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August 26, 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 #08.75:  
Notification of New NYMEX Chapter 7A, Metals Rules for Electronic  
Warrants.**

Dear Mr. Stawick:

The New York Mercantile Exchange, Inc. ("NYMEX" or "Exchange") is notifying the Commodity Futures Trading Commission ("CFTC" or "Commission") that it is self-certifying the new Chapter 7A. On August 28, 2008, NYMEX will launch the initial paperless phase of its Electronic Delivery System ("EDS") beginning with the delivery of Palladium (PA) contracts only for the September 2008 delivery period. This new Chapter 7A codifies procedures associated with the EDS system, and also provides new Rules for the Exchange's metals.

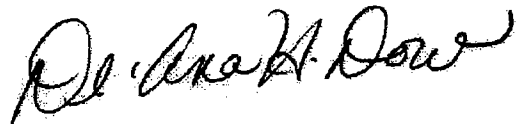
Beginning on August 28, 2008 the Exchange intends to have both this new Chapter 7A and the current Chapter 7 exist as part of the rulebook. The conversion process to electronic warrants will be on a commodity specific basis beginning with Palladium. Coinciding with the conversion for each specific commodity, the Exchange will certify updated contract specifications and have them fall under the rules of Chapter 7A. Once all of the metals have been converted, the Exchange intends to delete the current Chapter 7, thus leaving only this new Chapter 7A to govern the metals contracts.

The Exchange has been working on this process with the Licensed Facilities since around June, 2008. All of the Licensed Facilities have been active in the conversion process, and are planning on using the EDS system. Currently, the Exchange does not have any concerns regarding a Licensed Facility not accepting the new system.

Pursuant to Section 5c(c) of the Commodity Exchange Act ("Act") and CFTC Rule 40.6, the Exchange hereby certifies that the attached rule amendments comply with the Act, including regulations under the Act. These changes will be made effective on August 28, 2008.

Should you have any questions concerning the above, please contact Brian Regan, Senior Vice President and Counsel, 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 written in a cursive, flowing style.

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

Attachments:

## CHAPTER 7A: METALS RULES FOR ELECTRONIC WARRANTS

- 7A.00 Scope
- 7A.01 Definitions
- 7A.02 Designation and Obligation of Service Providers
- 7A.03 Storage of Commodities
- 7A.04 Warrants
- 7A.05 Termination of Trading
- 7A.06 Uniform Delivery Procedures
- 7A.07 Obligations in Delivery Dispute Resolution
- 7A.08 Enforcement of Warrant without Recourse
- 7A.09 Conformity with United States Standards

### METALS RULES

This chapter reflects the consolidation of NYMEX Division and COMEX Division metals rules and thus will be applicable to both Divisions. The Exchange will be making Chapter 7A applicable to individual futures contracts on a rolling basis pursuant to notice to be provided by the Exchange.

#### Rule 7A.00. SCOPE

The provisions of these rules shall apply to the storage within and delivery from a U.S. location, in fulfillment of the respective Exchange Futures Contracts of Aluminum, Copper, Gold, Platinum, Palladium and Silver.

#### Rule 7A.01. DEFINITIONS

For the purpose of this chapter, the following terms shall have the meanings stated below:

(a) “Aluminum” shall mean aluminum that meets the specifications for delivery in fulfillment of an Aluminum Futures Contract, as set forth in the Aluminum Futures Contract contained in Chapter 123 of the Exchange Rule Book.

(b) “Applicant” shall mean any Person seeking to be approved by the Exchange as a Service Provider with respect to one or more Commodities.

(c) “Approved Assayer” shall mean, with respect to a particular Commodity, an assayer approved by the Exchange for the verification of the metallurgical assay of such Commodity, as set forth in the rules for the applicable Commodity Futures Contract contained in the Exchange Rule Book.

(d) “Approved Brand” shall mean the specific Eligible Commodity product of an Approved Producer, or the unique brand mark of the Approved Producer’s specified facility that created such product for each specific contract.

(e) “Approved Carrier” shall mean an armored car company approved by the Exchange for the secure transportation of Gold, Platinum and Palladium.

- (f) “Approved Producer” shall mean, with respect to:
- (i) Aluminum, a Person approved by the Exchange, whose function is to produce Aluminum as an Approved Brand;
  - (ii) Copper, a Person approved by the Exchange, whose function is to refine Copper into an Approved Brand;
  - (iii) Platinum and Palladium, a Person approved by the Exchange, whose function is to refine, and verify the metallurgical assay of, the applicable Commodity as an Approved Brand and who is approved by the Exchange for the secure transportation of such refiner’s own Platinum and Palladium; and
  - (iv) Gold and Silver, a Person approved by the Exchange, whose function is to refine the applicable Commodity as an Approved Brand.
- (g) “Assay Certificate” shall have the meaning set forth in the rules for the applicable Commodity Futures Contract contained in the Exchange Rule Book.
- (h) “Buyer” shall mean the long Exchange Clearing Member under a Commodity Futures Contract.
- (i) “COMEX” shall mean the Commodity Exchange, Inc., a wholly owned subsidiary of the Exchange.
- (j) “Commodity” or “Commodities” shall mean Aluminum, Copper, Gold, Platinum, Palladium and Silver.
- (k) “Commission” shall mean the Commodity Futures Trading Commission.
- (l) “Contract” shall mean, with respect to a Commodity, such Commodity’s Exchange Futures Contract, as set forth in the applicable Chapter of the Exchange Rule Book.
- (m) “Contract Unit” shall mean the unit of weight for a Commodity as specified in such Commodity’s Contract.
- (n) “Conversion Date” shall mean the date that the Exchange delivery process is converted from a paper based system to an electronic delivery system. Product specific notice to members will be sent out as to the conversion dates for each respective contract.
- (o) “Copper” shall mean copper that meets the specifications for delivery in fulfillment of a Copper Futures Contract, as set forth in the Copper Futures Contract contained in Chapter 111 of the Exchange Rule Book.
- (p) “Electronic Documents” shall mean an electronic document that is a transferable record under Article 3 of the Uniform Commercial Code (“UCC”), and a document of title under Article 7 of the UCC.

(q) “Eligible” shall mean, with respect to any Commodity, that such Commodity is acceptable for delivery against the applicable Commodity Contract.

(r) “Futures Contract” shall mean, with respect to any Commodity, the futures contract contained in the relevant Chapter of the Exchange Rule Book applicable to such Commodity.

(s) “Gold” shall mean gold that meets the specifications for delivery in fulfillment of a Gold Futures Contract, as stated in the Gold Futures Contract contained in Chapter 113 of the Exchange Rule Book.

(t) “Licensed Depository” shall mean a facility approved and licensed by the Exchange for the secure storage of Gold, Silver, Palladium and/or Platinum.

(u) “Licensed Facility” shall mean a Licensed Warehouse or a Licensed Depository.

(v) “Licensed Warehouse” shall mean a facility approved and licensed by the Exchange for the secure storage of Aluminum and/or Copper.

(w) “Licensed Weighmaster” shall mean a weighmaster licensed by the Exchange, whose function is to verify the weight of Aluminum, Copper, Gold and/or Silver covered by a Warrant.

(x) “Tangible Net Worth” shall have the meaning as prescribed by U.S. GAAP.

(y) “Palladium” shall mean palladium that meets the specifications for delivery in fulfillment of a Palladium Futures Contract, as set forth in the Palladium Futures Contract contained in Chapter 100 of the Exchange Rule Book.

(z) “Person” shall mean an individual, partnership, limited partnership, corporation, limited liability company, unincorporated organization or association, trust or joint venture, or any other similar entity as the context reasonably permits.

(aa) “Platinum” shall mean platinum that meets the specifications for delivery in fulfillment of a Platinum Futures Contract, as stated in the Platinum Futures Contract contained in Chapter 90 of the Exchange Rule Book.

(bb) “Seller” shall mean the short Exchange Clearing Member under a Commodity Futures Contract.

(cc) “Service Provider” shall mean an Approved Assayer, Approved Carrier, Approved Producer, Licensed Depository, Licensed Warehouse and Licensed Weighmaster.

(dd) “Silver” shall mean silver that meets the specifications for delivery in fulfillment of a Silver Futures Contract, as stated in the Silver Futures Contract contained in Chapter 112 of the Exchange Rule Book.

(ee) “System” shall mean the Electronic Delivery System maintained and operated by the Exchange, as updated from time to time.

(ff) “Warrant” shall mean a document of title issued by a Licensed Facility, meeting the requirements of Article 7 of the UCC, and demonstrating that the referenced quantity of the covered Commodity, stored in the Licensed Facility referenced thereon, meets the specifications of the applicable Commodity Futures Contract.

(gg) “Weight Certificate” shall mean a document, in a format approved by the Exchange, which verifies the weight of the commodity. The weight specified in the Weight Certificate shall be binding on all parties.

## **Rule 7A.02. DESIGNATION AND OBLIGATIONS OF SERVICE PROVIDERS**

### **(A) Designation of Service Providers.**

- (1) In order to be designated as a Service Provider with respect to any Commodity Futures Contract, an Applicant must provide to the Exchange such documents as the Exchange may request, and are sufficient to establish, as determined by the Exchange in its sole discretion, the Applicant’s qualifications, capitalization and ability to undertake the obligations imposed by the Exchange Rules.
- (2) The approval of an Applicant as a Service Provider for one or more Commodities is at the sole discretion of the Exchange, and may be further subject to the approval of the Commodity Futures Trading Commission.

### **(B) Obligations of Service Providers.**

- (1) Approved Assayers. The Exchange may designate Approved Assayers for Commodities, said Approved Assayers to assist the Exchange in maintaining the integrity of the brands of Commodities tenderable against Commodity Futures Contracts by determining the metallurgical assay of said brands. In the event that the metallurgical assay of any Approved Brand shall be questioned, the Exchange shall refer the matter to said Approved Assayers for a report to assist said Board in its determination.
- (2) Approved Producer. The refiner or smelter whose products meet all Exchange requirements and are Eligible.
- (3) Approved Carriers. Each Approved Carrier shall provide for the secure transportation of Gold, Platinum and Palladium and shall maintain a chain of integrity for each such Commodity, as defined in the applicable Commodity Rules.
- (4) Licensed Weighmaster. Commodities shall be weighed only by Licensed Weighmasters designated by the Exchange. The Licensed Weighmaster shall generate a Weight Certificate which complies with the specifications set forth in Rule 7A.01(ss).
- (5) Licensed Facilities
  - (a) Insurance. No warehouse or depository shall be licensed and/or designated for the storage of a Commodity unless it has in force and

effect all-risk insurance against loss of the Commodity in such amount, issued by such insurance companies, and upon such terms and conditions as are satisfactory to the Exchange. All policies evidencing such insurance shall provide to the Exchange of at least ninety (90) days prior written notice of cancellation, change in the policy terms and/or premiums. The continued maintenance of such insurance shall be a condition to retention of the license and/or designation of each warehouse or depository; provided, however, that any Licensed Depository shall not be required to procure all-risk insurance unless the depository's net capital is less than \$250,000,000. All Licensed Facilities shall provide to the Exchange documents sufficient to satisfy the Exchange that the required insurance is in full force and effect.

- (b) Financial Assurance. Licensed Facilities shall provide such guaranties, bonds or other financial instruments to the Exchange as may be required to guaranty the performance of its obligations pursuant to these rules and any applicable delivery point agreement(s).
- (c) Reporting of Stocks.
  - (i) All Licensed Facilities shall report to the Exchange, prior to the time designated by the Exchange, all receipts and withdrawals of each Commodity that is Eligible on forms furnished by or in a format approved by the Exchange.
  - (ii) All Commodities bearing an Approved Brand shall be included in the report. All Commodities held by a Licensed Facility, as identified in and in compliance with Rule 7A.03, must be reported, even if not weighed into Contract Units or if not intended for Exchange delivery.
  - (iii) The report shall be sent every day that the Exchange is open for business and shall provide the information requested by the Exchange in its sole discretion. Unless the Exchange is closed for business, reports shall not be withheld and/or accumulated with any other day's receipts or withdrawals.
- (d) Annual Audit. Each Licensed Facility shall cause an independent auditor to conduct an annual inventory of all Commodities held on deposit and prepare an audit report certifying that the records of the License Facility accurately reflect the stock held by the Licensed Facility. Audits and reports shall be in compliance with the procedures established by the Exchange. Each audit report shall be filed with the Exchange within thirty days of the date of the completion of the audit.
- (e) Recordkeeping. Licensed Facilities shall make such reports, keep such records, and permit such visitation as the Exchange and/or Commission may prescribe. Such books and records shall be kept for a period of five years from the date thereof or for a longer period if

the Commission shall so direct, and such books, records and warehouses shall be open at all times to inspection by any representative of the Commission or the United States Department of Justice.

- (f) Financial Statements. Copies of audited statements of the Licensed Facility shall be filed with the Exchange, as they become available. If, at any time, there is a reduction in the Tangible Net Worth of the Licensed Facility of at least twenty percent (20%) subsequent to the filing of an audited statement, notice must be sent to the Exchange within twenty (20) calendar days of such reduction. The Exchange, in its sole discretion, may make the financial statements of Service Providers (including, but not limited to those entities seeking approval as Service Providers) available to Exchange Staff and committee members responsible for the approval process and for monitoring the financial condition of Service Providers.
- (g) Inspection. The Licensed Facility must afford, to any representative of the Exchange, access to the Licensed Facility's premises during normal business hours and the unrestricted right to examine any and all records of the Licensed Facility regarding Commodities that are Eligible.
- (h) Confidentiality. All officers, directors, employees and agents of a Licensed Facility shall be prohibited from revealing any information regarding customers who have dealings with the Licensed Facility or regarding Commodity deposits or withdrawals to any persons or firms except as permitted by the Licensed Facility's agreement with the Exchange.
- (i) Labeling. The Licensed Facility shall label each contract unit with the identifying marks referred to in the Warrant.

(C) Delisting and Revocation of Service Provider Status.

- (1) In the event that a Service Provider is in violation of either (a) the Exchange Rules, as amended from time to time, and/or (b) any applicable terms and conditions of the Service Provider's agreement with the Exchange, the Exchange shall send written notice, by the fastest means possible, to the Service Provider directing the Service Provider to cure, within thirty days of the date of the written notice, the violation of an Exchange Rule or the Service Provider's agreement with the Exchange, and if the Service Provider fails to cure the violation within the time stated, the Exchange shall have the right, in its sole discretion, to revoke the Service Provider's designation and remove it from the list of Exchange Service Providers.
- (2) Upon receipt of proper written notice from the Service Provider, the Service Provider can request that it be removed from the Exchange's list of Service Providers.



(D) Force Majeure

- (1) Upon the occurrence of a Force Majeure event, including events which prevent or threaten to prevent a Service Provider from performing the obligations imposed by these Rules, in addition to the specific rules set forth for each Commodity Contract, a Service Provider shall immediately notify the Exchange, pursuant to the terms of these Rules in addition to the specific rules set forth for each commodity contract, by the fastest means possible
- (2) Upon the occurrence of a Force Majeure event, the parties shall have a good faith obligation to agree upon (i) what, if any, of the obligations under these Rules, in addition to the specific rules set forth for each commodity contract shall be temporarily suspended, and (ii) what, if any, alternative procedures or obligations should be temporarily implemented.
- (3) A Service Provider, under such temporary procedures as may be implemented during a declaration of Force Majeure, shall have a continual obligation to immediately notify the Exchange of any change to such Service Provider's ability to meet its obligations under this Agreement.

**Rule 7A.03. Storage of Commodities**

- (A) General. For purposes of storage and delivery of metals upon contract by Warrants, Licensed Facility shall be understood to mean either (1) a single Licensed Facility, or (2) more than one contiguous Licensed Facility which together comprise a single system of Licensed Facilities, *provided* that all such Licensed Facilities are operated under common name and common management and all are managed or operated by a single firm or warehouseman, and were specifically identified as such in the application.
- (B) Copper. Upon the arrival at a Licensed Warehouse for Copper, Approved Brands of Copper shall be stored within the protection of a completely enclosed building. Licensed Warehouse shall maintain the Copper in such storage throughout its custody. Any Licensed Warehouse that does not presently store any Copper in accordance with the terms hereof shall immediately move such Copper to compliant storage space that is in compliance with Exchange requirements.

- (C) Silver, Gold, Platinum and Palladium. Promptly upon the arrival of any Silver, Gold, Platinum or Palladium at the Licensed Depository, such metal shall be placed in secure storage.
- (D) Storage and Handling Charges. In the event a Licensed Warehouse wishes to change its fees, the Licensed Facility shall provide the Exchange with at least ninety (90) days prior written notice of any changes and such notice shall itemize each proposed increase. The proposed fee increases may become effective on the first calendar day of the month following the ninety (90) day notification period.
- (E) Storage Limitations. In the event a Licensed Facility becomes unable to accept for delivery any Commodity, whether due to capacity limitations or any other reason, the Licensed Facility shall immediately notify the Exchange of such circumstance, describing in detail the relevant Commodity or Commodities affected and the status of such Commodity(ies) stored therein.

#### **Rule 7A.04. WARRANTS**

- (A) Existing Paper Warrants Issued by Licensed Facilities. At the date of conversion and implementation of the electronic delivery system, those paper warrants issued by licensed facilities will no longer be acceptable for delivery against the respective Exchange contracts. Existing paper warrants will be converted to electronic warrants at the date of conversion upon written approval by the owner of such warrant. Once the date of conversion occurs, existing paper warrants will no longer be deliverable on the Exchange and therefore are not subject to the Rules of the Exchange.
- (B) Procedures for the Issuance of Warrants. All Warrants issued by a Licensed Facility must be issued in the name of an Exchange Clearing Member and must be in a format approved by the Exchange.
  - (1) Within one business day from receipt of any Commodity at a Licensed Facility, the Licensed Facility must (a) determine such Commodity's Eligibility, (b) advise the owner if the Commodity is determined to be not Eligible, and (c) if requested by the owner and provided the Commodity meets the Contract specifications, issue a Warrant. If, due to capacity limitations or any other reason, a Licensed Facility is unable to meet such requirements, the Licensed Facility shall notify the Exchange and shall describe the reason(s) for such delay.
  - (2) In issuing a Warrant, Licensed Facility shall be responsible for verifying that the Commodity meets all the specifications for Commodity as stated in the Exchange Rules and shall be responsible for entering all applicable information into the System.
  - (3) A Warrant shall be an Electronic Document in a form approved by the Exchange and issued in compliance with this Rule 7A.04, and shall be supported by such paper or other tangible documents as specified in this Rule 7A.04. Licensed Facility shall enter in the System a reference to each

paper or other tangible document(s) that is related to the Warrant as specified in this Rule 7A.04.

- (4) Warrants must be transferable by delivery or by delivery and endorsement by the transferor.
  - (5) Warrants shall not be issued for more than or less than one Contract Unit. A Warrant issued for Aluminum shall be comprised of one shape and one Approved Brand. A Warrant issued for Copper shall be from one Approved Brand. A Warrant may be issued for Gold, Silver, Platinum or Palladium that co-mingles Approved Brands.
  - (6) A Warrant shall be of unlimited duration and remain valid until cancelled by the Licensed Facility that issued it.
  - (7) Licensed Facility shall be solely responsible for insuring that no duplicate Warrants are issued, printed or released by it.
  - (8) In the event that any paper or other tangible document that supports a Warrant has been damaged, lost, stolen or destroyed, Licensed Facility shall issue a replacement document upon completion of its procedures for the replacement thereof.
- (C) Procedures for the Cancellation of Warrants. A Warrant may be cancelled only by the Licensed Facility that issued it and only upon endorsement from the Exchange Clearing Member to such Licensed Facility in accordance with these Rules.
- (1) Upon demand to an Exchange Clearing Member by the owner of the Commodity for delivery of a Commodity, the Exchange Clearing Member shall endorse in the system with delivery instructions ("the account of") and shall, upon request by the holder, issue to the holder a physical confirmation of such endorsement.
- (D) Documents Required for Specific Commodity. With respect to issuance of any new Warrant, a Licensed Facility shall have and maintain in fireproof secure document storage until five (5) years following cancellation of the applicable Warrant, the following document(s) as applicable to the Commodity:
- (1) Aluminum.
    - (a) Weight Certificate issued by Licensed Weighmaster, and
    - (b) Chemical Analysis as set forth in the Aluminum Futures Contract contained in Chapter 123 of the Exchange Rule Book
  - (2) Copper.
    - (a) Weight Certificate issued by Licensed Weighmaster, and
    - (b) Declaration by the Licensed Warehouse that the Copper meets the specifications for delivery in fulfillment of a Copper Futures Contract, as set forth in the Copper Futures Contract contained in Chapter 111 of the Exchange Rule Book. Upon request from the Licensed Warehouse, the Seller shall provide verification that the copper cathodes are an Approved Brand meeting the specifications of

the contract, unless received directly from the producer of the Approved Brand.

(3) Gold.

- (a) Weight Certificate issued by Licensed Weighmaster, and
- (b) Assay Certificate if required pursuant to and as stated in the Gold Futures Contract contained in Chapter 113 of the Exchange Rule Book.

(4) Silver.

- (a) Weight Certificate issued by Licensed Weighmaster, if required pursuant to the Silver Futures Contract contained in Chapter 112 of the Exchange Rule Book.

(5) Palladium.

- (a) Assay Certificate, if required pursuant to the Palladium Futures Contract contained in Chapter 100 of the Exchange Rule Book.

(6) Platinum.

- (a) Assay Certificate, if required pursuant to the Platinum Futures Contract contained in Chapter 90 of the Exchange Rule Book.

(E) Customs, Import Duties and Import Taxes.

- (1) Whenever an import duty or import tax is levied upon silver or gold, such import duty or import tax shall be assumed and be payable by the Buyer upon the delivery on an Exchange contract of any Silver or Gold upon which such import duty or import tax is payable.
- (2) A Licensed Facility may not issue any Warrant for any quantity of Commodity for so long as such Commodity is in the custody of the U.S. Customs Service. Upon being removed from the custody of the U.S. Customs Service, and upon payment of any applicable U.S. import duties or U.S. import taxes, any commodity shall be subject to Rule 7A.04 prior to issuance of any Warrant thereon.
- (3) All taxes or other governmental charges imposed with respect to the ownership, possession or storage of a Commodity (including sales taxes on storage charges) shall be payable by the Person that is the owner of the Commodity with respect to the period for which the tax is imposed. Accordingly, if any such taxes are prepaid by the Seller for a period beginning on or before, but ending after, the delivery day, the Buyer shall refund to the Seller the portion of such taxes allocable on a pro rata basis to the portion of such period falling after the delivery day, and a corresponding adjustment shall be made upon the invoice. In addition, if any such taxes will be payable by the Buyer after the delivery day for a period that began before the delivery day, the Seller shall bear the portion of such taxes allocable on a pro rata basis to the portion of such period falling on or before the delivery day, and a corresponding adjustment shall

be made upon the invoice. However, inventory taxes shall be paid in full by the owner of the commodity on the date the inventory tax is assessed. All taxes or other governmental charges imposed in connection with the transfer or delivery of a Commodity or a Warrant shall be added to the contract price by the Seller in his invoice when delivery is made, and the amount thereof shall be paid by the Buyer.

### **Rule 7A.05. TERMINATION OF TRADING**

Trading in any current delivery month for each Commodity shall cease at the close of business on the third last business day of the delivery month.

### **Rule 7A.06. UNIFORM DELIVERY PROCEDURES**

A Seller may only commence the Uniform Delivery Procedure as detailed below with respect to a Warrant that has been entered into the System and for which the Seller is designated thereon as the Exchange Clearing Member. The Uniform Delivery Procedure for each Commodity is as follows:

(A) Location of Delivery of the Commodity.

- (1) Delivery of a Commodity shall be made at the Seller's choice of a Licensed Facility as specified in the Rules for such Commodity.
- (2) Except as otherwise provided in the Rules for each Commodity, all duties, entitlements, taxes, fees and other charges imposed prior to delivery on or in respect to the product shall be paid by the Seller. Delivery shall be made in accordance with applicable Federal, State and local laws.

(B) Date of Presentation.

- (1) A Seller with an open short position must file a Notice of Intention to Deliver with the Exchange. The Date of Presentation shall be the day on which Notice(s) of Intention to Deliver are presented to the Clearing House by the Seller. The Notice of Intention to Deliver shall be in a computer readable form approved by the Exchange. Said notice shall indicate the approved brand, the receipt number of the Warrant, the weight, the grade and the Licensed Warehouse and/or License Depository in which the Commodity is stored.
- (2) Each Notice of Intention to Deliver shall be accompanied by a Notice Summary. The Notice Summary summarizes the total number of contracts which the Seller intends to deliver and shall be in a form approved by the Exchange.
- (3) A Notice of Intention to Deliver may be presented on any business day beginning on the next to last business day of the calendar month preceding the delivery month and any subsequent business day not later than three business days prior to the end of the delivery month one hour after the Regular Trading Hours for the contract have ended. A notice of Intention

to Deliver may also be presented on the next to the last business day of the delivery month by 12:30 PM (New York Time).

- (4) The Notice of Intention to Deliver is not transferable.

(C) Notice Day.

- (1) Notice Day shall be the day on which an Allocation Notice and Invoice are issued by the Clearing House to the Buyer and the Seller. This shall be the business day prior to the Delivery Day.
- (2) The Allocation Notice shall specify the parties matched for delivery and the number of contracts to be delivered. The Invoice shall specify the brand, the Warrant number, the weight, the Licensed Facility in which the Commodity is stored, the name of the Seller, the name of the Buyer, and the price of the Commodity for each corresponding Warrant.
- (3) The Allocation Notice and Invoice shall be issued by the Clearing House to the Buyer and the Seller on the morning of the business day following the Date of Presentation, except for the next to last business day of the delivery month. On the next to last business day of the delivery month, the Clearing House shall issue the Allocation Notice and Invoice to the Buyer and the Seller prior to the end of that day.
- (4) The Allocation Notice and Invoice are not transferable.

(D) Settlement Price.

The settlement price at the close of business on the day the Notice of Intention to Deliver is given to the Clearing House shall be the basis for delivery. In the event the Notice of Intention to Deliver is given on the next to last business day of the delivery month, the settlement price shall be the settlement price at the close of business on the third to last business day (the previous day).

(E) Delivery Day.

- (1) The day the Buyer receives the Warrant for the Commodity shall be referred to as "Delivery Day." Delivery may take place on any business day beginning on the first business day of the delivery month or any subsequent business day of the delivery month, but not later than the last business day of the current delivery month.
- (2) The Buyer shall present payment to the Seller, at the Exchange, or another location mutually agreed upon by the parties. The member to whom delivery is made shall at once make payment to the member making delivery by the electronic transfer of federal funds "Payment". Payment shall be presented before 2:00 PM (New York Time) of Delivery Day.
- (3) The Seller, immediately upon receipt of payment shall update the System by endorsing the applicable Warrant to the account of Buyer.
- (4) Delivery made in fulfillment of contracts for future delivery shall be deemed a liquidation of the contract. The delivery of Commodity shall be considered complete when the documents required in subsection (3) of this

Rule have been delivered to the Buyer and Payment has been received by the Seller.

(F) Settlement of Storage and Handling Charges.

All Commodities must be delivered to the Buyer with handling and storage charges paid up to and including the day of delivery, and the Buyer may require the Seller to furnish satisfactory proof of payment thereof. Any storage charges prepaid by the Seller for a period extending beyond the Delivery Day (but not in excess of 30 days) shall be refunded by the Buyer to the Seller on a pro rata basis for the unexpired term and an adjustment made upon the invoice. All storage and handling charges for all Commodities must be in US Dollars. Where "in and out labor" charges have been paid as evidenced by the Warrant Receipt, or otherwise, the seller shall be entitled to charge the buyer for one-half of such "in and out labor" charges; in other words, the buyer will have to assume the "out labor" charges.

**Rule 7A.07. Obligations in Delivery and Dispute Resolution**

- (A) By the tender of a Warrant for a Commodity duly endorsed for delivery in fulfillment of a Commodity Futures Contract, the Seller shall be deemed to warrant that the Commodity meets the deliverable metal specifications set forth in the applicable Commodity Futures Contract Rule ("Delivery Warranty"). Such warranty shall remain in effect through successive endorsements of the Warrant for delivery on Commodity Futures Contracts. The warranty shall continue for the benefit of a member of the Exchange who shall have taken delivery of the Commodity in fulfillment of the Commodity Futures Contract(s), or in favor of such member's immediate customer.
- (B) In the event that an Exchange member or customer shall claim a breach of the Delivery Warranty, the Commodity shall be immediately submitted for sampling and assaying to an Approved Assayer. The expense of sampling and assaying shall, in the first instance, be borne by the claimant. If the Approved Assayer shall determine a deficiency in quality, the claimant shall have the right to recover the difference in the sampling and assaying and any cost of replacement of the commodity. The claimant may, at his option, proceed directly against the original Seller of the commodity, as shown on the Warrant upon an Exchange delivery without seeking recovery from the immediate Seller to him of the Exchange Commodity contract. If the original Seller of the Warrant satisfies the claim, intervening Sellers will be thereby discharged from liability to the claimant. If the claimant seeks recovery from the immediate Seller to the claimant, and his claim is satisfied by such Seller, the Party thus satisfying the claim will have a similar option to claim recovery directly from the original Seller of the Warrant or from the Party's immediately preceding Seller. Such claims as are in dispute between members of the Exchange shall in each case be submitted to arbitration under the rules of the Exchange.
- (C) The liability of a Seller of a Warrant as provided herein shall not be deemed to limit the rights of such Seller against any person or party for whose account the Seller acted in making delivery on an Exchange Commodity contract. If it shall be determined in such arbitration proceeding that any Seller of a Warrant or the person

or party for whom such Seller acted was aware of the breach of warranty or was involved in a plan or arrangement with the original Seller (or his customer) to place such inferior Commodity in a Licensed Facility for use in deliveries upon Exchange Commodity contracts, such Sellers shall not be entitled to recover from any prior Seller for the breach of warranty.

- (D) Any claim for damages arising between a Buyer and a Seller, as a result of a delivery pursuant to this Chapter, shall be governed by Chapter 5 of the NYMEX Rules except that the Chairperson of the Exchange or his designee shall appoint an Arbitration Panel composed of three Members of the Exchange.

#### **Rule 7A.08. ENFORCEMENT OF WARRANT WITHOUT RECOURSE**

The endorsement of a Warrant “without recourse” is improper, and the delivery of such a Warrant so endorsed shall not constitute a good delivery in fulfillment of an Exchange Commodity contract.

#### **Rule 7A.09. CONFORMITY WITH UNITED STATES STANDARDS**

Every contract for commodity futures traded on the Exchange shall require delivery thereunder of commodities of grades conforming to United States standards if such standards for such commodity shall have been officially promulgated and adopted by the Commodity Futures Trading Commission; provided, however, that if such standards adopted by the Commodity Futures Trading Commission differ from the standards for such contract adopted by the Exchange, the standard adopted by the Commodity Futures Trading Commission shall not apply to the existing contracts.