

ALBERTA SECURITIES COMMISSION

EXEMPTION ORDER

New York Mercantile Exchange, Inc.

Background

1. New York Mercantile Exchange, Inc. (**NYMEX**) seeks an order (the **Requested Relief**) under section 213 of the *Securities Act* (Alberta), R.S.A. 2000, c. S-4 (the **Act**) that:
 - (a) section 106 of the Act, which prohibits a person or company from trading in an exchange contract on an exchange in Alberta unless the exchange is recognized under section 62 of the Act and the form of the exchange contract has been accepted by the Alberta Securities Commission (the **Commission**) under section 107 of the Act, does not apply to trades (**Exempted Trades**) in exchange contracts offered by NYMEX (**Derivatives Contracts**) carried out on trading and clearing systems or trading platforms owned, operated, leased, licensed or otherwise made available by NYMEX (collectively, **Exchange Platforms**) to or by persons (**NYMEX Qualified Parties**) who are:
 - (i) registered under Alberta securities laws to trade in exchange contracts;
 - (ii) exempt from such registration requirements; or
 - (iii) “Qualified Parties” as defined in Commission Blanket Order 91-503 *Over-the-Counter Derivatives Transactions and Commodity Contracts*;
 - (b) section 62 of the Act, which prohibits a person or company from carrying on business as an exchange in Alberta unless the exchange is recognized by the Commission, does not apply, in respect of Exempted Trades, to the operation of the Exchange Platforms or to the provision by NYMEX to NYMEX Qualified Parties of direct electronic access to the Exchange Platforms; and
 - (c) section 75(1)(a) of the Act, which prohibits a person or company from acting as a dealer or an adviser unless the person or company is registered in accordance with Alberta securities laws, does not apply to Exempted Trades executed by or submitted for execution on the Exchange Platforms through clearing members of NYMEX (**NYMEX Clearing Members**).

Interpretation

2. Unless otherwise herein defined, terms used in this order have the same meaning as in the Act or in National Instrument 14-101 *Definitions*.

Representations

3. NYMEX represents as follows:
 - (a) NYMEX is a for-profit corporation organized under the laws of the state of Delaware in the United States of America (the **US**) and an indirect wholly-owned subsidiary of CME Group Inc. (**CME Group**).
 - (b) All Derivatives Contracts are executed by or submitted for execution through NYMEX Clearing Members, each of which must, to qualify as such, maintain at least US\$5 million of working capital determined in accordance with the US *Commodity Exchange Act* (the **CEA**) and must maintain funds on deposit in a guarantee fund maintained by NYMEX (the **NYMEX Guarantee Fund**) in accordance with the CEA and the rules of NYMEX. The NYMEX Guarantee Fund will be available to ensure the clearing of the Derivatives Contracts on the Exchange Platforms in the event that a NYMEX Clearing Member is unable to satisfy its obligations to NYMEX or to the NYMEX Clearing Members.
 - (c) NYMEX is a designated contract market (a **DCM**) and a derivatives clearing organization (a **DCO**), within the meaning of those terms under the CEA and is subject to regulatory supervision by the Commodity Futures Trading Commission (the **CFTC**), a US federal regulatory agency. The CEA obligates NYMEX to give the CFTC access to all records. The CFTC reviews, assesses and enforces NYMEX's adherence to the CEA and other applicable laws, including CEA requirements for DCMs and DCOs relating to financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection. CFTC supervision of NYMEX thus addresses the same concerns as would be addressed, in respect of Exempt Trades, by recognition of NYMEX by the Commission under the Act and provides an equivalent level of protection to the Alberta capital market and Alberta investors, including NYMEX Qualified Parties.
 - (d) Subject to US privacy laws, the CFTC can, on the Commission's request, share with the Commission information in the CFTC's possession regarding NYMEX's activities as a DCM and a DCO and otherwise cooperate with the Commission.
 - (e) NYMEX proposes to offer to NYMEX Qualified Parties in Alberta direct electronic access to the Exchange Platforms to enable them to trade Derivatives Contracts, which may involve activities that would, but for this order, be subject to sections 62, 75(1)(a) and 106 of the Act. NYMEX or an affiliate of CME Group may open an office in Alberta to develop and market Derivatives Contracts in Alberta.

- (f) Each of the NYMEX Qualified Parties permitted by NYMEX to trade on the Exchange Platforms in Alberta will be contractually obligated to notify NYMEX within 10 days of any substantive change to their qualification as a NYMEX Qualified Party.

Undertakings

4. NYMEX undertakes to:

- (a) comply with Alberta securities laws;
- (b) satisfy, unless prohibited by law, all Commission requests for information regarding the activities of NYMEX, the Exchange Platforms, Derivatives Contracts, NYMEX Qualified Parties and Exempted Trades;
- (c) provide any requisite consent to enable the CFTC to share information with the Commission regarding NYMEX's conduct as a DCM and a DCO;
- (d) ensure that each purported NYMEX Qualified Party is such;
- (e) maintain a validly appointed agent in Alberta to accept all communications and service on behalf of NYMEX (the **Agency Arrangement**);
- (f) provide to the Commission:
 - (i) at least 10 days advance notice of NYMEX's intention to begin offering any particular Derivatives Contract that differs substantively from Derivatives Contracts previously offered by NYMEX and traded in reliance on this order, and a copy of the terms and conditions of the proposed new Derivatives Contract;
 - (ii) within 30 days after the end of each calendar quarter, a list of all NYMEX Qualified Parties (with contact information for each) permitted by NYMEX to trade on the Exchange Platforms in Alberta, with any changes from the from the prior list identified;
 - (iii) within 5 days of any change in the Agency Arrangement, written notice of such change;
 - (iv) prompt written notice of any significant change in applicable US law relevant to NYMEX's operation as either a DCM or a DCO; and
 - (v) prompt written notice in the event that NYMEX becomes aware that any of its representations set out above is no longer true in any material respect or NYMEX becomes unable to fulfil any of its undertakings set out above.

Decision

5. The Commission, being satisfied by NYMEX's representations and undertakings that it would not be prejudicial to the public interest to do so, orders that the Requested Relief is granted for so long as:
- (a) NYMEX maintains in good standing its designation by the CFTC as a DCM and a DCO; and
 - (b) NYMEX's representations set out above remain true and NYMEX fulfils its undertakings set out above.
6. Unless terminated earlier, this order will expire on 31 October 2011.

14th October 2009

For the Commission:

“Original Signed By”

Glenda Campbell, QC

“Original Signed By”

Stephen Murison