

UNITED STATES OF AMERICA

Before the

COMMODITY FUTURES TRADING COMMISSION

Treatment of Funds Held in Connection with Clearing
by The New York Mercantile Exchange
of Contracts Traded on NYMEX Europe

ORDER

The New York Mercantile Exchange, Inc. (“NYMEX”), a registered derivatives clearing organization (“DCO”), has submitted a request that the Commodity Futures Trading Commission (“Commission”) issue an Order permitting NYMEX and registered futures commission merchants (“FCMs”) to hold customer funds in accounts segregated pursuant to Section 4d of the Commodity Exchange Act (“Act”) and Commission Regulation 1.20, in connection with NYMEX’s clearing of futures and options on futures contracts traded on a non-U.S. affiliate, NYMEX Europe Limited (“NYMEX Europe”), located in London, England.

The Commission has reviewed the request and the complete record in this matter (“Submission”), and finds that NYMEX has demonstrated that it can continue to comply with the requirements under the Act and the Commission’s regulations thereunder applicable to it. Moreover, NYMEX Europe is regulated by the U.K. Financial Services Authority, which is a signatory to several information sharing arrangements with the Commission and is located in a jurisdiction that has been deemed, pursuant to Commission Regulation 30.10, to have a regulatory regime that is comparable to the U.S. regulatory regime for the futures industry. Therefore,

IT IS ORDERED, pursuant to Section 4d(a)(2) of the Act, 7 U.S.C. § 6d(a)(2), that, subject to the terms and conditions below, NYMEX and registered FCMs that are acting pursuant to this Order may hold money, securities, and other property (collectively, “customer funds”) used to margin, guarantee, or secure commodity futures and commodity options contracts traded on NYMEX Europe with other customer funds used to margin, guarantee, or secure trades or positions in commodity futures or commodity options contracts executed on a Contract Market designated pursuant to Section 5 of the Act (“DCM”), or a Derivatives Transaction Execution Facility (“DTEF”) registered pursuant to Section 5a of the Act, in a segregated account or accounts maintained in accordance with Section 4d of the Act (including any orders issued pursuant to Section 4d(a)(2) of the Act) and the regulations thereunder, and all such customer funds shall be accounted for and treated and dealt with as belonging to the customers of the participating FCM consistently with Section 4d of the Act and the regulations thereunder.

IT IS FURTHER ORDERED, that:

- (1) This Order shall apply only to futures and options on futures contracts on energy or metals products traded on NYMEX Europe.
- (2) Such contracts shall not be fungible with any contract offered by any DCM.
- (3) All customer funds margining, guaranteeing, or securing such commodity futures and commodity options contracts traded on NYMEX Europe shall be held in the U.S. by NYMEX or FCMs acting pursuant to this Order.
- (4) Before accepting any new product traded on NYMEX Europe for clearing pursuant to this Order, NYMEX must comply with the requirements of Section 5c(c) of the Act and Commission Regulation 40.2.

(5) NYMEX shall at all times fulfill all representations made in its Submission, including all attachments and supporting materials thereto.

(6) Large Trader (Position) Reporting

(a) NYMEX shall provide to the Commission the information described in Part 16 of the Commission's regulations in the manner described in Parts 15 and 16 of the Commission's regulations with respect to all NYMEX Europe transactions;

(b) Each FCM acting pursuant to this Order shall provide to the Commission the information described in Part 17 of the Commission's regulations in the manner described in Parts 15 and 17 of the Commission's regulations with respect to all NYMEX Europe transactions in which it participates; and

(c) If the Commission promulgates a regulation under the Act addressing obligations under Parts 15, 16, and/or 17 of the Commission's regulations, then such regulation will supersede the obligations referred to in ¶¶ 6(a)-(b) above.

(7) NYMEX's retail customer protection fund shall be and shall remain applicable to customers of NYMEX Europe. *See* NYMEX Clearing Rules, Chapter 9 (XXV - Resolution of Board of Directors to establish and maintain a permanent Retail Customer Protection Mechanism (Feb. 10, 2004)).

(8) NYMEX shall promptly inform the Commission of any material change in applicable U.K. law or regulations relevant to its operation as a DCO clearing for NYMEX Europe including, but not limited to, any material change to U.K. requirements for Recognised Investment Exchanges ("RIEs"), the status of contracts between NYMEX and its members (arising upon the substitution of NYMEX as clearinghouse) as Market Contracts for the purposes of Part VII of the U.K. Companies Act of 1989, and any other change in such law or regulations affecting the conclusions contained in the Submission. NYMEX also shall promptly inform the

Commission of any change in NYMEX Europe's status as an RIE and any change in NYMEX Europe's rules that affects its cooperation with the Commission or with NYMEX.

(9) NYMEX Europe shall maintain a binding agreement appointing an agent in the U.S. for purposes of communications, including acceptance on behalf of NYMEX Europe of any summons, complaints, orders, subpoenas, requests for information, notice, or any other written document or correspondence issued by or on behalf of the Commission, the U.S. Department of Justice, or any U.S. clearing member, and NYMEX Europe shall promptly inform the Commission of any change in such agent or agreement with such agent.

This Order is issued pursuant to Section 4d of the Act based upon the representations made and supporting material provided to the Commission by NYMEX in its Submission. Any material changes or omissions in the facts or circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the relief set forth herein is appropriate. Further, in its discretion, the Commission may condition, modify, suspend, terminate, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion.

Issued in Washington, D.C., this __6th__ day of September, 2005.

By the Commission

/s/

Jean A. Webb
Secretary of the Commission