

U.S. COMMODITY FUTURES TRADING COMMISSION

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July 8, 1998

Mr. Christopher K. Bowen
Senior Vice President
and General Counsel
New York Mercantile Exchange
One North End Avenue
World Financial Center
New York, New York 10282-1101

COMMODITY FUTURES
TRADING COMMISSION
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Re: Proposed Adoption of Rule 6.45 (Specialist Market Maker Program)
and Amendments to Rule 6.43A (Broker Association Registration
Requirements)

Dear Mr. Bowen:

By letters dated April 16 through June 30, 1998, the New York Mercantile Exchange ("Exchange") submitted the above-referenced proposal pursuant to Section 5a(a)(12)(A) of the Commodity Exchange Act ("Act") and Commission Regulation 1.41(c). The proposed Specialist Market Maker Program ("Program") will permit the Specialist Market Maker ("SMM") to trade opposite customer orders placed in the limit order book ("OB"). The Program also may result in floor brokers taking the opposite sides of their customers' orders by placing either proprietary or customer orders with the SMM for inclusion in the OB and then entering the trading ring and trading opposite such orders.

Section 4b(a)(iv) of the Act provides, in relevant part, that it is unlawful for any member of a contract market willfully and knowingly and without the prior consent of such person to become the buyer in respect to any selling order of such person, or to become the seller in respect to any buying order of such person. Commission Regulation 155.2(e) requires each contract market to adopt rules that prohibit a floor broker from taking, directly or indirectly, the other side of any order of another person revealed to him or her by reason of his or her relationship to such other person, except with such other person's prior consent and in conformity with contract market rules approved by the Commission. The Commission previously

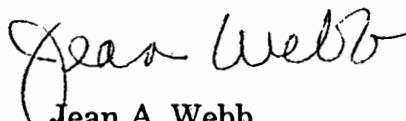
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has stated that the customer's consent must be "specific" to ensure that the customer has actually authorized the transactions.¹

The Exchange has represented that it will require each member futures commission merchant ("FCM") to provide each of its customers with a Specialist Market Maker Customer Information Statement, which will disclose the details of the Program, prior to accepting an order in any SMM designated contract market. The Exchange also has represented that it will remind each member FCM of its obligation to obtain the consent of any customer before accepting an order from the customer in any SMM designated contract market. Moreover, the Exchange represents that it will notify each member FCM that carries accounts for a non-member FCM that the member FCM must inform the non-member FCM of the non-member FCM's obligation to distribute the Specialist Market Maker Customer Information Statement to its customers and to obtain the consent of any customer prior to accepting the customer's order in any SMM designated contract market.

Please be advised that on this date the Commission approved the proposed new rule and rule amendments pursuant to Section 5a(a)(12)(A) of the Act.

Sincerely yours,


Jean A. Webb
Secretary

¹ See, Commodity Futures Trading Commission Final Rulemaking: Protection of Commodity Customers; Risk Disclosure by Futures Commission Merchants and Introducing Brokers to Customers; Bankruptcy Disclosure, 58 FR 17495, 17499 (April 5, 1993).