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June 18, 2009

**VIA E-MAIL**

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

**Re: Rule Certification. New York Mercantile Exchange, Inc. Submission #09.115: Notification of Amendments to Existing European Union Allowance (EUA) and Certified Emission Reduction (CER) Futures and Options Contracts Listed on Globex® and the NYMEX Trading Floor**

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 its existing European Union Allowance ("EUA") and Certified Emission Reduction ("CER") futures and option contracts, listed below, in connection with the launch of new, In Delivery Month European Union Allowance ("IDM EUA") and In Delivery Month Certified Emission Reduction ("IDM CER") futures and option contracts, which are filed with the Commission under submission #09-112.

<u>Contract</u>	<u>Code</u>	<u>Chapter</u>
European Union Allowance (EUA) Futures	RC	868
European Union Allowance (EUA) Option	AV	869
Certified Emission Reduction (CER) Futures	VA	870
Certified Emission Reduction (CER) Option	VG	872

The EUA futures and options rule amendments are included herewith in Appendix A. The CER futures and options rule amendments are included herewith in Appendix B. In connection with the launch of the IDM EUA and IDM CER futures and option contracts, these amendments are being made to implement conforming language across similar contract groups. Please note that the termination and delivery dates differentiate these existing EUA and CER futures and options contracts from the IDM EUA and IDM CER futures and option contracts. Thus, the termination and delivery dates for the contracts listed above shall remain unchanged.

In addition, the attached amendments provide clarification of rule references, consolidate certain rules within the chapters, and correct non-substantive errors.

Please note that these EUA and CER futures and options contracts continue to be listed for trading on Globex (futures contracts only) and the NYMEX trading floor (option contracts only) and for clearing on CME ClearPort.

Pursuant to Section 5c(c) of the Commodity Exchange Act ("Act") and CFTC Rule 40.6, the Exchange hereby certifies that the attached rule amendments for the existing EUA and CER Futures and Option contracts comply with the Act, including regulations under the Act. These changes will be made effective on trade date June 22, 2009.

Should you have any questions concerning the above, please contact Brad Leach at (212) 299-2609 or me at (312) 648-5422.

Sincerely,

/s/ Stephen M. Szarmack  
Director and Associate General Counsel

Attachments: Appendix A (Amended Rules for existing EUA Futures and Options)  
Appendix B (Amended Rules for existing CER Futures and Options)

## APPENDIX A – Amendments to Existing EUA Futures and Option Contracts

(bold/underline indicates additions; strikethrough indicates deletion)

### European Union Allowance (EUA) Futures Contract

#### 868.01A Definitions

(A) EU ETS: In January 2005, the European Union Emissions Trading Scheme ("EU ETS") commenced operation as the largest multi-country, multi-sector Greenhouse Gas emission trading scheme world-wide. It covers over 11,500 energy-intensive installations across the EU, which represent ~~else to~~ approximately half of Europe's emissions of CO<sub>2</sub>. These installations include combustion plants, oil refineries, coke ovens, iron and steel plants, and factories making cement, glass, lime, brick, ceramics, pulp and paper. The scheme is based on Directive 2003/87/EC, which entered into force on 25 October 2003.

(B) EUA: European Union Allowances ("EUA") granted under a National Allocation Plan of an EU member state.

(C) The terms "Seller" and "Buyer" shall mean the short Clearing Member and the long Clearing Member, respectively. Further, for purposes of this contract, Sellers and Buyers may utilize a designee to perform their respective and necessary obligations with regard to transferring and accepting allowances at the eligible registries.

~~(D)~~ The terms "Seller's Customer" and "Buyer's Customer" shall mean the seller and buyer of the physical product or swap transaction.

~~(DE)~~ The term "Settlement Price" shall mean the final settlement price used as the price for delivery of the product, which shall be the settlement price for the last trading day of the expiring delivery month. The settlement price for the last trading day shall be determined in accordance with the procedures set forth in NYMEX Rule 11G.11.

~~(EF)~~ ITL (International Transaction Log): All transactions between registries are maintained by transaction logs which verify the validity of transactions. The UNFCCC Secretariat maintains the ITL for the purposes of transfer under the Kyoto Protocol.

(F) Community Independent Transaction Log (CITL) shall mean the independent transaction log provided for in Article 20(1) of Directive 2003/87/EC, for the purpose of recording the issue, transfer and cancellation of EUAs under the Scheme and established, operated and maintained pursuant to Article 5 of the Registry Regulations;

~~Moreover the~~ The EU Commission has established and is become the Administrator of thea CITL for transfers involving EU Member States. Transfers involving EU Entities entail an additional step from the ITL to the CITL under the Kyoto Protocol for transfers of ~~CERs~~ EUAs between national registries.

(G) Communication Link shall mean the electronic exchange of messages/notifications (1) by which a buyer and seller communicate with a Registry, and/or (2) by which a Registry communicates with CITL, and/or (3) by which CITL communicates with the UNFCCC International Transaction Log (where applicable), and/or (4) by which a Registry communicates with the UNFCCC International Transaction Log (where Applicable), and/or (5) by which the UNFCCC International Transaction Log communicates with the CDM Registry (where applicable), which in any case is necessary to facilitate a transfer;

(H) Registry shall mean any registry in an EU Member State meeting the eligibility criteria and which has implemented the Linking Directive in a manner that authorizes private persons to hold EUAs and has Person Holding Accounts established in order to ensure the accurate accounting of the issue of holding, transfer, acquisition, surrender, cancellation, and replacement of EUAs under the Scheme, and which has been identified as a Registry by the Clearing House from time to time for the purpose of this futures contract;

(I) Registry Regulations shall mean the EU Commission Regulation (EC) No 2216/2004 for a standardized and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision 280/2004/EC of the European Parliament and of the Council, as amended from time to time including by EU Commission Regulation (EC) No.916/2007;

#### **868.01 Scope**

The provisions of these rules shall apply to all Phase 2008-2012 European Union EUAs bought or sold for future delivery on the Exchange with the Delivery at the UK Emissions Trading Registry.

#### **868.02 Time References**

For purposes of these Rules, unless otherwise specified, times referred to herein shall refer to and indicate the prevailing time in Greenwich Mean Time (GMT).

#### **868.03 Contract Unit**

The contract unit shall be one thousand (1,000) ~~metric tonnes of EUAs~~ for a delivery made by transfer through the UK Emissions Trading Registry.

#### **868.04 Delivery**

EUA delivery shall comply with all requirements for the electronic transfer of EUAs on the UK Emissions Trading Registry. All deliveries made under these rules shall be final and there shall be no appeal. Notwithstanding the use of a designee, all Clearing Members will remain ultimately responsible for performance of all applicable contract terms specific to Sellers and Buyers.

#### **868.05 Delivery Months**

Trading shall be conducted in contracts providing for delivery in such periods as shall be determined by the ~~Board of Directors~~Exchange.

#### **868.06 Minimum Price Fluctuations**

Prices shall be quoted in Euros and Euro cents per ~~EUAs metric tonne~~. The minimum price fluctuation shall be € 0.01 per ~~EUA metric tonne~~ (€10.00 per contract). There shall be no maximum price fluctuation.

#### **868.07 Termination of Trading**

Trading in the delivery month shall cease two business days prior to the first business day of the delivery month.

#### **868.08 Product Placement**

For purposes of Rule 9A.19, the Seller and Buyer shall fulfill their respective contractual obligations on a maturing contract unless, by 5:00 p.m. GMT on the 10-th business day prior to the first business day of

the delivery month, such Seller and Buyer have ~~provided~~ ~~received~~ account certification from his customer, in the form prescribed by the Exchange stating that: ~~(i) If a buyer, the Buyer's Customer has an account with UK Emissions Trading Registry; and (ii) If a seller, the Seller's Customer has an account with UK Emissions Trading Registry;~~

The receipt of such certification shall not relieve the Seller or Buyer, ~~or their respective Customers~~ of any obligations under any Rule other than Rule 9A.19.

#### **868.09 Delivery Procedures and Obligations**

The Clearing House is a party to all deliveries under this contract and will receive EUAs from the Seller into the Clearing House Holding Account of the UK Emissions Trading Registry. Following receipt from the Seller, the Clearing House will deliver EUAs to the Buyer from the Clearing House Holding Account to the UK Emissions Trading Registry Holding Account nominated by the Buyer.

The Seller shall comply with such requirements and obligations imposed by or under applicable Registry Regulations in all respects material to the submission of the forms noted in this Rule. The Buyer shall comply with such requirements and obligations imposed by or under applicable Registry Regulations in all respects material to ensure the acceptance of a valid transfer into its Holding Account. If a provision of the Regulations or the Clearing House Rules is inconsistent with a provision of the Registry Regulations, the provision of the Regulations or the Clearing House Rules shall prevail as between the Buyer, Seller, and the Clearing House to the extent of such inconsistency and to the extent permitted by law.

#### **(A) ~~OPERATIONAL RESPONSIBILITIES OF CLEARING MEMBERS HAVING OPEN LONG POSITIONS~~**

##### **(1) ~~Notice of Intention to Accept~~**

~~By 4:30- 10:00 PM~~ 10:00 p.m. GMT on the ~~first business day after the final day of last business~~ final day of trading ~~prior to the expiring delivery month, a Buyer having an open long position shall file with the Exchange a properly completed and signed Notice of Intention to Accept. The Notice of Intention to Accept shall be in the form prescribed by the Exchange and shall include: Name of the Buyer's Customer; Number of contracts to be accepted; UK Emissions Trading Registry Account Number; Name; Telephone Number and e-mail address of the Authorized Representative(s) for that that Registry account, and any additional information as may be required by the Exchange.;~~

~~If the link between the ITL and CITL is not operational two business days prior to the first business day of the delivery month, a Buyer shall file a properly completed and signed Notice of Intention to Accept by 4:30 p.m. GMT on the first business day following Exchange notice that the link between the CITL and the ITL is operational related to contract delivery.~~

#### **(B) ~~RESPONSIBILITIES OF CLEARING MEMBERS HAVING OPEN SHORT POSITIONS~~**

##### **(~~2~~) Notice of Intention to Deliver**

~~By 4:30-10:00 PM~~ 10:00 PM p.m. GMT on the ~~first business day after the final day of trading of the expiring~~ expiring delivery month, a Seller having an open short position shall file with the Exchange a properly completed and signed Notice of Intention to Deliver. The Notice of Intention to Deliver shall be in such form prescribed by the Exchange and shall include: ~~Name of the Seller's Customer; Number of contracts to be delivered; UK Emissions Trading Registry Account Number; Name;~~

Telephone Number and e-mail address of the Authorized Representative(s) for that registry  
Registry account, and any additional information as may be required by the Exchange.

~~By 5:00 p.m. GMT on the first business day after the final day of trading of the delivery month, the Seller will submit transfer request.~~

~~If the link between the ITL and CITL is not operational as of operational two business days prior to the first business day of the delivery month, a Seller shall file a properly completed and signed Notice of Intention to Deliver by 4:30 p.m. GMT on the first business day following Exchange notice that the link between the CITL and the ITL is operational related to contract delivery.~~

~~(3) By 6:30 PM GMT on the first business day after the final day of trading of the delivery month, the Seller will transfer EUAs subject to delivery to the Clearing House Holding Account of the UK Emissions Trading Registry.~~

~~(4) -By 7:00 PM GMT on the first business day after the final day of trading of the delivery month, for each Buyer that has satisfied its obligation under Rule 868.09(A)(6), the Clearing House will initiate the process of transferring the EUAs to the Buyer's account at the UK Emissions Trading Registry.~~

~~(5) -By 3:00 PM GMT the second business day after the final day of trading of the delivery month, Buyer shall receive EUAs from the Clearing House Holding Account of the UK Emissions Trading Registry.~~

~~(6) By 2:00 PM GMT on the business day following the last day of trading, the Buyer shall deposit / transfer Euro currency equal to the full value of the product to the designated Clearing House bank account.~~

~~(7) -By 3:00 PM GMT on the second business day following the last day of trading, for each Seller that has satisfied its obligation under Rule 868.09(A)(3), the Clearing House shall pay the Seller full contract value.~~

~~(C) USE OF SETTLEMENT PRICE: The final settlement price used for the delivery shall be the settlement price from the final day of trading.~~

~~(DB) Notice Day ASSIGNMENT DAY~~

~~(1) The Clearing House shall allocate Notices of Intention to Deliver and Notices of Intention to Accept by matching positions, to the extent possible.~~

~~(2) The Clearing House shall provide Assignment Notice Reports to the respective Clearing Members on the final day of trading of the delivery month.~~

~~If the link between the CITL and the ITL is not operational two business days prior to the first business day of the delivery month, the Clearing House will provide Tender Allocation Notices to the respective Clearing Members on the second business day following Exchange notice that the link between the CITL and the ITL is operational related to contract delivery.~~

~~(3) The day the Tender Allocation Notices are provided to the Clearing Members shall be referred to as "Notice Day". Tender Allocation Notices are not~~

transferable.

(E) PAYMENT AND DELIVERY MARGINS

(1) Definitions

(A) Daily Margin: The Buyer and Seller shall deposit with the Exchange margins in such amounts and in such form as required by the Exchange. Such margins which shall not be greater than the margins charged to the Buyer's Customer and Seller's Customer, shall be returned on the business day following notification to the Exchange that delivery and payment have been completed.

(B) Payment: shall include the settlement price times the number of contracts times 1,000. If the link between the CITL and the ITL is not operational two business days prior to the first business day of the delivery month, the payment of the Buyer shall include the Euro Over Night Index Average (EONIA) interest cost from the first business day of the contract month to the revised delivery date.

(C) Payment Date: shall mean the date on which the Clearing House transfers payment in connection with a delivery to a Seller.

~~(C) "Payment Date" shall mean the business day after the Buyer's Customer receipt of proper notification from the UK Emissions Trading Registry that EUA Allowances have been transferred from the Seller's Customer account to the Buyer's Customer account, provided documentation is supplied to the Buyer's Customer by no later than 2:00 p.m. GMT. Documentation supplied to Buyer after 2:00 p.m. GMT on any Exchange business day, shall be considered received on the following Exchange business day.~~

~~(D) By 5:00 p.m. GMT on the business day following the last day of trading, the long clearing member shall obtain from the long, if any, margin equal to the full value of the product to be delivered. Such margin shall consist of cash, securities issued by the United States Treasury Department maturing within ten (10) years from the date of deposit and guaranteed as to principal and interest by the United States Government or a letter of credit. Any Treasury securities so deposited shall be valued at ninety percent (90%) of the par value of such instruments. Any letter of credit so deposited shall be in a form approved by the Exchange, shall be issued or confirmed by an Exchange approved original margin depository, and shall be drawn in favor of the Exchange~~

~~(E) The Buyer shall pay the Seller at the office of the Seller by a certified check or electronic funds transfer, or any other method acceptable to both parties by 12:00 p.m. GMT on the payment date.~~

~~(F) On the Payment Date, the Seller, the Seller shall deliver a Notice of Payment to the Buyer with a copy to the Exchange by 4:30 p.m. GMT Time Zone. Upon receipt of such notice the delivery shall be complete.~~

~~(G) Any payment made on Payment Date shall be based on EUAs actually delivered that the Seller is obligated to deliver pursuant to the applicable delivery.~~

~~(F) Delivery Day~~

~~868. 10 Delivery Period~~

- ~~4 By 6:30 PM GMT on the first business day after the final day of trading of the delivery month, the Seller will transfer EUA Allowances subject to delivery to Clearing House Holding Account of the UK Emissions Trading Registry.~~
- ~~5 By 7:00 PM GMT on the first business day after the final day of trading of the delivery month, the Clearing House shall initiate transferring the EUA allowances to the Buyer's account at the UK Emissions Trading Registry.~~
- ~~6 By 2:00 PM GMT the second business day after the final day of trading of the delivery month, Buyer shall receive EUA allowances from the Clearing House Holding Account of the UK Emissions Trading Registry.~~

~~Delivery shall take place on the second business day of the delivery month.~~

~~If the link between the CITL and the ITL is not operational two business days prior to the first business day of the delivery month, the seller shall deliver on the tenth business day following the Exchange notice that the link between the CITL and the ITL is operational related to contract delivery.~~

#### **868.104 Validity of Documents**

The Exchange makes no representation with respect toing the authenticity, validity or accuracy of any of Tender Allocation Notice, Notice of Intention to Accept, Notice of Intention to Deliver, check or of any document or instrument delivered pursuant to these ~~rules~~Rules.

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#### **868.112 Exchange of Futures for Physical (EFP) and Exchange of Futures for Swaps (EFS)**

(A) An exchange of futures for, or in connection with, the product (EFP) or exchange of futures for or in connection with, swaps (EFS) transactions consist of two discrete, but related, transactions: a physical commodity or swap transaction and a futures transaction. At the time such transaction is effected, the Buyer's Customer and Seller's Customer of the futures must be respectively the Seller's Customer and Buyer's Customer of a quantity of the physical product or swaps agreement covered by this Section (or any derivative, by-product or related product). The quantity of physical product or swap agreement must be approximately equivalent to the quantity covered by the futures contracts.

(B) Except as provided below, ~~an EFP or EFS must take place during the hours of futures trading for the futures contract. An EFP or EFS transaction is permitted at any time before 1:00-30-5:30 p.m. GMT on the first business day after the final day of last trading day of the delivery month, provided, however, that an EFP or EFS which would established a futures position for both the Buyer's Customer and the Seller's Customer shall not be permitted on during the first business final hour of the last trading day day after the last day of trading.~~

~~If the link between the CITL and the ITL is not operational two business days prior to the first business day of the delivery month, EFP or EFS transactions will be extended until 2:30 p.m. GMT on the business day following the Exchange notice that the link between the CITL and the ITL is operational related to contract delivery.~~

(C) Any EFP or EFS transaction shall be governed by the provisions of this Rule and by the provisions of Exchange Rules 6.21 and 6.21A., respectively.



(D) Each Buyer's Customer and Seller's Customer must satisfy the Exchange, at its request, that the transaction is a legitimate EFP or EFS transaction. All documentary evidence relating to the EFP or EFS, including, without limitation, evidence as to change of ownership of the physical commodity or swap commitment, shall be obtained by the Clearing Members from their customers and made available by the Clearing Members for examination by the Exchange upon request.

(E) A report of each EFP or EFS transaction shall be entered on the day that the transaction thereto was made, or if such agreement was made after the close of trading, then on the next business day. EFP or EFS transactions shall be cleared through the Exchange in accordance with normal procedures, shall be clearly identified as EFP or EFS transactions, and shall be recorded as such by the Exchange and by the Clearing Members involved

#### **868.13-12 Alternative Delivery Procedure**

~~A Seller's Customer or An Alternative Buyer's Customer~~ may agree with the ~~Buyer's Customer Seller or the Seller's Customer~~ with which it has been matched by the Exchange under Rule 868.09(D)(B) to make and take delivery under terms or conditions which differ from the terms and conditions prescribed by this Chapter. In such a case, ~~Buyers and Sellers Clearing Members~~ shall execute an Alternative Delivery Procedure Notice of Intention to Deliver on ~~at~~ the form prescribed by the Exchange and shall deliver a completed executed copy of ~~such Notice of such form~~ to the Exchange. The delivery of an executed Alternative Notice of Intention to Deliver Delivery Procedure form to the Exchange shall release the ~~Buyer, Seller Clearing Members~~ and the Exchange from their respective obligations under the Exchange contracts.

In executing such Alternative Delivery Procedure form Notice, ~~Buyers and Sellers Clearing Members~~ shall indemnify the Exchange against any liability, cost or expense it may incur for any reason as a result of the execution, delivery, or performance of such contracts or such agreement, or any breach thereof or default there under. Upon receipt of an executed Alternative Notice of Intention to Deliver Delivery Procedure form, the Exchange will return to the ~~Buyer and Seller Clearing Members~~ all margin monies held for the account of each with respect to the contracts involved.

#### **868.14-13 ~~Force Majeure, Late Performance, Failure to Perform and Failure to Perform Force Majeure.~~**

(A) DEFINITION. As used in this Rule 868.14-13 the following terms, as well as variations thereof, shall have the meaning described below.

(1) "Late Performance" shall mean the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation imposed by, and within the time period established in, the Rules. Late Performance shall be restricted to three business days. Late Performance beyond three business days by, a Seller or a Buyer will be deemed a Failure to Perform.

(2) "Day of Late Performance" shall mean the twenty-four hour period commencing immediately after a Buyer, a Seller, or the Clearing House was to have performed. Each subsequent Day of Late Performance shall commence twenty-four hours after the beginning of the prior Day of Late Performance. When a Party is late in performance, the day when the act was to have performed shall be a Day of Late Performance.

(23) "Failure to Perform" shall mean the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation prior to the expiration of the period allowed for the late performance of such act.

(34) ~~"Contract Value"~~ shall means the amount equal to the settlement price on the last day of trading in a futures contract times 1,000 (the number of EUAs ~~tons~~ per contract) times the number of contracts to be delivered.

(45)(a) "Party" shall means a Buyer or Seller and such Buyer and Seller are each responsible to the Exchange for their obligations under these Rules and further responsible to the Exchange for the obligations of their respective customers under the Rules of this Chapter.

(b) "Other Party" shall means the corresponding Buyer when the Seller is late in performance or has failed to perform and the corresponding Seller when the Buyer is late in performance or has failed to perform.

~~(5) "Day of Late Performance" means the twenty four hour period commencing twelve hours after a Buyer or a Seller was to have performed, provided however, with respect to the obligations of Buyers and Sellers to submit documents to the Exchange pursuant to the Rules in this chapter, and with respect to the failure to transfer EUA within the delivery period, "Day of Late Performance" means that twenty four hour period commencing immediately after the time specified in the Rules in this chapter for the submission of a document. Each subsequent Day of Late Performance shall commence twenty four hours after the beginning of the prior Day of Late Performance. When a Party is late in performance, the day when the act is performed shall be a Day of Late Performance.~~

(6) ~~"Force Majeure"~~ shall means any circumstance (including but not limited to a strike, lockout, national emergency, governmental action, or act of God) which is beyond the control of such Buyer or Seller, and which prevents the Buyer or Seller from making or taking delivery of product when and as provided for in these Rules.

#### (B) RESPONSIBILITIES OF PARTIES TO THE DELIVERY

(1) ~~The parties to a delivery shall make commercially reasonable efforts to perform their respective delivery obligations at all times until a Party has failed to perform.~~

(2) ~~A Party which has failed to perform its obligations may no longer perform such obligations; provided, however, that a Buyer which has failed to make a payment shall make such payment.~~

#### (C) EMISSIONS ALLOWANCE DELIVERY COMMITTEE

(1) ~~Force Majeure, Late Performance and Failure to Perform shall be determined by a Panel of the Emissions Allowance Delivery Committee as set forth below. The Chairman of the Emissions Allowance Delivery Committee shall appoint a Panel, which shall consist of three (3) members of the Committee, to review a delivery:~~

~~(a) When the Chairman Emissions Allowance Delivery Committee is advised by the President or any person designated by the President that it appears that the performance of a Party to the delivery is late;~~

~~(b) Upon the written request of both the Buyer and the Seller;~~

~~(c) When the President or any person designated by the President requests such appointment;  
or~~

~~(d) When either Party to the delivery notifies the Exchange that circumstances exist constituting Force Majeure.~~

- (2) ~~The Chairman Emissions Allowance Delivery Committee shall not appoint to any Panel any person who has a direct or indirect interest in the delivery in question. Any Panel so appointed shall retain jurisdiction over the delivery in question until the delivery has been completed or a Party has been found to have failed to perform such delivery. Exchange Counsel shall serve as advisor to the Panel.~~
- (3) ~~The Panel shall meet within one business day of notification as provided in these Rules. Unless good cause for delay exists, within one business day the Panel shall determine whether force majeure exists, whether a Buyer or Seller is late in performing or has failed to perform its obligations as provided in the Rules, and advise the Market Regulation Compliance Department of such determination, and its findings in support thereof immediately. The Panel shall cause its determination to be communicated to the parties to the delivery as expeditiously as possible.~~
- (4) Upon a finding of force majeure, the Panel may take any one or combination of the following actions as it deems suitable order: an extension of time not to exceed ten days from the date of the scheduled delivery; or, refer the delivery to the ~~Board of Directors~~Exchange, represented by the Market Regulation Department, for emergency action, ~~as provided in Article 7.~~

#### (D) EXCHANGE ACTION

- (1) ~~Whenever a Buyer or a Seller is found by the Panel to be late in the performance of a delivery obligation or to have failed to perform a delivery, the Exchange, represented by the Market Regulation Department Compliance Department, shall issue a Notice of Assessment, in assessing a penalty of 10% of contract value for each applicable day of Late Performance, accordance with subsections (2) of this Section, specifying the findings of the Panel with respect to the late or failed delivery.~~
- (2) ~~When~~Whenever a Buyer or Seller ~~a Party has failed to perform, is found by the Panel or otherwise deemed to have a "Failure to Perform" the Exchange, represented by the Market Regulation Department Compliance Department shall issue a Notice of Assessment assessing penalties of ten ~~twenty~~ percent (10~~20~~%) of the contract value, in addition to any penalties assessed pursuant to subparagraph hereof (1) above, to be paid to the Exchange.~~
- (3) (a) A Party may appeal a Notice of Assessment by filing a Notice of Appeal with the Hearing Registrar of the Exchange and by serving a copy of the same on the Exchange's Market Regulation Department Compliance Counsel, within two business days of receipt of the Notice of Assessment from the Market Regulation Compliance Department. The Party filing the appeal ("Appellant") shall file, within twenty (20) days after filing the Notice of Appeal, a Memorandum of Appeal setting forth the factual and legal basis for the appeal. The Memorandum of Appeal must be filed with the Hearing Registrar and a copy of the same served upon the Exchange's Compliance Counsel.
  - (b) The Market Regulation Compliance Department may file with the Appellant and Hearing Registrar an Answering Memorandum to the Memorandum of Appeal within ten (10) days of receipt of that memorandum.
  - (c) Failure by the Party to file a Notice of Appeal or a Memorandum of Appeal with the time specified in subsection (D)(4)(a) of this Rule shall constitute a waiver, and the penalties set forth in the Notice of Assessment shall be paid within five days to the Exchange. Failure to pay such penalties in accordance with this Rule shall subject the party to the sanctions set forth in ~~Bylaw 406~~Chapter 4. In the event a party fails to Appeal, or waives the opportunity to appeal a Notice of

Assessment, the Assessment and findings of the Emission Allowance Delivery Committee shall constitute a final disciplinary action of the Exchange.

- (4) ~~Within ten (10) days after receipt of the Market Regulation Compliance Department's reply, the Appellant shall be entitled to examine all books, documents and other tangible evidence in possession or under the control of the Exchange that are to be relied on by Market Regulation the Compliance Department or are otherwise relevant to the matter.~~
- (5) ~~In the event of an appeal by a Party, the Chairman of the Exchange President, or his designee, shall appoint an Assessment Appeal Panel to hear and decide the appeal. The Panel shall be composed of three members of the Exchange, at least one of whom shall be a member of the Board of Directors. No member of the Panel may have a direct or indirect interest in the matter under the appeal. Each Panel Member shall disclose to the Chairman President, or his designee, any such interest which might preclude such Panel Member from rendering a fair and impartial determination. The formal Rules of Evidence shall not apply to such appeal, and the Panel shall be the sole judge with respect to the evidence presented to it. Exchange outside counsel shall advise the Panel.~~
- (6) ~~The procedures for the hearing of the appeal before the Assessment Appeal Panel shall be as follows:
  - (a) ~~At a date to be set by order of the Panel, and prior to such hearing, the Appellant and the Market Regulation Department Compliance Department shall furnish each other with a list of witnesses expected to be called at the hearing, and a list of documents and copies thereof expected to be introduced at the hearing.~~
  - (b) ~~At such hearing: The Appellant may appear personally and may be represented by counselor or other representative of his choice at the appeal.~~
  - (c) ~~The Market Regulation Department Compliance Department shall be entitled to offer evidence relating to the delivery and shall be entitled to call witnesses and introduce documents in support thereof. It shall be the burden of the Market Regulation Department Compliance Department to demonstrate, by the weight of the evidence, the appropriateness of the sanction set forth in the Notice of Assessment.~~
  - (d) ~~The Appellant shall be entitled to rebut the Market Regulation Department's Compliance Department's evidence and shall be entitled to call witnesses and introduce documents in support thereof.~~
  - (e) ~~The Market Regulation Department Compliance Department and the Appellant shall be entitled to cross-examine any witness called by the opposing Party at the hearing.~~
  - (f) ~~The Notice of Assessment, the Notice of Appeal, the Memorandum of Appeal, any Answering Memorandum, the stenographic transcript of the appeal, any documentary evidence or other material presented to and accepted by the Panel shall constitute the record of the hearing. The decision of the Panel shall be based upon the record of the hearing.~~
  - (g) ~~The Panel 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.~~~~

(h) The Assessment Appeal Panel shall issue a written decision in which it may affirm, reduce, or waive the charges assessed against the Appellant and shall state the reasons therefore.

(i) The decision of the Assessment Appeal Panel shall be a final decision of the Exchange and shall constitute a final disciplinary action of the Exchange. The fine is payable on the effective day of the decision or as specified. The effective day shall be fifteen (15) days after a copy of the written decision has been delivered to the appellant and to the Commission.

(8) The Assessment Appeal Panel shall consider, and make recommendations to the Board President, or his designee, concerning acceptance or rejection of, any offer of settlement submitted by Appellant. In the case of an offer of settlement, acceptance by the Board shall constitute the final disciplinary action of the Exchange.

#### (E) ARBITRATION PROCEDURE

(1) Any claim for damages arising between a Buyer and a Seller as a result of a delivery pursuant to this contract shall be settled by arbitration in accordance with these Rules.

(2) Notice of Intent to Arbitrate must be submitted to the Secretary of the Exchange within three business days of the occurrence upon which the claim is based or the decision of the Emissions Allowance Delivery Committee with respect to a late or failed performance. Failure to submit a Notice of Intent to Arbitrate within the prescribed period will be deemed a waiver of a Party's rights to arbitrate such a delivery dispute under the special or Regular Arbitration Rules.

(3) The Arbitration will be governed by Chapter 5-6A of the Rules except that the Chairman of the Exchange President or his designee shall appoint an Arbitration Panel composed of three Members of the Exchange, at least one of whom shall be a Member of the Board of Directors.

#### 868.14 Exclusion of Liability

Except as specifically provided in the Rules (and to the extent permitted by law), the Clearing House accepts no liability in connection with this futures contract, its performance, non-performance or its termination whether based on breach of contract, warranty, negligence or tort. In particular, but without limitation, the Clearing House shall not be responsible for or shall have any liability whatsoever to any Buyer or Seller for: the availability, suitability, unavailability or malfunction of a Communication Link or any part thereof; the performance or non-performance by a registry or CITL or UNFCCC International Transaction Log of their respective obligations under the Registry Regulations or otherwise; any act or omission of any operator of a Communication Link or any part thereof; or any act or omission of an authorized agent of any other party; or any performance or non-performance by the Clearing House in relation to its serving as a party to the deliveries and the Clearing House shall under no circumstances be liable for any indirect or consequential loss or loss of profits. Additionally, nothing in these Rules will constrain the Clearing House from performing its duties under CME Rule 802.

(bold/underline indicates additions; strikethrough indicates deletion)

## **European Union Allowance (EUA) Option Contract**

### **869.01 Expiration of ~~EUA Option Contract~~**

A European Union Allowance (EUA) Option ("EUA Option") contract on the Exchange shall expire at the close of trading three business days prior to the expiration of the underlying European Union Allowance (EUA) Futures ("EUA Futures") contract. The expiration date shall be announced prior to the listing of the option contract.

### **869.02 Trading Unit for ~~EUA Option Contracts~~**

An EUA Option is a European-s-Style option contract. An EUA put or call Option contract traded on the Exchange represents an option to assume a short or long position in the underlying EUA Futures contract traded on the Exchange.

### **869.03 Trading Months for ~~EUA Option Contracts~~**

Trading in EUA Option contracts shall be conducted in the contract months as shall be determined by the Exchange Board of Directors. Trading shall commence on the day fixed by resolution of the Exchange Board of Directors.

### **869.04 Hours of Trading in ~~EUA Option Contracts~~**

The EUA Option contract is available for open outcry trading on the Exchange trading floor between 9:00 a.m. and 2:30 p.m. (New York Prevailing time) Monday through Friday, except on Exchange Holidays.

The EUA Option contract is available for clearing on CME ClearPort<sup>®</sup> clearing system from 6:00 p.m. Sunday through 5:15 p.m. Friday (New York Prevailing time), with a 45-minute break each day between 5:15 p.m. and 6:00 p.m., except on Exchange Holidays.

The hours of trading in EUA option contracts on the Exchange shall be the same as the hours of trading for EUA futures contracts. All such trading shall take place on the trading floor of the Exchange within the hours prescribed by the Board of Directors.

### **869.05 Strike Prices for EUA Option Contracts**

~~(A)~~ Trading shall be conducted for options with strike prices in increments as set forth below.

~~(B)~~ On the first business day of trading in an option contract month, trading shall be at the following strike prices: (i) the previous day's settlement price for EUA Futures contracts in the corresponding delivery month rounded off to the nearest fifty-cent increment strike price (ii) the ten fifty-cent increment strike prices which are ten increments higher than the strike price described in (i) of this Rule 869.05~~(A)~~ and (iii) the ten fifty-cent increment strike prices which are ten increments lower than the strike price described in (i) of this Rule 869.05~~(A)~~

~~(C)~~ Thereafter, on any business day prior to the expiration of the option, new consecutive strike prices for both puts and calls will be added such that there will be ten increments above and below the at-the-money option.;

~~(D)~~ Notwithstanding the provisions of subsections ~~(B)~~ through ~~and (C)~~ of this Rule, if the Board Exchange determines that trading in EUA Options contracts will be facilitated thereby, the Board Exchange may, by resolution, change the increments between strike prices, the number of strike prices which shall be traded in the first day in any new option contract month, the number of new strike prices which will be introduced on each business day or the period preceding the expiration of an EUA Option contract in which no new strike prices may be introduced.

**869.06 Prices and Price Fluctuations**

Prices shall be quoted in Euros (€) and Euro cents (¢) per ~~EUA metric ton~~. The minimum price fluctuation is €0.01 per ~~metric ton~~ EUA. A cabinet trade may occur at a price of €1.00 per contract, however, if it results in the liquidation of positions for both parties to the trade.

**869.07 Absence of Price Fluctuation Limitations for ~~EUA Option Contract~~**

Trading in EUA Option contracts shall not be subject to price fluctuation limitations.

## APPENDIX B – Amendments to Existing CER Futures and Option Contracts

(bold/underline indicates additions; strikethrough indicates deletion)

### Certified Emission Reduction (CER) Futures Contract

#### 870.01A Definitions

(A) Certified Emission Reduction ("CER"). CERs shall mean a unit issued pursuant to Articles 12 and 17 of the Kyoto Protocol and the decisions adopted pursuant to the UNFCCC or the Kyoto Protocol which may be used for compliance purposes under the European Union Emissions Trading Scheme ("EU ETS") in accordance with Article 11a (3)(a) and (b) of the Directive 2003/87/EC (as amended from time to time) and the Linking Directive 2004/101/EC as implemented into Member State law. CERs from nuclear facilities; land use, land use change and forestry activities (LULUCF); and hydroelectric projects with generating capacities exceeding 20 MW are excluded from this definition.

(B) CDM ("Clean Development Mechanism") shall mean a-A mechanism established by Article 12 of the Kyoto Protocol for project-based emission reduction activities in developing countries.

(C) Clean Development Mechanism-Executive Board (CDM-EB): The CDM EB registers validated project activities as CDM projects, issues certified emission reductions to relevant projects participants, and manages series of technical panels and working groups meetings.

(D) The terms "Seller" and "Buyer" shall mean the short Clearing Member and the long Clearing Member, respectively. Further, for purposes of this contract, Sellers and Buyers may utilize a designee to perform their respective and necessary obligations with regard to transferring and accepting allowances at the eligible registries.

(E) The terms "Seller's Customer" and "Buyer's Customer" shall mean the seller and buyer of the physical product or swap transaction.

(F) ITL (International Transaction Log): All transactions between registries are maintained by transaction logs which verify the validity of transactions. The UNFCCC Secretariat maintains the ITL for the purposes of transfer under the Kyoto Protocol. Moreover the EU Commission ~~has established and is become~~ the Administrator of the Community Transaction Independent Log (CITL) for transfers involving EU Member States. Transfers involving EU Entities entail an additional step from the ITL to the CITL under the Kyoto Protocol for transfers of CERs between national registries.

(G) The term "Settlement Price" shall mean the final settlement price used as the price for delivery of the product, which shall be the settlement price for the last trading day of the expiring delivery month. The settlement price for the last trading day shall be determined in accordance with the procedures set forth in NYMEX Rule 11G.11.

(H) "Communication Link" shall mean the electronic exchange of messages/notifications (1) by which a buyer and seller communicate with a Registry, and/or (2) by which a Registry communicates with CITL, and/or (3) by which CITL communicates with the UNFCCC International Transaction Log (where applicable), and/or (4) by which a Registry communicates with the UNFCCC International Transaction Log (where Applicable), and/or (5) by which the UNFCCC International Transaction Log communicates with the CDM Registry (where applicable), which in any case is necessary to facilitate a transfer;

(I) "Registry" shall mean any registry in an EU Member State meeting the eligibility criteria and which has implemented the Linking Directive in a manner that authorizes private persons to hold CERs and has Person Holding Accounts established in order to ensure the accurate accounting of the issue of holding, transfer, acquisition, surrender, cancellation, and replacement of CERs- under the Scheme, and which



has been identified as a Registry by the Clearing House from time to time for the purpose of this futures contract;

(J) "Registry Regulations" shall mean the EU Commission Regulation (EC) No 2216/2004 for a standardized and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision 280/2004/EC of the European Parliament and of the Council, as amended from time to time including by EU Commission Regulation (EC) No.916/2007;

#### **870.01 Scope**

The provisions of these rules shall apply to all CERs, issued pursuant to Articles 12 and 17 of the Kyoto Protocol, bought or sold for future delivery on the Exchange with the Delivery at the UK Emissions Trading Registry or the Dutch CO2 Emissions Trading Registry.

#### **870.02 Time References**

For purposes of these Rules, unless otherwise specified, times referred to herein shall refer to and indicate the prevailing time in Greenwich Mean Time (GMT).

#### **870.03 Contract Unit**

The contract unit shall be one thousand (1,000) ~~metric tonnes of CERs units~~ for a delivery made by transfer through the UK Emissions Trading Registry or the Dutch CO2 Emissions Trading Registry.

#### **870.04 Delivery**

At the registry designation of the buyer, CER delivery shall take place by electronic transfer of CERs ~~units~~ at the UK Emissions Trading Registry or the Dutch CO2 Emissions Trading Registry. The registry will be designated by the Buyer, and it must satisfy "Eligibility Criteria" for international emissions trading specified in Article 17 of the Kyoto Protocol and Decision 11/CMP.1. All deliveries made under these rules Rules shall be final and there shall be no appeal. Notwithstanding the use of a designee, all Clearing Members will remain ultimately responsible for performance of all applicable contract terms specific to Sellers and Buyers.

#### **870.05 Delivery Months**

Trading shall be conducted in contracts providing for delivery in such periods as shall be determined by the ~~Board of Directors~~Exchange.

#### **870.06 Minimum Price Fluctuations**

Prices shall be quoted in Euro and Euro cents per ~~metric tonne~~CER ~~unit~~. The minimum price fluctuation shall be € 0.01 per ~~metric tonne~~ CER ~~unit~~ (€10.00 per contract). There shall be no maximum price fluctuations.

#### **870.07 Termination of Trading**

Trading in the delivery month shall cease two business days prior to the first business day of the delivery month.

#### **870.08 Product Placement**

(1) Certification:

For purposes of Rule 9A.19, the Seller and Buyer shall fulfill their respective contractual obligations on a maturing contract unless, by 5:00 p.m. GMT on the 10<sup>th</sup> business day prior to the first business day of the delivery month, such Seller and Buyer have ~~received~~ provided account certification ~~from his customer~~, in the form prescribed by the Exchange stating that: (i) If a buyer, the Buyer ~~'s Customer~~ has an account with the UK Emissions Trading Registry or the Dutch CO2 Emissions Trading Registry; (ii) If a

seller, the Seller's Customer has an account with the UK Emissions Trading Registry and/or the Dutch CO2 Emissions Trading Registry.

The receipt of such certification shall not relieve the Seller or Buyer, or their respective Customers of any obligations under any Rule other than Rule 9A.19.

#### **870.09 Delivery Procedures and Obligations**

The Clearing House is a party to all deliveries under this contract and will receive CERs from the Seller into the Clearing House Holding Account of the UK Emissions Trading Registry or the Dutch CO2 Emissions Trading Registry. Following receipt from the Seller, the Clearing House will deliver CERs to the Buyer from the Clearing House Holding Account to the UK Emissions Trading Registry or the Dutch CO2 Emissions Trading Registry Holding Account nominated by the Buyer.

The Seller shall comply with such requirements and obligations imposed by or under applicable Registry Regulations in all respects material to the submission of the forms noted in this Rule. The Buyer shall comply with such requirements and obligations imposed by or under applicable Registry Regulations in all respects material to ensure the acceptance of a valid transfer into its Holding Account. If a provision of the Regulations or the Clearing House Rules is inconsistent with a provision of the Registry Regulations, the provision of the Regulations or the Clearing House Rules shall prevail as between the Buyer, Seller, and the Clearing House to the extent of such inconsistency and to the extent permitted by law.

#### **(A) OPERATIONAL RESPONSIBILITIES OF CLEARING MEMBERS HAVING OPEN LONG POSITIONS**

##### **(1) Notice of Intention to Accept;**

~~By 4:30- 10:00 PM p.m. GMT on the first business day after the final day of trading of the delivery month, a Buyer having an open long position shall file with the Exchange a properly completed and signed Notice of Intention to Accept. The Notice of Intention to Accept shall be in the form prescribed by the Exchange and shall include: Name of the Buyer's Customer; Number of contracts to be accepted; Registry Name; Registry Account Number; Name, Telephone Number and e-mail address of the Authorized Representative(s) for that that registry account; and any additional information as may be required by the Exchange~~

~~If the link between the ITL and CCTL is not operational two business days prior to the first business day of the delivery month, a Buyer shall file a properly completed and signed Notice of Intention to Accept by 4:30 p.m. GMT on the first business day following Exchange notice that the link between the CCTL and the ITL is operational related to contract delivery.~~

#### **(B) RESPONSIBILITIES OF CLEARING MEMBERS HAVING OPEN SHORT POSITIONS**

##### **(2) Notice of Intention to Deliver**

~~By 4:30- 10:00 PM p.m. GMT on the first business day after the final day of trading of the delivery month, a Seller having an open short position shall file with the Exchange a properly completed and signed Notice of Intention to Deliver. The Notice of Intention to Deliver shall be in such form prescribed by the Exchange and shall include: Name of the Seller's Customer; Number of contracts to be delivered; Registry Name; Registry Account Number; Name, Telephone Number and e-mail address of the Authorized Representative(s) for that that registry account; and any additional information as may be required by the Exchange.~~

~~If the link between the ITL and CCTL is not operational two business days prior to the first business day of the delivery month, a Seller shall file a properly completed and signed Notice of Intention to Deliver by 4:30 p.m. GMT on the first business day following Exchange notice that the link between the CCTL and the ITL is operational related to contract delivery.~~

~~(3) By 6:30 PM GMT on the first business day after the final day of trading of the delivery month, the Seller will transfer CERs subject to delivery to the Clearing House Holding Account of the UK Emissions Trading Registry or the Dutch CO2 Emissions Trading Registry.~~

- (4) By 7:00 PM GMT on the first business day after the final day of trading of the delivery month, for each Buyer that has satisfied its obligation under Rule 870.09 (A)(6), the Clearing House will initiate the process of transferring the CERs to the Buyer's account at the UK Emissions Trading Registry or the Dutch CO2 Emissions Trading Registry.
- (5) By 3:00 PM GMT the second business day after the final day of trading of the delivery month, Buyer shall receive CERs from the Clearing House Holding Account of the UK Emissions Trading Registry or the Dutch CO2 Emissions Trading Registry.
- (6) By 2:00 p.m. GMT on the business day following the last day of trading, the Buyer shall deposit / transfer of Euro currency equal to the full value of the product to be delivered designated Clearing House bank account.
- (7) By 3:00 PM GMT on the second the business day following the last day of trading, for each Seller that has satisfied its obligation under Rule 870.09 (A)(3), the Clearing House shall pay the Seller full contract value.

~~(C) USE OF SETTLEMENT PRICE:~~ The final settlement price used for the delivery shall be the settlement price from the final day of trading.

~~(DB) Notice Day-ASSIGNMENT DAY~~

- (1) ~~The Clearing House shall allocate Notices of Intention to Deliver and Notices of Intention to Accept by matching positions, to the extent possible.~~
- (2) ~~(a) The Clearing House shall provide Tender Allocation Notices- Assignment Notice Reports to the respective- Clearing Members on the final day of trading of first business day of the delivery month.~~

~~If the link between the CITL and the ITL is not operational two business days prior to the first business day of the delivery month, the Clearing House will provide Tender Allocation Notices to the respective Clearing Members on the second business day following Exchange notice that the link between the CITL and the ITL is operational related to contract delivery.~~

~~(3) The day the Tender Allocation Notices are provided to the Clearing Members shall be referred to as "Notice Day". Tender Allocation Notices are not transferable.~~

~~(EC) PAYMENT AND DELIVERY MARGINS~~

~~(1) Definitions:~~

- (A) ~~"Daily Margin" shall mean: -the Exchange margins The that the Buyer and Seller shall deposit with the Exchange margins-in such amounts and in such form as required by the Exchange. Such margins which shall not be greater than the margins charged to the Buyer's Customer and Seller's Customer, shall be returned on the business day following notification to the Exchange that delivery and payment have been completed.~~
- (B) ~~"Payment" shall include the settlement price times the number of contracts times 1,000. If the link between the CITL and the ITL is not operational two business days prior to the first business day of the delivery month, the payment of the Buyer shall include the Euro Over Night Index Average (EONIA) interest cost from the first business day of the contract month to the revised delivery date.~~
- (C) ~~"Payment Date" shall mean the business day after the Buyer's Customer receipt of proper delivery notification from the UK Emissions Trading Registry or the Dutch CO2 Emissions Trading Registry that CERs have been transferred from the Seller's Customer account to the Buyer's Customer account, provided documentation is supplied to the Buyer's Customer by no later than 2:00 p.m. GMT. Documentation supplied to Buyer after 2:00 p.m. GMT on any~~

Exchange business day, shall be considered received on the following Exchange business day.

(C) "Payment Date" shall mean the date on which the Clearing House transfers payment in connection with a delivery to a Seller.

(D) ~~On the second business day following the last day of trading, the long clearing member shall obtain from the long, if any, margin equal to the full value of the product to be delivered. Such margin shall consist of cash, securities issued by the United States Treasury Department maturing within ten (10) years from the date of deposit and guaranteed as to principal and interest by the United States Government or a letter of credit. Any Treasury securities so deposited shall be valued at ninety percent (90%) of the par value of such instruments. Any letter of credit so deposited shall be in a form approved by the Exchange, shall be issued or confirmed by an Exchange approved original margin depository, and shall be drawn in favor of the Exchange.~~

(E) ~~The Buyer shall pay the Seller at the office of the Seller by a certified check or electronic funds transfer, or any other method acceptable to both parties by 12:00 p.m. GMT on the payment date.~~

~~(F) On the Payment Date, the Seller shall deliver a Notice of Payment to the Buyer with a copy to the Exchange by 4:30 p.m. GMT. Upon receipt of such notice the delivery shall be complete.~~

(GD) Any payment made on Payment Date shall be based on CERs actually delivered that the Seller is obligated to deliver pursuant to the applicable delivery.

#### **(F) Delivery Day**

The day the Buyer's customer receives the CERs shall be referred to as the Delivery Day.

#### **870.10 Delivery Period**

Delivery shall take place on the second business day of the delivery month.

If the link between the CITL and the ITL is not operational two business days prior to the first business day of the delivery month, the seller shall deliver on the tenth business day following the Exchange notice that the link between the CITL and the ITL is operational related to contract delivery.

#### **870.104 Validity of Documents**

The Exchange makes no representation with respect to the authenticity, validity or accuracy of any of Tender Allocation Notice, Notice of Intention to Accept, Notice of Intention to Deliver, check or of any document or instrument delivered pursuant to these Rules.

#### **870.121 Exchange of Futures for Physical (EFP) and Exchange of Futures for Swaps (EFS)**

(A) An exchange of futures for, or in connection with, the product (EFP) or exchange of futures for, or in connection with, swaps (EFS) transactions consist of two discrete, but related, transactions; a physical commodity or swap transaction and a futures transaction. At the time such transaction is effected, the Buyer's Customer and Seller's Customer of the futures must be respectively the Seller's Customer and Buyer's Customer of a quantity of the physical product or swaps agreement covered by this Section (or any derivative, by-product or related product). The quantity of physical product or swap agreement must be approximately equivalent to the quantity covered by the futures contracts.

(B) Except as provided below, an EFP or EFS ~~must take place during the hours of futures trading for the futures contract. An EFP or EFS transaction is permitted at any time before 25:30 p.m. GMT on the first business day after the final day of the last trading day of the delivery month~~ provided, however, that an EFP or EFS which would established a futures position for both the Buyer's Customer and the Seller's

Customer shall not be permitted ~~during the first business day~~ the final hour of the trading day for EFP or EFS after the last day of trading.

~~If the link between the CITL and the ITL is not operational two business days prior to the first business day of the delivery month, EFP or EFS transactions will be extended until 2:30 p.m. GMT on the business day following the Exchange notice that the link between the CITL and the ITL is operational related to contract delivery.~~

(C) Any EFP or EFS transaction shall be governed by the provisions of this Rule and by the provisions of Exchange Rules 6.21 and 6.21A, respectively.

(D) Each Buyer's Customer and Seller's Customer must satisfy the Exchange, at its request, that the transaction is a legitimate EFP or EFS transaction. All documentary evidence relating to the EFP or EFS, including, without limitation, evidence as to change of ownership of the physical commodity or swap commitment, shall be obtained by the Clearing Members from their customers and made available by the Clearing Members for examination by the Exchange upon request.

(E) A report of each EFP or EFS transaction shall be entered on the day that the transaction thereto was made, or if such agreement was made after the close of trading, then on the next business day. EFP or EFS transactions shall be cleared through the Exchange in accordance with normal procedures, shall be clearly identified as EFP or EFS transactions, and shall be recorded as such by the Exchange and by the Clearing Members involved.

#### **870.132 Alternative Delivery Procedure**

~~A Seller's Customer or An Alternative Buyer's Customer may agree with the Seller Buyer's Customer or the Seller's Customer with~~ with which it has been matched by the Exchange under Rule 870.09(DB) to make and take delivery under terms or conditions which differ from the terms and conditions prescribed by this Chapter. In such a case, ~~Buyers and Sellers Clearing Members~~ shall execute an Alternative Delivery Procedure Notice of Intention to Deliver on the a form prescribed by the Exchange and shall deliver a completed executed copy of ~~such Notice of such form~~ to the Exchange. The delivery of an executed Alternative Notice of Intention to Delivery Procedure form to the Exchange shall release the Buyer, Seller Clearing Members and the Exchange from their respective obligations under the Exchange contracts.

In executing such ~~Notice Alternative Delivery Procedure form, Buyers and Sellers Clearing Members~~ shall indemnify the Exchange against any liability, cost or expense it may incur for any reason as a result of the execution, delivery, or performance of such contracts or such agreement, or any breach thereof or default there under. Upon receipt of an executed Alternative Delivery Procedure form Notice of Intention to Deliver, the Exchange will return to the Buyers and Sellers Clearing Members all margin monies held for the account of each with respect to the contracts involved.

#### **870.14 ~~3~~ Force Majeure, Late Performance and, Failure to Perform- and Force Majeure**

(A) DEFINITION. As used in this Rule 870.44-13 the following terms, as well as variations thereof, shall have the meaning described below.

(1) ~~"Late Performance" shall~~ means the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation imposed by, and within the time period established in, the Rules. Late Performance shall be restricted to three business days. Late Performance beyond three business days by a Seller or a Buyer will be deemed a Failure to Perform.

(2) ~~"Day of Late Performance" shall mean~~ the twenty-four hour period commencing immediately after a Buyer, a Seller, or the Clearing House was to have performed. Each subsequent Day of Late Performance shall commence twenty-four hours after the beginning of the prior Day of Late Performance. When a Party is late in performance, the day when the act was to have performed shall be a Day of Late Performance.

- (23)- \_\_\_\_\_ "Failure to Perform" shall means the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation prior to the expiration of the period allowed for the late performance of such act.
- (34)- \_\_\_\_\_ "Contract Value" shall means the amount equal to the settlement price on the last day of trading in a futures contract times 1,000 (the number of tons CERs per contract) times the number of contracts to be delivered.
- (45)(a) "Party" shall means a Buyer or Seller and such Buyer and Seller are each responsible to the Exchange for their obligations under these Rules and further responsible to the Exchange for the obligations of their respective customers under the Rules of this Chapter.
- (b) "Other Party" shall means the corresponding Buyer when the Seller is late in performance or has failed to perform and the corresponding Seller when the Buyer is late in performance or has failed to perform.

~~(5) "Day of Late Performance" means the twenty four hour period commencing twelve hours after a Buyer or a Seller was to have performed, provided however, with respect to the obligations of Buyers and Sellers to submit documents to the Exchange pursuant to the Rules in this chapter, and with respect to the failure to transfer CERs within the delivery period, "Day of Late Performance" means that twenty four hour period commencing immediately after the time specified in the Rules in this chapter for the submission of a document. Each subsequent Day of Late Performance shall commence twenty four hours after the beginning of the prior Day of Late Performance. When a Party is late in performance, the day when the act is performed shall be a Day of Late Performance.~~

- (6)- "Force Majeure" shall means any circumstance (including but not limited to a strike, lockout, national emergency, governmental action, or act of God) which is beyond the control of such Buyer or Seller, and which prevents the Buyer or Seller from making or taking delivery of product when and as provided for in these Rules.

#### (B) RESPONSIBILITIES OF PARTIES TO THE DELIVERY

- (1)- The parties to a delivery shall make commercially reasonable efforts to perform their respective delivery obligations at all times until a Party has failed to perform.
- (2)- A Party which has failed to perform its obligations may no longer perform such obligations; provided, however, that a Buyer which has failed to make a payment shall make such payment.

#### (C) EMISSIONS ALLOWANCE DELIVERY COMMITTEE

- (1)- Force Majeure, Late Performance and Failure to Perform shall be determined by a Panel of the Emissions Allowance Delivery Committee as set forth below. The Chairman of the Emissions Allowance Delivery Committee shall appoint a Panel, which shall consist of three (3) members of the Committee, to review a delivery:-
- (a)- When the Chairman Emissions Allowance Delivery Committee is advised by the President or any person designated by the President that it appears that the performance of a Party to the delivery is late;
- (b)- Upon the written request of both the Buyer and the Seller;
- (c)- When the President or any person designated by the President requests such appointment; or
- (d)- When either Party to the delivery notifies the Exchange that circumstances exist constituting Force Majeure.
- (2)- The Chairman Emissions Allowance Delivery Committee shall not appoint to any Panel any person who has a direct or indirect interest in the delivery in question. Any Panel so appointed shall retain jurisdiction over the delivery in question until the delivery has been completed or a Party has been found to have failed to perform such delivery. Exchange Counsel shall serve as advisor to the Panel.

- (3) ~~The Panel shall meet within one business day of notification as provided in these Rules. Unless good cause for delay exists, within one business day the Panel shall determine whether force majeure exists, whether a Buyer or Seller is late in performing, or has failed to perform its obligations as provided in the Rules, and advise the Compliance Department Market Regulation Department of such determination, and its findings in support thereof immediately. The Panel shall cause its determination to be communicated to the parties to the delivery as expeditiously as possible.~~
- (4) ~~Upon a finding of force majeure, the Panel may take any one or combination of the following actions as it deems suitable, order: an extension of time not to exceed 10 days from the date of the scheduled delivery; or refer the delivery to the Board of Directors Exchange for emergency action as provided in Article 7.~~

(D) EXCHANGE ACTION

- (1) ~~Whenever a Buyer or a Seller is found by the Panel to be late in the performance of a delivery obligation or to have failed to perform a delivery, the Exchange, represented by the Compliance Market Regulation Department, shall issue a Notice of Assessment in assessing a penalty of 10% of contract value for each applicable day of Late Performance. ~~accordance with subsections (2) of this Section, specifying the findings of the Panel with respect to the late or failed delivery.~~~~
- (2) ~~Whenever a Buyer or Seller a Party has failed to perform is found by the Panel or otherwise deemed to have a "Failure to Perform" the Exchange, represented by, the Compliance Department Market Regulation Department shall issue a Notice of Assessment assessing penalties of ~~ten~~ twenty percent (~~10~~ 20%) of the contract value, in addition to any penalties assessed pursuant to subparagraph hereof (1) above, to be paid to the Exchange.~~
- (3) (a) A Party may appeal a Notice of Assessment by filing a Notice of Appeal with the Hearing Registrar of the Exchange and by serving a copy of the same on the Exchange's Compliance Counsel, within two business days of receipt of the Notice of Assessment from the Compliance Market Regulation Department. The Party filing the appeal ("Appellant") shall file, within twenty (20) days after filing the Notice of Appeal, a Memorandum of Appeal setting forth the factual and legal basis for the appeal. The Memorandum of Appeal must be filed with the Hearing Registrar and a copy of the same served upon the Exchange's Compliance Counsel.
- (b) ~~The Compliance Department Market Regulation Department~~ may file with the Appellant and Hearing Registrar an Answering Memorandum to the Memorandum of Appeal within ten (10) days of receipt of that memorandum.
- (c) Failure by the Party to file a Notice of Appeal or a Memorandum of Appeal with the time specified in subsection (D)(4)(a) of this Rule shall constitute a waiver, and the penalties set forth in the Notice of Assessment shall be paid within five days to the Exchange. Failure to pay such penalties in accordance with this Rule shall subject the party to the sanctions set forth in ~~Bylaw 106~~ Chapter 4. In the event a party fails to Appeal or waives the opportunity to appeal a Notice of Assessment the Assessment, and findings of the Emission Allowance Delivery Committee shall constitute a final disciplinary action of the Exchange.
- (4) ~~Within ten (10) days after receipt of the Market Regulation Compliance Department's reply, the Appellant shall be entitled to examine all books, documents and other tangible evidence in possession or under the control of the Exchange that are to be relied on by the Compliance Department Market Regulation Department or are otherwise relevant to the matter.~~
- (5) ~~In the event of an appeal by a Party, the Chairman of the Exchange President, or his designee, shall appoint an Assessment Appeal Panel to hear and decide the appeal. The Panel shall be composed of three members of the Exchange, at least one of whom shall be a member of the Board of Directors. No member of the Panel may have a direct or indirect interest in the matter under the appeal. Each Panel Member shall disclose to the Chairman President or his designee any such interest which might preclude such Panel Member from rendering a fair and impartial determination. The formal Rules of Evidence shall not apply to such appeal, and the Panel shall~~

be the sole judge with respect to the evidence presented to it. Exchange outside counsel shall advise the Panel.

- (6) The procedures for the hearing of the appeal before the Assessment Appeal Panel shall be as follows:
- (a) At a date to be set by order of the Panel, and prior to such hearing, the Appellant and the ~~Compliance Department~~ Market Regulation Department shall furnish each other with a list of witnesses expected to be called at the hearing, and a list of documents and copies thereof expected to be introduced at the hearing.
  - (b) At such hearing: The Appellant may appear personally and may be represented by counsel or other representative of his choice at the appeal.
  - (c) The ~~Compliance Department~~ Market Regulation Department shall be entitled to offer evidence relating to the delivery and shall be entitled to call witnesses and introduce documents in support thereof. It shall be the burden of the ~~Compliance Department~~ Market Regulation Department to demonstrate, by the weight of the evidence, the appropriateness of the sanction set forth in the Notice of Assessment.
  - (d) The Appellant shall be entitled to rebut the ~~Compliance~~ Market Regulation Department's evidence and shall be entitled to call witnesses and introduce documents in support thereof.
  - (e) The ~~Compliance Department~~ Market Regulation Department and the Appellant shall be entitled to cross-examine any witness called by the opposing Party at the hearing.
  - (f) The Notice of Assessment, the Notice of Appeal, the Memorandum of Appeal, any Answering Memorandum, the stenographic transcript of the appeal, any documentary evidence or other material presented to and accepted by the Panel shall constitute the record of the hearing. The decision of the Panel shall be based upon the record of the hearing.
  - (g) The Panel 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.
  - (h) The Assessment Appeal Panel shall issue a written decision in which it may affirm, reduce, or waive the charges assessed against the Appellant and shall state the reasons therefore.
  - (i) The decision of the Assessment Appeal Panel shall be a final decision of the Exchange and shall constitute a final disciplinary action of the Exchange. The fine is payable on the effective day of the decision or as specified. The effective day shall be fifteen (15) days after a copy of the written decision has been delivered to the appellant and to the Commission.
- (8) The Assessment Appeal Panel shall consider, and make recommendations to the ~~Board~~ President or his designee concerning acceptance or rejection of any offer of settlement submitted by Appellant. In the case of an offer of settlement, acceptance by the Board shall constitute the final disciplinary action of the Exchange.

#### **(E) ARBITRATION PROCEDURE**

- (1) Any claim for damages arising between a Buyer and a Seller as a result of a delivery pursuant to this contract shall be settled by arbitration in accordance with these Rules.
- (2) Notice of Intent to Arbitrate must be submitted to the Secretary of the Exchange within three business days of the occurrence upon which the claim is based or the decision of the Emissions Allowance Delivery Committee with respect to a late or failed performance. Failure to submit a Notice of Intent to Arbitrate within the prescribed period will be deemed a waiver of a Party's rights to arbitrate such a delivery dispute under the special or Regular Arbitration Rules.
- (3) The Arbitration will be governed by Chapter ~~5-6A~~ 5-6A of the Rules except that the ~~Chairman of the Exchange~~ President or his designee shall appoint an Arbitration Panel composed of three ~~Members of the Exchange, at least one of whom shall be a Member of the Board of Directors.~~

#### **870.14 Exclusion of Liability**



Except as specifically provided in the Rules (and to the extent permitted by law), the Clearing House accepts no liability in connection with this futures contract, its performance, non-performance or its termination whether based on breach of contract, warranty, negligence or tort. In particular, but without limitation, the Clearing House shall not be responsible for or shall have any liability whatsoever to any Buyer or Seller for: the availability, suitability, unavailability or malfunction of a Communication Link or any part thereof; the performance or non-performance by a registry or CITL or UNFCCC International Transaction Log of their respective obligations under the Registry Regulations or otherwise; any act or omission of any operator of a Communication Link or any part thereof; or any act or omission of an authorized agent of any other party; or any performance or non-performance by the Clearing House in relation to its serving as a party to the deliveries and the Clearing House shall under no circumstances be liable for any indirect or consequential loss or loss of profits. Additionally, nothing in these Rules will constrain the Clearing House from performing its duties under CME Rule 802.

(bold/underline indicates additions; strikethrough indicates deletion)

## **Certified Emission Reduction (CER) Option Contract**

### **872.01 Expiration of CER Option Contract**

A Certified Emission Reduction (CER) Option ("CER Option") contract on the Exchange shall expire at the close of trading three business days prior to the expiration of the underlying Certified Emission Reduction (CER) Futures ("CER Futures") contract. ~~The expiration date shall be announced prior to the listing of the option contract.~~

### **872.02 Trading Unit for CER Option Contracts**

A CER Options is a European-Style Option contract. A ~~Certified Emission Reduction (CER)~~ put or call Option contract traded on the Exchange represents an option to assume a short or long position in the underlying CER Futures contract traded on the Exchange.

### **872.03 Trading Months for CER Option Contracts**

Trading in CER Option contracts shall be conducted in the contract months as shall be determined by the Exchange Board of Directors. Trading shall commence on the day fixed by resolution of the Exchange Board of Directors.

### **872.04 Hours of Trading in CER Option Contracts**

The CER Option contract is available for open outcry trading on the Exchange trading floor between 9:00 a.m. and 2:30 p.m. (New York Prevailing time) Monday through Friday, except on Exchange Holidays.

The CER Option contract is available for clearing on CME ClearPort® clearing system from 6:00 p.m. Sunday through 5:15 p.m. Friday (New York Prevailing time), with a 45-minute break each day between 5:15 p.m. and 6:00 p.m., except on Exchange Holidays.

~~The hours of trading in CER option contracts on the Exchange shall be the same as the hours of trading for Crude Oil Options. All such trading shall take place on the trading floor of the Exchange within the hours prescribed by the Board of Directors.~~

### **872.05 Strike Prices for CER Option Contracts**

~~(A)~~ Trading shall be conducted for options with strike prices in increments as set forth below.

~~(AB)~~ On the first business day of trading in an option contract month, trading shall be at the following strike prices: (i) the previous day's settlement price for CER Futures contracts in the corresponding delivery month rounded off to the nearest fifty-cent increment strike price; (ii) the ten fifty-cent increment strike prices which are ten increments higher than the strike price described in (i) of this Rule 872.05~~(AB)~~; and (iii) the ten fifty-cent increment strike prices which are ten increments lower than the strike price described in (i) of this Rule 872.05~~(AB)~~.

~~(BC)~~ Thereafter, on any business day prior to the expiration of the option, new consecutive strike prices for both puts and calls will be added such that there will be ten increments above and below the at-the-money option.

~~(CD)~~ Notwithstanding the provisions of subsections (A) ~~through and (BC)~~ of this Rule, if the Board Exchange determines that trading in CER Options contracts will be facilitated thereby, the Board Exchange may, by resolution, change the increments between strike prices, the number of strike prices which shall be traded in the first day in any new option contract month, the number of new strike prices

which will be introduced on each business day or the period preceding the expiration of a CER Option contract in which no new strike prices may be introduced.

**872.06 Prices and Price Fluctuations**

Prices shall be quoted in Euros (€) and Euro cents (¢) per ~~CER metric ton~~. The minimum price fluctuation is € 0.01 (1 ¢) per ~~CER metric ton~~. A cabinet trade may occur at a price of €1.00 per a contract, however, if it results in the liquidation of positions for both parties to the trade.

**872.07 Absence of Price Fluctuation Limitations for ~~CER Option Contract~~**

Trading in CER Option contracts shall not be subject to price fluctuation limitations.