

August 21, 2007

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**Via E-Mail**

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

**Re: Rule Certification. NYMEX Submission 07.102: Notification of a Notice to Members Regarding Documentary Obligations/Standards For NYMEX ClearPort® Clearing Transactions**

Dear Ms. Eileen A. Donovan:

The New York Mercantile Exchange, Inc. ("Exchange") is notifying the Commodity Futures Trading Commission ("Commission") that it is self-certifying a Notice to Members regarding documentary obligations/standards for NYMEX ClearPort® Clearing transactions.

The "Periodic Reminder" (Notice No. 07-413 dated August 21, 2007 is attached) details the documentary obligations and standards for parties to a NYMEX ClearPort® Clearing Transaction as prescribed by NYMEX Division Rule 6.21A, Exchange of Futures for, or in Connection with, OTC Swap (EFS), and NYMEX Rule 6.21F, Exchange of OTC Energy Options for, or in Connection with, NYMEX Energy Options ("EOO"). Pursuant to Section 5c(c) of the Commodity Exchange Act ("Act") and CFTC Rule 40.6, the Exchange hereby certifies that the attached notification complies with the Act, including regulations under the Act.

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

Very truly yours,

Thomas F. LaSala  
Chief Regulatory Officer

cc: Brian Regan  
Nancy Minnett

**Notice No. 07-413**  
**August 21, 2007**

**TO:** All NYMEX Members, Member Firms and Clearing Members

**FROM:** James E. Newsome, President

**RE:** **PERIODIC REMINDER – Documentary Obligations/Standards for NYMEX ClearPort® Clearing Transactions as Prescribed by NYMEX Division Rules 6.21A, "Exchange of Futures for or in Connection with OTC Swap" and 6.21F Exchange of OTC Energy Options for, or in Connection with, NYMEX Energy Options**

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**Background**

In May of 2002, the New York Mercantile Exchange (the "Exchange") was issued an Order by the CFTC providing for the ability to bring certain transactions or contracts attractive to Over-the-Counter Participants into the Clearing House on its NYMEX Division. The scope of the Order was limited to "Clearing Only," meaning these contracts were NOT traded on an execution facility provided by NYMEX. These contracts commonly referred to as the "ClearPort Cleared Contracts" were brought into the Clearing House by means of an EFS ("Exchange of Futures for Swap") for any financially-settled contract or via an EFP ("Exchange of Futures for Physical") for any physically-delivered contract. Once cleared, these contracts are "Futures Contracts" and subject to all related handling including Customer Segregation pursuant to Section 4d(a)(2) of the Commodity Exchange Act (the "Act"), margining, and are subject to the rules of NYMEX insofar as it operates as a registered Derivatives Clearing Organization or "DCO," and also as it pertains to the transactions as they enter the Clearing House subject to NYMEX status as a Designated Contract Market. Additionally, the participants who engage in the EFS transactions must be "Eligible Contract Participants" or "ECPs" as defined in Section 1a(12) of the Act.

Subsequent to the Order, NYMEX listed a second group of contracts via self-certification to the CFTC on November 10, 2002, wherein the additional contracts were made available for "Trading" via the ACCESS® Electronic Trading System in addition to still providing entry for Clearing via EFP or EFS. NYMEX has since transferred the "Trading" functionality from ACCESS to ClearPort® Trading ("CPT") and expanded the "ClearPort" contracts available for trading via CPT or clearing via CPC. Further, NYMEX has recently expanded contracts available for posting via CPC to include Exchange of OTC Energy Options for, or in Connection with, NYMEX Energy Options ("EOO"). Additionally, the participants who engage in the EOO

transactions must be “Eligible Contract Participants” or “ECPs” as defined in Section 1a(12) of the Act.

**Documentary Requirements Pursuant to NYMEX Rule 6.21A Related to ALL CPC EFS Transactions**

NYMEX Rule 6.21A Section (A) states in relevant part:

(A) An exchange of futures for, or in connection with, a swap (EFS) consists of two discrete, but related, transactions; a swap transaction and a futures transaction. At the time such transaction is effected, the buyer and seller of the futures must be, respectively, the seller and the buyer of the swap. The swap component shall involve the commodity underlying the futures contract (or a derivative, by-product or related product of such commodity). The quantity covered by the swap must be approximately equivalent to the quantity covered by the futures contracts. The swap component of an EFS transaction must comply with the applicable CFTC swap regulatory requirements.

Rule 6.21A Section (E) states in relevant part:

(E)(1) Each buyer and seller must satisfy the Exchange, at its request, that the transaction is a legitimate EFS transaction. Upon the request of the Exchange, all documentary evidence relating to the EFS, including a master swap agreement and any supplements thereto, shall be obtained by the Clearing Members from the buyer or seller and made available by the Clearing Members for examination by the Exchange. Additionally, if the buyer or seller is a Member/Member Firm, the Exchange may obtain the information directly from such person(s).

(2) Failure by a buyer or seller, or its Clearing Member to satisfy the Exchange that an EFS transaction is bona fide shall subject such buyer or seller, if a Member/Member firm, or the clearing member to disciplinary action. Such disciplinary action, depending on the gravity of the offense, may be deemed to be a major offense of the Exchange's rules. Further, if the buyer or seller is not a Member/Member Firm, the Exchange may conduct a hearing before the Business Conduct Committee to limit, condition or deny access to the market.

For Example, Customer A is the Buyer of 100 NYMEX September “NN” futures contracts entered into via CPC versus Customer B. Then Customer A MUST be the Seller of an OTC Swap transaction. The converse obligation of Customer B the Seller of the “NN” futures via CPC is also the case.

Thus, as required in Section (E)1 of the rule above, Customer A, if requested, must be able to supply documentation substantiating that it “sold” an OTC contract to Customer B. If Customers A and B did NOT have some form of long-dated OTC contract which they were effectively novating to NYMEX via the CPC transaction, then they will have to document an OTC obligation between the parties. In such an arrangement, Customer A would be the BUYER of an OTC Swap, which is then “booked out” via the OTC Swap sale, which is a component of the NYMEX CPC EFS buy.

**Documentary Requirements Pursuant to NYMEX Rule 6.21F Related to ALL CPC EOO Transactions**

All documentary standards for EOO transactions are similar to those involving EFS transactions and are contained in NYMEX Rule 6.21F Sections (C)(1) and (C)(2), as follows:

NYMEX Rule 6.21F, Exchange of OTC Energy Options for, or in Connection with, NYMEX Energy Options

(C) (1) Each buyer and seller must satisfy the Exchange, at its request, that the transaction is a legitimate EOO transaction. Upon the request of the Exchange, all documentary evidence relating to the EOO, including relevant OTC documentation, shall be obtained by the Clearing Members from the buyer or seller and made available by the Clearing Members for examination by the Exchange. Additionally, if the buyer or seller is a Member/Member Firm, the Exchange may obtain the information directly from such person(s).

(2) Failure by a buyer or seller, or its Clearing Member to satisfy the Exchange that an EOO transaction is bona fide shall subject such buyer or seller, if a Member/Member Firm, or the Clearing Member to disciplinary action. Such disciplinary action, depending on the gravity of the offense, may be deemed to be a major offense of the Exchange's rules. Further, if the buyer or seller is not a Member/Member Firm, the Exchange may conduct a hearing before the Business Conduct Committee to limit, condition or deny access to the market.

**Compliance Reminder/Guidance**

Compliance Staff has observed in its reviews of CPC EFS and EOO transactions that most, if not all, parties do not place the OTC swap components of the transactions into their accounting systems unless the original transaction was long-dated and subject to a notation between the parties. Thus, the only documentation that has been supplied by parties has been the confirmation created by "Voice Brokers" who are the traditional liquidity facilitators of OTC activity.

It is therefore important that parties to CPC transactions work with their Voice Brokers to ensure that any confirms they create address the requirements of NYMEX Rules 6.21A and 6.21F.

In recognition of the above noted practice of documentation being created and supplied ONLY by the Voice Brokers, Compliance Staff, in 2004, engaged an informative conference call with a number of these firms/individuals. The purpose of the call was to make the documentary standards clear for participants. It is the responsibility of the participants to the transaction, meaning the BUYER and SELLER of NYMEX futures, however, to ensure that they comply with the standards of NYMEX Rules 6.21A and 6.21F. The participants may ultimately choose to rely upon the documentation created by the Voice Brokers but, nevertheless, if the documentation created by the Voice Broker is insufficient in satisfying the Rule requirements, the responsibility for that failure as well as any related regulatory consequence will be borne by the parties to the NYMEX futures transaction.

Any questions regarding this Notice can be directed to Thomas LaSala, Chief Regulatory Officer, at (212) 299-2897, Nancy Minett, Vice President, Compliance, at (212) 299-2940, and Anthony V. Densieski, Senior Director, Market Surveillance, at (212) 299-2881.