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August 20, 2008

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 #08.80: Notification of New Chapter 2A and Amendments to Chapters 1, 2, 3, 9, 101, 104, Rules 11.61, 11.62 11G.04, 5.36, 5.39, 6.10, 6.90, 8.00, 8.01, and to NYMEX Bylaws and COMEX Bylaws.

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 new Chapter 2A and the following amendments to Chapters 1, 2, 3, 9, 101, 104, Rules 11.61, 11.62 11G.04, 5.36, 5.39, 6.10, 6.90, 8.00, 8.01, NYMEX bylaws and Commodity Exchange Inc. ("COMEX") bylaws as the result of the change in corporate structure. As a note, this filing is being submitted conditional upon certain Board approval by the CME Group Inc. Board of Directors at a meeting scheduled for August 22, 2008. The existing NYMEX bylaws are being deleted in their entirety and replaced with the new version of the bylaws.

Except for Chapters 101 and 104, which apply only to the COMEX Division, all other amendments of rules apply to both the NYMEX and COMEX divisions. The changes noted below are intended to identify the most significant changes included in this submission, and are not an exhaustive list.

Chapters 1 and 101 are being amended to reflect current usage within the new corporate structure and to incorporate terms not presently defined elsewhere in the Rules. New definitions include "Charter," "Class A Member," "Class A Membership," "Class B Member," "Class B Membership," "Compliance Department," "Public Director," and "Regular Trading Hours." Deleted definitions include "Futures," "Member," and "Settlement Premium." Modified definitions include "Clearing Association, Clearing House or Clearing Department."

Rule 104.10 ("Recesses") is being deleted to reflect changes in the corporate reporting structure. Further, Rules 104.15, 104.62 and 104.69 are being modified to reflect additional changes in the corporate reporting structure. For example, "Secretary" is being changed to "Membership Services Department" to indicate the staff member

responsibility within the new reporting structure. Lastly, Rule 104.88 and certain other terms are being removed due to redundancy

Chapter 2 is being amended to modify references to the "Board" and "Membership Committee" in order to conform to the new corporate structure. The structure and powers of the "Membership Committee" are being amended, and the chapter is being amended to reflect those changes. Rule 2.08 is being removed as it is no longer applicable. Further, Rule 2.10 ("Member Firm Privileges") is being amended in order to update references from NYMEX Holdings Inc. common stock to CME Group common stock. Additionally, certain references to the Compliance/Surveillance Departments are being changed to the "Audit Department" in order to reflect changes in corporate structure.

Furthermore, new rules are being added to Chapter 2 in order to codify procedures dealing with failure to pay, effect of suspension, definitions for purposes, duty to report emergency event, summary suspension, creditors of insolvent Class A Members, establishment of valid claims, expelled Class A Members, sale of membership, disposition of proceeds and reinstatement of suspended Class A Member. Many of these new rules are being moved from the NYMEX/COMEX bylaws into this section of the rulebook.

New Chapter 2A contains two sections and is being added to the rulebook. One section describes the powers and duties of the Board of Directors, and the other section contains provisions relating to Exchange officers and employees. The Board authority provisions pertain to powers and duties related to Exchange facilities and avoiding conflicts. Further, this chapter has provisions pertaining to indemnification, Exchange physical emergencies, disclosure of information and the effect of other Exchange rules for Exchange officers and employees.

Chapter 3 is being amended in order to codify procedures for the new corporate structure. Rule 3.31 is being amended to reflect that the Membership Committee jurisdiction no longer covers "clearing" firms, and to reflect other changes relating to the new structure. Further, references to redundant committees and committees fulfilling functions that will be overseen by parallel committees or oversight structure within CME Group are being removed. Lastly, rules are being added or amended pertaining to disqualification from Board and Committee Service, Clearing House Committee, jurisdiction and general provisions, settlement offers, emergency actions and the Membership Committee.

Rule 9.21 is being amended to convert current NYMEX share requirements for Class A Members, Member Firms and Clearing Members to the CME Group share requirement equivalent. Rule 9.06 is being added in order to codify procedures for Emergency Financial Conditions. Additionally, the Exchange is modifying Rule 9.23 in order to establish uniform protection of clearing house financial safeguards for all exchanges in CME Group. Further, Rules 9.01 through 9.06, 9.10, 9.14, 9.17, 9.20, 9.21, and 9.24 are being modified to reflect that the Clearing House shall be under the jurisdiction of the Clearing House Committee, which has been defined to mean the CME Clearing House Risk Committee, with daily operation overseen by the President of the Clearing House and Clearing House staff.

Generally, rules throughout Chapter 9 are being modified in order to reflect the change from Board oversight of clearing rules to Clearing House Committee oversight. Additionally, in Rule 9.33, the term "Director of Market Surveillance" is being replaced by "Chief Regulatory Officer". The term "Office of Secretary" is being removed in Rule 9.36A, leaving the Compliance Department to accept service and set schedules for the Appeals Committee. Lastly, inapplicable Rules are being deleted and Rules 9.23A, 9.23B, 9.23C, 9.23D regarding protection of the Clearing House are being added.

Rules 11.61, 11.62 and 11G.04 are being amended in order to implement uniform application of standards and procedures among all CME Group Exchanges. NYMEX Rules 5.36, 5.39, 6.10, 6.90, 8.00 and 8.01 are being amended for consistency with the new corporate structure. Rule 5.36 is being amended and 5.39 is being added in order to reflect new arbitration procedures as the result of the new corporate structure. Rule 6.10 is being amended by removing references to certain Exchange Officials and replacing them with the more general term "Senior Exchange Officials." Rule 6.90 is being amended by changing the structure for the appeal of fines, to a subcommittee of the "Adjudication Committee," replacing the "Compliance Review Committee."

Rule 8.00 is being amended by removing the responsibility for the Compliance Department to submit reports to "the Board." Lastly, Rule 8.01 is being amended to reflect that the Audit Department may submit investigative reports to the Clearing House Committee, just as the Compliance Department now submits investigative reports to the Business Conduct Committee.


The NYMEX Resolutions are being amended in order to remove resolutions that are out-dated. The corporate governance resolution is being removed relating to Rule 3.31 and 3.03 regarding powers of the Membership Subcommittee to determine categorizations of candidates for nomination for election to the Board. Further, all other corporate resolutions (presently under the heading "Resolutions" at the end of the Rulebook) are being removed since they are outdated with the exception of "Resolution of Board of Directors with Respect to Adjudication and Arbitration Panel Members, Resolution to Confer Additional Trading Privileges to COMEX members for Platinum, Palladium and Propane, Resolution regarding the trading of liquefied Propane Gas Futures, and Representation by Committee Members of Parties to Arbitration.

Furthermore, the NYMEX and COMEX bylaws are being amended in order to reflect that many of the bylaw provisions have been relocated to relevant chapters in the rulebook. The remaining bylaws are being amended or deleted to reflect the terms of the deal and to update relevant references relating to moved bylaws. Lastly, for informational purposes, the Exchange has included an amended version of its Certificate of Incorporation.

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, conditional upon Board approval noted previously, will be made effective on August 25, 2008.

Should you have any questions concerning the above, please contact Nancy Minett at (212) 299-2940, Brian Regan at (212) 299-2207, or the undersigned at (202) 715-8517.

Sincerely,

A handwritten signature in black ink, appearing to read "De'Ana H. Dow". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

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

Attachments:

cc: Ananda Radhakrishnan, Director, CFTC DCIO
Richard Shilts, Director, CFTC DMO

NYMEX CHAPTER 1 – DEFINITIONS

1.00 Singular Number; Gender

Unless the context otherwise requires, words importing the singular number include the plural; and words importing the masculine gender include the feminine and neuter.

1.01 Act

The term "Act" shall mean the Commodity Exchange Act, as amended from time to time.

1.012 Board

The term "Board" shall mean the Board of Directors of the Exchange.

1.023 Business Day

The term "business day" shall mean any day on which the Exchange is open for trading.

1.034 Bylaws

The term "Bylaws" shall mean the "Bylaws" of the Exchange adopted by Stockholders for the regulation and management of the Exchange.

1.045 Carrying Member

The term "carrying member" shall mean a member that carries one or more customer accounts.

1.06 Charter

The term "Charter" shall mean the Certificate of Incorporation of the Exchange.

1.07 Class A Member

The term "Class A Member" shall mean an owner or a holder of a Class A Membership.

1.08 Class A Membership

The term "Class A Membership" shall mean a Class A membership issued by the Exchange.

1.09 Class B Member

The term "Class B Member" shall mean the owner of the Class B membership which shall be CME NYMEX Holdings Inc.

1.10 Class B Membership

The term "Class B Membership" shall mean the single Class B membership issued by the Exchange.

1.11 Clearing Association, Clearing House or Clearing Department

The terms "Clearing Association", "Clearing House" or "Clearing Department" shall mean the department of the Exchange or any corporation, organization or other entity authorized by the Board through which trades on the Exchange are cleared. ~~to clear commodity futures and options contracts executed on the Exchange.~~

1.12 Clearing House Committee

The term "Clearing House Committee" shall mean the CME Clearing House Risk Committee.

1.0613 Closing Range

(A) Except as provided in Section (B) of this rule, the term "closing range" shall mean, for each respective commodity futures and options contract that is listed for trading during the Regular Trading Hours trading session on the floor of the Exchange, the final two minutes (2) of trading; provided that with respect to the final day of trading in energy futures contracts for delivery in the current delivery month, closing range shall mean the last half hour of trading in such contracts.

(B) The term "closing range" shall mean, for each respective NYMEX electricity and Middle East Sour Crude Oil futures and options contract that is listed for trading solely on NYMEX ACCESS®, the final 10 minutes of the trading session on NYMEX ACCESS® for such contract.

1.0714 Commission

The term "Commission" shall mean the Commodity Futures Trading Commission.

1.0815 Commodity

The term "commodity" shall mean any or all goods, articles, services, rights and interests in which contracts for future delivery or options contracts are presently, or in the future, may be, dealt in, or are subject to the Bylaws and Rules.

1.16 Compliance Department

The term "Compliance Department" shall mean the CME Market Regulation Department which is authorized by the Board to provide regulatory services on behalf of the Exchange.

1.0917 Customer

The term "customer" shall mean a person, including another member, for whom a member carries an account.

1.108 Customer Account

The term "customer account" shall mean an account carried for a customer, including an omnibus account.

1.1419 Delivery Month

The term "delivery month" shall mean the month in which the actual commodity is delivered as required by the Bylaws and Rules or the month in which a futures contract is finally settled in accordance with the Bylaws and Rules.

1.2042-Exchange

The term "Exchange" shall mean the New York Mercantile Exchange Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware.

1.1321 Exercise Price

The terms "exercise price", "strike price" and "striking price" shall be synonymous and mean the price at which the futures contract underlying the options contract may be purchased or sold upon exercise of the option.

1.1422 Expiration Date

The term "expiration date" shall mean the last day on which an options contract may be exercised into the underlying futures contract.

1.2315 Firm

The term "firm" shall mean a corporation, partnership, association, sole proprietorship or other judicial entity.

1.2416 Floor Broker

The term "Floor Broker" shall mean any Class A member who has been granted floor trading privileges pursuant to the Bylaws and Rules and who, pursuant to said Bylaws and Rules, buys and sells any commodity futures or options contract on the Exchange for any person other than himself.

1.1725 Floor Member

The term "Floor Member" shall mean any Class A member who is either a Floor Broker or a Floor Trader.

1.1826 Floor Trader

The term "Floor Trader" shall mean any Class A member who has been granted floor trading privileges pursuant to the Bylaws and Rules and who, pursuant to said Bylaws and Rules, buys and sells any commodity futures or options contract on the Exchange for his own account.

1.19 Futures Contract

~~The term "futures contract" shall mean any contract for the purchase or sale of a commodity for future delivery which is traded on and subject to the Bylaws and Rules of the Exchange.~~

1.207 Good Standing

The term "good standing" shall mean, when used with reference to a Member, a Member who is not subject to an order of suspension or expulsion; who is current in the payment of all dues, assessments, fees and fines; and, who is not subject to an order of the Commission suspending or revoking any registration with the Commission or denying trading privileges on any Exchange.

1.218 Holiday

The term "holiday" shall mean any day which the Board may designate as an Exchange holiday on which the Exchange shall be closed.

1.22 Member

~~The term "Member" shall mean Class A Members of the Exchange and Member Firms.~~

CLASS A MEMBER

~~The term "Class A member" shall mean a member who has trading rights on the Exchange.~~

CLASS B MEMBER

~~The term "Class B member" shall mean "Class B member" as defined in the Certificate of Incorporation of the Exchange.~~

1.2329 Member Firm

The term "Member Firm" shall mean any firm to which membership privileges on the Exchange have been conferred.

1.2430 Non-member

The term "non-member" shall mean any person who is not a Member of the Exchange.

1.2531 Omnibus Account

The term "omnibus account" shall mean an account held in the name of a person which may be used for placing and clearing trades of one or more undisclosed customers or options of such person.

1.2632 Person

The term "person" shall mean an individual or firm.

1.2733 President

The term "President" shall mean the President of the Exchange or his authorized representative.

1.2834 Price

The term "Price" shall include for the purpose of these Rules the term "premium".

1.35 Public Director

The term "Public Director" shall mean any individual who (i) qualifies as an independent director under applicable listing standards, (ii) does not have trading privileges at the Chicago Mercantile Exchange, the Board of Trade of the City of Chicago, the New York Mercantile Exchange or the Commodity Exchange, and (iii) is not an officer, principal or employee of a member firm or clearing firm of any of the exchanges identified in (ii) above.

1.36 Regular Trading Hours

The term "Regular Trading Hours" shall mean those hours designated for open outcry trading of the relevant product as determined from time to time.

1.2379 Rule

The term "Rule" shall mean any Rule of the Exchange adopted by the Board.

1.3830 Settlement Premium

The term "settlement premium" shall mean the daily closing price of commodity options contracts as determined by the Exchange.

1.3934 Settlement Price

The term "settlement price" shall mean the daily closing price of commodity futures contracts as determined by the Exchange.

1.3402 Straddle

The term "straddle" shall mean, (i) with respect to the Rules governing margin, the purchase (or sale) of an Exchange futures contract in one delivery month for a customer account which is offset by the sale (or purchase) of another Exchange futures contract involving the same commodity in a different delivery month for such account, (ii) with respect to any other Rules, shall have the meaning, if any, as set forth in that Rule.

1.3413 Trading Member

The term "Trading Member" shall mean a Floor Member.

1.3424 Trade

The term "trade" shall mean any purchase or sale of any commodity futures or options contract made on the Exchange.

1.3435 Floor

Except as otherwise provided by the Exchange, the term "Floor" shall mean any trading floor on which Exchange contracts are listed for trading, ~~including the Exchange's trading facilities in Dublin.~~

Change History

~~1.03 Bylaws: (Amended: 11/17/00)~~

~~1.05 Clearing Association, Clearing House or Clearing Department: (Amended: 09/16/86)~~

~~1.06 Closing Range: (Amended: 09/01/86, 09/16/86, 08/29/87, 02/28/92, 11/22/99, 03/02/00, 05/04/00)~~

~~1.08 Commodity: (Amended: 09/16/86, 11/17/00)~~

~~1.11 Delivery Month: (Amended: 11/17/00)~~

1.12 Exchange: (Amended: 11/17/00)
1.13 Exercise Price: (Adopted and renumbered as 1.15: 09/16/86)
1.14 Expiration Date: (Adopted and renumbered as 1.16: 09/16/86)
1.15 Firm: (Renumbered as 1.17: 09/16/86)
1.16 Floor Broker: (Renumbered as 1.18 and amended: 09/16/86, 11/17/00)
1.17 Floor Member: (Renumbered as 1.19: 09/16/86, 11/17/00)
1.18 Floor Trader: (Renumbered as 1.20: 09/16/86, 11/17/00)
1.19 Futures Contract: (Renumbered as 1.21: 09/16/86, 11/17/00)
1.20 Good Standing: (Renumbered as 1.22: 09/16/86)
1.21 Holiday: (Renumbered as 1.23: 09/16/86)
1.22 Member: (Renumbered as 1.24: 09/16/86, 11/17/00)
1.23 Member Firm: (Renumbered as 1.25 and amended: 09/16/86)
1.24 Non-member: (Renumbered as 1.26: 09/16/86)
1.25 Omnibus Account: (Renumbered as 1.27: 09/16/86)
1.27 President: (Renumbered as 1.31 and amended: 09/16/86)
1.28 Price: (Renumbered as 1.32: 09/16/86)
1.29 Rule: (Renumbered as 1.33: 09/16/86)
1.30 Settlement Premium: (Adopted, renumbered, and amended: 09/16/86)

NYMEX CHAPTER 2 – MEMBERSHIP RULES

2.00 Personal Requirements

(A) Every Member and every applicant for membership must be the greater of either eighteen (18) years of age or the minimum age of majority required to be responsible for his contracts in each jurisdiction in which the Member or applicant conducts business.

(B) Every applicant must have, in the opinion of the Membership Committee and of the Board, good character, commercial standing and business experience. For the purposes of this provision, and for purposes of Chapter 2 generally, references to the "Board" shall mean the Board of Directors of the Exchange, or its designee(s).

(C) No person who has been employed by the Exchange shall be eligible for membership until six (6) months after he has ceased to be an employee; provided, however, the Membership Committee, based on the recommendation of the President, may waive, in its sole discretion, all or any part of such six (6) month period.

2.03 Application for Membership; Application Fees

(A) An applicant for membership must submit to the Exchange an application for membership in the form prescribed by the Board and such other documents as the Membership Committee shall deem necessary or appropriate or, shall require.

(B) Applications that are deemed by the Office of the Secretary the Membership Department to be incomplete shall be kept on file for four (4) months. Thereafter, the application shall be deemed to have been withdrawn and the applicant must submit a new application for membership prior to any consideration by the Membership Committee.

(C) Each application for membership shall be accompanied by a payment of a non-refundable application fee in such amount as may be fixed from time to time by the Board.

(D) Unless the Chairman of the Membership Committee decides otherwise, in his sole discretion, the provisions of

Rules 2.02 through 2.08 shall not apply to any Member who transfers his last membership and acquires a new Membership within 45 days.

2.06 Membership Committee

(A) ~~The A subcommittee of the Membership Committee shall review carefully each application for Membership. Any such subcommittee shall consist of three members and a Chairman. At least three of the four persons comprising a subcommittee of the COMEX Division Membership Panel must be COMEX Division Members. The subcommittee Membership Committee may direct the applicant to supplement any information provided to it and may direct the Exchange to investigate any such information.~~

(B) ~~When the application is complete (as provided in Rule §§2.03, 2.04, 2.05, and 2.06[A]), the subcommittee of the Membership Committee shall vote to recommend to the Board approval or disapproval of approve or disapprove the application. The Membership Committee's recommendations shall be submitted to the Board along with any statement of facts which are relevant to the application and which may assist the Board in its consideration of the application. The Chairman of the subcommittee shall have a vote and a unanimous vote of the subcommittee is required for approval of the applicant. If the applicant is not approved, the membership denial procedures set forth in Rule 2.80 shall apply.~~

2.08 Election to Membership Reserved

(A) ~~The Board shall consider each application it receives and the accompanying recommendation of the Membership Committee.~~

(B) ~~The Board may act upon applications for membership at any meeting. The favorable vote of at least two thirds of the Directors present at a meeting is necessary to elect to membership an applicant.~~

(C) ~~In the event that a quorum of the Membership Committee cannot be obtained or, in the event that consideration of an application is tabled by the Membership Committee, such action shall be reported to the Board and the Board may act upon the application on its own motion.~~

(D) ~~An applicant who has been rejected by the Board may not be reconsidered for membership by the Membership Committee for one (1) year after the date of rejection by the Board.~~

2.09 Denial of Membership

The Board ~~Membership Committee~~ may deny membership to any applicant who:

(A) does not meet any one or more of the qualifications for membership, or does not follow the procedures for applications for membership, set forth in the Rules;

(B) has been denied registration or whose registration has been revoked or is currently suspended by the Commission or by the Securities and Exchange Commission;

(C) has been convicted of a felony or a misdemeanor involving the purchase or sale of any commodity, security or option;

(D) is temporarily or permanently enjoined by any order, judgment or decree of any court of competent jurisdiction, of the Commission, of the Securities and Exchange Commission or of any state securities authority or agency from engaging or continuing in any conduct or practice involving the purchase or sale of any commodity, security option or similar instrument;

(E) is subject to any outstanding order issued by the Commission denying such person trading privileges on any contract market or, suspending or expelling such person from membership on any contract market;

(F) has been found to have violated willfully any provision of the Commodity Exchange Act, the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940 or the Investment Advisors Act of 1940 (as such Acts may have been, or may be, amended from time to time) or any rule, regulation or order promulgated under such Acts;

(G) has ever been convicted of a crime of moral turpitude or, within the ten (10) years preceding the date of his application, has been convicted of or pleaded guilty to a charge involving a felony;

(H) has ever been or is suspended or expelled from any commodity or securities exchange, related clearing organization, registered futures association, the National Association of Securities Dealers, Inc. or other self-regulatory organization or other business or professional association for violation of any rule of such organization;

(I) is subject to any substantial unsatisfied liens or judgments;

(J) has been insolvent, unable to pay debts as they matured, made an assignment for the benefit of creditors or was involved in any liquidation, reorganization or bankruptcy proceeding as a debtor, whether voluntary or involuntary, within the seven (7) years preceding the date of the application;

(K) has made any materially false statement or failed to state a material fact in or in connection with any application filed with the Exchange;

(L) fails to meet such other qualifications as the Board may from time to time determine are in the best interests of the Exchange; or

(M) fails to disclose any other information that would adversely affect the application for membership.

2.10 Member Firm Privileges

(A) Each firm, as a condition of obtaining and maintaining Member Firm privileges, shall be required to own and or have conferred upon it two (2) Exchange memberships in each Division in which it desires Member Firm privileges. The firm shall also be required to designate one or two individuals as its "conferring Members". Conferring Members may individually own the membership(s) and or hold such memberships via ABC Agreement. In addition, until further notice from the Exchange, each NYMEX Division Member Firm shall at all times own or have pledged/conferred upon it at least: ~~150,000 shares in NYMEX Holdings, Inc. common stock~~ 8,000 shares in CME Group common stock. ~~NYMEX Holdings, Inc. common stock.~~

(B) In the case of one conferring Member, such Member shall be an executive officer, general partner or an executive officer of a corporate general partner of the firm.

(C) In the case of two conferring Members, at least one member shall be an executive officer, general partner or an

executive officer of a corporate general partner of the firm; the other conferring Member need only be a bona fide full time employee of the firm.

(D) As used in this Rule, an executive officer, general partner or an executive officer of a corporate general partner must have the power to direct the affairs of the firm with respect to transactions executed on the Exchange or shall be the senior commodity officer of the firm.

(E) Trades done for the account of any parent, subsidiary, affiliate, etc. of a Member Firm, if not itself a Member Firm shall be at non-Member rates; only the firm obtaining Member Firm status hereunder may receive Member rates.

2.12 Cooperative Associations

(A) Subject to the approval of the Board, the privileges of Membership may be conferred upon a cooperative association of producers of the kind referred to in Commodity Exchange Act ~~§6(a)-5(C)~~. As a condition of obtaining and maintaining Member Firm privileges, the association shall be required to own and or have conferred upon it two (2) Exchange memberships in each Division in which it desires Member Firm privileges. The firm shall also be required to designate one or two individuals as its "conferring Members". Conferring Members may individually own the membership(s) and or hold such memberships via ABC Agreement.

(B) In the case of one conferring Member, such Member shall be a duly authorized representative of such association.

(C) In the case of two conferring Members, both conferring Members shall be duly authorized representatives of the association.

2.14 Financial and Reporting Requirements for Member Firms

(A) Unless exempted by the Board of Directors or its designee pursuant to Section (F), each Member Firm shall have and maintain working capital, (computed in accordance with generally accepted accounting principles), of not less than one hundred thousand dollars (\$100,000). A Member Firm which provides a financial "lease" guarantee for its employee pursuant to Rule 2.23(C) shall meet the special financial requirements of Rule 2.30(B).

(B) Each Member Firm that issues a financial "lease" guarantee under Rule 2.30 shall file with the ~~Financial Surveillance Section of the Compliance~~ Audit Department a financial report for each fiscal year. The report shall be prepared in accordance with generally accepted accounting and auditing principles and certified by an independent certified or licensed public accountant. Such report is to be filed within ninety (90) days after the close of the Member Firm's fiscal year.

(C) Each Member Firm that issues a financial "lease" guarantee under Rule 2.30 shall file with the ~~Financial Surveillance Section of the Compliance~~ Audit Department a financial report for the first six (6) months of its fiscal year, which report shall be executed by the conferring members and by the president of the Member Firm or by another appropriate official of the Member Firm. Such report shall be filed within forty-five (45) days after the close of the second quarter of the fiscal year of such Member Firm.

(D) Unless exempted from Subsection (A), if, for any reason, the net assets of a Member Firm decline below the level specified in this Rule 2.14 or decline by a factor of twenty percent (20%) from the last report to the Exchange, the

Member Firm shall give written notice of such event to the ~~Financial Surveillance Section of the Compliance Audit~~ Department within 10 days of its occurrence. This "Notice of Capital Impairment" should state the date of and the applicable reason for the decline of the Member Firm's working capital. For any Member Firm that has been exempted from Section (A) pursuant to Section (F), if the financial measurement used by the Board or its designee as an alternate measure of financial soundness declines below the specified level or declines by a factor of twenty percent (20%) from the last report to the Exchange, such Member Firm also shall give written notice of that fact to the ~~Financial Surveillance Section of the Compliance Audit~~ Department within ten days.

(3) Any planned reduction of a Member Firm's working capital, as defined by Rule 2.14(l) (A), of 30% or more from that last reported to the Exchange shall be prefaced at least two business days in advance of its occurrence by a formal written notice of such event(s) to the ~~Financial Surveillance Section of the Compliance~~ Audit Department. Such notification should state the date of and applicable reason for the planned reduction of the Member Firm's working capital.

(E) The Board of Directors or its designee may exempt a Member Firm from the working capital requirement set forth in Section (A) if, in its sole discretion, an alternate measure of the financial soundness of such Member Firm, such as a minimum level of net worth, is more appropriate.

(F) Extension of Time for Submission of Financial Statements

A Member Firm may request an extension of time for the submission of a financial statement to the Exchange by filing a written request with the ~~Vice President of the Exchange's Financial Surveillance Division~~ Audit Department prior to the date for which such financial statement is due to be submitted. The request should be signed by the Member Firm's Chief Financial Officer and state, in reasonable detail, the reasons for and the length of time necessary for such extension. Each such request submitted pursuant to this Rule will be reviewed for adequacy and granted or denied accordingly.

(G) Additional Financial Statements

The Exchange, at its discretion, may from time to time, request additional financial information and/or statements from Member Firms.

2.15 Financial and Reporting Requirements for Futures Commission Merchants; Reports; Fees

(A) Each Member and Member Firm registered with the Commission as a futures commission merchant shall maintain an adjusted net capital equal to the amount prescribed in Commission Regulation 1.17.

(B) Each Member and Member Firm registered with the Commission as a futures commission merchant shall file with the ~~Financial Surveillance Section of the Compliance~~ Audit Department such reports and other documents as are required by Commission Regulation §1.10 or otherwise or by the Exchange at such time as required by such regulation or by the Exchange.

(C) (1) If, for any reason, the "Adjusted Net Capital", as defined by CFTC Regulation 1.17 (c)(5), of a Member or Member Firm registered as a futures commission merchant declines below the minimum required by Rule 2.15(A), the Member or Member Firm futures commission merchant shall give immediate telephonic notice, to be confirmed by

written notice of the fact by telegraphic or facsimile transmission, to the ~~Financial Surveillance Section of the Compliance Audit~~ Department as noted within ~~By-Law Section 851 (Duty to Report Emergency Event)~~.

(2) If, for any reason, the "Net Capital", as defined by CFTC Regulation 1.17(c)(1), of a Member Firm registered as a futures commission merchant or "Tentative Net Capital" of a Member Firm also registered as a Broker-Dealer, declines by a factor of 20% or more from that last reported to the Exchange, the Member or Member Firm futures commission merchant shall give formal written notice of such event to the ~~Financial Surveillance Section of the Compliance Audit~~ Department within two business days of its occurrence. This "Notice of Capital Impairment" should state the date of the decline and an applicable reason for the decline of the Member futures commission merchant's net capital.

(3) Any planned reduction of a Member futures commission merchant's "Excess Net Capital" (defined as Net Capital per CFTC Regulation 1.17(c)[1] or "Excess Net Capital" of a Member Broker-Dealer, less the minimum capital required by Rule 2.15(I)(A) of 30% or more from that last reported to the Exchange shall be prefaced, at least two business days in advance of its occurrence, by a formal written notice of such event(s) to the ~~Financial Surveillance Section of the Compliance Audit~~ Department. Such notification should state the date of an applicable reason for the planned reduction of the member futures commission merchant's excess net capital.

(D) Each Member Firm registered with the CFTC as a Futures Commission Merchant shall develop and implement a written anti-money laundering program approved in writing by senior management reasonably designed to achieve and monitor the Member's compliance with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311, et. seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury and, as applicable, the Commodity Futures Trading Commission. That anti-money laundering program shall, at a minimum,

(1) Establish and implement policies, procedures and internal controls reasonably designed to assure compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder;

(2) Provide for independent testing for compliance to be conducted by Member personnel or by a qualified outside party;

(3) Designate an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program; and

(4) Provide ongoing training for appropriate personnel. Member FCMs must also supervise and ensure that their guaranteed introducing brokers are in compliance with the anti-money laundering provisions contained in this Rule.

2.16 Limitations on Conferring Members

(A) Member may not confer membership privileges on more than one Member Firm at the same time unless each of the following conditions are met:

(1) there is a direct ownership relationship between the Member Firms;

(2) separate seat(s) are used to confer such privileges;

(3) the Member conferring privileges concurrently maintains, for each of the Member Firms, the requisite qualifications for conferring privileges otherwise prescribed by the Rules of the Exchange; and

(4) the firms can demonstrate, to the satisfaction of the Exchange's ~~Compliance~~Audit Department, that such conference does not constitute a conflict of interest.

(B) A Member who confers membership privileges on a Member Firm agrees to make the proceeds of the sale of his memberships available for settlement of any and all claims against such Member, and Member Firm.

2.19 Reinstatement of Member Firm Privileges

A Member Firm whose membership privileges have been terminated for any reason may apply to the Membership Committee ~~Audit Department~~ for reinstatement of such privileges. If the Membership Committee ~~Audit Department~~ approves the request, it shall forward the request, with its recommendation, to the Board which may reinstate such privileges upon such terms and conditions as it, in its sole discretion, may impose.

2.21 Guarantee by Primary Clearing Member

(A) Each Floor Member must be guaranteed to trade on the floor by a Primary Clearing Member ("PCM"). To guarantee a Floor Member, the PCM must execute such guarantees and other documents as required by the Exchange. No Floor Trader may be guaranteed by two (2) PCMs at the same time.

(B) In order to guarantee a Floor Member, the PCM shall:

(1) agree to accept and clear all trades executed by the guaranteed Floor Member which are not otherwise accepted for clearance;

(2) agree to accept financial responsibility for the trades held in an account in the record name and for the benefit of the guaranteed Floor Member which have been accepted for clearance by another Clearing Member authorized by the PCM to clear trades for the Floor Member pursuant to Rule 2.31, provided that the other clearing member has notified the PCM and the ~~Compliance~~ Audit Department of any deficit in the guaranteed floor member's account by 12:00 P.M. on the next trading day after the deficit arose;

(3) agree to accept financial responsibility for all trades determined through the Exchange adjudication or arbitration process to have been executed by the guaranteed Floor Member, whether for his own account or for the accounts of others;

(4) execute such guarantees and other documents as the Exchange shall require in connection with the PCM's guarantee of a Floor Member and shall file said documents with the Membership Department; and

(5) comply with the financial requirements for guarantors as set forth in Rule 2.30 and in Rule 9.21

(C) The guarantee shall be in writing, filed by the PCM with the Membership Department and may only be withdrawn by means of a written notice of revocation filed with the Exchange in accordance with the provisions of Section (A) ("Regular Trading Hours") of Rule 2.33.

2.23 Financial Requirements of Floor Members

(A) There shall be no minimum financial requirements for either NYMEX or COMEX Division Floor Members other than for those individuals obtaining their membership privileges via a lease agreement or an Exchange-issued Floor Trading Permit as noted in subsection (B) below.

(B) Unless a formal guarantee is obtained as noted in Subsection (C) below, and filed with the Membership Department, each Floor Member obtaining his membership privileges via a lease agreement or an Exchange-issued, Floor Trading Permit must maintain, at all times, a minimum equity balance in a trading account with his Primary Clearing Member as follows:

- (i) NYMEX Division Floor Member: \$50,000
- (ii) COMEX Division Floor Member: \$25,000

(C) Floor Members obtaining their membership privileges via a lease agreement or an Exchange-issued trading Permit may be exempt from maintaining the minimum equity balance with their Primary Clearing Member, as required in Subsection (B) above, if a formal guarantee is obtained from a Member Firm of which he is a bona-fide, full time employee. Such guarantee shall obligate the Member Firm to:

- (1) Indemnify the Floor Member's PCM for any amount paid and/or incurred as a result of and allowable pursuant to its guarantee of the individual;
- (2) Assume any and all unsatisfied financial obligations of the lessee or Permit Trader to the Exchange and its Members arising out of the individual's conduct of business on the Exchange; and
- (3) Comply with the capital requirements of Rule 2.30 and reporting requirements of Rule 2.14 (B).

2.30 Additional Capital Required for Employee Guarantees

(A) Both Member Firms and Clearing Member Firms may issue certain financial guarantees of bona-fide full time employees which, when properly prepared and filed with the ~~Vice President~~ of the Exchange's Membership Department, will exempt such employees from the requirement that lease members and permit holders maintain minimum equity balances with their respective Primary Clearing Member.

(B) Each Member Firm and Clearing Member Firm must maintain capital in excess of that required by Rule 2.14 and 2.15 for each financial guarantee issued and allowed by Subsection (A), beyond a base of four guarantees per Division, as follows:

- (i) NYMEX Division: \$50,000
- (ii) COMEX Division: \$25,000

2.32 Duties of Guarantors and Primary Clearing Members

(A) Monitoring of Guaranteed Members

Each PCM shall affirmatively monitor the financial condition of each Floor Member guaranteed to determine that Floor Member's compliance with the terms and financial requirements of Rule 2.23 (lease members) and shall take steps to

terminate its guarantee upon non-compliance with such requirements.

In the event a Lease Member fails to maintain the minimum deposit in his trading account as required by Rule 2.23 (B), he may obtain from his Primary Clearing Member a temporary thirty (30) day financial guarantee. The issuance of such a financial guarantee relieves the Clearing Member from initiating steps to terminate its relationship as the Lease Member's Primary Clearing Member and provides the applicable Lease Member with additional time to reattain compliance.

The financial guarantee referred to in the paragraph above must be filed with Exchange's Financial Surveillance Division Audit Department on the same date it is executed. For each financial guarantee issued, the applicable Primary Clearing Member must maintain working capital in excess of that required by Rules 2.14 and 2.15 in amounts equal to \$50,000 for NYMEX Division Lease Members and \$25,000 for COMEX Division Lease Members.

It should be noted that a Lease Member may only obtain such a financial guarantee twice within any twelve (12) month period and never in consecutive thirty (30) days periods.

(B) Retention of Account Equity

A PCM shall retain the account equity that comprises, for purposes of Rule 2.23, the net liquidating equity, if any, required by these Rules to be maintained in a Floor Member's trading account for the greater of ten (10) days or until any and all pending claims by Members and Member Firms have been resolved.

2.36 Applications for Membership by a Member of Another Division

(A) Any Member of either the NYMEX Division or the COMEX Division shall be automatically eligible for membership in the other Division upon the filing of an application, subject to the following:

(1) The applicant must be a Member in good standing of the Division where he presently holds membership privileges at the time of the application through the time that it is considered by the ~~Board of Directors~~ Membership Committee. For the purposes of this Rule 2.36, the term "Member" shall mean an individual who currently holds a membership in his name by direct ownership, ABC agreement or lease agreement. In addition, an individual who leases his only seat shall be considered to hold a membership in his name for the purposes of this Rule 2.36.

(2) The applicant must sign a statement on a form prescribed by the Exchange attesting to the fact that no event has occurred, since the submission of his application to the Division where he is currently a member, which would require notification pursuant to Rule 2.42;

(3) The applicant shall pay the cost for the Exchange to perform an independent investigation; and

(4) The applicant shall meet all financial requirements of the Division where the applicant is seeking membership privileges.

(B) The report required under Subsection (A) (3) shall be reviewed by the Chairman of each Division's Membership Committee and the ~~Vice President, Member Services~~ Membership Department. Satisfactory applications that have been reviewed shall be submitted for approval to the ~~Board~~ Membership Committee. In the event that the independent

investigation required under Subsection (A)(3) does not confirm the attestation submitted by the applicant, the matter will be referred to the Compliance Department.

2.42 Required Notices

(A) Each individual or entity maintaining any membership status on the Exchange shall notify the Exchange in writing immediately upon the occurrence of any of the following events:

(i) Any material adverse change in financial condition;

(ii) Any material change in the individual or entity's relationship with the guarantor or with a Primary Clearing Member;

(iii) Any refusal of admission to, withdrawal of any application for membership in, any suspension, expulsion, bar, fine, censure, denial of membership, registration or license, withdrawal of any application for registration, cease and desist order, temporary or permanent injunction, denial of trading privileges, or any other sanction or discipline through an adverse determination, voluntary settlement or otherwise, by any commodity or securities exchange, related clearing organization, the National Futures Association, the Financial Industry Regulatory Authority~~National Association of Securities Dealers, Inc.~~, or any self-regulatory organization or other business or professional association;

(iv) Any refusal of admission to, withdrawal of any application for membership in, any suspension, expulsion, bar, fine, censure, denial of membership, registration or license, withdrawal of any application for registration, cease and desist order, temporary or permanent injunction, denial of trading privileges or any other sanction or discipline through an adverse determination, voluntary settlement or otherwise by:

(a) the Securities and Exchange Commission, the Commission or the securities commission or equivalent authority of any state, territory, the District of Columbia or foreign country; or

(b) any federal court, state court, or regulatory agency not mentioned above, quasi-governmental body;

(v) any conviction, finding of guilt, confession of guilt, plea of guilty or nolo contendere to a felony or misdemeanor charging misrepresentation, fraud, deceit, theft, embezzlement, gambling, conversion, abuse of a fiduciary relationship or other such act;

(vi) the commencement, by the issuance of a formal order of investigation (or its equivalent), or by the issuance or service or a written complaint (or its equivalent), of any judicial, administrative or self-regulatory proceeding, as the case may be, against such member by the Commission, the Securities and Exchange Commission, the securities commission or equivalent authority of any state, territory, the District of Columbia or foreign country, or any commodity or securities exchange or related clearing organization, or any registered futures or securities association, or any self-regulatory organization or other business or professional association.

(vii) any change in a Member Firm's liaison designated pursuant to Section (B) hereof; or

(viii) any revocation of any guarantee and any material change in employment, including without limitation any termination, voluntary or otherwise, of employment.

(B) Each individual maintaining any membership status on the Exchange shall file with the Membership Department (i) a written notice consenting to the designation of staff as identified by the Exchange's Assistant Secretary and/or Vice President, Member Services as the his or its agent for service of process concerning and limited to the Exchange-related activities and business; and (ii) if a Member Firm, a written notice designating an officer, employee or partner as the Exchange liaison, whom the Exchange may contact in order to obtain additional information or documentation in connection with any matter whatsoever provided in the Rules.

(C) Each Member Firm shall give written notice to the Exchange of all changes in the employment status of any of its employees who are Exchange Members and/or registered with the Exchange as trading floor personnel, in partners, whether general or limited, or in officers or directors.

(D) Each Member Firm shall give prior notice, in writing, to the Membership Department of any proposed merger, acquisition, consolidation, or sale of the Member Firm, whether into or by the Member Firm or otherwise. Such prior notice shall be supplemented by such documents or information as requested by the Vice President, Member Services Membership Department.

2.43 Lawsuits Brought Against the Exchange

1. For purposes of these Rules (a) the term "Claimant" shall mean any individual or legal entity that is presently, or was formerly, subject to the jurisdiction of the New York Mercantile Exchange or New York Mercantile Exchange, Inc. (collectively, "NYMEX") or their respective parent companies, subsidiaries (direct and indirect) or affiliates, (including the Class B member), including but not limited to Class A members, Commodity Exchange, Inc. ("COMEX") Division Members, Class A Lessees, COMEX Division Lessees, Class A Member Firms, COMEX Division Member Firms, Class A Clearing Members, COMEX Division Clearing Members, Permit Holders, Floor Brokerage Billing Entities, Electronic Traders and Authorized Terminal Users as both terms are defined in Chapter 11 in connection with NYMEX ACCESS®, Option Members, Aluminum Members and Eurotop Members, NYMEX Equity Members, COMEX Equity Members, Users and User Agents as both terms are defined in Chapter 11 in connection with NYMEX ClearPort® Trading, or any other individual or legal entity with some or all of the rights and privileges of membership or ownership in NYMEX or any of its subsidiaries (direct or indirect) or affiliates, (including the Class B member), or which has the right to trade in commodities or conduct business operations including but not limited to use of clearing services for products listed only for clearing on NYMEX or any of their respective parent companies, subsidiaries (direct or indirect), and any of their employees, including but not limited to clerks and Authorized Terminal Users.

(b) the term "Exchange" shall include NYMEX, and its respective parents, (including the Class B member), subsidiaries (direct and indirect) or any of its respective affiliates, members, successors, assigns, directors, governors, officers, committee members, employees, consultants or agents.

2. Floor Trading. Claimant acknowledges that floor trading at the Exchange is accomplished by open outcry in a trading "ring" or "pit" and that the Trading Floor is an environment of close physical proximity to others that may result in substantial physical contact with others. Claimant further acknowledges that such conditions on the Trading Floor may be exacerbated by volatility in trading or contract expiration. Claimant assumes all risk of loss, damage or injury, personal or otherwise, caused by reason of conditions on the Trading Floor and hereby waives (to the extent permissible under law) any claim based upon such conditions.

3. Except to the extent such loss, expense, damages or claims have been finally adjudicated to be ~~are~~ attributable to

~~the willful or wanton misconduct, gross negligence, bad faith, fraud, or criminal acts~~ of the Exchange, and except as otherwise expressly provided in these Rules, the Exchange shall not have liability to any Claimant for any loss, expense, damages (including direct, indirect, consequential and punitive damages) or claims resulting from or relating to:

(a) any personal injury or medical condition (and death resulting therefrom) that arise out of (i) the use or employment of the facilities or services at the Exchange, regardless of whether such services or facilities are provided by the Exchange or a third-party; or (ii) any interruption in or failure or unavailability of any such facilities, services, regardless of whether such services or facilities are provided by the Exchange or a third-party; or (iii) any action or failure to act by the Exchange.

(b) any error, omission or delay in calculating or disseminating any current, closing or settlement prices, values, transactions in, quotations for or other information about futures contracts and options contracts traded on the Exchange.

(c) the use of data transmitted or disseminated by or on behalf of the Exchange or any reporting authority designated by the Exchange, including but not limited to reports of transactions in, quotations for or other information about futures contracts and option contracts or reports of index values or related data; and, in connection with the use of such data, the Exchange makes no express or implied warranties as to such data, including but not limited to (i) the result to be obtained or (ii) the merchantability or fitness for a particular purpose or use.

(d) any suspension, inaccuracy, interruption or termination, or any other cause, relating to the furnishing, performance, operation, maintenance, use of or inability to use any or all portion of Exchange systems, or services and facilities used to support the Exchange systems and services related thereto, regardless of whether such services or facilities are provided by the Exchange or a third-party. In addition, the Exchange shall have no liability for errors or inaccuracies in information provided by Exchange systems or for losses or other injury or damages resulting from unauthorized access or any other misuse of any Exchange systems by any person.

(e) The foregoing limitation of liability and disclaimers shall be in addition to any other limitation of liability provision contained in these Rules, and, to the extent that they are inconsistent, the provisions of this Rule shall control.

(f) The foregoing limitation of liability shall be subject to the Commodity Exchange Act and Regulations thereunder.

(fg) The limitation of liability set forth in these rules shall not apply to or affect the rights or remedies of either any Claimant or the Exchange with respect to violations of the commodities laws and regulations.

4. Any Claimant that institutes a lawsuit or other similar proceeding against the Exchange in any court of law or otherwise and that fails to prevail in such lawsuit or proceeding shall pay to the Exchange any and all reasonable expenses and disbursements of the Exchange, including reasonable attorney's fees, incurred by the Exchange in the defense of such lawsuit or proceeding in addition to any statutory costs incurred by the Exchange.

5. Any claim may only be litigated in the County of Cook in the State of Illinois and will be governed by the laws of the State of Illinois without regard to any provisions of Illinois law that would apply the substantive law of a different jurisdiction. Claimant consents and submits to the in personam jurisdiction of State and Federal courts located in the City and State of New York. No action against the Exchange shall be commenced except in those courts located in the County of Cook in the State of Illinois, State of New York. Claimant waives personal service and consents to

service of process by registered or certified mail to the most recent address provided by Claimant to the Office of the Secretary ~~Membership Department~~. Nothing in these Rules shall affect the right of the Exchange to serve legal process in any other manner permitted by law or affect the right of the Exchange to bring any action or proceeding against Claimant or Claimant's property in a court of any other jurisdiction.

6. The Exchange and Claimant waive their right to trial by jury in any action or proceeding between them. To the extent permissible by law, Claimant waives the right to punitive damages, consequential damages, multiple damages and attorneys' fees in any such action or proceeding.

7. This Rule shall be construed and enforced in accordance with the laws of the State of ~~New York~~ Illinois without regard to conflict of any other laws, except to the extent pre-empted by Federal law. Each provision of this Rule shall be viewed as legally separate and distinct from the other provisions contained herein and if any provision of this Rule is held invalid, that provision shall not effect the legality and enforceability of any other provision.

2.45 Reserved Failure to Pay Fines, Dues, Assessments and Fees

(A) Fines - If a Class A Member or Member Firm defaults in the payment of any fine on the date due, such Class A Member or Member Firm may forfeit all membership privileges, including the privilege of accessing the floor and reduced clearing and trading fees, including Globex fees, as applicable. Exchange staff shall use reasonable efforts to notify the Class A Member or Member Firm before any privileges are forfeited.

(B) Dues, assessments and fees- Dues, assessments, and fees owed to the Exchange are payable upon receipt of the invoice. Class A Members in arrears 30 days after the invoice date may forfeit all membership privileges, including the privilege of accessing the floor and reduced clearing and trading fees, including Globex fees. Exchange staff shall use reasonable efforts to notify the Class A Member before any privileges are forfeited.

2.46 Reserved Effect of Suspension or Expulsion from Membership

(A) A Class A Member or Member Firm whose rights and privileges of Membership have been suspended shall continue to be:

- (1) subject to the Bylaws and the Rules;
- (2) liable for all dues, assessments, fees and fines imposed by the Exchange; and
- (3) obligated to the Exchange and to its Members for all contracts, obligations and liabilities entered into or incurred before, during and after such suspension.

(B) A Class A Member or Member Firm who has been expelled from the rights and privileges of Membership shall continue to be:

- (1) subject to the disciplinary and arbitration rules of the Exchange;
- (2) liable for all dues, assessments, fees and fines imposed by the Exchange prior to such expulsion; and

(3) obligated to the Exchange and its Members for all contracts, obligations, liabilities, fines and penalties entered into or incurred prior to or after such expulsion.

2.51 Procedure for Transfer of Memberships

(A) If a Member desires to transfer ownership of a membership, the transferor shall deliver to the Membership Department notification of intention to transfer, executed by the transferor or its legal representative. The notice of intention to transfer shall include the seat identification number, the date on which the transfer is intended to become effective and the name of the proposed transferee. The Membership Department, upon receipt of a notice of intention to transfer a membership, shall promptly notify the membership of the Exchange, by posting for a period of ten (10) days the notice of intention to transfer.

(B) No Member may transfer ownership of a membership or lease to another the trading privileges associated therewith unless and until the following conditions have been met:

(i) All dues, assessments, fines, penalties and any other monies (including, but not limited to, booth fees, office rent and phone charges) due and payable to the Exchange shall have been paid:

(ii) All claims of Members that: (1) arise out of, or in connection with, the transaction of business on the Exchange, and (2) are filed with the Membership Department within ten (10) days after the Exchange gave the membership notice of intention to transfer have been settled or discharged.

(iii) The condition in subpart (ii) above shall not apply to claims of Member Firms who are the beneficial owners of the proposed transfer membership pursuant to an ABC Agreement.

(iv) Payment by the transferee to the Exchange of a transfer fee in an amount to be fixed, from time to time, by the Board; provided, however, that a Member who purchases a membership in order to transfer it to another Member or to Member-elect and files a notice of intention to transfer the membership to such other Member or to such Member-elect shall not be required to pay a transfer fee upon transfer to such other Member or Member-elect.

(C) A transfer of ownership of a membership may be effected, notwithstanding the provisions of Sections (A) and (B) hereof provided that:

(i) the transferor owns and holds more than one full membership in the Division of the transferred membership; provided, however, that the claim shall be less than the then current value of a membership; or

(ii) the transferor deposits with the Exchange a certified check, payable to the Exchange, in an amount equal to the amount of the claim, including a reasonable amount for costs and attorney fees, for liquidated claims or such amount as may be determined by the Exchange for unliquidated claims provided that such amount shall be no higher than the price at which a membership last sold or at which a membership was bid. The Exchange shall retain such deposit until the earlier of ten (10) days after receipt of a notice of intention to transfer or all claims filed within ten (10) days of posting such notice have been resolved, or until the transferor, as specified above, has deposited with the Exchange an amount equal to the total of all claims filed within ten (10) days notice of such notice.

(D) A Member and/or Member firm that is the subject of any disciplinary proceeding or investigation by the Exchange may transfer the ownership and/or rights and obligations granted pursuant to the lease or A-B-C Agreement notwithstanding the existence of the disciplinary action however:

(i) such Member and/or Member firm shall remain subject to Exchange jurisdiction and be personally liable for any fines assessed in connection with the proceeding or investigation;

(ii) the Member and/or Member firm shall be deemed to have consented to the jurisdiction of the courts of the State of New York in New York County for the purpose of any action brought by the Exchange to enforce its rights against such Member and/or Member firm;

(iii) in the event that the lessee satisfied the financial requirements of Rule 2.23 by maintaining the required trading account equity such funds: (1) shall be frozen until the investigation is closed or proceeding concluded; (2) shall be paid to the Exchange in full or partial satisfaction of any fine; and (3) shall be released only upon written approval to the lessee's PCM from the Exchange's ~~Compliance~~ Audit Department.

(E) A transfer of the rights and obligations of membership back to a lessor upon the termination of a lease shall nonetheless result in continuing Exchange jurisdiction over the lessee with respect to any pending disciplinary investigation or proceedings involving the lessee, or any proceeding arising out of the lessee's acts or omissions during or relating to such proceeding. Lessors shall not be liable for, and shall not be responsible for the payment of disciplinary fines assessed against lessees. Such lessees shall have continuing personal liability for all disciplinary fines arising out of such investigations or proceedings.

(F) Notwithstanding Section (D), the lessee may receive all of the funds in his trading account at the time of the seat transfer, provided that he deposits in the Membership Department a certified check, or a check drawn on a Clearing Member's account, payable to the Exchange in the amount of \$50,000 for NYMEX Division lessees and \$25,000 for COMEX Division lessees.

(G) A membership that has been sold in accordance with Rule 2.52 may be transferred to the purchaser free from any claims notwithstanding that a claim may have been made under Section (B) hereof. The portion of the proceeds required in accordance with Subsection (C)(ii) of this Rule shall not be distributed until resolution of any claim as provided in Rule 2.68~~By-Law §858~~.

2.52 Procedures for Purchase and Sale of Membership

(A) All purchases and sales of Class A memberships, except for purchases and sales pursuant to Rule 2.50(C)(vi), must be made through the Membership Department, which shall maintain a file of bids and offers for memberships. A person desiring to buy or to sell a membership shall submit a written bid or offer to the Membership Department.

(B) The cost of purchasing a Class A membership from the Exchange may be fixed by the Board from time to time.

(C) The proceeds of any sale of a membership shall be distributed as set forth in ~~Bylaw §864~~ Rule 2.69B.

2.53 Acquisition of Membership by Member Elect

(A) Every Member-elect shall cause a transfer of a membership to the Member-elect within forty-five (45) days after election to membership and, within such period, shall subscribe to the Bylaws and Rules thereby pledging to comply with the Bylaws and Rules and all subsequent amendments to the Bylaws and Rules.

(B) If a Member-elect does not comply with the requirements of subsection (A) of this Rule, his election shall be void unless the time for compliance is extended, for any reason, by the Board Membership Committee.

2.56 Exchange Financed Class A and COMEX Memberships Reserved

~~(A) Up to sixty (60) percent of the cost of acquisition of the first Class A membership purchased by an individual who has been a Class A member, COMEX Division Member or Permit Holder on the Exchange for at least one year immediately prior to the filing of an application pursuant to this Rule 2.56 may be financed in accordance with a seat financing program sponsored by the Exchange. In addition, Class A members or COMEX members who have sold their only Class A or COMEX membership, as applicable, shall be eligible to obtain up to sixty (60) percent of the cost of acquisitions of another Class A or COMEX membership provided that the individual shall have been a Class A or COMEX member for at least one year immediately prior to the filing of an application pursuant to this Rule 2.56, either leasing a Class A or COMEX membership or holding a Class A or COMEX membership subject to an A-B-C agreement under Rule 2.60. To obtain such financing, an individual must complete and file with the Office of the Secretary an application approved by the Exchange. Eligibility determination and approvals shall be made by the Board of Directors upon a recommendation of the Committee. All Board decisions shall be final.~~

~~(B) Upon Board approval and issuance of a loan certificate, the borrower shall execute a financing agreement and related documentation on forms approved by the Exchange.~~

2.62 Reserved Definitions for Purposes of Rules 2.62 through 2.69C

As used in Rules 2.62 through 2.69C, the following terms have the meanings set forth in this Rule:

(A) The term "claimant" shall mean a person who has filed a Notice of Claim;

(B) The term "Notice of Claim" shall mean a notice of claim against the proceeds of a sale of a membership;

(C) The term "Class A Member" shall include, as applicable, Class A Members and Member Firms and employees of Class A Members and of Member Firms.

(D) The term "Reportable Emergency Event" shall mean, with respect to any Class A Member:

(1) the filing of a petition, answer or other document, or the taking of any other action, by such Class A member with respect to itself or against such Class A member, seeking liquidation, reorganization or other relief from creditors under the provisions of the U.S. Bankruptcy Code (11 U.S.C. §§101 et seq.), as it may be amended, or under the provisions of any other state or federal law for the relief of insolvent debtors;

(2) the dissolution of such Class A Member;

(3) the insolvency (as defined by any applicable state or federal statute) of such Class A Member;

(4) the failure of such Class A Member to meet any applicable financial requirements of the Exchange, any self-regulatory organization or any state or federal regulatory agency;

(5) the failure of such Class A Member to meet, when due, any margin call issued by the Clearing House, any clearing organization of any other exchange, or any person;

(6) the failure or inability of such Class A Member to comply with any of his contracts or the default by such Class A Member under any commodity contracts on the Exchange; or

(7) the imposition or service of any lien, attachment, execution or other levy or any injunction or other restraint against such Class A Member or Member Firm or their assets by any court, government agency, arbitrator or judgment creditor, which injunction or restraint may affect the ability of such Class A Member to perform his contracts or otherwise to engage in business.

(E) The term "Financial Emergency" shall mean, with respect to any Class A Member, any situation in which, in the sole discretion of the President of the Exchange or the President of the Clearing House, the financial condition of such Class A Member is not adequate for such Class A Member to meet his or its financial obligations or otherwise to engage in business; or, is such that it would not be in the best interests of the Exchange for such Class A Member to continue in business.

2.63 Reserved Duty to Report Emergency Event

(A) If a Reportable Emergency Event occurs with respect to any Class A member, then such Class A member shall advise the Exchange of the occurrence of the Reportable Emergency Event by the fastest available means of communication and shall also immediately deliver to the Exchange by the fastest available means, a written notice. Such notice shall specify:

(1) the nature of the Reportable Emergency Event;

(2) the date and time of occurrence;

(3) whether such Class A Member consents to a summary suspension pursuant to this Rule and, if so, whether such Class A Member waives a hearing with respect thereto; and

(4) whether such Class A member consents to a suspension that includes a prohibition against employment by another Class A member as a floor employee.

(B) A Class A Member who is insolvent shall provide to the Exchange, within 30 days of his insolvency and in addition to the Notice provided for in subsection (A) above, a sworn statement of his business affairs as they existed at the time of his insolvency.

2.64 Reserved Summary Suspension Pursuant to Consent

If a Class A member consents to a summary suspension as provided in Rule 2.63, in writing, then such Class A Member shall be immediately suspended in accordance with the terms of the consent and the Exchange shall notify the membership of such suspension.

2.65 Reserved Summary Suspension in a Financial Emergency

If the President of the Exchange or the President of the Clearing House determines, in his or her sole discretion, that there is a substantial question whether a Financial Emergency exists with respect to any Class A Member, he or she may empanel the Chief Executive Officer, the President of the Exchange, Chairman of the Board, the Chairman of the Clearing House Committee and the President of the Clearing House. Such panel shall be duly authorized and, upon a unanimous vote of the panel, be empowered to suspend, or take any other action, as it deems appropriate to

protect the Exchange. The panel may take such action regardless of whether the Class A Member has consented to a suspension. The Class A Member affected by action taken shall be notified and may request a hearing before the Board as provided in Rule 230A.(k). In the event of suspension, the Chief Executive Officer shall, promptly after a suspension, set the matter for hearing before the Board for final determination.

2.67 Reserved Creditors of Insolvent Class A Members

(A) Unless the President of the Clearing House shall direct otherwise, all futures and options contracts traded on the Exchange, made with or carried for a Class A Member suspended under this Chapter shall be liquidated by the party carrying the contracts. Such liquidation shall take place in the open market. If such contracts cannot be liquidated due to the closing of the Exchange for any reason, then such contracts shall be liquidated on the next day on which the Exchange is open. The period within which such contracts must be liquidated shall not include any period during which the provisions of the Rules limiting price fluctuations would prevent such liquidations.

(B) Within 10 days of the announcement of suspension of a Class A Member, any Class A Member who has a claim against such suspended Class A Member shall deliver to the Membership Department a Notice of Claim that details all contracts liquidated under this Rule and the net debit or credit balance resulting therefrom and that details any other claims that such Class A Member may have against the suspended Class A Member.

(C) Failure to file a Notice of Claim within such period shall bar such Class A Member from participating in any proceeds that result from any sale of the membership of the suspended Class A Member.

2.68 Reserved Establishment of Valid Claims

(A) The Membership Department shall furnish the suspended Class A Member and all Class A Members who have filed Notices of Claim as required by Rule 2.67 with copies of all Notices of Claim filed under Rule 2.67 and the sworn statement of the suspended Class A Member filed under Rule 2.63(B). The Membership Department shall also specify a date not more than 10 business days from the date on which such Notices of Claim are furnished to such Class A Members by which the suspended Class A Member or any claimant Class A Member may file an objection to any claim.

(B) If a suspended Class A member or any claimant Class A Member fails to file an objection to a claim before the date set by the Membership Department, then that Class A Member shall have waived all rights to object to such claim or claims.

(C) In the event that any claim is disputed, the validity of such claim shall be determined by arbitration in accordance with Chapter 5 of the Rules. The arbitration shall proceed as if the objecting Class A Member has filed a Demand for Arbitration. The objecting Class A Member shall pay the fee prescribed in Rule 5.37. The arbitrators shall determine whether and to what extent such claim is valid; and, in accordance therewith whether a claimant is entitled to participate in the proceeds of a sale of the Membership of such suspended Class A Member, pursuant to Rule 2.69B.

2.69 Reserved Expelled Class A Member

All Class A Memberships held by a Class A Member who is expelled from the Exchange shall be sold and the proceeds paid and applied as provided in Rules 2.69A and 2.69B.

2.69A Sale of Membership

(A) If within 10 business days from the date of the decision of the Arbitration Committee or from the last date established by the Membership Department for filing of objections to Notices of Claim, whichever is later, a Class A Member suspended under this Chapter does not pay all valid claims, then all Class A Memberships and all other collateral previously delivered or pledged to the Exchange (including, without limitation, Class A shares of CME Group) of the suspended Class A Member shall be sold in accordance with this Rule and the proceeds of the sale of such Class A Memberships shall be distributed in accordance with Rule 2.69B.

(B) When any Class A Membership is sold pursuant to this Rule, written notice of such sale stating the date and time of such sale shall be sent to the Class A Member and the other Class A Members 10 days prior to such sale.

(C) All sales should be made by the President or his designee on the floor of the Exchange to the highest bidder at open outcry but in no event less than the highest bid then posted at the Exchange for the transfer of a Class A Membership. Any Class A Member may purchase such Class A Memberships. Any Class A Memberships so purchased shall be free from and clear of any claims, liens or attachments. Such sale shall be final and binding and not subject to challenge. Payment for the purchase of such Memberships shall be made to the Exchange.

2.69B Disposition of Proceeds

The proceeds of any sale of any Class A Membership and all other collateral previously delivered or pledged to the Exchange (including, without limitation, Class A shares of CME Group) pursuant to Rule 2.69A shall be paid and applied in the following order of priority:

- (1) first, to the Exchange in full satisfaction of any amounts due to the Exchange including, but not limited to, booth fees, office rent, phone charges and outstanding balances (principal and accrued interest) on notes guaranteed pursuant to former Rule 2.56 ("Exchange Financed Class A Memberships");
- (2) second, pro rata to the payment of such Class A Member's primary clearing member and secondary clearing members, if any, of all claims filed in accordance with the requirements of Rule 2.51 for losses arising from the clearance of trades executed by the guaranteed Class A Member;
- (3) third, the remaining balance, if any, pro rata to other Class A Members on allowed claims arising out of transactions in Exchange futures and options contracts and/or any other Exchange business of such Class A Members, provided, that, no partner shall share in the proceeds of the sale of a Class A Membership of one of his partners until all claims of other Class A Members have been satisfied in full;
- (4) fourth, the remaining balance, if any, to the payment of any claims made by entities or persons who have financed the purchase of the Class A Membership; provided, that, documentation regarding such purchase was filed with the Membership Department prior to such purchase; and
- (5) fifth, the balance, if any, to the Class A Member whose Class A Membership was sold or to his legal representative, except that, notwithstanding any other provision of the Bylaws or the Rules, for purposes of this subsection (5) the term Class A Member shall not include lessees, but shall mean the beneficial owner of such Class A Membership.

2.69C Reinstatement of Suspended Class A Member

(A) A Class A Member suspended under Rules 2.64, 2.65 or 2.66 may apply for reinstatement at any time prior to the sale of his Class A Membership.

(B) When a Class A Member applies for reinstatement, he shall deliver to the President or his designee a schedule of all of his creditors, a statement of the amounts owed, the nature of the settlement by which claims of a creditor were paid, and such other information as the President or his designee may request.

(C) Written notice of the time and place of the meeting of the Hearing Panel of the Board at which the application for reinstatement is to be considered shall be sent to the suspended Class A Member and to the other Class A Members not less than five days prior to the meeting.

(D) The vote of a majority of the panel is required to reinstate the suspended Class A Member. Where a Class A Member has failed, however, to give timely the notice required by Rule 2.63, a vote of two-thirds of the entire Board is required to reinstate the suspended Class A Member.

(E) If a Class A Member suspended under this Chapter is not reinstated within one year from the date of his suspension, then such Class A Member may not be reinstated.

2.70 Leases of Memberships' Trading Privileges

(A) A Member may lease a membership's trading privileges to another Member or to a Member-elect pursuant to an agreement in a form prescribed by the Exchange; provided that, memberships subject to outstanding seat financing agreements under ~~former~~ Rule 2.56 shall not be leased. A copy of the lease must be delivered to the Membership Department and to the lessee's PCM.

(B) Except as provided in Rules 2.60, a lease includes any transfer of a membership by a Member where the transferring Member: retains the ownership interest in the membership; retains a right to appreciation or depreciation (or both) in the value of the membership; and retains a right to reacquire the membership.

(C) Deleted.

(D) A Member who, with respect to his last or sole membership, has leased to another his trading privileges ("lessor") shall not be entitled to member rates for trades executed for his account. A Member who, with respect to his last or sole membership on the NYMEX Division, has leased to another his NYMEX trading privileges shall not be entitled to: (i) serve on the Board of Directors, except as otherwise provided for in the by-laws or charter, or (ii) receive any life insurance and/or disability insurance benefits bestowed upon NYMEX Members; ~~however, a NYMEX Member who has leased to another any or all of his trading privileges with respect to any of his memberships shall be entitled to receive the pro rata share of any other distribution of: (1) the revenues, assets and proceeds of the Exchange; and (2) the assets of the Exchange in the event of any liquidation, dissolution or winding up the affairs of the Exchange.~~ A Member of either Division who, with respect to his last or sole membership, has leased to another his trading privileges ("lessor") shall not, while present on the respective Division(s) trading floor, be entitled to place orders, directly with any floor member or floor clerk, for the execution of any futures or options contracts (except that, if properly registered as a clerk, such person may transmit customer orders for execution).

(E) Notwithstanding anything to the contrary in Section (D), during the term of a lease of regular trading privileges on the NYMEX Division the lessee of those privileges ("lessee of regular trading privileges") shall be entitled to serve on

the Board of Directors, receive any life insurance and/or disability insurance benefits bestowed upon NYMEX Division Members, and member rates for any trades executed for his account during any Regular Trading Hours trading session and any other trading session, as the Board may, from time to time, determine.

(F) Section (F) applies only to COMEX Division lessees.

During the term of a lease of regular trading privileges on the COMEX Division the lessee of those privileges ("lessee of regular trading privileges") shall be entitled to receive member rates for any trades executed for his account during any Regular Trading Hours trading session, subject to all applicable surcharges as set forth in this Rule 2.70. The lessee of regular trading privileges shall not be entitled to receive any life insurance and/or disability insurance benefits bestowed upon Members, to vest and participate in any distributions from the Member Retention and Retirement Plan, or the right to vote that is set forth in the COMEX By-Laws.

In addition to the dues and assessments permitted under Section (I) of this Rule 2.70, the following fees shall be charged to the lessee of regular trading privileges on the COMEX Division:

(i) there shall be a surcharge of twelve and one-half cents (\$0.125) (twenty-five cents (\$0.25) per round-turn) on each futures contract and each option contract purchased or sold for the personal account of a lessee or for an account controlled by the lessee (customer type indicator CTI# 1).

(ii) there shall be a surcharge of fifty cents (\$0.50) (one dollar (\$1.00) per round-turn) on each futures contract and each option contract bought or sold by a lessee for the house account of the lessee's clearing member (CTI 2), for the account of another member present on the floor or an account controlled by such other member (CTI 3), or for the account of any other type of customer (CTI 4), provided that such surcharge shall not apply to contracts traded by a lessee who is one of no more than two bona fide employees of a member firm leasing memberships for the purpose of executing trades for the account of the member firm and/or its customers.

(G) Lessors and lessees may serve on Exchange committees to the extent allowed by the By-Laws and Rules and as determined by the Board of Directors.

(H) All lessors and lessees shall be subject to such dues and assessments as are from time-to-time determined by the Board of Directors.

(I) Lessees of regular trading privileges shall not be entitled to any other rights of membership not specifically set forth or addressed elsewhere in this Rule 2.70. The lessee's guarantor(s) shall have no right of indemnification against the lessor for any and all claims against the lessee which have been satisfied in accordance with the terms of the guarantee. The lessor shall neither be liable for nor shall the leased membership be used to satisfy any and all claims against the lessee which have not been satisfied by the lessee and/or the lessee's guarantor(s). Lessees shall have continuing personal liability for any claims which accrued during the term of the lease which were not satisfied by the lessee's guarantor(s); for the payment of disciplinary fines assessed against the lessee which were not otherwise satisfied; and for any other financial obligations to the Exchange and or its Members that were not otherwise satisfied.

2.77 Transfers Within Same Family Upon Death of a Member

(A) The membership of a deceased Member may be transferred to a member of the same family (a spouse, parent, child, sibling, grandparent or grandchild) within the period of time provided for in Rule 2.76, provided such transferee is a Member or Member-Elect. However, with respect to a membership financed under former Rule 2.56, no such transfer shall be effective unless and until the loan is repaid in accordance with Exchange Bylaws and Rules and Financing Agreement.

(B) If the family member to whom a transfer is sought is not eligible for election as a Member because he or she does not meet the minimum age requirement of Rule 2.00(A), the legal representative of the deceased Member, upon approval by the Exchange, shall retain the Membership in the name of the Estate of the deceased Member until such time as the family member to whom the transfer is ultimately sought meets the minimum age requirement of Rule 2.00(A).

2.80 Membership Denial Procedures

(A) In the event that a subcommittee of the Membership Committee recommends to the Board the disapproval of votes to disapprove an application for membership, the subcommittee the Board shall appoint a Panel of three disinterested Directors to hear the matter and shall issue a recommended decision for the Board's consideration of the applicable Panel of the Membership Committee ("Membership Committee"), as described in Rule 3.31.

(B) The subcommittee Membership Committee shall communicate to the Compliance Department its recommendation for disapproval and the reasons therefor; thereafter, the Membership Committee subcommittee shall cooperate with the Compliance Department in providing it with the evidence in support of the recommendation for disapproval.

(C) Within ten (10) days after the Membership Committee subcommittee's recommendation for disapproval is communicated to the Board Membership Committee, the Compliance Department shall issue and serve on the applicant, in the manner set forth in Rule 8.04(A), a Notice of Recommendation for Membership Denial which shall set forth the acts, practices or conduct on which the recommendation is based and notify the applicant that (1) he is entitled to a hearing on his application; (2) he must request, in writing, such a hearing and file an answer to the Notice of Recommendation for Membership Denial with the Compliance Department and the Secretary within ten (10) days of the receipt of the Notice; (3) failure to file an answer and request for hearing on a timely basis will result in the application for Membership being withdrawn.

(D) The applicant's Answer shall state, with respect to each allegation in the Notice, whether he admits, denies, or lacks sufficient information on which to respond and any other information with respect to mitigation or rehabilitation on which the applicant intends to rely at the hearing. An answer stating that the applicant lacks sufficient information on which to respond shall be deemed a denial of an allegation.

(E) The Board Panel Membership Committee may determine the procedures to be applied in any hearing before it; provided, however, that the following procedures shall apply in every case:

(1) The Membership Committee subcommittee's position shall be represented by the Compliance Department as counsel.

(2) The applicant may be represented by counsel or any other representative of his choice; either personally, or

through such counsel or other representative, may present witnesses or other evidence; and, may cross-examine witnesses.

(3) The formal rules of evidence shall not apply and the ~~Board Panel~~Membership Committee shall have the discretion to accept or to reject any and all evidence.

(4) A stenographic transcript of the proceedings shall be made.

(5) The Notice of Recommendation for Membership Denial, any Answer, the stenographic transcript, any documentary evidence or other material presented to the ~~Board Panel~~Membership Committee by either party shall constitute the record of the hearing.

(6) The burden of proof of unfitness for membership shall be on the Compliance Department.

(7) A finding of unfitness for membership may be made on the weight of the evidence contained in the record of the proceeding.

(8) In advance of the hearing, the applicant shall be entitled to examine all books, documents, and other tangible evidence in the possession or under the control of the Exchange that (i) are to be relied upon by the Compliance Department in prosecuting the matter, or, (ii) which are relevant to the application.

(9) Any person within the jurisdiction of the Exchange who is called as a witness at any hearing shall appear at such hearing and give testimony or produce evidence.

(10) The ~~Board Panel~~Membership Committee 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.

(F) The ~~Board Panel~~Membership Committee shall issue a ~~recommended~~ decision within thirty (30) days after the later of the close of the hearing or the last day on which any post-hearing memoranda are filed by the parties. The ~~recommended~~ decision shall ~~report to the Board~~include (1) a summary of the allegations of the Notice of Recommendation for Membership Denial and the Answer; (2) a summary of the evidence produced at the hearing; (3) a statement of the findings and conclusions of the ~~Board Panel~~Membership Committee with respect to each ground upon which the Notice of Recommendation for Membership Denial was based; and (4) a ~~recommendation to the Board either to admit to membership or deny admission to the applicant.~~

(G) The ~~recommended decision shall be served on the applicant in the manner set forth in Rule 8.04(A) at least ten (10) days before the next available monthly meeting of the Board. Not later than five (5) days before such meeting, the applicant may file with the Board a memorandum with respect to the recommended decision of the Board Panel.~~

(H) ~~Unless other good cause exists, the Board shall consider the matter of the applicant's admission to membership at such meeting upon review of the recommended decision of the Board Panel and the applicant's memorandum and shall issue a written decision within five (5) days of such meeting. Such decision shall contain the findings and conclusions of the Board with respect to the application and a determination of whether the applicant shall be admitted to membership. Such decision shall be a final decision of the Exchange.~~

2.87 VOTING PRIVILEGES Reserved

An Option Member has no voting rights on matters which are the subject of ballot vote or petition by the general membership.

Change History

2.11A Sole Proprietorships: (Adopted: 11/09/86)

NYMEX CHAPTER 2A – GOVERNMENT

Chapter 2A **Government**

200A.-229A. [RESERVED]

BOARD OF DIRECTORS – POWERS AND DUTIES

230A. GENERAL

The Board shall, subject to applicable provisions in the relevant corporate charter and bylaws:

- a. Be the governing body of the Exchange;
- b. Have charge and control of all property of the Exchange;
- c. Provide, acquire and maintain suitable Exchange quarters and facilities;
- d. [Reserved];
- e. [Reserved];
- f. Designate and authorize specific appointed officers to act on behalf of the Board to execute contracts within specified budgetary limits;
- g. Fix, determine and levy all membership dues, fees and assessments when necessary;
- h. Act in a judicial capacity in the conduct of hearings with respect to any charges proffered against members and, after such hearings, determine what disciplinary action, if any, should be taken by the Exchange with respect to those charges;
- i. Determine the commodities traded, the Division in which they shall be traded, the delivery months, hours of trading, the days of the contract month on which delivery may be made, and performance bond requirements;
- j. Make and amend the Rules of the Exchange; provided, the Board has also delegated such authority to make and amend the Rules of the Exchange to the Chairman and Vice Chairman of the Board and the Chief Executive Officer acting together; and
- k. Have power to act in emergencies. In the event that the Board or a hearing panel of the Board determines that an emergency situation exists in which the free and orderly market in a commodity is likely to be disrupted, or the financial integrity of the Exchange is threatened, or the normal functioning of the Exchange has been or is likely to be disrupted, it may, upon a majority vote of the members present or upon a majority vote of the members who respond to a poll, take such action as may in the Board's sole discretion appear necessary to prevent, correct or alleviate the emergency condition. Board members who abstain from voting on a Significant Action as defined in Rule 234A shall not be counted in determining whether such action was approved by a majority vote, but such members can be counted for the purpose of determining whether a quorum exists. Without limiting the foregoing, the Board may: (1) terminate trading, (2) limit trading to liquidation of contracts only, (3) order liquidation of all or a portion of a member's proprietary and/or customers' accounts, (4) order liquidation of positions of which the holder is unable or unwilling to make or take delivery, (5) confine trading to a specific price range, (6) modify the trading days or hours, (7) alter conditions of delivery, (8) fix the settlement price at which contracts are to be liquidated, and (9) require additional performance bonds to be deposited with the Clearing House. All Exchange contracts shall be subject to the Board's emergency powers and the specifications of each shall be deemed subject to this rule.

Whenever a hearing is scheduled to be held before a hearing panel of the Board ("Panel"), the Chairman of the Board shall appoint a director to serve as the Panel chairman, who shall conduct the hearing, and two additional directors to serve on the Panel. One of these directors shall be a non-member. A majority decision by the Panel shall be considered the action of the Board as a whole. Each Panel that conducts a hearing or proceeding shall consist of directors that possess sufficiently diverse interests so as to ensure fairness. No member of the Board may serve on a particular Panel if he has a personal, financial or other direct interest in the matter under consideration.

Any authority or discretion by these rules vested in the Chairman, Chief Executive Officer, President or other officer or delegated to any committee shall not be construed to deprive the Board of such authority or discretion and in the event of a conflict, the determination of the matter by the Board shall prevail.

231A. [RESERVED]

232A. EXCHANGE FACILITIES

The Exchange shall provide trading facilities which shall be open for trading on such days and at such hours as the Exchange shall determine, except during emergency situations as provided by Exchange rules.

233A. [RESERVED]

234A. AVOIDING CONFLICTS OF INTEREST IN "SIGNIFICANT ACTIONS"

234A.A. Definitions

For purposes of this rule:

1. "Significant Action" means (a) an Exchange action or rule change which addresses an "emergency" as defined in CFTC Regulation 40.1 (g); or (b) any change in Exchange performance bond levels that is designed to respond to extraordinary market conditions such as an actual or attempted corner, squeeze, congestion or undue concentration of positions, or that otherwise is likely to have a substantial effect on prices in any contract traded or cleared at the Exchange.
2. "Committee" means the Board or any body that is authorized to take a Significant Action.
3. "Member's Affiliated Firm" means a firm in which the member is a "principal," as defined in CFTC Regulation 3.1(a), or an employee.

234A.B. Review of Position Information

1. Prior to the consideration of any Significant Action, each member of the Committee must disclose to the appropriate Exchange staff the following position information to the extent known to him: ,
 - a. Gross positions held at the Exchange in the member's personal accounts or "controlled accounts," as defined in CFTC Regulation 1.3(i);
 - b. Gross positions held at the Exchange in proprietary accounts of the Member's Affiliated Firm;
 - c. Gross positions held at the Exchange in accounts in which the member is a principal;
 - d. Net positions held at the Exchange in customer accounts at the Member's Affiliated Firm; and
 - e. Any other types of positions, at the Exchange or elsewhere, held in the member's personal accounts or the proprietary accounts of the Member's Affiliated Firm that could reasonably be expected to be affected by the Significant Action.
2. Exchange staff will independently determine what positions are held in each of the above categories based on a review of the most recent large trader reports and clearing records available to the Exchange and any other source of information that is held by and reasonably available to the Exchange, taking into consideration the exigency of the Significant Action.
3. The requirements of sections B.1. and B.2. apply only to members who participate in either the deliberations or voting on the Significant Action in question.

234A.C. Determination Whether Abstention Required

1. A member of a Committee must abstain from both the deliberations and voting by such Committee on any Significant Action if the member knowingly has a direct and substantial financial interest in the result of the vote based upon either Exchange or non-Exchange positions that could reasonably be expected to be affected by the action or is otherwise conflicted based on existing Exchange policy. Exchange staff will independently require a member of a Committee to abstain from both the deliberations and voting by such Committee on any Significant Action if, based upon the information reviewed in sections B.1. and B.2. above, Exchange staff determines that the member

has a direct and substantial financial interest in the result of the vote.

2. The Exchange will prepare written records to document that the conflicts determination procedures required by this rule have been followed. Such records will include (a) the names of all members who attended the meeting in person or who otherwise were present by electronic means; (b) the name of any member who voluntarily recused himself or was required to abstain from both the deliberations and voting on a matter and the reason for the recusal or abstention, if stated; and (c) information on the position information that was reviewed for each member.

235A.-255A. [RESERVED]

EXCHANGE OFFICERS AND EMPLOYEES

256A. INDEMNIFICATION OF CERTAIN PERSONS

The Exchange shall indemnify its directors, officers, committee members, employees, and other persons as specified in Article VIII of the Exchange's Bylaws and Article 3 of the Amended and Restated Bylaws of Commodity Exchange, Inc., as applicable.

257A. EXCHANGE PHYSICAL EMERGENCIES

In the event that the functions of the Exchange are, or are threatened to be, severely and adversely affected by a physical emergency such as fire or other casualty, bomb threats, substantial conditioning systems or transportation breakdowns, the Chief Executive Officer, President or Chief Operating Officer or their delegate may take any action necessary to deal with the emergency, including but not limited to, a suspension of trading. In the absence of the aforementioned Exchange officers or delegate, any member of the Executive Committee may act instead of the Chief Executive Officer, President or Chief Operating Officer.

Upon a determination by the Chief Executive Officer, President or Chief Operating Officer or their delegate that the physical emergency has sufficiently abated to permit the orderly functioning of the Exchange, he shall order restoration of trading or the removal of other restrictions imposed.

The Exchange shall notify the CFTC of the implementation, modification or termination of a physical emergency action as soon as possible after taking the action.

Nothing in this rule shall in any way limit the authority of the Board of Directors to act in an emergency situation pursuant to Rule 230A.k.

258A. DISCLOSURE OF INFORMATION

The Exchange shall not disclose to any person any information regarding the financial condition of a Class A Member or Member Firm or the transactions or positions of any Class A Member or Member Firm or any person except:

- a. to any committee, officer, director, employee or agent of the Exchange authorized to receive such information within the scope of its or such person's duties;
- b. to any duly authorized representative of the Commission or other regulatory agency with jurisdiction over the Exchange requesting such information or to any duly authorized representative of any other regulatory or self-regulatory organization with which the Exchange has entered into an information sharing agreement;
- c. as required by law;
- d. when the Class A Member or Member Firm requests or consents to such disclosure; or
- e. that the Exchange may release such information in connection with any litigation involving the Exchange when, in the opinion of the Exchange, the information is relevant or the release of the information is necessary and appropriate to the conduct of such litigation.

259A. EFFECT OF OTHER EXCHANGE RULES

In the event of a conflict between the rules in this Chapter and any other Exchange rules, the rules in this Chapter shall control.

NYMEX CHAPTER 3 – COMMITTEE RULES

3.00 Rules of Order; Committee Composition

(A) Each committee shall have the authority to make rules governing its own conduct and its proceedings unless otherwise provided in the Bylaws and Rules. In the absence of such rules, all meetings of committees and subcommittees shall be conducted in accordance with the then current edition of Robert's Rules of Order.

(B) For Committees comprised of specifically designated percentages of Class A Member and COMEX Division representation, the following requirements shall apply:

(1) Where allocation of the specified percentages results in a requirement to round-off a fraction, the adjustment shall be accomplished in favor of the Membership division with minority representation;

(2) The Membership division with minority representation (through the Board of Directors or the COMEX Governors Committee, as the case may be) may object to the assignment of any dual member to the minority group.

(3) The COMEX Governors Committee shall be permitted to make recommendations to the Chairman and/or the Board as to the COMEX Division members to be appointed.

(C) In the event that any non-Exchange Members are added to any committee subject to specifically designated percentages of Class A Members and COMEX Division representation, the specifically designated percentages shall be changed to a ratio of the same proportion, so that, for example, a committee with specifically designated percentages of 70% Class A Members and 30% COMEX Division Members would then have a seven to three ratio requirement.

(D) In the event that any committee: 1) succeeds to all or any part of the functions of a committee subject to specifically designated percentages of Class A Members and COMEX Division representation ("Established Committee"); or 2) is created with responsibility for functions that significantly impact the COMEX Division ("New Committee"); COMEX Division Members shall be represented on the committee, in the case of a committee succeeding to the functions of an Established Committee, to the same extent they are represented on an Established Committee and, in the case of a New Committee, in a ratio of seven Class A Members to three COMEX Division Members.

~~(E) The specifically designated percentages of Class A Members and COMEX Division representation as specified in these rules shall be treated as a Term Sheet Rule as defined in the Bylaws of the COMEX Division.~~

3.02 Restrictions on Governing Board Members, Committee Members, Consultants, and Other Persons Who Possess Material, Non-Public Information

(A)(1) No member of the Board of Directors or any Committee of the Exchange or any Consultant shall use or disclose, for any purpose other than the performance of such person's official duties relating to the Board, Committee, or as a Consultant, material non-public information obtained as a result of such person's participation on the Board, Committee, or as a Consultant.

(2) No person shall trade for such person's own account, or for or on behalf of any other account, in any commodity interest, on the basis of any material, non-public information that such person knows was obtained in violation of Subsection (A)(1) of this rule from a governing board member, committee member, or consultant.

(B) The terms "material information" and "non-public information" shall have the same meaning as defined for those terms in Commission Regulation 1.59, as it may be in effect from time to time.

(C) Definitions:

(1) "Governing board member" means a member, or functional equivalent thereof, of the board of governors of a self-regulatory organization.

(2) "Committee member" means a member, or functional equivalent thereof, of any committee of a self-regulatory organization.

(3) "Consultant" means a person who serves in the capacity of a consultant for either the Board of Directors or the Exchange.

(D) Additionally, the following items shall be kept confidential if the Board's majority deems the item confidential at the time of a Board meeting and the same is reflected in the minutes of the meeting:

- (1) Deliberations and discussions;
- (2) Votes, including the number and identity of the voters; and
- (3) Issues requested to be included in future Board meeting agendas.

3.03 Disqualification from Board and Committee Service

(A) No person shall serve on the Board of Directors or any Board level committee, the Clearing House Committee, or any committee or subcommittee or panel thereof that is authorized by a self-regulatory organization to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions or to hear appeals thereof

(1) who is found by a final decision or settlement agreement (or absent a finding in the settlement agreement if any acts charged included a disciplinary offense) to have committed a disciplinary offense, as defined in Section (B) below; or

(2) whose CFTC registration in any capacity has been revoked or suspended; or

(3) who is subject to an agreement with the CFTC or any self-regulatory organization not to apply for registration or membership; or

(4) who is subject to a denial, suspension or disqualification from serving on a disciplinary committee, oversight committee, arbitration panel or governing board of any self-regulatory organization as that term is defined in Section 3(a)(26) of the Securities Exchange Act of 1934; or

(5) who has been convicted of any felony listed in Section 8a(2)(D)(ii) through (iv) of the Commodity Exchange Act;

for a period of three years from the date of such final decision or for such a time as the person remains subject to any suspension, expulsion or has failed to pay any portion of a fine imposed for committing a disciplinary offense, whichever is longer.

(B) "Disciplinary offense" is defined as a:

(1) Violation of any Exchange rule or the rules of a self-regulatory organization (as defined in CFTC Regulation 1.63(a)(1)), except those violations: (a) that are based solely on (i) decorum or attire, (ii) financial requirements, or (iii) reporting, recordkeeping, or position limit requirements which receive cumulative fines of \$5,000 or less within any twelve-month period; or (b) that receive cumulative fines of \$5,000 or less within any twelve-month period;

(2) Notwithstanding paragraph (1) above, a "disciplinary offense" shall include a violation of any Exchange rule or rule of another self-regulatory organization which: (a) involves fraud, deceit or conversion; or (b) results in an access denial, suspension or expulsion;

(3) Violation of the Commodity Exchange Act or CFTC regulations; or

(4) Failure to exercise supervisory responsibility in violation of the Rules of the Exchange, the rules of other self-regulatory organizations, the Commodity Exchange Act or CFTC regulations with respect to activities that involved fraud, deceit or conversion.

A Member who serves on any of the committees described in 3.03(A) shall inform the Exchange if he or she is currently ineligible, and shall immediately inform the Exchange if he or she later becomes ineligible, to serve on such committees under the standards set forth above with respect to disciplinary offenses. Violation of this rule shall be an act detrimental to the interest or welfare of the Exchange.

The following provisions of this Rule 3.03 shall apply with regard to the Class A Member of New York Mercantile Exchange Inc.

(A) Definitions:

(1) "Self-regulatory organization" means a "self-regulatory organization" as defined in Commission regulation 1.3(ee), and includes a "clearing organization" as defined in Commission regulation 1.3(d), except as defined in paragraph (C)(6) of this section.

(2) "Disciplinary committee" means any person or committee of persons, or any subcommittee thereof or panel that is authorized by a self-regulatory organization to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions or to hear appeals thereof.

(3) "Arbitration panel" means any person or panel empowered by a self-regulatory organization to arbitrate disputes involving such organization's members or their customers.

(4) "Oversight panel" means any panel authorized by a self-regulatory organization to review, recommend or establish policies or procedures with respect to the self-regulatory organization's surveillance, compliance, rule enforcement or disciplinary responsibilities.

(5) "Disciplinary offense" means:

(i) Any violation of the rules of a self-regulatory organization except those rules related to:

(A) Decorum or attire,

(B) Financial requirements, or

(C) Reporting or recordkeeping unless resulting in fines aggregating more than \$5,000 within any calendar year.

(ii) Any rule violation described in paragraphs (A)(5)(i)(A) through (A)(5)(i)(C) of this section which involves fraud, deceit or conversion or results in a suspension or expulsion, or with respect to repeated violations involving reporting or recordkeeping, where a disciplinary panel has determined, pursuant to a settlement agreement or an adjudication on the merits, that the violation, in light of all relevant facts including but not limited to evidence as to whether or not steps have been taken by a respondent to correct the situation, the reputation and disciplinary history of the respondent, and any indication that customers may have been harmed, investigations intentionally corrupted or rule violations masked by the pattern of audit trail offenses — warrant disqualification from Board or Disciplinary Committee service.

(iii) Any violation of the Commodity Exchange Act or the regulations promulgated thereunder, or,

(iv) Any failure to exercise supervisory responsibility with respect to acts described in paragraphs (A)(5)(i) through (A)(5)(iii) of this section when such failure is itself a violation of either the rules of the self-regulatory organization, the Act or the regulations promulgated thereunder.

(v) Except as provided in section (A)(5)(ii), violations of the following Exchange rules shall not be considered "disciplinary offenses" unless they involve fraud, deceit or conversion or result in suspension or expulsion:

(A) Decorum and Attire NYMEX Rules 6.60 and COMEX Rules 104.03; 104.14; 104.25; 104.09; 104.05(a); or 104.70; any rule violation that results in the interference or attempt to interfere with an employee of the Exchange in the performance of his duties under COMEX Rules 104.04, 104.05 and 104.07;

(B) Financial NYMEX Rules 2.14, 2.15, 2.23, 2.30, 2.33, 2.42, 2.72, 4.00, 4.01, 4.02, 4.03, 4.04, 4.05, 9.05, 9.20, 9.21, 140.22, 300.09 and 300.19 and COMEX Rules;

(C) Recordkeeping or Reporting NYMEX Rules 6.07, 6.07A, 6.08A, 6.08B, 6.10, 6.11, 6.18, 6.19, 6.20, 6.21, 6.24, 6.90, 8.50, 9.04, 9.22, 9.26, 9.27, 9.32, 9.33, 9.34, 9.35, 9.36, 11.27, 11.36, 11.58, 90.08, 90.13, 100.08, 100.13, 140.15, 140.19, 140.20, 150.09, 150.13, 150.14, 150.14A, 190.09, 190.13, 190.14, 190.14A, 200.11, 200.15, 200.17, 200.20, 200.20A, 220.11, 220.14, 220.17, 220.17A, 230.12, 230.17, 230.18, 300.08, 300.11, 300.13 and 300.15 (only to the extent that such rules relate to recordkeeping and/or reporting and do not result in aggregate fines exceeding \$5,000 in a calendar year) and COMEX Rules 104.80, 104.81, 104.82, 104.84, 104.85, 104.86, or 104.87.

(vi) A disciplinary offense must arise out of a proceeding or action which is brought by a self-regulatory organization, the Commission, any Federal or state agency, or other governmental body.

(6) "Final decision" means:

(i) A decision of a self-regulatory organization which cannot be further appealed within the self-regulatory organization, is not subject to the stay of the Commission or a court of competent jurisdiction and has not been reversed by the Commission or any court of competent jurisdiction; or,

(ii) Any decision by an administrative law judge, a court of competent jurisdiction or the Commission which has not been stayed or reversed.

(7) "Settlement agreement" means any agreement consenting to the imposition of sanctions by a self-regulatory organization, a court of competent jurisdiction or the Commission.

(B) No person who, within the prior three years, has become subject to one of the disqualifications set forth in subsection (C) below, shall be permitted to serve on the Board of Directors, the Business Conduct Committee, the Adjudication Committee, the Bylaws Committee, the Control Committee, the Compliance Review Committee, the Floor Committee, the Appeals Committee, the Arbitration Committee, or any Delivery Committee or appeals panel established in connection with a delivery.

(C) A person shall be disqualified from serving on the Board of Directors and the Committees set forth above, if such person:

(1) Was found within the prior three years by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the Commission to have committed a disciplinary offense;

(2) Entered into a settlement agreement within the prior three years in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense;

(3) Currently is suspended from trading on any contract market, is suspended or expelled from membership with any self-regulatory organization, is serving any sentence of probation or owes any portion of a fine imposed pursuant to either:

(i) A finding by a final decision of a self-regulatory organization, and administrative law judge, a court of competent jurisdiction or the Commission that such person committed a disciplinary offense; or,

(ii) A settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense.

(4) Currently is subject to an agreement with the Commission or any agreement with the Commission or any self-regulatory organization not to apply for registration with the Commission or membership in any self-regulatory organization;

(5) Currently is subject to or has had imposed on him within the prior three years a Commission registration revocation or suspension in any capacity for any reason, or has been convicted within the prior three years of any of the felonies listed in section 8a(2)(D)(ii) through (iv) of the Act;

(6) Currently is subject to a denial, suspension or disqualification from serving on the disciplinary committee, arbitration panel or governing board of any self-regulatory organization as that term is defined in section 3(a)(26) of the Securities Exchange Act of 1934.

(D) Within thirty days of the end of each calendar year the Exchange shall submit to the Commission a certified list of any persons who have been removed from its disciplinary committees, oversight panels, arbitration panels or governing board pursuant to the requirements of this Rule during the prior year.

(E) The Exchange shall submit to the Commission a schedule listing all these rule violations which constitute disciplinary offenses as defined in paragraph (A)(5)(i) of this Rule and to the extent necessary to reflect revisions shall submit an amended schedule within thirty days of the end of each calendar year. The Exchange shall maintain and keep current the schedule required by this section, post the schedule in a public place designed to provide notice to Members and otherwise ensure its availability to the general public.

The current schedule of violations that constitute a disciplinary offense as defined in paragraph (A)(5)(i) of this Rule is set forth in Schedule A to this Rule for the Class A Member and Schedule B to this Rule for the COMEX Division.

(F) Whenever the Exchange finds by final decision that a person has committed a disciplinary offense and such finding makes such person ineligible to serve on the Exchange's disciplinary committees, arbitration panels, oversight panels or governing board, the Exchange shall inform the Commission of that finding and the length of the ineligibility in any notice it is required to provide to the Commission pursuant to either Section 17(h)(1) of the Act or Commission Regulation 9.14.

Schedule A

The current schedule of violations that constitute a disciplinary offense as defined in paragraph (A)(5)(i) of this Rule is as follows:

Bylaw Sections:

106: Failure to Pay Dues, Assessments and Fees

110: Disclosure of Information

800: Members Subject to Disciplinary Proceedings

802: Failure to Pay Fine

851: Duty to Report Emergency Event

852: Summary Suspension: Action by the President (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping and/or reporting);

853: Summary Suspension: Action of the Executive Committee (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping and/or reporting);

Exchange Rules:

2.21: Qualification by Clearing Member

2.31: Duties of Guaranteed and Qualified Members

2.32: Duties of Guarantors and Qualifying Clearing Members

2.40: Responsibility of Member for Actions of Member Firms

2.41: Responsibility of Members and Member Firms for Actions of Employees

5.36: Awards

6.02: Hours for Trading

6.05: Transactions, Bids and Offers on the Trading Floor

6.06: Transactions Made at Other Than Current Market

6.08C: NYMEX ACCESS⁷ Spread Transactions

6.12: Resolution of Floor Trading Disputes

6.15: Standard Forms of Orders

6.16: Obligation of Floor Brokers

6.17: Errors and Omissions in Handling Orders

6.23: NYMEX ACCESS Trading Standards

6.25: Trading Work Station Administration

6.30: ACCESS to the Trading Floor

6.31: Trading Prohibition of Certain Persons

6.32: Trading Prohibitions: Representatives of Other Clearing Members

6.37: Attendance by Representatives of Members and Member Firms under Extraordinary Circumstances

6.40: Simultaneous Buy and Sell Orders on the Exchange Trading Floor

6.41: Trading Standards for Floor Brokers

6.42: Procedures on the Exchange Floor for Simultaneous Buy and Sell Orders

6.43: Floor Broker Registration Requirements

6.43A: Broker Associations

6.44: Registration for Billing of Floor and NYMEX ACCESS Brokerage

6.61: Pre-Arranged Trades

6.92: Surrender of Trading Records for Examination

8.00: Compliance Department

8.25: Cease and Desist Order

8.52: Manipulation

8.54: Payment of Gratuity to Employees of Others

8.55: Classification of Offenses (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping and/or reporting);

8.56: Confirmations

8.57: Confidentiality of Exchange Investigations and Proceedings

8.58: Exchange Jurisdiction Over Member, Etc.,

8.60: Obligation of Employee to Respond to Compliance Department Inquiries

8.61: Obligation of Employee to Comply with Rules of Exchange

~~8.62: Clerk Registration~~
~~8.63: Member, Member Firm and Permit Holder Responsibility~~
~~8.64: Clerk Badges~~
~~8.65: Sanctions~~
~~8.66: Billing and Commissions~~
~~8.68: Notification of Final Disciplinary Action Involving Financial Harm to a Customer~~
~~8.69: Audit Trail Violations~~
~~8.99: Member Summary Suspension (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping and/or reporting);~~
~~8.99B: Summary Procedures for Denial of Access to Specified Alternative Electronic Trading System~~
~~9.03: Guaranty Fund~~
~~9.04B: Use of E-RAV Risk Filter for Trading on Specified Exchange Alternative Electronic Trading Systems~~
~~9.10: Trade Refused By Clearing House~~
~~9.11: Transfer of Trades~~
~~9.14: Omnibus Accounts~~
~~9.19: Final Day of Trading~~
~~9.19A: Transfer to Correct Errors Occurring on the Last Day of Trading~~
~~9.28: Exemptions From Position Limits, Etc.,~~
~~9.37: NYMEX ACCESS Administrative Work Stations~~
~~9.37A: Use of Common AWS Operators by Clearing Members~~
~~11.02: Electronic Trader Designation Requirements~~
~~11.03: Scope of Trading Privileges~~
~~11.04: Responsibilities of Electronic Traders~~
~~11.07: Primary Clearing Member Permission for Electronic Trader Accounts with Other Clearing Members and Additional Authorized Terminal Users and Electronic Trading Privileges~~
~~11.08: Non-Member Firms Designated as Electronic Traders, Commodity Trading Advisers and Commodity Pool Operators~~
~~11.09: Duties of Primary Clearing Members to Monitor Electronic Traders~~
~~11.25: Acceptance of Orders for Entry into NYMEX ACCESS~~
~~11.27: Type Indicator Codes for Trading on NYMEX ACCESS@~~
~~11.31: Electronic Trading Privileges for Exchange Alternative Electronic Trading Systems~~
~~11.32: Designation Requirements for Users And User Agents Of Exchange's Alternative Electronic Trading System~~
~~11.33: Scope of Trading Privileges for Alternative Electronic Trading System~~
~~11.34: Responsibilities of Users on Exchange Alternative Electronic Trading Systems~~
~~11.35: Acceptance of Orders for Entry into Exchange Alternative Electronic Trading Systems~~
~~11.36: Type Indicator Codes for Trading on NYMEX ClearPort@~~
~~11.51: Business Day~~
~~11.52: Hours of Trading~~
~~11.53: Standard Forms of Orders for Exchange Electronic Trading Systems~~
~~11.54: Standard Forms of Orders for Exchange Electronic Trading Systems~~
~~11.55: Errors and Omissions in Handling Orders~~
~~11.56: Surrender of Trading Records for Examination~~
~~11.57: Trading Standards for Electronic Trading Systems~~
~~11.59: Use of Passwords~~
~~11.61: Limitation of Liability~~
~~11.62: NYMEX Personnel Limitation of Liability~~
~~11.64: Trading Prohibition of Certain Persons~~
~~11.65: Trading Prohibitions: Representatives of other Clearing Members~~
~~11.66: Simultaneous Buy and Sell Orders on Electronic Trading Systems~~
~~11G: NYMEX Electronic Trading Rules for Globex@ Trading System~~
~~Additional Rules (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping and/or reporting):~~
~~1. 6.60:~~
~~2. Financial – 2.14, 2.15, 2.23, 2.30, 2.33, 2.42, 2.72, 4.00, 4.01, 4.02, 4.03, 4.04, 4.05, 9.05, 9.20, 9.21, 140.22, 300.09 and 300.19;~~
~~3. Recordkeeping or Reporting – 6.07, 6.07A, 6.08A, 6.08B, 6.10, 6.11, 6.18, 6.19, 6.20, 6.21, 6.24, 6.90, 8.50, 9.04, 9.22, 9.26, 9.27, 9.32, 9.33, 9.34, 9.35, 9.36, 90.08, 90.13, 100.08, 100.13, 140.15, 140.19, 140.20, 150.09, 150.13, 150.14, 150.14A, 190.09, 190.13, 190.14, 190.14A, 200.11, 200.15, 200.17, 200.20, 200.20A, 220.11, 220.14, 220.17, 220.17A, 230.12, 230.17, 230.18, 300.08, 300.11, 300.13 and 300.15.~~
~~Schedule B~~
~~The current schedule of violations that constitute a disciplinary offense as defined in paragraph (A)(5)(i) of this Rule is as follows:~~

Bylaw Sections:

106: Failure to Pay Dues, Assessments and Fees

110: Disclosure of Information

800: Members Subject to Disciplinary Proceedings

802: Failure to Pay Fine

851: Duty to Report Emergency Event

852: Summary Suspension: Action by the President (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping and/or reporting);

853: Summary Suspension: Action of the Executive Committee (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping and/or reporting);

Exchange Rules:

104.05: Market Indication and Error Resolution Periods

104.12(a): Members Eligible to Trade on Floor-Full Floor Privileges

104.15: Trading Privileges for Guaranteed Member

104.16: Visitors

104.17: Persons Permitted to Enter Orders

104.21: Open Outcry

104.22(a): Disclosure of Customer's Order Prohibited Disclosures

104.23: Solicitation of Orders

104.24: Crossing of Orders

104.26: Wash Trades

104.27: Prearranged Trades

104.29: Errors Discovered After Trading Session

104.31: Dual Trading

104.32: Discretionary Orders

104.33: Priority of Orders and Allocation of Trades

104.34: Withholding Orders

104.35: Trading in Current Month

104.36: Exchanges for Physicals

104.37: Ex-Pits and Transfers of Existing Futures Contracts and Futures Options

104.38: Execution of Straddles

104.40: Futures Options Not Traded on Exchange

104.41: Void Transactions

104.61: Responsibility for Reporting Transactions

104.62: Add-In Trades Which are Promptly Discovered

104.63: Add-In Trades Which are not Promptly Discovered

104.64: Reporting Exercise of Futures Options

104.69: Floor Broker Registration

104.80: Trading Cards

104.81: Order Tickets

104.83: Transcription of Trade Data

104.95: Open Contracts

104.96: Reporting of Positions to Committee

104.97: Written Record of Transactions

8.00: Compliance Department

8.25: Cease and Desist Order

8.52: Manipulation

8.54: Payment of Gratuity to Employees of Others

8.55: Classification of Offenses (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping and/or reporting);

8.56: Confirmations

8.57: Confidentiality of Exchange Investigations and Proceedings

8.58: Exchange Jurisdiction Over Member, Etc.

8.60: Obligation of Employee to Respond to Compliance Department Inquiries

8.61: Obligation of Employee to Comply with Rules of Exchange

8.62: Clerk Registration

8.63: Member, Member Firm and Permit Holder Responsibility

8.64: Clerk Badges

8.65: Sanctions

8.66: Billing and Commissions

8.68: Notification of Final Disciplinary Action Involving Financial Harm to a Customer (Rule pending approval by the Commission)

~~8.60: Audit Trail Violations~~

~~8.09: Member Summary Suspension (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping);~~

~~Additional Rules (except to the extent the prohibited act relates solely to decorum or attire, financial requirements or recordkeeping and/or reporting);~~

~~104.03: Trading Outside Trading Hours~~

~~104.05(a): Market Indication and Error Resolution Period Pre-Opening Market Indication Period~~

~~104.09: Decorum on Floor~~

~~104.14: Trading Badges~~

~~104.25: Prohibited Bids and Offers~~

~~104.70: Quantity of Contracts Bid or Offered~~

~~(b) any interference or attempt to interfere with an employee of the Exchange in the performance of his duties under Rules 104.04 ("Conduct of Opening Calls"), 104.42 ("Matched Orders"), and 104.24 ("Crossing of Orders");~~

~~7.01: Minimum Financial Requirements for FCMs~~

~~7.02: Minimum Financial Requirements for Members~~

~~7.03: Minimum Financial Requirements for Member Firms~~

~~7.05: Guaranteed Members~~

~~7.07: Reporting Requirements~~

~~7.09: Additional Financial Statements~~

3.15 Bylaws Committee Reserved

~~(A) The Bylaws Committee shall be a Regular Committee and shall consist of such number of Members or persons employed by Members or Member Firms as the Chairman may appoint, subject to the approval of the Board. The Bylaws Committee shall be comprised of 70% Class A Members and 30% COMEX Division Members.~~

~~(B) All proposed Bylaws and all proposed amendments to Bylaws shall be referred to the Bylaws Committee for consideration and report to the Board unless the Board shall determine to omit such referral.~~

~~(C) The Committee may in its discretion propose to the Board such amendments or additions to the Bylaws as it may from time to time consider necessary or advisable.~~

3.16 Clearing House Committee

The Clearing House Committee shall be a Regular Committee and shall consist of such persons who are appointed by the Chairman of the Board, subject to the approval of the Board.

(A) Jurisdiction and General Provisions

The Clearing House Committee (or any subcommittee thereof) (collectively, "CHC"), shall determine whether an applicant satisfies the qualifications for status as a Clearing Member. The CHC decision shall be subject to appeal to the Board by an applicant. The CHC may adopt regulations regarding qualifications for admission to membership in the Clearing House, which regulations, when approved by the Board, shall have the same effect as rules of the Exchange. The CHC shall act upon applications for clearing membership, and, when approved by the CHC, shall be effective and thereafter ratified by the Board.

The CHC shall have at least two co-chairmen, who shall be members of the Board, and at least seven additional individuals, five who shall be Clearing Member representatives and at least one who shall be a non-member.

The CHC may conduct investigations, issue charges and consider settlement offers on its own initiative or by referral from Exchange staff or the Business Conduct Committee. Hearings on charges issued by the CHC will be conducted by the Adjudication Committee pursuant to the provisions of Exchange rules governing hearing procedures.

If the CHC determines that a Clearing Member is in a financial condition which jeopardizes or may jeopardize the integrity of the Exchange, the CHC may, by majority vote:

(1) Order the Clearing Member or its customers to deposit such additional performance bond with the Clearing House as deemed appropriate to protect the integrity of open contracts;

(2) Prescribe such additional capital or other financial requirements as it deems appropriate;

(3) Impose position limits on Clearing Members based on their regulatory capital and such other criteria as it deems appropriate;

(4) Suspend a Clearing Member, subject to approval of any two of the following individuals: the Chief Executive Officer, the President, the President of the Clearing House, the Chairman of the Board, the Chairman of the CHC or the Chief Operating Officer; and/or

(5) Order the Clearing Member to cease and desist from the conduct found to be contrary to the best interests of the Exchange.

No person shall serve on the CHC unless he has agreed in writing that he will not publish, divulge, or make known in any manner, any facts or information regarding the business of any person or entity or any other information which may come to his attention in his official capacity as a member of the CHC, except when reporting to the Board or to a committee concerned with such information or Exchange staff authorized to receive such information, when requested by the CFTC or other governmental agency or when compelled to testify in any judicial or administrative proceeding.

All information and documents provided to the CHC and all deliberations and documents related thereto shall be treated as non-public and confidential and shall not be disclosed, except as necessary to further an Exchange investigation or as required by law.

The CHC shall have jurisdiction to enforce rules pertaining to the following:

(1) Financial integrity of Clearing Members; and

(2) Business conduct of and compliance with Exchange rules by Clearing Members and by any Member who is an officer or a principal or who has assigned his membership on behalf of a Clearing Member, in connection with such Clearing Member's activities, except insofar as jurisdiction over matters relating to conduct, trading practices, trading ethics and certain sales practices of Members, and market manipulations or other actions that threaten the integrity of the market are within the purview of other Exchange committees.

(B) Settlement Offers

A respondent that is the subject of an investigation or charges may submit for consideration by the CHC a written offer of settlement in disposition of such investigation or charges. A respondent may submit a settlement offer without admitting or denying the rule violations upon which the penalty is based; provided, however, that an offer must include a consent to entry of findings by the CHC regarding the conduct and rule violations at issue and to the penalty to be imposed.

If the Audit or Compliance Department does not oppose the respondent's offer of settlement, the respondent's written offer of settlement and the Audit or Compliance Department's supporting statement shall be submitted to the CHC for consideration.

If the Audit or Compliance Department opposes an offer of settlement, the Respondent's written offer and the Audit or Compliance Department's written opposition shall be submitted to the CHC. The CHC's consideration of the offer of settlement shall be based upon the written offer and opposition filings, as well as the evidence presented to the CHC in determining to issue the charges.

The respondent may withdraw his offer at any time prior to final acceptance of the offer by the CHC. If the CHC accepts the offer, a written decision setting forth the CHC's findings and sanction shall be issued, and written notice of the decision shall be given to the respondent.

If the CHC rejects the offer, the respondent will be notified of the rejection and the offer will be deemed withdrawn. If an offer is withdrawn or rejected by the CHC, the respondent shall not be deemed to have made any admissions by

reason of the offer and shall not otherwise be prejudiced by having submitted the offer. The CHC chairman may decline to convene the CHC to consider a settlement offer.

In submitting a settlement offer, the respondent waives his right to a hearing and to appeal the CHC's decision if the offer is accepted; the respondent also waives any claim of bias or prejudice on the part of the CHC. If a respondent submits an offer within 14 days of a scheduled Adjudication Committee hearing on the charges, or after the Adjudication Committee hearing has begun, the offer shall not stay the Adjudication Committee hearing unless otherwise determined by the chairman of the Adjudication Committee. Any settlement offer submitted within 14 days of a scheduled Adjudication Committee hearing will be directed to the Adjudication Committee in the first instance. The Adjudication Committee may determine to accept or reject the settlement offer, or the Adjudication Committee may refer the settlement offer to the CHC, in which case the CHC will determine whether to accept or reject the offer.

(C) Emergency Actions

(1) The CHC is authorized to determine whether an emergency exists and whether emergency action is warranted. The following events and/or conditions may constitute emergencies:

(a) Any circumstances which may materially affect the performance of contracts traded on the Exchange, including failure of the payment system;

(b) Any action taken by the United States or any foreign government or any state or local government body, any other contract market, board of trade, or any other exchange or trade association (foreign or domestic), which may have a direct impact on trading on the Exchange;

(c) The actual or threatened bankruptcy or insolvency of any Member or the imposition of any injunction or other restraint by any government agency, court or arbitrator upon a Member of the Exchange which may affect the ability of that Member to perform on its contracts;

(d) Any circumstance in which it appears that a Member or any other person or entity has failed to perform contracts, is insolvent, or is in such financial or operational condition or is conducting business in such a manner that such person or entity cannot be permitted to continue in business without jeopardizing the safety of customer funds, Members, and/or the Exchange; and/or

(e) Any other circumstances which may have a severe, adverse effect upon the functioning of the Exchange.

(2) In the event that the CHC determines, in the good faith exercise of its sole discretion, that an emergency exists, it may take any of the following emergency actions or any other action that may be appropriate to respond to the emergency:

(a) Order the Clearing Member or his customer to deposit such additional performance bond with the Clearing House as deemed appropriate to protect the integrity of open contracts;

(b) Prescribe such additional capital requirements as it deems appropriate;

(c) Prescribe such position limitations as it deems appropriate;

(d) Order special or advance performance bond or funds to be deposited with the Clearing House from Members or from longs, shorts or both; and/or

(e) Order such performance bond changes as it deems appropriate.

All actions taken pursuant to this subsection shall be by majority vote of the committee members present. A Member affected by the action taken shall be notified in writing of such action. As soon as practicable, the Board and the CFTC shall be promptly notified of the emergency action in accordance with CFTC regulations. Nothing in this section shall in any way limit the authority of the Board, other committees, or other appropriate officials to act in an emergency situation as defined by these rules.

3.18 Compliance Review Committee

~~(A) The Compliance Review Committee shall be a Regular Committee and shall consist of the Chairmen of the Adjudication Committee, Appeals Committee, Business Conduct Committee, Control Committee, Floor Committee and Vice Chairmen of one of the COMEX Division Adjudication Committee Hearing Panels and of the COMEX Division Business Conduct Committee Panel, and such number of other persons as the Chairman may appoint, subject to the approval of the Board.~~

~~(B) The Committee may:~~

~~(i) make recommendations to the Bylaws Committee and to the Board regarding necessary or appropriate amendments, alterations or additions to the Bylaws and Rules of the Exchange;~~

~~(ii) review, and recommend to the Board, matters concerning the compliance activities, self-regulatory duties, and disciplinary policies of the Exchange;~~

~~(iii) recommend to the Chairman of the Board persons who, in the opinion of the Committee, have the abilities, maturity, judgment and other qualities to serve as members of the Adjudication Committee, Appeals Committee, Business Conduct Committee, Control Committee and Floor Committee;~~

~~(iv) direct the policies and procedures of the Adjudication Committee, Appeals Committee, Business Conduct Committee and Floor Committee be changed; and,~~

~~(v) direct the Business Conduct Committee, Floor Committee or Compliance Department to investigate a particular matter or matters or a particular person or persons when, in the opinion of the Committee, such investigation is necessary or proper in the fulfillment of the self-regulatory duties of the Exchange.~~

~~(C) The Committee shall have such other powers as are necessary and proper to its office. The list of powers of the Compliance Review Committee is not intended to limit the Committee's authority to be exclusive.~~

3.24 Equity Holders' Advisory Committee

~~The Equity Holders' Advisory Committee shall be a Regular Committee and shall consist of such number of Class A Equity Holders as the Chairman may appoint, subject to the approval of the Board.~~

3.27 Finance Committee

~~(A) The Finance Committee shall be a Regular Committee and shall consist of the Treasurer, who shall be the Chairman of the Committee, at least two (2) Directors and such number of Members, who shall not be Directors, as the Chairman shall appoint subject to the approval of the Board.~~

~~(B) The Committee shall exercise general supervision over the financial affairs of the Exchange. It shall examine and cause to be audited the accounts of the Exchange by such certified accountant or accountants as may, upon its recommendation, be approved by the Board; and shall prescribe the methods and procedures of keeping the accounts of the Exchange. It shall supervise all investments authorized by the Board. It shall recommend to the Board the financial institutions in which the Exchange's funds may be deposited and the separate accounts to be opened, maintained and designated for deposits and disbursements for various purposes.~~

3.31 Membership Committee

~~(A) The Membership Committee shall be a Regular Committee and shall consist of such number of Members as the Chairman may appoint, subject to the approval of the Board. The Membership Committee shall be divided into two panels, a Class A Membership Panel to review applications of Class A Members, the composition of which shall be left to the discretion of the Board of Directors (but will include the Vice Chairman of the COMEX Division Membership Panel), and COMEX Division Members, which shall be comprised of 70% COMEX Division Members and 30% Class A Members, and shall be chaired by the Chairman of the Class A Member Panel or his designatee.~~

~~(B) The Membership Committee shall have jurisdiction on all matters relating to applications for membership, conferring of membership privileges on non-clearing firms and the transfer of memberships. In addition, any proposed amendment to Rules §§2.70-2.73A (relating to leasing of trading privileges) (or any successor rules thereto) shall be submitted to the Membership Committee no later than 5 business days prior to its submission to the Board for approval. The Membership Committee shall review the proposed amendment and vote to recommend to the Board approval or disapproval of the proposed amendment; provided that such recommendation shall be advisory only and~~

shall not be binding on the Board. The Membership Committee may at any time recommend to the Board any amendment to Rules §§2.70-2.73A, as it deems appropriate. The Membership Committee's recommendations pursuant to this clause (B) shall be submitted to the Board along with any statement of facts which are relevant to the proposed amendment and which may assist the Board in their consideration of the proposed amendment.

Resolution Relating to Rule 3.31 and to Rule 3.03

A subcommittee of the NYMEX Division Membership Panel (as defined in the Rules) of New York Mercantile Exchange, Inc. ("NYMEX Exchange") comprised of those members of the Panel that have been stockholders and lessees of Class A memberships of NYMEX Exchange for at least one year prior to the meeting referred to in paragraph (1) below (the "Membership Subcommittee") shall also have jurisdiction over the categorization of persons for nomination for election to the Board of Directors of the Corporation. In that regard, the Membership Subcommittee shall implement the following procedures:

(1) The Membership Subcommittee shall invite from the stockholders, at an open meeting to be held not later than seven (7) weeks prior to the annual meeting of stockholders, recommendations of proposed nominees. Recommendations may be made either by the proposed nominees themselves (if such person is a stockholder) or any other stockholder including members of the Membership Subcommittee. Recommendations must state whether a proposed nominee is being recommended for the position of Director, Chairman of the Board or Vice Chairman. A stockholder may only recommend one proposed nominee for each such position, except that a stockholder may recommend one proposed nominee for each Director category as set forth in Article VI of the Certificate of Incorporation of the Corporation. Stockholders may appear before the Membership Subcommittee to present such recommendations. The Membership Subcommittee shall also consider the recommendations of stockholders submitted to it in writing at or before this meeting.

(2) On the morning after the open meeting of the Membership Subcommittee, the Membership Subcommittee shall post on the bulletin board of NYMEX a list of all persons who were recommended as proposed nominees. The list shall include the position, and in the case of a proposed nominee for Director, the category, as set forth in Article VI of the Certificate of Incorporation of the Corporation, for which each proposed nominee has been recommended.

(3) Not later than three (3) days after the open meeting of the Membership Subcommittee, stockholders may submit in writing to the Membership Subcommittee additional recommendations of proposed nominees. All such recommendations must include the position, and in the case of a proposed nominee for Director, the category, as set forth in Article VI of the Certificate of Incorporation of the Corporation, for which the proposed nominee is being recommended.

(4) On the morning after the three-day period that is set forth in paragraph (3) of this Resolution, the Membership Subcommittee shall post on the bulletin board of NYMEX a list of all persons who were recommended as proposed nominees in accordance with paragraphs (1) and (3) of this Resolution. The list shall include the position, and in the case of a proposed nominee for Director, the category, as set forth in Article VI of the Certificate of Incorporation of the Corporation, for which each proposed nominee has been recommended. No person whose name is not included on this list will be permitted to stand for election to the positions of Director, Chairman of the Board or Vice Chairman at the annual meeting of stockholders.

(5) Not later than five (5) weeks prior to the annual meeting of stockholders, the Membership Subcommittee shall determine whether each person who has been recommended as a proposed nominee is eligible for the position or positions for which he was recommended. It shall assign the proposed nominee to his proper category or categories, as set forth in Article VI of the Certificate of Incorporation of the Corporation, regardless of the category or categories for which he was recommended. The Membership Subcommittee shall hold such meetings and consider such information as it deems appropriate; provided, however, that any stockholder or lessee of Class A memberships having information concerning the eligibility of a proposed nominee may present such to the Membership Subcommittee for its consideration no later than one week after the closing of the period for recommending proposed nominees that is set forth in paragraph (3) of this Resolution; and, provided further, that any proposed nominees for Director as to whom the Membership Subcommittee is considering changing the category shall be notified of such in writing and shall have the right to appeal before the Membership Subcommittee. The Membership Subcommittee shall immediately notify the stockholders of the position or positions and/or category or categories for which each proposed nominee is eligible to be nominated.

(6) Nominations:

(a) Only those persons who were recommended as proposed nominees for election to the positions of Chairman or Vice Chairman of the Board pursuant to paragraphs (1) or (3) of this Resolution shall be eligible to be nominated for

election to these positions.

(b) ~~Persons who were recommended as proposed nominees for election to the positions of Director, Chairman of the Board or Vice Chairman pursuant to paragraphs (1) or (3) of this Resolution shall be eligible to be nominated for election to a Director position, and then, in only one of the categories of Director service to which they were assigned by the Membership Subcommittee pursuant to paragraph (5) of this Resolution.~~

(c) ~~Notwithstanding the determination of the Membership Subcommittee as to the category to which a proposed nominee is eligible to be nominated, any person who has been recommended as a proposed nominee or submitted his name as such in accordance with paragraphs (1) or (3) of this Resolution and who falls within the Director categories set forth in Article VI(d)(i)-(v) of the Certificate of Incorporation of the Corporation, shall be eligible to be nominated as a Director in the At Large category that is set forth in the Certificate of Incorporation of the Corporation. No person eligible to be nominated in the Equity Holder category or the Public Director category shall be eligible to be nominated in the At Large category.~~

(d) ~~Not later than four (4) weeks prior to the annual meeting of the stockholders, a person eligible to be nominated pursuant to this Resolution must file with the Office of the Secretary of the Exchange a nomination declaration which states that category in which the person intends to stand for election. Failure to submit a nomination declaration within this time frame will render the proposed nominee ineligible to run in any category.~~

(7) ~~No person may serve on the Membership Subcommittee beyond the date referred to in paragraph (3) of this Resolution, if such person's name is recommended as a proposed nominee for election. In the event that the names of both the Chairman and Vice Chairman of the Membership Subcommittee have been recommended as proposed nominees for election, the Subcommittee shall choose from the members of the Subcommittee its own acting Chairman to manage the process contemplated by this Resolution.~~

(8) ~~The ballot for the annual election shall list alphabetically candidates in each category, noting incumbency, where appropriate.~~

Change History

- ~~3.00 Rules of Order; Committee Composition: (Amended: 08/03/94, 11/17/00, 10/13/06)~~
- ~~3.01 Powers of Committees to Question Members: (Amended 10/13/06)~~
- ~~3.02 Restrictions on Governing Board Members, Committee Members, Consultants, and Other Persons Who Possess Material, Non-Public Information: (Amended: 03/28/88, 05/19/94, 11/17/00, 12/14/00, 10/13/06)~~
- ~~3.03 Disqualification from Board and Committee Service: (Amended: 07/11/90, 09/28/93, 01/10/94, 08/22/96, 03/09/99, 11/17/00, Rule 3.03(A)(5)(i)(C); 11/22/02, Rule 3.03(A)(5)(v)(C); 11/22/02; 07/06/05; 10/13/06)~~
- ~~3.04 Voting By Board and Committee Members on Certain Matters: (Adopted: 03/09/99; Amended: 11/17/00; 10/13/06)~~
- ~~3.10 Adjudication Committee: (Amended: 10/16/89, 09/28/93, 08/03/94, 11/17/00, 07/07/2006; 10/13/06)~~
- ~~3.11 Appeals Committee: (Amended: 09/28/93, 08/03/94, 11/17/00, 10/13/06)~~
- ~~3.11A Hearing Procedures: (Adopted: 09/28/93; Amended: 10/13/06)~~
- ~~3.12 Arbitration Committee: (Amended: 08/03/94, 11/17/00, 10/13/06)~~
- ~~3.14 Business Conduct Committee: (Amended: 10/16/89, 09/28/93, 08/03/94, 11/17/00, 04/12/05, 07/07/06, 10/13/06)~~
- ~~3.15 Bylaws Committee: (Amended: 08/03/94, 11/17/00, 10/13/06)~~
- ~~3.16 Clearing House Committee: (Amended 10/13/06)~~
- ~~3.18 Compliance Review Committee: (Amended: 08/03/94, 10/13/06)~~
- ~~3.19 Control Committee: (Amended: 09/16/86, 08/03/94, 11/17/00)~~
- ~~3.20 Reserved: (Formerly Floor Committee — Deleted 10/13/06)~~
- ~~3.21 Delivery Committee: (Formerly Training and Education Committee — Deleted 10/13/06)~~
- ~~3.22 Electronic Trading Advisory Committee: (Amended 10/13/06)~~
- ~~3.23 Energy Advisory Committee: (Amended 10/13/06)~~
- ~~3.24 Equity Holders' Advisory Committee: (formerly Class A Member Nominating Committee — Nominations Deleted: 09/21/95; Amended 10/13/06)~~
- ~~3.25 Facilities Committee: (Amended 10/13/06)~~
- ~~3.26 FCM Advisory Committee: (Adopted: 08/03/94; Amended 10/13/06)~~
- ~~3.27 Finance Committee: (Amended 10/13/06)~~
- ~~3.28 Floor/Settlement Price Committee: (Amended 10/13/06)~~
- ~~3.29 Floor Broker/Local Advisory Committee: (Amended: 10/13/06)~~
- ~~3.30 Marketing Committee: (Adopted: 08/03/94, 11/17/00)~~
- ~~3.31 Membership Committee: (Amended: 08/03/94, 11/17/00, 01/23/2001, 01/30/2001, 10/13/06)~~

~~3.32 Metals Advisory Committee: (Amended: 08/03/94, 07/09/96, 10/13/06)~~

~~3.33 NYMEX Charitable Foundation Committee: (Adopted: 08/03/94, 10/13/06)~~

~~3.34 Options Advisory Committee: (Amended 10/13/06)~~

NYMEX CHAPTER 5 – ARBITRATION RULES

5.36 Awards

(A) All awards shall be in writing and signed by a majority of the arbitrators or in such manner as is required by law. Such awards may be entered as a judgment in any court of competent jurisdiction. In addition to the damages sought, the panel may assess against the losing party arbitration fees, expenses and costs associated with the hearing. The panel may assess against a party all or any portion of the reasonable attorney fees incurred by any other party only upon a finding that it advanced a frivolous claim or defense, or engaged in willful acts of bad faith during the course of the arbitration.

(B) All awards rendered pursuant to these Rules shall be final and not subject to review or appeal, except as provided by applicable law. Within ten (10) calendar days of service of the award, a party may make a written request to the arbitrators to modify or correct an award if:

- 1) there was a miscalculation of figures or mistake in the description of any person, thing or property referred to in the award;
- 2) the arbitrators have awarded upon a matter not submitted to them and the merits of the decision upon the issues properly before the panel will not be affected by correcting the award; or
- 3) the award fails to satisfy the form requirements of 5.36(A).

(C) ~~The Exchange Secretary~~ shall promptly furnish to all parties a copy of the modification request. Any objection to a request for modification of an award must be submitted in writing to the arbitrators within five (5) calendar days of receipt of such request.

(D) The Exchange shall endeavor to deliver a copy of the award: (i) by registered or certified mail upon all parties, or their counsel, at the address of record; or (ii) by personally serving the award upon the parties. In the event that an award against a Member is issued in the amount of \$5,000 or more, the Exchange shall forward a copy of the award to the ~~Vice President of the Compliance Department~~ for investigative review, if in ~~his~~its discretion, investigative review is warranted.

(E) The arbitrators shall endeavor to render an award within thirty (30) business days from the date the record is closed.

(F) The failure of a Member, Member Firm or employee thereof to comply with an award; or to pay the full amount of the award to the Exchange as escrow agent pending a good faith consideration of appeal rights, within ten (10) days of such member's receipt of the award shall be a violation of the Rules of the Exchange and shall be grounds for automatic suspension from all rights and privileges of membership until the arbitration award is paid in full or is otherwise satisfied. In addition, failure by a Member Firm that is a Clearing Member to comply with an award or to pay the full amount of the award to the Exchange as escrow agent pending a good faith consideration of appeal rights, within ten (10) days of such member's receipt of the award, in any arbitration proceeding involving a delivery obligation shall be deemed by the Exchange to constitute a failure of the Clearing Member to discharge an obligation to the Clearing House. Any award escrowed with the Exchange, plus accrued interest, shall be released to the prevailing party as soon as practicable ninety-one days after notice of the award is issued unless a timely motion to vacate, modify or correct the award has been filed with a court of competent jurisdiction, in which case the Exchange shall hold the amount in escrow and disburse such amount, together with accrued interest, upon the entry of, and in accordance with, a final order disposing of the motion. Any party escrowing an award who thereafter decides not to file an appeal shall immediately notify the Exchange, which shall then release the amount in escrow, with accrued interest.

(G) A party to an arbitration shall notify the Exchange if that party learns that judicial review of the proceeding is being sought by any party.

5.39 CERTAIN CLAIMS AGAINST THE EXCHANGE INVOLVING TRADING SYSTEMS

(A) General

All claims arising out of or relating to the following matters shall be arbitrated in accordance with the specific requirements of this Rule 5.39A and, to the extent not inconsistent with such requirements, the rules of this Chapter:

- 1) receipt of an incorrect order status or the failure to have received an appropriate order status;
- 2) the negligence of Globex Control Center ("GCC") personnel or any other Exchange staff; or
- 3) Phantom Orders, as defined in Rule 11G.07.

Nothing in Rule 5.39(A) shall be construed to create a claim against the Exchange, to limit a defense available to the Exchange, or to obviate or modify any limitation of Exchange liability imposed by any other rule.

5.39.B. Initial Liability Claim and Demand for Arbitration

The initial claim of loss, including a detailed description of any loss suffered, must be made to the Exchange within ten business days of the date of the incident that caused the loss. The Exchange shall have 30 business days to pay or deny the claim in whole or in part. If the Exchange denies the claim in whole or in part, the claimant must file a written demand for arbitration with the Compliance Department within ten business days after the Exchange has notified the claimant of such denial. A claimant's failure to pursue its claim within these time limits shall bar any recovery on such claim.

5.39.C. Selection of Arbitration Panel

The arbitration panel shall consist of three arbitrators selected from a list of arbitrators maintained by the National Futures Association ("NFA"). The Exchange and the claimant shall each select one arbitrator. If the Exchange and the claimant are unable to agree on the third arbitrator, the President of the NFA or his delegate shall choose the third arbitrator.

5.39.D. Related Claims

All claims arising out of the same system failure, event or alleged negligent act shall, to the extent practicable in the determination of the chairman, be consolidated for a single hearing.

5.39.E. Award

Within 30 days of completion of the hearing, the panel shall issue a written decision. The award shall be limited to the lesser of the actual loss or the loss that would have been incurred if the claimant had used its best efforts to mitigate the loss. Punitive damages, loss of profits, loss of use, and indirect, incidental or consequential damages shall not be awarded. The decision of a majority of the panel shall be final and binding, and there shall be no appeal to the Board of Directors. A party may move, within three business days of the award, that the award be corrected to remedy any miscalculation or misdescription or where the award is otherwise imperfect in a matter of form not affecting the merits of the award.

5.39.F. Satisfaction of Award by Exchange

The Exchange shall satisfy any award against it subject to its limitation of liability rules and the rules respecting proration among claimants where damages allowed for a defined period of time exceed any limit imposed by Exchange rules. The Exchange may delay paying any award until such time as any applicable proration or limitation can be finally calculated.

Change History

- 5.01 Scope of Rules: (Amended: 08/17/92, 12/27/92, 03/11/96, 06/12/97, 11/17/00)
- 5.04 Required Submission: (Amended: 03/11/96, 04/10/03)
- 5.05 Permissive Submissions: (Amended: 04/10/03)
- 5.07 Composition of Panels: (Amended: 08/17/92)
- 5.09 Procedure for Claims Less Than \$2,500: (Amended: 08/17/92)
- 5.10 Time Limitation Upon Submission: (Rule 5.11 Renumbered as 5.10: 08/13/90)
- 5.11 Tolling of Time Limitation for the Institution of Legal Proceedings: (Rule 5.12 Renumbered as 5.11: 08/13/90)
- 5.12 Withdrawal and Dismissal of Proceedings: (Rule 5.13 Renumbered as 5.12 and amended: 08/13/90)
- 5.13 Settlements: (Rule 5.14 Renumbered as 5.13: 08/13/90)
- 5.14 Arbitrator Disclosure and Requests for Disqualification of Arbitrators: (Rule 5.15 Renumbered as 5.14 and amended: 08/13/90, 08/17/92)
- 5.15 Disqualification or Other Disability of Arbitrators: (Rule 5.16 Renumbered 5.15: 08/13/90)
- 5.16 Notice of Selection of Arbitrators: (Rule 5.17 Renumbered as 5.16 and amended: 08/13/90, 08/17/92)
- 5.17 Designation of Time and Place of Hearings: (Rule 5.18 Renumbered as 5.17: 08/13/90)
- 5.18 Initiation of Proceedings: (Rule 5.19 Renumbered as 5.18 and amended: 08/13/90)
- 5.19 Representation by Counsel: (Rule 5.20 Renumbered as 5.19: 08/13/90)
- 5.20 Failure to Appear: (Rule 5.21 Renumbered as 5.20 and amended: 08/13/90)
- 5.21 Adjournments: (Rule 5.22 Renumbered as 5.20 and amended: 08/13/90)
- 5.22 Procedures Governing Discovery: (Adopted: 08/13/90; Amended: 08/17/92)
- 5.23 Pre-Hearing Conference: (Adopted: 08/13/90)
- 5.24 Pre-Hearing Evidence Submission: (Adopted: 08/13/90)
- 5.25 Subpoena Process: (Rule 5.23 Renumbered as 5.25 and amended: 08/13/90)
- 5.26 Power to Direct Appearances: (Rule 5.24 Renumbered as 5.26: 08/13/90)
- 5.27 Evidence: (Rule 5.25 Renumbered as 5.27 and amended: 08/13/90)
- 5.28 Conduct of Hearings: (Rule 5.10 Renumbered as 5.28 and amended: 08/13/90)
- 5.29 Interpretation of Rules: (Rule 5.26 Renumbered as 5.29: 08/13/90)
- 5.30 Determination of Arbitrators: (Rule 5.28 Renumbered as 5.31: 08/13/90)
- 5.31 Record of Proceedings: (Rule 5.28 Renumbered as 5.31: 08/13/90)
- 5.32 Oaths of the Arbitrators and Witnesses: (Rule 5.29 Renumbered as 5.32: 08/13/90)
- 5.33 Amendments: (Rule 5.30 Renumbered as 5.33: 08/13/90)
- 5.34 Closing of Hearings: (Rule 5.31 Renumbered as 5.34: 08/13/90)
- 5.35 Reopening of Hearings: (Rule 5.32 Renumbered as 5.35: 08/13/90)
- 5.36 Awards: (Rule 5.33 Renumbered as 5.36 and amended: 08/13/90, 10/11/93, 07/24/95, Amended 07/26/2002.)
- 5.37 Schedule of Fees: (Rule 5.34 Renumbered as 5.37: 08/13/90)
- 5.38 Prohibition on Public Disclosure: (Adopted: 08/17/92)

NYMEX CHAPTER 6 – FLOOR RULES

6.10 Reporting of Trades Executed on the Trading Floor

(A) A Trading Member who sells a contract on the trading floor of the Exchange shall report to a designated Exchange employee execution of such transaction within 1 minute of completion. Such reports for futures contracts shall indicate the price (or in the case of spreads the differential) at which the transaction was executed or registered, the seller's name, quantity, commodity, delivery month, the name of the buyer against whom the transaction was executed or registered and whether the transaction was executed as a cross-trade. In the case of a transaction in an options contract, the selling Trading Member shall indicate the premium (or in the case of spreads the differential) at which the transaction was executed or registered, the seller's name, quantity, commodity, strike price, expiration month, whether a put or call, the name of the buyer against whom the transaction was executed or registered and whether the transaction was executed as a cross-trade. Selling Trading Members shall be responsible for assuring that each transaction that they report is disseminated by the Exchange.

(B) If any Trading Member discovers that a properly executed transaction in which he has participated on the Exchange Floor has not been reported by the Exchange, or has been reported incorrectly, he immediately shall notify the Chairman or any Vice Chairman or any member of the Floor Committee, the Floor Manager or any Exchange Employee, who is designated by the President for such purpose, of such fact and request that the transaction be included in the Exchange Records as an insert or correction, as the case may be.

(C) The Chairman, any Vice Chairman, any member of the Floor Committee, the Floor Manager, or any Exchange

employee who is designated by the President for such purpose, has the authority to approve an insert or a correction on the day the transaction was executed provided, however, that no member may participate in any deliberation or decision involving an insert or correction if that member has a personal or financial interest in the requested change. Any request for an insert or correction which is made later than fifteen minutes after the subject transaction or which would effect the daily opening range or closing range or high or low, must be approved by either the Floor Committee Chairman, Vice Chairman, Ring Chairman, or a designated Exchange employee including the Senior Vice President of Operations, Vice President of Compliance, the Vice President of Floor Operations or the Vice President of Floor Trade Data Entry and System, or in the absence of any of the aforementioned, two members of the Floor Committee. In making such determination, the member of the Floor Committee, the Floor Manager or any Exchange employee who is designated by the President for such purpose shall consider;

(i) bids, offers, and prices prevailing both at the time the trade allegedly was executed and at the time the insert or correction was requested;

(ii) activity in the ring at the time the trade allegedly was executed;

(iii) whether the insert or correction will establish a new high or low for that delivery month for such Trading day; and

(iv) such market and other considerations as may be appropriate.

(D) The Exchange will keep a log of all insert or correction requests including the details of the insert or correction requested and the name of the member or employee authorizing the insert or correction. The log entry for any insert or correction request made later than fifteen minutes after the subject transaction must also contain the name of the member making the request.

(E) No insert and no correction may be made unless a request to approve the insert or correction is made within the time limits prescribed in this Rule. If the request relates to a properly executed transaction that has not been reported by the Exchange, such request must be made by 5:15 or after the paperless transfer system displays the executed transaction, whichever is later. If the request relates to a correction of a properly executed transaction that has been erroneously reported to or by the Exchange, such request must be made prior to the close of trading on the business day following the day on which the transaction was executed.

(F) ~~Senior Exchange Officials~~ ~~The Senior Vice President of Operations, Vice President of Compliance, the Vice President of Floor Operations or the Vice President of Floor Trade Data Entry and System,~~ shall have the authority to approve a correction on the business day following the day on which the transaction was executed when the Trading Member presents documents that indicate, in the opinion of the above noted Exchange employee, that a correction is warranted. Such documents include, but are not limited to, time stamped order tickets, pit cards, trading cards, written reports of execution and other similar documents. No correction shall be approved unless the person approving the correction also takes into consideration the factors set forth in subsection (C) of this Rule.

(G) Where a properly executed transaction has been incorrectly reported and such transaction has not been corrected within the time limits prescribed by subsections (D), (E) and (F) of this Rule, a Trading Member who was a party to such transaction may request the Chairman, any Vice Chairman of the Floor Committee, the President or any of the above noted Exchange employees to approve a correction of such transaction. Such correction shall be made when,

(1) in the opinion of such person approving the correction, it appears that permitting the incorrect report to stand would result in a manifestly gross distortion of price reporting or a manifestly gross inequity to one party; and

(2) when each Trading Member who was a party to the transaction and each Clearing Member who cleared a portion of the transaction has indicated that such person approved of the correction; and

(3) the party making the request has made the request within a reasonable time under all the circumstances present; and

(4) the Trading Member presents documents that, in the opinion of the person approving the request, support the correction, and

(5) the person approving the request has taken into consideration all of the factors set forth in subsection (C) of this Rule. The person approving such request shall prepare a written record setting forth the reasons for making the correction and shall attach to such record a copy of all documents submitted in support of the request and the original approvals required under this subsection (G).

6.90 Trading Card Procedures

(A) A Floor Member shall regularly and promptly record all transactions that he executes on a sequentially numbered trading card pre-printed and issued by the Exchange. The Exchange shall maintain a record of all trading cards issued to such Floor Member. Each member shall be accountable for maintaining the original soft ply of all trading cards issued to such member in exact numerical sequence, including soft plies which are not used by the Floor Member or collected by the Exchange. Where the transaction is an EFP EFS, EFM or EFB, not executed by the Floor Member, the Floor Member's clerk may record the transaction on a separate trading card, provided that the trading card is clearly marked "EFP/EFS/EFM/EFB only."

(B) All trading cards shall show the Member's symbol, the date, price differential or premium, quantity, commodity, delivery month or expiration date, the opposite Floor Member, and, for options, the strike price, and whether the transaction involved a put or a call. With the exception of trades executed during the opening or closing ranges, members shall record the exact time of execution to the minute of the first trade made on each trading card. Members shall identify on their trading cards all trades executed during the opening and closing ranges by marking a line across the card below all transactions executed during the opening and above all transactions executed during the closing range. All transactions must be recorded in exact chronological order of execution on sequential lines of the trading card without skipping lines between trades. A member who executes trades both at open outcry and on an electronic tablet from the ring is not required to, but may elect to record any or all of the electronic executions on the trading card, under the following circumstances: the trade must be clearly designated with an E in the opposite broker column, and must indicate at a minimum side of market, quantity, month and price. The trade must be sequentially recorded and, the trade must indicate whether it is for the account of the member, another member or for a customer. Members may also choose to record electronic executions on a separate area of the trading card by marking a line across the card, labeling the line "electronic" and recording electronic executions below the line. If a member chooses this option, no open outcry trades may be recorded below the line. If any lines remain after the final transaction has been recorded on a trading card, including lines either above or below the "electronic" line designation, they shall be marked through by the Floor Member. EFP/EFS/EFM/EFB transactions may be recorded on a separate non-sequentially numbered trading card.

(C) Trading Cards may be collected by the Exchange, at such times and pursuant to such procedures as may be adopted by the Board.

(D) The hard ply of the trading card shall be used to report the sale of futures and options contracts within 1 minute of execution in accordance with Exchange Rule 6.10. Additionally, if any hard ply contains only purchases of futures or options contracts, the Floor Member must submit the hard copy ply of the trading card to the Exchange prior to using the next sequentially numbered trading card. EFP/EFS/EFM/EFB transactions must be promptly submitted to the Exchange and may be submitted by a clerk provided however, that submission by a clerk must be made to the corrections area only. No transaction other than an EFP/EFS/EFM/EFB may be recorded or submitted by a clerk.

(E) Members (or for EFS/EFP/EFM/EFB transactions, their clerks) shall use non-erasable ink when recording transactions on trading cards. Errors on trading cards may be corrected by placing a single line through the erroneous information such that the erroneous information remains plainly readable, or by rewriting the trading card; provided, however, that Members shall be required to maintain all trading cards, including trading cards containing EFP/EFS/EFM/EFB transactions recorded by clerks and those that have been rewritten. Floor Members may be exempt from personally retaining their trading cards if written notice, from their FCM or Member Firm employer, is given to the Compliance Department acknowledging that it is the custodian of a Floor Member's daily trading records (i.e. trading cards, and customer order memoranda).

(F) Notwithstanding the foregoing, the Board of Directors of the Exchange may approve for use by a Floor Member a handheld electronic trading pad ("Approved Handheld") to regularly and promptly record all transactions that he executes, which produces a sequential, unalterable record of trades executed by the Floor Member and which complies with the information and record retention rules and requirements of the Exchange.

(G) If the Compliance Department determines that Members or their clerks have failed to comply with any subdivision of Rule 6.90 it may summarily implement the following disciplinary procedures:

1. A Warning Letter may be issued for a first infraction, informing the Member that there was a rule violation.
2. A Second infraction in a 12 month period may subject the Member to a \$100.00 summary fine.

3. A third infraction in an 18 month period may subject the Member to a \$500.00 summary fine.
4. A fourth infraction in a 24 month period will be sufficient basis for a Compliance Department referral to the Business Conduct Committee for formal Disciplinary Action.
5. Subdivisions 1-4 will not apply when the Compliance Department determines that a Member has committed a substantive violation of Exchange rules in addition to a trading card infraction.

(H) Any fine imposed in accordance with Rule 6.90(D) may be appealed to a subcommittee of the Adjudication Compliance Review Committee ("Subcommittee"). The Subcommittee shall consist of a Chairman, two additional Subcommittee members and two alternates. The Subcommittee members and alternates shall be appointed by the Chairman of the Adjudication Compliance Review Committee. To appeal a fine, a Member shall file a typewritten request with the Exchange's Compliance Counsel within five (5) business days after receipt of the notice of such fine. The letter of appeal should set forth the reason for the requested appeal and attach any relevant documents. The Subcommittee shall meet at such times as it deems appropriate, and shall reach its decision based upon the letter of appeal and any other documents furnished by the Member subject to the fine with the appeal letter or by the Compliance Department. The Subcommittee in its sole discretion may permit or require personal appearances by the Member and/or the Compliance Department. The Subcommittee shall affirm, modify or reverse the fine appealed and shall issue its Decision in writing within thirty (30) days of meeting to consider the appeal.

Change History

- 6.00 Exchange Business Day: (Amended: 06/24/93, 03/02/00, 04/10/03, 10/29/04; 09/15/06, 11/29/2006)
- 6.01 Reserved: (Reserved: 12/27/92)
- 6.02 Hours for Trading: (Amended: 06/24/93)
- 6.04 Closing Range and Close: (Amended: 02/02/92, 12/27/92, 06/24/93, 11/22/99, 03/02/00, 05/04/00, 10/29/04, 09/15/06)
- 6.05 Transactions, Bids, and Offers on the Trading Floor: (Amended: 09/16/86, 09/16/87, 12/08/90, 03/25/91, 08/05/91, 06/26/92, 09/08/92, 12/27/92, 05/27/93, 4/16/2001)
- 6.06 Transactions Made at Other Than Current Market: (Amended: 09/16/86, 12/27/92)
- 6.07 Intercommodity Spreads: (Amended: 02/01/88, 05/09/91, 05/31/96, 09/12/96, 06/02/04)
- 6.07A Options-Futures Spreads: (Adopted: 06/17/91, Amended: 06/02/04)
- 6.08A Trading in Futures Spreads: (Amended: 09/16/86, 05/09/91, 12/27/92, 06/24/93, 06/02/04)
- 6.08B Trading in Options Spreads: (Adopted: 09/16/86; Amended: 08/09/91, 06/02/04)
- 6.08D Strip Transactions: (Adopted: 09/19/95; Amended: 03/21/96, 09/12/96, 07/12/01 11/10/01, 06/02/04)
- 6.09 Maximum Price Variations: (Amended: 09/16/86, 06/24/93)
- 6.10 Reporting of Trades Executed on the Trading Floor: (Amended: 09/16/86, 12/11/89, 05/03/90, 12/27/92, 05/11/98)
- 6.11 Confirmation of Trades Executed on the Trading Floor: (Amended: 09/16/86, 12/27/92)
- 6.12 Resolution of Floor Trading Disputes: (Amended: 09/16/86, 12/27/92, 06/24/93, 06/02/04)
- 6.15 Standard Forms of Orders: (Amended: 09/16/86, 05/31/88, 09/03/91, 06/24/93, 04/10/03, 09/15/06)
- 6.16 Obligations of Floor Brokers: (Amended: 09/16/86, 05/03/90, 12/27/92, 09/15/06)
- 6.17 Errors and Omissions in Handling Orders: (Amended: 06/24/93, 04/10/03, 04/23/04, 06/02/04)
- 6.17A Spread Transaction to Rectify an Error: (Adopted: 07/29/99)
- 6.18 Numbering and Time Stamping Orders: (Amended: 11/15/89, 05/16/90, 01/25/91, 03/25/91, 12/27/92, 06/24/93, 12/09/93, 03/18/94, 04/10/03, 06/02/04, 02/12/07)
- 6.19 Type Indicator Codes: (Adopted: 05/16/91; Amended: 06/24/93, 07/17/95, 03/19/03, 04/10/03, 12/13/04, 05/25/05)
- 6.20 Transfer Trades, Office Trades: (Amended: 09/16/86, 05/28/2003, 10/10/2006)
- 6.21B [Reserved]: (Amended 08/19/2005, 02/23/2007)
- 6.21G Participation by NYMEX Floor Members in Special Program for Over-the Counter Trading with FCM Guarantee: (Amended: 02/04/2005)
- 6.27 NYMEX Personnel – Limitation of Liability: (Adopted: 06/24/93; Amended 9/14/2001)
- 6.28 Reserved: (Adopted: 09/28/1994; Amended: 11/16/1995, 05/01/1996, 07/29/1998, 04/16/1999, 05/04/2000, 10/14/2004)
- 6.30 Access to the Trading Floor: (Amended: 05/09/91, 03/02/00, 10/29/2004)
- 6.31 Trading Prohibition of Certain Persons: (Amended: 12/27/92, 06/24/93, 04/10/03)
- 6.31A Trading Prohibitions for Exchange Employees: (Amended: 11/07/88, 05/16/94, 08/28/94, 11/16/95, 05/01/96, 07/29/98, 12/04/2001)
- 6.32 Trading Prohibitions: Representatives of Other Clearing Members: (Amended: 12/27/92, 04/10/03)
- 6.37 Attendance by Representatives of Member Firms Under Extraordinary Circumstances: (Adopted: 11/09/86)

6.40 Simultaneous Buy and Sell Orders on the Exchange Trading Floor: (Amended: 09/16/86, 06/24/03, 02/01/00, 04/03/00, 12/03/04)

6.40B Trading at Settlement: (Adopted: 02/01/00; Amended: 03/09/00, 07/28/00, 02/01/01, 03/04/03, 12/29/03, 10/29/04, 04/12/05, 08/15/05, 07/17/06, 08/23/06, 02/23/07)

6.40C Average Price Calculations by Futures Commission Merchants: (Adopted 10/03/2000)

6.40D Trading in One Minute and Five Minute Markers for Brent Crude Oil: (Adopted 04/08/2005)

6.41 Trading Standards for Floor Brokers: (Amended: 09/16/86, 10/12/89, 01/06/92, 06/24/93, 12/09/93, 10/17/86, 06/14/97, 04/10/03, 12/03/04, 03/07/05, 04/12/05)

6.42 Procedures on the Exchange Floor for Simultaneous Buy and Sell Orders: (Amended: 09/16/86, 12/27/92, 12/09/93, 06/02/04)

6.43 Floor Traders and Broker Registration Requirements: (Amended: 09/29/86, 09/07/93)

6.43A Broker Association Registration Requirements: (Amended: 12/09/93, 08/18/98, 02/21/01)

6.44 Registration for Billing of Floor and NYMEX ACCESS®: (Adopted: 02/04/01; Amended: 03/01/93, 06/24/93, 09/01/98, 02/21/01, 01/13/03, 04/10/03, 04/24/03, 08/08/03, 03/07/05)

6.45 Specialist Market Maker Program: (Adopted: 04/01/99; Amended: 05/14/99)

6.50 Settlement Prices: (Amended: 09/16/86)

6.51 Settlement Price Committee: (Amended: 12/27/92, 10/25/96, 04/08/97, 02/11/98, 03/12/99, 10/28/99, 03/02/00, 08/17/01, 05/28/03, 09/14/03, 11/12/03, 06/02/04, 10/29/04, 09/01/06)

6.52 Settlement Prices for Crude Oil, Heating Oil, Gasoline, and New York Harbor Gasoline Blendstock (RBOB) Futures Contracts: (Pilot Program) (Amended: 04/09/90, 10/25/96, 04/08/97, 09/01/98, 07/12/2001, 12/20/02, 10/29/04, 11/15/04, 04/12/05, 09/01/06, 10/13/06)

6.52A Settlement Prices for Natural Gas Futures Contracts: (Adopted: 10/25/96; Amended: 04/08/97, 09/01/98, 10/28/99, 12/03/2001, 12/20/2002, 11/12/2003, 02/04/2005, 09/01/06, 10/13/06)

6.52B Settlement Prices for Propane Gas Products: (Adopted: 04/08/97; Amended: 10/28/99, 12/20/02, 09/01/06, 10/13/06)

6.55 Options Settlement Premiums: (Adopted: 09/16/86; Amended: 03/19/99, 11/07/05, 06/21/07)

6.57 Post-Close Trading Session: (Amended: 05/16/94, 06/07/96, 07/12/96, 07/19/96, 02/24/97, 02/19/99, 03/02/00, 05/18/00, 07/12/00, 5/14/01, 3/6/03, 06/02/04, 8/3/06)

6.57A End of Week Trading Session: (Adopted: 02/16/01, Amended: 5/11/01, 06/02/04, 8/03/2006)

6.58 Large Lot Trading of Futures Contracts (Pilot Program): (Adopted 11/30/2001)

6.59 All or None Trading of Futures Contracts for PJM Electricity Monthly Futures (Pilot Program): (Amended: 03/05/04)

6.60 Floor Offenses: (Amended: 07/02/97)

6.90 Trading Card Procedures: (Amended: 12/21/89, 05/21/90, 03/21/90, 05/21/90, 07/08/91, 02/05/93, 12/17/95, 08/19/96, 07/08/05, 02/15/07)

6.91 Deleted: (Bracketing of Transactions. Deleted: 04/23/01)

6.92 Surrender of Trading Records for Examination: (Amended: 06/24/93)

NYMEX CHAPTER 8 – DISCIPLINARY RULES

8.00 Compliance Department

(A) All Class A Members, COMEX Division Members, Class A Member Firms, COMEX Division Member Firms, COMEX Division Option Members, COMEX Division Option Member Firms, COMEX Division Aluminum Members, Permit Holders, and Electronic Traders shall be subject to the jurisdiction of the Exchange for purposes of Chapter 8 of these Rules. For purposes of Chapter 8 of these Rules, except as stated otherwise in said rules or in these definitions, the following definitions shall apply: (i) the term "Member" shall include Class A Members, COMEX Division Members, COMEX Division Option Members, COMEX Division Aluminum Members, Permit Holders, Electronic Traders and Authorized Terminal Users who are also designated as Electronic Traders; (ii) the term "Member Firm" shall include Class A Member Firms, COMEX Division Member Firms, COMEX Division Option Member Firms, COMEX Division Aluminum Member Firms, NYMEX ACCESS® Trade Firms and other entities with electronic trading privileges; and (iii) the term "employees of Members" shall include Authorized Terminal Users and clerks. Use of the term Member, as set forth herein, shall not connote Membership privileges for purposes of the Delaware General Corporate Law or any other applicable law, nor shall the use of the term Member in the definitions or the rules connote any of the Membership privileges as are specifically set forth in the Bylaws of the Exchange. Notwithstanding the above, a User or User Agent as both terms are defined in Chapter 11 of an Alternative Electronic Trading System who is neither a Member nor a Member Firm shall not be subject to the jurisdiction of the Exchange for purposes of Chapter 8 of these Rules except as provided in Rule 8.99B (Summary Procedures for Denial of Access to Specified Alternative Electronic Trading System). For the purposes of this rule, the term "Alternative Electronic Trading System" shall mean any electronic trading system other than NYMEX ACCESS® on which NYMEX Division or COMEX Division products are traded, but not including GLOBEX®.

(B) The Compliance Department shall consist of employees of the Exchange. Such employees may not be Members or persons otherwise subject to the jurisdiction of Chapter 8 of these Rules. The Exchange may also hire persons (who shall not be members or persons otherwise subject to the jurisdiction of Chapter 8 of these Rules) to assist the Compliance Department in carrying out its functions.

(C) The Compliance Department shall conduct investigations of Rule violations and suspected Rule violations.

(D) During the investigation of a Rule violation by the Compliance Department, the involved Member, or Member Firm or employee of the foregoing shall be advised of the investigation and permitted to present to the Compliance Department any facts which tend to exculpate the Member, Member Firm or employee of the foregoing and any defenses such person or entity may have. Any interview shall be conducted at the time, place and in the manner designated by the Compliance Department. For the purpose of any interview conducted pursuant to this sub-section (D), a Member, Member Firm or employee of any of the foregoing must be informed, in writing prior to the interview that he may have counsel present at the interview. However, procedures governing the conduct of the interview including the limitation on adjournments granted to accommodate an interviewee's counsel schedule to reasonable periods of time, shall be determined by the Compliance Department. Any interview conducted by the Compliance Department may be tape recorded or transcribed stenographically at the election of the Compliance Department.

(E) The Compliance Department shall investigate the conduct and transactions of Members, Member Firms and employees of any of the foregoing and may examine the books and records of Members, Member Firms and employees of the foregoing. Members, Member Firms and employees of any of the foregoing shall make their books and records available to the Compliance Department and shall respond to all inquiries of the Compliance Department at the time, place, and in the manner designated by the Compliance Department.

(F) The Compliance Department may issue warning letters to persons under investigation informing them that there may have been a rule violation and that such continued activity may result in more severe disciplinary sanctions. Such warning letter is not a penalty nor is it an indication that a finding of a rule violation has been made.

~~(G) The Vice President of the Compliance Department shall submit reports to the Board. Such reports shall describe for the period covered by each report:~~

- ~~(i) the activities of the Compliance Department;~~
- ~~(ii) all investigations commenced and terminated;~~
- ~~(iii) the disposition of all cases presented to the Business Conduct Committee, the Adjudication Committee and the Appeals Committee. Such reports are to be submitted at least twice a year.~~

8.01 Investigative Report

~~When an investigation is completed, the Compliance Department or the Audit Department shall prepare an Investigative Report to be submitted to the Business Conduct Committee or the Clearing House Committee, as appropriate. The Investigative Report shall be in writing and shall set forth the reason the investigation was initiated, the relevant facts, and the conclusions and recommendations of the Compliance Department or Audit Department, and, if the Compliance Department concludes that there is a reasonable basis to believe that a Rule violation occurred, a recommendation of the Compliance Department to the Business Conduct Committee. The Investigative Report, when completed, shall be submitted for presentation to the Class A Members of the Business Conduct Committee or the COMEX Division of the Business Conduct Committee. The Chairman of the Business Conduct Committee shall assign Investigative Reports involving Class A Members, NYMEX Division Member Firms and persons trading on the Class A Members to the Class A Business Conduct Committee Panel and Investigative Reports involving COMEX Division Members, COMEX Division Member Firms and persons trading on the COMEX Division to the COMEX Division Business Conduct Committee Panel.~~

Change History

~~8.00 Compliance Department: (Amended: 09/16/86, 02/01/88, 11/17/88, 12/27/92, 09/10/95, 08/22/96, 04/10/03)~~

~~8.01 Investigative Report: (Amended: 08/22/96)~~

~~8.02 Business Conduct Committee: (Amended: 02/01/88, 10/16/89, 12/27/92, 09/10/95, 08/22/96, 06/22/00, 03/07/05)~~

~~8.03 Settlements: (Amended: 08/03/92, 12/27/92, 11/28/93, 02/28/2001)~~

~~8.04 Complaint: (Amended: 10/16/89, 12/27/92, 08/22/96, 03/07/05)~~

~~8.05 Answer: (Amended: 10/16/89, 10/22/96)~~

~~8.06 Reply: (Amended: 10/16/89, 08/22/96)~~

~~8.07 Adjudication Committee: (Amended: 10/16/89, 08/22/96)~~

8.08 Settlement by the Adjudication Committee: (Amended: 10/16/89, 12/27/92, 08/22/96, 02/28/2001, 08/06/2003)
 8.09 Hearing Panel: (Amended: 10/16/89, 12/08/90, 04/18/94, 08/22/96, 09/26/96)
 8.09A Pre-Hearing Procedures: (Adopted: 12/08/90; Amended: 08/22/96)
 8.10 Hearing Procedures: (Amended: 09/10/95, 08/22/96)
 8.11 Decision: (Amended: 10/16/89, 05/06/91, 08/03/92, 12/27/92, 11/28/93, 08/22/96, 09/26/96, 02/28/2001, 08/06/2003)
 8.12 Effective Date of Decisions: (Amended: 12/08/90; 08/22/96)
 8.13 Appeals: (Amended: 11/28/93, 08/22/96, 09/26/96)
 8.14 Compliance Department: (Amended: 08/22/96, 09/26/96)
 8.15 Respondent's Reply: (Amended: 08/22/96, 09/26/96)
 8.16 Appeals Committee: (Amended: 08/22/96)
 8.17 Appeals Panel: (Amended: 08/22/96, 09/26/96)
 8.20 Effective Date: (Amended: 12/08/90, 08/22/96)
 8.20A Ex Parte Communications: (Adopted: 06/01/92)
 8.21 Floor Committee: (Amended: 12/15/88, 12/08/90, 08/05/91, 08/03/92, 04/18/94, 03/04/96, 08/22/96, 09/26/96, 07/02/97, 08/05/97, 09/25/98, 08/25/2000)
 8.21A Maintenance of Health and Safety in Exchange Trading Rings: (Adopted: 12/09/05)
 8.22 Floor Committee Rules: (Amended: 12/08/90, 08/22/96)
 8.24 Expulsion by the Board: (Adopted: 09/16/86; Amended: 12/27/92, 08/22/96, 09/26/96)
 8.25 Cease and Desist Order: (Adopted: 01/25/91)
 8.50 Reports and Records: (Amended: 09/16/86, 12/31/91, 12/27/92, 08/22/96)
 8.52 Manipulation: (Amended: 12/27/92, 08/22/96)
 8.54 Payment of Gratuity to Employees of Others: (Amended: 12/27/92, 08/22/96)
 8.55 Classification of Offenses: (Amended: 03/28/88, 11/27/88, 10/16/89, 12/08/90, 12/27/92, 08/22/96, 02/28/01, 07/02/01, 04/10/03, 08/06/03, 12/03/04, 02/04/05, 07/08/05)
 8.56 Confirmations: (Amended: 09/16/86, 12/27/92, 08/22/96)
 8.57A Retention of Jurisdiction over Former Members and Member Firms: (Adopted: 08/22/96; Amended: 07/02/97, 03/07/05)
 8.58 Exchange Jurisdiction over Member, and Member Firm Employees: (Adopted: 12/01/90; Amended: 03/21/91, 12/27/92, 08/22/96, 07/02/97)
 8.59 Extent of Jurisdiction: (Adopted: 12/01/90; Amended: 12/27/92, 08/22/96, 07/02/97, 03/07/05)
 8.60 Obligation of Employee to Respond to Compliance Department Inquiries: (Adopted: 12/01/90; Amended: 12/27/92, 08/22/96)
 8.62 Clerk Registration, Trading Badges, Access to the Trading Floor and Disciplinary Jurisdiction: (Adopted: 12/01/90; Amended: 08/22/96, 04/24/97)
 8.63 Member and Member Firm Responsibility: (Adopted: 12/01/90; Amended: 12/27/92, 08/22/96)
 8.65 Sanctions and Restitution Orders: (Adopted: 12/01/90; Amended: 12/27/92, 08/22/96)
 8.66 Billing and Commissions: (Adopted: 12/01/90; Amended: 12/27/92, 08/22/96, 02/21/01)
 8.67 Summary Fines – Payment and Appeals: (Adopted: 12/01/90)
 8.68 Notification of Final Disciplinary Action Involving Financial Harm to a Customer: (Adopted: 09/28/93)
 8.69 Audit Trail Violations: (Adopted: 08/22/96)
 8.70 Floor Order Ticket Reviews – Summary Violations: (Adopted: 06/04/04)
 8.99 Class A Member Summary Suspension: (Adopted: 07/05/90; Amended: 12/27/92, 09/28/93)

NYMEX CHAPTER 9 – CLEARING RULES

9.01 Direction of the Clearing House

The general direction of the Clearing House shall be under the jurisdiction of the Clearing House Committee. The President of the Clearing House shall be responsible for the daily operation of the Clearing House and the implementation of the rules applicable to the Clearing House. The President of the Clearing House may also delegate authority for certain aspects of the daily operation of the Clearing House to staff of the Clearing House. The general direction of the Clearing House and its operation shall be under the jurisdiction of the Clearing House Committee, subject to the approval of the Board. The President of the Exchange shall be Manager of the Clearing House, subject to the direction of the Clearing House Committee.

9.02 Membership in the Clearing House

(A) Any Member Firm may, with the approval of the Clearing House Committee and notification to the Board, become a member of the Clearing House in the manner hereinafter set forth, provided:

(1) that the applicant must have such business integrity and financial responsibility as to justify the Clearing House in assuming the risk involved in the clearing of the applicant's trades;

(2) that a bona fide office can be continuously maintained in the City of New York and a bank account maintained with a bank in the City of New York acceptable to the President of the Clearing House. A Clearing Member not having an office in the City of New York may satisfy the condition respecting a bona fide business office in the City of New York by: A) designating another Clearing Member or member of the Exchange having a bona fide business office in the City of New York to act for it in all matters requiring action by a Clearing Member under the Bylaws and Rules of the Exchange and to receive on its behalf all notices or other communication including legal process in connection with Clearing House and/or Exchange transactions, such designation to be in form satisfactory to the Clearing House Committee; or B) presenting a plan for a "remote clearing solution" to the Clearing House Committee and having such plan approved by the Clearing House Committee. The President of the Clearing House Committee may establish procedures adopt rules, subject to the approval of the Board, respecting the nature of the office to be maintained in New York by a Clearing Member as well as the conditions to be complied with by a Clearing Member not having an office in the City of New York.

~~The Board, upon receipt of any application and report from~~ The Clearing House Committee, with appropriate notice to the Board, shall either approve or disapprove the applicant and, if approved, the applicant shall be admitted to membership in the Clearing House. If disapproved the applicant shall not be permitted to file another application for a period of one year from the date of notice of disapproval.

(B) The application shall be accompanied by a written document guaranteeing to the Clearing House the assumption of responsibility for any and all ~~future~~ trades made in the name of the applicant or his qualified floor traders and accepted by the Clearing House. Any qualified member or members so approved can be guaranteed by only one Clearing Member but may act as a floor broker for other Clearing Members.

(C) Said guaranteeing document, in the case of a partnership or corporation, shall be signed by the Exchange member of the partnership or corporation.

(D) In the case of a corporation, the guaranteeing document shall be accompanied by a copy of the resolution of the Board of the corporation authorizing the guarantee required by this Rule duly certified by the Secretary or the principal officer of the corporation.

(E) Any lawfully formed and conducted cooperative association of producers, within the meaning of the Commodity Exchange Act, which is engaged in any cash commodity business, having adequate financial responsibility may become a member of the Clearing House on the same terms and conditions as a corporation.

(F) Applications for membership in the Clearing House shall be accompanied by the applicant's balance sheet prepared and certified to by a certified public accountant and sworn to as to the substantial accuracy by the applicant whose signature shall be acknowledged. The balance sheet of the applicant shall show a working capital (as defined in Rule §9.23) of not less than \$5,000,000.

(G) Members of the Clearing House shall have the privilege of designating members of the Exchange as qualified floor traders in addition to their regular representative members. Such qualified floor traders must be guaranteed by the Clearing Member and subject to the approval of the Clearing House Committee.

(H) All applicants prior to their election to membership in the Clearing House shall sign a statement that if approved, they will observe and be bound by the Clearing Rules of the Exchange and all amendments subsequently made thereto.

(I) The President of the Clearing House shall refer to the Clearing House Committee for its consideration the application and supporting documents after the President of the Clearing House is satisfied that the financial requirements have been met.

(J) Where a Clearing Member guarantees more than six qualified floor traders he shall have, in addition to the capital required for each Clearing Member, an additional \$50,000.00 of working capital for the guarantee of each qualified floor trader in excess of six.

(K)(1) A corporation that is wholly owned by one member may be granted membership in the Clearing House provided that the provisions of this subsection have been met. The corporation must be a Member Firm upon which member privileges have been conferred by the owner of the Member Firm, or by the owner and a lessee leasing a membership from the owner of the corporation. The owner of the Member Firm must own both memberships. The

lease agreement, if any, shall provide that the lease agreement shall terminate immediately upon the failure of the Member Firm to meet its obligations to the Exchange or its Members and that the membership shall be available to satisfy such obligations. The member firm must have and maintain \$250,000 working capital; and the obligations of the Member Firm to the Clearing House must be guaranteed by its owner. Such a Member Firm will be permitted to Clear trades executed by or for the account of the owner and to qualify only the owner. The Member Firm may not qualify, clear or guarantee the trades of a lessee who confers membership privileges upon the corporation. The Member firm must maintain at all times at the Clearing House original margin deposit of \$100,000 regardless of lesser applicable margin requirements. The Member Firm must file with the Exchange financial statements as follows: a certified financial statement within ninety (90) days of the close of its fiscal year and quarterly financial statements within forty five (45) days of the close of each fiscal quarter other than the last fiscal quarter.

(2) In the event that a claim(s) against the lessee aggregating in excess of \$10,000 is (are) asserted, pursuant to any available means, the Member Firm shall, within two business days of the assertion of such claim, liquidate or transfer all positions cleared on the books of the Member Firm and cease doing business as a Member Firm; provided, however, that such action need not be taken if, within two business days of the assertion of a claim, the owner of the Member Firm deposits and maintains with the Clearing House \$300,000 original margin in addition to the margin requirements of this Section (K) to satisfy any and all claims that may be raised against the Member Firm or its owner and within thirty calendar days of such claim, the privileges of another membership owned by the owner of the Member Firm are conferred upon the Member Firm. On the effective date of the substituted conferred membership privileges, the \$300,000 additional original margin may be returned to the owner of the Member Firm. The original leased membership shall remain available to satisfy the claims, if valid, against the lessee.

(3) In the event that a claim(s) against the Member Firm aggregating in excess of \$10,000 is (are) asserted, pursuant to ~~By-law 857, Rule 2.51, or Rule 5.19~~ or, if by the Exchange pursuant to any available means, the lessee who has conferred the privileges of a leased membership on the Member Firm shall, within two business days, liquidate all positions held by or on his behalf and shall cease doing business as a Member of the Exchange; provided, however, that such action need not be taken if, within two business days:

(a) the lessee demonstrates that he owns or leases more than one membership; or

(b) the lessee, lessor or Member Firm deposits with the Exchange a Certified check, payable to the Exchange, in an amount equal to the higher of the price at which a Membership was last sold or at which a membership was offered and acknowledges that such funds shall be available to satisfy any and all valid claims against the lessee.

Provided, further, that in the event that the lessee continues to do business pursuant to the provisions of (a) or (b) above, the leased seat shall be available to satisfy any valid claims against the Member Firm.

(L) Each member who is a proprietor of a corporation or partnership which is a member of the Clearing House, pursuant to Section (K) of this Rule or otherwise, and as its principal business clears the trades of its proprietors in the house account shall guarantee to the Exchange, its members and member firms in a form and manner acceptable to the Exchange, the full and prompt payment of any and all obligations arising out of Exchange transactions made by or on behalf of such member. As used in this Section (L), the term proprietor shall mean an officer, director, or owner or controller of ten percent (10%) or more of the common or stock of a corporation or a general or limited partner of a partnership.

9.03 Guaranty Fund

(A) Contributions

Each Clearing Member shall deposit, and keep deposited, with the Exchange the amount prescribed in Section (B) as a contribution to the Guaranty Fund. The monies, securities, and instruments so deposited shall collectively constitute a fund known as the "Guaranty Fund" and shall be used as provided in the Rules to reimburse the Exchange, CME or CBOT for any loss sustained by the Exchange, CME or CBOT as a result of the failure of any NYMEX, COMEX, CME or CBOT Clearing Member to discharge ~~its~~^{his} obligations in accordance with the Rules ~~or the Rules of CME or CBOT~~. ~~The Board of Directors~~ The Clearing House Committee shall determine the appropriate size of the Guaranty Fund.

(B) Schedule of Contributions

The amount required to be deposited by each Clearing Member shall be determined by Clearing House staff, ~~a formula as recommended by the Clearing House Committee and approved by the Board of Directors~~. Such formula will include certain components of risk and volume and will be calculated by the Exchange staff on a quarterly basis,

or more frequently if deemed appropriate. At no time will a Clearing Member's minimum contribution be below \$2.5 million.

The amount deposited shall be in any combination of:

- (1) U.S. Dollars,
- (2) shares of certain Money Market Mutual Funds as approved by Clearing House staff~~the Board of Directors~~ and subject to the provisions of NYMEX Rule 9.05 (E) (4),
- (3) securities issued by the Department of the Treasury of the United States maturing within ten (10) years of the date of the deposit and guaranteed as to principal and interest by the United States government valued at ninety-five percent (95%) of par value.

(C) Custody

(1) The Guaranty Fund shall be deposited in a special account in the name of the Exchange in such depositories in ~~the City of New York~~ as may be designated by Clearing House staff~~the Board~~.

(2) Clearing House staff~~The Board~~ shall be empowered to invest and reinvest all or part of the funds constituting the Guaranty Fund in direct obligations of the United States and/or to deposit said funds at interest. Such investments and deposits shall be at the risk of the Exchange. All net income and gains on such investments and interest on such deposits shall belong to the Exchange and shall be withdrawn from the Guaranty Fund and deposited with the general funds of the Exchange.

(D) Impairment

If the Guaranty Fund or any part thereof be lost or become unavailable from any cause other than the default of the depositing Clearing Member, the amount so lost or made unavailable shall be forthwith restored by transferring thereto all of the surplus of the Exchange that may be necessary, except such amount as the Board may, in its discretion, decide to retain as surplus for future operating expenses, and if the amount thus transferred from surplus be not sufficient to cover the entire loss, the balance of such loss shall be made up by an assessment in equal shares upon each of the Exchange members. Such assessment shall be paid to the Exchange immediately (but in no case to exceed one business day) after notice in writing thereof shall have been mailed to each of the Exchange members.

(E) Surrender of Guaranty Fund Deposit

After a Clearing Member ceases to be a Clearing Member of the Exchange and after all obligations of such member to the Exchange shall have been discharged in full, the amount of the Guaranty Fund that to which such Clearing Member is entitled shall be returned. Any expense, including counsel fees, incurred by the Exchange in connection with a Clearing Member's deposit or the return thereof, may be charged to the Clearing Member.

9.03A Use of the Guaranty Fund

(A) The Exchange may at any time and from time to time assign, pledge, repledge or otherwise create a lien on or security interest in, the Guaranty Fund and/or the cash, securities and other property held in the Guaranty Fund to secure the repayment of funds borrowed by the Exchange (plus interest, fees and other amounts payable in connection therewith).

(B) Any such borrowing shall be on terms and conditions deemed necessary or advisable by the Exchange (including the collateralization thereof) in its sole discretion, and may be in amounts greater, and extend for periods of time longer than the obligations, if any, of any Clearing Member to the Exchange for which such cash, securities or other property was pledged to or deposited with the Exchange.

(C) Any funds so borrowed shall be used and applied by the Exchange solely for the purposes for which cash, securities and other property held in the Guaranty Fund are authorized to be used pursuant to Exchange Bylaws and the Rules; provided that the failure of the Exchange to use such funds in accordance with this Section (C) shall not impair any of the rights or remedies of any assignee, pledgee or holder of any such lien or security interest.

(D) Cash, securities and other property held in the Guaranty Fund shall remain the property of the respective Clearing Members depositing such cash securities and other property, except that:

(1) such property shall be subject to the rights and powers of the Exchange with respect thereto as set forth in Exchange Bylaws, the Rules, and any agreements between any Clearing Member and the Exchange; and

(2) such property shall be subject to the rights and powers of any person to which the Guaranty Fund or any cash, securities or other property held therein shall have been assigned, pledged, repledged or otherwise subjected to a lien or security interest.

9.04 Clearing Procedure

(A) Submission of Daily Reports and Checks

For each contract for the future delivery of commodities, for each options contract, and for each other contract made and/or cleared on or subject to the rules of the Exchange, each Clearing Member shall, on the day when such transaction takes place, make and deliver to the Exchange a daily report of all such contracts in accordance with rules prescribed by the Clearing House Board. The aforementioned daily report shall provide the Exchange with a complete record of the essential details of all transactions.

At times and under procedures established by the Clearing House, the Board each Clearing Member shall deposit with the Exchange required variation margin, and original margin in such form as is acceptable to the Exchange. The Exchange in like manner shall pay each Clearing Member such amounts as are due such Clearing Member. The amount payable to or by the Exchange as aforesaid shall be such amount as is necessary, after allowing for amounts theretofore paid on account, to adjust outstanding contracts with the Exchange together with all other contracts set forth in the daily report, to the last settlement prices and premiums posted by the Exchange.

(B) Payments for Original Margin

Each Clearing Member, at the time when payments are due to the Exchange as aforesaid, shall have deposited with the Exchange payment, in such form as is acceptable to the Exchange, for any original margin that may be required, as prescribed in these rules.

(C) Acceptance of Reports Final

All contracts reported to the Exchange as above provided shall be deemed accepted by it, unless the parties thereto are notified to the contrary by the Exchange on or before 9:45 a.m. on the Exchange business day following that on which the contracts are made, up to which time the Exchange has the right to refuse to accept any contract reported to it as aforesaid.

(D) Submission of Clearing Sheets

Within the time specified by the President or his designated representative, after the close of future call on each Exchange business day, each Clearing Member shall file with the Clearing House his Clearing Sheet of that day's business. The Clearing Sheet shall be in such form as the Clearing House shall prescribe and shall show in detail the following items:

- (1) open trades brought forward at the beginning of the day;
- (2) trades by such members on that day;
- (3) balanced or straddled trades;
- (4) number of trades offset;
- (5) balance open at end of day;
- (6) the amount due to or from such member on account of all adjusted transactions;
- (7) the total amount of margins due on trades made on date of Clearing Sheet;
- (8) the total amount of margins to be refunded on trades made on date of Clearing Sheet.
- (9) the total amount of premiums due on options trades made on date of clearing sheet;
- (10) the total amount of premiums to be refunded on options trades made on date of clearing sheet.

(E) Separate Sheets for House and Customer

Members having trades for their own account and for customers' accounts shall file two Clearing House Sheets, each sheet properly designated and complying with the members' own trades and the customers' trades.

(F) Reporting of Disputed Trades

Disputed transactions shall not appear upon the Clearing Sheet prior to the settlement of such disputes.

(G) Deposit for Debit Balance

If the Clearing Sheets of any Clearing Member show a debit balance such Clearing Member shall pay such balance in accordance with procedures and in such form as the Clearing House ~~the Board~~ shall specify.

(H) Refund for Credit Balance

If such Clearing Sheets show credit balances in favor of such Clearing Member after the Clearing House has had an opportunity to verify all balances on members' Clearing Sheets, the Exchange shall pay such balance in accordance with procedures and in such form as the Clearing House ~~Board~~ shall specify.

(I) Separate Deposits and Refunds for House and Customer

Clearing Members shall give to the Clearing House separate settlement deposits for settlement of trades for: (1) members' own accounts, customers' segregated accounts, and (3) customers' non-regulated accounts; likewise the Clearing House shall issue separate refunds to members for: total credit balances on (1) the member's own trades, customers' segregated trades, and customers' non-regulated trades.

(J) Offset Memorandum

Clearing Members shall be required to submit to the Clearing House offset memoranda as demanded in the form prescribed by the Clearing House.

(K) Daily Settlement

When a Clearing Member is long or short any amount of commodity futures and options contracts at the end of the day, as indicated by his Clearing Sheet, settlement shall be made with the Clearing House to the settlement price or premium for that day, and such Clearing Member shall pay to, or collect from, the Clearing House any debit or credit, as the case may be, represented by the difference between the price or premium at which the contract was bought or sold, and the settlement price or premium of the commodity for that day. After making such settlement with the Clearing House such Clearing Member shall be deemed long or short such commodity and option, as the case may be, at the settlement price of the day.

(L) No change in records of any kind submitted to the Clearing House shall be made unless approved by the Exchange after written application thereof by the Clearing Member is made to the Exchange, stating the reason for such change.

(M) (1) When clearing operations are conducted by means of electronic data processing machines, amounts owed to the Clearing House must be deposited in accordance with procedures and in such form as the Clearing House ~~Board~~ shall specify.

(2) Transfer information containing a customer account number, clearing member number and customer type indicator code, shall be submitted to the Exchange by the executing Floor Member within one hour after the initial transfer information is supplied by the Exchange. Disposition sheets shall be filed by 7:00 p.m. if done by paper submission, and by 8:30 p.m. if done by electronic submission.

(i) Tardy submission of transfer information, or disposition sheets, shall constitute grounds for a fine to be issued by designated Floor Department Staff or, where determined as appropriate by the Business Conduct Committee, as grounds for formal disciplinary action under Chapter 8 of the Rules.

(ii) Fines for the failure to submit transfer sheets or disposition information shall be levied by the President of the Clearing House in amounts as the Clearing House Committee ~~Board~~, by resolution, may prescribe from time to time.

(iii) As used in this subsection (M)(2), the term "failure to submit" means the failure to submit transfer information for any trade specified in this Rule 9.04 or a disposition sheet to the Clearing House on the day on which a trade is

executed prior to the time at which the Clearing House begins final trade processing.

(3) The President of the Clearing House may, at his discretion, announce times, other than those stated above, from which lateness will be computed.

(4) On the day of the expiration of an option contract, Clearing Members shall be required to have a representative available, during the times specified by the President of the Clearing House or his designee, to review Clearing House Reports and to make any adjustments thereto. All clearing data reported to the Exchange by a Clearing Member following the completion of the operational procedures prescribed by the President of the Clearing House shall be deemed accepted by the Clearing Member and the Clearing Member shall waive any claim against the Exchange based upon inaccurate or erroneous data appearing on said Clearing House Reports.

(N) Each Floor Member, prior to the earliest opening of trading in a contract in which the member traded the previous day, and at regular intervals during the trading day, shall be responsible to review his screen for Electronic, or "E", mail messages.

(O) Penalties imposed under this section shall not be subject to the provisions respecting procedures for disciplinary proceedings.

(P) Concurrent Futures Positions

(1) Concurrent long and short futures positions in the current delivery month may not be offset by netting, transfer, expit, adjustment or any other bookkeeping procedures, but each side must be offset by normal floor or electronic transactions in accordance with Exchange Rules. Provided, however, that a clearing member will be exempt from this requirement if: (i) one side of the concurrent position is established the business day prior to the date that the offset memoranda are filed with the Clearing House; (ii) a clearing member filing such offset memoranda can satisfy the Exchange at its request that the delay in effecting the offset is attributed to an error in the filing of its clearing sheets; and (iii) by 10:00 a.m. on the same date that a clearing member files such offset memoranda, the clearing member also files with the Clearing House an updated and accurate Long Open Interest Report.

(2) For the purposes of this Rule 9.04(P), the current delivery month for energy futures contracts commences on the open of trading on the third business day prior to the termination of the respective futures contract, including the termination date. The current delivery month for metals futures commences on the tenth (10th) business day prior to the first business day of the delivery month.

(Q) Metals Inventory Report

Each Clearing Member shall report to the Exchange in the form required by the Clearing House the quantity of deliverable metal warrants, and any changes thereto, owned by the Clearing Member, or held for customers. A report of a change in such information shall be made to the Exchange within one (1) business day of such change.

(R) Submission of Long Open Interest Report

Each Clearing Member shall submit to the Exchange by 10:00 a.m. on each Exchange business day, Futures and Options Long Open Interest Report(s) on the form prescribed by the Exchange.

9.04A NYMEX ClearPort® Clearing: 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"). In submitting either a NYMEX or DME transaction to the CPC Trade Portal or in allowing either a NYMEX or DME transaction to be submitted 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 transaction for a standardized futures contract listed for trading and clearing on the Exchange. For purposes of this rule, the two principals in either a NYMEX or DME Transaction 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 of NYMEX and DME Futures and Options. The process of submission of a NYMEX or DME futures or options 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"), 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, 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.

(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 Clearing House~~ ~~the Board of Directors~~ for this purpose, as amended from time to time. The Parties to the Transaction and any 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 Transactions.

(E) Registration of Eligible Participants, Eligible Accounts and Authorized 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 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 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 Broker. Moreover, submission of 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 Brokers, and the Clearing Member will have no responsibility for any such Brokers selected by the customer and no duty or obligation to supervise the activities of any such 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. Following submission of the trade details by 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 Broker or Exchange staff, as applicable, and upon mutual consent of the Parties to the Transaction, an 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 rules and procedures against any 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. 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 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. 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, and confirm whether the entry of the Transaction into clearing would fall within the risk value(s) established by the Clearing Member.

At all times until both 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 Transaction.

In the event that either side of the Transaction is rejected as a result of the ERAV Credit Check test, 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 Transaction would be resolved by the Parties to the Transaction.

(J) Trade Submission Deadlines. Transactions that are submitted, confirmed and accepted for clearing, as further provided by Section (K) of this rule, prior to 5:15 p.m. New York time on an Exchange business day will be included by the Exchange for clearing for that business day. The Exchange reserves the right to modify these business hours without notice at any time. The NYMEX facilitation desk will generally be available to assist users 24 hours a day on all Exchange business days.

(K) Clearance by Both Sides of the Transactions of Credit Check. Upon clearance by both 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.

Notwithstanding the above, a Clearing Member also shall be responsible for accepting and clearing a position for a 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

9.05 Margins

It shall be incumbent upon each Clearing Member that his trades and trades of his customers be margined up to the time of the acceptance of such trades by the Clearing House.

(A) Original Margin

Original Margin shall be paid on Exchange commodity transactions in such form as determined by the Clearing House ~~the Board of Directors~~. Original margins may be changed at the discretion of the Clearing House ~~the Board~~.

(B) Variation Margins

The President of the Clearing House ~~Exchange~~, at any time during the day, may call for variation margins to meet the variations in the market. Such margins shall be paid to the Exchange within the time limits prescribed by the President of the Clearing House.

(C) Additional and Advance Margin

In the ~~President's discretion~~ of the President of the Clearing House, if the protection of the Exchange so requires, the President of the Clearing House may call for additional original margin from any one or more clearing members in such forms, and at such times as ~~the President~~ she or she may specify. The President of the Clearing House may lower the margins that were increased when the Exchange no longer requires the protection of increased margins.

(D) Straddle Margins

(1) Futures Straddles

A Clearing Member carrying an account which has both a long and a short futures position with the Clearing House in a particular commodity, in the same or different contracts but in no event for the same delivery month of the same contract, may treat such long and short positions to the extent they are equal in quantity as a futures straddle. Each trade comprising a straddle shall be subject to separate brokerage and clearing charges. Initial margins deposited shall be the higher required for either trade or trades and when so deposited shall be sufficient for both trades but each trade shall be brought to the settling price, daily. When one trade of a straddle transaction is closed out all the remaining trade or trades that comprise the straddle must have the required original margin deposited with the Clearing House.

(2) Options Straddles

A Clearing Member carrying an account which has both (1) a short call option and a long call option; (2) a short put option and a long put option; (3) a long put option and a long call option; or (4) a short put option and a short call option, in a particular commodity, but in no event for the same series, may treat such positions to the extent they are equal in quantity as an options straddle. Each trade comprising a straddle shall be subject to separate brokerage and clearing charges. Initial margins deposited shall be the higher required for either trade or trades and when so deposited shall be sufficient for both trades but each trade shall be brought to the settling price, daily. When one trade of a straddle transaction is closed out all the remaining trade or trades that comprise the straddle must have the required original margin deposited with the Clearing House.

(E) Clearing Members may meet original margin calls by depositing:

(1) Cash (U.S. Currency);

(2) ~~Original Margin Certificates issued by an original margin depository, in form acceptable to the Clearing House, for delivery to the order of the Clearing House, representing~~ Securities issued by the Department of Treasury of the United States of America maturing within ten (10) years from the date of the deposit and guaranteed as to principal and interest by the United States Government; such securities shall be valued at ninety five percent (95%) of the par value; or

(3) Subject to a maximum limit of 50% of the Clearing Member's total original margin obligations, Irrevocable Letters of Credit payable to the order of the Clearing House including such Letters of Credit that are deposited with the Clearing Member in accordance with Exchange procedures by a customer, in form acceptable to the Clearing House, issued by or confirmed by an original margin depository and having an expiration date of not less than three (3) or more than twenty four (24) months from the date of issuance; provided, however, that such Letter of Credit may not be used to meet original margin obligations during the fifteen calendar days prior to the expiration date thereof (if the fifteenth day prior to the expiration of the Letter of Credit is not a business day, the period during which such Letter of Credit may not be used to meet original margin obligations shall begin on the business day immediately preceding that day); and, provided further, that on the business day preceding the fifteenth calendar day prior to the expiration of the Letter of Credit, the Clearing House shall issue a call for original margin to be deposited in a form and manner acceptable to the Clearing House for positions held open as of the close of business on that day and margined by the Letter of Credit. The Clearing House shall have the unqualified right to call on any Letter of Credit at any time prior to expiration. Upon expiration of a letter of credit that has been posted with the Exchange for the maximum twenty four (24) months, a new letter of credit must be posted as no amendments will be accepted to extend the maturity date,
or-

(4) Shares in a money market mutual fund that complies with CFTC Regulation §1.25 and that has been approved by ~~the Clearing House~~ the Board, subject to the following conditions:

(i) for purposes of original margin, such shares will be valued at 98% of market value; (ii) a Clearing Member's participation in any approved fund shall be limited to no more than 5% of that fund; and (iii) no more than ~~25~~10% of the total assets of an approved money market mutual fund may be used to meet original margin obligations at the Exchange.

(F) The Clearing House shall have the right, at all times, to prohibit or otherwise limit the use as original margin by any Clearing Member of letters of credit or of securities under this Rule.

(G) The Clearing House shall retain the original margin deposited with respect to any futures contract against which a delivery notice has been issued until the business day after the delivery date or such date as designated by the Clearing House.

(H) Customer Accounts with the Exchange

(1) Except as provided in subsection (2) below, all customer funds deposited with the Exchange shall be held in accordance with the Commodity Exchange Act and Commission Regulation 1.20 in an account identified as Customer Segregated. Customer funds shall be segregated by the Exchange and treated as belonging to the customers of the clearing member. Pursuant to this Rule, clearing members registered as Futures Commission Merchants shall not be required to obtain a segregated acknowledgment letter from the Exchange.

(2) Customer funds deposited with the Exchange for cleared transactions in over-the-counter pari-mutuel auctions may be deposited in either a member account or a customer non-regulated account. Neither account shall be treated as a customer segregated account.

9.06 Failure of Clearing Member to Deposit Margins

In the event of the failure of a member to deposit any margins as required, the President of the Clearing House, with the approval of the Clearing House Committee~~Board~~, may close out all or any part of the trades in the best interest of the Exchange and the defaulting Clearing Member. Any loss resulting therefrom shall be the liability of the defaulting Clearing Member. Any Clearing Member whose trades are thus closed out shall be promptly notified thereof by the President of the Clearing House.

9.06A Emergency Financial Conditions

If the President of the Exchange or the President of the Clearing House determines that the financial or operational condition of a clearing member or one of its affiliates is such that to allow that clearing member to continue its operation would jeopardize the integrity of the Exchange or the Clearing House, or negatively impacts the financial markets by introducing an unacceptable level of uncertainty, volatility or risk, whether or not the clearing member continues to meet the required minimum financial requirements, he or she may empanel the Chief Executive Officer, the President of the Exchange, Chairman of the Board, the Chairman of the Clearing House Committee and the President of the Clearing House. Such panel shall be duly authorized and, upon a unanimous vote of the panel, be empowered to order (a) an immediate position limitation, (b) an immediate suspension of the clearing member from the Clearing House and/or the Exchange, as applicable, (c) that all open trades of said clearing member be for liquidation only, (d) the liquidation or transfer of all or a portion of the open positions of the clearing member, or (e) additional performance bond to be deposited with the Clearing House. The clearing member affected by action taken shall be notified and may request a hearing before the Board as provided in Rule 230A.k. In the event of suspension, the Chief Executive Officer shall, promptly after a suspension, set the matter for hearing before the Board for final determination. To the extent that the panel orders that all open trades of a clearing member be for liquidation only, or the panel orders the liquidation or transfer of all of the open positions of a clearing member, the clearing member shall be treated as a withdrawing clearing member.

9.10 Trade Refused by Clearing House

When the President of the Clearing House deems the financial condition of any Clearing Member as inadequate to carry any additional transactions he shall prohibit such Clearing Member from clearing any new transactions. Any such member may appeal from the decision of the President of the Clearing House to the Clearing House Committee~~Board~~.

9.14 Omnibus Accounts

No Clearing Member may execute contracts for future delivery or options contracts on the Exchange for a carrying house which does not disclose the names of its customers or options customers (omnibus accounts) unless the carrying house agrees that it will, on request of the Clearing Member, disclose to the Clearing Member, the names, addresses, positions and transactions of its customers; provided, however, that the Clearing Member shall not call for such information unless requested to do so by the Board, a Committee of the Exchange, ~~or the President of the Clearing House or Compliance staff~~. A copy of such agreement shall be made available by the Clearing Member upon request of the Exchange.

9.17 Delivery Procedure

Commodities bought or sold on Exchange contracts or on Dubai Mercantile Exchange Limited contracts shall be delivered and accepted in accordance with the provisions of this Chapter, supplemented by provisions of the rules and delivery procedures of the Exchange and/or of the DME applicable to individual commodities. Any question affecting the handling or delivery or any commodity which is not specifically covered by the Bylaws and Rules may be referred to the Clearing House Committee~~Board~~ for determination.

9.20 Position Limits

(A) Defined Terms

For the purpose of this Rule, the following terms shall have the meanings set forth below, unless the context otherwise requires:

(1) "Modified Capital" shall mean the working capital (as defined in Rule 9.21) of a Clearing Member, (1) increased by an amount equal to (a) the face amount of any approved letter of credit issued to the Clearing House for the capital accounts of such Clearing Member and (b) fifty percent of the working capital of any person that issues an approved

Guarantee to the Clearing House for the capital account of such Clearing Member, and (2)(a) decreased by an amount equal to fifty percent of the working capital of such Clearing Member for each approved Guarantee such Clearing Member issues to the Clearing House for the capital account of another Clearing Member provided, however, that the capital of a Clearing Member may not be increased by letters of credit and/or guarantees by more than 100% of such Clearing Member's working capital. For the purpose of determining positions limits under this Rule, maximum working or modified capital shall be deemed to be \$1 billion.

(2) "Position Risk" shall mean the amount calculated using the Exchange's Standard Portfolio Analysis ("SPAN") margin system analyzing the net positions carried by the Clearing Member.

(B) Aggregate Position Limits

Except as provided in paragraphs (C) and (D) of this Rule, no Clearing Member may carry futures and/or options contracts resulting in "Position Risk" in excess of:

- (a) In the Customer Account – 200% of the firm's modified capital;
- (b) In the House Account – 100% of the firm's modified capital; or
- (c) In total – 250% of the firm's modified capital.

(C) Super Margin Deposits

Any Member may carry futures and/or options contracts resulting in Position Risk in excess of the limits established under paragraph (B) of this Rule and may have expanded position limits that result in Position Risk up to, but not in excess of:

- (a) In the Customer Account – 300% of the firm's modified capital;
- (b) In the House Account – 150% of the firm's modified capital; or
- (c) In total – 350% of the firm's modified capital.

if such Member deposits with the Clearing House (in addition to all other deposits for margins, fees or other charges that may be required), the difference between the Clearing Member's permissible Position Risk and actual Position Risk.

Such deposits shall be made at the same time and in the same form and manner, and shall otherwise be subject to the same Rules, as original margin deposits.

(D) Other Position Limits Other Position Limits The Clearing House Committee~~Board~~ (or its designee), in its discretion, may at any time establish position limits for any one or more clearing members which are higher or lower than or otherwise differ from, those established pursuant to paragraph (B), or change the amount of additional margin required pursuant to paragraph (C) or (F), based on the Clearing House Committee's~~Board's~~ evaluation of the financial and operational capacity of such clearing member and such other factors as the Clearing House Committee~~Board~~, in its discretion, considers appropriate, including but not limited to, (1) the business needs and financial condition of the clearing member, (2) the number of memberships or other clearing organizations held by the clearing member and the average number of contracts cleared through other clearing organizations each day by the clearing member, (3) the extent to which the clearing member trades and clears for either customer accounts, proprietary accounts, or both, (4) the length of time the clearing member has held a membership with the Clearing House, (5) the total open positions of the clearing member regularly maintained with the Clearing House and other commodity clearing organizations, and (6) such other factors as the Clearing House Committee~~Board~~, in its discretion, considers appropriate. No clearing member shall have a net interest or net straddles in excess of any such limits established by the Clearing House Committee~~Board~~. Any increase in position limits as noted above will require the posting of additional monies into the Exchange's Guaranty Fund in an amount as deemed appropriate by the Exchange's President of the Clearing House~~or designee~~.

Any Clearing Member whose position limit is set at a level less than the maximum set forth in paragraph (B) of this Rule may file a written request with the Clearing House Committee~~Board~~ for an increase of such limits, supporting such request with such evidence as the clearing member may desire. Thereupon, the Clearing House Committee~~Board~~, with or without a hearing as it may consider proper, shall take such action thereon as it may deem appropriate.

(E) Liquidation of Excess Positions

Any Clearing Member that exceeds its position limits under this Rule shall transfer or liquidate any futures and/or options contracts in excess of the position limits within such time as the President of the Clearing House, in consultation with the Clearing House Committee~~Board~~, may prescribe and shall report to the President of the

Clearing House when such excess has been reduced. Such Clearing Member shall deposit additional original margin on such excess positions equal to the amount required for positions held pursuant to paragraph (C) of this Rule. If a Clearing Member fails to transfer or liquidate any excess futures contracts within the time prescribed by the President of the Clearing House, ~~the President~~ or to deposit the additional original margin required by this paragraph (E), the President of the Clearing House may liquidate or transfer such excess positions.

9.21 Minimum Capital Requirements and Transfer Restrictions on Common Stock

(A) Working Capital Defined

For purposes of this Rule, the term "working capital" shall mean the amount by which current assets exceed current liabilities as calculated in accordance with generally accepted accounting principles or in the case of a Clearing Member registered as a Futures Commission Merchant it shall mean "adjusted net capital" as calculated in accordance with CFTC Regulation 1.17.

(B) Minimum Financial Requirements

Each Clearing Member registered with the Commission as a futures commission merchant shall have and maintain minimum working capital equal to or in excess of the greater of \$5,000,000 or the amount prescribed in Commission Regulation 1.17. Except as provided in Rule 9.02(K), all other Clearing Members shall have and maintain minimum working capital of \$5,000,000. In addition, until further notice from the Exchange, each NYMEX Clearing Member shall at all times own and maintain at least two Exchange Class A memberships and at least ~~180,000~~ 8,000 shares in CME Group common stock if it is a NYMEX-only clearing member, 12,000 shares in CME Group common stock if it is a NYMEX and either CME or CBOT clearing member, and 16,000 shares in CME Group common stock if it is a NYMEX, CME and CBOT clearing member. ~~NYMEX Holdings, Inc. common stock.~~

(C) Additional Financial Requirements for Primary Clearing Members

A Primary Clearing Member shall maintain \$50,000 in additional working capital, as defined in Subsection (A) above, for the guarantee of each Floor Member as noted within Rule 2.21 in excess of one hundred (100) of such guarantees for each Division of the Exchange, provided, however, that no such requirement shall apply where the guaranteed Floor Member has net liquid assets in excess of one hundred thousand dollars (\$100,000) and such Floor Member files with the Primary Clearing Member an annual financial statement as of the calendar year-end and presented on a form as provided by NYMEX documenting net liquid assets in excess of one hundred thousand dollars (\$100,000). The Primary Clearing Member shall obtain such financial statement and supporting schedules no later than January 31 of each year and maintain these documents as part of the Primary Clearing Members books and records.

(D) Alternative Measure of Financial Soundness

The ~~Clearing House Committee~~ Board of Directors or its designee may exempt a Clearing Member from the working capital requirement set forth in Rule 9.21 (B) if, in its sole discretion, an alternative measure of financial soundness of such Clearing Member, such as a minimum level of net worth, is more appropriate.

9.22 Financial Reporting

For purposes of this Rule 9.22, "Working Capital" shall be defined by Rule 9.21(A), "Net capital" shall be defined by Commission Regulation 1.17(c)(1) and "Excess Net Capital" shall be defined as Net Capital less the minimum capital required by Rule 9.21(B). For purposes of this Rule 9.22, an "FCM" shall mean a clearing member that is registered with the Commission as a Futures Commission Merchant.

(A) Quarterly Reports

(i) Each clearing member shall file with the ~~Financial Surveillance Section of the Compliance~~ Audit Department, within ninety days after the close of each fiscal year of such member, a copy of such member's balance sheet and income statement as of the close of such fiscal year, certified by an independent public accountant. Each clearing member shall also file with the ~~Financial Surveillance Section of the Compliance~~ Audit Department, within forty-five days after the close of the second quarter of each fiscal year of such member, a copy of such member's balance sheet and income statement as of the close of such quarter, certified by the chief financial officer of the clearing member. These reporting requirements may be satisfied by filing with the ~~Financial Surveillance Section of the Compliance~~ Audit Department a copy of Commission form 1-FR or Part II of the Securities and Exchange Commission Financial and Operational Combined Uniform Single ("FOCUS") Report, certified by an independent public accountant or the chief

financial officer of the clearing member, as may be required.

(ii) Each clearing member that is registered as an FCM shall file with the ~~Financial Surveillance Section of the Compliance Audit~~ Department both annual certified financial statements as well as quarterly unaudited financial statements in the manner and format as required by CFTC Regulation 1.10.

(B) Reports to Other Regulatory Authorities

Each clearing member shall also promptly file with the Clearing House of its designated agent a copy of any financial statement which such clearing member may file with the Commission, any registered national securities exchange, any commodity exchange or any other clearing organization.

(C) Impairment of Capital Reports

(1) In the event that the Working Capital of any clearing member at any time falls below the minimum Working Capital required by Rule 9.21(B), such clearing member shall give immediate written notice of the fact by the fastest available means of communication to the ~~Financial Surveillance Section of the Compliance Audit~~ Department. Such written notice shall include the information required by By-Law Section 851 (Duty to Report Emergency Event).

(2) In the event that the Working Capital, as defined by Rule 9.21(A), of any clearing member, or Net Capital if registered as an FCM, at any time declines by 20% or more from the capital last reported to the Exchange, the clearing member shall give formal written notice of such event to the ~~Financial Surveillance Section of the Compliance Audit~~ Department within two (2) business days of its occurrence. Such "Notice of Capital Impairment" shall state the date of and applicable reason(s) for the decline.

(3) In the event a clearing member knows, or has reasonable basis to believe, that, as a result of one or more transactions, the working capital, or Excess Net Capital if registered as an FCM, likely will be reduced by more than 30% from the capital on the previously submitted financial statement, the clearing member shall advise the ~~Financial Surveillance Section of the Compliance Audit~~ Department in writing at least 2 business days prior to making any such transaction(s) (e.g. dividend payments, loans, etc.)

(D) Other Financial Reports

The Clearing House may at any time and from time to time require any or all clearing members, in its discretion, to file with the Clearing House, or another person designated by the Clearing House, such additional financial information, authenticated in such manner, as the Clearing House may from time to time determine.

(E) Accountants Reports

The qualifications and reports of accountants for clearing members must meet the requirements set forth in Commission regulations and must be satisfactory to the Clearing House.

9.23 Protection of Clearing House

(A) Default by Clearing Member and Other Participating Exchanges

1. Default by Clearing Member

If a Clearing Member of NYMEX, COMEX, CME or CBOT fails promptly to discharge any obligation to the NYMEX or CME Clearing Houses, it shall be in default. If a Clearing Member is in default, its deposit in the Guaranty Fund (pursuant to Rule 9.03), its performance bonds on deposit with the Clearing House, the proceeds of the sale of any membership and Class A Shares assigned to it for clearing qualification, and any other assets held by, pledged to or otherwise available to the Clearing House, shall be applied by the Clearing House to discharge the obligation. For purposes of this rule, each default by an individual Clearing Member will be considered a separate default event.

For purposes of this Rule, the positions in the cross-margin account of a Participating Clearing Member or its Cross-Margining Affiliate at a Cross-Margining Clearing Organization, and the performance bond thereon, shall be considered assets of the Participating Clearing Member available to the Exchange to the extent provided in the Cross-Margining Agreement between the Exchange and such Cross-Margining Clearing Organization. A Clearing Member in default shall immediately make up any deficiencies in the Guaranty Fund resulting from such default prior to the close of business on the next banking day.

The Clearing Member shall take no action, including but not limited to, attempting to obtain a court order, that would interfere with the ability of the Clearing House to so apply such assets and proceeds.

If the performance bond deposits in the Guaranty Fund, and other assets of a Clearing Member available to the Exchange are insufficient to satisfy all of its obligations to the Clearing House, including all claims against the Clearing House by reason of its substitution for that clearing member pursuant to Rule 9.12, the Clearing House shall nonetheless pay all such claims, which shall be deemed a loss to it and which shall be a liability of the defaulting Clearing Member to the Exchange, which the Exchange may collect from any other assets of such clearing member or by process of law.

2. Default by Other Participating Exchanges.

If a participating exchange fails to promptly discharge any obligation to the Clearing House arising out of its obligations to the Exchange, such Participating Exchange's letters of credit, performance bonds and other assets available to the Exchange shall be applied by the Clearing House to discharge the obligation.

(B) Satisfaction of Clearing House Obligations

If the Clearing House is unable to immediately satisfy all claims against it including, but not limited to, costs associated with the liquidation, transfer and managing of positions, arising out of: 1) its substitution (pursuant to Rule 9.12) for a defaulting Clearing Member or a defaulting participating exchange, or a defaulting partner clearinghouse; 2) a shortfall in a cross-margining program; 3) the failure of a depository, exchange or market apart from the Exchange but whose transactions are cleared pursuant to the provisions of Rule 9.04A; or 4) for any other cause, then such claim or obligation shall be met and made good promptly by the use and application of funds from the following sources in the order of priority hereafter listed. Each source of funds set forth below shall be completely exhausted, to the extent practicable, before the next following source is applied.

- (1) Surplus funds of the Exchange in excess of funds necessary for normal operations.
- (2) Proceeds from each Clearing Member's Guaranty Fund based on each Clearing Member's percentage of the total Guarantee Fund requirement of all Clearing Members per Rule 9.03. In addition, solely for purposes of satisfying a clearing member default situation as described in this rule, the Guaranty Fund shall be combined with the funds in the Chicago Mercantile Exchange Inc. (CME) security deposit pool of funds (as described in CME Rule 816) to establish a single Guaranty Fund/Security Deposit pool of funds. Notwithstanding the above, the initial draw under this section 2, shall be in an amount up to any applicable insurance policy deductible then in place with the Exchange;
- (3) Proceeds from any default insurance maintained by the Exchange to the extent that such proceeds are available in a timely manner to be applied towards the default.
- (4) In the event a shortfall continues to exist after the application of the insurance proceeds described in number 3 above, any remaining unused proceeds from the Guaranty Fund/Security Deposit pool set forth in number 2 above shall then be applied;
- (5) The balance of the Clearing House loss remaining after application of the above funds shall be assessed against all Clearing Members (excluding any insolvent or defaulting clearing member). Each clearing member (excluding any insolvent or defaulting Clearing Member) shall be subject to an assessment up to an amount that does not exceed 275 percent of such Clearing Member's security deposit requirement.
- (6) All amounts assessed by the Exchange against a Clearing Member pursuant to this Rule, during the hours in which the Federal Reserve's wire transfer system (Fedwire) is in operation, shall be paid to the Exchange by such Clearing Member prior to the close of the Fedwire on such day. All amounts assessed within one (1) hour prior to the close of Fedwire shall be paid to the Exchange within one (1) hour after Fedwire next opens. While such application of funds shall be mandatory, the detailed implementation of Rule 9.23(B), shall be the responsibility of the Clearing House Committee with the approval of the Board.

Any Clearing Member that does not satisfy an assessment, made pursuant to paragraphs (5) or (6) above, shall be in default. Any Clearing House loss that remains as a result of such default shall be assessed pursuant to paragraph (5).

If a Clearing Member (i) makes payment of all amounts assessed against it pursuant to paragraph (5) or (6) above, (ii) replenishes any applicable deficiency in the Guaranty Fund in accordance with Rule 9.23(D), and (iii) satisfies all other conditions for withdrawal, it may, within five (5) business days of such payments, apply to withdraw from clearing membership. Immediately after the Exchange approves the Clearing Member's withdrawal, the withdrawing Clearing Member shall not be subject to any other assessment pursuant to this Rule. Further, upon the approval of the clearing member's request to withdraw, the security deposit that it has restored shall not be used or applied towards meeting any claim or obligation of the Clearing House pursuant to this Rule and shall be released.

After payment of an assessment pursuant to this Rule, a Clearing Member shall charge other Clearing Members for whom it clears contracts or carries positions on its books to recover their proportional share of the assessment. Such other Clearing Members shall promptly pay the charge.

To the extent that, and irrespective of the fact that, the Exchange has default insurance coverage in effect at the time of an event of default, the Exchange may nevertheless continue to utilize the resources under the priority outlined in Rule 9.23(B)(1), (B)(2), and (B)(5) for immediate liquidity while awaiting any insurance proceeds. Any insurance

proceeds so recovered by the Exchange, to the extent not required by the Exchange to cure a default, will be applied to the credit of the non-defaulting Clearing Members.

(C) Rights of Exchange for Recovery of Loss

If a loss for which Clearing Members or their Guaranty Fund proceeds have been assessed is subsequently recovered by the Exchange in whole or in part, the net amount of such recovery shall be credited to such persons or firms (whether or not they are clearing members at the time of recovery) in proportion to the amount of the assessment.

(D) Guaranty Fund to be Restored

In the event it shall become necessary to apply all or part of the Guaranty Fund to meet obligations to the Clearing House pursuant to Rule 9.23, Clearing Members shall immediately make good any such deficiency in the Guaranty Fund prior to the close of business on the next banking day.

(A) Clearing Member Assets

~~If a clearing member fails promptly to discharge any obligation to the Clearing House, its margin on deposit with the Clearing House, its deposit in the Guaranty Fund, and any of its other assets under the control of the Exchange or the Clearing House shall be applied by the Clearing House to discharge the obligation.~~

~~For purposes of this Rule, the positions in the cross-margin account of a participating Clearing Member or its Cross-Margin Affiliate at a Cross-Margining Clearing Organization, and the margin deposited thereon, shall be considered an asset of the Participating Clearing Member available to the Exchange to the extent provided in the Cross-Margin Agreement between the Exchange and such Cross-Margin Clearing Organization.~~

~~If the failure to discharge the obligation involves a default in the customer segregated account of the clearing member, all of such assets (whether held for the member, customer segregated or customer non-regulated accounts) shall be available to discharge the obligation. If such failure involves a default in the member account and/or customer non-regulated account of the clearing member, only that portion of such assets as are held in the member and/or customer non-regulated accounts shall be available to discharge the obligation. The clearing member shall immediately make up any deficiencies in its margin or its deposits in the Guaranty Fund resulting from such application.~~

(B) Other Assets

~~If the margin deposits in the Guaranty Fund and other assets of the Clearing Member under the control of the Exchange or the Clearing House are insufficient to satisfy all of the clearing member's obligations to the Clearing House, and if the clearing member fails to pay the Clearing House the amount of any such deficiency within one business day, the amount of the deficiencies shall be paid from the following sources of funds, each such source to be completely exhausted before the next following source is applied:~~

~~(1) First, such Exchange funds as the Board in its discretion may determine to apply;~~

~~(2) Second, proceeds from each clearing member's Guaranty Fund based on each firm's percentage of the total Guaranty Fund requirement of all clearing members per Rule 9.03;~~

~~(3) Third, proceeds from an insurance policy maintained by the Exchange; and~~

~~(4) Fourth, such assets as may be made available from assessments against Clearing Members pursuant to Section (C) of this Rule~~

~~Any amount so paid shall be deemed a loss to the Exchange or the Clearing House and shall be a liability of the defaulting Clearing Member to the Exchange or the Clearing House.~~

(C) Assessments

~~(1) Except as provided in Section (D) of this Rule, if there is a deficiency remaining after the Guaranty Fund has been exhausted as provided in Section (B) of this Rule, each clearing member (except the defaulting clearing member and any insolvent clearing member) shall be required, subject to the limitations in this Rule, to pay an assessment in an amount as determined by the Board in an amount proportional to such clearing member's Guaranty Fund requirement compared to the total Guaranty Fund requirement of all clearing members per Rule 9.03.~~

~~(2) Notwithstanding subsection (C)(1) of this Rule, no clearing member shall be required to pay, as an assessment, any amount in excess of~~

~~(a) the greater of 40 percent of such clearing member's:~~

~~(i) NYMEX modified capital as defined in Rule 9.20(A), or~~

~~(ii) COMEX modified capital as defined in Rule 9.20(A), or~~

~~(b) thirty million dollars (\$30,000,000), whichever is less, during any period of ten consecutive business days (the "Maximum Assessment"). The difference, if any, between the amount that would be assessed against any clearing member pursuant to subsection (C)(1) of this Rule and the Maximum Assessment for any such clearing member, shall be considered a deficiency and shall be assessed against clearing members (excluding the defaulting clearing member, any insolvent clearing member and any clearing member which has paid the Maximum Assessment) in accordance with subsection (C) of this Rule until the entire deficiency is paid or every clearing member (except the defaulting clearing member and any insolvent clearing member) has paid the Maximum Assessment, and any such assessment shall be considered part of a single assessment, without regard to the times when they are made, for purposes of determining the Maximum Assessment.~~

~~(3) Notwithstanding subsection (C)(1) of this Rule, a clearing member which pays an assessment in accordance with this Section (C) and gives the Clearing House written notice of withdrawal from membership prior to ten business days after such assessment is made shall not be subject to any further assessment after the date such notice is received by the Clearing House, except that such clearing member shall continue to be liable for any assessment made pursuant to the second sentence of subsection (C)(2) of this Rule, up to the Maximum Assessment.~~

~~(4) Any assessments made pursuant to this Rule shall be paid by each clearing member not more than one business day after written notice of any such assessment shall have been delivered to such clearing member.~~

~~(D) Cancelled Assessments~~

~~Notwithstanding Section (C) of this Rule, no clearing member shall be assessed if there would be a deficiency after all clearing members (excluding the defaulting clearing member and any insolvent clearing member) pay the Maximum Assessment.~~

~~(E) Charges Against Guaranty Fund~~

~~In the event it shall become necessary as provided in subsections (B)(2) and (3) of this Rule to apply all or part of the Guaranty Fund to meet any clearing member's obligations to the Clearing House, each clearing member shall be liable to restore its deposit to the amount required by Rule 9.03, upon demand by the Clearing House.~~

~~(F) Insolvent Members~~

~~In the event that clearing members are assessed as provided in Section (C) of this Rule, any insolvent clearing member who has been excluded from the assessment shall nonetheless be liable to the Clearing House for the amount of the assessment that otherwise would have been imposed on such clearing member.~~

~~(G) Recovery of Losses~~

~~If a loss for which Guaranty Fund deposits have been applied or clearing members have been assessed is afterward recovered by the Exchange or the Clearing House in whole or in part, the net amount of such recovery (after deducting legal fees and any other costs of collection incurred by the Exchange or the Clearing House) shall be paid as follows:~~

~~(1) First, to clearing members who made payments to the Clearing House pursuant to paragraphs (C) or (F) of this Rule, whether or not they are still clearing members, in proportion to the amounts so assessed, until all such clearing members shall have been repaid the full amount so assessed or the net amount of such recovery shall have been exhausted;~~

~~(2) Second, to clearing members against whose Guaranty Fund deposits the deficiency was charged pursuant to subsections (B)(2) and (3) of this Rule, whether or not they are still clearing members, in proportion to the amounts charged against their respective deposits but limited to the amounts so charged; and~~

(3) The balance, if any, to any purpose the Board, in its discretion, may approve.

XXV Resolution of the Board of Directors to establish and maintain a permanent Retail Customer Protection Mechanism

The Board of Directors, upon consideration of a pending CFTC Order, hereby:

~~RESOLVES, to establish and maintain a permanent retail customer protection mechanism supported by a commitment of not less than \$10 million which shall be available at all times to promptly reimburse retail customers trading on NYMEX whose original margin funds are lost in the unlikely result of a default by another customer of the same FCM in any contract cleared by NYMEX and where such customer default of a NYMEX contract results in a default of that FCM clearing member to NYMEX and where NYMEX uses customer margin funds of that FCM clearing member to address the default. For the purposes of this resolution and said CFTC order, the term "Retail Customer" shall be defined to include all natural persons who do not otherwise qualify as an "eligible contract participant" under the requirements of Section 1a(12) of the Commodity Exchange Act, provided however, that such definition of Retail Customer shall not include any NYMEX floor traders or floor brokers and additionally shall not include family members of NYMEX floor traders and floor brokers who maintain accounts at the same FCM where such NYMEX floor trader or floor broker maintains an account.~~

~~RESOLVES FURTHER, that in the event of a FCM default to NYMEX caused by a customer default as described above where the total loss of all Retail Customers at such FCM from such default exceeds the amount of the Exchange's then current commitment, authorizes Exchange staff to compensate such Retail Customers on a pro-rata basis.~~

~~RESOLVES FURTHER, that this resolution shall become effective as of the effective date of the order from the Commodity Futures Trading Commission.~~

9.24 Original Margin Depositories and Originators of Letters of Credit

(A) Original Margin certificates representing the deposit of securities by Clearing Members for original margin may be issued by a banking institution selected by the Clearing Member depositor provided that such institution has been approved by the Exchange as an original margin depository.

(B) Letters of credit may be issued, or confirmed, by a banking institution selected by a clearing member depositor, which institution has been approved by the Exchange as an original margin depository, and may be deposited to meet original margin requirements.

(C) In order to be approved as an original margin depository, a banking institution must:

(1) have capital and surplus of not less than \$250,000,000;

(2) have a P-1 or A-1 rating from Moody's Investors Services, Inc. or from Standard and Poors Corp. respectively.

(D) Letters of Credit may be issued by a banking institution that is not an original margin depository provided that such banking institution has capital and surplus of not less than \$250,000,000 and a P-1 or A-1 rating from Moody's Investors Service, Inc. or from Standard & Poors Corp., respectively and, provided further, that such Letter of Credit is confirmed by an original margin depository.

(E) No approved original margin depository or issuer of a letter of credit may commit, with respect to Exchange contracts, more than the lesser of ten percent (10%) of its capital and surplus or \$1 billion, provided, however, that an issuer may issue letters of credit up to \$1.1 billion, if such issuer establishes, to the satisfaction of the Exchange, an account at another financial institution and deposits in such account, for the benefit of the Exchange, collateral in the form of U.S. Government obligations of maturities of less than ten (10) years valued at 95% of par value, for the excess over \$1 billion. Such collateral shall be deemed to secure any and all obligations of such issuer under letters of credit issued by the issuer in favor of the Exchange. The Board of Directors, upon the application of an issuer of letters of credit, may grant a waiver of the \$1.1 billion ceiling, upon such terms and conditions as it deems appropriate.

(F) ~~The Clearing House Committee Board~~ may grant exemptions from paragraph (C) of this Rule upon such terms and conditions as the ~~Clearing House Committee Board~~ finds appropriate, in its sole discretion.

(G) Notwithstanding anything to the contrary in this Rule, a Clearing Member, which is a bank subsidiary or the affiliate of a bank may not deposit with the Clearing House a Letter of Credit issued or confirmed by such bank, parent bank, or affiliate bank.

(H)(1) Each banking institution approved as a margin depository and/or issuer of letters of credit shall file with the ~~Financial Surveillance Section of the Exchange's Compliance Department~~ Clearing House a copy of its annual certified financial statement within ninety days of the close of each fiscal year. In addition, each such approved institution shall file a copy of an unaudited financial statement within sixty days of the close of that institution's second quarter in each fiscal year. Such filings shall include, but are not limited to, an institution's balance sheet and income statement.

(2) A banking institution that fails to submit such required financial statements may be deemed to be inactive by the Exchange. Any institution that has been deemed to be inactive shall be ineligible to serve as a recognized margin depository or an issuer of letters of credit under this Rule 9.24.

9.25 Resolution of the Board of Directors to establish and maintain a permanent Retail Customer Protection Mechanism

The Board of Directors, upon consideration of a pending CFTC Order, hereby:

RESOLVES, to establish and maintain a permanent retail customer protection mechanism supported by a commitment of not less than \$10 million which shall be available at all times to promptly reimburse retail customers trading on NYMEX whose original margin funds are lost in the unlikely result of a default by another customer of the same FCM in any contract cleared by NYMEX and where such customer default of a NYMEX contract results in a default of that FCM clearing member to NYMEX and where NYMEX uses customer margin funds of that FCM clearing member to address the default. For the purposes of this resolution and said CFTC order, the term "Retail Customer" shall be defined to include all natural persons who do not otherwise qualify as an "eligible contract participant" under the requirements of Section 1a(12) of the Commodity Exchange Act, provided however, that such definition of Retail Customer shall not include any NYMEX floor traders or floor brokers and additionally shall not include family members of NYMEX floor traders and floor brokers who maintain accounts at the same FCM where such NYMEX floor trader or floor broker maintains an account.

RESOLVES FURTHER, that in the event of a FCM default to NYMEX caused by a customer default as described above where the total loss of all Retail Customers at such FCM from such default exceeds the amount of the Exchange's then current commitment, authorizes Exchange staff to compensate such Retail Customers on a pro rata basis.

RESOLVES FURTHER, that this resolution shall become effective as of the effective date of the order from the Commodity Futures Trading Commission.

9.33 Position Reporting

(A) Each Clearing Member shall submit to the Exchange reports of positions equal to or in excess of the levels established by Rule 9.34. Such reports shall be submitted by no later than 8:00 A.M. in an approved machine readable format unless authorized otherwise in advance by the Chief Regulatory Officer ~~Vice President of Market Surveillance~~ or his designee, provided however, that Clearing Members maintaining reportable positions for any contract listed on the Dubai Mercantile Exchange (DME) must submit such reports to the Exchange by no later than 12:00 A.M. (midnight).

(B) Any omnibus account or foreign broker shall submit a signed NYMEX reporting agreement in the form prescribed by the Exchange to the Exchange's Compliance Department upon becoming reportable. Any reportable omnibus account or foreign broker shall submit to the Exchange separately identifying all proprietary and customer positions equal to or in excess of the levels established by Rule 9.34. Such reports shall be submitted in the form prescribed by the Exchange by no later than 8:00 A.M. unless authorized otherwise in advance by the Chief Regulatory Officer ~~Senior Director of Market Surveillance~~ or his designee, provided however, that any omnibus account or foreign broker maintaining reportable positions for any contract listed on the Dubai Mercantile Exchange (DME) must submit such reports to the Exchange by no later than 12:00 A.M. (midnight). The failure by an omnibus account or foreign broker to submit a signed NYMEX reporting agreement or properly report positions may result in a hearing by the Business Conduct Committee to limit, condition or deny access to the market.

(C) Each futures commission merchant (whether a NYMEX Clearing Member or an omnibus firm or foreign broker that has executed a NYMEX reporting agreement) shall submit to the U.S. Commodity Futures Trading Commission

("CFTC") the information described in Part 17 of the CFTC's regulations in the manner described in Parts 15 and 17 of the CFTC's regulations, with respect to all DME transactions in which it participates.

(D) Interest in or Control of Several Accounts.

(1) If any person holds or has a financial interest in or controls more than one account, all such accounts shall be considered by the clearing member, omnibus account or foreign broker as a single account for reporting purposes.

(i) Accounts of Eligible Entities.

Accounts of Eligible Entities as defined in Rule 9.28(F) of this chapter that are traded by an independent account controller shall, together with other accounts traded by the independent account controller or in which the independent controller has an interest be considered a single account.

(ii) Accounts Controlled by Two or More Persons.

Accounts that are subject to day-to-day trading control by two or more persons shall, together with other accounts subject to control by exactly the same persons, be considered a single account.

(2) For purposes of this Rule 9.33, except for the interest of a limited partner or shareholder (other than the CPO) in a commodity pool, the term financial interest shall mean an interest of 10 percent or more in ownership or equity of an account.

(E) For purposes of sections (A), (B) and (C) above, if a person controls or holds a position equal to or greater than the number of contracts specified in Rule 9.34 long or short in any one month, then all such futures and options on such futures whether above the given level or not, shall be deemed reportable positions.

(F) All Clearing Members, omnibus accounts and foreign brokers for the purposes of sections (A), (B), (D) and (E) above, shall report to the Exchange each account in excess of the levels established in Rule 9.34 by a unique numeric designation. The unique numeric designation shall be established by filing with the Vice President of Market Surveillance a CFTC Form 102 meeting all the requirements of Section 17.01(b) of the Regulation of the Commission (17 C.F.R. Section 17.01(b)), as it may be amended from time to time, within one business day of when the account becomes reportable for the first time. The Clearing Member, omnibus account or foreign broker, as the case may be, shall file an updated Form 102 with the Exchange within one business day after any material change in the information supplied on the Form 102 occurs.

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, Member, or Clearing 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 will result in a warning letter being issued by the Compliance Staff to the customer (includes any Member or non-Member customer), and the warning letter shall be copied to the carrying Clearing Member(s). 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

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 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 of 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.

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

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 of 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 involves a position which is more than 150 percent of the speculative or approved hedge position limits;

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

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

(4) Where the President or his designee 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.

9.36A Appeal / Settlement

(A) Any fine imposed in accordance with Rule 9.36 may be appealed to the Appeals Committee. To appeal a fine, a Member or Clearing Member shall file a typewritten notice of appeal with the Office of the Secretary and the Compliance Department within ten (10) business days after receipt of the notice of such fine. The notice of appeal shall set forth the grounds for the appeal and any relevant documents shall be attached. A failure to appeal within such time limit shall operate as a waiver of all rights of appeal.

(B) The Compliance Department shall deliver to the appellant and file with the Office of the Secretary within ten (10) days of the date of delivery of the Notice of Appeal, a written memorandum in response to the Notice of Appeal.

(C) The appellant may deliver to the Compliance Department and file with the Office of the Secretary, within ten (10) days from receipt of the response of the Compliance Department, a written reply memoranda. Such memoranda must be limited to the matters contained in the response of the Compliance Department.

(D) In its discretion, the Appeal Panel may decide the appeal on the basis of the notice of fine and memoranda of the Respondent and the Compliance Department or may require the parties to make oral presentation. The Appeal Panel shall issue a written decision which shall include an order to affirm, reverse or modify the terms of the summary fine issued.

(E) The Appeal Panel may approve or reject offers of settlement between the appellant and the Compliance Department which may decrease the fine or otherwise modify the terms of the summary fine issued.

Change History

9.00 Liability of Exchange: (Amended: 10/08/2004, 05/30/2007)

9.02 Membership in the Clearing House: (Amended: 02/29/96, 10/01/86, 12/01/86, 07/17/89)

9.03 Guaranty Fund: (Amended: 07/01/87, 04/01/91, 06/01/93, 07/01/87, Rule 9.03(E): 8/12/02, 05/16/2003, 03/13/2006)

9.03A Use of the Guaranty Fund: (Adopted: 01/29/99)

9.04 Clearing Procedure: (Amended: 09/16/86, 04/20/87, 03/14/89, 06/01/90, 03/12/93, 08/16/93, 01/07/94, 03/21/94, 07/20/98, 10/08/2004, 11/29/2006, 5/3/2007)

9.04A NYMEX ClearPort® Clearing Procedures for Trade Submission: (Amended: 01/24/03, 10/08/2004, 05/23/2005)

9.05 Margins: (Amended: 09/16/86, 10/10/86, 02/25/91, 04/01/92, 09/25/92, 05/19/98, 6/01/2001, 01/11/2002, 10/08/2004, 12/19/2006, 07/20/2007)

9.07 Limit of Clearing House Losses: (Amended: 10/08/2004)

9.08 Clearing House Not Liable to Customer: (Amended: 09/16/1986, 10/08/2004)

9.09 Clearing Fees: (Amended: 04/29/88, 09/09/91, 02/10/97)

9.10A Offsetting NYMEX miNY™ and Regular Futures Positions: Added 06/09/2006

9.11A Give Up Trades – Trades Executed by Open Outcry: (Adopted 08/01/2001; Amended 08/04/2001)

9.14 Omnibus Accounts: (Amended: 09/16/1986, 07/21/1988)

9.15 Refund of Clearing Fees: (Amended: 10/26/1989)

9.16 Transaction Fees: (Amended: 10/08/2004, 05/30/2007)

9.17 Delivery Procedure: (Amended: 10/08/2004, 05/30/2007)

9.18 Delivery Through Clearing House: (Amended: 10/08/2004, 05/30/2007)

9.19 Final Day of Trading: (Amended: 09/16/86, 03/02/00, 04/10/03, 05/30/2007)
9.19A Transfers to Correct Errors Occurring on the Last Day of Trading: (Amended: 11/29/2006)
9.20 Position Limits: (Amended: 09/16/86, 11/11/86, 07/01/87, 07/24/87, 11/15/91, 06/15/2001, 05/16/2003, 03/13/2006)
9.21 Minimum Capital Requirements and Transfer Restrictions on Common Stock: (Amended: 01/02/87, 03/01/92, 10/27/97, 06/30/2001, 07/26/2001, 05/16/2003)
9.22 Financial Reporting: (Amended: 07/13/90, 05/19/98, 05/19/98)
9.23 Protection of Clearing House: (Amended: 09/16/1986, 07/01/1987, 03/01/1993, 11/07/1994, 8/14/2002, 05/16/2003, 10/08/2004)
9.24 Original Margin Depositories and Originators of Letters of Credit: (Amended: 12/12/89, 01/07/91, 03/21/91, 06/30/99, 03/07/05, 1/11/06, 11/01/06, 12/19/06)
9.26 All Month/Any One Month Position Accountability: (Amended: 09/16/86, 01/16/87, 05/04/87, 08/21/87, 10/02/89, 12/08/87, 02/12/90, 02/12/90, 10/16/90, 02/28/92, 04/20/92, 06/05/92, 08/24/92, 09/03/92, 02/16/93, 09/20/93, 12/26/94, 03/29/96, 09/27/96, 08/11/97, 07/10/98, 12/01/99, 05/04/00, Retitled and Amended 06/15/2001, Amended: 07/12/2001, 09/05/2001, 04/15/2003, 06/2003, 12/24/2003, 03/04/2004, 03/19/2004, 06/07/2004, 07/26/2004, 08/19/2004, 10/01/2004, 11/01/2004, 02/04/2005, 02/10/2005, 02/11/2005, 02/18/2005, 03/07/2005, 04/12/2005, 04/25/2005, 05/18/2005, 07/28/2005, 08/24/2005, 9/21/2005, 09/29/2005, 01/11/2006, 02/21/2006, 03/10/2006, 05/03/2006, 11/29/2006)
9.27 Expiration and Current Delivery Month Position Limits: (Amended: 08/29/88, 02/13/89, 06/23/90, 04/24/92, 10/02/92, 09/20/93, 03/29/96, 09/27/96, 10/17/96, 08/11/97, 07/10/98, 05/04/00, Retitled and Amended 06/15/2001, Amended: 07/12/2001, 12/20/2002, 04/15/2003, 06/2003, 12/24/2003, 03/04/2004, 03/19/2004, 04/30/2004, 06/07/2004, 07/26/2004, 08/19/2004, 10/01/2004, 11/01/2004, 02/04/2005, 02/10/2005, 02/11/2005, 02/18/2005, 04/12/2005, 04/25/2005, 05/09/2005, 05/18/2005, 07/28/2005, 09/21/2005, 09/29/2005, 01/11/2006, 02/21/2006, 3/10/2006, 05/03/2006, 11/29/2006, 12/22/2006, 5/3/2007)
9.27A Expiration Position Accountability Levels: (Adopted 10/16/06; Amended 01/11/07, 02/23/07)
9.28 Exemptions from Position Limits for Bona Fide Hedging Transactions: (Retitled and Amended 06/15/2001) Amended: 09/16/86, 05/04/87, 08/29/88, 11/09/89, 11/26/91, 03/25/93, 04/26/93, 07/16/93, 04/09/99, 12/22/2006)
9.29 Exemptions from Position Limits for Exposure from Commodity Swap Transactions: (Amended: 08/22/88, 11/29/90, 09/11/92, 03/25/94, 06/15/2001, 12/22/2006)
9.29A Exemptions from Position Limits for Exposure Associated with NYMEX Physical versus Cash Settled Arbitrage Transactions: (Amended: 11/29/2006)
9.30 Hedge Notice: (Amended: 09/16/86, 08/29/88, 02/13/89, 06/15/2001)
9.31 Revised Hedge Notice: (Amended: 09/16/86, 05/04/87, 08/29/88, 02/13/89)
9.32 Action by the Exchange: (Amended: 09/16/86, 05/04/87, 09/29/88, 06/15/2001, 12/22/2006)
9.33 Position Reporting: (Amended: 09/16/86, 05/04/87, 11/02/89, 04/25/91, 06/01/92, 09/18/92, 02/28/94, 11/29/2006, 05/23/2007)
9.34 Reporting Levels: (Rule 9.34 Renumbered as 9.35 and amended: 09/16/86, 05/04/87, 08/21/87, 08/29/88, 10/02/89, 10/19/90, 04/20/92, 06/05/92, 09/18/92, 10/02/92, 03/15/93, 03/29/96, 07/18/96, 09/27/96, 07/10/98, 05/04/00, 06/15/2001, 07/12/2001, 04/08/2003, 06/2003, 03/19/2004, 06/07/2004, 07/26/2004, 08/19/2004, 10/01/2004, 11/01/2004, 02/10/2005, 02/11/2005, 02/18/2005, 03/07/2005, 04/12/2005, 04/25/2005, 05/18/2005, 07/28/2005, 01/11/2006, 02/21/2006, 03/10/2006, 05/03/2006)
9.35 Aggregation: (Rule 9.35 renumbered as 9.36 and amended: 09/16/86), (Rule 9.36 renumbered as 9.35: 05/04/87; Amended: 08/29/88)
9.36 Penalties: (Amended: 08/29/88, 02/13/89, 06/23/90, 09/20/93, 01/22/96)
9.36A Appeal / Settlement: (Adopted: 09/20/93)
9.37 Required Use of ATOM by Clearing Members and Floor Brokers: ((Renumbered from Rule 9.40 to 9.37 on 10/08/2004) (Adopted: 09/27/96; Reserved: 07/08/00, Rule 11.25 renumbered as Rule 9.40 06/15/2002))
9.37A Reserved: (formerly) Use Of Common AWS Operators by Clearing Members. (Adopted: 06/24/93; Reserved: 07/08/00)
9.38 Participation by NYMEX Floor Members in Special Program for Over-the-Counter Trading with FCM Guarantee: (formerly) Trade Limit Monitoring System. (Adopted: 06/24/93; Reserved: 07/08/00. Current Rule adopted 10/08/2004)
9.39 Special Capital Provisions for Clearing Members Guaranteeing and Clearing OTC Contracts Executed by NYMEX Floor Members: (formerly) Authorized Communications. (Adopted: 06/24/93; Reserved: 07/08/00. Current Rule adopted 10/08/2004)
9.40C Clearing Requirements for Clearing of Over-the-Counter Option Transactions in Exchange-Designated Pari-mutual Auctions: (Adopted: 10/08/2004)
9.41 Special Capital Provisions for Clearing Members Guaranteeing and Clearing OTC Contracts Executed by NYMEX Floor Members: (Amended: 02/04/2005)

NYMEX CHAPTER 11 – RULES FOR EXCHANGE ELECTRONIC TRADING SYSTEMS

11.61 Limitation of Liability; No Warranties

~~(B) Except as provided in Rule 11.62, and except in instances where there has been a finding of willful or wanton misconduct, in which case the party found to have engaged in such conduct cannot avail itself of the protections of this rule, none of the Exchange or its affiliates or its subsidiaries or any of their respective officers, directors, members, employees, agents, designees, vendors, information providers, independent contractors or subcontractors, NYMEX Holdings Inc, or its affiliates (including the Class B member) or their officers, directors, members or employees, Task Management, Inc. ("TMI"), the International Petroleum Exchange of London Limited ("IPE"); IPE Officers, Directors, Members or Employees; Members, Member Firms, Clearing Members, Electronic Traders, Authorized Terminal Users of Electronic Traders, Users, User Agents or other persons acting as agents in causing the orders of others to be entered into NYMEX ACCESS® or NYMEX ClearPort® Trading nor any of their respective officers, directors, employees, agents or designees shall be liable to any person, including a customer, for any losses, damages, costs or expenses (including, but not limited to, loss of profits, loss of use, direct, special, indirect incidental or consequential damages), arising from:~~

~~(1) any failure or malfunction, including any inability to enter or cancel orders in whole or in part on NYMEX ACCESS® or NYMEX ClearPort® Trading, of NYMEX ACCESS® or an NYMEX ClearPort® Trading or any Exchange, NYMEX Holdings Inc, or its affiliates (including the Class B member), AT&T or TMI Services or any Exchange services or facilities used to support NYMEX ACCESS® or NYMEX ClearPort® Trading, including but not limited to the Trade Management System and Clearing 24®, or~~

~~(2) any fault in delivery, delay, omission, suspension, inaccuracy or termination, or any other cause, in connection with the furnishing, performance, maintenance, use of or liability to use all or any part of NYMEX ACCESS® or NYMEX ClearPort® Trading, data or other information made available on NYMEX ACCESS® or NYMEX ClearPort® Trading or any services or facilities used to support NYMEX ACCESS® or NYMEX ClearPort® Trading.~~

~~The foregoing shall apply regardless of whether a claim arises in contract, tort, negligence, strict liability or otherwise; furthermore, it shall not limit the liability of any Member, Member Firm, Clearing Member, Electronic Trader, Authorized Terminal Users of Electronic Traders, User, User Agent or other person acting as an agent in causing the orders of other to be entered into NYMEX ACCESS® or an NYMEX ClearPort® Trading or any of their respective officers, directors, employees, agents or designees for any act, incident or occurrence within their control.~~

~~(C) There are no express or implied warranties or representations provided by the Exchange, TMI or the IPE relating to NYMEX ACCESS® or any NYMEX ClearPort® Trading or any Exchange, NYMEX Holdings Inc, or its affiliates (including the Class B member), TMI or the IPE services or facilities used to support NYMEX ACCESS® or an Alternative Electronic Trading System, including but not limited to warranties of merchantability and warranties of fitness for a particular purpose or use.~~

~~(D) Any dispute arising out of the use of NYMEX ACCESS® or NYMEX ClearPort® Trading or Exchange, NYMEX Holdings Inc, or its affiliates (including the Class B member), or TMI services or facilities used to support NYMEX ACCESS® or NYMEX ClearPort® Trading in which the Exchange, NYMEX Holdings Inc, or its affiliates (including the Class B member), or any of their respective officers, Directors, employees, agents or designees is a party shall be construed and enforced in accordance with the laws of the State of New York without regard to conflict of laws, rules or procedures. Any actions, suits or proceedings against any of the above must be brought within two years from the~~

time that a cause of action has accrued, and any party bringing such action consents to jurisdiction in the U.S. District Court for the Southern District of New York and waives any objection to venue. This provision shall in no way create a cause of action and shall not authorize an action that would otherwise be prohibited by NYMEX Rules.

(E) Notwithstanding any of the foregoing provisions, this Rule shall in no way limit the applicability of any provision of the Commodity Exchange Act or the CFTC's regulations:

(A) EXCEPT AS PROVIDED BELOW, THE EXCHANGE AND CHICAGO MERCANTILE EXCHANGE INC. (CME) (INCLUDING EACH OF THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES), THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, LICENSORS, MEMBERS, AND CLEARING MEMBERS, SHALL NOT BE LIABLE TO ANY PERSON FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF USE, AND DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES), ARISING FROM:

(i) ANY FAILURE, MALFUNCTION, FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY, INTERRUPTION, TERMINATION, OR ANY OTHER CAUSE, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OPERATION, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF ANY OF THE SYSTEMS AND SERVICES OF THE EXCHANGE OR CME, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS AND SERVICES, INCLUDING WITHOUT LIMITATION ELECTRONIC ORDER ENTRY/DELIVERY, TRADING THROUGH ANY ELECTRONIC MEANS, ELECTRONIC COMMUNICATION OF MARKET DATA OR INFORMATION, WORKSTATIONS USED BY MEMBERS AND AUTHORIZED EMPLOYEES OF MEMBERS, PRICE REPORTING SYSTEMS AND ANY AND ALL TERMINALS, COMMUNICATIONS NETWORKS, CENTRAL COMPUTERS, SOFTWARE, HARDWARE, FIRMWARE AND PRINTERS RELATING THERETO; OR

(ii) ANY FAILURE OR MALFUNCTION, FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY, INTERRUPTION OR TERMINATION, OR ANY OTHER CAUSE, OF ANY SYSTEM OR SERVICE OF THE EXCHANGE OR CME, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, CAUSED BY ANY THIRD PARTIES INCLUDING, BUT NOT LIMITED TO, INDEPENDENT SOFTWARE VENDORS AND NETWORK PROVIDERS; OR

(iii) ANY ERRORS OR INACCURACIES IN INFORMATION PROVIDED BY THE EXCHANGE OR CME OR ANY OF THE EXCHANGE'S OR CME'S SYSTEMS, SERVICES OR FACILITIES; OR

(iv) ANY UNAUTHORIZED ACCESS TO OR UNAUTHORIZED USE OF ANY OF THE EXCHANGE'S OR CME'S SYSTEMS, SERVICES OR FACILITIES BY ANY PERSON.

THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY WHETHER A CLAIM ARISES IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, CONTRIBUTION OR OTHERWISE AND WHETHER THE CLAIM IS BROUGHT DIRECTLY OR AS A THIRD PARTY CLAIM. THE FOREGOING LIMITATION OF LIABILITY SHALL BE SUBJECT TO THE COMMODITY EXCHANGE ACT AND REGULATIONS THEREUNDER. A PARTY WHO HAS BEEN FINALLY ADJUDICATED TO HAVE ENGAGED IN WILLFUL OR WANTON MISCONDUCT MAY NOT AVAIL ITSELF OF THE PROTECTIONS IN THIS RULE.

(B) THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS (INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE)

PROVIDED BY THE EXCHANGE, THE CME (INCLUDING THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES), THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, AND LICENSORS RELATING TO ANY SYSTEMS OR SERVICES OF THE EXCHANGE OR CME OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES.

(C) ANY DISPUTE ARISING OUT OF THE USE OF SYSTEMS OR SERVICES OF THE EXCHANGE OR CME OR SERVICES, EQUIPMENT, OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES IN WHICH THE EXCHANGE OR CME (INCLUDING THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES), OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS OR LICENSORS IS A PARTY SHALL BE ARBITRATED PURSUANT TO RULE 5.39 ("CERTAIN CLAIMS AGAINST EXCHANGE INVOLVING TRADING SYSTEMS OR SERVICES "). ANY ARBITRATION SHALL BE BROUGHT WITHIN THE PERIOD PRESCRIBED BY CME RULES. ANY OTHER ACTIONS, SUITS OR PROCEEDINGS AGAINST ANY OF THE ABOVE MUST BE BROUGHT WITHIN TWO YEARS FROM THE TIME THAT A CAUSE OF ACTION HAS ACCRUED. THIS PARAGRAPH C SHALL IN NO WAY BE CONSTRUED TO LIMIT A PARTY'S OBLIGATION TO ARBITRATE ITS CLAIM OR TO CREATE A CAUSE OF ACTION AND SHALL NOT AUTHORIZE AN ACTION THAT WOULD OTHERWISE BE PROHIBITED BY CME RULES. IF FOR ANY REASON, A COURT OF COMPETENT JURISDICTION FINDS THAT SUCH DISPUTE IS NOT ARBITRABLE, SUCH DISPUTE MAY ONLY BE LITIGATED IN THE COUNTY OF COOK IN THE STATE OF ILLINOIS AND WILL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS WITHOUT REGARD TO ANY PROVISIONS OF ILLINOIS LAW THAT WOULD APPLY THE SUBSTANTIVE LAW OF A DIFFERENT JURISDICTION.

(D) THE CME OR THE EXCHANGE, MAY, IN THEIR RESPECTIVE SOLE DISCRETION, ASSUME RESPONSIBILITY FOR DIRECT, OUT-OF-POCKET LOSSES DIRECTLY CAUSED BY THE NEGLIGENCE OF NYMEX CUSTOMER SERVICE CALL CENTER ("NCSCC ") OR OTHER EXCHANGE STAFF AND/OR ORDER STATUS ERRORS PROVIDED BY THE NCSCC OR A CME OR EXCHANGE SYSTEM, SERVICE OR FACILITY. NOT WITHSTANDING THE ABOVE, I) THE EXCHANGE'S AND CME'S TOTAL COMBINED AGGREGATE OBLIGATIONS SHALL NOT EXCEED \$100,000 FOR ALL LOSSES FROM ALL CAUSES SUFFERED ON A SINGLE DAY; \$200,000 FOR ALL LOSSES SUFFERED FROM ALL CAUSES IN A SINGLE CALENDAR MONTH; AND \$2,400,000 FOR ALL LOSSES FROM ALL CAUSES SUFFERED IN A SINGLE CALENDAR YEAR. ANY DISPUTED CLAIM PURSUANT TO THIS PARAGRAPH D MUST BE ARBITRATED PURSUANT TO RULE 5.39 ("CERTAIN CLAIMS AGAINST EXCHANGE INVOLVING TRADING SYSTEMS OR SERVICES ").

(E) IN NO EVENT SHALL THE EXCHANGE'S AND CME'S TOTAL COMBINED AGGREGATE LIABILITY FOR ALL CLAIMS ARISING OUT OF ANY FAILURES, MALFUNCTIONS, FAULTS IN DELIVERY, DELAYS, OMISSIONS, SUSPENSIONS, INACCURACIES, INTERRUPTIONS, TERMINATIONS, ORDER STATUSING ERRORS, OR ANY OTHER CAUSES, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OPERATION, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF ANY OF THE EXCHANGE'S OR CME'S SYSTEMS OR SERVICES, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS AND SERVICES, OR THE NEGLIGENCE OF EXCHANGE OR CME STAFF EXCEED \$2,400,000 IN ANY GIVEN CALENDAR YEAR.

IF THE NUMBER OF ALLOWED CLAIMS ARISING OUT OF ANY FAILURES OR MALFUNCTIONS ON A SINGLE DAY OR SINGLE MONTH CANNOT BE FULLY SATISFIED BECAUSE OF THE ABOVE DOLLAR LIMITATIONS, ALL SUCH CLAIMS SHALL BE LIMITED TO A PRO RATA SHARE OF THE MAXIMUM AMOUNT FOR THE RESPECTIVE PERIOD.

A CLAIM AGAINST THE EXCHANGE OR CME, ARISING OUT OF ANY FAILURE OR MALFUNCTION SHALL ONLY BE ALLOWED IF SUCH CLAIM IS BROUGHT IN ACCORDANCE WITH THIS RULE.

11.62 Reserved NYMEX Personnel – Limitation of Liability

(A) The Exchange shall provide employees in the NYMEX Customer Service Call Center ("NCSCC") and elsewhere to perform certain services for Members, Member Firms, Clearing Members, Electronic Traders and Authorized Terminal Users with respect to NYMEX ACCESS® and for Members, Member Firms, Clearing Members, Users and User Agents with respect to NYMEX ClearPort® Trading. Such employees may not always be available to assist Members, Member Firms, Clearing Members, Electronic Traders, Authorized Terminal Users, Users and User Agents. The Exchange shall be liable when such employees negligently:

(1) cancel, or fail to cancel, orders resting in NYMEX ACCESS® or in NYMEX ClearPort® Trading; (2) terminate an Electronic Trader's or User's privileges, in which case only those orders that were resting in the system at the time of deactivation may be basis for an allowable claim; (3) fail to terminate an Electronic Trader's or User's privileges pursuant to valid instructions, in which case those orders that were entered or matched after the instruction was received by the NCSCC, but before the NCSCC has had a reasonable period of time to act upon such instruction, shall not form the basis for an allowable claim; and (4) issue passwords to unauthorized persons.

(B) The liability of the Exchange for the above shall be limited as follows:

(1) \$10,000 for any single claim; and

(2) \$100,000 for all claims arising out of the negligent actions or failures to act of all NYMEX employees on any single day.

(C) A single claim shall mean a loss resulting from all actions or failures to act as described above that were performed negligently by all NYMEX employees with respect, as applicable, to a single order entered through NYMEX ACCESS® or through NYMEX ClearPort® Trading, or, as applicable, multiple orders entered through NYMEX ACCESS® or through the NYMEX ClearPort® Trading for a single customer. Such claim may be brought by the Member, Member Firm, Clearing Member, Electronic Trader, or User who (or whose customer) was damaged.

(D) If the number of allowed claims arising out of the negligent actions or failures to act of all NYMEX employees on a single day cannot be fully satisfied because of the above limitations, all such claims shall be limited to a pro rata share of the maximum per day amount.

(E) ARBITRATION OF CLAIMS A claim against the Exchange for the negligent actions or failures to act enumerated above of the NCSCC employees shall only be allowed if such claim is brought pursuant to and in accordance with this Rule.

(1) Notice of Claim

(a) A written notice of the claim, including the amount of the loss incurred as a result of the alleged negligent action, must be presented to the Exchange within ten days following, as applicable, the NYMEX ACCESS® trading session or NYMEX ClearPort® Trading trading session during which the negligent action allegedly occurred.

(b) The Exchange shall have twenty days from receipt of such notice to satisfy, agree to pay subject to the limits in this Rule or dispute the claim. No payment in satisfaction of a claim may exceed the limits in this Rule. The Exchange shall notify the Member, Member Firm, Clearing Member, Electronic Trader, or User if the Exchange disputes the claim.

(2) Filing a Claim/Answer

(a) A Member, Member Firm, Clearing Member, Electronic Trader or User shall file a formal claim, on behalf of itself or a customer, within twenty days of notification that the Exchange disputes the claim. Failure to file a formal claim shall result in dismissal of the claim.

(b) The Exchange shall file an answer within twenty days of receipt of a formal claim. Failure to file an answer shall constitute an admission of liability, and the Exchange shall be required to pay the amount of the claim; provided however, that no such payment may exceed the limits in this Rule.

(3) Arbitration Panel

(a) All disputed claims shall be submitted to an arbitration panel for binding arbitration. The panel shall consist of the three panelists selected from a list of arbitrators maintained by the National Futures Association ("NFA"). The claimant and the Exchange shall each select one panelist. The President of NFA shall choose the third panelist.

(b) No person shall serve as a panelist unless and until he has first pledged to the Exchange that he will not publish, divulge, or make known in any manner, any facts or information regarding the business of any person or any other information which may come to his attention in his official capacity as a member of the panel, except when called upon to testify in any judicial or administrative proceeding.

(c) Each person serving on the panel shall comply with the standards of the American Bar Association-American Arbitration Association's "Code of Ethics for Arbitrators in Commercial Disputes", incorporated herein by reference.

(d) No person shall serve on an arbitration panel if he has a personal or financial interest in the matter under consideration.

(4) Hearing

(a) The panel shall consider all relevant testimony and documents submitted by the claimant and the Exchange. Each party has the right to be present at the hearing, to be represented by counsel at his own expense, to examine all relevant documents prior to and during the hearing, to present all relevant evidence in support of or as rebuttal to a claim or defense, and to question witnesses during the hearing. Testimony shall be taken under oath or affirmation.

(b) The panel may require any Member, Member Firm, Clearing Member, Electronic Trader or Authorized Terminal User, User or User Agent or any person employed by or associated with a Member, Member Firm, Clearing Member, Electronic Trader, or User or persons employed by the Exchange or other persons having an interest in the claim, to appear, to testify or to produce relevant documents. The panel shall have the power to issue and enforce subpoenas in accordance with the procedures of the American Arbitration Association. Whenever such production or appearance results from the request of a party, all reasonable costs incurred shall be borne by the party making the request, unless directed otherwise by the panel.

(c) The panel shall be the sole judge of the law and the facts, but if the panel is in doubt as to any questions of law, it may refer the question to Exchange legal counsel for an opinion. The panel shall not be bound by the formal rules of evidence. Ex parte contacts by any of the parties with persons on the arbitration panel shall not be permitted.

(d) An audio recording of the proceeding shall be made and maintained until the decision becomes final. A verbatim record of such recording shall not be transcribed unless requested by a party, who shall bear the cost of transcription.

(5) Decision

(a) Within thirty days of a completed hearing, the panel shall issue a written decision. The amount of any award issued by the panel shall be limited to the lesser of the actual loss or the loss that would have occurred if the claimant had diligently taken all necessary actions to mitigate the loss. The decision of a majority of the panel shall be final, and there shall be no appeal.

(b) An award shall be satisfied within three business days of receipt of the notice of decision. However, a party may, within three business days, request the arbitration panel to modify or correct its decision when there has been an obvious material miscalculation or misdescription or where the decision is imperfect in a matter of form not affecting the merits of the controversy.

(6) Applicability of Commodity Exchange Act

Notwithstanding the foregoing, this Rule shall in no way limit the applicability of any provision of the Commodity Exchange Act or the CFTC's regulations.

Change History

- 11.01 Holders of Electronic Trading Privileges: (Amended: 03/06/2006)
- 11.03 Scope of Trading Privileges: (Amended: 03/06/2006)
- 11.04 Responsibilities of Electronic Traders: (Amended: 03/06/2006)
- 11.25 Acceptance of Orders for Entry into NYMEX ACCESS@: (Adopted: 04/10/03)

11.26 Settlement Prices and Price Fluctuation Limits for NYMEX ACCESS@: (Adopted: 04/10/03)
 11.27 Type Indicator Codes for Trading on NYMEX ACCESS@: (Adopted: 04/10/03)
 11.31 Electronic Trading Privileges for NYMEX ClearPort@ Trading and Related Definitions: (Adopted: 04/10/03)
 11.32 Designation Requirements for Users and User Agents of Exchange's NYMEX ClearPort@ Trading System: (Adopted: 04/10/03)
 11.33 Scope of Trading Privileges for NYMEX ClearPort@ Trading: (Adopted: 04/10/03)
 11.34 Responsibilities of Users on NYMEX ClearPort@ Trading: (Adopted: 04/10/03)
 11.35 Acceptance of Orders for Entry into NYMEX ClearPort@ Trading: (Adopted: 04/10/03)
 11.36 Customer Type Indicator Codes for Trading on NYMEX ClearPort@ Trading: (Adopted: 04/10/03, Amended: 05/25/05)
 11.37 Settlement Prices for Contracts Traded Only on NYMEX ClearPort@ Trading: (Adopted: 04/10/03)
 11.51 Business Day: (Adopted: 04/10/03)
 11.52 Hours of Trading: (Adopted: 04/10/03)
 11.53 Electronic Trading Spread Transactions and Strip Transactions: (Adopted: 04/10/03)
 11.54 Standard Forms of Orders for Exchange Electronic Trading Systems: (Adopted: 04/10/03)
 11.55 Errors and Omissions in Handling Orders: (Adopted: 04/10/03)
 11.56 Surrender of Trading Records for Examination: (Adopted: 04/10/03)
 11.57 Trading Standards for Electronic Trading Systems: (Adopted: 04/10/03, Amended: 06/04/04; 02/08/07)
 11.57A Permissible Pre-Execution Discussions: (Amended: 02/08/07)
 11.58 Reporting and Record Keeping Requirements for Electronic Trading Systems: (Adopted: 04/10/03)
 11.59 User of Passwords: (Adopted: 04/10/03)
 11.60 Exchange of Futures for Physicals and Exchange of Futures for Swaps: (Adopted: 04/10/03)
 11.61 Limitation of Liability: (Adopted: 04/10/03)
 11.62 NYMEX Personnel—Limitation of Liability: (Adopted: 04/10/03)
 11.64 Trading Prohibition by Certain Persons: (Adopted: 04/10/03)
 11.65 Trading Prohibitions: Representatives of Other Clearing Members: (Adopted: 04/10/03)
 11.66 Restriction on Simultaneous Buy and Sell Orders on Exchange Electronic Trading Systems: (Adopted: 04/10/03, Amended: 02/08/07; 2/22/07)
 11.67 General Trading Standards for Exchange Electronic Trading Systems: (Adopted: 04/10/03)
 11.68 Closing Range and Close: (Adopted: 04/10/03)
 11.69 Registration for Billing of Brokerage on Exchange Electronic Trading Systems: (Adopted: 04/10/03)
 11.70 Exchange Options Market Maker Program for Electronic Trading of NYMEX and/or COMEX Options Contracts: (Adopted: 06/21/07)

NYMEX CHAPTER 11G – NYMEX ELECTRONIC TRADING RULES FOR GLOBEX TRADING SYSTEM

11G.04 Limitation of Liability; No Warranties

(A) EXCEPT AS PROVIDED BELOW, THE EXCHANGE, AND THE CHICAGO MERCANTILE EXCHANGE INC. (CME) (INCLUDING THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES), THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, LICENSORS, MEMBERS, AND CLEARING MEMBERS, SHALL NOT BE LIABLE TO ANY PERSON FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF USE, AND DIRECT, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL OR PUNITIVE DAMAGES), ARISING FROM:

(i) ANY FAILURE, MALFUNCTION, FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY, INTERRUPTION, TERMINATION, OR ANY OTHER CAUSE, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OPERATION, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF ANY OF THE CME'S SYSTEMS, AND SERVICES OF THE EXCHANGE OR CME, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS AND SERVICES, INCLUDING WITHOUT LIMITATION GLOBEX@ 2, CUBS™, TOPS™, CLEARING 21@, GLOBEX CONTROL CENTER™, GALAX-C™ ELECTRONIC ORDER ENTRY/DELIVERY, TRADING THROUGH ANY ELECTRONIC MEANS, ELECTRONIC COMMUNICATION OF MARKET DATA OR INFORMATION, WORKSTATIONS USED BY MEMBERS AND AUTHORIZED

EMPLOYEES OF MEMBERS, PRICE REPORTING SYSTEMS AND ANY AND ALL TERMINALS, COMMUNICATIONS NETWORKS, CENTRAL COMPUTERS, SOFTWARE, HARDWARE, FIRMWARE AND PRINTERS RELATING THERETO; OR

(ii) ANY FAILURE OR MALFUNCTION, FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY, INTERRUPTION OR TERMINATION, OR ANY OTHER CAUSE, OF ANY ~~CME SYSTEM OR~~ SERVICE OR FACILITY OF THE EXCHANGE, ~~OR CME~~, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, CAUSED BY ANY THIRD PARTIES INCLUDING, BUT NOT LIMITED TO, INDEPENDENT SOFTWARE VENDORS AND NETWORK PROVIDERS; OR

(iii) ANY ERRORS OR INACCURACIES IN INFORMATION PROVIDED BY THE EXCHANGE OR CME OR ANY OF THE EXCHANGE'S OR CME'S SYSTEMS, SERVICES OR FACILITIES; EXCEPT FOR INCORRECT ORDER STATUSING INFORMATION AS PROVIDED IN CME RULE 579 (GLOBEX CONTROL CENTER AND ORDER STATUSING) OR

(iv) ANY UNAUTHORIZED ACCESS TO OR UNAUTHORIZED USE OF ANY OF THE EXCHANGE'S OR CME'S SYSTEMS, SERVICES OR FACILITIES BY ANY PERSON.

THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY WHETHER A CLAIM ARISES IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, CONTRIBUTION OR OTHERWISE AND WHETHER THE CLAIM IS BROUGHT DIRECTLY OR AS A THIRD PARTY CLAIM. THE FOREGOING LIMITATION OF LIABILITY SHALL BE SUBJECT TO THE COMMODITY EXCHANGE ACT AND REGULATIONS THEREUNDER. A PARTY WHO HAS BEEN FINALLY ADJUDICATED TO HAVE ENGAGED IN WILLFUL OR WANTON MISCONDUCT MAY NOT AVAIL ITSELF OF THE PROTECTIONS IN THIS RULE.

(B) THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS (INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE) PROVIDED BY THE EXCHANGE, THE CME (INCLUDING THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES), THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, AND LICENSORS RELATING TO ANY OF ~~THE CME'S~~ SYSTEMS OR SERVICES, OF THE EXCHANGE, OR CME OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, INCLUDING THE GLOBEX SYSTEM;

(C) ANY DISPUTE ARISING OUT OF THE USE OF ~~CME'S~~ SYSTEMS OR SERVICES OF THE EXCHANGE OR CME OR SERVICES, EQUIPMENT, OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES IN WHICH ~~NYMEX~~ THE EXCHANGE OR CME (INCLUDING THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES), OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS OR LICENSORS, ~~OR EMPLOYEES~~ IS A PARTY SHALL BE ARBITRATED PURSUANT TO CME-RULE 5.39624 ("CERTAIN CLAIMS AGAINST EXCHANGE INVOLVING TRADING SYSTEMS OR SERVICES "). ANY ARBITRATION SHALL BE BROUGHT WITHIN THE PERIOD PRESCRIBED BY CME RULES. ANY OTHER ACTIONS, SUITS OR PROCEEDINGS AGAINST ANY OF THE ABOVE MUST BE BROUGHT WITHIN TWO YEARS FROM THE TIME THAT A CAUSE OF ACTION HAS ACCRUED. THIS PARAGRAPH C SHALL IN NO WAY BE CONSTRUED TO LIMIT A PARTY'S OBLIGATION TO ARBITRATE ITS CLAIM OR TO CREATE A CAUSE OF ACTION AND SHALL NOT AUTHORIZE AN ACTION THAT WOULD OTHERWISE BE PROHIBITED BY CME RULES. IF FOR ANY REASON, A COURT OF COMPETENT JURISDICTION FINDS THAT SUCH DISPUTE IS NOT ARBITRABLE, SUCH DISPUTE MAY ONLY BE LITIGATED IN THE COUNTY OF COOK IN THE STATE OF

ILLINOIS AND WILL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS WITHOUT REGARD TO ANY PROVISIONS OF ILLINOIS LAW THAT WOULD APPLY THE SUBSTANTIVE LAW OF A DIFFERENT JURISDICTION.

(D) ~~The THE CME, or the exchange, may, in their respective sole discretion, assume responsibility for~~ OR THE EXCHANGE, MAY, IN THEIR RESPECTIVE SOLE DISCRETION, ASSUME RESPONSIBILITY FOR DIRECT, OUT-OF-POCKET LOSSES ~~directly caused~~ DIRECTLY CAUSED BY THE NEGLIGENCE OF GLOBEX CONTROL CENTER OR OTHER EXCHANGE STAFF AND/OR ORDER STATUS ERRORS PROVIDED BY THE GLOBEX CONTROL CENTER OR A CME OR AN EXCHANGE SYSTEM, SERVICE OR FACILITY. NOT WITHSTANDING THE ABOVE, i) THE EXCHANGE'S AND CME'S TOTAL COMBINED AGGREGATE OBLIGATIONS SHALL NOT EXCEED \$100,000 FOR ALL LOSSES FROM ALL CAUSES SUFFERED ON A SINGLE DAY; \$200,000 FOR ALL LOSSES SUFFERED FROM ALL CAUSES IN A SINGLE CALENDAR MONTH; AND \$2,400,000 FOR ALL LOSSES FROM ALL CAUSES SUFFERED IN A SINGLE CALENDAR YEAR. ANY DISPUTED CLAIM PURSUANT TO THIS PARAGRAPH D MUST BE ARBITRATED PURSUANT TO CME RULE 5.39 624 ("CERTAIN CLAIMS AGAINST EXCHANGE INVOLVING TRADING SYSTEMS OR SERVICES").

(E) IN NO EVENT SHALL THE EXCHANGE'S AND CME'S, TOTAL COMBINED AGGREGATE LIABILITY FOR ALL CLAIMS ARISING OUT OF ANY FAILURES, MALFUNCTIONS, FAULTS IN DELIVERY, DELAYS, OMISSIONS, SUSPENSIONS, INACCURACIES, INTERRUPTIONS, TERMINATIONS, ORDER STATUSING ERRORS, OR ANY OTHER CAUSES, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OPERATION, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF ANY OF THE EXCHANGE'S OR CME'S SYSTEMS OR SERVICES, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS AND SERVICES, OR THE NEGLIGENCE OF EXCHANGE OR CME STAFF EXCEED \$2,400,000 IN ANY GIVEN CALENDAR YEAR.

IF THE NUMBER OF ALLOWED CLAIMS ARISING OUT OF ANY FAILURES OR MALFUNCTIONS ON A SINGLE DAY OR SINGLE MONTH CANNOT BE FULLY SATISFIED BECAUSE OF THE ABOVE DOLLAR LIMITATIONS, ALL SUCH CLAIMS SHALL BE LIMITED TO A PRO RATA SHARE OF THE MAXIMUM AMOUNT FOR THE RESPECTIVE PERIOD.

A CLAIM AGAINST THE EXCHANGE OR CME, ARISING OUT OF ANY FAILURE OR MALFUNCTION SHALL ONLY BE ALLOWED IF SUCH CLAIM IS BROUGHT IN ACCORDANCE WITH THIS RULE.

Change History

~~11G.03 GLOBEX Control Center and Limitation of Liability: (Amended: 11/29/2006)~~
~~11G.05 Average Price Calculations by Futures Commission Merchants: (Amended: 11/29/2006)~~
~~11G.06 Price Fluctuation Limits: (Amended: 11/29/2006)~~
~~11G.10 Customer Type Indicator Codes for Trading of NYMEX and COMEX Division Products on Globex: (Amended: 11/29/2006)~~
~~11G.11 Settlement Prices for Contracts Traded Only on GLOBEX: (Amended: 11/29/2006; 07/20/2007)~~
~~11G.14 Electronic Trading Spread Transactions and Strip Transactions: (Amended: 11/29/2006)~~
~~11G.15 Standard Forms of Orders for Trading of NYMEX and COMEX Products on Globex: (Amended: 11/29/2006)~~
~~11G.17 Surrender of Trading Records for Examination: (Amended: 11/29/2006)~~
~~11G.18 Trading Standards for Electronic Trading Systems: (Amended: 2/8/07, 6/21/07)~~
~~11G.19 Permissible Pre Execution Discussions: (Amended: 11/29/06, 6/21/07)~~
~~11G.20 Reporting and Record keeping Requirements for Electronic Trading Systems: (Amended: 11/29/2006)~~
~~11G.21 Exchange of Futures for Physicals and Exchange of Futures for Swaps: (Amended: 11/29/2006)~~

COMEX CHAPTER 101 – DEFINITIONS

101.01 Construction

AND -- May be construed as "or", and vice versa when the sense requires.

OR -- See And.

RULES -- The rules of the Exchange adopted by the Directors of the Exchange.

SINGULAR -- Shall import the plural, and vice versa, when the sense requires.

101.01A Rules of the NYMEX Division

The rules of the NYMEX Division shall apply to the Members and Member Firms of the NYMEX Division only unless otherwise specified, except that a COMEX Division Member shall be subject to the rules of the NYMEX Division with respect to trading in NYMEX Division products.

101.01B Rules of the COMEX Division

The rules of the COMEX Division shall apply to the Members and Member Firms of the COMEX Division only unless otherwise specified, except that a NYMEX Division Member shall be subject to the rules of the COMEX Division with respect to trading in COMEX Division products.

101.01C Rules of Uniform Application

Chapters Two, Two-A, Three, Four, Five, Seven, Eight, Nine, Ten, and Eleven, and Eleven-G of the NYMEX Division rules shall apply to both the NYMEX Division and the COMEX Division unless otherwise specified.

101.02 Definitions

PRESIDENT -- The President of the Exchange or his authorized representative.

TREASURER -- The Treasurer of the Exchange, or in the absence of a Treasurer, the Chief Financial Officer of the Exchange.

Change History

COMEX CHAPTER 104 – TRADING RULES

104.10 Recesses

~~The Chairman of the Floor Committee, with the approval of any member of the Board, the President, or any Vice-President, shall have the authority to order a recess or recesses during the trading hours of any one day which in the aggregate shall not exceed one hour in duration, during which trading in any futures contract or futures option shall be suspended, if in his opinion the volume of trading is so heavy as to make it desirable that floor members should be enabled to compare their records and verify trades in order to avoid confusion or errors at the close of the market. In the absence of the Chairman of the Floor Committee, any Vice-Chairman of the Floor Committee or any member of the Board Floor Group may act in the place and stead of the Chairman of the Floor Committee.~~

104.15 Primary Clearing Member Oversight of Accounts

(a) Clearance at Clearing Member other than PCM. At the discretion of his PCM, a floor member may be permitted to clear trades executed for the member's personal account through one or more clearing members other than the PCM.

A clearing member shall not accept for clearance trades executed by a floor member for his own account without the written authorization of the floor member's PCM.

(b) Access to Account Statements. If the PCM authorizes the clearance of trades at another clearing member, the PCM may request such other clearing member to provide it with daily account statements which reflect the status of the floor member's account each trading day, and such other clearing member shall comply promptly.

(c) Activity Reports. Each business day, a PCM shall pick up from the Exchange a report of daily trading activity of each member guaranteed by the PCM, which shall reflect each trade executed on the previous day by the guaranteed member for his own account if requested in writing by a PCM and approved by the guaranteed member named in the request, and a weekly report which shall reflect the aggregate number of contracts traded by a guaranteed member which have cleared at all other firms that week and an indication of whether such aggregate number includes trades executed for customer accounts.

(d) Revocation of Guarantee. To be effective, the revocation of an unconditional guarantee by a PCM must be submitted to the Membership Services Department Secretary and posted upon the bulletin board of the Exchange and the PCM must exercise due diligence to return the trading badge of the guaranteed member to the Membership Services Department Secretary. Such revocation shall be effective as to any trade executed by the member after notice thereof has been submitted to the Membership Services Department Secretary and posted upon the bulletin board of the Exchange. A member whose guarantee has been revoked shall be denied access to the floor of the Exchange for purposes of engaging in trading of futures contracts or future options contracts, until such time as another clearing member has designated itself as the member's PCM pursuant to Rule 104.13 (c) ("Qualifying for Floor Privileges - Primary Clearing Member"). A PCM which has revoked a licensee's guarantee shall be prohibited from reinstating a guarantee on behalf of that licensee during the period for which the individual continues to maintain his status as a licensee.

104.62 Add-In Trades of Deletion Requests Which Are Promptly Discovered

(A) If any Trading Member discovers that a properly executed transaction in which he has participated on the Exchange Floor has not been reported by the Exchange, or has been reported incorrectly, he immediately shall notify the Chairman or any Vice Chairman or any member of the Floor Committee, the Floor Manager or any Exchange Employee, who is designated by the President for such purpose, of such fact and request that the transaction be included in the Exchange Records as an insert or correction, as the case may be.

(B) The Chairman, any Vice Chairman, any member of the Floor Committee, the Floor Manager, or any Exchange employee who is designated by the President for such purpose, has the authority to approve an insert or a correction on the day the transaction was executed provided, however, that no member may participate in any deliberation or decision involving an insert or correction if that member has a personal or financial interest in the requested change. Any request for an insert or correction which is made later than fifteen minutes after the subject transaction or which would effect the daily opening range or closing range or high or low, must be approved by either the Floor Committee Chairman, Vice Chairman, Ring Chairman, or a designated Exchange employee including the ~~Senior Vice President of Operations, Vice President of Compliance, the Vice President of Floor Operations and System~~, or two members of the Floor Committee. In making such determination, the member of the Floor Committee, the Floor Manager or any Exchange employee who is designated by the President for such purpose shall consider;

(i) bids, offers, and prices prevailing both at the time the trade allegedly was executed and at the time the insert or correction was requested;

(ii) activity in the ring at the time the trade allegedly was executed;

(iii) whether the insert or correction will establish a new high or low for that delivery month for such Trading day; and

(iv) such market and other considerations as may be appropriate.

(C) The Exchange will keep a log of all insert or correction requests including the details of the insert or correction requested and the name of the member or employee authorizing the insert or correction. The log entry for any insert or correction request made later than fifteen minutes after the subject transaction must also contain the name of the member making the request.

(D) No insert and no correction may be made unless a request to approve the insert or correction is made within the time limits prescribed in this Rule. If the request relates to a properly executed transaction that has not been reported by the Exchange, such request must be made by 3:30pm. If the request relates to a correction of a properly executed

transaction that has been erroneously reported to or by the Exchange, such request must be made prior to the close of trading on the business day following the day on which the transaction was executed.

(E) ~~The Senior Vice President of Operations, Vice President of Compliance, the Vice President of Floor Operations or the Vice President of Floor Trade Data Entry and System, Designated Exchange staff~~ shall have the authority to approve an insert or correction up to two business days following the day on which the transaction was executed when the Trading Member presents documents that indicate, in the opinion of the above noted Exchange employee, that an insert or correction is warranted. Such documents include, but are not limited to, time stamped order tickets, pit cards, trading cards, written reports of execution and other similar documents. No insert or correction shall be approved unless the person approving the correction also takes into consideration the factors set forth in subsection (B) of this Rule.

(F) Where a properly executed transaction has been incorrectly reported and such transaction has not been corrected within the time limits prescribed by subsections (B), (C), (D) and (E) of this Rule, a Trading Member who was a party to such transaction may request the Chairman, any Vice Chairman of the Floor Committee, the President or any of the above noted Exchange employees to approve a correction of such transaction. Such correction shall be made when,

- (1) in the opinion of such person approving the correction, it appears that permitting the incorrect report to stand would result in a manifestly gross distortion of price reporting or a manifestly gross inequity to one party; and
- (2) when each Trading Member who was a party to the transaction and each Clearing Member who cleared a portion of the transaction has indicated that such person approved of the correction; and
- (3) the party making the request has made the request within a reasonable time under all the circumstances present; and
- (4) the Trading Member presents documents that, in the opinion of the person approving the request, support the correction, and
- (5) the person approving the request has taken into consideration all of the factors set forth in subsection (B) of this Rule. The person approving such request shall prepare a written record setting forth the reasons for making the correction and shall attach to such record a copy of all documents submitted in support of the request and the original approvals required under this subsection (F)

(G) Cross Trades. Notwithstanding any other provision of this Rule, a cross trade may be added into the records of the Exchange only if:

- (1) the trade was not recorded in the Exchange's record due to an error of an Exchange employee;
- (2) the floor member presents an add-in slip to a member of the Floor Committee within 10 minutes of the time the cross trade was executed;
- (3) the Floor Committee member to whom the slip is presented signs the slip acknowledging that he observed the floor broker announce his bid and offer, by open outcry, prior to the execution of the cross trade;
- (4) the floor member presents the signed add-in slip to a designated Exchange employee at the podium in the ring in which the trade was executed;
- (5) the Exchange employee who supervises the trading ring in which the trade was executed announces the proposed add-in cross trade to the ring; and
- (6) following receipt of no objection from any member in the ring, the ring supervisor co-signs the slip and authorizes insertion of the trade into the Exchange's records.

104.69 Floor Broker Registration

(a) Registration. A floor member may not purchase or sell for any other person any commodity for future delivery or any commodity option unless such floor member is registered as a floor broker in accordance with the Commodity Exchange Act, as amended, and such registration has not expired nor been suspended (and the period of such suspension shall not have expired) nor revoked.

(b) Reporting Responsibilities. A member who has applied for registration as a floor broker shall provide to the ~~Corporate Secretary of the Exchange~~ Membership Services Department a copy of the Form 8-R and any supplements thereto which the member filed with the National Futures Association as part of the registration application. A member shall notify the National Futures Association, in writing; within 30 days of any change in information on the member's Form 8-R or any supplement thereto and shall provide a copy of such written notification to the Membership Services Department, ~~Corporate Secretary of the Exchange~~.

104.88 Oversight of Exchange Operations

~~The Executive Committee or any Exchange employee designated by the President, including the Senior Vice President or Vice President of Operations, or the Senior Vice President or Vice President of Compliance, shall have the authority to direct any floor member or clearing member to submit to an operational audit to be performed by the Exchange or to submit accurate trade data in a timely fashion. Any floor member or clearing member that is the subject of such directive shall cooperate fully and completely therewith.~~

~~In addition, upon the request of the President or any Vice President, the Executive Committee shall meet to determine whether, as the result of untimely trade submission, a situation involving any or all floor members and/or clearing members exists that may tend to impair the orderly and efficient operations of the Exchange. If the Executive Committee determines that such a situation exists:~~

~~(a) the Executive Committee may require any or all floor members or clearing members to retain such clerks and related personnel as may be necessary to aid in the timely submission of trade data; and~~

~~(b) the Executive Committee may prohibit any or all floor members and clearing members from taking any new positions in futures contracts or futures options and may limit the trading by such floor members and clearing members to liquidating transactions. Any such determination shall be accomplished in the manner and pursuant to the procedures set forth in Rule 8.43 ("Summary and Emergency Procedures").~~

Change History

~~104.01 Trading Days: (Amended: 11/29/2006)~~
~~104.02 Hours for Trading: (Amended: 11/29/2006)~~
~~104.04 Conduct of Opening Calls: (Amended: 11/29/2006)~~
~~104.06 Opening and Closing Periods: (Amended: 11/29/2006)~~
~~104.07 Forms of Orders: (Amended: 11/29/2006)~~
~~104.08 Not Held Orders: (Amended: 11/29/2006)~~
~~104.17 Acceptance of Orders: (Amended: 11/29/2006)~~
~~104.18 Recognition Trading: (Amended: 11/29/2006)~~
~~104.19 Price at Which Acceptance Binding; Parties to Contract: (Amended: 11/29/2006)~~
~~104.23 Solicitation of Orders: (Amended: 11/29/2006)~~
~~104.46 Reporting Requirements: (Amended: 11/29/2006)~~
~~104.47 Position Limits: (Amended: 11/29/2006)~~
~~104.48 Position Accountability: (Amended: 11/29/2006)~~
~~104.62 Add-In Trades of Deletion Requests Which Are Promptly Discovered: (Amended 2/12/07)~~
~~104.63 [Deleted]: (Amended 2/12/07)~~
~~104.81 Order Tickets: (Amended: 2/13/07)~~
~~104.82 Submission of Trade Data: (Amended: 12/20/2004, 11/29/2006, 2/12/07)~~
~~104.83 Deleted: (Amended 2/12/07)~~
~~104.84 Verification of Trade Data: (Amended: 11/29/2006; 2/12/07)~~
~~104.85 [Deleted]: (Amended 2/12/07)~~
~~104.86 Rejection and Resolution of Trades: (Amended 2/12/07)~~
~~104.87 [Deleted]: (Amended 2/12/07)~~
~~104.88 Oversight of Exchange Operations: (Amended 2/12/07)~~
~~104.89 Settlement Price Committee: (Amended: 11/13/2006)~~
~~104.90 Average Price Trades: (Amended: 11/29/2006)~~
~~104.91 Futures Settlement Prices: (Amended: 11/29/2006)~~
~~104.92 Option Settlement Premiums: (Amended: 11/29/2006)~~
~~104.93 Use of Discretion to Establish Settlement Price: (Amended: 11/29/2006)~~
~~104.94 Settlement Price Procedures for Copper Contracts: (Amended: 02/21/2006, 11/29/2006)~~
~~104.94A Settlement Price Procedures for Aluminum Contracts: (Amended: 11/29/2006)~~

PRE-MERGER NEW YORK MERCANTILE EXCHANGE, INC. BYLAWS

The pre-merger New York Mercantile Exchange, Inc. Bylaws are being deleted and replaced by the Amended and Restated Bylaws of New York Mercantile Exchange, Inc. as set forth below.

AMENDED AND RESTATED BYLAWS OF NEW YORK MERCANTILE EXCHANGE, INC.

AMENDED AND RESTATED BYLAWS **OF** **NEW YORK MERCANTILE EXCHANGE, INC.**

Capitalized terms used but not otherwise defined herein (including the Rules) shall have the meaning given to such terms in the Certificate of Incorporation of the Corporation.

ARTICLE I—RULES AND REGULATIONS

Section 1. Incorporation of Rules and Regulations.

The affairs and operations of the Corporation, in addition to being governed by the Delaware General Corporation Law (the “DGCL”), the Certificate of Incorporation and these Bylaws, shall also be governed by the Rules. Where there exists any inconsistency between the Rules and the DGCL, the Certificate of Incorporation or these Bylaws, the DGCL, the Certificate of Incorporation or these Bylaws shall govern to the extent of the inconsistency.

Applicants for Class A Membership and any person or entity holding any Class A Membership in the Corporation shall be required to sign a written agreement to observe and be bound by the Certificate of Incorporation, these Bylaws and the Rules, as each may be amended from time to time. In addition, the Board of Directors may adopt interpretations of the Certificate of Incorporation, these Bylaws and the Rules (“Interpretations”), which shall be incorporated into and deemed to be Rules.

ARTICLE II—MEMBERSHIP

Section 1. Terms and Conditions.

The terms and conditions of membership in the Corporation, including, without limitation, the rights and obligations of members, member firms and delegates, in addition to being governed by the DGCL, the Certificate of Incorporation and these Bylaws, shall also be governed by the Rules. Without limiting the foregoing, requirements with respect to, and restrictions and limitations on, the ownership, use, purchase, sale, transfer or other disposition of any membership or interest therein, or any other interest of or relating to the Corporation or membership therein, including the payment of proceeds from the sale, transfer or other disposition of any membership or interest therein, shall be as provided herein, in the Certificate of Incorporation and in the Rules, or as otherwise provided in accordance with applicable law.

Section 2. Voting Rights.

Members shall have such voting rights as are specified in the Certificate of Incorporation. To the extent authorized by the Certificate of Incorporation, the Board of Directors shall be entitled to fix a record date for purposes of determining the members entitled to vote on any matter.

Section 3. Annual and Special Meetings.

The annual meetings of the Class B Member shall be held on such date, at such time and at such place, either within or without the state of Delaware, as shall be designated from time to time by the Board of Directors of the Corporation and stated in the notice of the meeting.

At the annual meetings the Class B Member shall elect the Board of Directors of the Corporation and transact such other business as may properly be brought before the meeting. For such business to be properly brought before the meeting, it must be: (i) authorized by the Board of Directors of the Corporation and specified in the notice, or a supplemental notice, of the meeting, (ii) otherwise brought before the meeting by or at the direction of the Board of Directors or the chairman of the meeting, or (iii) otherwise properly brought before the meeting by the Class B Member. No other business may be brought before or conducted at the meeting.

Special meetings of Class A Members or the Class B Member may be called by the Board of Directors of the Corporation or by the Chairman of the Board of Directors of the Corporation in their discretion and shall be held on such date, at such time and at such place, either within or without the state of Delaware, as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting. The business transacted at a special meeting of the Class B Member shall be limited to the purpose or purposes for which such meeting is called. Special meetings of Class A Members may also be called by the Board of Directors of the Corporation or by the Chairman of the Board of Directors of the Corporation upon the demand of the Class A Members pursuant to Section (C) of Article IV or Article IX of the Certificate of Incorporation. The business transacted at a special meeting of the Class A Members shall be limited to the purpose or purposes for which such meeting is called.

Section 4. Notice of Meetings.

Except as provided under Section (C) of Article IV of the Certificate of Incorporation, written notice of the place, date, and time of all meetings of the Class A Members or the Class B Member shall be given, not less than ten (10) nor more than sixty (60) days before the date on which the meeting is to be held, to each member entitled to vote at such meeting, except as otherwise provided herein or required by law (meaning, here and hereinafter, as required from time to time by the DGCL or the Certificate of Incorporation). The notice of any special meeting of members shall also state the purpose or purposes for which such meeting is called.

When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place, if any, thereof, and the means of remote communications, if any, by which members and proxy holders may be deemed to be present in person and vote at such adjourned meeting is announced at the meeting at which the adjournment is taken; provided, however, that if the date of any adjourned meeting is more than thirty (30) days after the date for which the meeting was originally noticed, or if a new record date is fixed for the adjourned meeting, notice of the place, if any, date, and time of the adjourned meeting and the means of remote communications, if any, by which members and proxy holders may be deemed to be present in person and vote at such adjourned meeting shall be given in conformity herewith. At any adjourned meeting, any business may be transacted which might have been transacted at the original meeting without regard to the presence of a quorum at such adjournment.

Section 5. Quorum.

The presence of the holder of the Class B Membership, in person or by proxy, shall constitute a quorum with respect to any matter on which the Class B Member is entitled to vote pursuant to the Certificate of Incorporation, or any meeting called to vote on such matters.

With respect to any matter on which the Class A Members are entitled to vote pursuant to the Certificate of Incorporation, or any meeting called to vote on such matters, the presence of owners of Class A Memberships, in person or by proxy, representing one-third of the votes entitled to be cast on such matters, shall constitute a quorum. If a quorum shall fail to attend any meeting, the chairman of the meeting or, in his or her absence, the Chairman of the Board of Directors of the Corporation or the President may adjourn the meeting to another place, if any, date or time.

Section 6. Organization.

Such person as the Board of Directors of the Corporation may have designated or, in the absence of such a person, the Chairman of the Board of Directors of the Corporation or, in his or her absence, such person as may be chosen by the Class B Member, shall call to order any meeting of the members of the Corporation and act as chairman of the meeting. In the absence of the Secretary of the Corporation, the secretary of the meeting shall be such person as the chairman of the meeting appoints.

Section 7. Conduct of Business.

The chairman of any meeting of the members of the Corporation shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him or her in order.

Section 8. Proxies and Voting.

At any meeting of the members of the Corporation, the members entitled to vote at such meeting may vote in person or by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this paragraph may be substituted or used in lieu of

the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 9. *Commercial Associate Memberships.*

There is hereby established a category of associate members known as "Commercial Associate Members" whose election to Commercial Associate Membership and whose rights, privileges and obligations shall be as set forth in this Section 9 and Section 10 of this Article II of these Bylaws.

The number of Commercial Associate Members shall be limited to 28. Any person who was a member in good standing of International Commercial Exchange, Inc. may be qualified as a Commercial Associate Member of the Corporation by complying with the following provisions:

(1) he shall have filed an application for Membership as a Commercial Associate Member in the form prescribed by the Corporation on or before December 31, 1973; and

(2) the application shall have been accompanied by a statement of the President or a Vice President of International Commercial Exchange, Inc. that the applicant was a member in good standing of said exchange and that his application was approved.

Section 10. *Obligations and Rights of Commercial Associate Members.*

A Commercial Associate Member shall be subject to all of the provisions of these Bylaws and the Rules applicable to Class A Members including, without limitation, the obligations for dues, assessments and fines, except the following:

(1) those that are not applicable to the nature of his membership such as the provisions respecting compliance with requirements for election to membership, provisions for transfer of membership and the like; and

(2) those that are inconsistent with the provisions of Section 9 and this Section 10 of this Article II of these Bylaws.

A Commercial Associate Member shall have the following rights and privileges: the right to confer Commercial Associate Membership privileges on a partnership, corporation or other entity in accordance with such rules as may be established for that purpose; the right to act as a Floor Trader, as such term is defined in the Rules, in transactions in all contracts traded on the Corporation only for his own account; and the right to act as a Floor Broker, as such term is defined in the Rules, only in transactions in contracts designated as "Commercial Associate Contracts."

Notwithstanding any other provision of these Bylaws or the Rules, a Commercial Associate Member shall not have any of the following rights or privileges: (1) to transfer his Commercial Associate Membership voluntarily (nor shall any such Commercial Associate Membership be transferred by operation of law, and any purported transfer in violation of this Section 10 of this Article II of these Bylaws shall be null and void ab initio); (2) to vote on any matter (including, but not limited to, amendments to the Certificate of Incorporation or these Bylaws, or any merger, consolidation or other business combination transactions); (3) to trade on the floor of the Corporation except as specified in this Section 10 of this Article II of these Bylaws; (4) to clear contracts or to confer the right to become a clearing member on a partnership, a corporation or other entity; (5) to have any interests in the profits of the Corporation or to receive any dividend or other distribution (including upon liquidation, dissolution, winding-up or otherwise) to be declared, paid or distributed by the Corporation or any consideration upon the merger or consolidation of the Corporation, which rights shall be solely vested in the Class B Member; (6) to become a member of the Board of Directors of the Corporation; and (7) to adopt, amend or repeal the Rules.

Section 11. *Waiver and Release*

Each owner of record of a Class A Membership on the official books and records of the Corporation as of the effective time of the merger (a "Closing Class A Member") of NYMEX Holdings, Inc. ("NYMEX Holdings") with and into CME NY Inc. ("Merger Sub") pursuant to the terms of that certain Agreement and Plan of Merger, dated as of March 17, 2008 and amended as of June 30, 2008 and July 18, 2008 (the "Merger Agreement"), among the Corporation, NYMEX Holdings, CME Group Inc. and Merger Sub (the "Merger"), shall have the right, pursuant to and subject to the compliance with the terms of Section 6.16 of the Merger Agreement, to receive a payment from the Corporation in an amount equal to \$750,000 per Class A Membership held by such Closing Class A Member (a "Membership Rights Payment"); provided however, that to receive the Membership Rights Payment, each Closing

Class A Member must deliver to the Corporation a duly executed waiver and release agreement substantially in the form attached to these Bylaws as Annex A (the "Waiver and Release").

ARTICLE III—BOARD OF DIRECTORS

Section 1. General.

The Board of Directors of the Corporation shall consist of the number of directors as set forth in the Certificate of Incorporation.

Section 2. Quorum.

A majority of the total number of directors then in office shall constitute a quorum of the Board of Directors of the Corporation.

Section 3. Attendance at Board Meetings.

Members of the Board of Directors of the Corporation or any committee who are physically present at a meeting of the Board of Directors of the Corporation or any committee may adopt as the procedure of such meeting that, for quorum purposes or otherwise, any member not physically present but in continuous communication with such meeting shall be deemed to be present. Continuous communication shall exist only when, by conference telephone or similar communications equipment, a member not physically present is able to hear and be heard by each other member deemed present, and to participate in the proceedings of the meeting.

Section 4. Regular Meetings.

The Board of Directors of the Corporation shall hold meetings at such times as the Board of Directors may determine from time to time.

Section 5. Special Meetings.

Special meetings of the Board of Directors of the Corporation may be called by the Chairman of the Board of Directors of the Corporation or the President or a majority of the Board of Directors. Notice of the time and place of special meetings shall be delivered personally or by telephone to each director or sent by first-class mail or telegram, charges prepaid, addressed to each director at that director's address as it is shown on the records of the Corporation. If the notice is mailed, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. If the notice is delivered personally or by telephone or by telegram, it shall be delivered personally or by telephone or to the telegraph company at least 48 hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose or the place of the meeting, if the meeting is to be held at the principal executive office of the Corporation.

Section 6. Certain Rights and Restrictions.

The right of any person to vote, participate or take any action in any capacity as a member of the Board of Directors of the Corporation or any committee, panel or other body shall be subject to such requirements and restrictions as may be provided herein, in the Certificate of Incorporation and in the Rules.

Section 7. Action by Consent.

Any action required or permitted to be taken by the Board of Directors of the Corporation may be taken without a meeting if all of the directors consent in writing to the adoption of a resolution authorizing such action. The resolutions and the written consents of the directors shall be filed with the minutes of the proceedings of the Board of Directors of the Corporation.

ARTICLE IV—COMMITTEES AND DEPARTMENTS

Section 1. General.

To the fullest extent permitted by law and the Certificate of Incorporation, the Board of Directors of the Corporation shall have the power to appoint, and to delegate authority to, such committees of the Board of Directors of the Corporation as it determines to be appropriate from time to time.

Section 2. *Additional and Standing Committees.*

In addition to such committees as may be authorized by the Board of Directors of the Corporation from time to time, the Corporation shall have such additional and standing committees, which shall be composed of such persons having such powers and duties, as provided in the Rules. Any person may be disqualified from serving on or participating in the affairs of any committee to the extent provided in the Rules.

Section 3. *Departments.*

The Corporation shall have such departments as are authorized in or in accordance with the Rules.

ARTICLE V—OFFICERS

Section 1. *General.*

The officers of the Corporation (and the titles thereof) shall be chosen by the Board of Directors of the Corporation from time to time in its sole discretion. The Board of Directors, in its discretion, also may choose a Chairman of the Board of Directors of the Corporation (who must be a director). Any number of offices may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these Bylaws. The officers of the Corporation need not be members of the Corporation nor, except in the case of the Chairman of the Board of Directors of the Corporation, need such officers be directors of the Corporation.

ARTICLE VI—NOTICES

Section 1. *Notices.*

Except as otherwise specifically provided herein or required by law, all notices required to be given to any member, director, committee member, officer, employee or agent shall be in writing and may in every instance be effectively given by hand delivery to the recipient thereof, by depositing such notice in the mails, postage paid, or by sending such notice by prepaid telegram, mailgram, facsimile or electronic mail. Any such notice shall be addressed to such member, director, committee member, officer, employee or agent at his or her last known address as the same appears on the books of the Corporation. The time when such notice is received, if hand delivered, or dispatched, if delivered through the mails or by telegram, mailgram, facsimile or electronic mail, shall be the time of the giving of the notice.

Section 2. *Waivers.*

A written waiver of any notice, signed by a member, director, committee member, officer, employee or agent, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such member, director, committee member, officer, employee or agent. Neither the business nor the purpose of any meeting need be specified in such a waiver.

ARTICLE VII—MISCELLANEOUS

Section 1. *Facsimile Signatures.*

Facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

Section 2. *Corporate Seal.*

The Board of Directors of the Corporation may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board of Directors of the Corporation or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

Section 3. *Reliance upon Books, Reports and Records.*

Each director and each member of any committee designated by the Board of Directors of the Corporation, shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors of the Corporation so designated, or by any other person as to matters which such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 4. Fiscal Year.

The fiscal year of the Corporation shall be as fixed by the Board of Directors from time to time.

Section 5. Time Periods.

Except as otherwise specifically provided, in applying any provision of these Bylaws which requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

Section 6. Execution of Corporate Contracts and Instruments.

The Board of Directors of the Corporation, except as otherwise provided in these Bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board of Directors of the Corporation or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

ARTICLE VIII—INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. Right to Indemnification.

Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director, officer, committee member or employee of the Corporation or is or was serving at the request of the Corporation as a director, officer, trustee, committee member or employee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, trustee, committee member or employee or in any other capacity while serving as a director, officer, trustee, committee member or employee, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith; provided, however, that, except as provided in Section 3 of this Article VIII of these Bylaws with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

Section 2. Right to Advancement of Expenses.

The right to indemnification conferred in Section 1 of this Article VIII of these Bylaws shall include the right to be paid by the Corporation the expenses (including attorney's fees) incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the DGCL requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section 2 of this Article VIII of these Bylaws or otherwise. The rights to indemnification and to the advancement of expenses conferred in Sections 1 and 2 of this Article VIII of these Bylaws shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a Director, officer, committee member or employee and shall inure to the benefit of the indemnitee's heirs, executors and administrators.

Section 3. Right of Indemnitee to Bring Suit.

If a claim under Section 1 or 2 of this Article VIII of these Bylaws is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the indemnitee may at any

time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its members) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its members) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VIII of these Bylaws or otherwise shall be on the Corporation.

Section 4. *Non-Exclusivity of Rights.*

The rights to indemnification and to the advancement of expenses conferred in this Article VIII of these Bylaws shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the Certificate of Incorporation, Bylaws, agreement, vote of members or disinterested directors or otherwise.

Section 5. *Insurance.*

The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, committee member, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 6. *Indemnification of Agents of the Corporation.*

The Corporation may, to the extent authorized from time to time by the Board of Directors of the Corporation, grant rights to indemnification and to the advancement of expenses to any agent of the Corporation to the fullest extent of the provisions of this Article VIII of these Bylaws with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

Section 7. *Corporation Defense Expenses.*

Any member or member firm who fails to prevail in a lawsuit or any other type of legal proceeding instituted by that member or member firm against the Corporation or any of its officers, directors, committee members, employees or agents must pay to the Corporation all reasonable expenses, including attorney's fees, incurred by the Corporation in the defense of such proceeding. Any member or member firm required to compensate the Corporation pursuant to this section shall be assessed interest on such amount at the rate of Prime plus one percent (1%), which interest shall accrue from the date such amount was demanded in writing after the member or member firm failed to prevail in a lawsuit or any other type of legal proceeding against the Corporation.

ARTICLE IX—AMENDMENTS

The Board of Directors of the Corporation is expressly empowered to adopt, amend or repeal the Bylaws. The Class B Member, acting pursuant to a resolution adopted by its Board of Directors, shall also have power to adopt, amend or repeal the Bylaws. The only member of the Corporation with any power to adopt, amend or repeal the Bylaws shall be the Class B Member, and no other member of, or class or series of membership in, the Corporation shall have any such power.

* * * *

Form of Waiver and Release

FORM OF WAIVER AND RELEASE

Capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Merger Agreement.

By executing this Waiver and Release, and effective upon acceptance of the Membership Rights Payment, the Class A Member, for itself and its past, present, and future direct and indirect subsidiaries, shareholders, members, equityholders, Affiliates, and its and their respective successors and assigns and, if the Class A Member is a natural person, for himself or herself, the Class A Member's spouse, heirs, administrators, children, representatives, executors, successors and assigns, and any other person (natural or otherwise) acting or purporting to act on behalf of any of the foregoing ("Releasing Parties"), effective as of the Effective Time, hereby absolutely, unconditionally and irrevocably waives any right to and releases and forever discharges NYMEX Holdings, NYMEX, CME Group, Merger Sub, the CME Group Subsidiaries and each of their respective Affiliates, shareholders, related organizations, agents, employees, officers, directors, advisors, successors and assigns (collectively, the "Released Parties") from any and all manner of causes of action, damages, liabilities, obligations, promises, judgments, claims and demands of any nature whatsoever, in law or in equity, of every kind and description, whether known or unknown, suspected, absolute or contingent ("Actions"), which such Releasing Parties (in any capacity whatsoever, including, without limitation, their capacities as stockholders of NYMEX Holdings) ever had, now have or hereafter can, shall or may have against any Released Party, including, without limitation, those Actions arising out of (i) the form and structure of the transactions relating to the Membership Rights Payments, (ii) the amount and form of consideration received by any Releasing Party in connection with the Membership Rights Payments, (iii) the transactions entered into in contemplation of or in connection with the Membership Rights Payments, including, without limitation, the Merger, and (iv) any such Releasing Parties' ownership of the Class A Memberships, including, without limitation, any and all rights any Releasing Party may have under Section 311G of the Bylaws of NYMEX (the "Bylaws"); provided, however, that this waiver and release shall not apply to the respective rights and obligations of the Releasing Parties to receive the Merger Consideration, if applicable, to enforce their rights to receive the Membership Rights Payments under the Merger Agreement and to enforce their rights as provided under Section (C) of Article IV and under the second sentence of Article IX of the Certificate of Incorporation of NYMEX.

COMEX BY-LAWS

Section 158. ADDITIONAL COMEX DIVISION MEMBER RIGHTS

(D) Notwithstanding the foregoing, the Board may take whatever action necessary in response to an "Emergency" as set forth in Article 7 of these By-Laws the rules of the Exchange as well as any other action as may be required by applicable law or regulation; provided, however, that the Board will use all commercially reasonable efforts to take the steps necessary to ensure that any action taken or rule enacted pursuant to an emergency action is temporary in nature and is consistent with the rights granted under this Section 158.

Section 205. VOTING

(E) Notwithstanding the foregoing provisions of Section 205(D), Section 205(D) shall not apply to emergency actions taken pursuant to Article 7 the rules of the Exchange. The Board of Directors will use all commercially reasonable efforts to take steps necessary (unless otherwise required by law) to ensure that any action taken or rule enacted pursuant to an emergency action is temporary in nature and is consistent with the rights granted to COMEX Division Members pursuant to these By-Laws and the Rules.

Section 300. COMPOSITION OF BOARD

(A) The governance of the COMEX Division shall be vested in the Board which shall be elected by NYMEX and shall consist of the ~~fifteen (15)~~ those persons who serve as Directors on the NYMEX Board.

Section 350. OFFICERS

The officers (and the titles thereof) shall be chosen by the Board from time to time in its sole discretion. NYMEX shall designate the Chairman of NYMEX as the Chairman of the Board. Any number of offices may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these By-Laws. The officers need not be members of the Exchange nor, except in the case of the Chairman of the Board, need such officers be directors. The officers shall have such powers and authority as may be specifically established by the Board.

~~The Board shall appoint a President, a Secretary and a Treasurer. The Board may appoint one or more Vice Presidents, and may classify such Vice Presidents, and may appoint such other officers as the Board may determine. Any officer appointed under this Section may be removed by the Board, with or without cause. Any person may hold two or more offices. The officers of the Exchange (other than the Chairman, the Vice Chairman and the Treasurer) shall not be members of the Exchange nor, except in the case of the Chairman, the Vice Chairman of the Board and the Treasurer, need such officers be Directors.~~

Section 503. EFFECTIVE DATE OF AMENDMENTS

All By-Laws and amendments thereto are effective and binding on Members and shall govern all matters to which they are applicable ten days following receipt of prior approval from the Commission or following receipt of notification that such prior approval is unnecessary, or, at such date as is fixed by the Board but shall not be retroactive (except as may be permitted under any Exchange rules governing emergencies and Articles 7 and 8).

ARTICLE 7 [RESERVED] EMERGENCIES

Section 700. DEFINITIONS

As used in this Article 7 of the By-Laws:

~~(A) The term "emergency" means any occurrence, circumstance or event as defined by the Commission in accordance with the applicable provisions of the Act which in the opinion of the Board requires immediate action and threatens or may threaten such things as the fair and orderly trading or liquidation of any commodity futures or options contract, traded on the COMEX Division. Occurrences, circumstances or events which the Board may deem emergencies are limited to:~~

- ~~(1) any manipulative activity or attempted manipulative activity;~~
- ~~(2) any actual, attempted or threatened corner, squeeze, congestion or undue concentration of positions;~~
- ~~(3) any circumstance or circumstances that may materially affect the ability to satisfy the obligations arising under futures or options contracts traded on the COMEX Division;~~
- ~~(4) any action taken by or against the government of the United States, any foreign government, any state or local government, or by any other exchange, any board of trade or trade association, whether foreign or domestic, which action may have a direct impact on trading on the COMEX Division;~~

(5) any circumstance that may have a severe, adverse effect on the physical functions of the COMEX Division including, for example, fires or other casualties, bomb threats, substantial inclement weather, power failures, communication or transportation breakdowns, computer system breakdowns, screen-based trading system breakdowns and malfunctions of plumbing, heating, ventilation and air conditioning systems;

(6) the bankruptcy or insolvency of any Member or Member Firm or the imposition or service of any lien, attachment, execution or other levy or an injunction or other restraint against a Member or Member Firm or their assets by any governmental agency, court, arbitrator or judgment creditor which event may affect the ability of the Member or Member Firm to perform on its contracts or otherwise to engage in business;

(7) the occurrence of a "Reportable Emergency Event" or "Financial Emergency" with respect to a Member or Member Firm, as defined in Section 850(C) or (D) of the By-Laws;

(8) any circumstance in which it appears, in the judgment of the Board, that a Member or Member Firm: (i) has failed to perform on its futures or options contracts, or (ii) is insolvent or is in such financial or operational condition or is conducting its business in such a manner that such Member or Member Firm cannot be allowed to continue its business without jeopardizing the safety of customer funds, of any Members or of the COMEX Division; or,

(9) any other unusual, unforeseeable and adverse circumstance with respect to which it is not practicable for the Exchange to submit, in timely fashion, a rule to the Commission for prior review.

(B) The term "two-thirds vote of the Board" means the affirmative vote of members of the Board constituting two-thirds of the Board, either (i) physically present and voting at any meeting at which a quorum of the Board is physically in attendance or (ii) voting in any manner other than at a meeting at which a quorum is physically in attendance as permitted by applicable state corporation law.

(C) The term "physical emergency" means, in addition to those events which are set forth at subparagraph (A)(5) of this Section 700, any computer malfunction, backlog or delay in clearing trades or in processing any documents relating to clearing trades, any floor occurrences which threaten an orderly market, or any similar events.

(D) The term "temporary emergency rule" means a rule or resolution adopted under this Article 7 of the By-Laws, to meet an emergency.

Section 701. EMERGENCY ACTION

(A) In the event of an emergency, the COMEX Division, by two-thirds vote of the Board and subject to the applicable provisions of the Commodity Exchange Act, and to the applicable rules and regulations promulgated thereunder, may adopt and place into immediate effect a temporary emergency rule.

(B) A temporary emergency rule, including any modification thereof, may not extend beyond the duration of the emergency as determined by the Board. However, in no event shall such a temporary emergency rule, or any modification thereof, extend for more than ninety (90) days after the temporary emergency rule is placed in effect.

(C) Any temporary emergency rule may provide for, or may authorize the Board to undertake actions which, in the sole discretion of the Board or of any Committee, are necessary or appropriate to meet the emergency including, but not limited to, such actions as:

~~(1) limiting trading to liquidation only, in whole or in part, or limiting trading to liquidation only except for new transactions in futures or options contracts by parties who have the commodity to deliver pursuant to such sales;~~

~~(2) extending or shortening the expiration date for trading in futures or options contracts;~~

~~(3) extending the time of delivery under futures contracts or expiration of futures or options contracts;~~

~~(4) changing delivery points, the manner of delivery or the means of delivery;~~

~~(5) modifying price limits;~~

~~(6) modifying circuit breakers;~~

~~(7) ordering the liquidation of futures and/or options contracts, the fixing of a settlement price or the reduction of positions held by or for any or all Members, Member Firms or customers;~~

~~(8) ordering the transfer of futures and/or options contracts and the money, securities and property securing such contracts held by or on behalf of customers by a Member or Member Firm to another Member or Member Firm or to other Members or Member Firms willing or obligated to assume such contracts;~~

~~(9) extending, limiting or changing hours of trading;~~

~~(10) suspending trading; and~~

~~(11) modifying or suspending any provision of rules of the contract market, including any contract market prohibition against dual trading.~~

Section 702. ACTION BY BOARD

~~(A) In an emergency, or to determine whether an emergency exists a meeting of the Board may be convened without notice.~~

~~(B) In the event of an emergency where a quorum of the Board is unavailable, all trading on the Exchange may be suspended by an affirmative vote of two-thirds of the members of the Board present. In the event of an emergency in which no other Director is present, the Chairman, or in his absence, the Vice Chairman, or in their absences any one Director present, or in their absences, the President, or in all their absences, the Executive Vice President, or in all their absences, any Vice President, may order suspension of trading for such period as in their or his judgment is necessary.~~

~~(C) Any action taken pursuant to this Section 702 shall be subject to review and modification by the Board.~~

Section 703. PHYSICAL EMERGENCIES

~~(A) — In the event that the physical functioning of the COMEX Division is, or is threatened to be, severely and adversely affected by a physical emergency, the Chairman, or in his absence the Vice Chairman, or in their absences the President, or in all their absences the Executive Vice President, or in his absence any Senior Vice President, or in their absences any member of the Executive Committee or in their absences any Board Member present, or in all their absences any Vice President, may take any action which in his opinion, is necessary or appropriate to deal with the physical emergency. Such action may include, but is not limited to, the suspension of trading in any or all contracts, a delay in the opening of trading in any or all contracts, the extension of trading in the time of~~

trading in any or all futures and options contracts or the extension of trading in the last day of trading in any or all futures and options contracts.

(B) — No action taken under this Section 703 shall continue in effect for more than five (5) days unless an extension of time has been granted by the Commission in accordance with the applicable provisions of the Act. Any action taken under this Section 703 shall be subject to review and to modification by the Board.

(C) — The officials designated in Section 703(A) may order the removal of any restriction imposed under this Section 703 if, in their judgment, the physical emergency has abated sufficiently to permit the physical functioning of the COMEX Division to continue in an orderly manner absent such restriction.

Section 910. COMEX DIVISION MEMBERS

The term "COMEX Division Members" shall mean Members of the COMEX Division of the Exchange and Member Firms, but shall not, except in Articles 7 and 8 of these By-Laws, include COMEX Option Members or Member Firms upon which membership privileges have been conferred by Option Member(s).

NYMEX RESOLUTIONS

I. Resolution of the Membership Committee Delegating Authority Under Rule 2.34 to Vice President for Membership

The Membership Committee, having been apprised of the potential disruption to a member's trading business activities in the event that such member has terminated his or her qualification or guarantee by a Clearing Member or a Member Firm and has obtained a substitute qualification or guarantee from another Clearing Member or Member Firm and expeditious approval of such substitute guarantee or qualification is not obtained, after discussion: RESOLVE, to delegate the functions of the Membership Committee or Sub-Committee thereof set forth in Rule 2.34 to the Vice President for Membership or other person designated by the Chairman of the Membership Committee; and

RESOLVE FURTHER, that such authorization be renewed at the end of each six month period.

RESOLVE FURTHER, that the effective date of this resolution shall be upon the date of approval by the Board of Directors.

II. Resolution of the Board of Directors to Permit Exchange of Futures for Physicals Transactions ("EFP") Which Establish Futures Positions for Both EFP Participants

The Board of Directors, upon review of the recommendations of the Compliance Review Committee with respect to EFP transactions in Platinum, and after discussion, hereby:

RESOLVES, to permit the execution and clearing of EFP transactions in Platinum in accordance with Exchange Rule 6.21 which establish futures positions for both participants to the EFP transaction, and

RESOLVES FURTHER, that this resolution shall become effective ten (10) days after receipt of approval from the Commodity Futures Trading Commission or notice that such approval is unnecessary.

III. Resolution of the Board of Directors Suspending the Provisions of Exchange Rules Which Permit the Use of Not-At-Risk (Class II) Membership Leases

The Board of Directors, having considered the report of the Special Membership Committee with respect to the advisability of continuing to permit Not-At-Risk (Class II) Membership Leases on the Exchange, after discussion:

RESOLVES, to suspend the operation of the provisions of Rules 2.71(B), 9.02(K) and 2.10(A) which permit memberships on the Exchange to be leased and held pursuant to Not-At-Risk Lease Agreements, effective January

2, 1987 and until such time as a further study of the issue is conducted by the Special Membership Committee and amendments, if any, are adopted by the Board.

RESOLVES FURTHER, that any Not At-Risk Leases which have been entered into and approved by the Membership Committee prior to the effective date of this Resolution shall be permitted to continue in effect for the full term of such Leases under the provisions of Rules 2.71(B), 9.02(K) and 2.10(A) and such Rules shall remain in full force and effect to that limited extent.

IV. Exchange of Futures for, or in Connection with, Product

The Board of Directors, having considered the recommendations of the Crude Oil and Petroleum Products Advisory Panels of the Petroleum Advisory Committee with respect to permitting Exchange of Futures for Product transactions in petroleum futures contracts which establish futures positions for both parties to the transaction, after discussion:

RESOLVES, to permit Exchange of Futures for Product Transactions in petroleum futures contracts which establish futures positions for both participants in the transactions, and

RESOLVES FURTHER, that Exchange Rules 150.14, 190.14, and 200.20, Exchange of Futures for, or in Connection with, Product, be amended to permit such transactions to be executed during normal trading hours on any business day prior to the third business day before the expiration of the contract as set forth below:

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

(B) Except as provided below, the EFP must take place during the hours of futures trading for the petroleum futures contract. An EFP is permitted at any time before 2:00 p.m. of the first business day following termination of trading in a futures contract, provided, however, that an EFP which establishes a futures position for both the buyer and the seller shall not be permitted during the last three business days prior to the termination of trading in a futures contract.

(C) A report of such EFP transaction shall be submitted to the Exchange which report shall identify the EFP as made under this Rule and shall contain the following information: a statement that the EFP has resulted in a change of ownership and the date thereof, the kind and quantity of the cash commodity, the kind and quantity of the futures, the price at which the futures transaction is to be cleared, the name of the clearing members and such other information as the Exchange may require.

(D) Each buyer and seller must satisfy the Exchange, at its request, that the transaction is a legitimate EFP transaction. All documentary evidence relating to the EFP, including, without limitation, evidence as to change of ownership of the cash commodity or a commitment therefore shall be obtained by the Clearing Members from the buyer or seller and made available by the Clearing Members for examination by the Exchange upon request.

(E) A report of each EFP 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 transactions shall be cleared through the Exchange in accordance with normal procedures, shall be clearly identified as EFP transactions, and shall be recorded as such by the Exchange and by the Clearing Members involved.

V. Resolution of Board to Impose 60 Day Moratorium on Consideration of Applications for Membership in Which Applicant Intends to Satisfy Applicable Financial Requirements Solely with Class I Membership

The Board of Directors, having considered the recommendation of the Membership Committee to review whether applicants for membership should be permitted to satisfy their financial requirements under NYMEX Rule 2.23 with the lease, or anticipated lease, of a Class I "at risk" membership, after discussion,

RESOLVES, to impose a sixty (60) day moratorium, on the consideration of membership applications in which the applicant attempts to satisfy the financial requirements of NYMEX Rule 2.23 solely through the acquisition, or anticipated acquisition, of a Class I membership agreement, and

RESOLVES FURTHER, to direct the Special Membership Committee to review the rules pertaining to the financial

requirements for membership applicants, and to report its recommendations for any rule amendments to the Board of Directors before the termination of the foregoing moratorium, and

RESOLVES FURTHER, that the foregoing resolution shall become effective ten days after approval thereof by the Commodity Futures Trading Commission.

VI. Resolution of Board of Directors with Respect to Adjudication and Arbitration Panel Members

The Board of Directors hereby

RESOLVES that any member who, at end of a term of the Arbitration or Adjudication Committees, is serving on a panel of said Committees with respect to a particular matter shall continue to serve in that capacity until the completion of the assigned matter even if said member is not reappointed to the Committee for the succeeding year's term.

VII. Resolution Regarding Establishment of July 10, 1987 as Expiration Date of August 1987 Crude Oil Options Contract

The Board of Directors, having considered that the expiration date of the August 1987 Crude Oil Options Contract would expire on July 3, 1987, as determined pursuant to Rule 310.01, and that such date is scheduled to be an Exchange holiday, hereby

RESOLVES to set the expiration date of the August 1987 Crude Oil Options Contract to be July 10, 1987; and

RESOLVES FURTHER to submit this resolution to the Commodity Futures Trading Commission for its approval and to notify the Exchange membership and all interested parties of this resolution prior to the listing of the August contract.

VIII. Resolution of Board of Directors Concerning Exchange Contracts with Interested Members or Entities

At a regular meeting of the Board of Directors on June 3, 1987, the Board, having considered the actual or potential conflict of interests, the appearance of impropriety or other harm to the Exchange or its members which might arise from a contract or transaction between the Exchange and a Member of the Board, an Exchange Committee Member or other Member of the Exchange or other person or entity associated or affiliated therewith in which such Member or other person or entity has a substantial financial interest hereby:

RESOLVES, to prohibit the Exchange, its Directors, Officers or others acting with authority or under color of authority for or on behalf of the Exchange from entering into a contract or transaction between the Exchange and any person or entity described in the preamble to this Resolution who has a substantial financial interest in such contract or transaction unless the material facts concerning such interest are fully disclosed to the Board and the Board, by majority vote, authorizes such contract or transaction. Any person with an interest in the contract or transaction is not entitled to vote thereon but may be counted for the purpose of determining the presence of a quorum at the meeting which considers the approval of the contract or transaction.

IX. Resolution of the Board of Directors Establishing Sanctions Procedure in the Event a Member Fails to Submit Transfer Forms

The Board of Directors, having considered the recommendation of the Clearing House Committee with respect to the establishment of a non-disciplinary sanction procedure for failure to submit a line of transfer information to the Clearing House on the trade date, after discussion:

RESOLVES to adopt the following procedures to be implemented pursuant to Exchange Rule 9.04(M)(2)(ii):

- 1) If a Member fails to submit transfer information to the Clearing House on 10 or more lines, the Compliance Department shall issue the offending Member a warning letter concerning that failure;
- 2) If a Member within a six (6) month period of having been warned as set forth above, fails to submit transfer information on any additional occasions the offending Member shall be fined in accordance with the following schedule:

No. Unreturned Lines of Information Fine

10-20
\$250.00
20 or more
\$500.00

Each fine shall be levied per occurrence and shall not be subject to the provisions of the Rules respecting disciplinary proceedings. However, the member may appeal a fine to the Clearing House Committee upon procedures established by that Committee. The decision of the Clearing House Committee shall be the final decision of the Exchange.

3) If a member fails to submit transfer information on three (3) or more occasions during a six (6) month period, such failures shall be reported to the Compliance Department for possible disciplinary action for violation of Exchange Rule 8.55(A)(17) or (B)(1) as the case may be.

RESOLVES FURTHER that the procedures shall become effective ten (10) days after approval by the Commodity Futures Trading Commission or notification that such approval is unnecessary.

X. Member Firm Qualifications

WHEREAS the Board of Directors recognizes that conducting operations as a Member Firm on the Exchange is a privilege; and

WHEREAS the Board believes it is in the best interests of the Exchange that in determining whether Member Firm status should be accorded, consideration should be given to whether the firm's principals and conferring members meet the Exchange's qualifications for individual membership;

IT IS HEREBY RESOLVED, that the Board may deny Member Firm status to any entity where one or more principal or conferring member of such entity could be denied individual membership in the Exchange based upon the qualifications set forth in Exchange Rule 2.09(A)-(L).

XI. Board Resolution on Matching Procedures for Crude Oil

The Board of Directors, having considered the facts concerning deliveries of foreign crude oil on the Exchange's light, sweet crude oil contract, hereby Resolves to institute the following matching procedures for Crude oil deliveries.

1. The form for the Notice of Intention to Accept Delivery shall be amended to include a box for a buyer to indicate a preference for delivery of foreign crude oil. The form shall indicate that the indication of a preference does not assure that a long will actually receive foreign crude oil.
2. Shorts and Longs in foreign crude oil deliveries will be matched as follows:
 - a. Foreign crude oil will be assigned first to the longs requesting foreign crude, allocating foreign crude to the longs so requesting it in order of size (i.e., if there are 250 contracts to be delivered and three Longs requesting 200, 60 and 30 contracts of foreign crude respectively, Long #1 will get 200 contracts, Long #2 will get 50 contracts, Long #3 will get no foreign crude).
 - b. If there is more foreign crude oil than preferences, the balance after preferences are filled will be assigned, in apportionments of approximately 80 contracts to the largest remaining longs in order of size (i.e., if 100 contracts remain after preferences are filled, 80 will go to the largest long and 20 to the second largest long). This process will continue until all foreign crude oil is assigned.
 - c. The Exchange staff, working with the pipelines, will retain the authority

XII. Resolution of the Board of Directors for Delivery Mos. NYMEX Energy Futures Options Contracts and for Added Delivery Mos. for Light Sweet Crude Oil & Natural Gas Futures Options Contracts

The Board of Directors hereby

RESOLVES that options on NYMEX energy contracts shall be listed for trading in twelve consecutive contract months.

For crude oil options, there will be three additional contract months. These expirations will initially be listed at 18, 24

and 36 months from the current expiring option. When the twelfth nearby month becomes a December contract month, a 24 and 36 month expiration shall be added as December contracts. In addition, an 18 month nearby shall be added for June.

For Natural Gas options, in addition to the twelve consecutive contract months, the Exchange shall list for trading contract months for the last month in a calendar-year quarter (March, June, September and December) for the eight calendar-year quarters immediately following the twelve consecutive contract months.

XIII. Petitions

WHEREAS, petitions from the Exchange's Membership to the Board of Directors are an essential part of the communications flow between the Membership and the Board; and

WHEREAS, petitions signed by Members of the Exchange and submitted to the Board may form the basis for Board action on issues of importance to the Membership;

IT IS HEREBY RESOLVED that, in order to protect the integrity of the petition process and to ensure that petitions remain an effective means of communicating the views of the Membership, the following procedures shall be required to be followed on all petitions (other than nominating petitions for candidates for election to the Board of Directors and petitions submitted under Bylaw 202) before the Board will formally meet to consider the substance of a petition:

(1) Pre-solicitation filings

Any petition must be filed with the Office of the Secretary before circulation. The signature pages for the petition shall be provided by the Exchange on a standard form developed by the Exchange. The Exchange will post on the bulletin board a brief notice that a petition has been filed and a statement of the general subject matter of the petition and will make the petition available for review by any Member during business hours.

(2) Solicitation

(a) Signatures may be solicited at any location and at any time. The full membership need not be solicited for signatures. Anyone may choose to solicit signatures from any portion of the membership. The Exchange will make available a mailing list to anyone wishing to circulate a petition to the entire Membership;

(b) Members must be fully advised of what they are signing and subscribing to, including all materials to be presented to the Board (e.g., cover letters or enclosures with the petition).

(3) Filing and Board Consideration

(a) Once signatures have been obtained, the original petition, with original signatures, shall be filed with the Secretary of the Exchange;

(b) Unless circumstances require otherwise, following filing of the signed petition, there will be a one-week "waiting period", to allow Members an opportunity to reconsider their views on the petition, to withdraw their signatures and/or to solicit counter-petitions. Any member shall have the right to circulate, submit and propose an argument opposed to the petition or a counter-petition on the same subject.

(c) Unless the circumstances dictate that they be considered sooner, the Board will consider the matters raised in the petition at its next regularly scheduled meeting following the conclusion of the one-week "waiting period".

XIV. Compliance Department Staff Authorized to Issue Summary Fines

WHEREAS, the Exchange Rules 8.62 and 8.63 authorize the Compliance Department, acting as Agent of the Floor Committee, to issue assessments for violation of Exchange Clerk Registration rules;

IT IS HEREBY RESOLVED THAT, upon approval by the Commodity Futures Trading Commission ("CFTC"), the Senior Vice President of Regulatory Affairs and Operations, the Vice President of the Compliance Department, the Director of the Trade Practice Unit and Compliance Counsel be authorized to act as the official agents of the Floor Committee, if an assessment is issued by the Compliance Department for violations of Exchange Rules 8.62 and 8.63.

WHEREAS, the Exchange is awaiting the CFTC's approval of a summary fine provision to Exchange Rule 6.90:

~~Trade Card Procedures and that rule authorizes the Compliance Department to issue assessments for violations of Exchange Rule 6.90:~~

~~IT IS HEREBY RESOLVED THAT, upon approval by the CFTC of the summary fine provision to Exchange Rule 6.90, the Senior Vice President of Regulatory Affairs and Operations, the Vice President of the Compliance Department, the Director of the Trade Practice Unit and Compliance Counsel be authorized to issue summary fines for violations of Exchange Rule 6.90.~~

~~XV. Revised Schedule for Natural Gas Futures Contract Termination~~

~~WHEREAS, in December of 1992, the Exchange extended trading of the natural gas futures spot-month contract from 1:00 p.m. to 3:10 p.m. on the final day of business, the Executive Committee has resolved to extend the Exchange of Futures for Physicals activity in that spot-month contract until 5:10 p.m. on that final business day; and~~

~~WHEREAS, the Exchange has established the following schedule of deadlines for the submission of documents and information and attendance requirements relating to the clearing procedures that are part of the delivery mechanism.~~

~~Last Three Trading Days~~

~~8:00 a.m. Mandatory attendance for authorized representatives of Clearing Members and Floor Members involved in spot-month business
Last Trading Day~~

~~3:10 p.m. Trading terminates for all contracts; mandatory attendance for authorized representatives of Clearing Members and Floor Members until dismisses by the Exchange 5:10 p.m. Deadline for spot-month EFP submissions~~

~~5:15 p.m. Late Pit Cards~~

~~6:15 p.m. Deadline for submission of information on Paperless Transfer System, same day corrections and "As Of" trade submission for the terminated contract month~~

~~Day After Last Trading Day~~

~~8:00 a.m. Mandatory attendance for authorized representatives of Clearing Members and Floor Members involved in spot-month business~~

~~11:00 a.m. Deadline for next-day trade adjustments~~

~~11:30 a.m. Deadline for Notices of Intention to Accept and Notices of Intention to Deliver~~

~~1:00 p.m. Clearing will complete the match~~

~~2:00 p.m. Latest time Clearing will place tender allocation notices in Clearing Member boxes~~

~~WHEREAS, the Exchange believes that it is in the best interest of the Exchange and the marketplace to enforce the deadlines contained in the schedule for the purpose of maintaining a fair and orderly delivery process;~~

~~IT IS HEREBY RESOLVED, that the Vice President of the Clearing Department, or his designee, and the Senior Vice President of the Floor Operations Department, or his designee, are authorized to issue summary fines, in accordance with Exchange Rule 8.21(A), for a Clearing Member or Floor Member's failure to meet the deadlines contained in the schedule;~~

~~IT IS FURTHER RESOLVED, that such summary fines shall be paid within ten (10) days. Fines to Floor Members may be appealed as provided in Exchange Rule 8.21(B); Fines to Clearing Members may be appealed in accordance with the procedures established by the Clearing House Committee.~~

~~XVI. Resolution of the Board of Directors Permitting Delivery of Product with Alternative Specifications for the 1993 September No. 2 Heating Oil Contract~~

~~The Board of Directors, having considered the grade and quality specifications in effect for the September 1993 No.2 Heating Oil Contract (the "Contract") and having determined that the color specification for the Contract is or may be incompatible with the introduction of dye into the product pursuant to the Environmental Protection Agency's program~~

with respect to heating oil that takes effect October 1, 1993, and having further determined that this action is necessary to maintain the integrity of the Contract, hereby

RESOLVES to amend Rule 150.03 so as to permit delivery of product with the following alternative grade and quality specifications for the September 1993 Contract:

Rule 150.03 Grade and Quality Specifications

The oil shall be a hydrocarbon oil free from alkali, mineral acid, grit, fibrous or other foreign matter and shall meet the following physical and chemical properties:

(A) No. 2 Heating oil

- (1) Gravity: A.P.I. 30 degrees F minimum (A.S.T.M. Test Method D287)
- (2) Flash: 130 degrees F minimum (A.S.T.M. Test Method D93)
- (3) Viscosity: Kinematic, Centistokes at 100 degrees F, minimum 2.0, maximum 3.6 (A.S.T.M. Test Method D445)
- (4) Water and Sediment: .05% maximum (A.S.T.M. Test Method D1796 or D2709)
- (5) Pour Point: 0 degrees F maximum for contract months September through March; 10 degrees maximum for contract months April through August. (A.S.T.M. Test Method D97)
- (6) Distillation: 10% Point 480 degrees F maximum; 90% Point, 640 degrees F maximum, End Point 690 degrees F maximum (A.S.T.M. Test Method D86)
- (7) Sulfur: 0.20% maximum (A.S.T.M. Test Method D129, D1552, D1266, D2622 or D4294)
- (8) Cloud Point: 15 degrees F maximum for contract months September through March; 20 degrees maximum for contract months April through August. (A.S.T.M. Test Method D2500).

(B) In addition to the grade and quality specifications listed in paragraph (A), heating oil that has not been dyed shall meet the color specification listed in subparagraph (B)(1) and heating oil that has been dyed pursuant to the Environmental Protection Agency's program with respect to heating oil that takes effect October 1, 1993 shall either meet the color specification listed in subparagraph (B)(1) or the stability, haze, carbon residue, ash weight and corrosion requirements listed in subparagraphs (B)(2), (3), (4), (5) and (6). The determination of whether dyed or undyed product is to be delivered shall be at the Seller's sole discretion.

- (1) Color: maximum 2.5 (A.S.T.M. Test Method D1500)
- (2) Stability:
 - (i) Thermal Stability: 90 minutes 300 degrees F Pad rating, 7 maximum (DuPoint Test Method); or
 - (ii) Oxidation Stability: mg/100ml, 2.5 maximum (A.S.T.M. Test Method D2274)
- (3) Haze Rating: 25 degrees C (77 degrees F), Procedure 2, 2 maximum (A.S.T.M. Test Method D4176)
- (4) Carbon Residue: Ramsbottom on 10% Bottom, 0.35 maximum (A.S.T.M. Test Method D524)
- (5) Ash: 0.01 maximum (A.S.T.M. Test Method D482)
- (6) Corrosion: 3 hours 50 degrees C (122 degrees F), 1 maximum (A.S.T.M. Test Method D130).

(C)

(1) A.S.T.M. refers to the American Society for Testing Materials.

(2) A.P.I. refers to the American Petroleum Institute.

(3) Dupont refers to Petroleum Chemicals Division, E.I. DuPont de Nemours & Company (Inc.); Petroleum Laboratory Test Methods.

XVII. Resolution to Prohibit Harassment Pursuant to NYMEX Rule 6.60

WHEREAS, the Exchange seeks to hold itself to the highest moral standards; and

WHEREAS, the Exchange is committed to providing a work environment free of any form of harassment, whether pertaining to matters of race, color, religion, national origin, age, sex or disability;

IT IS THEREFORE RESOLVED, that no Member, employee of a member, nor any other person within the jurisdiction of the Exchange shall engage in any form of harassment against another person, such as a Member, employee of a Member, Exchange employee or CEC employee. Harassment may take the form of verbal or non-verbal conduct, including abusive language or gestures, unwelcome physical contact, or the display of inappropriate reading material or objects, which results in a hostile, offensive, or intimidating work environment; interferes with work performance; or otherwise adversely affects employment at the Exchange.

IT IS FURTHER RESOLVED, that the Exchange will treat any act of harassment as an offense under Exchange Rule 6.60.

XVIII. Resolution of the Board of Directors Concerning the Oxygen Standard in the New York Harbor Unleaded Gasoline Contract

The Board of Directors resolves that, if EPA announces a change in the minimum oxygen standard from 1.7% to 1.8% in 1999 for Reformulated Gasoline, pursuant to Exchange Rule 190.03, such a change would be applicable to all deliveries against the New York Harbor Unleaded Gasoline Futures Contract beginning in the month that EPA first makes such change effective at the downstream level.

XIX. Resolution of the Executive Committee of the Board of Directors Regarding Price Fluctuation Limits for Exchange Contracts

The Executive Committee of the Board of Directors hereby

Resolves that, until further notice, the price fluctuation limit rules for each futures contract that is listed for trading on NYMEX ACCESS@ and that has such applicable rules shall continue in effect except as amended below with regard to market activity occurring on NYMEX ACCESS@:

The initial and subsequent price fluctuation limits (for each Exchange futures contract that has such limits) shall be expanded to 200% of the initial and subsequent price fluctuation limits applicable to the first two contract months of that futures contract that have price limits under the applicable rule.

This expanded limit (200% of the limits for the first two months with limits) shall be applicable to all contract months for that futures contract.

In the event that such a price fluctuation limit is reached by a bona fide bid at the high price fluctuation limit or a bona fide offer at the low price fluctuation limit, trading on NYMEX ACCESS@ shall be halted immediately except as directed otherwise by the President or the President's designee. Following resumption of trading, the price limits in effect shall be 200% of the limits applicable to RTH trading. In the event that a limit is touched during the last 90 minutes of a NYMEX ACCESS@ session, the market shall be halted briefly, and price limits shall be expanded thereafter.

In addition, in the event that a contract trading on NYMEX ACCESS@ traded for five minutes during the NYMEX ACCESS@ session at a price fluctuation limit applicable to the Regular Trading Hours session, then the RTH session shall open with expanded price fluctuation limits as provided under the applicable rule, even though no temporary cessation of trading occurred during the NYMEX ACCESS@ trading session.

~~XX. Procedures for the Nomination and Election of Members of the Board of Directors of NYMEX Holdings, Inc.~~

~~A subcommittee of the NYMEX Division Membership Panel (as defined in the Rules) of New York Mercantile Exchange, Inc. ("NYMEX Exchange") comprised of those members of the Panel that have been stockholders and lessees of Class A memberships of NYMEX Exchange for at least one year prior to the meeting referred to in paragraph (1) below (the "Membership Subcommittee") shall also have jurisdiction over the categorization of persons for nomination for election to the Board of Directors of the Corporation. In that regard, the Membership Subcommittee shall implement the following procedures:~~

~~(1) The Membership Subcommittee shall invite from the stockholders, at an open meeting to be held not later than seven (7) weeks prior to the annual meeting of stockholders, recommendations of proposed nominees. Recommendations may be made either by the proposed nominees themselves (if such person is a stockholder) or any other stockholder including members of the Membership Subcommittee. Recommendations must state whether a proposed nominee is being recommended for the position of Director, Chairman of the Board or Vice Chairman. A stockholder may only recommend one proposed nominee for each such position, except that a stockholder may recommend one proposed nominee for each Director category as set forth in Article VI of the Certificate of Incorporation of the Corporation. Stockholders may appear before the Membership Subcommittee to present such recommendations. The Membership Subcommittee shall also consider the recommendations of stockholders submitted to it in writing at or before this meeting.~~

~~(2) On the morning after the open meeting of the Membership Subcommittee, the Membership Subcommittee shall post on the bulletin board of NYMEX a list of all persons who were recommended as proposed nominees. The list shall include the position, and in the case of a proposed nominee for Director, the category, as set forth in Article VI of the Certificate of Incorporation of the Corporation, for which each proposed nominee has been recommended.~~

~~(3) Not later than three (3) days after the open meeting of the Membership Subcommittee, stockholders may submit in writing to the Membership Subcommittee additional recommendations of proposed nominees. All such recommendations must include the position, and in the case of a proposed nominee for Director, the category, as set forth in Article VI of the Certificate of Incorporation of the Corporation, for which the proposed nominee is being recommended.~~

~~(4) On the morning after the three-day period that is set forth in paragraph (3) of this Resolution, the Membership Subcommittee shall post on the bulletin board of NYMEX a list of all persons who were recommended as proposed nominees in accordance with paragraphs (1) and (3) of this Resolution. The list shall include the position, and in the case of a proposed nominee for Director, the category, as set forth in Article VI of the Certificate of Incorporation of the Corporation, for which each proposed nominee has been recommended. No person whose name is not included on this list will be permitted to stand for election to the positions of Director, Chairman of the Board or Vice Chairman at the annual meeting of stockholders.~~

~~(5) Not later than five (5) weeks prior to the annual meeting of stockholders, the Membership Subcommittee shall determine whether each person who has been recommended as a proposed nominee is eligible for the position or positions for which he was recommended. It shall assign the proposed nominee to his proper category or categories, as set forth in Article VI of the Certificate of Incorporation of the Corporation, regardless of the category or categories for which he was recommended. The Membership Subcommittee shall hold such meetings and consider such information as it deems appropriate; provided, however, that any stockholder or lessee of Class A memberships having information concerning the eligibility of a proposed nominee may present such to the Membership Subcommittee for its consideration no later than one week after the closing of the period for recommending proposed nominees that is set forth in paragraph (3) of this Resolution; and, provided further, that any proposed nominees for Director as to whom the Membership Subcommittee is considering changing the category shall be notified of such in writing and shall have the right to appeal before the Membership Subcommittee. The Membership Subcommittee shall immediately notify the stockholders of the position or positions and/or category or categories for which each proposed nominee is eligible to be nominated.~~

~~(6) Nominations:~~

~~(a) Only those persons who were recommended as proposed nominees for election to the positions of Chairman or Vice Chairman of the Board pursuant to paragraphs (1) or (3) of this Resolution shall be eligible to be nominated for election to these positions.~~

~~(b) Persons who were recommended as proposed nominees for election to the positions of Director, Chairman of the Board or Vice Chairman pursuant to paragraphs (1) or (3) of this Resolution shall be eligible to be nominated for~~

election to a Director position, and then, in only one of the categories of Director service to which they were assigned by the Membership Subcommittee pursuant to paragraph (5) of this Resolution.

(c) Notwithstanding the determination of the Membership Subcommittee as to the category to which a proposed nominee is eligible to be nominated, any person who has been recommended as a proposed nominee or submitted his name as such in accordance with paragraphs (1) or (3) of this Resolution and who falls within the Director categories set forth in Article VI(d)(i)-(v) of the Certificate of Incorporation of the Corporation, shall be eligible to be nominated as a Director in the At Large category that is set forth in the Certificate of Incorporation of the Corporation. No person eligible to be nominated in the Equity Holder category or the Public Director category shall be eligible to be nominated in the At Large category.

(d) Not later than four (4) weeks prior to the annual meeting of the stockholders, a person eligible to be nominated pursuant to this Resolution must file with the Office of the Secretary of the Exchange a nomination declaration which states that category in which the person intends to stand for election. Failure to submit a nomination declaration within this time frame will render the proposed nominee ineligible to run in any category.

(7) No person may serve on the Membership Subcommittee beyond the date referred to in paragraph (3) of this Resolution, if such person's name is recommended as a proposed nominee for election. In the event that the names of both the Chairman and Vice Chairman of the Membership Subcommittee have been recommended as proposed nominees for election, the Subcommittee shall choose from the members of the Subcommittee its own acting Chairman to manage the process contemplated by this Resolution.

(8) The ballot for the annual election shall list alphabetically candidates in each category, noting incumbency, where appropriate.

XXII. Resolution of the Board of Directors to Confer Additional Trading Privileges to COMEX Members for Platinum, Palladium and Propane

RESOLVED that the COMEX Division Members (owners and those members who hold a membership pursuant to an A-B-C Agreement) shall be conferred the privilege to trade Platinum Futures, Palladium Futures, Liquefied Propane Gas Futures and Platinum Options for customers in the Platinum ring by open-outcry; and

IT IS FURTHER RESOLVED that this trading privilege is revocable upon 90 days notice by further act of the Board of Directors in its sole discretion.

XXIII. Resolution of the Board of Directors of the New York Mercantile Exchange, Inc. Regarding the Trading of Liquefied Propane Gas Futures

RESOLVED that the trading of Liquefied Propane Gas Futures shall continue in the Platinum Ring and that COMEX Members trading privileges that permit proprietary trading of the Liquefied Propane Gas Futures by open-outcry in the Platinum Ring and on NYMEX ACCESS® shall continue until such time that these trading privileges are revoked by the Board of Directors, and

IT IS FURTHER RESOLVED that these trading privileges are revocable at any time by further act of the Board of Directors in its sole discretion.

XXIV. Representation by Committee Members of Parties to Arbitration

As arbitrators on the New York Mercantile Exchange, each of us may be asked to serve on a panel to resolve one of a variety of disputes that may arise between members. Additionally, these disputes may involve public customers as well. Arbitrations can involve large sums of money, and potentially can have an adverse effect on the reputations of your fellow members. Much is at stake from the point of view of the parties to each arbitration.

In light of the importance of the arbitration process, and to preserve fairness, and the appearance of fairness, it shall be the policy of the Arbitration Committee that a non-sitting Committee Member may not represent a party to an arbitration in any capacity.

Of course, this new policy does not affect the ability of a member of this Committee to be a witness or party to a proceeding, but merely prohibits the representation of others by a Committee

~~XXIV. Resolution of the Executive Committee of the Board of Directors Regarding Liquidation of Futures Contract Listed Only for Clearing at the Exchange~~

~~The Executive Committee of the Board of Directors hereby~~

~~RESOLVES that,~~

~~In connection with any Class A Member carrying an account(s) with open positions in a futures contract(s) listed only for clearing at the Exchange, when necessary the Executive Committee, acting pursuant to its powers and authority under Article 8 of the Exchange's Bylaws, may suspend such Member or take any other action that it deems appropriate to protect the Exchange and its Class A Members.~~

~~And RESOLVES further that,~~

~~With respect to the liquidation of open positions in a futures contract listed only for clearing at the Exchange, the Executive Committee may take any action that it deems to be necessary and appropriate to accomplish such liquidation.~~

~~Such action may include, but is not limited to, the appointment of one or more Exchange designees who shall be assigned responsibility for entering into any type of transaction deemed necessary, including those not executed on the Exchange to offset the open positions.~~

~~For each such designee, the Executive Committee shall determine the degree of discretion granted to such designee, including with respect to price and the time frame for orderly liquidation of the open positions.~~

~~XXV. Resolution of the Board of Directors to establish and maintain a permanent Retail Customer Protection Mechanism~~

~~The Board of Directors, upon consideration of a pending CFTC Order, hereby:~~

~~RESOLVES, to establish and maintain a permanent retail customer protection mechanism supported by a commitment of not less than \$10 million which shall be available at all times to promptly reimburse retail customers trading on NYMEX whose original margin funds are lost in the unlikely result of a default by another customer of the same FCM in any contract cleared by NYMEX and where such customer default of a NYMEX contract results in a default of that FCM clearing member to NYMEX and where NYMEX uses customer margin funds of that FCM clearing member to address the default. For the purposes of this resolution and said CFTC order, the term "Retail Customer" shall be defined to include all natural persons who do not otherwise qualify as an "eligible contract participant" under the requirements of Section 1a(12) of the Commodity Exchange Act, provided however, that such definition of Retail Customer shall not include any NYMEX floor traders or floor brokers and additionally shall not include family members of NYMEX floor traders and floor brokers who maintain accounts at the same FCM where such NYMEX floor trader or floor broker maintains an account.~~

~~RESOLVES FURTHER, that in the event of a FCM default to NYMEX caused by a customer default as described above where the total loss of all Retail Customers at such FCM from such default exceeds the amount of the Exchange's then current commitment, authorizes Exchange staff to compensate such Retail Customers on a pro rata basis.~~

~~RESOLVES FURTHER, that this resolution shall become effective as of the effective date of the order from the Commodity Futures Trading Commission.~~

Change History

- ~~I. Resolution of the Membership Committee Delegating Authority Under Rule 2.34 to Vice President for Membership: (Approved: 09/03/86)~~
- ~~II. Resolution of the Board of Directors to Permit Exchange of Futures for Physicals Transactions ("EFP") Which Establish Futures Positions for Both EFP Participants: (Approved: 02/02/87)~~
- ~~III. Resolution of the Board of Directors Suspending the Provisions of Exchange Rules Which Permit the Use of Not At-Risk (Class II) Membership Leases: (Approved: 01/02/87)~~
- ~~IV. Exchange of Futures for, or in Connection with, Product: (Approved: 04/01/87)~~
- ~~V. Resolution of Board to Impose 60 Day Moratorium on Consideration of Applications for Membership in Which Applicant Intends to Satisfy Applicable Financial Requirements Solely with Class I Membership: (Approved: 04/06/87)~~

~~VI. Resolution of Board of Directors with Respect to Adjudication and Arbitration Panel Members: (Approved: 04/01/87)~~
~~VII. Resolution Regarding Establishment of July 10, 1987 as Expiration Date of August 1987 Crude Oil Options Contract: (Approved: 05/14/87)~~
~~IX. Resolution of the Board of Directors Establishing Sanctions Procedure in the Event a Member Fails to Submit Transfer Forms: (Approved: 04/20/87; Amended: 06/01/90, 11/13/97)~~
~~X. Member Firm Qualifications: (Approved: 07/31/88)~~
~~XI. Board Resolution on Matching Procedures for Crude Oil: (Approved: 02/22/90)~~
~~XII. Resolution of the Board of Directors for Delivery Mos. NYMEX Energy Futures Options Contracts and for Added Delivery Mos. for Light Sweet Crude Oil & Natural Gas Futures Options Contracts: (Approved: 03/12/90; Amended: 02/24/94, 11/22/94, 03/25/97)~~
~~XIII. Petitions: (Approved: 03/28/90)~~
~~XIV. Compliance Department Staff Authorized to Issue Summary Fines: (Approved: 05/10/91)~~
~~XV. Revised Schedule for Natural Gas Futures Contract Termination: (Amended: 06/23/93)~~
~~XVII. Resolution to Prohibit Harassment Pursuant to NYMEX Rule 6.60: (Adopted: 10/20/95)~~
~~XVIII. Resolution of the Board of Directors Concerning the Oxygen Standard in the New York Harbor Unleaded Gasoline Contract: (Amended: 03/30/98, 08/01/99)~~
~~XIX. Resolution of the Executive Committee of the Board of Directors Regarding Price Fluctuation Limits for Exchange Contracts: (Adopted: 10/08/00)~~
~~XX. Procedures for the Nomination and Election of Members of the Board of Directors of NYMEX Holdings, Inc.: (Adopted 11/17/2000; Amended 03/23/2001, 01/30/2004)~~
~~XXI. Resolution of the Board of Directors to Confer Additional Trading Privileges to COMEX Members for Platinum, Palladium and Propane: (Adepted: 02/21/01)~~
~~XXII. Resolution of the Board of Directors of the New York Mercantile Exchange, Inc. Regarding the Trading of Liquefied Propane Gas Futures: (Adopted: 02/21/01)~~
~~XXIII. Representation by Committee Members of Parties to Arbitration: (Approved: 02/20/88)~~

PRE-MERGER AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF NEW YORK MERCANTILE EXCHANGE, INC.

The pre-merger Amended and Restated Certificate of Incorporation of New York Mercantile Exchange, Inc. is being deleted and replaced by the Second Amended and Restated Certificate of Incorporation of New York Mercantile Exchange, Inc. as set forth below.

SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF NEW YORK MERCANTILE EXCHANGE, INC.

**SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
NEW YORK MERCANTILE EXCHANGE, INC.**

New York Mercantile Exchange, Inc. (hereinafter referred to as the "Corporation"), which was originally incorporated in the State of Delaware on May 11, 2000, hereby certifies that this Second Amended and Restated Certificate of Incorporation was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware. This Second Amended and Restated Certificate of Incorporation amends, restates and integrates the provisions of the Corporation's amended and restated certificate of incorporation as hereby amended. The text of the amended and restated certificate of incorporation as heretofore amended is hereby restated to read in its entirety as follows:

**ARTICLE I
NAME**

The name of the corporation is New York Mercantile Exchange, Inc.

ARTICLE II
REGISTERED AGENT

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of the registered agent of the Corporation at such address is The Corporation Trust Company.

ARTICLE III
CORPORATE PURPOSES

The nature of the business or purposes to be conducted or promoted by the Corporation are to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law (as amended from time to time, the "DGCL").

ARTICLE IV
MEMBERSHIP

A. General.

The Corporation shall have no authority to issue capital stock. The terms and conditions of membership in the Corporation shall be as provided in or pursuant to this Certificate of Incorporation, the Bylaws of the Corporation (the "Bylaws") and the Rules and Regulations of the Corporation as in effect from time to time (the "Rules").

B. Classes and Series of Membership.

The membership interests that the Corporation shall have authority to issue shall consist of not more than 816 Class A Memberships (the "Class A Memberships" and the owners thereof, the "Class A Members") and one Class B Membership (the "Class B Membership" and the owner thereof, the "Class B Member"). The terms, conditions, preferences and rights of the Class A Memberships and the Class B Membership shall be as set forth in this Certificate of Incorporation, the Bylaws and the Rules. The Class A Members shall not have the right to vote on any matter, except as and to the extent provided in Article IX of this Certificate of Incorporation. The Class A Members shall have no interest in the profits of the Corporation and shall have no right to receive any dividend or other distribution (including upon liquidation, dissolution, winding-up or otherwise) to be declared, paid or distributed by the Corporation or the right to receive any consideration upon the merger or consolidation of the Corporation, which rights shall be vested solely in the Class B Member. Except to the extent (if any) required by law and Article IX of this Certificate of Incorporation, the Class B Member shall have the exclusive right to vote on any matter to be voted on by the members of the Corporation. The Class B Member shall have the exclusive right to receive any dividend or other distribution (including upon liquidation, dissolution, winding-up or otherwise) to be declared, paid or distributed by the Corporation or any consideration upon the merger or consolidation of the Corporation. The Class B Membership initially shall be held by CMEG NYMEX Holdings Inc., a Delaware corporation. The Board of Directors of the Corporation shall have the authority to create additional classes of memberships with such rights and limitations as the Board of Directors determines. Each Class A Member shall be entitled to one vote for each Class A Membership on any matter on which such Class A Member is entitled to vote. Each Class B Member shall have one vote on any matter on which such Class B Member is entitled to vote.

C. Class A Member Trading Rights.

Holders of Class A Memberships who meet the applicable membership and eligibility requirements set forth in this Certificate of Incorporation, the Bylaws and the Rules shall have (i) the rights to trade on the open outcry and electronic facilities of the Corporation (and owners thereof shall have the right to lease such rights) in each case in compliance with this Certificate of Incorporation, the Bylaws and the Rules and (ii) the other rights set forth in this Section (C) of this Article IV of this Certificate of Incorporation.

1. Classes of Memberships.

The Corporation shall not increase the number of Class A Memberships to a number greater than 816. The Corporation shall not create any new class of memberships in the Corporation with any rights to trade or to broker trades of any futures and options products that were traded on the Corporation's open outcry trading system as of July 18, 2008, on the open outcry facility of the Corporation.

2. Clearing Members.

In addition to any Rules or other qualifications set forth by the Corporation, a Member Firm, as so designated pursuant to the Rules, shall hold not fewer than two (2) Class A Memberships in order to qualify (a) as a Clearing Member, as such term is defined in the Rules, and (b) for member rates.

3. Transaction Fees.

The transaction fee for Class A Members trading futures and options products that were traded on the Corporation's open outcry trading system and/or electronic trading system as of July 18, 2008 for their accounts, whether utilizing the open outcry trading system or the electronic trading system, shall be lower than the transaction fees charged to any participant who is not a holder of a Class A Membership for the same product; provided, however, that the foregoing shall not prohibit the Board of Directors of the Corporation from establishing transaction fees on a non-permanent basis in connection with a market maker program or other programs designed to build market liquidity. This fee differential shall be maintained for so long as either Chicago Mercantile Exchange Inc. or Board of Trade of the City of Chicago, Inc. maintains a comparable fee differential.

Each Member Firm, as so designated pursuant to the Rules, shall receive member rates on trades for any account wholly-owned by such Member Firm independent of the identity of the individual that executes the relevant trade.

Each Individual Member, as so designated pursuant to the Rules, shall receive member rates for trades on any account wholly owned by such Individual Member, or any account jointly owned if all owners of such account are holders of Class A Memberships; provided that a holder of a Class A Membership executes the relevant trade. Additionally, for each Class A Membership owned or leased by an Individual Member, such member shall receive member rates for products traded electronically in such account for no more than three (3) individuals (in addition to the owner) to whom such owner or for no more than one (1) individual (in addition to the lessee) to whom such lessee assigns power of attorney rights pursuant to the Rules.

4. Open Outcry Facility.

The Corporation shall maintain facilities for an open outcry market for the trading (the "Trading Floor") of futures and options contracts traded on the Trading Floor as of July 18, 2008 (the "Current Products") until December 31, 2012. Following December 31, 2012, at any time following the end of the first full fiscal quarter as to which the Trading Floor does not satisfy the financial tests set forth below for such quarter (the "Quarterly Financial Tests"), the Corporation shall have the right to close the Trading Floor. Prior to closing the Trading Floor, the Corporation shall have the right to close any individual trading ring and terminate open outcry trading of any Current Products traded in such trading ring, if the Trading Floor would have satisfied the Quarterly Financial Tests for the immediately preceding fiscal quarter, on a pro forma basis, assuming that such trading ring was closed as of the first day of the testing period. The Corporation shall measure the Quarterly Financial Tests within sixty (60) days following each full fiscal quarter. The Corporation shall give the Class A Members at least thirty (30) days' notice of the closing of the Trading Floor or any trading ring.

In the event that the Trading Floor does not satisfy both of the tests set forth below at the end of any fiscal quarter, it will be deemed to have failed the Quarterly Financial Tests for that fiscal quarter.

(a) Revenue

The Revenue from the Trading Floor generated during the fiscal quarter for which the financial test is being measured and the immediately preceding quarter must exceed 50% of the Revenue from the Trading Floor for fiscal 2007 divided by two (2).

(b) Profitability

The Trading Floor After-Tax Profit Margin for the fiscal quarter for which the financial test is being measured and the immediately preceding quarter must equal or exceed 50% of the CME Group Inc. After-Tax Profit Margin for that same period.

For purposes of this calculation:

"Revenue from the Trading Floor" means the transaction fees, clearing fees (if separately charged), and other direct ancillary fees (e.g. booth rental) generated from open outcry trading on the Trading Floor.

"Trading Floor Expenses" means the direct expenses incurred to operate the Trading Floor, including but not limited to facility costs including rent (or implied rent), utilities, taxes, security, insurance.

telecommunications costs, amenities; trading expenses including market surveillance for Trading Floor trades, license fees, market maker fees, data vendor fees, and all computer software and hardware costs (including maintenance fees); depreciation on capital expenditures at the Trading Floor; staff and direct management of the staff for the Trading Floor; and all applicable city, state and federal taxes associated with the income or revenue generated from the Trading Floor.

“Trading Floor After-Tax Profit Margin” means the percentage derived by dividing (1) Revenue from the Trading Floor net of Trading Floor Expenses by (2) Revenue from the Trading Floor for the applicable period.

“CME Group Inc. After-Tax Profit Margin” means the percentage derived by (1) multiplying (x) CME Group Inc.’s consolidated operating income for the applicable period by (y) the difference between 1 (one) and CME Group Inc.’s effective corporate tax rate and (2) dividing that amount by CME Group Inc.’s consolidated total revenues for the applicable period. The amounts shall be obtained or derived from the financial statements included in the applicable quarterly or annual reports filed by CME Group Inc. with the Securities and Exchange Commission.

The Trading Floor shall be the exclusive venue for the open outcry trading for Current Products for so long as such products are traded on the Trading Floor. The Corporation is under no obligation to provide a backup or alternative facility for open outcry trading if the Trading Floor is rendered inoperable for any reason. In the event that the Trading Floor is rendered inoperable for any reason, the electronic trading platform, if any, on which any Current Product then is traded shall serve as the venue for trading such Current Product.

5. Moratorium on the Relocation of Current Products.

In the event that open outcry trading of any Current Product is terminated subject to Section (C)(4) of this Article IV, the Corporation will not, nor will it cause any subsidiary to, commence open outcry trading of such Current Product in the City of Chicago for a period of 540 days following such closure (the “540-Day Moratorium”). Notwithstanding the foregoing, open outcry trading of a Current Product may commence in the City of Chicago during the 540-Day Moratorium if the Board of Directors of the Corporation approves such action and within fifteen (15) days after given written notice of such action in reasonable detail to the holders of Class A Memberships and

(1) the owners of Class A Memberships entitled to cast 10% of the total number of votes entitled to be cast at a special meeting to approve the removal of the 540-Day Moratorium for such Current Product do not make written demand for a special meeting that complies with the requirements set forth below; or

(2) the owners of Class A Memberships entitled to cast 10% of the total number of votes entitled to be cast at a special meeting do make written demand for a special meeting that complies with the applicable requirements listed below and at such special meeting a majority of the voting power of the outstanding Class A Memberships approves the removal of such 540-Day Moratorium.

Any notice sent by the Corporation to Class A Members in connection with a special meeting under this Section (C)(5) of this Article IV shall be accompanied by a response form through which a Class A Member may request a special meeting and the 10% threshold shall be deemed met if such forms, by themselves or collectively with one or more other written demands or petitions (which may be delivered by fax or electronically to the Secretary of the Corporation), reflect that the owners of at least 10% of the Class A Memberships are requesting a special meeting to vote on the approval of the commencement of open outcry trading in the City of Chicago of a Current Product subject to the 540-Day Moratorium. Within three (3) business days after any Class A Member so requests such a special meeting, the Secretary of the Corporation shall confirm (by fax or electronically, in addition to regular mail), to each Class A Member submitting a response form, written demand or petition, receipt of such Class A Member’s request and whether the 10% threshold has, or has not, at that time been met. The written demand may also specify the date of such special meeting (in which case such meeting date shall be a business day which is not less than thirty (30) nor more than sixty (60) days from the date of such written demand).

6. Location of Open Outcry Trading Facility.

The Corporation shall maintain the Trading Floor at its existing location for so long as the Occupancy Agreement, dated as of May 18, 1995, among The City of New York, New York State Urban Development Corporation, New York City Economic Development Corporation, Battery Park City Authority and the Corporation, including its wholly-owned subsidiary, Commodity Exchange, Inc., remains in effect, and thereafter, at another location in the Borough of Manhattan.

ARTICLE V
MANAGEMENT OF AFFAIRS

The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and members:

A. *General.*

In accordance with Sections 141(a) and 141(j) of the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors of the Corporation; such power to include, without limitation, to (i) adopt, from time to time, Rules relating to criteria for eligibility for membership and procedures for becoming a member and any requirements or procedures for the acquisition or transfer of a membership as it may determine; and (ii) establish the Rules applicable to Class A Members, including, without limitation, relating to fees, financial standards and obligations for dues, assessments and fines, subject in each case to Section (C) of Article IV of this Certificate of Incorporation. In addition to the powers and authority expressly conferred upon them by statute or by this Certificate of Incorporation or the Bylaws, the directors are hereby empowered to exercise all powers and do all acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Certificate of Incorporation and any Bylaws; provided, however, that no Bylaws hereafter adopted by the Class B Member shall invalidate any prior act of the directors which would have been valid if such Bylaws had not been adopted.

B. *Action by Written Consent.*

The Class A Members shall not have the right to take action by written consent in lieu of a meeting and shall have no right to initiate any proposal, at or for any meeting of members.

The Class B Member shall have the right to effect by consent in writing any action which would require the approval of the Class B Member at a duly called annual or special meeting of the Class B Member.

ARTICLE VI
BOARD OF DIRECTORS

The number of directors of the Corporation shall be as from time to time fixed by, the Board of Directors of the Corporation. Election of directors need not be by written ballot unless the Bylaws so provide.

ARTICLE VII
AMENDMENT OF BYLAWS AND RULES

The Board of Directors of the Corporation is expressly empowered to adopt, amend or repeal the Bylaws. The Class B Member shall also have power to adopt, amend or repeal the Bylaws. The only member of the Corporation with any power to adopt, amend or repeal the Bylaws shall be the Class B Member, and no other member of, or class or series of membership in, the Corporation shall have any such power. No member of, or class or series of membership in, the Corporation shall have any power to adopt, amend or repeal the Rules.

ARTICLE VIII
LIMITATION OF LIABILITY; INDEMNIFICATION

No director shall be personally liable to the Corporation or any of its members for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its members, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit. Any repeal or modification of this Article VIII of this Certificate of

Incorporation by the Class B Member shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

The Corporation shall indemnify its directors to the fullest extent authorized or permitted by law, as now or hereafter in effect, and such right to indemnification shall continue as to a person who has ceased to be a director of the Corporation and shall inure to the benefit of his or her heirs, executors and personal and legal representatives; provided, however, that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any director (or his or her heirs, executors or personal or legal representatives) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors. The right to indemnification conferred by this Article VIII of this Certificate of Incorporation shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition.

The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to officers, employees and agents of the Corporation similar to those conferred in this Article VIII of this Certificate of Incorporation to directors of the Corporation.

The rights to indemnification and to the advancement of expenses conferred in this Article VIII of this Certificate of Incorporation shall not be exclusive of any other right which any person may have or hereafter acquire under this Certificate of Incorporation, the Bylaws of the Corporation, any statute, agreement, vote of the Class B Member or disinterested directors or otherwise.

Any repeal or modification of this Article VIII of this Certificate of Incorporation by the Class B Member shall not adversely affect any rights to indemnification and to the advancement of expenses of a director or officer of the Corporation existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

Except for the rights expressly provided in Section (C) of Article IV of this Certificate of Incorporation and as otherwise provided under Delaware law, the Board of Directors of the Corporation will have full and absolute discretion to manage the business and affairs of the Corporation and shall have the sole and absolute right, without any duty to any Class A Member, to set and establish the rules and regulations that govern the trading and operations of the Corporation and any of its subsidiaries.

ARTICLE IX

AMENDMENT OF CERTIFICATE OF INCORPORATION

The Corporation reserves the right to amend, modify or repeal any provision contained in this Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware, and all rights conferred upon the members of the Corporation are granted subject to this reservation. Any amendment of, or modification or repeal of any provision contained in Section (C) of Article IV of this Certificate of Incorporation or this sentence of this Article IX of this Certificate of Incorporation shall require, first, the approval of the Board of Directors of the Corporation and second, the approval of a majority of the votes cast by the Class A Members. Except as provided in the immediately preceding sentence, any amendment of, or modification or repeal of any provision contained in, this Certificate of Incorporation shall require, first, the approval of the Board of Directors of the Corporation and, second, the approval of the Class B Member and no other member or series or class of membership shall have the right to vote on any such amendment or repeal.