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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

OFFICE OF THE SECRETARIAT

**Re: Rule Certification. New York Mercantile Exchange, Inc. Submission #08.69:
Notification of Amendments to NYMEX Rule 9.04A, NYMEX ClearPort® Clearing
Procedures for Trade Submission.**

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 following amendments to NYMEX Rule 9.04A, NYMEX ClearPort® Clearing: Procedures for Trade Submission.

NYMEX Rule 9.04A codifies procedures for the submission of various futures and options transactions through the use of the NYMEX ClearPort® Clearing Trade Portal. This is a NYMEX clearing rule which is also used for the submission of comparable transactions for the Dubai Mercantile Exchange ("DME"). Various amendments are being made to this rule in order to clarify procedures for the two types of transactions which are submitted to the Exchange under this rule, via the NYMEX ClearPort® Clearing Trade Portal. These two transactions are: 1. Transactions submitted to the Exchange via the NYMEX ClearPort® Clearing Trade Portal for clearing in connection with a contract that is listed on the Exchange for clearing only ("DME Transactions"); or 2. Transactions listed for trading and clearing on the Exchange ("NYMEX Transactions"). These two transactions are not competitively executed on the Exchange.

These amendments also clarify the fact that DME Transactions are handled subject to DME rules and regulations. Additionally, references to "OTC Brokers" were changed to refer to "Brokers" which broadens the definition of broker functionality on NYMEX ClearPort® Clearing for these transactions. Further, other amendments were made, including references to a number of NYMEX Division, COMEX Division and DME rules, correction of trade submission deadlines, changing references from "Clearing Order" to "Transaction" for clarification purposes and other non-substantive amendments which clarify the rules for DME and NYMEX Transactions.

These amendments are being made in order to clarify the types of transactions that can be submitted and to address the fact that breaches of procedure for DME Transactions are handled pursuant to DME rules and regulations.

Pursuant to Section 5c(c) of the Commodity Exchange Act ("Act") and CFTC Rule 40.6, the Exchange hereby certifies that the attached rule amendments comply with the Act, including regulations under the Act. These changes will be made effective on July 11, 2008.

Should you have any questions concerning the above, please contact Thomas LaSala, Chief Regulatory Officer, at (212) 299-2897, or the undersigned at (202) 715-8517.

Very truly yours,



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

Attachment

NOTIFICATION OF AMENDMENTS TO NYMEX RULE 9.04A

(Bold/strikethrough indicates deletions; bold/underline indicates additions)

9.04A NYMEX ClearPort® Clearing: ~~Use of EFS and EFP Procedures for Trade Submission~~

(A) Scope of this Rule. This rule governs transactions not competitively executed on the Exchange ("Transactions") that are submitted to the New York Mercantile Exchange ("NYMEX" or the "Exchange") via the NYMEX ClearPort® Clearing Trade Portal ("CPC Trade Portal") for clearing in connection with a contract that is listed on the Exchange for clearing only (Dubai Mercantile Exchange "DME") ("DME Transactions") or listed for trading and clearing on the Exchange ("NYMEX Transactions"). ~~None of the provisions of this rule govern transactions submitted to clearing that have been executed in an over-the-counter pari-mutuel auction, which are instead governed by the terms of Rule 9.40C.~~ In submitting either a NYMEX or DME Ttransaction to the CPC Trade Portal NYMEX ClearPort® Clearing or in allowing either a NYMEX or DME Ttransaction to be submitted to ~~the Exchange to NYMEX ClearPort® Clearing to the CPC Trade Portal~~, the two parties to the Transaction shall be deemed to have mutually agreed to initiate a process to substitute their Ttransaction for a standardized futures contract ~~listed for clearing only (DME)~~ or listed for trading and clearing on the Exchange. For purposes of this rule, the two principals in either a NYMEX or DME the Ttransaction shall be referenced as the "Parties to the Transaction."

Further, with respect to DME Transactions, any breach of procedures related to this Rule 9.04A shall be handled pursuant to DME rules and regulations.

(B) **Transactions: Compliance with Regulatory Exemptions and Exclusions.** Each of the Parties to the NYMEX Transaction shall be responsible for ensuring that the Transaction complies with CFTC regulatory requirements as applicable for such transaction, including as appropriate compliance with the terms of a statutory exemption or exclusion under the Commodity Exchange Act from other CFTC regulation relied upon by the Parties to the Transaction.

(C) **Submission ~~stitution~~ of NYMEX and DME Futures and Options for the Transaction.** The process of substitution submission of a NYMEX or DME futures or options ~~contract for a~~ Transaction shall not be deemed to have been completed unless and until the Parties to the Transaction have successfully concluded the submission of the Transaction to the Exchange (or the DME as appropriate) as an exchange of futures for physicals ("EFP"), ~~or as an exchange of futures for swaps ("EFS")~~, an exchange of

~~OTC Option for exchange option ("EOO") or as a Block Trade, as applicable, pursuant to the respective provisions of NYMEX Rules 6.21, or Rule 6.21A, 6.21F, 6.21C- COMEX Rules 104.36, 104.36A, 104.36B, 104.36C, DME Rules 6.24 and 6.31, and the provisions of this rule. For forward transactions involving deferred delivery of the physical commodity to be submitted to the Exchange, the Parties to the Transaction shall utilize the EFP procedure, and for swap transactions to be submitted to the Exchange, the Parties to the Transaction shall utilize the EFS procedure.~~

(D) **Trade Submission Procedures.** All Transactions submitted to the Exchange pursuant to this rule must be submitted in accordance with the procedures established by the Board of Directors for this purpose, as amended from time to time. The Parties to the Transaction and any ~~OTC Broker~~ Party authorized under Section (E) of this Rule with brokering capability ("Broker" or "Brokers") authorized to submit executed transactions on their behalf to the Exchange and authorized for related activities shall be exclusively responsible, both individually and jointly, for accurately confirming the details of the Transaction to the Exchange. Once submitted, all such Transactions, subject to the rules for trade adjustments set forth in Section (G) of this Rule, shall be deemed final. Neither the Exchange nor a Clearing Member carrying the account of either party will have any responsibility in the confirmation of trade terms for the ~~EFP or EFS~~ Transactions.

(E) **Registration of Eligible Participants, Eligible Accounts and Authorized OTC Brokers.** Each NYMEX and DME Clearing Member must register with the Exchange in the manner provided any customer authorized by the Clearing Member to submit transactions to the Exchange (or the DME, as appropriate) pursuant to this rule, and must also register with the Exchange the applicable account numbers for each such customer. For each such account, the Clearing Member carrying that account also must submit to the Exchange in the manner provided the name of any OTC Broker(s) who has registered with the Exchange for services provided by the Exchange, and who is authorized by the customer to act on its behalf in ~~the submission of~~ executed transactions to the Exchange and related activity.

For any such OTC Brokers authorized by the customer and submitted to the Exchange by the Clearing Member, such submission by the Clearing Member will not constitute an endorsement or ratification of the customer's authorization of the OTC Broker. Moreover, submission of OTC Brokers authorized by the customer will not mean that the Clearing Member is in privity with, has a relationship with and/or is otherwise standing behind any of the customer's authorized OTC-Brokers, and the Clearing Member will have no responsibility for any such OTC Brokers selected by the customer and no duty or obligation to supervise the activities of any such OTC-Brokers.

(F) **Establishment of Authorized Commodities and Total Risk Value.** For each account number that has been registered with the Exchange pursuant to Section (E) of this rule, a NYMEX and DME Clearing

Member also must input into the Exchange's Risk Allocation Value "E-RAV" system authorization indicating the specific commodities for which a Transaction may be submitted to the Exchange pursuant to this rule and the risk value(s) assigned by the Clearing Member for Transactions for that account.

(G) Trade Deletion Procedures for Transactions Submitted via NYMEX ClearPort® Clearing Trade Entry Portal Web Interface. Following submission of the trade details to the web interface by an OTC Broker (or by Exchange staff as mutually agreed by the Parties to the Transaction), an e-mail will be transmitted to the Parties to the Transaction notifying them that they have been listed as counterparties in a Transaction that has been submitted to the Exchange. Following such submission, a buyer or seller may not unilaterally reject the trade terms previously submitted to the Exchange. However, in order to correct an error resulting from the good faith actions of the OTC Broker or Exchange staff, as applicable, and upon mutual consent of the Parties to the Transaction, an OTC Broker or Exchange staff, as applicable, may void the transaction provided, however, that this void response is received by the Exchange within sixty (60) minutes of the time of the initial submission of the Transaction to the Exchange.

Following the posting of the transaction on the Exchange, the Parties to the Transaction shall have no recourse or remedy under NYMEX or DME Exchange rules and procedures against any OTC Brokers and/or Clearing Members in connection with that Transaction and instead would need to pursue such private remedies as would be otherwise available under existing law.

(H) Entry of Transactions Clearing Orders. For a Transaction submitted to the Exchange pursuant to this rule, such transaction first will be routed to the Exchange's E-RAV Credit Check system. The time of entry of a Transaction Clearing Order into the Exchange's E-RAV system will be recorded by the system and will be used by the Exchange as the time that an E-RAV Credit Check was conducted pursuant to Section (I) below.

(I) Use of E-RAV Credit Check System. The Exchange will conduct an E-RAV Credit Check for each Transaction Clearing Order. The E-RAV Credit Check will confirm whether the Clearing Member carrying that account has authorized that account for Transactions submitted pursuant to this rule in the commodity involved in the Transaction Clearing Order, and confirm whether the entry of the Transaction Clearing Order into clearing would fall within the OTC risk value(s) established by the Clearing Member.

At all times until both Clearing Orders sides (Buy and Sell) of the Transaction have successfully cleared the E-RAV Credit Check, a Transaction submitted to the Exchange pursuant to this rule shall remain as an uncleared, bilateral OTC Transaction wherein the Parties to the Transaction continue as principals in that transaction.

In the event that either Clearing Order side of the Transaction is rejected as a result of the ERAV Credit Check test, ~~the EFS or EFP procedure would be deemed to have been terminated, and the Parties to the Transaction and their respective Clearing Members would be informed accordingly. Thereafter, any determination as to further action with respect to the OTC Transaction would be resolved by the Parties to the Transaction independently of the their Clearing Members and/or the Exchange.~~

(J) Trade Submission Deadlines. Transactions that are submitted, confirmed and accepted for clearing, as further provided by Section (K) of this rule, prior to ~~2:30~~ 5:15 p.m. New York time on an Exchange business day will be included by the Exchange for clearing for that business day ~~(except for Fridays and a business day preceding a holiday weekend)~~ and prior to 4:30 p.m. on Friday and on a business day preceding a holiday weekend. The Exchange reserves the right to modify these business hours without notice at any time. ~~The hours for electronic submission via the NYMEX website shall be from 7:00 p.m. Sunday evening through 4:30 p.m. Friday afternoon, except for the period from 2:40 p.m. to 3:15 p.m. (Monday-Thursday). The NYMEX facilitation desk will generally be available to assist users from 7:30 a.m. to 5:00 p.m. (Monday-Friday.)~~ 24 hours a day on all Exchange business days.

(K) Clearance by Both Clearing Orders Sides of the Transactions of Credit Check. Upon clearance by both ~~Clearing Orders sides of the Transaction~~ of the E-RAV Credit Check, the Transaction shall be deemed to have been accepted for clearing and will be routed automatically to the Exchange's clearing system. ~~Consequently, the EFS or EFP procedure also shall be deemed to have been completed, and futures contracts thereafter will effectively be substituted for the Transaction that is thus extinguished between the Parties to the Transaction.~~

Notwithstanding the above, a Clearing Member also shall be responsible for accepting and clearing a position for a ~~Clearing Order~~ Transaction entered into the Exchange's clearing system for clearing following any non-operation of the Exchange's E-RAV Credit Check functionality for the applicable account carried by the Clearing Member.