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U.S. DEPARTMENT OF THE SECRETARIAT

January 23, 2006

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

**COMMENT**

Re: Self-Regulation and Self-Regulatory Organizations in the Futures Industry

Dear Ms. Webb:

The New York Mercantile Exchange, Inc. ("NYMEX" or the "Exchange") appreciates the opportunity to comment on its own behalf and on behalf of its wholly-owned subsidiary, Commodity Exchange, Inc. ("COMEX"), in response to a series of questions on self-regulation and self-regulatory organizations in the futures industry set forth in the Commodity Futures Trading Commission's ("CFTC" or the "Commission") November 25, 2005 Federal Register release. NYMEX is a for-profit corporation organized under the laws of the State of Delaware. It is the chief operating subsidiary of NYMEX Holdings, Inc., ("NYMEX Holdings"). NYMEX Holdings' shares are not listed on a national market or exchange but are registered with the Securities and Exchange Commission ("SEC"), and as such, are subject to the rules and regulations of the SEC. As a designated contract market and a registered derivatives clearing organization, NYMEX is the largest exchange in the world for trading futures and options contracts on physical commodities.

NYMEX previously responded to questions on SRO governance by comment letter to the CFTC dated September 30, 2004. Prior to that filing, NYMEX staff also participated in various meetings and discussions with CFTC staff on the Commission's ongoing SRO Study. In addition, by letter dated October 14, 2004, NYMEX staff responded to follow-up questions posed by CFTC staff on SRO issues. We understand that by this latest round of inquiries, the CFTC intends to update the Commission's prior fact-finding on self-regulation, build on industry developments since inception of the SRO Study and offer interested parties an additional opportunity to comment as the SRO Study nears conclusion. NYMEX is pleased to provide responses to help advance the Commission's understanding of issues concerning self-regulation, SRO governance and other relevant matters.

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*The New York Mercantile Exchange, Inc., is composed of two divisions. The NYMEX Division offers trading in crude oil, heating oil, unleaded gasoline, natural gas, electricity, coal, propane, platinum, and palladium. The COMEX Division offers trading in gold, silver, copper, and aluminum.*

## Responses to Specific Questions

### **1. Is the present system of self-regulation an effective regulatory model for the futures industry?**

While NYMEX believes that it is prudent and appropriate for the Commission to undertake a review from time to time of self-regulatory systems and safeguards, we also believe that the current system of self-regulation is an effective regulatory model for the futures industry. Self-regulation of futures markets dates back more than a century, long predating the implementation of federal oversight of these markets. The current self-regulatory model, with oversight by the CFTC, dates back over 30 years, and was vastly improved upon with the implementation of the Commodity Futures Modernization Act of 2000 ("CFMA"), which introduced flexible core principles as performance benchmarks for SRO compliance. With the adoption of the core principles approach to self-regulation, Congress, in its wisdom, rejected the one-size-fits-all regulatory approach and provided exchanges broad flexibility with respect to how they comply with regulatory requirements.

This flexible approach to self-regulation, which has been in place for five years, has allowed exchanges to readily adapt to changing market conditions and business needs and has resulted in phenomenal growth in the futures industry. More importantly, these great strides in the futures industry have been achieved without compromise to market and financial integrity. The CFTC staff routinely evaluates the Exchange's regulatory programs for compliance with the core principles established for designated contract markets ("DCM") and has consistently found NYMEX to be in compliance.

Under the Commodity Exchange Act ("CEA" or "Act"), the CFTC's primary responsibility is detecting and deterring manipulation and fraud. NYMEX supports the CFTC's mission and believes that NYMEX and the CFTC have a strong shared interest in effective regulation of our markets. In the CFMA, Congress included core principles on SRO governance that were consistent with the CFTC's core mission and made clear that regulated entities remain accountable and responsible for meeting these core SRO requirements. NYMEX appreciates this flexibility in operating our business line and fully accepts the responsibility of continued compliance with the core principles.

Within the present flexible regulatory structure, NYMEX has been able to manage numerous market threatening situations with little or no disruption to the orderliness of the market or to the well being of market participants. Examples include the collapse of Enron along with the associated collapse of the energy merchant sector, and the REFCO debacle. Additionally, NYMEX has maintained orderly markets in the face of volatile market periods related to the Iraqi war and the supply interruptions caused by hurricanes Katrina & Rita.

An example of progressive and effective regulatory measures put into place under the existing structure includes the formation of an Exchange staff Risk Committee. Following the collapse of Enron, NYMEX staff established the Risk Committee, which

meets regularly to review news, ratings and financial information that indicate a change in financial condition for any large customers of NYMEX. Customers are evaluated to determine whether they present a substantial risk to the Exchange that would warrant the collection of additional margin under the power of the Exchange President. Information from the Risk Committee is used as the basis of a watch list to track the financial condition of customers at risk and allow the Exchange to react quickly if that condition deteriorates. NYMEX spearheaded a similar inter-exchange risk committee, composed of key clearing and risk personnel in the major US clearing organizations. NYMEX's financial safeguards and excellent lines of communication among colleague SROs and DCOs have allowed NYMEX to react quickly and effectively when faced with potential crisis situations. We firmly believe that Congress struck the right regulatory balance by applying a flexible regulatory approach that allows exchange and clearing organizations to respond to the needs of the rapidly evolving derivatives markets.

In addition to responding to specific changes in the marketplace, NYMEX also believes that inherent in the assumption of the self-regulatory function is the concomitant obligation to engage in continual review and self-examination regarding the effectiveness of an SRO's existing programs. At NYMEX, such an ongoing pro-active review of our SRO programs to enhance their strength and integrity is a basic element of our staunch commitment to effective self-regulation.

- 2. As the futures industry adapts to increased competition, new ownership structures, and for-profit business models, what conflicts of interest could arise between:**
  - a. An SRO's self-regulatory responsibilities and the interests of its members, shareholders, and other stakeholders; and**
  - b. An SRO's self-regulatory responsibilities and its commercial interests?**

Increased competition, demutualization and for-profit business models in the futures industry have raised heightened concerns among some observers about potential conflicts of interest, particularly in the exercise of self-regulatory responsibilities. Specifically, some commentators expressed concern that the new focus on maximizing profit would lead exchanges to give short shrift to core regulatory functions. To the contrary, the increasingly competitive environment has provided additional incentives for markets to place greater emphasis on protecting the company's business reputation through, among other things, effective SRO governance and compliance policies. This is particularly the case for a company, such as NYMEX, where well-regulated markets are an integral component of the company's brand and business reputation. We believe that an SRO's commercial interests are advanced by distinguishing itself as a fair, safe and liquid market. These attributes can be achieved only through an SRO program that is tough and effective. Market participants, shareholders and other interested parties must have confidence in the integrity of the market, or the Exchange could risk losing customers to markets that are perceived as fairer or more transparent.

Turning specifically to concerns regarding possible conflicts of interest and maintaining the confidentiality of sensitive information, the Exchange has long had in place a number of prohibitions and safeguards controlling the conduct of NYMEX Board members, staff and consultants for the Exchange. Thus, for example, NYMEX Board Members are subject to the requirements of NYMEX Rule 3.02 (“Restrictions on Governing Board Members, Committee Members, Consultants, and Other Persons Who Possess Material, Non-Public Information”) as well as NYMEX Rule 3.04 (“Voting by Board and Committee Members on Certain Matters.”). These rules are supplemented by a formal Board resolution (Resolution VIII - Resolution of Board of Directors Concerning Exchange Contracts with Interested Members or Entities). In addition, the Exchange’s official Ethics Guidelines applicable to all Exchange members, including Members who are serving as members of the NYMEX Board or NYMEX committees, contain detailed procedures addressing conflicts of interests and protection of confidential information.

Additional safeguards and affirmative obligations are in place for NYMEX staff as well. The NYMEX Employee Manual, which sets forth the official policy of the Exchange, establishes affirmative requirements for Exchange employees concerning protecting confidential information. In recent years, every NYMEX employee has been required to review and sign a copy of the “New York Mercantile Exchange Conflict of Interest Guidelines and Confidentiality Acknowledgement Form”, which is placed in the employee’s personnel file. As a complement to this document, beginning in January, 2006, every NYMEX employee also is required to review and execute a copy of the new NYMEX Code of Business Conduct, which similarly will be maintained in each employee’s personnel file. A copy of this standard NYMEX document can be found on the Exchange’s website.

As can be seen, specific requirements have been established for maintaining and protecting confidential information. Thus, for example, the new Code of Conduct makes clear that “[i]nformation about the Exchange, its employees, directors, members, customers, suppliers, and vendors is to be kept confidential and divulged **only** to individuals within the Exchange with **both a need to know the information and authorization to receive the information.**” (emphasis added). The new employee Code of Conduct also states at the beginning of the document that “[v]iolations of the Code will lead to prompt disciplinary action, up to and including dismissal.”

Overall, NYMEX has maintained a solid commitment to its self-regulatory responsibilities and has taken a number of steps to strengthen its SRO governance and compliance programs. Strong SRO programs, including effective market regulation and disciplinary programs, have long been a priority at NYMEX, and we have great confidence in the effectiveness of our current SRO governance structure and mechanisms. The CFTC staff has assessed the NYMEX program through its rule enforcement reviews since the Exchange demutualized and has found consistently that our SRO program is “adequate,” the standard typically applied by CFTC staff in the context of such reviews.

**3. Given the ongoing industry changes cited above, please describe how self-regulation can continue to operate effectively. What measures have SROs taken thus far, and what additional measures are needed, to ensure fair, vigorous, and effective self-regulation by competitive, publicly traded, for-profit SROs?**

Self-regulation will continue to operate effectively through continuous analysis of compliance systems and programs and through updates designed to ensure that all regulatory objectives are being met. NYMEX consistently engages in self-evaluation and develops initiatives to ensure that its regulatory programs remain effective. Since its demutualization in November 2000, NYMEX has implemented a number of SRO and corporate governance initiatives, including:

- Creation of a new independent Audit Committee consisting solely of “independent” directors to conduct oversight of the internal audit function;
- Creation of a new independent Exchange Compensation Committee consisting solely of “independent” directors to set the compensation and annual incentive bonus for NYMEX executives;
- Creation of a new Corporate Governance Committee to review policies and practices concerning corporate governance and a new Office of Corporate Governance;
- Adoption of new “whistle-blower” procedures;
- Adoption of a new Code of Ethics and Policy Statement for NYMEX Principal Executive Officer and for Senior Financial Officers;
- Adoption of a new NYMEX Company Disclosure Policy;
- Adoption of a new NYMEX Code of Business Conduct that must be executed by all Exchange employees;
- Implementation of rule amendments raising the maximum fine for each major offense from \$250,000 to \$1,000,000.
- Delegation to Exchange staff of responsibility for determining NYMEX settlement prices for products listed for trading and/or clearing on NYMEX ClearPort™ Trading and/or Clearing;
- Implementation of new rule amendments expanding from one to two the number of required public members participating in any Business Conduct Committee or Adjudication Committee proceeding;
- Addition of NYMEX Compliance employees as voting members with veto authority in the Settlement Committee of various NYMEX and COMEX Division markets including: Crude Oil futures, Natural Gas futures, Copper futures, PJM electricity futures and options, all calendar spread option contracts, all average price options, all crack spread option contracts, and both Gold and Silver options contracts;
- Implementation during the first quarter of 2006 of video surveillance of Exchange trading floors;
- Creation of new internal due diligence procedures for preparation of annual SEC Form 10-K and quarterly Form 10-Q reports to the SEC and other external financial reporting; and

- Board approval of a pilot program to include Exchange staff on NYMEX Floor Committees, which is being gradually expanded to include additional trading rings and listed contracts.

These initiatives reflect the Exchange's proactive approach to compliance with applicable regulations and its response to a careful examination of successful corporate governance principles. NYMEX will continue to evaluate its regulatory programs and implement changes as deemed appropriate for effective self-regulation. Regulations adopted by the CFTC under the CFMA permit futures exchanges to implement new rules and procedures without prior Commission approval, thus facilitating NYMEX's ability to strengthen its corporate governance expeditiously.

**4. What is the appropriate composition of SROs' boards of directors to ensure the fairness and effectiveness of their self-regulatory programs?**

NYMEX believes that the existing structure in place at NYMEX reflects our market participants and also promotes diversity of membership on the Exchange's Board of Directors. The Certificate of Incorporation of NYMEX Holdings, Inc. ("Certificate") provides that the directors of its board be comprised of 25 directors composed of a Chairman and Vice Chairman and that directors be divided into the following groups of membership: Floor Broker, Futures Commission Merchant ("FCM"), Trade, Local, Equity Holder and At Large. In addition, the Certificate stipulates that the Board of Directors shall have five Public Directors. The Public Director must be a person knowledgeable of futures trading or financial regulation or otherwise capable of contributing to the deliberations of the Board and may not be a member of the Exchange or affiliated with any member of the Exchange or an employee of the Exchange. Through these diverse qualification categories, the Exchange has a mechanism in place that effectively permits the views of the various segments of the NYMEX community to be heard and considered.

NYMEX also relies on feedback provided by a number of standing Exchange advisory committees, as well as other NYMEX committees that provide input from specific constituencies, including for example the Compliance Review Committee, which is primarily composed of the heads of various disciplinary committees, the Corporate Governance Committee, the FCM Advisory Committee and the Clearing Committee. The expertise provided by our industry directors and committee members is critical to an effective decision-making process and successful marketplace. Similarly, our public directors also provide an important perspective to exchange governance and policy decisions.

**5. Should SROs' boards include independent directors, and if so, what level of representation should they have? What factors are relevant to determining a director's independence?**

As stated above, NYMEX has five Public Directors on its Board of Directors. It has been our experience that this ratio of public directors on our governing board has served the

Exchange very well. This balance of interests between public directors and our other categories of directors can perhaps be more effective on SRO issues than a board composed solely of non-affiliated directors. Public Directors, along with our other Board member categories, promote diversity of membership on the Board and effectively provide the Board with a balance of interests in its decision making process.

The independence of our Public Directors is of great value to our Board and its decision making process. Under the New York Stock Exchange (“NYSE”) listing standards, NYMEX’s Public Directors would qualify as independent directors. As set forth in NYMEX Holding’s Certificate of Incorporation, in order to qualify as a Public Director, a person must be knowledgeable about futures trading or financial regulation or otherwise capable of contributing to Board deliberations and may not be a member of the Exchange or affiliated with any member of the Exchange or an employee of the Exchange. The purpose of the NYSE listing standards on independence is to ensure that the company’s directors are independent from and not subject to the influences of the management of that company. Thus, because the emphasis is on independence from management of the listed company, it is possible for markets subject to these listing standards to conclude that exchange members qualify as independent directors.

We believe that the factors for qualifying as a Public Director on the NYMEX Board are also appropriate factors for determining a director’s independence. It is important, however, to have a Board comprised of a sufficient number of persons with the expertise to make valuable contributions to the Board’s deliberations. Commodity trading is a specialized business and to restrict the boards of futures markets to non-members and persons independent of members, member firms and the exchange itself potentially would have a negative effect on the governing board’s decision making abilities.

- 6. Should self-regulation be overseen by an independent entity within an SRO?**
  - a. If so, what functions and authority should be vested in such an entity?**
  - b. At least two futures exchanges have implemented board-level regulatory oversight committees (“ROCs”) to oversee their regulatory functions in an advisory capacity. Commenters are invited to address any strengths or weaknesses in this approach.**

NYMEX believes that, consistent with the philosophy embodied in the CFMA, SROs should be accorded substantial flexibility and discretion in the manner in which they comply with the general performance standards set forth in the Core Principles. Thus, the internal corporate structure of an SRO should be individualized and determined by the SRO itself. An approach that provides an effective self-regulatory program for one exchange may or may not be appropriate for another exchange.

We are aware that certain industry participants have expressed concern that there may be some undue influence by the business management over the SRO/DSRO functions at exchanges and clearing houses. NYMEX’s Compliance Department has a demonstrated history of effective implementation of its SRO functions.

The Compliance Department and the Exchange's reporting lines have been structured to provide the Compliance Department and its management with direct reporting to the NYMEX President. Although this traditional reporting structure may have generated some concerns in the industry, NYMEX does not believe that its regulatory programs have been compromised in any way, as proven by routine CFTC reviews of our SRO functions. It is also important to note that NYMEX and its member firms have significant reputational (and consequently commercial) interests in ensuring the quality and integrity of the Exchange's self-regulatory programs. However, NYMEX also believes that any corporation, particularly SROs, should engage in periodic ongoing self-examination and, to the extent the results suggest that the process could be improved, should make appropriate changes.

An ROC as an independent body overseeing regulatory functions may provide one approach to clearer lines between the business and regulatory functions of exchanges. Another approach is to establish an ROC that ultimately advises and reports to the SRO's Board of Directors. While we have no direct experience with either of these regulatory models, we note that several U.S. futures exchange have adopted the latter approach. It is our understanding that the exchanges using this particular model have found it to be satisfactory. However, rather than focusing on the merits of any one particular model, NYMEX believes that it is crucial to remember the intent of Congress, as reflected in the structure of the CFMA, that the decisions as to how best to comply with the core principles remain with the regulated entity.

**7. The parent companies of some SROs are subject to the listing standards of the securities exchanges on which they are traded. Are such listing standards relevant to self-regulation and to conflicts of interest within DCMs?**

Parent companies of SROs, including NYMEX Holdings, Inc., and their SRO subsidiary typically have overlapping, and identical boards of directors. Therefore, the listing standards applied to the parent company would apply to the subsidiary. The NYSE listing standards place an emphasis on independence of board members to ensure that the company's directors are not subject to the influences of the management of that company. Thus, because the emphasis is on independence from management of the listed company, as opposed to independence between the business and regulatory arms of the SRO, it would appear that such listing standards would not be relevant to conflicts of interest within a DCM.

As a public company organized under the laws of Delaware, NYMEX is subject to Delaware state corporate laws, which establish adequate standards around the conduct of corporate directors. Moreover, under state corporation law, the board of directors has a duty to exercise its business judgment to act in the best interest of the company and its shareholders. Directors owe a fiduciary duty to their shareholders, which must be fulfilled in full compliance with applicable laws and regulations. Any additional rules in this area would be redundant and burdensome, and may create unnecessary conflicts with existing law.



- 8. What is the appropriate composition of SROs' disciplinary committees to ensure both expertise and impartiality in decision-making?**
- a. Should a majority of committee members be independent? Should the composition of SROs' disciplinary reflect the diversity of the constituency: Should similar safeguards apply to other key committees and if so, which committees?**
  - b. Should SRO disciplinary committees report to the board of directors, an independent internal body, or an outside body?**

NYMEX recognizes the value of diversity in the composition of its various SRO disciplinary committees and its rules and procedures reflect a disciplinary composition that incorporates the various market constituencies at NYMEX, as well as unaffiliated public members. NYMEX's Business Conduct Committee ("BCC"), which meets to review Compliance Department investigation reports and to determine whether or not to issue a formal complaint, and the Adjudication Committee, which meets to hear and decide the matter, both provide for diversity in composition across various representative categories. The specific composition requirements for these Exchange disciplinary committees are summarized below.

NYMEX Rule 3.13 governing BCC composition provides that membership on a panel reviewing a particular matter shall be comprised of Members or persons employed by Member Firms that are "balanced as equally as practicable" among the various representative categories specified in the rule. These categories include: Floor Broker, Local, Trade and FCM (off-the-floor). In addition, every BCC panel must include at least two persons who are neither a member of the Exchange nor employed by a Member or Member Firm (i.e., a "Public Committee Member"). The definition for Public Committee Member in the Exchange's BCC rule is consistent with the terms of former CFTC Regulation 1.64, which provided in certain instances for participation in a disciplinary committee proceeding by at least one member "who is not a member of the self-regulatory organization."

NYMEX Rule 3.11A, the Exchange's rule for hearing procedures at the Adjudication and Appeals Committee level, takes a slightly different approach than the BCC in three areas: a) the definition of public members, b) the type of cases necessitating participation by a public member, and c) the diversity on the committee. With regard to types of cases, Rule 3.11A parallels the requirements of former CFTC Regulation 1.64, which provided that participation by such a public committee member was required when:

- (a) The subject of the disciplinary action was a member of the SRO's governing board or one of the SRO's major disciplinary committees;
- (b) There was alleged manipulation or attempted manipulation; or
- (c) There was alleged conduct directly resulting in financial harm to a non-member of the contract market.

For such cases, Rule 3.11A provides for participation by "at least two Public Directors on the Board, and/or at least one Public Committee Member" of the applicable committee. Finally, Rule 3.11A also tracks the former CFTC regulation on committee composition

by requiring that more than 50% of the applicable disciplinary committee panel must be comprised of persons representing different membership interests than that of the subject of the proceeding.

Beyond the considerations noted above, the Exchange's BCC also establishes separate criteria for panels involving NYMEX and COMEX Division cases. Panels for NYMEX Division cases are to be comprised (in addition to one or more Public Committee Members) of 70% NYMEX Division representation and 30% COMEX Division representation. COMEX Division panels likewise are to be comprised (in addition to one or more Public Committee Members) of 30% NYMEX Division representation and 70% COMEX Division representation. Similar provisions apply in NYMEX Rule 3.10 with respect to Adjudication Committee panels, while Rule 3.11 provides that Appeals Committee panels involving a COMEX member shall consist of at least one COMEX Division member.

As to question (a), there are a range of types of cases that are presented to a disciplinary committee in the course of a given year. While a number of these cases are relatively straight-forward in nature, other cases, particularly major trade practice investigations, can require review of complex trading patterns executed among numerous floor members and involve an extensive number of trading sequences, thus requiring review and analyses of a large number of trading documents. NYMEX has been fortunate to have an extraordinary group of public directors on its disciplinary committees, some of whom had prior experience working in various positions in the futures industry. It is also fair to note that reviewing a complex trade investigation report can be challenging even for seasoned floor members with decades of experience on the trading floor.

NYMEX believes that it is necessary to provide fair due process to the subjects of an investigation (or later proceeding) by ensuring some level of expertise on the applicable disciplinary committee. The goal of providing adequate due process must be balanced with the equally important goal of providing an impartial process. We have endeavored to satisfy both goals by having a mix of experienced members along with a gradually increasing number of public committee members on our disciplinary committees.

Additionally, as described below, NYMEX disciplinary committees include committee members who work at FCMs among the mix of committee members. Again, NYMEX has been fortunate to have the voluntary service of a group of exceptionally talented individuals who are affiliated with FCMs. On nearly any matter involving a NYMEX Floor Member, an FCM committee member typically has no direct relation with trading activity on the NYMEX floor. Thus, FCM committee members offer the possibility of providing both a substantial degree of expertise regarding futures trading practices, as well as a degree of impartiality on many cases that rivals that of the public committee member. In our experience, FCM committee members have provided tremendous value in their service on our disciplinary committees. We respectfully suggest that any analysis that focuses solely upon a contrast between floor members and public or independent members may be unduly limiting with respect to the range of choices available to an SRO to meet its statutory obligations.

As to question (b), although NYMEX disciplinary committees do not formally report to the Board, each NYMEX disciplinary committee is chaired by a NYMEX member who is also serving on the NYMEX Board. In addition, any settlement on disciplinary charges ultimately must be approved by the full NYMEX Board and a disciplinary committee acts in the capacity of making recommendations to the Board on any proposed settlements.

In general, NYMEX believes that the conflict of interest and committee composition provisions that were in place at the Exchange prior to the implementation of the CFMA have served and will continue to serve the Exchange effectively in ensuring both expertise and impartiality in each disciplinary proceeding. Other exchanges may have undertaken different approaches, which adequately satisfy these public policy goals. Nonetheless, we believe that our own practice and experience provide an appropriate model of how to address these policy concerns. As part of our ongoing internal self-examination, we review our disciplinary practices and committee structures on a continual basis. Accordingly, we may make adjustments from time to time in our discretion when we conclude that it is appropriate and necessary to do so.

We also note that the processes and actions of the Exchange's disciplinary committees are included within the scope of CFTC staff's periodic rule enforcement reviews of NYMEX's SRO programs. Disciplinary committees are thus aware that their actions eventually will be reviewed by CFTC staff. Moreover, NYMEX is responsive to any recommendations that may arise from such reviews.

**9. What information should SROs make available to the public to increase transparency (e.g., governance, compensation structure, regulatory programs and other related matters)? Are the disclosure requirements applicable to publicly traded companies adequate for SROs?**

NYMEX, as well as other SROs, currently make a considerable amount of information on governance and regulatory structure available to the public. For example, NYMEX's bylaws and rules are displayed on the Exchange's website, including provisions governing board composition, board nomination and election procedures, regulatory structure, committee composition, etc. The home page of the NYMEX website includes a section entitled "Shareholder Relations," which is accessible to the general public. Under the Shareholder Relations tab, there is a subsection on SEC filings, which contains in PDF format the Exchange's SEC filings as a company with public reporting responsibilities. Included in the SEC filings are the Exchange's 10-K annual report and the quarterly 10-Q filings, both of which contain extensive information on budgets and staffing. The Shareholder Relations section of the website also provides the public with an opportunity to review all Exchange notices to members, which are archived on the website for several years. These notices address a broad variety of topics, including but not limited to election procedures and deadlines and Exchange compliance policies. Annual proxy statements filed in connection with the annual stockholders' meeting,

which contain executive compensation and other disclosures required by SEC rules, are also available on the NYMEX website.

In addition, the Exchange's website now includes a number of documents pertaining to corporate governance under a subsection entitled "Standards and Safeguards." To better highlight the Exchange's many recent initiatives in this area, the Exchange created a new Corporate Governance subsection in the Shareholder Relations section. This new subsection includes, among other things, the code of ethics for the Exchange's principal executive officer and the senior financial officer, the whistleblower complaint procedures, and the charters of the Exchange's Corporate Governance, Compensation and Audit Committees.

Beyond the information contained on NYMEX's website, much additional information is also readily available from the CFTC itself. The Commission regularly posts notice of all DCM and DCO rule changes on its website. Furthermore, as previously noted, the CFTC also makes publicly available its rule enforcement reviews of the Exchange's SRO staff, programs and actions.

Generally, NYMEX believes that greater transparency with respect to SRO governance and regulatory structures would promote a better understanding of the many safeguards in place and the substantial resources expended by SROs to satisfy their regulatory responsibilities. Greater transparency would be achieved best through ongoing and constructive dialogue between the Commission and the respective SRO concerning the type of information that would be most relevant and most appropriate for public dissemination.

**10. What conflicts of interest standards, if any, should apply specifically to DCOs, both stand-alone DCOs and those integrated within DCMs?**

Under the CFMA, Congress adopted provisions permitting the registration of DCOs and established 13 core principles governing those registered entities. Unlike the DCM core principles, the rules governing DCOs did not include specific provisions addressing Governance Fitness Standards, Conflicts of Interest, and Composition of Boards of Mutually Owned Contract Markets. We have not heard of any specific complaints or concerns about problems in this area, and Congress in its wisdom did not see fit to impose specific conflicts of interest or other governance requirements on DCO. Nonetheless, NYMEX believes that potential conflicts of interest could arise in a DCO structure, although they may arise in a different context. NYMEX's clearing house is fully integrated and, therefore, operates under the same conflicts rules as the Exchange. For stand alone DCOs, it may be prudent for the CFTC to assess whether in fact such safeguards should also be established by Congress to ensure the integrity of the clearing house board governance.

**11. What conflict of interest standards, if any, should be applicable to third-party regulatory service providers, including registered futures associations, to ensure fair, vigorous, and effective self-regulation on their part?**

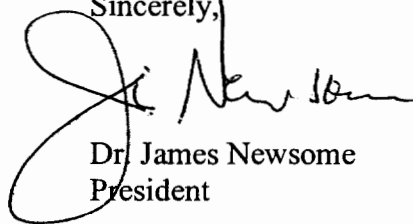
NYMEX believes that a third-party regulatory services provider should be subject to conflicts of interest standards. Registered futures associations (RFAs) typically have board members who are industry participants and who have relationships with individuals in the industry and affiliations with firms and other futures entities, such as DCMs. These relationships potentially put RFA board members in possession of material non-public information that could raise conflicts in their decision making. In addition, their capacity as directors could provide them access to such information, which also could compromise the integrity of their decision making.

The CFMA also gives DCMs the ability to delegate full regulatory functions to an RFA, including the disciplinary action and appeals processes. Although this scenario may present fewer conflicts given the independence of the service provider, there may be situations where conflicts could arise. NYMEX believes that in the interest of effective self-regulation and in order to ensure that the decision making process of an independent service provider is uncompromised, conflicts of interest standards similar to those applied to DCMs should be applied to RFAs.

\* \* \* \* \*

In closing, NYMEX thanks the Commission for the opportunity to submit comments concerning self-regulation and self-regulatory organizations in the futures industry. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Dr. James Newsome". The signature is written in a cursive style with a large, looping initial "J".

Dr. James Newsome  
President

cc: Chairman Reuben Jeffery  
Commissioner Sharon Brown-Hruska  
Commissioner Walter Lukken  
Commissioner Fred Hatfield  
Commissioner Michael Dunn