



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of  
Market Oversight

October 2, 2007

Christopher K. Bowen  
General Counsel, Chief Administrative Officer & Secretary  
New York Mercantile Exchange  
World Financial Center  
One North End Avenue  
New York, NY 10282-1101

Subject: Listing of New Futures Contracts on NYMEX ClearPort (NYMEX Submission 07.46)

Dear Mr. Bowen:

By letter dated and received July 5, 2007, the New York Mercantile Exchange (NYMEX or Exchange) submitted to the Commission, pursuant to the self-certification procedures of Section 5c(c)(1) of the Act and Commission Regulation 40.2, twenty-three new ClearPort energy futures contracts (ClearPort Contract Submission). Subsequently, the Division of Market Oversight (Division), by letter dated July 19, 2007, requested that NYMEX provide it with additional information regarding the ClearPort Contract Submission in order for the Division to evaluate the twenty-three contracts as part of its due diligence review of the submission. The Division requested that NYMEX submit the additional information by August 20, 2007. As of the date of this letter, NYMEX has not provided any of the requested information to the Division.

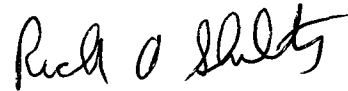
NYMEX's failure to respond to the Division's July 19<sup>th</sup> letter would appear to be a violation of Regulation 40.2(b) and its requirement that registered entities "provide, if requested by Commission staff, additional evidence, information or data relating to whether the contract meets, initially or on a continuing basis, any of the requirements of the Act or Commission regulations or policies."

As you should know, certifying the consistency of new products with the Act and Commission regulations thereunder without having a reasonable basis to do so is a violation of Section 5c(c)(1) of the Act. The Division notes that the information it has requested is basic to an evaluation of whether or not any of the twenty-three ClearPort contracts are readily susceptible to manipulation, the speculative position limits and position accountability levels are set at an appropriate size to deter potential manipulations or price distortions, and the Exchange is able to properly monitor trading in these contracts, among other things. NYMEX's apparent inability to

provide the requested information regarding these twenty-three contracts raises serious questions as to whether NYMEX had a reasonable basis for attesting to the consistency of the terms and conditions of each contract with the designation criteria and core principles applicable to the contracts.

The Division requests that NYMEX provide it with all of the information requested in the July 19<sup>th</sup> letter (enclosed for your convenience) by October 19, 2007. Failure to respond with a full and complete response by that date may result in the referral of this matter for further action by the Commission. If you have any questions, please feel free to contact me at 202-418-5275, David Van Wagner at 202-418-5481, or Martin Murray at 202-418-5276.

Sincerely,



Richard A. Shilts  
Director

Enclosure

cc: James E. Newsome  
Thomas LaSala  
Robert A. Levin