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OFFICE OF THE SECRETARIAT

**VIA E-MAIL**

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

**Re: Rule Certification. New York Mercantile Exchange, Inc. Submission #08.118: Notification of New NYMEX rules and COMEX Bylaw Amendments**

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 new NYMEX rules and Commodity Exchange, Inc. ("COMEX") Bylaw amendments to harmonize them with CME Group Bylaws and rules. As a note, pursuant to the COMEX Bylaws, modifications to Article 4, Section 402 (Powers of Committees), Subpart (F) were subject to: 1) COMEX Governor Committee approval; 2) notice to the COMEX Members; and 3) the right of COMEX Members to make a written demand for a special meeting within fifteen days of being provided such notice. No such meeting was requested.

Many of the changes eliminating a COMEX Bylaw are being made because the provisions are covered elsewhere in CME Group rules. Other changes eliminate discrepancies and harmonize the COMEX Bylaws with existing provisions in the CME Group Bylaws, particularly with reference to the functioning of the Board of Directors. A summary of the significant changes is set forth below. A copy of the changes is included as an attachment to this letter.

With regard to the COMEX Bylaws, Article 4, Section 402, Subpart (F) has required that subcommittees or panels of the Facilities, Membership, Business Conduct and Adjudication Committees be comprised of 70% COMEX Members and 30% NYMEX Members. This subsection is being amended to: 1) harmonize the names of the disciplinary committees with their CME/CBOT counterparts – the Probable Cause and Business Conduct Committees; 2) eliminate the Facilities Committee; and 3) require a simple majority rather than 70% of the members appointed to subcommittees or panels of the COMEX Membership, Business Conduct and Probable Cause committees to be COMEX Division Members.

As reflected in the attached NYMEX 402 and 406 rules, NYMEX and COMEX are adopting the same size requirements for panels of the Business Conduct and Probable Cause Committees currently required at CME/CBOT: a co-chairman, three members (including non-member representatives of Member Firms) and three non-members. The modification of the COMEX Bylaw requires that a majority of the Exchange Members appointed to a panel be COMEX Division Members, which will preserve COMEX Member participation in disciplinary matters involving COMEX Members but will allow for more flexibility in constituting the panels, including the appointment of Member Firm representatives who do not hold or own a membership.

**COMEX Division Membership Rights and Privileges**, Article 1, Section 157, Subpart (F) concerns the NYMEX IPO. This section is being eliminated as the IPO already took place.

**Petition Rights**, Article 2, Section 207 allows for any matter to be placed on the Board agenda upon receipt by the Secretary of a written request signed by 10% of COMEX Division Members; however the Board has no obligation to vote upon the matter contained in the request. This provision is being eliminated.

**Amendments of Bylaws**, Article 5, Section 500 has required a 2/3 vote of the Board to amend the Bylaws. The provision is unique to the COMEX Bylaws and is being eliminated. Subsequent Bylaw changes will require approval by a majority of a quorum of the Board.

**Clearing Department**, Article 6 is being eliminated as the generic provisions are covered in the rules.

**Disciplinary and Summary Proceedings**, Article 8 is being deleted in its entirety. The provisions concern a number of topics that are being incorporated into new NYMEX Chapters 4 and 9 and shortly thereafter into NYMEX Chapter 1. Elimination of the Article does not impact the core rights of COMEX members.

**Board**, Article 9, Section 903 is being amended to reference the Board or its designee(s) in order to eliminate inaccuracies in the Bylaws with respect to powers which the Board has delegated to some other body.

**Public or Independent Director**, Article 9, Section 942 has been amended to conform to the definition of Public Director in NYMEX Chapter 1.

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 and new rules comply with the Act, including regulations under the Act. These changes will be made effective on December 4, 2008.

Should you have any questions concerning the above, please contact Brian Regan at (212) 299-2207, or the undersigned at (202) 715-8517.

Sincerely,



De'Ana H. Dow  
Managing Director,  
Government Relations

Attachments:

cc: Ananda Radhakrishnan, Director, CFTC DCIO  
Richard Shilts, Director, CFTC DMO

**(strikethrough indicates deletions; underlining indicates additions.)**

**402. BUSINESS CONDUCT COMMITTEE**

**402.A. Jurisdiction and General Provisions**

The Business Conduct Committee ("BCC") shall have: 1) jurisdiction over Members with respect to matters relating to conduct, trading practices, sales practices, trading ethics and market manipulations or other actions that threaten the integrity of the market; 2) the authority, pursuant to Rule 402.C., to take emergency actions; 3) the authority, pursuant to Rule 402.D., to take actions against non-members; 4) the authority, pursuant to Rule 413.B., to conduct hearings on denials of access pursuant to Rule 413.A., and 5) the authority to conduct hearings on all matters over which it has jurisdiction.

The BCC shall act through a Panel composed of a chairman, three Exchange members or employees of member firms and three non-members. Of the Exchange members appointed to a Panel, a majority must be from the contract market where the case originated. A quorum of a Panel shall consist of a majority of the panel, but must include at least the chairman, two members or employees of member firms and two non-members.

Any Panel that conducts a hearing or proceeding shall consist of panelists who possess sufficiently diverse interests so as to ensure fairness.

No person shall serve on the BCC unless he has agreed in writing that he will not publish, divulge, or make known in any manner, any facts or information regarding the business of any person or any other information which may come to his attention in his official capacity as a member of the BCC, except when reporting to the Board or to a committee concerned with such information or to the Legal Department or Compliance~~Market Regulation~~ Department, when requested by the CFTC or other governmental agency or when compelled to testify in any judicial or administrative proceeding.

All information, records, materials and documents provided to the BCC and all deliberations, testimony, information, records, materials and documents related thereto shall be treated as non-public and confidential and shall not be disclosed, except as necessary to further an Exchange investigation or as required by law.

**402.B. Hearings**

Hearings by the BCC shall be before a Panel, and shall be conducted by a chairman of the BCC in accordance with the provisions of Rule 408.

If a Member is found guilty, by a majority vote, the Panel may do one or more of the following:

1. Order the Member to cease and desist from the conduct found to be in violation of these rules, the rules of any other exchange owned or controlled by CME Group, or the Commodity Exchange Act;
2. Order the Clearing Member or other Member to liquidate such portion of the open contracts in the Clearing Member's or other Member's proprietary or customers' accounts, or both, as the Panel deems appropriate to ensure the integrity of Exchange contracts or to ensure an orderly and liquid market;
3. Order the Clearing Member or its customer to deposit such additional performance bonds with the Clearing House as the Panel deems appropriate to protect the integrity of open contracts;
4. Prescribe such additional capital or other financial requirements as it deems appropriate;
5. Restrict the privilege of being affiliated with, employed by or having an interest in, a broker association or guaranteed introducing broker and/or suspend the trading floor access and/or the right to associate with a Member;
6. Restrict the Member's access to the Globex platform or any other trading or clearing platform owned or controlled by CME Group or to supervise the entry of any orders into such platforms by others;
7. Restrict the Member's access to any trading floor owned or controlled by CME Group;
8. Restrict the Member's ability to trade or enter orders in any or all products of any exchange owned or controlled by CME Group;
9. Suspend any or all of the privileges of membership;
10. Expel the member;
11. Impose a fine upon the Member not to exceed \$1,000,000 per violation plus the amount of any benefit received as a result of the violation;

12. Issue a reprimand;
13. Prescribe limitations on positions of the Member as may be appropriate;
14. Impose advertising restrictions upon the Member pursuant to these rules; and/or
15. Direct the Member to make restitution, in such amount as is warranted by the evidence, to the account of any party damaged by the conduct, or to the Clearing Member who has previously made restitution to the account of such party.

The Panel may also find that the evidence warrants an adjustment to the account of a party where a Member, though not in violation of an Exchange rule, has not fulfilled his or its responsibility for proper execution of such party's order.

When determining whether to impose any of the sanctions listed above, the Panel may consider any factors determined by the Panel to be relevant in the context of a particular case, including any of the factors described in the "Sanctioning Guidance to Self-Regulatory Organizations" in the CFTC Policy Statement Relating to the Commission's Authority to Impose Civil Money Penalties and Futures Self-Regulatory Organizations' Authority to Impose Sanctions: Penalty Guidelines (1994).

If the Panel shall decide by a majority vote that the matter might warrant a penalty in excess of its own authority, the chairman of the Panel shall refer the matter to the Board for further hearings and decision.

#### **402.C. Emergency Actions**

1. The BCC is authorized to determine whether an emergency exists and whether emergency action is warranted. The following events and/or conditions may constitute emergencies:
  - a. Any actual, attempted, or threatened market manipulation;
  - b. Any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions;
  - c. Any action taken by the United States or any foreign government or any state or local government body, any other contract market, board of trade, or any other exchange or trade association (foreign or domestic), which may have a direct impact on trading on the Exchange;
  - d. The actual or threatened bankruptcy or insolvency of any Member or the imposition of any injunction or other restraint by any government agency, self regulatory organization, court or arbitrator upon a Member which may affect the ability of that Member to perform on its contracts;
  - e. Any circumstance in which it appears that a Member or any other person or entity has failed to perform contracts or is in such financial or operational condition or is conducting business in such a manner that such person or entity cannot be permitted to continue in business without jeopardizing the safety of customer funds, Members, or the Exchange; and/or
  - f. Any other circumstance which may have a severe, adverse effect upon the functioning of the Exchange.
2. In the event that the BCC determines, in the good faith exercise of its sole discretion, that an emergency exists, it may take any of the following emergency actions or any other action that may be appropriate to respond to the emergency:
  - a. Terminate trading;
  - b. Limit trading to liquidation of contracts only;
  - c. Impose or modify position limits and/or order liquidation of all or a portion of a Member's proprietary and/or customers' accounts;
  - d. Order liquidation of positions as to which the holder is unable or unwilling to make or take delivery;
  - e. Confine trading to a specific price range;
  - f. Modify price limits;
  - g. Modify the trading days or hours;
  - h. Modify conditions of delivery;
  - i. Establish the settlement price at which contracts are to be liquidated; and/or
  - j. Require additional performance bond to be deposited with the Clearing House.

All actions taken pursuant to this subsection shall be by a majority vote of the Panel members present. A Member directly affected by the action taken shall be notified in writing of such action. As soon as practicable, the Board and the CFTC shall be notified of the emergency action in accordance with CFTC regulations. Nothing in this section shall in any way limit the authority of the Board, other committees, or other appropriate officials to act in an emergency situation as defined by these rules.

#### 402.D. Actions against Non-Members

If the BCC or ComplianceMarket-Regulation Department has reason to believe or suspect that any non-member is conducting trading activities in violation of the Commodity Exchange Act or Exchange rules or in a manner that threatens the integrity or liquidity of any contract, the committee or ComplianceMarket-Regulation Department may request such non-member and require any Members to appear, produce documents and testify at a ComplianceMarket-Regulation Department interview or investigation, or hearing to be conducted by the BCC.

If, after the hearing, the BCC determines that the actions of such non-member threaten the integrity or liquidity of any contract or threaten to violate or violate the Commodity Exchange Act or Exchange rules, the BCC may:

1. Order any Clearing Member to liquidate all or any portion of such non-member's position;
2. Order that no Clearing Member accept new positions on behalf of any such non-member;
3. Deny, limit or terminate access of such non-member to the Globex platform or any other trading or clearing platform owned or controlled by CME Group; and/or
4. Order such action as is necessary to prevent a threat to the contract or violation of the Commodity Exchange Act or Exchange rules.

#### 406. PROBABLE CAUSE COMMITTEE

The Probable Cause Committee ("PCC") shall receive and review investigation reports from the ComplianceMarket-Regulation Department. The PCC shall act through a Panel comprised of a chairman, three Exchange members or employees of member firms and three non-members. Of the Exchange members appointed to a Panel, a majority must be from the contract market where the case originated. A quorum of a Panel shall consist of a majority of the Panel, but must include at least the chairman, two members or employees of member firms and two non-members. The ComplianceMarket-Regulation Department is not required to provide notice of its intent to appear before the PCC to request charges.

Each Panel shall consist of panelists who possess sufficiently diverse interests so as to ensure fairness.

The PCC shall have the power to compel any Member to appear before it and to produce all books and records relevant to the subject matter under investigation. No Member or subject of an investigation shall have the right to appear before the PCC or make any written submission on his behalf.

A Panel shall endeavor to review an investigation report prepared by the ComplianceMarket-Regulation Department within 30 days of receipt of a report the Panel deems to be complete. The Panel shall, by majority vote, take one of the following actions: If the Panel determines that disciplinary action is unwarranted it shall direct that no further action be taken or that a warning letter be issued. If the Panel determines that a reasonable basis exists for finding that a violation of an Exchange rule may have occurred which may warrant disciplinary action, it shall issue appropriate charges. The Panel shall direct the ComplianceMarket-Regulation Department to give notice of the charges to the respondent in accordance with Rule 407.B. and to the appropriate BCC Panel chairman.

The ComplianceMarket-Regulation Department may appeal to the Board any refusal by a Panel to issue those charges requested by the ComplianceMarket-Regulation Department. If such an appeal is requested, the Board shall conduct a hearing on the matter in accordance with the procedures in Rule 411.

No person shall serve on the PCC unless he has agreed in writing that he will not publish, divulge or make known in any manner, any facts or information regarding the business of any person or entity or any other information which may come to his attention in his official capacity as a member of the PCC, except when reporting to the Board or to a committee concerned with such information or to the Legal Department or ComplianceMarket-Regulation Department, when requested by the CFTC or other governmental agency or when compelled to testify in any judicial or administrative proceeding.

All information, records, materials and documents provided to the PCC and all deliberations, testimony, information, records, materials and documents related thereto shall be treated as non-public and confidential and shall not be disclosed, except as necessary to further an Exchange investigation or as required by law.

This document identifies only those COMEX Bylaw provisions for which staff is recommending revisions. It does not include the entirety of the COMEX Bylaws.

**(~~strikethrough~~ indicates deletions; underlining indicates additions.)**

**Section 101. ~~ELIGIBILITY CRITERIA AND PROCEDURES~~RESERVED**

~~(A) Subject to the terms of Section 158(C)(2), the Board may adopt, from time to time, Rules relating to criteria for eligibility for membership and procedures for becoming a member and any requirements or procedures for the acquisition or transfer of a membership as it may determine.~~

~~(B) Subject to the terms of Section 158(C)(3)(b), the Board may adopt, from time to time, Rules relating to eligibility and application procedures for Floor Members as it shall determine.~~

**Section 102. ~~FINANCIAL STANDARDS~~RESERVED**

~~(A) The Board may adopt, from time to time, Rules relating to financial standards applicable to Members and Member Firms as a condition to becoming a Member and continuing as a Member. Subject to the terms of Section 158(C)(2), such financial standards may differ among different categories of membership as determined by the Board in its discretion.~~

~~(B) Any Member who is registered with the Commission shall comply with such rules and regulations as the Commission adopts relating to financial requirements.~~

**Section 106. ~~FAILURE TO PAY DUES, ASSESSMENTS AND FEES~~RESERVED**

~~(A) If a Member fails to pay any dues, assessments or fees when due and such failure is not cured within thirty (30) days after written notice to the Member by the COMEX Division that such dues, assessments or fees are due, such Member shall be suspended automatically from all rights and privileges of membership. Such suspension shall continue in effect until the failure is cured. The Executive Committee, upon written application received prior to the expiration of such period, may extend the thirty (30) day period, in its sole discretion.~~

~~(B) If a Member who is suspended under subsection (A) of this Rule fails to pay any dues, assessments or fees within thirty (30) days of the suspension, the Member shall be expelled from membership. The Board or the Executive Committee, upon written application received prior to the expiration of such thirty (30) day period and for good cause, may extend the thirty (30) day period.~~

~~(C) Any Member who fails to pay any dues, assessments or fees after written notice to the Member that such dues, assessments or fees are payable, shall pay a penalty, in addition to the sanctions imposed by this Section 106, as fixed from time to time by the Board but not less than twenty percent (20%) of the amount due.~~

**Section 108. ~~EFFECT OF SUSPENSION OR EXPULSION OF MEMBERSHIP~~RESERVED**

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

~~(1) subject to the By Laws and Rules of the Exchange;~~

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

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

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

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

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

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

### **Section 109. TRANSFER OF MEMBERSHIP RESERVED**

(A) ~~Membership in the Exchange is only transferable pursuant to the terms and conditions established by the By-Laws and the Rules.~~

(B) ~~A Member who is the subject of any disciplinary proceeding or investigation by the Exchange may transfer a membership pursuant to the terms and conditions established by the By-Laws and Rules.~~

(C) ~~Transfer restrictions on COMEX Division Memberships shall be subject to the provisions of Section 158 (C).~~

### **Section 110. DISCLOSURE OF INFORMATION RESERVED**

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

(1) ~~to any committee, officer, director, employee or agent of the Exchange authorized to receive such information within the scope of its or such person's duties;~~

(2) ~~to any duly authorized representative of the Commission or other regulatory agency with jurisdiction over the Exchange requesting such information or to any duly authorized representative of any other regulatory or self-regulatory organization with which the Exchange, as approved by the Board, has entered into an information-sharing agreement;~~

(3) ~~as required by law;~~

(4) ~~when the Member or Member Firm requests or consents to such disclosure; or~~

(5) ~~that the Exchange may release such information in connection with any litigation involving the Exchange when, in the opinion of the Exchange, the information is relevant or the release of the information is necessary and appropriate to the conduct of such litigation.~~

## **Section 157. COMEX DIVISION MEMBERSHIP RIGHTS AND PRIVILEGES**

[Subsections (A) – (E) are unchanged.]

(F) ~~COMEX Division Members will have the right to receive an amount equal to \$10 million (to be distributed among the holders of COMEX Division memberships pro rata, based on the number of memberships owned of record by each of them on the effective date of the registration statement referred to below) upon the receipt by NYMEX of the net proceeds of a NYMEX IPO (as hereinafter defined); provided, however, that NYMEX shall deposit \$500,000 into an account which shall be used to pay for the costs and expenses associated with protecting the interests of the COMEX Members. These amounts shall be disbursed at the written direction of the Governors Committee and shall be used to pay for the costs and expenses associated with protecting the interest of the COMEX Division Members. Any amounts deposited pursuant to this Section 157(F) shall be the property of the COMEX Division Members as they may be from time to time. "NYMEX IPO" means a public offering for cash of equity securities pursuant to a registration statement filed under the Securities Act of 1933 by NYMEX, any holding company which holds a controlling interest in NYMEX, or any entity which owns or operates all or substantially all of the business or assets which are owned by NYMEX immediately following August 3, 1994.~~Reserved.

[The remainder of the Section is unchanged.]

## **Section 158. ADDITIONAL COMEX DIVISION MEMBER RIGHTS**

[Subsections (A) and (B) are unchanged.]

(C) Membership Privileges

[Subsection (C)(1) is unchanged.]

(2) NYMEX may make changes to capital or eligibility requirements for becoming and maintaining Member or non-Clearing Member Firm status; provided that any such changes that are material must be reasonably related to then-current market conditions and commonly accepted industry practices. Notwithstanding anything in this paragraph or in these By-Laws ~~(including, without limitation, Section 604)~~ all clearing members for COMEX Division contracts shall be required to own at least two COMEX trading rights as a condition for such clearing membership.

[The remainder of the Section is unchanged.]

## **Section 207. PETITION RIGHTSRESERVED**

~~Any matter shall be placed on the agenda for a regular meeting of the Board (or, at the option of the Board, on the agenda of a special meeting of the Board to be called prior to the date of the next regular meeting of the Board) upon receipt by the Secretary of a written request to so include such matter signed by 10% of COMEX Division Members. Any such written request shall specify the purpose of such request and shall be submitted to the Secretary not less than 10 or more than 50 days before the date of such Board meeting. Notwithstanding the foregoing, the Board shall have no obligation to vote upon the matter or matters contained in such written request.~~

## **Section 301. POWERS OF THE BOARD**

[Subsection (A) is unchanged.]



(B) Without limiting the generality of the foregoing and subject to paragraph (D) of this Section, the Board shall have the following powers:

[Subsection (B)(1) is unchanged.]

(2) the Board may fix, from time to time, the fees or other compensation to Directors and to Members of any committee of the Board for services rendered in performing these duties as such, including compensation for ~~Public or Independent~~ Directors which may differ from the compensation for other Directors;

[The remainder of the Section is unchanged.]

### Section 302. CHAIRMAN OF THE BOARD OF DIRECTORS

[Subsection (A) is unchanged.]

(B) ~~Reserved~~The Chairman shall be an *ex-officio* member of all Committees.

[The remainder of the Section is unchanged.]

### Section 303. VICE CHAIRMAN OF THE BOARD OF DIRECTORS

[Subsection (A) is unchanged.]

(B) If the Chairman is absent or unable or unwilling to perform his duties, the Vice Chairman shall exercise and shall perform the duties of the Chairman. If both the Chairman and the Vice Chairman are absent, ~~or unable~~ or unwilling to perform the duties of Chairman, the Chief Executive Officer~~President~~ shall exercise and perform the duties of the Chairman. If the Chairman, Vice Chairman and Chief Executive Officer~~President~~ are all absent, ~~or unable~~ or unwilling to perform the duties of Chairman, a quorum of the Board, by majority vote, may choose an acting chairman from the remaining Directors.

### Section 307. RESIGNATION AND REMOVAL OF DIRECTORS

(A) Any Director may resign at any time by giving~~tendering~~ written notice of his resignation to the Chairman of the Board, if any, the Chief Executive Officer or the Secretary~~Board~~. Unless otherwise stated in a notice of resignation, it shall take effect when received by the officer to whom it is directed, without any need for its acceptance. Any resignation unless conditioned on acceptance, will be effective on the date stated in the notice or, if no date is stated, on the date tendered. Further, a resignation from the board of directors of NYMEX shall be deemed a simultaneous resignation from the Board. NYMEX shall take such action, including, without limitation, removing a Director, as required to ensure that the members of the Board are identical to the members of the board of NYMEX.

### Section 308. FILLING OF VACANCIES

(A) ~~—~~In the event there is a vacancy among the Directors caused by the death, removal or resignation of a Director, such vacancy may be filled by a majority of the Board of Directors then in office and any Director elected to fill such vacancy shall have the same remaining term as that of his or her predecessor~~shall be filled by a vote of NYMEX.~~

(B) ~~—~~A Director, other than the Chairman or Vice Chairman, appointed to fill a vacancy under this Section 308 shall hold office until the next annual meeting of members and until his successor is elected or appointed and qualified. ~~Such successor, and any person elected to fill an unfilled vacancy or~~

to replace a resigning Director shall be elected for a term of such length as would have remained in the term of the Director whose death, removal or resignation caused the vacancy. If no time would have remained in such term, such successor shall be elected for a full term.

### **Section 309. MEETINGS OF THE BOARD**

(A) ~~Regular meetings of the Board shall be held at such times as the Board deems appropriate. Regular meetings of the Board may be held without call or notice at such times and at such places, within or without the State of Delaware, as shall be fixed by resolution of the Board of Directors as may from time to time be determined by the Board. Special meetings of the Board may be called by the Chairman of the Board, if there be one, the President the Chief Executive Officer, or by a majority of the Board of Directors then in office and may be held at any time, date or place, within or without the State of Delaware, as the person or persons calling the meeting shall fix. Notice thereof stating of the time and the place of special meetings shall be delivered personally or by telephone to each Director or sent by first-class mail or telegram, charges prepaid, addressed to each Director at that Director's address as it is shown on the records of the Corporation. If the notice is mailed, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. If the notice is delivered personally or by telephone or telegram, it shall be delivered personally or by telephone or to the telegraph company at least 48 hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the Director or to a person at the office of the Director who the person giving the notice has reason to believe will promptly communicate it to the Director. The notice need not specify the purpose or the place of the meeting, if the meeting is to be held at the principal executive office of the Corporation, date and hour of the meeting shall be given to each Director either by mail not less than forty eight (48) hours before the date of the meeting, by telephone, telegram or electronic means on twenty four (24) hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.~~

[The remainder of the Section is unchanged.]

### **Section 401. EXECUTIVE COMMITTEE GENERAL PROVISIONS**

(A) ~~The Board shall appoint an Executive Committee which shall consist of those persons who serve as members of the executive committee of NYMEX.~~

(B) ~~The Executive Committee shall have and may exercise the authority of the Board. The Executive Committee shall have the power to perform other duties as are specified by the Board or as are provided in the By-Laws and Rules.~~

(C) ~~Any action taken by the Executive Committee shall be submitted to the Board at its next meeting for ratification. Except to the extent that the rights of third parties acquired by such action may be impaired, the Board may amend or rescind any such action.~~

(A) General. To the fullest extent permitted by law, the Board of Directors shall have the power to appoint, and to delegate authority to, such committees of the Board of Directors as it determines to be appropriate from time to time.

(B) Additional and Standing Committees. In addition to such committees as may be authorized by the Board of Directors from time to time, the Corporation shall have such additional and standing committees, which shall be composed of such persons having such powers and duties, as provided in the Rules. Any person may be disqualified from serving on or participating in the affairs of any committee to the extent provided in the Rules.

## Section 402. POWERS OF COMMITTEES

(A) — A Standing Committee shall have the authority of the Board to the extent provided in the By-Laws, Rules, or any resolutions of the Board and subject to applicable provisions of law.

(B) — A Special Committee shall have only the powers specifically delegated to it by the Board and shall not have any powers which a Standing Committee may not exercise under applicable provisions of law.

(C) — A Regular Committee shall have such powers as may be delegated to it in the By-Laws or Rules or by the Board; *provided, however,* that such powers shall in no case exceed the powers that the Board may delegate lawfully to an officer of COMEX Division.

[Subsections (D) and (E) are unchanged.]

(F) So long as open outcry trading continues to exist in the COMEX Division, a majority of the Exchange members appointed to subcommittees or panels of the Facilities Committee, Membership, Business Conduct and Probable Cause Adjudication Committees relating to COMEX Division facilities, membership processes or disciplinary action regarding COMEX Division Members shall be comprised of at least 70% of COMEX Division Members. The Facilities Committee subcommittee relating to the COMEX Division will be responsible for initiating any changes to COMEX Division facilities; *provided, however,* that such changes will be submitted to NYMEX for its approval. This provision is subject to amendment to comply with any regulatory requirements imposed by the CFTC. If public participation is increased by NYMEX with respect to NYMEX subcommittees or panels, then public participation with respect to COMEX subcommittees or panels may be increased to the same extent.

## Section 403. COMPOSITION OF COMMITTEES RESERVED

(A) — A Standing Committee shall consist of at least three (3) members, all of whom shall be Directors. The Board, by resolution adopted by a majority of the entire Board, may designate Standing Committees from the Directors.

(B) — A Special Committee shall consist of as many members of the Board as the Chairman, with the consent of the Board, shall appoint. All members of a Special Committee shall be Directors.

(C) — A Regular Committee shall be composed of such persons as the Chairman of the Board with the consent of the Board shall appoint; or, as the members may elect as provided in the By-Laws or Rules.

(D) — Except as otherwise provided in the By-Laws or Rules, the Chairman of the Board shall appoint a Chairman of each committee and may appoint such vice chairman of any committee as he deems desirable.

## Section 404. TERM OF COMMITTEES RESERVED

Unless otherwise specifically provided in the By-Laws or Rules, members of any committee shall hold office until the first meeting of the Board following the annual meeting of members and until their successors are appointed.

**Section 405. REMOVAL, RESIGNATION AND VACANCIES RESERVED**

~~(A) — Unless elected by the members and except as otherwise provided in these By-Laws, members of Committees hold office subject to the discretion of the Board; a member of a Committee elected or appointed by the Board may be removed with or without cause.~~

~~(B) — A member of a Committee or of any subcommittee may resign at any time by tendering written notice of his resignation to the Chairman. Unless contingent upon acceptance, such resignation will be effective on the date specified, or if no date is specified, on the date tendered. A member of a Standing Committee or Special Committee shall cease to be a committee member upon the termination of his membership on the Board.~~

~~(C) — The Chairman of the Board may remove with the consent of the Board, with or without cause, any chairman of a committee, vice chairman of a committee or any member of a committee whom he has appointed.~~

~~(D) — In the event there is a vacancy on a Standing Committee, the Board may fill such vacancy. In the event there is a vacancy on a Special Committee or a Regular Committee, the Chairman, with the consent of the Board, may fill such vacancy.~~

**Section 406. MEETINGS OF COMMITTEES RESERVED**

~~(A) — Unless otherwise specifically provided in the Rules or these By-Laws, regular meetings of committees and subcommittees shall be held on such date and at such time as the committee or subcommittee shall determine.~~

~~(B) — The chairman of any committee or any subcommittee shall have the authority to call a special meeting of such committee or subcommittee to be held on such date and at such time as the chairman of such committee shall determine.~~

~~(C) — Notice of all meetings of committees and subcommittees may be in writing, by telephone, or by other means of communication. Such notice shall be made not less than one hour before such meeting.~~

~~(D) — Any action required or permitted to be taken by a committee or subcommittee may be taken without a meeting if all the members of the committee or subcommittee consent in writing to the adoption of a resolution authorizing such action.~~

~~(E) — Any one or more members of a committee or subcommittee may participate in a meeting by means of a conference telephone or similar communications device allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.~~

**Section 407. QUORUM; VOTE RESERVED**

~~(A) — Unless otherwise specifically provided in the By-Laws or Rules, one-third (1/3) of the members of a committee or any subcommittee shall constitute a quorum for the transaction of business.~~

~~(B) — Unless otherwise specifically provided in the By-Laws or Rules, any action taken by a majority of members of a committee or subcommittee present at a meeting at which a quorum is present shall be a valid action of the committee or subcommittee.~~

**Section 408. SUBCOMMITTEES AUTHORIZED RESERVED**

~~A committee may designate, at any time, from its members, a subcommittee, or subcommittees, as it may deem necessary or appropriate. Each subcommittee shall have all of the authority of the committee to the extent provided in such designation, in the By-Laws or in the Rules subject to any applicable provision of law.~~

**Section 409. ALTERNATES RESERVED**

~~(A) The Board may designate one or more Directors as alternate members of any Standing Committee.~~

~~(B) The Chairman may designate one or more Directors as alternate members of any Special Committee.~~

~~(C) The Chairman of the Board, or, if the committee is elected by the Members, the Members, may designate one or more persons as alternate members of a Regular Committee.~~

~~(D) Any alternate or alternate committee member appointed or elected pursuant to this Section 409 may replace one or more absent members of any such committee.~~

**Section 500. AMENDMENT OF BY-LAWS**

~~(A) Subject to Section 205 and paragraph (B) of this Section 500, any By-Law may be adopted, amended or deleted by the Board by a vote of two-thirds of the entire Board. The proposed By-Laws, amendment, or deletion shall be adopted by the affirmative vote of the NYMEX Member. Notice of the proposed By-Law, amendment or deletion must be given in accordance with Section 203 and shall specifically set forth the entire By-Law, amendment, or deletion proposed.~~

[The remainder of this Section is unchanged.]

**ARTICLE 6  
CLEARING DEPARTMENT RESERVED**

**~~Section 600. PURPOSE~~**

~~All contracts made in accordance with the By-Laws of the COMEX Division shall be cleared through the Clearing Department or another clearing facility designated by the Board.~~

**~~Section 601. QUALIFICATIONS~~**

~~The Clearing Department or a facility designated by the Board shall prescribe the qualifications of its own members. No person shall be eligible to clear COMEX Division contracts who is not a Member or Member Firm.~~

**~~Section 602. PRINCIPLE OF SUBSTITUTION~~**

~~When a contract is cleared through the Clearing Department, the Clearing Department shall be deemed substituted as Seller to the Buyer, and as Buyer to the Seller, and thereupon shall have all the rights and be subject to all the liabilities of the Buyer and Seller with respect to such contract.~~

**ARTICLE 8**  
**DISCIPLINARY AND SUMMARY PROCEEDINGS [RESERVED]**

**Section 800. MEMBERS SUBJECT TO DISCIPLINARY PROCEEDINGS**

(A) ~~The Exchange may impose fines, penalties and other sanctions on Members, Member Firms and employees of Members and Member Firms that violate the By Laws or Rules of the COMEX Division or any resolution or order of the Board or Committee of the COMEX Division.~~

(B) ~~In this Article 8 of the By Laws and in the Rules relating to Disciplinary Proceedings, the term "Rule" means the By Laws or rules of the Exchange or any resolution or order of the Board or Committee of the Exchange.~~

(C) ~~A Member is responsible for the acts of his employees and any Member Firm upon which the Member has conferred privileges. A Member Firm is responsible for the acts of its partners, its directors, its officers and its employees.~~

**Section 801. DISCIPLINARY PROCEEDINGS**

~~The Board shall adopt rules establishing procedures whereby Members, Member Firms and employees of Members and Member Firms may be subjected to fines, penalties and other sanctions for violations by the By Laws and Rules.~~

**Section 802. FAILURE TO PAY FINE**

(A) ~~If a Member or Member Firm defaults in the payment of any fine on the date due and such default remains uncured for 30 days after notice of such default is given, such Member or Member Firm shall be suspended automatically without further action of the COMEX Division, and shall remain suspended until such fine is paid in full and the Member or Member Firm is reinstated as provided in Section 862.~~

(B) ~~If such Member or Member Firm is suspended as provided in By Law 802(A) and continues in default of the payment of any fine for a period of forty-five (45) days, the Member or Member Firm shall be expelled automatically, unless the Board in its sole discretion determines otherwise, and without further notice by the COMEX Division and the membership of such Member or by which such Member Firm is conferred privileges shall be sold and the proceeds for such sale paid and applied as provided in Section 861.~~

(C) ~~If an employee of a Member or of a Member Firm defaults in the payment of any fine, the Member or Member Firm shall be responsible for its full and complete payment. A failure of the Member or Member Firm to pay such a fine shall result in the suspension or expulsion of such Member or Member Firm as set forth in this Section 802.~~

**Sections 803-849. [RESERVED]**

**Section 850. DEFINITIONS**

~~As used in Sections 850 through 863, the following terms have the meanings set forth in this Section 850:~~

~~(A) the term "Claimant" means a person who has filed a Notice of Claim;~~

~~(B) the term "Notice of Claim" means a notice of claim against the proceeds of a sale of a membership;~~

~~(C) the term "Reportable Emergency Event" shall mean, with respect to any Member:~~

~~(1) the filing of a petition, answer or other document, or the taking of any other action, by such Member with respect to itself or against such Member, seeking: liquidation, reorganization or other relief from creditors under the provisions of the Bankruptcy Code of the United States (11 U.S.C. Section 101 *et seq.*), as it may be amended, or under the provisions of any other state or federal law for the relief of insolvent debtors;~~

~~(2) the dissolution of such Member;~~

~~(3) the insolvency (as defined by any applicable state or federal statute) of such Member;~~

~~(4) the failure of such Member to meet any applicable financial requirements of the COMEX Division, any self-regulatory organization or any state or federal regulatory agency;~~

~~(5) the failure of such Member to meet, when due, any margin call issued by the Clearing Department or any other clearing organization designated by the Exchange, any clearing organization of any other exchange, or any person;~~

~~(6) the failure or inability of such Member to comply with any of his contracts or the default by such Member under any commodity contracts on the Exchange; or~~

~~(7) the imposition or service of any lien, attachment, execution or other levy or any injunction or other restraint against such Member or Member Firm or their assets by any court, government agency, arbitrator or judgment creditor which injunction or restraint may affect the ability of such Member to perform his contracts or otherwise to engage in business.~~

~~(D) the term "Financial Emergency" means, with respect to any Member, any situation in which, in the sole discretion of the Executive Committee, the financial condition of such Member is not adequate for such Member to meet his financial obligations or otherwise to engage in business; or, is such that it would not be in the best interests of the Exchange for such Member to continue in business; and~~

~~(E) the term "Member" includes, as applicable, Members, and Member Firms and employees of Members and of Member Firms.~~

#### **Section 851. DUTY TO REPORT EMERGENCY EVENT**

~~If a Reportable Emergency Event occurs with respect to any Member, such Member shall advise the Exchange of the occurrence of the Reportable Emergency Event by the fastest available means of communication and shall also immediately deliver to the Exchange by the fastest available means, a written notice. Such notice shall specify:~~

~~(1) the nature of the Reportable Emergency Event;~~

~~(2) the date and time of occurrence;~~

~~(3) — whether such Member consents to a summary suspension pursuant to this Article 8 and, if so, whether such Member waives a hearing with respect thereto; and,~~

~~(4) — whether such Member consents to a suspension which includes a prohibition against employment by another Member as a floor employee.~~

#### ~~Section 852. SUMMARY SUSPENSION; ACTION BY THE PRESIDENT~~

~~If a Member consents to a summary suspension as provided in Section 851, either orally or in writing, the President shall immediately suspend such Member in accordance with the terms of the consent and notify the Membership of such suspension.~~

#### ~~Section 853. SUMMARY SUSPENSION; ACTION OF THE EXECUTIVE COMMITTEE~~

~~(A) — If at any time the Executive Committee of the Board of Directors determines, in its sole discretion, that there is a substantial question whether a Financial Emergency exists with respect to any Member, or, if at any time, the COMEX Division receives a notice of a Reportable Emergency Event from a Member, the Executive Committee may suspend, or take any other action against, such Member, any Member upon which such Member has conferred member privileges, any Member guaranteed by such Member, or any Member guaranteeing such Member, as it deems appropriate to protect the COMEX Division and its Members. The Executive Committee of the Board of Directors may take such action regardless of whether the Member has advised the COMEX Division as provided in Section 851, whether such Member has consented to a suspension, or whether such Member has waived a hearing.~~

~~(B) — Any action taken under the authority of this Section 853 may be taken without notice or a hearing where the Member waives notice or hearing, or when the Executive Committee or the Board of Directors determines, in its sole discretion, that the furnishing of notice, and an opportunity for a hearing before such action is taken or both is not practicable under the circumstances.~~

~~(C) — In any case where the Executive Committee of the Board of Directors has taken action against a Member without prior notice or hearing because of impracticability, the COMEX Division shall give promptly to such Member the notice required by Section 854(B) and an opportunity to be heard.~~

~~(D) — The powers and duties of the Executive Committee of the Board of Directors under this Article 8, including the obligation to hold a hearing, if requested, may be delegated to a subcommittee of any two or more members of the Executive Committee of the Board of Directors or to any other committee of the Exchange as the Chairman of the Board of Directors may decide in his sole discretion.~~

#### ~~Section 854. NOTICE~~

~~(A) — Any notice to a Member given before action is taken under Section 853 shall state: (1) the Financial Emergency or other situation which is believed to cause the need for summary action by the Executive Committee of the Board of Directors; and, (2) the date, time and place of the hearing.~~

~~(B) — Any notice to a Member given after action is taken under Section 853 shall state: (1) the action taken; (2) a brief summary of the reason for the action; (3) the effective time, date and duration of the action; and, (4) that upon written request by a date certain, a hearing will be held.~~



### **Section 855. HEARING DECISION**

~~(A) The Executive Committee of the Board of Directors, or other committee, as provided in Section 853(D), shall render a decision as provided in this By-Law. The decision shall be final and may not be appealed.~~

~~(B) A hearing, if requested, shall be fair and shall be conducted in accordance with procedures adopted by such committee for any hearing before it; but, during such hearing,~~

~~(1) the formal rules of evidence shall not apply;~~

~~(2) the Compliance Department shall present the case or the charges and penalties which are the subject of the hearing;~~

~~(3) the Member shall be permitted to appear personally and shall have the right to be represented by counsel or other person of his choice;~~

~~(4) the Member and the Compliance Department shall be entitled to cross-examine any persons appearing as witnesses at the hearing;~~

~~(5) the Member may call witnesses and present such evidence as may be relevant to the charges;~~

~~(6) the committee shall be the sole judge of the relevancy of such evidence;~~

~~(7) the Exchange shall require persons who are within its jurisdiction and who are called as witnesses to appear and produce evidence or testify and shall make reasonable efforts to secure the presence of all other persons called as witnesses whose testimony would be relevant; and,~~

~~(8) the committee may impose a summary penalty upon any person whose actions impede the progress of the hearing.~~

~~(C) Promptly following the close of hearings, the Executive Committee of the Board of Directors shall render a decision in writing, based on the weight of the evidence. The decision shall include:~~

~~(1) a description of, and the reasons for, the summary action;~~

~~(2) a brief summary of the evidence produced at the hearing;~~

~~(3) findings and conclusions;~~

~~(4) where action has already been taken under Section 853, a determination that such action be affirmed, modified or reversed; and,~~

~~(5) a description of any final action taken by the Executive Committee of the Board of Directors, its effective date and duration.~~

### **Section 856. OBLIGATIONS OF INSOLVENT MEMBERS**

~~A Member who is insolvent shall provide to the President, within thirty (30) days of his insolvency and in addition to the Notice provided for in Section 851, a statement of his business affairs as they existed at the time of his insolvency.~~

#### **Section 857. CREDITORS OF INSOLVENT MEMBERS**

~~(A) — Unless the Executive Committee of the Board of Directors shall direct otherwise, all futures and options contracts traded on the Exchange, made with or carried for a Member suspended under this Article 8 of the By-Laws shall be liquidated by the party carrying the contracts. Such liquidation shall take place in the open market. If such contracts cannot be liquidated due to the closing of the Exchange for any reason, such contracts shall be liquidated on the next day on which the Exchange is open. The period within which such contracts must be liquidated shall not include any period during which the provisions of the Rules limiting price fluctuations would prevent such liquidations.~~

~~(B) — Within ten (10) days of the announcement of suspension of a Member, any Member who has a claim against such suspended Member shall deliver to the President a Notice of Claim which details all contracts liquidated under this Section 857 and the net debit or credit balance resulting therefrom and which details any other claims which such Member may have against the suspended Member.~~

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

#### **Section 858. ESTABLISHMENT OF VALID CLAIMS**

~~(A) — The President shall furnish the suspended Member and all Members who have filed Notices of Claim as required by Section 857 with copies of all Notices of Claim filed under Section 857 and the sworn statement of the suspended Member filed under Section 856. The President shall also specify a date not more than ten (10) business days from the date on which such Notices of Claim are furnished to such Members by which the suspended Member or any claimant Member may file an objection to any claim.~~

~~(B) — If a suspended Member or any claimant Member fails to file an objection to a claim before the date set by the President, that Member shall have waived all rights to object to such claim or claims.~~

~~(C) — In the event that any claim is disputed, the validity of such claim shall be determined by arbitration in accordance with the Rules. The arbitration shall proceed as if the objecting Member has filed a Demand for Arbitration. The objecting Member shall pay the fee prescribed in the Rules. The arbitrators shall determine whether and to what extent such claim is valid, and, in accordance therewith whether and to what extent a claimant is entitled to participate in the proceeds of a sale of the membership of such suspended Member pursuant to Section 861.~~

#### **Section 859. EXPELLED MEMBER**

~~All memberships held by a Member who is expelled from the COMEX Division shall be sold and the proceeds paid and applied as provided in Sections 860 and 861.~~

#### **Section 860. SALE OF MEMBERSHIP**

~~(A) — If within ten (10) business days from the date of the decision of the Arbitration Committee or from the last date established by the President for filing of objections to Notices of Claim, whichever is later, a Member suspended under this Article 8 of the By-Laws does not pay all valid claims, the membership and all other collateral previously delivered or pledged to the Exchange or the COMEX Division (including, without limitation, shares of capital stock of NYMEX Holdings) of the suspended Member shall be sold in accordance with this Section 860 and the proceeds of the sale of such membership shall be distributed in accordance with Section 861.~~

~~(B) — When a membership is sold pursuant to this Section 860, written notice of such sale stating the date and time of such sale shall be sent to the Member and the membership ten (10) days prior to such sale.~~

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

#### **Section 861. DISPOSITION OF PROCEEDS**

~~The proceeds of any sale of a membership and all other collateral previously delivered or pledged to the Exchange or the COMEX Division (including, without limitation, shares of capital stock of NYMEX Holdings) shall be paid and applied in the following order of priority:~~

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

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

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

~~(4) — fourth, the remaining balance, if any, to the payment of any claims made by entities or persons who have financed the purchase of the membership provided that documentation regarding such purchase was filed with the Membership Department prior to the financing of such purchase; and~~

~~(5) — fifth, the balance, if any, to the Member whose membership was sold or to his legal representative, except that, notwithstanding any other provision of the By-Laws or Rules, for purposes of this subsection (5) the term Member shall not include lessees or licensees, but shall mean the beneficial owner of such membership.~~

#### **Section 862. REINSTATEMENT OF SUSPENDED MEMBER**

~~(A) — A Member suspended under Sections 852, 853 or 855 may apply for reinstatement at any time prior to the sale of his membership.~~

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

~~(C) — Written notice of the time and place of the meeting of the Board at which the application for reinstatement is to be considered shall be sent to the suspended member and to the other Members not less than five (5) days prior to the meeting.~~

~~(D) — The vote of a majority of the Board present and voting is required to reinstate the suspended Member. However, where a Member has failed to give timely the notice required by Section 851, a vote of two thirds of the entire Board is required to reinstate the suspended Member.~~

~~(E) — If a Member suspended under this Article 8 of the By-Laws is not reinstated within one (1) year from the date of his suspension, such Member may not be reinstated.~~

#### **Section 863. DEATH OF A MEMBER**

~~Upon receiving due notice of the death of a Member, the President or his designee shall announce such death to the other Members and shall post a notice of such fact on the floor of the COMEX Division for five (5) days. Any Member holding open futures or options contracts for such deceased Member shall liquidate such open futures or options contracts in accordance with the provisions of Section 857.~~

#### **Section 903. BOARD**

The term "Board" or "Board of Directors" shall mean the Board of Directors of Commodity Exchange, Inc. or its designee(s).

#### **Section 913. COMEX OPTION MEMBERS**

The term "COMEX Option Member" shall mean those persons having the rights set forth in Sections 2.6081 through 2.6786 of the Rules.

#### **Section 929. MEMBER**

The term "Member" shall mean any person or entity with any of the trading privileges on the COMEX Division set forth in Section 157(A) or under the Rules, including with respect to COMEX Option Members under Sections 2.6081 through 2.8667 of the Rules.

#### **Section 936. NYMEX HOLDINGSRESERVED**

The term "NYMEX Holdings" shall mean NYMEX Holdings, Inc., a Delaware corporation, and any successor thereto.

#### **Section 942. PUBLIC OR INDEPENDENT DIRECTOR**

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