

February 28, 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 #08.23: Certification of Amendments to Exchange  
Rules 8.03, 8.08, and 8.55.**

Dear Mr. David Stawick:

The New York Mercantile Exchange, Inc. ("NYMEX" or the "Exchange") is notifying the Commodity Futures Trading Commission ("CFTC" or "Commission") that it is self-certifying the following amendments to Exchange Rules 8.03, Settlements, 8.08, Settlement by the Adjudication Committee, and 8.55, Classification of Offenses.

The Exchange will implement the following changes to the above mentioned Exchange Rules:

Exchange Rule 8.55 outlines the Exchange's classification of offenses for disciplinary matters. The amendments to Rule 8.55 explicitly address the ability of the Exchange to impose a sanction which involves a suspension of membership privileges to include the loss of the ability to pay Member rates on electronic trades during the period of suspension. These amendments clarify sanctions that apply to trades entered through NYMEX electronic platforms, i.e., NYMEX ClearPort® trading and Chicago Mercantile Exchange® Globex® (applicable housekeeping changes made to Rule 8.08). Also under Rule 8.55, the fine for a minor offense is increased from \$10,000 to \$25,000.

Exchange Rule 8.03 outlines procedures related to the negotiation of Offers of Settlement before the Business Conduct Committee ("BCC") to satisfy, without admitting or denying the allegations, charges of rule violations. The amendments include increasing the maximum fine the BCC can impose, when considering a proposed settlement for a case prior to the submission of an Investigative Report, from \$5,000 to \$10,000 for each Rule violation alleged. The amendments also raise the cap for the aggregate maximum fine amount for any individual respondent's settlement considered by the BCC from \$100,000 to \$250,000. In addition, in light of the guidelines presently in effect for disciplinary sanctions, the amendments include language providing that should either the BCC or Adjudication Committee deviate from the prescribed guideline minimum or maximum sanctions, the reasons for the deviation be included in the

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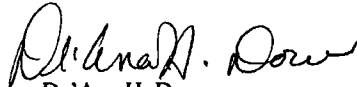
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record of the proceedings or in the written decision where applicable.

Pursuant to Section 5c(c) of the Commodity Exchange Act ("Act") and CFTC Rule 40.6, the Exchange hereby certifies that the amendments referenced above comply with the Act, including regulations under the Act. These changes will be made effective on March 3, 2008.

Should you have any questions concerning the above, please contact Nancy Minett, Vice President, Compliance, at (212) 299-2940.

Sincerely,

A handwritten signature in black ink, appearing to read "De'Ana H. Dow". The signature is fluid and cursive.

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

Attachment

## NOTIFICATION OF AMENDMENTS TO NYMEX RULES 8.03, 8.08 and 8.55

(Strikeouts in bold show deletions; Underlines in bold show additions)

### Rule 8.03, Settlements

(A) When the Compliance Department concludes that a Rule violation has occurred, and at any time prior to the submission of an Investigative Report to the Business Conduct Committee, the Compliance Department may negotiate with the Respondent and enter into a written Offer of Settlement with the Respondent. The Respondent may agree, without admitting or denying a Rule violation, to an Offer of Settlement which may provide for a cease and desist order, a censure, an order directing restitution to any injured person, ~~and~~ a fine of not more than \$10,000 ~~\$5,000~~ for each Rule violation alleged, or any combination of such penalties. Any such settlement is subject to the approval of the Business Conduct Committee.

(B) Concurrent with the review and consideration of an Investigative Report, a Panel of the Business Conduct Committee may also approve Offers of Settlement which have been submitted by the Respondent and recommended by the Compliance Department ("Joint Offers of Settlement") or have been unilaterally submitted by the Respondent ("Unilateral Offers of Settlement"). However, prior to the Respondent's submission of a Unilateral Offer of Settlement, the Respondent shall be required to file a written copy of the Unilateral Offer of Settlement with the Compliance Department. Thereafter, the Compliance Department may submit a written response to a Panel of the Business Conduct Committee. The Business Conduct Committee Panel has the sole discretion to determine whether it will hear oral arguments. The Business Conduct Committee Panel may either accept or reject both Joint and Unilateral Offers of Settlement. All Offers of Settlement approved by a Panel of the Business Conduct Committee under this section shall be accompanied by a written Complaint.

(C) Subsequent to a Panel of the Business Conduct Committee's consideration of an Investigative Report and directive that a written Complaint issue alleging such rule violations as the Committee determined a reasonable basis to believe existed (the "Complaint"), but prior to service of the Complaint on the Chairman of the Adjudication Committee or his designee, the Compliance Department may present a Joint Offer of Settlement to a Panel of the Business Conduct Committee. Alternatively, the Respondent may present a Unilateral Offer of Settlement to a Panel of the Business Conduct Committee. However, prior to the Respondent's submission of a Unilateral Offer of Settlement, the Respondent shall be required to file a written copy of the Unilateral Offer of Settlement with the Compliance Department. Thereafter, the Compliance Department may submit a written response to a Panel of the Business Conduct Committee. The Business Conduct Committee Panel has the sole discretion to determine whether it will hear oral arguments. The Business Conduct Committee Panel may either accept or reject both Joint and Unilateral Offers of Settlement. All Offers of Settlement approved by a Panel the Business Conduct Committee under this section shall be accompanied by a written Complaint, which sets forth the rules alleged to have been violated as determined by the Business Conduct Committee

in its initial determination and directive to issue the Complaint.

(D) Any Offer of Settlement agreed to under Sub-Sections (B) or (C) of this Rule may provide for a cease and desist order, a censure, an order directing restitution to any injured person, **an aggregate fine amount not to exceed \$250,000**, a fine not to exceed \$25,000 for each Rule violation alleged, an expulsion or suspension from all or some rights and privileges of membership, the ability to hold a permit, Electronic Trading Privileges, employment on the Exchange Floor, or employment for the purpose of entering orders on **any NYMEX electronic trading platform NYMEX ACCESS®** for a period not to exceed three (3) months for each Rule violation alleged, or any combination of such penalties. **Reasons for any deviation from the guideline minimum or maximum shall be included in the record of the proceedings or in the written decision where applicable.**

(E) Any settlement agreement approved by, or entered into with a Panel of the Business Conduct Committee is subject to the approval of the Exchange's Board of Directors.

#### **Rule 8.55, Classification of Offenses**

Offenses against the Exchange shall be classified as major offenses and minor offenses. Major offenses shall be punishable by one or more of the following: expulsion, suspension from all or some rights and privileges of membership, **including but not limited to** the ability to hold a permit, Electronic Trading Privileges, **the ability to pay Member rates on electronic trades, or** employment on the Exchange Floor, or employment for the purposes of entering orders on **any NYMEX electronic trading platform NYMEX ACCESS®, employment for the purposes of entering orders on NYMEX Clearport®,** a fine of not more than \$1,000,000, cease and desist order, or an order directing restitution to any injured person. Minor offenses shall be punishable by one or more of the following: a fine of no more than **\$25,000-\$10,000**, cease and desist order, order directing restitution to any injured person, or suspension for not more than one year from all or some rights and privileges of membership, **including but not limited to** the ability to hold a permit, Electronic Trading Privileges, **the ability to pay Member rates on electronic trades, or** employment on the Exchange Floor, **employment for the purposes of entering orders on NYMEX Clearport®,** or employment for the purposes of entering orders on **any NYMEX electronic trading platform NYMEX ACCESS®.** Unless good cause is shown, any offense involving fraudulent or deceitful trading practices detrimental to a customer's order shall be a Major Offense and shall be punishable, at a minimum, with a suspension or revocation of the Member's or Authorized Terminal User's right to execute customer orders.

A second violation of the same rule or the same minor offense within a period of twenty-four months of a final disciplinary action by the Exchange shall carry penalty provisions equivalent to a major offense.

#### **(A) Major Offenses**

No Member, Member Firm, or any employee of the foregoing shall commit a violation of any of the following rules, which shall be deemed major offenses of the Exchange.

- (1) to have an interest in, operate, or knowingly represent or make any transaction with or for a bucket shop;
- (2) to be guilty of fraud or any act of bad faith;
- (3) to be guilty of any dishonest conduct;
- (4) to make or report a false or fictitious trade;
- (5) to attempt extortion;
- (6) to default on, be delinquent in or otherwise fail to comply with the delivery requirements on any contract;
- (7) to engage in wash trading or accommodation trading;
- (8) to manipulate prices or attempt to manipulate prices or to corner or attempt to corner the market;
- (9) to make a material misstatement to the Board or to a committee, or on any information supplied to the Exchange or its officials;
- (10) to knowingly disseminate false, misleading or inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity upon the Exchange;
- (11) to trade or accept margins after insolvency;
- (12) to refuse to appear before the Board, the President or his designee or any investigative and hearing committee at a duly convened investigative hearing, or in connection with any investigation; to refuse to fully answer all questions and produce all books and records at such hearing or investigation, or to testify falsely;
- (13) to make use of or reveal any confidential information obtained by reason of participating in any committee meeting or in any investigative proceeding or hearing;
- (14) to knowingly accept, execute or clear a trade on the Exchange for the account of an Exchange employee or of a non-member employed on the floor of the Exchange or for a non-member employed as an Authorized Terminal User or User Agent or for an account in which such employee or non-member has a direct or indirect interest;
- (15) for a Member, Member Firm, Clearing Member or employee of the foregoing to permit the

use of its facilities, **any NYMEX electronic trading platform NYMEX ACCESS®, NYMEX Clearport®** or membership privileges by a Member or non-Member in a manner that impairs the dignity or degrades the good name of the Exchange, or creates a market or other situation detrimental to the Exchange, or results in violation of the speculative limit rules, or effectuates manipulations or corners or attempts at either; or to itself do any of the foregoing;

Comment [s1]:

(16) for a Member, Member Firm, Clearing Member or Authorized Terminal User **or User's Agent** to improperly utilize or permit the unauthorized use of **any NYMEX electronic trading platform NYMEX ACCESS®**.

(17) for a Member, Member Firm or Clearing Member to fail to maintain minimum financial requirements;

(18) to commit an act which is substantially detrimental to the interests or welfare of the Exchange;

(19) to refuse to comply with an order of the Board, the President or his designee or any committee of the Exchange, **including but not limited to a refusal to comply with orders that suspend the membership privilege of other Members to pay Member rates for transactions executed in any venue;**

(20) to intentionally violate any Exchange rule that results in harm to a customer;

(21) to fail to provide a required notice to the Exchange; and

(22) to violate Exchange Rules 3.02, ~~3.17(G)~~ or 8.54.

(23): Supervision.

(a) To fail to supervise any employee of a Member or Member Firm adequately to prevent the violation by such employee of any Exchange Rule that: (i) results in substantial detriment to the welfare and interests of the Exchange; (ii) results in harm to a customer or another Member or Member Firm; or (iii) otherwise constitutes a Major Offense.

(b) A showing that the violation of an Exchange Rule by an employee was a first offense of that kind and that the Member or Member Firm disclosed the violation to the Exchange and took immediate and appropriate remedial action on its own initiative upon discovering the violation shall be considered as mitigation to a charge of violating Rule 8.55(A)(23)(a).

#### **(B) Minor Offenses**

No Member, Member Firm, or any employee of the foregoing shall commit a violation of any of the following rules, which shall be deemed minor offenses of the Exchange.

(1) to engage in conduct detrimental to the Exchange;

- (2) to engage in conduct inconsistent with just and equitable principles of trade;
- (3) to be guilty of any conduct which has a manifest tendency to impair the dignity or the good name of the Exchange;
- (4) to interpose a Statute of Frauds defense to any claim for breach of an Exchange contract;
- (5) to make a false entry upon a clearing sheet;
- (6) to violate any rule, the violation of which is not a major offense; **and**,
- (7) to circulate or aid in the circulation in any manner of rumors which tend to reflect on the integrity of any contract;-
- (8) to fail consistently to conform to audit trail and/or trade submission standards;- **and**
- (9) to enter an order, either in person, by telephone, or otherwise, from a location on the trading floor of a Division of the Exchange from which the Member has not obtained trading privileges.
- (10): Supervision.
  - (a) To fail to supervise any employee of a Member or Member Firm adequately to prevent violations of Exchange Rules by such employee.
  - (b) A showing that the violation of an Exchange Rule by an employee was a first offense of that kind and that the Member or Member Firm disclosed the violation to the Exchange and took immediate and appropriate remedial action on its own initiative upon discovering the violation shall be an affirmative defense to a charge of violating Rule 8.55(B)(X)(a).

**Rule 8.08, Settlement by the Adjudication Committee**

(A) If the Respondent wishes to settle a matter at any time after the filing of the ~~C~~complaint with the Chairman of the Adjudication Committee, the Respondent may submit a written settlement offer. The settlement offer will be directed to the NYMEX Division Hearing Panel or the COMEX Division Hearing Panel, as applicable, that has not been assigned the case to hear and decide. The Compliance Department may recommend to that Hearing Panel an approval or a rejection of any settlement offer. Such offer may provide for the issuance of a cease and desist order, a censure, an order directing restitution to any injured person, a fine not to exceed \$1,000,000 for each violation alleged to have been committed, an expulsion or suspension from all or some rights and privileges of membership, the ability to hold a permit, electronic trading privileges, employment on the Exchange Floor, or employment for the purposes of entering orders on any NYMEX electronic trading platform NYMEX ACCESS® or any combination of such penalties.

(B) Any settlement offer which the Hearing Panel approves is subject to the approval of the Board.