

**PROPOSED AMENDED VERSION OF NYMEX, INC. RULEBOOK CHAPTER 9
("CLEARING RULES")**

Note: Important Note

As of May 16, 2003, this chapter governs the processing and clearing of COMEX Division transactions as well as NYMEX Division transactions. In addition, as of May 16, 2003, all bylaws and rules of the COMEX Clearing Association are no longer in force or effect.

Furthermore, as of ____, 2005, this chapter also governs the processing and clearing of NYMEX Europe Limited transactions.

9.00 NYMEX Europe

- (A) For purposes of these Chapter 9 rules and except as otherwise noted within a particular rule, references to requirements, conditions or procedures applicable to NYMEX or the NYMEX Division shall be read to include NYMEX Europe Limited within such NYMEX or NYMEX Division requirements, conditions or procedures.
- (B) The Exchange, in relation to providing clearing services to NYMEX Europe Limited for transactions on that exchange, will provide reports to NYMEX Europe Limited as necessary and will provide such other information to NYMEX Europe Limited as may be required for its business and regulatory operations.
- (C) In connection with providing clearing services for trading activity on NYMEX Europe Limited, a Clearing Member shall be by this Rule 9.00 bound by all applicable rules of NYMEX Europe Limited ("NYMEX Europe Rules") from time to time:
 - (1) governing the formation and allocation of contracts in respect of products admitted to trading on NYMEX Europe Limited's market ("NYMEX Europe Contracts"), and
 - (2) to the extent only that they relate to Designated Non-Members (as defined in the NYMEX Europe Rules) and Clearing Members who are members of NYMEX Europe Limited, NYMEX Europe Limited's default rules and rules governing default procedures in respect of NYMEX Europe Contracts;

and acknowledges that it is accordingly subject to the NYMEX Europe Rules in entering into any such NYMEX Europe Contract.

9.00A Liability of Exchange

- (A) A Clearing House shall be maintained and operated under the Bylaws and Rules of the Exchange, for the purpose of clearing all trading of members on, or subject to the Bylaws and Rules of, the Exchange.
- (B) Wherever these Rules create a right in favour of the Clearing House, or impose a liability on the Clearing House, it shall be construed as the right or liability of the Exchange and shall be enforceable by or against the Exchange.

- (C) The Exchange, the Clearing House, and the Clearing House Committee assume no liability in any clearing transactions, so far as fraudulent warehouse receipts are concerned, or the failure of insolvency of banks, or depositories.
- (D) In connection with the clearing of certain over-the-counter transactions in Exchange-designated pari-mutuel auctions, the Exchange may determine to facilitate the clearing of such transactions by establishing only for operational purposes one or more Exchange Clearing Member numbers and/or processing accounts. Notwithstanding the establishment of any Clearing Member number or account, the Exchange shall not be subject to the duties, obligations and requirements imposed upon Clearing Members under Exchange bylaws and rules.

9.01 Direction of the Clearing House

The general direction of the Clearing House and its operation shall be under the jurisdiction of the Clearing House Committee, subject to the approval of the Board. The President of the Exchange shall be Manager of the Clearing House, subject to the direction of the Clearing House Committee.

9.02 Membership in the Clearing House

- (A) Any Member Firm may, with the approval of the Clearing House Committee and the Board, become a member of the Clearing House in the manner hereinafter set forth, provided:
 - (1) that the applicant must have such business integrity and financial responsibility as to justify the Clearing House in assuming the risk involved in the clearing of the applicant's trades;
 - (2) that a bona fide office can be continuously maintained in the City of New York and a bank account maintained with a bank in the City of New York acceptable to the President. A Clearing Member not having an office in the City of New York may satisfy the condition respecting a bona fide business office in the City of New York: A) by designating another Clearing Member or member of the Exchange having a bona fide business office in the City of New York to act for it in all matters requiring action by a Clearing Member under the Bylaws and Rules of the Exchange and to receive on its behalf all notices or other communication including legal process in connection with Clearing House and/or Exchange transactions, such designation to be in form satisfactory to the Clearing House Committee; or B) presenting a plan for a "remote clearing solution" to the Clearing House Committee and having such plan approved by the Clearing House Committee. The Clearing House Committee may adopt rules, subject to the approval of the Board, respecting the nature of the office to be maintained in New York by a Clearing Member as well as the conditions to be complied with by a Clearing Member not having an office in the City of New York.

The Board, upon receipt of any application and report from the Clearing House Committee, shall either approve or disapprove the applicant and, if approved,

the applicant shall be admitted to membership in the Clearing House. If disapproved the applicant shall not be permitted to file another application for a period of one year from the date of notice of disapproval.

- (B) The application shall be accompanied by a written document guaranteeing to the Clearing House the assumption of responsibility for any and all futures trades made in the name of the applicant or his qualified floor traders and accepted by the Clearing House. Any qualified member or members so approved can be guaranteed by only one Clearing Member but may act as a floor broker for other Clearing Members.
- (C) Said guaranteeing document, in the case of a partnership or corporation, shall be signed by the Exchange member of the partnership or corporation.
- (D) In the case of a corporation, the guaranteeing document shall be accompanied by a copy of the resolution of the Board of the corporation authorizing the guarantee required by this Rule duly certified by the Secretary or the principal officer of the corporation.
- (E) Any lawfully formed and conducted cooperative association of producers, within the meaning of the Commodity Exchange Act, which is engaged in any cash commodity business, having adequate financial responsibility may become a member of the Clearing House on the same terms and conditions as a corporation.
- (F) Applications for membership in the Clearing House shall be accompanied by the applicant's balance sheet prepared and certified to by a certified public accountant and sworn to as to the substantial accuracy by the applicant whose signature shall be acknowledged. The balance sheet of the applicant shall show a working capital (as defined in Rule 9.23) of not less than \$5,000,000.
- (G) Members of the Clearing House shall have the privilege of designating members of the Exchange as qualified floor traders in addition to their regular representative members. Such qualified floor traders must be guaranteed by the Clearing Member and subject to the approval of the Clearing House Committee.
- (H) All applicants prior to their election to membership in the Clearing House shall sign a statement that if approved, they will observe and be bound by the Clearing Rules of the Exchange and all amendments subsequently made thereto.
- (I) The President shall refer to the Clearing House Committee for its consideration the application and supporting documents after the President is satisfied that the financial requirements have been met.
- (J) Where a Clearing Member guarantees more than six qualified floor traders he shall have, in addition to the capital required for each Clearing Member, an additional \$50,000.00 of working capital for the guarantee of each qualified floor trader in excess of six.
- (K)
 - (1) A corporation that is wholly owned by one member may be granted membership in the Clearing House provided that the provisions of this

subsection have been met. The corporation must be a Member Firm upon which member privileges have been conferred by the owner of the Member Firm, or by the owner and a lessee leasing a membership from the owner of the corporation. The owner of the Member Firm must own both memberships. The lease agreement, if any, shall provide that the lease agreement shall terminate immediately upon the failure of the Member Firm to meet its obligations to the Exchange or its Members and that the membership shall be available to satisfy such obligations. The member firm must have and maintain \$250,000 working capital; and the obligations of the Member Firm to the Clearing House must be guaranteed by its owner. Such a Member Firm will be permitted to Clear trades executed by or for the account of the owner and to qualify only the owner. The Member Firm may not qualify, clear or guarantee the trades of a lessee who confers membership privileges upon the corporation. The Member firm must maintain at all times at the Clearing House original margin deposit of \$100,000 regardless of lesser applicable margin requirements. The Member Firm must file with the Exchange financial statements as follows: a certified financial statement within ninety (90) days of the close of its fiscal year and quarterly financial statements within forty five (45) days of the close of each fiscal quarter other than the last fiscal quarter.

- (2) In the event that a claim(s) against the lessee aggregating in excess of \$10,000 is (are) asserted, pursuant to any available means, the Member Firm shall, within two business days of the assertion of such claim, liquidate or transfer all positions cleared on the books of the Member Firm and cease doing business as a Member Firm; provided, however, that such action need not be taken if, within two business days of the assertion of a claim, the owner of the Member Firm deposits and maintains with the Clearing House \$300,000 original margin in addition to the margin requirements of this Section (K) to satisfy any and all claims that may be raised against the Member Firm or its owner and within thirty calendar days of such claim, the privileges of another membership owned by the owner of the Member Firm are conferred upon the Member Firm. On the effective date of the substituted conferred membership privileges, the \$300,000 additional original margin may be returned to the owner of the Member Firm. The original leased membership shall remain available to satisfy the claims, if valid, against the lessee.
- (3) In the event that a claim(s) against the Member Firm aggregating in excess of \$10,000 is (are) asserted, pursuant to By-law 857, Rule 2.51, or Rule 5.19 or, if by the Exchange pursuant to any available means, the lessee who has conferred the privileges of a leased membership on the Member Firm shall, within two business days, liquidate all positions held by or on his behalf and shall cease doing business as a Member of the Exchange; provided, however, that such action need not be taken if, within two business days:
 - (a) the lessee demonstrates that he owns or leases more than one membership; or
 - (b) the lessee, lessor or Member Firm deposits with the Exchange a Certified check, payable to the Exchange, in an amount equal to the higher of the price at which a Membership was last sold or at which a membership was

offered and acknowledges that such funds shall be available to satisfy any and all valid claims against the lessee.

Provided, further, that in the event that the lessee continues to do business pursuant to the provisions of (a) or (b) above, the leased seat shall be available to satisfy any valid claims against the Member Firm.

- (L) Each member who is a proprietor of a corporation or partnership which is a member of the Clearing House, pursuant to Section (K) of this Rule or otherwise, and as its principal business clears the trades of its proprietors in the house account shall guarantee to the Exchange, its members and member firms in a form and manner acceptable to the Exchange, the full and prompt payment of any and all obligations arising out of Exchange transactions made by or on behalf of such member. As used in this Section (L), the term proprietor shall mean an officer, director, or owner or controller of ten percent (10%) or more of the common or stock of a corporation or a general or limited partner of a partnership.

9.03 Guaranty Fund

(A) Contributions

Each Clearing Member shall deposit, and keep deposited, with the Exchange the amount prescribed in Section (B) as a contribution to the Guaranty Fund. The monies, securities, and instruments so deposited shall collectively constitute a fund known as the "Guaranty Fund" and shall be used as provided in the Rules to reimburse the Exchange for any loss sustained by the Exchange as a result of the failure of any Clearing Member to discharge his obligations in accordance with the Rules.

(B) Schedule of Contributions

The amount required to be deposited by each Clearing Member shall be calculated as follows:

- (1) Dual Division Members: The aggregate of 10% of the firm's modified capital, calculated independently for each Division, as defined in Rule 9.20(A)(1) and based on the most recent financial statement submitted to the Exchange, with a maximum contribution of \$4 million.
- (2) Sole Division Members: 10% of the firm's modified capital, as defined in Rule 9.20(A)(1) and based on the most recent financial statement submitted to the Exchange, with a minimum contribution of \$100,000 and a maximum contribution of \$2 million.

The amount deposited shall be in the form of cash or securities issued by the Department of the Treasury of the United States maturing within ten (10) years of the date of the deposit and guaranteed as to principal and interest by the United States government valued at ninety-five percent (95%) of par value.

(C) Custody

- (1) The Guaranty Fund shall be deposited in a special account in the name of the Exchange in such depositories in the City of New York as may be designated by the Board.
- (2) The Board shall be empowered to invest and reinvest all or part of the funds constituting the Guaranty Fund in direct obligations of the United States and/or to deposit said funds at interest. Such investments and deposits shall be at the risk of the Exchange. All net income and gains on such investments and interest on such deposits shall belong to the Exchange and shall be withdrawn from the Guaranty Fund and deposited with the general funds of the Exchange.

(D) Impairment

If the Guaranty Fund or any part thereof be lost or become unavailable from any cause other than the default of the depositing Clearing Member, the amount so lost or made unavailable shall be forthwith restored by transferring thereto all of the surplus of the Exchange that may be necessary, except such amount as the Board may, in its discretion, decide to retain as surplus for future operating expenses, and if the amount thus transferred from surplus be not sufficient to cover the entire loss, the balance of such loss shall be made up by an assessment in equal shares upon each of the Exchange members. Such assessment shall be paid to the Exchange immediately (but in no case to exceed one business day) after notice in writing thereof shall have been mailed to each of the Exchange members.

(E) Surrender of Guaranty Fund Deposit

After a Clearing Member ceases to be a Clearing Member of the Exchange and after all obligations of such member to the Exchange shall have been discharged in full, the amount of the Guaranty Fund that to which such Clearing Member is entitled shall be returned. Any expense, including counsel fees, incurred by the Exchange in connection with a Clearing Member's deposit or the return thereof, may be charged to the Clearing Member.

9.03A Use of the Guaranty Fund

- (A) The Exchange may at any time and from time to time assign, pledge, repledge or otherwise create a lien on or security interest in, the Guaranty Fund and/or the cash, securities and other property held in the Guaranty Fund to secure the repayment of funds borrowed by the Exchange (plus interest, fees and other amounts payable in connection therewith).
- (B) Any such borrowing shall be on terms and conditions deemed necessary or advisable by the Exchange (including the collateralization thereof) in its sole discretion, and may be in amounts greater, and extend for periods of time longer than the obligations, if any, of any Clearing Member to the Exchange for which such cash, securities or other property was pledged to or deposited with the Exchange.
- (C) Any funds so borrowed shall be used and applied by the Exchange solely for the purposes for which cash, securities and other property held in the Guaranty Fund are authorized to be used pursuant to Exchange Bylaws and the Rules; provided that the

failure of the Exchange to use such funds in accordance with this Section (C) shall not impair any of the rights or remedies of any assignee, pledgee or holder of any such lien or security interest.

- (D) Cash, securities and other property held in the Guaranty Fund shall remain the property of the respective Clearing Members depositing such cash securities and other property, except that:
- (1) such property shall be subject to the rights and powers of the Exchange with respect thereto as set forth in Exchange Bylaws, the Rules, and any agreements between any Clearing Member and the Exchange; and
 - (2) such property shall be subject to the rights and powers of any person to which the Guaranty Fund or any cash, securities or other property held therein shall have been assigned, pledged, repledged or otherwise subjected to a lien or security interest.

9.04 Clearing Procedure

- (A) Allocation of trades to Clearing Members
- (1) Executing Floor Members shall, no later than one hour after the Exchange has entered initial trade information in relation to any trade into the Trade Management System (TMS), submit to the Exchange such allocation information as may be prescribed by the Board, including (but not limited to) customer account number, Clearing Member number and customer type indicator code.
 - (2) Tardy submission of allocation information shall constitute grounds for a fine to be issued by designated Floor Department Staff or, where determined as appropriate by the Business Conduct Committee, as grounds for formal disciplinary action under Chapter 8 of the Rules.
 - (3) Fines for the failure to submit allocation information shall be levied by the President in amounts as the Board, by resolution, may prescribe from time to time.
 - (4) Each Floor Member, prior to the earliest opening of trading in a contract in which that Floor Member traded the previous trading day, and at regular intervals during the trading day, shall be responsible to review TMS for email messages from customers and Clearing Members as to the proper allocation of trades.
 - (5) On the day of the expiration of an option contract, Clearing Members shall be required to have a representative available, during the times specified by the President or his designee, to review Clearing House Reports and to make any adjustments thereto.
- (B) Submission of Position Change Statements

Each Clearing Member shall no later than such time as the Board may prescribe from time to time on each trading day submit a Position Change Statement to the Exchange

setting out the information required by this form and any other informational requirement that the Board may establish from time to time.

(C) Separate Position Change Statements for House and Customer Accounts

Clearing Members having trades for their own account and for customers' accounts shall file two Position Change Statements, each properly designated and setting out the Clearing Member's own trades and the customers' trades.

(D) Exchange Not Liable for Inaccurate Position Change Statements

All clearing data reported to the Exchange by a Clearing Member following the completion of the operational procedures prescribed by the President shall be deemed accepted by the Clearing Member and the Clearing Member shall waive any claim against the Exchange based upon inaccurate or erroneous data appearing on said Clearing House Reports.

(E) Margin

At times and under procedures established by the Board each Clearing Member shall deposit with the Exchange required variation and original margin in such form as is acceptable to the Exchange. The Exchange in like manner shall pay each Clearing Member such amounts as are due such Clearing Member. The amount of margin payable to or by the Exchange on each trading day shall be calculated on the basis of the open trades allocated to that Clearing Member at the end of the previous trading day as stated in its Position Change Statement as adjusted by any position transfers or trade transfers made before the relevant margin call.

(F) Payments for Original Margin

Each Clearing Member, at the time when payments are due to the Exchange as aforesaid, shall have deposited with the Exchange payment, in such form as is acceptable to the Exchange, for any original margin that may be required, as prescribed in these rules.

(G) Daily Settlement

When a Clearing Member is long or short any amount of commodity futures and options contracts at the end of the day, as indicated by his Clearing Sheet, settlement shall be made with the Clearing House to the settlement price or premium for that day, and such Clearing Member shall pay to, or collect from, the Clearing House any debit or credit, as the case may be, represented by the difference between the price or premium at which the contract was bought or sold, and the settlement price or premium of the commodity for that day. After making such settlement with the Clearing House such Clearing Member shall be deemed long or short such commodity and option, as the case may be, at the settlement price of the day.

(H) Clearing Sheets

On each trading day ("T+1") following a trading day ("T"), the Exchange shall make available to each Clearing Member, a Clearing Sheet for each Clearing Member's House and Customer accounts in such form as the Board will from time to time

determine, confirmation of the trade and position data contained in that Clearing Member's Position Change Statement submitted in respect of T, together with:

- (1) the amount due to or from such Clearing Member on account of all its adjusted trades;
- (2) the total amount of margin due to or from such Clearing Member in respect of trades made on T; and
- (3) the total amount of premiums due to or from such Clearing Member in respect of options entered into on T.

(I) Reporting of Disputed Trades

Disputed trades shall not appear on any Clearing Sheet prior to the settlement of such disputes.

(J) Deposit for Debit Balance

If any Clearing Sheet of a Clearing Member shows a debit balance such Clearing Member shall pay such balance to the Clearing House in accordance with procedures and in such form as the Board shall specify.

(K) Refund for Credit Balance

If any Clearing Sheet of a Clearing Member shows a credit balance, after the Clearing House has had an opportunity to verify balances on members' Clearing Sheets, the Clearing House will pay such balance in accordance with procedures and in such form as the Board shall specify.

(L) Separate Deposits and Refunds for House and Customer

Clearing Members shall pay to the Clearing House separate settlement deposits for settlement of trades for: (1) Clearing Members' own accounts, their customers' segregated accounts, and (3) customers' non-regulated accounts; likewise the Clearing House shall issue separate refunds to Clearing Members for: total credit balances on (1) the member's own trades, customers' segregated trades, and customers' non-regulated trades.

(M) No change in records of any kind submitted to the Clearing House shall be made unless approved by the Exchange after written application thereof by the Clearing Member is made to the Exchange, stating the reason for such change.

(N) Penalties imposed under this section shall not be subject to the provisions respecting procedures for disciplinary proceedings.

(O) Concurrent Futures Positions

- (1) Concurrent long and short futures positions in the current delivery month may not be offset by netting, transfer, expit, adjustment or any other bookkeeping procedures, but each side must be offset by normal floor transactions in accordance with Exchange Rules. Provided, however, that a Clearing Member will be exempt from this requirement if: (i) one side of the concurrent position

is established the business day prior to the date that the offset memoranda are filed with the Clearing House; (ii) a Clearing Member filing such offset memoranda can satisfy the Exchange at its request that the delay in effecting the offset is attributed to an error in the filing of its Position Change Statement.

- (2) For the purposes of this Rule 9.04(P), the current delivery month for energy futures contracts commences on the opening of trading on the third business day prior to the termination of the respective futures contract, including the termination date. The current delivery month in platinum and palladium commences on the tenth (10th) business day prior to the first business day of the delivery month.

9.04A NYMEX ClearPort(sm) Clearing: Use of EFS and EFP Procedures for Trade Submission

- (A) Scope of this Rule. This rule governs transactions not executed on the Exchange ("Transactions") that are submitted to NYMEX via NYMEX ClearPort(sm) Clearing for clearing in connection with a contract that is listed for clearing only or listed for trading and clearing on the Exchange. None of the provisions of this rule govern transactions submitted to clearing that have been executed in an over-the-counter pari-mutuel auction, which are instead governed by the terms of Rule 9.40C. In submitting a transaction to NYMEX ClearPort(sm) Clearing or in allowing a transaction to be submitted to the Exchange to NYMEX ClearPort(sm) Clearing, the two parties to the Transaction shall be deemed to have mutually agreed to initiate a process to substitute their transaction for a standardized futures contract listed for clearing only or listed for trading and clearing on the Exchange. For purposes of this rule, the two principals in the transaction shall be referenced as the "Parties to the Transaction."
- (B) Transactions: Compliance with Regulatory Exemptions and Exclusions. Each of the Parties to the Transaction shall be responsible for ensuring that the Transaction complies with CFTC regulatory requirements as applicable for such transaction, including as appropriate compliance with the terms of a statutory exemption or exclusion under the Commodity Exchange Act from other CFTC regulation relied upon by the Parties to the Transaction.
- (C) Substitution of NYMEX Futures for the Transaction. The process of substitution of a NYMEX futures contract for a Transaction shall not be deemed to have been completed unless and until the Parties to the Transaction have successfully concluded the submission of the Transaction to the Exchange as an exchange of futures for physicals (EFP) or as an exchange of futures for swaps (EFS), as applicable, pursuant to the respective provisions of NYMEX Rule 6.21 or Rule 6.21A and the provisions of this rule. For forward transactions involving deferred delivery of the physical commodity to be submitted to the Exchange, the Parties to the Transaction shall utilize the EFP procedure, and for swap transactions to be submitted to the Exchange, the Parties to the Transaction shall utilize the EFS procedure.
- (D) Trade Submission Procedures. All transactions submitted to the Exchange pursuant to this rule must be submitted in accordance with the procedures established by the Board of Directors for this purpose, as amended from time to time. The Parties to the Transaction and any OTC Broker authorized to submit executed transactions on their

behalf to the Exchange and authorized for related activities shall be exclusively responsible, both individually and jointly, for accurately confirming the details of the Transaction to the Exchange. Once submitted, all such transactions, subject to the rules for trade adjustments set forth in Section (G) of this Rule, shall be deemed final. Neither the Exchange nor a Clearing Member carrying the account of either party will have any responsibility in the confirmation of trade terms for the EFP or EFS transaction.

- (E) Registration of Eligible Participants, Eligible Accounts and Authorized OTC Brokers. Each Clearing Member must register with the Exchange in the manner provided any customer authorized by the Clearing Member to submit transactions to the Exchange pursuant to this rule, and must also register with the Exchange the applicable account numbers for each such customer. For each such account, the Clearing Member carrying that account also must submit to the Exchange in the manner provided the name of any OTC Broker(s) who has registered with the Exchange for services provided by the Exchange, and who is authorized by the customer to act on its behalf in the submission of executed transactions to the Exchange and related activity. For any such OTC Brokers authorized by the customer and submitted to the Exchange by the Clearing Member, such submission by the Clearing Member will not constitute an endorsement or ratification of the customer's authorization of the OTC Broker. Moreover, submission of OTC Brokers authorized by the customer will not mean that the Clearing Member is in privity with, has a relationship with and/or is otherwise standing behind any of the customer's authorized OTC Brokers, and the Clearing Member will have no responsibility for any such OTC Brokers selected by the customer and no duty or obligation to supervise the activities of any such OTC Brokers.
- (F) Establishment of Authorized Commodities and Total Risk Value. For each account number that has been registered with the Exchange pursuant to Section (E) of this rule, a Clearing Member also must input into the Exchange's Risk Allocation Value "E-RAV" system authorization indicating the specific commodities for which a Transaction may be submitted to the Exchange pursuant to this rule and the risk value(s) assigned by the Clearing Member for Transactions for that account.
- (G) Trade Deletion Procedures for Transactions Submitted via NYMEX Web Interface. Following submission of the trade details to the web interface by an OTC Broker (or by Exchange staff as mutually agreed by the Parties to the Transaction), an e-mail will be transmitted to the Parties to the Transaction notifying them that they have been listed as counterparties in a Transaction that has been submitted to the Exchange. Following such submission, a buyer or seller may not unilaterally reject the trade terms previously submitted to the Exchange. However, in order to correct an error resulting from the good faith actions of the OTC Broker or Exchange staff, as applicable, and upon mutual consent of the Parties to the Transaction, an OTC Broker or Exchange staff, as applicable, may void the transaction provided, however, that this void response is received by the Exchange within sixty (60) minutes of the time of the initial submission of the transaction to the Exchange.

Following the posting of the transaction on the Exchange, the Parties to the Transaction shall have no recourse or remedy under Exchange rules and procedures against any OTC Brokers and/or Clearing Members in connection with that transaction

and instead would need to pursue such private remedies as would be otherwise available under existing law.

- (H) Entry of Clearing Orders. For a Transaction submitted to the Exchange pursuant to this rule, such transaction first will be routed to the Exchange's E-RAV Credit Check system. The time of entry of a Clearing Order into the Exchange's E-RAV system will be recorded by the system and will be used by the Exchange as the time that an E-RAV Credit Check was conducted pursuant to Section (I) below.
- (I) Use of E-RAV Credit Check System. The Exchange will conduct an E-RAV Credit Check for each Clearing Order. The E-RAV Credit Check will confirm whether the Clearing Member carrying that account has authorized that account for transactions submitted pursuant to this rule in the commodity involved in the Clearing Order, and confirm whether the entry of the Clearing Order into clearing would fall within the OTC risk value(s) established by the Clearing Member.

At all times until both Clearing Orders have successfully cleared the E-RAV Credit Check, a transaction submitted to the Exchange pursuant to this rule shall remain as an uncleared, bilateral OTC transaction wherein the Parties to the Transaction continue as principals in that transaction.

In the event that either Clearing Order is rejected as a result of the E-RAV Credit Check test, the EFS or EFP procedure would be deemed to have been terminated, and the Parties to the Transaction and their respective Clearing Members would be informed accordingly. Thereafter, any determination as to further action with respect to the OTC Transaction would be resolved by the Parties to the Transaction independently of the their Clearing Members and/or the Exchange.

- (J) Trade Submission Deadlines. Transactions that are submitted, confirmed and accepted for clearing, as further provided by Section (K) of this rule, prior to 2:30 p.m. Eastern Standard time on an Exchange business day will be included by the Exchange for clearing for that business day. The Exchange reserves the right to modify these business hours without notice at any time. The hours for electronic submission via the NYMEX website shall be from 7:00 p.m. Sunday evening through 2:30 p.m. Friday afternoon, except for the period from 2:30 p.m. to 3:15 p.m. (Monday-Thursday). The NYMEX facilitation desk will be available to assist users from 7:30 a.m. to 5:00 p.m. (Monday-Friday.)
- (K) Clearance by Both Clearing Orders of Credit Check. Upon clearance by both Clearing Orders of the E-RAV Credit Check, the transaction shall be deemed to have been accepted for clearing and will be routed automatically to the Exchange's clearing system. Consequently, the EFS or EFP procedure also shall be deemed to have been completed, and futures contracts thereafter will effectively be substituted for the Transaction that is thus extinguished between the Parties to the Transaction.

Notwithstanding the above, a Clearing Member also shall be responsible for accepting and clearing a position for a Clearing Order entered into the Exchange's clearing system for clearing following any non-operation of the Exchange's E-RAV Credit Check functionality for the applicable account carried by the Clearing Member.

9.04B Use of E-RAV Risk Filter for Trading on Specified Exchange Alternative Electronic Trading Systems

- (A) For the purposes of this rule, the term "Alternative Electronic Trading System" shall mean any electronic trading system other than NYMEX ACCESS® on which NYMEX Division or COMEX Division products are traded, but not including GLOBEX(r). (A) No order for a contract traded on an Alternative Electronic Trading System ("AETS contract") may be accepted for entry into such system unless and until the Clearing Member has input electronically to the AETS system, or related Exchange systems as may be specified by the Exchange, the following required information:
- (1) the account number;
 - (2) the contracts approved for trading for that account;
 - (3) with respect to trading on an AETS, the Risk Allocation Value for that account using the Exchange's enterprise risk allocation value system ("E-RAV"); and
 - (4) in addition to the Risk Allocation Value, setting net short and net long position limits for each contract permitted by the Clearing Member for that account.
- (B) The E-RAV risk filter does not apply to trading activity for the Regular Trading Hours session or trading activity for the NYMEX ACCESS® trading session. Trading on NYMEX ACCESS® is governed by a separate and distinct risk filter.
- (C) With respect to an AETS, the E-RAV dollar limit for a given customer account permitted by the Clearing Member for trading on such a system will not be used by the AETS as part of the risk filter for that system. Instead, the AETS will only utilize the net long and net short position limits set by the Clearing Member for each contract permitted for that customer, and Clearing Members should set such position limits accordingly.
- (D) A Clearing Member may modify at any time by electronic input in the manner provided to the Exchange the information required by Section (A).
- (E) A Clearing Member agrees unconditionally to accept and to clear all trades executed for that account for which it has input information pursuant to Section (A), regardless of malfunction or non-operation of the Exchange's contracts order filter functionality, the Risk Allocation Value order filter functionality, and/or the position limit functionality.
- (F) Following input of the information required in Section (A) above for any account, an order for such account may be executed by or on behalf of the User for such system.
- (G) Notwithstanding Section (F) above, the Exchange, as provided by Rule 8.99A ("Summary Procedures for Denial of Access") shall have the right without limitation at any time to terminate a User's passwords and access to the AETS.

9.05 Margins

It shall be incumbent upon each Clearing Member that his trades and trades of his customers be margined up to the time of the acceptance of such trades by the Clearing House.

(A) Original Margin

Original margin shall be paid on Exchange commodity transactions in such form as determined by the Board of Directors. Original margins may be changed at the discretion of the Board. Such margins shall be paid to the Exchange within the time limits prescribed by the President.

(B) Variation Margins

The President of the Exchange, at any time during the day, may call for variation margins to meet the variations in the market. Such margins shall be paid to the Exchange within the time limits prescribed by the President.

(C) Additional and Advance Margin

In the President's discretion if the protection of the Exchange so requires, the President may call for additional original margin from any one or more Clearing Members in such forms, and at such times as the President may specify. The President may lower the margins that were increased when the Exchange no longer requires the protection of increased margins.

(D) Straddle Margins

(1) Futures Straddles

A Clearing Member carrying an account which has both a long and a short futures position with the Clearing House in a particular commodity, in the same or different contracts but in no event for the same delivery month of the same contract, may treat such long and short positions to the extent they are equal in quantity as a futures straddle. Each trade comprising a straddle shall be subject to separate brokerage and clearing charges. Initial margins deposited shall be the higher required for either trade or trades and when so deposited shall be sufficient for both trades but each trade shall be brought to the settling price, daily. When one trade of a straddle transaction is closed out all the remaining trade or trades that comprise the straddle must have the required original margin deposited with the Clearing House.

(2) Options Straddles

A Clearing Member carrying an account which has both (1) a short call option and a long call option; (2) a short put option and a long put option; (3) a long put option and a long call option; or (4) a short put option and a short call option, in a particular commodity, but in no event for the same series, may treat

such positions to the extent they are equal in quantity as an options straddle. Each trade comprising a straddle shall be subject to separate brokerage and clearing charges. Original margins deposited shall be the higher required for either trade or trades and when so deposited shall be sufficient for both trades but each trade shall be brought to the settling price, daily. When one trade of a straddle transaction is closed out all the remaining trade or trades that comprise the straddle must have the required original margin deposited with the Clearing House.

- (E) Clearing Members may meet original margin calls by depositing:
- (1) Cash (U.S. Currency);
 - (2) Original Margin Certificates issued by an original margin depository, in form acceptable to the Clearing House, for delivery to the order of the Clearing House, representing securities issued by the Department of Treasury of the United States of America maturing within ten (10) years from the date of the deposit and guaranteed as to principal and interest by the United States Government; such securities shall be valued at ninety five percent (95%) of the par value; or
 - (3) Subject to a maximum limit of 50% of the Clearing Member's total original margin obligations, Irrevocable Letters of Credit payable to the order of the Clearing House including such Letters of Credit that are deposited with the Clearing Member in accordance with Exchange procedures by a customer, in form acceptable to the Clearing House, issued by or confirmed by an original margin depository and having an expiration date of not less than three (3) or more than eighteen (18) months from the date of issuance; provided, however, that such Letter of Credit may not be used to meet original margin obligations during the fifteen calendar days prior to the expiration date thereof (if the fifteenth day prior to the expiration of the Letter of Credit is not a business day, the period during which such Letter of Credit may not be used to meet original margin obligations shall begin on the business day immediately preceding that day); and, provided further, that on the business day preceding the fifteenth calendar day prior to the expiration of the Letter of Credit, the Clearing House shall issue a call for original margin to be deposited in a form and manner acceptable to the Clearing House for positions held open as of the close of business on that day and margined by the Letter of Credit. The Clearing House shall have the unqualified right to call on any Letter of Credit at any time prior to expiration.
 - (4) Shares in a money market mutual fund that complies with CFTC Regulation §1.25 and that has been approved by the Board, subject to the following conditions:
 - (a) for purposes of original margin, such shares will be valued at 95% of market value; (ii) a Clearing Member's participation in any approved fund shall be limited to no more than 5% of that fund; and (iii) no more than 25% of the total assets of an approved money market mutual fund may be used to meet original margin obligations at the Exchange.

- (F) The Clearing House shall have the right, at all times, to prohibit or otherwise limit the use as original margin by any Clearing Member of letters of credit or of securities under this Rule.
- (G) The Clearing House shall retain the original margin deposited with respect to any futures contract against which a delivery notice has been issued until the business day after the delivery date or such date as designated by the Clearing House.
- (H) Customer Accounts with the Exchange
 - (1) Except as provided in subsection (2) below, all customer funds deposited with the Exchange shall be held in accordance with the Commodity Exchange Act and Commission Regulation 1.20 in an account identified as Customer Segregated. Customer funds shall be segregated by the Exchange and treated as belonging to the customers of the Clearing Member. Pursuant to this Rule, Clearing Members registered as Futures Commission Merchants shall not be required to obtain a segregated acknowledgment letter from the Exchange.
 - (2) Customer funds deposited with the Exchange for cleared transactions in over-the-counter pari-mutuel auctions may be deposited in either a member account or a customer non-regulated account. Neither account shall be treated as a customer segregated account.

9.06 Failure of Clearing Member to Deposit Margins

In the event of the failure of a member to deposit any margins as required, the President, with the approval of the Board, may close out all or any part of the trades in the best interest of the Exchange and the defaulting Clearing Member. Any loss resulting therefrom shall be the liability of the defaulting Clearing Member. Any Clearing Member whose trades are thus closed out shall be promptly notified thereof by the President.

9.07 Limit of Clearing House Losses

Losses to be borne by the Clearing House shall be limited to losses resulting from the substitution of the Clearing House under contracts between Clearing Members, or in the case of cleared transactions in over-the-counter pari-mutuel auctions, under contracts between NYMEX and a participant in such an auction that are given up for clearing.

The Clearing House shall not be liable for any obligations of a non-Clearing Member, nor for any obligation of a Clearing Member to a non-Clearing Member, nor for any obligation of a Clearing Member to another member of the Clearing House who is acting for him as broker.

9.08 Clearing House Not Liable to Customer

The Clearing House shall under no circumstances become liable to make deliveries to or accept deliveries from a customer of its Clearing Members, or in any way become

obligated to a customer by reason of any contract or, except as otherwise provided, to exercise any option or accept assignment of such exercise on behalf of a customer of its Clearing Member, made for the customer by a Clearing Member. Such customer must look to his Clearing Member or broker to make or accept all deliveries, to exercise or accept assignment of exercise, of any options contract for all settlements.

9.09 Clearing Fees

- (A) Charges for clearing trades shall be fixed by the Board upon the recommendation of the Clearing House Committee and shall be payable by Clearing Members as billed. All Clearing Fees shall be charged per contract bought, sold, delivered or accepted.
- (B) A minimum fee of \$200.00 per month shall be charged to Clearing Members.
- (C) Claims by Clearing Members for adjustments to clearing charges or fees shall be made to the Exchange within 90 days of the invoicing of such charges by the Exchange. The failure to claim adjustments within this period shall constitute a waiver of such claim by the Clearing Member; provided, however, that the Board of Directors, for good cause shown and following review by the Clearing House Committee, may authorize payment by the Exchange of a late claim for adjustment filed within 6 months of the invoicing of charges by the Exchange in excess of \$1,000. Any late claim for adjustment paid by the Exchange shall be subject to a 10% administrative fee that shall be deducted from such payment. No claim for adjustment will be considered that is filed later than 6 months after the invoicing of changes by the Exchange.

9.10 Trade Refused by Clearing House

When the President deems the financial condition of any Clearing Member as inadequate to carry any additional transactions he shall prohibit such Clearing Member from clearing any new transactions. Any such member may appeal from the decision of the President to the Board.

9.11 Transfer of Trades

Where a Floor Member enters into a trade for another Member, he shall file with the Clearing House within one hour a complete description of the trade, giving the name of the principal for whom he was acting as broker and on whose Clearing Sheet the transaction is to be cleared; he shall be liable as principal upon such trade until it has been accepted by the Clearing House for the account of his principal.

9.11A Give-Up Trades - Trades Executed by Open Outcry

In the absence of a give-up agreement whose terms and conditions govern the responsibilities/obligations of executing brokers, customers and Clearing Members, the following rules shall define the respective responsibilities/obligations of those parties to an order. The "executing broker", as used in this rule, is the registered billing entity, Member Firm or Floor Broker to whom the order is transmitted for transactions on NYMEX and the Floor Broker to whom the order is transmitted for transactions on NYMEX Europe.

(A) Responsibilities/Obligations of Clearing Members

- (1) **Limits Placed by Clearing Member.** A Clearing Member may, in its discretion, place trading limits on the trades it will accept for give-up for a customer's account from an executing broker, provided however, that the executing broker receives prior written or electronic notice from the Clearing Member of the trading limits on that account. Notice must be received by the executing broker in a timely manner. A copy of such notice shall be retained by the Clearing Member.
- (2) **Trade Rejection.** A Clearing Member may reject ("DK") a trade only if: (1) the trade exceeds the trading limits established under Section I(A) of this rule for that customer and it has been communicated to the executing broker as described in Subsection (A); or (2) the trade is an error for which the executing broker is responsible. If a Clearing Member has a basis for rejecting a trade, and chooses to do so in accordance with the provisions of Rule 2.21(B), it must notify the executing broker promptly.
- (3) **Billing.** Except in connection with brokerage fees incurred for transactions executed on NYMEX Europe (where Floor Brokers generally will directly collect brokerage fees from their customers), A Clearing Member otherwise will pay all floor brokerage fees incurred for all transactions executed by the executing broker for the customer and subsequently accepted by the Clearing Member by means of the ATOM system. Floor brokerage fees will be agreed upon in advance among the Clearing Member, customer and the executing broker.

(B) Responsibilities/Obligations of Executing Brokers

- (1) **Customer Order Placement.** An executing broker will be responsible for determining that all orders are placed or authorized by the customer. Once an order has been accepted, a broker or the broker's clerk must:
 - (a) confirm the terms of the order with the customer;
 - (b) accurately execute the order according to its terms;
 - (c) confirm the execution of the order to the customer as soon as practicable; and
 - (d) transmit such executed order to the Clearing Member as soon as practicable in accordance with Exchange Rules and procedures.
- (2) **Use of Other Persons.** Unless otherwise agreed in writing, the executing broker is allowed to use the services of another broker in connection with the broker's obligations under these rules. The executing broker remains responsible to the customer and Clearing Member under these rules.
- (3) **Executing Broker Responsibility for Verifying Clearing Member Authorization.** Prior to a broker accepting and executing an initial order for any

new customer account, the executing broker must confirm with the Clearing Member by telephonic, electronic or written means, that:

- (a) the customer has a valid account with the Clearing Member;
- (b) the account number;
- (c) the brokerage rate;
- (d) the customer is authorized by the Clearing Member to place orders with the executing broker for that account.

The executing broker must retain a copy of the authorization or the specifics of the telephonic confirmation, which includes: opposite party, date, time, and any other relevant information. The falsification of such information shall be the basis for disciplinary action.

- (4) Rejection of Customer Order. Where an executing broker has confirmed Clearing Member authorization to execute orders on behalf of a customer in accordance with this Rule 9.11A, the broker may, in the broker's discretion, reject an order that the customer transmits to the broker for execution. The broker shall promptly notify the customer and the Clearing Member(s) of any such rejection.

9.12 Substitution

The Exchange may accept contracts offered to it by Clearing Members for clearance, and by such acceptance shall, in place of either party to a contract so accepted and toward the other party thereto, assume the obligations imposed thereby and succeed to and become vested with all the rights and benefits accruing therefrom, assuming to the buyer the position of seller and to the seller the position of buyer, as the case may be. As between the Exchange and each of the parties to an accepted contract the terms and conditions thereof shall continue in full force and effect.

9.13 Bank Holidays

When the Exchange is open for business on a day banks are closed, because of a legal or bank holiday, the time limit for settlement of Clearing House accounts shall be extended to the next bank business day.

9.14 Omnibus Accounts

No Clearing Member may execute contracts for future delivery or options contracts on the Exchange for a carrying house which does not disclose the names of its customers or options customers (omnibus accounts) unless the carrying house agrees that it will, on request of the Clearing Member, disclose to the Clearing Member, the names, addresses, positions and transactions of its customers; provided, however, that the Clearing Member shall not call for such information unless requested to do so by the Board, a Committee of the Exchange or the President. A copy of such agreement shall be made available by the Clearing Member upon request of the Exchange.

9.15 Refund of Clearing Fees

Should the income of the Exchange derived from Clearing Members in any year be in excess of its expenses for such year, the Board may, in its sole discretion, return any or all of such excess income to Clearing Members in the proportion that the number of contracts cleared by each Clearing Member on which a clearance fee was charged by the Exchange during such year bears to the total number of such contracts cleared by the Exchange during such year. The decision of the Board with respect to the determination of excess income and the decision whether to return, retain or otherwise use such excess income shall be conclusive.

9.16 Transaction Fees

Clearing Members shall collect from non-member customers a transaction fee as established by the Exchange for each commodity contract bought or sold or otherwise cleared on or subject to the rules of the Exchange. Clearing Members also shall collect from non-member customers a transaction fee as established by the NYMEX Europe Limited for each commodity contract bought or sold on or subject to the rules of NYMEX Europe Limited and remit said fees to the Clearing House as billed.

9.17 Delivery Procedure

Commodities bought or sold on Exchange or NYMEX Europe Limited contracts shall be delivered and accepted in accordance with the provisions of this Chapter, supplemented by provisions of the rules of the Exchange or of NYMEX Europe Limited applicable to individual commodities. Any question affecting the handling or delivery or any commodity which is not specifically covered by the Bylaws and Rules may be referred to the Board for determination.

9.18 Delivery Through Clearing House

All deliveries or settlements in fulfilment of listed Exchange contracts shall be made through the Clearing House in accordance with Bylaws and Rules.

9.19 Final Day of Trading

(A)

- (1) On the final day of trading in the delivery month of a contract that is listed for trading by open outcry on the trading floor of the Exchange or of NYMEX Europe Limited, it shall be the responsibility of each Clearing Member who is not in a position to fulfil his contractual obligation on any maturing contract by prescribed notice and tender, to have a liquidating order entered on the Exchange floor or on the NYMEX Europe Limited floor one hour before the time established for the beginning of the closing range for such delivery month. All such orders shall be market orders to be executed prior to the expiration of trading.
- (2) On the final day of trading in the delivery month of a contract that is listed for trading solely on NYMEX ACCESS® or on an Alternative Electronic Trading

System, it shall be the responsibility of each Clearing Member who is not in a position to fulfil its contractual obligation on any maturing contract by prescribed notice and tender, to have a liquidating order entered on NYMEX ACCESS® or an Alternative Electronic Trading System, as applicable. For the purposes of this rule, the term "Alternative Electronic Trading System" shall mean any electronic trading system other than NYMEX ACCESS® on which NYMEX Division or COMEX Division products are traded, but not including GLOBEX®.

9.19A Transfers to Correct Errors Occurring on the Last Day of Trading

- (A) For purposes of this Rule 9.19A, a Clearing Member carrying open contracts in an expired delivery month for its own account or the account of any other person as the result of an error may, by consent of the account owners, transfer any or all of such contracts to any other account carried by such Clearing Member or to any other Clearing Member; provided, however, that:
- (1) such transfer shall occur not later than the time prescribed for Clearing Members to file with the Exchange a Notice of Intention to Accept or Deliver for the specific commodity, by which time the Clearing Member(s) effecting the transfer, shall deliver to the Clearing House written notification of such transfer in the form and manner prescribed by the Exchange specifying the parties thereto and the prices at which such transfers were effected; and
 - (2) the Clearing Member(s) must submit and retain records of all forms presented to the Clearing House for the processing of any error transfer trade.
- (B) In the event that the error is discovered after the close of trading on the last day of trading in an expiring contract, but before the trade is assigned to a Clearing Member, a floor member on the Exchange or on NYMEX Europe Limited may transfer the position held in error to any account carried by any Clearing Member, provided that the floor member and the Clearing Member carrying the account accepting the positions submit to the Exchange and retain a copy of the forms required by the Exchange for the transfer of such position.

9.20 Position Limits

- (A) Defined Terms

For the purpose of this Rule, the following terms shall have the meanings set forth below, unless the context otherwise requires:

- (1) "Modified Capital" shall mean the working capital (as defined in Rule 9.21) of a Clearing Member, (1) increased by an amount equal to (a) the face amount of any approved letter of credit issued to the Clearing House for the capital accounts of such Clearing Member and (b) fifty percent of the working capital of any person that issues an approved Guarantee to the Clearing House for the capital account of such Clearing Member, and (2)(a) decreased by an amount equal to fifty percent of the working capital of such Clearing Member for each approved Guarantee such Clearing Member issues to the Clearing House for

the capital account of another Clearing Member and (b) an amount declared by such Clearing Member for the purpose of establishing position limits less than those otherwise permitted under this Rule; provided, however, that the capital of a Clearing Member may not be increased by letters of credit and/or guarantees by more than 100% of such Clearing Member's working capital. For the purpose of determining positions limits under this Rule, modified capital will be determined for the NYMEX and COMEX Divisions independently, and the maximum capital for each Division shall be deemed to be \$200 million.

- (2) "Position Risk" shall mean the amount calculated using the Exchange's Standard Portfolio Analysis ("SPAN") margin system analyzing the net positions carried by the Clearing Member.

(B) Aggregate Position Limits

Except as provided in paragraphs (C) and (D) of this Rule, no Clearing Member may carry futures and/or options contracts on either the NYMEX Division or the COMEX Division resulting in "Position Risk" in excess of:

- (1) In the Customer Account - 150% of the firm's modified capital;
- (2) In the House Account - 75% of the firm's modified capital; or
- (3) In total - 200% of the firm's modified capital.

(C) Super Margin Deposits

Any Member may carry futures and/or options contracts resulting in Position Risk in excess of the limits established under paragraph (B) of this Rule on either the NYMEX Division or the COMEX Division, and may have expanded position limits that result in Position Risk up to, but not in excess of:

- (1) In the Customer Account - 200% of the firm's modified capital;
- (2) In the House Account - 100% of the firm's modified capital; or
- (3) In total - 250% of the firm's modified capital.

if such Member deposits with the Clearing House (in addition to all other deposits for margins, fees or other charges that may be required), the difference between the Clearing Member's permissible Position Risk and actual Position Risk.

Such deposits shall be made at the same time and in the same form and manner, and shall otherwise be subject to the same Rules, as original margin deposits.

- (D) Other Position Limits The Board (or its designee), in its discretion, may at any time establish position limits for any one or more Clearing Members which are higher or lower than or otherwise differ from, those established pursuant to paragraph (B), or change the amount of additional margin required pursuant to paragraph (C) or (F), based on the Board's evaluation of the financial and operational capacity of such

Clearing Member and such other factors as the Board, in its discretion, considers appropriate, including but not limited to, (1) the business needs and financial condition of the Clearing Member, (2) the number of memberships or other clearing organizations held by the Clearing Member and the average number of contracts cleared through other clearing organizations each day by the Clearing Member, (3) the extent to which the Clearing Member trades and clears for either customer accounts, proprietary accounts, or both, (4) the length of time the Clearing Member has held a membership with the Clearing House, (5) the total open positions of the Clearing Member regularly maintained with the Clearing House and other commodity clearing organizations, and (6) such other factors as the Board, in its discretion, considers appropriate. No Clearing Member shall have a net interest or net straddles in excess of any such limits established by the Board.

Any Clearing Member whose position limit is set at a level less than the maximum set forth in paragraph (B) of this Rule may file a written request with the Board for an increase of such limits, supporting such request with such evidence as the Clearing Member may desire. Thereupon, the Board, with or without a hearing as it may consider proper, shall take such action thereon as it may deem appropriate.

(E) Liquidation of Excess Positions

Any Clearing Member that exceeds its position limits under this Rule shall transfer or liquidate any futures and/or options contracts in excess of the position limits within such time as the President, in consultation with the Board, may prescribe and shall report to the President when such excess has been reduced. Such Clearing Member shall deposit additional original margin on such excess positions equal to the amount required for positions held pursuant to paragraph (C) of this Rule. If a Clearing Member fails to transfer or liquidate any excess futures contracts within the time prescribed by the President, the President or to deposit the additional original margin required by this paragraph (E), the President may liquidate or transfer such excess positions.

9.21 Minimum Capital Requirements

(A) Working Capital Defined

For purposes of this Rule, the term "working capital" shall mean the amount by which current assets exceed current liabilities as calculated in accordance with generally accepted accounting principles or in the case of a Clearing Member registered as a Futures Commission Merchant it shall mean "adjusted net capital" as calculated in accordance with CFTC Regulation 1.17.

(B) Minimum Financial Requirements

Each Clearing Member registered with the Commission as a futures commission merchant shall have and maintain minimum working capital equal to or in excess of the greater of \$5,000,000 or the amount prescribed in Commission Regulation 1.17. Except as provided in Rule 9.02(K), all other Clearing Members shall have and maintain minimum working capital of \$5,000,000.

(C) Additional Financial Requirements for Primary Clearing Members A Primary Clearing Member shall maintain \$50,000 in additional working capital, as defined in Subsection (A) above, for the guarantee of each Floor Member as noted within Rule 2.21 in excess of one hundred (100) of such guarantees for each Division of the Exchange, provided, however, that no such requirement shall apply where the guaranteed Floor Member has net liquid assets in excess of one hundred thousand dollars (\$100,000) and such Floor Member files with the Primary Clearing Member an annual financial statement as of the calendar year-end and presented on a form as provided by NYMEX documenting net liquid assets in excess of one hundred thousand dollars (\$100,000). The Primary Clearing Member shall obtain such financial statement and supporting schedules no later than January 31 of each year and maintain these documents as part of the Primary Clearing Members books and records.

(D) Alternative Measure of Financial Soundness

The Board of Directors or its designee may exempt a Clearing Member from the working capital requirement set forth in Rule 9.21 (B) if, in its sole discretion, an alternative measure of financial soundness of such Clearing Member, such as a minimum level of net worth, is more appropriate.

9.22 Financial Reporting

For purposes of this Rule 9.22, "Working Capital" shall be defined by Rule 9.21(A), "Net capital" shall be defined by Commission Regulation 1.17(c)(1) and "Excess Net Capital" shall be defined as Net Capital less the minimum capital required by Rule 9.21(B). For purposes of this Rule 9.22, an "FCM" shall mean a Clearing Member that is registered with the Commission as a Futures Commission Merchant.

(A) Quarterly Reports

(1) Each Clearing Member shall file with the Financial Surveillance Section of the Compliance Department, within ninety days after the close of each fiscal year of such member, a copy of such member's balance sheet and income statement as of the close of such fiscal year, certified by an independent public accountant. Each Clearing Member shall also file with the Financial Surveillance Section of the Compliance Department, within forty-five days after the close of the second quarter of each fiscal year of such member, a copy of such member's balance sheet and income statement as of the close of such quarter, certified by the chief financial officer of the Clearing Member. These reporting requirements may be satisfied by filing with the Financial Surveillance Section of the Compliance Department a copy of Commission form 1-FR or Part II of the Securities and Exchange Commission Financial and Operational Combined Uniform Single ("FOCUS") Report, certified by an independent public accountant or the chief financial officer of the Clearing Member, as may be required.

(2) Each Clearing Member that is registered as an FCM shall file with the Financial Surveillance Section of the Compliance Department both annual certified financial statements as well as quarterly unaudited financial statements in the manner and format as required by CFTC Regulation 1.10.

(B) Reports to Other Regulatory Authorities

Each Clearing Member shall also promptly file with the Clearing House of its designated agent a copy of any financial statement which such Clearing Member may file with the Commission, any registered national securities exchange, any commodity exchange or any other clearing organization.

(C) Impairment of Capital Reports

- (1) In the event that the Working Capital of any Clearing Member at any time falls below the minimum Working Capital required by Rule 9.21(B), such Clearing Member shall give immediate written notice of the fact by the fastest available means of communication to the Financial Surveillance Section of the Compliance Department. Such written notice shall include the information required by By-Law Section 851 (Duty to Report Emergency Event).
- (2) In the event that the Working Capital, as defined by Rule 9.21(A), of any Clearing Member, or Net Capital if registered as an FCM, at any time declines by 20% or more from the capital last reported to the Exchange, the Clearing Member shall give formal written notice of such event to the Financial Surveillance Section of the Compliance Department within two (2) business days of its occurrence. Such "Notice of Capital Impairment" shall state the date of and applicable reason(s) for the decline.
- (3) In the event a Clearing Member knows, or has reasonable basis to believe, that, as a result of one or more transactions, the working capital, or Excess Net Capital if registered as an FCM, likely will be reduced by more than 30% from the capital on the previously submitted financial statement, the Clearing Member shall advise the Financial Surveillance Section of the Compliance Department in writing at least 2 business days prior to making any such transaction(s) (e.g. dividend payments, loans, etc.)

(D) Other Financial Reports

The Clearing House may at any time and from time to time require any or all Clearing Members, in its discretion, to file with the Clearing House, or another person designated by the Clearing House, such additional financial information, authenticated in such manner, as the Clearing House may from time to time determine.

(E) Accountants Reports

The qualifications and reports of accountants for Clearing Members must meet the requirements set forth in Commission regulations and must be satisfactory to the Clearing House.

9.23 Protection of Clearing House

(A) Clearing Member Assets

If a Clearing Member fails promptly to discharge any obligation to the Clearing House, its margin on deposit with the Clearing House, its deposit in the Guaranty Fund, and any of its other assets under the control of the Exchange or the Clearing House shall be applied by the Clearing House to discharge the obligation.

For purposes of this Rule, the positions in the cross-margin account of a participating Clearing Member or its Cross-Margin Affiliate at a Cross-Margining Clearing Organization, and the margin deposited thereon, shall be considered an asset of the Participating Clearing Member available to the Exchange to the extent provided in the Cross-Margin Agreement between the Exchange and such Cross-Margin Clearing Organization.

If the failure to discharge the obligation involves a default in the customer segregated account of the Clearing Member, all of such assets (whether held for the member, customer segregated or customer non-regulated accounts) shall be available to discharge the obligation. If such failure involves a default in the member account and/or customer non-regulated account of the Clearing Member, only that portion of such assets as are held in the member and/or customer non-regulated accounts shall be available to discharge the obligation. The Clearing Member shall immediately make up any deficiencies in its margin or its deposits in the Guaranty Fund resulting from such application.

(B) Other Assets

If the margin deposits in the Guaranty Fund and other assets of the Clearing Member under the control of the Exchange or the Clearing House are insufficient to satisfy all of the Clearing Member's obligations to the Clearing House, and if the Clearing Member fails to pay the Clearing House the amount of any such deficiency within one business day, the amount of the deficiencies shall be paid from the following sources of funds, each such source to be completely exhausted before the next following source is applied:

- (1) First, such Exchange funds as the Board in its discretion may determine to apply;
- (2) Second, proceeds from each Clearing Member's Guaranty Fund based on each firm's percentage of the total Guarantee Fund requirement of all Clearing Members per Rule 9.03;
- (3) Proceeds from an insurance policy maintained by the Exchange; and
- (4) Third, such assets as may be made available from assessments against Clearing Members pursuant to Section (C) of this Rule.

Any amount so paid shall be deemed a loss to the Exchange or the Clearing House and shall be a liability of the defaulting Clearing Member to the Exchange or the Clearing House.

(C) Assessments

- (1) Except as provided in Section (D) of this Rule, if there is a deficiency remaining after the Guaranty Fund has been exhausted as provided in Section (B) of this Rule, each Clearing Member (except the defaulting Clearing Member and any insolvent Clearing Member) shall be required, subject to the limitations in this Rule, to pay an assessment in an amount as determined by the Board in an amount proportional to such Clearing Member's Guaranty Fund requirement compared to the total Guaranty Fund requirement of all Clearing Members per Rule 9.03.
 - (2) Notwithstanding subsection (C)(1) of this Rule, no Clearing Member shall be required to pay, as an assessment, any amount in excess of
 - (a) the greater of 40 percent of such Clearing Member's:
 - (i) NYMEX modified capital as defined in Rule 9.20(A), or
 - (ii) COMEX modified capital as defined in Rule 9.20(A), or
 - (b) thirty million dollars (\$30,000,000), whichever is less, during any period of ten consecutive business days (the "Maximum Assessment"). The difference, if any, between the amount that would be assessed against any Clearing Member pursuant to subsection (C)(1) of this Rule and the Maximum Assessment for any such Clearing Member, shall be considered a deficiency and shall be assessed against Clearing Members (excluding the defaulting Clearing Member, any insolvent Clearing Member and any Clearing Member which has paid the Maximum Assessment) in accordance with subsection (C) of this Rule until the entire deficiency is paid or every Clearing Member (except the defaulting Clearing Member and any insolvent Clearing Member) has paid the Maximum assessment, and any such assessment shall be considered part of a single assessment, without regard to the times when they are made, for purposes of determining the Maximum Assessment.
 - (3) Notwithstanding subsection (C)(1) of this Rule, a Clearing Member which pays an assessment in accordance with this Section (C) and gives the Clearing House written notice of withdrawal from membership prior to ten business days after such assessment is made shall not be subject to any further assessment after the date such notice is received by the Clearing House, except that such Clearing Member shall continue to be liable for any assessment made pursuant to the second sentence of subsection (C)(2) of this Rule, up to the Maximum Assessment.
 - (4) Any assessments made pursuant to this Rule shall be paid by each Clearing Member not more than one business day after written notice of any such assessment shall have been delivered to such Clearing Member.
- (D) Cancelled Assessments

Notwithstanding Section (C) of this Rule, no Clearing Member shall be assessed if there would be a deficiency after all Clearing Members (excluding the defaulting Clearing Member and any insolvent Clearing Member) pay the Maximum Assessment.

(E) Charges Against Guaranty Fund

In the event it shall become necessary as provided in subsections (B)(2) and (3) of this Rule to apply all or part of the Guaranty Fund to meet any Clearing Member's obligations to the Clearing House, each Clearing Member shall be liable to restore its deposit to the amount required by Rule 9.03, upon demand by the Clearing House.

(F) Insolvent Members

In the event that Clearing Members are assessed as provided in Section (C) of this Rule, any insolvent Clearing Member who has been excluded from the assessment shall nonetheless be liable to the Clearing House for the amount of the assessment that otherwise would have been imposed on such Clearing Member.

(G) Recovery of Losses

If a loss for which Guaranty Fund deposits have been applied or Clearing Members have been assessed is afterward recovered by the Exchange or the Clearing House in whole or in part, the net amount of such recovery (after deducting legal fees and any other costs of collection incurred by the Exchange or the Clearing House) shall be paid as follows:

- (1) First, to Clearing Members who made payments to the Clearing House pursuant to paragraphs (C) or (F) of this Rule, whether or not they are still Clearing Members, in proportion to the amounts so assessed, until all such Clearing Members shall have been repaid the full amount so assessed or the net amount of such recovery shall have been exhausted;
- (2) Second, to Clearing Members against whose Guaranty Fund deposits the deficiency was charged pursuant to subsections (B)(2) and (3) of this Rule, whether or not they are still Clearing Members, in proportion to the amounts charged against their respective deposits but limited to the amounts so charged; and
- (3) The balance, if any, to any purpose the Board, in its discretion, may approve.

XXV Resolution of the Board of Directors to establish and maintain a permanent Retail Customer Protection Mechanism

The Board of Directors, upon consideration of a pending CFTC Order, hereby:

RESOLVES, to establish and maintain a permanent retail customer protection mechanism supported by a commitment of not less than \$10 million which shall be available at all times to promptly reimburse retail customers trading on NYMEX whose original margin funds are lost in the unlikely result of a default by another customer of the same FCM in any contract cleared by NYMEX and

where such customer default of a NYMEX contract results in a default of that FCM Clearing Member to NYMEX and where NYMEX uses customer margin funds of that FCM Clearing Member to address the default. For the purposes of this resolution and said CFTC order, the term "Retail Customer" shall be defined to include all natural persons who do not otherwise qualify as an "eligible contract participant" under the requirements of Section 1a(12) of the Commodity Exchange Act, provided however, that such definition of Retail Customer shall not include any NYMEX floor traders or floor brokers and additionally shall not include family members of NYMEX floor traders and floor brokers who maintain accounts at the same FCM where such NYMEX floor trader or floor broker maintains an account.

RESOLVES FURTHER, that in the event of a FCM default to NYMEX caused by a customer default as described above where the total loss of all Retail Customers at such FCM from such default exceeds the amount of the Exchange's then current commitment, authorizes Exchange staff to compensate such Retail Customers on a pro rata basis.

RESOLVES FURTHER, that this resolution shall become effective as of the effective date of the order from the Commodity Futures Trading Commission.

9.24 Original Margin Depositories and Originators of Letters of Credit

- (A) Original Margin certificates representing the deposit of securities by Clearing Members for original margin may be issued by a banking institution selected by the Clearing Member depositor provided that such institution has been approved by the Exchange as an original margin depository.
- (B) Letters of credit may be issued, or confirmed, by a banking institution selected by a Clearing Member depositor, which institution has been approved by the Exchange as an original margin depository, and may be deposited to meet original margin requirements. Any Letter of Credit so deposited must have a term of not less than thirty (30) days nor more than three hundred sixty five (365) days.
- (C) In order to be approved as an original margin depository, a banking institution must:
 - (1) have capital and surplus of not less than \$250,000,000;
 - (2) have a P-1 or A-1 rating from Moody's Investors Services, Inc. or from Standard and Poors Corp. respectively, and,
 - (3) maintain an office for payment within the City and County of New York and within five (5) miles of the offices of the Exchange.
- (D) Letters of Credit may be issued by a banking institution that is not an original margin depository provided that such banking institution has capital and surplus of not less than \$250,000,000 and a P-1 or A-1 rating from Moody's Investors Service, Inc. or from Standard & Poors Corp., respectively and, provided further, that such Letter of Credit is confirmed by an original margin depository.

- (E) No approved original margin depository or issuer of a letter of credit may commit, with respect to Exchange contracts, more than the lesser of ten percent (10%) of its capital and surplus or \$200 million, provided, however, that an issuer may issue letters of credit up to \$300 million, if such issuer establishes, to the satisfaction of the Exchange, an account at another financial institution and deposits in such account, for the benefit of the Exchange, collateral in the form of U.S. Government obligations of maturities of less than ten (10) years valued at 95% of par value, for the excess over \$200 million. Such collateral shall be deemed to secure any and all obligations of such issuer under letters of credit issued by the issuer in favour of the Exchange. The Board of Directors, upon the application of an issuer of letters of credit, may grant a waiver of the \$300 million ceiling, upon such terms and conditions as it deems appropriate.
- (F) The Board may grant exemptions from paragraph (C) of this Rule upon such terms and conditions as the Board finds appropriate, in its sole discretion.
- (G) Notwithstanding anything to the contrary in this Rule, a Clearing Member, which is a bank subsidiary or the affiliate of a bank may not deposit with the Clearing House a Letter of Credit issued or confirmed by such bank, parent bank, or affiliate bank.
- (H)
 - (1) Each banking institution approved as a margin depository and/or issuer of letters of credit shall file with the Financial Surveillance Section of the Exchange's Compliance Department a copy of its annual certified financial statement within ninety days of the close of each fiscal year. In addition, each such approved institution shall file a copy of an unaudited financial statement within sixty days of the close of that institution's second quarter in each fiscal year. Such filings shall include, but are not limited to, an institution's balance sheet and income statement.
 - (2) A banking institution that fails to submit such required financial statements may be deemed to be inactive by the Exchange. Any institution that has been deemed to be inactive shall be ineligible to serve as a recognized margin depository or an issuer of letters of credit under this Rule 9.24.

9.26 All Month/Any One Month Position Accountability

- (A) Any person, as defined in Rule 1.26, who owns or controls positions in excess of the levels cited in Sections (C) and (D) of this Rule shall be subject to the following provisions pursuant to position accountability levels:
 - (1) promptly supply to the Exchange such information as the Exchange may request pertaining to the nature and size of the position, the trading strategy employed with respect to the position, and the position owner's or controller's hedging requirements, provided, however, that if the position owner or controller fails to supply such information as and when requested, the President or his designee may order the reduction of such position;
 - (2) agree, upon request by the President or his designee, not to increase the position owned or controlled as of the time the request was received; and

- (3) agree to comply with any prospective limit prescribed by the President or his designee which exceeds the size of the position owned or controlled.
- (B) For the purposes of this Rule 9.26, the futures-equivalent of an option contract and spread option contract is the previous day's NYMEX Risk Factor for that option. Further, long calls, short puts and long futures are on the same side of the market; short calls, long puts and short futures are on the same side of the market.

With respect to crack spread option contracts, a call option is the equivalent of a long product futures contract and a short crude oil futures contract; a put option is the equivalent of a short product futures contract and a long crude oil futures contract. Therefore, long crack spread option calls and short crack spread option puts are on the same side of the market; short crack spread option calls and long crack spread option puts are on the same side of the market.

With respect to calendar spread option contracts, a call option is the equivalent of a long futures contract in the first underlying futures in the spread and a short futures contract in the second underlying futures in the spread; a put option is the equivalent of a short futures contract in the first underlying futures in the spread and a long futures contract in the second underlying futures in the spread.

- (C) For purposes of this rule, a Crude Oil e-miNY(sm) contract shall be deemed equivalent to .50 of a Crude Oil light Sweet future cited in (i)(a) below. A Natural Gas e-miNY(sm) shall be deemed equivalent to .50 of a Natural Gas future cited in (x) below.
- (D) Except as provided in Rule 9.27, the any one month/all month position accountability levels for each futures contract traded on the Exchange are:

I. Futures Contracts Listed for Open Outcry Trading	Net Futures or Futures- Equivalent Position Accountability Levels
Light Sweet Crude Oil (also includes WTI Calendar Swap, NYMEX WTI-Brent Spread Calendar Swap, Crude Oil Average Price Options and Crude Oil Look-Alike Options)	20,000 contracts
NYMEX Brent Crude Oil (also includes NYMEX WTI-Brent Spread Calendar Swap and NYMEX Brent Calendar Swap)	20,000 contracts
New York Harbor Unleaded Gasoline (also includes Unleaded Gasoline Average Price Options and Unleaded Gasoline Look-Alike Options)	7,000 contracts
New York Heating Oil (also includes NY Harbor Calendar Swap, Heating	7,000 contracts

Oil Average Price Options and Heating Oil Look-Alike Options)

Northwest Europe Gasoil	7,000 contracts
Natural Gas (also includes Henry Hub Swap, Henry Hub Natural Gas Penultimate Swap and Natural Gas Look-Alike Options)	12,000 contracts
Liquefied Propane Gas	1,500 contracts
Palladium	1,000 contracts
Platinum	1,500 contracts
Central Appalachian Coal	5,000 contracts

The Position Accountability levels for the PJM Calendar Month LMP Swap, PJM Calendar Week LMP Swap and the PJM Calendar Day Ahead LMP Swap shall be 5,000 contracts in the aggregate.

II. Futures Contracts Listed for Trading only on NYMEX ACCESS® and also Listed for Clearing of Off-Exchange Transactions Through NYMEX ClearPortsm Clearing	Net Futures or Futures-Equivalent Position Accountability Levels
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Louisiana Light Sweet Crude Oil	10,000 contracts
West Texas Sour Crude Oil	10,000 contracts
West Texas Intermediate Midland Crude Oil	10,000 contracts
Mars Blend Crude Oil	10,000 contracts
Mid-Columbia Electricity	5,000

	contracts
Palo Verde Electricity	5,000 contracts
PJM Electricity	5,000 contracts
Net Futures or Futures- Equivalent Position Accountability Levels	
IV. Futures Contracts Listed for Trading Only on NYMEX ClearPortsm Trading and also Listed for Clearing of Off-Exchange Transactions Through NYMEX ClearPortsm Clearing	
Cash-Settled Crude Oil and Crude Products	
WTI Calendar	
Note: For purposes of this rule, positions in this contract are aggregated with positions in the Light Sweet Crude Oil contract as indicated in Subsection I. above.	
NYMEX WTI-Brent Spread Calendar Swap	
Note: For purposes of this rule, positions in this contract are aggregated with positions in The Light Sweet Crude Oil contract as indicated in Subsection I. above.	
NYMEX Brent Calendar Swap	
Note: For purposes of this rule, positions in this contract are aggregated with positions in The Light Sweet Crude Oil contract as indicated in Subsection I. above.	
Dated Brent Calendar Swap	5,000 contracts
Dubai Crude Oil Calendar Swap	10,000 contracts
U.S. Gulf Coast Unl 87 Crack Spread Calendar	10,000 contracts
U.S. Gulf Coast No. 2 Crack Spread Calendar	10,000 contracts

Unl 87 Up-Down Spread Calendar Swap	10,000 contracts
No. 2 Up-Down Spread Calendar Swap	10,000 contracts
WTI-Bow River Swap	10,000 contracts
New York Harbor Gasoline Calendar Swap	
Note: For purposes of this rule, positions in this contract are aggregated with positions in the New York Harbor Unleaded Gasoline futures as indicated in Subsection I. above	
New York Harbor Heating Oil Calendar Swap	
NYH Unleaded Crack Calendar Swap	
NYH Unleaded Crack Calendar Swap	10,000 contracts
NYH No. 2 Crack Calendar Swap	10,000 contracts
New York Harbor Unleaded Gasoline vs. New York Harbor Heating Oil Swap	10,000 contracts
New York Harbor Conv. Gasoline vs. New York Harbor Unleaded Gasoline Spread Swap	10,000 contracts
New York Harbor LS Diesel vs. New York Harbor No. 2 Heating Oil Spread Swap	10,000 contracts
Gulf Coast Gasoline vs. Gulf Coast Heating Oil Spread Swap	10,000 contracts
Gulf Coast Jet vs. New York Harbor No. 2 Heating Oil Spread Swap	10,000 contracts
Los Angeles Jet Fuel vs. New York Harbor No. 2 Heating Oil Spread Swap	10,000 contracts

Los Angeles Carb Gasoline Swap	10,000 contracts
Los Angeles Carb Gasoline vs. New York Harbor Gasoline Swap	10,000 contracts
Gulf Coast No. 6 Fuel 3.0% Sulfur Swap	10,000 contracts
Gulf Coast No. 6 Fuel Oil Crack Swap	10,000 contracts
New York Harbor Residual Fuel 1.0% Sulfur Swap	10,000 contracts
New York Harbor Residual Fuel Crack Swap	10,000 contracts
Gulf Coast Gasoline Calendar Swap	10,000 contracts
Gulf Coast Heating Oil Calendar Swap	10,000 contracts
European Naphtha Calendar Swap	10,000 contracts
European Naphtha Calendar Swap	1,500 contracts
European Jet Kero NWE Calendar Swap (Northwest Europe)	1,500 contracts
European Jet Kero Rotterdam Calendar Swap	1,500 contracts
European Gasoil 0.2 Rotterdam Calendar Swap	1,500 contracts
European Gasoil 0.2 NWE Calendar Swap (Northwest Europe)	1,500 contracts
European Gasoil 0.2 MED Calendar Swap (Mediterranean)	1,500 contracts
European ULSD (Diesel) Rotterdam Calendar Swap	1,500 contracts
European ULSD NWE Calendar Swap (Northwest Europe)	1,500 contracts
European 1% Fuel Oil Calendar Swap (Northwest Europe)	1,500 contracts
European 1% Fuel Oil Rotterdam Calendar Swap	1,500 contracts
European 3.5% Fuel Oil Rotterdam Calendar Swap	1,500 contracts
European 3.5% Fuel Oil MED Calendar Swap (Mediterranean)	1,500 contracts
European Singapore Fuel Oil 180cst Calendar Swap	1,500 contracts

Cash-Settled Electricity Power Products

NYISO Zone A LBMP Swap	10,000 contracts
NYISO Zone G LBMP Swap	10,000 contracts
NYISO Zone J LBMP Swap	10,000 contracts
ISO New England Internal Hub Peak LMP Swap	5,000 contracts
DOW JONES Mid-Columbia Electricity Price Index Swap	5,000 contracts
DOW JONES NP15 Electricity Price Index Swap	5,000 contracts
DOW JONES Palo Verde Electricity Price Index Swap	5,000 contracts
DOW JONES SP15 Electricity Price Index Swap	5,000 contracts
NYISO Zone A Off-Peak LBMP Swap	5,000 contracts
NYISO Zone G Off-Peak LBMP Swap	5,000 contracts
NYISO Zone J Off-Peak LBMP Swap	5,000 contracts
PJM Western Hub Off-Peak LMP Swap	5,000 contracts
Northern Illinois Hub Off-Peak LMP Swap	5,000 contracts
AEP-Dayton Hub Off-Peak LMP Swap	5,000 contracts
ISO New England Internal Hub Off-Peak LMP Swap	5,000 contracts
AEP-Dayton Hub Calendar-Month LMP Swap	5,000 contracts
AEP-Dayton Hub Calendar-Day LMP Swap	5,000 contracts
Northern Illinois Hub Calendar-Month LMP Swap	5,000 contracts
Northern Illinois Hub Calendar-Day LMP Swap	5,000 contracts

Cash-Settled Coal Products

Eastern Rail CSX Coal Swap	200 contracts
Western Rail PRB Coal Swap	200 contracts

Cash-Settled Natural Gas Products

Henry Hub Swap

Note: For purposes of this rule, positions in this contract are aggregated with positions in the Natural Gas futures contract as indicated in Subsection I. above.

Henry Hub Natural Gas Penultimate Swap

Note: For purposes of this rule, positions in this contract are aggregated with positions in the Natural Gas Futures contract as indicated in Subsection I. above.

Henry Hub Basis Swap	12,000 contracts
AECO/NIT Basis Swap	10,000 contracts
Chicago Basis Swap	10,000 contracts
Houston Ship Channel Basis Swap	10,000 contracts
San Juan Basis Swap	10,000 contracts
SoCal Basis Swap	10,000 contracts
Transco Zone 6 Basis Swap	10,000 contracts
Northwest Rockies Basis Swap	10,000 contracts
Panhandle Basis Swap	10,000 contracts

MichCon Basis Swap (Platts IFERC)	10,000 contracts
Permian Basis Swap (Platts IFERC)	10,000 contracts
M-3 Basis Swap (Platts IFERC)	10,000 contracts
TCO Basis Swap (Platts IFERC)	10,000 contracts
Malin Basis Swap (NGI)	10,000 contracts
PG&E Citygate Basis Swap (NGI)	10,000 contracts
NGPL Texok Basis Swap (Platts IFERC)	10,000 contracts
NGPL LA Basis Swap (Platts IFERC)	10,000 contracts
ANR OK Basis Swap (Platts IFERC)	10,000 contracts
Sumas Basis Swap	10,000 contracts
NGPL Mid-Con Basis Swap (Platts IFERC)	10,000 contracts
Demarc Basis Swap (Platts IFERC)	10,000 contracts
Ventura Basis Swap (Platts IFERC)	10,000 contracts
Dominion Basis Swap (Platts IFERC)	10,000 contracts
Waha Basis Swap (Platts IFERC)	10,000 contracts
CIG Rockies Basis Swap (Platts IFERC)	10,000 contracts
Transco Zone 3 Basis Swap (Platts IFERC)	10,000 contracts
TETCO STX Basis Swap (Platts IFERC)	10,000

	contracts
TETCO ELA Basis Swap (Platts IFERC)	10,000 contracts
Columbia Gulf Louisiana Basis Swap (Platts IFERC)	10,000 contracts
Chicago Index Swap	10,000 contracts
Permian Index Swap	10,000 contracts
Henry Hub Index Swap	10,000 contracts
Houston Ship Channel Index Swap	10,000 contracts
Panhandle Index Swap	10,000 contracts
Waha Index Swap	10,000 contracts
Chicago Swing Swap	10,000 contracts
Permian Swing Swap	10,000 contracts
Henry Hub Swing Swap	10,000 contracts
Houston Ship Channel Swing Swap	10,000 contracts
Panhandle Swing Swap	10,000 contracts
Waha Swing Swap	10,000 contracts
ANR Louisiana Basis	10,000 contracts
Kern River Wyoming Basis	10,000 contracts
Questar Basis	10,000 contracts

Tennessee 500 Leg Basis	10,000 contracts
Tennessee Zone 0 Basis	10,000 contracts
Texas Gas Zone SL Basis	10,000 contracts
Trunkline LA Basis	10,000 contracts
San Juan Index	10,000 contracts
Sumas Index	10,000 contracts
Rockies Index	10,000 contracts
SoCal Index	10,000 contracts
TETCO M-3 Index	10,000 contracts
Transco Zone 6 Index	10,000 contracts
PG&E Citygate Index	10,000 contracts
Dominion Index	10,000 contracts
San Juan Swing	10,000 contracts
Sumas Swing	10,000 contracts
Kern Opal Swing	10,000 contracts
SoCal Swing	10,000 contracts
TETCO M-3 Swing	10,000 contracts
Transco Zone 6 Swing	10,000

	contracts
PG&E Citygate Swing	10,000 contracts
Dominion, South Point Swing	10,000 contracts

Option Contract Gross Option Quadrant Position Accountability Levels

Crude Oil Light Sweet	40,000 contracts
NYMEX Brent Crude Oil	40,000 contracts
N.Y. Heating Oil	20,000 contracts
N.Y. Harbor Unleaded Gasoline	20,000 contracts
N.Y. Heating Oil-Crude Oil Light Sweet Spread	20,000 contracts
N.Y. Harbor Unleaded Gasoline-Crude Oil Light Sweet Spread	20,000 contracts
Natural Gas	20,000 contracts
Platinum	20,000 contracts
PJM Calendar-Month LMP Swap	10,000 contracts

Crude Oil Average Price Option

(Note: For purposes of this rule, this APO contract will be aggregated with the Light Sweet Crude Oil futures contract.)

Unleaded Gasoline Average Price Option

(Note: For purposes of this rule, this APO contract will be aggregated

with the New York Harbor Unleaded Gasoline futures contract.)

Heating Oil Average Price Option

(Note: For purposes of this rule, this APO contract will be aggregated with the New York Harbor Heating Oil futures contract.)

For the purposes of this Rule 9.26, option quadrants are: (a) long call; (b) short call; (c) long put; (d) short put.

V. Option Contracts Listed Only for Clearing of Off-Exchange Transactions via NYMEX ClearPortsm Clearing

Natural Gas Look-Alike Option

(Note: for purposes of this rule, this option contract will be aggregated with the Natural Gas futures contract as indicated in Subsection I, above.)

WTI Crude Oil Look-Alike Option

(Note: for purposes of this rule, this option contract will be aggregated with the Light Sweet Crude Oil futures contract as indicated in Subsection I, above.)

New York Harbor Unleaded Gasoline Look-Alike Option

(Note: for purposes of this rule, this option contract will be aggregated with the Unleaded Gasoline futures contract as indicated in Subsection I, above.)

New York Harbor Heating Oil Look-Alike Option

(Note: for purposes of this rule, this option contract will be aggregated with the Heating Oil futures contract as indicated in Subsection I, above.)

9.27 Expiration and Current Delivery Month Position Limits or Position Accountability

- (A) No person may own or control a net long position or a net short position in the expiration or current delivery month (as defined in this Rule 9.27 for energy and metals contracts respectively) in excess of the levels set forth in this Rule 9.27.
- (B) The expiration position limits for energy contracts set forth below are effective on the open of trading of the last three trading days of the futures contract. The expiration position limits shall be calculated on a net futures-equivalent basis. For purposes of this rule, a Crude Oil e-miNY(sm) contract shall be deemed equivalent to .50 of a Crude Oil light sweet future cited below. A Natural Gas e-miNY(sm) shall be deemed equivalent to .50 of a Natural Gas future cited in (x) below.

The expiration position limits for energy futures contracts listed below are:

Futures Contracts

	Net Futures or Futures- Equivalent Expiration Position Limits
I. Futures Contracts Listed for Open Outcry Trading	
Light, Sweet Crude Oil (also includes WTI Calendar Swap, NYMEX WTI-Brent Spread Calendar Swap, Crude Oil Average Price Options, and WTI Crude Oil Look-Alike Options)	2,000 contracts
New York Harbor Unleaded Gasoline (also includes NY Harbor Calendar Swap, Unleaded Gasoline Average Price Options, and New York Harbor Unleaded Gasoline Look-Alike Options)	1,000 contracts
New York Heating Oil (also includes NY Harbor Calendar Swap, Heating Oil Average Price Options, and New York Harbor Heating Oil Look-Alike Options)	1,000 contracts
Northwest Europe Gasoil	1,000 contracts
Natural Gas (also includes Henry Hub Swap, Henry Hub Natural Gas Penultimate Swap and Natural Gas Look-Alike Option Contracts)	1,000 contracts
Liquefied Propane Gas	250 contracts
Central Appalachian Coal	200 contracts
	Net Futures or Futures- Equivalent Expiration Position Limits
II. Futures Contracts Listed for Trading only on NYMEX ACCESS® and also Listed for Clearing of Off-Exchange Transactions Through NYMEX ClearPort(sm) Clearing	
Louisiana Light Sweet Crude Oil	1,000 contracts
West Texas Sour Crude Oil	1,000 contracts
West Texas Intermediate Midland Crude Oil	1,000 contracts

Mars Blend Crude Oil

1,000
contracts

III. Futures Contracts Listed only for Clearing of Off-Exchange Transactions via NYMEX ClearPortsm

**Net
Futures
or Futures-
Equivalent
Expiration
Position
Limits**

Physical Delivery Contracts

Mid-Columbia Electricity

350
contracts

Palo Verde Electricity

350
contracts

PJM Electricity

350
contracts

IV. Futures Contracts Listed for Trading Only on NYMEX ClearPortsm Trading and Listed for Clearing of Off-Exchange Transactions Through NYMEX ClearPortsm Clearing

Cash-Settled Contracts

**Net
Futures or
Futures-
Equivalent
Expiration
Position
Limits**

Cash-Settled Crude Oil and Crude Oil Products

WTI Calendar

Note: For purposes of this rule, positions in this contract are aggregated with positions in the Light Sweet Crude Oil contract.

NYMEX WTI-Brent Spread Calendar Swap Note: For purposes of this rule, positions in this contract are aggregated with positions in the Light

Sweet Crude Oil contract.

WTI - Bow River Swap	1,000 contracts
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New York Harbor Gasoline Calendar Swap

Note: For purposes of this rule, positions in this contract are aggregated with positions in the New York Harbor Unleaded Gasoline futures contract.

New York Harbor Heating Oil Calendar Swap

Note: For purposes of this rule, positions in this contract are aggregated with positions in the New York Harbor Heating

Oil futures contract.

NYH Unleaded Crack Calendar Swap	2,000 contracts
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NYH No. 2 Crack Calendar Swap	2,000 contracts
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New York Harbor Unleaded Gasoline vs. New York Harbor Heating Oil Swap	1,000 contracts
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New York Harbor Conv. Gasoline vs. New York Harbor Unleaded Gasoline Spread Swap	1,000 contracts
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New York Harbor LS Diesel vs. New York Harbor No. 2 Heating Oil Spread Swap	1,000 contracts
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Gulf Coast Gasoline vs. Gulf Coast Heating Oil Spread Swap	1,000 contracts
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Gulf Coast Jet vs. New York Harbor No. 2 Heating Oil Spread Swap	1,000 contracts
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Los Angeles Jet Fuel vs. New York Harbor No. 2 Heating Oil Spread Swap	1,000 contracts
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Los Angeles Carb Gasoline Swap	1,000 contracts
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Los Angeles Carb Gasoline vs. New York Harbor Gasoline Swap	1,000 contracts
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Gulf Coast No. 6 Fuel 3.0% Sulfur Swap	1,000 contracts
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Gulf Coast No. 6 Fuel Oil Crack Swap	1,000 contracts
Gulf Coast Gasoline Calendar Swap	1,000 contracts
Gulf Coast Heating Oil Calendar Swap	1,000 contracts
Gulf Coast Jet Fuel Calendar Swap	1,000 contracts
New York Harbor Residual Fuel 1.0% Sulfur Swap	1,000 contracts
New York Harbor Residual Fuel Crack Swap	1,000 contracts
Dubai Crude Oil Calendar Swap	250 contracts
U.S. Gulf Coast Unl 87 Crack Spread Calendar	250 contracts
U.S. Gulf Coast No. 2 Crack Spread Calendar	250 contracts
Unl 87 Up-Down Spread Calendar Swap	250 contracts
No.2 Up-Down Spread Calendar Swap	250 contracts
European Naphtha Calendar Swap	150 contracts
European Jet Kero NWE Calendar Swap (Northwest Europe)	150 contracts
European Jet Kero Rotterdam Calendar Swap	150 contracts
European Gasoil 0.2 Rotterdam Calendar Swap	150 contracts
European Gasoil 0.2 NWE Calendar Swap (Northwest Europe)	150 contracts
European Gasoil 0.2 MED Calendar Swap (Mediterranean)	150 contracts
European ULSD (Diesel) Rotterdam Calendar Swap	150

	contracts
European ULSD NWE Calendar Swap (Northwest Europe)	150 contracts
European 1% Fuel Oil Calendar Swap (Northwest Europe)	150 contracts
European 1% Fuel Oil Rotterdam Calendar Swap	150 contracts
European 3.5% Fuel Oil Rotterdam Calendar Swap	150 contracts
European 3.5% Fuel Oil MED Calendar Swap (Mediterranean)	150 contracts
European Singapore Fuel Oil 180cst Calendar Swap	150 contracts

Cash-Settled Electricity Power Products

NYISO Zone A LBMP Swap	1,000 contracts
NYISO Zone G LBMP Swap	1,000 contracts
NYISO Zone J LBMP Swap	1,000 contracts
ISO New England Internal Hub Peak LMP Swap	500 contracts
DOW JONES Mid-Columbia Electricity Price Index Swap	500 contracts
DOW JONES NP15 Electricity Price Index Swap	500 contracts
DOW JONES Palo Verde Electricity Price Index Swap	500 contracts
DOW JONES SP15 Electricity Price Index Swap	500 contracts
NYISO Zone A Off-Peak LBMP Swap	500 contracts

NYISO Zone G Off-Peak LBMP Swap	500 contracts
NYISO Zone J Off-Peak LBMP Swap	500 contracts
PJM Western Hub Off-Peak LMP Swap	500 contracts
Northern Illinois Hub Off-Peak LMP Swap	500 contracts
AEP-Dayton Hub Off-Peak LMP Swap	500 contracts
ISO New England Internal Hub Off-Peak LMP Swap	500 contracts
AEP-Dayton Hub Calendar-Month LMP Swap	500 contracts
AEP-Dayton Hub Calendar-Day LMP Swap	500 contracts
Northern Illinois Hub Calendar-Month LMP Swap	500 contracts
Northern Illinois Hub Calendar-Day LMP Swap	500 contracts
Cash-Settled Coal Products	
Eastern Rail CSX Coal Swap	200 contracts
Western Rail PRB Coal Swap	200 contracts

Cash-Settled Natural Gas Products

Henry Hub Swap

Note: For purposes of this rule, positions in this contract are aggregated with positions in the Natural Gas futures contract.

Henry Hub Natural Gas Penultimate Swap

Note: For purposes of this rule, positions in this contract are aggregated with positions in the Natural Gas futures contract.

MichCon Basis Swap (Platts IFERC)	500 contracts
Permian Basis Swap (Platts IFERC)	2,000 contracts
M-3 Basis Swap (Platts IFERC)	1,500 contracts
TCO Basis Swap (Platts IFERC)	2,500 contracts
Malin Basis Swap (NGI)	2,000 contracts
PG&E Citygate Basis Swap (NGI)	2,000 contracts
NGPL Texok Basis Swap (Platts IFERC)	1,000 contracts
NGPL LA Basis Swap (Platts IFERC)	500 contracts
ANR OK Basis Swap (Platts IFERC)	500 contracts
Sumas Basis Swap	1,000 contracts
NGPL Mid-Con Basis Swap (Platts IFERC)	500 contracts
Demarc Basis Swap (Platts IFERC)	1,000 contracts
Ventura Basis Swap (Platts IFERC)	2,000 contracts
Dominion Basis Swap (Platts IFERC)	2,000 contracts
Waha Basis Swap	2,000 contracts
CIG Rockies Basis Swap (Platts IFERC)	1,000 contracts

AECO/NIT Basis Swap	2,000 contracts
Chicago Basis Swap	2,000 contracts
Henry Hub Basis Swap	2,000 contracts
Houston Ship Channel Basis Swap	2,000 contracts
San Juan Basis Swap	2,000 contracts
SoCal Basis Swap	2,000 contracts
Transco Zone 6 Basis Swap	1,500 contracts
Northwest Rockies Basis Swap	2,000 contracts
Panhandle Basis Swap	2,000 contracts
Transco Zone 3 Basis Swap (Platts IFERC)	1,000 contracts
TETCO STX Basis Swap (Platts IFERC)	1,000 contracts
TETCO ELA Basis Swap (Platts IFERC)	500 contracts
Columbia Gulf Louisiana Basis Swap (Platts IFERC)	500 contracts
Chicago Index Swap	2,000 contracts
Permian Index Swap	2,000 contracts
Henry Hub Index Swap	2,000 contracts
Waha Index Swap	2,000 contracts
Panhandle Index Swap	2,000

	contracts
Houston Ship Channel Index Swap	2,000 contracts
* Chicago Swing	2,000 contracts
* Permian Swing	2,000 contracts
* Henry Hub Swing	2,000 contracts
* Waha Swing	2,000 contracts
* Panhandle Swing	2,000 contracts
* Houston Ship Channel Swing	2,000 contracts
ANR Louisiana Basis	1,000 contracts
Kern River Wyoming Basis	1,000 contracts
Questar Basis	1,000 contracts
Tennessee 500 Leg Basis	1,500 contracts
Tennessee Zone 0 Basis	1,500 contracts
Texas Gas Zone SL Basis	1,000 contracts
Trunkline LA Basis	1,000 contracts
San Juan Index	2,000 contracts
Sumas Index	1,000 contracts
Rockies Index	2,000 contracts

SoCal Index	2,000 contracts
TETCO M-3 Index	1,500 contracts
Transco Zone 6 Index	1,500 contracts
PG&E Citygate Index	2,000 contracts
Dominion Index	2,000 contracts
*San Juan Swing	2,000 contracts
*Sumas Swing	1,000 contracts
*Kern Opal Swing	2,000 contracts
*SoCal Swing	2,000 contracts
*TETCO M-3 Swing	1,500 contracts
*Transco Zone 6 Swing	1,500 contracts
*PG&E Citygate Swing	2,000 contracts
*Dominion, South Point Swing	2,000 contracts

* The expiration position limits for the Swing contracts are applicable for the aggregate of each daily position during the expiration month, and are effective on the first calendar day of the expiration month continuing until the conclusion of trading in the expiring contract. No position for any one day during the expiration month may exceed one-tenth of the expiration position limit.

V. Option Contracts Listed Only for Clearing of Off-Exchange Transactions via NYMEX ClearPortsm Clearing

Natural Gas Look-Alike Option

(Note: for purposes of this rule, this option contract will be aggregated with the Natural Gas futures contract as indicated in Subsection I, above.)

WTI Crude Oil Look-Alike Option

(Note: for purposes of this rule, this option contract will be aggregated with the Light Sweet Crude Oil futures contract as indicated in Subsection I, above.)

New York Harbor Unleaded Gasoline Look-Alike Option

(Note: for purposes of this rule, this option contract will be aggregated with the Unleaded Gasoline futures contract as indicated in Subsection I, above.)

New York Harbor Heating Oil Look-Alike Option

(Note: for purposes of this rule, this option contract will be aggregated with the Heating Oil futures contract as indicated in Subsection I, above.)

- (C) The expiration month position limit for the PJM contracts are effective on the opening of trading on all business days when a contract month becomes the first nearby month (or spot month) and continues on an intra-day basis thereafter until the conclusion of trading in the expiring contract. The expiration month position limit shall be calculated on a net futures-equivalent basis.

The expiration month position limit for PJM electricity futures contracts listed for trading on the Exchange is 3,000 contract units (on any one day) in the aggregate for the following contracts:

PJM Calendar-Month-LMP Swap (PJM Interconnection, LLC)

PJM Calendar-Week-LMP Swap (PJM Interconnection, LLC)

PJM Calendar Day-Ahead-LMP Swap (PJM Interconnection, LLC)

- (D) The current delivery month position limits for platinum and palladium are effective on the business day prior to the first notice day for any delivery month. No person shall maintain any position which, when combined with the number of contracts for which a delivery notice has been tendered or accepted during the delivery month, exceeds the maximum permissible current delivery month position limit for such contract.

The current delivery month position limits for metals futures contracts are:

(a) Palladium 650 contracts

(b) Platinum 200 contracts

- (1) Unless otherwise agreed, all orders received for execution on NYMEX ACCESS® shall be deemed to be cancelled if not executed during the trading session for which they were received.

9.28 Exemptions from Position Limits for Bona Fide Hedging Transactions

- (A) The limits set forth at Rule 9.27 shall not apply to bona fide hedging transactions as defined in §1.3(z)(1) of the Regulations of the Commission (17 C.F.R. §1.3(z)(1)), as it may be amended from time to time.
- (B) Notwithstanding the provisions of Subsection (A) of this Rule 9.28, any person who owns or controls a bona fide hedging position in excess of the levels set forth in Rule 9.27 must comply with the applicable provisions of Rules 9.29, 9.31, 9.32 and this Rule 9.28.
- (C) Any person who owns or control bona fide hedge positions must initiate and liquidate positions in accordance with sound commercial practices and in an orderly manner; trading shall not be conducted in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes. No person shall use hedge positions to attempt to violate or avoid the By-Laws and Rules or to impair the good name of the Exchange.
- (D) Any person who received approval to own or control positions classified as bona fide hedge positions shall submit to the Exchange, upon the request of the Board, the Control Committee or the President any information required by the Board, the Control Committee or the President or his designee (collectively, the "President" for purposes of Rules 9.28-9.36).
- (E) Whenever an order of the Board, of the Control Committee or of any other Committee of the Exchange excludes from the operation of the order bona fide hedge positions or transactions, any person who desires his positions or transactions to be excluded must file a Hedge Notice with the Exchange as provided in this Chapter 9.
- (F) Nothing in this Chapter 9 concerning exemption from position limits or any related provision shall in any way limit (i) the authority of the Exchange to take emergency action or (ii) the authority of the President to review at any time the position owned or controlled by any person and to direct that a position be reduced to the level provided for by Rules 9.26 or 9.27.

9.29 Exemptions from Position Limits for Exposure from Commodity Swap Transactions

- (A) A person may apply to the Exchange for an exemption from the position limits set forth in Rule 9.27 where such exemption is necessary to reduce exposure resulting from commodity swap transactions that meet all the criteria of the Commodity Futures Trading Commission (the "Commission"), as stated in the Policy Statement Concerning Swap Transactions, 54 Fed. Reg. 30694 (July 21, 1989), or the Exemption of Swap Agreements 17 C.F.R. Part 35 (Jan. 22, 1993), as it may be amended or interpreted by the Commission or other provisions applicable to swap transactions contained in the Commodity Exchange Act.
- (B) Applicants for an exemption under this Rule shall apply to the President or his authorized representative (referred to as the "President"), on forms provided by the

Exchange, not more than five (5) days after assuming a position in excess of position limits under this Rule.

The Application shall include: a list of the contracts for which exemption is requested; a full and complete explanation of the underlying swap exposure; an agreement to comply with the limits imposed with respect to the proposed transactions; audited financial statements or other financial statements in the form approved by the President; an agreement to comply with the By-Laws and Rules of the Exchange; an agreement to submit a supplemental statement to the Exchange explaining any material change in circumstances or information provided in the application; and agreement to initiate and liquidate positions in accordance with sound commercial practices and in an orderly manner; and such other information, and representations as may be required by the Exchange.

- (C) Any person who receives approval to own or control positions pursuant to this Rule, shall provide to the Exchange, upon the request of the Board, the Control Committee, or the President, any information or documentation requested relating to the exemption, the underlying swap transactions, or the financial condition of the applicant.
- (D) The President shall, on the basis of the application and supplemental information which the Exchange may request, determine whether an exemption from speculative position limits shall be granted. The President may deny, condition or impose limitations upon an exemption request, based upon the applicant's business needs, financial status and integrity, the bona fides of the underlying swap transactions, on the liquidity, depth and volume of the market for which the exemption is sought, and on such factors as the President deems appropriate. The President may review at any time exemptions granted under this Rule, and may modify, revoke or place limitations on the exemption.
- (E) Nothing in this Rule shall in any way limit (i) the authority of the Exchange to take emergency action; or (ii) the authority of the President to review at any time the position owned or controlled by any person and to direct that a position be reduced to the level provided for by Rules 9.26 and/or 9.27.
- (F) Any person who has received from the President written authorization to exceed position limits imposed under Rules 9.27 must file with the Exchange an updated application annually, no later than the anniversary date of the initial authorization, or waive the exemption.

9.30 Hedge Notice

- (A) Any person who owns or controls a bona fide hedge position in excess of the levels set forth in Rule 9.27 must file with the Exchange a written Hedge Notice accompanied by audited financial statements or other financial statements in the form approved by the President, not more than five (5) days after assuming such a position, provided, however, that such position may not be assumed with respect to a contract expiring within three (3) business days except as authorized in advance by the President; further provided that a Hedge Notice seeking exemption from a current delivery month position limit in a metals futures contract shall be filed, and must be approved, prior to

assuming a position in excess of the limit; and, further provided that the President or his designee may in special circumstances authorize the late filing of any Hedge Notice.

- (B) Any Hedge Notice must, except as otherwise authorized by the President, provide the following statements and information:
- (1) A representation that the transactions will be bona fide hedging transactions as defined in Regulation §11.3(z)(1) of the Commission (17 C.F.R. §1.3(z)(1)) as it may be amended from time to time;
 - (2) A representation that the transactions will be necessary or advisable as an integral part of such person's business; and, in that connection, a full and complete explanation of the nature and extent of such business;
 - (3) A representation that the person has complied with any applicable Federal requirement relating to hedging; and, that the person has received approval, where necessary, from the Commission;
 - (4) A schedule of the maximum number of contracts, long and short, which the person will establish as a hedge;
 - (5) An agreement to comply with whatever limits are imposed with respect to the proposed transactions; to submit a supplemental statement explaining any change in circumstances which affect the nature of such position; and, to comply with the By-Laws and Rules; and
 - (6) A statement from the person's carrying firm that the transactions will be identified as hedging transactions on the books of such firm.
- (C) Any person who has received from the President or his designee written authorization to exceed position limits imposed by Rule 9.26 or 9.27 must file with the Exchange an updated Hedge Notice annually.

9.31 Revised Hedge Notice

Whenever the positions which a person desires to classify as a bona fide hedge exceed the limits imposed by the President or exceed the maximum number of contracts previously identified by such person in the Hedge Notice such person shall file with the Exchange, not more than five (5) days after the date on which such person has exceeded such amounts, a Revised Hedge Notice accompanied by audited financial statements or other financial statements in the form approved by the President provided, however, that such limits may not be exceeded with respect to a contract expiring within three (3) business days except as authorized in advance by the President; further provided that a Revised Hedge Notice seeking exemption from a current delivery month position limit in a metals futures contract previously identified in the Hedge Notice shall be filed, and must be approved, prior to assuming a position in excess of such limit; and, further provided that the President or his designee may in special circumstances authorize the late filing of any Hedge Notice.

9.32 Action by the Exchange

- (A) The President shall determine whether the transactions or positions described in the Hedge Notice are bona fide hedging transactions or positions.
- (B) The President may impose such limits on bona fide hedge transactions or positions, as in his discretion are commensurate with market conditions, the person's business needs, financial ability and integrity.
- (C) The President may review, from time to time, any approvals of hedge transactions and positions; and the President may revoke, or place limitations on, any approval. Any person who is adversely affected by a determination of the President may request the Control Committee to review such determination.
- (D) No Clearing Member shall maintain or clear any position which taken alone or when aggregated in accordance with the provisions of this Chapter 9 exceeds the position limits permitted under Rules 9.27, except as otherwise authorized pursuant to this Chapter 9.
- (E) In the event that the President learns that a Member or customer maintains positions in accounts with more than one Clearing Member, such that aggregating positions in all such accounts exceeds the position limits established by this Chapter 9, the President will notify each Clearing Member maintaining or carrying such accounts that it is in violation of Section (D) of this Rule 9.32. A Clearing Member receiving notification from the President or his designee that it is in violation of Subsection (D) of this Rule 9.32 shall reduce any above-limit position as directed by the President, provided that reduction of an aggregated position which is maintained by two or more Clearing Members shall be proportional unless otherwise directed by the President.

9.33 Position Reporting

- (A) Each Clearing Member shall submit to the Exchange reports of positions equal to or in excess of the levels established by Rule 9.34. Such reports shall be submitted by no later than 8:00 A.M. in an approved machine readable format unless authorized otherwise in advance by the Director of Market Surveillance or his designee.
- (B) Any omnibus account or foreign broker shall submit a signed NYMEX reporting agreement in the form prescribed by the Exchange to the Exchange's Compliance Department upon becoming reportable. Any reportable omnibus account or foreign broker shall submit to the Exchange separately identifying all proprietary and customer positions equal to or in excess of the levels established by Rule 9.34. Such reports shall be submitted in the form prescribed by the Exchange by no later than 8:00 A.M. unless authorized otherwise in advance by the Director of Market Surveillance or his designee. The failure by an omnibus account or foreign broker to submit a signed NYMEX reporting agreement or properly report positions may result in a hearing by the Business Conduct Committee to limit, condition or deny access to the market.
- (C) Interest in or Control of Several Accounts.

- (1) If any person holds or has a financial interest in or controls more than one account, all such accounts shall be considered by the Clearing Member, omnibus account or foreign broker as a single account for reporting purposes.
- (a) Accounts of Eligible Entities.
- Accounts of Eligible Entities as defined in Rule 9.28(F) of this chapter that are traded by an independent account controller shall, together with other accounts traded by the independent account controller or in which the independent controller has an interest be considered a single account.
- (b) Accounts Controlled by Two or More Persons.
- Accounts that are subject to day-to-day trading control by two or more persons shall, together with other accounts subject to control by exactly the same persons, be considered a single account.
- (2) For purposes of this Rule 9.33, except for the interest of a limited partner or shareholder (other than the CPO) in a commodity pool, the term financial interest shall mean an interest of 10 percent or more in ownership or equity of an account.
- (D) For purposes of sections (A), (B) and (C) above, if a person controls or holds a position equal to or greater than the number of contracts specified in Rule 9.34 long or short in any one month, then all such futures and options on such futures whether above the given level or not, shall be deemed reportable positions.
- (E) All Clearing Members, omnibus accounts and foreign brokers for the purposes of sections (A), (B), (C) and (D) above, shall report to the Exchange each account in excess of the levels established in Rule 9.34 by a unique numeric designation. The unique numeric designation shall be established by filing with the Director of Market Surveillance a CFTC Form 102 meeting all the requirements of Section 17.01(b) of the Regulation of the Commission (17 C.F.R. Section 17.01(b)), as it may be amended from time to time, within one business day of when the account becomes reportable for the first time. The Clearing Member, omnibus account or foreign broker, as the case may be, shall file an updated Form 102 with the Exchange within one business day after any material change in the information supplied on the Form 102 occurs.

9.34 Reporting Levels

- (A) The quantities fixed for the purposes of filing a report under Rule 9.33 are:

Commodity

Crude Oil Light Sweet	350 contracts
NYMEX Brent Crude Oil	350 contracts
PJM Calendar-Month-LMP Swap (PJM	1 contract

Interconnection, LLC)	
PJM Calendar-Week-LMP Swap (PJM Interconnection, LLC)	1 contract
PJM Calendar Day-Ahead-LMP Swap (PJM Interconnection, LLC)	1 contract
New York Harbor Unleaded Gasoline	150 contracts
New York Heating Oil	250 contracts
Northwest Europe Gasoil	25 contracts
Liquefied Propane Gas	25 contracts
Natural Gas	175 contracts
Palladium	25 contracts
Platinum	50 contracts
Central Appalachian Coal	25 contracts
Crude Oil L.S. Options Long Put	350 contracts
Crude Oil L.S. Options Long Call	350 contracts
Crude Oil L.S. Options Short Put	350 contracts
Crude Oil L.S. Options Short Call	350 contracts
WTI Crude Oil Look-Alike Long Put	100 contracts
WTI Crude Oil Look-Alike Long Call	100 contracts
WTI Crude Oil Look-Alike Short Put	100 contracts
WTI Crude Oil Look-Alike Short Call	100 contracts
New York Heating Oil Long Put	250 contracts
New York Heating Oil Long Call	250 contracts
New York Heating Oil Short Put	250 contracts
New York Heating Oil Short Call	250 contracts
New York Harbor Heating Oil Look-Alike Long Put	100 contracts
New York Harbor Heating Oil Look-Alike	100 contracts

Long Call	
New York Harbor Heating Oil Look-Alike Short Put	100 contracts
New York Harbor Heating Oil Look-Alike Short Call	100 contracts
N.Y.H. Unleaded Gasoline Long Put	150 contracts
N.Y.H. Unleaded Gasoline Long Call	150 contracts
N.Y.H. Unleaded Gasoline Short Put	150 contracts
N.Y.H. Unleaded Gasoline Short Call	150 contracts
N.Y.H. Unleaded Gasoline Look-Alike Long Put	100 contracts
N.Y.H. Unleaded Gasoline Look-Alike Long Call	100 contracts
N.Y.H. Unleaded Gasoline Look-Alike Short Put	100 contracts
N.Y.H. Unleaded Gasoline Look-Alike Short Call	100 contracts
Platinum Options Long Put	50 contracts
Platinum Options Long Call	50 contracts
Platinum Options Short Put	50 contracts
Platinum Options Short Call	50 contracts
Heating Oil-Crude Oil L.S. Spread Long Put	25 contracts
Heating Oil-Crude Oil L.S. Spread Long Call	25 contracts
Heating Oil-Crude Oil L.S. Spread Short Put	25 contracts
Heating Oil-Crude Oil L.S. Spread Short Call	25 contracts
N.Y.H. Unleaded Gas-Crude Oil L.S. Spread Long Put	25 contracts
N.Y.H. Unleaded Gas-Crude Oil L.S.	25 contracts

Spread Long Call	
N.Y.H. Unleaded Gas-Crude Oil L.S. Spread Short Put	25 contracts
N.Y.H. Unleaded Gas-Crude Oil L.S. Spread Short Call	25 contracts
Natural Gas Options Long Put	175 contracts
Natural Gas Options Long Call	175 contracts
Natural Gas Options Short Put	175 contracts
Natural Gas Options Short Call	175 contracts
Natural Gas Look-Alike Long Put	100 contracts
Natural Gas Look-Alike Long Call	100 contracts
Natural Gas Look-Alike Short Put	100 contracts
Natural Gas Look-Alike Short Call	100 contracts
Central Appalachian Coal Options Long Put	25 contracts
Central Appalachian Coal Options Long Call	25 contracts
Central Appalachian Coal Options Short Put	25 contracts
Central Appalachian Coal Options Short Call	25 contracts
PJM Calendar-Month LMP Swap Options Long Put	1 contract
PJM Calendar-Month LMP Swap Options Long Call	1 contract
PJM Calendar-Month LMP Swap Options Short Put	1 contract
PJM Calendar-Month LMP Swap Options Short Call	1 contract

**Futures Contracts listed for Trading Only on NYMEX
ClearPort(sm) Trading
and also Listed for Clearing of Off-Exchange Transactions
Through NYMEX
ClearPort(sm) Clearing**

Henry Hub Swap	175 contracts
Henry Hub Natural Gas Penultimate Swap	100 contracts
WTI Calendar Swap	350 contracts
NYMEX-WTI-Brent Spread Calendar Swap	350 contracts
NYMEX Brent Calendar Swap	350 contracts
Dated Brent Calendar Swap	25 contracts
Louisiana Light Sweet Crude Oil	350 contracts
West Texas Sour Crude Oil	25 contracts
West Texas Intermediate Midland Crude Oil	350 contracts
Mars Blend Crude Oil	25 contracts
WTI - Bow River Swap	25 contracts
New York Harbor Gasoline Calendar Swap	150 contracts
New York Harbor Heating Oil Calendar Swap	250 contracts
New York Harbor Unleaded Gasoline vs. New York Harbor Heating Oil Swap	25 contracts
New York Harbor Conv. Gasoline vs. New York Harbor Unleaded Gasoline Spread Swap	150 contracts
New York Harbor LS Diesel vs. New York Harbor No. 2 Heating Oil Spread Swap	25 contracts
Gulf Coast Gasoline vs. Gulf Coast Heat Oil Spread Swap	25 contracts
Gulf Coast Jet vs. New York Harbor No. 2 Heating Oil Spread Swap	25 contracts
Los Angeles Jet Fuel vs. New York Harbor No. 2 Heating Oil Spread Swap	25 contracts

Los Angeles Carb Gasoline Swap	150 contracts
Los Angeles Carb Gasoline vs. New York Harbor Gasoline Swap	150 contracts
Gulf Coast No. 6 Fuel 3.0% Sulfur Swap	25 contracts
Gulf Coast No. 6 Fuel Oil Crack Swap	25 contracts
Gulf Coast Gasoline Calendar Swap	25 contracts
Gulf Coast Heating Oil Calendar Swap	25 contracts
Gulf Coast Jet Fuel Calendar Swap	25 contracts
New York Harbor Residual Fuel 1.0% Sulfur Swap	25 contracts
New York Harbor Residual Fuel Crack Swap	25 contracts
European Naphtha Calendar Swap	25 contracts
European Jet Kero NWE Calendar Swap (Northwest Europe)	25 contracts
European Jet Kero Rotterdam Calendar Swap	25 contracts
European Gasoil 0.2 Rotterdam Calendar Swap	25 contracts
European Gasoil 0.2 NWE Calendar Swap (Northwest Europe)	25 contracts
European Gasoil 0.2 MED Calendar Swap (Mediterranean)	25 contracts
European ULSD (Diesel) Rotterdam Calendar Swap	25 contracts
European ULSD NWE Calendar Swap (Northwest Europe)	25 contracts
European 1% Fuel Oil Calendar Swap (Northwest Europe)	25 contracts
European 1% Fuel Oil Rotterdam Calendar Swap	25 contracts
European 3.5% Fuel Oil Rotterdam Calendar Swap	25 contracts
European 3.5% Fuel Oil MED Calendar Swap	25 contracts

(Mediterranean)

European Singapore Fuel Oil 180cst Calendar Swap	25 contracts
NYISO Zone A LBMP Swap	25 contracts
NYISO Zone G LBMP Swap	25 contracts
NYISO Zone J LBMP Swap	25 contracts
ISO New England Peak LMP Swap	25 contracts
DOW JONES Mid-Columbia Electricity Price Index Swap	25 contracts
DOW JONES NP15 Electricity Price Index Swap	25 contracts
DOW JONES Palo Verde Electricity Price Index Swap	25 contracts
DOW JONES SP15 Electricity Price Index Swap	25 contracts
NYISO Zone A Off-Peak LBMP Swap	25 contracts
NYISO Zone G Off-Peak LBMP Swap	25 contracts
NYISO Zone J Off-Peak LBMP Swap	25 contracts
PJM Western Hub Off-Peak LMP Swap	25 contracts
Northern Illinois Hub Off-Peak LMP Swap	25 contracts
AEP-Dayton Hub Off-Peak LMP Swap	25 contracts
ISO New England Internal Hub Off-Peak LMP Swap	25 contracts
AEP-Dayton Hub Calendar-Month LMP Swap	25 contracts
AEP-Dayton Hub Calendar-Day LMP Swap	25 contracts
Northern Illinois Hub Calendar-Month LMP Swap	25 contracts
Northern Illinois Hub Calendar-Day LMP Swap	25 contracts
MichCon Basis Swap (Platts IFERC)	175 contracts

Permian Basis Swap (Platts IFERC)	175 contracts
M-3 Basis Swap (Platts IFERC)	25 contracts
TCO Basis Swap (Platts IFERC)	175 contracts
Malin Basis Swap (NGI)	25 contracts
PG&E Citygate Basis Swap (NGI)	175 contracts
NGPL Texok Basis Swap (Platts IFERC)	175 contracts
NGPL LA Basis Swap (Platts IFERC)	175 contracts
ANR OK Basis Swap (Platts IFERC)	175 contracts
Panhandle Basis Swap (Platts IFERC)	175 contracts
NGPL Mid-Con Basis Swap (Platts IFERC)	175 contracts
Demarc Basis Swap (Platts IFERC)	175 contracts
Ventura Basis Swap (Platts IFERC)	175 contracts
Dominion Basis Swap (Platts IFERC)	25 contracts

Physical Delivery Contracts

Mid-Columbia Electricity	25 contracts
Palo Verde Electricity	25 contracts
PJM Electricity	25 contracts
Cash-Settled Contracts	
Dubai Crude Oil Calendar Swap	25 contracts
U.S. Gulf Coast Unl 87 Crack Spread Calendar	25 contracts
U.S. Gulf Coast No. 2 Crack Spread Calendar	25 contracts
Unl 87 Up-Down Spread Calendar Swap	25 contracts
No. 2 Up-Down Spread Calendar Swap	25 contracts
AECO/NIT Basis Swap	25 contracts
Chicago Basis Swap	175 contracts

Henry Hub Basis Swap	25 contracts
Houston Ship Channel Basis Swap	25 contracts
San Juan Basis Swap SoCal Basis Swap	25 contracts
SoCal Basis Swap	25 contracts
Transco Zone 6 Basis Swap	25 contracts
NYH Unleaded Crack Calendar Swap	25 contracts
NYH No. 2 Crack Calendar Swap	25 contracts
Northwest Rockies Basis	25 contracts
E-Miny Crude Oil	350 contracts
E-Miny Natural Gas	175 contracts
CIG Rockies Basis Swap	25 contracts
Sumas Basis Swap	25 contracts
Waha Basis Swap	175 contracts
Transco Zone 3 Basis Swap	175 contracts
TETCO STX Basis Swap	175 contracts
TETCO ELA Basis Swap	175 contracts
Columbia Gulf Louisiana Basis Swap	175 contracts
Chicago Index Swap	25 contracts
Permian Index Swap	25 contracts
Henry Hub Index Swap	25 contracts
Houston Ship Channel Index Swap	25 contracts
Panhandle Index Swap	25 contracts
Waha Index Swap	25 contracts
Chicago Swing Swap	25 contracts
Permian Swing Swap	25 contracts
Henry Hub Swing Swap	25 contracts
Houston Ship Channel Swing Swap	25 contracts

Panhandle Swing Swap	25 contracts
Waha Swing Swap	25 contracts
Eastern Rail CSX Coal Swap	25 contracts
Western Rail PRB Coal Swap	25 contracts
ANR Louisiana Basis	25 contracts
Kern River Wyoming Basis	25 contracts
Questar Basis	25 contracts
Tennessee 500 Leg Basis	25 contracts
Tennessee Zone 0 Basis	25 contracts
Texas Gas Zone SL Basis	25 contracts
Trunkline LA Basis	25 contracts
San Juan Natural Gas Index	25 contracts
Sumas Index	25 contracts
Rockies Index	25 contracts
SoCal Natural Gas Index	25 contracts
TETCO M-3 Natural Gas Index	25 contracts
TRANSCO Zone 6 Natural Gas Index	25 contracts
PG&E Citygate Natural Gas Index	25 contracts
Dominion Natural Gas Index	25 contracts
San Juan Swing	25 contracts
Sumas Index	25 contracts
Kern Opal Swing	25 contracts
SoCal Swing	25 contracts
TETCO M-3 Swing	25 contracts
TRANSCO Zone 6 Swing	25 contracts
PG&E Citygate Swing	25 contracts
Dominion, South Point Swing	25 contracts

9.35 Aggregation

In determining whether any person has exceeded the limits established by this Chapter 9, all positions held in accounts owned or controlled by such person, including those positions in accounts for which such person by power of attorney or otherwise, directly or indirectly, controls trading shall be included with the positions of such person; such limits upon positions shall apply to positions held by two or more persons acting pursuant to an express or implied agreement or understanding, the same as if all of the positions were held by a single person.

9.36 Penalties

- (A) Definition of a Speculative Limit Violation. For purposes of this Rule, the ownership or control over, as well as the carrying by a Clearing Member of, a position in excess of that allowed under Rules 9.26 - 9.35 shall be deemed a speculative position limit violation; provided, however, that a Clearing Member shall not be deemed to be in violation for carrying the position of another person for whom the Clearing Member does not exercise trading discretion unless the position exceeds the speculative position limit as of the close of trading on two successive business days. Each business day on which a customer, member, or Clearing Member, as the case may be, is in excess of the limits allowed under Rules 9.26 - 9.35 shall be considered a separate speculative position limit violation.
- (B) First Violation. The first occurrence of a speculative position limit violation will not be deemed a rule violation, however, it will result in a warning letter being issued by the Compliance Staff to the customer (includes any Member or non-member customer) and to the carrying Clearing Member; provided, however, that where the violation results from the aggregation of two or more customer accounts, no warning letter shall be issued to any Clearing Member that demonstrates to the satisfaction of the President or his designee that: (1) it did not carry any individual customer account which held an excessive position; (2) it took timely and appropriate remedial action upon discovery or notification of the violation (whichever occurs first); and, where applicable, (3) it employs systems and procedures reasonably calculated to discover whether positions held in two or more accounts carried by it should be aggregated under the rules of the Exchange.
- (C) Subsequent Violation.
 - (1) By Clearing Member or Member Within 12 Months The occurrence of a second speculative position limit violation within 12 months of any previous speculative position limit violation shall be a rule violation which will subject the Member or Clearing Member, as the case may be, to an automatic fine in accordance with the fine schedule in Paragraph (D) of this Rule 9.36, and to a cease and desist order issued by the President, or his designee.
 - (2) By Clearing Member or Member After 12 Months

The occurrence of a second position limit violation more than 12 months after any previous speculative position limit violation may subject the Member or Clearing Member, as the case may be, to a cease and desist order issued by the President, or his designee.

(3) By Customer

The occurrence of a second speculative position limit violation by a customer will subject the customer to a warning letter issued by the Compliance Staff stating that any future violation by the customer of the speculative position limit rules may result in extraordinary sanctions, including, but not limited to, conditioning, limiting, or denying access of such customer to the market. Imposition of any such extraordinary sanction shall be preceded by a hearing conducted before a panel of the Business Conduct Committee.

- (D) Automatic Fine Schedule. As used in this Sub-paragraph (D), the word "contract" shall mean any futures contract, an option contract, or a futures-equivalent position, in excess of that allowed under Rules 9.26 - 9.35.

Situation Fine Assessed Against

- (1) Member account over specula- \$1,000 Member and Clearing Member speculative position limits.
 - (2) Non-Member Customer ac- \$1,000 Clearing Member count over speculative position limits.
 - (3) House account over specula- \$1,000 Clearing Member speculative position limits.
- (E) Additional Penalties. Any other provision of these Rules notwithstanding, a panel of the Business Conduct Committee may take other actions or impose additional penalties against any customer, Member or Clearing Member, including, but not limited to, limiting conditioning or denying access to the market, in the following cases:
- (1) Where the violation occurs in the spot month;
 - (2) Where the violation involves a position which is more than 150 percent of the speculative or approved hedge position limits;
 - (3) Where the violation is the third offence within any 12-month period;
 - (4) Where a Clearing Member fails to promptly comply with an instruction by the President or his designee to reduce any position; and
 - (5) Where the Compliance Department deems the violation to constitute a severe abuse of Exchange rules.

- (F) Alternative Position Limit Violation Evaluation. If a position exceeds speculative position limits at the close of trading when evaluated using the previous day's NYMEX Risk Factors, but does not exceed speculative position limits when evaluated using the NYMEX Risk Factors as of that day's close of trading, then the position shall not be deemed to violate the speculative position limits contained herein.
- (G) Multiple Clearing Members. A customer or member who maintains positions at more than one Clearing Member which taken together exceed the speculative position limit will be deemed to have waived confidentiality regarding his positions, and the Clearing Members carrying the excessive positions may be informed of the overall position and required to make reductions on a pro rata basis.

9.36A Appeal / Settlement

- (A) Any fine imposed in accordance with Rule 9.36 may be appealed to the Appeals Committee. To appeal a fine, a Member or Clearing Member shall file a typewritten notice of appeal with the Office of the Secretary and the Compliance Department within ten (10) business days after receipt of the notice of such fine. The notice of appeal shall set forth the grounds for the appeal and any relevant documents shall be attached. A failure to appeal within such time limit shall operate as a waiver of all rights of appeal.
- (B) The Compliance Department shall deliver to the appellant and file with the Office of the Secretary within ten (10) days of the date of delivery of the Notice of Appeal, a written memorandum in response to the Notice of Appeal.
- (C) The appellant may deliver to the Compliance Department and file with the Office of the Secretary, within ten (10) days from receipt of the response of the Compliance Department, a written reply memoranda. Such memoranda must be limited to the matters contained in the response of the Compliance Department.
- (D) In its discretion, the Appeal Panel may decide the appeal on the basis of the notice of fine and memoranda of the Respondent and the Compliance Department or may require the parties to make oral presentation. The Appeal Panel shall issue a written decision which shall include an order to affirm, reverse or modify the terms of the summary fine issued.
- (E) The Appeal Panel may approve or reject offers of settlement between the appellant and the Compliance Department which may decrease the fine or otherwise modify the terms of the summary fine issued.

9.37 Required Use of ATOM by Clearing Members and Floor Brokers

- (A) Each Clearing Member of the Exchange and floor broker must enter into an agreement (the "ATOM Agreement") to participate in the ATOM1 system. The ATOM Agreement shall be in the form specified by the Exchange and shall be filed with the Exchange.

- (B) Each Clearing Member shall enter and maintain all applicable floor brokerage rates into the ATOM system, at rates agreed to between the Clearing Member and the applicable floor broker. A Clearing Member must provide thirty (30) days prior written notice to the floor broker before any modification to a floor brokerage rate entered in the ATOM system shall become effective.
- (C) Each Clearing Member and floor broker shall agree on customer identification codes and each floor broker shall enter these codes when entering clearing data for such trades for these customers.

1 "ATOM" is a trademark of the Board of Trade Clearing Corporation and has been licensed for use by NYMEX.

9.37A Reserved

9.38 Participation by NYMEX Floor Members in Special Program for Over-the-Counter Trading with FCM Guarantee

- (A) This program is effective until February 4, 2005, or until such other date as announced by the Exchange. The over-the-counter (OTC) contracts, agreements or transactions must be executed pursuant to Section 2(h)(1) of the Commodity Exchange Act (Act), which in effect provides among other things that such transactions shall be subject to CFTC anti-fraud and anti-manipulation authority and also may not be entered into on a trading facility. This program generally allows a NYMEX Floor Member to enter into trading in certain OTC contracts on the basis of a FCM guarantee without needing to satisfy the total assets requirements otherwise necessary under the Act for such trading. In order to maintain eligibility for this program, a NYMEX Floor Member must continue to satisfy all of the conditions contained in this rule.
- (B) This program is available only to NYMEX Floor Members in good standing who are properly registered with the CFTC as a floor trader and/or as a floor broker. With respect to floor brokers, this program is available only for trading executed by the floor broker for his proprietary account. In addition, each NYMEX Floor Member must notify the Exchange Compliance Department prior to any participation in this program.
- (C) Clearing. The NYMEX Floor Member must have obtained and at all times maintain a financial guarantee in writing as provided by the Exchange for the contracts, agreements or transactions from a NYMEX Clearing Member that:
 - (1) is registered with the Commission as an FCM; and,
 - (2) clears the OTC contracts, agreements or transactions thus guaranteed for such NYMEX Floor Member.
- (D) Permissible OTC contracts, agreements or transactions shall be limited to trading in a commodity that either:
 - (1) is listed only for clearing at NYMEX or

- (2) is listed for trading and clearing at NYMEX and NYMEX's rules provide for exchanges of futures for swaps in that contract, and
 - (3) each OTC contract, agreement or transaction executed pursuant to this NYMEX program must be cleared at NYMEX.
- (E) The NYMEX Floor Member may not enter into OTC contracts, agreements or transactions with another floor broker or floor trader as the counterparty for any contract that is listed for trading on the Exchange. However, a NYMEX Floor Member may enter into OTC contracts, agreements or transactions for such products with the Exchange in connection with options or forwards entered into through a pari-mutuel auction or, in connection with other OTC contracts, agreements or transactions, with an individual or entity that qualifies as an eligible contract participant" pursuant to the Act.
- (F) All contracts transacted in connection with this rule must be submitted and accepted for clearing on the Exchange. This rule neither authorizes nor allows a NYMEX Floor Member to maintain an uncleared OTC position and such activity would constitute a violation of this rule.

9.39 Special Capital Provisions for Clearing Members Guaranteeing and Clearing OTC Contracts Executed by NYMEX Floor Members

- (A) Clearing Members that guarantee and clear OTC contracts, agreements or transactions pursuant to the program referenced in NYMEX Rule 9.38 must have and maintain at all times minimum working capital of at least \$20 million; provided, however, that during the first 18 months following commencement of this program, a Clearing Member must have and maintain minimum working capital of at least:
- (1) \$5 million during the first twelve months of the two-year period; and
 - (2) \$10 million during the thirteenth through eighteenth months of the two-year period.
- (B) If, during the 18-month period, a Clearing Member does not maintain working capital of at least \$20 million, it must further reduce its working capital in compliance with this program by 100 percent of the NYMEX margin requirements for the OTC contracts, agreements or transactions of floor brokers and floor traders that it is guaranteeing pursuant to this program. A Clearing Member must compute its working capital in accordance with Exchange rules and generally accepted accounting principles consistently applied.
- (C) A Clearing Member that is subject to the provisions of paragraph (B), above shall be required to compute, on a daily basis, the total margin requirement for OTC contracts, agreements or transactions of floor brokers and floor traders that it is guaranteeing pursuant to this program. Such computations must be documented and maintained by the Clearing Member in accordance with CFTC Regulation 1.31 and be made available for inspection by Exchange representatives. Computations prepared as of financial statement filing dates must be included as part of such filing with the Exchange.

- (D) A decline in a Clearing Member's working capital resulting from the application of this Rule shall be subject to the reporting requirements set forth in Rule 9.22.

Clearing Rules Specifically Governing Clearing Member Obligations Regarding Clearing of Options and Forwards Executed in Exchange-Designated Pari-mutuel Auctions

Note: The following subsection is intended to group together several rules that apply specifically to obligations associated with the clearing of this category of product. Clearing Members are advised that, in addition to other Chapter 9 rules that govern their duties more generally, they may wish to also consult the following Chapter 9 rules:

Rule 9.00(D);
Rule 9.04(I);
Rule 9.05(H); and
Rule 9.23

9.40C Clearing Requirements for Clearing of Over-the-Counter Option Transactions in Exchange-Designated Pari-mutuel Auctions

- (A) No Clearing Member shall assign an account number that would accept the entry of orders into an Exchange-designated pari-mutuel auction for or on behalf of a customer, unless such customer is first provided with an Auction Procedures document in a form approved by the Exchange and any subsequent revisions or amendments to such Auction Procedures. A Clearing Member shall obtain the agreement of each eligible customer for which it proposes to clear transactions in a pari-mutuel auction that such customer will be bound by the Auction Procedures and by applicable Exchange Rules, in connection with each such transaction. Such agreement may be obtained in any manner deemed appropriate by the Clearing Member, including without limitation through the customer's consent in its agreement with the Clearing Member to be bound by Exchange Rules, provided that such agreement can be enforced by the Exchange or an Auction Broker (as defined below) against the customer. The Auction Procedures applicable to pari-mutuel auctions and transactions are hereby incorporated into these Rules and made a part hereof to the same extent as if such Procedures were reprinted herein in their entirety.
- (B) Participation in an Exchange-designated pari-mutuel auction shall be limited to "eligible customers." For purposes of this rule, eligible customers shall be limited to individuals and entities:
- (1) who qualify as an "eligible contract participant" as defined by the Commodity Exchange Act and by CFTC rule, order or other interpretation, which would include NYMEX Floor Members participating in over-the-counter markets under the conditions and requirements established by NYMEX Rule 9.38;
 - (2) who agree to be bound by the NYMEX Rules and by the Auction Procedures referenced in Section (C);

- (3) who have established a relationship with a Clearing Member and for whom the Clearing Member has submitted information to the Exchange as provided in Section (C); and
- (4) where the offer and sale of products listed in such auction to such individual or entity and the participation in such auction market by such individual or entity does not violate any law applicable to such individual or entity.

Clearing Members may only authorize customer accounts for Exchange-designated pari-mutuel auction for customers.

(C) Before authorizing any account of an eligible customer to trade in an Exchange-designated pari-mutuel auction, a Clearing Member must first submit to the Exchange in the manner provided by the Exchange the following information along with other related information that may be required by the Exchange from time to time:

- (1) the account number of the eligible customer;
- (2) the commodity or commodities that the Clearing Member has authorized the eligible customer to trade on the Exchange-designated pari-mutuel auction; and
- (3) the maximum financial exposure that the Clearing Member is willing to accept for trading by the eligible customer on the Exchange-designated pari-mutuel auction. The limit set by the Clearing Member for the Exchange-designated pari-mutuel auction shall be unique to that auction and thus shall operate separately from the risk limits that may be applicable to that account number in connection with other Exchange services.

In addition, by agreeing to clear transactions in a pari-mutuel auction for eligible customers, and by establishing Risk Allocation Values for orders submitted by that customer, in accordance with paragraph (E) below, a Clearing Member will be deemed to represent and warrant that each customer for which it agrees to clear transactions is an eligible customer under these Rules and that such customer has been provided with the Auction Procedures (including any revisions or amendments) and has agreed to be bound by the Auction Procedures and these Rules. Each Clearing Member will indemnify and hold harmless the Exchange from any claims, damages, losses, costs or expenses whatsoever incurred by NYMEX or any Auction Broker arising out of any representation or warranty made by Clearing Member in this Clause (C) not being true or accurate (including any claim that an eligible customer is not bound by any Supplemental Cleared OTC Contract (defined in Section (F) below)).

(D) Pari-mutuel transactions will be entered into through separate auctions, as set forth in the Auction Procedures. Upon the completion of an auction, each eligible customer with an executed transaction will be deemed to have entered into an over-the-counter transaction with the Exchange on the terms, and in the amount and at the price, specified with respect to the particular auction, without any further action by Exchange, the Clearing Member or the eligible customer. Immediately thereafter, the over-the-counter transaction will be given up for clearing to the Clearing Member

designated by the eligible customer and shall be extinguished and replaced, by a cleared over-the-counter transaction between the Exchange and the applicable Clearing Member without any further action by the eligible customer or the Clearing Member pursuant to product specifications for such product as provided by Exchange rule ("Cleared OTC Contract").

- (E) In addition, Clearing Members must require their eligible customers to designate at least one firm through which the customer's orders will be submitted into the Exchange-designated pari-mutuel auction ("Auction Broker"). The duties of an Auction Broker will include application of the authorizations and risk limits (set by a Clearing Member pursuant to Section (C)) (hereafter "Risk Data") to the orders received from the eligible customers of the Clearing Member.
- (F) A Clearing Member agrees unconditionally to accept and to clear all trades executed for that account for which it has input information pursuant to Section (C), regardless of malfunction or non-operation of the Exchange's contracts order filter functionality, the Risk Allocation Value order filter functionality, and/or the position limit functionality, provided however that in the event of any manner of misapplication or non-application of the Risk Data by an Auction Broker that results in the execution of a transaction above the risk limit specified by the Clearing Member for an eligible customer, the Clearing Member shall be required to clear only that portion of the transaction that is within or up to such risk limit and the excess of the transaction size above such risk limit shall result in the execution of a cleared contract (a "Supplemental Cleared OTC Contract") on behalf of the relevant Auction Broker, in the amount of such excess, which shall be cleared by the Auction Broker's Clearing Member. The eligible customer that entered the order in excess of its credit limit shall reimburse the Auction Broker for any amounts that the Auction Broker is required to pay under the Supplemental Cleared OTC Contract. Conversely, the Auction Broker will pay to the eligible customer any amount that the Auction Broker receives under such Supplemental Cleared OTC Contract. A Clearing Member shall be responsible for maintaining and updating as appropriate the Risk Data on an ongoing basis and shall submit any such updates to the Risk Data pursuant to the procedures and deadlines as established by the Exchange.

9.41 Special Capital Provisions for Clearing Members Guaranteeing and Clearing OTC Contracts Executed by NYMEX Floor Members

- (A) Clearing Members that guarantee and clear OTC contracts, agreements or transactions pursuant to the program referenced in NYMEX Rule 6.21G must have and maintain at all times minimum working capital of at least \$20 million
- (B) A decline in a Clearing Member's working capital resulting from the application of this Rule shall be subject to the reporting requirements set forth in Rule 9.22.