Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 87–1851–01 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 87–1851–00, issued to Dr. Costa on January 29, 2007 (72 FR 5680), authorizes tagging studies and physiological research on seals in Antarctica, including crabeater seals (*Hydrurga leptonyx*), Weddell seals (*Leptonychotes weddellii*), and Ross seals (*Ommatophoca rossii*). The permit also authorizes research on California sea lions (*Zalophus californianus*) to investigate foraging, diving, energetics, food habits, and at-sea distribution along the California coast. Incidental harassment of California sea lions, harbor seals (*Phoca vitulina*), northern elephant seals (*Mirounga augustirostris*), and northern fur seals (*Callorhinus ursinus*) in California is authorized. The permit expires on January 31, 2012. Permit No. 87–1851–01, issued on January 13, 2009 (74 FR 4374), authorizes the permit holder to expand the geographic area where research is conducted in Antarctica to include the Weddell Sea, for the duration of the permit.

The permit holder is requesting the permit be amended to include authorization for expanding the geographic range where research is conducted in Antarctica to include the Ross Sea and to increase the number of Weddell seals captured, sedated, tagged, and sampled from 10 animals per year to 40 animals per year.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 14, 2009.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–25212 Filed 10–19–09; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), To Undertake a Determination Whether the Henry Financial Swing Contract; Henry Financial Basis Contract; and Henry Financial Index Contract, Offered for Trading on the IntercontinentalExchange, Inc., Perform Significant Price Discovery Functions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of action and request for comment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is undertaking a review to determine whether the Henry Financial Swing (''HHD'') contract; Henry Financial Basis (''HEN'') contract; and/or Henry Financial Index (''HIS'') contract, offered for trading on the IntercontinentalExchange, Inc. (''ICE''), an exempt commercial market (''ECM'') under Sections 2(h)(3)–(5) of the Commodity Exchange Act (''CEA'' or the ''Act''), perform significant price discovery functions. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder. In connection with this evaluation, the Commission invites comment from interested parties.

DATES: Comments must be received on or before November 4, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

- Follow the instructions for submitting comments. *Federal eRulemaking Portal: http://www.regulations.gov*.
- *E-mail: secretary@cftc.gov*. Include Henry Financial Swing (HHD) contract; Henry Financial Basis (HEN) contract; and/or Henry Financial Index (HIS) contract in the subject line of the message, depending on the subject contract(s) to which the comments apply.
- *Fax:* (202) 418–5521.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/*.

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov*; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 16, 2009, the CFTC promulgated final rules implementing provisions of the CFTC Reauthorization Act of 2008 (''Reauthorization Act'') [1] which subjects ECMs with significant price discovery contracts (''SPDCs'') to self-regulatory and reporting requirements, as well as certain Commission oversight authorities, with respect to those contracts. Among other things, these rules and rule amendments revise the information-submission requirements applicable to ECMs, establish procedures and standards by which the Commission will determine whether an ECM contract performs a significant price discovery function, and provide guidance with respect to compliance with nine statutory core principles applicable to ECMs with SPDCs. These rules became effective on April 22, 2009.

In determining whether an ECM's contract is or is not a SPDC, the Commission will consider the contract's material liquidity, price linkage to other contracts, potential for arbitrage with other contracts traded on designated contract markets or derivatives transaction execution facilities, use of the ECM contract's prices to execute or settle other transactions, and other factors.

In order to facilitate the Commission's identification of possible SPDCs,

[1] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

Commission rule 36.3(c)(2) requires that an ECM operating in reliance on section 2(h)(3) promptly notify the Commission and provide supporting information or data concerning any contract: (i) that averaged five trades per day or more over the most recent calendar quarter; and (ii) (A) for which the ECM sells price information regarding the contract to market participants or industry publications; or (B) whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement, or other daily price of another agreement.

II. Determination of a SPDC

A. The SPDC Determination Process

Commission rule 36.3(c)(3) establishes the procedures by which the Commission makes and announces its determination on whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish a notice in the **Federal Register** that it intends to undertake a determination as to whether the specified agreement, contract, or transaction performs a significant price discovery function and to receive written data, views, and arguments relevant to its determination from the ECM and other interested persons.[2] After prompt consideration of all relevant information [3], the Commission will, within a reasonable period of time after the close of the comment period, issue an order explaining its determination. Following the issuance of an order by the Commission that the ECM executes or trades an agreement, contract, or transaction that performs a significant price discovery function, the ECM must demonstrate, with respect to that agreement, contract, or transaction, compliance with the core principles under section 2(h)(7)(C) of the CEA [4] and the applicable provisions of Part 36. If the Commission's order represents the first time it has determined that one of the ECM's contracts performs a significant price discovery function, the ECM must submit a written demonstration of its compliance with the core principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the ECM has an additional SPDC, the ECM must submit a written demonstration of its compliance with the core principles within 30 calendar days of the Commission's order.

B. Henry Financial Swing Contract

The HHD contract is a daily contract that is cash settled based on the spot index price for natural gas at the Henry Hub, as published by Platts in the ''Daily Price Survey'' table of *Gas Daily*. The Platts index price is based on fixed-price cash market transactions that are voluntarily reported by traders. The size of the HHD contract is 2,500 million British thermal units (''mmBtu''), and the unit of trading is any multiple of 2,500 mmBtu. The HHD contract is listed for 65 consecutive calendar days.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its HHD contract, 5,246 separate trades occurred in the second quarter of 2009, resulting in a daily average of 82.0 trades. During the same period, the HHD contract had a total trading volume of 242,968 contracts (which was an average of 3,796.4 contracts per day). As of June 30, 2009, open interest in the HHD contract was 20,173 contracts.

It appears that the HHD contract may satisfy the material liquidity, arbitrage, and material price reference factors for SPDC determination. With respect to material liquidity, trading in the HHD contract averaged over 3,500 contracts on a daily basis with more than 80 separate transactions each day. Moreover, the open interest at the end of the second quarter in 2009 was significant. Because the HHD contract specifies the Henry Hub, the contract's prices series may be highly correlated with that of the New York Mercantile Exchange's physically-delivered Natural Gas contract and/or the ICE's Henry Financial LD1 Financial Fixed Price contract, thus increasing the opportunity for arbitrage. In regard to material price reference, while it did not specifically address the natural gas contracts under review, the ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain natural gas contracts. Natural gas contracts based on actively-traded hubs are transacted on the ICE's electronic trading platform, with the remainder being completed over-the-counter and potentially submitted for clearing by voice brokers. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''Henry Hub End of Day'' and ''OTC Gas End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

C. Henry Financial Basis Contract

The HEN contract is a monthly contract that is cash settled based on the difference between the bidweek price index for a particular calendar month at the Henry Hub, as published by Platts in its *Inside FERC's Gas Market Report,* and the final settlement price of the New NYMEX's physically-delivered Henry Hub natural gas futures contract for the same calendar month. The Platts bidweek price is based on fixed-price cash market transactions that are conducted during the last five business days of the month and are voluntarily reported by traders; bidweek transactions specify the delivery of natural gas during the following calendar month. The size of the HEN contract is 2,500 mmBtu, and the unit of trading is any multiple of 2,500 mmBtu. The HEN contract is listed for up to 72 calendar months.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its HEN contract, 538 separate trades occurred in the second quarter of 2009, resulting in a daily average of 8.4 trades. During the same period, the HEN contract had a total trading volume of 78,870 (which was an average of 1,232.3 contracts per day). As of June 30, 2009, open interest in the HEN contract was 128,504 contracts.

It appears that the HEN contract may satisfy the material liquidity, price linkage, and material price reference factors for SPDC determination. With respect to material liquidity, trading in the HEN contract averaged more than 1,000 contracts on a daily basis, with nearly 10 separate transactions each day. In addition, the open interest in the subject contract was substantial. In regard to price linkage, the final settlement of the HEN contract is based, in part, on the final settlement price of the NYMEX's physically-delivered natural gas contract, where the NYMEX is registered with the Commission as a designated contract market (''DCM''). In regard to material price reference, while it did not specifically address the

[2] The Commission may commence this process on its own initiative or on the basis of information provided to it by an ECM pursuant to the notification provisions of Commission rule 36.3(c)(2).

[3] Where appropriate, the Commission may choose to interview market participants regarding their impressions of a particular contract. Further, while they may not provide direct evidentiary support with respect to a particular contract, the Commission may rely for background and context on resources such as its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* (''ECM Study''). *http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/pr5403–07_ecmreport.pdf.*

[4] 7 U.S.C. 2(h)(7)(C).

natural gas contracts under review, the ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain natural gas contracts. Natural gas contracts based on actively-traded hubs are transacted on the ICE's electronic trading platform, with the remainder being completed over-the-counter and potentially submitted for clearing by voice brokers. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''Henry Hub End of Day'' and ''OTC Gas End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

D. Henry Financial Index Contract

The HIS contract is a monthly contract that is cash settled based on the arithmetic average of the daily natural gas prices at the Henry Hub, as quoted in the ''Daily Price Survey'' table of Platts' *Gas Daily* during the specified month, less the Platts bidweek price that is reported in the first issue of *Inside FERC's Gas Market Report* in which the natural gas is produced. The Platts prices are based on fixed-price cash market transactions that are voluntarily reported by traders. The size of the HIS contract is 2,500 mmBtu, and the unit of trading is any multiple of 2,500 mmBtu. The HIS contract is listed for 36 calendar months.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its HIS contract, 550 separate trades occurred in the second quarter of 2009, resulting in a daily average of 8.6 trades. During the same period, the HIS contract had a total trading volume of 79,330 contracts (which was an average of 1,239.5 contracts per day). As of June 30, 2009, open interest in the HIS contract was 127,346 contracts.

It appears that the HIS contract may satisfy the material liquidity, and material price reference factors for SPDC determination. With respect to material liquidity, trading in the HIS contract averaged over 1,200 contracts on a daily basis with more than 8 separate transactions each day. In addition, the open interest in the subject contract was substantial. In regard to material price reference, while it did not specifically address the natural gas contracts under review, the ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain natural gas contracts. Natural gas contracts based on actively-traded hubs are transacted on the ICE's electronic trading platform, with the remainder being completed over-the-counter and potentially submitted for clearing by voice brokers. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''Henry Hub End of Day'' and ''OTC Gas End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

III. Request for Comment

In evaluating whether an ECM's agreement, contract, or transaction performs a significant price discovery function, section 2(h)(7) of the CEA directs the Commission to consider, as appropriate, four specific criteria: Price linkage, arbitrage, material price reference, and material liquidity. As it explained in Appendix A to the Part 36 rules,[5] the Commission, in making SPDC determinations, will apply and weigh each factor, as appropriate, to the specific contract and circumstances under consideration.

As part of its evaluation, the Commission will consider the written data, views, and arguments from any ECM that lists the potential SPDC and from any other interested parties. Accordingly, the Commission requests comment on whether the HHD, HEN, and/or HIS contracts perform significant price discovery functions. Commenters' attention is directed particularly to Appendix A of the Commission's Part 36 rules for a detailed discussion of the factors relevant to an SPDC determination. The Commission notes that comments which analyze the contracts in terms of these factors will be especially helpful to the determination process. In order to determine the relevance of comments received, the Commission requests that commenters explain in what capacity are they knowledgeable about the subject contracts. Moreover, because three contracts are included in this notice, it is important that commenters identify to which contract(s) their comments apply.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[6] imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Certain provisions of final Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA; OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

B. Cost-Benefit Analysis

Section 15(a) of the CEA[7] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission ''consider'' the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The bulk of the costs imposed by the requirements of Commission Rule 36.3 relate to significant and increased information-submission and reporting requirements adopted in response to the Reauthorization Act's directive that the Commission take an active role in determining whether contracts listed by ECMs qualify as SPDCs. The enhanced requirements for ECMs will permit the Commission to acquire the information it needs to discharge its newly-mandated responsibilities and to ensure that ECMs with SPDCs are identified as entities with the elevated status of registered entity under the CEA and are in compliance with the statutory terms of the core principles of section 2(h)(7)(C) of the Act. The primary benefit to the public is to enable the Commission to discharge its statutory obligation to monitor for the presence of SPDCs and extend its oversight to the trading of SPDCs.

Issued in Washington, DC, on October 14, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

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[5] 17 CFR Part 36, Appendix A.

[6] 44 U.S.C. 3507(d).

[7] 7 U.S.C. 19(a).