

# SUBMISSION COVER SHEET

Exchange Identifier Code (optional) 05.144

Date August 25, 2005

**ORGANIZATION**

New York Mercantile Exchange, Inc.

**FILING AS A:**

**DCM**

**DCO**

**DTEF**

**TYPE OF FILING**

• **Rule Amendments**

Self-Certification Under Reg. 40.6(a)

Commission Approval Requested Under Reg. 40.5 or 40.4 (a)

Notification of Rule Amendment Under Reg. 40.6(c)

Non-Material Agricultural Rule Change Determination Under Reg. 40.4(b)

• **New Products**

Self-Certification Under Reg. 40.2 or 41.23

Commission Approval Requested Under Reg. 40.3

**RULE NUMBERS**

N/A

**DESCRIPTION (Rule Amendments Only)**

August 25, 2005

**Via Electronic Mail**

Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

**RE: Amended Request for Commission Rule Approval. NYMEX Submission  
05.144: Migration of Listing of Trading of Certain Listed Futures Contracts  
from NYMEX to New NYMEX Affiliate in London**

Dear Ms. Webb:

The New York Mercantile Exchange, Inc. ("NYMEX" or "Exchange") is submitting an amendment to its previous request for prior approval on a voluntary basis by the Commodity Futures Trading Commission ("CFTC" or "Commission") of the attached proposed procedure, which constitutes a "rule" as that term is defined by CFTC Regulation 40.1. The proposed procedure is authorized pursuant to the authority provided under Section 501 of the Exchange's bylaws. The request for prior approval follows substantive discussions between Commission staff and Exchange staff concerning the approach set forth in this proposed new procedure. In seeking prior approval, the Exchange notes that the noncompetitive execution procedures described below thus would be compliant with the requirements set forth in Commission Regulation 1.38.

NYMEX Europe Limited (or "NEL"), a recently formed U.K. affiliate of NYMEX, has applied to the U.K. Financial Services Authority ("FSA") for an order designating it as a U.K. recognized investment exchange ("RIE") in London. The application is under review by the FSA and as of this writing NYMEX Europe Limited does not have a confirmation of, or a firm date for, the issuance of such order by the FSA.

In anticipation, however, of approval of the RIE designation request submitted by NEL, NYMEX wishes to inform its Members and market participants of new operational procedures to migrate the listing for trading of Brent Crude Oil Futures (commodity symbol SC) and Northwest Europe Gas Oil Futures (commodity symbol GR) Contracts (the "Affected Contracts") from the NYMEX trading facility in Dublin to NEL. As of the launch date of NEL as an RIE, all open positions in the Affected Contracts will no longer be listed or traded on the NYMEX trading facility in Dublin and, instead, will be listed and traded only on and subject to the rules of NEL. All Affected Contracts will continue to be cleared by NYMEX, Inc. in its capacity as the clearing organization contracted by NEL for this service. NYMEX will further update the Commission and the market place as more information becomes available concerning a launch date for trading on NEL.

NYMEX's parent company, NYMEX Holdings, created the new subsidiary in London in response to market demand from current participants who would prefer to trade on a market located in London rather than a market based in Dublin. Additionally, NYMEX previously notified its members on February 14, 2005, of its intention to migrate the Affected Contracts from the Dublin facility to NEL. Consequently, based upon feedback NYMEX received from market participants, NYMEX reasonably believes that the overwhelming majority of present participants in the Affected Contracts is looking ahead to the listing of the Affected Contracts by NEL and would therefore prefer to have their current positions rolled over or otherwise established on the new market.

The migration of listed contracts that is contemplated by NYMEX and NEL would result in the Affected Contracts being shifted from trading on NYMEX, a CFTC designated contract market ("DCM") to being listed for trading on NEL, which is anticipated to become an RIE regulated by the FSA. Although the Commission has regularly determined that the FSA operates a comparable regulatory regime to the CFTC on many regulatory issues, in response to potential issues raised by Commission staff concerning the potential movement of existing contracts from one regulatory jurisdiction to another, NYMEX proposes that the migration of listed contracts from the Exchange to NEL be accomplished through a process in which all existing open interest in the Affected Contracts on the Exchange would be closed out concurrent with the re-establishment of the open interest in the Affected Contracts on NEL. All open interest will automatically be transferred in accordance with the following procedure. As of the close of trading of the Dublin facility on the Friday on which the Dublin facility ceases trading, all open positions in the Affected Contracts carried by NYMEX, Inc. Clearing Members will be automatically closed out and new positions in the Affected Contracts on NEL opened on the same side of the market and in the same quantity as the original positions of those Clearing Members in the Affected Contracts.

Accordingly, in seeking to address the concerns expressed by Commission staff, to satisfy the commercial needs of our market users and to avoid imposing unnecessary costs or burdens on these markets, the Exchange is proposing to implement the attached procedure to facilitate this one time transfer. Under the proposal, the Exchange would issue notices to its members and member firms (with related public announcements) describing the procedures to be utilized, and, upon confirmation of the recognition of NEL as an RIE, would issue a follow-up notice, providing information regarding the applicable transfer date and launch date for trading on NEL. Furthermore, Clearing Members carrying open positions in Affected Contracts (or whose customers seek to initiate new positions in the Affected Contracts) would be required to notify their customers of these procedures. Any customers not wishing to be subject to these procedures thus would have ample notice of this method of transfer of the listing of the Affected Contracts and could determine to liquidate or off-set their open positions prior to the transfer.

The proposed procedures provide that following the close of trading on the last day that the Affected Contracts are listed in Dublin, the Exchange would direct each Clearing Member carrying open interest on the Exchange in the Affected Contracts to execute a "back office" bookkeeping entry for each account (whether a house or customer account) carried by that FCM. The bookkeeping entry effectively would close out the existing positions in the Affected Contracts on the Exchange by substituting the Exchange (in its capacity as a DCO) opposite the open positions in each account.

The positions in the Affected Contracts would then be reopened as contracts in NEL contract terms, which will be exactly the same terms as the Affected Contracts closed out on

the Exchange (except that they will be governed by English law and their trading will be subject to the rules of a U.K. recognized RIE regulated by the FSA). So, for example, if the FCM carries ten customer accounts, each with an SC open position, the Exchange and the FCM would record a bookkeeping entry to close out each such customer position. In addition, the books and records of the carrying FCM would reflect a matching and simultaneous back office bookkeeping entry involving the Exchange and the Clearing Member in which the Clearing Member (on behalf of the accounts that it carries) receives a position in NEL Contracts on the same side of the market and in the same quantity as their former position on the Exchange in the Affected Contracts as of the close of trading on the transfer date. The simultaneous back office procedures will occur automatically after the close of business of the final day that the Affected Contracts are listed for trading in Dublin (or at such other time on that day as announced by the Exchange following further consultation with the Exchange's Clearing Members but in any event no later than the completion of the clearing cycle on that day.)

The Exchange intends to offer market participants a degree of flexibility as to the pricing of the back office transfers. Some market participants may prefer to have their positions re-established on NEL at the same price as the original trade price of their NYMEX position, while other market participants may want the back-office procedures to occur at the closing settlement price on the date of the transfer. Regardless of which price convention is elected, there will be no distinction in variation margin cash flow calculated for close of business on the last trading day in Dublin. Thus, the Exchange believes both approaches should be available. This approach would be consistent with the general historical practice of block transfers of customer positions from one FCM to another at US exchanges, which generally permit transfers from one FCM to another at the original cost but do permit exceptions from time to time so as to permit transfers at the closing price on the day of the transfer. The Exchange intends to effect all back office transfers of open positions in the Affected Contracts at the closing settlement prices of such positions unless notified by a clearing member to the contrary with respect to specific open positions. Accordingly, FCMs carrying open positions in the Affected Contracts would need to check with each customer to determine the price mechanism preferred and also advise the Exchange. NYMEX, Inc. plans to distribute a Notice to Members which will give additional operational details prior to the termination of trading in Dublin.

NYMEX does not believe that the one time procedure described above poses any potential anticompetitive effects on market participants or others. Indeed, this migration of the trading of the Affected Contracts from Dublin to London is being undertaken in connection with a general business plan to bring greater competition to world oil futures markets. This procedure, while imposing certain limited administrative burdens on carrying FCMs, should not generate material burdens on market participants in the Affected Contracts. Significantly, this proposed procedure would avoid any disruption of the market integrity in the Affected Contracts.

The proposed procedure would not impact the financial integrity of the open positions in the Affected Contracts. All Affected Contracts re-established on NEL through the back office procedure will be cleared by NYMEX, Inc. and the clearing rules of NYMEX, Inc. will continue to govern the clearing and settlement of all Affected Contracts following the migration of the listing for trading.

The process noted above would provide a clear demarcation as to the end of the Commission's jurisdictional authority over (and responsibility for) trading activity in the Affected Contracts after their delisting from the Dublin trading facility. As a note, since the launch of the branch trading floor in Dublin, NYMEX Europe permittees have been deemed to be "Members"

of the Exchange for purposes of NYMEX's disciplinary jurisdiction. Accordingly, pursuant to the provisions of NYMEX Rule 8.57A (Retention of Jurisdiction over Former Members and Member Firms), NYMEX will retain jurisdiction over such traders for a two-year period in connection with any activity that occurred on the Exchange prior to the closing of the Dublin branch floor.

In closing, the Exchange believes strongly that the proposed procedure is responsive to the concerns expressed by Commission staff while remaining sensitive to the commercial interests of our market users. Accordingly, we request Commission approval of the attached proposed policy on an expedited basis.

Should you have any questions concerning the above, please contact the undersigned at (212) 299-2897.

Very truly yours,

Thomas LaSala  
Senior Vice President  
Compliance and Risk Management

cc: John Lawton, Esq.  
Riva Adriance, Esq.  
Clarence Sanders, Esq.  
Robert Wasserman, Esq.