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March 8, 1995

BY HAND

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Supplement To
AOR 1995-02

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RECEIVED
FEDERAL ELECTION COMMISSION
MAR 8 1995

Re: AOR 1995-2
(Our File No. 62751-08)

Dear Mr. Noble:

We are pleased to respond to your letter of January 12, 1995 concerning the Advisory Opinion Request of the New York Mercantile Exchange ("NYMEX") dated January 4, 1994.

Question (1): Please state what is meant by the term "beneficially owned," as in seats beneficially owned by member firms. Explain the nature of such ownership as distinguished from other forms, e.g., legal title.

Response to Question (1): Under rules applicable to the COMEX Division, record ownership of COMEX Division Regular Memberships may be only in natural persons. In the case of a membership owned beneficially by a firm, the individual seatholder has entered into an "A-B-C Agreement" with the firm that employs him pursuant to which, in return for funds from the firm to purchase or finance the purchase of his membership, the individual has agreed, upon the occurrence of certain events, to pay such proceeds as may be derived from sale or other disposition of his seat, to the firm or to transfer his membership to the firm's designee. Triggering events typically include the termination of firm membership through dissolution of the firm or other event (or notice thereof to the individual member), the death of the individual or the resignation of the individual from the firm.^{1/}

^{1/} A sample A-B-C Agreement containing these types of terms is appended to this letter in response the Question 3.

As used in NYMEX's Request for Advisory Opinion, the term "beneficial interest" refers to the residual economic rights reserved to the member firms under A-B-C Agreements with employees who hold seats financed by such firms.

Question (2): You explain that each COMEX Division Regular Member who holds a seat on behalf of a member firm has a significant economic and financial stake in NYMEX. In summary, you describe these individuals as the persons in their respective firms who, as a general matter, have the most to gain or lose in the success or failure of the exchange. Explain how such a member differs from others who are principals, partners, key shareholders, senior managers, or officers of such firms. State the number of members who do not fit into any of these categories, and describe the connections of those persons to their respective firms. State whether there are any rules or official guidelines as to the position in the firm of the person designated to hold a seat on behalf of a member firm that beneficially owns a seat. Describe the content of these rules or guidelines.

Response to Question (2): (a) Under COMEX Rule 2.04, a corporate applicant for membership must have membership privileges conferred upon it by one individual member who holds two memberships or two individual members (the "conferring member(s)"). At least one member must be either (1) be a senior officer of the corporation responsible for commodity activities or (2) a senior executive officer of the corporation who is authorized by virtue of his position to participate meaningfully in the policy-making decisions and operations of the corporation.

If there are two conferring members and one individual is not a senior or executive officer, he or she most often will be a person within the firm who is expert with respect to trading conducted by the firm on the COMEX Division. Thus, some seat holders under A-B-C agreements are senior commodities officers, some are senior firm executives and the rest are experts involved in COMEX Division trading. Such persons very often are (and in the case of traders who are not officers almost invariably will be) individuals who work in the futures trading pits on the floor of the Exchange trading COMEX Division futures contracts for their firms, for themselves or for both. In contrast to other employees and officers of member firms who may have an indirect interest in the outcome of COMEX Division trading, all seatholders generally are specialists and senior managers who know or work regularly in the COMEX Division. Most often, they earn their livings directly in the trading pits and have vital, personal stakes in the COMEX Division and its success.

(b) Approximately half of the memberships governed by A-B-C Agreements involve individuals who hold trading floor

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privileges; the rest are likely to be conferring members who are officers.

(c) The only requirement applicable to individuals who hold seats on behalf of member firms is that they be employees of such firms.

Question (3): Please provide a sample standard ABC agreement. If there are certain provisions that vary from the standard, but are often used, please provide samples of those variations.

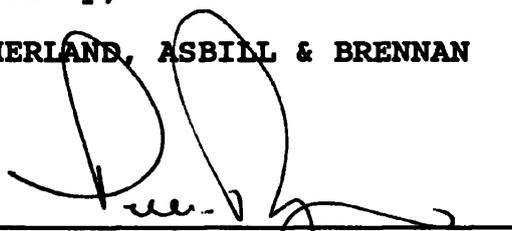
Response to Question (3): A sample A-B-C Agreement enclosed with this letter.

* * *

Please let us know if you have further questions. We will look forward to the Commission's decision on NYMEX's Advisory Opinion Request.

Sincerely,

SUTHERLAND, ASBILL & BRENNAN

By: 

Peter H. Rodgers

Attorneys for the New York Mercantile Exchange
and NYMEX Political Action Committee, Inc.



R1:89

(Name of Partnership/Corporation)

A-B-C AGREEMENT

AGREEMENT made and effective this _____ day of _____, 19____, by and between _____ a (general partnership/limited partnership/corporation) organized and existing under the laws of the State of _____ (hereinafter the "Firm"), with its principal office at _____, and _____ residing at _____ (hereinafter the "Member or Applicant").

WHEREAS, the Firm has advanced to the Applicant funds to assist him in financing his acquisition of a Membership # _____ in Commodity Exchange, Inc. (hereinafter "Comex"); and

WHEREAS, the Firm is a member of Comex and the Firm and the Applicant desire to set forth their respective rights in and to the Membership,

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto agree as follows:

1. The Applicant hereby contributes to the Firm the use of the Membership and agrees that he will not sell, transfer or in any way encumber the Membership (except to the extent that such Membership shall necessarily be encumbered under the By-Laws and Rules of Comex), and the Applicant will use the Membership only in furtherance of the business of the Firm and for no other purpose. All benefits to be derived from the Membership shall accrue to the Firm. All dues, fines, assessments and other expenses of maintaining the Membership shall be paid by the Firm as an expense of the Firm. Insofar as it is necessary for the protection of creditors of the Firm, the proceeds of the Membership shall be considered assets of the Firm subject to the By-Laws and Rules of Comex.

2. Upon the occurrence of any one of the following events ("Event of Termination") - (i) the Firm ceases to be a Member Firm of Comex; or (ii) the Firm gives written notice to the Member that as of a stated date the firm will cease to be a Member Firm of Comex; or (iii) the Member ceases to be a (general partner/officer) of the Firm, or receives notice from the Firm that as of a stated date he will cease to be a (general partner/officer) of the Firm; or (iv) the Member dies or is declared incompetent - the Member or his legal representative

shall have the unqualified right during a period of thirty (30) days thereafter (except that in the case of death or incompetency of the Member such period shall be deemed to expire ten (10) days after the appointment of the legal representative or committee of the Member) to elect, by giving written notice to the Firm, to retain the Membership in Comex upon payment to the Firm of the amount then necessary to purchase another Membership on Comex, together with such transfer and other fees as may then be required by Comex to be paid in connection with the purchase of a Membership.

3. Upon the Firm's receiving notice in writing within the above mentioned period that the Member or his legal representatives elect not to retain said Membership, or upon the expiration of the period without such notice of election to retain or notice of election not to retain having been given to the Firm, then each (general partner/officer) of the Firm is hereby appointed the Member's attorney-in-fact, anyone of whom may act singly to exercise either option set forth in subparagraph (a) or subparagraph (b) of this paragraph 3. Upon the occurrence of an Event of Termination which is not an event giving rise to the right to act pursuant to the power of attorney granted by the Member pursuant to this agreement, then the Member, his legal representatives or committee shall, forthwith, at the direction of any (general partner/officer) of the Firm, either

(a) sell the Membership and pay the proceeds over to the Firm; or

(b) transfer the Membership to a person designated by the Firm and satisfactory to the Board of Governors of Comex.

4. The amount necessary to purchase another Membership in the Exchange shall be determined as follows: (check one or specify)

(1) Price of most recent bona fide transfer of an Exchange Membership which occurred through the membership auction facility maintained by the Exchange immediately prior to the Firm's receipt of notice in writing of the Member's intention to retain the Membership;

(2) Average price of the three most recent bona fide transfers of an Exchange Membership which occurred through such facility immediately prior to the Firm's receipt of notice in writing of the Member's intention to retain the Membership;

(3) Midpoint between the highest bid and the lowest offer for an Exchange Membership outstanding within such facility at the time of receipt by the Firm of notice in writing of the Member's intention to retain the Membership; or

(4) Other (specify) _____

(Name of Partnership/Corporation)

By: _____
(signature)
General Partner/Chief
Executive Officer

(signature of Secretary),
Secretary Affix Corporate
Seal Here

(signature of Member)