

December 11, 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  
#08.135: Notification of Implementation of New NYMEX Rule 993 and  
Renumbering of Existing NYMEX Rule 993**

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 implementation of new NYMEX Rule 993 and notifying the CFTC of the renumbering of existing NYMEX Rule 993 as NYMEX Rule 994. New Rule 993 was previously numbered as NYMEX Rule 9.25 and was recently deleted in connection with the harmonization of NYMEX rules with CME and CBOT rules. Rule 9.25 was deleted because the rule pertained to a Commission Order dating back to 2004 that the Exchange no longer relied on. Following conversations with CFTC staff, the Exchange determined to reinstate deleted Rule 9.25 as Rule 993 in the rulebook, given that the Commission's 2004 Order remains in place, although not relied on by NYMEX.

Pursuant to Section 5c(c) of the Commodity Exchange Act ("Act") and CFTC Rule 40.6, the Exchange hereby certifies that the attached NYMEX rule complies with the Act, including regulations under the Act. These changes will be made effective on December 15, 2008.

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

Sincerely,



De'Ana H. Dow  
Managing Director,  
Government Relations

Attachment

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

(Additions bold/underline; deletions/strikethrough)

**993. 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.

**CLEARING MEMBER BANKRUPTCY**

**9934. CUSTOMER SUBSTITUTION IN THE EVENT OF CLEARING MEMBER BANKRUPTCY**

In the event that an "order for relief" as defined in CFTC Reg. 190.01(dd) has been entered in respect to a clearing member whose customer holds a futures contract or options contract that may only be liquidated by physical delivery and, as to such contract:

- (i) trading has ceased on the date of the entry of the "order for relief;"
- (ii) notice of delivery has been tendered on or before the date of the entry of the "order for relief;" or
- (iii) trading ceases before the trustee can liquidate the contract;

then the Clearing House shall allow the customer (if his identity can be readily ascertained and verified) to be directly substituted for the debtor clearing member to the extent necessary to complete delivery. None of the requirements for delivery, including notices, instructions, payment, etc., shall be waived hereby. Moreover, substitution shall in no way relieve the debtor clearing member of its obligations to the Clearing House and the opposite clearing member in regard to any claims arising out of that delivery.