and vote on any matter involving a named party in interest where such member:

(a) is a named party in interest;

(b) is an employer, employee, or fellow employee of a named party in interest;

(c) is associated with a named party in interest through a "broker association" as defined in Commission Regulation 156.1;

(d) has any other significant, ongoing business relationship with a named party in interest, not including relationships limited to executing futures or option transactions opposite of each other or to clearing futures or option transactions through the same clearing member; or,

(e) has a family relationship with a named party in interest.

(2)(a) Prior to the consideration of any matter involving a named party in interest, each member of the Board, Governors Committee, Disciplinary Committee or Oversight Panel, as the case may be, must disclose to the Exchange Employee designated by the Chairman of the Board, Governors Committee, Disciplinary Committee or Oversight Panel for such purpose whether or not he or she has one of the relationships listed in subparagraph (B)(1) of this rule with a named party in interest.

(b) In addition, taking into consideration the exigency of the Board's, Governors Committee's, Disciplinary Committee's or Oversight Panel's action with regard to a named party in interest, the Exchange Employee shall review any records which are held by, and reasonably available to, the Exchange to ascertain whether any Board, Governors Committee, Disciplinary Committee or Oversight Panel member has a relationship of the type set forth in subparagraph (B)(1) of this Rule with a named party in interest. Upon completion of the disclosure required by this Rule and any review of Exchange records, the Exchange Employee shall report to the Chairman of the Board, Governors Committee, Disciplinary Committee or Oversight Panel any member's relationship with a named party in interest.

(3) Any Board, Governors Committee, Disciplinary Committee or Oversight Panel member having a relationship with a named party in interest of the type set forth in subparagraph (B)(1) above or who chooses not to make any such disclosure shall abstain from deliberating and voting on any matter involving a named party in interest and withdraw from the meeting until such time as the matter involving the named party in interest has been disposed of.

(4) In any case where an issue as to whether or not a Board, Governors Committee, Disciplinary Committee or Oversight Panel member has a relationship with a named party in interest exists, the Board, Governors Committee, Disciplinary Committee or Oversight Panel shall appoint an ad hoc committee composed of at least three members who have no relationship with the named party in interest who shall then determine based on the information obtained pursuant to subparagraph (B)(2) of this Rule whether such member has a relationship with a named party in interest and therefore must abstain from deliberating and voting on any matter involving such named party in interest.

(C) Financial Interest in a Significant Action

(1) A member of the Board, the Governors Committee, a Disciplinary Committee, or an Oversight Panel must abstain from any deliberations and vote on any significant action if the Board, Governors Committee, Disciplinary Committee or Oversight Panel member knowingly has a direct and substantial financial interest in the result of the vote based upon either Exchange or non-Exchange futures or options positions that could reasonably be expected to be affected by the action.

(2) Prior to the consideration of any significant action, the Board, Governors Committee, Disciplinary Committee or Oversight Panel, as the case may be, shall determine the number of positions that may be held in any commodity's delivery month or months which may be affected by the significant action that shall be considered a de minimis position such that a member shall be deemed not to have a direct and substantial financial interest in the result of the vote of such action.

(3) Each member of the Board, the Governors Committee, a Disciplinary Committee or Oversight Panel shall disclose to the Exchange Employee designated by the Chairman of the Board, Governors Committee, Disciplinary Committee or Oversight Panel for such purpose the following futures and options position information with respect to any commodity's delivery month or months affected by the significant action that is known to him or her at the time:

(a) gross positions held at the Exchange in the member's personal accounts or "controlled accounts," as defined in Commission Regulation 1.3(j);

(b) gross positions held at the Exchange in proprietary accounts, as defined in Commission Regulation §1.17(b)(3), at the member's affiliated firm;

(c) gross positions held at the Exchange in accounts in which the member is a principal, as defined in Commission Regulation §3.1(a);

(d) net positions held at the Exchange in "customer" accounts, as defined in Commission Regulation §1.17(b)(2), at the member's affiliated firm; and

(e) any other types of positions, whether maintained at the Exchange or elsewhere, held in the member's personal accounts or the proprietary accounts of the member's affiliated firm that the Board, Governors Committee, Disciplinary Committee or Oversight Panel reasonably expects could be affected by the significant action.

(4) In addition to the position information disclosed pursuant to subparagraph (C)(3) above, and taking into consideration the exigency of the significant action, the Exchange Employee shall obtain and review with respect to any Board, Governors Committee, Disciplinary Committee or Oversight Panel member who makes a disclosure of position information the following information:

(a) the most recent large trader reports and clearing records available to the Exchange; and

(b) any other pertinent information that is held by, and reasonably available to, the Exchange.

The Exchange Employee shall then report such position information to the Chairman of the Board, Governors Committee, Disciplinary Committee or Oversight Panel.

(5) Upon a review of the position information obtained pursuant to subparagraph (C)(3), and subparagraph (C)(4) of this rule, any Board, Governors Committee, Disciplinary Committee or Oversight Panel member holding more than a de minimis position or who chooses not to make the disclosure required by subparagraph (C)(3) shall be advised that he or she must abstain from deliberating and voting on the significant action and shall withdraw from the meeting until such time as the matter involving the significant action has been disposed of.

(6) In any case where an issue whether a Board, Governors Committee, Disciplinary Committee or Oversight Panel member has a direct and substantial financial interest in a significant action as defined by this rule exists, the Board, Governors Committee, Disciplinary Committee or Oversight Panel shall appoint an ad hoc committee of at least three members holding no positions or a de minimis position in any commodity's delivery month or months which may be affected by the significant action. The ad hoc committee will review the position information obtained pursuant to subparagraph (C)(3) and subparagraph (C)(4) of this Rule and advise the Board, Governors Committee, Disciplinary Committee or Oversight Panel whether such member has a direct and substantial financial interest in the significant action and therefore must abstain from deliberating and voting on such significant action.

(D) Participation in Deliberations

(1) Notwithstanding any other provision of this Rule, the Board, Governors Committee, Disciplinary Committee or Oversight Panel may permit a member to participate in deliberations prior to the vote on a significant action for which the member would otherwise be required to abstain if such participation is consistent with the public interest and the member does not vote on such action.

(2) In making a determination as to whether to permit a member to participate in deliberations on a significant action for which he or she otherwise would be required to abstain, the Board, Governors Committee, Disciplinary Committee or Oversight Panel, as the case may be, shall appoint an ad hoc committee of at least three members which shall consider the following factors:

(a) whether the member's participation in deliberations is necessary for the Board, Governors Committee, Disciplinary Committee or Oversight Panel to achieve a quorum in the matter; and

(b) whether the member has unique or special expertise, knowledge or experience in the matter under consideration.

(3) Prior to any determination pursuant to this subparagraph, the ad hoc committee appointed by the Board, Governors Committee, Disciplinary Committee or Oversight Panel must fully consider the position information which is the basis for the member's direct and substantial financial interest in the result of a vote on a significant action obtained pursuant to subparagraph (C)(3) and subparagraph (C)(4) of this Rule.

(E) Documentation of Determination

The Board, Governors Committee, a Disciplinary Committee and Oversight Panel and any ad hoc committee appointed pursuant to this rule, shall reflect in its minutes or otherwise document any determinations made with respect to a member's ability to participate in, or abstain from, the deliberations and vote on any significant action.

Such documentation shall include:

(1) the names of all members who attended the meeting or who otherwise were present by electronic means;

(2) the name of any member who voluntarily recused himself or was required to abstain from deliberations and/or voting on a matter and the reason for the recusal or abstention, if stated; and

(3) any position information that was reviewed for each member, and

(4) the names of all members of any ad hoc committee.

3.05 Reserved

3.06 Reserved

3.07 Reserved

3.08 Reserved

3.09 Reserved

3.10 Adjudication Committee

(A) The Adjudication Committee shall be a Regular Committee and shall consist of a Chairman who is a Class A Member and four Hearing Panels ("Hearing Panels"). Each panel shall contain at least ~~three persons who are neither Members of the Exchange nor employed by a Member, Member Firm or the Exchange ("Public Committee Members")~~ and shall otherwise be balanced as equally as practicable among representatives of the Member categories: Floor Broker, Local, Trade and FCM (off-the-floor representative). There shall be no restriction on the affiliations or categories of alternates. The panel members and alternates shall be appointed by the Chairman, subject to approval of the Board.

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(B) (1) Two of the Hearing Panels shall be designated to hear matters pertaining to New York Mercantile Exchange Inc., ("NYMEX Inc.") and two of the Hearing Panels shall be designated to hear COMEX Division matters ("COMEX Hearing Panels"). Each panel shall consist of 10 regular panelists and as many alternates as the Chairman of the Committee shall designate.

(2) The NYMEX Inc. members on the NYMEX Panels will consist of 70% Class A Members and 30% COMEX Division Members. The NYMEX Inc. members on the COMEX Hearing Panels will consist of 70% COMEX Division Members and 30 % Class A Members.

(C) One person on each Hearing Panel shall serve as its Chairman and shall be designated by the Board as a Co-Vice-Chairman of the Adjudication Committee. ~~Seven members of a Hearing Panel shall constitute a quorum for the purpose of exercising the powers of the Hearing Panel, provided that three Public Committee Members must be present.~~ Alternates will be selected by the Chairman to replace any Member of a Hearing Panel unable to serve on any case, subject to the provisions of paragraph (A) above.

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(D) The Adjudication Committee shall hold such meetings as, in the discretion of the Chairman of the Committee are necessary to review matters pertaining to Exchange disciplinary actions, including but not limited to, Board policy and disciplinary precedents.

(E) The Adjudication Committee shall make a report to the Board at least twice a year. The report shall detail the activities of the Committee for the period covered by such report and shall describe all disciplinary actions taken by the Committee during such period.

3.11 Appeals Committee

(A) The Appeals Committee shall be a Regular Committee and shall consist of such number of Members or persons employed by Members or Member Firms as the Chairman may appoint, subject to the approval of the

Board. Panels of the Appeals Committee shall be appointed in accordance with the disciplinary rules of the Exchange, as applicable and for any appeal of a decision of a COMEX Hearing Panel, the Appeal Panel shall consist of at least one COMEX Division Member and at least one Public Member.

(B) The Appeals Committee shall make a report to the Board at least twice a year. The report shall detail the activities of the Committee for the period covered by such report and shall describe all disciplinary actions taken by the Committee during such period.

3.11A Hearing Procedures

(A) At least one Public Director of the Board, and/or at least one Public Committee Member of the Adjudication Committee or the Appeals Committee, as applicable, must participate in the consideration of a major disciplinary action before the Board, the Adjudication Committee, the Appeals Committee, or a panel of any, as applicable, in which:

(i) the subject of the action is a Member of the Board, the Adjudication Committee or the Appeals Committee; or

(ii) any of the charged, alleged or adjudicated Exchange rules involve: (a) manipulation or attempted manipulation or the price of a commodity, a futures contract or an option on a futures contract; or (b) conduct which directly results in financial harm to a person who is not a member of the Exchange.

(B) Whenever a major disciplinary action before the Executive Committee involves either of the circumstances set forth in sub-paragraphs (A)(i) and (ii) above, at least one Public Director of the Board or at least one Public Committee Member of the Business Conduct Committee or the Adjudication Committee, shall serve with the Executive Committee, or any panel thereof, in consideration of the matter.

(C) In any matter before the Board, the Executive Committee, the Adjudication Committee, the Appeals Committee, or a panel of any, with respect to a major disciplinary action, more than fifty percent (50%) of the Board, the committee or panel shall be comprised of person representing membership interests other than that of the subject of the disciplinary proceeding being considered.

(D) For the purposes of this rule, the following definitions shall apply:

(i) "membership interest" shall mean:

(a) floor brokers,

(b) floor traders,

(c) futures commission merchants,

(d) producers, consumers, processors, distributors, and merchandisers of commodities traded on the Exchange;

(e) participants in a variety of pits or principal groups of commodities traded on the Exchange; and

(f) other market users or participants.

(ii) "major disciplinary action" shall mean a matter before the Board, the Executive Committee, the Adjudication Committee, the Appeals Committee, or a panel of any, which pertains to a hearing, settlement, the imposition of sanctions or an appeal, in cases involving a disciplinary offense as defined in Rule 3.03(A)(5)(i).

3.12 Arbitration Committee

The Arbitration Committee shall be a Regular Committee and shall consist of such number of Members or persons employed by Members or Member Firms as the Chairman may appoint, subject to the approval of the Board. The Arbitration Committee shall be comprised of 70% Class A Members and 30% COMEX Division Members. Panels of the Arbitration Committee shall be appointed in accordance with the arbitration rules of the Exchange, as applicable, and for any arbitration of a matter relating to the COMEX Division of the

Exchange, the Arbitration Panel shall consist of at least one COMEX Division Member.

3.13 Reserved

3.14 Business Conduct Committee

(A) The Business Conduct Committee shall be a Regular Committee and shall be divided into a Class A Member Business Conduct Committee Panel and a COMEX Division Business Conduct Committee Panel. Each Panel shall consist of a Chairman who is a Class A Member, ten additional Committee members and four alternates. The ten Committee members shall include at least three people who are neither Members of the Exchange nor employed by a Member or Member Firm ("Public Committee Members"); the balance shall be Members or persons employed by Member Firms, balanced as equally as practicable among representatives of the categories: Floor Broker, Local, Trade and FCM (off-the-floor representative). The Class A Member Business Conduct Committee Panel shall be comprised of 70% Class A Members and 30% COMEX Division Members. The COMEX Division Business Conduct Committee Panel shall be comprised of 70% COMEX Division Members and 30% Class A Members. There shall be no restriction on the affiliations or categories of the alternates. The Committee members and alternates shall be appointed by the Chairman, subject to the approval of the Board.

(B) The Business Conduct Committee shall hold such meetings as, in the discretion of the Chairman of the Committee, are necessary to review matters pertaining to Exchange disciplinary actions, including but not limited to, Board policy and disciplinary precedents. Seven Members of the Business Conduct Committee shall constitute a quorum for the purposes of exercising the powers of the Committee, provided that at least three of these seven Members must be Public Committee Members.

(C) The Business Conduct Committee shall make a report to the Board at least twice a year. The report shall detail the activities of the Committee for the period covered by such report and shall describe all disciplinary actions taken by the Committee during such period.

3.15 Bylaws Committee

(A) The Bylaws Committee shall be a Regular Committee and shall consist of such number of Members or persons employed by Members or Member Firms as the Chairman may appoint, subject to the approval of the Board. The Bylaws Committee shall be comprised of 70% Class A Members and 30% COMEX Division Members.

(B) All proposed Bylaws and all proposed amendments to Bylaws shall be referred to the Bylaws Committee for consideration and report to the Board unless the Board shall determine to omit such referral.

(C) The Committee may in its discretion propose to the Board such amendments or additions to the Bylaws as it may from time to time consider necessary or advisable.

3.16 Clearing House Committee

The Clearing House Committee shall be a Regular Committee and shall consist of such persons who are appointed by the Chairman of the Board, subject to the approval of the Board.

3.17 Reserved

3.18 Compliance Review Committee

(A) The Compliance Review Committee shall be a Regular Committee and shall consist of the Chairmen of the Adjudication Committee, Appeals Committee, Business Conduct Committee, Control Committee, Floor Committee and Vice-Chairmen of one of the COMEX Division Adjudication Committee Hearing Panels and of the COMEX Division Business Conduct Committee Panel, and such number of other persons as the Chairman may appoint, subject to the approval of the Board.

Deleted: Audit Committee

Deleted: (A) The Audit Committee shall be a Regular Committee and shall consist of the Chairman of the Board and three Public Directors appointed by the Board. One of the Public Directors shall serve as Chairman of the Committee .
(B) The Audit Committee shall:
(i) On an annual basis:
(a) make a recommendation to the Board of Directors regarding selection, retention and discharge of independent auditors for the ensuing year; and
(b) review the scope and general extent of the independent auditors' examination, the significant audit procedures which will be utilized, and fees charged for their services.
(ii) Review the audited financial statements and discuss them with management and the independent auditors. These discussions shall include, but not be limited to, the matters required to be disclosed under Statement of Auditing Standards No. 61 (established by the Auditing Standards Board) and consideration of the quality of the Exchange's accounting principles as applied in its financial reporting, including a review of sensitive accounting estimates, reserves and accruals, judgement areas, audit adjustments (whether or not recorded), and other such inquires as the Committee or the independent auditors shall deem appropriate. Based on such review, the Committee shall make its recommendation to the Board as to the inclusion of the Exchange's audited financial statements in the Exchange's Annual Report on Form 10-K.
(iii) Discuss with representatives of management and the independent auditors:
(a) the interim financial information contained in the Exchange's Quarterly Report on Form 10-Q prior to its filing; and
(b) the results of the review by the independent auditors. ... [1]

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(B) The Committee may:

- (i) make recommendations to the Bylaws Committee and to the Board regarding necessary or appropriate amendments, alterations or additions to the Bylaws and Rules of the Exchange;
- (ii) review, and recommend to the Board, matters concerning the compliance activities, self-regulatory duties, and disciplinary policies of the Exchange;
- (iii) recommend to the Chairman of the Board persons who, in the opinion of the Committee, have the abilities, maturity, judgment and other qualities to serve as members of the Adjudication Committee, Appeals Committee, Business Conduct Committee, Control Committee and Floor Committee;
- (iv) direct the policies and procedures of the Adjudication Committee, Appeals Committee, Business Conduct Committee and Floor Committee be changed; and,
- (v) direct the Business Conduct Committee, Floor Committee or Compliance Department to investigate a particular matter or matters or a particular person or persons when, in the opinion of the Committee, such investigation is necessary or proper in the fulfillment of the self-regulatory duties of the Exchange.

(C) The Committee shall have such other powers as are necessary and proper to its office. The list of powers of the Compliance Review Committee is not intended to limit the Committee's authority to be exclusive.

3.19 Control Committee

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(A) The Control Committee shall be a Regular Committee and shall consist of such number of Members as the Chairman may appoint, subject to the approval of the Board. The Control Committee shall be comprised of 70% Class A Members and 30% COMEX Division Members.

(B) The Chairman of the Committee shall, for each commodity for future delivery traded on the Exchange, appoint from members of the Control Committee, Subcommittees of three members to exercise the powers of the Control Committee with respect to such commodity. Members of the Control Committee may serve on more than one Subcommittee and the same Subcommittee may be appointed for more than one commodity. Each Subcommittee for a commodity traded on the COMEX Division of the Exchange shall consist of at least one COMEX Division Member.

(C) The Chairman of the Board may appoint a Member to the Control Committee to fill any vacancy, permanent or temporary, in the Control Committee and such appointment shall be subject to the approval of the Board at its next meeting. The Chairman of the Control Committee shall replace any member of a Subcommittee with another member of the Control Committee when it appears to him that such member has an interest in the subject matter over which the Subcommittee has jurisdiction. It shall be the responsibility of a member of a Subcommittee to inform the Chairman of the Control Committee or the Chairman of any Subcommittee of any such personal interest or any such interest, known to him, of another Member of the Committee or of any Subcommittee as soon as it becomes known to him.

(D) Functions of the Control Committee.

It shall be the function of the Control Committee, acting through its Subcommittees, to endeavor to correct any circumstances which interfere with or might interfere with the normal functioning of the market.

(i) Circumstances which interfere with the normal functioning of the market include: events, conditions or positions which threaten or might threaten a free, open and orderly market, the fair and orderly trading in any commodity futures or options contracts, the orderly liquidation of any commodity futures or options contract or delivery pursuant to any futures contract; a distortion of prices; a congestion, squeeze or corner or circumstances or positions which might result therein; positions of any person or group of persons which might lead to any of the foregoing results or which are out of proportion to his or their ability to perform their contracts; or any events, and, circumstances or positions which threaten or might threaten the best interests of the Exchange or the public.

(E) Powers of Subcommittees.

Each Subcommittee of the Control Committee shall have the following powers:

- (i) To assemble information with respect to open positions in such contract at such time prior to maturity as it deems advisable.
- (ii) To obtain from the Clearing House details as to all open positions held by Clearing Members for themselves and their customers, directly or indirectly, together with information as to their intentions respecting liquidation or delivery. Such information shall be furnished in code. However, when requested by the Subcommittee, the Clearing House shall obtain from Clearing Members and furnish to the Subcommittee the names, positions and intentions of the Clearing Members and their customers holding such open positions.
- (iii) To summon any Member or Member Firm, its partners, directors, officers or employees to give such information as may be required and to examine, or cause to be examined, such books and records as it may deem relevant to its investigation.
- (F) Report to the Board.

If a Subcommittee is unable to bring about the correction of a circumstance which interferes with or might interfere with the normal functioning of the market it shall report its findings and recommendations to the Board and such circumstances may be dealt with by the Exchange as an emergency pursuant to the Bylaws and Rules or Regulations of the Commodity Futures Trading Commission.

(G) No Member of the Control Committee or of any of its Subcommittees shall disclose to any person any information received by such Member as a result of his membership on the Control Committee or any of its Subcommittees except as required by this Rule §3.19. No Member of the Control Committee or of any of its Subcommittees shall make use of, directly or indirectly, any of the information received by such Member as a result of his membership on the Control Committee or any of its Subcommittees. Violation of this Rule §3.19(G) shall be a major offense.

3.20 Reserved

3.21 Delivery Committee

The Delivery Committee shall be a Regular Committee and shall consist of such persons as the Chairman appoints, subject to the approval of the Board.

3.22 Electronic Trading Advisory Committee

(A) The Electronic Trading Advisory Committee shall be a Regular Committee and shall consist of such number of Exchange employees as the Chairman may appoint, subject to the approval of the Board.

(B) The Committee shall have jurisdiction to review the circumstances surrounding NYMEX ACCESS@ transactions, transactions on NYMEX ClearPort@ Trading and transactions involving NYMEX Division contracts and COMEX Division contracts executed on CME's Globex@ platform to determine whether a transaction was in error, and, if so, whether such trade should be cancelled.

3.23 Energy Advisory Committee

The Energy Advisory Committee shall be a Regular Committee and shall consist of such persons as the Chairman may appoint, subject to the approval of the Board.

3.24 Equity Holders' Advisory Committee

The Equity Holders' Advisory Committee shall be a Regular Committee and shall consist of such number of Class A Equity Holders as the Chairman may appoint, subject to the approval of the Board.

3.25 Facilities Committee

(A) The Facilities Committee shall be a Regular Committee and shall consist of such members as the

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Chairman shall appoint, subject to Subsections (B) and (C) below. The Chairman of the Facilities Committee shall be a Class A Member.

(B) The Facilities Committee shall consist of three subcommittees. The General Facilities Subcommittee, the Class A Member Booth Allocation Subcommittee and the COMEX Division Booth Allocation Subcommittee. A member may serve on one or more subcommittees.

(C) The Class A Member Booth Allocation Subcommittee shall be comprised of Class A Members and shall have jurisdiction over Class A Member booth allocations, subject to approval of the Board. The COMEX Division Booth Allocation Subcommittee shall be comprised of COMEX Division Members and shall have jurisdiction over COMEX Division booth allocations, subject to approval of the Board. The General Facilities Subcommittee shall be comprised of 70% Class A Members and 30% COMEX Division Members, shall be chaired by the Chairman of the Facilities Committee and shall have jurisdiction over all other facilities matters, subject to approval of the Board.

3.26 FCM Advisory Committee

The FCM Advisory Committee shall be a Regular Committee and shall be comprised of such persons as the Chairman may appoint, subject to approval of the Board.

3.27 Finance Committee

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(A) The Finance Committee shall be a Regular Committee and shall consist of the Treasurer, who shall be the Chairman of the Committee, at least two (2) Directors and such number of Members, who shall not be Directors, as the Chairman shall appoint subject to the approval of the Board.

(B) The Committee shall exercise general supervision over the financial affairs of the Exchange. It shall examine and cause to be audited the accounts of the Exchange by such certified accountant or accountants as may, upon its recommendation, be approved by the Board; and shall prescribe the methods and procedures of keeping the accounts of the Exchange. It shall supervise all investments authorized by the Board. It shall recommend to the Board the financial institutions in which the Exchange's funds may be deposited and the separate accounts to be opened, maintained and designated for deposits and disbursements for various purposes.

3.28 Floor/Settlement Price Committee

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(A) The Floor/Settlement Committee shall be a Regular Committee and shall consist of such number of Floor Members and NYMEX staff members as the Chairman may appoint, subject to the approval of the Board. The Committee shall be divided into subcommittees for each commodity traded. To the extent possible, each subcommittee, except as provided in NYMEX Division Rule 6.51(B) and COMEX Division Rule 104.89, shall consist of three (3) Members representative of the commodity traded one of whom shall be a Floor Broker, one of whom shall be a Floor Trader, and one of whom shall represent the Trade.

(B) The Floor/Settlement Committee shall:

(i) Resolve any disputes arising out of bids or offers by action of any member of the Committee without notice to other members of the Committee.

(ii) Supervise practices relating to bids or offers and take steps to avoid disruptive practices or practices inconsistent with orderly trading procedures.

(iii) Supervise the conduct of members and others on the Floor of the Exchange and maintain good order and decorum.

(iv) Have such other powers as may be set forth in the Bylaws and Rules and such other functions as may be delegated to it by the Board.

(v) At the conclusion of the RTH trading session on the Exchange Floor each day, settlement prices shall be determined for every contract traded.

(C) The Chairman of the Floor/Settlement Committee shall designate a Ring Chairman for each trading ring on the Exchange. The Ring Chairman for all Class A Member products will be a Class A Member. The Ring Chairman for all COMEX Division products will be a COMEX Division Member. With respect to service on the Floor/Settlement Committee by Floor Members, the Ring Chairman will recommend to the Chairman of the Committee members to serve in each trading ring. Although NYMEX staff members on the Floor/Settlement Committee may not serve as a Ring Chairman, such staff members nonetheless shall be permitted to attend and to vote at Ring Chairman meetings, as well as at regular meetings of the full Floor/Settlement Committee. Where a decision of the Floor/Settlement Committee is contested, in those markets where the Floor/Settlement Committee includes members of Staff, Staff members on the Floor/Settlement Committee will have the authority to review and modify or uphold decisions made by the Floor/Settlement Committee, in accordance with procedures established by the Floor/Settlement Committee.

3.29 Floor Broker/Local Advisory Committee

The Floor Broker/Local Advisory Committee shall be a Regular Committee and shall consist of such number of Floor Brokers and Local Traders as the Chairman may appoint, subject to the approval of the Board.

3.30 Marketing Committee

The Marketing Committee shall be a Regular Committee and shall be comprised of such persons as the Chairman may appoint, subject to approval of the Board. The Committee shall be comprised 70% of Class A Members and 30% of COMEX Division Members.

3.31 Membership Committee

(A) The Membership Committee shall be a Regular Committee and shall consist of such number of Members as the Chairman may appoint, subject to the approval of the Board. The Membership Committee shall be divided into two panels, a Class A Membership Panel to review applications of Class A Members, the composition of which shall be left to the discretion of the Board of Directors (but will include the Vice Chairman of the COMEX Division Membership Panel), and COMEX Division Members, which shall be comprised of 70% COMEX Division Members and 30% Class A Member, and shall be chaired by the Chairman of the Class A Member Panel or his designate.

(B) The Membership Committee shall have jurisdiction on all matters relating to applications for membership, conferring of membership privileges on firms and the transfer of memberships. In addition, any proposed amendment to Rules §§2.70-2.73A (relating to leasing of trading privileges) (or any successor rules thereto) shall be submitted to the Membership Committee no later than 5 business days prior to its submission to the Board for approval. The Membership Committee shall review the proposed amendment and vote to recommend to the Board approval or disapproval of the proposed amendment; provided that such recommendation shall be advisory only and shall not be binding on the Board. The Membership Committee may at any time recommend to the Board any amendment to Rules §§2.70-2.73A, as it deems appropriate. The Membership Committee's recommendations pursuant to this clause (B) shall be submitted to the Board along with any statement of facts which are relevant to the proposed amendment and which may assist the Board in its consideration of the proposed amendment.

Resolution Relating to Rule 3.31 and to Rule 3.03

A subcommittee of the NYMEX Division Membership Panel (as defined in the Rules) of New York Mercantile Exchange, Inc. ("NYMEX Exchange") comprised of those members of the Panel that have been stockholders and lessees of Class A memberships of NYMEX Exchange for at least one year prior to the meeting referred to in paragraph (1) below (the "Membership Subcommittee") shall also have jurisdiction over the categorization of persons for nomination for election to the Board of Directors of the Corporation. In that regard, the Membership Subcommittee shall implement the following procedures:

(1) The Membership Subcommittee shall invite from the stockholders, at an open meeting to be held not later than seven (7) weeks prior to the annual meeting of stockholders, recommendations of proposed nominees. Recommendations may be made either by the proposed nominees themselves (if such person is a

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Deleted: (A) The Training and Education Committee shall be a Regular Committee and shall consist of such number of persons as the Chairman may appoint, subject to the approval of the Board. The Training and Education Committee shall be comprised of 70% Class A Member Members and 30% COMEX Division Members.

(B) The Training and Education Committee shall be responsible for the preparation and administration of a broker training curriculum and examination. Successful completion of the curriculum and examination shall be required for approval of all Members as Floor Members.

(C) The Training and Education Committee, in its discretion, may waive completion of the curriculum and examination for any person who has or had floor trading privileges on another Exchange or was a Member.

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stockholder) or any other stockholder including members of the Membership Subcommittee. Recommendations must state whether a proposed nominee is being recommended for the position of Director, Chairman of the Board or Vice Chairman. A stockholder may only recommend one proposed nominee for each such position, except that a stockholder may recommend one proposed nominee for each Director category as set forth in Article VI of the Certificate of Incorporation of the Corporation. Stockholders may appear before the Membership Subcommittee to present such recommendations. The Membership Subcommittee shall also consider the recommendations of stockholders submitted to it in writing at or before this meeting.

(2) On the morning after the open meeting of the Membership Subcommittee, the Membership Subcommittee shall post on the bulletin board of NYMEX a list of all persons who were recommended as proposed nominees. The list shall include the position, and in the case of a proposed nominee for Director, the category, as set forth in Article VI of the Certificate of Incorporation of the Corporation, for which each proposed nominee has been recommended.

(3) Not later than three (3) days after the open meeting of the Membership Subcommittee, stockholders may submit in writing to the Membership Subcommittee additional recommendations of proposed nominees. All such recommendations must include the position, and in the case of a proposed nominee for Director, the category, as set forth in Article VI of the Certificate of Incorporation of the Corporation, for which the proposed nominee is being recommended.

(4) On the morning after the three-day period that is set forth in paragraph (3) of this Resolution, the Membership Subcommittee shall post on the bulletin board of NYMEX a list of all persons who were recommended as proposed nominees in accordance with paragraphs (1) and (3) of this Resolution. The list shall include the position, and in the case of a proposed nominee for Director, the category, as set forth in Article VI of the Certificate of Incorporation of the Corporation, for which each proposed nominee has been recommended. No person whose name is not included on this list will be permitted to stand for election to the positions of Director, Chairman of the Board or Vice Chairman at the annual meeting of stockholders.

(5) Not later than five (5) weeks prior to the annual meeting of stockholders, the Membership Subcommittee shall determine whether each person who has been recommended as a proposed nominee is eligible for the position or positions for which he was recommended. It shall assign the proposed nominee to his proper category or categories, as set forth in Article VI of the Certificate of Incorporation of the Corporation, regardless of the category or categories for which he was recommended. The Membership Subcommittee shall hold such meetings and consider such information as it deems appropriate; provided, however, that any stockholder or lessee of Class A memberships having information concerning the eligibility of a proposed nominee may present such to the Membership Subcommittee for its consideration no later than one week after the closing of the period for recommending proposed nominees that is set forth in paragraph (3) of this Resolution; and, provided further, that any proposed nominees for Director as to whom the Membership Subcommittee is considering changing the category shall be notified of such in writing and shall have the right to appeal before the Membership Subcommittee. The Membership Subcommittee shall immediately notify the stockholders of the position or positions and/or category or categories for which each proposed nominee is eligible to be nominated.

(6) Nominations:

(a) Only those persons who were recommended as proposed nominees for election to the positions of Chairman or Vice Chairman of the Board pursuant to paragraphs (1) or (3) of this Resolution shall be eligible to be nominated for election to these positions.

(b) Persons who were recommended as proposed nominees for election to the positions of Director, Chairman of the Board or Vice Chairman pursuant to paragraphs (1) or (3) of this Resolution shall be eligible to be nominated for election to a Director position, and then, in only one of the categories of Director service to which they were assigned by the Membership Subcommittee pursuant to paragraph (5) of this Resolution.

(c) Notwithstanding the determination of the Membership Subcommittee as to the category to which a proposed nominee is eligible to be nominated, any person who has been recommended as a proposed nominee or submitted his name as such in accordance with paragraphs (1) or (3) of this Resolution and who falls within the Director categories set forth in Article VI(d)(i)-(v) of the Certificate of Incorporation of the Corporation, shall be eligible to be nominated as a Director in the At Large category that is set forth in the Certificate of Incorporation of the Corporation. No person eligible to be nominated in the Equity Holder category or the Public Director category shall be eligible to be nominated in the At Large category.

(d) Not later than four (4) weeks prior to the annual meeting of the stockholders, a person eligible to be nominated pursuant to this Resolution must file with the Office of the Secretary of the Exchange a nomination declaration which states that category in which the person intends to stand for election. Failure to submit a nomination declaration within this time frame will render the proposed nominee ineligible to run in any category.

(7) No person may serve on the Membership Subcommittee beyond the date referred to in paragraph (3) of this Resolution, if such person's name is recommended as a proposed nominee for election. In the event that the names of both the Chairman and Vice Chairman of the Membership Subcommittee have been recommended as proposed nominees for election, the Subcommittee shall choose from the members of the Subcommittee its own acting Chairman to manage the process contemplated by this Resolution.

(8) The ballot for the annual election shall list alphabetically candidates in each category, noting incumbency, where appropriate.

3.32 Metals Advisory Committee

The Metals Advisory Committee shall be a Regular Committee and shall consist 30% of persons appointed by the Chairman and 70% of persons appointed by the COMEX Governors Committee subject to approval of the Board. The COMEX Governors Committee shall designate the Vice Chairman of the Metals Advisory Committee from among its members.

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Deleted: shall consist of the Chairman and Vice Chairman of the COMEX Precious Metals, Copper, Aluminum and Platinum Advisory Committees. The Chairman of the Platinum Advisory Committee shall be the Chairman of the Metals Advisory Committee.

Deleted: 3.24 Reserved

3.33 NYMEX Charitable Foundation Committee

The NYMEX Charitable Foundation Committee shall be a Regular Committee and shall consist of such persons as the Chairman may appoint, subject to the approval of the Board.

Deleted: 3.26 Petroleum Products Advisory Committee

Deleted: The Petroleum Products Advisory Committee shall be a Regular Committee and shall consist of such persons as the Chairman may appoint, subject to the approval of the Board.

Deleted: 3.27 Electricity Advisory Committee

Deleted: The Electricity Advisory Committee shall be a Regular Committee and shall consist of such persons as the Chairman may appoint, subject to the approval of the Board.

Deleted: 3.28 Natural Gas Advisory Committee

Deleted: The Natural Gas Advisory Committee shall be a Regular Committee and shall consist of such persons as the Chairman may appoint, subject to the approval of the Board.

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Deleted: 3.30 Liquefied Propane Gas Advisory Committee

3.34 Options Advisory Committee

The Options Advisory Committee shall be a Regular Committee and shall consist 70% of persons appointed by the Chairman of the Board and 30% of persons appointed by the COMEX Governors Committee. The Chairman and Vice Chairman of the Committee shall be Class A Members.

Deleted: The Liquefied Propane Gas Advisory Committee shall be a Regular Committee and shall consist of such persons as the Chairman may appoint, subject to the approval of the Board.

Deleted: 3.31 COMEX Precious Metals Advisory Committee

Deleted: The COMEX Precious Metals Advisory Committee shall be a Regular Committee and shall consist 30% of persons appointed by the Chairman and 70% of persons appointed by the COMEX Governors Committee subject to approval of the Board. The Chairman and Vice Chairman of the Committee shall be COMEX Division Members.

Deleted: 3.33 Copper Advisory Committee

Deleted: The Copper Advisory Committee shall be a Regular Committee and shall consist 30% of persons appointed by the Chairman and 70% of persons appointed by the COMEX Governors Committee subject to approval of the Board. The Chairman and Vice Chairman of the Committee shall be COMEX Division Members.

Deleted: 3.34 Aluminum Advisory Committee

Deleted: The Aluminum Advisory Committee shall be a Regular Committee and shall consist 30% of persons appointed by the Chair ... [2]

Deleted: 3.35 Platinum Advisory Committee

Deleted: The Platinum Advisory Committee shall be a Regular Committee and shall consist 70 ... [3]

Deleted: 3.36 Operations Committee

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Deleted: 3.39 Technology Committee

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Deleted: Government Relations

Deleted: 3.41 Hand-Held Technology Committee

Deleted: The Hand-Held Technology Committee shall be a Regular Committee and shall be compr ... [6]

3.35 Political Action Committee

The Political Action Committee shall be a Regular Committee and shall be comprised of such persons as the Chairman may appoint, subject to approval of the Board.

Deleted: 3.44 COMEX Division Margin Committee

Deleted: (A) The COMEX Division Margin Committee shall be a Regular Committee, shall consist of such members as the Chairman shall appoint with the consent of the Board and shall be comprised 70% of COMEX Division Members and 30% of Class A Members. The COMEX Division representations shall include at least two members from each of the following groups: Commission House, Floor Group and Trade Group.

(B) The Margins Committee shall be available to consult with the Board or its assignee with respect to minimum margin requirements for futures and options contracts traded on the COMEX Division. The Committee may make recommendations to alter existing margin levels at such times as the Committee deems to be in the best interests of the Exchange.

Deleted: 3.45 COMEX Division Rules Committee

Deleted: The COMEX Division Rules Committee shall be a Regular Committee of the Exchange and shall be comprised of such persons as the Chairman may appoint, subject to approval of the Board. The Committee shall be comprised 50% of Class A Members and 50% of COMEX Division Members and shall consider and make recommendations to the Board with respect to the consolidation of the rules of the COMEX Division and the Class A Member and with respect to any amendments to or deletions of rules that have been termed "Term Sheet Rules".

Change History

- 3.00 Rules of Order; Committee Composition: (Amended: 08/03/94, 11/17/00)
- 3.02 Restrictions on Governing Board Members, Committee Members, Consultants, and Other Persons Who Possess Material, Non-Public Information: (Amended: 03/28/88, 05/19/94, 11/17/00, 12/14/2000)
- 3.03 Disqualification from Board and Committee Service: (Amended: 07/11/90, 09/28/93, 01/10/94, 08/22/96, 03/09/99, 11/17/00, Rule 3.03(A)(5)(i)(C); 11/22/02, Rule 3.03(A)(5)(v)(C); 11/22/02, 07/06/05)
- 3.04 Voting By Board and Committee Members on Certain Matters: (Adopted: 03/09/99; Amended: 11/17/00)
- 3.10 Adjudication Committee: (Amended: 10/16/89, 09/28/93, 08/03/94, 11/17/00)
- 3.11 Appeals Committee: (Amended: 09/28/93, 08/03/94, 11/17/00)
- 3.11A Hearing Procedures: (Adopted: 09/28/93)
- 3.12 Arbitration Committee: (Amended: 08/03/94, 11/17/00)
- 3.13 Business Conduct Committee: (Amended: 10/16/89, 09/28/93, 08/03/94, 11/17/00, 04/12/05)
- 3.14 Bylaws Committee: (Amended: 08/03/94, 11/17/00)
- 3.16 Compliance Review Committee: (Amended: 08/03/94)
- 3.17 Control Committee: (Amended: 09/16/86, 08/03/94, 11/17/00)
- 3.20 Floor Committee: (Adopted: 08/03/94, 11/17/00)
- 3.21 Training and Education Committee: (Amended: 09/25/92, 08/03/94, 11/17/00)
- 3.22 Membership Committee: (Amended: 08/03/94, 11/17/00, 01/23/2001, 01/30/2001)
- 3.23 Metals Advisory Committee: (Amended: 08/03/94, 07/09/96)
- 3.24 Reserved: (formerly Class A Member Nominating Committee - Nominations. Deleted: 09/21/95)

- 3.25 Delivery Committee: (Amended: 08/26/96)
- 3.27 Electricity Advisory Committee: (Amended: 08/03/94)
- 3.29 Options Advisory Committee: (Adopted: 09/16/86; Amended: 08/03/94, 11/17/00)
- 3.30 Liquefied Propane Gas Advisory Committee: (Adopted: 08/21/87)
- 3.31 COMEX Precious Metals Advisory Committee: (Adopted: 08/03/94; Amended: 07/09/96)
- 3.33 Copper Advisory Committee: (Adopted: 08/03/94)
- 3.34 Aluminum Advisory Committee: (Adopted: 08/03/94)
- 3.35 Platinum Advisory Committee: (Adopted: 08/03/94, 11/17/00)
- 3.36 Operations Committee: (Adopted: 08/03/94, 11/17/00)
- 3.37 Facilities Committee: (Adopted: 08/03/94, 11/17/00)
- 3.38 FCM Advisory Committee: (Adopted: 08/03/94)
- 3.39 Technology Committee: (Adopted: 08/03/94, 11/17/00)
- 3.40 Government Relations Committee: (Adopted: 08/03/94)
- 3.41 Hand-Held Technology Committee: (Adopted: 08/03/94, 11/17/00)
- 3.42 Marketing Committee: (Adopted: 08/03/94, 11/17/00)
- 3.43 Settlement Price Committee: (Amended: 04/08/97, 04/12/05; Former Rule 6.51 redesignated as Rule 3.43; 08/03/94)
- 3.44 COMEX Division Margin Committee: (Adopted: 08/03/94, 11/17/00)
- 3.45 COMEX Division Rules Committee: (Adopted: 08/03/94, 11/17/00)
- 3.46 Electronic Trading Review Committee: (Adopted: 08/03/94; Amended: 07/16/2003)
- 3.47 Audit Committee: (Adopted: 05/17/99; Amended: 11/17/00)

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(A) The Audit Committee shall:

Member Audit Committee shall:

(i) On an annual basis:

(a) make a recommendation to the Board of Directors regarding selection, retention and discharge of independent auditors for the ensuing year; and

(b) review the scope and general extent of the independent auditors' examination, the significant audit procedures which will be utilized, and fees charged for their services.

(ii) Review the audited financial statements and discuss them with management and the independent auditors. These discussions shall include, but not be limited to, the matters required to be disclosed under Statement of Auditing Standards No. 61 (established by the Auditing Standards Board) and consideration of the quality of the Exchange's accounting principles as applied in its financial reporting, including a review of sensitive accounting estimates, reserves and accruals, judgement areas, audit adjustments (whether or not recorded), and other such inquires as the Committee or the independent auditors shall deem appropriate. Based on such review, the Committee shall make its recommendation to the Board as to the inclusion of the Exchange's audited financial statements in the Exchange's Annual Report on Form 10-K.

(iii) Discuss with representatives of management and the independent auditors:

(a) the interim financial information contained in the Exchange's Quarterly Report on Form 10-Q prior to its filing; and

(b) the results of the review by the independent auditors.

(iv) On a monthly basis, or at such times as the Committee shall determine, but not less than twice each year, meet with the independent auditors, President, Senior Vice President of Finance, Vice President of Internal Audit and other personnel as the Committee deems appropriate to review:

(a) the scope of the audit plan;

(b) the Exchange's financial statements;

(c) the results of external and internal audits;

(d) the effectiveness of the Exchange's system of internal controls;

(e) any limitations imposed by Exchange personnel on the independent auditors; and

(f) such other matters as the Committee shall deem appropriate upon advising the Executive Committee.

(v) Review the internal audit function of the Exchange, including proposed audit programs for the coming year, the coordination of such a programs with the independent auditors, the extent to which recommendations made by the internal auditors or by the independent auditors have been implemented, and management's response to the recommendations of the independent auditors.

(vi) Review, at its discretion, compliance with codes of conduct established the Exchange.

((vii)) Consult with the independent auditors, and when appropriate the Vice President of Internal Audit, out of the presence of management.

(viii) Establish direct communication between the auditors and the Board.

((ix)) Initiate, at its discretion, investigations within the parameters of foregoing responsibilities, and for that purpose with the approval of the Board, retain outside legal counsel, independent auditors, or any other such experts as if may deem appropriate.

((x)) Report to the entire Board at such time as the Committee determines, but not less than twice a year on the activities described in this Rule.

COMMODITY EXCHANGE, INC.
BY-LAWS

ARTICLE 1
MEMBERSHIP

Section 109. TRANSFER OF MEMBERSHIP

(A) Membership in the Exchange is only transferable pursuant to the terms and conditions established by the By-Laws and the Rules.

(B) A Member who is the subject of any disciplinary proceeding or investigation by the Exchange may transfer a membership pursuant to the terms and conditions established by the By-Laws and Rules.

(C) No restriction on transfer applicable to COMEX Division memberships shall be more restrictive than those applicable to NYMEX Division memberships. (Section 109 Adopted 08/03/94)

Section 110. DISCLOSURE OF INFORMATION

The Exchange shall not disclose to any person any information regarding the financial condition of a Member or Member Firm or the transactions or positions of any Member or Member Firm or any person except:

(1) to any committee, officer, director, employee or agent of the Exchange authorized to receive such information within the scope of its or such person's duties;

(2) to any duly authorized representative of the Commission or other regulatory agency with jurisdiction over the Exchange requesting such information or to any duly authorized representative of any other regulatory or self-regulatory organization with which the Exchange, as approved by the Board, has entered into an information sharing agreement;

(3) as required by law;

(4) when the Member or Member Firm requests or consents to such disclosure; or

(5) that the Exchange may release such information in connection with any litigation involving the Exchange when, in the opinion of the Exchange, the information is relevant or the release of the information is necessary and appropriate to the conduct of such litigation. (Section 110 Adopted 08/03/94)

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Deleted: No Member may transfer a membership when such Member, or a Member Firm upon which such Member has conferred member privileges, is the subject of any disciplinary proceeding or investigation by the Exchange under the By-Laws or Rules, except as otherwise provided in the By-Laws or the Rules.

Deleted: notwithstanding that such Member, or the Member Firm upon which such Member conferred member privileges, is the subject of any investigation by the Exchange, 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.

Sections 150-156. [RESERVED]

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**ARTICLE 2
MEETINGS OF MEMBERS**

Section 203. NOTICE OF MEETING

(A) Notice of the annual meeting of COMEX Division Members shall state the place, date and time of such meeting.

(B) Notice of any special meeting of COMEX Division Members shall state the place, date and time of such special meeting, the purposes for which such meeting is called and shall indicate that it is being issued by or at the direction of the person or persons calling the special meeting.

(C) The President or the Secretary shall issue all notices of meetings of COMEX Division Members.

(D) A copy of the notice of any meeting of COMEX Division Members shall be given personally, or by delivery to a postal box located on the Exchange premises or by first class mail, postage prepaid and addressed to each COMEX Division Member at his address as it appears in the records of the Exchange. Notice of a meeting, when mailed in accordance with this By-Law Section 203(D), shall be effective when mailed. Notice of any meeting of COMEX Division Members shall be given not less than ten (10) nor more than fifty (50) days prior to the date of the meeting. (Section 203 Adopted 08/03/94)

**ARTICLE 3
GOVERNMENT AND ADMINISTRATION**

Section 300. COMPOSITION OF BOARD

(A) The governance of the COMEX Division shall be vested in the Board, which shall be elected by NYMEX and shall consist of the fifteen (15) persons who serve as Directors on the NYMEX Board.

Section 301. POWERS OF THE BOARD

(A) Subject to paragraph (D) of this Section and Sections 205(D) and 205(G) of these By-Laws, the COMEX Division shall be managed by the Board which is vested with

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¶
(1) a Chairman of the Board and a Vice-Chairman of the Board, each of whom shall qualify and serve in accordance with the provisions of By-Laws Section 302 and Section 303, respectively;
¶
(2) eighteen (18) persons ("Member Directors") who shall qualify and serve in accordance with By-Law Section 304; and
¶
(3) five (5) persons ("Public Directors") who shall qualify and serve in accordance with By-Law Section 305. (Section 300 Adopted 08/03/94; revised 05/15/03)
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all powers necessary and proper for the government of the COMEX Division, the regulation and conduct of Members and Member Firms, and for the promotion of the welfare, objects and purposes of the COMEX Division. Subject to paragraph (D) of this Section and Sections 205(D) and 205(G) of these By-Laws and the other powers and rights specifically granted to the COMEX Governors Committee under the New COMEX By-laws and the Merger Agreement, the Board shall have control over and management of, the property, business and finances of the COMEX Division. Subject to paragraph (D) of this Section and Sections 205(D) and 205(G) of these By-Laws, the Board may also adopt, amend, rescind or interpret the Rules of the COMEX Division as it deems necessary and appropriate.

(B) Without limiting the generality of the foregoing and subject to paragraph (D) of this Section, the Board shall have the following powers:

(1) the Board may make such expenditures as it deems necessary for the best interests of the COMEX Division;

(2) the Board may fix, from time to time, the fees or other compensation to Directors and to Members of any committee of the Board for services rendered in performing these duties as such, including the compensation for Public or Independent Directors may differ from the compensation for other Directors;

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(3) the Board shall have the power to take such action as may be necessary to effectuate any final order or decision of the Commodity Futures Trading Commission taken under authority of the Commodity Exchange Act and necessary to comply in all respects with any requirements applicable to the COMEX Division under the Act; and

(4) the Board shall have the power to adopt arbitration rules for the settlement of claims, grievances, disputes and controversies.

(C) The Board may designate by resolution, from time to time, such committees as it may deem necessary or appropriate, and delegate to such committees the authority of the Board to the extent provided in these By-Laws or in such resolution, subject to any applicable provision of law.

(D) No action taken by the Board of Directors with respect to any Special Matter shall be effective without either (i) the prior consent of the COMEX Governors Committee as provided in Section 205 of these By-Laws which shall be subject to the veto rights of the COMEX Division Members provided for in Section 205(D) or (ii) the prior approval of COMEX Division Members in accordance with the provisions of Section 205(D). (Section 301 Adopted 08/03/94)

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Deleted: Chairman, who shall be the Chairman of the NYMEX Board of Directors, shall be elected at an annual meeting of NYMEX to serve a term of two (2) years until the second annual meeting of NYMEX after his election and until his successor is elected and qualified.

Section 302. CHAIRMAN OF THE BOARD OF DIRECTORS

(A) NYMEX shall designate the Chairman of NYMEX as the Chairman.

(B) The Chairman shall be an *ex-officio* member of all Committees.

(C) The Chairman shall have such authority and perform such duties as are incident to his office. He shall present any reports of the Board at meetings of Members. Whenever he deems it appropriate, the Chairman may communicate to the Board or to the Members any ideas and suggestions which tend, in his opinion, to promote the welfare and usefulness of the COMEX Division. The Chairman shall have a vote on all questions at all meetings of the Board or of the Members. (Section 302 Adopted 08/03/94)

Section 303. VICE CHAIRMAN OF THE BOARD OF DIRECTORS

(A) NYMEX shall designate the Vice Chairman of NYMEX as the Vice Chairman.

(B) If the Chairman is absent or unable to perform his duties, the Vice Chairman shall exercise and shall perform the duties of the Chairman. If both the Chairman and the Vice Chairman are absent or unable to perform the duties of Chairman, the President shall exercise and perform the duties of the Chairman. If the Chairman, Vice-Chairman and President are all absent or unable to perform the duties of Chairman, a quorum of the Board, by majority vote, may choose an acting chairman from the remaining Directors. (Section 303 Adopted 08/03/94)

Section 304 - 306. [RESERVED]

Section 307. RESIGNATION AND REMOVAL OF DIRECTORS

(A) Any Director may resign at any time by tendering written notice of his resignation to the Board. Any resignation unless conditioned on acceptance, will be effective on the date stated in the notice or, if no date is stated, on the date tendered. Further, a resignation from the board of directors of NYMEX shall be deemed a simultaneous resignation from the Board. NYMEX shall take such action, including, without limitation, removing a Director, as required to ensure that the members of the board are identical to the members of the Board of NYMEX.

Section 308. FILLING OF VACANCIES

(A) In the event there is a vacancy among the Directors caused by the death, removal or resignation of Director, such vacancy shall be filled by a vote of NYMEX.

(B) A Director, other than the Chairman or Vice-Chairman, appointed to fill a vacancy under this Section 308 shall hold office until the next annual meeting of members and until his successor is elected or appointed and qualified. Such successor, and any person elected to fill an unfilled vacancy or to replace a resigning Director, shall be elected for a term of such length as would have remained in the term of the Director whose death, removal or resignation caused the vacancy. If no time would have remained in such term,

Deleted: (B) The Chairman shall be the chief executive officer of the COMEX Division and shall preside at all meetings of the Members and of the Board. He may appoint such experts and professional advisors, as he deems appropriate.¶

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Deleted: The Vice Chairman, who shall be the Vice Chairman of the NYMEX Board of Directors, shall be elected, except as provided in By-Law Section 308, at an annual meeting of NYMEX at which the Chairman of the Board of Directors is not subject to be elected, to serve a term of two years until the second annual meeting of NYMEX after his election and until his successor is elected and qualified.

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¶ Each Member Director shall be ... [1]

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such successor shall be elected for a full term.

Section 309. MEETINGS OF THE BOARD

(A) Regular meetings of the Board shall be held at such times as the Board deems appropriate. Regular meetings of the Board may be held without notice at such time and at such place as may from time to time be determined by the Board. Special meetings of the Board may be called by the Chairman, if there be one, the President, or by a majority of the Directors. Notice thereof stating the place, date and hour of the meeting shall be given to each Director either by mail not less than forty-eight (48) hours before the date of the meeting, by telephone, telegram or electronic means on twenty-four (24) hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

(B) The Chairman and Vice Chairman of the COMEX Governors Committee shall be entitled to attend all meetings of the Board in person, as observers only, and not as Directors. The Chairman and Vice Chairman of the COMEX Governors Committee shall not, *ipso facto*, be members of the Board, shall not have the right to vote at meetings of the Board and shall not be counted for purposes of determining whether a quorum exists. The Chairman and Vice Chairman of the COMEX Governors Committee may address the Board in the same manner and subject to the same restrictions as apply to members of the Board. Inadvertent failure or inability to notify either of them of a meeting shall not affect the validity of any action taken at the meeting in his or their absence. The Chairman and Vice Chairman of the COMEX Governors Committee may, by action of the Board, be excluded from those portions of meetings of the Board (i) that relate exclusively to matters as to which the Board concludes, based on the advice of counsel, that the presence of the Chairman and/or Vice Chairman of the COMEX Governors Committee may result in the loss of a privilege against disclosure which otherwise would be available, or (ii) during which the Board of Directors considers actual or potential litigation brought by the COMEX Governors Committee or any COMEX Division Member. (Section 309 Adopted 08/03/94)

Section 310. QUORUM

A majority of the entire Board shall constitute a quorum. A majority of Directors present, whether or not a quorum exists, may adjourn any meeting to another time or place. Unless specifically provided otherwise in the By-Laws or any applicable law, any action taken by a vote of a majority of the Directors present at a meeting at which there is a quorum shall be the act of the Board. (Section 310 Adopted 08/03/94)

Section 313. [RESERVED]

Deleted: (D) In the event of the death, resignation or vacancy of the Chairman, the Vice Chairman shall be the Chairman.¶

¶
(E) In the event of the death, resignation or vacancy in the office of the Vice Chairman, the Board, by vote of a majority of the Directors then in office, shall elect a Vice Chairman.¶

¶
(F) A Chairman or a Vice Chairman appointed or elected pursuant to this By-Law Section 308 shall hold office until the next annual meeting of members and until his successor is elected and qualified. Such successor shall be elected for a term of such length as would have remained in the term of the Chairman or Vice-Chairman whose death, removal or resignation had caused the vacancy. If no time would have remained in such term, such successor shall be elected for a full term.¶

Deleted: (G) In the event that a Member Director is elected or appointed to fill a vacancy in the office of Vice-Chairman, and provided that such Member Director's term would not have expired at the next annual meeting of Members, such Member Director may, if he does not choose to run for the office of Chairman or Vice-Chairman, resume his position as Member Director upon the election and qualification of his successor as Vice-Chairman. (Section 308 Adopted 08/03/94)¶

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Deleted: (B) The Chairman may call a special meeting of the Board whenever he deems necessary. The Chairman shall call a special meeting when a written demand of not less than five (5) Directors is received. ¶

-----Section Break (Continuous)-----

(C) Notice of a meeting may be given in writing, by telephone or by other means of communication and shall be effective when so given. No special meeting may be called on notice of less than one hour. Notice of a meeting shall be given to the Chairman and Vice Chairman of the COMEX Governors Committee. Notice of any meeting may be waived by a Director or the Chairman or Vice Chairman of the COMEX Governors Committee in writing or by his attendance at a meeting without protest of the lack of notice to ... [11]

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Section 314. RULES OF ORDER

The Board shall have the authority to make rules governing its own conduct and proceedings.

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Section 350. OFFICERS

The Board shall appoint a President, a Secretary and a Treasurer. The Board may appoint one or more Vice Presidents, and may classify such Vice Presidents, and may appoint such other officers as the Board may determine. Any officer appointed under this Section may be removed by the Board, with or without cause. Any person may hold two or more offices. The officers of the Exchange (other than the Chairman, the Vice Chairman and the Treasurer) shall not be members of the Exchange nor, except in the case of the Chairman, the Vice Chairman of the Board, and the Treasurer, need such officers be Directors. The officers shall have such powers and authority as may be specifically established by the Board. (Section 350 Adopted 08/03/94)

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Sections 351-356. [RESERVED]

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**ARTICLE 4
COMMITTEES**

Section 400. COMMITTEE DESIGNATION

(A) The COMEX Division shall have such Standing Committees, Special Committees and Regular Committees as are provided in the By-Laws or Rules. The Board may appoint Regular Committees in addition to those named in the By-Laws or Rules. Committees established under the By-Laws of the New York Mercantile Exchange shall have authority to consider matters relating to the COMEX Division.

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(B) The COMEX Division shall have a COMEX Governors Committee with such powers, rights, privileges and duties as are specified in Article 4A of the By-Laws. (Section 400 Adopted 08/03/94)

Section 401. EXECUTIVE COMMITTEE

(A) The Board shall appoint an Executive Committee which shall consist of those persons who serve as members of the Executive Committee of NYMEX.

Deleted: which shall be a Standing Committee and shall consist of members of the Executive Committee of the New York Mercantile Exchange. The Chairman of the Board shall be the Chairman of the Executive Committee and the Vice Chairman of the Board shall be the Vice Chairman of the Executive Committee.

(B) The Executive Committee shall have and may exercise the authority of the Board. The Executive Committee shall have the power to perform other duties as are specified by the Board or as are provided in the By-Laws and Rules.

(C) Any action taken by the Executive Committee shall be submitted to the Board at its next meeting for ratification. Except to the extent that the rights of third parties acquired by such action may be impaired, the Board may amend or rescind any such action. (Section 401 Adopted 08/03/94)

Section 402. POWERS OF COMMITTEES

(A) A Standing Committee shall have the authority of the Board to the extent provided in the By-Laws, Rules, or any resolutions of the Board and subject to applicable provisions of law.

(B) A Special Committee shall have only the powers specifically delegated to it by the Board and shall not have any powers which a Standing Committee may not exercise under applicable provisions of law.

(C) A Regular Committee shall have such powers as may be delegated to it in the By-Laws or Rules or by the Board; *provided, however,* that such powers shall in no case exceed the powers that the Board may delegate lawfully to an officer of COMEX Division.

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(D) All Committees shall have all powers necessary and incident to the discharge of their duties. (Section 402 Adopted 08/03/94)

Section 403. COMPOSITION OF COMMITTEES

(A) A Standing Committee shall consist of at least three (3) members, all of whom shall be Directors. The Board, by resolution adopted by a majority of the entire Board, may designate Standing Committees from the Directors.

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(B) A Special Committee shall consist of as many members of the Board as the Chairman, with the consent of the Board, shall appoint. All members of a Special Committee shall be Directors.

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(C) A Regular Committee shall be composed of such persons as the Chairman of the Board with the consent of the Board shall appoint; or, as the members may elect as provided in the By-Laws or Rules.

(D) Except as otherwise provided in the By-Laws or Rules, the Chairman of the Board shall appoint a Chairman of each committee and may appoint such vice chairman of any committee as he deems desirable. (Section 403 Adopted 08/03/94)

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Section 405. REMOVAL, RESIGNATION AND VACANCIES

(A) Unless elected by the members and except as otherwise provided in these By-Laws, members of Committees hold office subject to the discretion of the Board; a

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member of a Committee elected or appointed by the Board may be removed with or without cause.

(B) A member of a Committee or of any subcommittee may resign at any time by tendering written notice of his resignation to the Chairman. Unless contingent upon acceptance, such resignation will be effective on the date specified, or if no date is specified, on the date tendered. A member of a Standing Committee or Special Committee shall cease to be a committee member upon the termination of his membership on the Board.

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(C) The Chairman of the Board may remove with the consent of the Board, with or without cause, any chairman of a committee, vice chairman of a committee or any member of a committee whom he has appointed.

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(D) In the event there is a vacancy on a Standing Committee, the Board may fill such vacancy. In the event there is a vacancy on a Special Committee or a Regular Committee, the Chairman, with the consent of the Board, may fill such vacancy. (Section 405 Adopted 08/03/94)

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Section 406. MEETINGS OF COMMITTEES

(A) Unless otherwise specifically provided in the Rules or these By-Laws, regular meetings of committees and subcommittees shall be held on such date and at such time as the committee or subcommittee shall determine.

(B) The chairman of any committee or any subcommittee shall have the authority to call a special meeting of such committee or subcommittee to be held on such date and at such time as the chairman of such committee shall determine.

(C) Notice of all meetings of committees and subcommittees may be in writing, by telephone, or by other means of communication. Such notice shall be made not less than one hour before such meeting.

(D) Any action required or permitted to be taken by a committee or subcommittee may be taken without a meeting if all the members of the committee or subcommittee consent in writing to the adoption of a resolution authorizing such action.

(E) Any one or more members of a committee or subcommittee may participate in a meeting by means of a conference telephone or similar communications device allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting. (Section 406 Adopted 08/03/94)

Section 409. ALTERNATES

(A) The Board may designate one or more Directors as alternate members of any Standing Committee.

(B) The Chairman may designate one or more Directors as alternate members of any Special Committee.

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(C) The Chairman of the Board, or, if the committee is elected by the Members, the Members, may designate one or more persons as alternate members of a Regular Committee.

(D) Any alternate or alternate committee member appointed or elected pursuant to this By-Law Section 409 may replace one or more absent members of any such committee. (Section 409 Adopted 08/03/94)

**ARTICLE 4A
COMEX GOVERNORS COMMITTEE
AND COMEX DIVISION MEMBER MATTERS**

Section 408A. [RESERVED]

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Section 411A. [RESERVED]

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Section 413A. [RESERVED]

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Section 414A. [RESERVED]

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**ARTICLE 5
AMENDMENTS TO BY-LAWS AND RULES**

Section 501. [RESERVED]

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Section 502. AMENDMENTS AFFECTING EXISTING CONTRACTS

Unless provided to the contrary in the By-Laws or Rules in the resolution adopting an amendment or deletion of the By-Laws or Rules, any amendment or deletion of the By-Laws or Rules that relate to products traded on the COMEX Division shall be binding on contracts entered into before and after such amendment or deletion. Unless provided to the contrary in a resolution adopting an amendment, any amendment or deletion that affects the amount of money to be paid, or grade, quality or quantity of merchandise to

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be received, under any contract shall be effective only with respect to the delivery month immediately following the last delivery month in which there is an open position on the date such amendment or deletion becomes effective. (Section 502 Adopted 08/03/94)

Section 504. TECHNICAL AMENDMENTS

The Board, by majority vote at any meeting, may change the numbers and captions of the By-Laws or amend the By-Laws to correct cross-references to By-Laws, statutes, regulations, to correct typographical errors or similar matters. The Board may make such changes effective immediately. (Section 504 Adopted 08/03/94)

**ARTICLE 6
CLEARING DEPARTMENT**

Section 600. PURPOSE

All contracts made in accordance with the By-Laws of the COMEX Division shall be cleared through the Clearing Department, or another clearing facility designated by the Board. (Section 600 Adopted 08/03/94; revised 05/15/03)

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Section 601. QUALIFICATIONS

The Clearing Department or a facility designated by the Board shall prescribe the qualifications of its own members. No person shall be eligible to clear COMEX Division contracts who is not a Member or Member Firm. (Section 601 Adopted 08/03/94)

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ARTICLE 7 EMERGENCIES

Section 700. DEFINITIONS

As used in this Article 7 of the By-Laws:

(A) The term "emergency" means any occurrence, circumstance or event as defined by the Commission in accordance with the applicable provisions of the Act which in the opinion of the Board requires immediate action and threatens or may threaten such things as the fair and orderly trading or liquidation of any commodity futures or options contract, traded on the COMEX Division. Occurrences, circumstances or events which the Board may deem emergencies are limited to:

- (1) any manipulative activity or attempted manipulative activity;
- (2) any actual, attempted or threatened corner, squeeze, congestion or undue concentration of positions;
- (3) any circumstance or circumstances that may materially affect the ability to satisfy the obligations arising under futures or options contracts traded on the COMEX Division;
- (4) any action taken by or against the government of the United States, any foreign government, any state or local government, or by any other exchange, any board of trade or trade association, whether foreign or domestic, which action may have a direct impact on trading on the COMEX Division;
- (5) any circumstance that may have a severe, adverse effect on the physical functions of the COMEX Division including, for example, fires or other casualties, bomb threats, substantial inclement weather, power failures, communication or transportation breakdowns, computer system breakdowns, screen-based trading system breakdowns and malfunctions of plumbing, heating, ventilation and air conditioning systems;
- (6) the bankruptcy or insolvency of any Member or Member Firm or the imposition or service of any lien, attachment, execution or other levy or an injunction or other restraint against a Member or Member Firm or their assets by any governmental agency, court, arbitrator or judgment creditor which event may affect the ability of the Member or Member Firm to perform on its contracts or otherwise to engage in business;
- (7) the occurrence of a "Reportable Emergency Event" or "Financial Emergency" with respect to a Member or Member Firm, as defined in Section 850(C) or (D) of the By-Laws;

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(8) any circumstance in which it appears, in the judgment of the Board, that a Member or Member Firm: (i) has failed to perform on its futures or options contracts, or (ii) is insolvent or is in such financial or operational condition or is conducting its business in such a manner that such Member or Member Firm cannot be allowed to continue its business without jeopardizing the safety of customer funds, of any Members or of the COMEX Division; or,

(9) any other unusual, unforeseeable and adverse circumstance with respect to which it is not practicable for the Exchange to submit, in timely fashion, a rule to the Commission for prior review.

(B) The term "two-thirds vote of the Board" means the affirmative vote of members of the Board constituting two-thirds of the Board, either (i) physically present and voting at any meeting at which a quorum of the Board is physically in attendance or (ii) voting in any manner other than at a meeting at which a quorum is physically in attendance as permitted by applicable state corporation law.

(C) The term "physical emergency" means, in addition to those events which are set forth at sub-paragraph (A)(5) of this By-Law 700, any computer malfunction, backlog or delay in clearing trades or in processing any documents relating to clearing trades, any floor occurrences which threaten an orderly market, or any similar events.

(D) The term "temporary emergency rule" means a rule or resolution adopted, under this Article 7 of the By-Laws, to meet an emergency. (Section 700 Adopted 08/03/94)

Section 701. EMERGENCY ACTION

(A) In the event of an emergency, the COMEX Division, by two-thirds vote of the Board and subject to the applicable provisions of the Commodity Exchange Act, and to the applicable rules and regulations promulgated thereunder, may adopt and place into immediate effect a temporary emergency rule.

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(B) A temporary emergency rule, including any modification thereof, may not extend beyond the duration of the emergency as determined by the Board. However, in no event shall such a temporary emergency rule, or any modification thereof, extend for more than ninety (90) days after the temporary emergency rule is placed in effect.

(C) Any temporary emergency rule may provide for, or may authorize the Board to undertake actions which, in the sole discretion of the Board or of any Committee, are necessary or appropriate to meet the emergency including, but not limited to, such actions as:

(1) limiting trading to liquidation only, in whole or in part, or limiting trading to liquidation only except for new transactions in futures or options contracts by parties who have the commodity to deliver pursuant to such sales;

(2) extending or shortening the expiration date for trading in futures or options contracts;

(3) extending the time of delivery under futures contracts or expiration of futures or options contracts;

(4) changing delivery points, the manner of delivery or the means of delivery;

(5) modifying price limits;

(6) modifying circuit breakers;

(7) ordering the liquidation of futures and/or options contracts, the fixing of a settlement price or the reduction of positions held by or for any or all Members, Member Firms or customers;

(8) ordering the transfer of futures and/or options contracts and the money, securities and property securing such contracts held by or on behalf of customers by a Member or Member Firm to another Member or Member Firm or to other Members or Member Firms willing or obligated to assume such contracts;

(9) extending, limiting or changing hours of trading;

(10) suspending trading; and

(11) modifying or suspending any provision of rules of the contract market, including any contract market prohibition against dual trading. (Section 701 Adopted 08/03/94)

Section 702. ACTION BY BOARD

(A) In an emergency, or to determine whether an emergency exists a meeting of the Board may be convened without notice.

(B) In the event of an emergency where a quorum of the Board is unavailable, all trading on the Exchange may be suspended by an affirmative vote of two-thirds of the members of the Board present. In the event of an emergency in which no other Directors present, the Chairman, or in his absence, the Vice Chairman, or in their absences any one Director present, or in their absences, the President, or in all their absences, the Executive Vice President, or in all their absences, any Vice President, may order suspension of trading for such period as in their or his judgment is necessary.

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(C) Any action taken pursuant to this By-Law Section 702 shall be subject to review and modification by the Board. (Section 702 Adopted 08/03/94)

ARTICLE 8
DISCIPLINARY AND SUMMARY PROCEEDINGS

Section 851. DUTY TO REPORT EMERGENCY EVENT

If a Reportable Emergency Event occurs with respect to any Member, such Member shall advise the Exchange of the occurrence of the Reportable Emergency Event by the fastest available means of communication and shall also immediately deliver to the Exchange by the fastest available means, a written notice. Such notice shall specify:

(1) the nature of the Reportable Emergency Event;

(2) the date and time of occurrence;

(3) whether such Member consents to a summary suspension pursuant to this Article 8 and, if so, whether such Member waives a hearing with respect thereto; and,

(4) whether such Member consents to a suspension which includes a prohibition against employment by another Member as a floor employee. (Section 851 Adopted 08/03/94)

Section 853. SUMMARY SUSPENSION; ACTION OF THE EXECUTIVE COMMITTEE

(A) If at any time the Executive Committee of the Board of Directors determines, in its sole discretion, that there is a substantial question whether a Financial Emergency exists with respect to any Member, or, if at any time, the COMEX Division receives a notice of a Reportable Emergency Event from a Member, the Executive Committee may suspend, or take any other action against, such Member, any Member upon which such Member has conferred member privileges, any Member guaranteed by such Member, or any Member guaranteeing such Member, as it deems appropriate to protect the COMEX Division and its Members. The Executive Committee of the Board of Directors may take such action regardless of whether the Member has advised the COMEX Division as provided in By-Law Section 851, whether such Member has consented to a suspension, or whether such Member has waived a hearing.

(B) Any action taken under the authority of this By-Law Section 853 may be taken without notice or a hearing where the Member waives notice or hearing, or when the Executive Committee or the Board of Directors determines, in its sole discretion, that the furnishing of notice, and an opportunity for a hearing before such action is taken or both is not practicable under the circumstances.

(C) In any case where the Executive Committee of the Board of Directors has taken action against a Member without prior notice or hearing because of impracticability, the COMEX Division shall give promptly to such Member the notice required by By-Law Section 854(B) and an opportunity to be heard.

(D) The powers and duties of the Executive Committee of the Board of Directors under this Article 8, including the obligation to hold a hearing, if requested, may be delegated to a subcommittee of any two or more members of the Executive Committee of the Board of Directors or to any other committee of the Exchange as the Chairman of the Board of Directors may decide in his sole discretion. (Section 853 Adopted 08/03/94)

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Section 855. HEARING DECISION

(A) The Executive Committee of the Board of Directors, or other committee, as provided in By-Law Section 853(D), shall render a decision as provided in this By-Law. The decision shall be final and may not be appealed.

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(B) A hearing, if requested, shall be fair and shall be conducted in accordance with procedures adopted by such committee for any hearing before it; but, during such hearing,

(1) the formal rules of evidence shall not apply;

(2) the Compliance Department shall present the case or the charges and penalties which are the subject of the hearing;

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(3) the Member shall be permitted to appear personally and shall have the right to be represented by counsel or other person of his choice;

(4) the Member and the Compliance Department shall be entitled to cross-examine any persons appearing as witnesses at the hearing;

(5) the Member may call witnesses and present such evidence as may be relevant to the charges;

(6) the committee shall be the sole judge of the relevancy of such evidence;

(7) the Exchange shall require persons who are within its jurisdiction and who are called as witnesses to appear and produce evidence or testify and shall make reasonable efforts to secure the presence of all other persons called as witnesses whose testimony would be relevant; and,

(8) the committee may impose a summary penalty upon any person whose actions impede the progress of the hearing.

(C) Promptly following the close of hearings, the Executive Committee of the Board of Directors shall render a decision in writing, based on the weight of the evidence. The decision shall include:

- (1) a description of, and the reasons for, the summary action;
- (2) a brief summary of the evidence produced at the hearing;
- (3) findings and conclusions;
- (4) where action has already been taken under By-Law Section 853, a determination that such action be affirmed, modified or reversed; and,
- (5) a description of any final action taken by the Executive Committee of the Board of Directors, its effective date and duration. (Section 855 Adopted 08/03/94)

Section 858. ESTABLISHMENT OF VALID CLAIMS

(A) The President shall furnish the suspended Member and all Members who have filed Notices of Claim as required by By-Law Section 857 with copies of all Notices of Claim filed under By-Law Section 857 and the sworn statement of the suspended Member filed under By-Law Section 856. The President shall also specify a date not more than ten (10) business days from the date on which such Notices of Claim are furnished to such Members by which the suspended Member or any claimant Member may file an objection to any claim.

(B) If a suspended Member or any claimant Member fails to file an objection to a claim before the date set by the President, that Member shall have waived all rights to object to such claim or claims.

(C) In the event that any claim is disputed, the validity of such claim shall be determined by arbitration in accordance with the Rules. The arbitration shall proceed as if the objecting Member has filed a Demand for Arbitration. The objecting Member shall pay the fee prescribed in the Rules. The arbitrators shall determine whether and to what extent such claim is valid, and, in accordance therewith whether and to what extent a claimant is entitled to participate in the proceeds of a sale of the membership of such suspended Member pursuant to Section 861. (Section 858 Adopted 08/03/94)

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Section 860. SALE OF MEMBERSHIP

(A) If within ten (10) business days from the date of the decision of the Arbitration Committee or from the last date established by the President for filing of objections to Notices of Claim, whichever is later, a Member suspended under this Article 8 of the By-Laws does not pay all valid claims, the membership and all other collateral previously delivered or pledged to the Exchange or the COMEX Division (including, without limitation, shares of capital stock of NYMEX Holdings) of the suspended Member shall be sold in accordance with this By-Law Section 860 and the proceeds of the sale of such membership shall be distributed in accordance with By-Law Section 861.

(B) When a membership is sold pursuant to this By-Law Section 860, written notice of such sale stating the date and time of such sale shall be sent to the Member and the membership ten (10) days prior to such sale.

(C) All sales should be made by the President or his designee on the floor of the COMEX Division to the highest bidder at open outcry but in no event less than the highest bid then posted at the COMEX Division for the transfer of a membership. Any Member may purchase such membership. Any membership so purchased shall be free from and clear of any claims, liens or attachments. Such sale shall be final and binding and not subject to challenge. Payment for the purchase of such membership shall be made to the COMEX Division. (Section 860 Adopted 08/03/94)

Section 861. DISPOSITION OF PROCEEDS

The proceeds of any sale of a membership and all other collateral previously delivered or pledged to the Exchange or the COMEX Division (including, without limitation, shares of capital stock of NYMEX Holdings) shall be paid and applied in the following order of priority:

(1) first, to the Exchange in full satisfaction of any amounts due to the Exchange including, but not limited to, booth fees, office rent, phone charges and outstanding balances (principal and accrued interest) on notes guaranteed pursuant to Rule 2.56 ("Exchange Financed Class A and COMEX Memberships");

(2) second, pro rata to the payment of such Class A Member's primary clearing member and secondary clearing members, if any, of all claims filed in accordance with the requirements of Rule 2.51 ("Procedure for Transfer of Membership") for losses arising from the clearance of trades executed by the guaranteed Class A Member;

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(2) third, the remaining balance, if any, pro rata to other Members on allowed claims arising out of transactions in Exchange futures and options contracts and/or any other Exchange business of such Members, pro rata; provided that no partner shall share in the proceeds in the sale of a membership of one of his partners until all claims of other Members have been satisfied in full;

(3) fourth, the remaining balance, if any, to the payment of any claims made by entities or persons who have financed the purchase of the membership provided that documentation regarding such purchase was filed with the Membership Department prior to the financing of such purchase; and

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(4) fifth, the balance, if any, to the Member whose membership was sold or to his legal representative, except that, notwithstanding any other provision of the By-Laws or Rules, for purposes of this subsection (5) the term Member shall not include lessees, but shall mean the beneficial owner of such membership. (Section 861 Adopted 08/03/94)

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Section 862. REINSTATEMENT OF SUSPENDED MEMBER

(A) A Member suspended under By-Laws Section 852, 853 or 855 may apply for reinstatement at any time prior to the sale of his membership.

(B) When a Member applies for reinstatement, he shall deliver to the President a schedule of all of his creditors, a statement of the amounts owed, the nature of the settlement by which claims of a creditor were paid, and such other information as the President may request.

(C) Written notice of the time and place of the meeting of the Board at which the application for reinstatement is to be considered shall be sent to the suspended member and to the other Members, not less than five (5) days prior to the meeting.

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(D) The vote of a majority of the Board present and voting is required to reinstate the suspended Member. However, where a Member has failed to give timely the notice required by By-Law Section 851, a vote of two-thirds of the entire Board is required to reinstate the suspended Member.

(E) If a Member suspended under this Article 8 of the By-Laws is not reinstated within one (1) year from the date of his suspension, such Member may not be reinstated. (Section 862 Adopted 08/03/94)

+Section 863. DEATH OF A MEMBER

Upon receiving due notice of the death of a Member, the President or his designee shall announce such death to the other Members and shall post a notice of such fact on the floor of the COMEX Division for five (5) days. Any Member holding open futures or options contracts for such deceased Member shall liquidate such open futures or options contracts in accordance with the provisions of By-Law Section 857. (Section 863 Adopted 08/03/94)

**ARTICLE 9
DEFINITIONS**

Section 914. DIRECTORS

The term "Directors" shall mean the members of the Board.

Section 912. EXCHANGE

The term "Exchange" shall mean the New York Mercantile Exchange, a corporation organized and existing under the Delaware General Corporation Law and consisting of the NYMEX Division and the COMEX Division, and any successor thereto. (Section 912 Adopted 08/03/94)

Deleted: Not-For-Profit Corporation Law of the State of New York

Section 927. NYMEX HOLDINGS

The term "NYMEX Holdings" shall mean NYMEX Holdings, Inc., a Delaware corporation, and any successor thereto.

Section 925A. PUBLIC OR INDEPENDENT DIRECTOR

The term "Public or Independent Director" shall mean individuals who are not Members or employees of the Exchange and who qualify and serve in accordance with the certificate of incorporation of NYMEX Holdings.

ELECTION AND CLASSIFICATION OF MEMBER DIRECTORS

Each Member Director shall be a member of the NYMEX Board of Directors and shall be elected at an annual meeting of NYMEX to serve a term of three years until the third annual meeting of NYMEX after his election and until his successor is elected and qualified. (Section 304 Adopted 08/03/94)

Section 305. APPOINTMENT AND QUALIFICATION OF PUBLIC DIRECTORS

Public Directors shall be public directors of the NYMEX Board of Directors. Public Directors shall hold office for a term of two (2) years to expire after the first meeting of the Board after the second annual meeting of NYMEX following such appointment. (Section 305 Adopted 08/03/94)

Section 306. [Intentionally Omitted]

, other than the Chairman of the Board,

The Chairman of the Board may resign at any time by tendering written notice of his resignation to a quorum of the Board

(B) In the event of the refusal, failure, neglect or inability of a Director, other than the Chairman or the Vice-Chairman, to discharge his duties, or for any cause adversely affecting the best interests of the COMEX Division, or if a Director, other than the Chairman or Vice-Chairman, shall absent himself from three successive regular or special meetings and fail to justify such absences to the satisfaction of the Board, the Board shall have the power to remove such Director by an affirmative vote of the Directors provided there is a quorum of not less than a majority present at the meeting (regular or special) at which such action is taken.

(C) In the event of the refusal, failure, neglect or inability of the Chairman or the Vice-Chairman to discharge his duties, or for any cause adversely affecting the best interests of the COMEX Division, or if the Chairman or the Vice-Chairman shall absent himself from three successive regular or special meetings and fail to justify such absences to the satisfaction of the Board, the Board shall have the power to suspend such Chairman or Vice-Chairman by an affirmative vote of the Directors provided there is a quorum of not less than a majority present at the meeting (regular or special) at which such action is taken. If the Board suspends a Chairman or Vice-Chairman pursuant to this By-Law Section 307(C), it shall call a Special Meeting of Members to be held within 30 days of such suspension, to vote on the removal or the termination of the suspension of such Chairman or Vice-Chairman. A Chairman or Vice-Chairman suspended pursuant to this By-Law Section 307(C) shall have no rights or privileges of a Director during the period of suspension.

(D) In the event any Director other than a Public Director ceases to be a NYMEX Division Member, he shall be deemed to have automatically resigned from the Board. (Section 307 Adopted 08/03/94)

(C) Notice of a meeting may be given in writing, by telephone or by other means of communication and shall be effective when so given. No special meeting may be called on notice of less than one hour. Notice of a meeting shall be given to the Chairman and Vice Chairman of the COMEX Governors Committee. Notice of any meeting may be waived by a Director or the Chairman or Vice Chairman of the COMEX Governors Committee in writing or by his attendance at a meeting without protest of the lack of notice to him either before, or at the commencement of, the meeting.

(D) Notice of a Regular Meeting need not specify the purpose of any meeting.

(E) Notice of a Special Meeting shall specify the purpose of such meeting.