

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 subject 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 a 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 one or several of the subject contracts. Moreover, because five 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")<sup>19</sup> 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<sup>20</sup> 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 such an order or to determine whether the benefits of such an 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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#### 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 Fuel Oil-180 Singapore Swap Contract, Offered for Trading on the IntercontinentalExchange, Inc., Performs a Significant Price Discovery Function**

**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 Fuel Oil—180 Singapore Swap ("SZS") 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 a significant price discovery function. 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](mailto:secretary@cftc.gov). Include Fuel Oil—180 Singapore Swap (SZS) Contract in the subject line of the message.*

- *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](mailto:gprice@cftc.gov); or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418-5133. E-mail: [snathan@cftc.gov](mailto: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")<sup>1</sup> 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

<sup>19</sup> 44 U.S.C. 3507(d).

<sup>20</sup> 7 U.S.C.19(a).

<sup>1</sup> 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

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 evaluate 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, 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.<sup>2</sup> After prompt consideration of all relevant information,<sup>3</sup> the Commission will, within a reasonable period of time

<sup>2</sup> 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).

<sup>3</sup> 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](http://www.cftc.gov/stellent/groups/public/newsroom/documents/file/pr5403-07_ecmreport.pdf).

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<sup>4</sup> 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. Fuel Oil-180 Singapore Swap Contract

The SZS contract specifies 1,000 metric tons of 180 CentiStokes (cst) Singapore high-sulfur fuel oil. The contract is cash-settled based on the arithmetic average of the means between the daily high and low price quotations for "HSFO 180 CST" delivered in the specified calendar month, published under the "Singapore" heading within Platts' *Asia-Pacific/Arab Gulf Marketscan*. The SZS contract is listed for up to 60 consecutive calendar months beginning with the next calendar month.

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 the SZS contract, the total number of trades was 1,957 in the second quarter of 2009, resulting in a daily average of 30.6 trades. During the same period, the SZS contract had a total trading volume of 13,170 contracts and an average daily trading volume of 205.8 contracts. Additionally, as of June 30, 2009, open interest was 11,356 contracts.

It appears that the SZS contract may satisfy the material liquidity and material price reference factors for SPDC determination. With respect to material liquidity, as noted above, trading in the ICE SZS contract averaged over 200 contracts on a daily basis, with more than 30 separate transactions each day. In regard to material price reference, while it did not specify which contracts

served a significant price discovery function or reference this particular contract, the Commission's ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain energy contracts. Energy contracts based on actively-traded locations are transacted heavily 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, 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 "OTC Oil 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,<sup>5</sup> 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 ICE's SZS contract performs a significant price discovery function. Commenters' attention is directed particularly to Appendix A of the Commission's Part 36 rules for a detailed discussion of the factors relevant to a 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 contract.

<sup>4</sup> 7 U.S.C. 2(h)(7)(C).

<sup>5</sup> 17 CFR Part 36, Appendix A.

#### IV. Related Matters

##### A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")<sup>6</sup> 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<sup>7</sup> 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 such an order or to determine whether the benefits of such an 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.

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David A. Stawick,

Secretary of the Commission.

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#### DEFENSE NUCLEAR FACILITIES SAFETY BOARD

##### Sunshine Act Notice

**AGENCY:** Defense Nuclear Facilities Safety Board.

**ACTION:** Notice of public meeting.

**SUMMARY:** Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) public hearing and meeting described below. The Board will conduct a public hearing and meeting pursuant to 42 U.S.C. 2286b and invites any interested persons or groups to present any comments, technical information, or data concerning safety issues related to the matters to be considered.

**TIME AND DATE OF MEETING:** 9 a.m., November 24, 2009.

**PLACE:** Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW., Suite 300, Washington, DC 20004-2001. Additionally, as a part of the Board's E-Government initiative, the meeting will be presented live through Internet video streaming. A link to the presentation will be available on the Board's Web site (<http://www.dnfsb.gov>).

**STATUS:** Open. While the Government in the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

**MATTERS TO BE CONSIDERED:** The Board will hold a series of public meetings to examine the Department of Energy's (DOE) implementation of Recommendation 2004-1, *Oversight of Complex, High-Hazard Nuclear Operations*. In 2003 and 2004, the Board conducted a series of eight public meetings that examined DOE's methods, and the proposed changes to those methods, for providing and ensuring adequate protection for the public health and safety and that of the workers at DOE's defense nuclear facilities. Based on the findings from these public meetings, the Board issued Recommendation 2004-1 on May 21, 2004. While the Board notes that

progress has been made on many of the 22 commitments contained in DOE's *Implementation Plan to Improve Oversight of Nuclear Operations (Revision 2, October 2006)*, major commitments remain incomplete, and areas continue to require greater attention from senior management if planned activities are to be completed. In addition, commitments previously declared complete must be reviewed and reinforced by cognizant managers to reaffirm the continued achievement of their purposes and functions. This series of public meetings will examine the overall implementation of Recommendation 2004-1 in light of the Recommendation's basic precepts: strengthen federal health and safety assurance; learn from internal and external operating experience; and revitalize the implementation of Integrated Safety Management. Of particular importance to the successful implementation of Recommendation 2004-1 is the direct and unbroken line of roles and responsibilities for the safety of nuclear operations, extending from the Secretary of Energy, Program Secretarial Officers, and the National Nuclear Security Administration (NNSA) to field offices and sites.

This hearing and meeting is intended to further assist the Board and DOE in their collective efforts to evaluate any needed improvements in the timeliness of issue resolution. The Board expects to hear presentations from the top leadership team of DOE and NNSA to outline the safety goals and safety management approach that DOE/NNSA is pursuing in the context of activities conducted under Recommendation 2004-1 and other DOE safety initiatives. The Board may also collect any other information relevant to health or safety of the workers and the public, with respect to Recommendation 2004-1. The public hearing portion of this proceeding is authorized by 42 U.S.C. 2286b.

**CONTACT PERSON FOR MORE INFORMATION:** Brian Grosner, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004-2901, (800) 788-4016. This is a toll-free number.

**SUPPLEMENTARY INFORMATION:** Requests to speak at the hearing may be submitted in writing or by telephone. The Board asks that commentators describe the nature and scope of their oral presentation. Those who contact the Board prior to close of business on November 23, 2009, will be scheduled for time slots, beginning at approximately 12 p.m. The Board will post a schedule for those speakers who

<sup>6</sup> 44 U.S.C. 3507(d).

<sup>7</sup> 7 U.S.C. 19(a).