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August 10, 2005

BY E-MAIL AND FEDERAL EXPRESS

Ms. Jean A. Webb
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

**Re: New York Mercantile Exchange, Inc. - Request for Relief Pursuant
to Section 4d(a)(2) of the Commodity Exchange Act**

Dear Ms. Webb:

I. Introduction

We are writing on behalf of our client, New York Mercantile Exchange, Inc. ("NYMEX"), to request that the Commodity Futures Trading Commission ("CFTC"), in relation to futures contracts traded on NYMEX Europe Limited ("NYMEX Europe") and cleared by NYMEX, issue an order pursuant to Section 4d(a)(2) of the Commodity Exchange Act ("CEA") permitting NYMEX, and CFTC registered futures commission merchants ("FCMs"), to carry the resulting customer positions and associated funds in accounts segregated pursuant to Section 4d of the CEA and CFTC Regulation 1.20 rather than in secured amount accounts pursuant to CFTC Regulation 30.7.

II. Background

A. NYMEX

NYMEX is registered with the CFTC as a designated contract market ("DCM") and as a derivatives clearing organization ("DCO"). In addition, NYMEX is registered with the United Kingdom ("UK") Financial Services Authority ("FSA") as a recognised overseas investment

exchange (“ROIE”).¹ NYMEX is a marketplace for trading energy and metals futures contracts (and options thereon²) through two trading divisions: the NYMEX division,³ which primarily trades futures contracts on energy (e.g., crude oil, gasoline, heating oil and natural gas) and platinum products; and the COMEX division, which primarily trades futures contracts on metals products (e.g., gold, silver, copper and aluminum). The clearing department of NYMEX (also referred to herein as the “Clearing House”) provides clearing services to both the NYMEX and COMEX trading divisions. NYMEX is wholly owned by its parent company, NYMEX Holdings, Inc. (“NYMEX Holdings”).

B. NYMEX Europe

NYMEX Europe, an English company, is in the process of registering with the FSA as a recognised investment exchange in the UK (“RIE”) for the purpose of trading futures contracts on certain commodities (primarily Brent crude and gasoil products).⁴ NYMEX Europe is an indirect⁵ wholly owned subsidiary of NYMEX Holdings and is a sister affiliate of NYMEX. NYMEX Europe will provide open-outcry trading facilities on its trading floor and after-hours electronic trading through the NYMEX ACCESS® and NYMEX ClearPortSM trading systems. The NYMEX Europe trading rules are substantially similar to the NYMEX trading rules (a draft of the NYMEX Europe rules as submitted to the FSA is attached hereto as Exhibit A).

C. Description of NYMEX/NYMEX Europe Clearing Arrangements (the “Clearing Arrangements”)

All contracts executed on NYMEX Europe will be submitted to NYMEX for clearing and settlement pursuant to a Clearing Services Agreement between NYMEX Europe and NYMEX Inc. The Clearing Services Agreement sets out specifications for clearing and settlement services and service levels. It also includes escalation procedures to enable NYMEX Europe and NYMEX staff to resolve any issues in respect of the services on a timely basis. In essence, NYMEX will clear trades entered into on and pursuant to the rules of NYMEX Europe on

¹ As an ROIE, NYMEX Inc. is permitted, under the UK’s Financial Services and Markets Act 2000 (“FSMA”), to act as the clearing house of a UK “recognised investment exchange.”

² The term “futures contract” as used herein includes both futures contracts and options on futures contracts.

³ The NYMEX trading division maintains a satellite trading floor facility in Dublin, Ireland on which Brent Crude Oil futures contracts are traded. *But, see*, footnote 9 below.

⁴ NYMEX Europe submitted its RIE application to the FSA on April 7, 2005. Initially, NYMEX Europe will trade the following contracts: Brent Crude Oil Futures Contract; Northwest Europe Gasoil Futures Contract; and Brent Crude Oil Options Contract.

⁵ NYMEX Europe is 100% directly owned by NYMEX Europe Exchange Holdings Limited (“NYMEX Europe Holdings”), an English company that is currently 100% owned by NYMEX Holdings.

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essentially the same basis as it clears trades for the NYMEX and COMEX trading divisions of NYMEX.

All members of NYMEX Europe will be required to clear through a clearing member of NYMEX (accordingly, all customer transactions will be cleared by a CFTC- registered FCM). NYMEX clearing members will not be required to become members of NYMEX Europe merely by virtue of clearing for a NYMEX Europe member.⁶ Such NYMEX clearing members will be designated, pursuant to NYMEX Europe rules, as “Designated Non-Members” in respect of market contracts entered into with NYMEX Europe customers, NYMEX Europe members and between NYMEX clearing members clearing NYMEX Europe contracts (“Market Contracts”), but not in respect of contracts with the Clearing House resulting from the substitution of the Clearing House in accordance with NYMEX rules. Although not members of NYMEX Europe, the foregoing “designation” allows such clearing members to be on an equal footing with NYMEX Europe members so that Market Contracts are protected under Part VII of the UK Companies Act of 1989 for purposes of relevant UK insolvency laws.

NYMEX clearing members will submit NYMEX Europe trades to NYMEX pursuant to the applicable clearing and settlement rules, regulations and procedures of NYMEX.⁷ Upon acceptance of a trade by NYMEX, NYMEX will be substituted as the central clearing counterparty to such trades (*i.e.*, the buyer to each seller and the seller to each buyer). All NYMEX financial resources and default rules will apply equally to NYMEX Europe contracts once such contracts are accepted by NYMEX for clearing. As a DCO, NYMEX has instituted detailed risk-management policies and procedures to guard against default risk with respect to contracts cleared by it. With respect to NYMEX Europe transactions, NYMEX intends to continue to collect both original margin and variation margin from its clearing members on a daily basis pursuant to the same schedule it currently utilizes.⁸ In addition, NYMEX maintains substantial financial resources and a system of guarantees for financial performance. NYMEX believes that its existing resources and protections are sufficient to protect the funds of customers trading domestic products (and held in segregated customer accounts) in the event of a default by a NYMEX clearing member as a result of trading NYMEX Europe products.

⁶ The Clearing House will not have any direct contractual relationship with NYMEX Europe non-clearing members (NYMEX Rule 9.08). Accordingly, the Clearing House will not be liable for any obligations of non-clearing members, or for any obligation of a clearing member to a non-clearing member or for any obligation of a clearing member to another clearing member who is acting for it as broker. Furthermore, the Clearing House will not be liable to customers of NYMEX Europe members to make or take deliveries or otherwise.

⁷ Attached hereto as Exhibit B is a copy of the amended Chapter 9 Clearing Rules of NYMEX.

⁸ Attached hereto as Exhibit C is a table that summarizes the clearing cycle for NYMEX Europe.

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Although the NYMEX Europe trading rules are substantially similar to NYMEX trading rules, initially there will be no fungibility between NYMEX contracts and NYMEX Europe contracts. This means that to the extent NYMEX and NYMEX Europe list contracts with the same specifications, the contracts will not offset each other within the Clearing House.² Nonetheless, the Clearing House anticipates providing portfolio margining benefits for NYMEX and NYMEX Europe correlated futures contracts held in the same collateral pool (*i.e.*, portfolio margining will apply (i) to correlated contracts held in customer segregated accounts and (ii) to correlated contracts held in the clearing member's house account). Lastly, subject to the relief requested in this letter, NYMEX clearing members will be able to utilize their current NYMEX-approved clearing settlement bank accounts (all of which are located in the US) for funds supporting both NYMEX and NYMEX Europe positions.

NYMEX represents that, with respect to the Clearing Arrangements, NYMEX will continue to comply with the DCO Core Principles enumerated in Section 5b(c)(2) of the CEA and Part 39 of the CFTC Regulations.

III. CFTC Relief Requested: US Customer Segregation Requirements vs. Secured Amount Requirements

Under Section 4d(a)(2) of the CEA and CFTC Regulation 1.20, NYMEX, as a DCO, must segregate and separately account for all customer funds received by NYMEX from a clearing member to margin or settle the trades of such member's customers and all funds accruing to such customers from the funds of NYMEX members and of NYMEX itself ("customer segregation"). These same customer segregation requirements apply to customer accounts carried by FCMs. However, as a general matter, the foregoing sections of the CEA and the CFTC Rules only apply to funds deposited with respect to trading on or subject to a US contract market. Although not specified in the CEA, CFTC Regulations 1.3(rr) and 30.7 effectively require an FCM to set aside funds required to margin non-US futures transactions in an account that is held separate both from house funds and from customer segregated funds (the "secured amount"). Accordingly, absent relief from the CFTC, margin to support trading on NYMEX Europe would be deemed subject to the secured amount rules rather than the customer segregation requirements.

Notwithstanding the foregoing, Section 4d(a)(2) of the CEA also provides that "in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, such money securities, and property of the customers of such futures commission merchant may be commingled and deposited as provided in this section with any other money,

² Note, however, that NYMEX does not intend to list the same contracts as NYMEX Europe. Upon recognition of NYMEX Europe by the FSA, the NYMEX trading division will discontinue offering the Brent Crude Oil futures contract on its satellite trading floor in Dublin.

securities, and property received by such futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customers of such futures commission merchant.” In addition, CFTC Regulation 30.10 permits any party adversely affected by any requirement under Part 30 of the CFTC’s rules to petition the CFTC for relief from such requirement. Accordingly, NYMEX is hereby requesting that the CFTC allow the treatment of funds to support trading on NYMEX Europe as US-customer segregated funds rather than in accordance with the CFTC Regulation 30.7 secured amount requirements.

As discussed below, the CFTC has recently allowed similar “commingling” of customer funds that support US and non-US futures markets with respect to other DCOs and FCMs. In doing so, the CFTC concluded that it had the authority to construe its own rules to permit the inclusion of what would otherwise be a secured amount in the segregated funds account. It appears the CFTC concluded that it was permissible to do so because customer margin deposits for foreign futures transactions would be held in accordance with the stricter standards applicable to US customer-segregated funds. Further, in connection with its grant of such “commingling” relief, the CFTC recently issued an interpretation to its Part 190 Rules that address bankruptcy issues in this context. Under the CFTC Part 190 Interpretation,¹⁰ the CFTC clarifies that in cases where money, securities or other property margining, guaranteeing or securing futures contracts traded on non-US boards of trade has been deposited, pursuant to a CFTC order, in a segregated account established pursuant to CFTC Regulation 1.20, such customer funds will enjoy the same protections and benefits as all other customers in the segregated funds accounts (that is, collateral supporting foreign futures contracts placed in US segregation pursuant to such CFTC order shall be treated as in a “futures account,” not a “foreign futures account,” for purposes of CFTC Part 190).

The benefits of allowing such commingling are very important to DCOs, FCMs and other market participants. Such benefits include, *inter alia*: (i) the ability to enjoy the heightened protections and benefits afforded to all customers in the US segregated funds account, (ii) portfolio margining within a single collateral pool, (iii) a reduction in the number of margin and settlement bank accounts DCOs and FCMs need to establish and maintain, (iv) avoidance of the need to undertake substantial programming changes to accounting systems to establish separate secured accounts, (v) fewer demands on FCM capital since FCMs would not need to set aside funds to cover secured amount accounts and (vi) ease of back office administration (*i.e.*, no need for customers and FCMs to move funds and securities back and forth between segregated and secured amount accounts to satisfy margin or segregated/secured funding requirements).

¹⁰ 69 Fed. Reg. 69510 (November 30, 2004) (Part 190 – Interpretative Statement Regarding Funds Determined to be Held in the Futures Account Type of Customer Account Class).

IV. Comparison to Similar CFTC Orders Permitting Non-US Exchange Trades to be Cleared by a US DCO and Held in Customer Segregated Accounts Rather than in 30.7 Secured Accounts

The CFTC has previously allowed “commingling” of customer funds that support US and non-US futures markets with respect to other DCOs and their clearing links with non-US clearing organizations. In particular, the CFTC provided such relief with respect to the clearing links between (i) Chicago Mercantile Exchange (“CME”) and MEFF Sociedad Rectora de Productos Financieros de Renta Variable, S.A. (“MEFF”)¹¹ and (ii) The Clearing Corporation (“CCorp”) and Eurex Clearing AG, Frankfurt (“Eurex Clearing”).¹² With respect to each of the foregoing “link” arrangements, the CFTC issued Orders that permit the holding, in a segregated funds account, of margin deposits and other property associated with trades made on non-US futures markets where those trades are cleared in the US through a clearing link that has been established between the US DCO (*i.e.*, CME, CCorp) and a non-US clearing house (*i.e.*, MEFF and Eurex Clearing, respectively). In both cases, the CFTC Orders required the DCOs to meet a number of terms and conditions designed to ensure their ongoing compliance with the Core Principles applicable to DCOs as set forth in the CEA and Part 39 of the CFTC Regulations.

As in the foregoing “link” arrangements, NYMEX and the FCMs would hold customer margin deposits for non-US futures contracts (*i.e.*, NYMEX Europe) in US customer segregated funds accounts. However, the NYMEX Clearing Arrangement differs from the CCorp/Eurex Clearing and CME/MEFF arrangements insofar as the latter “links” involve the use of a non-US clearing organization as a “special member” of the US DCO. With respect to these “link” arrangements, the non-US clearing house became a “special clearing member” of the US DCO and trades submitted through a non-US exchange clearing member are booked through the “special clearing member” account.¹³ Thus, many of the terms and conditions contained in the CFTC Orders were focused on the relationship between the US DCO and the intermediary non-US clearing house. For example, such terms and conditions related to credit/capital requirements applicable to the non-US clearing house/“special clearing member,” information sharing, coordination of establishing margin requirements, the timely payment and collection of funds

¹¹ 64 Fed. Reg. 34110 (June 27, 2001).

¹² <http://www.cftc.gov/files/tm/tmclearingcorpphase1order.pdf> (Order issued October 21, 2004).

¹³ Note that in the CME/MEFF “link,” CME is the sole clearing house. Whereas, in the CCorp/Eurex Clearing “link,” both CCorp and Eurex Clearing are “special clearing members” of each other and perform various clearing services based on the following factors: (i) whether the contract is traded on the US DCM (*i.e.*, U.S. Futures Exchange, L.L.C., a/k/a Eurex US) or the non-US board of trade (*i.e.*, Eurex Frankfurt AG), (ii) whether the contract is US dollar or Euro-denominated, and (iii) whether the clearing member is a member of CCorp, Eurex Clearing or both.

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between the US DCO and the non-US clearing house, the establishment of bank accounts outside the US to assist in the timely and orderly flow of funds and procedures to ensure trades are posted into the proper sub-accounts at the “special clearing member.”

With respect to the NYMEX Clearing Arrangement, however, there is no need for NYMEX Europe to serve as a “special clearing member” of NYMEX as there is no non-US clearing house involved. Rather, NYMEX will serve as the sole clearing house to NYMEX Europe, and only clearing members of NYMEX will be allowed to clear NYMEX Europe transactions. Thus, there is no intermediate “special clearing member” with corresponding credit risks and requirements and sub-accounting relationships. Accordingly, there is no need by NYMEX to coordinate payment flows with a “special clearing member” located outside of the US. Indeed, all settlement accounts will be located in the US and payment flows between NYMEX and its clearing members will be essentially the same as they are today.

With respect to information sharing and establishment of margin requirements, the NYMEX Clearing Arrangement is again more “direct” than the CME/MEFF or CCorp/Eurex Clearing “links.” NYMEX and NYMEX Europe are affiliates owned and controlled by the same parent entity. NYMEX has been directly involved in the establishment of NYMEX Europe and will be providing many services to NYMEX Europe, including risk management, trade surveillance, price reporting and trading systems and other compliance services. Accordingly, NYMEX is very familiar with the proposed NYMEX Europe contracts, rules, policies and procedures.¹⁴ Lastly, NYMEX is currently clearing trades executed on the NYMEX trading division satellite floor in Dublin (*i.e.*, the Brent Crude Oil futures contract which is proposed to be traded on NYMEX Europe). NYMEX has thus already demonstrated its ability to clear trades executed overseas.

Given that NYMEX and NYMEX Europe are under common ownership and control, the proposed Clearing Arrangement is analogous to NYMEX adding another trading division to be cleared by the Clearing House in addition to the current NYMEX and COMEX trading divisions. For the reasons set forth above, the NYMEX Clearing Arrangement is a more straightforward

¹⁴ In addition, NYMEX Europe has modeled its rules after the NYMEX rules. There are several reasons for this. Many of NYMEX Europe’s officers and employees will be very familiar with the NYMEX Rules or will be in contact on a frequent basis with their counterparts in the US, who are familiar with them. This will greatly enhance NYMEX and NYMEX Europe’s ability to monitor and enforce the Clearing Arrangement from the outset. Next, NYMEX Europe’s rules are designed to coordinate with those of the Clearing House enabling NYMEX to continue to meet its regulatory obligations as a DCO. NYMEX personnel will therefore already be familiar with the rules which they are charged with monitoring and enforcing. Lastly, NYMEX Europe’s members will have US affiliates who are familiar with the NYMEX Rules and will act as their clearing members. To the extent NYMEX Europe rules are the same as NYMEX rules, this will greatly facilitate member review and enhance NYMEX Europe members’ ability to comply with such rules.

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"link" than the CME/MEFF or CCorp/Eurex "clearing links" and should be accorded the "commingling" relief previously granted by the CFTC.

V. Relief Requested

For the reasons stated above, in connection with NYMEX providing clearing services directly to NYMEX Europe, NYMEX requests that the CFTC issue an order permitting the Clearing House and FCMs to carry in US customer segregated accounts customer positions arising out of, and funds related to, contracts traded on NYMEX Europe. The order will apply only to futures and options on futures contracts based on metals and energy products that are executed on or subject to the rules of NYMEX Europe (and does not apply to "cleared only" over-the-counter products), that are carried in the U.S. by the Clearing House and registered FCMs, and that are not fungible with any contract offered by a U.S. DCM. It is anticipated that initially the contracts traded on NYMEX Europe and cleared by the Clearing House subject to the order will include the Brent Crude Oil futures contract, the Northwest Gas Oil futures contract and the Brent Options contract.

Thank you for your prompt consideration of this request. If you have any questions please contact the undersigned at (312) 558-5905 or Christopher K. Bowen, General Counsel and Chief Administrative Officer NYMEX, at (212) 299-2200.

Very truly yours,



Michael M. Philipp

MMP:jb

Attachments

cc: Chairman Reuben Jeffery III
Commissioner Walter L. Lukken
Commissioner Sharon Brown-Hruska
Commissioner Fred Hatfield
Commissioner Michael V. Dunn
James L. Carley
John C. Lawton
James E. Newsome, President, NYMEX
Christopher K. Bowen, General Counsel and Chief Administrative Officer, NYMEX

Exhibit A – NYMEX Europe Rules

Exhibit B – Amended NYMEX Clearing Rules

Exhibit C – Table Summarizing Clearing Cycle for NYMEX Europe