

October 16, 2013

VIA E-MAIL

Ms. Melissa Jurgens
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

**RE: CFTC Regulation 40.6(a)(6) Emergency Rule Certification. Notification of
Emergency Action (Declaration of Force Majeure) with Respect to New York
Mercantile Exchange, Inc. EIA Flat Tax On-Highway Diesel Futures and Related
Average Price Option and EIA Flat Tax Retail U.S. Gasoline Futures Contracts
Pursuant to NYMEX Rule 701
NYMEX Submission 13-496**

Dear Ms. Jurgens:

The U.S. federal government shutdown has resulted in the closure of the U.S. Department of Energy's Energy Information Administration ("EIA"), which publishes a weekly index for on-highway diesel and gasoline retail prices. The New York Mercantile Exchange, Inc. ("NYMEX" or the "Exchange") uses this information to calculate the final settlement for two (2) energy futures contracts: EIA Flat Tax On-Highway Diesel Futures (code A5) and EIA Flat Tax U.S. Retail Gasoline Futures (code JE) as well as for one (1) related option contract: EIA Flat Tax On-Highway Diesel Average Price Option (code DAP). For these products, the final settlement is based upon a monthly arithmetic average of weekly prices published by the EIA. For the October 2013 contract month, the EIA would have published the first of the index component numbers on October 7; as of today, no additional prices have been published.

The market has continued to request clarity from the Exchange on our methodology for calculating the final settlement during this time. At present, there is one alternative reporting service, Oil Price Information Service ("OPIS"), that provides the necessary information with similar methodology to the EIA methodology. The OPIS pricing alternative is an effective substitute with a correlation of 98% to the EIA assessments.

As of the filing of this submission, open interest in the October 2013 EIA Flat Tax On-Highway Diesel Futures and EIA Flat Tax Retail Gasoline Futures contracts are 700 and 28 contracts, respectively. There is no open interest in the Average Price Option contract.

Pursuant to its authority pursuant to NYMEX Rule 701 ("Declarations of Force Majeure"), the Exchange has determined to implement an interim alternative settlement method as follows:

**Interim Alternative Final Settlement Methodology for EIA On-Highway Diesel and Gasoline Futures
Contracts and Related Average Price Option Contract**

October 2013 Contract Months and Beyond:

- Effective starting on Monday, October 14, and continuing for each week during the U.S. federal government shutdown that the EIA does not publish the constituent numbers on their regularly scheduled release dates, NYMEX will utilize the weekly OPIS Retail Gasoline and Diesel Fuel Surcharge Index Report as the basis for the final settlement of the EIA Flat Tax On-Highway Diesel Futures (code A5) and EIA Flat Tax U.S. Retail Gasoline Futures contracts (code JE). The EIA Flat Tax On-Highway Diesel Futures and its related Average Price Option (code DAP) will utilize the retail price reference for the entire U.S. for Ultra-low Sulfur Diesel (On-Highway). The EIA Flat Tax U.S. Retail Gasoline Futures (code JE) will utilize the U.S. retail price reference for Regular Gasoline for both Conventional and Reformulated areas combined.
- NYMEX will resume using EIA pricing starting on the first Monday that the EIA officially resumes reporting its weekly retail pricing. NYMEX will utilize OPIS pricing as an interim replacement for EIA data for each week starting on October 14 and continuing until the first Monday that EIA resumes reporting its weekly price. NYMEX will not utilize any back-dated pricing from EIA for those weeks that it was shut down. To clarify, NYMEX will only use EIA data that is released on its regularly scheduled release date (i.e., each Monday of October 2013 and beyond) and any back-dated pricing released by EIA will not be used as a component of the index used to compute final settlement for the two products.

Notification to the marketplace of this determination is being made pursuant to the attached Special Executive Report S-6876 dated October 16, 2013, a copy of which is attached as Appendix A.

NYMEX has reviewed the designated contract market core principles (“Core Principles”) as set forth in the Commodity Exchange Act (“CEA”) and has identified that the declaration of Force Majeure may have some bearing on the following Core Principles:

- Emergency Authority: The declaration of Force Majeure by NYMEX is an emergency circumstance, and, as such, requires prompt notice to be provided to the Commission under both Commission Regulations and NYMEX Rule 701. The declaration of Force Majeure with respect to the above-referenced products was made pursuant to NYMEX Rule 701.
- Availability of General Information: NYMEX published SER S-6876 earlier today to provide notice to the marketplace of the declaration of Force Majeure. In addition to being emailed to all market participants subscribed to receive SERs via email, the SER has also been uploaded to the CME Group website.

NYMEX certifies that the declaration of Force Majeure and SER S-6786 complies with the CEA and regulations thereunder. There were no substantive opposing views expressed.

The Exchange certifies that this submission has been concurrently posted on the Exchange’s website at <http://www.cmegroup.com/market-regulation/rule-filings.html>.

If you have any further questions or comments, please do not hesitate to contact Dan Brusstar at Daniel.Brusstar@cmegroup.com or 212-299-2206, or me at Christopher.Bowen@cmegroup.com or at 212-299-2200.

Very truly yours,

/s/Christopher Bowen

Managing Director,
Chief Regulatory Counsel

Attachment: Appendix A - Special Executive Report S-6876 dated October 16, 2013

cc: Kathleen Cronin, CME
Thomas LaSala, CME
Vincent McGonagle, CFTC
David Van Wagner, CFTC



APPENDIX A

Special Executive Report

SER#: 6876

October 16, 2013

SUBJECT: Interim Alternative Final Settlement Methodology for NYMEX EIA On-Highway Diesel and Gasoline Futures and Related Average Price Option

As a result of the U.S. federal government shutdown, U.S. Department of Energy's Energy Information Administration (EIA) data, which is used to settle two NYMEX energy futures contracts and one option contract, is no longer available. During this time, NYMEX will utilize the weekly Oil Price Information Service (OPIS) Retail Gasoline and Diesel Fuel Surcharge Index Report as the basis for the final settlement of the EIA Flat Tax On-Highway Diesel Futures (code A5), its related EIA Flat Tax On-Highway Average Price Option (code DAP), and EIA Flat Tax U.S. Retail Gasoline Futures (code JE) contracts. These contracts are listed for trading on CME Globex and the NYMEX trading floor, and for submission for clearing on CME ClearPort.

Pursuant to NYMEX Rule 701 (Declarations of Force Majeure), NYMEX has determined to implement interim alternative final settlement procedures for these contracts as detailed below.

- Effective starting on Monday, October 14, 2013 and continuing for each week during the government shutdown, NYMEX will utilize the weekly Oil Price Information Service (OPIS) Retail Gasoline and Diesel Fuel Surcharge Index Report as the basis for the final settlement of the EIA Flat Tax On-Highway Diesel Futures (code A5), its related EIA Flat Tax On-Highway Average Price Option (code DAP), and EIA Flat Tax U.S. Retail Gasoline Futures (code JE) contracts.
- The EIA Flat Tax On-Highway Diesel Futures (code A5), and the related Average Price Option (code DAP), will be settled utilizing the OPIS retail price reference for the entire USA under the heading "ULS Diesel (On-Highway)". The EIA Flat Tax Retail Gasoline Futures (code JE), will be settled utilizing the OPIS retail price reference for the entire U.S. under the heading "Regular (Blended)" for both Conventional and Reformulated areas combined.
- NYMEX will resume using EIA pricing after the government resumes operation, starting on the first Monday that the EIA officially resumes reporting its weekly retail pricing. NYMEX will use OPIS pricing as an interim replacement for EIA data for each week starting on October 14 and continuing until the first Monday that EIA resumes reporting its weekly price. NYMEX will not utilize any back-dated pricing from EIA for those weeks that it did not publish weekly retail pricing during the U.S. federal government shutdown. To clarify, NYMEX will only use EIA data that is released on its regularly scheduled Monday release date (i.e., each Monday of October 2013 and beyond) and back-dated pricing released by EIA, if any, will not be used as a component of the index used to compute final settlement for these products.

Should you have any questions regarding this Special Executive Report, please contact: Dan Brusstar, Senior Director, Energy Research, 212-299-2604, Daniel.Brusstar@cmegroup.com

For media inquiries concerning this Special Executive Report, please contact CME Group Corporate Communications at 312-930-3434 or news@cmegroup.com