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OFC. 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: Rule Certification. New York Mercantile Exchange, Inc. Submission #08.74:
Notification of Amendments to NYMEX Rule 9.36, Penalties.**

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 9.36, Penalties.

NYMEX Rule 9.36 addresses the penalties associated with violations of the Exchange's speculative position limits. The amendments to this Rule implement a tiered penalty structure for any second speculative position limit violation within 12 months of a previous violation. This tiered structure consists of automatic penalties for a second violation of the rule: a \$5,000 fine for a violation up to 25% above the applicable limit, and a \$15,000 fine for a violation in excess of 25% above the applicable limit.

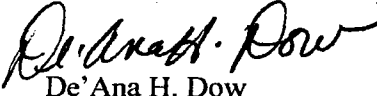
Additional amendments to the Rule clarify any potential ambiguity with respect to:

1) fines applicable to violations by a non-Member customer; 2) the assessment by the Exchange of the non-Member customer's Clearing Member for such fines; and 3) the manner in which the Exchange may assess multiple Clearing Members for a non-Member customer violation carried across those Clearing Members. Finally, various non-substantive housekeeping amendments are being made.

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 29, 2008.

Should you have any questions concerning the above, please contact Anthony V. Densieski, Vice President, Market Surveillance, at (212) 299-2881, or the undersigned at (202) 715-8517.

Sincerely,

A handwritten signature in black ink, appearing to read "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

Attachment

NOTIFICATION OF AMENDMENTS TO NYMEX RULE 9.36

(Insertions are indicated by bold, underlined text; deletions are indicated by bold, stricken text.)

Rule 9.36, Penalties

(A) Definition of a Speculative Limit Violation. For purposes of this Rule, the ownership or control over, as well as the carrying by a Clearing Member of, a position in excess of that allowed under Rules 9.26 - 9.35 shall be deemed a speculative position limit violation; provided, however, that a Clearing Member shall not be deemed to be in violation for carrying the position of another person for whom the Clearing Member does not exercise trading discretion unless the position exceeds the speculative position limit as of the close of trading on two successive business days. Each business day on which a customer, ~~m~~**Member**, or ~~e~~**Clearing m**~~Member~~, as the case may be, is in excess of the limits allowed under Rules 9.26 - 9.35 shall be considered a separate speculative position limit violation.

Where an overage results from the aggregation of two or more customer accounts, the overage shall not be deemed a speculative position limit by the Clearing Member, provided that the Clearing Member demonstrates to the satisfaction of the President or his designee that: (1) it did not carry any individual customer account which held an excessive position; (2) it took timely and appropriate remedial action upon discovery or notification of the violation (whichever occurs first); and, where applicable, (3) it employs systems and procedures reasonably calculated to discover whether positions held in two or more accounts carried by it should be aggregated under the rules of the Exchange.

(B) First Violation. The first occurrence of a speculative position limit violation will not be deemed a rule violation. ~~However, the occurrence of a first violation, however, it~~ will result in a warning letter being issued by the Compliance Staff to the customer (includes any Member or non-~~m~~**Member** customer), and the warning letter shall be copied to the carrying Clearing Member(s). ~~and to the carrying Clearing Member; provided, however, that where the violation results from the aggregation of two or more customer accounts, no warning letter shall be issued to any Clearing Member that demonstrates to the satisfaction of the President or his designee that: (1) it did not carry any individual customer account which held an excessive position; (2) it took timely and appropriate remedial action upon discovery or notification of the violation (whichever occurs first); and, where applicable, (3) it employs systems and procedures reasonably calculated to discover whether positions held in two or more accounts carried by it should be aggregated under the rules of the Exchange.~~ Where the carrying Clearing Member(s) has also committed a speculative position limit violation as set forth in paragraph (A) of this Rule 9.36 by carrying such positions, a warning letter shall be separately issued to such Clearing Member(s).

(C) Subsequent Violation.

(1) Automatic Fine By Clearing Member or Member Within 12 Months

[insert line break] The occurrence of a second speculative position limit violation **by a non-Member customer, Member, or Clearing Member** within 12 months of any previous speculative position limit violation shall be a rule violation which **shall subject such non-Member customer, Member, or Clearing Member** ~~will subject the Member or Clearing Member, as the case may be,~~ to an automatic fine, **and, in the case of a speculative position limit violation by a Member or Clearing Member, to a cease and desist order issued by the President or his designee.** **Fines levied pursuant to this Paragraph (C)(1) shall be assessed by the President, or his designee, against the Member, Clearing Member, or in the case of a non-Member customer, against the non-Member customer's Clearing Member,** in accordance with the fine schedule in Paragraph (D) of this Rule 9.36, ~~and to a cease and desist order issued by the President, or his designee.~~

(2) **Violation** By Clearing Member or Member After 12 Months

The occurrence of a second position limit violation **by a Member or Clearing Member** more than 12 months after any previous speculative position limit violation may subject **such the** Member or Clearing Member, as the case may be, to a cease and desist order issued by the President, or his designee.

(3) By Customer

In addition to automatic fines levied against a customer pursuant to paragraph (C)(1) of this Rule 9.36, ~~the~~ occurrence of a second speculative position limit violation by a customer will subject the customer to a warning letter issued by the **Compliance Staff President, or his designee,** stating that any future violation by the customer of the speculative position limit rules may result in extraordinary sanctions, including, but not limited to, conditioning, limiting, or denying access of such customer to the market. Imposition of any such extraordinary sanction shall be preceded by a hearing conducted before a panel of the Business Conduct Committee.

(D) Automatic Fine Schedule for subsequent speculative limit violation within a 12-month period.

Situation	Fine	Assessed Against
(1) Member account <u>up to 25%</u> over speculative position limits.	\$1,000 <u>\$5,000</u>	Member and/or Clearing Member
<u>(2) Member account in excess of 25% over speculative position limits.</u>	<u>\$15,000</u>	<u>Member and/or Clearing Member</u>
(2) (3) Non-Member Customer account <u>up to 25%</u> over speculative position limits.	\$1,000 <u>\$5,000</u>	Clearing Member
<u>(4) Non-Member customer account in excess of 25% over speculative position limits.</u>	<u>\$15,000</u>	<u>Clearing Member</u>
(3) (5) House account <u>up to 25%</u> over speculative position limits.	\$1,000 <u>\$5,000</u>	Clearing Member
<u>(6) House account in excess of 25% over speculative position limits.</u>	<u>\$15,000</u>	<u>Clearing Member</u>
<u>(7) Clearing Member carries an account up to 25% over speculative position limits.</u>	<u>\$5,000</u>	<u>Clearing Member</u>
<u>(8) Clearing Member carries an account in excess of 25% over speculative position limits.</u>	<u>\$15,000</u>	<u>Clearing Member</u>

With respect to a customer account that is carried with multiple Clearing Members that taken together exceed applicable position limits, the applicable fine may be assessed, at the sole discretion of the President or his designee: (1) equally among such carrying Clearing Members; (2) on a pro rata basis among carrying Clearing Members; (3) solely against one or more such carrying Clearing Members.

(E) Additional Penalties. Any other provision of these Rules notwithstanding, a panel of the Business Conduct Committee may take other actions or impose additional penalties against any customer, Member or Clearing Member, including, but not limited to, limiting, conditioning or denying access to the market, in the following cases:

~~(1) Where the violation occurs in the spot month;~~

~~(2)~~ (1) Where the violation involves a position which is more than 150 percent of the speculative or approved hedge position limits;

~~(3)~~ (2) Where the violation is the third offense within any 12-month period;

~~(4)~~ (3) Where a Clearing Member fails to promptly comply with an instruction by the President or his designee to reduce any position; **and or**

~~(5)~~ (4) Where the President or his designee Compliance Department deems the violation to

constitute a severe abuse of Exchange rules.

(F) Alternative Position Limit Violation Evaluation. If a position exceeds speculative position limits at the close of trading when evaluated using the previous day's NYMEX Risk Factors, but does not exceed speculative position limits when evaluated using the NYMEX Risk Factors as of that day's close of trading, then the position shall not be deemed to violate the speculative position limits contained herein.

(G) Multiple Clearing Members. A customer or member who maintains positions at more than one Clearing Member which taken together exceed the speculative position limit will be deemed to have waived confidentiality regarding his positions, and the Clearing Members carrying the excessive positions may be informed of the overall position and required to make reductions on a pro rata basis.