

October 18, 2005

**Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581**

BY E-MAIL AND FASCIMILE

SUBJECT: Request for Commission Rule Approval: Proposed Amendment to Supplement No. 2, “Licensed Depositories and Weighmasters for Gold” of the Gold Futures Contract and Supplement No. 1, “Official List of Approved Depositories” of the Platinum and Palladium Futures Contracts. Submission No. 05-188.

Dear Ms. Webb:

Pursuant to Section 5c(c)(2) of the Commodity Exchange Act (the “Act”) and CFTC Rule 40.5 (“Voluntary Submission of Rules for Commission Review and Approval”), the New York Mercantile Exchange Inc. (“NYMEX” or the “Exchange”) hereby requests on a voluntary basis CFTC approval for a proposed amendment to Supplement No. 2, “Licensed Depositories and Weighmasters for Gold” of the Gold Futures Contract and Supplement No. 1, “Official List of Approved Depositories” of the Platinum and Palladium Futures Contracts.

The proposed amendment and a complete explanation of its operation, purpose and effect are attached hereto.

If you have any questions concerning this submission, please contact the undersigned at 212-299-2930 or Albert J. Getz at 212-299-2608.

Sincerely,

Robert A. Levin
Senior Vice President

cc: Richard Shilts, Division of Market Oversight
Allen Cooper, Eastern Region

I. EXPLANATION AND PURPOSE

The Exchange proposes to amend Supplement No. 2, “Licensed Depositories and Weighmasters for Gold” of the Gold Futures Contract and Supplement No. 1, “Official List of Approved Depositories” of the Platinum and Palladium Futures Contracts.

The proposed amendments add the Manfra, Tordella & Brookes, Inc. (“MTB”) vault facility located at 90 Broad Street, New York City, New York as a Licensed Depository for the storage of gold, platinum and palladium deliverable against the Exchange’s Gold, Platinum and Palladium Futures Contracts.

A. CORPORATE STRUCTURE AND OWNERSHIP

The company is a wholly owned subsidiary of Pamp Ventures SA which is a wholly owned subsidiary of MKS Finance S.A. (“MKS”) which is incorporated in Switzerland. MKS, a privately owned company established in 1979, is one of the world’s leading companies specializing in the refining, fabrication and marketing of a wide range of precious metals products and services. MKS is a member of the COMEX Division of the Exchange, the Chicago Mercantile Exchange, The Tokyo Commodity Exchange (“TOCOM”) and is an associate member of the London Bullion Market Association.

B. CUSTOMER CONFIDENTIALITY

Since MKS, the parent of MTB is a member of various exchanges which trade precious metals, the confidentiality of customer information is an important part of the Exchange’s due diligence. In order to mitigate any concerns that market participant’s may have regarding a depository institution’s policies to ensure that sensitive information known only to the depository operations personnel is not relayed to other areas of the institution or its affiliated companies, the Exchange has reviewed MTB’s confidentiality policy.

MTB’s policies and procedures prohibit disclosing any specific information regarding the identity of customers who have dealings with the vault operations with respect to warrants that are deliverable against Exchange futures contracts, or inventory, deposits or withdrawals of any such customer’s Exchange warrants to any firm or person. The MTB accounting system will be designed to segregate all information pertaining to NYMEX storage customers from the rest of the MTB accounting/inventory system to assist in enforcing the nondisclosure policy as it pertains to the MTB Trading Department.

C. LEASE / VAULT CLASSIFICATION / INSPECTION

MTB leases the vault and office space in the subbasement of 90 Broad Street, New York, NY. The vault is classified as 10R, which is equivalent to a Class 3 vault.

Exchange Staff has inspected the MTB facility at 90 Broad Street, New York City, NY and has determined that the facility meets all of the Exchange requirements to become a Licensed Depository for the storage of gold, platinum and palladium.

D. FINANCIAL

The COMEX Depository application requires that the depository institution maintain a net worth of not less than \$250 million at all times, or first loss insurance payable directly to holders of the depository receipts for the full value of metal stored at the location in the aggregate of not less than \$100 million. Exchange Rules specify that the insurance must be issued by such insurance companies, and upon such terms and conditions as are satisfactory to the Exchange. Neither MTB nor its guarantor MKS Finance meets the \$250 million net worth requirement. Therefore, MTB must have first loss insurance payable directly to the holders of the depository receipts. This insurance is discussed below.

The Exchange has required MTB's ultimate parent company, MKS, whose tangible net worth is greater than US\$100 million, to provide a guarantee in a format acceptable to the Exchange. This guarantee is discussed below.

For the fiscal year ending June 30, 2005 MTB had a tangible net worth of US \$1.8 million and working capital of US \$1.7 million. In the auditor's opinion, "the financial statements present fairly, in all material respects, the financial position of Manfra, Tordella & Brookes, Inc at June 30, 2005 and 2004 and the results of its operations and cash flows for the year then ended, in conformity with accounting principals generally accepted in the United States of America."

With respect to MKS Finance, for its fiscal year ending June 30, 2005, shareholder's equity was US \$123.6 million and working capital was US \$83.1 million. In the opinion of the auditor, "the consolidated financial statements give a true and fair view of the financial position, the results of its operations and the cash flows in accordance with the International Financial Reporting Standards (IFRS) and comply with the Swiss law."

Guarantee: The Exchange has received a guarantee from MKS Finance S.A., the parent of MTB, in a form acceptable to the Exchange. As guarantor, MKS shall be liable for (1) all financial obligations of MTB; and (2) the performance by MTB of all obligations, duties and responsibilities of an Exchange Licensed Depository and Exchange Licensed Weighmaster, where applicable, imposed by Exchange Rules and all applicable local, state and federal statutes and regulations.

E. INSURANCE

MTB has in force through Willis with London Underwriters an insurance policy which covers US\$100 million each and every loss in respect of bullion and precious metal of all kinds for NYMEX /COMEX warehouse receipt owners/bearers and contained within the MTB's vault only. This insurance is acceptable to the Exchange.

Limit of Liability: USD 100,000,000 each and every loss in respect of bullion and precious metals of all kinds for NYMEX/COMEX warehouse warrants as defined whilst contained within the Assured's vault only.

Warrants Clause: This policy recognizes that the holder of a Warrant (as defined below), duly issued by Manfra, Tordella & Brooks and properly endorsed, is the legal owner of such precious metal represented by that Warrant. As such, the holder of such Warrant is identified as a Loss Payee for the purposes of this Policy.

In the event of a loss covered under this Policy, a check providing loss compensation will be issued by the Underwriters payable jointly to Manfra, Tordella & Brooks and Loss Payee. In the event of a recoverable loss hereunder and that Manfra, Tordella & Brooks becomes subject to the US Bankruptcy Code, it is hereby noted and agreed and that the Warrant holders will be paid directly by Underwriters hereon.

For the purposes of the foregoing clause, a Warrant shall be defined as:

A document of title issued by Manfra, Tordella & Brooks meeting all applicable local, state and federal laws and regulations. A Warrant is deemed to be proof of the existence of the property for which it has been issued. Notwithstanding anything contained in this Warrants Clause, it is understood and agreed that this Policy provides insurance cover for the actual Property that maybe detailed on a warrant issued by Manfra, Tordella & Brooks but does not provide cover for loss or damage to the warrant itself.

Basis of Valuation and Loss Settlement Clause: The basis of valuation and loss settlement shall be based on either NYMEX or COMEX settlement price on the day following the day of loss is discovered or as may be declared prior to known loss or damage.

Notice Clause: The Underwriters shall give the New York Mercantile Exchange ninety (90) days advance written notice, at the address set forth below, in the event of cancellation, non-renewal or material change in this policy.

The effective date of this attachment is the date on which the Assured receives approval to become a recognised COMEX and /or NYMEX depository.

F. CURRENT METAL INVENTORY

None of the gold, platinum and palladium currently stored in a vault, which is yet to be approved as a Licensed Depository for these metals would immediately qualify to be reported as eligible metal. Under Exchange Rules, in order to be eligible for delivery, gold may only be delivered to an Exchange Licensed Depository by an Approved Carrier directly from (1) the refiner of the approved brand, (2) an approved assayer provided that the gold is accompanied by an assay certificate of the approved assayer, or (3) another licensed depository provided the gold was placed in the other licensed depository pursuant to (1) and (2) above. Since the gold stocks in any new facility have not gone through this "Chain of Integrity" they are not eligible for the

issuance of a warrant. All gold currently in storage at any new depository must be reassayed by an Exchange Approved Assayer in order to be eligible to be put on warrant.

With respect to platinum and palladium, a similar chain of integrity is required before these metals may be placed on warrant. Therefore, none of the platinum and palladium bars (ingots) currently stored in this facility would be eligible for delivery. They would require reassaying by an Approved Assayer or Assayer/Refiner before becoming eligible for delivery.

G. LICENSED WEIGHMASTER

The application for a Licensed Depository for Gold also requires that the Depository be designated a Licensed Weighmaster for the Gold. Each warrant issued by a Licensed Depository for Gold must be accompanied by a weight certificate issued by an Exchange Licensed Weighmaster certifying the weight of each bar of gold, the serial number of each bar and the name of the Approved Refiner of each bar.

Each bar of gold must be weighed to the 1/100 of a troy ounce. The procedures require that each bar be weighed to the nearest 1/1000 of a troy ounce and weights of 4/1000 of a troy ounce or less are rounded down to the nearest 1/100 of a troy ounce and weights of 5/1000 of a troy ounce or more are rounded up to the nearest 1/100 of a troy ounce.

MTB has installed a Mettler Toledo scale which is capable of weighing in the increments required by the Gold Futures Contract. The company has requested the scale manufacturer to recalibrate this scale. Upon completion of the recalibration, MTH will represent and warrant to the Exchange that the scale has been recalibrated. A condition precedent to the effective date will be the confirmation from MTB that the scale has been professionally recalibrated.

H. CONDITIONS PRECEDENT

A condition precedent to the effective date of the MTB facility in becoming an Exchange Licensed Depository would be the execution of legal documentation acceptable to the Exchange and confirmation that the scale has been professionally recalibrated.

II. PROPOSED AMENDMENTS

The proposed amendments are attached.

Proposed Amendment. Underlining indicates additions.

Gold Supplement
No. 2

COMMODITY EXCHANGE, INC.
LICENSED DEPOSITORIES AND WEIGHMASTERS FOR GOLD

<u>Depository</u>	<u>Facilities</u>	<u>Computer Code</u>
<u>NEW YORK</u>		
SCOTIAMOCATTA DEPOSITORY, A DIVISION OF THE BANK OF NOVA SCOTIA 26 Broadway New York, NY 10004 (Orders: (212) 912-8530)	26 Broadway New York, NY	3001
HSBC Bank USA 1 West 39th Street, SC 2 Level New York, NY 10018 (Orders: (212) 525-6439)	1 West 39th Street, SC 2 Level New York, NY	5001
BRINK'S Incorporated Suite 400 580 5 th Avenue New York, New York 10036 (Orders: (718) 949-2186)	652 Kent Avenue Brooklyn, NY	4001
<u>Manfra, Tordella & Brookes, Inc.</u> <u>90 Broad Street</u> <u>New York, New York 10004</u> <u>(Orders: (212) 981-4518)</u>	<u>90 Broad Street</u> <u>New York, New York</u>	<u>7001</u>

ADDITIONAL LICENSED WEIGHMASTERS FOR GOLD

Ledoux & Company
359 Alfred Avenue
Teaneck, NJ 07666
(Orders: NJ (201) 837-7160)

Proposed Amendment. Underlining indicates additions.

PALLADIUM FUTURES CONTRACT

Supplement No. 1

OFFICIAL LIST OF APPROVED DEPOSITORIES

Depository	Facility at	Computer Code
NEW YORK		
SCOTIAMOCATTA DEPOSITORY, A DIVISION OF THE BANK OF NOVA SCOTIA	26 Broadway New York, NY 10004 212-912-8530	3001
HSBC Bank USA	1 West 39th Street SC 2 Level New York, NY 10018 212-525-6439	5001
BRINK's INC.	652 Kent Avenue Brooklyn, NY 11211 718-949-2186	4001
<u>Manfra, Tordella & Brookes, Inc.</u> <u>90 Broad Street</u> <u>New York, New York 10004</u> <u>(Orders: (212) 981-4518)</u>	<u>90 Broad Street</u> <u>New York, New York</u>	<u>7001</u>
DELAWARE		
DELAWARE DEPOSITORY SERVICE COMPANY, LLC	3601 North Market Street Wilmington, DE 19802 302-765-3889	6001

Proposed Amendment. Underlining indicates additions.

PLATINUM FUTURES CONTRACT

Supplement No. 1

OFFICIAL LIST OF APPROVED DEPOSITORIES

Depository	Facility at	Computer Code
NEW YORK		
SCOTIAMOCATTA DEPOSITORY, A DIVISION OF THE BANK OF NOVA SCOTIA	26 Broadway New York, NY 10004 212-912-8530	3001
HSBC Bank USA	1 West 39th Street SC 2 Level New York, NY 10018 212-525-6439	5001
BRINK's INC.	652 Kent Avenue Brooklyn, NY 11211 718-949-2186	4001
<u>Manfra, Tordella & Brookes, Inc.</u> <u>90 Broad Street</u> <u>New York, New York 10004</u> <u>(Orders: (212) 981-4518)</u>	<u>90 Broad Street</u> <u>New York, New York</u>	<u>7001</u>
DELAWARE		
DELAWARE DEPOSITORY SERVICE COMPANY, LLC	3601 North Market Street Wilmington, DE 19802 302-765-3889	6001

III. EXCHANGE ACTION

The proposed amendment to Supplement No. 2, “Licensed Depositories and Licensed Weighmasters” of the COMEX Gold Futures Contract was approved by the Exchange’s Metals Advisory Committee and Board of Directors at regularly scheduled meetings. As the proposed amendment to Gold Supplement No. 2 “Licensed Depositories and Licensed Weighmasters” affects a “Special Matter” under the COMEX By-Laws, notice was provided to the owners of COMEX Division Memberships who were provided with 10 days to submit a petition signed by owners of 155 COMEX Division Memberships requesting a vote of the COMEX Division to disapprove the amendments, pursuant to the procedures set forth under COMEX By-Law 205(D). No substantive opposing views were expressed and no anti-competitive effects are anticipated or are apparent.

The Exchange intends to make the amendment the latter of (1) the satisfaction of the conditions precedent discussed above or (2) upon receipt of Commission approval or notification that prior approval is not needed. While there are open positions in the Gold, Platinum and Palladium Futures Contracts, the proposed changes and implementation of the amendment with respect to Licensed Depositories of the respective futures contracts will allow market participants ample time to fully evaluate and modify their positions. These proposed rule changes are not believed to have any impact on market positions or prices since the proposed depository is located within the region defined by the applicable metals futures contracts.

In addition to the notification of the proposed amendment, pursuant to COMEX By-Law 205(D), given on September 8, 2005, the Membership will be informed in a Notice to Membership dated October 18, 2005 that the Exchange intends to amend Supplement No. 2, “Licensed Depositories and Licensed Weighmasters” of the Gold Futures Contract and Supplement No. 1, “Official List of Licensed Depositories” for the Platinum and Palladium Futures Contracts as discussed above.

