



Christopher Bowen  
Managing Director and Chief Regulatory Counsel  
Legal Department

March 15, 2012

**VIA E-MAIL**

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

**RE: Modifications to NYMEX And COMEX Energy And Metals Products Cross-Venue Incentive Program  
NYMEX Submission No. 12-081**

Dear Mr. Stawick:

New York Mercantile Exchange, Inc ("NYMEX" or the "Clearing House") and the Commodity Exchange, Inc. ("COMEX") (NYMEX and COMEX collectively the "Exchanges") hereby notify the Commodity Futures Trading Commission ("Commission") that they plan on extending the NYMEX And COMEX Energy and Metals Cross-Venue Incentive Program ("Program"). Modifications to the Program will become effective on April 1, 2012.

Exhibit 1 sets forth the terms of this Program. Additions to the Program have been underlined and deletions to the Program have been ~~everstruck~~.

NYMEX and COMEX business staff responsible for the Program and the NYMEX legal department collectively reviewed the designated contract market core principles and the derivatives clearing organization core principles (collectively the "Core Principles") as set forth in the Commodities Exchange Act ("CEA"). During the review, NYMEX and COMEX staff identified the following Core Principles as potentially being impacted;

Designated Contract Market Core Principles: Prevention of Market Disruption, Execution of Transactions, Protection of Market Participants, Compliance with Rules and Recordkeeping.

The Program and proposed modifications will not impact the Exchanges' ability to perform their trade practice and market surveillance obligations under the CEA and NYMEX and COMEX market regulation staff will continue to monitor all market participants that trade the Program's products to prevent manipulative trading and market abuse. Additionally, NYMEX and COMEX have implemented systems to track Program participants' volume to ensure proper distribution of earned incentives. The products included in this Program are listed for trading in the open and competitive market. Participants who might meet the criteria for this Program generally perform complex trading strategies that include both on-exchange and off-exchange activities. The set of incentives encompassed by the Program have been developed to increase volume across all NYMEX venues through additional execution of these strategies, ultimately having a positive impact on the price discovery process taking place in the centralized market as the Program is designed to increase liquidity on that venue. Participants in the Program will be selected by NYMEX and COMEX staff using criteria as further stated in Exhibit 1. Chapter 4 of the NYMEX rules includes prohibitions against fraudulent, non-competitive, unfair or abusive practices. All participants must execute a contractual agreement with NYMEX in which each participant will expressly agree to comply with and be subject to, applicable regulations and NYMEX rules. The Program will be subject to the Exchanges' record retention policies which comply with the CEA.

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Derivatives Clearing Organization ("DCO") Core Principles: Financial Resources, Participant and Product Eligibility, Rule Enforcement, Recordkeeping, Public Information and Information Sharing:

The incentives in this Program will have a non-material impact on the financial resources of the Clearing House. As such, it will not prevent the Clearing House from demonstrating that it has adequate financial, operational, and managerial resources to discharge its responsibilities as a DCO. When selecting an applicant into the Program, NYMEX will take into account multiple factors from a candidate firm including those set forth in Exhibit 1. The incentives provided under the Program will not impact the Clearing House's ability to perform its monitoring or enforcement obligations under the CEA. Chapter 4 of the NYMEX rules includes prohibitions against fraudulent, non-competitive, unfair or abusive practices. All participants must execute an application or contractual agreement with the Clearing House in which each participant will expressly agree to comply with and be subject to, applicable regulations and NYMEX rules. The Program will be subject to the Clearing House's records retention policies which comply with the CEA. The Program contains "information concerning" each clearing and other fee that the DCO charges members and participants. A potential participant in the Program who wishes to subscribe to the Program may contact the Clearing House to receive further information regarding the fees that are charged to Program participants.

The Exchanges certify that the Program complies with the CEA and the regulations thereunder. There were no substantive opposing views to this Program.

The Exchanges certify that this submission has been concurrently posted on the Exchanges' website at <http://www.cmegroup.com/market-regulation/rule-filings.html>

If you require any additional information regarding this submission, please contact Robert Lev at 312-930-3019 or via e-mail at [robert.lev@cmegroup.com](mailto:robert.lev@cmegroup.com), or contact me at 212-299-2200. Please reference our NYMEX/COMEX Submission No. 12-081 in any related correspondence.

Sincerely,

/s/ Christopher Bowen  
Managing Director, Chief Regulatory Counsel

Attachments

# EXHIBIT 1

## NYMEX And COMEX Energy And Metals Products Cross-Venue Incentive Program

### Program Purpose

The purpose of the Program and Program modifications are to incentivize volume and liquidity in energy and metals products across NYMEX and COMEX's trading venues. The resulting addition of liquidity for these products benefits all participants in the market.

### Product Scope

All NYMEX/COMEX energy and metals products that are traded on Globex®, all NYMEX and COMEX energy and metals products that are traded on the NYMEX/COMEX trading floor via open outcry and all over-the-counter ("OTC") energy and metals products that are cleared by the Clearing House with current clearing fees exceeding fifty cents (\$ 0.50) (collectively the "Products").

### Eligible Participants

NYMEX/COMEX may designate up to three (3) participants in the Program. A participant must be a NYMEX or COMEX member firm. In order to be considered for the Program, an applicant must (i) have, over a recent time period, achieved a significantly high combined cross-venue average daily volume in NYMEX and COMEX options products, (ii) have, over a recent time period, maintained a significantly high percentage of their trades position-taking trades, or a trade in which a position is opened and subsequently not closed within that same trading day (iii) not currently be participating in another incentive program that includes the Products in order to be considered for participation in the Program.

### Program Term

Start date is December 1, 2011. End date is ~~March 31, 2012.~~ June 30, 2012.

### Hours

N/A

### Progressive Tiered Volume Incentives

Once accepted into the Program, participants will be eligible to receive the following incentives.

1. Fee Discounts. Participants will be eligible to receive predetermined fee discounts for NYMEX and COMEX energy and metals products that are traded on Globex® and via open outcry.
2. Volume Incentives. Participants will be eligible to participate in tiered volume incentives whereby participants may be charged reduced fee rates in NYMEX and COMEX OTC energy and metals products with current fees exceeding fifty cents (\$ 0.50) that a participant submits for clearing to the Clearing House. The progressive tiered volume levels are predetermined by NYMEX and COMEX and are based on a participant's combined monthly volume in the above-referenced products.

3. Fee Waivers. Participants will be eligible to receive fee waivers for certain NYMEX energy contracts traded on Globex® and surcharges relating to exchange of futures for swaps and block trades in certain NYMEX and COMEX products.

#### **Monitoring and Termination of Status**

The Exchanges shall monitor trading activity and participants' performance and shall retain the right to revoke Program participant status if they conclude from review that a Program participant no longer meets the eligibility requirements of the Program.