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Commodity Futures Trading Commission

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**A New Regulatory Framework for
Multilateral Transaction Execution
Facilities, Intermediaries and Clearing
Organizations; Exemption for Bilateral
Transactions; Proposed Rules**

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 5, 15, 20, 36, 37, 38, 100, 170 and 180

RIN 3038-AB55

A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing a new regulatory framework to apply to multilateral transaction execution facilities, to market intermediaries and to clearing organizations. This new framework constitutes a broad exemption under the authority of section 4(c) of the Commodity Exchange Act from many of the current rules applicable to designated contract markets. In addition, the proposed framework to a large degree relies more heavily on disclosure rather than merit regulation. It establishes three new market categories, including the category of exempt multilateral transaction execution facility and two categories of Commission-recognized and regulated multilateral transaction execution facilities. In companion releases published in this edition of the **Federal Register**, the Commission also is proposing new rules for intermediaries and regulations applicable to entities that clear derivative transactions. These notices propose far-reaching and fundamental changes to modernize Federal regulation of commodity futures and option markets. The Commission also is proposing in a companion release published in this edition of the **Federal Register** to expand and to clarify the operation of the current swaps exemption. Nothing in these releases, however, would affect the continued vitality of the Commission's exemption for swaps transactions under Part 35 of its rules, or any of its other existing exemptions, policy statements or interpretations. Moreover, nothing in the proposed rules would affect the application of any statutory exclusion, including in particular, the applicability of the exclusion under section 2(a)(1)(A)(ii), popularly known as "the Treasury Amendment."

DATES: Comments must be received by August 7, 2000.

ADDRESSES: Comments should be sent to the Commodity Futures Trading

Commission, Three Lafayette Centre, 1125 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to (202) 418-5521 or, by e-mail to secretary@cftc.gov. Reference should be made to "Regulatory Reinvention."

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, or Alan L. Seifert, Deputy Director or Riva Spear Adriance, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1125 21st Street, NW., Washington, DC 20581. Telephone: (202) 418-5260. E-mail: (P)Architzel@cftc.gov, (A)Seifert@cftc.gov or (R)Adriance@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview

The Commission is proposing a new regulatory framework to apply to multilateral transaction execution facilities that trade contracts for the purchase or sale of a contract for future delivery or commodity options. The Commission believes that this new structure will promote innovation, maintain U.S. competitiveness, and at the same time reduce systemic risk and protect customers. The proposed framework does not require that U.S. futures exchanges change their method of operation in any way. However, the markets are poised to undergo rapid change as they continue to meet the competitive challenges posed by technological advances. The new framework provides U.S. futures exchanges the flexibility to respond to these challenges by offering a level of regulation tailored to three alternative types of markets.

Specifically, the Commission is proposing to replace the current "one-size-fits-all" regulation for futures markets with broad, flexible "Core Principles," and to establish three regulatory tiers for markets: Recognized futures exchanges (RFEs), derivatives transaction facilities (DTFs) and exempt multilateral transaction execution facilities (exempt MTEFs).¹ The Core Principles are tailored to match the degree and manner of regulation to the varying nature of the products traded

thereon, and to the sophistication of customers.

Under the proposed framework, current U.S. futures exchanges would be included automatically in the RFE category. These exchanges would receive the immediate benefits associated with complying with core principles rather than the prescriptive regulations now in place. In addition to achieving greater flexibility in their current operations, the exchanges also could choose to operate as a DTF or as an exempt MTEF, where appropriate, and be subject to a lesser degree of regulation for many of the commodities that they trade. Or they could operate a combination of the three. The business choice would be theirs.

The Commission is proposing that a category of multilateral transaction execution facilities known as "Derivatives Transaction Facilities," which is geared toward institutional or commercial traders, be subject to an intermediate level of regulation. DTFs, like RFEs, would be Commission-recognized markets. Futures exchanges, if they choose, also may operate as a DTF for those commodities with deliverable supplies sufficiently large to render them eligible for such an intermediate level of regulation.

Although DTFs are intended primarily for institutional traders, the proposed rules provide the individual DTF the flexibility to decide whether or not to include non-institutional traders. The Commission is proposing, therefore, to permit access to a DTF by non-institutional traders only through a registered futures commission merchant (FCM) that is a member of a recognized clearing organization and that has \$20 million of adjusted net capital. Those FCMs would be required to provide their non-institutional customers trading on a DTF with additional disclosures and other protections.

In addition, certain commercial markets may operate as DTFs for any commodity, other than the agricultural commodities enumerated in section 1a(3) of the Act. Such commercial traders generally would have both the financial ability and the physical means to deliver tangible commodities or otherwise be involved in trading that commodity in connection with their line of commerce. A market that is eligible to be an exempt MTEF, which is discussed below, may voluntarily become a DTF in order to become a "recognized" market.

The Commission also is proposing an exemption for facilities on which transactions are entered into among institutional traders in contracts based upon a debt obligation, a foreign

¹ Products subject to the special procedural provisions of section 2(a)(1)(B) of the Act would continue to be designated and regulated by the Commission as contract markets.

currency, an interest rate, an exempt security, a measure of credit risk or quality, or cash-settled based upon an economic or commercial index or based upon an occurrence or contingency. These commodities are highly unlikely to be susceptible to manipulation. These facilities (exempt MTEFs) would be exempt from all of the requirements of

the Commodity Exchange Act (Act or CEA) and Commission rules, except for anti-fraud and anti-manipulation provisions and a requirement that if performing a price discovery function they provide pricing information to the public. The proposed rules also include a provision that a violation of the terms of the exemption would not render the

transactions void. These exempt markets could not hold themselves out as being regulated by the Commission. As noted above, existing futures markets, where appropriate, would have the opportunity to operate under the terms of this exemption, if they so choose. The following chart summarizes the proposed framework:

SUMMARY OF FRAMEWORK FOR MULTILATERAL TRADE EXECUTION FACILITIES

Market	Characteristics	Requirements
Recognized Futures Exchange (RFE)	1. Any commodity; 2. Any trader	Fifteen Core Principles.
Recognized Derivatives Transaction Facility (DTF) ² .	1. Only commodities: (a) included in box below; or (b) individual contracts on a case-by-case basis; or 2. Only commercial traders	Seven Core Principles.
Exempt Multilateral Transaction Facility (Exempt MTEF).	1. Only for the following commodities: (a) a debt obligation; (b) a foreign currency; (c) an interest rate; (d) an exempt security (e) a measure of credit quality; (f) an occurrence or contingency beyond the control of the counterparties; or (g) cash-settled based upon an economic or commercial index or measure; and 2. Only institutional traders	1. Anti-fraud section of the CEA; 2. Anti-manipulation section of the CEA; and 3. May not hold self out as regulated.

These proposed rules, along with those proposed in the companion releases on intermediaries and clearing organizations, comprise a new regulatory framework which is intended to provide greater flexibility in meeting technological and competitive challenges. At the same time, the Commission will retain its oversight authority to ensure the integrity of markets and prices, to deter manipulation, to protect the markets' financial integrity, and to protect customers.

To ensure that the Commission's regulations address regulatory goals in the least costly and burdensome manner consistent with achieving the Commission's mission, the Commission has reviewed its proposed regulatory framework in relation to the four primary objectives of the Act: Ensuring market and price integrity; protecting against market manipulation; protecting the financial integrity of the markets; and protecting customers from abusive trading and sales practices. The proposed amendments would move the Commission from a direct to an

oversight regulator, replacing prescriptive rules with broad performance standards in the form of core principles. The core principles are proposed to be supplemented with statements of guidance on practices that comply with the standards and, only as necessary, implementing rules. The proposed framework reflects differences in regulation of individual markets due to the nature of the commodity traded and the sophistication of market participants. Moreover, the proposed framework adheres to internationally-accepted guidance regarding appropriate regulatory measures for exchange-traded derivatives markets.

The Commission was encouraged in this undertaking by the other Federal financial regulators that comprise the President's Working Group on Financial Markets³ and by the chairmen of the

³ Recognizing the importance of the OTC derivatives markets, the Chairmen of the Senate and House Agriculture Committees requested that the President's Working Group on Financial Markets (PWG) conduct a study of OTC derivatives markets. After studying the existing regulatory framework for OTC derivatives, recent innovations, and the potential for future developments, the PWG on November 9, 1999, reported to Congress its recommendations. See *Over-the-Counter Derivatives Markets and the Commodity Exchange Act*, Report of the President's Working Group. The PWG report focused on promoting innovation, competition, efficiency, and transparency in OTC derivatives markets and in reducing systemic risk.

Commission's Congressional oversight committees. Specifically, by letter dated November 30, 1999, the Chairmen of the Senate and House Agriculture Committees, joined by additional senior Senators and Members of the House of Representatives, "encourag[ed] the Commission to use the exemptive authority granted it by the Commodity Exchange Act to lessen regulatory burdens on United States' futures markets so that they may compete more effectively."

B. Changing Nature of Exchange-Traded Markets

The proposed new regulatory framework responds to changes that have occurred in markets operating under the CEA. Exchange-traded derivatives markets have changed dramatically over the last twenty-five years. Since the last major revision of the regulatory scheme in 1974, the majority of futures trading volume has shifted from agricultural commodities to financial commodities. Moreover, in

Although specific recommendations about the regulatory structure applicable to exchange-traded futures were beyond the scope of its report, the PWG suggested that the Commission review existing regulatory structures (particularly those applicable to markets for financial futures) to determine whether they were appropriately tailored to serve valid regulatory goals.

² As noted above, although DTFs are geared toward sophisticated or institutional traders, the framework would permit a facility eligible to be a DTF based upon the nature of the commodities traded to choose to include non-institutional traders.

1974, no contracts were cash-settled. Today, many are. Over the past twenty-five years the markets also have become increasingly institutional. In addition, the exchanges themselves have matured. During the last twenty-five years they have developed better audit trails, have markedly improved their self-regulatory and surveillance programs and have placed in effect greater safeguards against conflicts of interest in decision-making. They have entered into arrangements with both domestic and foreign exchanges to share surveillance information in order better to carry out their functions. They also have introduced for trading a remarkable range of new commodities.

The competitive environment for United States futures exchanges also has changed dramatically during the last twenty-five years. Although futures trading was always global in nature, aggregate trading volume on non-U.S. futures and option exchanges has surpassed aggregate trading volume on U.S. exchanges. In addition, exchange-traded derivative markets face increased competition from the over-the-counter markets.

II. Framework for Multilateral Transaction Execution Facilities

The Commission is proposing a multifaceted framework which includes three broad categories of trading facilities: Recognized Futures Exchanges, Derivatives Transaction Facilities and Exempt MTEFs. The level of oversight applied to exchanges or trading facilities would be based on the nature of participants allowed to trade on the facility and certain characteristics of the commodities being traded. In general, where access to an exchange or facility is restricted to more sophisticated traders or commercial participants, or where the nature of the commodity being traded poses a relatively low susceptibility to manipulation, regulatory oversight would be set at a lower level, reflecting the reduced need to monitor closely such markets. One constant requirement at all levels of oversight, however, is the need for markets serving a price discovery function to provide a degree of price transparency. This multifaceted approach to oversight is intended to balance the public interests of market and price integrity, protection against manipulation and customer protection with the need to permit exchanges and other trading facilities to operate more flexibly in today's competitive environment.

A. Exempt Multilateral Transaction Execution Facilities (Exempt MTEFs)

The Commission is proposing a new, self-effectuating exemption for those multilateral transaction facilities (MTEFs) meeting the conditions specified in the rule. As proposed, these facilities would be exempt from regulation by the Commission. The exemption would apply to transactions traded on MTEFs that are open for trading only to eligible participants, either trading for their own account or through another eligible participant, and only for contracts based upon: (1) A debt obligation; (2) a foreign currency; (3) an interest rate; (4) an exempt security or index thereof, as provided in § 2a(1)(B)(v) of the Act; (5) a measure of credit risk or quality, including instruments known as "total return swaps," "credit swaps" or "spread swaps;" (6) an occurrence or contingency beyond the control of the counterparties to the transaction; or (7) cash-settled, based upon an economic or commercial index or measure beyond the control of the counterparties to the transaction and not based upon prices derived from trading in a directly corresponding underlying cash market.

The Commission is of the view that these commodities, when traded between or among eligible participants need not be subject to the regulatory scheme of the Act. Accord PWG Report at 17. In this regard, transactions by eligible participants in these commodities would be exempt from Commission regulation under either the Part 35 exemption for bilateral transactions or under the Part 36 exemption for MTEFs.

It should be noted that the instruments eligible for exemption are limited by operation of section 2(a)(1)(B) of the Act, which is reserved in proposed § 36.3(a). The reservation, and application, of this provision is consistent with the language of section 4(c) of the Act which limits the Commission's authority to exempt transactions from the application of section 2(a)(1)(B) of the Act.

Examples of existing non-dormant, designated contract markets that are based on an eligible debt obligation include CBT U.S. Treasury bonds, CBT Long term U.S. Treasury notes and CME Treasury Bills. The Commission particularly requests comment with respect to inclusion of government securities in the list of commodities that are eligible for the exemption under part 36. In light of the significant regulation of government securities markets under the Government Securities Act of 1986

(as amended)⁴ and other securities laws, would granting a broad exemption to contract markets for futures on government securities give rise to significant and undesirable opportunities for regulatory arbitrage?

Examples of eligible foreign currencies include currency contract and currency cross rates. Contracts on an interest rate typically represent interest on time deposits. Because these time deposits generally are non-negotiable, the contracts overlying them are usually cash-settled. Such rates are derived from activity in the interbank market, which is very liquid and deep. A major component of the interbank market is the market for deposits of U.S. dollars held in foreign markets. This market sets the interest rates for dollars held as deposits in these banks. Much of the activity is centered in London and is reflected by the London Interbank Offer Rate (LIBOR). LIBOR is the rate at which the most credit-worthy banks offer to lend to one another. Variable rate loans, deposits, and interest rate swaps are often quoted as a spread over LIBOR. Other active trading centers exist throughout Europe and in other countries in Asia and elsewhere, and the interest rates reported for those markets share similar monikers such as PIBOR (Paris Interbank Offer Rate), FIBOR (Frankfurt Interbank Offer Rate), and TIBOR (Tokyo Offer Rate). Commodities on existing non-dormant designated contract markets eligible for this exemption include CME three month Eurodollars, CME one month LIBOR, CME three month Euroyen, CME three month TIBOR, CME three month Euro Canada and CBT yield curve spreads.

The commodities eligible for exemption include measures of credit risk or quality. This category specifically includes various types of instruments denominated as "total return swaps," "credit swaps," or "credit spread swaps." As noted in a companion release in this issue of the **Federal Register** proposing amendments to the Commission's part 35 exemption, nothing in the rules that the Commission is proposing would affect the continued applicability of any existing Commission exemptions, policy statements or interpretations to such total return swaps or to any other instrument. An example of an existing designated contract market included in this category is the CBT bankruptcy index.

⁴ Government Securities Act of 1986, Pub. L. 99-571, 100 Stat. 3208; Government Securities Act Amendments of 1993, Pub. L. 103-202, 107 Stat. 2344.

The final two categories of eligible commodity are for contracts based upon an occurrence or a contingency beyond the control of any trader, or any economic or commercial index or measure not based upon prices derived from trading in a directly corresponding underlying cash market. These instruments must be cash settled, because there is no underlying tangible commodity, financial asset or instrument which could be delivered to settle the contracts at maturity, *i.e.*, there is no direct cash market counterpart. For these types of derivatives, concerns about the potential for manipulation of cash market prices are obviated, since individual traders typically have no ability to influence the value of the cash settlement, and, since the settlement value is not based on the prices of any asset or product traded in a directly corresponding cash market.

Exempt derivative instruments included in this category are contracts that are cash settled based upon an objective measurement of an economic or commercial index, a natural occurrence or a contingency. In this regard, the cash settlement measure could be based on an objective process, such as a count or measurement of a physical property or natural occurrence, or could be calculated by an independent third party that is widely accepted as a reputable provider of data regarding the commodity. Also included in this category are contracts that are settled in cash based upon the outcome of a contingency, such as a recurring or nonrecurring event, a specific incident, a natural phenomenon or the unambiguous results of some other condition that gives rise to a hedgeable risk. It is not intended to include contracts based upon a cash-settlement price determined through cash-market trading of any physical commodity or financial instrument, but rather contracts based on the objectively determined results of an outcome, occurrence, or event that is beyond the control of the parties involved in the contract or the entity where trading occurs. Derivatives traders have no ability to influence the final settlement value to profit on a derivatives position, and in many cases, the data used to compile the indexes are publicly available and are generated by reputable sources. Finally, included in this category are contracts based on an objectively determined index value or measure of an economic or commercial index reflecting broad characteristics of the economy as a whole, or portions thereof, or material segments of commercial activity.

Examples include contracts based on: Weather (such as contracts based on temperatures or precipitation data); the Consumer Price Index or the Gross Domestic Product; insurance data, bankruptcy rates, real estate rental indexes or occupancy (vacancy) rates for individual localities; or measures of physical production or sales amounts such as housing starts or auto sales; or crop yields.

The Commission is proposing to define MTEF as "an electronic or non-electronic market or similar facility through which persons, for their own accounts or for the accounts of others, enter into, agree to enter into or execute binding transactions by accepting bids or offers made by one person that are open to multiple persons conducting business through such market or similar facility." The definition as proposed does not, and is not intended to, "preclude participants from engaging in privately negotiated bilateral transactions, even where these participants use computer or other electronic facilities, such as 'broker screens,' to communicate simultaneously with other participants so long as they do not use such systems to enter orders to execute transactions." See, 58 FR 5587, 5591 (Jan. 22, 1993). Accordingly, the definition makes clear that it does not include facilities merely used as a means of communicating bids or offers nor does it include markets in which a single market maker offers to enter into bilateral transactions with multiple counterparties who may not transact with each other.

It should be noted that the definition of MTEF in proposed § 36.1(b) applies only to those rules in which it is cited. It is not intended to modify, alter, amend or interpret any other provision of the Act or the Commission's rules. For example, the proposed § 36.1(b) definition of MTEF does not affect the meaning or application of the statutory term, "board of trade." 7 U.S.C. 1a(a). Thus, the scope and application of the statutory exclusion in section 2(a)(1)(A)(ii) of the Act, popularly known as the "Treasury Amendment," which depends in part on the meaning of "board of trade," is in no way affected by the Commission's proposed adoption of a definition of MTEF under § 36.1(b) for purposes of the exemptions in part 35 and part 36 of its rules. Accordingly, a facility that fits within the definition of "multilateral transaction execution facility" in part 36 may not be a "board of trade" for purposes of the Treasury Amendment.

As proposed, in exercising its authority under these exemptive rules, the Commission would not make any

determination that the exempted transactions are or are not subject to its jurisdiction. When it adopted section 4(c) in 1992, the Conferees of the Congress stated:

The Conferees do not intend that the exercise of exemptive authority by the Commission (under Section 4(c)) would require any determination beforehand that the agreement, instrument, or transaction for which an exemption is sought is subject to the Act. Rather, this provision provides flexibility for the Commission to provide legal certainty to novel instruments where the determination as to jurisdiction is not straightforward.⁵

In exercising this exemptive authority to date, the Commission has not made a determination that the transactions being exempted were, or were not, subject to the Commission's jurisdiction under the CEA.⁶ Accordingly, the Commission is not making a determination that any market that is eligible to be an exempt MTEF under the proposed exemption is or is not subject to the Commission's jurisdiction under the CEA. Moreover, the fact that one market may operate as an exempt MTEF in reliance upon the proposed exemption, or that a similar market voluntarily submits to CFTC oversight as a recognized DTF or RFE, does not imply that the Commission has made a determination that any firm or entity that operates in a similar manner is subject to the Commission's jurisdiction under the CEA. However, the proposed exemptive rules for DTFs and RFEs provide that a market that is eligible to operate as an exempt MTEF but which chooses to become recognized by the Commission as a DTF or RFE, is bound to comply with applicable provisions of the Act and Commission rules as a condition of those exemptions.

B. Derivatives Transaction Facilities

The Commission also is proposing a new exemptive category for Derivatives Transaction Facilities. A market or similar facility, including a board of

⁵ 5 H.R. Rep. No. 978, 102d Cong., 2d Sess. 82-83 (1992).

⁶ For instance, when the Commission exempted certain swap agreements in 1993, pursuant to section 4(c) of the Act, it stated:

The issuance of this rule (Rule 35.2) should not be construed as reflecting any determination that the swap agreements covered by the terms hereof are subject to the Act, as the Commission has not made and is not obligated to make any such determination.

58 FR 5587, 5588 (Jan. 22, 1993). See also Order Granting the London Clearing House's Petition for an Exemption Pursuant to Section 4(c) of the Commodity Exchange Act, 64 FR. 53346 (October 1, 1999); Exemption for Certain Contracts Involving Energy Products, 58 FR. 21286, 21288 (Apr. 20, 1993); Regulation of Hybrid Instruments, 58 FR 5580, 55821 n. 2 (Jan. 22, 1993).

trade, would be eligible to become a DTF under proposed part 37, regardless of its method of transmitting bids and offers or its matching system, if the contracts traded on the DTF meet specified commodity eligibility requirements. These are identical to the commodity eligibility requirements for the exempt MTEF.⁷ Such DTFs would have the choice of whether or not to permit access to the market by non-eligible traders, but if they did permit such access, it would be allowed only through registered FCMs meeting a number of additional requirements. The intermediary firm and its associated person would be required to meet a number of requirements, including providing their non-institutional customers with enhanced disclosure and additional protections.⁸ The DTF, however, may limit access solely to eligible participants if it so chooses.⁹

In addition, under proposed part 37, a facility that restricted participation to "eligible commercial participants" would be eligible to become a DTF to trade contracts based on all commodities other than those domestic agricultural commodities enumerated in section 1(a)(3) of the Act¹⁰ and those commodities subject to the provisions of section 2(a)(1)(B) of the Act. This type of eligible commercials-only market structure lessens many of the regulatory concerns regarding manipulation ordinarily present with contracts for tangible commodities.¹¹

⁷ The Commission also expects, however, on a case-by-case basis, that the surveillance history and the self-regulatory undertakings of a particular exchange or facility could make it possible to include a specific contract traded on that facility within the DTF category even if the underlying commodity does not meet the general eligibility criteria. An exchange or facility seeking a case-by-case determination would be recognized as a DTF for that contract or contracts only upon CFTC approval.

⁸ Proposed amendments to the Commission's rules governing intermediaries are published today in a separate release in this edition of the **Federal Register**. Although those amendments apply to all categories of intermediaries irrespective of where they choose to transact business, certain proposals differentiate between intermediation on various types of markets and for different types of customers.

⁹ Facilities that meet the commodity eligibility requirement and permit access only to institutional traders are thereby eligible to be exempt MTEFs. However, such facilities may choose to seek recognition as a DTF. By choosing to comply with the additional DTF requirements outlined in this framework and thereby becoming recognized, the facility would be acknowledged to have met a higher regulatory standard.

¹⁰ They are wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, potatoes, wool, wool tops, fats and oils, cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice.

¹¹ Many of these trading facilities are expected to replicate electronically various aspects of today's

The Commission is proposing that the agricultural commodities listed in section 1a(3) of the Act not be eligible for trading on a DTF. Because the current futures markets in these commodities tend to be the primary, if not the only, centralized source of price discovery and price basing for these commodities, they have not been included by the Commission in certain regulatory programs, particularly at the time of their initiation.¹² However, members of the agricultural community have at times argued that they should not be prohibited from benefiting from innovative trading practices that are available for non-agricultural commodities. In light of the unique considerations that these commodities present, the Commission is seeking comment from the agricultural community on the advisability of allowing the enumerated agricultural commodities to be traded on a DTF at this time.

Although contracts, agreements or transactions traded on a DTF would be exempt from many of the Act's provisions and Commission regulations,¹³ the exemption is contingent upon compliance with the conditions set forth in part 37.¹⁴ Transactions carried out in reliance upon the proposed part 37 exemption would not be voidable as a matter of law due to a violation of the part 37 exemption.

To be recognized as a DTF under proposed part 37 an entity either must have been designated under sections 4c, 5, 5a(a) or 6 of the Act as a contract market in at least one commodity which is not dormant within the meaning of § 5.2 of the Commission's regulations, or must apply to the Commission for

commercial markets, including trading exclusively between principals, and direct negotiation and documentation of trades. In addition, these facilities often do not provide clearing arrangements for contracts.

¹² For example, options on agricultural futures contracts were introduced subsequent to options trading on non-agricultural commodities and the enumerated agricultural commodities are not included in the existing Part 36 exemption.

¹³ Certain sections of the Act, including the fraud and manipulation provisions of the Act and the Commission's regulations are reserved in proposed rule 37.5 and would continue to apply.

¹⁴ Although exempt from many statutory and regulatory requirements, DTFs as a condition of the Part 37 rules, generally would be considered under proposed rule 37.1(a) to be subject to the Act's provisions as though the DTF were a "board of trade," or a "designated contract market" under the Act. Therefore, the Act would apply to a DTF (and an RFE) as would any other statutory or regulatory provision which refers to "boards of trade" or "designated contract markets." Accordingly, transactions on a DTF would be accorded the same treatment for bankruptcy or tax purposes as transactions on formally designated contract markets.

recognition as a DTF under part 37. Under proposed § 37.3, a DTF must meet certain conditions for recognition. An application should address how the facility has provided for rules relating to trading on its facility, including: (1) Depending on the nature of the trading mechanism, (i) rules to deter trading abuses, and adequate power and capacity to detect, investigate and take action against violation of its trading rules, or (ii) use of technology that provides participants with impartial access to transactions and captures information that is available for use in determining whether violations of its rules have occurred; (2) rules or terms and conditions defining, or specifications detailing, the operation of the trading mechanism or electronic matching platform; and (3) rules or terms and conditions detailing the financial framework applying to the transactions or ensuring the financial integrity of transactions entered into by, or through, its facilities. The application also should address how the facility would initially, and on a continuing basis, meet and adhere to seven core principles: enforcement, market oversight, operational information, transparency, fitness, recordkeeping and competition.¹⁵

Guidance on meeting the conditions for recognition is provided in the appendix to part 37. Including information not self-evident from the DTF's rules or trading terms addressing the issues set forth in the appendix to part 37 in an application for recognition would assist the Commission in understanding how the applicant meets and adheres to the conditions for recognition. The guidance in the appendix to part 37, however, is intended to be a safe harbor and not the exclusive method of meeting the part 37 conditions for recognition. A DTF could meet a condition for recognition or support its application through procedures, materials, descriptions or documents other than those described in the part 37 appendix.

A board of trade, facility, or entity seeking recognition as a derivatives transaction facility would be deemed to be recognized thirty days after the Commission received the application if the application met the conditions for recognition pursuant to § 37.3 and the applicant and/or its rules or procedures do not violate the Act or the

¹⁵ A board of trade, facility, or entity recognized as a DTF that also maintained a designated contract market or a recognized futures exchange would be required either to clearly identify trading products by market on any electronic system or to provide for separate physical trading locations, depending upon the trading mechanism.

Commission's regulations. An entity seeking recognition as a DTF may request that the Commission approve its initial set of rules under section 5a(a)(12)(A) of the Act and Commission regulations thereunder. Subsequently, the DTF would notify the Commission of additional rules and rule amendments in the same manner that it notifies market participants. A DTF could request that the Commission approve new rules or rule amendments under section 5a(a)(12)(A) of the Act and Commission regulations thereunder. A DTF also could request the Commission to issue an order determining whether the DTF, in adopting and implementing a rule, endeavored to take the least anticompetitive means of achieving the objective, purposes, and policies of the Act.¹⁶

C. Recognized Futures Exchanges

The Commission also is proposing significant regulatory relief to futures exchanges from current requirements that are applicable to designated contract markets. All currently designated contract markets, except for those designated as contract markets in section 2(a)(1)(B) commodities, will be afforded this relief. Under proposed part 38, currently designated contract markets will become recognized futures exchanges. Proposed part 38 replaces many prescriptive rules with performance-based rules. These performance-based rules, or Core Principles, will provide recognized futures exchanges with greater operational flexibility. Prescriptive rules relating to audit trail and conflict of interest procedures, for example, will be replaced by more flexible Core Principles. Moreover, the Commission would not require that it approve an RFE's new contracts prior to listing. In addition, except for the terms and conditions of agricultural commodities enumerated in section 1a(3) of the Act, the Commission would not require its

approval of an RFE's rules and rule amendments prior to implementation, although an RFE voluntarily could submit such contracts or rule amendments to the Commission for review and approval. Furthermore, the exchanges would no longer be responsible for auditing intermediaries' sales practices. Instead, enforcement would be the responsibility of a registered futures association. The National Futures Association (NFA) currently is the only such registered organization.

In addition to currently designated contract markets, other multilateral transaction execution facilities could apply for recognition as an RFE. Eligibility for recognition is not limited by the nature of the trader having access to the facility or the nature of the commodities to be traded. Because RFEs may permit unconditioned access to any type of trader, including both institutional and non-institutional customers or participants, and may list contracts on any type of commodity, including those based on commodities that have finite deliverable supplies or cash markets with limited liquidity, RFE markets potentially have a greater susceptibility to price manipulation and raise greater concerns regarding customer protection than those of DTFs. Therefore, the proposed rules in part 38 preserve a higher level of market surveillance, position reporting obligations, customer protections and financial safeguards than do the rules for DTFs.

In order to be recognized as an RFE, an applicant must meet all of the conditions for recognition specified by proposed rule 38.3. Applicants are to demonstrate how the board of trade, facility or entity has provided for: (1) A clear framework for conducting programs of market surveillance, compliance, and enforcement, including having procedures in place to make use of collected data for real-time monitoring and for post-event audit and compliance purposes to prevent market manipulation; (2) rules relating to trading on its exchange, including rules to deter trading abuses, and adequate authority and capacity to detect, investigate and take action against violations of its trading rules, and a dedicated regulatory department or delegation of that function to an appropriate entity; (3) rules defining, or specifications detailing, the manner of operation of the trading mechanism or electronic matching platform and a trading mechanism or electronic matching platform that performs as defined in the operational rules or specifications; (4) a clear framework for

ensuring the financial integrity of transactions entered into by or through its exchange; (5) established procedures for impartial disciplinary committee(s) or other similar mechanisms empowered to discipline, suspend, or expel members, or to deny access to participants or, if provided for, discipline participants; and (6) arrangements to obtain necessary information to perform the above functions, including the capacity and arrangements to carry out the International Information Sharing Agreement and Memorandum of Understanding developed by the Futures Industry Association (FIA) Global Task Force on Financial Integrity and a mechanism to provide to the public ready access to its rules and regulations.

The application is to address how the exchange initially, and on a continuing basis, meets and adheres to each of part 38's fifteen Core Principles: rule enforcement, products, position monitoring and reporting, position limits, emergency authority, public information, transparency, trading system, audit trail, financial standards, customer protection, dispute resolution, governance, recordkeeping and competition. Guidance on meeting the Core Principles is provided in the appendix to part 38. Information addressing these issues should be included in an application for recognition and should explain to the Commission how the applicant meets and adheres to the conditions for recognition.

Appendix A to part 38 offers general guidance for applicants seeking recognition and also includes a number of proposed statements of acceptable practices for compliance with several Core Principles. These acceptable practices are intended to indicate a manner in which an applicant can meet a Core Principle, but are not meant to be the exclusive means for meeting that Core Principle. Rather, these acceptable practices should be viewed as safe harbors. If an RFE follows an acceptable practice included in the appendix to part 38, it is assured of meeting the relevant Core Principle.

A board of trade, facility, or entity seeking recognition as a recognized futures exchange would be deemed to be recognized sixty days after the Commission received the application unless it appeared that the applicant and/or its rules or procedures might violate a specific provision of the Act or Commission rule that has been reserved under the proposed exemptive rule, or fails to meet one or more of the conditions for recognition in proposed

¹⁶ The Commission is proposing a new part 20 to require traders on DTFs to provide information to the Commission concerning their trading on a DTF in response to a Commission special call for such information. This authority is critical to the Commission's ability to oversee the market. In addition, the Commission is proposing to amend Rule 15.05 by adding paragraphs (e), (f) and (g). The new paragraphs will permit the Commission to obtain information from foreign brokers, any of their customers or a foreign trader trading on a DTF or an RFE regarding their futures or options transactions on the facility or exchange. The amendments extend to foreign persons trading on DTFs or RFEs the requirements of rule 15.05 relative to foreign brokers, their customers and foreign traders whose accounts are maintained by a futures commission merchant or introducing broker.

rule 38.3. In that case, the Commission could notify the applicant that the Commission would review the proposal under section 6 of the Act.

The Commission is proposing amendments to part 5 of its rules to permit RFEs to list new products based only on their certification that the contract and its rules do not violate any applicable provision of the Act or Commission rules. As an aid to exchanges listing new products through this certification procedure, the Commission also is proposing a new statement of guidance relating to Core Principle #2, that contracts listed for trading not be readily susceptible to manipulation. New products listed under this procedure must be labeled as listed pursuant to exchange certification. Alternatively, an RFE could submit a new product for prior Commission review and approval under fast-track procedures. RFEs choosing to submit new contracts for prior approval under fast-track procedures should submit an application which conforms to the requirements of Guideline No. 1, 17 CFR part 5, appendix A.¹⁷ The Commission will approve the terms and conditions of contracts submitted for review. Such contracts may be listed as "approved by the Commission."

Similarly, an RFE may request that the Commission approve amendments to its rules under section 5a(a)(12)(A) of the Act and Commission regulations thereunder. The Commission is proposing a voluntary procedure for the review and approval of exchange rules. Under these procedures, all exchange rule amendments could be submitted for forty-five day fast track review and certain rule amendments could be submitted for expedited review as provided previously by the Commission in approving a general authorizing rule. Alternatively, an RFE could amend its rules (other than the terms or conditions of contracts on the agricultural commodities enumerated in section 1a(3) of the Act) by certification to the Commission that a rule does not violate the Act or Commission rules on the day preceding the rule's implementation.

The certification procedure proposed under the changes to rule 1.41 is similar to a certification procedure published by the Commission as proposed rule 1.41(z) in November of 1999.¹⁸ The

Commission points out, however, that the currently proposed certification procedure includes a stay provision that was not included in the 1.41(z) proposal. That provision is limited to use during any proceeding to disapprove, alter or amend a rule.¹⁹ The decision to impose a stay would not be delegable to any employee of the Commission. The Commission requests comments on this provision.

The Commission is also proposing that it merely be notified on a weekly basis following the implementation of certain specified exchange rule amendments. The Commission need not be notified, even as part of a weekly update, however, of rule changes relating to exchange administration, including those relating to decorum.

D. Deletion of Part 180 and Amendment of Commission Regulation 170.8

Contract markets are required, under section 5a(a)(11) of the Act, to provide fair and equitable procedures for the settlement of customer claims and grievances against any of its members or such members' employees, whether through arbitration or other dispute resolution programs. The Commission promulgated part 180 (Arbitration or other Dispute Resolution Procedures) to give the contract markets a blueprint for developing the required "fair and equitable" procedures. As part of the regulatory reform process discussed earlier the Commission is proposing to delete part 180. Instead of following the detailed requirements of part 180, the Commission is proposing that RFEs be required to meet the Core Principle for dispute resolution. For contracts in section 2(a)(1)(B) commodities which will continue to be designated contract markets, section 5a(a)(11) of the Act would still require the contract market to provide fair and equitable procedures for the settlement of customer claims and grievances.

The Commission has included an appendix to part 38, as explained above, to provide guidance on meeting the conditions for approval under part 38, including acceptable practices for some of the Core Principles. These acceptable practices, as previously explained, are ways to meet a Core Principle but are not meant to be the only method for meeting that Core Principle. Instead, these acceptable practices should be viewed as safe harbors. Therefore, the guidance on Core Principle 12, dispute resolution, includes acceptable practices for exchange dispute resolution programs as one, but not the only, means for meeting the dispute

resolution Core Principle. The acceptable practices provided in the appendix were based on the principles for arbitration and other dispute resolution settlement procedures under part 180. The guidance on customer dispute resolution found in the appendix to part 38 would also be applicable to derivative transaction facilities that allowed access to non-institutional participants.²⁰

The Commission is also proposing to amend § 170.8 of the Commission's regulations as that provision currently requires that the procedures for settlement of customer disputes promulgated by futures associations be consistent with part 180. Under the proposed amendments to § 170.8, programs for resolution of customer claims and grievances promulgated by futures associations would be required to be consistent with the guidelines and acceptable practices found in the appendix to part 38.

III. Section 4(c) Findings

These rule amendments are being proposed under section 4(c) of the Act, which grants the Commission broad exemptive authority. Section 4(c) of the Act provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission may by rule, regulation or order exempt any class of agreements, contracts or transactions, either unconditionally or on stated terms or conditions. To grant such an exemption, the Commission must find that the exemption would be consistent with the public interest, that the agreement, contract, or transaction to be exempted would be entered into solely between appropriate persons and that the exemption would not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act.²¹

As explained above, these proposed rules would establish a new regulatory framework. The proposed framework is intended to promote innovation and competition in the trading of derivatives and to permit the markets the flexibility to respond to technological and structural changes in the markets. Specifically, the proposed framework would establish three regulatory tiers with regulations tailored to the nature of

¹⁷ Guideline No. 1 was itself recently amended to reduce unnecessary burdens. By and large it merely requires an applicant to file with the Commission the proposed contract's terms and conditions and a completed checklist. This checklist replaces a previously required narrative explanation and justification of the proposed contract's terms and conditions.

¹⁸ 64 FR 66428 (November 26, 1999).

¹⁹ Proposed rule 1.41(c)(1)(iv).

²⁰ In light of the deletion of part 180, a new rule 166.5 replacing former rule 180.3 relating to the use of pre-dispute arbitration agreements is being proposed in the companion release on intermediaries in today's edition of the **Federal Register**. The substance of the rule as proposed is unchanged from the current requirement.

²¹ See, 7 U.S.C. 6(c).

the commodities traded and the nature of the market participant. As the Commission explained above, access to each of the tiers is dependent upon the appropriateness of the participant. Accordingly, and for the reasons detailed above, the Commission finds that each class of participant eligible to participate in a specific tier is appropriate for that exemptive relief. Moreover, the exemptions for parts 37 and 38 are upon stated terms. As detailed above, these terms include application of regulatory and self-regulatory requirements tailored to the nature of the market. The Commission believes that, in light of these conditions, the exemptive relief would have no adverse effect on any of the regulatory or self-regulatory responsibilities imposed by the Act. The Commission specifically requests the public to comment on these issues.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of these rules on small entities. Information of the type that would be required under the proposed rule does not involve any small organizations.

B. Paperwork Reduction Act of 1995

This proposed rulemaking contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: Rules Relating to part 37, Establishing Procedures for Entities to be Recognized as Derivatives Transaction Facilities (DTFs), OMB Control Number 3038-XXXX.

The estimated burden was calculated as follows:

Estimated number of respondents: 10.
Annual responses by each respondent: 1.

Total annual responses: 10.
Estimated average hours per response: 200.

Annual reporting burden: 2,000.
Collection of Information: Rules Relating to part 38, Establishing Procedures for Entities to become a Recognized Futures Exchange (RFE), OMB Control Number 3038-XXXX.

The estimated burden was calculated as follows:

Estimated number of respondents: 10.
Annual responses by each respondent: 1.

Total annual responses: 10.
Estimated average hours per response: 300.

Annual reporting burden: 3,000.
Collection of Information: Rules Pertaining to Large Trader Reports, OMB Control Number 3038-0009

The estimated burden associated with the elimination of large trader reporting requirements for futures exchanges that operate exempt multilateral trade execution facilities was calculated as follows:

Estimated number of respondents: 4,731.
Annual responses by each respondent: 14.67.
Total annual responses: 69,392.
Estimated average hours per response: 35213.

Annual reporting burden: 24,435.
This annual reporting burden of 24,435 hours represents a decrease of 394 hours as a result of the proposed revision.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503; Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in:

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days

of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington DC 20581, (202) 418-5160.

List of Subjects

17 CFR Part 1

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

17 CFR Part 5

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

17 CFR Part 15

Commodity futures, Contract markets, Reporting and recordkeeping requirements.

17 CFR Part 20

Commodity futures, Contract markets, Reporting and recordkeeping requirements.

17 CFR Part 36

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 37

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 38

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 100

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 170

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 180

Claims, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4, 4c, 4i, 5, 5a, 6 and 8a thereof, 7 U.S.C. 6, 6c, 6i, 7, 7a, 8, and 12a, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

**PART 1—GENERAL REGULATIONS
UNDER THE COMMODITY EXCHANGE
ACT**

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.37 is proposed to be amended by adding paragraphs (c) and (d) to read as follows:

§ 1.37 Customer's or option customer's name, address, and occupation recorded; record of guarantor or controller of account.

* * * * *

(c) Each derivatives transactions facility and each recognized futures exchange shall keep a record in permanent form which shall show the true name; address; and principal occupation or business of any foreign trader executing transactions on the facility or exchange, as well as the name of any person guaranteeing such transactions or exercising any control over the trading of such foreign trader.

(d) Paragraph (c) of this section shall not apply to a derivatives transactions facility or recognized futures exchange on which transactions in futures contracts or options contracts of foreign traders are executed through and the resulting transactions are maintained in accounts carried by a registered futures commission merchant or introducing broker subject to the provisions of paragraph (a) of this section.

3. Section 1.41 is proposed to be amended as follows:

a. By removing and reserving paragraph (b),

b. By redesignating paragraph (e) as paragraph (i) and revising it,

c. By revising paragraphs (c) through (e),

d. By amending paragraphs (f) and (g) by adding the words "or recognized futures exchange" after the words "contract market" each time they appear, and

e. By removing and reserving paragraphs (j) through (t), to read as follows:

§ 1.41 Contract market rules; submission of rules to the Commission; exemption of certain rules.

* * * * *

(b) [Reserved]

(c) Exemption from the rule review procedure requirements of Section 5a(a)(12)(A) of the Act and related regulations.

(1) Rules of designated contract markets, recognized futures exchanges and recognized clearing organizations.

Notwithstanding the rule approval and filing requirements of Section 5a(a)(12) of the Act, designated contract markets, recognized futures exchanges and recognized clearing organizations may place a rule into effect without prior Commission review or approval if:

(i) The rule is not a term or condition of a contract for future delivery of an agricultural commodity listed in section 1(a)(3) of the Act;

(ii) The entity has filed a submission for the rule, and the Commission has received the submission at its Washington, D.C. headquarters and at the regional office having jurisdiction over the entity by close of business on the business day preceding implementation of the rule; and

(iii) The rule submission includes:
(A) The label, "Submission of rule by self-certification;"

(B) The text of the rule (in the case of a rule amendment, brackets must indicate words deleted and underscoring must indicate words added);

(C) A brief explanation of the rule including any substantive opposing views not incorporated into the rule; and

(D) A certification by the eligible entity that the rule does not violate any provision of the Act and regulations thereunder.

(iv) The Commission retains the authority to stay the effectiveness of a rule implemented pursuant to paragraph (c)(1) of this section during the pendency of Commission proceedings to disapprove, alter or amend the rule. The decision to stay the effectiveness of a rule in such circumstances may not be delegable to any employee of the Commission.

(2) Rules of derivatives transaction facilities. Notwithstanding the rule approval and filing requirements of section 5a(a)(12)(A) of the Act, derivatives transaction facilities may place a rule into effect without prior Commission review or approval if the derivatives transaction facility files with the Commission at its Washington, D.C. headquarters a submission labeled, "DTF Rule Notice" which includes the text of the rule or rule amendment (brackets must indicate words deleted and underscoring must indicate words added) at the time traders or participants in the market are notified, but in no event later than the close of business on the business day preceding implementation of the rule.

(d)(1) Voluntary submission of rules for fast-track approval. A designated contract market, recognized futures exchange, derivatives transaction facility or recognized clearing

organization may submit any rule or proposed rule, except those submitted to the Commission under paragraph (f) of this section, for approval by the Commission pursuant to section 5a(a)(12)(A) of the Act, whether or not so required by section 5a(a)(12) of the Act under the following procedures:

(i) One copy of each rule submitted under this section shall be furnished in hard copy or electronically in a format specified by the Secretary of the Commission to the Commission at its Washington, DC headquarters. If a hard copy is furnished for submissions under appendix A to part 5 of this chapter, two additional hard copies shall be furnished to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Each submission under this paragraph (d)(1) shall be in the following order:

(A) Label the submission as "Submission for Commission rule approval;"

(B) Set forth the text of the rule or proposed rule (in the case of a rule amendment, brackets must indicate words deleted and underscoring must indicate words added);

(C) Describe the proposed effective date of a proposed rule and any action taken or anticipated to be taken to adopt the proposed rule by the contract market, recognized futures exchange, derivatives transaction facility or recognized clearing organization or by its governing board or by any committee thereof, and cite the rules of the entity that authorize the adoption of the proposed rule;

(D) Explain the operation, purpose, and effect of the proposed rule, including, as applicable, a description of the anticipated benefits to market participants or others, any potential anticompetitive effects on market participants or others, how the rule fits into the contract market, recognized futures exchange, derivatives transaction facility or recognized clearing organization's framework of self-regulation, and any other information which may be beneficial to the Commission in analyzing the proposed rule. If a proposed rule affects, directly or indirectly, the application of any other rule of the submitting entity, set forth the pertinent text of any such rule and describe the anticipated effect;

(E) Note and briefly describe any substantive opposing views expressed with respect to the proposed rule which were not incorporated into the proposed rule prior to its submission to the Commission; and

(F) Identify any Commission regulation that the Commission may

need to amend, or sections of the Act or Commission regulations that the Commission may need to interpret in order to approve or allow into effect the proposed rule. To the extent that such an amendment or interpretation is necessary to accommodate a proposed rule, the submission should include a reasoned analysis supporting the change.

(ii) All rules submitted for Commission approval under paragraph (d)(1)(i) of this section shall be deemed approved by the Commission under section 5a(a)(12)(A) of the Act, forty-five days after receipt by the Commission, unless notified otherwise within that period, if:

(A) The submission complies with the requirements of paragraphs (d)(1)(i) (A) through (F) of this section or, for dormant contracts, the requirements of § 5.3 of this chapter;

(B) The submitting entity does not amend the proposed rule or supplement the submission, except as requested by the Commission, during the pendency of the review period; and

(C) The submitting entity has not instructed the Commission in writing during the review period to review the proposed rule under the 180 day review period under section 5a(a)(12)(A) of the Act.

(iii) The Commission, within forty-five days after receipt of a submission filed pursuant to paragraph (d)(1)(i) of this section, may notify the entity making the submission that the review period has been extended for a period of thirty days where the proposed rule raises novel or complex issues which require additional time for review or is of major economic significance. This notification shall briefly describe the nature of the specific issues for which additional time for review is required. Upon such notification, the period for review shall be extended for a period of thirty days, and, unless the entity is notified otherwise during that period, the rule shall be deemed approved at the end of the enlarged review time.

(iv) During the forty-five day period for fast-track review, or the thirty-day extension when the period has been enlarged under paragraph (d)(1)(iii) of this section, the Commission shall notify the submitting entity that the Commission is terminating fast-track review procedures and will review the proposed rule under the 180 day review period of section 5a(a)(12)(A) of the Act, if it appears that the proposed rule may violate a specific provision of the Act, regulations, or form or content requirements of this section. This termination notification will briefly specify the nature of the issues raised

and the specific provision of the Act, regulations, or form or content requirements of this section that the proposed rule appears to violate. Within fifteen days of receipt of this termination notification, the designated contract market, recognized futures exchange, derivatives transaction facility or recognized clearing organization may:

(A) Withdraw the rule;

(B) Request the Commission to review the rule pursuant to the one hundred and eighty day review procedures set forth in section 5a(a)(12)(A) of the Act; or

(C) Request the Commission to render a decision whether to approve the proposed rule or to institute a proceeding to disapprove the proposed rule under the procedures specified in section 5a(a)(12)(A) of the Act by notifying the Commission that the submitting entity views its submission as complete and final as submitted.

(2) Voluntary submission of rules for expedited approval. Notwithstanding the provisions of paragraph (d)(1) of this section, changes to terms and conditions of a contract that are consistent with the Act and Commission regulations and with standards approved or established by the Commission in a written notification to the market or clearing organization of the applicability of this paragraph (d)(2) shall be deemed approved by the Commission at such time and under such conditions as the Commission shall specify, provided, however, that the Commission may at any time alter or revoke the applicability of such a notice to any particular contract.

(e)(1) Notification of rule amendments. Notwithstanding the rule approval and filing requirements of section 5a(a)(12) of the Act and of paragraphs (c) and (d) of this section, designated contract markets, recognized futures exchanges, derivatives transaction facilities and recognized clearing organizations may place the following rules into effect without prior notice to the Commission if the following conditions are met:

(i) The designated contract market, recognized futures exchange, derivatives transaction facility or clearing organization provides to the Commission at least weekly a summary notice of all rule changes made effective pursuant to this paragraph during the preceding week. Such notice must be labeled "Weekly Notification of Rule Changes" and need not be filed for weeks during which no such actions have been taken. One copy of each such submission shall be furnished in hard copy or electronically in a format

specified by the Secretary of the Commission to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; and

(ii) The rule change governs:

(A) Non-material revisions.

Corrections of typographical errors, renumbering, periodic routine updates to identifying information about approved entities and other such nonsubstantive revisions of contract terms and conditions that have no effect on the economic characteristics of the contract;

(B) Delivery standards set by third parties. Changes to grades or standards of commodities deliverable on futures contracts that are established by an independent third party and that are incorporated by reference as terms of the contract, provided that the grade or standard is not established, selected or calculated solely for use in connection with futures or option trading;

(C) Index contracts. Routine changes in the composition, computation, or method of selection of component entities of an index other than a stock index referenced and defined in the contract's terms, made by an independent third party whose business relates to the collection or dissemination of price information and that was not formed solely for the purpose of compiling an index for use in connection with a futures or option contract;

(D) Transfer of membership or ownership. Procedures and forms for the purchase, sale or transfer of membership or ownership, but not including qualifications for membership or ownership, any right or obligation of membership or ownership or dues or assessments; or

(E) Administrative Procedures. The organization and administrative procedures of a contract market's governing bodies such as a Board of Directors, Officers and Committees, but not voting requirements and procedures or requirements or procedures relating to conflicts of interest.

(2) Notification of rule amendments not required. Notwithstanding the rule approval and filing requirements of section 5a(a)(12) of the Act and of paragraphs (c) and (d) of this section, designated contract markets, recognized futures exchanges, derivatives transaction facilities and recognized clearing organizations may place into effect without notice to the Commission, rules governing:

(i) Administration. The routine, daily administration, direction and control of employees, requirements relating to gratuity and similar funds, but not

guaranty, reserves, or similar funds; declaration of holidays, and changes to facilities housing the market, trading floor or trading area; or

(ii) Standards of decorum. Standards of decorum or attire or similar provisions relating to admission to the floor, badges, visitors, but not the establishment of penalties for violations of such rules.

* * * * *

(i) Membership lists. Upon request of the Commission each designated contract market, recognized futures exchange, derivatives transaction facility or recognized clearing organization shall promptly furnish to the Commission a current list of the facility's or entity's members or owners subject to fitness requirements.

4. In part 1, §§ 1.43, 1.45, and 1.50 are proposed to be removed and reserved.

5. Part 5 is proposed to be amended as as follows:

PART 5—PROCEDURES FOR LISTING NEW PRODUCTS

a. The authority citation for part 5 continues to read as follows:

Authority: 7 U.S.C. 6(c), 6c, 7, 7a, 8 and 12a.

b. The heading of part 5 is proposed to be revised as set forth above and §§ 5.1 through 5.4 are proposed to be revised to read as follows:

§ 5.1 Listing contracts for trading by exchange certification.

(a) Notwithstanding the provisions of section 4(a)(1) of the Act or § 33.2 of this chapter, a board of trade that has been recognized by the Commission as a recognized futures exchange under § 38.3 of this chapter may list for trading contracts of sale of a commodity for future delivery or commodity option contracts, if the recognized futures exchange:

(1) Lists for trading at least one contract which is not dormant within the meaning of § 5.3 of this part;

(2) In connection with the trading of the contract complies with all requirements of the Act and Commission regulations thereunder applicable to the recognized futures exchange under part 38 of this chapter;

(3) Files with the Commission at its Washington, D.C., headquarters either in electronic or hard-copy form a copy of the contract's initial terms and conditions and a certification by the recognized futures exchange that the contract's initial terms and conditions neither violate nor are inconsistent with any requirement of part 38 of this chapter, any applicable provision of the Commodity Exchange Act or of the rules

thereunder, and the filing is received no later than the close of business of the business day preceding the contract's initial listing; and

(4) Identifies the contract in its rules as listed for trading pursuant to exchange certification.

(b) The provisions of this section shall not apply to:

(1) A contract subject to the provisions of section 2(a)(1)(B) of the Act;

(2) A contract to be listed initially for trading that is the same or substantially the same as one for which an application for Commission review and approval pursuant to § 5.2 was filed by another board of trade while the application is pending before the Commission; or

(3) A contract to be listed initially for trading that is the same or substantially the same as one which is the subject of a pending Commission proceeding to disapprove designation under section 6 of the Act, to disapprove a term or condition under section 5a(a)(12) of the Act, to alter or supplement a term or condition under section 8a(7) of the Act, to amend terms or conditions under section 5a(a)(10) of the Act, to declare an emergency under section 8a(9) of the Act, or to any other proceeding the effect of which is to disapprove, alter, supplement, or require a contract market to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.

§ 5.2 Listing products for trading by derivatives transaction facilities.

Notwithstanding the provisions of section 4(a)(1) of the Act or § 33.2 of this chapter, a recognized derivatives transaction facility under § 37.3 of this chapter may list contracts for trading if it files with the Commission at its Washington, D.C. headquarters, a submission labeled "DTF Notice of Product Listing," which includes the text of the contract's terms or conditions at the time traders or participants in the market are notified, but in no event later than the close of business on the business day preceding initial listing.

§ 5.3 Voluntary submission of new products for Commission review and approval.

(a) Cash-settled contracts. A new contract to be listed for trading by a recognized futures exchange under § 38.3 of this chapter or a recognized derivatives transaction facility under § 37.3 of this chapter shall be deemed approved by the Commission ten business days after receipt by the Commission of the application for

contract approval, unless notified otherwise within that period, if:

(1) The submitting entity labels the submission as being submitted pursuant to Commission rule 5.2—Fast Track Ten-Day Review;

(2)(i) The application for approval is for a futures contract providing for cash settlement or for delivery of a foreign currency for which there is no legal impediment to delivery and for which there exists a liquid cash market; or

(ii) For an option contract that is itself cash-settled, is for delivery of a foreign currency that meets the requirements of paragraph (a)(2)(i) of this section or is to be exercised into a futures contract which has already been designated as a contract market or approved under this section;

(3) The application for approval is for a commodity other than those enumerated in section 1a(3) of the Act or one that is subject to the procedures of section 2(a)(1)(B) of the Act;

(4) The submitting entity trades at least one contract which is not dormant within the meaning of this part;

(5) The submission complies with the requirements of Appendix A of this part—Guideline No. 1;

(6) The submitting entity does not amend the terms or conditions of the proposed contract or supplement the application for designation, except as requested by the Commission or for correction of typographical errors, renumbering or other such nonsubstantive revisions, during that period; and

(7) The submitting entity has not instructed the Commission in writing during the review period to review the application for designation under the usual procedures under section 6 of the Act.

(b) Contracts for physical delivery. A new contract to be listed for trading by a recognized futures exchange under § 38.3 of this chapter or by a derivatives transaction facility under § 37.3 of this chapter shall be deemed approved by the Commission forty-five days after receipt by the Commission of the application for contract approval, unless notified otherwise within that period, if:

(1) The submitting entity labels the submission as being submitted pursuant to Commission rule 5.2—Fast Track Forty-Five Day Review;

(2) The application for contract approval is for a commodity other than those subject to the procedures of section 2(a)(1)(B) of the Act;

(3) The submitting entity lists for trading at least one contract which is not dormant within the meaning of this part;

(4) The submission complies with the requirements of Appendix A to this part—Guideline No. 1;

(5) The submitting entity does not amend the terms or conditions of the proposed contract or supplement the application for designation, except as requested by the Commission or for correction of typographical errors, renumbering or other such nonsubstantive revisions, during that period; and

(6) The submitting entity has not instructed the Commission in writing during the forty-five day review period to review the application for designation under the usual procedures under section 6 of the Act.

(c) Notification of extension of time. The Commission, within ten days after receipt of a submission filed under paragraph (a) of this section, or forty-five days after receipt of a submission filed under paragraph (b) of this section, may notify the submitting entity that the review period has been extended for a period of thirty days where the application for approval raises novel or complex issues which require additional time for review. This notification will briefly specify the nature of the specific issues for which additional time for review is required. Upon such notification, the period for fast-track review of paragraphs (a) and (b) of this section shall be extended for a period of thirty days.

(d) Notification of termination of fast-track procedures. During the fast-track review period provided under paragraphs (a) or (b) of this section, or of the thirty-day extension when the period has been enlarged under paragraph (c) of this section, the Commission shall notify the submitting entity that the Commission is terminating fast-track review procedures and will review the proposed rule under the usual procedures of section 6 of the Act, if it appears that the proposed contract may violate a specific provision of the Act, regulations, or form or content requirements of Appendix A to this part. This termination notification will briefly specify the nature of the issues raised and the specific provision of the Act, regulation, or form or content requirement of Appendix A to this part that the proposed contract appears to violate. Within ten days of receipt of this termination notification, the submitting entity may request that the Commission render a decision whether to approve the designation or to institute a proceeding to disapprove the proposed application for designation under the procedures specified in section 6 of the Act by notifying the Commission that the exchange views its

application as complete and final as submitted.

(e) Delegation of authority. (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Economic Analysis or to the Director's delegatee, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to request under paragraphs (a)(6) and (b)(5) of this section that the recognized futures exchange or derivatives transaction facility amend the proposed contract or supplement the application, to notify a submitting entity under paragraph (c) of this section that the time for review of a proposed contract term submitted for review under paragraphs (a) or (b) of this section has been extended, and to notify the submitting entity under paragraph (d) of this section that the fast-track procedures of this section are being terminated.

(2) The Director of the Division of Economic Analysis may submit to the Commission for its consideration any matter which has been delegated in paragraph (e)(1) of this section.

(3) Nothing in the paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (e)(1) of this section.

§ 5.4 Dormant contracts.

(a) Definitions. For purposes of this section:

(1) The term dormant contract means any commodity futures or option contract:

(i) In which no trading has occurred in any future or option expiration for a period of six complete calendar months; or

(ii) Which has been certified by a recognized futures exchange or a recognized derivatives transaction facility to the Commission to be a dormant contract market.

(2) [Reserved]

(b) Listing of additional futures trading months or option expiration by certification. A contract that has been listed for trading initially under the procedures of either § 5.1 or 5.3 of this part that has become dormant may be relisted for trading additional months pursuant to the procedures of § 1.41(c) by filing the bylaw, rule, regulation or resolution to list additional trading months or expirations with the Commission as specified in that section. Upon relisting, the contract must be identified by the recognized futures exchange as listed for trading by exchange certification.

(c) Approval for listing of additional futures trading months or option expirations. A contract that has been

initially approved by the Commission under § 5.3 of this part and that has become dormant may be relisted for trading additional months pursuant to the procedures of § 1.41(d) by filing the bylaw, rule, regulation or resolution to list additional trading months or expirations with the Commission as specified in that section.

(1) Each such submission shall clearly designate the submission as filed pursuant to Commission Rule 5.3; and

(2) Include the information required to be submitted pursuant to § 5.3 of this part or an economic justification for the listing of additional months or expirations in the dormant contract market, which shall include an explanation of those economic conditions which have changed subsequent to the time the contract became dormant and an explanation of how any new terms and conditions which are now being proposed, or which have been proposed for an option market's underlying futures contract market, would make it reasonable to expect that the futures or option contract will be used on more than an occasional basis for hedging or price basing.

(d) Exemptions. No contract shall be considered dormant until the end of sixty (60) complete calendar months:

(1) Following initial listing; or

(2) Following Commission approval of the contract market bylaw, rule, regulation, or resolution to relist trading months submitted pursuant to paragraph (c) of this section.

c. Appendices C and D are removed and reserved to read as follows:

Appendix C—[Reserved]

Appendix D—[Reserved]

PART 15—REPORTS—GENERAL PROVISIONS

6. The authority citation for Part 15 is proposed to be revised to read as follows:

Authority: 7 U.S.C. 2, 4, 5, 6(c), 6a, 6c(a)–(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19 and 21.

7. Section 15.05 is proposed to be amended by adding paragraphs (e) through (h) to read as follows:

§ 15.05 Designation of agent for foreign brokers, customers of a foreign broker and foreign traders.

* * * * *

(e) Any derivatives transaction facility or recognized futures exchange that permits a foreign broker to intermediate transactions in futures contracts or options contracts on the facility or exchange, or permits a foreign trader to effect transactions in futures contracts

or options contracts on the facility or exchange shall be deemed to be the agent of the foreign broker and any of its customers for whom the transactions were executed, or the foreign trader for purposes of accepting delivery and service of any communication issued by or on behalf of the Commission to the foreign broker, any of its customers or the foreign trader with respect to any futures or options contracts executed by the foreign broker or the foreign trader on the derivatives transaction facility or recognized futures exchange. Service or delivery of any communication issued by or on behalf of the Commission to a derivatives transaction facility or recognized futures exchange pursuant to such agency shall constitute valid and effective service upon the foreign broker, any of its customers, or the foreign trader. A derivatives transaction facility or recognized futures exchange who has been served with, or to whom there has been delivered, a communication issued by or on behalf of the Commission to a foreign broker, any of its customers, or a foreign trader shall transmit the communication promptly and in a manner which is reasonable under the circumstances, or in a manner specified by the Commission in the communication, to the foreign broker, any of its customers or the foreign trader.

(f) It shall be unlawful for any derivatives transaction facility or recognized futures exchange to permit a foreign broker, any of its customers or a foreign trader to effect transactions in futures contracts or options contracts unless the derivatives transaction facility or recognized futures exchange prior thereto informs the foreign broker, any of its customers or the foreign trader in any reasonable manner the derivatives transaction facility or recognized futures exchange deems to be appropriate, of the requirements of this section.

(g) The requirements of paragraphs (e) and (f) of this section shall not apply to any transactions in futures contracts or options if the foreign broker, any of its customers or the foreign trader has duly executed and maintains in effect a written agency agreement in compliance with this paragraph with a person domiciled in the United States and has provided a copy of the agreement to the derivatives transaction facility or recognized futures exchange prior to effecting any transactions in futures contracts or options contracts on the derivatives transaction facility or recognized futures exchange. This agreement must authorize the person domiciled in the United States to serve as the agent of the foreign broker, any

of its customers or the foreign trader for purposes of accepting delivery and service of all communications issued by or on behalf of the Commission to the foreign broker, any of its customers or the foreign trader and must provide an address in the United States where the agent will accept delivery and service of communications from the Commission. This agreement must be filed with the Commission by the derivatives transaction facility or recognized futures exchange prior to permitting the foreign broker, any of its customers or the foreign trader to effect any transactions in futures contracts or options contracts. Unless otherwise specified by the Commission, the agreements required to be filed with the Commission shall be filed with the Secretary of the Commission at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581. A foreign broker, any of its customers or a foreign trader shall notify the Commission immediately if the written agency agreement is terminated, revoked, or is otherwise no longer in effect. If the derivatives transaction facility or recognized futures exchange knows or should know that the agreement has expired, been terminated, or is no longer in effect, the derivatives transaction facility or recognized futures exchange shall notify the Secretary of the Commission immediately. If the written agency agreement expires, terminates, or is not in effect, the derivatives transaction facility or recognized futures exchange and the foreign broker, any of its customers or the foreign trader are subject to the provisions of paragraphs (e) and (f) of this section.

(h) The provisions of paragraphs (e), (f) and (g) of this section shall not apply to a derivatives transactions facility or recognized futures exchange on which all transactions in futures contracts or options contracts of foreign brokers, their customers or foreign traders are executed through and the resulting transactions are maintained in accounts carried by a registered futures commission merchant or introducing broker subject to the provisions of Rules 15.05(a), (b), (c) and (d).

8. Chapter I of 17 CFR is proposed to be amended by adding a new Part 20 to read as follows:

PART 20—SPECIAL CALLS RELATING TO TRANSACTIONS ON DERIVATIVES TRANSACTION FACILITIES

Sec.

- 20.1 Special calls for information from derivatives transaction facilities.
20.2 Special calls for information from futures commission merchants.

20.3 Special calls for information from participants.

20.4 Delegations of authority.

Authority: 7 U.S.C. 6(c), 6i and 12(a)(5).

§ 20.1 Special calls for information from derivatives transaction facilities.

Upon special call by the Commission, a derivatives transaction facility shall provide to the Commission such information related to its business as a derivatives transaction facility, including information relating to data entry and trade details, in the form and manner and within the time as specified by the Commission in the special call.

§ 20.2 Special calls for information from futures commission merchants.

Upon special call by the Commission, each person registered or deemed to be registered as a futures commission merchant that carries or has carried an account for a customer on a derivatives transaction facility shall provide information to the Commission concerning such accounts or related positions carried for the customer on other facilities or markets, in the form and manner and within the time specified by the Commission in the special call.

§ 20.3 Special calls for information from participants.

Upon special call by the Commission, any person who enters into or has entered into a contract, agreement, or transaction on a derivatives transaction facility shall provide information to the Commission concerning such contracts, agreements, or transactions or related positions on other facilities or markets, in the form and manner and within the time specified by the Commission in the special call.

§ 20.4 Delegation of authority.

The Commission hereby delegates, until the Commission orders otherwise, the authority to make special calls for information set forth in §§ 20.1, 20.2 and 20.3 to the Directors of the Division of Economic Analysis and the Division of Trading and Markets to be exercised separately by each Director or by such other employee or employees as the Director may designate from time to time. The Director of the Divisions of Economic Analysis and Trading and Markets may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

9. PART 36 is proposed to be revised to read as follows:

PART 36—EXEMPTION OF TRANSACTIONS ON MULTILATERAL TRANSACTION EXECUTION FACILITIES

- Sec.
36.1 Definitions.
36.2 Exemption.
36.3 Enforceability.

Authority: 7 U.S.C. 2, 6, 6c, and 12a.

§ 36.1 Definitions.

As used in this part:

(a) Eligible participant means and shall be limited to the parties or entities listed in § 35.1(b)(1)–(11) of this chapter; and

(b) Multilateral transaction execution facility means an electronic or non-electronic market or similar facility through which persons, for their own accounts or for the accounts of others, enter into, agree to enter into or execute binding transactions by accepting bids or offers made by one person that are open to multiple persons who conduct business through such market or similar facility, but does not include:

(1) A facility whose participants individually negotiate (or have individually negotiated) with counterparties the material terms applicable to transactions between them, including transactions conducted on the facility, and which are subject to subsequent acceptance by the counterparties;

(2) Any electronic communications system on which the execution of a transaction results from the content of bilateral communications exchanged between the parties and not by the interaction of multiple orders within a predetermined, non-discretionary automated trade matching algorithm; or

(3) Any facility on which only a single firm may participate as market maker and participants other than the market maker may not accept bids or offers of other non-market maker participants.

§ 36.2 Exemption.

A contract, agreement or transaction traded on a multilateral transaction execution facility as defined in § 36.1(b) is exempt from all provisions of the Act and any person or class of persons offering, entering into, rendering advice, or rendering other services with respect to such contract, agreement or transaction is exempt for such activity from all provisions of the Act (except in each case the provisions enumerated in § 36.3(a)) provided the following terms and conditions are met:

(a) Only eligible participants, either trading for their own account or through another eligible participant, have trading access to the multilateral transaction execution facility;

(b) The contract, agreement or transaction listed on or traded through the multilateral transaction execution facility is based upon:

- (1) A debt obligation;
- (2) A foreign currency;
- (3) An interest rate;
- (4) An exempt security or index thereof, as provided in section 2a(1)(B)(iv) of the Act;

(5) A measure of credit risk or quality, including instruments known as “total return swaps,” “credit swaps” or “spread swaps;”

(6) An occurrence, extent of an occurrence or contingency beyond the control of the counterparties to the transaction; or

(7) Cash-settled, based upon an economic or commercial index or measure beyond the control of the counterparties to the transaction and not based upon prices derived from trading in a directly corresponding underlying cash market;

(c) If cleared, the submission of such contracts, agreements or transactions for clearance and/or settlement must be to a clearing organization that is authorized by the Commission under § 39.2 of this chapter: Provided, however, that nothing in this paragraph precludes:

(1) Arrangements or facilities between parties to such contracts, agreements or transactions that provide for netting of payment obligations resulting from such agreements; or

(2) Arrangements or facilities among parties to such contracts, agreements or transactions, that provide for netting of payments resulting from such contracts, agreements or transactions;

(d) The multilateral transaction execution facility on or through which such contracts, agreements or transactions are traded and the parties to, participants in, or intermediaries in such a facility that is exempt under this section are prohibited from claiming that the facility is regulated, recognized or approved by the Commission;

(e) The facility must be legally separate from any designated contract market, any recognized futures exchange under part 38 of this chapter and any facility recognized as a derivatives trading facility under part 37 of this chapter;

(f) The facility:

(1) If an electronic system that also lists for trading products pursuant to parts 37 or 38 of this chapter, must provide notice of the agreements, contracts or transactions traded on the facility pursuant to this part 36 and that such transactions are not subject to regulation under the Act; or

(2) If providing a physical trading environment, must provide that products trading pursuant to parts 37 or part 38 of this chapter be traded in a location separate from products traded pursuant to this part 36; and

(g) If the Commission determines by order, after notice and an opportunity for a hearing, that the facility serves as a significant source for the discovery of prices for an underlying commodity, the facility must on a daily basis disseminate publicly trading volume and price ranges and other trading data appropriate to that market as specified in the order.

(h) Any person or entity may apply to the Commission for exemption from any of the provisions of the Act (except 2(a)(1)(B)) for other arrangements or facilities, on such terms and conditions as the Commission deems appropriate, including, but not limited to, the applicability of other regulatory regimes.

§ 36.3 Enforceability.

(a) Notwithstanding the exemption in § 36.2, sections 2(a)(1)(B), 4b, and 4o of the Act and § 32.9 of this chapter as adopted under section 4c(b) of the Act, and sections 6(c) and 9(a)(2) of the Act to the extent they prohibit manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market, continue to apply to transactions and persons otherwise subject to those provisions.

(b) A party to a contract, agreement, or transaction that is with an eligible counterparty (or counterparty reasonably believed by such party to be an eligible counterparty) shall be exempt from any claim, counterclaim or affirmative defense by such counterparty under section 22(a)(1) of the Act or any other provision of the Act:

(1) That such contract, agreement, or transaction is void, voidable or unenforceable, or

(2) To rescind or recover any payment made in respect of such contract, agreement, or transaction, based solely on the failure of such party or such contract, agreement, or transaction to comply with the terms or conditions of the exemption under this part.

10. Chapter I of 17 CFR is proposed to be amended by adding new Part 37 as follows:

PART 37—EXEMPTION OF TRANSACTIONS ON A DERIVATIVES TRANSACTION FACILITY

- Sec.
37.1 Scope and definitions.
37.2 Exemption.

- 37.3 Conditions for recognition as a derivatives transaction facilities.
 37.4 Procedures for recognition.
 37.5 Enforceability.
 37.6 Fraud in connection with Part 37 transactions.

Appendix A to Part 37—Application Guidance

Authority: 7 U.S.C. 2, 6, 6c, 6(c) and 12a.

§ 37.1 Scope and Definitions.

(a) Scope. (i) The derivatives transaction facility and the products listed for trading thereon under this exemption shall be deemed to be subject to all of the provisions of the Act and Commission regulations thereunder which are applicable to a “board of trade,” “board of trade licensed by the Commission,” “exchange,” “contract market,” “designated contract market,” or “contract market designated by the Commission” as though those provisions were set forth in this section and included specific reference to contracts listed for trading by recognized derivatives transaction facilities pursuant to this section.

(2) The provisions of this section shall not apply to a commodity or a contract subject to the provisions of section 2(a)(1)(B) of the Act.

(b) Definition. As used in this part “*eligible commercial participant*” means, and shall be limited to, a party or entity listed in §§ 35.1(b)(1), (b)(2), (b)(3), (b)(6) and (b)(8) of this chapter that in connection with its business, makes and takes delivery of the underlying physical commodity and regularly incurs risks related to such commodity, or is a dealer that regularly provides hedging, risk management or market-making services to the foregoing entities.

§ 37.2 Exemption.

Notwithstanding § 37.1(a)(1), a contract, agreement or transaction traded on a multilateral transaction execution facility as defined in § 36.1(b) of this chapter, the facility and the facility’s operator are exempt from all provisions of the Act and from all Commission regulations thereunder for such activity, except for those provisions of the Act and Commission regulations which, as a condition of this exemption, are reserved in § 37.5(a), provided the following terms and conditions are met:

(a)(1) Only eligible commercial participants trading for their own account have trading access to the derivatives transaction facility for contracts, agreements or transactions in any commodity except for those listed in section 1(a)(3) of the Act.; or

(2)(i) The contract, agreement or transaction listed on or traded through

the multilateral transaction execution facility meets the requirements set forth in § 36.2(b) of this chapter or has been found by the Commission on a case-by-case determination to have a sufficiently liquid and deep cash market and a surveillance history based on actual trading experience to provide assurance that the contract is highly unlikely to be manipulated; and

(ii) Participants that are not eligible participants as defined in § 35.1(b) of this chapter may have trading access only through a registered futures commission merchant that operates in accordance with the provisions of § 1.17(a)(1)(ii) of this chapter;

(b) The multilateral transaction execution facility through which the contract agreement or transaction is entered into has been recognized by the Commission as a derivatives transaction facility pursuant to § 37.3;

(c) A multilateral transaction execution facility that applies to be, and is, a recognized derivatives transaction facility must comply with all of the conditions of this part 37 exemption and must disclose to participants transacting on or through its facility that transactions conducted on or through the facility are subject to the provisions of this part 37;

(d) If cleared, the submission of such contracts, agreements or transactions for clearance and/or settlement must be to a clearinghouse that is authorized by the Commission under part 39 of this chapter. Provided, however, that nothing in this paragraph precludes:

(1) Arrangements or facilities between parties to such contracts, agreements or transactions that provide for netting of payment obligations resulting from such agreements; or

(2) arrangements or facilities among parties to such contracts, agreements or transactions, that provide for netting of payments resulting from such contracts, agreements or transactions; and

(e) The products if traded on an electronic system must be clearly identified as traded on a recognized derivatives transaction facility or if traded in a physical trading environment must be traded in a location separate from products traded as designated contract markets, or pursuant to parts 36 and 38 of this chapter;

§ 37.3 Conditions for recognition as a derivatives transaction facility

(a) To be recognized as a derivatives transaction facility, the facility initially must have:

(1) Rules relating to trading on its facility, including, depending on the nature of the trading mechanism:

(i) Rules to deter trading abuses, and adequate power and capacity to detect, investigate and take action against violation of its trade rules including arrangements to obtain necessary information to perform the functions in paragraph (a)(1)(i) of this section, or

(ii) Use of technology that provides participants with impartial access to transactions and captures information that is available for use in determining whether violations of its rules have occurred;

(2) Rules or terms and conditions defining, or specifications detailing, the operation of the trading mechanism or electronic matching platform;

(3) Rules or terms and conditions detailing the financial framework applying to the transactions or ensuring the financial integrity of transactions entered into by, or through, its facilities; and

(b) Initially, and on a continuing basis, must meet and adhere to the following seven core principles:

(1) Enforcement. Monitor and enforce its rules or terms and conditions including, if applicable, limitations on access.

(2) Market oversight. As appropriate to the market and the contracts traded:

(i) Monitor markets on a routine and nonroutine basis as necessary to ensure orderly trading and have and where appropriate exercise authority to maintain an orderly market; or

(ii) Provide information to the CFTC as requested by the CFTC to satisfy its obligations under the CEA.

(3) Operational information. Disclose to regulators and market participants, to the extent possible, information concerning trading terms, contract terms and conditions, trading mechanisms, financial integrity arrangements or mechanisms, as well as other relevant information.

(4) Transparency. Provide to market participants on a fair, equitable and timely basis information regarding prices, bids and offers, and other information appropriate to the market and, as appropriate to the market, make available to the public with respect to actively traded products and, to the extent applicable, information regarding daily opening and closing prices, price range, trading volume and other related market information.

(5) Fitness. As appropriate to the market, have fitness standards for members, operators or owners with greater than 10 percent interest or an affiliate of such an owner, members of the governing board, and those who make disciplinary determinations.

(6) Recordkeeping. Keep full books and records of all activities related to its

business as a recognized derivatives transaction facility, including full information relating to data entry and trade details sufficient to reconstruct trading, in a form and manner acceptable to the CFTC for a period of five years, during the first two of which the books and records are readily available, and which shall be open to inspection by any representative of the CFTC or the U.S. Department of Justice.

(7) Competition. Avoid unreasonable restraints of trade or imposing any burden on competition not necessary or appropriate in furtherance of the objectives of the Act or the regulations thereunder.

§ 37.4 Procedures for recognition.

(a) Recognition by certification. A board of trade, facility or entity that is designated under sections 4c, 5, 5a(a) or 6 of the Act as a contract market in at least one commodity which is not dormant within the meaning of § 5.2 of this chapter will be recognized by the Commission as a derivatives transaction facility upon receipt by the Commission at its Washington, D.C. headquarters of a copy of the derivatives transaction facility's rules and a certification by the board of trade, facility or entity that it meets the conditions for recognition under this part.

(b) Recognition by application. A board of trade, facility or entity shall be recognized by the Commission as a derivatives transaction facility thirty days after receipt by the Commission of an application for recognition as a derivatives transaction facility unless notified otherwise during that period, if:

(1) The application demonstrates that the applicant satisfies the conditions for recognition under this part;

(2) The submission is labeled as being submitted pursuant to this part 37;

(3) The submission includes a copy of the derivatives transaction facility's rules and a brief explanation of how the rules satisfy each of the conditions for recognition under § 37.3;

(4) The applicant does not amend or supplement the application for recognition, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period; and

(5) The applicant has not instructed the Commission in writing during the review period to review the application pursuant to procedures under section 6 of the Act.

(6) Appendix A to this part provides guidance to applicants on how the conditions for recognition enumerated in § 37.3 could be satisfied.

(c) Termination of Part 37 review. During the thirty-day period for review pursuant to paragraph (b) of this section, the Commission shall notify the applicant seeking recognition that the Commission is terminating review under this section and will review the proposal under the procedures of section 6 of the Act, if it appears that the application fails to meet the conditions for recognition under this part. This termination notification will state the nature of the issues raised and the specific condition of recognition that the application appears to violate, is contrary to or fails to meet. Within ten days of receipt of this termination notification, the applicant seeking recognition may request that the Commission render a decision whether to recognize the derivatives transaction facility or to institute a proceeding to disapprove the proposed submission under procedures specified in section 6 of the Act by notifying the Commission that the applicant seeking recognition views its submission as complete and final as submitted.

(d) Delegation of Authority.

(1) The Commission hereby delegates, until it orders otherwise, to the Directors of the Division of Trading and Markets and the Division of Economic Analysis or their delegates, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to notify the entity seeking recognition under paragraph (b) of this section that review under those procedures is being terminated.

(2) The Directors of the Division of Trading and Markets or the Division of Economic Analysis may submit to the Commission for its consideration any matter which has been delegated in this paragraph.

(3) Nothing in the paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (d)(1) of this section.

(e) Request for Commission approval of rules and products. (1) An entity seeking recognition as a derivatives transaction facility may request that the Commission approve any or all of its rules and subsequent amendments thereto, including both operational rules and the terms or conditions of products listed for trading on the facility, at the time of recognition or thereafter, under section 5a(a)(12) of the Act and §§ 1.41 and 5.3 of this chapter, as applicable. A derivatives transaction facility may label a product in its rules as, "Listed for trading pursuant to Commission approval," if the product's terms or conditions have been approved by the Commission. Rules of the derivatives trading facility not submitted pursuant

to § 37.4(b)(3) shall be submitted to the Commission pursuant to § 1.41 of this chapter.

(2) An entity seeking recognition as a derivatives transaction facility may request that the Commission consider under the provisions of section 15 of the Act any of the entity's rules or policies, including both operational rules and the terms or conditions of products listed for trading, at the time of recognition or thereafter.

(f) *Request for withdrawal of recognition.* A recognized derivatives transaction facility may withdraw from Commission recognition by filing with the Commission at its Washington, D.C. headquarters such a request. Withdrawal from recognition shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the facility was recognized by the Commission.

§ 37.5 Enforceability

(a) Notwithstanding the exemption in § 37.2, sections 1a, 2(a)(1), 4, 4b, 4c, 4g, 4i, 4o, 5(6), 5(7), the rule disapproval procedures of 5a(a)(12), 5b, 6(a), 6(b), 6(c), 6b, 6c, 8(a), 8(c), 8a(6), 8a(7), 8a(9) 8c(a), 9(a)(2), 9(a)(3), 9(f), 14, 20 and 22 of the Act and §§ 1.3, 1.31, 1.37, 1.41, 5.3, 33.10, Part 5, Part 20, and Part 37 of this chapter continue to apply.

(b) For purposes of section 22(a) of the Act, a party to a contract, agreement, or transaction is exempt from a claim that the contract, agreement or transaction is void, voidable, subject to rescission or otherwise invalidated or rendered unenforceable solely for failure of the parties to a contract, agreement or transaction, or the contract, agreement or transaction itself, to comply with the terms and conditions for the exemption under this part or as a result of:

(1) A violation by the recognized derivatives transaction facility of the provisions of this part 37; or

(2) Any Commission proceeding to disapprove a rule, term or condition under section 5a(a)(12) of the Act, to alter or supplement a rule, term or condition under section 8a(7) of the Act, to declare an emergency under section 8a(9) of the Act, or any other proceeding the effect of which is to disapprove, alter, supplement, or require a recognized derivatives transaction facility to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.

§ 37.6 Fraud in connection with Part 37 transactions.

It shall be unlawful for any person, directly or indirectly, in or in

connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of any transaction entered pursuant to this part—

(1) To cheat or defraud or attempt to cheat or defraud any person;

(2) Willfully to make or cause to be made to any person any false report or statement thereof or cause to be entered for any person any false record thereof;

(3) Willfully to deceive or attempt to deceive any person by any means whatsoever.

Appendix A to Part 37—Application Guidance

This appendix provides guidance to applicants for recognition as derivatives transaction facilities under § 37.3. Addressing the issues and questions set forth below would help the Commission in its consideration of whether the application has met the conditions for recognition. To the extent that compliance with, or satisfaction of, a core principle is not self-explanatory from the face of the derivatives transaction facilities rules or terms, the application should include an explanation or other form of documentation demonstrating that the applicant meets the conditions for recognition.

Core Principle #1: Enforcement: Monitoring and enforcement of its rules or terms and conditions including, if applicable, limitations on access

(a) A derivatives transaction facility should have arrangements and resources and authority for effectively and affirmatively enforcing its rules, including the authority and ability to collect or capture information and documents on both a routine and non-routine basis and to investigate effectively possible rule violations.

(b) This should include the authority and ability to discipline, and limit or suspend a member's or participant's activities and/or the authority and ability to terminate a member's or participant's activities or access pursuant to clear and fair standards.

Core Principle #2: Market Oversight: As appropriate to the market and the contracts traded, to: (1) Monitor markets on a routine and non-routine basis as necessary to ensure open and competitive trading and have and, where appropriate, exercise authority to maintain an open and competitive market; or (2) provide information to the Commission as necessary for the Commission to satisfy its obligations under the Act

(a) Arrangements and resources for effective market surveillance programs should facilitate, on both a routine and non-routine basis, direct supervision of the market. Appropriate objective testing and review of any automated systems should occur initially and periodically to ensure proper system functioning, adequate capacity and security. The analysis of data collected should be suitable for the type of information collected and should occur in a timely fashion. A derivatives transaction facility should have the authority to collect the

information and documents necessary to reconstruct trading for appropriate market analysis as it carries out its market surveillance programs. The derivatives transaction facility also should have the authority to intervene as necessary to maintain an open and competitive market. In carrying out this responsibility, the facility should address access to, and use of, material non-public information by members, owners or operators, participants or facility employees.

(b) Alternatively, and as appropriate to the market, a derivatives transaction facility may choose to satisfy Core Principle #2 by providing information to the Commission as requested by the Commission to satisfy its obligations under the Act. The derivatives transaction facility should have the authority to collect or capture and retrieve all necessary information.

(c) The Commission will collect reporting data from large traders only upon Special Call as provided in Part 20 of this chapter.

Core Principle #3: Operational Information: Disclose to regulators and market participants, to the extent possible, information concerning trading terms, contract terms and conditions, trading mechanisms, financial integrity arrangements or mechanisms, as well as other relevant information

A derivatives transaction facility should have arrangements and resources for the disclosure and explanation of trading terms, contract terms and conditions, trading mechanisms, financial integrity arrangements or mechanisms. Such information may be made publicly available through the operation of a website by the derivatives transaction facility.

Core Principle #4: Transparency: Provide to market participants on a fair, equitable and timely basis information regarding prices, bids and offers, and other information appropriate to the market, make available to the public with respect to actively traded products and, to the extent applicable, information regarding daily opening and closing prices, price range, trading volume and other related market information

All market participants should have information regarding prices, bids and offers, or other information appropriate to the market readily available on a fair and equitable basis. The derivatives transaction facility should provide to the public information regarding daily opening and closing prices, price range, trading volume, open interest and other related market information for actively traded contracts. Provision of information could be through such means as provision of the information to a financial information service or by placement of the information on a facility's web site.

Core Principle #5: Fitness: Appropriate fitness standards for members, operators or owners with greater than 10 percent interest or an affiliate of such an owner, members of the governing board, and those who make disciplinary determinations

A derivatives transaction facility should have appropriate eligibility criteria for the

categories of persons set forth in the Core Principle which would include standards for fitness and for the collection and verification of information supporting compliance with such standards. Minimum standards of fitness are those bases for refusal to register a person under section 8a(2) of the Act. A demonstration of the fitness of the applicant's members, operators or owners may include providing the Commission with registration information for such persons, certification to the fitness of such persons, an affidavit of such persons' fitness by the facility's Counsel or other information substantiating the fitness of such persons.

Core Principle #6: Recordkeeping: Maintenance of full books and records of all activities related to its business as a recognized derivatives transaction facility, including full information relating to data entry and trade details, in a form and manner acceptable to the Commission for a period of five years, during the first two of which the books and records are readily available, and which shall be open to inspection by any representative of the Commission or the United States Department of Justice

Commission rule 1.31 constitutes the acceptable practice regarding the form and manner for keeping records.

Core Principle #7: Competition: To avoid unreasonable restraints of trade or imposing any burden on competition not necessary or appropriate in furtherance of the objectives of the Act or the regulations thereunder

Guidance on individual rules, terms or practices is available by submitting a rule for Commission approval under the procedures of § 1.41 of this chapter or by requesting that the Commission issue an Order considering the rule, term or practice under the provision of section 15 of the Act.

11. Chapter I of 17 CFR is proposed to be amended by adding new Part 38 as follows:

PART 38—EXEMPTION OF TRANSACTIONS ON A RECOGNIZED FUTURES EXCHANGE

Sec.

38.1 Scope.

38.2 Exemption.

38.3 Conditions for recognition as a recognized futures exchange.

38.4 Procedures for recognition.

38.5 Enforceability.

38.6 Fraud in connection with Part 38 transactions.

Appendix A to Part 38—Guidance for Applicants and Acceptable Practices

Authority: 7 U.S.C. 2, 6, 6c, and 12a.

§ 38.1 Scope.

(a) Except for commodities subject to paragraph (a) of this section, the provisions of the exemption in § 38.2 of this part shall apply to every board of trade that has been designated as a contract market in a commodity under section 6 of the Act. Provided, however,

nothing in this provision affects the eligibility of designated contract markets for exemption under parts 36 or 37 of this chapter.

(b) Recognized futures exchanges that have been recognized by the Commission by application under § 38.3 and the products listed for trading thereon shall be deemed to be subject to all of the provisions of the Act and Commission regulations thereunder which are applicable to a "board of trade," "board of trade licensed by the Commission," "exchange," "contract market," "designated contract market," or "contract market designated by the Commission" as though those provisions were set forth in this section and included specific reference to contracts listed for trading by recognized futures exchanges pursuant to this section.

(c) The provisions of this section shall not apply to a commodity or a contract subject to the provisions of section 2(a)(1)(B) of the Act.

§ 38.2 Exemption.

Notwithstanding § 38.1(b), a contract, agreement or transaction traded on a multilateral transaction execution facility as defined in § 36.1(b) of this chapter, the facility and the facility's operator are exempt from all provisions of the Act and from all Commission regulations thereunder for such activity, except for those provisions of the Act and Commission regulations which, as a condition of this exemption, are reserved in § 38.5(a), provided the following terms and conditions are met:

(a) The multilateral transaction execution facility on which the contract agreement or transaction is entered into has been recognized by the Commission as a recognized futures exchange pursuant to § 38.3;

(b) A multilateral transaction execution facility that applies to be, and is, a recognized futures exchange must comply with all of the conditions of this part 38 exemption and must disclose to participants transacting on or through its facilities that transactions conducted on or through the facility are subject to the provisions of this part 38;

(c) If cleared, the submission of such contracts, agreements or transactions for clearance and/or settlement must be to a clearinghouse which is authorized by the Commission under part 39 of this chapter. *Provided, however,* that nothing in this paragraph precludes:

(1) Arrangements or facilities between parties to such contracts, agreements or transactions that provide for netting of payment obligations resulting from such agreements; or

(2) Arrangements or facilities among parties to such contracts, agreements or transactions, that provide for netting of payments resulting from such agreements; and

(d) The products if traded on an electronic system must be clearly identified as traded on a recognized futures exchange or if traded in a physical trading environment must be traded in a location separate from products traded pursuant to parts 36 and 37 of this chapter;

§ 38.3 Conditions for recognition as a recognized futures exchange.

(a) To be recognized as a recognized futures exchange, the exchange must demonstrate initially that it has:

(1) A clear framework for conducting programs of market surveillance, compliance, and enforcement, including having procedures in place to make use of collected data for real-time monitoring and for post-event audit and compliance purposes to prevent market manipulation;

(2) Rules relating to trading on the exchange, including rules to deter trading abuses, and adequate power and capacity to detect, investigate and take action against violations of its trading rules, and a dedicated regulatory department or delegation of that function to an appropriate entity;

(3) Rules defining, or specifications detailing, the manner of operation of the trading mechanism or electronic matching platform and a trading mechanism or electronic matching platform that performs as defined in the operational rules or specifications;

(4) A clear framework for ensuring the financial integrity of transactions entered into by or through the exchange;

(5) Established procedures for impartial disciplinary committee(s) or other similar mechanisms empowered to discipline, suspend, and expel members, or to deny access to participants or, if provided for, discipline participants;

(6) Arrangements to obtain necessary information to perform the above functions, including the capacity and arrangements to carry out the International Information Sharing Agreement and Memorandum of Understanding developed by the Futures Industry Association (FIA) Global Task Force on Financial Integrity, and a mechanism to provide to the public ready access to its rules and regulations; and

(b) Initially, and on a continuing basis, must meet and adhere to the following fifteen core principles:

(1) Rule enforcement. Monitor and enforce its rules;

(2) Products. List contracts for trading which are not readily susceptible to manipulation;

(3) Position monitoring and reporting. Monitor markets on a routine and nonroutine basis as necessary to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process;

(4) Position limits. Adopt position limits on trading where necessary and appropriate to lessen the threat of market manipulation or congestion during delivery months;

(5) Emergency authority. Exercise authority to intervene to maintain fair and orderly trading, including where applicable authority to liquidate or transfer open positions, to require the suspension or curtailment of trading, and to require the posting of additional margin;

(6) Public information. Make information concerning the contract terms and conditions and the trading mechanism, as well as other relevant information, readily available to market authorities, users and the public;

(7) Transparency. Provide, appropriate to the market, information to the public regarding prices, bids and offers, including the opening and closing prices and daily range, and information on volume and open interest;

(8) Trading system. Provide a competitive, open, and efficient market;

(9) Audit trail. Have procedures to ensure the recording of full data entry and trade details sufficient to reconstruct trading, the safe storage of such information and systems to enable information to be used in assisting in detecting and deterring customer and market abuse. Such procedures should ensure the quality of data captured;

(10) Financial standards. Have, monitor, and enforce rules regarding the financial integrity of the transactions that have been executed on the exchange and, where intermediaries are permitted, have rules addressing the financial integrity of the intermediary and the protection of customer funds as appropriate and a program to enforce those requirements;

(11) Customer protection. Have, monitor and enforce rules for customer protection;

(12) Dispute resolution. Provide for alternative dispute resolution mechanisms appropriate to the nature of the market;

(13) Governance. Have fitness standards for members, for owners or operators with greater than ten percent interest or an affiliate of such an owner, members of the governing board, and those who make disciplinary

determinations. The recognized futures exchange must have a means to address conflicts of interest in making decisions and access to, and use of, material non-public information by the foregoing persons and by exchange employees. For mutually owned futures exchanges, the composition of the governing board must reflect market participants;

(14) Recordkeeping. Keep full books and records of all activities related to their business as a recognized futures exchange in a form and manner acceptable to the CFTC for a period of five years, during the first two of which the books and records are readily available, and which shall be open to inspection by any representative of the CFTC or the U.S. Department of Justice; and

(15) Competition. Avoid unreasonable restraints of trade or impose any burden on competition not necessary or appropriate in furtherance of the objectives of the Act or the regulations thereunder.

§ 38.4 Procedures for recognition.

(a) Recognition by prior designation. A board of trade, facility or entity that is designated under sections 4c, 5, 5a(a) or 6 of the Act as a contract market on the effective date of this rule in at least one commodity which is not dormant within the meaning of § 5.2 of this chapter is recognized by the Commission as a recognized futures exchange and each of the contracts traded thereon that has been designated by the Commission as a designated contract market in a commodity may be labeled in the recognized futures exchange's rules as listed for trading pursuant to Commission approval.

(b) Recognition by application. A board of trade, facility or entity shall be recognized by the Commission as a recognized futures exchange sixty days after receipt by the Commission of an application for recognition unless notified otherwise during that period, if:

(1) The application demonstrates that the applicant satisfies the conditions for recognition under this part;

(2) The submission is labeled as being submitted pursuant to this part 38;

(3) The submission includes a copy of the applicant's rules and a brief explanation of how the rules satisfy each of the conditions for recognition under § 38.3;

(4) The applicant does not amend or supplement the application for recognition, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period; and

(5) The applicant has not instructed the Commission in writing during the review period to review the application pursuant to procedures under section 6 of the Act.

(6) Appendix A to this part provides guidance to applicants on how the conditions for recognition enumerated in § 38.3 could be satisfied.

(c) Termination of Part 38 review. During the sixty-day period for review pursuant to paragraph (b) of this section, the Commission shall notify the applicant seeking recognition that the Commission is terminating review under this section and will review the proposal under the procedures of section 6 of the Act, if it appears that the application fails to meet the conditions for recognition under this part. This termination notification will state the nature of the issues raised and the specific condition of recognition that the application appears to violate, is contrary to or fails to meet. Within ten days of receipt of this termination notification, the applicant seeking recognition may request that the Commission render a decision whether to recognize the futures exchange or to institute a proceeding to disapprove the proposed submission under procedures specified in section 6 of the Act by notifying the Commission that the applicant seeking recognition views its submission as complete and final as submitted.

(d) Delegation of Authority. (1) The Commission hereby delegates, until it orders otherwise, to the Directors of the Division of Trading and Markets and the Division of Economic Analysis or their delegates, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to notify the entity seeking recognition under paragraph (b) of this section that review under those procedures is being terminated.

(2) The Directors of the Division of Trading and Markets or the Division of Economic Analysis may submit to the Commission for its consideration any matter which has been delegated in this paragraph.

(3) Nothing in the paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (d)(1) of this section.

(e) Request for Commission approval of rules and products. (1) An entity seeking recognition as a recognized futures exchange may request that the Commission approve any or all of its rules and subsequent amendments thereto, including both operational rules and the terms or conditions of products listed for trading on the exchange, at the time of recognition or thereafter, under

section 5a(a)(12) of the Act and §§ 1.41 and 5.3 of this chapter, as applicable. A product the terms or conditions of which have been approved by the Commission may be labeled in its rules as listed for trading pursuant to Commission approval. In addition, rules of the recognized futures exchange not submitted pursuant to § 38.4(b)(3) shall be submitted to the Commission pursuant to § 1.41 of this chapter.

(2) An entity seeking recognition as a recognized futures exchange may request that the Commission consider under the provisions of section 15 of the Act any of the entity's rules or policies, including both operational rules and the terms or conditions of products listed for trading, at the time of recognition or thereafter.

(f) Request for withdrawal of application for recognition or withdrawal of recognition. An entity may withdraw an application to be a recognized futures exchange or once recognized, may withdraw from Commission recognition by filing with the Commission at its Washington, D.C. headquarters such a request. Withdrawal from recognition shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the exchange was recognized by the Commission.

§ 38.5 Enforceability

(a) Notwithstanding the exemption in § 38.2, sections 1a, 2(a)(1), 4, 4a, 4b, 4c, 4g, 4i, 4o, 5(6), 5(7), the rule disapproval procedures of 5a(a)(12), 5b, 6(a), 6(b), 6(c), 6b, 6c, 8(a), 8(c), 8a(6), 8a(7), 8a(9), 8c(a), 8c(b), 8c(c), 8c(d), 9(a), 9(f), 20 and 22 of the Act and §§ 1.3, 1.31, 1.37, 1.38, 1.41, 33.10, part 5, part 9, parts 15–21 and part 38 of this chapter continue to apply.

(b) For purposes of Section 22(a) of the Act, a party to a contract, agreement, or transaction is exempt from a claim that the contract, agreement or transaction is void, voidable, subject to rescission or otherwise invalidated or rendered unenforceable as a result of:

(1) A violation by the recognized futures exchange of the provisions of this part 38; or

(2) Any Commission proceeding to disapprove a rule, term or condition under section 5a(a)(12) of the Act, to alter or supplement a rule, term or condition under section 8a(7) of the Act, to declare an emergency under section 8a(9) of the Act, or any other proceeding the effect of which is to disapprove, alter, supplement, or require a recognized futures exchange to adopt a specific term or condition, trading rule

or procedure, or to take or refrain from taking a specific action.

§ 38.6 Fraud in connection with Part 38 transactions.

It shall be unlawful for any person, directly or indirectly, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of any transaction entered pursuant to this part:

(a) To cheat or defraud or attempt to cheat or defraud any person;

(b) Willfully to make or cause to be made to any person any false report or statement thereof or cause to be entered for any person any false record thereof; or

(c) Willfully to deceive or attempt to deceive any person by any means whatsoever.

Appendix A to Part 38—Guidance for Applicants and Acceptable Practices

This appendix provides guidance and acceptable practices for the Core Principles found in Part 38. Guidance to applicants for recognition as recognized futures exchanges under § 38.3 is offered under subsection (a) following a Core Principle. Addressing the issues and questions set forth therein would help the Commission in its consideration of whether the application has met the conditions for recognition. To the extent that compliance with, or satisfaction of, a core principle is not self-explanatory from the face of the recognized futures exchange's rules or terms, the application should include an explanation or other form of documentation demonstrating that the applicant meets the conditions for recognition. Acceptable practices meeting the requirements of the Core Principles are set forth in subsection (b). Recognized futures exchanges that follow specific practices outlined under subsection (b) for any Core Principle below will meet the applicable Core Principle. Except where otherwise provided, subsection (b) does not state the exclusive means for satisfying a Core Principle.

Core Principle #1: Rule Enforcement: Monitor and enforce its rules

(a) Application Guidance.

(1) A recognized futures exchange should have arrangements and resources for effective trade practice surveillance programs, with the authority to collect information and documents on both a routine and non-routine basis including the examination of books and records kept by members/participants of the exchange. The arrangements and resources should facilitate the direct supervision of the market and the analysis of data collected.

(2) A recognized futures exchange should have arrangements, resources and authority for effective rule enforcement. The Commission believes that this should include the authority and ability to discipline and limit or suspend a member's or participant's activities as well as the authority and ability to terminate a member's or participant's

activities pursuant to clear and fair standards.

(b) *Acceptable Practices.* An effective trade practice surveillance program should include:

(1) Maintenance of data reflecting the details of each transaction executed on an RFE;

(2) Electronic analysis of these data routinely to detect potential trading violations;

(3) Appropriate and thorough investigative analysis of these and other potential trading violations brought to its attention; and

(4) Prompt and effective disciplinary action for any violation that is found to have been committed. The Commission believes that the latter element should include the authority and ability to discipline and limit or suspend a member's or participant's activities pursuant to clear and fair standards. See, e.g., 17 CFR Part 8.

Core Principle #2 Products: List contracts for trading which are not readily susceptible to manipulation

(a) *Application Guidance.* Applicants should submit their initial product for listing for Commission approval under § 5.1 and Part 5, Appendix A of this chapter. Subsequent products may be listed for trading by self-certification under § 5.3 of this chapter.

(b) *Acceptable Practices.* Guideline No. 1, 17 CFR Part 5, Appendix A may be used as guidance in meeting this Core Principle.

Core Principle #3: Position monitoring and reporting: Monitor markets on a routine and nonroutine basis as necessary to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process

(a) *Application Guidance.* [Reserved].

(b) *Acceptable Practices.* (1) An acceptable program for monitoring markets will generally involve the collection of various market data, including information on traders' market activity. Those data should be evaluated on an ongoing basis in order to make an appropriate regulatory response to potential market disruptions or abusive practices.

(2) The recognized futures exchange should collect data in order to assess whether the market price is responding to the forces of supply and demand. Appropriate data usually include various fundamental data about the underlying commodity, its supply, its demand, and its movement through marketing channels. Especially important are data related to the size and ownership of deliverable supplies—the existing supply and the future or potential supply, and to the pricing of the deliverable commodity relative to the futures price and relative to similar, but nondeliverable, kinds of the commodity. For cash-settled markets, it is more appropriate to pay attention to the availability and pricing of the commodity making up the index to which the market will be settled, as well as monitoring the continued suitability of the methodology for deriving the index.

(3) To assess a traders' activity and potential power in a market, at a minimum,

every exchange should have routine access to the positions and trading done by the members of its clearing facility. Although clearing member data may be sufficient for some exchanges, an effective surveillance program for exchanges with substantial numbers of customers trading through intermediaries should employ a much more comprehensive large-trader reporting system (LTRS). The Commission operates an industry-wide LTRS. As an alternative to having its own LTRS or contracting out for such a system, exchanges may find it more efficient to use information available from the Commission's LTRS data for position monitoring.

Core Principle #4: Position Limits: Adopt position limits on trading where necessary and appropriate to lessen the threat of market manipulation or congestion during delivery months

(a) *Application Guidance.* [Reserved].

(b) *Acceptable Practices.* (1) In order to diminish potential problems arising from excessively large speculative positions, the Commission sets limits on traders' positions for certain commodities. These position limits specifically exempt bona fide hedging, permit other exemptions, and set limits differently by markets, by futures or delivery months, or by time periods. For purposes of evaluating an exchange speculative-limit program, the Commission considers the specified limit levels, aggregation policies, types of exemptions allowed, methods for monitoring compliance with the specified levels, and procedures for enforcement to deal with violations.

(2) In general, position limits are not necessary for markets where the threat of excessive speculation or manipulation is very low. Thus, exchanges do not need to set position-limit levels for futures markets in major foreign currencies and in certain financial futures having very liquid and deep underlying cash markets. Where speculative limits are appropriate, acceptable speculative-limit levels typically are set in terms of a trader's combined position in the futures contract plus its position in the option contract (on a delta-adjusted basis).

(3) Spot-month levels for physical-delivery markets should be based upon an analysis of deliverable supplies and the history of spot-month liquidations. Spot-month limits for physical-delivery markets are appropriately set at no more than 25 percent of the estimated deliverable supply. For cash-settled markets, spot-month position limits may be necessary if the underlying cash market is small or illiquid such that traders can disrupt the cash market or otherwise influence the cash-settlement price to profit on a futures position. In these cases, the limit should be set at a level that minimizes the potential for manipulation or distortion of the futures contract's or the underlying commodity's price. Markets may elect not to provide all-months-combined and non-spot month limits.

(4) An exchange may provide for position accountability provisions in lieu of position limits for contracts on financial instruments, intangible commodities, or certain tangible commodities. Markets appropriate for

position accountability rules include those with large open-interest, high daily trading volumes and liquid cash markets.

(5) Exchanges must have aggregation rules that apply to those accounts under common control, those with common ownership, *i.e.*, where there is a 10 percent or greater financial interest, and those traded according to an expressed or implied agreement.

Exchanges will be permitted to set more stringent aggregation policies. For example, one major exchange adopted a policy of automatically aggregating members of the same household, unless they were granted a specific waiver. Exchanges may grant exemptions to their position limits for bona fide hedging (as defined in Commission Rule 1.3(z)) and may grant exemptions for reduced risk positions, such as spreads, straddles and arbitrage positions.

(6) Exchanges must establish a program for effective monitoring and enforcement of these limits. One acceptable enforcement mechanism is a program whereby traders apply for these exemptions by the exchange and are granted a position level higher than the applicable speculative limit. The position levels granted under hedge exemptions are based upon the trader's commercial activity in related markets. Exchanges may allow a brief grace period where a qualifying trader may exceed speculative limits or an existing exemption level pending the submission and approval of appropriate justification. An exchange should consider whether it wants to restrict exemptions during the last several days of trading in a delivery month. Acceptable procedures for obtaining and granting exemptions include a requirement that the exchange approve a specific maximum higher level.

(7) Exchanges with many markets with large numbers of traders should have an automated means of detecting traders' violations of speculative limits or exemptions. Exchanges should monitor the continuing appropriateness of approved exemptions by periodically reviewing each trader's basis for exemption or requiring a reapplication.

(8) Finally, an acceptable speculative limit program must have specific policies for taking regulatory action once a violation of a position limit or exemption is detected. The exchange policy will need to consider appropriate actions where the violation is by a non-member and should address traders carrying accounts through more than one intermediary.

(9) A violation of exchange position limits that have been approved by the Commission is also a violation of section 4a(e) of the Act.

Core Principle #5: Emergency Authority: Exercise authority to intervene to maintain fair and orderly trading markets including where applicable authority to liquidate or transfer open positions, to require the suspension or curtailment of trading, and to require the posting of additional margin

(a) *Application Guidance.* [Reserved].

(b) *Acceptable Practices.* A recognized futures exchange should have clear procedures and guidelines for exchange decision-making regarding emergency intervention in the market. An exchange

should also have the authority to intervene as necessary to maintain markets with fair and orderly trading as well as procedures for carrying out the intervention. As is necessary to address perceived market threats, the exchange, among other things, should be able to impose position limits in particular in the delivery month, impose or modify price limits, modify circuit breakers, call for additional margin either from customers or clearing members, order the liquidation or transfer of open positions, order the fixing of a settlement price, order the reduction in positions, extend or shorten the expiration date or the trading hours, suspend or curtail trading on the market, order the transfer of customer contracts and the margin for such contracts from one member of the exchange to another or alter the delivery terms or conditions. The Commission believes that a recognized futures exchange should also have procedures and guidelines for the notification of the Commission of the exercise of regulatory emergency authority as well as procedures and guidelines for documentation of the exchange's decision-making process and the reasons for use of its emergency action authority.

Core Principle #6: Public Information: Make information concerning the contract terms and conditions and the trading mechanism, as well as other relevant information, readily available to market authorities, users and the public

(a) *Application Guidance.* A recognized futures exchange should have arrangements and resources for the disclosure of contract terms and conditions and trading mechanisms to the Commission, users and the public. Procedures should also include the provision of information on listing new products, rule amendments or other changes to previously disclosed information to the Commission, users and the public.

(b) *Acceptable Practices.* [Reserved].

Core Principle #7: Transparency. Provide, appropriate to the market, information to the public regarding prices, bids and offers, including the opening and closing prices and daily range, and information on volume and open interest

(a) *Application Guidance.* [Reserved].

(b) *Acceptable Practices.* [Reserved].

Core Principle #8: Trading system: Provide, a competitive, open, and efficient market

(a) *Application Guidance.* (1) Appropriate objective testing and review of any automated systems should occur initially and periodically to ensure proper system functioning, adequate capacity and security. A recognized futures exchange's analysis of its automated system should address appropriate principles for the oversight of automated systems, ensuring proper system function, adequate capacity and security. The Commission believes that the guidelines issued by the International Organization of Securities Commissions ("IOSCO") in 1990 (which have been referred to as the "Principles for Screen-Based Trading Systems"), subsequently adopted by the Commission on November 21, 1990 (55 FR 48670), are appropriate guidelines for a recognized futures exchange to apply to

electronic trading systems. Any program of objective testing and review of the system should be performed by an independent third party. A professional that is a certified member of the Informational Systems Audit and Control Association experienced in the industry would be an acceptable party to carry out such testing and review. The Commission believes that information gathered by analysis, oversight or any program of objective testing and review of any automated systems regarding system functioning, capacity and security should be made available to the Commission and the public.

(2) A recognized futures exchange that determines to allow block trading should have rules which:

(i) Define the block based upon the customary size of large positions in the cash and derivatives market,

(ii) Restrict access to block trading to eligible participants,

(iii) Provide a mechanism for ensuring that the block's price will be fair and reasonable, and

(iv) provide for transparency of the trade by requiring that it be reported for clearing within a reasonable period of time and that it be identified separately in the price reporting system.

(b) *Acceptable Practices.* [Reserved].

Core Principle #9: Audit trail: Have in place procedures to ensure the recording of full data entry and trade details sufficient to reconstruct trading, the safe storage of such information and systems to enable information to be used in assisting in combating customer and market abuse. Such procedures should ensure the quality of data captured

(a) *Application Guidance.* A recognized futures exchange should have arrangements and resources for recording of full data entry and trade details sufficient to reconstruct trading and the safe storage of audit trail data systems enabling information to be used in combating customer and market abuse.

(b) *Acceptable Practices.* (1) The goal of an audit trail is to detect and deter customer and market abuse. An effective exchange audit trail should capture and retain sufficient trade-related information to permit exchange staff to detect trading abuses and to reconstruct all transactions. An audit trail should include specialized electronic surveillance programs that would identify potentially abusive trades and trade patterns, including for instance, withholding or disclosing customer orders, trading ahead, and preferential allocation. An acceptable audit trail must be able to track a customer order from time of receipt through fill allocation. The exchange must create and maintain an electronic transaction history database that contains information with respect to transactions affected on the recognized futures exchange.

(2) An acceptable audit trail, therefore, should include the following: Original source documents, transaction history, electronic analysis capability, and safe storage capability. A registered futures exchange whose audit trail satisfies the following acceptable practices would satisfy Core Principle 9.

(i) *Original Source Documents.* Original source documents include unalterable, sequentially identified records on which trade execution information is originally recorded, whether recorded manually or electronically. For each customer order, such records reflect the terms of the order, an account identifier that relates back to the account(s) owner(s), and the time of order entry. For floor-based exchanges, the time of report of execution of the order should also be captured.

(ii) *Transaction History.* A transaction history which consists of an electronic history of each transaction, including:

(A) All data that are input into the trade entry or matching system for the transaction to match and clear;

(B) Whether the trade was for a customer or proprietary account;

(C) Timing and sequencing data adequate to reconstruct trading; and

(D) The identification of each account to which fills are allocated.

(iii) *Electronic Analysis Capability.* An electronic analysis capability that permits sorting and presenting data included in the transaction history so as to reconstruct trading and to identify possible trading violations with respect to both customer and market abuse.

(iv) *Safe Storage Capability.* Safe storage capability provides for a method of storing the data included in the transaction history in a manner that protects the data from unauthorized alteration, as well as from accidental erasure or other loss. Data should be retained in accordance with the recordkeeping standards of Core Principle 14.

Core Principle #10: Financial standards: Have, monitor, and enforce rules regarding the financial integrity of the transactions that have been executed on the exchange and, where intermediaries are permitted, have rules addressing the financial integrity of the intermediary and the protection of customer funds as appropriate and a program to enforce those requirements

(a) *Application Guidance.* Clearing of transactions executed on a recognized futures exchange should be provided through a Commission recognized clearing facility. In addition, a recognized futures exchange should maintain the financial integrity of its transactions by maintaining minimum financial standards and having default rules and procedures. The minimum financial standards should be monitored for compliance purposes. The Commission believes that in order to monitor for minimum financial requirements, a recognized futures exchange should routinely receive financial and related information. Rules addressing the protection of customer funds should address the segregation of customer and proprietary funds, the custody of customer funds and the investment standards for customer funds.

(b) *Acceptable Practices.* [Reserved]

Core Principle #11: Customer protection: Have, monitor and enforce rules for customer protection

(a) *Application Guidance.* A recognized futures exchange should have rules

prohibiting conduct by intermediaries that is fraudulent, noncompetitive, unfair, or an abusive practice in connection with the execution of trades and a program to detect and discipline such behavior. Intermediated markets are not required to have, monitor or enforce rules requiring intermediaries to provide risk disclosure or to comply with other sales practices.

(b) *Acceptable Practices.* [Reserved]

Core Principle #12: Dispute resolution: Provide for alternative dispute resolution mechanisms appropriate to the nature of the market

(a) *Application Guidance.* A recognized futures exchange should provide customer dispute resolution procedures that are fair and equitable and that are made available to the customer on a voluntary basis, either directly or through another self-regulatory organization.

(b) *Acceptable Practices.* (1) Core Principle #12 requires a recognized futures exchange to provide for dispute resolution mechanisms that are appropriate to the nature of the market.

(2) In order to satisfy acceptable standards, a recognized futures exchange should provide a customer dispute resolution mechanism that is fundamentally fair and is equitable. The procedure should provide:

(i) The customer with an opportunity to have his or her claim decided by a decision-maker that is objective and impartial,

(ii) Each party with the right to be represented by counsel, at the party's own expense,

(iii) Each party with adequate notice of claims presented against him or her, an opportunity to be heard on all claims, defenses and permitted counterclaims, and an opportunity for a prompt hearing,

(iv) For prompt written final settlement awards that are not subject to appeal within the exchange, and

(v) Notice to the parties of the fees and costs which may be assessed.

(3) The procedure employed also must be voluntary, as provided in § 166.5 of this part. If the recognized futures exchange also provides a procedure for the resolution of disputes which do not involve customers (*i.e.*, member-to-member disputes), the procedure for the resolution of such disputes must be independent of and shall not interfere with or delay the resolution of customers' claims or grievances.

(4) A counterclaim which arises out of a transaction or occurrence that is the subject of a customer's claim or grievance and which does not require for adjudication the presence of essential witnesses, parties or third persons over whom the recognized futures exchanges does not have jurisdiction could be allowed under the recognized futures exchange's dispute resolution procedures. Other counterclaims should be permissible only if the customer agreed to the submission after the counterclaim had arisen, and if the aggregate monetary value of the counterclaim was capable of calculation.

(5) A recognized futures exchange may delegate to another self-regulatory organization or to a registered futures association its responsibility to provide for

customer dispute resolution mechanisms. Provided, however, that, if the recognized futures exchange does so delegate that responsibility, the exchange shall in all respects treat any decision issued by such other organization or association as if the decision were its own including providing for the appropriate enforcement of any award issued against a delinquent member.

Core Principle #13: Governance: Have fitness standards for members, for owners or operators with greater than 10 percent interest or an affiliate of such an owner, members of the governing board, and those who make disciplinary determinations. The recognized futures exchange must have a means to address conflicts of interest in making decisions and access to, and use of, material non-public information by the foregoing persons and by exchange employees. For mutually owned futures exchanges, the composition of the governing board must reflect market participants

(a) *Application Guidance.* A recognized futures exchange should have appropriate eligibility criteria for the categories of persons set forth in the Core Principle which should include standards for fitness and for the collection and verification of information supporting compliance with such standards. The standards could be based on the disqualification standards under section 8a(2) of the Act. The Commission believes that such standards should include the provision to the Commission of registration information for such persons, whether registration information, certification to the fitness of such persons, an affidavit of such persons' fitness by the facility's counsel or other information substantiating the fitness of such persons. If an exchange provided certification of the fitness of such a person, the Commission believes that such certification should be based on verified information that the person is fit to be in their position. The means to address conflicts of interest in decision-making should include methods to ascertain the presence of conflicts of interest and to make decisions in the event of such a conflict. In addressing the access to, and use of, material non-public information, the Commission believes that the recognized futures exchange should provide for limitations on exchange employee trading.

(b) *Acceptable Practices.* [Reserved]

Core Principle #14: Recordkeeping: Must keep full books and records of all activities related to their business as a recognized futures exchange in a form and manner acceptable to the Commission for a period of five years, during the first two of which the books and records are readily available, and which shall be open to inspection by any representative of the Commission or the United States Department of Justice

(a) *Application Guidance.* [Reserved]

(b) *Acceptable Practices.* Commission rule 1.31 constitutes the acceptable practice regarding the form and manner for keeping records.

Core Principle #15: Competition: Recognized futures exchanges should avoid unreasonable restraints of trade or impose any burden on competition not necessary or appropriate in furtherance of the objectives of the Act or the regulations thereunder

(a) *Application Guidance.* A recognized futures exchange should avoid unreasonable restraints of trade in any terms and conditions of access or provision of services or any non-compete clauses or limitations on future activity.

(b) *Acceptable Practices.* [Reserved]

PART 100—[REMOVED AND RESERVED]

12. Part 100 is proposed to be removed and reserved.

PART 170—REGISTERED FUTURES ASSOCIATIONS

13. The authority citation for Part 170 continues to read as follows:

Authority: 7 U.S.C. 6p, 12a, and 21.

14. Section 170.8 is proposed to be revised to read as follows:

§ 170.8 Settlement of customer disputes (section 17(b)(10) of the Act).

A futures association must be able to demonstrate its capacity to promulgate rules and to conduct proceedings which provide a fair, equitable and expeditious procedure, through arbitration or otherwise, for the voluntary settlement of a customer's claim or grievance brought against any member of the association or any employee of a member of the association. Such rules shall conform to and be consistent with section 17(b)(10) of the Act and be consistent with the guidelines and acceptable practices for dispute resolution found within Appendix A and Appendix B to Part 38 of this chapter.

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES [REMOVED]

15. Part 180 is proposed to be removed.

Issued in Washington, DC, this 8th day of June, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00-14914 Filed 6-21-00; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 4, 140, 155 and 166

RIN 3038-AB56

Rules Relating to Intermediaries of Commodity Interest Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: On February 22, 2000, a staff task force of the Commodity Futures Trading Commission ("CFTC" or "Commission") submitted a report to the CFTC's Congressional oversight committees entitled A New Regulatory Framework. To further the regulatory reform process, the Commission is proposing to revise its rules relating to intermediation of commodity futures and commodity options ("commodity interest") transactions.

The proposed new rules would provide greater flexibility in several areas. To ease barriers to entry for persons seeking registration as futures commission merchants ("FCMs") or introducing brokers ("IBs"), the Commission would: Provide a simplified registration procedure for those persons wishing to operate as FCMs or IBs only on recognized derivatives transaction facilities "DTFs" for institutional customers, and who are regulated by other federal financial regulatory agencies; and eliminate the requirement to submit a certified financial report as part of the standard registration application for FCMs and IBs. For all registrants, the Commission would eliminate its rule requiring ethics training, replacing it with a Statement of Acceptable Practices. In addition, the Commission would respond favorably to a rule change of the National Futures Association ("NFA") that would relieve sales personnel dealing only with institutional customers of the requirement to pass a proficiency test. The Commission is also proposing to amend the definition of the term "principal" in Rule 3.1(a), mainly to eliminate inclusion of certain types of officers of a firm, and to make conforming amendments to other rules.

Account opening procedures would be simplified to allow for all required disclosures (with the exception of arbitration agreements) to be acknowledged with a single signature, which may be an electronic signature. The obligation for FCMs and IBs to provide a specific disclosure statement would also be eliminated for a greater number of sophisticated customers. Electronic transmission of account

statements would also be permitted, and the Commission's rules as to close-out of offsetting positions would be streamlined to allow for customer choice.

Further, the Commission proposes to expand the range of instruments in which FCMs may invest customer funds. The Commission also requests comment concerning whether customers should be allowed to "opt out" of the rules requiring segregation of customer funds, and whether FCMs should be allowed to maintain, in the same customer segregated account, funds used for the purpose of securing or margining instruments other than those currently permitted. Finally, the Commission is considering the issuance of a separate order revising its previous pronouncements regarding the treatment of customer funds on deposit with FCMs for the purpose of trading on foreign markets.

DATES: Comments must be received on or before August 7, 2000.

ADDRESSES: Comments on the proposed rules should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418-5521, or by e-mail to secretary@cftc.gov. Reference should be made to "Proposed Rules Concerning Intermediaries."

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, Paul H. Bjarnason, Jr., Special Advisor for Accounting Policy (with respect to Rule 1.25 concerning investment of customer funds), or Andrew J. Shipe, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418-5450.

SUPPLEMENTARY INFORMATION:

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