

**VIA E-MAIL**

Mr. David Stawick  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

**Re: New Product Rule Certification. New York Mercantile Exchange, Inc. Submission #08.38: Notification Regarding the Listing of Eight New NO<sub>x</sub> Emissions Allowance Futures Contracts on NYMEX ClearPort<sup>®</sup> Clearing and CME Globex<sup>®</sup>; and SO<sub>2</sub> Emission Allowance Option Contract on the NYMEX Trading Floor and NYMEX ClearPort<sup>®</sup> Clearing.**

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CFTC.

08/20/08  
OFFICE OF THE SECRETARIAT  
MARCH 4 PM 4:01

Dear Mr. Stawick:

The New York Mercantile Exchange, Inc. ("NYMEX" or "Exchange") is notifying the Commodity Futures Trading Commission ("CFTC" or "Commission") that it is self-certifying the listing of the following contracts:

- SO<sub>2</sub> Emission Allowance Option ( Code AS, Rules 871.01-871.07)
- Seasonal NO<sub>x</sub> Emission Allowance – Vintage 2009 – Futures (Code YI, Rules 860.01-860.14)
- Seasonal NO<sub>x</sub> Emission Allowance – Vintage 2010 – Futures (Code YJ, Rules 861.01-861.14)
- Seasonal NO<sub>x</sub> Emission Allowance – Vintage 2011 – Futures (Code YN, Rules 862.01-862.14)
- Seasonal NO<sub>x</sub> Emission Allowance – Vintage 2012 – Futures (Code YM, Rules 863.01-863.14)
- Annual NO<sub>x</sub> Emission Allowance – Vintage 2009 – Futures (Code WW, Rules 864.01-864.14)
- Annual NO<sub>x</sub> Emission Allowance – Vintage 2010 – Futures (Code YP, Rules 865.01-865.14)
- Annual NO<sub>x</sub> Emission Allowance – Vintage 2011 – Futures (Code YQ, Rules 866.01-866.14)
- Annual NO<sub>x</sub> Emission Allowance – Vintage 2012 – Futures (Code YR, Rules 867.01-867.14)

These new futures contracts will be listed on the NYMEX ClearPort<sup>®</sup> clearing and CME Globex<sup>®</sup> systems beginning at 6:00 P.M. on Sunday evening, March 16, for trade date March 17. The Exchange will list consecutive quarterly contracts starting from June 2008, through the last December of each corresponding vintage year. Each of these new futures contracts will be available during the normal trading hours for NYMEX ClearPort<sup>®</sup> clearing. In addition, the Exchange will allow Exchange of Futures for Physical to be submitted for clearing via NYMEX ClearPort<sup>®</sup> clearing pursuant to the terms of Rule 6.21.

The new SO<sub>2</sub> Emission Allowance Option Contract will be listed for open outcry trading between the hours of 9:00 A.M to 2:30 P.M Eastern Daylight Time, and on NYMEX ClearPort<sup>®</sup> clearing for submission of EOO transactions pursuant to NYMEX Rule 6.21F. There will be an Option for each listed underlying contract.

Pursuant to Section 5c(c) of the Commodity Exchange Act (“Act”) and CFTC Rules 40.2 and 40.6, the Exchange hereby certifies that the attached contract(s) comply with the Act, including regulations under the Act.

Should you have any questions concerning the above, please contact Brad Leach at (212) 299-2609 or the undersigned at (202) 715-8517.

Sincerely,

A handwritten signature in black ink, reading "De'Ana H. Dow". The signature is written in a cursive style with a large initial "D".

De'Ana H. Dow  
Senior Vice President and  
Chief Legislative Counsel

Attachments: Contract terms and conditions  
Supplemental information

**SO<sub>2</sub> Emissions Allowance Option Contract**

### **871.01 Expiration of SO2 Emissions Option Contract**

A SO2 Emissions option contract on the Exchange shall expire at the close of trading on the 15<sup>th</sup> business day of the contract month. If the 15<sup>th</sup> is not a business day, the option will expire on the business day prior to the 15<sup>th</sup>.

### **871.02 Trading Unit for Option Contract**

A SO2 Emissions put or call option contract traded on the Exchange represents an option to assume a short or long position in the underlying NYMEX SO2 Emissions Allowance Futures contract traded on the Exchange.

### **871.03 Trading Months for SO2 Emissions Option Contract**

Trading in SO2 Emissions option contracts shall be conducted in the months as shall be determined by the Board of Directors. Trading shall commence on the day fixed by resolution of the Board of Directors.

### **871.04 Hours of Trading in SO2 Emissions Option Contracts**

The hours of trading in SO2 Emissions option contracts on the Exchange shall be the same as the hours of trading for SO2 Emissions futures contracts. All such trading shall take place within the venue and hours prescribed by the Board.

### **871.05 Strike Prices for SO2 Emissions Option Contracts**

(A) Trading shall be conducted for options with strike prices in increments as set forth below.

(B) On the first business day of trading in an option contract month, trading shall be at the following strike prices: (i) the previous day's settlement price for SO2 futures contracts in the corresponding delivery month rounded off to the nearest five dollar increment strike price (ii) the five five-dollar increment strike prices which are five increments higher than the strike price described in (i) of this Rule 871.05(B) and (iii) the five five-dollar increment strike prices which are five increments lower than the strike price described in (i) of this Rule 871.05(B).

(C) Thereafter, on any business day prior to the expiration of the option, new consecutive strike prices for both puts and calls will be added such that there will be five increments above and below the at-the-money option..

(D) Notwithstanding the provisions of subsections (A) through (C) of this Rule, if the Board determines that trading in SO2 options will be facilitated thereby, the Board may, by resolution, change the increments between strike prices, the number of strike prices which shall be traded in the first day in any new option contract month, the number of new strike prices which will be introduced on each business day or the period preceding the expiration of a SO2 option in which no new strike prices may be introduced.

### **871.06 Prices and Price Fluctuations**

Prices shall be quoted in dollar and cent (c) per ton. There shall be no maximum price fluctuation limits. A cabinet trade may occur at a price of \$1.00 per contract, however, if it results in the liquidation of positions for both parties to the trade.

### **871.07 Absence of Price Fluctuation Limitations for SO2 Emissions Option Contract**

Trading in SO2 Emissions option contracts shall not be subject to price fluctuation limitations.

## **Seasonal NOX Emissions Allowance Vintage 2009 Futures Contract**

### **860. 01 Scope**

The provisions of these rules shall apply to Seasonal NOX emissions allowances vintage 2009 (or earlier vintages) bought or sold for future delivery on the Exchange with the Delivery at the U.S Environmental Protection Agency's (EPA) Allowance Management System (NAMS).

#### **860.01A. Definitions**

- A. EPA means the U.S. Environmental Protection Agency or any successor agency with similar jurisdiction.
- B. Seasonal NOX Allowance refers to a tradable permit to emit one ton of NOX from May 1 to September 30 in a given or subsequent calendar year under the Clean Air Interstate Rule (CAIR) Seasonal NOX Budget Trading Program as specified further by EPA.
- C. NOX Allowance Management System (NAMS) means the system established by the EPA for recording the transfer of Allowances among various entities under the Clean Air Act as set.
- D. Vintage Year means the first calendar year for which the allowance may be utilized for compliance.
- E. The terms "Seller" and "Buyer" shall mean the short Clearing Member and the long Clearing Member, respectively.
- F. The terms "Seller's Customer" and "Buyer's Customer" shall mean the seller and buyer of the physical product.
- G. The term "Settlement Price" shall mean the final settlement price used as the price for delivery of the product, which shall be the settlement price for the last trading day of the expiring delivery month. The settlement price for the last day of the trading shall be determined in accordance with the procedures set forth in NYMEX Rule 11G.11.

#### **860.02 Time References**

For purposes of these Rules, unless otherwise specified, times referred to herein shall refer to and indicate the prevailing time in New York.

#### **860. 03 Contract Unit**

The contract unit shall be ten (10) tons of Seasonal NOX emissions allowances vintage 2009 (or earlier vintages) for delivery made by transfer through NAMS.

#### **860. 04 Delivery**

Emission allowance delivery shall comply with all requirements for the electronic transfer of Seasonal NOX allowances through the NOX Allowance Management System. All deliveries made under these rules shall be final and there shall be no appeal.

#### **860. 05 Delivery Months**

Trading shall be conducted in contracts providing for delivery in such periods as shall be determined by the Board of Directors.

**860. 06 Minimum Price Fluctuations**

Prices shall be quoted in dollars per ton. The minimum price fluctuation shall be \$25.00 per ton (\$250.00 per contract). There shall be no maximum price fluctuation.

**860. 07 Termination of Trading**

Trading in the current delivery month shall cease at termination of the third business day prior to the last business day of the contract month.

**860. 08 Product Placement**

For purposes of Rule 9.19, the Seller and Buyer shall fulfill its contractual obligation on a maturing contract only if, by 12:00 noon on the day preceding the last trading day in the applicable delivery month, such Seller and Buyer have received NAMS account certification from his customer, in the form prescribed by the Exchange stating that the Customer has an account with NAMS,

The receipt of such certification shall not relieve the Seller or Buyer, or their respective Customers of any obligations under any Rule other than Rule 9.19.

**860. 09 Delivery Procedures**

**(A) RESPONSIBILITIES OF CLEARING MEMBERS HAVING OPEN LONG POSITIONS**

**(1) NOTICE OF INTENTION TO ACCEPT**

By 11:30 a.m. on the second business day prior to the last business day of an expiring delivery month, a Buyer having an open position shall file with the Exchange a properly completed and signed Notice of Intention to Accept. The Notice of Intention to Accept shall be in the form prescribed by the Exchange and shall include the Name of the Buyer's Customer, Number of contracts to be accepted, and any additional information as may be required by the Exchange.

By 4:00 p.m. on Notice Day, the Buyer shall provide the Seller with the following information: NAMS Account Number; Vintage Year; Name; Phone Number and e-mail address of the Account Representative (AAR) or the authorized alternate for that NAMS account.

**(B) RESPONSIBILITIES OF CLEARING MEMBERS HAVING OPEN SHORT POSITIONS**

## **(1) NOTICE OF INTENTION TO DELIVER**

By 11:30 a.m on the second business day prior to the last business day of an expiring delivery month, a Seller having an open short position shall file with the Exchange a properly completed and signed Notice of Intention to Deliver. The Notice of Intention to Deliver shall be in such form prescribed by the Exchange and shall include: Name of the Seller's Customer; Number of contracts to be delivered; NAMS Account Number; Vintage Year; Name; Phone Number and e-mail address of the Account Representative (AAR) or the authorized alternate for that NAMS account, and any information as may be required by the Exchange.

## **INFORMATION PROVIDED BY SELLER TO BUYER**

By 4:00 p.m. on Notice Day, the Seller shall provide the Buyer with the following information: NAMS Account Number, Vintage Year, Name, Phone Number and e-mail address of the Account Representative (AAR) or the authorized alternate for that NAMS account.

## **(E) Payment and Delivery Margins**

### **(1) Definitions**

- (a) "Payment" shall include the settlement price times the number of contracts times 10.
- (b) "Payment Date" shall mean the business day after the Buyer's Customer receipt of proper notification from the NAMS that allowances have been transferred from the Seller's Customer account to the Buyer's Customer account, provided documentation is supplied to the Buyer's Customer by no later than 2:00 P.M. Documentation supplied to Buyer after 2:00 noon on any Exchange business day, shall be considered received on the following Exchange business day.
- (c) On the business day following the last day of trading, the long clearing member shall obtain from the long, if any, margin equal to the full value of the product to be delivered. Such margin shall consist of cash, securities issued by the United States Treasury Department maturing within ten (10) years from the date of deposit and guaranteed as to principal and interest by the United States Government or a letter of credit. Any Treasury securities so deposited shall be valued at ninety percent (90%) of the par value of such instruments. Any letter of credit so deposited shall be in a form approved by the Exchange, shall be issued or confirmed by an Exchange approved original margin depository, and shall be drawn in favor of the Exchange.
- (d) The Buyer shall pay the Seller at the office of the Seller by a certified check or electronic funds transfer, or any other method acceptable to both parties by 12:00 P.M. on the payment date.
- (e) The Buyer and Seller shall deposit with the Exchange margins in such amounts and in such form as required by the Exchange. Such margins, which shall not be greater than the margins charged to the Buyer's Customer and Seller's Customer, shall be returned on the business day following notification to the Exchange that delivery and payment have been completed.

- (f) On the Payment Date, The Seller shall deliver a Notice of Payment to the Buyer with a copy to the Exchange by 4:30 PM. Upon receipt of such notice the delivery shall be complete.
- (g) Any payment made on Payment Date shall be based on allowances actually delivered.

**(F) Delivery Day**

The day the Buyer' customer receives the allowances shall be referred to as the Delivery Day.

**860. 10 Delivery Period**

Delivery shall take place on the third business day prior to the last business day of the delivery month.

**860. 11 Validity of Documents**

The Exchange makes no representation respecting the authenticity, validity or accuracy of any of Tender Allocation Notice, Notice of Intention to Accept, Notice of Intention to Deliver, check or of any document or instrument delivered pursuant to these rules.

**860. 12 Exchange of Futures for, or in Connection with Product**

(A) An exchange of futures for, or in connection with, the product (EFP) consists of two discrete, but related, transactions; a cash transaction and a futures transaction. At the time such transaction is effected, the Buyer's Customer and the Seller' Customer of the futures must be the Seller's Customer and the Buyer's Customer of a quantity of the physical product covered by this Section (or any derivative, by-product or related product). The quantity of physical product must be approximately equivalent to the quantity covered by the futures contracts.

(B) Except as provided below, an EFP must take place during the hours of futures trading for the Seasonal NOX Emissions Allowance futures contract. An EFP is permitted in the expiring futures contract until two hours after trading terminates on the last day of trading of the expiring futures contract. An EFP which establishes a futures position for both the buyer and the seller shall not be permitted during the two hour period following the termination of trading of the expired futures contract.

(C) Any Exchange of Futures for, or in Connection with, Product (EFP) shall governed by the provisions of Rule 6.21.

(D) Each Buyer's Customer and Seller's Customer must satisfy the Exchange, at its request, that the transaction is a legitimate EFP transaction. All documentary evidence relating to EFP, including, without limitation, evidence as to change of ownership of the physical commodity shall be obtained by the Clearing Members from their customers or and made available by the Clearing Members for examination by the Exchange upon request.



### **860. 13 Alternative Delivery Procedure**

A Seller's Customer or Buyer's Customer may agree with the Buyer's Customer or the Seller's Customer with which it has been matched by the Exchange under Rule 860.09(D) to make and take delivery under terms or conditions which differ from the terms and conditions prescribed by this Chapter. In such a case, Clearing Members shall execute an Alternative Notice of Intention to Deliver on the form prescribed by the Exchange and shall deliver a completed executed copy of such Notice to the Exchange. The delivery of an executed Alternative Notice of Intention to Deliver to the Exchange shall release the Clearing Members and the Exchange from their respective obligations under the Exchange contracts.

In executing such Notice, Clearing Members shall indemnify the Exchange against any liability, cost or expense it may incur for any reason as a result of the execution, delivery, or performance of such contracts or such agreement, or any breach thereof or default there under. Upon receipt of an executed Alternative Notice of Intention to Deliver, the Exchange will return to the Clearing Members all margin monies held for the account of each with respect to the contracts involved.

### **860. 14 Force Majeure, Late Performance and Failure to Perform**

**(A) DEFINITION.** As used in this Rule 860.14 the following terms, as well as variations thereof, shall have the meaning described below.

(1) "Late Performance" means the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation imposed by, and within the time period established in, the Rules.

(2) "Failure to Perform" means the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation prior to the expiration of the period allowed for the late performance of such act.

(3) "Contract Value" means the amount equal to the settlement price on the last day of trading in a futures contract times 10 (the number of tons per contract) times the number of contracts to be delivered.

(4)(a) "Party" means a Buyer or Seller and such Buyer and Seller are each responsible to the Exchange for their obligations under these Rules and further responsible to the Exchange for the obligations of their respective customers under the Rules of this Chapter.

(b) "Other Party" means the corresponding Buyer when the Seller is late in performance or has failed to perform and the corresponding Seller when the Buyer is late in performance or has failed to perform.

(5) "Day of Late Performance" means the twenty-four hour period commencing twelve hours after a Buyer or a Seller was to have performed, provided however, with respect to the

obligations of Buyers and Sellers to submit documents to the Exchange pursuant to the Rules in this chapter, and with respect to the failure to transfer allowances within the delivery period, "Day of Late Performance" means that twenty four hour period commencing immediately after the time specified in the Rules in this chapter for the submission of a document. Each subsequent Day of Late Performance shall commence twenty-four hours after the beginning of the prior Day of Late Performance. When a Party is late in performance, the day when the act is performed shall be a Day of Late Performance.

(6) "Force Majeure" means any circumstance (including but not limited to a strike, lockout, national emergency, governmental action, or act of God) which is beyond the control of such Buyer or Seller, and which prevents the Buyer or Seller from making or taking delivery of product when and as provided for in these Rules.

### **(B) RESPONSIBILITIES OF PARTIES TO THE DELIVERY**

(1) The parties to a delivery shall make commercially reasonable efforts to perform their respective delivery obligations at all times until a Party has failed to perform.

(2) A Party which has failed to perform its obligations may no longer perform such obligations; provided, however, that a Buyer which has failed to make a payment shall make such payment.

### **(C) EMISSIONS ALLOWANCE DELIVERY COMMITTEE**

(1) Force Majeure, Late Performance and Failure to Perform shall be determined by a Panel of the Emissions Allowance Delivery Committee as set forth below. The Chairman of the Emissions Allowance Delivery Committee shall appoint a Panel, which shall consist of three (3) members of the Committee, to review a delivery:

(a) When the Chairman is advised by the President or any person designated by the President that it appears that the performance of a Party to the delivery is late;

(b) Upon the written request of both the Buyer and the Seller;

(c) When the President or any person designated by the President requests such appointment; or

(d) When either Party to the delivery notifies the Exchange that circumstances exist constituting Force Majeure.

(2) The Chairman shall not appoint to any Panel any person who has a direct or indirect interest in the delivery in question. Any Panel so appointed shall retain jurisdiction over the delivery in question until the delivery has been completed or a Party has been found to have failed to perform such delivery. Exchange Counsel shall serve as advisor to the Panel.

(3) The Panel shall meet within one business day of notification as provided in these Rules. Unless good cause for delay exists, within one business day the Panel shall determine whether

force majeure exists, whether a Buyer or Seller is late in performing or has failed to perform its obligations as provided in the Rules, and advise the Compliance Department of such determination, and its findings in support thereof immediately. The Panel shall cause its determination to be communicated to the parties to the delivery as expeditiously as possible.

(4) Upon a finding of force majeure, the Panel may take any one or combination of the following actions as it deems suitable, order an extension of time not to exceed five days from the date of the scheduled delivery; or, refer the delivery to the Board of Directors for emergency action as provided in Article 7.

#### **(D) EXCHANGE ACTION**

(1) Whenever a Buyer or a Seller is found by the Panel to be late in the performance of or to have failed to perform a delivery, the Exchange, represented by the Compliance Department, shall issue a Notice of Assessment in accordance with subsections (2) of this Section, specifying the findings of the Panel with respect to the late or failed delivery.

(2) When a Party has failed to perform, the Compliance Department shall issue a Notice of Assessment assessing penalties of ten percent (10%) of the contract value, in addition to any penalties assessed pursuant to subparagraph (2) hereof, to be paid to the Exchange.

(3)(a) A Party may appeal a Notice of Assessment by filing a Notice of Appeal with the Hearing Registrar of the Exchange and by serving a copy of the same on the Exchange's Compliance Counsel, within two business days of receipt of the Notice of Assessment from the Compliance Department. The Party filing the appeal ("Appellant") shall file, within twenty (20) days after filing the Notice of Appeal, a Memorandum of Appeal setting forth the factual and legal basis for the appeal. The Memorandum of Appeal must be filed with the Hearing Registrar and a copy of the same served upon the Exchange's Compliance Counsel.

(b) The Compliance Department may file with the Appellant and Hearing Registrar an Answering Memorandum to the Memorandum of Appeal within ten (10) days of receipt of that memorandum.

(c) Failure by the Party to file a Notice of Appeal or a Memorandum of Appeal with the time specified in subsection (D)(4)(a) of this Rule shall constitute a waiver, and the penalties set forth in the Notice of Assessment shall be paid within five days to the Exchange. Failure to pay such penalties in accordance with this Rule shall subject the party to the sanctions set forth in Bylaw 106. In the event a party fails to Appeal, or waives the opportunity to appeal a Notice of Assessment the Assessment and findings of the Delivery Committee shall constitute a final disciplinary action of the Exchange.

(4) Within ten (10) days after receipt of the Compliance Department's reply, the Appellant shall be entitled to examine all books, documents and other tangible evidence in possession or under the control of the Exchange that are to be relied on by the Compliance Department or are

otherwise relevant to the matter.

(5) In the event of an appeal by a Party, the Chairman of the Exchange, or his designee, shall appoint an Assessment Appeal Panel to hear and decide the appeal. The Panel shall be composed of three members of the Exchange, at least one of whom shall be a member of the Board of Directors. No member of the Panel may have a direct or indirect interest in the matter under the appeal. Each Panel Member shall disclose to the Chairman any such interest which might preclude such Panel Member from rendering a fair and impartial determination. The formal Rules of Evidence shall not apply to such appeal, and the Panel shall be the sole judge with respect to the evidence presented to it. Exchange outside counsel shall advise the Panel.

(6) The procedures for the hearing of the appeal before the Assessment Appeal Panel shall be as follows:

(a) At a date to be set by order of the Panel, and prior to such hearing, the Appellant and the Compliance Department shall furnish each other with a list of witnesses expected to be called at the hearing, and a list of documents and copies thereof expected to be introduced at the hearing.

(b) At such hearing: The Appellant may appear personally and may be represented by counsel or other representative of his choice at the appeal.

(c) The Compliance Department shall be entitled to offer evidence relating to the delivery and shall be entitled to call witnesses and introduce documents in support thereof. It shall be the burden of the Compliance Department to demonstrate, by the weight of the evidence, the appropriateness of the sanction set forth in the Notice of Assessment.

(d) The Appellant shall be entitled to rebut the Compliance Department's evidence and shall be entitled to call witnesses and introduce documents in support thereof.

(e) The Compliance Department and the Appellant shall be entitled to cross-examine any witness called by the opposing Party at the hearing.

(f) The Notice of Assessment, the Notice of Appeal, the Memorandum of Appeal, any Answering Memorandum, the stenographic transcript of the appeal, any documentary evidence or other material presented to and accepted by the Panel shall constitute the record of the hearing. The decision of the Panel shall be based upon the record of the hearing.

(g) The Panel shall have the power to impose a penalty against any person who is within the jurisdiction of the Exchange and whose actions impede the progress of a hearing.

(h) The Assessment Appeal Panel shall issue a written decision in which it may affirm, reduce, or waive the charges assessed against the Appellant and shall state the reasons therefore.

(i) The decision of the Assessment Appeal Panel shall be a final decision of the Exchange and

shall constitute a final disciplinary action of the Exchange. The fine is payable on the effective day of the decision or as specified. The effective day shall be fifteen (15) days after a copy of the written decision has been delivered to the appellant and to the Commission.

(8) The Assessment Appeal Panel shall consider, and make recommendations to the Board concerning acceptance or rejection of, any offer of settlement submitted by Appellant. In the case of an offer of settlement, acceptance by the Board shall constitute the final disciplinary action of the Exchange.

#### **(E) ARBITRATION PROCEDURE**

(1) Any claim for damages arising between a Buyer and a Seller as a result of a delivery pursuant to this contract shall be settled by arbitration in accordance with these Rules.

(2) Notice of Intent to Arbitrate must be submitted to the Secretary of the Exchange within three business days of the occurrence upon which the claim is based or the decision of the Emissions Allowance Delivery Committee with respect to a late or failed performance. Failure to submit a Notice of Intent to Arbitrate within the prescribed period will be deemed a waiver of a Party's rights to arbitrate such a delivery dispute under the special or Regular Arbitration Rules.

(3) The Arbitration will be governed by Chapter 5 of the Rules except that the Chairman of the Exchange or his designee shall appoint an Arbitration Panel composed of three Members of the Exchange, at least one of whom shall be a Member of the Board of Directors.

### **Seasonal NOX Emissions Allowance Vintage 2010 Futures Contract**

#### **861. 01 Scope**

The provisions of these rules shall apply to all Seasonal NOX emissions allowances vintage 2010 (or earlier vintages) bought or sold for future delivery on the Exchange with the Delivery at the U.S Environmental Protection Agency's (EPA) Allowance Management System (NAMS).

#### **861.01A. Definitions**

- A. EPA means the U.S. Environmental Protection Agency or any successor agency with similar jurisdiction.
- B. Seasonal NOX Allowance refers to a tradable permit to emit one ton of NOX from May 1 to September 30 in a given or subsequent calendar year under the Clean Air Interstate Rule (CAIR) Seasonal NOX Budget Trading Program as specified further by EPA.
- C. NOX Allowance Management System (NAMS) means the system established by the EPA for recording the transfer of Allowances among various entities under the Clean Air Act as set.
- D. Vintage Year means the first calendar year for which the allowance may be utilized for compliance.
- E. The terms "Seller" and "Buyer" shall mean the short Clearing Member and the long Clearing Member, respectively.
- F. The terms "Seller's Customer" and "Buyer's Customer" shall mean the seller and buyer of the physical product.
- G. The term "Settlement Price" shall mean the final settlement price used as the price for delivery of the product, which shall be the settlement price for the last trading day of the expiring delivery month. The settlement price for the last day of the trading shall be determined in accordance with the procedures set forth in NYMEX Rule 11G.11.

#### **861.02 Time References**

For purposes of these Rules, unless otherwise specified, times referred to herein shall refer to and indicate the prevailing time in New York.

#### **861.03 Contract Unit**

The contract unit shall be ten (10) tons of Seasonal NOX emissions allowances vintage 2010 (or earlier vintages) for delivery made by transfer through NAMS.

#### **861.04 Delivery**

Emission allowance delivery shall comply with all requirements for the electronic transfer of Seasonal NOX allowances through the NOX Allowance Management System. All deliveries made under these rules shall be final and there shall be no appeal.

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Trading shall be conducted in contracts providing for delivery in such periods as shall be determined by the Board of Directors.

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Prices shall be quoted in dollars per ton. The minimum price fluctuation shall be \$25.00 per ton (\$250.00 per contract). There shall be no maximum price fluctuation.

**861. 07 Termination of Trading**

Trading in the current delivery month shall cease at termination of the third business day prior to the last business day of the contract month.

**861. 08 Product Placement**

For purposes of Rule 9.19, the Seller and Buyer shall fulfill its contractual obligation on a maturing contract only if, by 12:00 noon on the day preceding the last trading day in the applicable delivery month, such Seller and Buyer have received NAMS account certification from his customer, in the form prescribed by the Exchange stating that the Customer has an account with NAMS,

The receipt of such certification shall not relieve the Seller or Buyer, or their respective Customers of any obligations under any Rule other than Rule 9.19.

**861. 09 Delivery Procedures****(A) RESPONSIBILITIES OF CLEARING MEMBERS HAVING OPEN LONG POSITIONS****(1) NOTICE OF INTENTION TO ACCEPT**

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- (a) "Payment" shall include the settlement price times the number of contracts times 10.
- (b) "Payment Date" shall mean the business day after the Buyer's Customer receipt of proper notification from the NAMS that allowances have been transferred from the Seller's Customer account to the Buyer's Customer account, provided documentation is supplied to the Buyer's Customer by no later than 2:00 P.M. Documentation supplied to Buyer after 2:00 noon on any Exchange business day, shall be considered received on the following Exchange business day.
- (c) On the business day following the last day of trading, the long clearing member shall obtain from the long, if any, margin equal to the full value of the product to be delivered. Such margin shall consist of cash, securities issued by the United States Treasury Department maturing within ten (10) years from the date of deposit and guaranteed as to principal and interest by the United States Government or a letter of credit. Any Treasury securities so deposited shall be valued at ninety percent (90%) of the par value of such instruments. Any letter of credit so deposited shall be in a form approved by the Exchange, shall be issued or confirmed by an Exchange approved original margin depository, and shall be drawn in favor of the Exchange.
- (d) The Buyer shall pay the Seller at the office of the Seller by a certified check or electronic funds transfer, or any other method acceptable to both parties by 12:00 P.M. on the payment date.
- (e) The Buyer and Seller shall deposit with the Exchange margins in such amounts and in such form as required by the Exchange. Such margins, which shall not be greater than the margins charged to the Buyer's Customer and Seller's Customer, shall be returned on the business day following notification to the Exchange that delivery and payment have been



completed.

- (f) On the Payment Date, The Seller shall deliver a Notice of Payment to the Buyer with a copy to the Exchange by 4:30 PM. Upon receipt of such notice the delivery shall be complete.
- (g) Any payment made on Payment Date shall be based on allowances actually delivered.

**(F) Delivery Day**

The day the Buyer's customer receives the allowances shall be referred to as the Delivery Day.

**861. 10 Delivery Period**

Delivery shall take place on the third business day prior to the last business day of the delivery month.

**861. 11 Validity of Documents**

The Exchange makes no representation respecting the authenticity, validity or accuracy of any of Tender Allocation Notice, Notice of Intention to Accept, Notice of Intention to Deliver, check or of any document or instrument delivered pursuant to these rules.

**861. 12 Exchange of Futures for, or in Connection with Product**

(A) An exchange of futures for, or in connection with, the product (EFP) consists of two discrete, but related, transactions; a cash transaction and a futures transaction. At the time such transaction is effected, the Buyer's Customer and the Seller's Customer of the futures must be the Seller's Customer and the Buyer's Customer of a quantity of the physical product covered by this Section (or any derivative, by-product or related product.) The quantity of physical product must be approximately equivalent to the quantity covered by the futures contracts.

(B) Except as provided below, an EFP must take place during the hours of futures trading for the Seasonal NOX Emissions Allowance futures contract. An EFP is permitted in the expiring futures contract until two hours after trading terminates on the last day of trading of the expiring futures contract. An EFP which establishes a futures position for both the buyer and the seller shall not be permitted during the two hour period following the termination of trading of the expired futures contract.

(C) Any Exchange of Futures for, or in Connection with, Product (EFP) shall governed by the provisions of Rule 6.21.

(D) Each Buyer's Customer and Seller's Customer must satisfy the Exchange, at its request, that the transaction is a legitimate EFP transaction. All documentary evidence relating to EFP, including, without limitation, evidence as to change of ownership of the physical commodity shall be obtained by the Clearing Members from their customers or and made available by the Clearing Members for examination by the Exchange upon request.

### **861. 13 Alternative Delivery Procedure**

A Seller's Customer or Buyer's Customer may agree with the Buyer's Customer or the Seller's Customer with which it has been matched by the Exchange under Rule 861.09(D) to make and take delivery under terms or conditions which differ from the terms and conditions prescribed by this Chapter. In such a case, Clearing Members shall execute an Alternative Notice of Intention to Deliver on the form prescribed by the Exchange and shall deliver a completed executed copy of such Notice to the Exchange. The delivery of an executed Alternative Notice of Intention to Deliver to the Exchange shall release the Clearing Members and the Exchange from their respective obligations under the Exchange contracts.

In executing such Notice, Clearing Members shall indemnify the Exchange against any liability, cost or expense it may incur for any reason as a result of the execution, delivery, or performance of such contracts or such agreement, or any breach thereof or default there under. Upon receipt of an executed Alternative Notice of Intention to Deliver, the Exchange will return to the Clearing Members all margin monies held for the account of each with respect to the contracts involved.

### **861. 14 Force Majeure, Late Performance and Failure to Perform**

**(A) DEFINITION.** As used in this Rule 861.14 the following terms, as well as variations thereof, shall have the meaning described below.

(1) "Late Performance" means the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation imposed by, and within the time period established in, the Rules.

(2) "Failure to Perform" means the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation prior to the expiration of the period allowed for the late performance of such act.

(3) "Contract Value" means the amount equal to the settlement price on the last day of trading in a futures contract times 10 (the number of tons per contract) times the number of contracts to be delivered.

(4)(a) "Party" means a Buyer or Seller and such Buyer and Seller are each responsible to the Exchange for their obligations under these Rules and further responsible to the Exchange for the obligations of their respective customers under the Rules of this Chapter.

(b) "Other Party" means the corresponding Buyer when the Seller is late in performance or has failed to perform and the corresponding Seller when the Buyer is late in performance or has failed to perform.

(5) "Day of Late Performance" means the twenty-four hour period commencing twelve hours after a Buyer or a Seller was to have performed, provided however, with respect to the obligations of Buyers and Sellers to submit documents to the Exchange pursuant to the Rules in

this chapter, and with respect to the failure to transfer allowances within the delivery period, "Day of Late Performance" means that twenty four hour period commencing immediately after the time specified in the Rules in this chapter for the submission of a document. Each subsequent Day of Late Performance shall commence twenty-four hours after the beginning of the prior Day of Late Performance. When a Party is late in performance, the day when the act is performed shall be a Day of Late Performance.

(6) "Force Majeure" means any circumstance (including but not limited to a strike, lockout, national emergency, governmental action, or act of God) which is beyond the control of such Buyer or Seller, and which prevents the Buyer or Seller from making or taking delivery of product when and as provided for in these Rules.

### **(B) RESPONSIBILITIES OF PARTIES TO THE DELIVERY**

(1) The parties to a delivery shall make commercially reasonable efforts to perform their respective delivery obligations at all times until a Party has failed to perform.

(2) A Party which has failed to perform its obligations may no longer perform such obligations; provided, however, that a Buyer which has failed to make a payment shall make such payment.

### **(C) EMISSIONS ALLOWANCE DELIVERY COMMITTEE**

(1) Force Majeure, Late Performance and Failure to Perform shall be determined by a Panel of the Emissions Allowance Delivery Committee as set forth below. The Chairman of the Emissions Allowance Delivery Committee shall appoint a Panel, which shall consist of three (3) members of the Committee, to review a delivery:

(a) When the Chairman is advised by the President or any person designated by the President that it appears that the performance of a Party to the delivery is late;

(b) Upon the written request of both the Buyer and the Seller;

(c) When the President or any person designated by the President requests such appointment; or

(d) When either Party to the delivery notifies the Exchange that circumstances exist constituting Force Majeure.

(2) The Chairman shall not appoint to any Panel any person who has a direct or indirect interest in the delivery in question. Any Panel so appointed shall retain jurisdiction over the delivery in question until the delivery has been completed or a Party has been found to have failed to perform such delivery. Exchange Counsel shall serve as advisor to the Panel.

(3) The Panel shall meet within one business day of notification as provided in these Rules. Unless good cause for delay exists, within one business day the Panel shall determine whether

force majeure exists, whether a Buyer or Seller is late in performing or has failed to perform its obligations as provided in the Rules, and advise the Compliance Department of such determination, and its findings in support thereof immediately. The Panel shall cause its determination to be communicated to the parties to the delivery as expeditiously as possible.

(4) Upon a finding of force majeure, the Panel may take any one or combination of the following actions as it deems suitable, order an extension of time not to exceed 5 days from the date of the scheduled delivery; or, refer the delivery to the Board of Directors for emergency action as provided in Article 7.

#### **(D) EXCHANGE ACTION**

(1) Whenever a Buyer or a Seller is found by the Panel to be late in the performance of or to have failed to perform a delivery, the Exchange, represented by the Compliance Department, shall issue a Notice of Assessment in accordance with subsections (2) of this Section, specifying the findings of the Panel with respect to the late or failed delivery.

(2) When a Party has failed to perform, the Compliance Department shall issue a Notice of Assessment assessing penalties of ten percent (10%) of the contract value, in addition to any penalties assessed pursuant to subparagraph (2) hereof, to be paid to the Exchange.

(3)(a) A Party may appeal a Notice of Assessment by filing a Notice of Appeal with the Hearing Registrar of the Exchange and by serving a copy of the same on the Exchange's Compliance Counsel, within two business days of receipt of the Notice of Assessment from the Compliance Department. The Party filing the appeal ("Appellant") shall file, within twenty (20) days after filing the Notice of Appeal, a Memorandum of Appeal setting forth the factual and legal basis for the appeal. The Memorandum of Appeal must be filed with the Hearing Registrar and a copy of the same served upon the Exchange's Compliance Counsel.

(b) The Compliance Department may file with the Appellant and Hearing Registrar an Answering Memorandum to the Memorandum of Appeal within ten (10) days of receipt of that memorandum.

(c) Failure by the Party to file a Notice of Appeal or a Memorandum of Appeal with the time specified in subsection (D)(4)(a) of this Rule shall constitute a waiver, and the penalties set forth in the Notice of Assessment shall be paid within five days to the Exchange. Failure to pay such penalties in accordance with this Rule shall subject the party to the sanctions set forth in Bylaw 106. In the event a party fails to Appeal, or waives the opportunity to appeal a Notice of Assessment the Assessment and findings of the Delivery Committee shall constitute a final disciplinary action of the Exchange.

(4) Within ten (10) days after receipt of the Compliance Department's reply, the Appellant shall be entitled to examine all books, documents and other tangible evidence in possession or under the control of the Exchange that are to be relied on by the Compliance Department or are

otherwise relevant to the matter.

(5) In the event of an appeal by a Party, the Chairman of the Exchange, or his designee, shall appoint an Assessment Appeal Panel to hear and decide the appeal. The Panel shall be composed of three members of the Exchange, at least one of whom shall be a member of the Board of Directors. No member of the Panel may have a direct or indirect interest in the matter under the appeal. Each Panel Member shall disclose to the Chairman any such interest which might preclude such Panel Member from rendering a fair and impartial determination. The formal Rules of Evidence shall not apply to such appeal, and the Panel shall be the sole judge with respect to the evidence presented to it. Exchange outside counsel shall advise the Panel.

(6) The procedures for the hearing of the appeal before the Assessment Appeal Panel shall be as follows:

(a) At a date to be set by order of the Panel, and prior to such hearing, the Appellant and the Compliance Department shall furnish each other with a list of witnesses expected to be called at the hearing, and a list of documents and copies thereof expected to be introduced at the hearing.

(b) At such hearing: The Appellant may appear personally and may be represented by counsel or other representative of his choice at the appeal.

(c) The Compliance Department shall be entitled to offer evidence relating to the delivery and shall be entitled to call witnesses and introduce documents in support thereof. It shall be the burden of the Compliance Department to demonstrate, by the weight of the evidence, the appropriateness of the sanction set forth in the Notice of Assessment.

(d) The Appellant shall be entitled to rebut the Compliance Department's evidence and shall be entitled to call witnesses and introduce documents in support thereof.

(e) The Compliance Department and the Appellant shall be entitled to cross-examine any witness called by the opposing Party at the hearing.

(f) The Notice of Assessment, the Notice of Appeal, the Memorandum of Appeal, any Answering Memorandum, the stenographic transcript of the appeal, any documentary evidence or other material presented to and accepted by the Panel shall constitute the record of the hearing. The decision of the Panel shall be based upon the record of the hearing.

(g) The Panel shall have the power to impose a penalty against any person who is within the jurisdiction of the Exchange and whose actions impede the progress of a hearing.

(h) The Assessment Appeal Panel shall issue a written decision in which it may affirm, reduce, or waive the charges assessed against the Appellant and shall state the reasons therefore.

(i) The decision of the Assessment Appeal Panel shall be a final decision of the Exchange and

shall constitute a final disciplinary action of the Exchange. The fine is payable on the effective day of the decision or as specified. The effective day shall be fifteen (15) days after a copy of the written decision has been delivered to the appellant and to the Commission.

(8) The Assessment Appeal Panel shall consider, and make recommendations to the Board concerning acceptance or rejection of, any offer of settlement submitted by Appellant. In the case of an offer of settlement, acceptance by the Board shall constitute the final disciplinary action of the Exchange.

#### **(E) ARBITRATION PROCEDURE**

(1) Any claim for damages arising between a Buyer and a Seller as a result of a delivery pursuant to this contract shall be settled by arbitration in accordance with these Rules.

(2) Notice of Intent to Arbitrate must be submitted to the Secretary of the Exchange within three business days of the occurrence upon which the claim is based or the decision of the Emissions Allowance Delivery Committee with respect to a late or failed performance. Failure to submit a Notice of Intent to Arbitrate within the prescribed period will be deemed a waiver of a Party's rights to arbitrate such a delivery dispute under the special or Regular Arbitration Rules.

(3) The Arbitration will be governed by Chapter 5 of the Rules except that the Chairman of the Exchange or his designee shall appoint an Arbitration Panel composed of three Members of the Exchange, at least one of whom shall be a Member of the Board of Directors.

## **Seasonal NOX Emissions Allowance Vintage 2011 Futures Contract**

### **862. 01 Scope**

The provisions of these rules shall apply to all Seasonal NOX emissions allowances vintage 2011 (or earlier vintages) bought or sold for future delivery on the Exchange with the Delivery at the U.S Environmental Protection Agency's (EPA) Allowance Management System (NAMS).

### **862.01A. Definitions**

- A. EPA means the U.S. Environmental Protection Agency or any successor agency with similar jurisdiction.
- B. Seasonal NOX Allowance refers to a tradable permit to emit one ton of NOX from May 1 to September 30 in a given or subsequent calendar year under the Clean Air Interstate Rule (CAIR) Seasonal NOX Budget Trading Program as specified further by EPA.
- C. NOX Allowance Management System (NAMS) means the system established by the EPA for recording the transfer of Allowances among various entities under the Clean Air Act as set.
- D. Vintage Year means the first calendar year for which the allowance may be utilized for compliance.
- E. The terms "Seller" and "Buyer" shall mean the short Clearing Member and the long Clearing Member, respectively.
- F. The terms "Seller's Customer" and "Buyer's Customer" shall mean the seller and buyer of the physical product.
- G. The term "Settlement Price" shall mean the final settlement price used as the price for delivery of the product, which shall be the settlement price for the last trading day of the expiring delivery month. The settlement price for the last day of the trading shall be determined in accordance with the procedures set forth in NYMEX Rule 11G.11.

### **862.02 Time References**

For purposes of these Rules, unless otherwise specified, times referred to herein shall refer to and indicate the prevailing time in New York.

### **862. 03 Contract Unit**

The contract unit shall be ten (10) tons of Seasonal NOX emissions allowances vintage 2011 (or earlier vintages) for delivery made by transfer through NAMS.

### **862. 04 Delivery**

Emission allowance delivery shall comply with all requirements for the electronic transfer of

Seasonal NOX allowances through the NOX Allowance Management System. All deliveries made under these rules shall be final and there shall be no appeal.

**862. 05 Delivery Months**

Trading shall be conducted in contracts providing for delivery in such periods as shall be determined by the Board of Directors.

**862. 06 Minimum Price Fluctuations**

Prices shall be quoted in dollars per ton. The minimum price fluctuation shall be \$25.00 per ton (\$250.00 per contract). There shall be no maximum price fluctuation.

**862. 07 Termination of Trading**

Trading in the current delivery month shall cease at termination of the third business day prior to the last business day of the contract month.

**862. 08 Product Placement**

For purposes of Rule 9.19, the Seller and Buyer shall fulfill its contractual obligation on a maturing contract only if, by 12:00 noon on the day preceding the last trading day in the applicable delivery month, such Seller and Buyer have received NAMS account certification from his customer, in the form prescribed by the Exchange stating that the Customer has an account with NAMS,

The receipt of such certification shall not relieve the Seller or Buyer, or their respective Customers of any obligations under any Rule other than Rule 9.19.

**862. 09 Delivery Procedures**

**(A) RESPONSIBILITIES OF CLEARING MEMBERS HAVING OPEN LONG POSITIONS**

**(1) NOTICE OF INTENTION TO ACCEPT**

By 11:30 a.m. on the second business day prior to the last business day of an expiring delivery month, a Buyer having an open position shall file with the Exchange a properly completed and signed Notice of Intention to Accept. The Notice of Intention to Accept shall be in the form prescribed by the Exchange and shall include the Name of the Buyer's Customer, Number of contracts to be accepted, and any additional information as may be required by the Exchange;

By 4:00 p.m. on Notice Day, the Buyer shall provide the Seller with the following information: NAMS Account Number; Vintage Year; Name; Phone Number and e-mail address of the Account Representative (AAR) or the authorized alternate for that NAMS account;



## **(B) RESPONSABILITIES OF CLEARING MEMBERS HAVING OPEN SHORT POSITIONS**

### **(1) NOTICE OF INTENTION TO DELIVER**

By 11:30 a.m on the second business day prior to the last business day of an expiring delivery month, a Seller having an open short position shall file with the Exchange a properly completed and signed Notice of Intention to Deliver. The Notice of Intention to Deliver shall be in such form prescribed by the Exchange and shall include: Name of the Seller's Customer; Number of contracts to be delivered; NAMS Account Number; Vintage Year; Name; Phone Number and e-mail address of the Account Representative (AAR) or the authorized alternate for that NAMS account, and any additional information as may be required by the Exchange.

### **INFORMATION PROVIDED BY SELLER TO BUYER**

By 4:00 p.m. on Notice Day, the Seller shall provide the Buyer with the following information: NAMS Account Number; Vintage Year; Name; Phone Number and e-mail address of the Account Representative (AAR) or the authorized alternate for that NAMS account.

## **(E) Payment and Delivery Margins**

### **(1) Definitions**

- (a) "Payment" shall include the settlement price times the number of contracts times 10.
- (b) "Payment Date" shall mean the business day after the Buyer's Customer receipt of proper notification from the NAMS that allowances have been transferred from the Seller's Customer account to the Buyer's Customer account, provided documentation is supplied to the Buyer's Customer by no later than 2:00 P.M. Documentation supplied to Buyer after 2:00 noon on any Exchange business day, shall be considered received on the following Exchange business day.
- (c) On the business day following the last day of trading, the long clearing member shall obtain from the long, if any, margin equal to the full value of the product to be delivered. Such margin shall consist of cash, securities issued by the United States Treasury Department maturing within ten (10) years from the date of deposit and guaranteed as to principal and interest by the United States Government or a letter of credit. Any Treasury securities so deposited shall be valued at ninety percent (90%) of the par value of such instruments. Any letter of credit so deposited shall be in a form approved by the Exchange, shall be issued or confirmed by an Exchange approved original margin depository, and shall be drawn in favor of the Exchange.
- (d) The Buyer shall pay the Seller at the office of the Seller by a certified check or electronic funds transfer, or any other method acceptable to both parties by 12:00 P.M. on the payment date.
- (e) The Buyer and Seller shall deposit with the Exchange margins in such amounts and in such form as required by the Exchange. Such margins, which shall not be greater than the margins charged to the Buyer's Customer and Seller's Customer, shall be returned on the

business day following notification to the Exchange that delivery and payment have been completed.

- (f) On the Payment Date, The Seller shall deliver a Notice of Payment to the Buyer with a copy to the Exchange by 4:30 PM. Upon receipt of such notice the delivery shall be complete.
- (g) Any payment made on Payment Date shall be based on allowances actually delivered.

#### **(F) Delivery Day**

The day the Buyer's customer receives the allowances shall be referred to as the Delivery Day.

#### **862. 10 Delivery Period**

Delivery shall take place on the third business day prior to the last business day of the delivery month.

#### **862. 11 Validity of Documents**

The Exchange makes no representation respecting the authenticity, validity or accuracy of any of Tender Allocation Notice, Notice of Intention to Accept, Notice of Intention to Deliver, check or of any document or instrument delivered pursuant to these rules.

#### **862. 12 Exchange of Futures for, or in Connection with Product**

(A) An exchange of futures for, or in connection with, the product (EFP) consists of two discrete, but related, transactions; a cash transaction and a futures transaction. At the time such transaction is effected, the Buyer's Customer and the Seller's Customer of the futures must be the Seller's Customer and the Buyer's Customer of a quantity of the physical product covered by this Section (or any derivative, by-product or related product.) The quantity of physical product must be approximately equivalent to the quantity covered by the futures contracts.

(B) Except as provided below, an EFP must take place during the hours of futures trading for the Seasonal NOX Emissions Allowance futures contract. An EFP is permitted in the expiring futures contract until two hours after trading terminates on the last day of trading of the expiring futures contract. An EFP which establishes a futures position for both the buyer and the seller shall not be permitted during the two hour period following the termination of trading of the expired futures contract.

(C) Any Exchange of Futures for, or in Connection with, Product (EFP) shall governed by the provisions of Rule 6.21.

(D) Each Buyer's Customer and Seller's Customer must satisfy the Exchange, at its request, that the transaction is a legitimate EFP transaction. All documentary evidence relating to EFP, including, without limitation, evidence as to change of ownership of the physical commodity shall be obtained by the Clearing Members from their customers or and made available by the Clearing Members for examination by the Exchange upon request.

### **862. 13 Alternative Delivery Procedure**

A Seller's Customer or Buyer's Customer may agree with the Buyer's Customer or the Seller's Customer with which it has been matched by the Exchange under Rule 862.09(D) to make and take delivery under terms or conditions which differ from the terms and conditions prescribed by this Chapter. In such a case, Clearing Members shall execute an Alternative Notice of Intention to Deliver on the form prescribed by the Exchange and shall deliver a completed executed copy of such Notice to the Exchange. The delivery of an executed Alternative Notice of Intention to Deliver to the Exchange shall release the Clearing Members and the Exchange from their respective obligations under the Exchange contracts.

In executing such Notice, Clearing Members shall indemnify the Exchange against any liability, cost or expense it may incur for any reason as a result of the execution, delivery, or performance of such contracts or such agreement, or any breach thereof or default there under. Upon receipt of an executed Alternative Notice of Intention to Deliver, the Exchange will return to the Clearing Members all margin monies held for the account of each with respect to the contracts involved.

### **862. 14 Force Majeure, Late Performance and Failure to Perform**

**(A) DEFINITION. As used in this Rule 862.14 the following terms, as well as variations thereof, shall have the meaning described below.**

(1) "Late Performance" means the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation imposed by, and within the time period established in, the Rules.

(2) "Failure to Perform" means the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation prior to the expiration of the period allowed for the late performance of such act.

(3) "Contract Value" means the amount equal to the settlement price on the last day of trading in a futures contract times 10 (the number of tons per contract) times the number of contracts to be delivered.

(4)(a) "Party" means a Buyer or Seller and such Buyer and Seller are each responsible to the Exchange for their obligations under these Rules and further responsible to the Exchange for the obligations of their respective customers under the Rules of this Chapter.

(b) "Other Party" means the corresponding Buyer when the Seller is late in performance or has failed to perform and the corresponding Seller when the Buyer is late in performance or has failed to perform.

(5) "Day of Late Performance" means the twenty-four hour period commencing twelve hours

after a Buyer or a Seller was to have performed, provided however, with respect to the obligations of Buyers and Sellers to submit documents to the Exchange pursuant to the Rules in this chapter, and with respect to the failure to transfer allowances within the delivery period, "Day of Late Performance" means that twenty four hour period commencing immediately after the time specified in the Rules in this chapter for the submission of a document. Each subsequent Day of Late Performance shall commence twenty-four hours after the beginning of the prior Day of Late Performance. When a Party is late in performance, the day when the act is performed shall be a Day of Late Performance.

(6) "Force Majeure" means any circumstance (including but not limited to a strike, lockout, national emergency, governmental action, or act of God) which is beyond the control of such Buyer or Seller, and which prevents the Buyer or Seller from making or taking delivery of product when and as provided for in these Rules.

### **(B) RESPONSIBILITIES OF PARTIES TO THE DELIVERY**

(1) The parties to a delivery shall make commercially reasonable efforts to perform their respective delivery obligations at all times until a Party has failed to perform.

(2) A Party which has failed to perform its obligations may no longer perform such obligations; provided, however, that a Buyer which has failed to make a payment shall make such payment.

### **(C) EMISSIONS ALLOWANCE DELIVERY COMMITTEE**

(1) Force Majeure, Late Performance and Failure to Perform shall be determined by a Panel of the Emissions Allowance Delivery Committee as set forth below. The Chairman of the Emissions Allowance Delivery Committee shall appoint a Panel, which shall consist of three (3) members of the Committee, to review a delivery:

(a) When the Chairman is advised by the President or any person designated by the President that it appears that the performance of a Party to the delivery is late;

(b) Upon the written request of both the Buyer and the Seller;

(c) When the President or any person designated by the President requests such appointment; or

(d) When either Party to the delivery notifies the Exchange that circumstances exist constituting Force Majeure.

(2) The Chairman shall not appoint to any Panel any person who has a direct or indirect interest in the delivery in question. Any Panel so appointed shall retain jurisdiction over the delivery in question until the delivery has been completed or a Party has been found to have failed to perform such delivery. Exchange Counsel shall serve as advisor to the Panel.

(3) The Panel shall meet within one business day of notification as provided in these Rules. Unless good cause for delay exists, within one business day the Panel shall determine whether force majeure exists, whether a Buyer or Seller is late in performing or has failed to perform its obligations as provided in the Rules, and advise the Compliance Department of such determination, and its findings in support thereof immediately. The Panel shall cause its determination to be communicated to the parties to the delivery as expeditiously as possible.

(4) Upon a finding of force majeure, the Panel may take any one or combination of the following actions as it deems suitable, order an extension of time not to exceed five days from the date of the scheduled delivery; or, refer the delivery to the Board of Directors for emergency action as provided in Article 7.

#### **(D) EXCHANGE ACTION**

(1) Whenever a Buyer or a Seller is found by the Panel to be late in the performance of or to have failed to perform a delivery, the Exchange, represented by the Compliance Department, shall issue a Notice of Assessment in accordance with subsections (2) of this Section, specifying the findings of the Panel with respect to the late or failed delivery.

(2) When a Party has failed to perform, the Compliance Department shall issue a Notice of Assessment assessing penalties of ten percent (10%) of the contract value, in addition to any penalties assessed pursuant to subparagraph (2) hereof, to be paid to the Exchange.

(3)(a) A Party may appeal a Notice of Assessment by filing a Notice of Appeal with the Hearing Registrar of the Exchange and by serving a copy of the same on the Exchange's Compliance Counsel, within two business days of receipt of the Notice of Assessment from the Compliance Department. The Party filing the appeal ("Appellant") shall file, within twenty (20) days after filing the Notice of Appeal, a Memorandum of Appeal setting forth the factual and legal basis for the appeal. The Memorandum of Appeal must be filed with the Hearing Registrar and a copy of the same served upon the Exchange's Compliance Counsel.

(b) The Compliance Department may file with the Appellant and Hearing Registrar an Answering Memorandum to the Memorandum of Appeal within ten (10) days of receipt of that memorandum.

(c) Failure by the Party to file a Notice of Appeal or a Memorandum of Appeal with the time specified in subsection (D)(4)(a) of this Rule shall constitute a waiver, and the penalties set forth in the Notice of Assessment shall be paid within five days to the Exchange. Failure to pay such penalties in accordance with this Rule shall subject the party to the sanctions set forth in Bylaw 106. In the event a party fails to Appeal, or waives the opportunity to appeal a Notice of Assessment the Assessment and findings of the Delivery Committee shall constitute a final disciplinary action of the Exchange.

(4) Within ten (10) days after receipt of the Compliance Department's reply, the Appellant shall

be entitled to examine all books, documents and other tangible evidence in possession or under the control of the Exchange that are to be relied on by the Compliance Department or are otherwise relevant to the matter.

(5) In the event of an appeal by a Party, the Chairman of the Exchange, or his designee, shall appoint an Assessment Appeal Panel to hear and decide the appeal. The Panel shall be composed of three members of the Exchange, at least one of whom shall be a member of the Board of Directors. No member of the Panel may have a direct or indirect interest in the matter under the appeal. Each Panel Member shall disclose to the Chairman any such interest which might preclude such Panel Member from rendering a fair and impartial determination. The formal Rules of Evidence shall not apply to such appeal, and the Panel shall be the sole judge with respect to the evidence presented to it. Exchange outside counsel shall advise the Panel.

(6) The procedures for the hearing of the appeal before the Assessment Appeal Panel shall be as follows:

(a) At a date to be set by order of the Panel, and prior to such hearing, the Appellant and the Compliance Department shall furnish each other with a list of witnesses expected to be called at the hearing, and a list of documents and copies thereof expected to be introduced at the hearing.

(b) At such hearing: The Appellant may appear personally and may be represented by counsel or other representative of his choice at the appeal.

(c) The Compliance Department shall be entitled to offer evidence relating to the delivery and shall be entitled to call witnesses and introduce documents in support thereof. It shall be the burden of the Compliance Department to demonstrate, by the weight of the evidence, the appropriateness of the sanction set forth in the Notice of Assessment.

(d) The Appellant shall be entitled to rebut the Compliance Department's evidence and shall be entitled to call witnesses and introduce documents in support thereof.

(e) The Compliance Department and the Appellant shall be entitled to cross-examine any witness called by the opposing Party at the hearing.

(f) The Notice of Assessment, the Notice of Appeal, the Memorandum of Appeal, any Answering Memorandum, the stenographic transcript of the appeal, any documentary evidence or other material presented to and accepted by the Panel shall constitute the record of the hearing. The decision of the Panel shall be based upon the record of the hearing.

(g) The Panel shall have the power to impose a penalty against any person who is within the jurisdiction of the Exchange and whose actions impede the progress of a hearing.

(h) The Assessment Appeal Panel shall issue a written decision in which it may affirm, reduce, or waive the charges assessed against the Appellant and shall state the reasons therefore.

(i) The decision of the Assessment Appeal Panel shall be a final decision of the Exchange and shall constitute a final disciplinary action of the Exchange. The fine is payable on the effective day of the decision or as specified. The effective day shall be fifteen (15) days after a copy of the written decision has been delivered to the appellant and to the Commission.

(8) The Assessment Appeal Panel shall consider, and make recommendations to the Board concerning acceptance or rejection of, any offer of settlement submitted by Appellant. In the case of an offer of settlement, acceptance by the Board shall constitute the final disciplinary action of the Exchange.

#### **(E) ARBITRATION PROCEDURE**

(1) Any claim for damages arising between a Buyer and a Seller as a result of a delivery pursuant to this contract shall be settled by arbitration in accordance with these Rules.

(2) Notice of Intent to Arbitrate must be submitted to the Secretary of the Exchange within three business days of the occurrence upon which the claim is based or the decision of the Emissions Allowance Delivery Committee with respect to a late or failed performance. Failure to submit a Notice of Intent to Arbitrate within the prescribed period will be deemed a waiver of a Party's rights to arbitrate such a delivery dispute under the special or Regular Arbitration Rules.

(3) The Arbitration will be governed by Chapter 5 of the Rules except that the Chairman of the Exchange or his designee shall appoint an Arbitration Panel composed of three Members of the Exchange, at least one of whom shall be a Member of the Board of Directors.

## **Seasonal NOX Emissions Allowance Vintage 2012 Futures Contract**

### **863.01 Scope**

The provisions of these rules shall apply to all Seasonal NOX emissions allowances vintage 2012 (or earlier vintages) bought or sold for future delivery on the Exchange with the Delivery at the U.S Environmental Protection Agency's (EPA) Allowance Management System (NAMS).

### **863.01A. Definitions**

- A. EPA means the U.S. Environmental Protection Agency or any successor agency with similar jurisdiction.
- B. Seasonal NOX Allowance refers to a tradable permit to emit one ton of NOX from May 1 to September 30 in a given or subsequent calendar year under the Clean Air Interstate Rule (CAIR) Seasonal NOX Budget Trading Program as specified further by EPA.
- C. NOX Allowance Management System (NAMS) means the system established by the EPA for recording the transfer of Allowances among various entities under the Clean Air Act as set.
- D. Vintage Year means the first calendar year for which the allowance may be utilized for compliance.
- E. The terms "Seller" and "Buyer" shall mean the short Clearing Member and the long Clearing Member, respectively.
- F. The terms "Seller's Customer" and "Buyer's Customer" shall mean the seller and buyer of the physical product.
- G. The term "Settlement Price" shall mean the final settlement price used as the price for delivery of the product, which shall be the settlement price for the last trading day of the expiring delivery month. The settlement price for the last day of the trading shall be determined in accordance with the procedures set forth in NYMEX Rule 11G.11.

### **863.02 Time References**

For purposes of these Rules, unless otherwise specified, times referred to herein shall refer to and indicate the prevailing time in New York.

### **863.03 Contract Unit**

The contract unit shall be ten (10) tons of Seasonal NOX emissions allowances vintage 2012 (or



earlier vintages) for delivery made by transfer through NAMS.

**863. 04 Delivery**

Emission allowance delivery shall comply with all requirements for the electronic transfer of Seasonal NOX allowances through the NOX Allowance Management System. All deliveries made under these rules shall be final and there shall be no appeal.

**863. 05 Delivery Months**

Trading shall be conducted in contracts providing for delivery in such periods as shall be determined by the Board of Directors.

**863. 06 Minimum Price Fluctuations**

Prices shall be quoted in dollars per ton. The minimum price fluctuation shall be \$25.00 per ton (\$250.00 per contract). There shall be no maximum price fluctuation.

**863. 07 Termination of Trading**

Trading in the current delivery month shall cease at termination of the third business day prior to the last business day of the contract month.

**863. 08 Product Placement**

For purposes of Rule 9.19, the Seller and Buyer shall fulfill its contractual obligation on a maturing contract only if, by 12:00 noon on the day preceding the last trading day in the applicable delivery month, such Seller and Buyer have received NAMS account certification from his customer, in the form prescribed by the Exchange stating that the Customer has an account with NAMS,

The receipt of such certification shall not relieve the Seller or Buyer, or their respective Customers of any obligations under any Rule other than Rule 9.19.

**863. 09 Delivery Procedures**

**(A) RESPONSIBILITIES OF CLEARING MEMBERS HAVING OPEN LONG POSITIONS**

**(1) NOTICE OF INTENTION TO ACCEPT**

By 11:30 a.m. on the second business day prior to the last business day of an expiring delivery month, a Buyer having an open position shall file with the Exchange a properly completed and signed Notice of Intention to Accept. The Notice of Intention to Accept shall be in the form prescribed by the Exchange and shall include the Name of the Buyer's Customer, Number of contracts to be accepted, and any additional information as may be required by the Exchange.

By 4:00 p.m. on Notice Day, the Buyer shall provide the Seller with the following information: NAMS Account Number; Vintage Year; Name; Phone Number and e-mail

address of the Account Representative (AAR) or the authorized alternate for that NAMS account.

## **(B) RESPONSABILITIES OF CLEARING MEMBERS HAVING OPEN SHORT POSITIONS**

### **(1) NOTICE OF INTENTION TO DELIVER**

By 11:30 a.m on the second business day prior to the last business day of an expiring delivery month, a Seller having an open short position shall file with the Exchange a properly completed and signed Notice of Intention to Deliver. The Notice of Intention to Deliver shall be in such form prescribed by the Exchange and shall include: Name of the Seller's Customer; Number of contracts to be delivered; NAMS Account Number; Vintage Year; Name; Phone Number and e-mail address of the Account Representative (AAR) or the authorized alternate for that NAMS account, and any additional information as may be required by the Exchange

### **INFORMATION PROVIDED BY SELLER TO BUYER**

By 4:00 p.m. on Notice Day, the Seller shall provide the Buyer with the following information: NAMS Account Number; Vintage Year; Name; Phone Number and e-mail address of the Account Representative (AAR) or the authorized alternate for that NAMS account.

## **(E) Payment and Delivery Margins**

### **(1) Definitions**

- (a) "Payment" shall include the settlement price times the number of contracts times 10.
- (b) "Payment Date" shall mean the business day after the Buyer's Customer receipt of proper notification from the NAMS that allowances have been transferred from the Seller's Customer account to the Buyer's Customer account, provided documentation is supplied to the Buyer's Customer by no later than 2:00 P.M. Documentation supplied to Buyer after 2:00 noon on any Exchange business day, shall be considered received on the following Exchange business day.
- (c) On the business day following the last day of trading, the long clearing member shall obtain from the long, if any, margin equal to the full value of the product to be delivered. Such margin shall consist of cash, securities issued by the United States Treasury Department maturing within ten (10) years from the date of deposit and guaranteed as to principal and interest by the United States Government or a letter of credit. Any Treasury securities so deposited shall be valued at ninety percent (90%) of the par value of such instruments. Any letter of credit so deposited shall be in a form approved by the Exchange, shall be issued or confirmed by an Exchange approved original margin

depository, and shall be drawn in favor of the Exchange.

- (d) The Buyer shall pay the Seller at the office of the Seller by a certified check or electronic funds transfer, or any other method acceptable to both parties by 12:00 P.M. on the payment date.
- (e) The Buyer and Seller shall deposit with the Exchange margins in such amounts and in such form as required by the Exchange. Such margins, which shall not be greater than the margins charged to the Buyer's Customer and Seller's Customer, shall be returned on the business day following notification to the Exchange that delivery and payment have been completed.
- (f) On the Payment Date, The Seller shall deliver a Notice of Payment to the Buyer with a copy to the Exchange by 4:30 PM. Upon receipt of such notice the delivery shall be complete.
- (g) Any payment made on Payment Date shall be based on allowances actually delivered.

**(F) Delivery Day**

The day the Buyer's customer receives the allowances shall be referred to as the Delivery Day.

**863. 10 Delivery Period**

Delivery shall take place on the third business day prior to the last business day of the delivery month.

**863. 11 Validity of Documents**

The Exchange makes no representation respecting the authenticity, validity or accuracy of any of Tender Allocation Notice, Notice of Intention to Accept, Notice of Intention to Deliver, check or of any document or instrument delivered pursuant to these rules.

**863. 12 Exchange of Futures for, or in Connection with Product**

(A) An exchange of futures for, or in connection with, the product (EFP) consists of two discrete, but related, transactions; a cash transaction and a futures transaction. At the time such transaction is effected, the Buyer's Customer and the Seller' Customer of the futures must be the Seller's Customer and the Buyer's Customer of a quantity of the physical product covered by this Section (or any derivative, by-product or related product.) The quantity of physical product must be approximately equivalent to the quantity covered by the futures contracts.

(B) Except as provided below, an EFP must take place during the hours of futures trading for the Seasonal NOX Emissions Allowance futures contract. An EFP is permitted in the expiring futures contract until two hours after trading terminates on the last day of trading of the expiring futures contract. An EFP which establishes a futures position for both the buyer and the seller shall not be permitted during the two hour period following the termination of trading of the expired futures contract.

(C) Any Exchange of Futures for, or in Connection with, Product (EFP) shall governed by the

provisions of Rule 6.21.

(D) Each Buyer's Customer and Seller's Customer must satisfy the Exchange, at its request, that the transaction is a legitimate EFP transaction. All documentary evidence relating to EFP, including, without limitation, evidence as to change of ownership of the physical commodity shall be obtained by the Clearing Members from their customers or and made available by the Clearing Members for examination by the Exchange upon request.

### **863. 13 Alternative Delivery Procedure**

A Seller's Customer or Buyer's Customer may agree with the Buyer's Customer or the Seller's Customer with which it has been matched by the Exchange under Rule 863.09(D) to make and take delivery under terms or conditions which differ from the terms and conditions prescribed by this Chapter. In such a case, Clearing Members shall execute an Alternative Notice of Intention to Deliver on the form prescribed by the Exchange and shall deliver a completed executed copy of such Notice to the Exchange. The delivery of an executed Alternative Notice of Intention to Deliver to the Exchange shall release the Clearing Members and the Exchange from their respective obligations under the Exchange contracts.

In executing such Notice, Clearing Members shall indemnify the Exchange against any liability, cost or expense it may incur for any reason as a result of the execution, delivery, or performance of such contracts or such agreement, or any breach thereof or default there under. Upon receipt of an executed Alternative Notice of Intention to Deliver, the Exchange will return to the Clearing Members all margin monies held for the account of each with respect to the contracts involved.

### **863. 14 Force Majeure, Late Performance and Failure to Perform**

**(A) DEFINITION. As used in this Rule 863.14 the following terms, as well as variations thereof, shall have the meaning described below.**

(1) "Late Performance" means the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation imposed by, and within the time period established in, the Rules.

(2) "Failure to Perform" means the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation prior to the expiration of the period allowed for the late performance of such act.

(3) "Contract Value" means the amount equal to the settlement price on the last day of trading in a futures contract times 10 (the number of tons per contract) times the number of contracts to be delivered.

(4)(a) "Party" means a Buyer or Seller and such Buyer and Seller are each responsible to the Exchange for their obligations under these Rules and further responsible to the Exchange for the obligations of their respective customers under the Rules of this Chapter.

(b) "Other Party" means the corresponding Buyer when the Seller is late in performance or has failed to perform and the corresponding Seller when the Buyer is late in performance or has failed to perform.

(5) "Day of Late Performance" means the twenty-four hour period commencing twelve hours after a Buyer or a Seller was to have performed, provided however, with respect to the obligations of Buyers and Sellers to submit documents to the Exchange pursuant to the Rules in this chapter, and with respect to the failure to transfer allowances within the delivery period, "Day of Late Performance" means that twenty four hour period commencing immediately after the time specified in the Rules in this chapter for the submission of a document. Each subsequent Day of Late Performance shall commence twenty-four hours after the beginning of the prior Day of Late Performance. When a Party is late in performance, the day when the act is performed shall be a Day of Late Performance.

(6) "Force Majeure" means any circumstance (including but not limited to a strike, lockout, national emergency, governmental action, or act of God) which is beyond the control of such Buyer or Seller, and which prevents the Buyer or Seller from making or taking delivery of product when and as provided for in these Rules.

#### **(B) RESPONSIBILITIES OF PARTIES TO THE DELIVERY**

(1) The parties to a delivery shall make commercially reasonable efforts to perform their respective delivery obligations at all times until a Party has failed to perform.

(2) A Party which has failed to perform its obligations may no longer perform such obligations; provided, however, that a Buyer which has failed to make a payment shall make such payment.

#### **(C) EMISSIONS ALLOWANCE DELIVERY COMMITTEE**

(1) Force Majeure, Late Performance and Failure to Perform shall be determined by a Panel of the Emissions Allowance Delivery Committee as set forth below. The Chairman of the Emissions Allowance Delivery Committee shall appoint a Panel, which shall consist of three (3) members of the Committee, to review a delivery:

(a) When the Chairman is advised by the President or any person designated by the President that it appears that the performance of a Party to the delivery is late;

(b) Upon the written request of both the Buyer and the Seller;

(c) When the President or any person designated by the President requests such appointment; or

(d) When either Party to the delivery notifies the Exchange that circumstances exist constituting Force Majeure.

(2) The Chairman shall not appoint to any Panel any person who has a direct or indirect interest in the delivery in question. Any Panel so appointed shall retain jurisdiction over the delivery in question until the delivery has been completed or a Party has been found to have failed to perform such delivery. Exchange Counsel shall serve as advisor to the Panel.

(3) The Panel shall meet within one business day of notification as provided in these Rules. Unless good cause for delay exists, within one business day the Panel shall determine whether force majeure exists, whether a Buyer or Seller is late in performing or has failed to perform its obligations as provided in the Rules, and advise the Compliance Department of such determination, and its findings in support thereof immediately. The Panel shall cause its determination to be communicated to the parties to the delivery as expeditiously as possible.

(4) Upon a finding of force majeure, the Panel may take any one or combination of the following actions as it deems suitable, order an extension of time not to exceed five days from the date of the scheduled delivery; or, refer the delivery to the Board of Directors for emergency action as provided in Article 7.

#### **(D) EXCHANGE ACTION**

(1) Whenever a Buyer or a Seller is found by the Panel to be late in the performance of or to have failed to perform a delivery, the Exchange, represented by the Compliance Department, shall issue a Notice of Assessment in accordance with subsections (2) of this Section, specifying the findings of the Panel with respect to the late or failed delivery.

(2) When a Party has failed to perform, the Compliance Department shall issue a Notice of Assessment assessing penalties of ten percent (10%) of the contract value, in addition to any penalties assessed pursuant to subparagraph (2) hereof, to be paid to the Exchange.

(3)(a) A Party may appeal a Notice of Assessment by filing a Notice of Appeal with the Hearing Registrar of the Exchange and by serving a copy of the same on the Exchange's Compliance Counsel, within two business days of receipt of the Notice of Assessment from the Compliance Department. The Party filing the appeal ("Appellant") shall file, within twenty (20) days after filing the Notice of Appeal, a Memorandum of Appeal setting forth the factual and legal basis for the appeal. The Memorandum of Appeal must be filed with the Hearing Registrar and a copy of the same served upon the Exchange's Compliance Counsel.

(b) The Compliance Department may file with the Appellant and Hearing Registrar an Answering Memorandum to the Memorandum of Appeal within ten (10) days of receipt of that memorandum.

(c) Failure by the Party to file a Notice of Appeal or a Memorandum of Appeal with the time specified in subsection (D)(4)(a) of this Rule shall constitute a waiver, and the penalties set forth in the Notice of Assessment shall be paid within five days to the Exchange. Failure to pay such

penalties in accordance with this Rule shall subject the party to the sanctions set forth in Bylaw 106. In the event a party fails to Appeal, or waives the opportunity to appeal a Notice of Assessment the Assessment and findings of the Delivery Committee shall constitute a final disciplinary action of the Exchange.

(4) Within ten (10) days after receipt of the Compliance Department's reply, the Appellant shall be entitled to examine all books, documents and other tangible evidence in possession or under the control of the Exchange that are to be relied on by the Compliance Department or are otherwise relevant to the matter.

(5) In the event of an appeal by a Party, the Chairman of the Exchange, or his designee, shall appoint an Assessment Appeal Panel to hear and decide the appeal. The Panel shall be composed of three members of the Exchange, at least one of whom shall be a member of the Board of Directors. No member of the Panel may have a direct or indirect interest in the matter under the appeal. Each Panel Member shall disclose to the Chairman any such interest which might preclude such Panel Member from rendering a fair and impartial determination. The formal Rules of Evidence shall not apply to such appeal, and the Panel shall be the sole judge with respect to the evidence presented to it. Exchange outside counsel shall advise the Panel.

(6) The procedures for the hearing of the appeal before the Assessment Appeal Panel shall be as follows:

(a) At a date to be set by order of the Panel, and prior to such hearing, the Appellant and the Compliance Department shall furnish each other with a list of witnesses expected to be called at the hearing, and a list of documents and copies thereof expected to be introduced at the hearing.

(b) At such hearing: The Appellant may appear personally and may be represented by counsel or other representative of his choice at the appeal.

(c) The Compliance Department shall be entitled to offer evidence relating to the delivery and shall be entitled to call witnesses and introduce documents in support thereof. It shall be the burden of the Compliance Department to demonstrate, by the weight of the evidence, the appropriateness of the sanction set forth in the Notice of Assessment.

(d) The Appellant shall be entitled to rebut the Compliance Department's evidence and shall be entitled to call witnesses and introduce documents in support thereof.

(e) The Compliance Department and the Appellant shall be entitled to cross-examine any witness called by the opposing Party at the hearing.

(f) The Notice of Assessment, the Notice of Appeal, the Memorandum of Appeal, any Answering Memorandum, the stenographic transcript of the appeal, any documentary evidence or other material presented to and accepted by the Panel shall constitute the record of the hearing. The decision of the Panel shall be based upon the record of the hearing.

(g) The Panel shall have the power to impose a penalty against any person who is within the jurisdiction of the Exchange and whose actions impede the progress of a hearing.

(h) The Assessment Appeal Panel shall issue a written decision in which it may affirm, reduce, or waive the charges assessed against the Appellant and shall state the reasons therefore.

(i) The decision of the Assessment Appeal Panel shall be a final decision of the Exchange and shall constitute a final disciplinary action of the Exchange. The fine is payable on the effective day of the decision or as specified. The effective day shall be fifteen (15) days after a copy of the written decision has been delivered to the appellant and to the Commission.

(8) The Assessment Appeal Panel shall consider, and make recommendations to the Board concerning acceptance or rejection of, any offer of settlement submitted by Appellant. In the case of an offer of settlement, acceptance by the Board shall constitute the final disciplinary action of the Exchange.

#### **(E) ARBITRATION PROCEDURE**

(1) Any claim for damages arising between a Buyer and a Seller as a result of a delivery pursuant to this contract shall be settled by arbitration in accordance with these Rules.

(2) Notice of Intent to Arbitrate must be submitted to the Secretary of the Exchange within three business days of the occurrence upon which the claim is based or the decision of the Emissions Allowance Delivery Committee with respect to a late or failed performance. Failure to submit a Notice of Intent to Arbitrate within the prescribed period will be deemed a waiver of a Party's rights to arbitrate such a delivery dispute under the special or Regular Arbitration Rules.

(3) The Arbitration will be governed by Chapter 5 of the Rules except that the Chairman of the Exchange or his designee shall appoint an Arbitration Panel composed of three Members of the Exchange, at least one of whom shall be a Member of the Board of Directors.



## **Annual NOX Emissions Allowance Vintage 2009 Futures Contract**

### **864.01 Scope**

The provisions of these rules shall apply to all Annual NOX emissions allowances vintage 2009 (or earlier vintages) bought or sold for future delivery on the Exchange with the Delivery at the U.S Environmental Protection Agency's (EPA) Allowance Management System (NAMS).

#### **864.01A. Definitions**

- A. EPA means the U.S. Environmental Protection Agency or any successor agency with similar jurisdiction.
- B. Annual NOX Allowance refers to a tradable permit to emit one ton of NOX from January 1 to December 31 in a given or subsequent calendar year under the Clean Air Interstate Rule (CAIR) Annual NOX Budget Trading Program as specified further by EPA.
- C. NOX Allowance Management System (NAMS) means the system established by the EPA for recording the transfer of Allowances among various entities under the Clean Air Act as set.
- D. Vintage Year means the first calendar year for which the allowance may be utilized for compliance.
- E. The terms "Seller" and "Buyer" shall mean the short Clearing Member and the long Clearing Member, respectively.
- F. The terms "Seller's Customer" and "Buyer's Customer" shall mean the seller and buyer of the physical product.
- G. The term "Settlement Price" shall mean the final settlement price used as the price for delivery of the product, which shall be the settlement price for the last trading day of the expiring delivery month. The settlement price for the last day of the trading shall be determined in accordance with the procedures set forth in NYMEX Rule 11G.11.

#### **864.02 Time References**

For purposes of these Rules, unless otherwise specified, times referred to herein shall refer to and indicate the prevailing time in New York.

#### **864.03 Contract Unit**

The contract unit shall be ten (10) tons of Annual NOX emissions allowances vintage 2009 (or earlier vintages) for delivery made by transfer through NAMS.

**864. 04 Delivery**

Emission allowance delivery shall comply with all requirements for the electronic transfer of Annual NOX allowances through the NOX Allowance Management System. All deliveries made under these rules shall be final and there shall be no appeal.

**864. 05 Delivery Months**

Trading shall be conducted in contracts providing for delivery in such periods as shall be determined by the Board of Directors.

**864. 06 Minimum Price Fluctuations**

Prices shall be quoted in dollars per ton. The minimum price fluctuation shall be \$25.00 per ton (\$250.00 per contract). There shall be no maximum price fluctuation.

**864. 07 Termination of Trading**

Trading in the current delivery month shall cease at termination of the third business day prior to the last business day of the contract month.

**864. 08 Product Placement**

For purposes of Rule 9.19, the Seller and Buyer shall fulfill its contractual obligation on a maturing contract only if, by 12:00 noon on the day preceding the last trading day in the applicable delivery month, such Seller and Buyer have received NAMS account certification from his customer, in the form prescribed by the Exchange stating that the Customer has an account with NAMS,

The receipt of such certification shall not relieve the Seller or Buyer, or their respective Customers of any obligations under any Rule other than Rule 9.19.

**864. 09 Delivery Procedures****(A) RESPONSIBILITIES OF CLEARING MEMBERS HAVING OPEN LONG POSITIONS****(1) NOTICE OF INTENTION TO ACCEPT**

By 11:30 a.m. on the second business day prior to the last business day of an expiring delivery month, a Buyer having an open position shall file with the Exchange a properly completed and signed Notice of Intention to Accept. The Notice of Intention to Accept shall be in the form prescribed by the Exchange and shall include the Name of the Buyer's Customer, Number of contracts to be accepted, and any additional information as may be required by the Exchange.

By 4:00 p.m. on Notice Day, the Buyer shall provide the Seller with the following information: NAMS Account Number; Vintage Year, Name, Phone Number and e-mail address of the Account Representative (AAR) or the authorized alternate for that NAMS account.

## **(B) RESPONSABILITIES OF CLEARING MEMBERS HAVING OPEN SHORT POSITIONS**

### **(1) NOTICE OF INTENTION TO DELIVER**

By 11:30 a.m on the second business day prior to the last business day of an expiring delivery month, a Seller having an open short position shall file with the Exchange a properly completed and signed Notice of Intention to Deliver. The Notice of Intention to Deliver shall be in such form prescribed by the Exchange and shall include: Name of the Seller's Customer; Number of contracts to be delivered, NAMS Account Number; Vintage Year; Name; Phone Number and e-mail address of the Account Representative (AAR) or the authorized alternate for that NAMS account, and any additional information as may be required by the Exchange.

### **INFORMATION PROVIDED BY SELLER TO BUYER**

By 4:00 p.m. on Notice Day, the Seller shall provide the Buyer with the following information: NAMS Account Number; Vintage Year; Name; Phone Number and e-mail address of the Account Representative (AAR) or the authorized alternate for that NAMS account.

**(C) USE OF SETTLEMENT PRICE:** The final settlement price used for the delivery shall be the settlement price from the final day of trading.

### **(D) Notice Day**

- (1) The Clearing House shall allocate Notices of Intention to Deliver and Notices of Intention to Accept by matching size of positions, to the extent possible.
- (2) The Clearing House shall provide Tender Allocation Notices to the respective Clearing Members by 2:00 P.M on the second business day prior to the last business day of the delivery month.
- (3) The day the Tender Allocation Notices are provided to the Clearing Members shall be referred to as "Notice Day". Tender Allocation Notices are not transferable.

### **(E) Payment and Delivery Margins**

#### **((1) Definitions**

- (a) "Payment" shall include the settlement price times the number of contracts times 10.
- (b) "Payment Date" shall mean the business day after the Buyer's Customer receipt of proper notification from the NAMS that allowances have been transferred from the Seller's Customer account to the Buyer's Customer account, provided documentation is supplied to the Buyer's Customer by no later than 2:00 P.M. Documentation supplied to Buyer after 2:00 noon on any Exchange business day, shall be considered received on the following Exchange business day.
- (c) On the business day following the last day of trading, the long clearing member shall obtain from the long, if any, margin equal to the full value of the product to be delivered.

Such margin shall consist of cash, securities issued by the United States Treasury Department maturing within ten (10) years from the date of deposit and guaranteed as to principal and interest by the United States Government or a letter of credit. Any Treasury securities so deposited shall be valued at ninety percent (90%) of the par value of such instruments. Any letter of credit so deposited shall be in a form approved by the Exchange, shall be issued or confirmed by an Exchange approved original margin depository, and shall be drawn in favor of the Exchange.

- (d) The Buyer shall pay the Seller at the office of the Seller by a certified check or electronic funds transfer, or any other method acceptable to both parties by 12:00 P.M. on the payment date.
- (e) The Buyer and Seller shall deposit with the Exchange margins in such amounts and in such form as required by the Exchange. Such margins, which shall not be greater than the margins charged to the Buyer's Customer and Seller's Customer, shall be returned on the business day following notification to the Exchange that delivery and payment have been completed.
- (f) On the Payment Date, The Seller shall deliver a Notice of Payment to the Buyer with a copy to the Exchange by 4:30 PM. Upon receipt of such notice the delivery shall be complete.
  - (a) Any payment made on Payment Date shall be based on allowances actually delivered.

#### **(F) Delivery Day**

The day the Buyer's customer receives the allowances shall be referred to as the Delivery Day.

#### **864. 10 Delivery Period**

Delivery shall take place on one business day prior to the last business day of the delivery month.

#### **864. 11 Validity of Documents**

The Exchange makes no representation respecting the authenticity, validity or accuracy of any of Tender Allocation Notice, Notice of Intention to Accept, Notice of Intention to Deliver, check or of any document or instrument delivered pursuant to these rules.

#### **864. 12 Exchange of Futures for, or in Connection with Product**

(A) An exchange of futures for, or in connection with, the product (EFP) consists of two discrete, but related, transactions; a cash transaction and a futures transaction. At the time such transaction is effected, the Buyer's Customer and the Seller's Customer of the futures must be the Seller's Customer and the Buyer's Customer of a quantity of the physical product covered by this Section (or any derivative, by-product or related product.) The quantity of physical product must be approximately equivalent to the quantity covered by the futures contracts.

(B) Except as provided below, an EFP must take place during the hours of futures trading for the Annual NOX Emissions Allowance futures contract. An EFP is permitted in the expiring futures

contract until two hours after trading terminates on the last day of trading of the expiring futures contract. An EFP which establishes a futures position for both the buyer and the seller shall not be permitted during the two hour period following the termination of trading of the expired futures contract.

(C) Any Exchange of Futures for, or in Connection with, Product (EFP) shall governed by the provisions of Rule 6.21.

(D) Each Buyer's Customer and Seller's Customer must satisfy the Exchange, at its request, that the transaction is a legitimate EFP transaction. All documentary evidence relating to EFP, including, without limitation, evidence as to change of ownership of the physical commodity shall be obtained by the Clearing Members from their customers or and made available by the Clearing Members for examination by the Exchange upon request.

#### **864. 13 Alternative Delivery Procedure**

A Seller's Customer or Buyer's Customer may agree with the Buyer's Customer or the Seller's Customer with which it has been matched by the Exchange under Rule 864.09(D) to make and take delivery under terms or conditions which differ from the terms and conditions prescribed by this Chapter. In such a case, Clearing Members shall execute an Alternative Notice of Intention to Deliver on the form prescribed by the Exchange and shall deliver a completed executed copy of such Notice to the Exchange. The delivery of an executed Alternative Notice of Intention to Deliver to the Exchange shall release the Clearing Members and the Exchange from their respective obligations under the Exchange contracts.

In executing such Notice, Clearing Members shall indemnify the Exchange against any liability, cost or expense it may incur for any reason as a result of the execution, delivery, or performance of such contracts or such agreement, or any breach thereof or default there under. Upon receipt of an executed Alternative Notice of Intention to Deliver, the Exchange will return to the Clearing Members all margin monies held for the account of each with respect to the contracts involved.

#### **864. 14 Force Majeure, Late Performance and Failure to Perform**

**(A) DEFINITION.** As used in this Rule 864.14 the following terms, as well as variations thereof, shall have the meaning described below.

(1) "Late Performance" means the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation imposed by, and within the time period established in, the Rules.

(2) "Failure to Perform" means the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation prior to the expiration of the period allowed for the late performance of such act.

(3) "Contract Value" means the amount equal to the settlement price on the last day of trading in

a futures contract times 10 (the number of tons per contract) times the number of contracts to be delivered.

(4)(a) "Party" means a Buyer or Seller and such Buyer and Seller are each responsible to the Exchange for their obligations under these Rules and further responsible to the Exchange for the obligations of their respective customers under the Rules of this Chapter.

(b) "Other Party" means the corresponding Buyer when the Seller is late in performance or has failed to perform and the corresponding Seller when the Buyer is late in performance or has failed to perform.

(5) "Day of Late Performance" means the twenty-four hour period commencing twelve hours after a Buyer or a Seller was to have performed, provided however, with respect to the obligations of Buyers and Sellers to submit documents to the Exchange pursuant to the Rules in this chapter, and with respect to the failure to transfer allowances within the delivery period, "Day of Late Performance" means that twenty four hour period commencing immediately after the time specified in the Rules in this chapter for the submission of a document. Each subsequent Day of Late Performance shall commence twenty-four hours after the beginning of the prior Day of Late Performance. When a Party is late in performance, the day when the act is performed shall be a Day of Late Performance.

(6) "Force Majeure" means any circumstance (including but not limited to a strike, lockout, national emergency, governmental action, or act of God) which is beyond the control of such Buyer or Seller, and which prevents the Buyer or Seller from making or taking delivery of product when and as provided for in these Rules.

## **(B) RESPONSIBILITIES OF PARTIES TO THE DELIVERY**

(1) The parties to a delivery shall make commercially reasonable efforts to perform their respective delivery obligations at all times until a Party has failed to perform.

(2) A Party which has failed to perform its obligations may no longer perform such obligations; provided, however, that a Buyer which has failed to make a payment shall make such payment.

## **(C) EMISSIONS ALLOWANCE DELIVERY COMMITTEE**

(1) Force Majeure, Late Performance and Failure to Perform shall be determined by a Panel of the Emissions Allowance Delivery Committee as set forth below. The Chairman of the Emissions Allowance Delivery Committee shall appoint a Panel, which shall consist of three (3) members of the Committee, to review a delivery:

(a) When the Chairman is advised by the President or any person designated by the President that it appears that the performance of a Party to the delivery is late;

- (b) Upon the written request of both the Buyer and the Seller;
- (c) When the President or any person designated by the President requests such appointment; or
- (d) When either Party to the delivery notifies the Exchange that circumstances exist constituting Force Majeure.

(2) The Chairman shall not appoint to any Panel any person who has a direct or indirect interest in the delivery in question. Any Panel so appointed shall retain jurisdiction over the delivery in question until the delivery has been completed or a Party has been found to have failed to perform such delivery. Exchange Counsel shall serve as advisor to the Panel.

(3) The Panel shall meet within one business day of notification as provided in these Rules. Unless good cause for delay exists, within one business day the Panel shall determine whether force majeure exists, whether a Buyer or Seller is late in performing or has failed to perform its obligations as provided in the Rules, and advise the Compliance Department of such determination, and its findings in support thereof immediately. The Panel shall cause its determination to be communicated to the parties to the delivery as expeditiously as possible.

(4) Upon a finding of force majeure, the Panel may take any one or combination of the following actions as it deems suitable, order an extension of time not to exceed five days from the date of the scheduled delivery; or, refer the delivery to the Board of Directors for emergency action as provided in Article 7.

#### **(D) EXCHANGE ACTION**

(1) Whenever a Buyer or a Seller is found by the Panel to be late in the performance of or to have failed to perform a delivery, the Exchange, represented by the Compliance Department, shall issue a Notice of Assessment in accordance with subsections (2) of this Section, specifying the findings of the Panel with respect to the late or failed delivery.

(2) When a Party has failed to perform, the Compliance Department shall issue a Notice of Assessment assessing penalties of ten percent (10%) of the contract value, in addition to any penalties assessed pursuant to subparagraph (2) hereof, to be paid to the Exchange.

(3)(a) A Party may appeal a Notice of Assessment by filing a Notice of Appeal with the Hearing Registrar of the Exchange and by serving a copy of the same on the Exchange's Compliance Counsel, within two business days of receipt of the Notice of Assessment from the Compliance Department. The Party filing the appeal ("Appellant") shall file, within twenty (20) days after filing the Notice of Appeal, a Memorandum of Appeal setting forth the factual and legal basis for the appeal. The Memorandum of Appeal must be filed with the Hearing Registrar and a copy of the same served upon the Exchange's Compliance Counsel.

(b) The Compliance Department may file with the Appellant and Hearing Registrar an

Answering Memorandum to the Memorandum of Appeal within ten (10) days of receipt of that memorandum.

(c) Failure by the Party to file a Notice of Appeal or a Memorandum of Appeal with the time specified in subsection (D)(4)(a) of this Rule shall constitute a waiver, and the penalties set forth in the Notice of Assessment shall be paid within five days to the Exchange. Failure to pay such penalties in accordance with this Rule shall subject the party to the sanctions set forth in Bylaw 106. In the event a party fails to Appeal, or waives the opportunity to appeal a Notice of Assessment the Assessment and findings of the Delivery Committee shall constitute a final disciplinary action of the Exchange.

(4) Within ten (10) days after receipt of the Compliance Department's reply, the Appellant shall be entitled to examine all books, documents and other tangible evidence in possession or under the control of the Exchange that are to be relied on by the Compliance Department or are otherwise relevant to the matter.

(5) In the event of an appeal by a Party, the Chairman of the Exchange, or his designee, shall appoint an Assessment Appeal Panel to hear and decide the appeal. The Panel shall be composed of three members of the Exchange, at least one of whom shall be a member of the Board of Directors. No member of the Panel may have a direct or indirect interest in the matter under the appeal. Each Panel Member shall disclose to the Chairman any such interest which might preclude such Panel Member from rendering a fair and impartial determination. The formal Rules of Evidence shall not apply to such appeal, and the Panel shall be the sole judge with respect to the evidence presented to it. Exchange outside counsel shall advise the Panel.

(6) The procedures for the hearing of the appeal before the Assessment Appeal Panel shall be as follows:

(a) At a date to be set by order of the Panel, and prior to such hearing, the Appellant and the Compliance Department shall furnish each other with a list of witnesses expected to be called at the hearing, and a list of documents and copies thereof expected to be introduced at the hearing.

(b) At such hearing: The Appellant may appear personally and may be represented by counsel or other representative of his choice at the appeal.

(c) The Compliance Department shall be entitled to offer evidence relating to the delivery and shall be entitled to call witnesses and introduce documents in support thereof. It shall be the burden of the Compliance Department to demonstrate, by the weight of the evidence, the appropriateness of the sanction set forth in the Notice of Assessment.

(d) The Appellant shall be entitled to rebut the Compliance Department's evidence and shall be entitled to call witnesses and introduce documents in support thereof.

(e) The Compliance Department and the Appellant shall be entitled to cross-examine any witness



called by the opposing Party at the hearing.

(f) The Notice of Assessment, the Notice of Appeal, the Memorandum of Appeal, any Answering Memorandum, the stenographic transcript of the appeal, any documentary evidence or other material presented to and accepted by the Panel shall constitute the record of the hearing. The decision of the Panel shall be based upon the record of the hearing.

(g) The Panel shall have the power to impose a penalty against any person who is within the jurisdiction of the Exchange and whose actions impede the progress of a hearing.

(h) The Assessment Appeal Panel shall issue a written decision in which it may affirm, reduce, or waive the charges assessed against the Appellant and shall state the reasons therefore.

(i) The decision of the Assessment Appeal Panel shall be a final decision of the Exchange and shall constitute a final disciplinary action of the Exchange. The fine is payable on the effective day of the decision or as specified. The effective day shall be fifteen (15) days after a copy of the written decision has been delivered to the appellant and to the Commission.

(8) The Assessment Appeal Panel shall consider, and make recommendations to the Board concerning acceptance or rejection of, any offer of settlement submitted by Appellant. In the case of an offer of settlement, acceptance by the Board shall constitute the final disciplinary action of the Exchange.

#### **(E) ARBITRATION PROCEDURE**

(1) Any claim for damages arising between a Buyer and a Seller as a result of a delivery pursuant to this contract shall be settled by arbitration in accordance with these Rules.

(2) Notice of Intent to Arbitrate must be submitted to the Secretary of the Exchange within three business days of the occurrence upon which the claim is based or the decision of the Emissions Allowance Delivery Committee with respect to a late or failed performance. Failure to submit a Notice of Intent to Arbitrate within the prescribed period will be deemed a waiver of a Party's rights to arbitrate such a delivery dispute under the special or Regular Arbitration Rules.

(3) The Arbitration will be governed by Chapter 5 of the Rules except that the Chairman of the Exchange or his designee shall appoint an Arbitration Panel composed of three Members of the Exchange, at least one of whom shall be a Member of the Board of Directors.

## **Annual NOX Emissions Allowance Vintage 2010 Futures Contract**

### **865.01 Scope**

The provisions of these rules shall apply to all Annual NOX emissions allowances vintage 2010 (or earlier vintages) bought or sold for future delivery on the Exchange with the Delivery at the U.S Environmental Protection Agency's (EPA) Allowance Management System (NAMS).

### **865.01A. Definitions**

- A. EPA means the U.S. Environmental Protection Agency or any successor agency with similar jurisdiction.
- B. Annual NOX Allowance refers to a tradable permit to emit one ton of NOX from January 1 to December 31 in a given or subsequent calendar year under the Clean Air Interstate Rule (CAIR) Annual NOX Budget Trading Program as specified further by EPA.
- C. NOX Allowance Management System (NAMS) means the system established by the EPA for recording the transfer of Allowances among various entities under the Clean Air Act as set.
- D. Vintage Year means the first calendar year for which the allowance may be utilized for compliance.
- E. The terms "Seller" and "Buyer" shall mean the short Clearing Member and the long Clearing Member, respectively.
- F. The terms "Seller's Customer" and "Buyer's Customer" shall mean the seller and buyer of the physical product.
- G. The term "Settlement Price" shall mean the final settlement price used as the price for delivery of the product, which shall be the settlement price for the last trading day of the expiring delivery month. The settlement price for the last day of the trading shall be determined in accordance with the procedures set forth in NYMEX Rule 11G.11.

### **865.02 Time References**

For purposes of these Rules, unless otherwise specified, times referred to herein shall refer to and indicate the prevailing time in New York.

### **865.03 Contract Unit**

The contract unit shall be ten (10) tons of Annual NOX emissions allowances vintage 2010 (or

earlier vintages) for delivery made by transfer through NAMS.

#### **865. 04 Delivery**

Emission allowance delivery shall comply with all requirements for the electronic transfer of Annual NOX allowances through the NOX Allowance Management System. All deliveries made under these rules shall be final and there shall be no appeal.

#### **865. 05 Delivery Months**

Trading shall be conducted in contracts providing for delivery in such periods as shall be determined by the Board of Directors.

#### **865. 06 Minimum Price Fluctuations**

Prices shall be quoted in dollars per ton. The minimum price fluctuation shall be \$25.00 per ton (\$250.00 per contract). There shall be no maximum price fluctuation.

#### **865. 07 Termination of Trading**

Trading in the current delivery month shall cease at termination of the third business day prior to the last business day of the contract month.

#### **865. 08 Product Placement**

For purposes of Rule 9.19, the Seller and Buyer shall fulfill its contractual obligation on a maturing contract only if, by 12:00 noon on the day preceding the last trading day in the applicable delivery month, such Seller and Buyer have received NAMS account certification from his customer, in the form prescribed by the Exchange stating that the Customer has an account with NAMS,

The receipt of such certification shall not relieve the Seller or Buyer, or their respective Customers of any obligations under any Rule other than Rule 9.19.

#### **865. 09 Delivery Procedures**

### **(A) RESPONSIBILITIES OF CLEARING MEMBERS HAVING OPEN LONG POSITIONS**

#### **(1) NOTICE OF INTENTION TO ACCEPT**

By 11:30 a.m. on the second business day prior to the last business day of an expiring delivery month, a Buyer having an open position shall file with the Exchange a properly completed and signed Notice of Intention to Accept. The Notice of Intention to Accept shall be in the form prescribed by the Exchange and shall include the Name of the Buyer's Customer, Number of contracts to be accepted, and any additional information as may be required by the Exchange;

By 4:00 p.m. on Notice Day, the Buyer shall provide the Seller with the following information: NAMS Account Number; Vintage Year; Name; Phone Number and e-mail address of the Account Representative (AAR) or the authorized alternate for that NAMS account;

## **(B) RESPONSABILITIES OF CLEARING MEMBERS HAVING OPEN SHORT POSITIONS**

### **(1) NOTICE OF INTENTION TO DELIVER**

By 11:30 a.m. on the second business day prior to the last business day of an expiring delivery month, a Seller having an open short position shall file with the Exchange a properly completed and signed Notice of Intention to Deliver. The Notice of Intention to Deliver shall be in such form prescribed by the Exchange and shall include: Name of the Seller's Customer; Number of contracts to be delivered; NAMS Account Number; Vintage Year; Name; Phone Number and e-mail address of the Account Representative (AAR) or the authorized alternate for that NAMS account, and any additional information as may be required by the Exchange.

### **INFORMATION PROVIDED BY SELLER TO BUYER**

By 4:00 p.m. on Notice Day, the Seller shall provide the Buyer with the following information: NAMS Account Number, Vintage Year, Name, Phone Number and e-mail address of the Account Representative (AAR) or the authorized alternate for that NAMS account.

**(C) USE OF SETTLEMENT PRICE:** The final settlement price used for the delivery shall be the settlement price from the final day of trading.

### **(D) Notice Day**

- (1) The Clearing House shall allocate Notices of Intention to Deliver and Notices of Intention to Accept by matching size of positions, to the extent possible.
- (2). The Clearing House shall provide Tender Allocation Notices to the respective Clearing Members by 2:00 P.M. on the second business day prior to the last business day of the delivery month.
- (3) The day the Tender Allocation Notices are provided to the Clearing Members shall be referred to as "Notice Day". Tender Allocation Notices are not transferable.

### **(E) Payment and Delivery Margins**

#### **((1) Definitions**

- (a) "Payment" shall include the settlement price times the number of contracts times 10.
- (b) "Payment Date" shall mean the business day after the Buyer's Customer receipt of proper notification from the NAMS that allowances have been transferred from the Seller's Customer account to the Buyer's Customer account, provided documentation is supplied to the Buyer's Customer by no later than 2:00 P.M. Documentation supplied to Buyer after 2:00 noon on any Exchange business day, shall be considered received on the following Exchange business day.
- (c) On the business day following the last day of trading, the long clearing member shall

obtain from the long, if any, margin equal to the full value of the product to be delivered. Such margin shall consist of cash, securities issued by the United States Treasury Department maturing within ten (10) years from the date of deposit and guaranteed as to principal and interest by the United States Government or a letter of credit. Any Treasury securities so deposited shall be valued at ninety percent (90%) of the par value of such instruments. Any letter of credit so deposited shall be in a form approved by the Exchange, shall be issued or confirmed by an Exchange approved original margin depository, and shall be drawn in favor of the Exchange.

- (d) The Buyer shall pay the Seller at the office of the Seller by a certified check or electronic funds transfer, or any other method acceptable to both parties by 12:00 P.M. on the payment date.
- (e) The Buyer and Seller shall deposit with the Exchange margins in such amounts and in such form as required by the Exchange. Such margins, which shall not be greater than the margins charged to the Buyer's Customer and Seller's Customer, shall be returned on the business day following notification to the Exchange that delivery and payment have been completed.
- (a) On the Payment Date, The Seller shall deliver a Notice of Payment to the Buyer with a copy to the Exchange by 4:30 PM. Upon receipt of such notice the delivery shall be complete.
- (b) Any payment made on Payment Date shall be based on allowances actually delivered.

#### **(F) Delivery Day**

The day the Buyer's customer receives the allowances shall be referred to as the Delivery Day.

#### **865. 10 Delivery Period**

Delivery shall take place on one business day prior to the last business day of the delivery month.

#### **865. 11 Validity of Documents**

The Exchange makes no representation respecting the authenticity, validity or accuracy of any of Tender Allocation Notice, Notice of Intention to Accept, Notice of Intention to Deliver, check or of any document or instrument delivered pursuant to these rules.

#### **865. 12 Exchange of Futures for, or in Connection with Product**

(A) An exchange of futures for, or in connection with, the product (EFP) consists of two discrete, but related, transactions; a cash transaction and a futures transaction. At the time such transaction is effected, the Buyer's Customer and the Seller' Customer of the futures must be the Seller's Customer and the Buyer's Customer of a quantity of the physical product covered by this Section (or any derivative, by-product or related product.) The quantity of physical product must be approximately equivalent to the quantity covered by the futures contracts.

(B) Except as provided below, an EFP must take place during the hours of futures trading for the Annual NOX Emissions Allowance futures contract. An EFP is permitted in the expiring futures

contract until two hours after trading terminates on the last day of trading of the expiring futures contract. An EFP which establishes a futures position for both the buyer and the seller shall not be permitted during the two hour period following the termination of trading of the expired futures contract.

(C) Any Exchange of Futures for, or in Connection with, Product (EFP) shall be governed by the provisions of Rule 6.21.

(D) Each Buyer's Customer and Seller's Customer must satisfy the Exchange, at its request, that the transaction is a legitimate EFP transaction. All documentary evidence relating to EFP, including, without limitation, evidence as to change of ownership of the physical commodity shall be obtained by the Clearing Members from their customers or and made available by the Clearing Members for examination by the Exchange upon request.

### **865.13 Alternative Delivery Procedure**

A Seller's Customer or Buyer's Customer may agree with the Buyer's Customer or the Seller's Customer with which it has been matched by the Exchange under Rule 865.09(D) to make and take delivery under terms or conditions which differ from the terms and conditions prescribed by this Chapter. In such a case, Clearing Members shall execute an Alternative Notice of Intention to Deliver on the form prescribed by the Exchange and shall deliver a completed executed copy of such Notice to the Exchange. The delivery of an executed Alternative Notice of Intention to Deliver to the Exchange shall release the Clearing Members and the Exchange from their respective obligations under the Exchange contracts.

In executing such Notice, Clearing Members shall indemnify the Exchange against any liability, cost or expense it may incur for any reason as a result of the execution, delivery, or performance of such contracts or such agreement, or any breach thereof or default there under. Upon receipt of an executed Alternative Notice of Intention to Deliver, the Exchange will return to the Clearing Members all margin monies held for the account of each with respect to the contracts involved.

### **865.14 Force Majeure, Late Performance and Failure to Perform**

**(A) DEFINITION.** As used in this Rule 865.14 the following terms, as well as variations thereof, shall have the meaning described below.

(1) "Late Performance" means the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation imposed by, and within the time period established in, the Rules.

(2) "Failure to Perform" means the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation prior to the expiration of the period allowed for the late performance of such act.

(3) "Contract Value" means the amount equal to the settlement price on the last day of trading in

a futures contract times 10 (the number of tons per contract) times the number of contracts to be delivered.

(4)(a) "Party" means a Buyer or Seller and such Buyer and Seller are each responsible to the Exchange for their obligations under these Rules and further responsible to the Exchange for the obligations of their respective customers under the Rules of this Chapter.

(b) "Other Party" means the corresponding Buyer when the Seller is late in performance or has failed to perform and the corresponding Seller when the Buyer is late in performance or has failed to perform.

(5) "Day of Late Performance" means the twenty-four hour period commencing twelve hours after a Buyer or a Seller was to have performed, provided however, with respect to the obligations of Buyers and Sellers to submit documents to the Exchange pursuant to the Rules in this chapter, and with respect to the failure to transfer allowances within the delivery period, "Day of Late Performance" means that twenty four hour period commencing immediately after the time specified in the Rules in this chapter for the submission of a document. Each subsequent Day of Late Performance shall commence twenty-four hours after the beginning of the prior Day of Late Performance. When a Party is late in performance, the day when the act is performed shall be a Day of Late Performance.

(6) "Force Majeure" means any circumstance (including but not limited to a strike, lockout, national emergency, governmental action, or act of God) which is beyond the control of such Buyer or Seller, and which prevents the Buyer or Seller from making or taking delivery of product when and as provided for in these Rules.

## **(B) RESPONSIBILITIES OF PARTIES TO THE DELIVERY**

(1) The parties to a delivery shall make commercially reasonable efforts to perform their respective delivery obligations at all times until a Party has failed to perform.

(2) A Party which has failed to perform its obligations may no longer perform such obligations; provided, however, that a Buyer which has failed to make a payment shall make such payment.

## **(C) EMISSIONS ALLOWANCE DELIVERY COMMITTEE**

(1) Force Majeure, Late Performance and Failure to Perform shall be determined by a Panel of the Emissions Allowance Delivery Committee as set forth below. The Chairman of the Emissions Allowance Delivery Committee shall appoint a Panel, which shall consist of three (3) members of the Committee, to review a delivery:

(a) When the Chairman is advised by the President or any person designated by the President that it appears that the performance of a Party to the delivery is late;

- (b) Upon the written request of both the Buyer and the Seller;
- (c) When the President or any person designated by the President requests such appointment; or
- (d) When either Party to the delivery notifies the Exchange that circumstances exist constituting Force Majeure.

(2) The Chairman shall not appoint to any Panel any person who has a direct or indirect interest in the delivery in question. Any Panel so appointed shall retain jurisdiction over the delivery in question until the delivery has been completed or a Party has been found to have failed to perform such delivery. Exchange Counsel shall serve as advisor to the Panel.

(3) The Panel shall meet within one business day of notification as provided in these Rules. Unless good cause for delay exists, within one business day the Panel shall determine whether force majeure exists, whether a Buyer or Seller is late in performing or has failed to perform its obligations as provided in the Rules, and advise the Compliance Department of such determination, and its findings in support thereof immediately. The Panel shall cause its determination to be communicated to the parties to the delivery as expeditiously as possible.

(4) Upon a finding of force majeure, the Panel may take any one or combination of the following actions as it deems suitable, order an extension of time not to exceed five days from the date of the scheduled delivery; or, refer the delivery to the Board of Directors for emergency action as provided in Article 7.

#### **(D) EXCHANGE ACTION**

(1) Whenever a Buyer or a Seller is found by the Panel to be late in the performance of or to have failed to perform a delivery, the Exchange, represented by the Compliance Department, shall issue a Notice of Assessment in accordance with subsections (2) of this Section, specifying the findings of the Panel with respect to the late or failed delivery.

(2) When a Party has failed to perform, the Compliance Department shall issue a Notice of Assessment assessing penalties of ten percent (10%) of the contract value, in addition to any penalties assessed pursuant to subparagraph (2) hereof, to be paid to the Exchange.

(3)(a) A Party may appeal a Notice of Assessment by filing a Notice of Appeal with the Hearing Registrar of the Exchange and by serving a copy of the same on the Exchange's Compliance Counsel, within two business days of receipt of the Notice of Assessment from the Compliance Department. The Party filing the appeal ("Appellant") shall file, within twenty (20) days after filing the Notice of Appeal, a Memorandum of Appeal setting forth the factual and legal basis for the appeal. The Memorandum of Appeal must be filed with the Hearing Registrar and a copy of the same served upon the Exchange's Compliance Counsel.

(b) The Compliance Department may file with the Appellant and Hearing Registrar an



Answering Memorandum to the Memorandum of Appeal within ten (10) days of receipt of that memorandum.

(c) Failure by the Party to file a Notice of Appeal or a Memorandum of Appeal with the time specified in subsection (D)(4)(a) of this Rule shall constitute a waiver, and the penalties set forth in the Notice of Assessment shall be paid within five days to the Exchange. Failure to pay such penalties in accordance with this Rule shall subject the party to the sanctions set forth in Bylaw 106. In the event a party fails to Appeal, or waives the opportunity to appeal a Notice of Assessment the Assessment and findings of the Delivery Committee shall constitute a final disciplinary action of the Exchange.

(4) Within ten (10) days after receipt of the Compliance Department's reply, the Appellant shall be entitled to examine all books, documents and other tangible evidence in possession or under the control of the Exchange that are to be relied on by the Compliance Department or are otherwise relevant to the matter.

(5) In the event of an appeal by a Party, the Chairman of the Exchange, or his designee, shall appoint an Assessment Appeal Panel to hear and decide the appeal. The Panel shall be composed of three members of the Exchange, at least one of whom shall be a member of the Board of Directors. No member of the Panel may have a direct or indirect interest in the matter under the appeal. Each Panel Member shall disclose to the Chairman any such interest which might preclude such Panel Member from rendering a fair and impartial determination. The formal Rules of Evidence shall not apply to such appeal, and the Panel shall be the sole judge with respect to the evidence presented to it. Exchange outside counsel shall advise the Panel.

(6) The procedures for the hearing of the appeal before the Assessment Appeal Panel shall be as follows:

(a) At a date to be set by order of the Panel, and prior to such hearing, the Appellant and the Compliance Department shall furnish each other with a list of witnesses expected to be called at the hearing, and a list of documents and copies thereof expected to be introduced at the hearing.

(b) At such hearing: The Appellant may appear personally and may be represented by counsel or other representative of his choice at the appeal.

(c) The Compliance Department shall be entitled to offer evidence relating to the delivery and shall be entitled to call witnesses and introduce documents in support thereof. It shall be the burden of the Compliance Department to demonstrate, by the weight of the evidence, the appropriateness of the sanction set forth in the Notice of Assessment.

(d) The Appellant shall be entitled to rebut the Compliance Department's evidence and shall be entitled to call witnesses and introduce documents in support thereof.

(e) The Compliance Department and the Appellant shall be entitled to cross-examine any witness

called by the opposing Party at the hearing.

(f) The Notice of Assessment, the Notice of Appeal, the Memorandum of Appeal, any Answering Memorandum, the stenographic transcript of the appeal, any documentary evidence or other material presented to and accepted by the Panel shall constitute the record of the hearing. The decision of the Panel shall be based upon the record of the hearing.

(g) The Panel shall have the power to impose a penalty against any person who is within the jurisdiction of the Exchange and whose actions impede the progress of a hearing.

(h) The Assessment Appeal Panel shall issue a written decision in which it may affirm, reduce, or waive the charges assessed against the Appellant and shall state the reasons therefore.

(i) The decision of the Assessment Appeal Panel shall be a final decision of the Exchange and shall constitute a final disciplinary action of the Exchange. The fine is payable on the effective day of the decision or as specified. The effective day shall be fifteen (15) days after a copy of the written decision has been delivered to the appellant and to the Commission.

(8) The Assessment Appeal Panel shall consider, and make recommendations to the Board concerning acceptance or rejection of, any offer of settlement submitted by Appellant. In the case of an offer of settlement, acceptance by the Board shall constitute the final disciplinary action of the Exchange.

#### **(E) ARBITRATION PROCEDURE**

(1) Any claim for damages arising between a Buyer and a Seller as a result of a delivery pursuant to this contract shall be settled by arbitration in accordance with these Rules.

(2) Notice of Intent to Arbitrate must be submitted to the Secretary of the Exchange within three business days of the occurrence upon which the claim is based or the decision of the Emissions Allowance Delivery Committee with respect to a late or failed performance. Failure to submit a Notice of Intent to Arbitrate within the prescribed period will be deemed a waiver of a Party's rights to arbitrate such a delivery dispute under the special or Regular Arbitration Rules.

(3) The Arbitration will be governed by Chapter 5 of the Rules except that the Chairman of the Exchange or his designee shall appoint an Arbitration Panel composed of three Members of the Exchange, at least one of whom shall be a Member of the Board of Directors.

## **Annual NOX Emissions Allowance Vintage 2011 Futures Contract**

### **866. 01 Scope**

The provisions of these rules shall apply to all Annual NOX emissions allowances vintage 2011 (or earlier vintages) bought or sold for future delivery on the Exchange with the Delivery at the U.S Environmental Protection Agency's (EPA) Allowance Management System (NAMS).

### **866.01A. Definitions**

- A. EPA means the U.S. Environmental Protection Agency or any successor agency with similar jurisdiction.
- B. Annual NOX Allowance refers to a tradable permit to emit one ton of NOX from January 1 to December 31 in a given or subsequent calendar year under the Clean Air Interstate Rule (CAIR) Annual NOX Budget Trading Program as specified further by EPA.
- C. NOX Allowance Management System (NAMS) means the system established by the EPA for recording the transfer of Allowances among various entities under the Clean Air Act as set.
- D. Vintage Year means the first calendar year for which the allowance may be utilized for compliance.
- E. The terms "Seller" and "Buyer" shall mean the short Clearing Member and the long Clearing Member, respectively.
- F. The terms "Seller's Customer" and "Buyer's Customer" shall mean the seller and buyer of the physical product.
- G. The term "Settlement Price" shall mean the final settlement price used as the price for delivery of the product, which shall be the settlement price for the last trading day of the expiring delivery month. The settlement price for the last day of the trading shall be determined in accordance with the procedures set forth in NYMEX Rule 11G.11.

### **866.02 Time References**

For purposes of these Rules, unless otherwise specified, times referred to herein shall refer to and indicate the prevailing time in New York.

### **866. 03 Contract Unit**

The contract unit shall be ten (10) tons of Annual NOX emissions allowances vintage 2011 (or earlier vintages) for delivery made by transfer through NAMS.

**866. 04 Delivery**

Emission allowance delivery shall comply with all requirements for the electronic transfer of Annual NOX allowances through the NOX Allowance Management System. All deliveries made under these rules shall be final and there shall be no appeal.

**866. 05 Delivery Months**

Trading shall be conducted in contracts providing for delivery in such periods as shall be determined by the Board of Directors.

**866. 06 Minimum Price Fluctuations**

Prices shall be quoted in dollars per ton. The minimum price fluctuation shall be \$25.00 per ton (\$250.00 per contract). There shall be no maximum price fluctuation.

**866. 07 Termination of Trading**

Trading in the current delivery month shall cease at termination of the third business day prior to the last business day of the contract month.

**866. 08 Product Placement**

For purposes of Rule 9.19, the Seller and Buyer shall fulfill its contractual obligation on a maturing contract only if, by 12:00 noon on the day preceding the last trading day in the applicable delivery month, such Seller and Buyer have received NAMS account certification from his customer, in the form prescribed by the Exchange stating that the Customer has an account with NAMS,

The receipt of such certification shall not relieve the Seller or Buyer, or their respective Customers of any obligations under any Rule other than Rule 9.19.

**866. 09 Delivery Procedures**

**(A) RESPONSIBILITIES OF CLEARING MEMBERS HAVING OPEN LONG POSITIONS**

**(1) NOTICE OF INTENTION TO ACCEPT**

By 11:30 a.m. on the second business day prior to the last business day of an expiring delivery month, a Buyer having an open position shall file with the Exchange a properly completed and signed Notice of Intention to Accept. The Notice of Intention to Accept shall be in the form prescribed by the Exchange and shall include the Name of the Buyer's Customer, Number of contracts to be accepted, and any additional information as may be required by the Exchange.

By 4:00 p.m. on Notice Day, the Buyer shall provide the Seller with the following information: NAMS Account Number; Vintage Year; Name; Phone Number and e-mail

address of the Account Representative (AAR) or the authorized alternate for that NAMS account.

**(B) RESPONSABILITIES OF CLEARING MEMBERS HAVING OPEN SHORT POSITIONS**

**(1) NOTICE OF INTENTION TO DELIVER**

By 11:30 a.m on the second business day prior to the last business day of an expiring delivery month, a Seller having an open short position shall file with the Exchange a properly completed and signed Notice of Intention to Deliver. The Notice of Intention to Deliver shall be in such form prescribed by the Exchange and shall include: Name of the Seller's Customer; Number of contracts to be delivered, NAMS Account Number; Vintage Year; Name; Phone Number and e-mail address of the Account Representative (AAR) or the authorized alternate for that NAMS account, and any additional information as may be required by the Exchange.

**INFORMATION PROVIDED BY SELLER TO BUYER**

By 4:00 p.m. on Notice Day, the Seller shall provide the Buyer with the following information: NAMS Account Number, Vintage Year, Name, Phone Number and e-mail address of the Account Representative (AAR) or the authorized alternate for that NAMS account.

**(C) USE OF SETTLEMENT PRICE:** The final settlement price used for the delivery shall be the settlement price from the final day of trading.

**(D) Notice Day**

- (1) The Clearing House shall allocate Notices of Intention to Deliver and Notices of Intention to Accept by matching size of positions, to the extent possible.
- (2). The Clearing House shall provide Tender Allocation Notices to the respective Clearing Members by 2:00 P.M on the second business day prior to the last business day of the delivery month.
- (3) The day the Tender Allocation Notices are provided to the Clearing Members shall be referred to as "Notice Day". Tender Allocation Notices are not transferable.

**(E) Payment and Delivery Margins**

**((1) Definitions**

- (a) "Payment" shall include the settlement price times the number of contracts times 10.
- (b) "Payment Date" shall mean the business day after the Buyer's Customer receipt of proper notification from the NAMS that allowances have been transferred from the Seller's Customer account to the Buyer's Customer account, provided documentation is supplied to the Buyer's Customer by no later than 2:00 P.M. Documentation supplied to Buyer after 2:00 noon on any Exchange business day, shall be considered received on the

following Exchange business day.

- (c) On the business day following the last day of trading, the long clearing member shall obtain from the long, if any, margin equal to the full value of the product to be delivered. Such margin shall consist of cash, securities issued by the United States Treasury Department maturing within ten (10) years from the date of deposit and guaranteed as to principal and interest by the United States Government or a letter of credit. Any Treasury securities so deposited shall be valued at ninety percent (90%) of the par value of such instruments. Any letter of credit so deposited shall be in a form approved by the Exchange, shall be issued or confirmed by an Exchange approved original margin depository, and shall be drawn in favor of the Exchange.
- (d) The Buyer shall pay the Seller at the office of the Seller by a certified check or electronic funds transfer, or any other method acceptable to both parties by 12:00 P.M. on the payment date.
- (e) The Buyer and Seller shall deposit with the Exchange margins in such amounts and in such form as required by the Exchange. Such margins, which shall not be greater than the margins charged to the Buyer's Customer and Seller's Customer, shall be returned on the business day following notification to the Exchange that delivery and payment have been completed.
- (f) On the Payment Date, The Seller shall deliver a Notice of Payment to the Buyer with a copy to the Exchange by 4:30 PM. Upon receipt of such notice the delivery shall be complete.
- (g) Any payment made on Payment Date shall be based on allowances actually delivered.

#### **(F) Delivery Day**

The day the Buyer's customer receives the allowances shall be referred to as the Delivery Day.

#### **866. 10 Delivery Period**

Delivery shall take place on one business day prior to the last business day of the delivery month.

#### **866. 11 Validity of Documents**

The Exchange makes no representation respecting the authenticity, validity or accuracy of any of Tender Allocation Notice, Notice of Intention to Accept, Notice of Intention to Deliver, check or of any document or instrument delivered pursuant to these rules.

#### **866. 12 Exchange of Futures for, or in Connection with Product**

(A) An exchange of futures for, or in connection with, the product (EFP) consists of two discrete, but related, transactions; a cash transaction and a futures transaction. At the time such transaction is effected, the Buyer's Customer and the Seller' Customer of the futures must be the Seller's Customer and the Buyer's Customer of a quantity of the physical product covered by

this Section (or any derivative, by-product or related product.) The quantity of physical product must be approximately equivalent to the quantity covered by the futures contracts.

(B) Except as provided below, an EFP must take place during the hours of futures trading for the Annual NOX Emissions Allowance futures contract. An EFP is permitted in the expiring futures contract until two hours after trading terminates on the last day of trading of the expiring futures contract. An EFP which establishes a futures position for both the buyer and the seller shall not be permitted during the two hour period following the termination of trading of the expired futures contract.

(C) Any Exchange of Futures for, or in Connection with, Product (EFP) shall be governed by the provisions of Rule 6.21.

(D) Each Buyer's Customer and Seller's Customer must satisfy the Exchange, at its request, that the transaction is a legitimate EFP transaction. All documentary evidence relating to EFP, including, without limitation, evidence as to change of ownership of the physical commodity shall be obtained by the Clearing Members from their customers or made available by the Clearing Members for examination by the Exchange upon request.

#### **866. 13 Alternative Delivery Procedure**

A Seller's Customer or Buyer's Customer may agree with the Buyer's Customer or the Seller's Customer with which it has been matched by the Exchange under Rule 866.09(D) to make and take delivery under terms or conditions which differ from the terms and conditions prescribed by this Chapter. In such a case, Clearing Members shall execute an Alternative Notice of Intention to Deliver on the form prescribed by the Exchange and shall deliver a completed executed copy of such Notice to the Exchange. The delivery of an executed Alternative Notice of Intention to Deliver to the Exchange shall release the Clearing Members and the Exchange from their respective obligations under the Exchange contracts.

In executing such Notice, Clearing Members shall indemnify the Exchange against any liability, cost or expense it may incur for any reason as a result of the execution, delivery, or performance of such contracts or such agreement, or any breach thereof or default there under. Upon receipt of an executed Alternative Notice of Intention to Deliver, the Exchange will return to the Clearing Members all margin monies held for the account of each with respect to the contracts involved.

#### **866. 14 Force Majeure, Late Performance and Failure to Perform**

(A) **DEFINITION.** As used in this Rule 866.14 the following terms, as well as variations thereof, shall have the meaning described below.

(1) "Late Performance" means the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation imposed by, and within the time period established in, the Rules.

(2) "Failure to Perform" means the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation prior to the expiration of the period allowed for the late performance of such act.

(3) "Contract Value" means the amount equal to the settlement price on the last day of trading in a futures contract times 10 (the number of tons per contract) times the number of contracts to be delivered.

(4)(a) "Party" means a Buyer or Seller and such Buyer and Seller are each responsible to the Exchange for their obligations under these Rules and further responsible to the Exchange for the obligations of their respective customers under the Rules of this Chapter.

(b) "Other Party" means the corresponding Buyer when the Seller is late in performance or has failed to perform and the corresponding Seller when the Buyer is late in performance or has failed to perform.

(5) "Day of Late Performance" means the twenty-four hour period commencing twelve hours after a Buyer or a Seller was to have performed, provided however, with respect to the obligations of Buyers and Sellers to submit documents to the Exchange pursuant to the Rules in this chapter, and with respect to the failure to transfer allowances within the delivery period, "Day of Late Performance" means that twenty four hour period commencing immediately after the time specified in the Rules in this chapter for the submission of a document. Each subsequent Day of Late Performance shall commence twenty-four hours after the beginning of the prior Day of Late Performance. When a Party is late in performance, the day when the act is performed shall be a Day of Late Performance.

(6) "Force Majeure" means any circumstance (including but not limited to a strike, lockout, national emergency, governmental action, or act of God) which is beyond the control of such Buyer or Seller, and which prevents the Buyer or Seller from making or taking delivery of product when and as provided for in these Rules.

## **(B) RESPONSIBILITIES OF PARTIES TO THE DELIVERY**

(1) The parties to a delivery shall make commercially reasonable efforts to perform their respective delivery obligations at all times until a Party has failed to perform.

(2) A Party which has failed to perform its obligations may no longer perform such obligations; provided, however, that a Buyer which has failed to make a payment shall make such payment.

## **(C) EMISSIONS ALLOWANCE DELIVERY COMMITTEE**

(1) Force Majeure, Late Performance and Failure to Perform shall be determined by a Panel of the Emissions Allowance Delivery Committee as set forth below. The Chairman of the



Emissions Allowance Delivery Committee shall appoint a Panel, which shall consist of three (3) members of the Committee, to review a delivery:

(a) When the Chairman is advised by the President or any person designated by the President that it appears that the performance of a Party to the delivery is late;

(b) Upon the written request of both the Buyer and the Seller;

(c) When the President or any person designated by the President requests such appointment; or

(d) When either Party to the delivery notifies the Exchange that circumstances exist constituting Force Majeure.

(2) The Chairman shall not appoint to any Panel any person who has a direct or indirect interest in the delivery in question. Any Panel so appointed shall retain jurisdiction over the delivery in question until the delivery has been completed or a Party has been found to have failed to perform such delivery. Exchange Counsel shall serve as advisor to the Panel.

(3) The Panel shall meet within one business day of notification as provided in these Rules. Unless good cause for delay exists, within one business day the Panel shall determine whether force majeure exists, whether a Buyer or Seller is late in performing or has failed to perform its obligations as provided in the Rules, and advise the Compliance Department of such determination, and its findings in support thereof immediately. The Panel shall cause its determination to be communicated to the parties to the delivery as expeditiously as possible.

(4) Upon a finding of force majeure, the Panel may take any one or combination of the following actions as it deems suitable, order an extension of time not to exceed five days from the date of the scheduled delivery; or, refer the delivery to the Board of Directors for emergency action as provided in Article 7.

#### **(D) EXCHANGE ACTION**

(1) Whenever a Buyer or a Seller is found by the Panel to be late in the performance of or to have failed to perform a delivery, the Exchange, represented by the Compliance Department, shall issue a Notice of Assessment in accordance with subsections (2) of this Section, specifying the findings of the Panel with respect to the late or failed delivery.

(2) When a Party has failed to perform, the Compliance Department shall issue a Notice of Assessment assessing penalties of ten percent (10%) of the contract value, in addition to any penalties assessed pursuant to subparagraph (2) hereof, to be paid to the Exchange.

(3)(a) A Party may appeal a Notice of Assessment by filing a Notice of Appeal with the Hearing Registrar of the Exchange and by serving a copy of the same on the Exchange's Compliance Counsel, within two business days of receipt of the Notice of Assessment from the Compliance

Department. The Party filing the appeal ("Appellant") shall file, within twenty (20) days after filing the Notice of Appeal, a Memorandum of Appeal setting forth the factual and legal basis for the appeal. The Memorandum of Appeal must be filed with the Hearing Registrar and a copy of the same served upon the Exchange's Compliance Counsel.

(b) The Compliance Department may file with the Appellant and Hearing Registrar an Answering Memorandum to the Memorandum of Appeal within ten (10) days of receipt of that memorandum.

(c) Failure by the Party to file a Notice of Appeal or a Memorandum of Appeal with the time specified in subsection (D)(4)(a) of this Rule shall constitute a waiver, and the penalties set forth in the Notice of Assessment shall be paid within five days to the Exchange. Failure to pay such penalties in accordance with this Rule shall subject the party to the sanctions set forth in Bylaw 106. In the event a party fails to Appeal, or waives the opportunity to appeal a Notice of Assessment the Assessment and findings of the Delivery Committee shall constitute a final disciplinary action of the Exchange.

(4) Within ten (10) days after receipt of the Compliance Department's reply, the Appellant shall be entitled to examine all books, documents and other tangible evidence in possession or under the control of the Exchange that are to be relied on by the Compliance Department or are otherwise relevant to the matter.

(5) In the event of an appeal by a Party, the Chairman of the Exchange, or his designee, shall appoint an Assessment Appeal Panel to hear and decide the appeal. The Panel shall be composed of three members of the Exchange, at least one of whom shall be a member of the Board of Directors. No member of the Panel may have a direct or indirect interest in the matter under the appeal. Each Panel Member shall disclose to the Chairman any such interest which might preclude such Panel Member from rendering a fair and impartial determination. The formal Rules of Evidence shall not apply to such appeal, and the Panel shall be the sole judge with respect to the evidence presented to it. Exchange outside counsel shall advise the Panel.

(6) The procedures for the hearing of the appeal before the Assessment Appeal Panel shall be as follows:

(a) At a date to be set by order of the Panel, and prior to such hearing, the Appellant and the Compliance Department shall furnish each other with a list of witnesses expected to be called at the hearing, and a list of documents and copies thereof expected to be introduced at the hearing.

(b) At such hearing: The Appellant may appear personally and may be represented by counsel or other representative of his choice at the appeal.

(c) The Compliance Department shall be entitled to offer evidence relating to the delivery and shall be entitled to call witnesses and introduce documents in support thereof. It shall be the burden of the Compliance Department to demonstrate, by the weight of the evidence, the

appropriateness of the sanction set forth in the Notice of Assessment.

(d) The Appellant shall be entitled to rebut the Compliance Department's evidence and shall be entitled to call witnesses and introduce documents in support thereof.

(e) The Compliance Department and the Appellant shall be entitled to cross-examine any witness called by the opposing Party at the hearing.

(f) The Notice of Assessment, the Notice of Appeal, the Memorandum of Appeal, any Answering Memorandum, the stenographic transcript of the appeal, any documentary evidence or other material presented to and accepted by the Panel shall constitute the record of the hearing. The decision of the Panel shall be based upon the record of the hearing.

(g) The Panel shall have the power to impose a penalty against any person who is within the jurisdiction of the Exchange and whose actions impede the progress of a hearing.

(h) The Assessment Appeal Panel shall issue a written decision in which it may affirm, reduce, or waive the charges assessed against the Appellant and shall state the reasons therefore.

(i) The decision of the Assessment Appeal Panel shall be a final decision of the Exchange and shall constitute a final disciplinary action of the Exchange. The fine is payable on the effective day of the decision or as specified. The effective day shall be fifteen (15) days after a copy of the written decision has been delivered to the appellant and to the Commission.

(8) The Assessment Appeal Panel shall consider, and make recommendations to the Board concerning acceptance or rejection of, any offer of settlement submitted by Appellant. In the case of an offer of settlement, acceptance by the Board shall constitute the final disciplinary action of the Exchange.

#### **(E) ARBITRATION PROCEDURE**

(1) Any claim for damages arising between a Buyer and a Seller as a result of a delivery pursuant to this contract shall be settled by arbitration in accordance with these Rules.

(2) Notice of Intent to Arbitrate must be submitted to the Secretary of the Exchange within three business days of the occurrence upon which the claim is based or the decision of the Emissions Allowance Delivery Committee with respect to a late or failed performance. Failure to submit a Notice of Intent to Arbitrate within the prescribed period will be deemed a waiver of a Party's rights to arbitrate such a delivery dispute under the special or Regular Arbitration Rules.

(3) The Arbitration will be governed by Chapter 5 of the Rules except that the Chairman of the Exchange or his designee shall appoint an Arbitration Panel composed of three Members of the Exchange, at least one of whom shall be a Member of the Board of Directors.

## **Annual NOX Emissions Allowance Vintage 2012 Futures Contract**

### **867.01 Scope**

The provisions of these rules shall apply to all Annual NOX emissions allowances vintage 2012 (or earlier vintages) bought or sold for future delivery on the Exchange with the Delivery at the U.S Environmental Protection Agency's (EPA) Allowance Management System (NAMS).

### **867.01A. Definitions**

- A. EPA means the U.S. Environmental Protection Agency or any successor agency with similar jurisdiction.
- B. Annual NOX Allowance refers to a tradable permit to emit one ton of NOX from January 1 to December 31 in a given or subsequent calendar year under the Clean Air Interstate Rule (CAIR) Annual NOX Budget Trading Program as specified further by EPA.
- C. NOX Allowance Management System (NAMS) means the system established by the EPA for recording the transfer of Allowances among various entities under the Clean Air Act as set.
- D. Vintage Year means the first calendar year for which the allowance may be utilized for compliance.
- E. The terms "Seller" and "Buyer" shall mean the short Clearing Member and the long Clearing Member, respectively.
- F. The terms "Seller's Customer" and "Buyer's Customer" shall mean the seller and buyer of the physical product.
- G. The term "Settlement Price" shall mean the final settlement price used as the price for delivery of the product, which shall be the settlement price for the last trading day of the expiring delivery month. The settlement price for the last day of the trading shall be determined in accordance with the procedures set forth in NYMEX Rule 11G.11.

### **867.02 Time References**

For purposes of these Rules, unless otherwise specified, times referred to herein shall refer to and indicate the prevailing time in New York.

**867. 03 Contract Unit**

The contract unit shall be ten (10) tons of Annual NOX emissions allowances vintage 2012 (or earlier vintages) for delivery made by transfer through NAMS.

**867. 04 Delivery**

Emission allowance delivery shall comply with all requirements for the electronic transfer of Annual NOX allowances through the NOX Allowance Management System. All deliveries made under these rules shall be final and there shall be no appeal.

**867. 05 Delivery Months**

Trading shall be conducted in contracts providing for delivery in such periods as shall be determined by the Board of Directors.

**867. 06 Minimum Price Fluctuations**

Prices shall be quoted in dollars per ton. The minimum price fluctuation shall be \$25.00 per ton (\$250.00 per contract). There shall be no maximum price fluctuation.

**867. 07 Termination of Trading**

Trading in the current delivery month shall cease at termination of the third business day prior to the last business day of the contract month.

**867. 08 Product Placement**

For purposes of Rule 9.19, the Seller and Buyer shall fulfill its contractual obligation on a maturing contract only if, by 12:00 noon on the day preceding the last trading day in the applicable delivery month, such Seller and Buyer have received NAMS account certification from his customer, in the form prescribed by the Exchange stating that the Customer has an account with NAMS,

The receipt of such certification shall not relieve the Seller or Buyer, or their respective Customers of any obligations under any Rule other than Rule 9.19.

**867. 09 Delivery Procedures**

**(A) RESPONSIBILITIES OF CLEARING MEMBERS HAVING OPEN LONG POSITIONS**

**(1) NOTICE OF INTENTION TO ACCEPT**

By 11:30 a.m. on the second business day prior to the last business day of an expiring delivery month, a Buyer having an open position shall file with the Exchange a properly completed and signed Notice of Intention to Accept. The Notice of Intention to Accept shall be in the form prescribed by the Exchange and shall include the Name of the Buyer's Customer, Number of contracts to be accepted, and any additional information as may be required by the Exchange.

By 4:00 p.m. on Notice Day, the Buyer shall provide the Seller with the following

information: NAMS Account Number; Vintage Year; Name; Phone Number and e-mail address of the Account Representative (AAR) or the authorized alternate for that NAMS account.

**(B) RESPONSABILITIES OF CLEARING MEMBERS HAVING OPEN SHORT POSITIONS**

**(1) NOTICE OF INTENTION TO DELIVER**

By 11:30 a.m on the second business day prior to the last business day of an expiring delivery month, a Seller having an open short position shall file with the Exchange a properly completed and signed Notice of Intention to Deliver. The Notice of Intention to Deliver shall be in such form prescribed by the Exchange and shall include: Name of the Seller's Customer, Number of contracts to be delivered, NAMS Account Number; Vintage Year; Name; Phone Number and e-mail address of the Account Representative (AAR) or the authorized alternate for that NAMS account, and any additional information as may be required by the Exchange

**INFORMATION PROVIDED BY SELLER TO BUYER**

By 4:00 p.m. on Notice Day, the Seller shall provide the Buyer with the following information: NAMS Account Number, Vintage Year, Name, Phone Number and e-mail address of the Account Representative (AAR) or the authorized alternate for that NAMS account.

**(C) USE OF SETTLEMENT PRICE:** The final settlement price used for the delivery shall be the settlement price from the final day of trading.

**(D) Notice Day**

- (1) The Clearing House shall allocate Notices of Intention to Deliver and Notices of Intention to Accept by matching size of positions, to the extent possible.
- (2). The Clearing House shall provide Tender Allocation Notices to the respective Clearing Members by 2:00 P.M on the second business day prior to the last business day of the delivery month.
- (3) The day the Tender Allocation Notices are provided to the Clearing Members shall be referred to as "Notice Day". Tender Allocation Notices are not transferable.

**(E) Payment and Delivery Margins**

**((1) Definitions**

- (a) "Payment" shall include the settlement price times the number of contracts times 10.
- (b) "Payment Date" shall mean the business day after the Buyer's Customer receipt of proper notification from the NAMS that allowances have been transferred from the Seller's Customer account to the Buyer's Customer account, provided documentation is supplied to the Buyer's Customer by no later than 2:00 P.M. Documentation supplied to Buyer

after 2:00 noon on any Exchange business day, shall be considered received on the following Exchange business day.

- (c) On the business day following the last day of trading, the long clearing member shall obtain from the long, if any, margin equal to the full value of the product to be delivered. Such margin shall consist of cash, securities issued by the United States Treasury Department maturing within ten (10) years from the date of deposit and guaranteed as to principal and interest by the United States Government or a letter of credit. Any Treasury securities so deposited shall be valued at ninety percent (90%) of the par value of such instruments. Any letter of credit so deposited shall be in a form approved by the Exchange, shall be issued or confirmed by an Exchange approved original margin depository, and shall be drawn in favor of the Exchange.
- (d) The Buyer shall pay the Seller at the office of the Seller by a certified check or electronic funds transfer, or any other method acceptable to both parties by 12:00 P.M. on the payment date.
- (e) The Buyer and Seller shall deposit with the Exchange margins in such amounts and in such form as required by the Exchange. Such margins, which shall not be greater than the margins charged to the Buyer's Customer and Seller's Customer, shall be returned on the business day following notification to the Exchange that delivery and payment have been completed.
- (f) On the Payment Date, The Seller shall deliver a Notice of Payment to the Buyer with a copy to the Exchange by 4:30 PM. Upon receipt of such notice the delivery shall be complete.
- (g) Any payment made on Payment Date shall be based on allowances actually delivered.

#### **(F) Delivery Day**

The day the Buyer's customer receives the allowances shall be referred to as the Delivery Day.

#### **867. 10 Delivery Period**

Delivery shall take place on one business day prior to the last business day of the delivery month.

#### **867. 11 Validity of Documents**

The Exchange makes no representation respecting the authenticity, validity or accuracy of any of Tender Allocation Notice, Notice of Intention to Accept, Notice of Intention to Deliver, check or of any document or instrument delivered pursuant to these rules.

#### **867. 12 Exchange of Futures for, or in Connection with Product**

(A) An exchange of futures for, or in connection with, the product (EFP) consists of two discrete, but related, transactions; a cash transaction and a futures transaction. At the time such transaction is effected, the Buyer's Customer and the Seller's Customer of the futures must be the Seller's Customer and the Buyer's Customer of a quantity of the physical product covered by

this Section (or any derivative, by-product or related product.) The quantity of physical product must be approximately equivalent to the quantity covered by the futures contracts.

(B) Except as provided below, an EFP must take place during the hours of futures trading for the Annual NOX Emissions Allowance futures contract. An EFP is permitted in the expiring futures contract until two hours after trading terminates on the last day of trading of the expiring futures contract. An EFP which establishes a futures position for both the buyer and the seller shall not be permitted during the two hour period following the termination of trading of the expired futures contract.

(C) Any Exchange of Futures for, or in Connection with, Product (EFP) shall be governed by the provisions of Rule 6.21.

(D) Each Buyer's Customer and Seller's Customer must satisfy the Exchange, at its request, that the transaction is a legitimate EFP transaction. All documentary evidence relating to EFP, including, without limitation, evidence as to change of ownership of the physical commodity shall be obtained by the Clearing Members from their customers or made available by the Clearing Members for examination by the Exchange upon request.

#### **867. 13 Alternative Delivery Procedure**

A Seller's Customer or Buyer's Customer may agree with the Buyer's Customer or the Seller's Customer with which it has been matched by the Exchange under Rule 867.09(D) to make and take delivery under terms or conditions which differ from the terms and conditions prescribed by this Chapter. In such a case, Clearing Members shall execute an Alternative Notice of Intention to Deliver on the form prescribed by the Exchange and shall deliver a completed executed copy of such Notice to the Exchange. The delivery of an executed Alternative Notice of Intention to Deliver to the Exchange shall release the Clearing Members and the Exchange from their respective obligations under the Exchange contracts.

In executing such Notice, Clearing Members shall indemnify the Exchange against any liability, cost or expense it may incur for any reason as a result of the execution, delivery, or performance of such contracts or such agreement, or any breach thereof or default there under. Upon receipt of an executed Alternative Notice of Intention to Deliver, the Exchange will return to the Clearing Members all margin monies held for the account of each with respect to the contracts involved.

#### **867. 14 Force Majeure, Late Performance and Failure to Perform**

(A) **DEFINITION.** As used in this Rule 867.14 the following terms, as well as variations thereof, shall have the meaning described below.

(1) "Late Performance" means the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation imposed by, and within the time period established in, the Rules.



(2) "Failure to Perform" means the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation prior to the expiration of the period allowed for the late performance of such act.

(3) "Contract Value" means the amount equal to the settlement price on the last day of trading in a futures contract times 10 (the number of tons per contract) times the number of contracts to be delivered.

(4)(a) "Party" means a Buyer or Seller and such Buyer and Seller are each responsible to the Exchange for their obligations under these Rules and further responsible to the Exchange for the obligations of their respective customers under the Rules of this Chapter.

(b) "Other Party" means the corresponding Buyer when the Seller is late in performance or has failed to perform and the corresponding Seller when the Buyer is late in performance or has failed to perform.

(5) "Day of Late Performance" means the twenty-four hour period commencing twelve hours after a Buyer or a Seller was to have performed, provided however, with respect to the obligations of Buyers and Sellers to submit documents to the Exchange pursuant to the Rules in this chapter, and with respect to the failure to transfer allowances within the delivery period, "Day of Late Performance" means that twenty four hour period commencing immediately after the time specified in the Rules in this chapter for the submission of a document. Each subsequent Day of Late Performance shall commence twenty-four hours after the beginning of the prior Day of Late Performance. When a Party is late in performance, the day when the act is performed shall be a Day of Late Performance.

(6) "Force Majeure" means any circumstance (including but not limited to a strike, lockout, national emergency, governmental action, or act of God) which is beyond the control of such Buyer or Seller, and which prevents the Buyer or Seller from making or taking delivery of product when and as provided for in these Rules.

## **(B) RESPONSIBILITIES OF PARTIES TO THE DELIVERY**

(1) The parties to a delivery shall make commercially reasonable efforts to perform their respective delivery obligations at all times until a Party has failed to perform.

(2) A Party which has failed to perform its obligations may no longer perform such obligations; provided, however, that a Buyer which has failed to make a payment shall make such payment.

## **C) EMISSIONS ALLOWANCE DELIVERY COMMITTEE**

(1) Force Majeure, Late Performance and Failure to Perform shall be determined by a Panel of the Emissions Allowance Delivery Committee as set forth below. The Chairman of the

Emissions Allowance Delivery Committee shall appoint a Panel, which shall consist of three (3) members of the Committee, to review a delivery:

(a) When the Chairman is advised by the President or any person designated by the President that it appears that the performance of a Party to the delivery is late;

(b) Upon the written request of both the Buyer and the Seller;

(c) When the President or any person designated by the President requests such appointment; or

(d) When either Party to the delivery notifies the Exchange that circumstances exist constituting Force Majeure.

(2) The Chairman shall not appoint to any Panel any person who has a direct or indirect interest in the delivery in question. Any Panel so appointed shall retain jurisdiction over the delivery in question until the delivery has been completed or a Party has been found to have failed to perform such delivery. Exchange Counsel shall serve as advisor to the Panel.

(3) The Panel shall meet within one business day of notification as provided in these Rules. Unless good cause for delay exists, within one business day the Panel shall determine whether force majeure exists, whether a Buyer or Seller is late in performing or has failed to perform its obligations as provided in the Rules, and advise the Compliance Department of such determination, and its findings in support thereof immediately. The Panel shall cause its determination to be communicated to the parties to the delivery as expeditiously as possible.

((4) Upon a finding of force majeure, the Panel may take any one or combination of the following actions as it deems suitable, order an extension of time not to exceed five days from the date of the scheduled delivery; or, refer the delivery to the Board of Directors for emergency action as provided in Article 7.

#### **(D) EXCHANGE ACTION**

(1) Whenever a Buyer or a Seller is found by the Panel to be late in the performance of or to have failed to perform a delivery, the Exchange, represented by the Compliance Department, shall issue a Notice of Assessment in accordance with subsections (2) of this Section, specifying the findings of the Panel with respect to the late or failed delivery.

(2) When a Party has failed to perform, the Compliance Department shall issue a Notice of Assessment assessing penalties of ten percent (10%) of the contract value, in addition to any penalties assessed pursuant to subparagraph (2) hereof, to be paid to the Exchange.

(3)(a) A Party may appeal a Notice of Assessment by filing a Notice of Appeal with the Hearing Registrar of the Exchange and by serving a copy of the same on the Exchange's Compliance

Counsel, within two business days of receipt of the Notice of Assessment from the Compliance Department. The Party filing the appeal ("Appellant") shall file, within twenty (20) days after filing the Notice of Appeal, a Memorandum of Appeal setting forth the factual and legal basis for the appeal. The Memorandum of Appeal must be filed with the Hearing Registrar and a copy of the same served upon the Exchange's Compliance Counsel.

(b) The Compliance Department may file with the Appellant and Hearing Registrar an Answering Memorandum to the Memorandum of Appeal within ten (10) days of receipt of that memorandum.

(c) Failure by the Party to file a Notice of Appeal or a Memorandum of Appeal with the time specified in subsection (D)(4)(a) of this Rule shall constitute a waiver, and the penalties set forth in the Notice of Assessment shall be paid within five days to the Exchange. Failure to pay such penalties in accordance with this Rule shall subject the party to the sanctions set forth in Bylaw 106. In the event a party fails to Appeal, or waives the opportunity to appeal a Notice of Assessment the Assessment and findings of the Delivery Committee shall constitute a final disciplinary action of the Exchange.

(4) Within ten (10) days after receipt of the Compliance Department's reply, the Appellant shall be entitled to examine all books, documents and other tangible evidence in possession or under the control of the Exchange that are to be relied on by the Compliance Department or are otherwise relevant to the matter.

(5) In the event of an appeal by a Party, the Chairman of the Exchange, or his designee, shall appoint an Assessment Appeal Panel to hear and decide the appeal. The Panel shall be composed of three members of the Exchange, at least one of whom shall be a member of the Board of Directors. No member of the Panel may have a direct or indirect interest in the matter under the appeal. Each Panel Member shall disclose to the Chairman any such interest which might preclude such Panel Member from rendering a fair and impartial determination. The formal Rules of Evidence shall not apply to such appeal, and the Panel shall be the sole judge with respect to the evidence presented to it. Exchange outside counsel shall advise the Panel.

(6) The procedures for the hearing of the appeal before the Assessment Appeal Panel shall be as follows:

(a) At a date to be set by order of the Panel, and prior to such hearing, the Appellant and the Compliance Department shall furnish each other with a list of witnesses expected to be called at the hearing, and a list of documents and copies thereof expected to be introduced at the hearing.

(b) At such hearing: The Appellant may appear personally and may be represented by counsel or other representative of his choice at the appeal.

(c) The Compliance Department shall be entitled to offer evidence relating to the delivery and shall be entitled to call witnesses and introduce documents in support thereof. It shall be the

burden of the Compliance Department to demonstrate, by the weight of the evidence, the appropriateness of the sanction set forth in the Notice of Assessment.

(d) The Appellant shall be entitled to rebut the Compliance Department's evidence and shall be entitled to call witnesses and introduce documents in support thereof.

(e) The Compliance Department and the Appellant shall be entitled to cross-examine any witness called by the opposing Party at the hearing.

(f) The Notice of Assessment, the Notice of Appeal, the Memorandum of Appeal, any Answering Memorandum, the stenographic transcript of the appeal, any documentary evidence or other material presented to and accepted by the Panel shall constitute the record of the hearing. The decision of the Panel shall be based upon the record of the hearing.

(g) The Panel shall have the power to impose a penalty against any person who is within the jurisdiction of the Exchange and whose actions impede the progress of a hearing.

(h) The Assessment Appeal Panel shall issue a written decision in which it may affirm, reduce, or waive the charges assessed against the Appellant and shall state the reasons therefore.

(i) The decision of the Assessment Appeal Panel shall be a final decision of the Exchange and shall constitute a final disciplinary action of the Exchange. The fine is payable on the effective day of the decision or as specified. The effective day shall be fifteen (15) days after a copy of the written decision has been delivered to the appellant and to the Commission.

(8) The Assessment Appeal Panel shall consider, and make recommendations to the Board concerning acceptance or rejection of, any offer of settlement submitted by Appellant. In the case of an offer of settlement, acceptance by the Board shall constitute the final disciplinary action of the Exchange.

## **(E) ARBITRATION PROCEDURE**

(1) Any claim for damages arising between a Buyer and a Seller as a result of a delivery pursuant to this contract shall be settled by arbitration in accordance with these Rules.

(2) Notice of Intent to Arbitrate must be submitted to the Secretary of the Exchange within three business days of the occurrence upon which the claim is based or the decision of the Emissions Allowance Delivery Committee with respect to a late or failed performance. Failure to submit a Notice of Intent to Arbitrate within the prescribed period will be deemed a waiver of a Party's rights to arbitrate such a delivery dispute under the special or Regular Arbitration Rules.

(3) The Arbitration will be governed by Chapter 5 of the Rules except that the Chairman of the Exchange or his designee shall appoint an Arbitration Panel composed of three Members of the Exchange, at least one of whom shall be a Member of the Board of Directors.

## Supplemental Information

### **SO<sub>2</sub> Reductions and Allowance Trading Under the Acid Rain Program Acid Rain Program SO<sub>2</sub> Allowances**

The innovative, market-based sulfur dioxide (SO<sub>2</sub>) allowance trading component of the Acid Rain Program allows utilities to adopt the most cost-effective strategy to reduce SO<sub>2</sub> emissions at units in their systems. Affected utilities are required to install systems that continuously monitor emissions of SO<sub>2</sub>, nitrogen oxides (NO<sub>x</sub>), and other related pollutants in order to track progress, ensure compliance, and provide credibility to the trading component of the program. In any year that compliance is not achieved, excess emissions penalties will apply, and sources either will have allowances deducted immediately from their accounts or may submit a plan to EPA that specifies how the excess SO<sub>2</sub> emissions will be offset.

#### Overview

The Clean Air Act Amendments of 1990 set a goal of reducing annual SO<sub>2</sub> emissions by 10 million tons below 1980 levels. To achieve these reductions, the law required a two-phase tightening of the restrictions placed on fossil fuel-fired power plants:

- Phase I (began in 1995)  
Affected 263 units at 110 mostly coal-burning electric utility plants located in 21 eastern and midwestern states. An additional 182 units joined Phase I of the program as substitution or compensating units, bringing the total of Phase I affected units to 445.
- Phase II (began in 2000)  
Tightened the annual emissions limits imposed on large, higher emitting plants and also set restrictions on smaller, cleaner plants fired by coal, oil, and gas, encompassing over 2,000 units in all. The program affects existing utility units serving generators with an output capacity of greater than 25 megawatts and all new utility units.

Reductions in SO<sub>2</sub> emissions are facilitated through a market-based system for capping and trading—the centerpiece of EPA's Acid Rain Program. The allowance trading system creates

low-cost rules of exchange that minimize government intrusion and make allowance trading a viable compliance strategy for reducing SO<sub>2</sub>.

## **Introduction**

Allowance trading is the centerpiece of EPA's Acid Rain Program, and allowances are the currency with which compliance with the SO<sub>2</sub> emissions requirements is achieved. Through the market-based allowance trading system, utilities regulated under the program, rather than a governing agency, decide the most cost-effective way to use available resources to comply with the acid rain requirements of the Clean Air Act. Utilities can reduce emissions by employing energy conservation measures, increasing reliance on renewable energy, reducing usage, employing pollution control technologies, switching to lower sulfur fuel, or developing other alternate strategies. Units that reduce their emissions below the number of allowances they hold may trade allowances with other units in their system, sell them to other utilities on the open market or through EPA auctions, or bank them to cover emissions in future years. Allowance trading provides incentives for energy conservation and technology innovation that can both lower the cost of compliance and yield pollution prevention benefits.

The Acid Rain Program established a precedent for solving other environmental problems in a way that minimizes the costs to society and promotes new technologies.

## **What Are Allowances?**

An allowance authorizes a utility or industrial source to emit one ton of SO<sub>2</sub> during a given year or any year thereafter. At the end of each year, the source must hold an amount of allowances at least equal to its annual emissions, i.e., a source that emits 5,000 tons of SO<sub>2</sub> must hold at least 5,000 allowances that are usable in that year. However, regardless of how many allowances a source holds, it is never entitled to exceed the limits set under Title I of the Act to protect public health.

Allowances are fully marketable commodities. Once allocated, allowances may be bought, sold, traded, or banked for use in future years. Allowances may not be used for compliance prior to the calendar year for which they are allocated.

## **How Are Allowances Allocated?**

Allowances were allocated for each year beginning in 1995. Phase I included certain electricity generating units. EPA allocated allowances at an emission rate of 2.5 pounds of SO<sub>2</sub>/mmBtu (million British thermal units) of heat input, multiplied by the unit's baseline mmBtu (the average fossil fuel consumed from 1985 through 1987). These allowance allocations are listed in Table A of the Clean Air Act and codified in the Allowance System Regulations (Part 73, Table 1). Alternative or additional allowance allocations were made for various units, including affected

units in Illinois, Indiana, and Ohio, which were allocated a pro rata share of 200,000 additional allowances each year from 1995 to 1999.

In Phase II, which began in the year 2000, EPA expanded the group of affected sources to include virtually all units over 25 MW in generating capacity, and tightened the allowance allocation. Allowance allocation calculations were made for various types of units, such as coal- and gas-fired units with low and high emissions rates or low fuel consumption. EPA allocated allowances to each unit at an emission rate of 1.2 pounds of SO<sub>2</sub>/mmBtu of heat input, multiplied by the unit's baseline. Beginning in 2010, the Act places a cap at 8.95 million on the number of allowances issued to units each year. This effectively caps emissions at 8.95 million tons annually and ensures that the mandated emissions reductions are maintained over time.

### **How Else Can Allowances Be Obtained?**

In addition to annual allocations, allowances are also available upon application to three EPA reserves. In Phase I, units could apply for and receive additional allowances by installing qualifying Phase I technology (a technology that can be demonstrated to remove at least 90 percent of the unit's SO<sub>2</sub> emissions) or by reassigning their reduction requirements among other units employing such technology. A second reserve provides allowances as incentives for units achieving SO<sub>2</sub> emissions reductions through customer-oriented conservation measures or renewable energy generation. The third reserve contains allowances set aside for auction, which are sponsored yearly by EPA. Anyone can participate in the annual allowance auction which is held at the end of March every year.

Units that began operating in 1996 or later are not allocated allowances. Instead, they have to purchase allowances from the market or from the EPA auction to cover their SO<sub>2</sub> emissions.

### **Annual Auction**

Once a year, EPA auctions a certain number of SO<sub>2</sub> allowances at the end of March. Utilities, environmental groups, allowance brokers, and anyone else interested in purchasing allowances can participate

### **Spot Bids (First Usable in 2007)**

#### **2007 Acid Rain Allowance Auction Results**

<b>BIDS</b>	<b>BIDDER'S NAME</b>	<b>QUANTITY TOTAL</b>	
\$1,120.00	Washington College Student Environmental Alliance	1	1
\$1,000.00	Green County Energy, LLC	8	9

\$600.00	Clean Air Conservancy Charitable Trust	3	12
\$491.00	Acid Rain Retirement Fund	12	24
\$490.00	AEM 250 Cornell University 2007	1	25
\$473.00	Transalta Energy Marketing U.S.	50	75
\$465.00	Transalta Energy Marketing U.S.	50	125
\$464.00	Transalta Energy Marketing U.S.	75	200
\$463.00	Transalta Energy Marketing U.S.	150	350
\$462.00	Transalta Energy Marketing U.S.	300	650
\$461.00	Transalta Energy Marketing U.S.	575	1,225
\$456.00	Transalta Energy Marketing U.S.	2,175	3,400
\$455.22	The Detroit Edison Company	250	3,650
\$453.22	The Detroit Edison Company	250	3,900
\$452.50	Saracen Energy LP	15,000	18,900
\$451.22	The Detroit Edison Company	250	19,150
\$451.00	Transalta Energy Marketing U.S.	2,175	21,325
\$450.08	Morgan Stanley	25,000	46,325
\$450.00	South Carolina Public Service Authority	2,500	48,825
\$449.22	The Detroit Edison Company	250	49,075
\$447.50	Constellation Energy Commodities Group, Inc.	1,250	50,325
\$445.08	Morgan Stanley	10,000	60,325
\$445.00	Alpha	1,000	61,325
\$445.00	South Carolina Public Service Authority	2,500	63,825
\$444.22	The Detroit Edison Company	250	64,075
\$443.00	Transalta Energy Marketing U.S.	4,350	68,425
\$441.25	KS&T, LP	20,000	88,425
\$440.08	Morgan Stanley	5,000	93,425
\$440.07	Merrill Lynch Commodities Inc.	2,500	95,925
\$440.00	Alpha	1,500	97,425
\$440.00	South Carolina Public Service Authority	2,500	99,925
\$439.58	Constellation Energy Commodities Group, Inc.	1,250	101,175
\$439.22	The Detroit Edison Company	250	101,425
\$435.08	Morgan Stanley	10,000	111,425
\$435.00	Alpha	2,500	113,925
\$434.22	The Detroit Edison Company	500	114,425
\$433.25	KS&T, LP*	20,000	134,425

### **Who May Participate in Allowance Trading?**

Allowances may be bought, sold, and traded by any individual, corporation, or governing body, including brokers, municipalities, environmental groups, and private citizens. The primary participants in allowance trading are officials designated and authorized to represent the owners and operators of electric utility plants that emit SO<sub>2</sub>.



Any person or group, including brokers and investors, wishing to purchase allowances may open a general AMS account.

### **What Is the System for Keeping Track of Allowances?**

EPA's role in allowance trading is to record allowance transfers that are used for compliance and to ensure at the end of the year that a source's emissions do not exceed the number of allowances it holds. To accomplish this, EPA maintains an Allowance Management System (AMS). Each affected utility source, corporation, group, or individual holding allowances has an account in the AMS. Parties must notify EPA to have transfers recorded in their AMS account, but it is not necessary to record all transfers with EPA until such time that the allowances are to be used to meet a source's SO<sub>2</sub> emissions limitation requirement. AMS accounts are, however, the official records for allowance holdings and transfers used for compliance purposes. To facilitate tracking and recording, EPA assigns every account an identification number and every allowance a serial number.

Any person or group, including brokers and investors, wishing to purchase allowances may open a general AMS account.

### **What Information is Contained in AMS Accounts?**

AMS accounts track:

- Issuance of all allowances.
- How many allowances an account holds.
- How many allowances are held in various allowance reserves, such as the EPA Auction Reserve and the Conservation and Renewable Energy Reserve.
- Deduction of allowances for compliance purposes.
- Transfer of allowances between accounts.

### **How Are Allowance Transfers Submitted?**

Allowance transfer requests and all correspondence with EPA concerning compliance with the Acid Rain Program must be performed by authorized account representatives. For a source account, the Designated Representative, who represents the owners and operators of that unit, performs this function. For a general account, the Authorized Account Representative is the person who represents the parties with an ownership interest in the allowances, and who signs the Account Information Form to open the account.

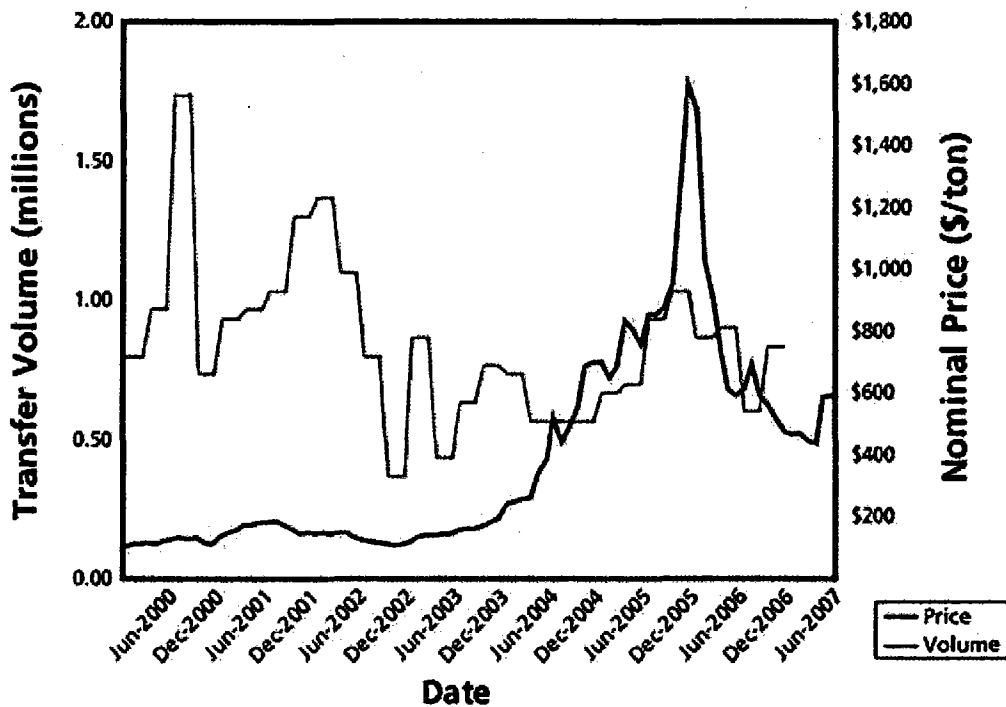
### **How Is Compliance Determined?**

At the end of the year, sources must hold in their compliance accounts a quantity of allowances equal to or greater than the amount of SO<sub>2</sub> emitted during that year. To cover their emissions for the previous year, sources must finalize allowance transactions and submit them to EPA by March 1 (February 29 - leap year) to be recorded in their compliance accounts. The amount of emissions is determined in accordance with the monitoring and reporting requirements described in the Continuous Emission Monitoring Rule.

After the March 1 deadline and the final submitted transfers are recorded, EPA deducts allowances from each source's compliance account in an amount equal to its SO<sub>2</sub> emissions for that year. If the source's emissions do not exceed its allowances, the remaining allowances are carried forward, or banked for future use. If a source's emissions exceed its allowances, the source must pay a penalty and surrender allowances for the following year to EPA as excess emission offsets.

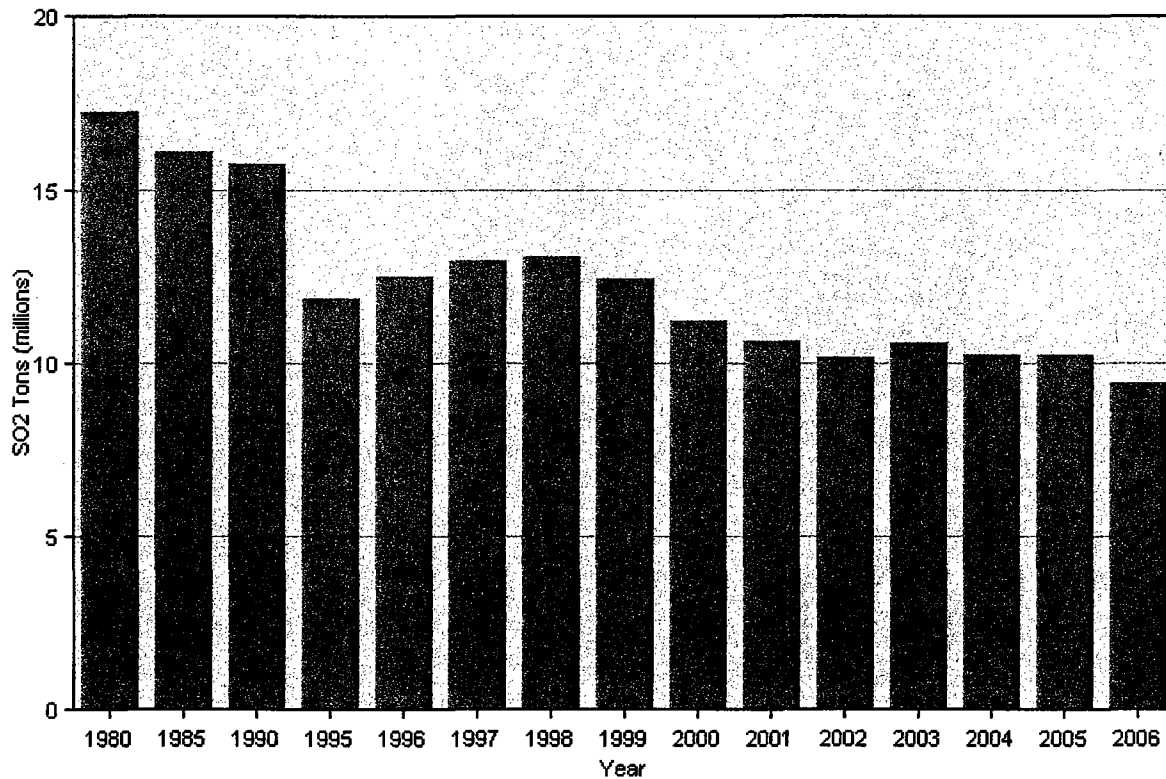
### **Volume Data**

**Simplified Monthly Transfer Volume and Price, 2000-2007**



Source: EPA, 2007

**Acid Rain SO<sub>2</sub> Emissions Trends, 1980 through 2006**



## SO2 Spot Market Participants:

Major Spot Market Participants	
Acid Rain Retirement Fund	Indiana Municipal Power Agency
Adirondack Council, Inc.	Indianapolis Power & Light Company
ADM Investor Services, Inc.	Integrus Energy Group
AEP Energy Partners LP	Jarod Klaas-Keith Thompson
AES Cayuga, LLC	JEA
AES Pasadena	Jerry A Walker
Air Products and Chemicals, Inc.	John A Klopp
Alabama Electric Cooperative, Inc.	Josh Margolis-Lauren Kisling
Alabama Power Company	JP Morgan Chase Bank, National Association
Alberto Gomez Jr	JP Morgan Futures, Inc
Alcoa Power Generating, Inc.	JPMorgan Ventures Energy Corporation
Alexander Long David Gloski	Kenneth M Raber-NC Eastern Municipal Power Agency
Allegheny Energy	Kentucky Utilities Company
Allegheny Energy-Monongahela Power Company	King Street Capital, L.P.
Alpha Energy Master Ltd.	King Street Capital, Ltd.
Alpha Natural Resources, LLC	Koch Supply & Trading, LP
Ameren Energy Generating Company	LG&E Power, Inc.
Amerex USA, Ltd.	Lincoln Electric System
American Electric Power	Louis Dreyfus Energy Services, LP
American Municipal Power - Ohio	M F Global, Inc
Ann W McIver	Magnum Coal Company
Anthony Pekny	MEG II
Arizona Public Service Company	Merrill Lynch Commodities, Inc
Arizona Public Service Company	MidAmerican Energy Company
Arkansas Electric Cooperative Corporation	Millennium Environmental Group, Inc.
Arlene F Carter	Minneapolis South High School
Associated Electric Cooperative, Inc.	Mirant Energy Trading, LLC
Atlantic City Electric Company	Mirant Mid-Atlantic, LLC
Barbara H McBride Betty Chu	Mississippi Power Company
Barbara H McBride	Missouri Basin Municipal Power-Western Minnesota Municipal Power
Bear Energy LP	Municipal Electric Authority of Georgia
Black Hills Corporation	Natsource Mac 77, Ltd
Boston Trust & Investment Management Company	Nebraska Public Power District
BP Gas & Power Company	Nevada Power Company
Brian Carroll Eric Klein	Northern Indiana Public Service Company
Buckeye Power, Inc.	NRG Power Marketing, Inc.
Calpine Operating Services Company, Inc.	Oglethorpe Power Corporation
Cantor Fitzgerald Brokerage, LP	Ohio Valley Electric Corporation
Carolina Power & Light Company	Old Dominion Electric Cooperative

Christopher Ronk<br>Madison M Quinn  
 Cincinnati Gas & Electric Company  
 City of Austin  
 City of Tallahassee  
 City Utilities of Springfield, MO

Clean Air Conservancy  
 CLECO Power, LLC

Conectiv Atlantic Generation, LLC  
 Conectiv Energy  
 Connecticut DEP  
 CONSOL Energy Inc.  
 Consolidated Edison of New York  
 Constellation Energy Commodities Group, Inc.  
 Consumers Energy Company  
 Cooperative Power Association-United Power Association  
 Coral Energy Holding, LP-Coral Energy Resources, LP  
 Credit Suisse Energy LLC  
 Dairyland Power Cooperative  
 Dalton Utilities<br>Georgia Power Company  
 Darrell W Bayless<br>Paul E Reynolds  
 Deseret Generation & Transmission-Utah Municipal Power Agency  
 Detroit Edison Company  
 DOI - Bureau of Reclamation  
 Dominion Energy Marketing, Inc.  
 Dominion Energy Merchant  
 Doug Hunter<br>Utah Associated Municipal Power Systems  
 DPL EM, LLC  
 DTE Coal Services, Inc.  
 Duke Energy Corporation  
 Duke Energy Indiana, Inc.<br>Duke Energy Shared Services, Inc.  
 Duke Energy Ohio, Inc.<br>Duke Energy Shared Services, Inc.  
 Duke Energy Ohio, Inc.  
 Duke Energy Shared Services, Inc.  
 East Kentucky Power Cooperative  
 Eastern Associated Coal Corporation-Peabody COALSALSALES Company  
 Ecofin Limited  
 Edison Mission Marketing & Trading Electric Energy, Inc.  
 Emily Richardson<br>Washington College Student Environmental Alliance  
 Evolution Markets, LLC  
 Exelon Generation Company LLC

Orion Power Holdings, Inc.<br>Orion Power Midwest, LP, Inc.  
 Owensboro Municipal Utilities  
 Pacific Gas and Electric Company  
 PacifiCorp  
 Patrick Blanchard  
 Peabody COALSALSALES Company-Peabody Coal Company  
 Peabody COALTRADE, Inc.  
 Pennsylvania Environmental Council-University of Pittsburgh  
 Pittsburg & Midway Coal Mining Company  
 Potomac Electric Power Company  
 PPL EnergyPlus, LLC  
 PPL Generation, LLC  
 PPL Rights, Inc.  
 PSEG Energy Resources & Trade, LLC  
 PSEG Fossil LLC-Public Service Electric & Gas Company

Public Service Company of Colorado  
 Public Service Company of New Mexico  
 Public Service of New Hampshire  
 Puget Sound Energy, Inc.  
 Reliant Energy Mid-Atlantic Power Holdings, LLC

Reliant Energy Services, Inc.  
 Rice Dairy LLC  
 Ridgefield Capital Group<br>Tyticus Partners L.P.  
 Robert A Schaffeld<br>Southern Power Company  
 Robert Koltun

Rochester Gas & Electric Corporation  
 Salt River Project  
 San Diego Gas & Electric Company  
 San Miguel Electric Cooperative

Saracen Energy LP

SEMPRA ENERGY TRADING CORP  
 South Carolina Electric & Gas Company  
 South Carolina Public Service Authority  
 Southern California Edison Company

Southern Indiana Gas and Electric Company  
 State of Delaware Dept. of Natural  
 SUEZ Energy Marketing NA, Inc.  
 Sunbury Generation, LP

Swiss Re  
 Tampa Electric Company  
 Tennessee Valley Authority

Fimat USA, LLC	Topaz Power Group, LLC
First Bank & Trust - Brookings, SD	TransAlta Energy Marketing (US)
FirstEnergy Generation Corporation	Tucson Electric Power Company
FirstLight Power Resources Services, LLC	TXU Energy Trading
Florida Power & Light Company	TXU Power
Florida Power Corporation	UGI Development Company
Fortis Energy Marketing and Trading, GP	Union Electric Company
General Electric Company	United Power, a division of ICAP United Inc.
George B Kaiser	University of Iowa Environmental Law Society
Georgia Power Company	University of Wisconsin
Greg Arnold-Harold Buchanan	US Gen New England, Inc.
Gregory L Poe	Utah Municipal Power Agency
Gregory P Kunkel	Virginia Electric & Power Company
Griffon Holdings LLC-Lewis Garry Williams-	
Nancy Olsen	Westar Energy, Inc.
ICAP United Inc.	Western Kentucky Energy Corporation
Idaho Power Company	William O Perkins III
Illinois Municipal Electric Agency	Wisconsin Public Power, Inc.
Independence Power and Light	WPS Power Development, Inc.

## **NO<sub>x</sub> Budget Trading Program/NO<sub>x</sub> SIP Call**

In 2003, EPA began to administer the NO<sub>x</sub> Budget Trading Program under the “NO<sub>x</sub> SIP Call.” The NO<sub>x</sub> Budget Trading Program is a market-based cap and trade program created to reduce emissions of nitrogen oxides (NO<sub>x</sub>) from power plants and other large combustion sources in the eastern United States. NO<sub>x</sub> is a prime ingredient in the formation of ground-level ozone (smog), a pervasive air pollution problem in many areas of the eastern United States. The NO<sub>x</sub> Budget Trading Program was designed to reduce NO<sub>x</sub> emissions during the warm summer months, referred to as the ozone season, when ground-level ozone concentrations are highest.

### **Allowance Information**

As part of its responsibility to administer the NO<sub>x</sub> Budget Trading Program under the SIP Call, EPA’s Clean Air Markets Division will record allowance allocations in the NO<sub>x</sub> Allowance Management System (NAMS) according to the specifications of each state. The requirements for recording allocations in NAMS are that the state has finalized its SIP including its trading rules, the SIP is approved by EPA, and that the state submits to the Clean Air Markets Division an electronic file including account-specific allocation amounts.

### **The NO<sub>x</sub> SIP Call**

In October, 1998, EPA finalized the "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone"—commonly called the "NO<sub>x</sub> SIP Call." The NO<sub>x</sub> SIP Call was designed to mitigate significant transport of NO<sub>x</sub>, one of the precursors of ozone. For those states opting to meet the obligations of the NO<sub>x</sub> SIP call through a cap and trade program, EPA included a model NO<sub>x</sub> Budget Trading Program rule (Part 96). This trading program was developed to facilitate cost effective emissions reductions of oxides of nitrogen (NO<sub>x</sub>) from large stationary sources. Part 96 provides sources with a complete trading program including provisions for applicability, allocations, monitoring, banking, penalties, trading protocols and program administration. States choosing to participate in the NO<sub>x</sub> Budget Trading Program have the flexibility to modify certain provisions within the model rule

## **Clean Air Interstate Rule Overview**

On May 12, 2005, the United States Environmental Protection Agency (EPA) published the final version of the Clean Air Interstate Rule (CAIR) in Federal Register, 70 FR 25162. CAIR is a requirement to reduce the interstate transport of pollutants that significantly contribute to nonattainment of ozone and fine particle (PM<sub>2.5</sub>) concentrations. The program is directed at reducing nitrogen oxides (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) emissions from the electric power sector across a 28-state region of the Eastern United States and the District of Columbia. The EPA is requiring these states to revise their state implementation plans (SIPs) to include control measures to reduce emissions of NO<sub>x</sub> and/or SO<sub>2</sub>.

Based on an assessment of the emissions contributing to interstate transport of air pollution and available control measures, EPA determined that achieving required reductions in the identified states by controlling emissions from power plants is highly cost effective.<sup>1</sup> The EPA developed a model cap and trade program for the states that will achieve the emission budget milestones set by CAIR. CAIR is implemented in two phases. For NO<sub>x</sub>, Phase I runs from 2009-2014 and Phase II is for the years 2015 and later. For SO<sub>2</sub>, Phase I covers the years 2010-2014 and Phase II is for the years 2015 and later. Across the CAIR region, in Phase I there will be a 53 percent reduction and in Phase II there will be a 61 percent reduction from 2003 NO<sub>x</sub> emission levels. For SO<sub>2</sub>, the reductions will be 45 percent in Phase I and 57 percent in Phase II from 2003 SO<sub>2</sub> emission levels.

### **What is the CAIR Model Trading Program?**

The backbone of CAIR is the optional trading program covering the emissions from electric generating units (EGUs) larger than 25 MW. This program consists of three separate markets – annual SO<sub>2</sub> emissions, annual NO<sub>x</sub> emissions and ozone-season NO<sub>x</sub> emissions. The NO<sub>x</sub> markets are two separate compliance requirements – the annual market addresses PM<sub>2.5</sub> concerns and the seasonal market addresses ozone concerns. CAIR establishes a budget for emissions of NO<sub>x</sub> and SO<sub>2</sub> for each state affected by CAIR. The states are required to meet these budgets, with EPA's preferred approach being the model trading program administered by the EPA. If the state chooses to participate in the federal trading program, this budget is the number of allowances the state has the discretion to allocate to sources. If a state chooses not to adopt the trading program, it either has to demonstrate legally enforceable programs that will reduce emissions sufficiently to meet the prescribed budget or be subject to federal regulation under a federal implementation plan (FIP).

### **Annual NOx Emissions Market – Model Rule**

The CAIR annual NOx trading program relies upon CAIR annual NOx allowances allocated by the states. The NOx SIP call allowances and CAIR ozone-season NOx allowances cannot be used for compliance with the annual CAIR reduction requirement. Each state will have a share of the compliance supplement pool (CSP) that is comprised of 200,000 CAIR annual NOx allowances of vintage year 2009. The state may distribute the CSP allowances based upon criteria for early reduction and need. There are no restrictions on the use of the banked annual allowances or CSP allowances.

### **Ozone Season NOx Emission Market – Model Rule**

The CAIR ozone-season NOx trading program relies upon CAIR ozone-season NOx allowances allocated by the states. Pre-2009 NOx SIP Call allowances can be banked into the program and used by CAIR-affected sources for compliance with the CAIR ozone-season NOx program. NOx SIP Call allowances will not be issued after 2008. Banked NOx SIP Call allowances cannot be used to meet the annual NOx emissions budget. There are no other restrictions on the use of banked allowances.

### **Flexibility for States in Development of Trading Program**

For the most part, states have to implement the trading program as dictated by the EPA in the model rule. The states do have flexibility in determining the following aspects of the program:

- Development of NOx allocations methodologies provided allocation information is submitted to EPA in required time frame. This includes:
  - Cost of allowance distribution (free v. auction)
  - Frequency of allocations (permanent v. periodically updated)
  - Basis for distribution (heat-input v. power output)
  - Use of allowance set-asides and their size (new source, energy efficiency, development of IGCC, renewable or small units).
- Provisions that allow individual units to opt-in to the trading program so long as the units comply with Part 75 monitoring requirements.

### **Volume Data:**

#### **1) CAIR NOX Ozone Season Allowances Held at EPA as of March 10, 2008**



<b>Vintage Year</b>	<b>Current CAIR OS Program allowance holdings</b>
2009	470,521
2010	417,013
2011	394,580
2012	318,601
<b>Total</b>	<b>1,600,715</b>

**2) CAIR NOX Annual Allowances Held at EPA as of March 10 ,2008**

<b>Vintage Year</b>	<b>Current CAIR NOx Program allowance holdings</b>
2009	1,242,524.00
2010	1,089,338.00
2011	1,089,339.00
2012	871,826.00
<b>Total</b>	<b>4,293,027.00</b>

**CAIR Emission Caps**

*(million tons)*

	<b>2009 2010</b>	<b>2015</b>
Annual NOx (2009)	1.5	1.3
Seasonal NOx (2009)	.58	.48

**Spot Month Limit For the Annual and Seasonal Nox:**

- NYMEX reviewed the yearly EPA NOX Cap and applied it monthly to achieve a NYMEX contract equivalent of 12,500. The monthly cap calculated by NYMEX was determined by dividing the annual 2009 NOX cap of 1.5 million tons promulgated by EPA, by 12 months. The spot month limit for annual 2009 NOx is 1500 which is 12% of

the monthly total. For subsequent vintage years, 2010, 2011, and 2012: NYMEX reviewed the EPA NOX cap for 2015 and scaled down the spot limits to 1000 for each of these vintage years. These spot limits also represent approximately 12% of the total.

- For the Seasonal NOX, NYMEX reviewed the yearly EPA NOX Cap and applied it monthly to achieve a NYMEX contract equivalent of 4833. The monthly cap is calculated by NYMEX was determined by dividing the seasonal 2009 NOX cap of 0.58 million tons promulgated by EPA, by 12 months. The spot month limit for seasonal 2009 NOx is 600 which is 12% of the monthly total. For subsequent vintage years, 2010, 2011, and 2012: NYMEX reviewed the EPA NOX cap for 2015 and scaled down the spot limits to 500 for each of these vintage years. These spot limits also represent approximately 12% of the total.

### Major Players in the Annual and Seasonal NOX Spot Markets:

Major Spot Market Participants	
Acid Rain Retirement Fund	Indiana Municipal Power Agency
Adirondack Council, Inc.	Indianapolis Power & Light Company
ADM Investor Services, Inc.	Integrays Energy Group
AEP Energy Partners LP	Jarod Klaas-Keith Thompson
AES Cayuga, LLC	JEA
AES Pasadena	Jerry A Walker
Air Products and Chemicals, Inc.	John A Klopp
Alabama Electric Cooperative, Inc	Josh Margolis-Lauren Kisling
Alabama Power Company	JP Morgan Chase Bank, National Association
Alberto Gomez Jr	JP Morgan Futures, Inc
Alcoa Power Generating, Inc.	JPMorgan Ventures Energy Corporation
Alexander Long David Gloski	Kenneth M Raber-NC Eastern Municipal Power Agency
Allegheny Energy	Kentucky Utilities Company
Allegheny Energy-Monongahela Power Company	King Street Capital, L.P.
Alpha Energy Master Ltd.	King Street Capital, Ltd.
Alpha Natural Resources, LLC	Koch Supply & Trading, LP
Ameren Energy Generating Company	LG&E Power, Inc.
Amerex USA, Ltd.	Lincoln Electric System
American Electric Power	Louis Dreyfus Energy Services, LP
American Municipal Power - Ohio	M F Global, Inc
Ann W McIver	Magnum Coal Company
Anthony Pekny	MEG II
Arizona Public Service Company	Merrill Lynch Commodities, Inc
Arizona Public Service Company	MidAmerican Energy Company
Arkansas Electric Cooperative Corporation	Millennium Environmental Group, Inc.
Arlene F Carter	Minneapolis South High School
Associated Electric Cooperative, Inc.	Mirant Energy Trading, LLC
Atlantic City Electric Company	Mirant Mid-Atlantic, LLC
Barbara H McBride Betty Chu	Mississippi Power Company

Barbara H McBride  
Bear Energy LP  
Black Hills Corporation  
Boston Trust & Investment Management Company  
BP Gas & Power Company  
Brian Carroll<br>Eric Klein  
Buckeye Power, Inc.  
Calpine Operating Services Company, Inc.  
Cantor Fitzgerald Brokerage, LP  
Carolina Power & Light Company  
  
Christopher Ronk<br>Madison M Quinn  
Cincinnati Gas & Electric Company  
City of Austin  
City of Tallahassee  
City Utilities of Springfield, MO  
  
Clean Air Conservancy  
CLECO Power, LLC  
  
Conectiv Atlantic Generation, LLC  
Conectiv Energy  
Connecticut DEP  
CONSOL Energy Inc.  
Consolidated Edison of New York  
Constellation Energy Commodities Group, Inc.  
Consumers Energy Company  
Cooperative Power Association-United Power Association  
Coral Energy Holding, LP-Coral Energy Resources, LP  
Credit Suisse Energy LLC  
Dairyland Power Cooperative  
Dalton Utilities<br>Georgia Power Company  
Darrell W Bayless<br>Paul E Reynolds  
Deseret Generation & Transmission-Utah Municipal Power Agency  
Detroit Edison Company  
DOI - Bureau of Reclamation  
Dominion Energy Marketing, Inc.  
Dominion Energy Merchant  
Doug Hunter<br>Utah Associated Municipal Power Systems  
DPL EM, LLC  
DTE Coal Services, Inc.  
Duke Energy Corporation  
Duke Energy Indiana, Inc.<br>Duke Energy Shared Services, Inc.  
Duke Energy Ohio, Inc.<br>Duke Energy Shared Services, Inc.

Missouri Basin Municipal Power-Western Minnesota Municipal Power  
Municipal Electric Authority of Georgia  
Natsource Mac 77, Ltd  
  
Nebraska Public Power District  
Nevada Power Company  
Northern Indiana Public Service Company  
NRG Power Marketing, Inc.  
Oglethorpe Power Corporation  
Ohio Valley Electric Corporation  
Old Dominion Electric Cooperative  
Orion Power Holdings, Inc.<br>Orion Power Midwest, LP, Inc.  
Owensboro Municipal Utilities  
Pacific Gas and Electric Company  
PacifiCorp  
Patrick Blanchard  
Peabody COALSALES Company-Peabody Coal Company  
Peabody COALTRADE, Inc.  
Pennsylvania Environmental Council-University of Pittsburgh  
Pittsburg & Midway Coal Mining Company  
Potomac Electric Power Company  
PPL EnergyPlus, LLC  
PPL Generation, LLC  
PPL Rights, Inc.  
PSEG Energy Resources & Trade, LLC  
PSEG Fossil LLC-Public Service Electric & Gas Company  
  
Public Service Company of Colorado  
Public Service Company of New Mexico  
Public Service of New Hampshire  
Puget Sound Energy, Inc.  
Reliant Energy Mid-Atlantic Power Holdings, LLC  
  
Reliant Energy Services, Inc.  
Rice Dairy LLC  
Ridgefield Capital Group<br>Tyticus Partners L.P.  
Robert A Schaffeld<br>Southern Power Company  
Robert Koltun  
  
Rochester Gas & Electric Corporation  
Salt River Project  
San Diego Gas & Electric Company  
San Miguel Electric Cooperative  
  
Saracen Energy LP  
  
SEMPRA ENERGY TRADING CORP

Duke Energy Ohio, Inc.	South Carolina Electric & Gas Company
Duke Energy Shared Services, Inc.	South Carolina Public Service Authority
East Kentucky Power Cooperative	Southern California Edison Company
Eastern Associated Coal Corporation-Peabody COALSALES Company	Southern Indiana Gas and Electric Company
Ecofin Limited	State of Delaware Dept. of Natural
Edison Mission Marketing & Trading	SUEZ Energy Marketing NA, Inc.
Electric Energy, Inc.	Sunbury Generation, LP
Emily Richardson Washington College	Swiss Re
Student Environmental Alliance	Tampa Electric Company
Evolution Markets, LLC	Tennessee Valley Authority
Exelon Generation Company LLC	Topaz Power Group, LLC
Fimat USA, LLC	TransAlta Energy Marketing (US)
First Bank & Trust - Brookings, SD	Tucson Electric Power Company
FirstEnergy Generation Corporation	TXU Energy Trading
FirstLight Power Resources Services, LLC	TXU Power
Florida Power & Light Company	UGI Development Company
Florida Power Corporation	Union Electric Company
Fortis Energy Marketing and Trading, GP	United Power, a division of ICAP United Inc.
General Electric Company	University of Iowa Environmental Law Society
George B Kaiser	University of Wisconsin
Georgia Power Company	US Gen New England, Inc.
Greg Arnold-Harold Buchanan	Utah Municipal Power Agency
Gregory L Poe	Virginia Electric & Power Company
Gregory P Kunkel	Westar Energy, Inc.
Griffon Holdings LLC-Lewis Garry Williams-	Western Kentucky Energy Corporation
Nancy Olsen	William O Perkins III
ICAP United Inc.	Wisconsin Public Power, Inc.
Idaho Power Company	WPS Power Development, Inc.
Illinois Municipal Electric Agency	
Independence Power and Light	

## Important Links

Allowance data for all Clean Air Markets programs:

[http://camddataandmaps.epa.gov/gdm/index.cfm?fuseaction=allowances.program&AQW\\_fuseaction=allowances.program&AQW\\_criteria\\_fuseaction=allowances.program&AQW\\_tabMode=1&AQW\\_datasetSelection=Accounts&AQW\\_menuSelection=programs&AQW\\_criteriaAction=reset&AQW\\_requiredSelectionMade=false&AQW\\_requiredMenuItem=&divinstructions=The+Accounts+folder+provides+access+to+current+account+information+for+all+programs.+Click+here+to+begin+your+custom+Accounts+query.](http://camddataandmaps.epa.gov/gdm/index.cfm?fuseaction=allowances.program&AQW_fuseaction=allowances.program&AQW_criteria_fuseaction=allowances.program&AQW_tabMode=1&AQW_datasetSelection=Accounts&AQW_menuSelection=programs&AQW_criteriaAction=reset&AQW_requiredSelectionMade=false&AQW_requiredMenuItem=&divinstructions=The+Accounts+folder+provides+access+to+current+account+information+for+all+programs.+Click+here+to+begin+your+custom+Accounts+query.)

Allowances dataset Held at EPA:

[http://camddataandmaps.epa.gov/gdm/index.cfm?fuseaction=prepackaged.progressresults\\_allowance](http://camddataandmaps.epa.gov/gdm/index.cfm?fuseaction=prepackaged.progressresults_allowance)

Description of the programs:

<http://www.epa.gov/airmarkets/trading/index.html>

<http://www.epa.gov/airmarkets/cap-trade/index.html>

<http://www.epa.gov/airmarkets/progsregs/index.html>

<http://www.epa.gov/cair/basic.html#basic>

<http://www.epa.gov/airmarkets/progsregs/nox/index.html>

<http://www.epa.gov/airmarkets/progsregs/arp/index.html>

<http://www.epa.gov/airmarkets/progsregs/cair/index.html>