

RECEIVED  
C.F.T.C.



2009 MAR -6 PM 1:45

March 6, 2009 OFFICE OF THE SECRETARIAT

**VIA E-MAIL**

Mr. David Stawick  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

**RE: Rule Certification. New York Mercantile Exchange, Inc. Submission #09.38: Notification of Amendments to Chapters 1, 2, 2A, 100 and Rule 439 Relating to harmonization of NYMEX Membership Rules with CME and CBOT**

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 amendments to NYMEX rules to harmonize its rules with CME and CBOT rules. Specifically, the proposed changes address NYMEX membership rules which are being harmonized to the greatest extent possible with CME and CBOT Rules.

A summary of the significant changes is set forth below. The new rule chapters and amendments to existing rules are included as an attachment to this letter.

**Membership Rules**

New NYMEX Chapter 1 (Membership) adopts the majority of language in existing CME and CBOT Chapter 1 based on NYMEX's planned adoption of existing CME and CBOT membership rules, practices and procedures. The marked modifications in new NYMEX Chapter 1 show how the NYMEX rules will differ from their CME counterpart.

NYMEX Rule 2.10 (Member Firm Privileges) currently requires that at least one of the individuals who assign a membership to a firm for purposes of the firm qualifying for member firm privileges be an executive officer, general partner or executive officer of a corporate general partner of the firm. New NYMEX Rule 106.J. (Member Firm) requires that such assignments be made by principals or employees of the member firm or persons with an acceptable proprietary interest in the member firm.

NYMEX Rule 2.14 (Financial and Reporting Requirements for Member Firms) has been eliminated. As of March 16, financial and reporting requirements will apply solely to Clearing Member firms pursuant to the rules already in place in NYMEX Chapter 9. The change harmonizes the requirements of NYMEX non-clearing member firms with those of CME non-clearing member firms.

NYMEX Rules 2.23 (Financial Requirements of Floor Members) and 2.30 (Additional Capital Required for Employee Guarantees) have been eliminated. The change eliminates the current requirement that NYMEX and COMEX lessees maintain a minimum equity balance in a trading account with their qualifying clearing member and the provision allowing member firms to exempt member and permit holder employees from the requirements of Rule 2.23 provided such firms maintained excess capital for each financial guarantee issued in excess of four

guarantees per Division. Neither CME nor CBOT require minimum equity balances for lessees or require firms to maintain excess capital as a financial guarantee for employees of the firm who are also members or permit holders. The changes harmonize NYMEX requirements with those of CME and CBOT.

The NYMEX Membership Department currently notifies the membership of transfers via posting for ten days. CME and CBOT Rule 110 (Claims Against Membership, Application of Proceeds) provides for a 20 day posting period with respect to sales and transfers. New NYMEX Rule 110 adopts the 20 day posting period.

Current NYMEX Rule 2.70 (Leases of Memberships' Trading Privileges) holds the lessor harmless with respect to any claims against the lessee arising out of the lessee's use of the membership. As a result, lessors at NYMEX have not obtained indemnification agreements from the firm qualifying the lessee. At CME and CBOT, such claims are allowed pursuant to Rule 110. In order to not disrupt current business practices at NYMEX, the status quo has been maintained and the relevant language has been relocated to new NYMEX Rule 106.D.6.

The requirement under current NYMEX Rule 2.60 (A-B-C Agreements) that a member firm's financing of the cost of acquisition of a membership for employees and principals be done pursuant to an A-B-C agreement has been eliminated. Neither CME nor CBOT prescribe the specific form required for such financing.

#### Related Changes

Given that NYMEX Chapter 100 (Palladium Futures Contract) currently has a Rule 100.00 in the chapter, it is being renumbered as Chapter 100A (and Rule 100A.00) to distinguish it from the new NYMEX Rule 100 (General) in new NYMEX Chapter 1. Additionally, based on NYMEX adopting its membership rules into Chapter 1, existing NYMEX Chapter 1 (Definitions) has been modified such that the definitions no longer reside in a chapter. Rather, the section will precede the rules set forth in Chapter 1.

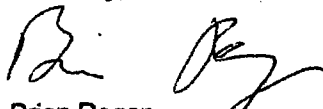
Based on NYMEX's adoption of Rule 110, a reference to former NYMEX Rule 2.69B(1) in NYMEX Rule 439 has been corrected.

Based on the elimination of the rules currently set forth in NYMEX Chapter 2, current NYMEX Chapter 2A (Government) has been modified to become NYMEX Chapter 2.

Pursuant to Section 5c(c) of the Commodity Exchange Act ("Act") and CFTC Rule 40.6, the Exchange certifies that the attached NYMEX rule amendments and new rule chapters comply with the Act, including regulations under the Act. These changes will be made effective on Monday, March 16, 2009.

Should you have any questions concerning the above, please contact the undersigned at (212) 299-2207.

Sincerely,



Brian Regan  
Managing Director, Regulatory Counsel

Attachment

Additions are underlined; deletions are struck through.

## Chapter 1 Membership

### 100. GENERAL

Membership with full privileges in the ~~CME~~ NYMEX Division shall be limited to ~~816625~~; membership with full privileges in the ~~IMM~~ COMEX Division shall be limited to ~~843772~~; and COMEX Option Membership; membership with full privileges in the ~~IOM~~ Division shall be limited to ~~2381287~~; and membership with full privileges in the ~~CME~~ Division shall be limited to 413. Membership in the Exchange is a privilege subject to transfer only as authorized and on the conditions prescribed herein.

### 101. QUALIFICATIONS AND RESPONSIBILITIES

Any adult of good moral character, reputation and business integrity, with adequate financial resources and credit to assume the responsibilities and privileges of membership, is eligible for membership in the Exchange. A determination as to whether an applicant for membership or an applicant for an incentive program offered by CMENYMEX satisfies the Exchange requirements shall be made by the Membership Committee or by staff in the applicable department. A person approved for membership and an individual or entity approved for an incentive program shall be subject to all of the rules and regulations of the Exchange. Notwithstanding a transfer of membership, a person shall continue to be responsible for violations of Exchange rules and regulations committed by him while he was a member and also agrees to have any disputes, which arose while he was a member and which relate to or arise out of any transaction upon the Exchange or membership in the Exchange, resolved in accordance with Chapter 6A.

### 102. NON-MEMBER INVESTORS

A person may purchase a membership interest and be approved as a "Non-Member Investor" in the Exchange. The person shall file an Application to become a Non-Member Investor with the Membership Services Department (the "Department"). A Non-Member Investor is presumed to know all the rules and regulations of the Exchange and agrees to abide by and be subject to them. In the event that multiple individuals own a membership, such individuals shall appoint a designated individual who shall have the authority to sell, lease, pledge or otherwise dispose of or encumber the membership. Further, in the event that a legal entity owns a membership, such entity must provide the Department with appropriate corporate, partnership or other legal documentation indicating who has authority to sell, lease, pledge or otherwise dispose of or encumber the membership and any other documentation requested by the Department.

## PROCEDURES FOR PURCHASE, SALE AND TRANSFER

### 103. PURCHASE OF MEMBERSHIP AND MECHANICS OF PURCHASE

#### 103.A. Purchase of Membership

The prospective purchaser of a membership shall sign and file with the Department a Bid to Purchase which shall be guaranteed by: a) a clearing member of the Exchange; or b) the deposit of a certified or cashier's check; or c) a wire transfer; ~~or d) for swap transactions, the deposit of a CME, IMM, or IOM membership and/or a wire transfer or a certified or cashier's check.~~ The Bid to Purchase shall contain an agreement by the purchaser to take no recourse against the Exchange in the event his Application for Membership is rejected (except as provided in Section 8c of the Commodity Exchange Act).

~~For purposes of this Chapter 1, a membership in the Exchange may only be purchased in conjunction with the Class B Share coupled to such membership. References to a "membership" shall include the associated Class B Share.~~

#### 103.B. Mechanics of Purchase

The Department shall post the lowest offer to sell and the highest bid to purchase ~~a membership in each Division~~ each type of membership. The Department shall match bids and offers and, in the event of an agreement, shall promptly notify the purchaser and the seller. Within two business days of such notification, the purchaser shall deposit with the Department the following:

- a. A check, payable to the Exchange, for a transfer fee in an amount set by Exchange staff; and
- b. (1) A wire transfer, or a certified or cashier's check, if not previously deposited, or a check or a wire transfer from a ~~CME~~ clearing firm, payable to the Exchange, in the amount of the purchase price,

~~or, (2) if the seller has filed a written consent, a CME, IMM, or IOM membership if not previously deposited, owned free of any Rule 110 claims or any other liens, representing partial or complete satisfaction of the purchase price, and constituting a partial or complete exchange of membership(s) to that extent. Pursuant to such an exchange of membership(s), the purchaser and seller each must file an indemnification agreement in favor of the Exchange from a clearing member by which the clearing member agrees to pay all valid Rule 110 claims against the purchaser or the seller, as the case may be, up to the value at the time of the exchange of the membership(s) transferred by such purchaser or seller.~~

#### **104. SALE OF MEMBERSHIP**

A membership in the Exchange may only be sold as provided for in the Rules. When the owner or the legal representative of an owner desires to sell a membership, he shall sign and file with the Department an Offer to Sell, which shall set forth the price at which he is offering his membership, and contain an agreement to the conditions of sale set forth in these rules.

Upon the sale of a membership, any and all membership privileges granted by these rules shall terminate.

#### **105. APPLICATION FOR MEMBERSHIP**

##### **105.A. Application Process for Members Accessing the Trading Floor**

The applicant shall file an Application for Membership and the appropriate fee with the Department. The applicant shall agree to take no recourse against the Exchange in the event his application is rejected (except as provided in Section 8c of the Commodity Exchange Act), set forth all financial arrangements made in connection with the proposed purchase or transfer of the membership and agree to abide by the applicable rules and regulations of the Exchange and all amendments thereto.

Upon completion of the foregoing, the Department shall notify the membership by posting for a period of 20 days of the name of the applicant, the seller, the purchase price and the transfer type. The notice shall request the submission to the Department of claims against the seller or transferor arising out of Exchange transactions or any other relationship regulated by the Exchange.

During the posting period, the Department shall prepare a report on the qualifications of the applicant.

The Short Form application of a member who is transferring onto a membership may be approved by Exchange staff before the expiration of the posting period, provided the member obtains an indemnification agreement in favor of the Exchange from a clearing member to cover Rule 110 claims up to the value of the membership at the time of the transfer.

An applicant who wishes to procure a membership by purchase, or by transfer, may do so either prior or subsequent to approval for membership pursuant to Rule 107. An applicant who has acquired a membership prior to approval for membership shall become a member upon such approval. An applicant approved for membership prior to acquiring a membership shall become a member if, within thirty calendar days after approval for membership, he procures a membership; otherwise his membership shall be deemed vacated and the Exchange shall retain the membership application processing fee. Extensions of the 30-day period in which the applicant must acquire a membership may be granted by the Department.

##### **105.B. Application Process for Members Not Requesting Access to the Trading Floor**

The applicant shall file an Application for Membership and the appropriate fee with the Department. The applicant shall agree to take no recourse against the Exchange in the event his application is rejected (except as provided in Section 8c of the Commodity Exchange Act), set forth all financial arrangements made in connection with the proposed purchase or transfer of the membership and agree to abide by the applicable rules and regulations of the Exchange and all amendments thereto.

The applicant may receive temporary membership privileges which do not permit trading floor access upon the filing of a complete Application unless the Department has reason to believe that the applicant is not qualified for membership. An applicant that receives temporary membership privileges shall be subject to all of the rules of the Exchange including the rules related to the approval and rejection of an applicant. Such temporary membership privileges will expire upon the earlier of: 1) sixty days after the temporary membership privileges are granted; 2) a rejection of the applicant's membership application by the Membership Committee; or 3) notification that the application for membership has been approved. An applicant who receives temporary non-trading floor membership privileges who is subsequently rejected for membership shall reimburse the Exchange for the difference between trading and clearing fees paid by reason of the temporary membership status and the fees that would have been paid on the same transactions at the rates that would have otherwise prevailed.

The Department shall notify the membership by posting for a period of 20 days of the name of the

applicant, the seller or transferor and the purchase price. The notice shall request the submission to the Department of claims against the seller or transferor arising out of Exchange transactions or any other relationship regulated by the Exchange. During the posting period, the Department shall prepare a report on the qualifications of the applicant.

The Application of a member who obtains a membership may be approved by the Department before the expiration of the posting period, provided the member obtains an indemnification agreement in favor of the Exchange from a clearing member to cover Rule 110 claims up to the value of the membership at the time of purchase or transfer.

An applicant who has acquired a membership prior to approval for membership shall become a member upon such approval. An applicant approved for membership prior to acquiring a membership shall become a member if, within thirty calendar days after approval for membership, he procures a membership; otherwise his membership shall be deemed vacated and the Exchange shall retain the membership application processing fee. Extensions of the 30-day period in which the applicant must acquire a membership may be granted by the Department.

**105.C. Application for Floor Broker's or Floor Trader's License**

Each membership applicant seeking a floor broker's or floor trader's license shall apply for registration as a floor broker or a floor trader with the National Futures Association. Individuals not accessing the trading floor are not required to obtain floor broker or floor trader registration.

**106. TRANSFERS, SECURITY TRANSACTIONS, AND AUTHORIZATIONS TO TRANSFER OR SELL**

Transfers of memberships may be made only in accordance with the following provisions. All of the applicable procedures and requirements for the sale and purchase of a membership as set forth in Chapter 1, including the provisions of Rule 110, shall apply to transfers made under this rule. A transfer, reinstatement or revocation of a transfer shall not be completed until all valid Rule 110 claims against a member are satisfied unless a properly completed Indemnification Form is filed by a member's qualifying clearing member.

**106.A. Authorization to Sell**

An Authorization to Sell ("Authorization Agreement") is a grant of authority by a member or applicant for membership that may be used only for the purposes specified in Rule 106.B. Authorization Agreements shall be effective only if executed on the form supplied by the Exchange and filed with the Department. Authorization Agreements shall be irrevocable without the written consent of the grantee.

A member or applicant for membership who executes an Authorization Agreement relinquishes his power to direct the sale of his membership. A grantee shall have all powers of sale that otherwise would have been available to the grantor. The Exchange shall act at the grantee's direction as if the grantee was the member-owner.

Private agreements between the grantor and the grantee shall not be recognized by the Exchange and shall not affect the rights of the Exchange or its members. The grantee shall be entitled, in addition to any other rights he may have under Rule 110, to the residual proceeds after all Rule 110 claims have been satisfied up to the amount of the outstanding debt owed.

**106.B. Security Transactions**

A member, applicant for membership or a Non-Member Investor, may execute an Authorization Agreement, in favor of a clearing member, a financial institution or bank, or in favor of the member that financed the purchase of the membership ~~and associated Class B Share~~ in order to secure any outstanding debt connected with that financing.

A member, applicant for membership or a Non-Member Investor may execute an Authorization Agreement in favor of a member or clearing member to whom the member is indebted or may become indebted by reason of transactions upon the Exchange in order to secure such current or future debts.

**106.C. Family Transfers**

A member or Non-Member Investor may temporarily transfer his membership to a member of his immediate family who shall be subject to all Exchange rules and regulations. For purposes of this rule, immediate family members shall be limited to parents, siblings, children, grandchildren, grandparents, fathers-in-law, mothers-in-law, sons-in law, daughters-in-law and spouses.

Rule 106.C transfers shall be subject to the following terms and conditions:

1. The transferor may revoke the transfer upon written notice filed with the Department.
2. The transferor shall have the right at any time to withdraw the authority of the transferee to trade on the membership by giving notice to the transferee's qualifying clearing member and such clearing

member must subsequently notify the Exchange pursuant to Rule 511.A.

3. The transfer shall be revoked and the membership shall revert to the transferor's estate or conservator upon official notice of the death or formally declared incompetence of the transferor. However, the legal representative of a deceased member's estate may transfer his membership pursuant to this Rule 106.C. during the pendency of probate.
4. Upon a transferor's expulsion from the Exchange, the transfer shall be revoked and the membership shall revert to the transferor who must sell the membership within 30 days.
5. Upon approval for membership, the transferee shall be treated as a member for all purposes, except that the transferee shall have no authority to sell, transfer or assign the membership. The transferor shall be considered the member and an assignment of the membership for clearing purposes pursuant to Rule 902 shall not be terminated by the transferee.
6. The transferor may sell the membership at any time in accordance with the provisions of Rule 104 or transfer the membership and associated Class B Share pursuant to Rule 106. The proceeds of the sale of the membership and associated Class B Share will be distributed to the transferor following the settlement of all claims pursuant to Rule 110.
7. The transferred membership may be sold in accordance with Rule 133, and the proceeds may be applied as provided in Rule 110, to satisfy financial obligations of the transferee to the Exchange, to another member or to a clearing member arising out of the transferee's use of the membership in the event that such financial obligations have not been otherwise satisfied.

#### 106.D. Futures Industry Transfers

A member or Non-Member Investor may temporarily transfer his membership to another member who shall be subject to all Exchange rules and regulations.

Transfers under this section shall be subject to the following terms and conditions:

1. The transferor may revoke the transfer upon written notice filed with the Department.
2. The transferor shall have the right at any time to withdraw the authority of the transferee to trade on the membership by giving notice to the transferee's qualifying clearing member and such clearing member must subsequently notify the Exchange pursuant to Rule 511.A.
3. The transfer shall be revoked and the membership shall revert to the transferor's estate or conservator upon official notice of the death or formally declared incompetence of the transferor. However, the legal representative of a deceased member's estate may transfer his membership pursuant to this Rule 106.D. during the pendency of probate.
4. The transferor is eligible to be elected to the Board of Directors as a Class B-1 Director, Class B-2 Director or Class B-3 Director (as such terms are defined in the Certificate of Incorporation), whichever is applicable. A transferor who is a member of the Board may have access to the trading floor in order to meet with other members, but may not trade while on the trading floor.
5. The transferor may sell the membership at any time in accordance with the provisions of Rule 104 or transfer the membership pursuant to Rule 106. The proceeds of the sale of the membership will be distributed to the transferor following the settlement of all claims pursuant to Rule 110.
6. The transferred membership may be sold in accordance with Rule 133, and the proceeds may be applied as provided in Rule 110, to satisfy financial obligations of the transferee to the Exchange, to another member or to a clearing member arising out of the transferee's use of the membership in the event that such financial obligations have not been otherwise satisfied. The transferee's guarantor(s) shall have no right of indemnification against the transferor for any and all claims against the transferee which have been satisfied in accordance with the terms of the guarantee. The transferor shall neither be liable for nor shall the transferred membership be used to satisfy any and all claims against the transferee which have not been satisfied by the transferee and/or the transferee's guarantor(s). Transferees shall have continuing personal liability for any claims which accrued during the term of the transfer which were not satisfied by the transferee's guarantor(s) for the payment of disciplinary fines assessed against the transferee which were not otherwise satisfied; and for any other financial obligations to the Exchange and/or its members that were not otherwise satisfied.
7. ~~The transferee must be qualified to trade by a clearing member acceptable to the transferor. The transferor may not assign the membership for clearing purposes pursuant to Rule 902.~~
8. A transferee shall place all trades on the books of his qualifying clearing member unless written authorization to the contrary from said clearing member and from the transferor has been filed with the Department. Failure to adhere to the requirements of this rule and Rule 511 and Rule 903.F shall exclude a clearing member not qualifying the transferee from receiving proceeds under Rule

110.

9. Upon a transferor's expulsion from the Exchange, the transfer shall be revoked and the membership shall revert to the transferor who must sell the membership within 30 days.

~~10. 11. [Reserved] Except as provided in Rule 135, any transferee approved for membership pursuant to this Rule 106.D. after January 7, 1985, who was not a member as of January 7, 1985, shall be eligible to execute trades only for his own account for a cumulative period of twelve (12) months following his or her election to membership unless exempted there from by the Membership Committee.~~

~~11. A lease entered into on or after February 1, 1996, which is terminated by a transferee prior to its expiration date, shall be controlled by the following early cancellation payment obligation:~~

~~A transferee who unilaterally terminates a lease remains obligated to make the agreed rental payments to transferor until the end of the term of the lease; however, transferee's obligation to make such rental payments shall be reduced by the amount of rental payments received by transferor if transferor is able to lease the membership to another person during the remaining term of the original lease. Transferor must use his best efforts to lease the membership to another person as soon as possible and at the highest possible rental obtainable based on similar leases, if any, then being executed.~~

12. A lessor shall notify the Exchange, in a manner designated by the Exchange, of the terms of a new lease agreement or any renewal of a lease agreement within two (2) business days of the negotiation of the lease agreement, or renewal thereof. A lessor's failure to comply with this Rule 106.D.12 may result in the issuance of a warning letter to the lessor. A lessor may then be subject to an automatic fine of \$500 and \$1000 respectively for a second and third violation of this rule within a rolling 12-month period from the issuance of the warning letter. Repeated violations of this rule may be referred to a disciplinary committee.

13. ~~For leases expiring on or after December 31, 2006, u~~Unless otherwise previously agreed to by the transferor and the transferee, notice must be provided by the parties of their intention to continue a leasing arrangement at least ten (10) days prior to the expiration of the current lease term. If either party fails to provide such notice, it is assumed that the lease will not be renewed upon its expiration. Terms of the renewal, if any, will be subject to negotiation between the parties.

~~14. No Option Membership may be transferred pursuant to this Rule 106.D.~~

**106.E. Unconditional Bequests and Bona Fide Gifts of Membership**

A member or Non-Member Investor may make a bona fide gift or bequest of membership. The bona fide gift may be made only to immediate family members as defined in Rule 106.C. Unless otherwise required by law, a letter affirming the gift or Letters of Office from the Probate Court and a letter from the decedent's personal representative allowing the transfer will be required as a precondition of transfer.

**106.F. Clearing Member**

A membership may be owned by a clearing member, or a person or an entity having an acceptable proprietary interest in the clearing member. The membership may be transferred provided that: (1) the transfer is approved by Exchange staff; and (2) the transferee is approved pursuant to the rules of the Exchange.

**106.G. Transfer to Wholly-Owned Entities**

A membership may be transferred to an entity which is wholly-owned by the member or his immediate family members as that term is used in Rule 106.C. Transfers pursuant to this authorization shall be limited to transfers pursuant to Rules 106.C., D. or E.

A 106.G. transferee may assign the membership for clearing purposes in accordance with Rule 902 except in circumstances where the transfer has been made pursuant to Rule 106.D.

**106.H. Trading Member Firm [Reserved]**

~~A membership may be owned by, or two memberships may be leased by, a trading member firm. The memberships may be held in the name of the trading member firm or transferred to a principal or employee of the trading member firm and transferred among its principals and employees provided that: (1) the transfer is approved by Exchange staff; (2) the transferee is approved pursuant to the rules of the Exchange; and (3) the transfer is for the legitimate business purposes of the firm. The firm shall have the right, at any time, to have the principal or employee disqualified from trading, but must have~~

him disqualified upon termination of his employment or other association with the firm. Notice to have the principal or employee disqualified from trading must be given to his qualifying clearing member who in turn must notify the Exchange pursuant to Rule 511.A. The trading member firm shall designate on a form provided by the Exchange a representative who shall be authorized to deal with the Exchange with respect to the membership transferred under this Section.

A Rule 106.H. membership may not be transferred pursuant to any other provision of Rule 106. The membership may not be assigned for clearing purposes under Rule 902.

Rule 106.H. trading member firm benefits apply only to the firm's proprietary trading and not to the trading of any affiliates, subsidiaries or customers. All proprietary positions of the trading member firm must be carried by a clearing member(s) in accounts separate from positions of affiliates, subsidiaries, customers and other entities.

Any holder or transferee of a Rule 106.H. membership may not solicit or contact customers from the floor of the Exchange.

A Rule 106.H. firm may not hold itself out to the public as a clearing member.

#### **106.I. Affiliate Member Firm [Reserved]**

An "affiliate" shall be defined to include a clearing member or a firm that either owns, directly or indirectly, 100% of a clearing member or has 100% ownership, direct or indirect, in common with a firm that owns, directly or indirectly, 100% of a clearing member.

A membership may be owned by a clearing member or affiliate firm under this Rule. The membership may be held in the name of the firm or transferred to a principal or employee of an affiliate that directly or indirectly owns or is owned by all other affiliated parties within the organization of affiliated parties and be transferred among its principals and employees provided that: (1) the transfer is approved by Exchange staff; (2) the transferee is approved for membership pursuant to the rules of the Exchange; and (3) the transfer is for the legitimate business purposes of the firm. The affiliate shall have the right, at any time, to have a principal or employee disqualified from trading, but must have him disqualified upon termination of his employment or other association with the firm. Notice to have the principal or employee disqualified from trading must be given to his qualifying clearing member, and such clearing member must subsequently notify the Exchange pursuant to Rule 511.A. The clearing member or affiliate firm shall designate on a form provided by the Exchange a representative who shall be authorized to deal with the Exchange with respect to the membership held under this Section.

A Rule 106.I. membership may not be transferred pursuant to any other provision of Rule 106. The membership may not be assigned for clearing purposes under Rule 902.

Rule 106.I. firm benefits apply to the proprietary trading activity of any affiliate within the 100% related party structure. All proprietary positions of the firm and its affiliates must be carried by a clearing member(s) in accounts separate from positions of subsidiaries, customers and other entities.

A Rule 106.I. firm may not hold itself out to the public as a clearing member.

Exchange staff may grant exemptions from the requirements of this Rule.

#### **106.J. Reserved Member Firm**

A firm may qualify as a non-clearing Member Firm if two Exchange memberships in each Division in which it desires member firm privileges are owned by the firm or are assigned to it by principals or employees of the member firm or persons, including a parent company, with an acceptable proprietary interest in the member firm.

COMEX Option Memberships may be assigned solely for the purpose of trading those contracts which a COMEX Option Member is permitted to trade. Each NYMEX Division member firm must also own or have assigned to it by principals, employees, or persons with an acceptable proprietary interest in the member firm, at least 8,000 CME Group Class A Shares. The memberships may be held in the name of the member firm, principals or employees of the member, or persons with an acceptable proprietary interest in the member firm. The member firm may transfer firm-owned memberships among such persons provided that: (1) the transfer is approved by Exchange staff; (2) the transferee is approved pursuant to the rules of the Exchange; and (3) the transfer is for the legitimate business purposes of the firm. The firm shall have the right, at any time, to withdraw the authority of the transferee to trade on a firm-owned membership, but must withdraw such authority upon termination of his employment or other association with the firm. Notice of the withdrawal of the authority of the transferee to trade on a firm-owned membership must be given to his qualifying clearing member who in turn must notify the Exchange. The member firm shall designate on a form provided by the Exchange a representative who shall be authorized to deal with the Exchange with respect to the membership transferred under this Section.

The proceeds of the sale of a membership which has been assigned in order to qualify a Rule 106.J.



firm shall be subject to Rule 110 claims against both the owner of the membership and the Rule 106.J. firm.

A Rule 106.J membership may not be transferred pursuant to any other provision of Rule 106. The membership may not be assigned for clearing purposes under Rule 902.

Rule 106.J. member firm benefits apply only to the firm's member firm trading and not to the trading of any affiliates, subsidiaries or customers. All positions of the member firm must be carried by a clearing member(s) in accounts separate from positions of affiliates, subsidiaries, customers and other entities.

Any holder or transferee of a Rule 106.J. membership may not solicit or contact customers from the floor of the Exchange, unless the member firm is an FCM or IB.

A Rule 106.J. firm may not hold itself out to the public as a clearing member.

**106.K. Transfer to a Trust**

A member may transfer his membership to a trust for which the member is the grantor. The document(s) establishing the trust shall at all times include the restrictions as to permissible beneficiaries and state that (1) the trust takes the membership subject to all of the rules of the Exchange, as may be amended, (2) the interests in the membership that inure to the beneficiaries of the trust shall be subject to all of the rules of the Exchange, as may be amended, (3) the Exchange's rights with respect to the membership are superior to those of the beneficiaries, and (4) the Exchange shall have no liability to the beneficiaries of the trust in the event of the mishandling of the trust assets by the trustee. Permissible beneficiaries are immediate family members as set forth in Rule 106.C. The grantor (or the grantor's personal representative) and the trustee (and any successor) shall each provide in the form provided by the Exchange an acknowledgment that the trust takes the membership subject to all of the rules of the Exchange and that the trust is in compliance with the requirements of this Rule. The grantor shall comply with any request to produce trust information made by Exchange staff.

If such a transfer is made by a bona fide gift or bequest, it shall also be subject to the requirements of Rule 106.E.

The grantor's liability to the Exchange under Rule 439 shall continue with respect to any claim arising out of an act or omission occurring prior to such transfer, and the membership will continue to be treated as the asset of the grantor for the purposes of Rule 439 and for otherwise meeting any obligations to the Exchange arising out of the grantor's use of the membership prior to the transfer to the trust, including fines imposed with respect to conduct occurring prior to the transfer.

A membership held pursuant to a transfer under this section may be assigned for clearing privileges or reinstated to the transferor pursuant to this section.

The transfer shall be revoked and the membership shall revert to the transferor upon official notice to the Exchange that the trust has been revoked. The membership must be transferred out of the trust within 90 days of the closing of the member's estate.

**106.L. [Reserved] Transfer of Membership Created by the Membership Rights Program**

~~Exchange staff is authorized to allow the transfer of the ownership of record of any membership created by the combination of four quarter memberships pursuant to the Membership Rights Program provided that the transferor and the transferee have each continuously maintained at least a quarter interest in the membership from the date of the combination of the membership.~~

**106.M. Transfer to Joint Tenants With Right of Survivorship**

A member may transfer his membership to himself and a member of his immediate family, as defined in Rule 106.C., as joint tenants with right of survivorship.

The joint tenants shall designate on a form provided by the Exchange which one of them shall be authorized to deal with the Exchange with respect to the membership transferred under this Section. The designee must qualify for membership by satisfying the requirements of Chapter 1 of these rules, and shall be treated as a member for all purposes. In the designation form, the joint tenants shall acknowledge that the designee shall have the exclusive right to transfer the membership or to execute an Authorization to Sell pursuant to Rule 106.A. and that the Exchange shall have no liability to the non-designee in the event of such transfer or execution or the mishandling of the membership by the designee. The joint tenants may at any time change such designation in writing signed by both of them, and each such change shall be deemed a transfer for the purposes of these rules. Upon such change in designation, the new designee must qualify for membership by satisfying the requirements of Chapter 1 of these rules.

Whether or not the transferor is the designee, the transferor's liability to the Exchange under Rule 439

shall continue with respect to any claim arising out of an act or omission occurring prior to a transfer under this rule, and the membership will continue to be treated as an asset of the transferor for the purposes of Rule 439 and for otherwise meeting any obligations to the Exchange arising out of the transferor's use of the membership prior to such transfer, including fines imposed with respect to conduct occurring prior to the transfer.

Upon receipt of satisfactory proof of the death of a joint tenant, the Exchange will transfer the membership to the survivor.

Upon receipt by the Exchange of written notice signed by both joint tenants terminating joint ownership of the membership transferred under this section and instructing the Exchange to transfer the membership to one of the joint tenants as sole owner, the Exchange shall transfer such membership pursuant to such instructions.

A membership held pursuant to a transfer under this section may not be assigned for clearing privileges under Rule 902.

**106.N. ~~106.O.~~ [Reserved] GEM Institutional Access Firm**

~~A GEM membership may be owned by a non-member firm. The membership may be held in the name of the firm or may be transferred to an employee of the non-member firm and transferred among its employees provided that: (1) the transfer is approved by Exchange staff, (2) the transferee is approved pursuant to the rules of the Exchange; (3) the transfer is for the legitimate business purposes of the firm; and (4) the firm is not engaged in futures customer business with U.S. customers. The firm shall have the right, at any time, to have the employee disqualified from trading, but must have him disqualified upon termination of his employment with the firm. Notice to have the employee disqualified from trading must be given to the employee's qualifying clearing member. The non-member firm shall designate on a form provided by the Exchange a representative who shall be authorized to deal with the Exchange with respect to the membership transferred under this Section.~~

~~A Rule 106.N. membership may not be transferred pursuant to any other provision of Rule 106. The membership may not be assigned for clearing purposes under Rule 902.~~

~~Rule 106.N. non-member firm benefits apply only to the firm's proprietary trading and not to the trading of any affiliates, subsidiaries or customers. All proprietary positions of the non-member firm must be carried by a clearing member(s) in accounts separate from positions of affiliates, subsidiaries, customers and other entities.~~

~~A Rule 106.N. firm may not hold itself out to the public as a clearing member.~~

~~The holder of a GEM membership pursuant to this section may solicit foreign customers from the floor of the Exchange, but only in products within the GEM Division and bona fide spreads involving such products.~~

~~A Rule 106.N. firm may not hold itself out to the public as a clearing member.~~

~~The holder of a GEM membership pursuant to this section may solicit foreign customers from the floor of the Exchange, but only in products within the GEM Division and bona fide spreads involving such products.~~

**106.O. — Transfer of GEM Membership**

~~Ownership of record of a GEM membership that was formed by the combination of GEM fractional interests may be transferred to any of the members whose fractional interests were combined to form that GEM membership.~~

**106.P. Transfer to a Family Limited Partnership**

A member may transfer his membership to a Family Limited Partnership ("FLP") with respect to which all partners are members of the member's family who would be eligible for a family transfer from the member pursuant to Rule 106.C. The limited partnership agreement or other document(s) governing the FLP shall at all times prohibit transfers of an interest in the FLP to any person who is not eligible pursuant to Rule 106.C and shall state that (1) the FLP's interest in the membership shall at all times be subject to all of the rules of the Exchange, as may be amended, including, but not limited to, Rule 110 and, if the membership is assigned to a clearing member for clearing qualification, Rule 902; (2) management of the FLP shall be vested exclusively in a managing general partner, who must qualify for membership by satisfying the requirements of Chapter 1 of these rules; and (3) the Exchange shall have no liability to the partners for any loss, damage, or expense resulting from any acts or omissions by the managing general partner or any person acting by or through the authority of a general partner. The transferor and the managing general partner (and any successor) shall each provide in the form provided by the Exchange a certification that the FLP acquires the membership subject to all of the rules of the Exchange and that the FLP is in compliance with the requirements of this Rule. The FLP also may transfer the membership back to the transferor.

If the transfer of a membership to the FLP is made by a bona fide gift or bequest, it shall also be subject to the requirements of Rule 106.E.

Transfer of a membership pursuant to this rule shall not relieve the transferor of any liability to the Exchange under Rule 439 with respect to any claim arising out of an act or omission occurring prior to such transfer, and the membership will continue to be treated as the asset of the transferor for the purposes of Rule 439 and for otherwise meeting any obligations to the Exchange arising out of the transferor's use of the membership prior to the transfer to the FLP, including fines imposed with respect to conduct occurring prior to the transfer.

A membership held pursuant to a transfer under this section may be assigned for clearing purposes under Rule 902.

**106.Q. ~~106.S.~~ [Reserved]**

**~~106.R. Electronic Corporate Member Firm~~**

~~A membership may be owned by, or two memberships may be transferred to a proprietary trading firm. The membership may be held in the name of the firm or transferred to a principal or employee of the electronic corporate member firm and transferred among its principals and employees provided that: (1) the transfer is approved by Exchange staff; (2) the transferee is approved pursuant to the rules of the Exchange; and (3) the transfer is for the legitimate business purposes of the firm. The electronic corporate member firm shall have the right, at any time, to have the principal or employee disqualified from trading, but must have him disqualified upon termination of his employment or other association with the firm. Notice to have the principal or employee disqualified from trading must be given to his qualifying clearing member who in turn must notify the Exchange pursuant to Rule 511.A. The electronic corporate member firm shall designate on a form provided by the Exchange a representative who shall be authorized to deal with the Exchange with respect to the membership transferred under this Section.~~

~~A Rule 106.R. membership may not be transferred pursuant to any other provision of Rule 106. The membership may not be assigned for clearing purposes under Rule 902.~~

~~Rule 106.R. benefits apply only to an electronic corporate member firm's proprietary trading and not to the trading of any affiliates, subsidiaries or customers. All proprietary positions of the electronic corporate member firm must be carried by a clearing member(s) in accounts separate from positions of affiliates, subsidiaries, customers and other entities.~~

~~A Rule 106.R. membership does not confer upon a holder or transferee of such membership the ability to access the trading floor. In addition, an individual that has owned or held a CME, IMM or IOM membership in the previous two years, may not be a holder or transferee of a Rule 106.R. membership.~~

~~A Rule 106.R. firm may not hold itself out to the public as a clearing member.~~

**~~106.S. Family of Funds Member Firm~~**

~~A membership may be owned under this Rule by: (1) a clearing member that is a hedge fund or a fund management company; (2) a fund management company of a clearing member; or (3) a fund that is part of the family of funds of a clearing member. The membership may be held in the name of the fund management company or an approved fund and may be transferred to a principal or employee of the fund management company or an approved fund and be transferred among their principals and employees provided that: (i) the transfer is approved by Exchange staff; (ii) the transferee is approved pursuant to the rules of the Exchange; and (iii) the transfer is for the legitimate business purposes of the fund management company or fund. The fund management company or the fund shall have the right, at any time, to have the principal or employee disqualified from trading, but must have him disqualified upon termination of his employment or other association with the company. Notice to have the principal or employee disqualified from trading must be given to his qualifying clearing member who in turn must notify the Exchange pursuant to Rule 511.A. The fund management company or the fund shall designate on a form provided by the Exchange a representative who shall be authorized to deal with the Exchange with respect to the membership transferred under this Section.~~

~~A Rule 106.S. membership may not be transferred pursuant to any other provision of Rule 106. The membership may not be assigned for clearing purposes under Rule 902.~~

~~For each CME, IMM or IOM membership owned by such fund management company or fund over the requirement needed to qualify as a clearing member, Rule 106.S. benefits shall apply to the proprietary trading activity of up to five funds within the family of funds managed by the fund management company. All proprietary positions of each fund must be carried by a clearing member(s) in accounts separate from positions of affiliates, subsidiaries, customers and other funds within the family of funds.~~

~~Exchange staff may grant exemptions from the requirements of this Rule.~~

**107. APPROVAL OF APPLICANT**

Department staff shall review and approve applicants for membership on the Exchange. Such approval shall be based upon admission criteria established by the Membership Committee. The Membership Committee shall review applicants for membership not meeting the staff-administered admission criteria.

Department staff shall inquire into and be satisfied with respect to the reputation and financial responsibility of the applicant and the details of the financial arrangements made in connection with the purchase or transfer of the membership. After review of all of the information, a decision shall be made as to whether the applicant is qualified for membership.

An applicant not approved for membership by Department staff shall be referred to a panel of the Membership Committee. A panel of the Membership Committee shall consist of two members and a chairman, who shall have a vote. A unanimous vote of the panel is required for approval of the applicant.

An applicant approved for membership either by Department staff or the Membership Committee, as applicable, shall assume the responsibilities and privileges of membership once a membership is obtained.

**108. [RESERVED]**

**109. REJECTION OF APPLICANT**

If an applicant is rejected by the Membership Committee panel, the applicant may appeal the decision to the full Membership Committee. The Membership Committee shall decide, by majority vote, whether the applicant is qualified for membership. The decision of the Membership Committee shall be final. An applicant rejected by the Membership Committee may be reconsidered for membership if new or additional information is subsequently brought to the attention of the Membership Committee. If an applicant is rejected for membership or if for any reason his application is withdrawn, the Exchange shall retain the processing fee and the applicant shall assume all risk of gain or loss from the resale of any membership purchased by him prior thereto.

If the applicant executed and filed an Authorization to Sell pursuant to Rule 106.A. with the Department in connection with the financing of the purchase of a membership, then the proceeds of any sale of such membership shall be paid to the grantee, up to the amount of the debt, including interest.

**110. CLAIMS AGAINST MEMBERSHIP, APPLICATION OF PROCEEDS**

For the purposes of this rule "sale" shall include a sale made pursuant to Rule 104 or a transfer made in accordance with the provisions of Rule 106; "seller" shall include firms that have membership privileges pursuant to Rules 106. F., G., H., I., N., R. or S.; and "claim" shall be limited to claims involving incidents that occurred prior to the sale of the membership and which arose in connection with transactions on the Exchange or membership in the Exchange. Claims resulting from conduct subsequent to the sale of a membership may not be asserted against that membership or its proceeds. All claims against the seller's membership or its proceeds shall be submitted in writing to the Department within 20 days of the posting of notice of the sale of said membership. At the conclusion of the 20-day claim filing period, the Market Regulation Department and the Department shall conduct an investigation of all claims properly filed against the seller's membership or its proceeds. This investigation shall be completed within 20 days unless the investigation cannot be resolved within that period.

The total proceeds of the sale, or in the case of a transfer, the value at the mid-point of the bid-offer spread as of the date of the transfer, of the membership shall be applied to the following purposes and in the following order of priority:

- a. Payment of all dues, fines, contributions, charges and other indebtedness due to the Exchange, the CME-Gratuity-Fund or GEX-Corporation;
- b. Payment of any indebtedness to the clearing member who last qualified the selling member prior to the sale arising out of: (i) a pledge of such membership as collateral security on such indebtedness, or (ii) a deficit which the Exchange staff determines to have arisen directly out of transactions on the Exchange or transactions with GEX-Corporation;
- c. Payment of amounts due to other clearing members on claims filed which the Exchange staff determines to have arisen directly out of transactions on the Exchange;
- d. Payment of amounts due to members and member firms on claims filed which the Exchange staff determines to have arisen directly out of transactions on the Exchange; and

- e. Payment of amounts due to public customers of the seller based on claims filed by such customers or based on reports of the Market Regulation Department, which claims are determined by the Exchange staff to be based upon misappropriation of customer funds, improperly executed transactions, unpaid credit balances, or other similar matters, directly related to transactions on the Exchange;

No other claims against the proceeds of the sale of a membership shall be recognized and administered by the Exchange, but the creditors of the seller of a membership not falling in the foregoing categories may pursue other legal means of securing payment of their obligations.

The Exchange staff shall make a final determination of all claims filed in time or reported by the Market Regulation Department and the Department against the proceeds of the sale of a membership.

Except as provided in Rule 913, the Exchange staff shall make a distribution of such proceeds within 40 days after receiving notification and confirmation of the sale of the membership, unless claims to the proceeds are not resolved within that period. If, however, at such time an Exchange disciplinary proceeding is pending against the seller or, based upon a pending investigation, is highly probable, or if a legal proceeding, in respect to which the indemnification provisions of Rule 439 would operate, is pending, has been announced or is highly probable, then the Exchange staff shall retain so much of the proceeds as determined by staff in order to satisfy such obligations until such time as the pending matter is concluded.

Distribution of proceeds shall be made by the payment of claims in the categories listed in this rule to the extent the proceeds from the sale are sufficient to meet those obligations. If the proceeds of the sale of a membership are insufficient to pay all amounts determined to be due under the categories listed in this rule, the proceeds shall be applied to pay the full amounts determined to be due under subparagraphs a, b, c, d and e in the priority named. If the proceeds are insufficient to pay the amounts determined to be due under any priority, the claims due under that priority shall be paid pro rata, and the remaining priorities shall be left unpaid. In determining the amount of any claim, the Exchange staff shall first deduct the fair cash value of any collateral held by that claimant. Creditors of the seller of a membership whose obligations are not fully satisfied pursuant to this paragraph may pursue other legal means of securing payment of their obligations.

The surplus, if any, shall be paid to the person whose membership was sold or his legal representative or a 106.A-B. grantee, as applicable, upon the execution of a satisfactory release. The Exchange staff's determination and allowance of claims hereunder shall be final. The death, incompetence, expulsion, suspension, insolvency or bankruptcy of a member shall not affect the rights of claimants under this rule.

#### 111.— 119. [RESERVED]

### PRIVILEGES AND RESPONSIBILITIES

#### 120. MEMBERSHIP CATEGORIES

There are ~~four~~ three categories of membership: NYMEX Division, COMEX Division and COMEX Option Membership ~~CME, IMM, IOM and GEM. CME-NYMEX Division membership privileges extend to all CME-NYMEX products and to any COMEX products for which cross-divisional trading privileges have been granted by the Board; IMM-COMEX Division membership privileges extend to all COMEX products and to any NYMEX products for which cross-divisional trading privileges have been granted by the Board; and COMEX Option Membership privileges are limited to products assigned to COMEX~~ Option Members by the Board are limited to products assigned to that Division, the IOM Division and the GEM Division by the Board; IOM Division membership privileges are limited to products assigned to that Division and the GEM Division by the Board; and GEM Division membership privileges are limited to products assigned to that Division by the Board. CME, IMM, IOM and/or GEM members may also be granted Expanded Access Product privileges in connection with designated products listed by CBOT.

A member of the ~~IMM, IOM or GEM~~ NYMEX Division or COMEX Division or a COMEX Option Member who personally executes trades on the floor in products other than those assigned to his respective Division or category ~~or designated Expanded Access Products~~ shall be deemed to have committed an act detrimental to the interest or welfare of the Exchange, ~~except as provided by Rule 194.~~ A member who trades products on Globex in which he does not have membership privileges is not entitled to member's rates for such trades.

#### 121. MEMBERSHIP PRIVILEGES

Membership in the Exchange entitles the member to certain privileges including the right:

- a. To access the trading floor if properly qualified by a clearing member;

- b. To act as a floor broker and/or floor trader in accordance with Exchange rules the requirements of Chapter 5; and
- c. To receive member or lessee clearing fee rates in accordance with Exchange requirements.

**122. MEMBERSHIP DUES AND ASSESSMENTS PAYABLE**

~~Dues and other amounts owed to the Exchange, including CME Gratuity Fund dues and assessments, and amounts owed to the CME Club, are payable upon receipt of the invoice. Members in arrears 60 days after the invoice date may forfeit all membership privileges, including the privilege of accessing the floor and reduced clearing and trading fees, including Globex fees. Exchange staff shall use reasonable efforts to notify the member before any privileges are forfeited.~~

~~Each permit holder's employing clearing member is responsible for the payment of the permit holder's dues, fees and assessments.~~

**123. COMPLIANCE WITH THE COMMODITY EXCHANGE ACT**

All members of the Exchange shall comply with the provisions of the Commodity Exchange Act and the rules and regulations duly issued pursuant thereto by the CFTC, including the filing of reports, maintenance of books and records, and permitting inspection and visitation by duly authorized representatives of the CFTC.

**124. VIOLATIONS OF COMMODITY EXCHANGE ACT**

Within a reasonable time following the receipt of final notice under Section 6(c) of the Commodity Exchange Act from the CFTC that any person has been found guilty of violating the provisions of the Commodity Exchange Act, Exchange staff shall take the necessary action to effectuate the order of the CFTC, as applicable, and shall report such action to the Board.

**125. GRATUITY FUND [RESERVED]**

~~Every person becoming a member of the Exchange who is not leasing a membership and every person becoming a member of any Division of the Exchange, whether now or hereafter existing, who at the time of his admission has not attained his 55th birthday, shall automatically become a member of Chicago Mercantile Exchange Inc. Gratuity Fund and shall be required to pay the initial fee and all assessments imposed, in compliance with the by-laws of said Gratuity Fund and shall be bound by said by-laws and all amendments thereof and by such other rules and regulations as may be adopted by the Board of Directors of the Exchange or the Gratuity Fund in conformity with such by-laws. Every person who becomes a member of the Gratuity Fund shall be required to continue as a member thereof so long as he continues as a member of the Exchange or any of its Divisions.~~

**126. MEMBERSHIP EDUCATION PROGRAMS**

A member's right to access the trading floor requires that he first attend an initial educational program respecting CFTC and Exchange trading rules, federal, Exchange, and administrative sanctions for violating rules, and members' legal and professional responsibilities concerning treatment of customer orders and handling of customer business.

Continued access requires members to comply with the ethics standards set forth in Appendix B to Part 3 of the CFTC's Regulations-Statement of Acceptable Practices, or any equivalent ethics training.

**127. TRADING AND SOLICITATION PRIVILEGES**

A member shall have the right, subject to the rules of the Exchange, to trade as principal and as broker for others by open outcry only with respect to products assigned to his membership division or category or designated Expanded Access Products. The Exchange shall designate the CME products which CME and CBOT members may solicit from the combined CME and CBOT trading floor.

**128-12930. [RESERVED]**

**130. REQUIRED NOTICES BY MEMBER FIRMS AND SUSPENSION OF MEMBER FIRM PRIVILEGES**

Rule 106.H., I., N., R., and S.J. member firms shall notify the Audit Department prior to any proposed merger, acquisition, consolidation, combination, sale, or any other change of ownership involving the Rule 106.H., I., N., R., or S.J. firm.

If any Rule 106.H., I., N., R., or S.J. firm has notified the Exchange of a bankruptcy proceeding or a

definite intention to file for bankruptcy pursuant to Rule 442, or if the Exchange otherwise becomes aware of such a proceeding or intention, or if, in the opinion of the Audit Department, any Rule 106.H., I., N., R., or S.J. firm that is an FCM fails to meet CFTC minimum financial requirements or neglects to promptly furnish a statement upon request, the membership privileges of the Rule 106.H., I., N., R., or S.J. firm may be suspended, subject to the procedures set forth in Rule 974.B.

## INVOLUNTARY SALE

### 131. **EXPULSION FOR FRAUD OR DISHONESTY PRIOR TO ELECTION TO MEMBERSHIP**

A member who is found to have been guilty of fraud or dishonest conduct prior to becoming a member and of failing to make full disclosure thereof in his application for membership, or who is found guilty of having made a false statement of a material fact in or in connection with his application, may be expelled from membership in the Exchange by a Panel of the Business Conduct Committee.

### 132. **[RESERVED]**

### 133. **SALE OF MEMBERSHIP WHEN MEMBER DEFAULTS**

If Exchange staff determines that a member or a firm that has membership privileges is in default upon any financial obligation due to the Exchange or any financial obligation to another member or to a clearing member in connection with transactions on the Exchange, the CEO may order the membership of the defaulting member or firm sold and the proceeds applied as provided in Rule 110. If, within 30 days of such CEO order of sale, the defaulting member or firm satisfies the indebtedness due and provides proof of such satisfaction to the staff, the ordered sale of the membership shall be cancelled. If full payment is not made within the 30-day period, then the membership involved shall be sold at public auction within 10 days after the expiration of the 30-day period and upon five days' notice to the defaulting member or firm, which notice shall also be publicly posted at the Exchange. The public auction sale shall be conducted by the staff in accordance with the following procedures. The highest bid to purchase a membership in the applicable division on file with the Department shall be considered the initial bid at the auction. Thereafter, any person may attend and bid at the auction. If the proceeds from the sale are less than the indebtedness of the defaulting member or firm, such debtor shall remain liable to the Exchange or its members or clearing members for the deficit.

### 134.-194. **[RESERVED]**

### 135. **GEM DIVISION**

#### ~~135.A. Trading Privileges of GEM Members~~

~~A GEM member shall have access to the trading floor to trade as principal and as broker for others in all products assigned to the GEM Division and all products available pursuant to Rule 194, hereinafter collectively referred to as GEM accessible products. A GEM member who trades electronically or places orders for pit or electronically traded products in which he does not have membership privileges is not entitled to member rates for such trades. GEM members may not solicit business from the floor of the Exchange except for business in GEM accessible products and bona fide spreads involving such products as set forth in the Interpretations Section at the end of this chapter. The time during which a GEM membership is held will not be counted toward satisfaction of the holding period necessary to permit lessees to become order fillers in the CME, IMM, or IOM Divisions unless the holder can demonstrate that he was primarily engaged in active trading or order filling in GEM accessible products during that holding period. Lessees in all divisions may fill orders in GEM accessible products without regard to such holding period.~~

#### ~~135.B. Restriction on Trading Floor Access~~

~~After January 7, 1998, any person who relinquishes trading privileges as a CME, IMM or IOM member may not exercise trading floor privileges as a GEM member for two years after relinquishing such privileges in another division. This restriction shall not apply to a person who relinquishes trading privileges that were obtained pursuant to a Rule 106.C. family transfer, provided, however, that such person does not cease to hold or own a GEM membership that was obtained prior to or during the time that such person held the higher division membership pursuant to Rule 106.C. This restriction does not prevent any person who has floor access privileges as a GEM member as of January 7, 1998, from continuing to exercise those privileges. Exchange staff may grant exemptions from this restriction upon a showing of financial hardship.~~

~~If an individual is originally approved for membership in the GEM division, he may on one occasion, which must be within one year from the date he was approved or transferred to a higher division~~

membership, return to a GEM membership without being subject to the restriction on trading floor access of this rule.

Firms are permitted to transfer memberships among firm employees. However, a firm employee previously holding a CME, IMM or IOM membership owned by the firm may not exercise trading floor privileges as a GEM member for two years after relinquishing membership privileges in another division if he remains employed by such firm and, during that time, the firm sells or leases the CME, IMM or IOM membership formerly held by such employee.

~~136-139. [RESERVED]~~

~~140. AGRICULTURAL BUSINESS SOLICITATION PERMIT PROGRAM~~

~~140.A. Number of Permits~~

~~The Exchange shall authorize and issue no more than 14 Permits for Agricultural Solicitation (PASs). PASs that have been revoked, withdrawn, or abandoned may not be reissued.~~

~~140.B. Eligibility and Approval~~

~~An application for a PAS must meet all conditions for and be approved for membership on the Exchange. Upon approval for membership, the PAS holder shall be subject to the rules of the Exchange. An applicant for a PAS must be an Associated Person registered with the NFA and be an employee of a CME clearing member. The foregoing qualifications must be met at all times.~~

~~140.C. Term of Permits and Program Expiration Date~~

~~PASs shall be valid for a period of three years, beginning with the date of issuance to the PAS holder, except that all PASs shall expire no later than December 31, 2000. An existing PAS which expires prior to December 31, 2000, may be renewed by the current PAS holder with the approval of Exchange staff.~~

~~140.D. Cost of Permits~~

~~PASs will be offered at a price of \$250 per month with payments to be remitted quarterly. Accordingly, a PAS holder shall pay \$750 at the start of each quarter.~~

~~140.E. PAS Privileges~~

~~PAS holders shall have access to the trading floor to solicit customer business only for CME agricultural products. While on the floor, PAS holders shall not solicit business for other products and shall not be compensated for processing any customer orders to trade other products. A PAS holder may continue to receive a salary from the CME clearing member that employs the PAS holder.~~

- ~~1. A PAS's customers shall be carried directly on the books of an Exchange clearing member.~~
- ~~2. A PAS holder shall be supervised by a member present on the floor.~~
- ~~3. PAS holders shall be required to make a continuing bona fide effort to solicit customer business in agricultural products.~~

~~140.F. Additional Limitations of PAS Holders~~

- ~~1. A PAS conveys no equity to the holder at expiration.~~
- ~~2. A PAS does not entitle the holder to voting privileges or attendance at members' social functions.~~
- ~~3. A PAS holder shall have no minimum net capital requirement.~~
- ~~4. A PAS holder shall not be eligible to execute orders or to trade any futures or options contracts on the Exchange for his own account.~~

~~140.G. Jurisdiction~~

~~Exchange staff shall have the greatest latitude in determining whether permit holders have complied with the rules of the program. In the event that Exchange staff determines that a PAS holder has failed to comply with the rules of this program, it shall have the authority to suspend floor privileges and to revoke the permit. In no event, however, shall a permit holder be entitled to the return of any portion of the cost of the permit.~~

~~141-193. [RESERVED]~~

~~194. NEW PRODUCT ACCESS PROGRAM~~

~~194.A. General~~

~~The New Product Access Program ("Program") is intended to increase for a limited time the number of individuals eligible to trade new products by allowing participating members in all divisions to trade, broker and solicit customer business in such products from the trading floor.~~

~~Every product listed for trading by the Exchange after the effective date of this Program will be regarded~~



as a "new product" covered by this Program unless the Board of Directors determines that such product should not be covered by this Program. A new product that merely modifies or replaces an existing product will not be covered by this Program. The Board may also, at its discretion, allow participating members to have access to certain existing products under the terms of this Program.

**194.B. Trading Privileges and Restrictions**

Participating members are entitled to trade and solicit customer business in a new product until that product's Initial Termination Date. The "Initial Termination Date" for a new product shall be the later of (1) two years after the date that trading in such product starts or (2) the first day of the month after volume of trading for that product (futures and options combined) averaged at least 1,000 contracts per day in CFI-4 non-member trades for a 90-day period.

Notwithstanding the previous paragraph, the Board of Directors may grant exceptions to this rule.

Members participating in the Program may enter orders for specified futures or options in other divisions as part of a spread with a new product position. The new product leg of the spread must be executed simultaneously with or before the other leg.

**194.C. Brokerage Privileges and Restrictions**

Participating members are entitled to broker a new product until the earlier of (1) the Initial Termination Date for such product or (2) three months after the volume of trading for such product (futures and options combined) averaged at least 1,000 contracts per day in CFI-4 non-member trades for a 90-day period. Thereafter, a member must hold trading privileges in the division to which the product has been assigned in order to act as a broker in such product.

Notwithstanding the previous paragraph, the Board of Directors may grant exceptions to this rule.

**194.D. Jurisdiction**

The Program shall be under the jurisdiction of the Exchange staff.

**194.E. Extension of Program for Contributing Members**

A participating member who meets any one of the following criteria with respect to a new product will be deemed to have contributed to the success of such product:

1. A trader whose trading volume in such product is in the top 50 percent of all traders trading such product.
2. A trader whose trading regularity, measured by the number of brackets in which he has traded such product, is in the top 50 percent of all traders trading such product.
3. A broker whose volume of new product contracts filled is in the top 50 percent of all brokers who filled such product.
4. A solicitor whose volume of new product contracts executed based on the orders he generated is in the top 75 percent of all members who solicited customer business in such product from the trading floor.

Each participating member who has contributed to the success of a new product as described above will be permitted to continue to trade or solicit customer business (but not broker) in such new product for an additional three years or such longer period as the Membership Committee may determine.

**194.F. Clearing Fees**

Participating members will pay lessee clearing fee rates for trading and brokering new products.

**194.G. Termination of Program**

The Exchange may terminate the Program at any time. Upon termination of the Program, participating members who met the criteria set forth in Section E. of this rule may continue to have access to new products for the remaining time specified in that section.

195.

**MARKET MAKER PROGRAMS**

Exchange staff shall approve the implementation of market maker programs, pursuant to which market makers would be authorized to maintain two-sided markets in those products designated by the Exchange. To the extent that the terms of any such market maker program may be in conflict with any Rules of the Exchange, such terms shall supersede such Rules. Nothing in this Rule shall alter or waive a member's responsibility to comply with provisions of the Commodity Exchange Act or Rules or Regulations of the Commodity Futures Trading Commission unless exempted by the Commission.

(End Chapter 1)

## INTERPRETATIONS & SPECIAL NOTICES RELATING TO CHAPTER 1

### INTERPRETATION OF RULE 135.A. REGARDING ALLOWABLE SPREADS FOR GEM MEMBERS

Rule 135.A. provides that GEM members may not solicit business from the floor of the Exchange except for business in GEM accessible products and bona fide spreads involving such products.

The only allowable spreads involving non-GEM products in which GEM members may solicit business while on the trading floor are listed below:

GSCI	with	Live Cattle and Lean Hogs
S&P/Barra Growth and Value	with	S&P 500, S&P Mid-Cap, E-Mini S&P 500
East-European Currencies	with	Euro FX
European style currency options	with	British pound, Canadian dollar, Euro FX, Japanese yen and Swiss franc futures or American style options on these futures
CME\$INDEX™	with	Euro FX, Japanese yen, British pound, Swiss franc, Australian dollar, Canadian dollar, Swedish krona
E-Mini NASDAQ Composite	with	E-Mini NASDAQ-100, E-Mini S&P-500, E-Mini S&P MidCap 400, S&P SmallCap 600, Financial SPCTR, Technology SPCTR
Yen-Denominated Nikkei-225	with	Dollar-Denominated Nikkei-225
HICP	with	Eurodollar

[The definitions formerly set forth in NYMEX Chapter 1 have been relocated to a new Definitions Section of the NYMEX Rulebook and will no longer be contained in a numbered chapter.]

## Definitions

### 4.00-Singular Number; Gender

Unless the context otherwise requires, words importing the singular number include the plural; and words importing the masculine gender include the feminine and neuter.

### 4.01-Act

The term "Act" shall mean the Commodity Exchange Act, as amended from time to time.

### 4.02-Board

The term "Board" shall mean the Board of Directors of the Exchange.

### 4.03-Business Day

The term "business day" shall mean any day on which the Exchange is open for trading.

### 4.04-Bylaws

The term "Bylaws" shall mean the "Bylaws" of the Exchange adopted by Stockholders for the regulation and management of the Exchange.

**1.05-Carrying Member**

The term "carrying member" shall mean a member that carries one or more customer accounts.

**1.06-Charter**

The term "Charter" shall mean the Certificate of Incorporation of the Exchange.

**1.07-Class A Member**

The term "Class A Member" shall mean an owner or a holder of a Class A Membership.

**1.08-Class A Membership**

The term "Class A Membership" shall mean a Class A membership issued by the Exchange.

**1.09-Class B Member**

The term "Class B Member" shall mean the owner of the Class B membership which shall be CMEG NYMEX Holdings Inc.

**1.10-Class B Membership**

The term "Class B Membership" shall mean the single Class B membership issued by the Exchange.

**1.11-Clearing Association, Clearing House or Clearing Department**

The terms "Clearing Association", "Clearing House" or "Clearing Department" shall mean the department of the Exchange or any corporation, organization or other entity authorized by the Board through which trades on the Exchange are cleared.

**1.12-Clearing House Committee**

The term "Clearing House Committee" shall mean the CME Clearing House Risk Committee.

**1.13-Closing Range**

(A) Except as provided in Section (B) of this rule, the term "closing range" shall mean, for each respective commodity futures and options contract that is listed for trading during the Regular Trading Hours trading session on the floor of the Exchange, the final two minutes (2) of trading; provided that with respect to the final day of trading in energy futures contracts for delivery in the current delivery month, closing range shall mean the last half hour of trading in such contracts.

**1.14-Commission**

The term "Commission" shall mean the Commodity Futures Trading Commission.

**1.15-Commodity**

The term "commodity" shall mean any or all goods, articles, services, rights and interests in which contracts for future delivery or options contracts are presently, or in the future, may be, dealt in, or are subject to the Bylaws and Rules.

**1.16-Compliance Department**

The term "Compliance Department" shall mean the CME Market Regulation Department which is authorized by the Board to provide regulatory services on behalf of the Exchange.

**4.17 Customer**

The term "customer" shall mean a person, including another member, for whom a member carries an account.

**4.18 Customer Account**

The term "customer account" shall mean an account carried for a customer, including an omnibus account.

**4.19 Delivery Month**

The term "delivery month" shall mean the month in which the actual commodity is delivered as required by the Bylaws and Rules or the month in which a futures contract is finally settled in accordance with the Bylaws and Rules.

**4.20 Exchange**

The term "Exchange" shall mean the New York Mercantile Exchange Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware.

**4.21 Exercise Price**

The terms "exercise price", "strike price" and "striking price" shall be synonymous and mean the price at which the futures contract underlying the options contract may be purchased or sold upon exercise of the option.

**4.22 Expiration Date**

The term "expiration date" shall mean the last day on which an options contract may be exercised into the underlying futures contract.

**4.23 Firm**

The term "firm" shall mean a corporation, partnership, association, sole proprietorship or other judicial entity.

**4.24 Floor Broker**

The term "Floor Broker" shall mean any Class A member who has been granted floor trading privileges pursuant to the Bylaws and Rules and who, pursuant to said Bylaws and Rules, buys and sells any commodity futures or options contract on the Exchange for any person other than himself.

**4.25 Floor Member**

The term "Floor Member" shall mean any Class A member who is either a Floor Broker or a Floor Trader.

**4.26 Floor Trader**

The term "Floor Trader" shall mean any Class A member who has been granted floor trading privileges pursuant to the Bylaws and Rules and who, pursuant to said Bylaws and Rules, buys and sells any commodity futures or options contract on the Exchange for his own account.

**4.27 Good Standing**

The term "good standing" shall mean, when used with reference to a Member, a Member who is not subject to an order of suspension or expulsion; who is current in the payment of all dues, assessments, fees and fines; and, who is not subject to an order of the Commission suspending or revoking any registration with the Commission or denying trading privileges on any Exchange.

**4.28 Holiday**

The term "holiday" shall mean any day which the Board may designate as an Exchange holiday on which the Exchange shall be closed.

**4.29-Member Firm**

The term "Member Firm" shall mean any firm to which membership privileges on the Exchange have been conferred.

**4.30-Non-member**

The term "non-member" shall mean any person who is not a Member of the Exchange.

**4.31-Omnibus Account**

The term "omnibus account" shall mean an account held in the name of a person which may be used for placing and clearing trades of one or more undisclosed customers or options of such person.

**4.32-Person**

The term "person" shall mean an individual or firm.

**4.33-President**

The term "President" shall mean the President of the Exchange or his authorized representative.

**4.34-Price**

The term "Price" shall include for the purpose of these Rules the term "premium".

**4.35-Public Director**

The term "Public Director" shall mean any individual who (i) qualifies as an independent director under applicable listing standards, (ii) does not have trading privileges at the Chicago Mercantile Exchange, the Board of Trade of the City of Chicago, the New York Mercantile Exchange or the Commodity Exchange, and (iii) is not an officer, principal or employee of a member firm or clearing firm of any of the exchanges identified in (ii) above.

**4.36-Regular Trading Hours**

The term "Regular Trading Hours" shall mean those hours designated for open outcry trading of the relevant product as determined from time to time.

**4.37-Rule**

The term "Rule" shall mean any Rule of the Exchange adopted by the Board.

**4.38-Settlement Premium**

The term "settlement premium" shall mean the daily closing price of commodity options contracts as determined by the Exchange.

**4.39-Settlement Price**

The term "settlement price" shall mean the daily closing price of commodity futures contracts as determined by the Exchange.

**4.40-Straddle**

The term "straddle" shall mean, (i) with respect to the Rules governing margin, the purchase (or sale) of an Exchange futures contract in one delivery month for a customer account which is offset by the sale (or purchase) of another Exchange futures contract involving the same commodity in a different delivery month for such account, (ii) with respect to any other Rules, shall have the meaning, if any, as set forth in that Rule.

#### 1.41 Trading Member

The term "Trading Member" shall mean a Floor Member.

#### 1.42 Trade

The term "trade" shall mean any purchase or sale of any commodity futures or options contract made on the Exchange.

#### 1.43 Floor

Except as otherwise provided by the Exchange, the term "Floor" shall mean any trading floor on which Exchange contracts are listed for trading.

[Former NYMEX Chapter 2 (Membership Rules) has been completely deleted and replaced with new NYMEX Chapter 1 (Membership). NYMEX Chapter 2 will become (Government), replacing existing NYMEX Chapter 2A (Government)]

### Membership Rules

#### 2.00 Personal Requirements

(A) Every Member and every applicant for membership must be the greater of either eighteen (18) years of age or the minimum age of majority required to be responsible for his contracts in each jurisdiction in which the Member or applicant conducts business.

(B) Any adult of good moral character, reputation and business integrity, with adequate financial resources and credit to assume the responsibilities and privileges of membership, is eligible for membership in the Exchange. A determination as to whether an applicant for membership or an applicant for an incentive program offered by NYMEX satisfies the Exchange requirements shall be made by the Membership Committee or by staff in the applicable department. A person approved for membership and an individual or entity approved for an incentive program shall be subject to all of the rules and regulations of the Exchange.

(C) No person who has been employed by the Exchange shall be eligible for membership until six (6) months after he has ceased to be an employee; provided, however, the Membership Committee, based on the recommendation of the President, may waive, in its sole discretion, all or any part of such six (6) month period.

#### 2.01 Reserved

#### 2.02 Reserved

#### 2.03 Application for Membership; Application Fees

(A) An applicant for membership must submit to the Exchange an application for membership in the form prescribed by the Board and such other documents as the Membership Committee shall deem necessary or appropriate or, shall require. For the purposes of this provision, and for purposes of Chapter 2 generally, references to the "Board" shall mean the Board of Directors of the Exchange, or its designee(s).

(B) Applications that are deemed by the Membership Department to be incomplete shall be kept on file for four (4) months. Thereafter, the application shall be deemed to have been withdrawn and the applicant must submit a new application for membership prior to any consideration by the Membership Committee.

(C) Each application for membership shall be accompanied by a payment of a non-refundable application fee in such amount as may be fixed from time to time by the Board.

(D) Unless the Chairman of the Membership Committee decides otherwise, in his sole discretion, the provisions of Rules 2.03 through 2.08 shall not apply to any Member who transfers his last membership and acquires a new Membership within 45 days.

#### **2.04 Notice of Application**

The names of each applicant and his employer shall be posted on the Exchange premises and on the Exchange's website and distributed electronically, where possible, at least ten (10) days prior to the consideration of an application for membership.

#### **2.05 Procedures for Determining Fitness of Applicants for Exchange Membership**

(A) The Exchange shall refer each application for membership for an independent investigation to determine and report to the Exchange any past or pending criminal actions, disciplinary proceedings or investigations.

(B) The applicant's financial statement may be verified by an independent inquiry of all banks scheduled as holding the applicant's assets and by requiring each applicant to provide copies of appropriate supporting documentation.

#### **2.06 Approval of Applicant and Referral to a Subcommittee of the Membership Committee**

(A) When the application is complete staff shall review and approve applicants for membership on the Exchange. Such approval shall be based upon admission criteria established by the Membership Committee. A subcommittee of the Membership Committee shall review applicants for membership not meeting the staff administered admission criteria. A subcommittee of the Membership Committee shall review any application for Membership not approved by Exchange staff. Any such subcommittee shall consist of three members and a Chairman. At least three of the four persons comprising a subcommittee of the COMEX Division Membership Panel must be COMEX Division Members. The subcommittee may direct the applicant to supplement any information provided to it and may direct the Exchange to investigate any such information.

(B) The Chairman of the subcommittee shall have a vote and a unanimous vote of the subcommittee is required for approval of the applicant. If the applicant is not approved, the membership denial procedures set forth in Rule 2.80 shall apply.

#### **2.07 APPEARANCE OF APPLICANT**

Each applicant for membership not approved by staff is required to appear personally before the Membership Committee. In its discretion, the Membership Committee may waive the appearance of the applicant. Unless waived by the Membership Committee, an applicant's failure to appear on the date fixed by the Membership Committee shall constitute a withdrawal of the application.

#### **2.08 Reserved**

#### **2.09 Denial of Membership**

The Membership Committee may deny membership to any applicant who:

(A) does not meet any one or more of the qualifications for membership, or does not follow the procedures for applications for membership, set forth in the Rules;

(B) has been denied registration or whose registration has been revoked or is currently suspended by the Commission or by the Securities and Exchange Commission;

(C) has been convicted of a felony or a misdemeanor involving the purchase or sale of any commodity, security or option;

(D) is temporarily or permanently enjoined by any order, judgment or decree of any court of competent jurisdiction, of the Commission, of the Securities and Exchange Commission or of any state securities authority or agency from engaging or continuing in any conduct or practice involving the purchase or sale of any commodity, security option or similar instrument;

(E) is subject to any outstanding order issued by the Commission denying such person trading privileges on any contract market or, suspending or expelling such person from membership on any contract market;

(F) has been found to have violated willfully any provision of the Commodity Exchange Act, the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940 or the Investment Advisors Act of

1940 (as such Acts may have been, or may be, amended from time to time) or any rule, regulation or order promulgated under such Acts;

(G) has ever been convicted of a crime of moral turpitude or, within the ten (10) years preceding the date of his application, has been convicted of or pleaded guilty to a charge involving a felony;

(H) has ever been or is suspended or expelled from any commodity or securities exchange, related clearing organization, registered futures association, the National Association of Securities Dealers, Inc. or other self-regulatory organization or other business or professional association for violation of any rule of such organization; (I) is subject to any substantial unsatisfied liens or judgments;

(J) has been insolvent, unable to pay debts as they matured, made an assignment for the benefit of creditors or was involved in any liquidation, reorganization or bankruptcy proceeding as a debtor, whether voluntary or involuntary, within the seven (7) years preceding the date of the application;

(K) has made any materially false statement or failed to state a material fact in or in connection with any application filed with the Exchange;

(L) fails to meet such other qualifications as the Board may from time to time determine are in the best interests of the Exchange; or

(M) fails to disclose any other information that would adversely affect the application for membership.

#### **2.10 Member Firm Privileges**

(A) Each firm, as a condition of obtaining and maintaining Member Firm privileges, shall be required to own and or have conferred upon it two (2) Exchange memberships in each Division in which it desires Member Firm privileges. The firm shall also be required to designate one or two individuals as its "conferring Members". Conferring Members may individually own the membership(s) and or hold such memberships via ABC Agreement. In addition, until further notice from the Exchange, each NYMEX Division Member Firm shall at all times own or have pledged/conferred upon it at least 8,000 shares in CME Group common stock.

(B) In the case of one conferring Member, such Member shall be an executive officer, general partner or an executive officer of a corporate general partner of the firm.

(C) In the case of two conferring Members, at least one member shall be an executive officer, general partner or an executive officer of a corporate general partner of the firm; the other conferring Member need only be a bona fide full time employee of the firm.

(D) As used in this Rule, an executive officer, general partner or an executive officer of a corporate general partner must have the power to direct the affairs of the firm with respect to transactions executed on the Exchange or shall be the senior commodity officer of the firm.

(E) Trades done for the account of any parent, subsidiary, affiliate, etc. of a Member Firm, if not itself a Member Firm shall be at non-Member rates; only the firm obtaining Member Firm status hereunder may receive Member rates.

#### **2.11 (Reserved)**

##### **2.11A Sole Proprietorships**

(A) Subject to the approval of the Board, the privileges of membership may be conferred upon a sole proprietorship by one Member who owns and holds two (2) memberships.

(B) A sole proprietorship upon which Member firm privileges are conferred may not obtain membership in the Clearing House of the Exchange.

##### **2.12 Cooperative Associations**

(A) Subject to the approval of the Board, the privileges of Membership may be conferred upon a cooperative association of producers of the kind referred to in Commodity Exchange Act §6a(a). As a condition of obtaining and maintaining Member Firm privileges, the association shall be required to own and or have conferred upon it two (2) Exchange memberships in each Division in which it desires Member Firm privileges. The firm shall also be required



to designate one or two individuals as its "conferring Members". Conferring Members may individually own the membership(s) and/or hold such memberships via ABC Agreement.

(B) In the case of one conferring Member, such Member shall be a duly authorized representative of such association.

(C) In the case of two conferring Members, both conferring Members shall be duly authorized representatives of the association.

### **2.13 Applications for Member Firms**

Firms wishing to apply for membership privileges shall file an application in the form approved by the Board along with the following documents:

(A) an opinion, acceptable to the Exchange, of counsel to the Firm that the Firm is: (1) duly and validly organized and existing under the laws of the jurisdiction in which it was organized; (2) qualified to transact business under the laws of the jurisdiction in which it has its principal place of business; and (3) qualified to transact business in the State of New York or that such qualification is unnecessary;

(B) a copy of a resolution, duly certified by the Secretary or other authorized officer or partner of the Firm, designating an agent for service of process concerning and limited to the Exchange-related activities and business of the Member Firm and/or employees of the Member Firm;

(C) a copy of a resolution, duly certified by the Secretary or other authorized officer or partner of the Firm, or by the governing body of the Firm, authorizing the application for membership privileges and the execution of the documents referred to above;

(D) with respect to partnerships, a statement describing the business in which it is engaged and a certified copy of its current partnership agreement. The Firm shall also file certified copies of any and all documents filed in the State of New York authorizing the partnership to conduct business in New York. All amendments to the partnership agreement shall be filed immediately with the Membership Department;

(E) a copy of the applicant firm's most recent financial statement verifying compliance with the minimum capital requirements of Rule 2.14. In addition, applicant firms registered as a Futures Commission Merchant must also submit their certified financial statement prepared as of the most recent fiscal year end; and

(F) each application for membership privileges shall be accompanied by payment of a non-refundable application fee in an amount to be fixed, from time to time, by the Board.

### **2.14 Financial and Reporting Requirements for Member Firms**

(A) Unless exempted by the Board of Directors or its designee pursuant to Section (F), each Member Firm shall have and maintain working capital, (computed in accordance with generally accepted accounting principles), of not less than one hundred thousand dollars (\$100,000). A Member Firm which provides a financial "lease" guarantee for its employee pursuant to Rule 2.23(C) shall meet the special financial requirements of Rule 2.30(B).

(B) Each Member Firm that issues a financial "lease" guarantee under Rule 2.30 shall file with the Audit Department a financial report for each fiscal year. The report shall be prepared in accordance with generally accepted accounting and auditing principles and certified by an independent certified or licensed public accountant. Such report is to be filed within ninety (90) days after the close of the Member Firm's fiscal year.

(C) Each Member Firm that issues a financial "lease" guarantee under Rule 2.30 shall file with the Audit Department a financial report for the first six (6) months of its fiscal year, which report shall be executed by the conferring members and by the president of the Member Firm or by another appropriate official of the Member Firm. Such report shall be filed within forty-five (45) days after the close of the second quarter of the fiscal year of such Member Firm.

(D) Unless exempted from Subsection (A), if, for any reason, the net assets of a Member Firm decline below the level specified in this Rule 2.14 or decline by a factor of twenty percent (20%) from the last report to the Exchange, the Member Firm shall give written notice of such event to the Audit Department within 10 days of its occurrence. This "Notice of Capital Impairment" should state the date of and the applicable reason for the decline of the Member Firm's working capital. For any Member Firm that has been exempted from Section (A) pursuant to Section (F), if the financial measurement used by the Board or its designee as an alternate measure of financial soundness declines

below the specified level or declines by a factor of twenty percent (20%) from the last report to the Exchange, such Member Firm also shall give written notice of that fact to the Audit Department within ten days.

(3) Any planned reduction of a Member Firm's working capital, as defined by Rule 2.14(f) (A), of 30% or more from that last reported to the Exchange shall be prefaced at least two business days in advance of its occurrence by a formal written notice of such event(s) to the Audit Department. Such notification should state the date of and applicable reason for the planned reduction of the Member Firm's working capital.

(E) The Board of Directors or its designee may exempt a Member Firm from the working capital requirement set forth in Section (A) if, in its sole discretion, an alternate measure of the financial soundness of such Member Firm, such as a minimum level of net worth, is more appropriate.

#### (F) Extension of Time for Submission of Financial Statements

A Member Firm may request an extension of time for the submission of a financial statement to the Exchange by filing a written request with the Audit Department prior to the date for which such financial statement is due to be submitted. The request should be signed by the Member Firm's Chief Financial Officer and state, in reasonable detail, the reasons for and the length of time necessary for such extension. Each such request submitted pursuant to this Rule will be reviewed for adequacy and granted or denied accordingly.

#### (G) Additional Financial Statements

The Exchange, at its discretion, may from time to time, request additional financial information and/or statements from Member Firms.

### **2.15 Reserved**

### **2.16 Limitations on Conferring Members**

(A) Member may not confer membership privileges on more than one Member Firm at the same time unless each of the following conditions are met:

(1) there is a direct ownership relationship between the Member Firms;

(2) separate seat(s) are used to confer such privileges;

(3) the Member conferring privileges concurrently maintains, for each of the Member Firms, the requisite qualifications for conferring privileges otherwise prescribed by the Rules of the Exchange; and

(4) the firms can demonstrate, to the satisfaction of the Audit Department, that such conference does not constitute a conflict of interest.

(B) A Member who confers membership privileges on a Member Firm agrees to make the proceeds of the sale of his memberships available for settlement of any and all claims against such Member, and Member Firm.

### **2.17 Cessation and Inactivation of Membership Privileges**

A Member Firm may relinquish or inactivate its privileges provided that:

(A) the Exchange has received written notice of the Member Firm's intention to relinquish or inactivate its privileges, including the name of each Member guaranteed by the Member Firm pursuant to Exchange Rules 2.21 and/or 2.23 and the name and number of each non-Member account guaranteed by the Member Firm.

(B) the Exchange has given to Members at least ten (10) days notice of the Member Firm's intent to relinquish or inactivate its privileges; and

(C) the Member Firm delivers to the Exchange a written statement that all claims arising out of Exchange transactions against the Member Firm have been settled or discharged; and

(D) no Member or Member Firm has filed a claim against the withdrawing Member Firm and/or any Members or non-Members it guarantees.

## **2.18 Termination of Member Firm Privileges**

(A) Member Firm privileges shall be suspended or terminated automatically as set forth below:

(1) If the sole conferring Member dies or ceases to be an executive officer, general partner, representative, limited partner or employee of the Member Firm, the Member Firm's privileges shall be terminated ninety (90) days after the date of the occurrence of any such event unless a new conferring Member is approved for the Member Firm prior to such termination.

(2) If a sole conferring Member shall be suspended or expelled for any reason, such suspension or expulsion shall apply to the Member Firm.

(B) Member Firm privileges may be suspended, or terminated by the action of the Exchange in accordance with the By-Laws and the Rules.

## **2.19 Reinstatement of Member Firm Privileges**

A Member Firm whose membership privileges have been terminated for any reason may apply to the Audit Department for reinstatement of such privileges. If the Audit Department approves the request, it shall forward the request, with its recommendation, to the Board which may reinstate such privileges upon such terms and conditions as it, in its sole discretion, may impose.

## **2.20 Floor Trading Privileges**

The privilege of trading on the floor of the Exchange is limited to Members who have obtained a formal guarantee from a Primary Clearing Member, have completed a training course administered by the Training and Education Committee and have registered with the NFA, as further provided by Rules §§2.21, 2.22, 2.23, 2.24, 2.25, 2.26, 2.27 and 2.28; and to such other persons as established by the Board under a plan to grant access to such other persons.

## **2.21 Reserved**

## **2.22 Floor Member Training**

(A) Prior to the grant of Floor Member privileges, a Member must successfully complete a Broker Training Course administered by the Training and Education Committee.

(B) The Training and Education Committee, for good cause shown, may waive any part, or all, of the Broker Training Course for a particular Member or class of Members.

(C) In order for a Floor Member to maintain Floor Member privileges, every three years a Member must attend a Continuing Education Program approved by the Training and Education Committee. Failure of a Floor Member to attend shall result in the automatic suspension of Floor Member trading privileges. Such suspension shall commence on the business day following the expiration of three years from the date a member last completed an approved Continuing Education and Ethics Program, and continue until proof of completion of a Continuing Education and Ethics Program.

## **2.23 Financial Requirements of Floor Members**

(A) There shall be no minimum financial requirements for either NYMEX or COMEX Division Floor Members other than for those individuals obtaining their membership privileges via a lease agreement or an Exchange issued Floor Trading Permit as noted in subsection (B) below.

(B) Unless a formal guarantee is obtained as noted in Subsection (C) below, and filed with the Membership Department, each Floor Member obtaining his membership privileges via a lease agreement or an Exchange issued Floor Trading Permit must maintain, at all times, a minimum equity balance in a trading account with his Primary Clearing Member as follows:

- (i) NYMEX Division Floor Member: \$50,000
- (ii) COMEX Division Floor Member: \$25,000

(C) Floor Members obtaining their membership privileges via a lease agreement or an Exchange issued trading Permit may be exempt from maintaining the minimum equity balance with their Primary Clearing Member, as required in Subsection (B) above, if a formal guarantee is obtained from a Member Firm of which he is a bona fide, full time employee. Such guarantee shall obligate the Member Firm to:

(1) Indemnify the Floor Member's PCM for any amount paid and/or incurred as a result of and allowable pursuant to its guarantee of the individual;

(2) Assume any and all unsatisfied financial obligations of the lessee or Permit Trader to the Exchange and its Members arising out of the individual's conduct of business on the Exchange; and

(3) Comply with the capital requirements of Rule 2.30 and reporting requirements of Rule 2.14 (B).

#### **2.24 Reserved**

#### **2.25 Reserved**

#### **2.26 Reserved**

#### **2.27 Termination of Floor Trading Privileges**

(A) Floor trading privileges terminate automatically upon the occurrence of any of the following events:

(i) the filing with the Exchange of a termination by the Clearing Member of its qualifications;

(ii) failure of the Floor Member to satisfy the requirements of Rule §2.23;

(iii) suspension, expulsion, or termination of the Membership of the Floor Member or the qualifying Clearing Member; or

(iv) for any other reason specified in the Bylaws or Rules.

(B) When Floor Trading privileges have been terminated for any reason, an application for renewal must be made in accordance with these Rules.

(C) When floor trading privileges have been terminated or suspended for any reason, the member subject to such termination of privileges, upon notification of termination or suspension, shall forthwith surrender his NYMEX Trader badge to the Chairman or a Vice Chairman of the Floor Committee, or their designee.

#### **2.29 Reserved**

#### **2.30 Additional Capital Required for Employee Guarantees**

(A) Both Member Firms and Clearing Member Firms may issue certain financial guarantees of bona fide full time employees which, when properly prepared and filed with the Exchange's Membership Department, will exempt such employees from the requirement that lease members and permit holders maintain minimum equity balances with their respective Primary Clearing Member.

(B) Each Member Firm and Clearing Member Firm must maintain capital in excess of that required by Rule 2.14 and 2.15 for each financial guarantee issued and allowed by Subsection (A), beyond a base of four guarantees per Division, as follows:

(i) NYMEX Division: \$50,000

(ii) COMEX Division: \$25,000

#### **2.31 Duties of Guaranteed Members**

(A) Each Member guaranteed by a Member Firm or Primary Clearing Member shall file with such Member Firm or Primary Clearing Member a copy of any financial statement or document filed with any other Exchange.

(B) No Member may hold a direct or indirect interest in any commodity account carried by any other Clearing Member

without the prior written consent of the Primary Clearing Member.

(C) Unless otherwise requested by a Member Firm or a Clearing Member or the Member's PCM, a guaranteed Member shall cause to be delivered to a guarantor or to his or her Primary Clearing Member as applicable all statements and confirmations with respect to any commodity account, in which such Member has a direct or indirect interest or over which such Member exercises direct or indirect control.

(D) No guaranteed or qualified Member shall open a commodity account without the prior written consent of such Member's guarantor or qualifying Clearing Member.

### **2.32 Duties of Guarantors and Primary Clearing Members**

#### **(A) Monitoring of Guaranteed Members**

Each PCM shall affirmatively monitor the financial condition of each Floor Member guaranteed to determine that Floor Member's compliance with the terms and financial requirements of Rule 2.23 (lease members) and shall take steps to terminate its guarantee upon non-compliance with such requirements.

In the event a Lease Member fails to maintain the minimum deposit in his trading account as required by Rule 2.23 (B), he may obtain from his Primary Clearing Member a temporary thirty (30) day financial guarantee. The issuance of such a financial guarantee relieves the Clearing Member from initiating steps to terminate its relationship as the Lease Member's Primary Clearing Member and provides the applicable Lease Member with additional time to attain compliance.

The financial guarantee referred to in the paragraph above must be filed with the Exchange's Audit Department on the same date it is executed. For each financial guarantee issued, the applicable Primary Clearing Member must maintain working capital in excess of that required by Rule 2.14 in amounts equal to \$50,000 for NYMEX Division Lease Members and \$25,000 for COMEX Division Lease Members.

It should be noted that a Lease Member may only obtain such a financial guarantee twice within any twelve (12) month period and never in consecutive thirty (30) days periods.

#### **(B) Retention of Account Equity**

A PCM shall retain the account equity that comprises, for purposes of Rule 2.23, the net liquidating equity, if any, required by these Rules to be maintained in a Floor Member's trading account for the greater of ten (10) days or until any and all pending claims by Members and Member Firms have been resolved.

### **2.33 Termination of Guarantees**

(A) A Member Firm or Clearing Member or PCM that has guaranteed Floor Member may revoke the financial "lease" guarantee or PCM guarantee, as applicable, by submitting a written Notice of Revocation during regular business hours. Such notice shall indicate the desired effective date and time of termination. Such termination of a guarantee by a PCM shall become effective only after occurrence of all of the following events:

- (1) receipt by the Membership Department of such written Notice of Revocation;
- (2) notice by the PCM to the guaranteed Floor Member by providing that Floor Member with a copy of the Notice of Revocation filed with the Membership Department;
- (3) posting notice of such revocation by the Membership Department; and
- (4) removal of the Floor Member's trading symbol from the clearing system of the Exchange.

A PCM shall use due diligence to obtain the Trading Badge of a Floor Member whose guarantee has been terminated by that PCM.

(B) The Notice of Termination shall indicate whether the Member Firm or Clearing Member or PCM is asserting against the guaranteed Member any claims that arising out of the transaction of business on the Exchange.

(C) The suspension, expulsion, or other termination of the privileges of a Member Firm or Clearing Member or PCM

shall operate to terminate all guarantees issued by such Member Firm or Clearing Member or PCM.

(D) The Membership Department promptly shall give notice to the membership of the termination of any guarantee.

#### **2.34 Reserved**

#### **2.35 Reserved**

#### **2.36 Applications for Membership by a Member of Another Division**

(A) Any Member of either the NYMEX Division or the COMEX Division shall be automatically eligible for membership in the other Division upon the filing of an application, subject to the following:

(1) The applicant must be a Member in good standing of the Division where he presently holds membership privileges at the time of the application through the time that it is considered by the Membership Committee. For the purposes of this Rule 2.36, the term "Member" shall mean an individual who currently holds a membership in his name by direct ownership, ABC agreement or lease agreement. In addition, an individual who leases his only seat shall be considered to hold a membership in his name for the purposes of this Rule 2.36.

(2) The applicant must sign a statement on a form prescribed by the Exchange attesting to the fact that no event has occurred since the submission of his application to the Division where he is currently a member, which would require notification pursuant to Rule 2.42;

(3) The applicant shall pay the cost for the Exchange to perform an independent investigation; and

(4) The applicant shall meet all financial requirements of the Division where the applicant is seeking membership privileges.

(B) The report required under Subsection (A) (3) shall be reviewed by the Chairman of each Division's Membership Committee and the Membership Department. Satisfactory applications that have been reviewed shall be submitted for approval to the Membership Committee. In the event that the independent investigation required under Subsection (A)(3) does not confirm the attestation submitted by the applicant, the matter will be referred to the Compliance Department.

#### **2.37 Reserved**

#### **2.38 Reserved**

#### **2.39 Reserved**

#### **2.40 Responsibility of Member for Actions of Member Firms**

A Member who has conferred membership privileges on a Member Firm shall be responsible for, and subject to disciplinary action as a result of, the acts or omissions and the breaches or violations of the Bylaws and Rules by such Member Firm.

#### **2.41 Responsibility of Members and Member Firms for Actions of Employees**

(A) An individual or entity maintaining any membership status on the Exchange shall be responsible for, and subject to disciplinary action as a result of, the acts or omissions and for the breaches or violation of the By Laws and Rules of its employees.

(B) Every Member Firm shall be responsible for, and subject to, disciplinary action as a result of, the acts and omissions, and for the breaches or violations of the By Laws and Rules of its partners, directors, or officers.

#### **2.42 Required Notices**

(A) Each individual or entity maintaining any membership status on the Exchange shall notify the Exchange in writing immediately upon the occurrence of any of the following events:

(i) Any material adverse change in financial condition;

(ii) Any material change in the individual or entity's relationship with the guarantor or with a Primary Clearing Member;

(iii) Any refusal of admission to, withdrawal of any application for membership in, any suspension, expulsion, bar, fine, censure, denial of membership, registration or license, withdrawal of any application for registration, cease and desist order, temporary or permanent injunction, denial of trading privileges, or any other sanction or discipline through an adverse determination, voluntary settlement or otherwise, by any commodity or securities exchange, related clearing organization, the National Futures Association, the Financial Industry Regulatory Authority, or any self-regulatory organization or other business or professional association;

(iv) Any refusal of admission to, withdrawal of any application for membership in, any suspension, expulsion, bar, fine, censure, denial of membership, registration or license, withdrawal of any application for registration, cease and desist order, temporary or permanent injunction, denial of trading privileges or any other sanction or discipline through an adverse determination, voluntary settlement or otherwise by:

(a) the Securities and Exchange Commission, the Commission or the securities commission or equivalent authority of any state, territory, the District of Columbia or foreign country; or

(b) any federal court, state court, or regulatory agency not mentioned above, quasi-governmental body;

(v) any conviction, finding of guilt, confession of guilt, plea of guilty or nolo contendere to a felony or misdemeanor charging misrepresentation, fraud, deceit, theft, embezzlement, gambling, conversion, abuse of a fiduciary relationship or other such act;

(vi) the commencement, by the issuance of a formal order of investigation (or its equivalent), or by the issuance or service of a written complaint (or its equivalent), of any judicial, administrative or self-regulatory proceeding, as the case may be, against such member by the Commission, the Securities and Exchange Commission, the securities commission or equivalent authority of any state, territory, the District of Columbia or foreign country, or any commodity or securities exchange or related clearing organization, or any registered futures or securities association, or any self-regulatory organization or other business or professional association;

(vii) any change in a Member Firm's liaison designated pursuant to Section (B) hereof; or

(viii) any revocation of any guarantee and any material change in employment, including without limitation any termination, voluntary or otherwise, of employment.

(B) Each individual maintaining any membership status on the Exchange shall file with the Membership Department (i) a written notice consenting to the designation of staff as identified by the Exchange as his or its agent for service of process concerning and limited to the Exchange related activities and business; and (ii) if a Member Firm, a written notice designating an officer, employee or partner as the Exchange liaison, whom the Exchange may contact in order to obtain additional information or documentation in connection with any matter whatsoever provided in the Rules.

(C) Each Member Firm shall give written notice to the Exchange of all changes in the employment status of any of its employees who are Exchange Members and/or registered with the Exchange as trading floor personnel, in partners, whether general or limited, or in officers or directors.

(D) Each Member Firm shall give prior notice, in writing, to the Membership Department of any proposed merger, acquisition, consolidation, or sale of the Member Firm, whether into or by the Member Firm or otherwise. Such prior notice shall be supplemented by such documents or information as requested by the Membership Department.

#### **2.43 LIMITATION OF LIABILITY, NO WARRANTIES**

A. EXCEPT AS PROVIDED BELOW, THE EXCHANGE AND CHICAGO MERCANTILE EXCHANGE INC. (CME) (INCLUDING THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES), THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, LICENSORS, MEMBERS, AND CLEARING MEMBERS, SHALL NOT BE LIABLE TO ANY PERSON FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF USE, AND DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES), ARISING FROM:

(i) ANY FAILURE, MALFUNCTION, FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY,

INTERRUPTION, TERMINATION, OR ANY OTHER CAUSE, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OPERATION, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF ANY OF THE SYSTEMS AND SERVICES OF THE EXCHANGE OR CME, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS AND SERVICES, INCLUDING WITHOUT LIMITATION ELECTRONIC ORDER ENTRY/DELIVERY, TRADING THROUGH ANY ELECTRONIC MEANS, ELECTRONIC COMMUNICATION OF MARKET DATA OR INFORMATION, WORKSTATIONS USED BY MEMBERS AND AUTHORIZED EMPLOYEES OF MEMBERS, PRICE REPORTING SYSTEMS AND ANY AND ALL TERMINALS, COMMUNICATIONS NETWORKS, CENTRAL COMPUTERS, SOFTWARE, HARDWARE, FIRMWARE AND PRINTERS RELATING THERETO; OR

(ii) ANY FAILURE OR MALFUNCTION, FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY, INTERRUPTION OR TERMINATION, OR ANY OTHER CAUSE, OF ANY SYSTEM OR SERVICE OF THE EXCHANGE OR CME, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, CAUSED BY ANY THIRD PARTIES INCLUDING, BUT NOT LIMITED TO, INDEPENDENT SOFTWARE VENDORS AND NETWORK PROVIDERS; OR

(iii) ANY ERRORS OR INACCURACIES IN INFORMATION PROVIDED BY THE EXCHANGE OR CME OR ANY OR ANY OF THE EXCHANGE'S OR CME'S SYSTEMS, SERVICES OR FACILITIES, EXCEPT FOR INCORRECT ORDER STATUSING INFORMATION AS PROVIDED IN RULE 11G.579 (GLOBEX CONTROL CENTER); OR

(iv) ANY UNAUTHORIZED ACCESS TO OR UNAUTHORIZED USE OF ANY OF THE EXCHANGE'S OR CME'S SYSTEMS, SERVICES OR FACILITIES BY ANY PERSON.

THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY WHETHER A CLAIM ARISES IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, CONTRIBUTION OR OTHERWISE AND WHETHER THE CLAIM IS BROUGHT DIRECTLY OR AS A THIRD PARTY CLAIM.

THE FOREGOING LIMITATION OF LIABILITY SHALL BE SUBJECT TO THE COMMODITY EXCHANGE ACT AND REGULATIONS THEREUNDER. A PARTY WHO HAS BEEN FINALLY ADJUDICATED TO HAVE ENGAGED IN WILLFUL OR WANTON MISCONDUCT MAY NOT AVAIL ITSELF OF THE PROTECTIONS IN THIS RULE.

B. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS (INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE) PROVIDED BY THE EXCHANGE, THE CME (INCLUDING THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES), THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, AND LICENSORS RELATING TO ANY SYSTEMS OR SERVICES OF THE EXCHANGE OR CME OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, INCLUDING THE GLOBEX SYSTEM.

C. ANY DISPUTE ARISING OUT OF THE USE OF SYSTEMS OR SERVICES OF THE EXCHANGE OR CME OR SERVICES, EQUIPMENT, OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES IN WHICH THE EXCHANGE OR CME (INCLUDING THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES), OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS OR LICENSORS IS A PARTY SHALL BE ARBITRATED PURSUANT TO RULE 621 ("CERTAIN CLAIMS AGAINST THE EXCHANGE INVOLVING TRADING SYSTEMS OR SERVICES"). ANY ARBITRATION SHALL BE BROUGHT WITHIN THE PERIOD PRESCRIBED BY EXCHANGE RULES. ANY OTHER ACTIONS, SUITS OR PROCEEDINGS AGAINST ANY OF THE ABOVE MUST BE BROUGHT WITHIN TWO YEARS FROM THE TIME THAT A CAUSE OF ACTION HAS ACCRUED. THIS PARAGRAPH C SHALL IN NO WAY BE CONSTRUED TO LIMIT A PARTY'S OBLIGATION TO ARBITRATE ITS CLAIM OR TO CREATE A CAUSE OF ACTION AND SHALL NOT AUTHORIZE AN ACTION THAT WOULD OTHERWISE BE PROHIBITED BY EXCHANGE RULES. IF FOR ANY REASON, A COURT OF COMPETENT JURISDICTION FINDS THAT SUCH DISPUTE IS NOT ARBITRABLE, SUCH DISPUTE MAY ONLY BE LITIGATED IN THE COUNTY OF COOK IN THE STATE OF ILLINOIS AND WILL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS WITHOUT REGARD TO ANY PROVISIONS OF ILLINOIS LAW THAT WOULD APPLY THE SUBSTANTIVE LAW OF A DIFFERENT JURISDICTION.

D. THE CME OR THE EXCHANGE, MAY, IN THEIR RESPECTIVE SOLE DISCRETION, ASSUME RESPONSIBILITY FOR DIRECT, OUT OF POCKET LOSSES DIRECTLY CAUSED BY THE NEGLIGENCE OF GLOBEX CONTROL CENTER OR OTHER EXCHANGE STAFF AND/OR ORDER STATUS ERRORS PROVIDED BY THE GLOBEX CONTROL CENTER OR A CME OR EXCHANGE SYSTEM, SERVICE OR FACILITY, NOTWITHSTANDING THE ABOVE, I) THE EXCHANGE'S AND CME'S TOTAL COMBINED AGGREGATE OBLIGATIONS SHALL NOT EXCEED \$100,000 FOR ALL LOSSES FROM ALL CAUSES SUFFERED ON A SINGLE DAY; \$200,000 FOR ALL LOSSES SUFFERED FROM ALL CAUSES IN A SINGLE CALENDAR MONTH;



AND \$2,400,000 FOR ALL LOSSES FROM ALL CAUSES SUFFERED IN A SINGLE CALENDAR YEAR. ANY DISPUTED CLAIM PURSUANT TO THIS PARAGRAPH D MUST BE ARBITRATED PURSUANT TO RULE 621 ("CERTAIN CLAIMS AGAINST THE EXCHANGE INVOLVING TRADING SYSTEMS OR SERVICES").

E. IN NO EVENT SHALL THE EXCHANGE'S AND CME'S TOTAL COMBINED AGGREGATE LIABILITY FOR ALL CLAIMS ARISING OUT OF ANY FAILURES, MALFUNCTIONS, FAULTS IN DELIVERY, DELAYS, OMISSIONS, SUSPENSIONS, INACCURACIES, INTERRUPTIONS, TERMINATIONS, ORDER STATUSING ERRORS OR ANY OTHER CAUSES, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OPERATION, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF ANY OF THE EXCHANGE'S OR CME'S SYSTEMS OR SERVICES, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS AND SERVICES, OR THE NEGLIGENCE OF EXCHANGE OR CME STAFF EXCEED \$2,400,000 IN ANY GIVEN CALENDAR YEAR.

IF THE NUMBER OF ALLOWED CLAIMS ARISING OUT OF ANY FAILURES OR MALFUNCTIONS ON A SINGLE DAY OR SINGLE MONTH CANNOT BE FULLY SATISFIED BECAUSE OF THE ABOVE DOLLAR LIMITATIONS, ALL SUCH CLAIMS SHALL BE LIMITED TO A PRO RATA SHARE OF THE MAXIMUM AMOUNT FOR THE RESPECTIVE PERIOD.

A CLAIM AGAINST THE EXCHANGE OR CME, ARISING OUT OF ANY FAILURE OR MALFUNCTION SHALL ONLY BE ALLOWED IF SUCH CLAIM IS BROUGHT IN ACCORDANCE WITH THIS RULE.

#### **2.44 Disputes Between Members**

Any Member, Member Firm or Clerk involved in a transaction or business relationship on the Exchange about which a dispute arises that is not resolved shall act in the most expeditious manner practicable to mitigate or limit any damage to any party to such transaction or relationship. There shall be a rebuttable presumption that such acts of mitigation shall not be admissible with respect to liability for the transaction or relationship giving rise to the dispute.

#### **2.45 Failure to Pay Fines, Dues, Assessments and Fees**

(A) Fines—If a Class A Member or Member Firm defaults in the payment of any fine on the date due, such Class A Member or Member Firm may forfeit all membership privileges, including the privilege of accessing the floor and reduced clearing and trading fees, including Globex fees, as applicable. Exchange staff shall use reasonable efforts to notify the Class A Member or Member Firm before any privileges are forfeited.

(B) Dues, assessments and fees—Dues, assessments, and fees owed to the Exchange are payable upon receipt of the invoice. Class A Members in arrears 30 days after the invoice date may forfeit all membership privileges, including the privilege of accessing the floor and reduced clearing and trading fees, including Globex fees. Exchange staff shall use reasonable efforts to notify the Class A Member before any privileges are forfeited.

#### **2.46 Effect of Suspension or Expulsion from Membership**

(A) A Class A Member or Member Firm whose rights and privileges of Membership have been suspended shall continue to be:

(1) subject to the Bylaws and the Rules;

(2) liable for all dues, assessments, fees and fines imposed by the Exchange; and

(3) obligated to the Exchange and to its Members for all contracts, obligations and liabilities entered into or incurred before, during and after such suspension.

(B) A Class A Member or Member Firm who has been expelled from the rights and privileges of Membership shall continue to be:

(1) subject to the disciplinary and arbitration rules of the Exchange;

(2) liable for all dues, assessments, fees and fines imposed by the Exchange prior to such expulsion; and

(3) obligated to the Exchange and its Members for all contracts, obligations, liabilities, fines and penalties entered into or incurred prior to or after such expulsion.

#### **2.47 Reserved**

#### **2.48 Reserved**

~~2.49 Reserved~~

~~2.50 Transfer of Memberships~~

~~(A) A Member, Member Firm or other entity may transfer ownership of a membership upon sale of a membership to another Member, Member Firm or Member-elect as provided in Rule 2.52.~~

~~(B) A Member may transfer ownership of his membership as a result of a bona fide gift, bequeath or bequest from the Member:~~

~~(1) To an eligible family member (i.e., a spouse, parent, child, sibling, grandparent, or grandchild);~~

~~(2) To a trust for which the Member is grantor and, if while living and competent, a trustee of the trust; and with respect to which all beneficiaries are members of the Member's family who would be eligible for a family transfer from the Member pursuant to paragraph (B)(1) of this Rule.~~

~~(i) The document(s) establishing and governing the trust shall at all times prohibit assignments of an interest in the trust to any person who is not an eligible family member and state that:~~

~~(a) The trust's interest in the membership shall at all times be subject to all of the Rules of the Exchange, as may be amended;~~

~~(b) The management of the trust shall be vested exclusively in a trustee (and any successor) who, if not already a Member, shall qualify for membership by satisfying the requirements of Chapter 2 of these Rules;~~

~~(c) The Exchange's rights with respect to the membership shall be superior to those of the beneficiaries; and~~

~~(d) The Exchange shall have no liability to the beneficiaries for any loss, damage, or expense resulting from any acts or omissions by the trustee.~~

~~(ii) The transferor and the trustee (and any successor) shall each provide, in a form acceptable to the Exchange, a certification that the trust shall/has acquire (d) the membership subject to all of the Rules of the Exchange and that the trust is in compliance with the requirements of the Exchange's By Laws and Rules.~~

~~(iii) Transfer of a membership pursuant to this Rule shall not relieve the transferor of any liability to the Exchange or its Members with respect to any claim arising out of an act or omission occurring prior to such transfer, and the membership will continue to be treated as the asset of the transferor for the purposes of satisfying any obligations to the Exchange and/or its Members arising out of the transferor's use of the membership prior to the transfer to the trust, including, but not limited to, fines imposed with respect to conduct occurring prior to the transfer to the trust.~~

~~(iv) If the transferor, trustee or any subsequent trustee exercises, in his own name, the floor trading privileges associated with said membership, the membership will be treated as the asset of the transferor, trustee or any subsequent trustee for the purposes of satisfying any obligations to the Exchange or its Members arising out of the transferor's, trustee's or subsequent trustee's use of the membership.~~

~~(v) A membership held in trust may not be used to confer member firm privileges.~~

~~(vi) Upon official notice to the Exchange that the trust will be or has been revoked, the membership may:~~

~~(a) Be transferred back to the transferor, if living;~~

~~(b) Be transferred to the transferor's estate; or~~

~~(c) Be sold in accordance with and subject to the provisions of Rule 2.52.~~

~~(3) To a Family Limited Partnership ("FLP") with respect to which all partners are members of the member's family who would be eligible for a family transfer from the member pursuant to paragraph B(1) of this Rule.~~

~~(i) The limited partnership agreement or other document(s) governing the FLP shall at all times prohibit assignments of an interest in the FLP to any person who is not an Eligible Family Member and state that:~~

~~(a) The FLP's interest in the membership shall at all times be subject to all of the Rules of the Exchange, as may be amended;~~

(b) The management of the FLP shall be vested exclusively in a managing general partner, who shall qualify for membership by satisfying the requirements of Chapter 2 of these Rules;

(c) The Exchange's rights with respect to the membership shall be superior to those of the partners; and

(d) The Exchange shall have no liability to the partners for any loss, damage, or expense resulting from any acts or omissions by the managing general partner.

(ii) The transferor and the managing general partner (and any successor) shall each provide, in a form acceptable to the Exchange, a certification that the FLP shall/has acquire (d) the membership subject to all of the Rules of the Exchange and that the FLP is in compliance with the requirements of the Exchange's By-Laws and Rules.

(iii) Transfer of a membership pursuant to this Rule shall not relieve the transferor of any liability to the Exchange or its Members with respect to any claim arising out of an act or omission occurring prior to such transfer, and the membership will continue to be treated as the asset of the transferor for the purposes of satisfying any obligations to the Exchange and/or its Members arising out of the transferor's use of the membership prior to the transfer to the FLP, including, but not limited to, fines imposed with respect to conduct occurring prior to the transfer to the FLP.

(iv) If the transferor, managing general partner or any subsequent managing general partner exercises, in his own name, the floor trading privileges associated with said membership, the membership will be treated as the asset of the transferor, managing general partner or any subsequent managing general partner for the purposes of satisfying any obligations to the Exchange or its Members arising out of the transferor's, managing general partner's or subsequent managing general partner's use of the membership.

(v) A membership held in a FLP may not be used to confer member firm privileges.

(vi) Upon official notice to the Exchange that the FLP will be or has been revoked, the membership may:

(a) Be transferred back to the transferor, if living;

(b) Be transferred to the transferor's estate; or

(c) Be sold in accordance with and subject to the provisions of Rule 2.52.

(C) A Member, Member Firm or other entity may transfer ownership of a membership by operation of law:

(D) A Member may transfer ownership of a membership as a result of a sale where the seller and purchaser are members of the same family (a spouse, parent, child, sibling, grandparent, or grandchild).

(E) The transfer in ownership of a membership shall be effective upon the execution of an assignment of registration to the transferee on the membership records of the Exchange.

(F) A Member may retain ownership of his membership and transfer, via lease or ABC Agreement, those rights and obligations specifically provided for in the lease or ABC Agreement. The transfer of such rights and obligations shall be concurrent with the effective and/or termination date of the lease or ABC Agreement.

(G) The Exchange shall treat the person in whose name a membership is registered on the membership records of the Exchange as the sole owner of the membership, notwithstanding the terms and conditions of an ABC Agreement, Trust Agreement or Family Limited Partnership Agreement pursuant to which the person holds such membership, and, except as otherwise provided in the By-Laws and Rules, shall not be bound to recognize any claim to, or interest in, such membership, by any other person or entity, whether or not the Exchange has notice of such purported claim or interest.

#### **2.51 Procedure for Transfer of Memberships**

(A) If a Member desires to transfer ownership of a membership, the transferor shall deliver to the Membership Department notification of intention to transfer, executed by the transferor or its legal representative. The notice of intention to transfer shall include the seat identification number, the date on which the transfer is intended to become effective and the name of the proposed transferee. The Membership Department, upon receipt of a notice of intention to transfer a membership, shall promptly notify the membership of the Exchange, by posting for a period of ten (10) days the notice of intention to transfer.

(B) No Member may transfer ownership of a membership or lease to another the trading privileges associated therewith unless and until the following conditions have been met:

(i) All dues, assessments, fines, penalties and any other monies (including, but not limited to, booth fees, office rent and phone charges) due and payable to the Exchange shall have been paid;

(ii) All claims of Members that: (1) arise out of, or in connection with, the transaction of business on the Exchange, and (2) are filed with the Membership Department within ten (10) days after the Exchange gave the membership notice of intention to transfer have been settled or discharged.

(iii) The condition in subpart (ii) above shall not apply to claims of Member Firms who are the beneficial owners of the proposed transfer membership pursuant to an ABC Agreement.

(iv) Payment by the transferee to the Exchange of a transfer fee in an amount to be fixed, from time to time, by the Board; provided, however, that a Member who purchases a membership in order to transfer it to another Member or to Member elect and files a notice of intention to transfer the membership to such other Member or to such Member elect shall not be required to pay a transfer fee upon transfer to such other Member or Member elect.

(C) A transfer of ownership of a membership may be effected, notwithstanding the provisions of Sections (A) and (B) hereof provided that:

(i) the transferor owns and holds more than one full membership in the Division of the transferred membership; provided, however, that the claim shall be less than the then current value of a membership; or

(ii) the transferor deposits with the Exchange a certified check, payable to the Exchange, in an amount equal to the amount of the claim, including a reasonable amount for costs and attorney fees, for liquidated claims or such amount as may be determined by the Exchange for unliquidated claims provided that such amount shall be no higher than the price at which a membership last sold or at which a membership was bid. The Exchange shall retain such deposit until the earlier of ten (10) days after receipt of a notice of intention to transfer or all claims filed within ten (10) days of posting such notice have been resolved, or until the transferor, as specified above, has deposited with the Exchange an amount equal to the total of all claims filed within ten (10) days notice of such notice.

(D) A Member and/or Member firm that is the subject of any disciplinary proceeding or investigation by the Exchange may transfer the ownership and/or rights and obligations granted pursuant to the lease or A-B-C Agreement notwithstanding the existence of the disciplinary action however:

(i) such Member and/or Member firm shall remain subject to Exchange jurisdiction and be personally liable for any fines assessed in connection with the proceeding or investigation;

(ii) the Member and/or Member firm shall be deemed to have consented to the jurisdiction of the courts of the State of New York in New York County for the purpose of any action brought by the Exchange to enforce its rights against such Member and/or Member firm;

(iii) in the event that the lessee satisfied the financial requirements of Rule 2.23 by maintaining the required trading account equity such funds: (1) shall be frozen until the investigation is closed or proceeding concluded; (2) shall be paid to the Exchange in full or partial satisfaction of any fine; and (3) shall be released only upon written approval to the lessee's PCM from the Exchange's Audit Department.

(E) A transfer of the rights and obligations of membership back to a lessor upon the termination of a lease shall nonetheless result in continuing Exchange jurisdiction over the lessee with respect to any pending disciplinary investigation or proceedings involving the lessee, or any proceeding arising out of the lessee's acts or omissions during or relating to such proceeding. Lessors shall not be liable for, and shall not be responsible for the payment of disciplinary fines assessed against lessees. Such lessees shall have continuing personal liability for all disciplinary fines arising out of such investigations or proceedings.

(F) Notwithstanding Section (D), the lessee may receive all of the funds in his trading account at the time of the seat transfer, provided that he deposits in the Membership Department a certified check, or a check drawn on a Clearing Member's account, payable to the Exchange in the amount of \$50,000 for NYMEX Division lessees and \$25,000 for COMEX Division lessees.

(G) A membership that has been sold in accordance with Rule 2.52 may be transferred to the purchaser free from any claims notwithstanding that a claim may have been made under Section (B) hereof. The portion of the proceeds required in accordance with Subsection (C)(ii) of this Rule shall not be distributed until resolution of any claim as provided in Rule 2.68.

#### **2.52 Procedures for Purchase and Sale of Membership**

(A) All purchases and sales of Class A memberships, except for purchases and sales pursuant to Rule 2.50(C)(vi), must be made through the Membership Department, which shall maintain a file of bids and offers for memberships. A person desiring to buy or to sell a membership shall submit a written bid or offer to the Membership Department.

(B) The cost of purchasing a Class A membership from the Exchange may be fixed by the Board from time to time.

(C) The proceeds of any sale of a membership shall be distributed as set forth in Rule 2.68B.

#### **2.53 Acquisition of Membership by Member Elect**

(A) Every Member elect shall cause a transfer of a membership to the Member elect within forty five (45) days after election to membership and, within such period, shall subscribe to the Bylaws and Rules thereby pledging to comply with the Bylaws and Rules and all subsequent amendments to the Bylaws and Rules.

(B) If a Member elect does not comply with the requirements of subsection (A) of this Rule, his election shall be void unless the time for compliance is extended, for any reason, by the Membership Committee.

#### **2.54 Effect of Filing Notice of Intention to Transfer**

A Member shall cease to have floor trading privileges on the effective date a notice of intention to transfer the ownership of his sole membership in either Exchange Division and/or the floor trading privileges associated with the lease of a sole membership.

#### **2.55 Payment for Memberships Purchased**

Except for purchases and sales pursuant to Rule 2.50(C)(vi), the cost of all Class A memberships purchased shall be deposited by the purchaser with the Exchange, by certified check drawn on the account of the purchaser, by wire transfer in the name of the purchaser, or by check drawn on the account of a clearing member, within two (2) business days of the purchase of the membership. The Exchange shall pay the seller by check upon completion of the transfer of all memberships that are subject to the terms of this rule.

#### **2.56 Reserved**

#### **2.57 Reserved**

#### **2.58 Reserved**

#### **2.59 Reserved**

#### **2.60 A-B-C Agreements**

(A) A-B-C Agreements - A Member Firm may finance the cost of acquisition of a bona fide employee or principal of such Member Firm. The financing arrangement must be made pursuant to an A-B-C agreement, which must be approved by the Membership Committee and which must be filed with the Membership Department.

(B) The A-B-C Agreement must contain, at a minimum, the following terms and conditions:

(i) The Member Firm shall subordinate any and all claims to the membership to the valid and proven claims of all other Members and Member Firms;

(ii) The Member holding the membership must agree not to sell, transfer or otherwise encumber the membership

except with the consent of the financing Member Firm; and, must agree that the proceeds of any authorized sale of the membership shall be considered as assets of the financing Member Firm;

(iii) An A-B-C Agreement must terminate upon the occurrence of any one of the following events:

(a) the Member Firm ceases to be, or gives notice of intention to cease to be, a Member Firm; or

(b) the Member ceases to be an employee of the Member Firm;

(iv) An A-B-C Agreement shall not become effective until approved by the Membership Committee;

(v) An A-B-C Agreement shall set forth in detail all arrangements regarding the disposition of the membership upon termination of the A-B-C agreement; and,

(vi) An A-B-C Agreement shall provide that any and all controversies arising out of or in connection with the agreement, its negotiation, interpretation or termination shall be submitted to arbitration under the rules of the Exchange.

#### **2.61 Terms of Financing Agreement**

The financing agreement must contain, at a minimum, the following terms and conditions:

(i) The Member or Member Firm shall subordinate any and all claims to the membership to the valid and proven claims of all other Members and Member Firms; and

(ii) The Class A Member holding the membership must agree not to sell, transfer or otherwise encumber the membership except with the consent of the financing Member or Member Firm; and, must agree that the proceeds of any authorized sale of the membership shall be considered as assets of the financing Member or Member Firm;

#### **2.62 — 2.63 Reserved**

#### **2.64 Summary Suspension Pursuant to Consent**

If a Class A member consents to a summary suspension, in writing, then such Class A Member shall be immediately suspended in accordance with the terms of the consent and the Exchange shall notify the membership of such suspension.

#### **2.65 Summary Suspension in a Financial Emergency**

If the President of the Exchange or the President of the Clearing House determines, in his or her sole discretion, that there is a substantial question whether a Financial Emergency exists with respect to any Class A Member, he or she may empanel the Chief Executive Officer, the President of the Exchange, Chairman of the Board, the Chairman of the Clearing House Committee and the President of the Clearing House. Such panel shall be duly authorized and, upon a unanimous vote of the panel, be empowered to suspend, or take any other action, as it deems appropriate to protect the Exchange. The panel may take such action regardless of whether the Class A Member has consented to a suspension. The Class A Member affected by action taken shall be notified and may request a hearing before the Board as provided in Rule 230A.(k). In the event of suspension, the Chief Executive Officer shall, promptly after a suspension, set the matter for hearing before the Board for final determination.

#### **2.66 Reserved**

#### **2.67 Creditors of Insolvent Class A Members**

(A) Reserved

(B) Within 10 days of the announcement of suspension of a Class A Member, any Class A Member who has a claim against such suspended Class A Member shall deliver to the Membership Department a Notice of Claim that details all contracts liquidated under this Rule and the net debit or credit balance resulting therefrom and that details any other claims that such Class A Member may have against the suspended Class A Member.

(C) Failure to file a Notice of Claim within such period shall bar such Class A Member from participating in any proceeds that result from any sale of the membership of the suspended Class A Member.

#### **2.68 Establishment of Valid Claims**

(A) The Membership Department shall furnish the suspended Class A Member and all Class A Members who have filed Notices of Claim as required by Rule 2.67 with copies of all Notices of Claim filed under Rule 2.67. The Membership Department shall also specify a date not more than 10 business days from the date on which such Notices of Claim are furnished to such Class A Members by which the suspended Class A Member or any claimant Class A Member may file an objection to any claim.

(B) If a suspended Class A member or any claimant Class A Member fails to file an objection to a claim before the date set by the Membership Department, then that Class A Member shall have waived all rights to object to such claim or claims.

(C) In the event that any claim is disputed, the validity of such claim shall be determined by arbitration under the rules of the Exchange. The arbitrators shall determine whether and to what extent such claim is valid, and, in accordance therewith whether a claimant is entitled to participate in the proceeds of a sale of the Membership of such suspended Class A Member, pursuant to Rule 2.69B.

#### **2.69 Expelled Class A Member**

All Class A Memberships held by a Class A Member who is expelled from the Exchange shall be sold and the proceeds paid and applied as provided in Rules 2.69A and 2.69B.

##### **2.69A Sale of Membership**

(A) If within 10 business days from the date of the decision of the Arbitration Committee or from the last date established by the Membership Department for filing of objections to Notices of Claim, whichever is later, a Class A Member suspended under this Chapter does not pay all valid claims, then all Class A Memberships and all other collateral previously delivered or pledged to the Exchange (including, without limitation, Class A shares of CME Group) of the suspended Class A Member shall be sold in accordance with this Rule and the proceeds of the sale of such Class A Memberships shall be distributed in accordance with Rule 2.69B.

(B) When any Class A Membership is sold pursuant to this Rule, written notice of such sale stating the date and time of such sale shall be sent to the Class A Member and the other Class A Members 10 days prior to such sale.

(C) All sales should be made by the President or his designee on the floor of the Exchange to the highest bidder at open outcry but in no event less than the highest bid then posted at the Exchange for the transfer of a Class A Membership. Any Class A Member may purchase such Class A Memberships. Any Class A Memberships so purchased shall be free from and clear of any claims, liens or attachments. Such sale shall be final and binding and not subject to challenge. Payment for the purchase of such Memberships shall be made to the Exchange.

##### **2.69B Disposition of Proceeds**

The proceeds of any sale of any Class A Membership and all other collateral previously delivered or pledged to the Exchange (including, without limitation, Class A shares of CME Group) pursuant to Rule 2.69A shall be paid and applied in the following order of priority:

(1) first, to the Exchange in full satisfaction of any amounts due to the Exchange including, but not limited to, booth fees, office rent, phone charges and outstanding balances (principal and accrued interest) on notes guaranteed pursuant to former Rule 2.56 ("Exchange Financed Class A Memberships");

(2) second, pro rata to the payment of such Class A Member's primary clearing member and secondary clearing members, if any, of all claims filed in accordance with the requirements of Rule 2.51 for losses arising from the clearance of trades executed by the guaranteed Class A Member;

(3) third, the remaining balance, if any, pro rata to other Class A Members on allowed claims arising out of transactions in Exchange futures and options contracts and/or any other Exchange business of such Class A Members, provided that, no partner shall share in the proceeds of the sale of a Class A Membership of one of his partners until all claims of other Class A Members have been satisfied in full;

(4) fourth, the remaining balance, if any, to the payment of any claims made by entities or persons who have financed the purchase of the Class A Membership; provided, that, documentation regarding such purchase was filed with the Membership Department prior to such purchase; and  
(5) fifth, the balance, if any, to the Class A Member whose Class A Membership was sold or to his legal representative, except that, notwithstanding any other provision of the Bylaws or the Rules, for purposes of this subsection (5) the term Class A Member shall not include lessees, but shall mean the beneficial owner of such Class A Membership.

#### **2.69C Reinstatement of Suspended Class A Member**

(A) A Class A Member suspended under Rules 2.64, 2.65 or 2.66 may apply for reinstatement at any time prior to the sale of his Class A Membership.

(B) When a Class A Member applies for reinstatement, he shall deliver to the President or his designee a schedule of all of his creditors, a statement of the amounts owed, the nature of the settlement by which claims of a creditor were paid, and such other information as the President or his designee may request.

(C) Written notice of the time and place of the meeting of the Hearing Panel of the Board at which the application for reinstatement is to be considered shall be sent to the suspended Class A Member and to the other Class A Members not less than five days prior to the meeting.

(D) The vote of a majority of the panel is required to reinstate the suspended Class A Member.

(E) If a Class A Member suspended under this Chapter is not reinstated within one year from the date of his suspension, then such Class A Member may not be reinstated.

#### **2.70 Leases of Memberships' Trading Privileges**

(A) A Member may lease a membership's trading privileges to another Member or to a Member elect pursuant to an agreement in a form prescribed by the Exchange; provided that, memberships subject to outstanding seat financing agreements under former Rule 2.56 shall not be leased. A copy of the lease must be delivered to the Membership Department and to the lessee's PCM.

(B) Except as provided in Rules 2.60, a lease includes any transfer of a membership by a Member where the transferring Member retains the ownership interest in the membership; retains a right to appreciation or depreciation (or both) in the value of the membership; and retains a right to reacquire the membership.

(C) Deleted.

(D) A Member who, with respect to his last or sole membership, has leased to another his trading privileges ("lessor") shall not be entitled to member rates for trades executed for his account. A Member who, with respect to his last or sole membership on the NYMEX Division, has leased to another his NYMEX trading privileges shall not be entitled to: (i) serve on the Board of Directors, except as otherwise provided for in the by laws or charter, or (ii) receive any life insurance and/or disability insurance benefits bestowed upon NYMEX Members. A Member of either Division who, with respect to his last or sole membership, has leased to another his trading privileges ("lessor") shall not, while present on the respective Division(s) trading floor, be entitled to place orders, directly with any floor member or floor clerk, for the execution of any futures or options contracts (except that, if properly registered as a clerk, such person may transmit customer orders for execution).

(E) Notwithstanding anything to the contrary in Section (D), during the term of a lease of regular trading privileges on the NYMEX Division the lessee of those privileges ("lessee of regular trading privileges") shall be entitled to serve on the Board of Directors, receive any life insurance and/or disability insurance benefits bestowed upon NYMEX Division Members, and member rates for any trades executed for his account during any Regular Trading Hours trading session and any other trading session, as the Board may, from time to time, determine.

(F) Section (F) applies only to COMEX Division lessees.

During the term of a lease of regular trading privileges on the COMEX Division the lessee of those privileges ("lessee of regular trading privileges") shall be entitled to receive member rates for any trades executed for his account during any Regular Trading Hours trading session, subject to all applicable surcharges as set forth in this Rule 2.70. The lessee of regular trading privileges shall not be entitled to receive any life insurance and/or disability insurance



benefits bestowed upon Members, to vest and participate in any distributions from the Member Retention and Retirement Plan, or the right to vote that is set forth in the COMEX By-Laws.

In addition to the dues and assessments permitted under Section (f) of this Rule 2.70, the following fees shall be charged to the lessee of regular trading privileges on the COMEX Division:

(i) there shall be a surcharge of twelve and one-half cents (\$0.125) (twenty-five cents (\$0.25) per round turn) on each futures contract and each option contract purchased or sold for the personal account of a lessee or for an account controlled by the lessee (customer type indicator CTI# 1).

(ii) there shall be a surcharge of fifty cents (\$0.50) (one dollar (\$1.00) per round turn) on each futures contract and each option contract bought or sold by a lessee for the house account of the lessee's clearing member (CTI 2), for the account of another member present on the floor or an account controlled by such other member (CTI 3), or for the account of any other type of customer (CTI 4), provided that such surcharge shall not apply to contracts traded by a lessee who is one of no more than two bona fide employees of a member firm leasing memberships for the purpose of executing trades for the account of the member firm and/or its customers.

(G) Lessors and lessees may serve on Exchange committees to the extent allowed by the By-Laws and Rules and as determined by the Board of Directors.

(H) All lessors and lessees shall be subject to such dues and assessments as are from time to time determined by the Board of Directors.

(I) Lessees of regular trading privileges shall not be entitled to any other rights of membership not specifically set forth or addressed elsewhere in this Rule 2.70. The lessee's guarantor(s) shall have no right of indemnification against the lessor for any and all claims against the lessee which have been satisfied in accordance with the terms of the guarantee. The lessor shall neither be liable for nor shall the leased membership be used to satisfy any and all claims against the lessee which have not been satisfied by the lessee and/or the lessee's guarantor(s). Lessees shall have continuing personal liability for any claims which accrued during the term of the lease which were not satisfied by the lessee's guarantor(s); for the payment of disciplinary fines assessed against the lessee which were not otherwise satisfied; and for any other financial obligations to the Exchange and or its Members that were not otherwise satisfied.

#### **2.71 Terms of Lease Agreement**

(A) A membership lease agreement must, and shall be deemed to, include the following minimum provisions:

(- (i) upon the death of the lessee, the expiration of the term stated in the agreement or any other event of termination, the agreement shall terminate and the parties shall immediately give written notice thereof to the Membership Department;

(- (ii) neither the lessor nor the lessee shall be permitted to sell or transfer the leased membership during the term of the lease agreement unless it is specifically provided otherwise in this agreement;

(- (iii) the agreement shall not be effective until the lessee is elected to membership;

(- (iv) the rights and obligations associated with the lease of a membership shall automatically be transferred back to the lessor from the lessee upon termination of the agreement or any event of termination notwithstanding any restrictions to such transfer pursuant to the terms of Rule 2.51;

(- (v) during the term of the lease, the lessor and lessee shall be entitled to only those rights of membership as are set forth in Rule 2.70;

(- (vi) any and all controversies arising out of, or in connection with the lease, its negotiation, interpretation or termination shall be submitted to arbitration under the rules of the Exchange; and

(vii) Claims of the Exchange, its Members, and Member Firms that arise out of the transaction of business on the same Division as the leased membership that remain unsatisfied shall have no effect on the automatic transfer of the rights and obligations associated with the leased membership to the lessor from the lessee.

#### **2.72 Notices Required of Lessor and Lessees, and Duties of COMEX Division Lessors during Notice Period**

(A) The lessor shall give to the Membership Department written notice of any proposed lease agreement or renewal thereof at least ten (10) business days prior to filing the initial lease agreement or any renewal thereof.

(B) A lessor or lessee of a membership who does not intend to renew the lease agreement shall give to the Membership Department and to the lessee or lessor (as appropriate) written notice of that fact at least ten (10) business days prior to the termination of the lease agreement.

#### **2.73 Lease of Sole Membership**

(A) A membership actively being used for conferring purposes may not be leased at any time.

#### **2.73A Transfer Back of Certain Previously Transferred Last or Sole Memberships**

A former Member who, prior to the effective date of this Rule, transferred on the records of the Exchange his last or sole membership to a current member, but can demonstrate to the satisfaction of the Exchange that he continuously retained beneficial ownership of such membership, shall be entitled to have such membership transferred back into his name on the books and records of the Exchange at any time prior to December 31, 1996, provided that such former Member shall comply with all Exchange rules relating to applications for membership, presently meets all standards for membership and executes such forms and agreements as prescribed by the Exchange. Any former Member to whom a membership is transferred back pursuant to this rule may lease such membership immediately, notwithstanding the provisions of Rule 2.73(a). A member of the same family as a deceased former Member (a spouse, parent, child, sibling, grandparent, or grandchild) who holds the beneficial ownership of the membership previously held by the former member may transfer the membership into his name in accordance with the terms of this Rule.

#### **2.74 Reserved**

#### **2.75 Reserved**

#### **2.75A Reserved**

#### **2.75B Reserved**

#### **2.75C Reserved**

#### **2.75D Reserved**

#### **2.75E Reserved**

#### **2.75F Reserved**

#### **2.76 Transfer of Membership After Death**

(A) If the agreement does not provide for the termination of the lease upon the lessor's death, the beneficial ownership of a membership of a deceased Member that is subject to a lease agreement shall be transferred to his or her estate, which shall assume the deceased Member's rights and obligations as lessor under the lease. No new leases or extensions of existing leases will be permitted after the member's death.

(B) No membership of a deceased Member may be carried on the Exchange for more than two years from the date of the Member's death. If, at the expiration of two years from the date of death, the membership of a deceased Member has not been sold or transferred in accordance with Rule 2.77, the Board of Directors shall order the membership of the deceased Member to be sold at the then prevailing bid, subject to the Rules for transfer of exchange memberships.

#### **2.77 Transfers Within Same Family Upon Death of a Member**

(A) The membership of a deceased Member may be transferred to a member of the same family (a spouse, parent, child, sibling, grandparent or grandchild) within the period of time provided for in Rule 2.76, provided such transferee is a Member or Member Elect. However, with respect to a membership financed under former Rule 2.56, no such transfer shall be effective unless and until the loan is repaid in accordance with Exchange Bylaws and Rules and Financing Agreement.

(B) If the family member to whom a transfer is sought is not eligible for election as a Member because he or she does not meet the minimum age requirement of Rule 2.00(A), the legal representative of the deceased Member, upon approval by the Exchange, shall retain the Membership in the name of the Estate of the deceased Member until such time as the family member to whom the transfer is ultimately sought meets the minimum age requirement of Rule 2.00(A).

#### **2.78 Reserved**

#### **2.79 Reserved**

#### **2.80 Membership Denial Procedures**

(A) In the event that a subcommittee of the Membership Committee votes to disapprove an application for membership, the subcommittee shall issue a recommended decision for the consideration of the applicable Panel of the Membership Committee ("Membership Committee").

(B) The subcommittee shall communicate to the Compliance Department its recommendation for disapproval and the reasons therefor; thereafter, the subcommittee shall cooperate with the Compliance Department in providing it with the evidence in support of the recommendation for disapproval.

(C) Within ten (10) days after the subcommittee's recommendation for disapproval is communicated to the Membership Committee, the Compliance Department shall issue and serve on the applicant a Notice of Recommendation for Membership Denial which shall set forth the acts, practices or conduct on which the recommendation is based and notify the applicant that (1) he is entitled to a hearing on his application; (2) he must request, in writing, such a hearing and file an answer to the Notice of Recommendation for Membership Denial with the Compliance Department within ten (10) days of the receipt of the Notice; (3) failure to file an answer and request for hearing on a timely basis will result in the application for Membership being withdrawn.

(D) The applicant's Answer shall state, with respect to each allegation in the Notice, whether he admits, denies, or lacks sufficient information on which to respond and any other information with respect to mitigation or rehabilitation on which the applicant intends to rely at the hearing. An answer stating that the applicant lacks sufficient information on which to respond shall be deemed a denial of an allegation.

(E) The Membership Committee may determine the procedures to be applied in any hearing before it; provided, however, that the following procedures shall apply in every case:

(1) The subcommittee's position shall be represented by the Compliance Department as counsel.

(2) The applicant may be represented by counsel or any other representative of his choice; either personally, or through such counsel or other representative, may present witnesses or other evidence; and, may cross-examine witnesses.

(3) The formal rules of evidence shall not apply and the Membership Committee shall have the discretion to accept or to reject any and all evidence.

(4) A stenographic transcript of the proceedings shall be made.

(5) The Notice of Recommendation for Membership Denial, any Answer, the stenographic transcript, any documentary evidence or other material presented to the Membership Committee by either party shall constitute the record of the hearing.

(6) The burden of proof of unfitness for membership shall be on the Compliance Department.

(7) A finding of unfitness for membership may be made on the weight of the evidence contained in the record of the proceeding.

(8) In advance of the hearing, the applicant shall be entitled to examine all books, documents, and other tangible evidence in the possession or under the control of the Exchange that (i) are to be relied upon by the Compliance Department in prosecuting the matter, or, (ii) which are relevant to the application.

(9) Any person within the jurisdiction of the Exchange who is called as a witness at any hearing shall appear at such hearing and give testimony or produce evidence.

(10) The Membership Committee shall have the power to impose a penalty against any person who is within the jurisdiction of the Exchange and whose actions impede the progress of a hearing.

(F) The Membership Committee shall issue a decision within thirty (30) days after the later of the close of the hearing or the last day on which any post-hearing memoranda are filed by the parties. The decision shall include (1) a summary of the allegations of the Notice of Recommendation for Membership Denial and the Answer; (2) a summary of the evidence produced at the hearing; (3) a statement of the findings and conclusions of the Membership Committee with respect to each ground upon which the Notice of Recommendation for Membership Denial was based; and (4) a determination of whether the applicant shall be admitted to membership. Such decision shall be a final decision of the Exchange.

#### **2.81 Option Member Trading Privileges**

An Option Member shall be authorized to trade the following contracts on the COMEX Division of the Exchange: gold options; silver options; copper options; and aluminum futures. In addition, if and when such contracts are listed on NYMEX ClearPort(sm) Trading an Option Member shall be authorized to trade such contracts on NYMEX ClearPort(sm) Trading.

#### **2.82 APPLICABILITY OF BY LAWS, RULES AND RESOLUTIONS**

Except as otherwise provided in this Chapter 2, an Option Member shall be subject to all duties and obligations imposed upon members by the By-Laws, Rules and Resolutions of the Exchange; provided, however, that the Board by resolution, may exempt an Option Member from any such duty or obligation that the Board, in its sole discretion, shall deem incompatible with, or in conflict with, or unrelated to, the activities of an Option Member. All references in the By-Laws, Rules, and Resolutions to "Members" shall apply with equal force to Option Members and all such references to "Member Firms" shall apply to Option Member Firms, unless specifically negated.

#### **2.83 DUES AND ASSESSMENTS**

Option Members shall be responsible for dues and assessments in such amounts as from time to time may be determined by the Board, which amounts shall in no event exceed the dues and assessments charged to regular members.

#### **2.84 BASIS FOR DISCIPLINARY PROCEEDING**

An Option Member shall be subject to disciplinary proceedings and the imposition of sanctions as provided in the By-Laws, Rules and Resolutions, including revocation of an Option Membership if such Option Member:

(A) executes, or attempts to execute, a trade in any contract other than the contracts which he is permitted to trade pursuant to Rule 2.81;

(B) engages in words or conduct which represent, or appear to represent, that such a Option Member is a holder of full membership in either Division of the Exchange; or

(C) violates any Rule for which a member may be sanctioned.

#### **2.85 FIRM PRIVILEGES**

Each holder of an Option Membership shall be entitled to confer privileges on a partnership, corporation or sole proprietorship solely for the purpose of trading those contracts which the Option Member is permitted to trade pursuant to Rule 2.81.

#### **2.85 Leases**

No Option Membership may be leased.

#### **2.87 Reserved**

[The rules in former NYMEX Chapter 2A (Government) are being relocated to NYMEX Chapter 2 (Government) and Chapter 2A is being eliminated.]

## Chapter 2A Government

200A.-229A. [RESERVED]

230A. General

The Board shall, subject to applicable provisions in the relevant corporate charter and bylaws:

- a. Be the governing body of the Exchange;
- b. Have charge and control of all property of the Exchange;
- c. Provide, acquire and maintain suitable Exchange quarters and facilities;
- d. [Reserved];
- e. [Reserved];
- f. Designate and authorize specific appointed officers to act on behalf of the Board to execute contracts within specified budgetary limits;
- g. Fix, determine and levy all membership dues, fees and assessments when necessary;
- h. Act in a judicial capacity in the conduct of hearings with respect to any charges proffered against members and, after such hearings, determine what disciplinary action, if any, should be taken by the Exchange with respect to those charges;
- i. Determine the commodities traded, the Division in which they shall be traded, the delivery months, hours of trading, the days of the contract month on which delivery may be made, and performance bond requirements;
- j. Make and amend the Rules of the Exchange; provided, the Board has also delegated such authority to make and amend the Rules of the Exchange to the Chairman and Vice Chairman of the Board and the Chief Executive Officer acting together; and
- k. Have power to act in emergencies. In the event that the Board or a hearing panel of the Board determines that an emergency situation exists in which the free and orderly market in a commodity is likely to be disrupted, or the financial integrity of the Exchange is threatened, or the normal functioning of the Exchange has been or is likely to be disrupted, it may, upon a majority vote of the members present or upon a majority vote of the members who respond to a poll, take such action as may in the Board's sole discretion appear necessary to prevent, correct or alleviate the emergency condition. Board members who abstain from voting on a Significant Action as defined in Rule 234A shall not be counted in determining whether such action was approved by a majority vote, but such members can be counted for the purpose of determining whether a quorum exists. Without limiting the foregoing, the Board may: (1) terminate trading, (2) limit trading to liquidation of contracts only, (3) order liquidation of all or a portion of a member's proprietary and/or customers' accounts, (4) order liquidation of positions of which the holder is unable or unwilling to make or take delivery, (5) confine trading to a specific price range, (6) modify the trading days or hours, (7) alter conditions of delivery, (8) fix the settlement price at which contracts are to be liquidated, and (9) require additional performance bonds to be deposited with the Clearing House. All Exchange contracts shall be subject to the Board's emergency powers and the specifications of each shall be deemed subject to this rule.

Whenever a hearing is scheduled to be held before a hearing panel of the Board ("Panel"), the Chairman of the Board shall appoint a director to serve as the Panel chairman, who shall conduct the hearing, and two additional directors to serve on the Panel. One of these directors shall be a non-member. A majority decision by the Panel shall be considered the action of the Board as a whole. Each Panel that conducts a hearing or proceeding shall consist of directors that possess sufficiently diverse interests so as to ensure fairness. No member of the Board may serve on a particular Panel if he has a personal, financial or other direct interest in the matter under consideration.

Any authority or discretion by these rules vested in the Chairman, Chief Executive Officer, President or other officer or delegated to any committee shall not be construed to deprive the Board of such authority or discretion and in the event of a conflict, the determination of the matter by the Board shall prevail.

231A. [RESERVED]

**232A. Exchange Facilities**

The Exchange shall provide trading facilities which shall be open for trading on such days and at such hours as the Exchange shall determine, except during emergency situations as provided by Exchange rules

**233A. [RESERVED]**

**234A. Avoiding Conflicts of Interest in "Significant Actions"**

**234A.A. Definitions**

For purposes of this rule:

1. "Significant Action" means (a) an Exchange action or rule change which addresses an "emergency" as defined in CFTC Regulation 40.1 (g); or (b) any change in Exchange performance bond levels that is designed to respond to extraordinary market conditions such as an actual or attempted corner, squeeze, congestion or undue concentration of positions, or that otherwise is likely to have a substantial effect on prices in any contract traded or cleared at the Exchange.
2. "Committee" means the Board or any body that is authorized to take a Significant Action.
3. "Member's Affiliated Firm" means a firm in which the member is a "principal," as defined in CFTC Regulation 3.1(a), or an employee.

**234A.B. Review of Position Information**

1. Prior to the consideration of any Significant Action, each member of the Committee must disclose to the appropriate Exchange staff the following position information to the extent known to him:

- a. Gross positions held at the Exchange in the member's personal accounts or "controlled accounts," as defined in CFTC Regulation 1.3(j);
- b. Gross positions held at the Exchange in proprietary accounts of the Member's Affiliated Firm;
- c. Gross positions held at the Exchange in accounts in which the member is a principal;
- d. Net positions held at the Exchange in customer accounts at the Member's Affiliated Firm; and
- e. Any other types of positions, at the Exchange or elsewhere, held in the member's personal accounts or the proprietary accounts of the Member's Affiliated Firm that could reasonably be expected to be affected by the Significant Action.

2. Exchange staff will independently determine what positions are held in each of the above categories based on a review of the most recent large trader reports and clearing records available to the Exchange and any other source of information that is held by and reasonably available to the Exchange, taking into consideration the exigency of the Significant Action.

3. The requirements of sections B.1. and B.2. apply only to members who participate in either the deliberations or voting on the Significant Action in question.

**234A.C. Determination Whether Abstention Required**

1. A member of a Committee must abstain from both the deliberations and voting by such Committee on any Significant Action if the member knowingly has a direct and substantial financial interest in the result of the vote based upon either Exchange or non-Exchange positions that could reasonably be expected to be affected by the action or is otherwise conflicted based on existing Exchange policy. Exchange staff will independently require a member of a Committee to abstain from both the deliberations and voting by such Committee on any Significant Action if, based upon the information reviewed in sections B.1. and B.2. above, Exchange staff determines that the member has a direct and substantial financial interest in the result of the vote.

2. The Exchange will prepare written records to document that the conflicts determination procedures required by this rule have been followed. Such records will include (a) the names of all members who attended the meeting in person or who otherwise were present by electronic means; (b) the name of any member who voluntarily recused himself or was required to abstain from both the deliberations and voting on a matter and the reason for the recusal or abstention, if stated; and (c) information on the position information that was reviewed for each member.

| 235A. – 255A.[RESERVED]

| 256A. Indemnification of Certain Persons

The Exchange shall indemnify its directors, officers, committee members, employees, and other persons as specified in Article VIII of the Exchange's Bylaws and Article 3 of the Amended and Restated Bylaws of Commodity Exchange, Inc., as applicable.

| 257A. Exchange Physical Emergencies

In the event that the functions of the Exchange are, or are threatened to be, severely and adversely affected by a physical emergency such as fire or other casualty, bomb threats, substantial conditioning systems or transportation breakdowns, the Chief Executive Officer, President or Chief Operating Officer or their delegate may take any action necessary to deal with the emergency, including but not limited to, a suspension of trading. In the absence of the aforementioned Exchange officers or delegate, any member of the Executive Committee may act instead of the Chief Executive Officer, President or Chief Operating Officer.

Upon a determination by the Chief Executive Officer, President or Chief Operating Officer or their delegate that the physical emergency has sufficiently abated to permit the orderly functioning of the Exchange, he shall order restoration of trading or the removal of other restrictions imposed.

The Exchange shall notify the CFTC of the implementation, modification or termination of a physical emergency action as soon as possible after taking the action.

Nothing in this rule shall in any way limit the authority of the Board of Directors to act in an emergency situation pursuant to Rule 230A.k.

| 258A. Disclosure of Information

The Exchange shall not disclose to any person any information regarding the financial condition of a Class A Member or Member Firm or the transactions or positions of any Class A Member or Member Firm or any person except:

- a. to any committee, officer, director, employee or agent of the Exchange authorized to receive such information within the scope of its or such person's duties;
- b. to any duly authorized representative of the Commission or other regulatory agency with jurisdiction over the Exchange requesting such information or to any duly authorized representative of any other regulatory or self-regulatory organization with which the Exchange has entered into an information sharing agreement;
- c. as required by law;
- d. when the Class A Member or Member Firm requests or consents to such disclosure; or
- e. that the Exchange may release such information in connection with any litigation involving the Exchange when, in the opinion of the Exchange, the information is relevant or the release of the information is necessary and appropriate to the conduct of such litigation.

| 259A. Effect of Other Exchange Rules

In the event of a conflict between the rules in this Chapter and any other Exchange rules, the rules in this Chapter shall control.

439. MEMBER'S INDEMNIFICATION LIABILITY

A Member or former Member shall indemnify and hold harmless the Exchange and CME Group, Inc., including each of their respective subsidiaries and affiliates (collectively, the indemnified parties) and their officers, directors, employees, and agents, for any and all losses, damages, costs and expenses

(including attorneys' fees) incurred by the indemnified parties as a result (directly or indirectly) of such Member's violation or alleged violation of Exchange rules or state or federal law.

Any charges arising out of this rule shall be subject to liens as provided in Rule 2.69B(4)110(a).

## **Chapter 100A Palladium Futures Contract**

### **100A.00 Scope**

The provisions of these rules shall apply to all palladium bought or sold for future delivery on the Exchange. As used in this Chapter, defined terms shall have the meanings ascribed to them in Chapter 7A, Metals Rules for Electronic Warrants.

### **100A.01 Definitions**

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

"Contract Unit" shall mean 100 troy ounces.

### **100A.02 Contract Unit**

The Seller shall deliver one Contract Unit of palladium, weighed to the nearest thousandth of a troy ounce, or the equivalent weight in grams, of homogeneous cast plate and/or ingot, with a weight tolerance of 7% either higher or lower. Each Contract Unit may consist of more than one piece of plate and/or ingot, with no individual piece weighing less than 10 troy ounces, or the equivalent weight in grams.

### **100A.03 Grade and Quality Specifications**

Palladium delivered under this contract shall be a minimum of 99.95% pure.

### **100A.04 Packaging and Marking**

(A) Palladium may be delivered in packaged or unpackaged form.

(B) If Palladium is delivered in packaged form, the Palladium shall be in a package sealed by an Approved Assayer or Approved Producer so that the package may not be opened without destruction of the seal. Each package shall contain exactly one Contract Unit of Palladium and must bear:

- (1) the lot or identification number(s) of each ingot and/or plate contained therein;
- (2) the actual weight of the palladium therein;
- (3) the grade of the pieces therein;
- (4) the name or logo of the Approved Assayer or mark of the Approved Brand; and
- (5) the chemical symbol for Palladium, Pd and/or the word "Palladium".

(C) If Palladium is delivered in unpackaged form, each piece of Palladium comprising the Contract Unit shall be incised with:

- (1) the lot or identification number of such ingot and/or plate contained therein;
- (2) its actual weight (provided that if the piece was previously sampled, the weight on the Assay Certificate shall govern);
- (3) the grade of such piece;



(4) the name or logo of the Approved Assayer or mark of the Approved Brand; and

(5) the chemical symbol for Palladium, Pd and/or the word "Palladium".

#### **100A.05 Delivery Months**

During each calendar month (the "current calendar month"), the Exchange will make available for trading contracts that provide for delivery of Palladium in the following months: 1) the current calendar month; 2) the first calendar month following the current calendar month; 3) the second calendar month following the current calendar month; and 4) each March, June, September and December during the period beginning with the first calendar month following the current calendar month through the 15th calendar month following the current calendar month.

#### **100A.06 Price and Fluctuations**

Prices shall be quoted in dollars and cents per troy ounce. The minimum price fluctuation shall be \$.05 per troy ounce. There shall be no maximum limit on price fluctuation.

#### **100A.07 Validity of Documents**

The Exchange makes no representation respecting the authenticity, validity or accuracy of any document or instrument delivered pursuant to these Rules.

#### **100A.08 Warrant**

Each Warrant shall contain the information set forth in the Assay Certificate, incised on the bar, or clearly identified on the package; *provided, however*, that weight shall be expressed in troy ounces. If the weight incised on the bar or set forth on the Assay Certificate is in grams, it shall be converted to troy ounces by dividing the weight in grams by 31.1035 and rounding to the nearest thousandth of a troy ounce. The Warrant shall represent that the Contract Unit:

(A) is an Approved Brand, meeting the grade and quality specifications of Rule 100.03, received directly from its Approved Producer by means of one or more Approved Carriers and/or, with respect to Palladium from the Approved Producer, by means of such Approved Producer's own transport, or

(B) is an Approved Brand, meeting the grade and quality specifications of Rule 100.03, received directly from one or more storage vaults located in Zurich, Switzerland owned or controlled by either Credit Suisse Group or UBS AG, by means of one or more Approved Carriers. Such storage vaults are delivery locations for the London Platinum and Palladium Market. Upon request of the Licensed Depository, the Seller shall provide to the Licensed Depository a *pro forma* invoice and a bar list issued by either Credit Suisse Group or UBS AG (or the wholly-owned subsidiary that owns such vault), and, if so requested, the Licensed Depository is not required to issue a Warrant for any such Contract Unit until such documentation has been provided, or

(C) was received directly from an Approved Assayer or Approved Producer by means of one or more Approved Carriers and/or, with respect to Palladium from the Approved Producer, by means of such Approved Producer's own transport, and was accompanied by an Assay Certificate(s) for each piece in the Contract Unit, or

(D) was received directly from an Approved Assayer or Approved Producer by means of one or more Approved Carriers and/or, with respect to Palladium from the Approved Producer, by means of such Approved Producer's own transport, and was not accompanied by an Assay Certificate(s) for each piece in the Contract Unit but has been determined to be Eligible after having been inspected by an Approved Assayer or Approved Producer, or

(E) was received directly from another Licensed Depository by means of one or more Approved Carriers, *provided, however*, that the Palladium was previously Eligible, or

(F) was deposited at a Licensed Depository, and thereafter inspected by an Approved Assayer or Approved Producer and determined to be Eligible.

#### **100A.09 Inspection and Assay Certificate**

(A) Assay Certificates. Except for Palladium delivered pursuant to Rules 100.08(A), (B), (C) or (E), the Licensed Depository shall, upon receipt of the commodity, cause an inspection to be made by an Approved Assayer or an Approved Producer. The Approved Assayer or Approved Producer shall issue Assay Certificate(s) covering each

piece in the Contract Unit in the form approved by the Exchange.

(B) Each Assay Certificate shall report the lot or bar number, weight, grade, the name of the Approved Assayer or Approved Producer, the symbol identifying the metal or the name of the metal and the date of inspection. On all Assay Certificates, weight shall be expressed in troy ounces.

(C)

(1) Every lot inspected must bear on the package the lot number, seal number, date of inspection, weight, grade, and the name of the Approved Assayer or Approved Producer who made the inspection. (Effective as to Palladium assayed prior to October 1, 1979.)

(2) Every lot inspected, if packaged, must bear on such package the lot or bar number, weight, grade; the name or logo of the Approved Assayer or Approved Producer and the symbol identifying the metal or the name of the metal. Every lot inspected, if unpackaged, must be incised with the lot or bar number, weight, grade; the name or logo of the Approved Assayer or Approved Producer, and the symbol identifying the metal. (Effective as to Palladium assayed on and after October 1, 1979.)

(D) If a Contract Unit of Palladium is surrendered to the bearer of a Warrant, or if the Contract Unit is in a package and the seal is broken, the Assay Certificate(s) for such Contract Unit is no longer valid and such Contract Unit is no longer Eligible.

(E) The Seller shall bear the costs of inspection, delivery to the Licensed Depository, charges of the Licensed Depository, and all other expenses, if any, to determine that the Palladium is Eligible.