

UNITED STATES OF AMERICA
Before The
COMMODITY FUTURES TRADING COMMISSION

Treatment of Funds Held in Connection with
the Clearing of Over-the-Counter Products
by The New York Mercantile Exchange

ORDER

On May 30, 2002, the Commission issued an Order (“May 30 Order”) permitting the New York Mercantile Exchange, Inc. (“NYMEX”), a registered derivatives clearing organization (“DCO”), and futures commission merchants (“FCMs”) clearing through NYMEX to commingle customer funds used to margin, secure, or guarantee certain contracts executed in the over-the-counter (“OTC”) markets and cleared by NYMEX with other funds held in segregated accounts maintained in accordance with Section 4d of the Commodity Exchange Act (“Act”) and Commission regulations, subject to specified terms and conditions.

On February 4, 2003, the Commission issued an Order (“Feb. 4 Order”) that deemed NYMEX floor brokers and floor traders to be “eligible contract participants” pursuant to section 1a(12)(C) of the Act for purposes of entering into certain OTC energy transactions to be submitted to NYMEX for clearing, subject to certain other terms and conditions.

On February 6, 2004, NYMEX filed a request that the Commission supplement the May 30 Order and amend the Feb. 4 Order (“Request Letter”). Specifically, NYMEX requested that the May 30 Order be supplemented to permit seven option contracts executed in the OTC markets to be submitted for clearing via the process of an exchange of OTC options for NYMEX options (“EOO”) listed only for clearing.

Upon consideration, the Commission has determined to issue this Order. Subject to the following terms and conditions, NYMEX and FCMs clearing through NYMEX may commingle customer funds used to margin, secure, or guarantee option contracts executed in the OTC markets and cleared by NYMEX with other funds held in segregated accounts maintained in accordance with Section 4d of the Act and Commission regulations. The terms and conditions are as follows:

1. This Order shall apply to each of the following contracts during any period of time in which such contract is listed only for clearing at NYMEX:

- Palo Verde Electricity
- PJM Electricity (physical delivery)
- Mid-Columbia Electricity
- Light Sweet Crude Oil Average Price Option
- New York Harbor Heating Oil Average Price Option
- New York Harbor Unleaded Gasoline Average Price Option
- Natural Gas Look-Alike Options
- Light Sweet Crude Oil Look-Alike Options
- New York Harbor Heating Oil Look-Alike Options
- New York Harbor Unleaded Gasoline Look-Alike Options

2. Each of the terms and conditions set forth in the May 30 Order shall continue to apply to the first three contracts listed above. The terms and conditions set forth in the May 30 Order numbered 2, 3, 4, 7, 8, 9, 10, 11, and 12 shall also apply to each of the additional seven option contracts listed above.
3. NYMEX shall apply the SPAN margining system and calculate margin rates for the option contracts listed above as described in the Request Letter.
4. NYMEX shall calculate settlement prices for the option contracts listed above as described in the Request Letter.
5. NYMEX shall maintain a comprehensive financial safeguard system that includes functions such as the following: monitoring clearing member settlements, monitoring changes in settlement prices, analysis of customer margin calls, review of capital based position limits, analysis of early warning for capital exposure, review of exchange settlement banking activity, monitoring of intraday margin calls, analysis of segregation figures, meetings of an internal risk committee, audits of firm margin, audits of deficit accounts, reviews of floor member capital compliance, analysis of member firm capital compliance, guarantee fund analysis, reconciliation of bank accounts, periodic calculation of maximum potential clearing member assessments, periodic review of member firm financial statements, and membership applicant review.
6. NYMEX shall maintain resources that include, in addition to margins on deposit, stockholders equity, a guarantee fund, a default insurance policy, and the power to assess clearing members in the event of a default.
7. NYMEX has established and shall maintain a permanent customer protection mechanism represented 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 funds are lost as a 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. NYMEX may increase this amount from time to time by such additional amounts as appropriate under its assessment of relevant factors. For purposes of this Order, the term "retail customer" shall be defined as any natural person who does not otherwise qualify as an "eligible contract participant" under the requirements of Section 1a(12) of the Act except that such definition of retail customer shall not include any NYMEX floor trader or floor broker or any family member of a NYMEX floor trader or floor broker

who maintains an account at the same FCM where such NYMEX floor trader or floor broker maintains an account.

8. All firms that clear contracts pursuant to this Order and that additionally carry positions for any retail customer as that term is defined above must maintain working capital of not less than \$20 million.
9. NYMEX shall submit a report to the Commission within 120 days of commencement of clearing pursuant to this Order setting forth an analysis of the adequacy of the margin requirements for the options listed above during the first 90 days of clearing pursuant to this Order.
10. NYMEX shall promptly report to the Commission in writing if it has a reasonable basis to believe that
 - (a) retail participation on NYMEX exceeds 5% of total participation on NYMEX,
 - or
 - (b) the total amount available from the non-margin sources listed in condition 6 of this Order declines by 10% or more from the amount available on the effective date of this order.
11. With respect to permissible contracts, agreements or transactions executed pursuant to the Feb. 4 Order, paragraph 4 of the Feb. 4 Order shall be amended so as to include the following new subsection:
 - “(c) is listed only for clearing at NYMEX and NYMEX’s rules provide for exchanges of options for options in that contract.”

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. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted may require the Commission to reconsider its finding that the provisions set forth herein are appropriate. If experience demonstrates that the continued effectiveness of this Order would be contrary to the public interest, the Commission may condition, modify, suspend, terminate or otherwise restrict the provisions of this Order, as appropriate, on its own motion.

Issued in Washington, D.C., this 10th day of February, 2004.

By the Commission


Jean A. Webb
Secretary of the Commission