



New York  
Mercantile Exchange

March 26, 2008

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OFF. OF THE SECRETARIAT

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: NYMEX Submission #08.31: Notification Regarding the Listing of New York Harbor Ethanol Futures Contract on CME GLOBEX® and NYMEX ClearPort® Clearing**

Dear Mr. Stawick:

The New York Mercantile Exchange, Inc. ("NYMEX" or the "Exchange") is notifying the Commodity Futures Trading Commission ("CFTC" or "Commission") that it is self-certifying the listing for trading and clearing of a new physically-delivered New York Harbor Ethanol Futures contract, code QE, NYMEX Rules 192.01 – 192.17.

This new futures contract will be listed on the CME GLOBEX® electronic trading platform and on the NYMEX ClearPort® clearing system beginning at 6:00 PM on Sunday evening, March 30, 2008, for trade date Monday, March 31. This new futures contract will be available during the normal trading hours for CME GLOBEX® and NYMEX ClearPort® clearing.

The first contract month to be listed will be for May 2008. The Exchange will list 36 consecutive months. The contract size is 42,000 gallons and the minimum tick size is \$0.0001 per gallon.

Reporting levels and Positions Limits/Accountability levels for these contracts are provided in submission #08.49, under separate cover. The off-exchange transactions of exchanges of futures for physical product (EFP) and of futures for swap transactions (EFS) for these new futures contracts shall be governed by the provisions of NYMEX Rules 6.21 and 6.21A, respectively. 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 complies with the Act, including regulations under the Act. Should you have any questions concerning the above, please contact the undersigned at (212) 299-2207 or Daniel Brusstar at (212) 299-2604.

Very truly yours,

Brian Regan  
Senior Vice President and Counsel

Attachments: Contract terms and conditions  
Supplemental Market Information

New York Mercantile Exchange, Inc.  
World Financial Center  
One North End Avenue  
New York, NY 10282-1101  
(212) 299-2000

*The New York Mercantile Exchange, Inc., is composed of two divisions. The NYMEX Division offers trading in crude oil, heating oil, unleaded gasoline, natural gas, electricity, coal, propane, platinum, and palladium. The COMEX Division offers trading in gold, silver, copper, and aluminum.*

## **NYMEX New York Harbor Ethanol Contract**

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### **192.01 Scope**

The provisions of these rules shall apply to all denatured fuel ethanol bought or sold for future delivery on the Exchange for New York Harbor delivery.

### **192.01A Definitions**

- (A) The terms "Seller" and "Buyer" shall mean the short Clearing Member and the long Clearing Member, respectively.
- (B) The terms "Seller's Customer" and "Buyer's Customer" shall mean the seller and buyer, respectively, of the physical product.
- (C) The term "Notice Day" shall mean the business day after the day the Clearing House receives copies of the Notices of Intention to Deliver and Notices of Intention to Accept from the respective Clearing Members. The Notice Day shall be the second business day after the final day of trading in the expiring delivery month.
- (D) The term "Settlement Price" shall mean the final settlement price used as the price for delivery of the product, which shall be on the last trading day of the month preceding the delivery month. The final settlement price shall be determined in accordance with the procedures set forth in Rule 6.25.



#### **192.04 Delivery**

(A) Delivery shall be made F.O.B. seller's ex-shore facility in New York Harbor with all duties, entitlements, taxes, fees and other charges imposed prior to delivery on or in respect to the product paid by the seller. Delivery shall be made in accordance with applicable Federal, State and local laws. RINs as defined under the federal regulations governing the Renewable Fuel Standard (RFS) Program, as set forth in 40 CFR Part 80, will be required for all deliveries of ethanol. The transfer of RINs shall be in full compliance with EPA regulations, including the product transfer documentation requirements in 40 CFR, section 80.1128(a)(7). Buyer shall reimburse Seller for any tax as had been or will be paid by the Seller. At Buyer's option, such delivery shall be made by any of the following methods:

- (1) By delivery into Buyer's Customer's barge;
- (2) By delivery into Buyer's Customer's pipeline, if Buyer's Customer can take delivery in such manner at the facility used by Seller's Customer;
- (3) By stock transfer of title to the Buyer's Customer; if the facility used by Seller's Customer allows such transfer;
- (4) By book transfer if the Seller's Customer agrees to such transfer;
- (5) By intra-facility transfer ("pump-over"), if the facility used by Seller's Customer allows such transfer;
- (6) By inter-facility transfer ("pump-over"), if the facilities used by both Seller's Customer and Buyer's Customer allow such transfer;
- (7) By delivery into buyer's truck, if the facility and tankage used by the Seller's Customer has the connectivity that allows such movement. For truck delivery, the Buyer's Customer shall pay Seller's Customer a truck surcharge of \$0.03 cents per gallon above the final settlement price. The Seller's Customer's terminal shall provide access for truck delivery during the terminal's normal operating hours and according to the terminal's normal truck capacity restrictions. The delivery window for truck delivery shall be extended up to six days, if necessary, subject to the truck capacity restrictions in effect at the Seller's Customer's terminal.

(B) For purposes of these rules, any Seller's Customer delivering an aggregate of twenty-five (25) contracts or less in a delivery month, shall deliver all such contracts from no more than two facilities. When a Seller's Customer delivers an aggregate of fifteen (15) contracts or less in a delivery month, all such contracts shall be delivered from one facility.

(C) For the purpose of these rules, New York Harbor shall extend from the East River west of Hunts Point; Gowanus Bay west of the Hamilton Avenue Bridge; the Hudson River south of the George Washington Bridge; the Upper Bay; the Narrows; the Lower Bay west of Morton Point; the Newark Bay; the Hackensack River south of the Witt-Penn Bridge; the Passaic River south of the Pulaski Skyway Bridge; the Kill Van Kull; the Arthur Kill and the Raritan River east of the Garden State Parkway Bridge.

(D) All deliveries made under these rules shall be final and there shall be no appeal.

#### **192.05 Delivery Months**

Trading shall be conducted in contracts providing for delivery in such months as may be determined by the Board of Directors. Trading in the delivery periods shall commence on the day fixed by the Board of Directors.

**192.06 Prices and Fluctuations**

Prices shall be quoted in dollars and cents per gallon. The minimum price fluctuation shall be \$.0001 per gallon. There shall be no maximum price fluctuation.

**192.07 Termination of Trading**

Trading in a current month shall cease on the last business day of the month preceding the delivery month.

**192.08 Product Placement**

**(1) Certification:**

For purposes of Rule 9.19, the Seller shall fulfill its contractual obligation on a maturing contract only if, prior to one hour before the time established for the beginning of the closing range of the applicable delivery month, such Seller has received from his customer a certification, in the form prescribed by the Exchange, stating that the customer has or will have in position, not later than the fifth business day of the delivery month, at one or more eligible delivery facilities at which delivery may be made under this Chapter, a quantity and quality of product sufficient to meet such customer's obligations to make delivery when and as prescribed in these Rules; provided, however, that the receipt of such certification shall not relieve the seller of any obligations under any Rule other than Rule 9.19.

**(2) Product in Tank**

The Seller's Customer shall have a quantity and quality of product in tank at one or more eligible delivery facilities in accordance with the inspection requirements under Rule 192.12 prior to the first day of the consecutive three-day period for initiation of delivery identified by the buyer in the Initial Delivery Instructions. The obligation to have product in tank, as prescribed in this section (2), shall constitute a "material act with respect to a delivery obligation" as referenced in Rule 192.15(A)(1).

**192.09 Delivery Procedures**

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

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

By 3:00 p.m. on the first business day of the delivery month, a Buyer having an open long position shall file with the Exchange a properly completed and signed Notice of Intention to Accept. The Notice of Intention to Accept, in the form prescribed by the Exchange, shall include: the name of the Buyer's customer, the number of contracts to be accepted, the names of three inspection companies and any additional information required by the Exchange. The Buyer may, at its option, request a preferred delivery site; such request shall not be binding upon the Seller.

**(2) INITIAL DELIVERY INSTRUCTIONS**

As soon as possible after receipt from the Exchange of a Notice of Intention to Deliver, but not later than 4:30 p.m. on a business day not later than the fourth business day of the delivery month, the

Buyer shall deliver to the Seller identified in such Notice of Intention to Deliver, with a copy to the Exchange, properly completed and signed Initial Delivery Instructions, in the form prescribed by the Exchange, which shall include the following information:

- (a) Name of Seller's Customer;
- (b) Tender Number;
- (c) Name and Location of Delivery Facility specified in the Notice of Intention to Deliver;
- (d) Number of Contracts;
- (e) Method of Delivery;
- (f) A consecutive three day period for initiation of delivery;
- (g) Name of the designated inspection company, if so required; and,
- (h) Such additional information as may be required by the Exchange.

### **(3) VERIFICATION OF DELIVERY METHOD AND INSPECTION COMPANY**

Prior to giving the Seller Initial Delivery Instructions, the Buyer shall verify with and confirm in writing to the Seller that the method of delivery specified conforms to the normal capabilities of the Seller's Customer's facility with respect to the manner of delivery and the quantity to be delivered and that the inspection company specified has been accepted by the Seller. Such verification shall be confirmed in the Initial Delivery Instructions. If the Buyer and Seller fail to agree on one of the three inspection companies included in the Notice of Intention to Accept, the matter shall be referred to the Petroleum Delivery Committee as provided in Rule 192.15(C)(6). Initial Delivery Instructions may not be amended after they have been given to the Seller.

### **(4) DELIVERY INSTRUCTIONS**

The Buyer may tender, at the office of the Seller, Delivery Instructions on any business day prior to 10:30 a.m. Delivery Instructions given after 10:30 a.m. on any business day shall be deemed to have been given on the following business day. A Buyer may not tender Delivery Instructions on the day on which Initial Delivery Instructions are tendered to the Seller under Rule 192.09(A)(2). The Buyer's Delivery Instructions for a delivery which is to occur during the consecutive three day period the final day of which is the day prior to the last business day of the month shall not designate such final day of the period for the initiation of the delivery. The Buyer must give Delivery Instructions to the Seller not later than five calendar days prior to the time of the proposed delivery, or such earlier business day as is necessary to assure that the day on which Delivery Instructions are given is followed by a period that includes at least one business day and three subsequent calendar days ending on the day prior to the last business day of the delivery month. A copy of the Delivery Instructions must be given to the Exchange. Except as provided in Rule 192.09(A)(6) below, Delivery Instructions must conform to the Initial Delivery Instructions tendered by the Buyer to the Seller.

### **(5) FORM OF DELIVERY INSTRUCTIONS**

The Delivery Instructions must be properly completed and signed, in such form as prescribed by the Exchange, and shall contain the following information:

- (a) Name of Seller's Customer;
- (b) Tender Number;
- (c) Name and Location of Delivery Facility specified in the Notice of Intention to Deliver;

- (d) Number of Contracts;
- (e) Method of Delivery (which must conform to the normal capabilities of the facility named in the Notice of Intention to Deliver with respect to the manner and time of delivery and the quantity to be delivered);
- (f) Name of proposed Carrier (i.e., Barge, Truck or Pipeline), and the approximate size of the barge, if any;
- (g) For interfacility transfers, name of receiving facility;
- (h) Date and Approximate Time for Initiating Delivery;
- (i) Name of inspection company, if so required; and,
- (j) Such additional information as may be required by the Exchange.

#### (6) AMENDMENT OF INITIAL DELIVERY INSTRUCTIONS OR OF DELIVERY INSTRUCTIONS

Neither initial delivery instructions nor delivery instructions may be amended after they have been given. However, upon mutual consent of the parties and upon written notice to the Exchange, the parties may change the delivery facility named by the seller, the method of delivery named by the Buyer, the three day period for delivery named by the Buyer, or the specific delivery date and time named by the Buyer.

#### (7) NOTICE OF CLEARANCE; NOTICE OF NON-CLEARANCE

(a) If the Buyer receives from the Seller a Notice of Clearance advising that the Seller will deliver pursuant to the Delivery Instructions, the Buyer shall require its customer to post with it the full purchase price of all product to be purchased under all contracts covered by such Notice not later than two days prior to the scheduled initiation of delivery.

(b) If the Buyer receives from the Seller a Notice of Non-Clearance advising that the Seller is unable to deliver in accordance with the Delivery Instructions, the Buyer shall give Revised Delivery Instructions to the Seller, not later than 10:30 a.m. on the third business day following receipt of such Notice, or such earlier business day as is necessary to assure that the day on which Revised Delivery Instructions are given is followed by at least two subsequent calendar days ending on the day prior to the last business day of the delivery month. A copy of Revised Delivery Instructions shall be given to the Exchange. The Revised Delivery Instructions shall comply in all respects with the provisions of sub-paragraph (5) above and shall thereafter comply with the provisions of this sub-paragraph as if such Revised Delivery Instructions were the original Delivery Instructions; provided, however, that such Revised Delivery Instructions may designate for delivery the final day of the consecutive three day period immediately prior to the last business day of the month. Such Revised Delivery Instructions shall specify a delivery date and time not less than 24 hours before or after the delivery time specified in the original Delivery Instructions (whether or not such date and time is within the three-day period specified in the Initial Delivery Instructions), provided such date and time is prior to the last business day of the delivery month and at least two calendar days subsequent to the date on which such Revised Delivery Instructions are given to the Seller. Revised Delivery Instructions given after 10:30 a.m. on any day shall be deemed to have been given on the following business day. Except as provided in Rule 151.09(A)(6), Revised Delivery Instructions may not be amended after they have been given to the Seller.

**(8) ACCEPTANCE OF PRODUCT**

The Buyer's Customer may not begin to accept the product earlier than the day after the fifth business day of the delivery month or later than the last day prior to the last business day of the delivery month. The Buyer's Customer may complete receipt of product no later than the last business day of the delivery month.

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

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

By 3:00 p.m. on the first business day of the 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 as prescribed by the Exchange and shall include the name of the Seller's customer, the name and location of the facility which will supply the product, the number of contracts and such additional information as may be required by the Exchange.

**(2) NOTICE OF CLEARANCE; NOTICE OF NON-CLEARANCE**

(a) Not later than 4:30 p.m. of a day on which the Buyer gives the Seller Delivery Instructions, the Seller shall give the Buyer a properly completed and signed Notice of Clearance in such form as prescribed by the Exchange, with a copy to the Exchange, indicating that it is prepared to make delivery in accordance with the provisions of the Buyer's Delivery Instructions.

(b) (i) In the event that the Seller's Customer is unable to make delivery in accordance with the Buyer's Delivery Instructions because of a good faith inability to receive clearance from the facility, the Seller shall, not later than 4:30 p.m. of the day on which the Buyer gives the Seller Delivery Instructions, give to the Buyer a Notice of Non-Clearance, with a copy to the Exchange, and state the reasons for such inability. The Seller may, at its option, in the Notice of Non-Clearance suggest an alternate or preferred delivery site, date or time. In the event the facility nominated by the Seller asserts a minimum loading requirement for barge delivery which is an amount greater than the quantity nominated by the Buyer for lifting, the Seller may not issue a Notice of Non-Clearance to the Buyer based solely upon such loading requirement. However, in the event the facility's minimum loading requirement prevents delivery as nominated by the buyer, the Seller may unilaterally and without the Buyer's consent, upon written notice to the Buyer, with a copy to the Exchange, not later than 4:30 p.m. of the day on which the Buyer gives the Seller Delivery Instructions, amend the name and location of the delivery facility set forth in the Delivery Notice to consummate delivery as otherwise provided in the Delivery Instructions.

(ii) If Notice of Non-Clearance is given, the Seller shall require its customer, at the time the Notice of Non-Clearance is given, to post additional original margin equal to 25% of the total contract value of all contracts listed in the Delivery Instructions. Such additional margin shall be posted by the Seller with the Exchange not later than 11 a.m. on the next business day.

(iii) Not later than 4:30 p.m. of a day on which the Buyer gives the seller Revised Delivery Instructions, the Seller shall give the Buyer a Notice of Clearance, with a copy to the Exchange, indicating that it is prepared to make delivery in accordance with the provisions of the Buyer's



**Revised Delivery Instructions.** Revised Delivery Instructions given after 10:30 a.m. on any day shall be deemed to have been given on the following business day. In the event that the Seller's Customer is unable to make delivery in accordance with the Buyer's Revised Delivery Instructions because of Force Majeure, the Seller shall, not later than 4:30 p.m. of the day on which the Buyer gives the Seller Revised Delivery Instructions, give to the Buyer a Notice of Non-Clearance with a copy to the Exchange, and state the reasons for such inability to make delivery.

**(C) SETTLING PRICE.** The last settling price shall be the basis for delivery.

**(D) NOTICE DAY.** 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. The Clearing House shall pass copies of the notices to the respective Clearing Members on the morning of the next business day. The day the notices are passed to the Clearing Members shall be referred to as the Notice Day. The Notice Day shall be the second business day of the delivery month.

**(E) NON-TRANSFERABLE.** The Clearing Member who receives a Notice of Intention to Deliver or Notice of Intention to Accept from the Clearing House shall have agreed to accept or deliver product. Notices of Intention to Deliver or Notices of Intention to Accept are not transferable.

**(F) DELIVERY DAY**

(1) Shipment will commence when product passes the Buyer's Customer's cargo intake flange, tank or pipeline connection; at such time the Buyer's Customer shall bear the risk of loss.

(2) The Buyer's Customer shall pay the Seller's Customer at the office of the Seller's Customer by certified check by 12:00 noon of the business day following the receipt of the product, or by 12:00 noon on the last business day of the delivery month, whichever is earlier. The amount of payment shall be based on volume delivered as determined in Rule 192.02. Should the inspector, appointed under Rule 192.12, be unable to supply quantitative results prior to the time established herein for payment of the product, a pro forma payment based on 42,000 U.S. gallons per contract shall be made. Payment adjustments based on actual quantity transferred shall be completed between Clearing Members by 12:00 noon of the first business day after receipt of the telexed Inspector's report but no later than the third business day after transfer of physical product. Alternatively, buyer and seller may mutually agree to effect payment or adjustment, as otherwise prescribed in this Rule, by federal funds money wire as a substitution for a certified check.

(a) If the Buyer requires multiple delivery dates, multiple payment shall be required for each portion of product transferred.

(b) The Seller's Customer, upon receipt of payment, shall give the Buyer's Customer a bill of lading or other quantitative certificate and any other appropriate documents necessary to transfer ownership of the product to the buyer.

(3) The day the Buyer's Customer receives the product shall be referred to as the Delivery Day.

### **192.10 Shipment**

(A) The facility must be capable of making delivery by barge, and may be capable of making delivery by truck.

(B) The Seller's Customer's ex-shore facility must have a minimum draft of 20 feet at mean low water and a minimum access draft of 20 feet at mean low water. The Seller's Customer must supply the product as soon as the barge or tanker reports readiness to load; alternatively, if delivery is to be made on shore, the Seller's Customer must supply the product as soon as the Buyer's Customer reports that the transfer facility or truck is ready to accept the product.

(C) The Buyer's Customer's barge must be safely afloat at all times.

(D) The Seller's Customer shall pay all applicable demurrage charges if the shore facility is unable to deliver the product at a rate sufficient to meet normal requirements for loading a barge or is unable to deliver ex-tank or pipeline at the normal rate for such delivery. The Buyer's Customer shall pay all other demurrage charges.

(E) For truck delivery, the Buyer shall pay Seller a truck surcharge of \$0.03 cents per gallon in addition to the final settlement price.

#### **192.11 Validity of Documents**

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

#### **192.12 Inspection**

(A) The Buyer shall notify the Seller in the Initial Delivery Instructions that a grade and quality or quantity inspection is requested. The Seller's Customer shall initiate inspection of the product to be delivered 24 hours prior to the nominated time and date specified in the delivery instructions. The Buyer may request the tests for any or all grade and quality specifications for the stated product listed in Rule 192.03. The Buyer may request a quantity inspection for all deliveries. The Buyer shall require a quantity inspection for delivery by barge, tanker or inter-facility transfer (pump-over). If the Buyer does not request a quantity inspection, the Seller may request such inspection.

(B) If a Buyer requests grade and quality or quantity inspection, or if a Seller requests a quantity inspection, the inspection company listed in the Initial Delivery Instructions shall perform the inspection, unless an alternate inspection company is appointed by the Petroleum Delivery Committee, pursuant to Rule 192.09(A)(3).

(C) If the product meets grade and quality specifications, the Buyer's Customer and Seller's Customer shall share equally in the cost of inspection. If the product does not meet grade and quality specifications, the Seller's Customer shall pay the cost of inspection. The cost of verifying the quantity of product transferred shall be shared equally by Buyer's Customer and Seller's Customer.

(D) If the product does not meet grade and quality specifications, or if product is added to the tendered tank(s) after the inspection is conducted, the Seller's Customer, at its own expense shall initiate a second inspection, performed by the same inspection company as the initial inspection.

Seller's Customer shall furnish the results of the second inspection to the Buyer's Customer no later than the nominated time and date of pickup. If the product does not meet grade and quality specifications in the second inspection, within one business day of receipt of the report by the Exchange a Panel of the Petroleum Delivery Committee, as appointed by the Chairman, shall meet to review the delivery if necessary, pursuant to the procedures set forth in Rule 192.15(C).

In addition, the Seller shall require its customer to post additional margin equal to 25% of the total contract value of all contracts listed in the Delivery Instructions. Such additional margin shall be posted by the Seller with the Exchange not later than 11:00 a.m. on the next business day.

(E) The inspection company shall not be affiliated with the parties to the delivery. The inspection company must be capable of performing the quantity or quality tests requested by the Buyer or Seller in such a manner so as to assure that the product delivered conforms with these rules. The inspection company shall determine the quantity or quality of product transferred by using the prevailing practices of the facility transferring the product in effect at the time of delivery.

(F) The Buyer shall deliver to the Exchange, if requested, a copy of all reports of the inspection company.

#### **192.14 EFP and EFS**

- (A) An exchange of futures for, or in connection with, the product (EFP) or exchange of futures for swaps (EFS) consist of two discrete, but related, transactions; a physical commodity or swap transaction and a futures transaction. At the time such transaction is effected, the Buyer's Customer and Seller's Customer of the futures must be the Seller's Customer and Buyer's Customer of a quantity of the physical product or swaps agreement covered by this Section (or any derivative, by-product or related product). The quantity of physical product or swap agreement must be approximately equivalent to the quantity covered by the futures contracts.
- (B) Except as provided below, an EFP or EFS must take place during the hours of trading for the futures contract. An EFP or EFS is permitted at any time before 2:00 PM of the first business day following termination of trading in an expired futures contract, provided, however, that an EFP or EFS which establishes a futures position for both the Buyer's Customer and Seller's Customer shall not be permitted on the first business day following the expired contract.
- (C) Any EFP or EFS shall be governed by the provisions of this Rule and by the provisions of Rules 6.21 and 6.21A respectively.
- (D) Each Buyer's Customer and Seller's Customer must satisfy the Exchange, at its request, that the transaction is a legitimate EFP or EFS transaction. All documentary evidence relating to the EFP or EFS, including, without limitation, evidence as to change of ownership of the physical commodity or swap commitment, shall be obtained by the Clearing Members from their customers and made available by the Clearing Members for examination by the Exchange upon request.

- (E) A report of each EFP or EFS transaction shall be given, and notice thereof shall be posted on the floor of the Exchange, on the day that the transaction thereto was made, or if such agreement was made after the close of trading, then on the next business day. EFP or EFS transactions shall be cleared through the Exchange in accordance with normal procedures, shall be clearly identified as EFP or EFS transactions, and shall be recorded as such by the Exchange and by the Clearing Members involved.

#### **192.15 Alternative Delivery Procedure**

A seller or buyer may agree with the buyer or seller with which it has been matched by the Exchange under Rule 192.09(D) to make and take delivery under terms or conditions which differ from the terms and conditions described by this Chapter. In such a case, Clearing Members shall execute an Alternate 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 thereunder. 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.

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

(A) DEFINITION. As used in this Rule 192.16 the following terms, as well as variations thereof, shall have the meanings 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. No Late Performance may exceed the lesser of five continuous business days or eight consecutive calendar days.

(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 the contract times 42,000 times the number of contracts to be delivered.

(4) (a) "Party" means a buyer or seller.

(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, "day of late performance" means the 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) PETROLEUM DELIVERY COMMITTEE

(1) Force Majeure, Late Performance and Failure to Perform shall be determined by a Panel of the Petroleum Delivery Committee as set forth below. The Chairman of the Petroleum 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 of 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) Absent a declaration of a force majeure, the Panel may, with the consent of both the buyer and the seller, take any one or combination of the following actions as it deems suitable:

(a) grant an extension of time not to exceed five days from the date of the scheduled delivery, provided, however, that each delivery shall be completed not later than the fifth business day of the calendar month following the delivery month or the last day of the period provided for late performance of the contract, whichever is earlier;

(b) change the delivery site to a site within New York Harbor, provided that the seller has product or will have product at such site in time for delivery; or,

(c) modify the method of taking delivery. Nothing in this Subsection shall preclude a party or the Exchange from seeking the remedies set forth in Sections (D) and (E) of this Rule.

(5) Upon a finding of force majeure, the Panel may take any one or combination of the following actions as it deems suitable:

a) order an extension of time not to exceed five days from the date of the scheduled delivery, provided, however, that each delivery shall be completed not later than the fifth business day of the calendar month following the delivery month;

b) change the delivery site to a site within New York Harbor, provided that the seller has product or will have product at such site in time for delivery;

c) modify the method of taking delivery if such method is acceptable to the buyer;

d) allocate deliveries; or,

e) refer to Board of Directors for emergency action as provided in Article 7.

(6) The Panel may appoint an inspection company as provided in Rule 150.09 (A)(3), provided, however, that the inspection company appointed by the Panel shall not be either of the two inspection companies listed in the Notice of Intention to Accept.

#### (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) and (3) of this Section, specifying the findings of the Panel with respect to the late or failed delivery.

(2) Either one or both parties shall be assessed a penalty to be paid to the Exchange for each day of Late Performance as follows:

- first day of late performance - 3% of contract value, but not less than \$840 per contract;
- second day of late performance - 3% of contract value, but not less than \$840 per contract;
- third day of late performance - 3% of contract value, but not less than \$840 per contract;
- fourth day of late performance - 3% of contract value, but not less than \$840 per contract;
- fifth day of late performance - 3% of contract value, but not less than \$840 per contract;
- sixth day of late performance - 3% of contract value, but not less than \$840 per contract;
- seventh day of late performance - 4% of contract value, but not less than \$1,200 per contract;
- eighth day of late performance - 5% of contract value, but not less than \$1,200 per contract;

Such charges shall be cumulative for each day of late performance.

(3) When a party has failed to perform, the Compliance Department shall issue a Notice of Assessment assessing penalties of ten percent of the contract value, but not less than \$3,000 per contract, in addition to any penalties assessed pursuant to subparagraph (2) hereof, to be paid to the Exchange.

(4)(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 the Hearing Register 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 Petroleum Delivery Committee shall constitute a final disciplinary action of the Exchange.

(5) 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.

(6) 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.

(7) 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 therefor.

(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 Petroleum 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 delivery dispute under the special or Regular Arbitration Rules.

(3) The Arbitration will be governed by the Exchange Arbitration 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.

### **192.17 Time References**

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

## **Supplemental Information for the New York Harbor Ethanol Contract**

### **U.S. Ethanol Market**

The U.S. ethanol market is growing rapidly, particularly due to the government mandate for renewable fuels. The two largest ethanol markets are centered in New York (the main consumption center) and Chicago (the main production center). According to the EIA's *Monthly Oxygenate Report*, U.S. ethanol production has grown to over 400,000 barrels per day this year, mostly in the Padd 2 (Midwest) area. The EIA data on ethanol production can be viewed at the following link:

[http://tonto.eia.doe.gov/dnav/pet/pet\\_pnp\\_oxy\\_dc\\_nus\\_mbb1\\_m.htm](http://tonto.eia.doe.gov/dnav/pet/pet_pnp_oxy_dc_nus_mbb1_m.htm)

The New York Harbor has become a key hub for storage and distribution of ethanol to the East Coast via rail deliveries from the Midwest. As a note, the delivery points in the New York Harbor for the new NYMEX ethanol futures contract will be substantially the same delivery points as those used in the New York Harbor for the Exchange's existing gasoline and heating oil futures contracts. In the EIA's *Monthly Oxygenate Report*, the Padd 1 ethanol inventories have grown to 3.5 million barrels in storage as of year-end 2007, with approximately 50% to 60% of the Padd 1 stocks held in the New York Harbor terminals. The EIA data on ethanol stocks can be viewed at the following link under the category of fuel ethanol:

[http://tonto.eia.doe.gov/dnav/pet/pet\\_stoc\\_typ\\_d\\_r10\\_SAE\\_mbb1\\_m.htm](http://tonto.eia.doe.gov/dnav/pet/pet_stoc_typ_d_r10_SAE_mbb1_m.htm)

Currently, the monthly deliverable supply of ethanol in the New York Harbor cash market is approximately 2.5 to 3.0 million barrels (or 80,000 to 100,000 barrels per day) of ethanol that is stored and transshipped to points on the East Coast. The estimated trading volume of ethanol in the New York Harbor cash market is approximately 250,000 to 300,000 barrels per day. The typical transaction size is 25,000 barrels, with 12 to 20 separate transactions per day. The volume of spot transactions is more than half of all cash transactions, and the balance of trades are longer-term contracts. There is active trading in forward cash deals in the New York Harbor cash market, with forward cash market activity occurring up to six months into the future.

In addition, there is a robust OTC ethanol swaps market that is cash-settled and allows commercial participants to hedge price risk. The size of the OTC market is not transparent, but a small percentage (roughly 10% to 20%) of the OTC swaps activity is cleared by the CME and NYMEX. The CME's cleared ethanol swap futures contract has approximately 17,500 lots of open interest, which is equivalent to 12 million barrels of ethanol. In addition, the two cleared NYMEX ethanol swap futures contracts currently listed on the NYMEX ClearPort® Clearing and Trading platforms or venues have open interest of 2100 contracts, which is equivalent to 2.1 million barrels of ethanol. The forward activity in the OTC swaps market extends out to 24 months into the future.

### **Ethanol Market Participants**

The ethanol market participation is diverse and includes both oil companies and ethanol producers. The participants in the new ethanol contract largely overlap with the participants in the Exchange's existing gasoline and heating oil futures contracts. A partial listing is as follows:

**Refiners**

ConocoPhillips  
Valero  
Shell  
ExxonMobil  
BP  
Sunoco  
Amerada Hess

**Traders/Producers**

Northville  
Vitol  
ADM  
Koch  
Noble  
Cargill  
Morgan Stanley  
CSC Sugar LLC  
POET Ethanol Products  
Hess Energy Trading  
Hawkeye Renewables  
Verasun  
Aventine  
Lansing

**Brokers**

Powerline  
GFI Starsupply  
IVG Green  
MOAB  
Progressive  
Biofuels Connect  
Evolution Markets

**Financial**

Goldman Sachs  
FIMAT  
Merrill Lynch

**Speculative Limits for Ethanol Contract**

The Exchange has set the expiration month limit for the New York Harbor Ethanol futures contract at 150 contracts (equivalent to 150,000 barrels) which is addressed in a separate submission and which is approximately 5% to 6% of the monthly deliverable supply for ethanol of approximately 2.5 million to 3.0 million barrels in the New York Harbor area.