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Commissioner Jill E. Sommers
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**Re: Transparency Issues Related to NYMEX's November 9, 2008 Block
TAS Launch**

Dear Acting Chairman Lukken, Commissioner Dunn, Commissioner Chilton, and
Commissioner Sommers:

Over the past several weeks, I have had numerous conversations with many CME/
NYMEX officials from compliance, marketing and clearing to express my concerns
relating to the upcoming November 9th, 2008 launch of NYMEX Trading at Settlement
(TAS), via the "over the counter" (OTC) market through the block trading mechanism
(hereinafter "Block TAS"). As you know, the offsetting of TAS orders through arbitrage
and hedging has a tremendous impact on the NYMEX settlement process. Allowing
traders to Block TAS circumvents the existing transparency that currently exists on the
Globex electronic and open outcry platforms. The TAS markets currently enjoy
tremendous liquidity and depth of market through these two venues.

NYMEX is well aware that the OTC market is dark and lacks transparency. The day-to-
day trading in that market is not regulated by the U.S. Commodity Futures Trading
Commission. Moreover, block trades are privately negotiated transactions. The
combination of private transactions in unregulated OTC markets will foster mischievous
conduct and the disruptive use of TAS. Allowing a few well capitalized proprietary
trading shops, index traders, or select commercial firms to hide TAS orders from the
general market place is harmful to the integrity of the market. The New York Stock
Exchange (NYSE) publishes closing imbalances (free of charge) for all market
participants to view at their leisure. If the NYSE adopted a mechanism similar to the
current proposal, it would allow four or five firms the unfair advantage of obtaining
exclusive information that is important for price discovery (e.g. that there might be 3
million shares of Exxon to buy or sell on any given close or 6 million IBM to buy on the
close). I doubt the Securities and Exchange Commission would approve such a procedure

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that would effectively eliminate important price discovery information from the marketplace.

On October 19, 2006, NYMEX issued a compliance advisory reminding members that the "misuse of TAS or MO trades to acquire a position in order to unfairly affect a settlement price" would "subject the member and/or customer to disciplinary action for any of a number of rule violations..." NYMEX Notice No. 548 (10/19/2006). I commend you on issuing Notice No. 548. However, moving TAS markets to the OTC venue only reduces transparency and evades the spirit of your October 19, 2006 compliance advisory.

Alternatively, rather than moving TAS trading into the shady corners of the marketplace, NYMEX should expand its current TAS rules and allow TAS "spread trading" for various months as it would promote transparency for all front-end users and alleviate the inefficiencies of rolling spreads.

I feel very strongly that Block TAS will have a negative impact on market integrity. I am available at any time to discuss this further with NYMEX, the CFTC, and the larger trading community. In these turbulent and volatile times, the last thing the U.S. energy markets need is less transparency.



Mark B. Fisher
November 3, 2008

Cc: Michael Loesch, Chief of Staff, Office of Acting Chairman Lukken
Eric Juzenas, Chief of Staff, Office of Commissioner Dunn
Elizabeth Ritter, Counsel, Office of Commissioner Chilton
Marcia Blasé, Counsel, Office of Commissioner Sommers
Terry Arbit, General Counsel
Richard Shilts, Director, Division of Market Oversight
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Phupinder Gill, CME Group, President
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