

for the past three fiscal years. The calculations revealed that the number of contracts that would be included in the three-year moving averages were 22 futures contracts but only one option contract. Accordingly, for options, the Commission is not revising the option contract approval fee for 2004, consistent with the policy noted above. For the 22 futures contracts, a review of actual costs of processing these contract approval requests reveal that the average cost over the period was \$6,000 per contract, including overhead.

In accordance with its regulations as codified at 17 CFR Part 40 Appendix B, the Commission has determined that the fee for an approval request of a futures contract will be set at \$6,000 and the fee for an approval request of an option contract will remain at \$1,000. The fee for simultaneously submitted futures contracts and option contracts on those futures contracts and the fees for filings containing multiple cash-settled indices on non-tangible commodities have been set as indicated in the schedule set forth in the *Summary of Fees* above.

**III. Cost-Benefit Analysis**

Section 15 of the Act, as amended by section 119 of the CFMR, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. Section 15 does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15 simply requires the Commission to consider the costs and benefits of its action, in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas of concern and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The submission of new products for Commission review and approval by designated contract markets or DTEFs is voluntary. The Commission has therefore concluded that those entities choosing to make such submissions find that the benefits of doing so equal or exceed the fees, which, as explained

above, are derived from the Commission's actual processing costs.

**IV. Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 USC 601, *et seq.*, requires agencies to consider the impact of rules on small business. The fees implemented in this release affect contract markets and registered DTEFs. The Commission has previously determined that contract markets and registered DTEFs are not "small entities" for purposes of the Regulatory Flexibility Act. Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to 5 USC 605(b), that the fees implemented here will not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC, on March 2, 2004, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

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**COMMODITY FUTURES TRADING COMMISSION**

**Fees for Reviews of the Rule Enforcement Programs of Contract Markets and Registered Futures Association**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Establish a new schedule of fees.

**SUMMARY:** The Commission charges fees to designated contract markets and the National Futures Association (NFA) to recover the costs incurred by the Commission in the operation of a program which provides a service to these entities. The fees are charged for the Commission's conduct of its program of oversight of self-regulatory rule enforcement programs (17 CFR part 1, appendix B) (NFA and the contract markets are referred to as SROs).

The calculation of the fee amounts to be charged for FY 2003 is based on an average of actual program costs incurred during FY 2000, 2001, and 2002, as explained below. The FY 2003 fee schedule is set forth in the

**SUPPLEMENTARY INFORMATION.**

**EFFECTIVE DATES:** The FY 2003 fees for Commission oversight of each SRO rule enforcement program must be paid by each of the named SROs in the amount specified by no later than May 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Stacy Dean Yochum, Counsel to the Executive Director, Office of the Executive Director, Commodity Futures

Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418-5160, or Eileen Chotiner, Attorney, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418-5467.

**SUPPLEMENTARY INFORMATION:**

**I. General**

This notice relates to fees for the Commission's review of the rule enforcement programs at the registered futures associations and contract markets regulated by the Commission.

**II. Schedule of Fees**

Fees for the Commission's review of the rule enforcement programs at the registered futures associations and contract markets regulated by the Commission:

Entity	Fee amount
Chicago Board of Trade .....	\$161,420
Chicago Mercantile Exchange .....	170,273
Kansas City Board of Trade .....	12,301
New York Mercantile Exchange .....	132,918
Minneapolis Grain Exchange .....	6,748
National Futures Association .....	195,708
New York Board of Trade ....	58,265
<b>Total .....</b>	<b>737,633</b>

**III. Background Information**

*A. General*

The Commission recalculates the fees charged each year with the intention of recovering the costs of operating this Commission program.<sup>1</sup> All costs are accounted for by the Commission's Management Accounting Structure Codes (MASC) system, which records each employee's time for each pay period. The fees are set each year based on direct program costs, plus an overhead factor.

*B. Overhead Rate*

The fees charged by the Commission to the SROs are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide overhead direct program labor costs into the total amount of the Commission-wide overhead pool. For this purpose, direct program labor costs are the salary costs of personnel working in all Commission

<sup>1</sup> See Section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a and 31 U.S.C. 9701. For a broader discussion of the history of Commission Fees, see 52 FR 46070 (Dec. 4, 1987).

programs. Overhead costs consist generally of the following Commission-wide costs: indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 105 percent for fiscal year 2000, 117 percent for fiscal year 2001, and 129 percent for fiscal year 2002. These overhead rates are applied to the direct labor costs to calculate the costs of oversight of SRO rule enforcement programs.

**C. Conduct of SRO Rule Enforcement Reviews**

Under the formula adopted in 1993 (58 FR 42643, Aug. 11, 1993), which appears at 17 CFR Part 1 Appendix B, the Commission calculates the fee to recover the costs of its review of rule enforcement programs, based on the three-year average of the actual cost of performing reviews at each SRO. The cost of operation of the Commission's

program of SRO oversight varies from SRO to SRO, according to the size and complexity of each SRO's program. The three-year averaging is intended to smooth out year-to-year variations in cost. Timing of reviews may affect costs—a review may span two fiscal years and reviews are not conducted at each SRO each year. Adjustments at actual costs may be made to relieve the burden on an SRO with a disproportionately large share of program costs.

The Commission's formula provides for a reduction in the assessed fee if an SRO has a smaller percentage of United States industry contract volume than its percentage of overall Commission oversight program costs. This adjustment reduces the costs so that as a percentage of total Commission SRO oversight program costs, they are in line with the pro rata percentage for that SRO of United States industry-wide contract volume.

The calculation made is as follows: The fee required to be paid to the Commission by each contract market is

equal to the lesser of actual costs based on the three-year historical average of costs for that contract market or one-half of average costs incurred by the Commission for each contract market for the most recent three years, plus a pro rata share (based on average trading volume for the most recent three years) of the aggregate of average annual costs of all contract markets for the most recent three years. The formula for calculating the second factor is:  $0.5a + 0.5vt = \text{current fee}$ . In this formula, "a" equals the average annual costs, "v" equals the percentage of total volume across exchanges over the last three years, and "t" equals the average annual costs for all exchanges. NFA, the only registered futures association regulated by the Commission, has no contracts traded; hence its fee is based simply on costs for the most recent three fiscal years.

This table summarizes the data used in the calculations and the resulting fee for each entity:

	Three-year average actual costs	Three-year percentage of volume	Average year 2003 fee
Chicago Board of Trade .....	\$161,420	34.7882	\$161,420
Chicago Mercantile Exchange .....	170,273	47.6397	170,273
New York Mercantile Exchange .....	173,114	14.4836	132,918
New York Board of Trade .....	100,453	2.5111	58,265
Kansas City Board of Trade .....	22,310	0.3581	12,301
Minneapolis Grain Exchange .....	12,617	0.1373	6,748
Subtotal .....	640,187	99.9181	541,925
National Futures Association .....	195,708	N/A	195,708
Total .....	835,895	99.9181	737,633

An example of how the fee is calculated for one exchange, the Minneapolis Grain Exchange, is set forth here:

- a. Actual three-year average costs equal \$12,617.
- b. The alternative computation is:  $(.5) (\$12,617) + (.5) (.001373) (\$640,187) = \$6748$ .
- c. The fee is the lesser of a or b; in this case \$6748.

As noted above, the alternative calculation based on contracts traded is not applicable to the NFA because it is not a contract market and has no contracts traded. The Commission's average annual cost for conducting oversight review of the NFA rule enforcement program during fiscal years 2000 through 2002 was \$195,708 (one-third of \$587,124). The fee to be paid by the NFA for the current fiscal year is \$195,708.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 USC 601, *et seq.*, requires agencies to consider the impact of rules on small business. The fees implemented in this release affect contract markets (also referred to as exchanges) and registered futures associations. The Commission has previously determined that contract markets and registered futures associations are not "small entities" for purposes of the Regulatory Flexibility Act. Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to 5 USC 605(b) that the fees implemented here will not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC, on March 2, 2004, by the Commission.

**Jean A. Webb,**  
*Secretary of the Commission.*  
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**CONSUMER PRODUCT SAFETY COMMISSION**

[CPSA Docket No. 04-C0003]

**The Lifetime Products, Inc., Provisional Acceptance of a Settlement Agreement and Order**

**AGENCY:** Consumer Product Safety Commission.  
**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the