



## U.S. COMMODITY FUTURES TRADING COMMISSION

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February 18, 2004

Gregory J. Robbins, Esq.  
Sidley Austin Brown & Wood  
Bank One Plaza  
10 South Dearborn Street  
Chicago, Illinois 60603

Re: Application of HedgeStreet, Inc. for Designation as a Contract Market

Dear Mr. Robbins:

By letters and electronic mail dated March 12, 2001 through February 11, 2004, HedgeStreet, Inc. ("HedgeStreet" or "Exchange") applied to the Commodity Futures Trading Commission ("Commission"), pursuant to Sections 5 and 6(a) of the Commodity Exchange Act ("Act"), 7 U.S.C. §§7 and 8(a), for designation as a contract market. The Commission has reviewed the materials submitted, including all comments submitted with respect to the materials submitted, and has determined to designate HedgeStreet as a contract market, pursuant to Sections 5 and 6 of the Act, 7 U.S.C. §§7 and 8(a).

Concurrent with designation, the Commission has approved, pursuant to Section 5c(c) of the Act, 7 U.S.C. §7a-2(c), HedgeStreet Rules 1.1-1.8, 2.1-2.5, 3.1-3.13, 4.1-4.3, 5.1-5.2, 6, 7.1-7.7, 8.1-8.5, and 9.1-9.3.

The Commission's approval is based upon, among other things, written submissions, explanations and representations provided by the Exchange describing the manner in which the HedgeStreet System will operate. The Commission's designation is also based upon written submissions, explanations, demonstrations, and representations provided by HedgeStreet, the National Futures Association ("NFA"), and USinternetworking concerning how NFA and USinternetworking shall assist HedgeStreet in meeting the Exchange's self-regulatory obligations. The Commission's designation is also based upon written submissions, explanations, and representations provided by HedgeStreet and Union Bank of California concerning how HedgeStreet will meet certain of the Exchange's settlement and clearing obligations. HedgeStreet should inform the Commission of any material modifications to the operation of HedgeStreet, the HedgeStreet Trading System, the clearing and settlement arrangements, or HedgeStreet's self-regulatory program, including, but not limited to, those services provided by the NFA, USinternetworking, and Union Bank of California. Any change in the identity of the regulatory service providers, or the regulatory services they provide to the Exchange, are considered rule changes, and should be submitted to the Commission as such, pursuant to Section 5c(c) of the Act.

The Commission reminds HedgeStreet that any modification to its trade matching algorithm also constitutes a rule change that must be submitted to the Commission pursuant to

Mr. Gregory J. Robbins

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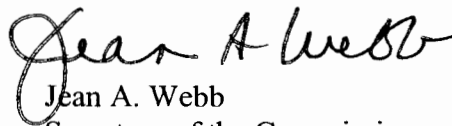
Section 5c(c) of the Act. The Commission also reminds the Exchange that position limits or position accountability procedures may need to be specified for contracts listed by the Exchange, if HedgeStreet lists contracts that do not fit the general description of underlying instruments provided in the contract market application or as would otherwise be warranted under Core Principle 5. All position limits or position accountability procedures should be included with the Exchange's filing to the Commission in connection with the listing of each contract submitted under the Commission's certification or approval procedures.

In approving HedgeStreet's application, the Commission is not approving either the agreement for settlement services between HedgeStreet and Union Bank of California, or the agreement for compliance and surveillance services between HedgeStreet and NFA. In this connection, HedgeStreet itself shall remain responsible for ensuring the performance of all self-regulatory functions required of it as a designated contract market under the Act and the Commission's regulations, including enforcement of the terms of all of HedgeStreet's rules.

The Commission notes that HedgeStreet will operate as both a designated contract market (DCM) and a derivatives clearing organization (DCO) and that, therefore, all HedgeStreet members will be both DCM members and DCO members. Accordingly, under the Commission's large trader reporting rules found in Parts 15 through 21, HedgeStreet is required to file clearing member reports with the Commission under Rule 16.00 and HedgeStreet's clearing members are required to file large trader reports with the Commission under Rule 17.00. The Commission notes, however, that since all trading on HedgeStreet will be nonintermediated, the reports filed under Rule 17.00 would capture the essential information regarding traders and their positions that would also be provided by reports under Rule 16.00. In these circumstances, and until otherwise warranted, the Commission does not believe that it is necessary for HedgeStreet to file clearing member reports under Rule 16.00 so long as HedgeStreet files large trader reports on behalf of its clearing members under Part 17. HedgeStreet, of course, remains subject to all other applicable reporting requirements including those imposed by Rules 16.01 and 16.06. Commission staff will work with HedgeStreet to establish appropriate reporting levels under Rule 15.03.

The Commission reminds HedgeStreet that it must comply with the terms of the enclosed Order of Designation, which includes certain undertakings offered by HedgeStreet in its letter dated February 9, 2004.

Sincerely,



Jean A. Webb  
Secretary of the Commission

cc: Dr. John Nafeh  
HedgeStreet, Inc.  
1825 South Grant Street  
Suite 500  
San Mateo, California 94402

UNITED STATES OF AMERICA

Before the

COMMODITY FUTURES TRADING COMMISSION

In the Matter of the Application of  
HedgeStreet, Inc.  
for Designation as a Contract Market

ORDER OF DESIGNATION

HedgeStreet, Inc. (HedgeStreet), a Delaware corporation, submitted pursuant to Sections 5 and 6(a) of the Commodity Exchange Act (Act), 7 U.S.C. §§ 7 and 8(a), an application for designation as a contract market. Having reviewed the application and the complete record in this matter, including all public comments submitted with respect to the application, the Commission adopts the reasons set forth in the February 10, 2004 Memorandum of the Division of Market Oversight (Staff Memorandum) as the basis for the following findings and rulings:

1. The Commission FINDS that, as required by Section 6(a), 7 U.S.C. § 8(a), HedgeStreet's application provides a showing that it complies with the conditions set forth in the Act and the Commission's regulations thereunder applicable to it for designation as a contract market, and provides a sufficient assurance that it will continue to comply with the requirements of the Act and the Commission's regulations;
2. The Commission FINDS that HedgeStreet has committed to certain conditions and undertakings as set forth in Section VII of the Staff Memorandum;
3. IT IS ORDERED, under Sections 5 and 6(a) of the Act, 7 U.S.C. §§ 7 and 8(a), that the application of HedgeStreet for designation as a contract market is approved;

4. IT IS FURTHER ORDERED, that this approval of designation shall be subject to compliance with all sections of the Act and regulations thereunder applicable to HedgeStreet as a designated contract market;

5. IT IS FURTHER ORDERED, that, in place of filing clearing member reports under Rule 16.00 and until further order of the Commission, HedgeStreet shall file large trader reports and forms under Part 17 on behalf of its clearing members; and

6. IT IS FURTHER ORDERED, that HedgeStreet will comply with commitments it made to the Commission by its letter dated February 9, 2004 (February 9<sup>th</sup> commitments), as follows:

HedgeStreet and any official, agent, or other person acting on behalf of HedgeStreet within the scope of his or her employment or office shall not, in or in connection with the offer or sale of HedgeStreet products:

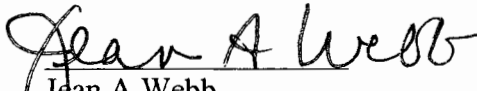
- (a) Cheat or defraud or attempt to cheat or defraud any person;
- (b) Willfully make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or
- (c) Willfully deceive or attempt to deceive any person by any means whatsoever.

The Commission has accepted the February 9<sup>th</sup> commitments from HedgeStreet in light of the fact that HedgeStreet's structure and intended manner of operation is qualitatively different from more traditional exchanges. HedgeStreet will not have any intermediaries; rather it will have members who interact directly with the trading facility. More traditional markets have been intermediated markets in which the intermediaries conduct most customer solicitations. Since HedgeStreet is nonintermediated, any solicitation that occurs will be by HedgeStreet. In these circumstances, these commitments are appropriate to ensure that

HedgeStreet customers receive a similar level of protection against fraudulent conduct, including fraudulent solicitation, as customers of more traditional exchanges.

Issued in Washington, D.C., this 18<sup>th</sup> day of February, 2004.

By the Commission

  
Jean A Webb  
Secretary of the Commission