



A CME/Chicago Board of Trade/NYMEX Company

July 9, 2009

OFFICE OF THE SECRETARIAT
C.F.T.C.
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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

**Re: Rule Certification. New York Mercantile Exchange, Inc.
Submission # 09.131: Notification of Amendments to
Existing SO₂ Emission Allowance Futures Contract**

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 amendments to its existing SO₂ Emission Allowance Futures contract (chapter 782, commodity code RS) in connection with the launch of the new SO₂ Emission 25-Allowance Futures contract. These amendments are being made to implement conforming language across similar contract groups.

Pursuant to Section 5c(c) of the Commodity Exchange Act ("Act") and CFTC Rules 40.6, the Exchange hereby certifies that the attached amendments comply with the Act, including regulations under the Act. These changes will be made effective on trade date July 13, 2009.

Should you have any questions concerning the above, please contact Brad Leach at (212) 299-2609, or me at (312) 338-2483.

Sincerely,

/s/ Lisa A. Dunsky
Director and Associate General Counsel

Attachment: Amended Rules for existing SO₂ Emission Allowance Futures contract

(bold/underline indicates addition; strikethrough indicates deletion)

NYMEX SO₂ Emissions Allowance Futures Contract

782.01A Definitions

- A. EPA means the U.S. Environmental Protection Agency or any successor agency with similar jurisdiction.
- B. SO₂ Allowance refers to a tradable permit to emit SO₂ as specified further by EPA
- C. SO₂ Allowance Management System (AMS) 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 Clean Air Markets Division (CAMD) Business System is the EPA's electronic platform for recording information submitted by regulated entities and other Program participants, including the electronic transfer of allowances between accounts.
- F. The terms "Seller" and "Buyer" shall mean the short Clearing Member and the long Clearing Member, respectively.
- G. The terms "Seller's Customer" and "Buyer's Customer" shall mean the seller and buyer of the physical product.
- H. 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 813.6-52

[Rules 782.01 – 782.04 are unchanged]

782.05 Delivery Months

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

[Rules 782.06 – 782.07 are unchanged]

782.08 Product Placement

For purposes of Rule 9A.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 AMS account certification from his customer, in the form prescribed by the Exchange stating that the Customer has an account with AMS, with access to CAMD Business System.

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 9A.19.

782.09 Delivery Procedures

(A) RESPONSIBILITIES OF CLEARING MEMBERS HAVING OPEN LONG POSITIONS

(+) 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;

2) INFORMATION PROVIDED BY SELLER TO BUYER

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

(B) RESPONSIBILITIES OF CLEARING MEMBERS HAVING OPEN SHORT POSITIONS

(4) 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, ATS Account Number, Vintage Year, Name, Phone Number and e-mail address of the Account Representative (AAR) or the authorized alternate for that ATS account, Any additional information as may be required by the Exchange.

2) INFORMATION PROVIDED BY SELLER TO BUYER

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

[Rules 782.09 – 782.11 are unchanged]

782.12 Exchange of Futures for, or in Connection with Product- Physical (EFP) and Exchange of Futures for Swaps (EFS)

- A. An exchange of futures for, or in connection with, ~~the product (EFP)~~ or exchange of futures for, or in connection with, swap (EFS) transactions consist 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 or swaps agreement 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 or EFS transaction must take place during the hours of futures trading for the SO2 Emissions Allowance futures contract. An EFP or EFS 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 or EFS 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 expired futures contract.
- C. Any An EFP or EFS transaction ~~Exchange of Futures for, or in Connection with, Product (EFP)~~ shall be governed by the provisions of Rule 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 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 or 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 entered 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.

[Rule 782.13 is unchanged]

782.14 Late Performance, Failure to Perform, and Force Majeure

(A) DEFINITION. As used in this Rule 782.14 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. **Late Performance shall be restricted to three business days. Late Performance beyond three business days by, a Seller or a Buyer will be deemed a Failure to Perform.**
2. "Day of Late Performance" means the twenty-four hour period commencing **immediately after twelve hours** after a Buyer or a Seller was to have performed. **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 was to have performed shall be a Day of Late Performance.**
3. "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.
4. "Contract Value" means the amount equal to the settlement price on the last day of trading in a futures contract times 100 (the number of allowances per contract) times the number of contracts to be delivered.
5. (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 nominated half cycle, "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 of the Emission Allowance Delivery Committee 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 of the Emission Allowance Delivery Committee 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 Market Regulation 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 anyone or combination of the following actions as it deems suitable grant an extension of time not to exceed five days from the date of the scheduled delivery.

~~Nothing in This Subsection shall not 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 anyone 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 Exchange, represented by the Market Regulation Department, Board of Directors for emergency action as provided in Exchange Rules 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 Market Regulation Compliance Department, shall issue a Notice of Assessment, assessing a penalty of 10% of contract value for each applicable day of Late Performance. ~~in accordance with subsections (2) of this Section, specifying the findings of the Panel with respect to the late or failed delivery.~~, shall issue a Notice of Assessment
- (2) When a Party has failed to perform, the Market Regulation Compliance Department shall issue a Notice of Assessment assessing penalties of ~~ten~~ twenty percent (~~10~~ 20%) of the contract value, in addition to any penalties assessed pursuant to subparagraph ~~(1)~~ (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 Market

Regulation 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 **Market Regulation** 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 **Chapter 4-Bylaw 406**. 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 **Market Regulation** 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 **Market Regulation** Compliance Department or are otherwise relevant to the matter.
- (5) In the event of an appeal by a Party, the **President 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 **President, or his designee, 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 **Market Regulation** 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 counselor or other representative of his choice at the appeal.
- (c) The **Market Regulation** 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 **Market Regulation** 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 **Market Regulation** Compliance Department's evidence and shall be entitled to call witnesses and introduce documents in support thereof.
- (e) The **Market Regulation** 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 **President Board** concerning acceptance or rejection of, any offer of settlement submitted by Appellant. In the case of an offer of settlement, acceptance by the **President 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 **6A5** of the Rules except that the **President Chairman** of the Exchange or his designee shall appoint an Arbitration Panel composed of three **m**Members of the Exchange, at least one of whom shall be a Member of the Board of Directors.