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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 10-Q**

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the Quarterly Period Ended September 30, 2007

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the Transition Period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 001-33149

**NYMEX Holdings, Inc.**

Delaware  
(State of Incorporation)

13-4098266  
(I.R.S. Employer  
Identification Number)

One North End Avenue  
World Financial Center  
New York, New York 10282-1101  
(212) 299-2000

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Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act.

Large accelerated filer       Accelerated filer       Non-accelerated filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

A total of 92,870,600 shares of the registrant's \$0.01 par value common stock were outstanding at November 5, 2007.

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**PART I: FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**NYMEX HOLDINGS, INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF INCOME (Unaudited)**  
(in thousands, except for share data)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2006	2007	2006
<b>Operating Revenues</b>				
Clearing and transaction fees	\$ 145,259	\$ 119,200	\$ 420,826	\$ 314,966
Market data fees	24,892	15,927	71,392	47,221
Other, net	3,049	3,167	8,805	10,292
Total operating revenues	<u>173,200</u>	<u>138,294</u>	<u>501,023</u>	<u>372,479</u>
<b>Operating Expenses</b>				
Direct transaction costs	24,685	16,645	73,105	31,582
Salaries and employee benefits	19,531	22,560	61,051	60,046
Occupancy and equipment	5,306	8,429	16,853	22,467
Depreciation and amortization, net of deferred credit amortization	3,272	3,322	10,417	11,570
General and administrative	4,590	4,569	14,232	15,199
Professional services	5,159	3,278	13,267	10,811
Telecommunications	1,536	1,263	4,376	4,754
Marketing	839	1,681	4,398	4,420
Other expenses	220	2,366	2,063	6,716
Total operating expenses	<u>65,138</u>	<u>64,113</u>	<u>199,762</u>	<u>167,565</u>
Operating income	<u>108,062</u>	<u>74,181</u>	<u>301,261</u>	<u>204,914</u>
<b>Non-Operating Income and Expenses</b>				
Investment income, net	4,873	2,936	17,713	5,750
Interest income from securities lending	19,955	37,397	80,448	97,914
Interest expense/fees from securities lending	(18,811)	(36,536)	(77,836)	(95,435)
Interest expense	(1,615)	(1,666)	(4,839)	(5,000)
Losses from unconsolidated investments	(2,020)	(991)	(32,607)	(1,768)
Total non-operating income and expenses	<u>2,382</u>	<u>1,140</u>	<u>(17,121)</u>	<u>1,461</u>
Income before provision for income taxes	110,444	75,321	284,140	206,375
Provision for income taxes	47,870	34,597	123,601	93,885
Net income	<u>\$ 62,574</u>	<u>\$ 40,724</u>	<u>\$ 160,539</u>	<u>\$ 112,490</u>
<b>Earnings per Share</b>				
Basic	<u>\$ 0.66</u>	<u>\$ 0.47</u>	<u>\$ 1.70</u>	<u>\$ 1.78</u>
Diluted	<u>\$ 0.66</u>	<u>\$ 0.47</u>	<u>\$ 1.69</u>	<u>\$ 1.78</u>
<b>Weighted Average Number of Common Shares Outstanding</b>				
Basic	<u>94,457,000</u>	<u>81,600,000</u>	<u>94,456,000</u>	<u>60,079,000</u>
Diluted	<u>94,836,000</u>	<u>81,600,000</u>	<u>94,827,000</u>	<u>60,079,000</u>
Proforma weighted average common shares outstanding and earnings per share retroactively adjusted to reflect the 90,000-for-1 recapitalization on March 14, 2006 (Unaudited):				
<b>Earnings per Share</b>				
Basic	<u>\$ 0.66</u>	<u>\$ 0.47</u>	<u>\$ 1.70</u>	<u>\$ 1.35</u>
Diluted	<u>\$ 0.66</u>	<u>\$ 0.47</u>	<u>\$ 1.69</u>	<u>\$ 1.35</u>
<b>Weighted Average Number of Common Shares Outstanding</b>				
Basic	<u>94,457,000</u>	<u>81,600,000</u>	<u>94,456,000</u>	<u>79,448,000</u>
Diluted	<u>94,836,000</u>	<u>81,600,000</u>	<u>94,827,000</u>	<u>79,448,000</u>

See accompanying notes to the unaudited condensed consolidated financial statements.

**NYMEX HOLDINGS, INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(in thousands, except for share data)

	September 30, 2007 (Unaudited)	December 31, 2006
<b>Assets</b>		
Cash and cash equivalents	\$ 3,596	\$ 18,631
Collateral from securities lending program	957,806	2,547,312
Marketable securities, at market value	536,499	485,581
Clearing and transaction fees receivable, net of allowance for member credits	50,229	32,853
Prepaid expenses	7,578	7,009
Margin deposits and guaranty funds	21,611	17,052
Other current assets	48,029	10,238
Total current assets	1,625,348	3,118,676
Property and equipment, net	177,332	183,193
Goodwill and indefinite-lived intangible asset	307,125	307,125
Long-term investments	111,054	3,008
Other assets	7,150	11,929
Total assets	<u>\$ 2,228,009</u>	<u>\$ 3,623,931</u>
<b>Liabilities and Stockholders' Equity</b>		
Accounts payable and accrued liabilities	\$ 16,285	\$ 14,854
Accrued salaries and related liabilities	18,634	13,688
Payable under securities lending program	957,806	2,547,312
Margin deposits and guaranty funds	21,611	17,052
Income tax payable	11,151	4,984
Other current liabilities	36,354	35,019
Total current liabilities	1,061,841	2,632,909
Grant for building construction deferred credit	104,557	106,166
Long-term debt	80,281	80,281
Members' retirement obligation	11,964	12,367
Other liabilities	28,425	17,286
Total liabilities	<u>1,287,068</u>	<u>2,849,009</u>
<b>Commitments and contingencies</b>		
<b>Stockholders' equity</b>		
Common stock, \$ 0.01 par value; 181,909,600 shares authorized, 94,457,405 and 94,449,800 shares issued as of September 30, 2007 and December 31, 2006; and 92,870,600 and 89,678,600 shares outstanding as of September 30, 2007 and December 31, 2006, respectively	944	944
Additional paid-in capital	803,595	796,585
Retained earnings (deficit)	119,826	(21,823)
Accumulated other comprehensive income (loss), net of tax	16,576	(784)
Total stockholders' equity	940,941	774,922
Total liabilities and stockholders' equity	<u>\$ 2,228,009</u>	<u>\$ 3,623,931</u>

See accompanying notes to the unaudited condensed consolidated financial statements.

**NYMEX HOLDINGS, INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(in thousands, except for share data)

	Common Stock		Additional Paid-in Capital	Retained Earnings (Deficit)	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity
	Shares	Amount				
Balances at January 1, 2006	816	\$ —	\$ 69,631	\$ 39,479	\$ 672	\$ 109,782
Comprehensive income:						
Net income	—	—	—	154,801	—	154,801
Realization of gain on available-for-sale securities, net of deferred income taxes of \$570	—	—	—	—	(672)	(672)
<b>Total comprehensive income</b>						<b>154,129</b>
SFAS No. 158 adjustment to record unrealized post-retirement obligation, net of deferred income taxes of \$628.	—	—	—	—	(784)	(784)
Dividends declared:						
Common stock, \$36,765/share on January 11, 2006	—	—	—	(30,000)	—	(30,000)
Common stock, \$196,078/share on March 6, 2006	—	—	(68,897)	(91,103)	—	(160,000)
Common stock, \$0.06/share on July 6, 2006	—	—	—	(5,000)	—	(5,000)
Common stock, \$0.14/share on November 10, 2006	—	—	—	(10,000)	—	(10,000)
Common stock, \$0.98/share on November 10, 2006	—	—	—	(80,000)	—	(80,000)
Retirement of common stock	(816)	—	—	—	—	—
Issuance of common stock	73,440,000	734	(734)	—	—	—
Issuance of common stock in initial public offering, net of underwriting discounts	6,365,000	64	347,907	—	—	347,971
Direct costs of initial public offering	—	—	(3,749)	—	—	(3,749)
Conversion of cumulative redeemable convertible preferred stock to common stock	8,160,000	82	153,016	—	—	153,098
Additional proceeds from private equity offering	—	—	10,000	—	—	10,000
Issuance of common stock for purchase of COMEX electronic trading rights	6,484,800	64	279,538	—	—	279,602
Tax benefit related to NYMEX MRRP	—	—	8,591	—	—	8,591
Share-based compensation awards	—	—	1,282	—	—	1,282
<b>Balances at December 31, 2006</b>	<b>94,449,800</b>	<b>944</b>	<b>796,585</b>	<b>(21,823)</b>	<b>(784)</b>	<b>774,922</b>
Comprehensive income:						
Net income	—	—	—	160,539	—	160,539
Foreign currencies translations	—	—	—	—	209	209
Unrealized gain on available-for-sale securities, net of deferred income taxes of \$13,206	—	—	—	—	17,151	17,151
<b>Total comprehensive income</b>						<b>177,899</b>
Dividends declared:						
Common stock, \$0.10/share on April 30, 2007	—	—	—	(9,445)	—	(9,445)
Common stock, \$0.10/share on August 1, 2007	—	—	—	(9,445)	—	(9,445)
Share-based compensation awards	7,605	—	7,356	—	—	7,356
Direct costs of initial public offering	—	—	(346)	—	—	(346)
<b>Balances at September 30, 2007 (Unaudited)</b>	<b>94,457,405</b>	<b>\$ 944</b>	<b>\$ 803,595</b>	<b>\$ 119,826</b>	<b>\$ 16,576</b>	<b>\$ 940,941</b>

See accompanying notes to the unaudited condensed consolidated financial statements.

**NYMEX HOLDINGS, INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (Unaudited)**  
(in thousands)

	Nine Months Ended September 30,	
	2007	2006
<b>Cash flows from operating activities</b>		
Net income	\$ 160,539	\$ 112,490
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	12,026	12,960
Amortization of intangibles	—	219
Deferred grant credits	(1,984)	(1,984)
Deferred rental income	(506)	(506)
Deferred rent expense	(143)	(162)
Deferred income taxes	(14,493)	(605)
Allowance for doubtful accounts and credits	393	(567)
Share-based compensation	7,356	—
Other, net	5,701	1,324
Asset impairment and disposition losses	26,004	1,161
Decrease (increase) in operating assets:		
Clearing and transaction fees receivable	(17,376)	(15,375)
Prepaid expenses	(569)	(813)
Margin deposits and guaranty fund assets	(4,559)	71,302
Other current assets	(9,336)	(3,290)
Increase (decrease) in operating liabilities:		
Accounts payable and accrued liabilities	1,431	(4,806)
Accrued salaries and related liabilities	4,946	7,485
Margin deposits and guaranty fund liabilities	4,559	(71,302)
Income tax payable	6,167	3,612
Other current liabilities	1,019	10,116
Other liabilities	627	1,114
Members' retirement obligation	(403)	(55)
Net cash provided by operating activities	<u>181,399</u>	<u>122,318</u>
<b>Cash flows from investing activities</b>		
Decrease (increase) in collateral from securities lending program	1,589,506	(132,102)
(Increase) decrease in securities purchased under agreements to resell	(17,360)	6,900
Purchase of long-term investments	(109,143)	(2,925)
Loan to unconsolidated entity	(13,700)	—
Increase in marketable securities	(33,558)	(93,071)
Capital expenditures	(6,207)	(8,722)
Decrease in other assets	2,454	593
Net cash provided by (used in) investing activities	<u>1,411,992</u>	<u>(229,327)</u>
<b>Cash flows from financing activities</b>		
Direct costs of initial public offering	(346)	—
Proceeds from issuance of preferred stock	—	160,000
Costs related to issuance of preferred stock	—	(6,902)
(Decrease) increase in obligation to return collateral under securities lending program	(1,589,506)	132,102
Dividends paid	(18,574)	(198,600)
Net cash (used in) provided by financing activities	<u>(1,608,426)</u>	<u>86,600</u>
Net decrease in cash and cash equivalents	(15,035)	(20,409)
<b>Cash and cash equivalents, beginning of period</b>	<u>18,631</u>	<u>35,664</u>
<b>Cash and cash equivalents, end of period</b>	<u>\$ 3,596</u>	<u>\$ 15,255</u>

See accompanying notes to the unaudited condensed consolidated financial statements.

**NYMEX HOLDINGS, INC. AND SUBSIDIARIES**

**NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**NOTE 1. Basis of Presentation and Summary of Significant Accounting Policies**

***Nature of Business***

NYMEX Holdings, Inc. (“NYMEX Holdings”) was incorporated in 2000 as a stock corporation in Delaware, and is the successor to the New York Mercantile Exchange. On November 22, 2006, NYMEX Holdings completed an initial public offering (“IPO”) of its common stock which is listed on the New York Stock Exchange under the symbol “NMX.” The two principal operating subsidiaries of NYMEX Holdings are New York Mercantile Exchange, Inc. (“NYMEX Exchange” or “NYMEX Division”) and Commodity Exchange, Inc. (“COMEX” or “COMEX Division”), which is a wholly-owned subsidiary of NYMEX Exchange. Where appropriate, each division will be discussed separately, and collectively will be referred to as the “Exchange.” NYMEX Holdings and its subsidiaries are collectively referred to as the “Company.”

The Company exists principally to provide facilities to buy, sell and clear energy, precious and base metals, and soft commodities for future delivery under rules intended to protect the interests of market participants. The Company itself does not own commodities, trade for its own account, or otherwise engage in market activities. The Company provides the physical facilities necessary to conduct an open outcry auction market, electronic trading systems, systems for the matching and clearing of trades executed on the Exchange, and systems for the clearing of certain bilateral trades executed off-exchange in the over-the-counter (“OTC”) market. These services facilitate price discovery, hedging and liquidity in the energy and metals markets. The liquidity that the Exchange and other centralized markets offer is achieved in large part because the traded contracts have standardized terms and the Company’s clearinghouse mitigates counterparty performance risk. Transactions executed on the Exchange mitigate the risk of counter-party default because the Company’s clearinghouse acts as the counterparty to every trade. To manage the risk of financial nonperformance, the Exchange requires members to post margin. Trading on the Exchange is regulated by the Commodity Futures Trading Commission.

***Basis of Presentation***

The accompanying unaudited condensed consolidated financial statements include the accounts of NYMEX Holdings and its wholly-owned subsidiaries and have been prepared in accordance with U.S. generally accepted accounting principles (“GAAP”). The Company consolidates any investment in a variable interest entity for which the Company is the primary beneficiary. Investments in unconsolidated entities representing ownership of at least 20% but less than 50% are accounted for under the equity method. Investments in unconsolidated entities representing ownership of less than 20% are accounted for under the cost method unless it is determined that the Company has significant influence over the decision making process of the investee, in which case the investment is accounted for under the equity method. All significant intercompany transactions and balances have been eliminated in consolidation. The accompanying unaudited condensed consolidated financial statements reflect all adjustments which are, in the opinion of the Company’s management, necessary for a fair statement of the results for the periods presented.

The preparation of the accompanying condensed consolidated financial statements and related footnote disclosures in accordance with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements, the reported amounts of revenues and expenses during the reporting period, and the disclosure of contingent liabilities. While management uses its best judgment, actual results could differ from those estimates.

Certain reclassifications have been made to the condensed consolidated financial statements for the three- and nine-month periods ended September 30, 2006 to conform to the current presentation. Investment income, net, interest income from securities lending, interest expense/fees from securities lending, interest expense and losses from unconsolidated investments are currently presented in the non-operating income and expenses

**NYMEX HOLDINGS, INC. AND SUBSIDIARIES**

**NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

section of the condensed consolidated statements of income. Previously, investment income, net and interest income from securities lending (which was reported net of related securities lending interest expense) were reported in the revenues section. Fees related to securities lending were previously reported in general and administrative expenses. Interest expense was reported as a separate operating expense and losses from unconsolidated investments were reported in other expenses. Additionally, direct transaction costs are reported separately as part of operating expenses. Previously, direct transaction costs were reported in general and administrative expenses.

Pursuant to the rules and regulations of the United States Securities and Exchange Commission (“SEC”), certain information and disclosures normally included in the notes to the annual financial statements have been omitted from these interim financial statements. The Company suggests that these financial statements be read in conjunction with the audited financial statements and the notes included in the Company’s most recent Annual Report on Form 10-K and any Current Reports on Form 8-K.

***Significant Accounting Policies***

The Company’s significant accounting policies are described in the notes to the December 31, 2006 audited consolidated financial statements included in its Annual Report on Form 10-K.

***Recent Accounting Pronouncements***

Effective January 1, 2007, the Company adopted Financial Accounting Standards Board (“FASB”) Interpretation No. 48, *Accounting for Uncertainty in Income Taxes—an interpretation of FASB Statement No. 109* (“FIN No. 48”). FIN No. 48 clarifies the accounting for uncertainty in income taxes recognized in a company’s financial statements in accordance with Statement of Financial Accounting Standards (“SFAS”) No. 109, *Accounting for Income Taxes*. FIN No. 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. The adoption of FIN No. 48 did not have an impact on the Company’s condensed consolidated financial statements.

As of the date of adoption, the Company had approximately \$1.9 million of unrecognized tax benefits that, if recognized, would affect the annual effective income tax rate. As of September 30, 2007, the Company has \$2.2 million of unrecognized tax benefits.

The Company recognizes interest and penalties, if applicable, related to uncertain tax positions in the provision for income taxes line of the condensed consolidated statements of income. During the nine-month period ended September 30, 2007, the Company recognized approximately \$0.1 million of accrued interest associated with uncertain tax positions. As of September 30, 2007, the Company has approximately \$0.7 million of accrued interest related to uncertain tax positions, which is included in the \$2.2 million noted above.

The earliest tax year open to examination by the Internal Revenue Service and the other tax jurisdictions in which the Company files a tax return is 2003. During the second quarter, the Company concluded a tax examination with the City of New York for the years 2000 through 2002. At the conclusion of this examination, a payment was made to the City of New York in the amounts of \$0.2 million of tax and \$0.1 million of interest for a total of \$0.3 million. The resolution of this examination had no impact on the Company’s effective tax rate.

***Recent Accounting Pronouncements and Changes, Not Yet Adopted***

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements* (“SFAS No. 157”), which defines fair value, establishes a framework for measuring fair value in accordance with GAAP, and expands



**NYMEX HOLDINGS, INC. AND SUBSIDIARIES**

**NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

disclosures about fair value measurements. SFAS No. 157 will be effective for the Company's fiscal year 2008. The Company is currently evaluating the potential effects of the adoption of SFAS No. 157 on its results of operations and financial position.

In February 2007, the FASB released SFAS No. 159, *Value Option for Financial Assets and Financial Liabilities*. This Statement permits entities to choose to measure many financial instruments and certain other items at fair value. SFAS No. 159 will be effective for the Company's fiscal year 2008. The Company is currently evaluating the potential effects of the adoption of SFAS No. 159 on its results of operations and financial position.

**NOTE 2. Securities Lending**

The Company entered into an agreement with JPMorgan Chase Bank, N.A. ("JPMorgan") to participate in a securities lending program. Under this program, JPMorgan, as agent, lends on an overnight basis, a portion of the clearing members' securities on deposit in the Company's margin deposits and guaranty fund to third parties in return for cash collateral. JPMorgan, in turn, invests the cash collateral in various investments on behalf of the Company in accordance with the program's investment guidelines. The Company receives the benefits, and bears the risks, of such investments. Interest expense is then paid to the third party for the cash collateral the Company controlled during the transaction, and a fee is paid to JPMorgan for administering the transaction. Interest income and interest expense, as well as the fee paid to JPMorgan, are reported in the non-operating income and expenses section on the Company's condensed consolidated statements of income. At September 30, 2007, the fair value of the securities on loan was \$957.8 million. Interest income, interest expense and the JPMorgan fees recognized under the securities lending program were \$80.4 million, \$77.2 million and \$0.6 million, respectively, for the nine months ended September 30, 2007 compared to \$97.9 million, \$94.6 million and \$0.8 million, respectively, for the nine months ended September 30, 2006.

**NOTE 3. Allowance for Doubtful Accounts and Credits**

Clearing and transaction fees receivable are carried net of allowances for member credits, which are determined based upon expected billing adjustments. Allowances for member credits were \$509,000 at September 30, 2007 and December 31, 2006. The Company believes the allowances are adequate to cover member credits. The Company also believes the likelihood of incurring material losses due to non-collectibility is remote and, therefore, no allowance for doubtful accounts is necessary.

An allowance for doubtful accounts is maintained for market data accounts receivable to cover potential non-collectible vendor receivables and credit adjustments by the market data vendor customers. This allowance was \$307,000 and \$147,000 at September 30, 2007 and December 31, 2006, respectively, which the Company believes is sufficient to cover potential bad debts and expected unclaimed credits. Accounts receivable for market data revenues, net of the allowance, totaled \$13.1 million and \$5.5 million at September 30, 2007 and December 31, 2006, respectively, and are included in other current assets on the Company's condensed consolidated balance sheets.

The Company maintains a reserve for non-collectible receivables of other revenues in the amount of \$660,000 and \$552,000 at September 30, 2007 and December 31, 2006, respectively, to cover potential bad debts and expected unclaimed credits. Accounts receivable for other revenues, net of the allowance, totaled \$318,000 and \$197,000 at September 30, 2007 and December 31, 2006, respectively, and are included in other current assets on the Company's condensed consolidated balance sheets.

**NYMEX HOLDINGS, INC. AND SUBSIDIARIES**

**NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**NOTE 4. Margin Deposits and Guaranty Funds**

The Company is required, under the Commodity Exchange Act, to maintain separate accounts for cash and securities that are deposited by clearing members, at banks approved by the Company, as margin for house and customer accounts. These margin deposits are used by members to meet their obligations to the Company for margin requirements on open futures and options positions, as well as delivery obligations.

Each clearing member firm is required to maintain a security deposit, in the form of cash or U.S. Treasury securities with a maturity of ten years or less or shares of approved money market mutual funds, of a minimum of \$2.5 million in a fund known as a guaranty fund (the “Guaranty Fund”). The Guaranty Fund may be used for any loss sustained by the Company as a result of the failure of a clearing member to discharge its obligations on the NYMEX Division or COMEX Division. Although there is one Guaranty Fund for both divisions, separate contribution amounts are calculated for each division.

Every member and non-member executing transactions on the Company’s divisions must be guaranteed by a clearing member and clear their transactions through the Company’s clearinghouse. This requirement also applies to transactions conducted outside of the Exchange which clear through NYMEX ClearPort® Clearing as well as NYMEX Division and COMEX Division products traded on CME Globex® electronic trading platform. Clearing members of the NYMEX Division and COMEX Division require their customers to maintain deposits in accordance with Company margin requirements. Margin deposits and Guaranty Funds are posted by clearing members with the Company’s clearinghouse. In the event of a clearing member default, the Company satisfies the clearing member’s obligations on the underlying contract by drawing on the defaulting clearing member’s Guaranty Funds. If those resources are insufficient, the Company may fund the obligations from its own financial resources or draw on Guaranty Funds posted by non-defaulting clearing members. The Company also maintains a \$115 million default insurance policy. This insurance coverage is available to protect the Company and clearing members in the event that a default in excess of \$250 million occurs.

The Company is entitled to earn interest on cash balances posted as margin deposits and Guaranty Funds. Such balances are included in the Company’s condensed consolidated balance sheets, and are generally invested overnight in securities purchased under agreements to resell. Margin deposits and Guaranty Fund balances earning interest for clearing member firms are reported below, however, are not included in the Company’s condensed consolidated balance sheets.

## NYMEX HOLDINGS, INC. AND SUBSIDIARIES

## NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following table sets forth margin deposits and Guaranty Fund balances held by the Company on behalf of clearing members at September 30, 2007 and December 31, 2006 (in thousands):

	September 30, 2007			December 31, 2006		
	Margin Deposits	Guaranty Funds	Total Funds	Margin Deposits	Guaranty Funds	Total Funds
<b>Cash and securities earning interest for NYMEX Holdings</b>						
Cash	\$ 24	\$ 7,557	\$ 7,581	\$ 10,010	\$ 42	\$ 10,052
Securities held for resale	14,030	—	14,030	7,000	—	7,000
Total cash and securities	14,054	7,557	21,611	17,010	42	17,052
<b>Cash and securities earning interest for members</b>						
Money market funds	4,558,005	97,855	4,655,860	5,788,910	71,036	5,859,946
U.S. Treasuries	12,402,848	184,808	12,587,656	9,692,639	171,061	9,863,700
Letters of credit	2,758,151	—	2,758,151	2,571,918	—	2,571,918
Total cash and securities	19,719,004	282,663	20,001,667	18,053,467	242,097	18,295,564
Total funds	\$ 19,733,058	\$ 290,220	\$ 20,023,278	\$ 18,070,477	\$ 242,139	\$ 18,312,616

**NOTE 5. Goodwill and Indefinite-Lived Intangible Asset**

In 1994, NYMEX Division acquired the equity interests, but not the trading rights and protections, of the owners of COMEX Division memberships. As part of the agreement for this acquisition, a \$10 million payment would be made to the owners of COMEX Division memberships in the event the Company consummated an initial public offering (“Special IPO Payment”). Upon the Company’s successful completion of its initial public offering on November 22, 2006, the Special IPO Payment was made to owners of COMEX Division memberships of record as of November 16, 2006. This payment was considered additional consideration to the original purchase price of the COMEX equity interests and, therefore, was recorded as additional goodwill on the Company’s condensed consolidated balance sheets. Goodwill amounted to \$26.3 million at September 30, 2007 and December 31, 2006.

On November 20, 2006, the owners of COMEX Division memberships voted on and approved an agreement with the Company in which their trading rights and protections were terminated in exchange for certain new trading rights and protections. The value assigned to the acquired trading rights was based on a measurement date of September 20, 2006, the date the agreement was entered into. The average price of the Company’s common stock for the two days before and after the measurement date was used to value the trading rights at approximately \$280.8 million. Included in the value are direct costs the Company incurred in preparing and negotiating such agreement. The Company considered the guidance set forth in SFAS No. 142, *Goodwill and Other Intangible Assets*, in determining that the acquired trading rights have an indefinite useful life.

Intangible assets that have finite useful lives are amortized over their estimated useful lives. Goodwill and indefinite lived intangible assets are assessed annually for impairment. The latest impairment assessment of goodwill and the indefinite lived intangible asset was completed in the fourth quarter of 2006 and no impairment was determined. Future impairment tests will be performed annually in the fourth quarter, or sooner if warranted by economic conditions.

**NYMEX HOLDINGS, INC. AND SUBSIDIARIES**

**NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**NOTE 6. Long-Term Investments**

Long-term investments are comprised principally of the Company's investments in Montréal Exchange, DME Holdings and Optionable, Inc. as described below:

On April 10, 2007, the Company entered into a Stock and Warrant Purchase Agreement with Optionable, Inc. ("Optionable"), an energy derivatives broker, whereby the Company purchased 19% of Optionable's outstanding common shares on a fully diluted basis for approximately \$28.9 million in cash. The warrant entitles the Company to purchase from Optionable common shares so as to increase the Company's ownership to an amount not to exceed 40% of Optionable's outstanding common shares on a fully diluted basis. Following a precipitous fall in Optionable's stock price during May 2007 due to the loss of a major customer and resignation of its chief executive officer, among other matters, the Company evaluated its investment in Optionable for other-than-temporary impairment. In evaluating this investment, the Company took into consideration the severity of the stock price decline, the expected period of time necessary for a recovery to occur and the Company's ability to retain its investment during the period anticipated for recovery in fair value, if any. In analyzing Optionable's financial condition and following the guidance in FASB Statement No. 115, *Accounting for Certain Investments in Debt and Equity Securities* ("SFAS No. 115"), and EITF 03-1, *The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments*, the Company determined the impairment in its Optionable investment as other-than-temporary and recorded a pre-tax charge of approximately \$26 million in June 2007. This charge is recorded in losses from unconsolidated investments on the Company's condensed consolidated statements of income. The shares of Optionable are considered available-for-sale securities in accordance with SFAS No. 115. Available-for-sale securities are stated at fair value, and unrealized holding gains and losses, net of the related deferred tax effect, are reported as a separate component of stockholders' equity. At September 30, 2007, the fair value of the securities was approximately \$1.7 million.

On March 13, 2007, the Company entered into a Private Placement Subscription Agreement (the "Agreement") with Bourse De Montréal, Inc., a Canadian corporation ("Montréal Exchange") whereby the Company purchased approximately 3.1 million common shares of Montréal Exchange for approximately \$78 million in cash. The shares purchased represent approximately 10% of the total outstanding shares of Montréal Exchange immediately after the execution of the Agreement, which was consummated on March 23, 2007. The Company accounted for this investment under the cost method as it cannot exercise significant influence over the operating and financial policies of Montréal Exchange. Subsequently, on March 27, 2007, Montréal Exchange commenced trading on the Toronto Stock Exchange under the symbol "MXX." Following the public offering of the Montréal Exchange, the Company evaluated and concluded that its investment in Montréal Exchange should be reported as an "available-for-sale" security in accordance with SFAS No. 115. At September 30, 2007, the fair value of the securities was approximately \$110.7 million.

In June 2005, the Company and Tatweer Dubai LLC ("Tatweer"), a subsidiary of Dubai Holding LLC, entered into a joint venture to develop the Middle East's first energy futures exchange. As part of this venture, DME Holdings Limited ("DME Holdings"), which is jointly owned by the Company and Tatweer Dubai LLC, was incorporated as a limited company under the laws of Bermuda. DME Holdings is the indirect owner of Dubai Mercantile Exchange Limited (the "DME"), a limited liability company formed under the laws of the Dubai International Financial Centre ("DIFC"), a financial free zone designed to promote financial services within the United Arab Emirates. On June 1, 2007, DME commenced offering sour crude and fuel oil products for trading. DME is regulated by the Dubai Financial Services Authority, a regulatory body established within the DIFC.

On May 24, 2007, DME Holdings entered into a Shareholders Agreement with the Oman Investment Fund to ultimately sell a 31.58% equity interest in DME Holdings. In conjunction with this agreement, the Company and Tatweer loaned \$13.7 million each to DME Holdings in order to meet the financial resource requirements of

**NYMEX HOLDINGS, INC. AND SUBSIDIARIES**

**NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

the regulatory authorities. Upon the consummation of the restructuring of the investment pursuant to the Shareholders Agreement, the Company will ultimately own a 32.5% economic interest and a 34.21% voting interest in DME Holdings.

The Company is required to contribute capital to the joint venture in an aggregate amount of \$9.8 million over a five-year period, contingent upon the DME's achievement of certain agreed upon performance targets. For the three- and nine-month periods ended September 30, 2007, the Company incurred losses, attributable to its investment, of approximately \$1.9 million and \$6.5 million, respectively, as compared to \$1.0 million and \$1.7 million, respectively, for the three- and nine-month periods ended September 30, 2006. These losses are recorded in losses from unconsolidated investments on the condensed consolidated statements of income.

FASB Interpretation No. 46, *Consolidation of Variable Interest Entities, an Interpretation of Accounting Research Bulletin No. 51* ("FIN 46") and its amendment FIN 46(R) (revised December 2003) provides guidance for determining when an entity should consolidate another entity that meets the definition of a variable interest entity ("VIE"). Special purpose entities and other types of entities are assessed for consolidation under this guidance. A variable interest entity is required to be consolidated if the Company will absorb a majority of the expected losses, will receive a majority of the expected residual returns, or both. An entity that consolidates a variable interest entity is called the primary beneficiary. The Company evaluated and determined that Optionable and Montréal Exchange are not VIEs in accordance with FIN 46(R). Additionally, based on a re-evaluation of DME following the consummation of the Shareholders Agreement, the Company determined that DME is no longer a VIE because it meets the business scope exception provided in FIN 46(R).

**NOTE 7. Long-Term Debt**

The Company issued long-term debt totaling \$100 million during 1996 and 1997 to provide completion financing for the Company's trading facility and headquarters. This issuance contained three series, each with different maturities, interest rates and repayment schedules. Series A notes require annual principal repayments from 2001 to 2010, and a final payment of principal in 2011. Series B notes require annual principal repayments from 2011 to 2020, and a final payment of principal in 2021. Series C notes require annual principal repayments from 2022 to 2025, and a final payment of principal in 2026. The notes represent senior unsecured obligations of the Company and are not secured by the Company's headquarters, the Company's interest therein, or any other collateral. The notes are subject to a prepayment penalty in the event they are paid off prior to their scheduled maturities. The Company believes that any economic benefit derived from early redemption of these notes would be offset by the redemption penalty. These notes place certain limitations on the Company's ability to incur additional indebtedness. At September 30, 2007 and December 31, 2006, the notes payable balance, including the current portion, was \$83.1 million. At September 30, 2007, the fair value of the notes was approximately \$99.4 million.

**NYMEX HOLDINGS, INC. AND SUBSIDIARIES**
**NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**
**NOTE 8. Earnings per Share**

The Company calculates earnings per share using common stock issued, which differs from common stock outstanding due to the issuance of common stock as consideration for the trading rights the Company acquired from the owners of COMEX Division memberships (see Notes 5 and 13) and for vested stock awarded to non-employee directors of the Company's board under the 2006 Long-Term Incentive Plan (see Notes 13 and 15). The calculation of earnings per common share for the period ended September 30, 2007 and 2006 is as follows (in thousands, except for share data):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2006	2007	2006
Net income	\$ 62,574	\$ 40,724	\$ 160,539	\$ 112,490
Less: Accrued preferred stock dividends	—	2,236	—	4,858
Accretion of preferred stock issuance costs	—	345	—	755
Earnings available to common stockholders	<u>\$ 62,574</u>	<u>\$ 38,143</u>	<u>\$ 160,539</u>	<u>\$ 106,877</u>
Weighted average common shares outstanding	94,457,000	73,440,000	94,456,000	54,071,000
Participating securities—convertible preferred stock	—	8,160,000	—	6,008,000
Weighted average common shares outstanding—basic	<u>94,457,000</u>	<u>81,600,000</u>	<u>94,456,000</u>	<u>60,079,000</u>
Effect of stock options	307,000	—	301,000	—
Effect of restricted stock units	72,000	—	70,000	—
Weighted average common shares outstanding—dilutive	<u>94,836,000</u>	<u>81,600,000</u>	<u>94,827,000</u>	<u>60,079,000</u>
Earnings per Share:				
Basic	\$ 0.66	\$ 0.47	\$ 1.70	\$ 1.78
Diluted	\$ 0.66	\$ 0.47	\$ 1.69	\$ 1.78
Proforma weighted average common shares outstanding and earnings per share retroactively adjusted to reflect the 90,000-for-1 recapitalization on March 14, 2006 (Unaudited):				
Earnings available to common stockholders	<u>\$ 62,574</u>	<u>\$ 38,143</u>	<u>\$ 160,539</u>	<u>\$ 106,877</u>
Weighted average common shares outstanding:				
Basic	94,457,000	81,600,000	94,456,000	79,448,000
Effect of stock options	307,000	—	301,000	—
Effect of restricted stock units	72,000	—	70,000	—
Diluted	<u>94,836,000</u>	<u>81,600,000</u>	<u>94,827,000</u>	<u>79,448,000</u>
Earnings per Share:				
Basic	\$ 0.66	\$ 0.47	\$ 1.70	\$ 1.35
Diluted	\$ 0.66	\$ 0.47	\$ 1.69	\$ 1.35

**NOTE 9. Members' Retirement Plan and Benefits**

The Company maintains a retirement and benefit plan under the COMEX Members' Recognition and Retention Plan ("MRRP"). This plan provides benefits to certain members of the COMEX Division based on long-term membership, and participation is limited to individuals who were COMEX Division members prior to the Company's acquisition of COMEX in 1994. No new participants were permitted into the plan after the date of the acquisition. The annual benefit payments are \$12,500 (\$2,000 for options members) for ten years for vested participants. Under the terms of the MRRP, the Company is required to fund the plan with a minimum annual contribution of \$400,000 until it is fully funded. The Company funded the plan with a contribution of \$800,000 in 2006 and expects to do so again in 2007. Based on actuarial estimates and continued funding of \$800,000 per year, the Company expects the plan to be fully funded by 2019. The annual contribution may be reduced if changes in actuarial estimates indicate that full funding can be achieved without making the entire funding contributions indicated above. Based on actuarial estimates, the Company's contributions are charged against current operations. All benefits to be paid under the MRRP shall be based upon reasonable actuarial

**NYMEX HOLDINGS, INC. AND SUBSIDIARIES**

**NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

assumptions which, in turn, are based upon the amounts that are available and are expected to be available to pay benefits, except that the benefits paid to any individual will not exceed the amounts stated above. Quarterly distributions from the MRRP began in the second quarter of 2002. Subject to the foregoing, the board of directors of the Company reserves the right to amend or terminate the MRRP upon an affirmative vote of 60% of the eligible COMEX Division plan participants.

**NOTE 10. Technology Services Agreement**

On April 6, 2006, NYMEX Exchange entered into a definitive technology services agreement (the “CME Agreement”) with Chicago Mercantile Exchange Inc. (“CME”), a wholly-owned subsidiary of Chicago Mercantile Exchange Holdings Inc. CME is the primary electronic trading service provider for NYMEX Exchange’s energy futures and options contracts and, also, for the COMEX Division metals products.

The CME Agreement has a ten-year term from the launch date with rolling three-year extensions unless, among other reasons, (i) either party elects not to renew the CME Agreement upon written notice prior to the beginning of the applicable renewal term, or (ii) either party elects to terminate the CME Agreement between the fifth and the sixth year anniversary of the first launch date upon written notice and payment of a termination fee. Pursuant to the CME Agreement, NYMEX Exchange will pay to CME a minimum annual payment or per trade fees based on average daily volume, whichever is greater. In addition, pursuant to the CME Agreement, if the Company acquires or merges with an entity, that at the time of such acquisition or merger, operates a trading execution system for futures or futures options products (or off-exchange look-alike versions of such products), electronic trading of such products shall be transitioned to CME Globex electronic trading platform within two years.

Under the terms of the CME Agreement, the Company incurred fees of \$14.7 million and \$40.6 million for the current three- and nine-month periods, respectively, as compared to \$5.1 million and \$5.7 million for the same periods last year. These fees are included in direct transaction costs on the condensed consolidated statements of income.

**NOTE 11. Pension and Other Benefit Plans**

The Company sponsors various defined contribution and postretirement plans to qualifying employees. The Company also provides postemployment benefits to eligible employees after employment but before retirement.

***Savings Plan***

The Company sponsors a defined contribution plan (the “Savings Plan”) that incorporates a deferred salary arrangement under Section 401(k) of the Internal Revenue Code to all eligible domestic employees. The Company matches employee contributions up to a maximum of 3% of salary. In addition, the Company makes annual contributions ranging from 2% to 7% based upon tenure for each eligible Savings Plan member upon achievement by the Company of certain performance targets.

***Deferred Compensation Plan***

The Company has a nonqualified deferred compensation plan (the “Deferred Plan”) for key employees to permit them to defer receipt of current compensation. The Company may provide a matching and a regular year-end contribution to the Deferred Plan. Matching and year-end contribution percentages follow the same guidelines as the Company’s defined contribution plan. The Deferred Plan is not intended to be a qualified plan under the provisions of the Internal Revenue Code. It is intended to be unfunded and, therefore, all compensation deferred under the Deferred Plan is held by the Company and commingled with its general assets. The

## NYMEX HOLDINGS, INC. AND SUBSIDIARIES

## NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

participating employees are general creditors of the Company with respect to these benefits. The Company has the right to amend, modify, or terminate the Deferred Plan at any time. At September 30, 2007 and December 31, 2006, deferred compensation amounted to \$2.9 million and \$2.4 million, respectively, and is included in accrued salaries and related liabilities on the condensed consolidated balance sheets.

**Postemployment Plan**

The Company offers various postemployment benefits to employees after employment but before retirement. These benefits are paid in accordance with the Company's established postemployment benefit practices and policies. Postemployment benefits include both short-term disability income benefits and long-term disability related health benefits. The Company accrues for these future postemployment benefits, which are funded on a pay-as-you-go basis. The Company's postemployment benefits liabilities at September 30, 2007 and December 31, 2006 were \$0.7 million and \$0.5 million, respectively.

**Postretirement Plan**

The Company's postretirement benefit costs are based on actuarial valuations. These valuations are based on key assumptions, including the discount rate and health care cost trend rate. Material changes in its postretirement benefit costs may occur in the future due to changes in these assumptions, changes in the number of plan participants and changes in the level of benefits provided. The Company provides certain health care and life insurance benefit plans for qualifying retired employees. Substantially all of the Company's employees may become eligible for these benefits if they reach specified age and years of service criteria while working for the Company. The benefits are provided through certain insurance companies.

Net periodic benefit cost for the Company's defined benefit retirement plans and other benefit plans for the three and nine months ended September 30, 2007 and 2006 included the following components (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2006	2007	2006
Service costs	\$ 128	\$ 109	\$ 348	\$ 327
Interest costs	129	115	345	345
Amortization of prior service costs	(14)	(14)	(42)	(42)
Amortization of net (gain) loss	10	22	42	66
Total net period postretirement benefit cost	<u>\$ 253</u>	<u>\$ 232</u>	<u>\$ 693</u>	<u>\$ 696</u>

Subsequent to the filing of the 2006 consolidated financial statements, the Company's management determined that it had not properly classified the adoption of SFAS No. 158, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans—an amendment of FASB Statements No. 87, 88, 106 and 132(R)* ("SFAS No. 158"). Specifically, the Company misclassified the unfunded status of the postretirement benefit plan as a component of total comprehensive income for the year ended December 31, 2006. The Company corrected the accompanying condensed consolidated statements of stockholders' equity to properly classify the adoption of SFAS No. 158 as an adjustment to accumulated other comprehensive income at December 31, 2006.

**NOTE 12. Lease Termination Costs**

In June 2006, the Company ceased its floor trading operations of its London-based exchange. As a result, the Company incurred lease termination costs of approximately \$1.5 million during the first and second quarters



**NYMEX HOLDINGS, INC. AND SUBSIDIARIES**

**NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

of 2006 on various operating leases it had contracted to support its floor trading operations. In September 2006, the Company consolidated its London offices, and in doing so vacated its location at 131 Finsbury Pavement. The Company began negotiations with the landlord during September 2006 to buy out the remaining lease term. As such, the Company recorded a charge of approximately \$1.9 million in the third quarter of 2006 for the estimated amount to be paid. This charge was recorded in occupancy and equipment on the Company's condensed consolidated statements of income.

The following tables summarize the activity related to the various London exchange lease terminations in accordance with SFAS No. 146, *Accounting for Costs Associated with Exit or Disposal Activities* (in thousands):

	<u>Lease Termination Costs</u>		<u>Lease Termination Costs</u>
Total expected to be incurred	\$ 3,426	Liability at January 1, 2007	\$ 2,980
Charges incurred in 2006	\$ 3,426	Charges	—
Charges incurred in 2007	—	Payments	(2,102)
Cumulative charges incurred as of September 30, 2007	<u>\$ 3,426</u>	Liability at September 30, 2007	<u>\$ 878</u>

**NOTE 13. Common Stock**

At September 30, 2007, the composition of common stock was as follows:

	<u>Authorized<sup>1</sup></u>	<u>Issued</u>	<u>Outstanding<sup>2</sup></u>
Common Stock <sup>3</sup>	101,984,800	21,741,705	21,734,100
Series A-1 Common Stock	24,480,000	19,806,000	19,806,000
Series A-2 Common Stock	24,480,000	23,310,000	23,310,000
Series A-3 Common Stock	24,480,000	23,411,000	23,411,000
Series B-1 Common Stock	2,161,600	1,974,000	1,974,000
Series B-2 Common Stock	2,161,600	2,099,300	1,309,700
Series B-3 Common Stock	2,161,600	2,115,400	1,325,800
	<u>181,909,600</u>	<u>94,457,405</u>	<u>92,870,600</u>

<sup>1</sup> Common stock authorized consists of: (i) 73,440,000 shares reserved for issuance upon conversion of the Series A-1, Series A-2 and Series A-3 Common Stock; (ii) 8,160,000 shares authorized and issued for the conversion of the Company's preferred stock; (iii) 4,300,000 shares reserved for issuance under the Company's 2006 Long-Term Incentive Plan; (iv) 9,600,000 shares authorized in connection with the IPO of which 6,365,000 were issued; and (v) 6,484,800 shares reserved for issuance upon conversion of the Series B-1, Series B-2 and Series B-3 Common Stock.

<sup>2</sup> Series B-1, Series B-2 and Series B-3 Common Stock were issued as consideration for the trading rights the Company acquired from the owners of COMEX Division memberships (see Note 5). In accordance with the terms of the agreement, each of the 772 owners of COMEX Division memberships was to receive 8,400 shares of the Company's common stock (2,800 Series B-1, 2,800 Series B-2, and 2,800 Series B-3 shares) and was able to individually elect the timing of the receipt of those shares. The election choices included the receipt of: (i) all shares on the date the agreement was consummated (November 20, 2006); (ii) all shares on January 2, 2007; or (iii) in one-third increments on the 180<sup>th</sup>, 360<sup>th</sup> and 540<sup>th</sup> day following the date the

**NYMEX HOLDINGS, INC. AND SUBSIDIARIES**

**NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

Company's Registration Statement on Form S-1, as filed with the SEC, became effective (November 16, 2006). As a result of the election by the 772 owners of COMEX Division memberships: 204 elected to receive their shares, totaling 1,713,600 shares, on November 20, 2006; 286 elected to receive their shares, totaling 2,402,400 shares, on January 2, 2007; and 282 elected to receive their shares, totaling 2,368,800 shares, in one-third increments as described above.

- 3 The difference between the Common Stock issued and outstanding represents stock awards that have vested to non-employee directors of the Company's board, which were granted under the 2006 Long-Term Incentive Plan. In accordance with each non-employee director's award, shares that are vested are unable to be sold until six months after the director is no longer serving on the board, therefore, the vested shares are considered to be issued but not outstanding.

**NOTE 14. Supplemental Disclosures of Cash Flow Information**

Supplemental disclosures of cash flow information for the nine months ended September 30, 2007 and 2006 are as follows:

	Nine Months Ended September 30,	
	2007	2006
	(in thousands)	
Cash paid for:		
Interest	\$ 80,385	\$ 97,926
Income taxes	\$ 131,751	\$ 90,271
Non-cash investing and financing activities:		
Unrealized gain on available-for-sale securities	\$ 30,358	\$ 1,324
Issuance of common stock	\$ —	\$ 734
Cumulative redeemable convertible preferred stock dividends and amortization of issue costs	\$ —	\$ 5,613
Decrease in income taxes payable due to NYMEX MRRP tax benefit	\$ —	\$ 7,305

**NOTE 15. Share-Based Compensation**

At September 30, 2007, the Company has only one share-based compensation plan ("Plan") that was described in the Company's Annual Report on Form 10-K for the year ended December 31, 2006. The Plan provides for the granting of incentive stock options, non-qualified stock options, restricted stock, and restricted stock unit awards to employees and directors for up to 4.3 million shares of common stock. The Company believes that such awards better align the interest of its employees with those of its stockholders. The exercise price for all stock options is not less than 100% of the fair market value of the common stock on the date of grant. Notwithstanding the foregoing, the fair market value of a share of common stock for purposes of determining awards with a grant date as of the Company's initial public offering was set in the final prospectus for such initial public offering. No monetary payment is required as a condition of receiving a restricted stock or restricted stock unit award, since the consideration for the award shall be services actually rendered to the Company or for the Company's benefit. All share-based compensation currently awarded vest over a varying period of up to four years from the date of grant. Non-qualified stock options currently awarded have a maximum term of 8 years.

**NYMEX HOLDINGS, INC. AND SUBSIDIARIES**

**NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

The following table summarizes the changes in non-qualified stock options under the Company's share-based compensation plan for the three- and nine-month periods ended September 30, 2007:

	Three Months Ended September 30, 2007		Nine Months Ended September 30, 2007	
	Shares (in thousands)	Weighted average exercise price	Shares (in thousands)	Weighted average exercise price
Outstanding at the beginning of the period	1,343.5	\$ 62.12	1,334.5	\$ 59.00
Granted	—	—	58.5	130.60
Exercised	—	—	—	—
Forfeited or expired	6.0	59.00	55.5	59.00
Outstanding at the end of the period	<u>1,337.5</u>	<u>\$ 62.13</u>	<u>1,337.5</u>	<u>\$ 62.13</u>
Options exercisable at the end of the period	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>

A summary of the status of the Company's non-vested shares restricted stock unit awards for the three- and nine-month periods ended September 30, 2007, is presented below:

	Three Months Ended September 30, 2007		Nine Months Ended September 30, 2007	
	Shares	Weighted average Grant-Date Fair Value (in thousands)	Shares	Weighted average Grant-Date Fair Value (in thousands)
Nonvested at the beginning of the period	198.0	\$ 12,361.4	198.7	\$ 11,726.0
Granted	—	—	10.2	1,278.5
Vested	7.6	625.5	7.6	625.5
Forfeited or expired	1.0	59.0	11.9	702.1
Nonvested at the end of the period	<u>189.4</u>	<u>\$ 11,676.9</u>	<u>189.4</u>	<u>\$ 11,676.9</u>

On a quarterly basis, the Company evaluates the expected forfeiture rate based upon actual terminations in the current quarter. As of September 30, 2007, the current forfeiture rate for the non-vested non-qualified stock options and restricted stock unit awards was 10.2% and 11.2%, respectively, as compared to 1.9% and 3.4%, respectively, at December 31, 2006. As of September 30, 2007, there was \$30.7 million of total unrecognized compensation cost related to non-vested share-based compensation arrangements granted under the Plan. This cost is expected to be recognized over the future vesting period of four years.

**NOTE 16. Segment Reporting**

The Company considers operating results for two business segments: Open Outcry and Electronic Trading and Clearing. Open Outcry is the trading and clearing of NYMEX Division and COMEX Division futures and options contracts on the trading floors of the Exchange. Electronic Trading and Clearing consists of NYMEX ACCESS®, NYMEX ClearPort® Trading, NYMEX ClearPort® Clearing and trading on the CME Globex® electronic trading platform. The Company reports revenue on a segment basis. Total revenues presented for each segment include clearing and transaction fees related to such segment and a pro rated portion of market data fees. Other revenues are attributed entirely to Open Outcry. Direct transaction costs are allocated directly to the segment they are incurred for. Depreciation and amortization and other operating expenses are allocated directly to the segment they pertain to, where practicable, with the balance of these expenses allocated based on the proportion of operating revenues, net of direct transaction costs, attributed to each segment. Non-operating income and expenses are allocated entirely to Corporate/Other. The prior year segment information has been reclassified to reflect this methodology of reporting each segment.

**NYMEX HOLDINGS, INC. AND SUBSIDIARIES**

**NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

Financial information relating to these business segments is set forth below (in thousands):

	Three Months Ended September 30, 2007				Three Months Ended September 30, 2006			
	Open Outcry	Electronic Trading & Clearing	Corporate / Other	Total	Open Outcry	Electronic Trading & Clearing	Corporate / Other	Total
Total operating revenues	\$ 42,035	\$ 131,165	\$ —	\$ 173,200	\$ 61,020	\$ 77,274	\$ —	\$ 138,294
Direct transaction costs	—	24,685	—	24,685	74	16,571	—	16,645
Depreciation and amortization	1,622	1,650	—	3,272	2,155	1,167	—	3,322
Other operating expenses	15,587	21,594	—	37,181	27,781	15,980	385	44,146
Operating income	24,826	83,236	—	108,062	31,010	43,556	(385)	74,181
Non-operating income	—	—	2,382	2,382	—	—	1,140	1,140
Income before provision for income taxes	24,826	83,236	2,382	110,444	31,010	43,556	755	75,321
Provision for income taxes	10,760	36,077	1,033	47,870	14,244	20,006	347	34,597
Net income	\$ 14,066	\$ 47,159	\$ 1,349	\$ 62,574	\$ 16,766	\$ 23,550	\$ 408	\$ 40,724

	Nine Months Ended September 30, 2007				Nine Months Ended September 30, 2006			
	Open Outcry	Electronic Trading & Clearing	Corporate / Other	Total	Open Outcry	Electronic Trading & Clearing	Corporate / Other	Total
Total operating revenues	\$ 129,393	\$ 371,630	\$ —	\$ 501,023	\$ 190,436	\$ 182,043	\$ —	\$ 372,479
Direct transaction costs	—	73,105	—	73,105	536	31,046	—	31,582
Depreciation and amortization	5,205	5,212	—	10,417	8,460	3,110	—	11,570
Other operating expenses	52,082	64,143	15	116,240	83,649	39,929	835	124,413
Operating income (loss)	72,106	229,170	(15)	301,261	97,791	107,958	(835)	204,914
Non-operating (expense) income	—	—	(17,121)	(17,121)	—	—	1,461	1,461
Income (loss) before provision for income taxes	72,106	229,170	(17,136)	284,140	97,791	107,958	626	206,375
Provision (benefit) for income taxes	31,366	99,689	(7,455)	123,601	44,487	49,113	285	93,885
Net income (loss)	\$ 40,740	\$ 129,480	\$ (9,681)	\$ 160,539	\$ 53,304	\$ 58,844	\$ 341	\$ 112,490

The Company does not account for, and does not report to management, its assets (other than goodwill and other intangible assets for SFAS No. 142 reporting purposes) or capital expenditures by business segment. Foreign source revenues and long-lived assets located in foreign countries are not material to the consolidated results of operations and financial position of the Company and are, therefore, not disclosed separately.

**NOTE 17. Direct Transaction Costs**

The Company incurs various costs to support its trading floor and clearinghouse. These costs include fees paid to third-party brokers for submitting individually negotiated off-exchange trades to the Exchange for the clearing of specified products. These costs also include service fees paid to the CME in connection with the CME Agreement (see Note 10), license and royalty fees paid to third-party vendors for the use of their settlement prices, and trading floor supplies needed for the Company's open outcry venue.

**NYMEX HOLDINGS, INC. AND SUBSIDIARIES**

**NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**NOTE 18. Commitments and Contingencies**

In connection with its operating activities, the Company enters into certain contractual obligations. The Company's material contractual cash obligations include long-term debt, a technology services agreement, operating leases and other contracts. A summary of the Company's minimum required future cash payments associated with its contractual cash obligations outstanding as of September 30, 2007, as well as an estimate of the timing in which these commitments are expected to expire, are set forth in the following table:

	Payments Due by Period						Total
	2007	2008	2009	2010	2011	Thereafter	
	(in thousands)						
<b>Contractual Obligations</b>							
Long-term debt principal	\$ 2,817	\$ 2,817	\$ 2,817	\$ 2,817	\$ 7,739	\$ 64,091	\$ 83,098
Long-term debt interest	3,208	6,205	5,994	5,783	5,573	36,213	62,976
Services agreements <sup>1</sup>	2,538	10,080	10,270	11,571	30,948	—	65,407
Operating leases—facilities	783	3,012	3,027	3,306	3,585	2,187	15,900
Operating leases—equipment	319	1,553	1,354	518	—	—	3,744
Other long-term obligations	856	1,029	1,041	967	800	6,417	11,110
Total contractual obligations	<u>\$ 10,521</u>	<u>\$ 24,696</u>	<u>\$ 24,503</u>	<u>\$ 24,962</u>	<u>\$ 48,645</u>	<u>\$ 108,908</u>	<u>\$ 242,235</u>

<sup>1</sup> Services agreements include required minimum payments in accordance with a technology services agreement with CME. The CME Agreement has a ten-year term from the launch date (June 2006) with rolling three-year extensions. Either party may elect to terminate the CME Agreement between the fifth and the sixth year anniversary of the first launch date upon written notice and payment of a termination fee. As a result, the Company's current minimum obligation under the CME Agreement is for payments in years one through five. As such, the Contractual Obligations table above sets forth the Company's minimum obligation for years one through five, including the related termination fee in the event the Company elects to terminate the CME Agreement. In addition, the services agreements category includes employment agreements as filed with the SEC.

As previously disclosed in Note 1, the Company has \$2.2 million of unrecognized tax benefits as of September 30, 2007. The Company is subject to periodic examinations of its income tax returns by the U.S. Internal Revenue Service and various state and local taxing authorities, which could result in future tax liabilities, the payment of which would offset the current unrecognized tax benefits. Due to the uncertainty of the outcome of any future income tax examinations, it is not possible to estimate when tax payments, if any, would be made.

In 1995, the Company secured a grant of \$128.7 million from the New York City Economic Development Corporation ("EDC") and the Empire State Development Corporation ("ESDC", formerly known as the New York State Urban Development Corporation) for construction of its corporate headquarters and trading facility. The grant is being recognized in income on the same basis as, and is a reduction to, the depreciation of the facility. The Company is liable for liquidating damages on a declining scale, currently at \$25 million, if it violates terms of the occupancy agreement at any time prior to 15 years from the date of occupancy, July 7, 1997.

The Company occupies premises under leases, including a land lease, with various lessors that expire in 2007 through 2069. For the three months ended September 30, 2007 and 2006, rental expense for facilities and the land lease amounted to \$0.6 million and \$2.5 million, respectively. For the nine months ended September 30, 2007 and 2006, rental expense for facilities and the land lease amounted to \$1.9 million and \$5.9 million,

## NYMEX HOLDINGS, INC. AND SUBSIDIARIES

## NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

respectively. Included in the amounts for the three- and nine-month periods ended September 30, 2006 is the \$1.9 million lease termination charges the Company incurred on its London premises (see Note 12). The nine-month period ended September 30, 2006 also includes a \$1.8 million lease termination charge the Company incurred in regards to office space it formerly leased in New York City. The lease commitments on the Company's facilities include scheduled base rent increases over the terms of the leases. The base rent payments are recorded in occupancy and equipment expense on the condensed consolidated statements of income using the straight-line method over the terms of the leases. The Company has recorded a deferred credit to reflect the excess of rent expense over cash payments since inception of the leases.

The Company leases space to tenants in its headquarters facility. For the three months ended September 30, 2007 and 2006, rents collected from these leases were \$2.2 million and \$2.1 million, respectively. For the nine months ended September 30, 2007 and 2006, rents collected from these leases were \$6.5 million and \$6.4 million, respectively. Rents collected are recorded in other revenue on the condensed consolidated statements of income. Future minimum rental income for the years 2007 through 2011 are as follows:

	<u>(in thousands)</u>
2007	\$ 1,894
2008	5,666
2009	4,804
2010	4,484
2011	4,221
Thereafter	6,557
Total	<u>\$ 27,626</u>

In accordance with the DME shareholders agreement, the Company is required to contribute capital to the joint-venture in an aggregate amount of \$9.8 million over a five-year period, contingent upon the DME's achievement of certain agreed upon performance targets. At September 30, 2007, the Company has contributed a total of \$6.5 million.

**Financial Guarantees**

The Company has certain guarantee arrangements in its clearing process as well as other financial guarantees discussed below:

Included in marketable securities are investments that are pledged as collateral with one of the Company's investment managers relating to a membership seat financing program. Under this program, the investment manager extends credit to individuals purchasing NYMEX Division memberships. The program requires that the Company pledge assets to the investment manager in an amount equal to at least 118% of the loan value. In the event a member defaults on a loan, the investment manager has the right to seize the Company's collateral for the amount of the default, and the Company has the right to liquidate the member's interest in NYMEX Division to reimburse its loss of collateral. At September 30, 2007, there were total seat loan balances of \$4.9 million and securities pledged against the seat loan balances of \$5.7 million.

The Company serves a clearinghouse function, standing as a financial intermediary on every open futures and options transaction cleared. Through its clearinghouse, the Company maintains a system of guarantees for performance of obligations owed to buyers and sellers. This system of guarantees is supported by several mechanisms, including margin deposits and guaranty funds posted by clearing members with the Company's clearinghouse. The amount of margin deposits on hand will fluctuate over time as a result of, among other things, the extent of open positions held at any point in time by market participants in NYMEX Division and COMEX

**NYMEX HOLDINGS, INC. AND SUBSIDIARIES**

**NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

Division contracts and the margin rates then in effect for such contracts. The Company is required, under the Commodity Exchange Act, to maintain separate accounts for cash and securities that are deposited by clearing members, at banks approved by the Company, as margin for house and customer accounts. These clearing deposits are used by members to meet their obligations to the Company for margin requirements on open futures and options positions, as well as delivery obligations.

The Company established additional retail customer protection supported by a commitment of at least \$10 million available at all times to promptly reimburse retail customers in the event that their clearing member defaults as a result of a default by another customer where margin funds from the retail customer's account are used to address the default. Retail customers are defined as those that do not otherwise qualify as "eligible contract participants" under the requirements of the Commodity Exchange Act, and are not floor traders or floor brokers on the Exchange or family members of an Exchange floor trader or floor broker who maintains an account at the same clearing firm.

There were no events of default during the nine months ended September 30, 2007, in any of the above arrangements, in which a liability should be recognized.

**Legal Proceedings**

Set forth below is a description of material litigation to which the Company is a party, as of September 30, 2007. Although there can be no assurance as to the ultimate outcome, the Company believes it has a meritorious defense and is vigorously defending the matter described below. The final outcome of any litigation, however, cannot be predicted with certainty, and an adverse resolution of this matter could have a material adverse effect on the Company's consolidated results of operations, financial position or cash flows.

The Company has been named as a defendant in the following legal action:

*New York Mercantile Exchange, Inc. v. IntercontinentalExchange, Inc.* On November 20, 2002, NYMEX Exchange commenced an action in United States District Court for the Southern District of New York against IntercontinentalExchange, Inc. ("ICE"). The amended complaint alleges claims for: (a) copyright infringement by ICE arising out of ICE's uses of certain NYMEX Exchange settlement prices; (b) service mark infringement by reason of use by ICE of the service marks NYMEX and NEW YORK MERCANTILE EXCHANGE; (c) violation of trademark anti-dilution statutes; and (d) interference with contractual relationships. On January 6, 2003, ICE served an Answer and Counterclaims, in which ICE alleges five counterclaims against NYMEX Exchange as follows: (1) a claim for purported violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, for NYMEX Exchange's allegedly trying to maintain a monopoly in the execution of the North America energy futures and expand the alleged monopoly into the execution and clearing of North American OTC energy contracts by attempting to deny ICE access to NYMEX Exchange settlement prices; (2) a claim for purported violation of Section 1 of the Sherman Act by conspiring with certain of its members to restrain trade by attempting to deny ICE access to NYMEX Exchange settlement prices; (3) a claim for alleged violation of Section 2 of the Sherman Act by NYMEX Exchange purportedly denying ICE access to NYMEX Exchange's settlement prices which are allegedly an "essential facility"; (4) a claim for purported violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act by NYMEX Exchange allegedly tying execution services for North American energy futures and options to clearing services; and (5) a claim for purported violation of the Lanham Act through false advertising with respect to certain services offered by NYMEX Exchange and services offered by ICE. The counterclaims request damages and trebled damages in amounts not specified yet by ICE in addition to injunctive and declaratory relief.

**NYMEX HOLDINGS, INC. AND SUBSIDIARIES**

**NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

On August 11, 2003, the Court issued an opinion dismissing certain counterclaims and one affirmative defense, with leave to replead. On or about August 28, 2003, NYMEX Exchange was served with ICE's First Amended Counterclaims in which ICE made four counterclaims against NYMEX Exchange principally alleging violations of U.S. antitrust laws, including claims regarding monopoly leveraging.

By Order and Opinion dated June 30, 2004, the Court granted NYMEX Exchange's motion and dismissed all of the antitrust counterclaims asserted against NYMEX Exchange. ICE did not appeal this decision.

By Order and Opinion dated September 29, 2005, the Court (1) granted ICE's motion for summary judgment to the extent of dismissing NYMEX Exchange's federal claims for copyright and trademark infringement and dismissing without prejudice (by declining to exercise supplemental jurisdiction), NYMEX Exchange's state law claims for violation of trademark anti-dilution statutes and interference with contractual relationships, and (2) denied NYMEX Exchange's cross-motion for partial summary judgment on copyright infringement and tortious interference with contract. On October 13, 2005, NYMEX Exchange filed a notice of appeal with the United States Court of Appeals for the Second Circuit. On August 1, 2007, the United States Court of Appeals affirmed the judgment of the lower Court. On August 15, 2007, NYMEX Exchange filed a Combined Petition for Panel Rehearing and for Rehearing *En Banc* before the United States Court of Appeals for the Second Circuit. On October 18, 2007, the Court denied NYMEX Exchange's petition. NYMEX Exchange is presently considering whether to seek a further review of, or appeal from, this decision.

**NOTE 19. Subsequent Events**

On October 31, 2007, the Board of Directors approved a special dividend of \$100 million, as well as its regular quarterly dividend of \$0.10 per share on the Company's common stock. Both dividends will apply to shareholders of record as of the close of business on December 3, 2007, and payable on December 28, 2007.



**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

**Business Overview**

The Company provides facilities to buy, sell and clear energy, precious and base metals, and soft commodities for future delivery under rules intended to protect the interests of market participants. The Company provides liquid marketplaces where physical commodity market participants can manage future price risk and, through the Company's clearing operations, mitigate counterparty credit risk. Through real-time and delayed dissemination of its transaction prices, the Company provides price discovery and transparency to market participants. In order to enhance its markets and provide market participants additional mechanisms to manage risk, the Company continuously offers new products, distribution services and clearing services. The Company does not own commodities, trade for its own account, or otherwise engage in market activities.

The NYMEX Division provides a marketplace for trading energy, metals and soft commodity futures and options. The COMEX Division provides a marketplace for trading precious and base metals futures and options. NYMEX Division's principal markets include crude oil, natural gas, heating oil and gasoline. COMEX Division's principal markets include gold, silver and high grade copper. In addition, the Company presently offers soft commodities futures contracts for coffee, sugar, cocoa, cotton and orange juice. The Company provides the physical facilities for open outcry auction markets. The open outcry markets operate during regular business hours, and trading activities in these markets are, for purposes of this management discussion, referred to as floor trading. In addition, the Company makes its product slate available for electronic trading on CME Globex electronic trading platform virtually 24 hours a day and five days per week to market participants.

The Company provides trade-clearing services for all transactions executed through its floor trading operations and electronic trading platforms, as well as all Company product transactions executed on CME Globex electronic trading platform. In addition, through NYMEX ClearPort<sup>®</sup> Clearing, an over-the-counter ("OTC") clearing initiative, the Company alleviates some of the credit issues in the marketplace by providing the usage of the Company's clearing operations to offer market participants the advantages of reducing costs and permitting futures and OTC positions to be offset. This initiative permits market participants to negotiate bilateral trades in the OTC market, which are then transferred to the Company's division as futures contracts for clearing.

In order to conduct floor-trading activities, market participants must own or lease a membership on the NYMEX Division or COMEX Division. Non-members may execute floor trades on the Company's divisions, but must do so through a member.

Certain NYMEX Division and COMEX Division members are clearing members. Clearing members provide capital to support the Company's clearing activities. All market participants trading through the Company's floor trading or trading Company products through the CME Globex platform must have a clearing relationship with a clearing member who will clear their trades through the Company's clearinghouse. Market participants must have similar clearing member relationships to use NYMEX ClearPort<sup>®</sup> Clearing.

The Company's principal sources of revenues are clearing and transaction fees derived from trades executed on its divisions, and/or cleared through its clearinghouse, and fees charged for the Company's proprietary futures and options contract price information.

Clearing and transaction fees are dependent primarily upon the volume of trading activity conducted on the Company's divisions and cleared by the Company's clearinghouse. These volumes are impacted by several factors, including:

- National and international economic and political conditions;
- Volatility in price levels of the underlying commodities;
- Market perception of stability in commodities and financial markets;

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- The level and volatility of interest rates and inflation;
- Credit quality of market participants; and
- Weather conditions affecting certain energy commodities.

The relative proportions of member and non-member trading activities, and the trading venues on which market participants trade also impact the levels of clearing and transaction fees. NYMEX Division and COMEX Division members are afforded more favorable transaction pricing than non-members, and are eligible to participate in certain transaction fee and cost reduction programs, which impact the level of clearing and transaction fees and other revenues.

Market data relating to proprietary prices of contracts executed on the Company's divisions are sold to vendors who redistribute this information to market participants and others. The level of market data fees is dependent upon the number of vendors and the number of end users receiving data through the vendor redistribution process. The Company relies on its market data vendors to supply accurate information regarding the number of subscribers that are accessing the Company's market data. As such, the Company conducts periodic audits of the information provided by its market data vendors.

The Company's expenses consist primarily of direct transaction costs, employee compensation and benefits and the cost of facilities, equipment, software and communications to support the Company's trading and clearing operations. The Company also incurs marketing costs associated with the development and launch of new products and services. The Company continually invests in technology and infrastructure to support market expansion, enhance its trading and clearing technology, and develop new products and services.

### ***Note Regarding Forward-Looking Statements***

The Company may, in discussions of its future plans, objectives and expected performance in periodic reports filed by the Company with the Securities and Exchange Commission (or documents incorporated by reference therein) and in written and oral presentations made by the Company, include projections or other forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 or Section 21E of the Securities Exchange Act of 1934, as amended (the "1934 Act"). Such projections and forward-looking statements are based on assumptions, which the Company believes are reasonable but are, by their nature, inherently uncertain. Some of the important factors that could cause actual results to differ from any such projections or other forward-looking statements are discussed below, and in other reports filed by the Company under the 1934 Act, including in the Company's December 31, 2006 Annual Report on Form 10-K. The Company's forward-looking statements are based on information available to the Company as of the date hereof, and except as required by law, the Company undertakes no obligation to update any forward-looking statement, whether as a result of new information, future events or otherwise. Actual results and experience may differ materially from forward-looking statements as a result of many factors, including: changes in general economic and industry conditions in various markets in which the Company's contracts are traded; increased competitive activity; fluctuations in prices of the underlying commodities as well as for trading floor administrative expenses related to the trading and clearing of contracts; the ability to control costs and expenses; changes to legislation or regulations; protection and validity of the Company's intellectual property rights and rights licensed from others; and other unanticipated events and conditions. It is not possible for the Company to foresee or identify all such factors.

### ***Results of Operations***

Net income for the three months ended September 30, 2007 was \$62.6 million, an increase of \$21.9 million or 54%, from \$40.7 million for the same period last year. The increase in net income was primarily the result of operating revenues increasing by \$34.9 million, which was partially offset by an increase in income taxes of \$13.3 million.

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Net income for the nine months ended September 30, 2007 was \$160.5 million, an increase of \$48.0 million or 43%, from \$112.5 million for the same period last year. Excluding the impairment charge related to the Company's investment in Optionable, Inc. ("Optionable"), which amounted to \$26.0 million on a pre-tax basis or \$14.7 million on an after-tax basis, net income for the nine months ended September 30, 2007 was \$175.2 million, an increase of \$62.7 million or 56% from the same period last year. The increase in net income was primarily the result of operating revenues increasing by \$128.5 million, which was partially offset by increases in operating expenses, non-operating expenses and income taxes of \$32.2 million, \$18.6 million and \$29.7 million, respectively.

The increases in operating revenues for both the three- and nine-month periods were principally due to an increase in gross clearing and transaction fees as a result of higher trading and clearing volumes and an increased fee schedule applied to NYMEX Division member rates that became effective May 1, 2007. The increase in operating expenses for the nine-month period was due primarily to an increase in direct transaction costs, which are directly associated with higher clearing and transaction volume. The increase in non-operating expenses for the nine-month period was principally attributable to the pre-tax charge of \$26 million related to the impairment of NYMEX's investment in Optionable.

### **Revenues**

#### ***Clearing and Transaction Fees***

Clearing and transaction fees for the three months ended September 30, 2007 were \$145.3 million, an increase of \$26.1 million or 22%, from \$119.2 million for the same period last year. Total volume of contracts traded and/or cleared was 93.9 million contracts, an increase of 15% compared to the same period last year. Average daily volume increased to 1.491 million contracts, an increase of 13% compared to the same period last year. Additionally, the gross average rate per contract increased to \$1.55 from \$1.45 compared to the same period last year.

Clearing and transaction fees for the nine months ended September 30, 2007 were \$420.8 million, an increase of \$105.8 million or 34%, from \$315.0 million for the same period last year. Total volume of contracts traded and/or cleared was 274.2 million contracts, an increase of 24% compared to the same period last year. Average daily volume was 1.466 million contracts, an increase of 24% compared to the same period last year. Additionally, the gross average rate per contract increased to \$1.53 from \$1.43 in the prior year period.

The increases for both the three- and nine month periods were principally attributed to higher levels of electronic volume from the Company's products traded on the CME Globex electronic trading platform that began in June 2006. In addition, higher NYMEX ClearPort® Clearing volumes contributed to the increase during the nine-month period ended September 30, 2007.

Provided below is a summary of total volume traded and/or cleared and open interest on the Company's three significant components of trading and clearing operations: (i) NYMEX Division; (ii) COMEX Division; and (iii) NYMEX ClearPort® Clearing. NYMEX Division and COMEX Division information presented excludes contracts cleared through NYMEX ClearPort® Clearing. Trading and clearing volumes discussed in this management's discussion and analysis are expressed as "round-turns," which are matched buys and sells of the underlying contracts. Trading and clearing volumes include futures settlement and options exercise transactions for which transaction fees are assessed. In its Quarterly Report on Form 10-Q for the period ended September 30, 2006, the Company reported its NYMEX Division volume of its four benchmark energy contracts separately. These benchmark energy contracts are: (i) light sweet crude oil; (ii) Henry Hub natural gas; (iii) NY heating oil; and (iv) NY harbor unleaded gasoline. All other crude oil, natural gas, heating oil or gasoline contracts that were not the benchmark energy contracts were reported in the NYMEX Division volumes as part of "other." For this Form 10-Q, the Company has grouped all contracts by their underlying commodity. Accordingly, prior period volume information has been adjusted to reflect this new presentation for comparative purposes. Open interest represents the number of contracts at September 30, 2007 for which clearing members and their customers are obligated to the Company's clearinghouse and are required to make or take future delivery of the physical

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commodity (or in certain cases be settled by cash), or close out the position with an offsetting sale or purchase prior to contract expiration. Options open interest represents unexpired, unexercised option contracts.

**NYMEX Division**

For the three months ended September 30, 2007, the volume of futures and options contracts traded and cleared on the NYMEX Division was 61.8 million contracts, an increase of 13.6 million contracts or 28%, compared to 48.2 million contracts for the same period last year. Futures contract volume was 51.2 million contracts, an increase of 13.5 million contracts or 36%, compared to 37.7 million contracts for the same period last year. Options contract volume was 10.7 million contracts, an increase of 0.2 million contracts or 1%, compared to 10.5 million contracts for the same period last year.

For the nine months ended September 30, 2007, the volume of futures and options contracts traded and cleared on the NYMEX Division was 180.2 million contracts, an increase of 46.1 million contracts or 34%, compared to 134.1 million contracts for the same period last year. Futures contract volume was 148.3 million contracts, an increase of 42.3 million contracts or 40%, compared to 106.0 million contracts for the same period last year. Options contract volume was 31.9 million contracts, an increase of 3.8 million contracts or 13%, compared to 28.1 million contracts for the same period last year.

The following tables set forth trading and clearing volumes and open interest for the Company's energy futures and options products:

**NYMEX Division Contracts Traded and Cleared  
For the Three Months Ended September 30,**

	2007			2006		
	Futures	Options	Total	Futures	Options	Total
	(in thousands)					
Crude oil	32,964	7,460	<b>40,424</b>	23,031	7,168	<b>30,199</b>
Natural gas	8,276	2,731	<b>11,007</b>	7,732	3,013	<b>10,745</b>
Heating oil	4,404	168	<b>4,572</b>	3,730	185	<b>3,915</b>
Gasoline	5,255	261	<b>5,516</b>	3,005	155	<b>3,160</b>
Other	253	39	<b>292</b>	158	—	<b>158</b>
Total	<u>51,152</u>	<u>10,659</u>	<u><b>61,811</b></u>	<u>37,656</u>	<u>10,521</u>	<u><b>48,177</b></u>

**NYMEX Division Contracts Traded and Cleared  
For the Nine Months Ended September 30,**

	2007			2006		
	Futures	Options	Total	Futures	Options	Total
	(in thousands)					
Crude oil	95,319	22,582	<b>117,901</b>	63,650	18,551	<b>82,201</b>
Natural gas	23,640	7,865	<b>31,505</b>	21,071	8,347	<b>29,418</b>
Heating oil	13,356	479	<b>13,835</b>	10,658	547	<b>11,205</b>
Gasoline	15,251	904	<b>16,155</b>	10,010	685	<b>10,695</b>
Other	745	61	<b>806</b>	579	—	<b>579</b>
Total	<u>148,311</u>	<u>31,891</u>	<u><b>180,202</b></u>	<u>105,968</u>	<u>28,130</u>	<u><b>134,098</b></u>

**NYMEX Division Contracts Open Interests**  
**At September 30,**

	2007			2006		
	Futures	Options	Total	Futures	Options	Total
	(in thousands)					
Crude oil	1,548	3,864	5,412	1,244	3,044	4,288
Natural gas	753	1,197	1,950	954	1,539	2,493
Heating oil	242	72	314	220	89	309
Gasoline	196	56	252	123	18	141
Other	32	3	35	18	8	26
Total	<u>2,771</u>	<u>5,192</u>	<u>7,963</u>	<u>2,559</u>	<u>4,698</u>	<u>7,257</u>

The Company believes the overall growth in total futures and options energy contracts traded and cleared on the NYMEX Division for the three- and nine-month periods ended September 30, 2007 were due primarily to the following factors:

- Continued strong global demand for crude oil, heating oil and gasoline;
- Instability in the oil producing countries in the Middle East and Africa heightened concerns over the reliability of oil exports from such countries;
- An overall increase in the price of crude oil and gasoline due to strong demand fundamentals in the U.S. and globally as well as various disruptions at refineries, which resulted in lower production in the U.S.; and
- Increased acceptance and accessibility of electronic trading.

All of these factors impact the volatility of the commodities which, in turn, increases trading activity.

**COMEX Division**

For the three months ended September 30, 2007, the volume of futures and options contracts traded and cleared on the COMEX Division was 10.0 million contracts, an increase of 3.7 million contracts or 57%, compared to 6.3 million contracts for the same period last year. Futures contract volume was 8.8 million contracts, an increase of 3.8 million contracts or 75%, compared to 5.0 million contracts for the same period last year. Options contract volume was 1.2 million contracts, a decrease of 0.1 million contracts or 10%, compared to 1.3 million contracts for the same period last year.

For the nine months ended September 30, 2007, the volume of futures and options contracts traded and cleared on the COMEX Division was 28.9 million contracts, an increase of 2.9 million contracts or 11%, compared to 26.0 million contracts for the same period last year. Futures contract volume was 25.2 million contracts, an increase of 4.2 million contracts or 20%, compared to 21.0 million contracts for the same period last year. Options contract volume was 3.7 million contracts, a decrease of 1.3 million contracts or 26%, compared to 5.0 million contracts for the same period last year.

The following tables set forth trading and clearing volumes and open interest for the Company's major metals futures and options products:

**COMEX Division Contracts Traded and Cleared  
For the Three Months Ended September 30,**

	2007			2006		
	Futures	Options	Total	Futures	Options	Total
	(in thousands)					
Gold	6,134	851	<b>6,985</b>	3,309	1,020	<b>4,329</b>
Silver	1,686	335	<b>2,021</b>	1,004	291	<b>1,295</b>
High grade copper	972	4	<b>976</b>	706	8	<b>714</b>
Aluminum	—	—	—	4	—	<b>4</b>
<b>Total</b>	<b>8,792</b>	<b>1,190</b>	<b>9,982</b>	<b>5,023</b>	<b>1,319</b>	<b>6,342</b>

**COMEX Division Contracts Traded and Cleared  
For the Nine Months Ended September 30,**

	2007			2006		
	Futures	Options	Total	Futures	Options	Total
	(in thousands)					
Gold	17,341	2,690	<b>20,031</b>	13,599	3,392	<b>16,991</b>
Silver	4,924	947	<b>5,871</b>	4,689	1,494	<b>6,183</b>
High grade copper	2,926	25	<b>2,951</b>	2,685	81	<b>2,766</b>
Aluminum	1	—	<b>1</b>	13	—	<b>13</b>
<b>Total</b>	<b>25,192</b>	<b>3,662</b>	<b>28,854</b>	<b>20,986</b>	<b>4,967</b>	<b>25,953</b>

**COMEX Division Contracts Open Interests  
At September 30,**

	2007			2006		
	Futures	Options	Total	Futures	Options	Total
	(in thousands)					
Gold	437	386	<b>823</b>	327	365	<b>692</b>
Silver	118	118	<b>236</b>	99	111	<b>210</b>
High grade copper	79	2	<b>81</b>	70	5	<b>75</b>
Aluminum	—	—	—	1	—	<b>1</b>
<b>Total</b>	<b>634</b>	<b>506</b>	<b>1,140</b>	<b>497</b>	<b>481</b>	<b>978</b>

The Company believes the varying increases and decreases in futures and options metals contracts traded and cleared on the COMEX Division for the three- and nine-month periods ended September 30, 2007 were due primarily to the following factors:

- Decreased inflation;
- A weakened U.S. currency compared to other international currencies;
- A steady decline in the volatility of all metals;
- An increase in copper inventories;

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- A decrease in gold available for commercial and financial use due to an increase in gold storage as collateral for exchange-traded gold funds; and
- An increase in price levels for all metals, particularly gold.

### **NYMEX ClearPort® Clearing**

For the three months ended September 30, 2007, the volume of futures and options contracts cleared on NYMEX ClearPort® Clearing was 22.1 million contracts, a decrease of 5.4 million contracts or 20%, compared to 27.5 million contracts for the same period last year. Futures contract volume was 13.1 million contracts, a decrease of 6.8 million contracts or 34%, compared to 19.9 million contracts for the same period last year. Options contract volume was 9.0 million contracts, an increase of 1.4 million contracts or 18%, compared to 7.6 million contracts for the same period last year.

For the nine months ended September 30, 2007, the volume of futures and options contracts cleared on NYMEX ClearPort® Clearing was 65.1 million contracts, an increase of 4.7 million contracts or 8%, compared to 60.4 million contracts for the same period last year. Futures contract volume was 39.1 million contracts, a decrease of 5.3 million contracts or 12%, compared to 44.4 million contracts for the same period last year. Options contract volume was 26.0 million contracts, an increase of 10.0 million contracts or 63%, compared to 16.0 million contracts for the same period last year.

The following tables set forth clearing volumes for products cleared through NYMEX ClearPort® Clearing:

#### **NYMEX ClearPort® Clearing Contracts For the Three Months Ended September 30,**

	2007			2006		
	Futures	Options	Total	Futures	Options	Total
	(in thousands)					
Natural gas	11,868	7,728	19,596	19,242	7,166	26,408
Electricity	150	129	279	259	82	341
Petroleum	1,050	988	2,038	371	399	770
Coal	45	—	45	16	—	16
Other	16	157	173	4	—	4
Total	13,129	9,002	22,131	19,892	7,647	27,539

#### **NYMEX ClearPort® Clearing Contracts For the Nine Months Ended September 30,**

	2007			2006		
	Futures	Options	Total	Futures	Options	Total
	(in thousands)					
Natural gas	36,117	22,923	59,040	42,777	14,842	57,619
Electricity	464	324	788	907	189	1,096
Petroleum	2,005	2,480	4,485	704	961	1,665
Coal	100	—	100	39	—	39
Other	409	298	707	6	—	6
Total	39,095	26,025	65,120	44,433	15,992	60,425

**NYMEX ClearPort® Clearing Open Interests**  
At September 30,

	2007			2006		
	Futures	Options	Total	Futures	Options	Total
	(in thousands)					
Natural gas	6,527	5,182	<b>11,709</b>	6,593	4,122	<b>10,715</b>
Electricity	208	171	<b>379</b>	256	70	<b>326</b>
Petroleum	340	1,111	<b>1,451</b>	191	482	<b>673</b>
Coal	15	—	<b>15</b>	6	—	<b>6</b>
Other	4	—	<b>4</b>	3	—	<b>3</b>
<b>Total</b>	<b>7,094</b>	<b>6,464</b>	<b>13,558</b>	<b>7,049</b>	<b>4,674</b>	<b>11,723</b>

For the three- and nine-month periods, the varying increases and decreases in futures and options on NYMEX ClearPort® Clearing were due primarily to traditional over the counter participants seeking credit risk mitigation provided by the Company's clearinghouse for off-exchange trade execution activities and to a certain extent, low volatility in natural gas markets. Factors affecting natural gas volatility are, but not limited to, supply capacity constraints, variation in natural gas storage and sensitivity of peak day demands due to temperature. In addition, growth in the number of different natural gas products offered, as well as additional products for petroleum on NYMEX ClearPort® Clearing contributed to the increase in volume for the nine months ended September 30, 2007.

**Market Data Fees**

For the three months ended September 30, 2007, market data fees were \$24.9 million, an increase of \$9.0 million or 56%, from \$15.9 million for the same period last year.

For the nine months ended September 30, 2007, market data fees were \$71.4 million, an increase of \$24.2 million or 51%, from \$47.2 million for the same period last year.

The increases for both the three- and nine-month periods were due primarily to the implementation of a new price structure that went into effect on January 1, 2007. Additionally, an increase in the number of market data devices being utilized, for which the Company charges fees, also contributed to the increase in fees.

**Other, Net**

For the three months ended September 30, 2007, other revenues were \$3.0 million, a decrease of \$0.2 million or 4%, from \$3.2 million for the same period last year.

For the nine months ended September 30, 2007, other revenues were \$8.8 million, a decrease of \$1.5 million or 14%, from \$10.3 million for the same period last year.

The decreases for both the three- and nine-month periods were due primarily to the elimination in 2007 of fees the Company charged for the right to trade certain products on its trading floor. In addition, a decline in floor fines contributed to the decrease for the nine months ended September 30, 2007.

**Operating Expenses**

**Direct Transaction Costs**

For the three months ended September 30, 2007, direct transaction costs were \$24.7 million, an increase of \$8.1 million or 48%, from \$16.6 million for the same period last year.



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For the nine months ended September 30, 2007, direct transaction costs were \$73.1 million, an increase of \$41.5 million or 131%, from \$31.6 million for the same period last year.

The increases for both the three- and nine-month periods were due primarily to volume on the CME Globex electronic trading platform which began in June 2006 (see Note 10 to the unaudited condensed consolidated financial statements). Additionally, increased volume on NYMEX ClearPort<sup>®</sup> Clearing contributed to the increase in direct transaction costs for the nine-month period. Transaction costs for both of these platforms are volume based and, therefore, the increased volumes equated to higher costs.

### ***Salaries and Employee Benefits***

For the three months ended September 30, 2007, salaries and employee benefits were \$19.5 million, a decrease of \$3.1 million or 13%, from \$22.6 million for the same period last year. The decrease is principally attributable to the reduction of employee costs associated with workforce reductions that began during the last half of 2006, coupled with significantly lower severance related costs in the current period as compared to the same period last year. This decrease was offset, in part, by the Company's non-cash share-based compensation costs that were not present in the prior year period.

For the nine months ended September 30, 2007, salaries and employee benefits were \$61.0 million, an increase of \$1.0 million or 2%, from \$60.0 million for the same period last year. The increase was principally attributable to the impact of the Company's non-cash, share-based compensation awards granted since the Company's initial public offering in November 2006. Partially offsetting this increase was a decrease in employee costs associated with the reduced employee headcount, as well as lower severance related costs during the nine months ended September 30, 2007.

### ***Occupancy and Equipment***

For the three months ended September 30, 2007, occupancy and equipment expenses were \$5.3 million, a decrease of \$3.1 million or 37%, from \$8.4 million for the same period last year.

For the nine months ended September 30, 2007, occupancy and equipment expenses were \$16.9 million, a decrease of \$5.6 million or 25%, from \$22.5 million for the same period last year.

The decreases for both the three- and nine-month periods were due primarily to lease termination charges incurred in the first and third quarters of 2006 in connection with office space leased in New York City and the closure of the Company's London floor trading operations. As a result, no rent expense was charged for the two aforementioned properties during the current three- and nine-month periods. Partially offsetting the decrease during the nine-month period was increased repair and maintenance charges on the Company's headquarters facility.

### ***Depreciation and Amortization***

For the three months ended September 30, 2007, depreciation and amortization expense was \$3.3 million, essentially flat from the same period last year.

For the nine months ended September 30, 2007, depreciation and amortization expense was \$10.4 million, a decrease of \$1.2 million or 10%, from \$11.6 million for the same period last year.

The decrease for the nine-month period was due primarily to lower depreciation charges on certain leasehold improvements and equipment. The prior year period included accelerated depreciation based on a change in estimate to the useful life of such assets as a result of the closure of the Company's London floor trading operations in 2006. Partially offsetting this decrease was higher computer equipment and software depreciation in the current year period related to assets necessary for the Company to support the increased volume in electronic trading.

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### **General and Administrative**

For the three months ended September 30, 2007, general and administrative expenses were \$4.6 million, essentially flat from the same period last year.

For the nine months ended September 30, 2007, general and administrative expenses were \$14.2 million, a decrease of \$1.0 million or 6%, from \$15.2 million for the same period last year.

The decrease for the nine-month period was a result of management's cost control initiatives implemented in the latter half of last year. In addition, contributing to the decrease was significantly lower board of director fees, as the composition of the board was reduced from twenty-five directors to fifteen directors on May 1, 2006. These decreases were partially offset by higher insurance costs as a result of the Company becoming publicly traded in November 2006.

### **Professional Services**

For the three months ended September 30, 2007, professional services expenses were \$5.2 million, an increase of \$1.9 million or 57%, from \$3.3 million for the same period last year.

For the nine months ended September 30, 2007, professional services expenses were \$13.3 million, an increase of \$2.5 million or 23%, from \$10.8 million for the same period last year.

The increases for both the three- and nine-month periods were primarily due to higher legal fees incurred to support the Company's strategic business initiatives.

### **Telecommunications**

For the three months ended September 30, 2007, telecommunications expenses were \$1.5 million, an increase of \$0.2 million or 22%, from \$1.3 million for the same period last year. The increase for the three-month period was due primarily to higher data communications and web hosting costs.

For the nine months ended September 30, 2007, telecommunications expenses were \$4.4 million, a decrease of \$0.4 million or 8%, from \$4.8 million for the same period last year. The decrease for the nine-month period was due primarily to lower telephone related costs, which was mainly the result of the closing of the London trading floor in the prior year.

### **Marketing**

For the three months ended September 30, 2007, marketing expenses were \$0.8 million, a decrease of \$0.9 million or 50%, from \$1.7 million for the same period last year. The decrease was principally attributable to higher advertising and other marketing expenses incurred in the prior year period related to the Company's expansion initiatives.

For the nine months ended September 30, 2007, marketing expenses were \$4.4 million, essentially flat from the same period last year.

### **Other Expenses**

For the three months ended September 30, 2007, other expenses were \$0.2 million, a decrease of \$2.2 million or 91%, from \$2.4 million for the same period last year.

For the nine months ended September 30, 2007, other expenses were \$2.1 million, a decrease of \$4.6 million or 69%, from \$6.7 million for the same period last year.

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The decreases for both the three- and nine-month periods were due to lower member benefit costs, as the Company discontinued its members' benefit subsidy program effective April 1, 2007. Additionally, the Company incurred lower losses on asset disposals and lower charitable contributions during the current year periods.

### **Non-Operating Income and Expenses**

#### ***Investment Income, Net***

For the three months ended September 30, 2007, investment income was \$4.9 million, an increase of \$2.0 million or 66%, from \$2.9 million for the same period last year.

For the nine months ended September 30, 2007, investment income was \$17.7 million, an increase of \$11.9 million or 208%, from \$5.8 million for the same period last year.

The increases for both the three- and nine-month periods were principally attributable to a higher amount of funds invested as the Company received net proceeds of approximately \$344 million from its initial public offering in November 2006, resulting in higher investment income.

#### ***Interest Income and Interest Expense/Fees from Securities Lending***

Interest income from securities lending for the three and nine months ended September 30, 2007 were \$20.0 million and \$80.4 million, respectively, compared to \$37.4 million and \$97.9 million for the same respective periods last year. Interest expense/fees from securities lending for the three and nine months ended September 30, 2007 were \$18.8 million and \$77.8 million, respectively, compared to \$36.5 million and \$95.4 million for the same respective periods last year. For the current three- and nine-month periods, the decreases in both interest income and interest expense/fees is attributable to lower average daily balances of funds invested as compared to the same periods in 2006. The average daily balances of funds the Company invested during the three and nine months ended September 30, 2007 were approximately \$1.4 billion and \$1.9 billion, respectively, compared to approximately \$2.6 billion and \$2.5 billion, respectively, during the same periods last year. These decreases were offset, in part, by a higher average interest rate in 2007 when compared to 2006. The ratio of interest expense/fees to interest income will vary, based on the ability of JPMorgan, as agent, to negotiate better rates on those securities in greater demand.

#### ***Interest Expense***

For the three months ended September 30, 2007, interest expense was \$1.6 million, a decrease of 3% compared to the same period last year of \$1.7 million.

For the nine months ended September 30, 2007, interest expense was \$4.8 million, a decrease of \$0.2 million or 3% compared to the same period last year of \$5.0 million.

The decreases for both the three- and nine-month periods were due primarily to a lower principal balance on the Company's long-term debt as a result of annual principal payments made each October.

#### ***Losses from Unconsolidated Investments***

Losses from unconsolidated investments for the three and nine months ended September 30, 2007 were \$2.0 million and \$32.6 million, respectively, compared to \$1.0 million and \$1.8 million, respectively, for the same periods last year. For the current three-month period, the increase in losses is principally attributable to the Company's investment in the Dubai Mercantile Exchange Limited ("DME"). DME commenced trading on June 1, 2007. All costs incurred prior to the commencement date were related to the establishment of DME.

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For the nine-month period, the significant increase in losses is primarily the result of a pre-tax impairment charge of \$26.0 million related to the Company's investment in Optionable (see Note 6 to the unaudited condensed consolidated financial statements). Additionally, losses from DME, which totaled \$6.5 million for the nine-month period, contributed to the increased losses.

### **Provision for Income Taxes**

The Company's effective tax rate was 43.5% for the nine months ended September 30, 2007 compared to 45.5% for the same period last year. The decline in 2007 was primarily the result of an overall lower state and local effective tax rate due to the increase of electronic trading as a percentage of total clearing and transaction fees.

### **Financial Condition and Cash Flows**

#### **Liquidity and Capital Resources**

At September 30, 2007 and December 31, 2006, the Company had \$540.1 million and \$504.2 million, respectively, in cash and cash equivalents and marketable securities. Working capital at September 30, 2007 and December 31, 2006 was \$563.5 million and \$485.8 million, respectively. The Company has a long-term AA+ and a short-term A-1+ counter-party credit rating from Standard & Poor's Rating Services that was initially obtained in April 2003 and sustained through a ratings review in September 2006.

#### **Sources and Uses of Cash**

The following table is a summary of significant cash flow categories for the nine months ended September 30, 2007 and 2006:

	September 30,	
	2007	2006
	(in thousands)	
Net cash flow provided by (used in):		
Operating activities	\$ 181,399	\$ 122,318
Investing activities	1,411,992	(229,327)
Financing activities	(1,608,426)	86,600
Net decrease in cash and cash equivalents	<u>\$ (15,035)</u>	<u>\$ (20,409)</u>

Net cash provided by operating activities for the nine months ended September 30, 2007 was \$181.4 million, an increase of \$59.1 million compared to the same period last year. This increase was principally attributable to higher net income of \$48.0 million and the noncash, pre-tax impairment charge of \$26.0 million, \$14.7 million on an after-tax basis, related to the Company's investment in Optionable. This increase was offset, in part, by decreases in various payable accounts as well as increases in the Company's receivables and deferred income taxes.

Under its securities lending program, JPMorgan, as agent for the Company, lends on an overnight basis, a portion of the clearing members' securities on deposit in the Company's margin deposits and guaranty fund to third parties in return for cash collateral. JPMorgan, in turn, invests the cash collateral in various investments on behalf of the Company, in accordance with the program's investment guidelines. The Company receives the benefits, and bears the risks, of such investments. The cash collateral received is recorded as a liability and presented in financing activities on the Company's condensed consolidated statements of cash flows. The corresponding investment is recorded as an asset and presented in investing activities on the Company's condensed consolidated statements of cash flows.

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Net cash used in investing activities for the nine months ended September 30, 2007, exclusive of securities purchased under the securities lending program, was \$177.5 million, an increase of \$80.3 million compared to the same period last year. This increase was due primarily to the Company's investment in Montréal Exchange and Optionable (see Note 6 to the unaudited condensed consolidated financial statements) offset, in part, by a decrease in the amount of cash invested in marketable securities.

Net cash used in financing activities for the nine months ended September 30, 2007, exclusive of cash received under the securities lending program, was \$18.9 million, a decrease of \$26.6 million compared to the same period last year. The prior year period included cash dividends paid to the Company's stockholders totaling \$198.6 million that was offset, in part, by \$160 million the Company received, net of costs, in connection with its sale of a 10% equity interest in the Company. Cash dividends paid in the current nine-month period totaled \$18.6 million.

The Company believes that its cash flows from operations and existing working capital will be sufficient to meet its needs for the foreseeable future, including capital expenditures, debt service and dividends. Subject to certain limitations under existing long-term note agreements, the Company has the ability, and may seek to raise capital through the issuance of debt or equity in the private and public capital markets.

### **Investment Policy**

The Company maintains cash and short-term investments in an amount sufficient to meet its working capital requirements. The Company's investment policies are designed to maintain a high degree of liquidity, emphasizing safety of principal and total after-tax return. Excess cash on hand is generally invested overnight in short-term marketable securities. Cash that is not required to meet daily working capital requirements is invested primarily in high-grade tax-exempt municipal bonds and obligations of the U.S. government and its agencies. The Company also invests in equity securities. At September 30, 2007 and December 31, 2006, cash and investments were as follows:

	September 30, 2007	December 31, 2006
	(in thousands)	
Cash and cash equivalents	\$ 3,596	\$ 18,631
Marketable securities	536,499	485,581
	<u>\$ 540,095</u>	<u>\$ 504,212</u>

Included in marketable securities at September 30, 2007 are investments totaling \$12.3 million relating to the COMEX Division Members' Recognition and Retention Plan ("MRRP") (see Note 9 to the unaudited condensed consolidated financial statements).

Also, included in marketable securities are investments that are pledged as collateral with one of the Company's investment managers relating to a membership seat financing program (see Note 18 to the unaudited condensed consolidated financial statements).

The Company is required, under the Commodity Exchange Act, to maintain separate accounts for cash and securities that are deposited by clearing members, at banks approved by the Company, as margin for house and customer accounts. These margin deposits are used by members to meet their obligations to the Company for margin requirements on open futures and options positions, as well as delivery obligations. In addition, each clearing member firm is required to maintain a security deposit, in the form of cash, U.S. Treasury securities with a maturity of ten years or less or money market mutual funds, of a minimum of \$2.5 million in the Guaranty Fund. The Guaranty Fund may be used for any loss sustained by the Company as a result of the failure of a clearing member to discharge its obligations on the NYMEX Division or COMEX Division. The Company is entitled to earn interest on cash balances posted as margin deposits and Guaranty Funds. Such balances are

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included in the Company's condensed consolidated balance sheets, and are generally invested overnight in cash and securities purchased under agreements to resell. The table in Note 4 to the unaudited condensed consolidated financial statements sets forth margin deposits and Guaranty Fund balances held by the Company on behalf of clearing members at September 30, 2007 and December 31, 2006.

Under the securities lending program, JPMorgan, as agent, lends on an overnight basis, a portion of the clearing members' securities on deposit in the Company's margin deposits and guaranty fund to third parties in return for cash collateral. JPMorgan, in turn, invests the cash collateral in various investments on behalf of the Company, in accordance with the program's investment guidelines. The Company receives the benefits, and bears the risks, of such investments. (see Note 2 to the unaudited condensed consolidated financial statements).

### Future Cash Requirements

In connection with its operating activities, the Company enters into certain contractual obligations. The Company's material contractual cash obligations include long-term debt, services agreements, operating leases and other contracts.

A summary of the Company's future cash payments associated with its contractual cash obligations outstanding as of September 30, 2007, as well as an estimate of the timing in which these commitments are expected to expire, are set forth in the following table:

	Payments Due by Period						Total
	2007	2008	2009	2010	2011	Thereafter	
Contractual Obligations							
Long-term debt principal	\$ 2,817	\$ 2,817	\$ 2,817	\$ 2,817	\$ 7,739	\$ 64,091	\$ 83,098
Long-term debt interest	3,208	6,205	5,994	5,783	5,573	36,213	62,976
Services agreements <sup>1</sup>	2,538	10,080	10,270	11,571	30,948	—	65,407
Operating leases—facilities	783	3,012	3,027	3,306	3,585	2,187	15,900
Operating leases—equipment	319	1,553	1,354	518	—	—	3,744
Other long-term obligations	856	1,029	1,041	967	800	6,417	11,110
Total contractual obligations	<u>\$ 10,521</u>	<u>\$ 24,696</u>	<u>\$ 24,503</u>	<u>\$ 24,962</u>	<u>\$ 48,645</u>	<u>\$ 108,908</u>	<u>\$ 242,235</u>

<sup>1</sup> Services agreements include required minimum payments in accordance with a technology services agreement with CME. The CME Agreement has a ten-year term from the launch date (June 2006) with rolling three-year extensions. Either party may elect to terminate the CME Agreement between the fifth and the sixth year anniversary of the first launch date upon written notice and payment of a termination fee. As a result, the Company's current minimum obligation under the CME Agreement is for payments in years one through five. As such, the Contractual Obligations table above sets forth the Company's minimum obligation for years one through five, including the related termination fee in the event the Company elects to terminate the CME Agreement. In addition, the services agreements category includes employment agreements as filed with the SEC.

As previously disclosed in Note 1 to the unaudited condensed consolidated financial statements, the Company has \$2.2 million of unrecognized tax benefits as of September 30, 2007. The Company is subject to periodic examinations of its income tax returns by the U.S. Internal Revenue Service and various state and local taxing authorities, which could result in future tax liabilities, the payment of which would offset the current unrecognized tax benefits. Due to the uncertainty of the outcome of any future income tax examinations, it is not possible to estimate when tax payments, if any, would be made.

In 1995, the Company secured a grant of \$128.7 million from the New York City Economic Development Corporation ("EDC") and the Empire State Development Corporation ("ESDC", formerly known as the New York State Urban Development Corporation) for construction of its corporate headquarters and trading facility.

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The grant is being recognized in income on the same basis as, and is a reduction to, the depreciation of the facility. The Company is liable for liquidating damages on a declining scale, currently at \$25 million, if it violates terms of the occupancy agreement at any time prior to 15 years from the date of occupancy, July 7, 1997.

The Company's senior notes are subject to a prepayment penalty in the event they are paid off prior to their scheduled maturities. The Company believes that any economic benefits derived from early redemption of these notes would be offset by the redemption penalty. These notes place certain limitations on the Company's ability to incur additional indebtedness.

In accordance with the DME shareholders agreement, the Company is required to contribute capital to the joint venture in an aggregate amount of \$9.8 million over a five-year period, contingent upon the DME's achievement of certain agreed upon performance targets. The Company made an initial capital contribution of \$2.5 million in 2005 and made additional capital contributions of \$4.0 million in 2006 to the joint venture.

### **Other Matters**

In February 2004, the Commodity Futures Trading Commission ("CFTC") issued an order requiring, among other things, that the Company establish and maintain a permanent retail customer protection mechanism supported by a commitment of not less than \$10 million, which must be available at all times to reimburse retail customers trading on the Exchange whose original margin might be lost in the default of another customer of their clearing member. The Company has established the retail customer protection mechanism. Based on historical patterns, the Company believes that the likelihood of a default that would require reimbursement under this mechanism is remote. Therefore, the Company has not established, and does not expect in the future to establish, a liability related to this commitment.

### **Responsibility for Financial Reporting**

The Company's management is responsible for the preparation, integrity and objectivity of the unaudited condensed consolidated financial statements and related notes, and the other financial information contained in this Quarterly Report on Form 10-Q. Such financial statements have been prepared in accordance with U.S. generally accepted accounting principles and are considered by management to present fairly the Company's consolidated financial position, results of operations and cash flows. These unaudited condensed consolidated financial statements include certain amounts that are based on management's estimates and judgments, giving due consideration to materiality.

[Table of Contents](#)**Item 3. Quantitative and Qualitative Disclosures about Market Risk**

The table below provides information about the Company's marketable securities (excluding equity and short-term debt securities) and long-term debt including expected principal and interest cash flows for the years 2007 through 2011 and thereafter:

**Principal Amounts by Expected Maturity**  
**At September 30, 2007**  
(in thousands)

<u>Year</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>	<u>Weighted Average Interest Rate</u>
<b>Assets</b>				
<b>Debt Securities</b>				
2007	30,695	343	31,038	3.77%
2008	2,665	326	2,991	4.40%
2009	1,199	397	1,596	4.17%
2010	617	360	977	4.11%
2011	167	182	349	4.09%
Thereafter	5,403	3,272	8,675	2.38%
<b>Total</b>	<b><u>\$40,746</u></b>	<b><u>\$ 4,880</u></b>	<b><u>\$ 45,626</u></b>	
Fair Value	<b><u>\$42,174</u></b>			
<b>Liabilities</b>				
<b>Corporate Debt</b>				
2007	2,817	3,208	6,025	7.72%
2008	2,817	6,205	9,022	7.73%
2009	2,817	5,994	8,811	7.74%
2010	2,817	5,783	8,600	7.75%
2011	7,739	5,573	13,312	7.76%
Thereafter	64,091	36,213	100,304	7.79%
<b>Total</b>	<b><u>\$83,098</u></b>	<b><u>\$62,976</u></b>	<b><u>\$146,074</u></b>	
Fair Value	<b><u>\$99,448</u></b>			

**Interest Rate Risk****Investment Income**

The Company's investment income consists primarily of interest income and realized and unrealized gains and losses on the market values of its investments. Given the composition of its investment portfolio, the Company's investment income is highly sensitive to fluctuation in interest rates. Investment income for the three and nine months ended September 30, 2007 was \$4.9 million and \$17.7 million, respectively, compared to \$2.9 million and \$5.8 million, respectively in the prior year periods. The fair value of the Company's marketable securities, including equity and short-term debt securities, was \$536.5 million at September 30, 2007. The Company believes that a hypothetical change in the interest rate of 100 basis points would not have a material impact on its consolidated results of operations, financial condition or cash flows.

**Debt**

The weighted average interest rate on the Company's long-term debt is 7.77%. The debt contains a redemption premium, the amount of which varies with changes in interest rates. Therefore, the fair market value



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of the Company's long-term debt is highly sensitive to changes in interest rates. Although the market value of the debt will fluctuate with interest rates, the Company's interest expense will not vary with changes in market interest rates if the debt is paid off in accordance with stated principal repayment schedules. As of the date of this report, the Company does not expect to pay down any series of its long-term debt prior to stated maturities. However, the Company may pursue future financing strategies that involve early repayment of its current debt, or issuance of new debt, potentially increasing its sensitivity to changes in interest rates.

### **Credit Risk**

NYMEX Division bylaws authorize its board of directors to fix the annual dues of the owners of the Class A memberships and to levy assessments as it determines to be necessary. Such dues and assessments are payable at such time as NYMEX Division's board of directors may determine. NYMEX Division's board of directors may waive the payment of dues by all owners of Class A memberships or by individual members as it determines. COMEX Division bylaws provide its board of directors with similar powers relating to dues, assessments and fees with respect to COMEX Division memberships, provided that such dues and assessments may not be imposed on NYMEX Exchange Class A members on a per-member basis and that the ability of COMEX Division's board of directors to impose such fees is subject to the limitations.

The Exchange, as a self-regulatory organization, has instituted detailed risk-management policies and procedures to guard against default risk with respect to contracts traded and/or cleared on the Exchange. In order to manage the risk of financial non-performance, the Exchange: (i) has established that clearing members maintain at least \$5 million in minimum working capital; (ii) limits the number of net open contracts that can be held by any clearing member, based upon that clearing member's capital; (iii) requires clearing members to post original margin collateral for all open positions, and to collect original margin from their customers; (iv) pays and collects variation margin on a marked-to-market basis at least twice daily; (v) requires clearing members to collect variation margin from their customers; (vi) requires deposits to the Guaranty Fund from clearing members which would be available to cover financial non-performance; and (vii) has broad assessment authority to recoup financial losses. The Exchange also maintains extensive surveillance and compliance operations and procedures to monitor and enforce compliance with rules pertaining to the trading, position sizes, delivery obligations and financial condition of members. In addition, NYMEX Division clearing members, as all NYMEX Division member firms, must each own and hold 150,000 shares of common stock of NYMEX Holdings and two Class A memberships in NYMEX Exchange. The COMEX Division clearing member firms, as all COMEX Division member firms, must each pledge two COMEX Division memberships.

As part of the Exchange's powers and procedures designed to support contract obligations in the event that a contract default occurs, the Exchange may levy assessments on any of its clearing members if, after a default by another clearing member, there are insufficient funds available to cover a deficit. The maximum assessment on each clearing member firm is the lesser of \$30 million or 40% of such clearing member firm's modified regulatory capital as reported periodically to the Exchange.

Despite the Company's authority to levy assessments or impose fees, there can be no assurance that the relevant members will have the financial resources available to pay, or will not choose to be expelled from membership rather than pay, any dues, fees or assessments. The Company believes that assessment liabilities of a member arising prior to expulsion are contractual in nature and, accordingly, survive expulsion. In addition, the Exchange would have recourse to such member and the proceeds from the Company's sale of such member's collateral would apply towards any outstanding obligations to the Exchange of such member. Recourse to a member's collateral, however, may not be of material value in the case of large defaults that result in assessments greater in value than the collateral, particularly when the collateral's value declines markedly in price as a consequence of the default.

Moreover, despite the risk mitigation techniques adopted by, and other powers and procedures implemented by the Company, which are designed to, among other things, minimize the potential risks associated with the occurrence of contract defaults on the Company, there can be no assurance that these powers and procedures will prevent contract defaults or will otherwise function to preserve the liquidity of the Company.

**Item 4. Controls and Procedures**

- (a) *Evaluation of Disclosure Controls and Procedures.* The Company's Principal Executive Officer and Principal Financial Officer, after evaluating the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this Quarterly Report on Form 10-Q, have concluded that, based on such evaluation, the Company's disclosure controls and procedures were effective in reporting, on a timely basis, information required to be disclosed by the Company in the reports that the Company files or submits under the Exchange Act, and this Quarterly Report on Form 10-Q.
- (b) *Changes in Internal Controls.* There were no changes in the Company's internal control over financial reporting identified in connection with the evaluation of such internal control that occurred during the Company's last fiscal quarter that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

**PART II: OTHER INFORMATION**

**Item 1.      *Legal Proceedings***

Information regarding legal proceedings is disclosed in Note 18 to the unaudited condensed consolidated financial statements under the subheading “Legal Proceedings.” Such disclosure is incorporated herein by reference.

**Item 1A.     *Risk Factors***

There have been no material changes to the Risk Factors contained in the Company’s Annual Report on Form 10-K for the year ended December 31, 2006, as filed with the SEC on March 5, 2007.

**Item 2.      *Unregistered Sales of Equity Securities and Use of Proceeds***

On November 22, 2006, NYMEX Holdings completed an initial public offering (“IPO”) of its common stock. The common stock from this offering was registered under the Securities Act of 1933, as amended, pursuant to a Registration Statement on Form S-1 (File No. 333-135800) that was declared effective by the SEC on November 16, 2006. In connection with this offering, NYMEX Holdings sold 5,390,000 shares of its common stock, and certain selling stockholders sold 1,110,000 shares of common stock held by them. In addition, NYMEX Holdings sold 975,000 shares of its common stock pursuant to the underwriters’ full exercise of their over-allotment option.

The initial public offering price was \$59.00 per share. The Company did not receive any proceeds from the shares of common stock sold by the selling stockholders. Net proceeds, after deducting underwriting discounts and commissions of approximately \$27.6 million and direct costs of approximately \$4.1 million, totaled approximately \$343.8 million. Upon the completion of its IPO, a \$10 million payment was made to owners of COMEX Division memberships in accordance with the 1994 COMEX Merger Agreement.

During the nine months ended September 30, 2007, the Company used approximately \$109 million of the net proceeds to fund its long-term investments, the most significant of which were the Company’s investments in the Montréal Exchange and Optionable, Inc. (see Note 6 to the unaudited condensed consolidated financial statements). The remaining funds are invested in accordance with the Company’s investment policies. There has been no material change in the Company’s planned use of proceeds from its IPO as described in the Company’s final prospectus filed with the SEC.

**Item 3.      *Defaults upon Senior Securities***

Not applicable

**Item 4.      *Submission of Matters to a Vote of Security Holders***

Not applicable

**Item 5.      *Other Information***

Not applicable

**Item 6.      *Exhibits***

- 31.1      Certification of the Principal Executive Officer pursuant to § 302 of the Sarbanes-Oxley Act of 2002.
- 31.2      Certification of the Principal Financial Officer pursuant to § 302 of the Sarbanes-Oxley Act of 2002.
- 32        Certification of the Principal Executive Officer and Principal Financial Officer pursuant to § 906 of the Sarbanes-Oxley Act of 2002.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**NYMEX HOLDINGS, INC.**

By:                                 /s/ JAMES E. NEWSOME  
Name: **James E. Newsome**  
Title: **President & CEO**  
**(Principal Executive Officer)**

Date: November 9, 2007

By:                                 /s/ KENNETH D. SHIFRIN  
Name: **Kenneth D. Shifrin**  
Title: **Chief Financial Officer**  
**(Principal Financial Officer)**

Date: November 9, 2007

**Certification of the Principal Executive Officer  
Pursuant to Section 302  
of the Sarbanes-Oxley Act of 2002**

I, James E. Newsome, certify that:

1. I have reviewed this quarterly report on Form 10-Q of NYMEX Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: \_\_\_\_\_ /s/ JAMES E. NEWSOME

Name: **James E. Newsome**  
Title: **President & CEO**  
**(Principal Executive Officer)**

Date: November 9, 2007

**Certification of the Principal Financial Officer  
Pursuant to Section 302  
of the Sarbanes-Oxley Act of 2002**

I, Kenneth D. Shifrin, certify that:

1. I have reviewed this quarterly report on Form 10-Q of NYMEX Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: \_\_\_\_\_ /s/ KENNETH D. SHIFRIN

Name: **Kenneth D. Shifrin**  
Title: **Chief Financial Officer  
(Principal Financial Officer)**

Date: November 9, 2007

