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February 12, 2004

VIA FACSIMILE AND ELECTRONIC MAIL

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 #04.16:
New NYMEX Board of Directors Resolution Concerning a New Permanent
Retail Customer Protection Mechanism**

Dear CFTC Commissioners:

The New York Mercantile Exchange, Inc. ("Exchange") is notifying the Commodity Futures Trading Commission ("Commission") that it is implementing a new NYMEX Board of Directors resolution concerning a new permanent retail customer protection mechanism. Pursuant to Section 5c(c) of the Commodity Exchange Act ("Act") and CFTC Rule 40.6, the Exchange hereby certifies that the new resolution complies with the Act, including regulations under the Act. With respect to the implementation of this new safeguard, by the terms of the attached resolution, the Exchange agreed to be committed to the new protections as of the date of a recent CFTC order to the Exchange (February 10, 2004). However, as this resolution falls within the definition of a rule as defined by CFTC Rule 40.1 and in compliance with the self-certification requirements of rule implementation under Rule 40.6, this new resolution will be implemented as a rule effective tomorrow, February 13, 2004.

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

Very truly yours,

Brian J. Regan
Vice President and Counsel

Resolution of the Board of Directors

Resolution of the Board of Directors to establish and maintain a permanent Retail Customer Protection Mechanism

The Board of Directors, upon consideration of a pending CFTC Order, hereby:

RESOLVES, to establish and maintain a permanent retail customer protection mechanism supported by a commitment of not less than \$10 million which shall be available at all times to promptly reimburse retail customers trading on NYMEX whose original margin funds are lost in the unlikely result of a default by another customer of the same FCM in any contract cleared by NYMEX and where such customer default of a NYMEX contract results in a default of that FCM clearing member to NYMEX and where NYMEX uses customer margin funds of that FCM clearing member to address the default. For the purposes of this resolution and said CFTC order, the term "Retail Customer" shall be defined to include all natural persons who do not otherwise qualify as an "eligible contract participant" under the requirements of Section 1a(12) of the Commodity Exchange Act, *provided however*, that such definition of Retail Customer shall not include any NYMEX floor traders or floor brokers and additionally shall not include family members of NYMEX floor traders and floor brokers who maintain accounts at the same FCM where such NYMEX floor trader or floor broker maintains an account.

RESOLVES FURTHER, that in the event of a FCM default to NYMEX caused by a customer default as described above where the total loss of all Retail Customers at such FCM from such default exceeds the amount of the Exchange's then current commitment, authorizes Exchange staff to compensate such Retail Customers on a pro rata basis.

RESOLVES FURTHER, that this resolution shall become effective as of the effective date of the order from the Commodity Futures Trading Commission.