

August 16, 2007

Via E-Mail

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

Re: Rule Certification. NYMEX Submission 07.97: Notification of Amendments to Exchange User License Agreement and Schedule B Regarding NYMEX ClearPort® Clearing Services.

Dear Ms. Eileen A. Donovan:

The New York Mercantile Exchange ("NYMEX" or the "Exchange") is notifying the Commodity Futures Trading Commission ("CFTC" or "Commission") of amendments to Exchange User License Agreement and Schedule B NYMEX ClearPort® Clearing Services.

Effective for trade date Monday, August 20, 2007, these amendments generally seek to incorporate reference to additional trade types including Exchange of Futures for Product (Physical) (EFPs), Exchange of Futures for Swaps (EFS), Exchange of OTC Options for Exchange Options (EOO), and Block Trades, that will be available for submission via the NYMEX ClearPort® Clearing Trade Entry Portal. Pursuant to Section 5c(c) of the Commodity Exchange Act ("Act") and CFTC Rule 40.6, the Exchange hereby certifies that the attached amendments comply with the Act, including regulations under the Act.

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

Very truly yours,

Thomas F. LaSala
Chief Regulatory Officer

cc: Brian Regan
Nancy Minett

EXCHANGE USER LICENSE AGREEMENT

This agreement ("Agreement") sets out the terms on which the New York Mercantile Exchange, Inc. ("Exchange"), a for-profit Delaware corporation having its principal place of business at One North End Avenue, World Financial Center, New York, New York, 10282, will provide the user ("User") with access to the Web site located at <http://www.nymex.com> or such other addresses or uniform resource locators as may be specified by the Exchange (collectively, the "Site") and the services provided therein by the Exchange on its own behalf and on behalf of other exchanges, including the Dubai Mercantile Exchange Limited™ ("DME™") through DME Direct™ powered by NYMEX ClearPort® (each other exchange, including the DME™, referred to individually as a "Participating Exchange"). The services provided on the Site include, but are not limited to:

- 1) Electronic trading services for bidding and offering contracts listed for trading by the Exchange and the Participating Exchanges ("NYMEX ClearPort® Trading Services"), as detailed in Schedule A, A-1 (and related appendices), and A-2 (and related appendices), as applicable;
- 2) Exchange clearing of futures positions for Exchange contracts and Participating Exchange contracts arising out of off-exchange transactions, including exchange of futures for physical ("EFP"), exchange of futures for swaps ("EFS") and exchange of OTC options for Exchange options ("EOO"), and Exchange clearing of block trades in contracts listed for trading by the Exchange ("Clearing Services" or "NYMEX ClearPort® Clearing Services") as detailed in Schedule B;
- 3) During open outcry trading on the Exchange of certain contracts, the Exchange offers from its trading floor live audio broadcasts of NYMEX Market Data (as defined in Schedule C), accessible to Users from a specified page of the Site (collectively, the "NYMEX Squawk Boxes" and, individually, the "NYMEX Natural Gas Squawk Box" and the "NYMEX Crude Oil Squawk Box"), as detailed in Schedule C;
- 4) NYMEX Electronic Order Network Services ("NEON Services"), which enable firms and traders to route orders to various NYMEX-designated venues including open-outcry trading venues (i.e., NYMEX Energies Markets or COMEX Metals Markets), as detailed in Schedule D.
- 5) such other services that the Exchange may offer from time to time ("Other Services").

All of the above referenced services shall be collectively referred to herein as "Services."

In consideration of the recitals and the mutual covenants and agreements hereinafter set forth, the Exchange and User agree as follows

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SCHEDULE B NYMEX ClearPort® Clearing Services

This Schedule B sets out the specific terms and conditions on which the Exchange will provide the User with the NYMEX ClearPort® Clearing Services. All capitalized terms used herein shall have the same meaning set forth in the Agreement.

1. **General Terms.** User agrees that this Schedule B supplements and shall supersede any conflicting terms contained in the Agreement and **Exchange Privacy Policy**. User further agrees that this Schedule B shall be superseded by any conflicting terms contained in the Exchange Rules.
2. **Clearing Services.**
 - (a) Clearing Services generally involve receiving off-exchange **swap, physical or options** transactions and replacing them with Exchange or a Participating Exchange cleared standardized contracts (**"Transactions"**) **or receiving and**

clearing individually negotiated block trades in specified contracts listed for trading by the Exchange (each, a "Transaction"). Currently, the trade entry web interface available via the NYMEX ClearPort® Clearing menu is designed to accept trades from brokers, who must be registered with the Exchange and authorized by a Clearing Member to submit trades to clear through specific accounts set up by the Clearing Member.

(b) In addition, the Exchange will operate a NYMEX ClearPort® Facilitation Desk for Participating Principals to submit trades to the Exchange or a Participating Exchange for clearing off-exchange **or block trade** Transactions. Both Participating Principals must consent to clear the ~~off-exchange~~ Transaction and provide the Exchange Facilitation Desk with the appropriate account information, which is supplied by the Participating Principal's Clearing Member. Those Participating Principals interested in submitting such off-exchange **or block trade** Transactions to the Exchange or a Participating Exchange for clearing must contact the Exchange Facilitation Desk via telephone at 1-866-246-9639 during the hours when NYMEX ClearPort® Clearing Services are available. Questions or inquiries can be sent via email to facilitation@nymex.com.

(c) By submitting the terms of a **Transaction trade** to the Exchange or a Participating Exchange for clearing, User agrees to exchange its swaps, ~~or~~ physical **or options** transactions, as applicable, executed with its counterparty off-exchange or **block trade** and constituting CPC User Transaction Data (as defined in Section 9 below), for a standardized Exchange or Participating Exchange futures contract via either the Exchange's or Participating Exchange's exchange of futures for swaps or exchange of futures for physicals ~~procedure~~ **or exchange of OTC options for Exchange options (EOO) procedure, or block trade procedure** as applicable. User understands that the standardized Exchange or Participating Exchange futures contract may be listed at the Exchange or Participating Exchange only for purposes of clearing. User also understands that after the CPC User Transaction Data (as defined in Section 9 below) is submitted to the Exchange or Participating Exchange, it becomes the Exchange Data. In connection with the **trade Transaction** being submitted, User agrees to accept and to be bound by all applicable Exchange Rules or relevant Participating Exchange Rules, which may be updated from time to time. In particular, User should be aware that Chapter 6 of the NYMEX Rules contains rules governing procedures for exchanges of futures for physicals and exchanges of futures for **swaps or EOO or and block trades** as well as for determining settlement prices for NYMEX ClearPort® Clearing contracts. Chapter 8 of the NYMEX Rules contains a rule establishing summary procedures for denial of access. Furthermore, Chapter 9 of the NYMEX Rules contains rules on off-exchange clearing procedures, on position limits and position accountability, and on reporting levels. Finally, User also may wish to review certain rules in Chapters 2 and 6 of the NYMEX Rules concerning limitations of liability and lawsuits against the Exchange. Users should also review the relevant Participating Exchange Rules applicable to transactions in such Participating Exchange's contracts that are submitted for clearing.

3. **Registration and User Agents**. User may register for the NYMEX ClearPort® Clearing Services online as described on the NYMEX ClearPort® Getting Started page. Contact the Exchange Customer Service Call Center ("NCSCC") via telephone at 1-800-438-8616 or via email at NYMEXClearPort@nymex.com with any questions. A step-by-step guide to registration for the Services is provided in greater detail on the NYMEX ClearPort® Getting Started page. The User may register one or more of its User Agents to access the Site and/or System on behalf of User for the purposes of utilizing NYMEX ClearPort® Clearing Services. Such User Agents may be individuals or entities. All broker firms using or accessing any area of this Site must register only as Users. Such firms may designate their own brokers as User Agents. By contrast, neither a broker firm nor any one else serving as a broker may be listed as a User Agent. See Section 4 ("Registration") of the Agreement for additional terms relating to registration and User Agents.
4. **User IDs and Passwords**. Following registration for NYMEX ClearPort® Clearing Services, the Exchange shall issue to User and its User Agents one or more Password(s) for use exclusively by User and/or its User Agents.
5. **Terms of Payment**. In addition to the Terms of Payment contained in the Agreement, User of the NYMEX ClearPort® Clearing Services agrees to the additional payment terms as follows:

Clearing Services. On or about the tenth (10th) day of each month, the Exchange will send an invoice for billable Services from the prior month to the User or the Users Clearing Member.

6. **Fee Schedule**. Until further notice from the Exchange, there shall be no monthly subscription charge and no Exchange transaction fee to the User. However, the User will remain responsible for Exchange clearing fees for executed transactions, which will be collected by the User's Clearing Member on behalf of the Exchange.
7. **Additional Representations and Warranties**. In addition to the representations, warranties and covenants contained in the Agreement, the User further represents and warrants the following:

(a) User agrees that it will only use and permit use of the Site and System for soliciting and entering orders for itself and for persons for whom User is authorized to act, such as customers of the User, for trades in the System.

(b) User represents and warrants that neither User nor any of its User Agents are subject to any trading prohibition by any governmental authority or self-regulatory organization, whether under the Commodity Exchange Act as amended, or otherwise, which would apply to any transaction on the System. Furthermore, User represents and warrants that User and its User Agents shall comply with the Exchange Rules, relevant Participating Exchange Rules and any and all local, state, national and other jurisdiction's laws, rules, regulations or orders applicable to User's access to and use of the Site, System and Services, and shall not use the System in any jurisdiction in which to do so would be illegal or otherwise prohibited. User further represents and warrants that it and its User Agents shall only use the Site, System and Services from a jurisdiction included in the list of jurisdictions provided by the Exchange, as such list may be amended from time to time in the Exchange's sole discretion.

8. Execution of Transactions.

(a) User agrees that it will be obligated to pay the clearing and other transactional fees due on any Transaction submitted to the Site or System, as established from time to time by the Exchange in the applicable Fee Schedule. User also agrees to pay the fees specified, if any, in the applicable Fee Schedule as then in effect.

(b) User agrees that Transactions submitted to the Site or System shall be deemed to be "in writing" and to have been "signed" for all purposes and that any record of any such Transaction will be deemed to be in "writing". User will not contest the legally binding nature, validity or enforceability of any Transaction submitted to the Site or System based on the fact that it was entered and executed electronically and expressly waives any and all rights it may have to assert any such claim.

(c) User agrees that it will not contest the legally binding nature, validity or enforceability of any Transaction submitted to the Site or System based upon any claim that the Transaction was unlawful under applicable law and expressly waives any and all rights it may have to assert any such claim.

9. **Intellectual Property.** Notwithstanding the provisions of Section 7 ("Intellectual Property") in the Agreement, the parties hereby agree that any bids, offers or other Transaction information that User and/or its User Agents generate and provide to the Exchange in connection with the submission of transactions for Clearing Services ("CPC User Transaction Data") shall be treated as the non-exclusive property of each party (and any applicable Participating Exchange) and each party (and applicable Participating Exchange) shall have the right to use, sell, retransmit and/or redistribute such CPC User Transaction Data. User and its User Agents further understand and agree that from time to time, the Exchange may request the participation of User and/or its User Agents in determining daily settlement prices for products and instruments for which the Exchange provides Clearing Services. Such participation may include the voluntary submission to the Exchange of various price data other than CPC User Transaction Data, such as the submission of forward price curves for particular products ("User Price Curve Data"). Any and all User Price Curve Data shall remain the exclusive property of the User and User shall retain the right to use, sell, retransmit or redistribute such data. User hereby grants the Exchange the right to use such User Price Curve Data, provided that the Exchange shall not report or otherwise distribute specific assessment prices in connection with such data.

User hereby acknowledges that it has read, agrees to and shall be bound by all of the terms and conditions contained in this Schedule B.