

October 19, 2006

Via E-Mail

Office of the Acting Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

RECEIVED
CFTC
OCT 19 PM 2:34
OFFICE OF THE SECRETARY

**Re: Rule Certification. NYMEX Submission 06.124: Notification
of a Compliance Advisory to Clarify NYMEX Division Rule
6.41 and COMEX Division Rule 104.31**

Dear Ms. Eileen Donovan:

The New York Mercantile Exchange ("NYMEX" or the "Exchange") is notifying the Commodity Futures Trading Commission ("CFTC" or "Commission") of a Compliance Advisory to clarify NYMEX Division Rule 6.41, Trading Standards for Floor Brokers, and COMEX Division Rule 104.31, Dual Trading.

The Compliance Advisory (attached Notice No. 06-549) provides interpretive guidance on impermissible trading while in possession of executable customer orders. Pursuant to Section 5c(c) of the Commodity Exchange Act ("Act") and CFTC Rule 40.6, the Exchange hereby certifies that the attached notification filing complies with the Act, including regulations under the Act.

If you have any questions, please contact Nancy Minett, Vice President, Compliance, at (212) 299-2940, Russell Cloughen, Senior Director, Trade Practice Surveillance, at (212) 299-2880, or Adam Wernow, Compliance Counsel, at (212) 299-2851.

Sincerely,

Thomas F. LaSala
Senior Vice President
Compliance and Risk Management

cc: Brian Regan

Notice No. 06-549
October 19, 2006

TO: All Exchange Members, Member Firms and Clearing Members

FROM: James E. Newsome, President

RE: **Compliance Advisory: Interpretive Guidance on Impermissible Trading While in Possession of Executable Customer Orders.**

NYMEX Division Rule 6.41 and COMEX Division Rule 104.31 both prohibit trading ahead of an executable customer order on the same side of the market. Questions have arisen as to whether these prohibitions include trading other months or other markets on the same side of the market before the customer order is executed. The issues discussed below were addressed at the Compliance Review Committee on October 16, 2006, and the Committee recommended issuance of this Advisory.

Trading in front of an executable customer order in the same contract or in a related contract (whether electronic or open outcry—for example, a cash-settled Crude Oil Globex® execution in front of an executable physical Crude Oil order in the same month and side of market) is prohibited. Members were advised that for purposes of the trading ahead prohibition contained in NYMEX Division Rule 6.41 and COMEX Division Rule 104.31, a future or option in “the same commodity” shall include any contract based on the same underlying physical commodity, irrespective of the contract’s size or whether the contract is physically delivered or cash-settled. [Also see Notice to Members 06-293, June 5, 2006—FAQ on side-by-side trading issues; trading ahead.]

Other situations, for example trading in front of an order in a related month, are addressed by other provisions in the Exchange rulebook. The trading ahead rules specifically address the situation where an execution by a broker holding a customer order would have been appropriate and should have been allocated to an executable customer order. However, Members must be aware that where they are trading either for their own account or for an account in which they have an interest, and such trading is done based, in whole or in part, on knowledge of an executable customer order on the same side of the market, they are trading in violation of the Exchange rules. Such trading is neither “Just and Equitable” [Exchange Rule 8.55(B)(2)] nor executed in good faith [Exchange Rule 8.55(A)(2)].

Members who act as brokers on behalf of customers have a fiduciary duty to the customer and must exercise due diligence in their trading for customers [NYMEX Division Rule 6.16,

COMEX Division Rule 104.65]. Thus, when a Member trades for his own account or for any account in which he has an interest; where such trading relies on or is advantageous to the Member because of information contained in an executable customer order or where such trading disadvantages the customer; that Member is trading in bad faith and is subject to disciplinary sanctions. For example, where a Member received a customer's market order to buy a January contract of sufficient size to cause an upward price movement, it could be considered a violation of NYMEX rules if the Member first purchased February contracts for a personal account prior to executing the order. The Member's personal trades, executed in front of the customer order in another contract month in this circumstance indicates that, in the execution of trades for his own interest, the Member either disadvantaged a customer order, or took advantage of material nonpublic information gained due to his handling of a customer order.

NYMEX Division Rule 6.41: Trading Standards for Floor Brokers, states in pertinent part that:

(A) No Trading Member shall purchase any commodity for future delivery, purchase any call option, or sell any put option for any commodity options contract, for his own account, or for any account in which he has an interest, while holding an order of another person for the purchase of any future, any call option, or sale of any put option, in the same commodity which is executable at the market price or at the price at which such transaction can be made for the Member's own account or the account in which he has an interest.

(B) No Trading Member shall sell any commodity for future delivery, sell any call option or purchase any put option for his own account, or for any account in which he has an interest, while holding an order of another person for the sale of any future, any call option, or purchase of any put option, in the same commodity which is executable at the market price or at the price at which such transaction can be made for the Member's own account or the account in which he has an interest.

COMEX Division Rule 104.31, Dual Trading, states:

(a) Prohibited Transactions.

(i) Except to the extent provided in 104.31(b) ("Dual Trading--Permissible Transactions"), a floor member may not purchase any futures contract or futures call option or sell any futures put option in a commodity for his own account or for any account in which he has any direct or indirect interest while holding an order of another person for the purchase of a futures contract or futures call option or for the sale of any futures put option in the same commodity which is executable at the market price or at the price at which such purchase can be made for the member's own account or for the account in which he has an interest.

(ii) Except to the extent provided in Rule 104.31(b) ("Dual Trading-Permissible Transactions"), a floor member may not sell any futures contract or futures call option or purchase any futures put option in a commodity for his own account or for any account in which he has any direct or indirect interest while holding an order of another person for the sale of a futures contract or futures call option or for the purchase of any futures put option in the same commodity which is

executable at the market price or at the price at which such purchase can be made for the member's own account or for the account in which such member has an interest.

(b) Permissible Transactions. A member may execute, for his own account or for an account in which he has any direct or indirect interest, the transactions described in Rules 104.31(a)(i) and (ii) ("Dual Trading-Prohibited Transaction"), if and only if (i) the order of the other person involves a different delivery month or option contract month than the order executed by the member for his own account or for any account in which he has an interest and the transaction is executed on the opening call; or (ii) the member, with the prior specific consent of his customer, executes or attempts to execute the customer's order in accordance with the provisions of Rule 104.24 ("Crossing of Orders") and Rule 104.24(e) ("Crossing of Orders - Floor Member Crossing with Customer").

Other specific situations that could violate the Trading Ahead prohibition are addressed below:

Trading Ahead of Associated Broker's Orders

A disciplinary committee may consider a Member to have traded ahead of an associated broker's order where circumstances indicate that the Member had actual knowledge of the associate's orders.

Trading Ahead of Market on Close Orders

Members are also reminded that the prohibitions described above extend to all forms of orders, including Market-on-Close orders that may be executed ratably over an entire closing range [Notice to Members 06-293, June 5, 2006].

If you have any questions, please contact Nancy Minett, Vice President, Compliance, at (212) 299-2940, Russell Cloughen, Senior Director, Trade Practice Surveillance, at (212) 299-2880, or Adam Wernow, Compliance Counsel, at (212) 299-2851.