COMMODITY FUTURES TRADING COMMISSION

Petition of the Chicago Board of Trade, the Chicago Mercantile Exchange, and the New York Mercantile Exchange for Exemption Pursuant to Section 4(c) of the Commodity Exchange Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of petition for exemption and request for comment.

SUMMARY: The Chicago Board of Trade, the Chicago Mercantile Exchange, and the New York Mercantile Exchange have submitted a joint petition dated June 25, 1999, to the Commodity Futures Trading Commission requesting an exemption, pursuant to Section 4(c) of the Commodity Exchange Act, for all boards of trade that have been designed by the Commission as contract markets from certain statutory requirements concerning the contract market designation process for new contract submissions and the contract market rule review process. The Commission believes that publication of the petition for comment in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act and the Commission's regulations. The full text of the petition is reproduced at the end of this Notice.

DATES: Comments must be received on or before October 12, 1999.

ADDRESSES: Comments should be submitted to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Comments also may be sent by facsimile to (202) 418–5521 or by electronic mail to secretary@cftc.gov. Reference should be made to the ''Petition of the Chicago Board of Trade, the Chicago Mercantile Exchange, and the New York Mercantile Exchange for Exemption Pursuant to Section 4(c) of the Commodity Exchange Act.''.

FOR FURTHER INFORMATION CONTACT: Rebecca L. Creed, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone number (202) 418–5430; electronic mail rcreed@ cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated June, 1999, and received June 28, 1999, the Chicago Board of Trade, the Chicago Mercantile Exchange, and the New York Mercantile Exchange (collectively referred to as the ''Exchanges'') submitted a joint petition to the Commodity Futures Trading Commission (''Commission'' or ''CFTC''), pursuant to Section 4(c) of the Commodity Exchange Act (''Act''),[1] requesting an exemption for all boards of trade that have been designated by the Commission as contract markets from certain statutory requirements. Specifically, the petition requests an exemption from the Act's requirements in three areas: (1) the contract market designation process for new contract submissions, set forth in Sections 5 and 6 of the Act and any related statutory provisions, including Section 2(a)(8)(B)(ii) of the Act; (2) the contract market rule review process, set forth in Section 5a(a)(12) of the Act; and (3) pertinent provisions of the Act that would otherwise prevent the immediate adoption and implementation of trading rules an procedures that are comparable to those of a competing foreign exchange.

The Exchanges' petition was filed in response to the Commission's Order dated June 2, 1999. That Order withdrew the Commission's proposed rules governing the use of automated trading systems in the United States (''U.S.'') which provide access to foreign electronic boards of trade.[2] The Order also directed Commission staff ''to begin immediately processing no-action requests from foreign boards of trade seeking to place trading terminals in the United States, and to issue responses where appropriate, pursuant to the general guidelines included in the Eurex (DTB) no-action process, or other guidelines established by the Commission, to be reviewed and applied as appropriate on a case-by-case basis.''[3] Finally, by the same Order, the Commission determined to ''commit to simultaneously initiate processes to address the comparative regulatory levels between U.S. and foreign electronic trading systems so as not to provide one with a competitive advantage.''

The Exchanges state that their petition for exemptive relief should be in order to avoid unfair competition from foreign exchanges that have been or will be permitted to place their electronic trading systems in the U.S. pursuant to no-action letters issued by Commission staff.[4] Since these foreign exchanges will not be required to obtain Commission designation as contract markets in order to operate in the U.S., the Exchanges state that they will not be

[1] Section 4(c) of the Act states in relevant part:

Unless exempted by the Commission pursuant to subsection (c), it shall be unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery (other than a contract which is made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions) unless—

(1) such transaction is conducted on or subject to the rules of a board of trade which has been designated by the Commission as a 'contract market' for such commodity;

(2) such contract is executed or consummated by or through a member of such contract market; and

(3) such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery * * *.

Section 4(c) of the Act provides the Commission with the authority ''by rule, regulation, or order'' after notice and opportunity for hearing to exempt ''any agreement, contract, or transaction (or class thereof)'' from the requirements of Section 4(a) or from any other provision of the Act, with the exception of the Shad-Johnson Accord provisions of Section 2(a)(1)(B) (stock index futures).

[2] *See* 64 FR 14159 (March 24, 1999) (proposed rules); 64 FR 32829 (June 18, 1999) (announcement of withdrawal of proposed rules).

[3] In February 1996, the Commission's Division of Trading and Markets (''Division'') issued a no-action letter to the Deutsche Terminborse (''DTB''), an automated international futures and options exchange headquartered in Frankfurt, Germany. DTB has subsequently changed its name to Eurex Deutschland (''Eurex''). In this no-action letter, the Division agreed, subject to certain conditions, not to recommend enforcement action to the Commission if Eurex placed computer terminals in the U.S. offices of its members for principal trading and, where the Eurex member is also a futures commission merchant (''FCM'') registered with the Commission under the Act, for trading on behalf of U.S. customers as well, without Eurex being designated as a U.S. contract market. *See* CFTC Interpretative Letter No. 96–28 [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,669 (Feb. 29, 1996).

Subsequent to receiving the Exchanges' petition for exemptive relief, on July 23, 1999, the Division granted a no-action request submitted by LIFFE Administration and Management (which operates The London International Financial Futures and Options Exchange) to make its electronic trading and order matching system available to its members in the U.S. Similarly, on August 10, 1999, the Division granted the no-action requests submitted on behalf of Eurex, the Sydney Futures Exchange Limited, the New Zealand Futures and Options Exchange Limited, and the ParisBourse SBF SA with respect to the placement of their respective electronic trading and order matching systems in the U.S.

[4] Currently, U.S. customers can access the products offered by foreign exchanges by: (1) communicating through a U.S. registered FCM or introducing broker (''IB'') (where the FCM or IB would relay the cutomer's order for execution to a foreign member of the foreign exchange by telephone, facsimile transmission, or other means); (2) communicating with a foreign firm that has received an exemption from registration under Part 30 of the Commission's regulations; or (3) utilizing cross-exchange access programs or other trading links between U.S. contract markets and foreign exchanges (*see e.g.*, the trading of Marche a Terme International de France products through Chicago Mercantile Exchange Globex terminals located in the U.S.).

subject to the same statutory and regulatory requirements as existing U.S. contract markets. The Exchanges state that this no-action process severely hampers their ability to compete with such foreign exchanges.

The Commission wishes to emphasize that it has not made any prior judgment with respect to any element of the Exchanges' petition for exemptive relief and that it will give serious consideration to all of the issues raised by, and the comments received on, the petition. The Commission urges members of the interested public, including U.S. contract markets, market participants, Commission registrants and end-users, as well as other federal government regulators to comment on all aspects of the petition.

II. The Exchanges' Petition for Exemption

A. Contract Market Designation Process for New Contract Submissions

Through their petition, the Exchanges are requesting that all boards of trade designated by the Commission as contract markets be exempt from complying with the contract market designation process for new contract submissions set forth in Sections 5 and 6 of the Act as well as any related statutory provisions, including Section 2(a)(8)(B)(ii) of the Act. The Exchanges state that they need the ability to list new contracts without being subject to the Act's review and approval process in order to remain competitive with foreign exchanges that have been or will be allowed to place electronic trading systems in the U.S. without being designated as contract markets by the Commission.

B. Review of New Rules or Rule Amendments

Through their petition, the Exchanges request that all boards of trade designated by the Commission as contract markets be exempt from complying with the contract market rule review process set forth in Section 5a(a)(12) of the Act.[5] Instead, the Exchanges are proposing that U.S. contract markets be required to provide notice of new rules or rule amendments to the Commission ten days in advance of the effective date. New rules and rule amendments submitted pursuant to this exemptive procedure would not be stayed or delayed unless the Commission determined that the rule was likely to cause fraud, render trading readily susceptible to manipulation, or threaten the financial integrity of the market.

C. Immediate Adoption and Implementation of Contract Market Trading Rules and Procedures That Are Comparable to Those of Competing Foreign Exchanges

Finally, the Exchanges are requesting that all boards of trade designated by the Commission as contract markets be exempt from pertinent provisions of the Act that would otherwise prevent such contract markets from responding immediately to competition from a foreign exchange authorized to operate trading terminals in the U.S. Specifically, under the exemptive relief requested by the Exchanges in their petition, any designated contract market would be able to implement trading rules and procedures comparable to those of the competing foreign exchange, provided that such rules and procedures would only apply to contracts listed by the U.S. contract market that are subject to direct competition from a contract listed by such foreign exchange. Under this procedure, designated contract markets would be able to adopt and implement such trading rules and procedures immediately upon submission to the Commission of the following materials: (1) the text of the rules and procedures being adopted; and (2) a certification that a foreign exchange employs comparable rules and procedures for a contract that directly competes with a contract listed by the U.S. contract market.

III. Request for Comment

The Commission requests comment on all aspects of the Exchanges' petition for exemption, including the issues identified below.

(1) The no-action process by which foreign exchanges are allowed to place their electronic trading terminals in the U.S. permits these exchanges to have limited access to the U.S. markets. For example, when the Division recently granted a no-action request submitted on behalf of LIFFE to make its electronic trading system available in the U.S., the Division imposed certain conditions that, among other things, require LIFFE to adhere to periodic reporting requirements apprising the Commission of the level of its business activity in the U.S. Moreover, if LIFFE wishes to make new contracts or products available in the U.S. through its electronic trading system, LIFFE must request and obtain supplementary no-action relief from the Division. To the extent that LIFFE substantially increases the quantity or modifies the nature of its business activity within the U.S., the Division has the discretion to re-examine the relief granted to LIFFE and, if appropriate, the Commission could require it to become designated as a contract market under Section 5 of the Act. Do the limitations on the degree of access that foreign exchanges will have to the U.S. markets pursuant to no-action positions alter the need for any of the exemptive relief sought by the Exchanges in their petition?

(2) In their petition, the Exchanges specifically request that all boards of trade designated by the Commission as contract markets be exempt from complying with the contract market designation process for new contract submissions set forth in Sections 5 and 6 of the Act as well as any related statutory provisions, including Section 2(a)(8(B)(ii) of the Act. The Commission recently proposed a two-year pilot program to permit the immediate listing of certain new contracts for trading for a specified period of time prior to obtaining Commission approval.[6] Please discuss whether the Commission's proposed rulemaking addresses the Exchange's stated need for relief in this area.

(3) In their petition, the Exchanges specifically request that all boards of trade designated by the Commission as contract markets be exempt from complying with the contract market rule review process set forth in Section 5a(a)(12) of the Act. Alternatively, the Exchanges propose that contract markets be required to provide notice of new rules or rule amendments to the Commission ten days in advance of the effective date and that the review of such proposals not be stayed or delayed unless the Commission determined that the rule was ''likely to cause fraud, render trading readily susceptible to manipulation, or threaten the financial integrity of the market.''

(a) Is this standard sufficient for the Commission to carry out its statutory obligations?

(b) In additional to fraud, manipulation, and financial integrity issues, are there any other issues which the Commission should address when determining whether to stay or delay the immediate implementation of proposed contract market rules or rule amendments?

(4) Please discuss the impact of any legal uncertainty on contract markets and market users if the Commission were to undertake disapproval of

[5] In their petition, the Exchanges indicate they are not requesting relief from those provisions of Section 5a(a)(12) of the Act which related to emergency rules. The Commission presumes that the Exchanges are not seeking an exemption from the contract market rule disapproval provisions of Section 5a(a)(12).

[6] *See* 64 FR 40528 (July 27, 1999).

contract market rules after their implementation.

(5) In their petition, the Exchanges specifically request that all boards of trade designated by the Commission as contract markets be exempt from pertinent provisions of the Act that would otherwise prevent such contract markets from responding immediately to competition from those foreign exchanges authorized to operate trading terminals in the U.S. Specifically, under this area of requested exemptive relief, contract markets would be able to adopt and implement trading rules and procedures comparable to those of competing foreign exchanges immediately upon their submission to the Commission along with certain accompanying certifications when the foreign exchanges are offering contracts in direct competition with those of a U.S. exchange.

(a) Under the proposal, it might be possible for a single U.S. contract to be subject to rules drawn from a number of different competing foreign exchanges. It also might be possible for different contracts trading side-by-side at a particular U.S. contract market to be subject to different sets of rules based upon the rules of competing foreign exchanges. Please discuss the implications of these possibilities, including their impact, if any, upon the ability of the Commission, the contract markets, or Commission registrants to discharge their regulatory responsibilities.

(b) The Exchanges preface their specific requests for exemptive relief with the general request that the ''Commission exercise its authority under Section 4(c) of the Act and grant certain exemptions from provisions of the Act except for . . . the provisions that prohibit manipulation.'' If the Commission were to grant the exemptive relief requested, could the Commission and the contract markets ensure that such comparable trading rules and procedures were not inconsistent with the Act's prohibitions against fraud and manipulation?

(c) Implicit in the Exchanges' petition is the notion that rules established for electronic trading on foreign exchanges could be applied to open outcry markets. Are there any public interest issues raised by applying rules designed for electronic trading systems to open outcry markets?

(6) The Commission's public comment process provides an opportunity to interested parties, both private and governmental, to comment on any issues related to proposed contracts and significant contract market rule changes (*e.g.*, electronic trading systems, alternative execution procedures). Under the Exchanges' petition, proposals in each of the three areas of requested relief would not be subject to a public comment period. Please discuss whether the lack of a public comment process would have any impact on the ability of the Commission to discharge its regulatory responsibilities in these areas.

(7) In their petition, the Exchanges indicate that U.S. contract markets may be disadvantaged by the ability of foreign exchanges to pay for order flow and/or provide inducements for market makers or customers to trade their products. What are the differences between foreign exchange rules related to order flow and liquidity programs and the U.S. contract market rules that the Commission has approved in these areas? [7]

(8) In their petition, the Exchanges state that, in contrast to foreign exchanges, U.S. contract markets are unable to adopt certain trading methodologies that provide guaranteed price and/or execution quantity. In June 1999, the Commission issued an Advisory on Alternative Execution, or Block Trading, Procedures for the Futures Industry,[8] in which it announced its intention to consider contract market proposals to adopt similar alternative execution methodologies. Please discuss whether there are any modifications that could be made to the Commission's Advisory that would further address the Exchanges' concerns in this regard. Please also discuss the extent to which such changes would be consistent with the Commission's responsibilities for ensuring the integrity and economic utility of futures markets and protecting market participants against manipulation, abusive trade practices, and fraud.

(9) In their petition, the Exchange states that U.S. contract markets are not permitted to delay the reporting of transaction information in order to accommodate market participants who desire to withhold relevant information about their transactions until they have been able to act in another market or execute additional transactions. The Exchanges believe that the ability of foreign exchanges to delay the reporting of certain types of transactions, such as block trades, to the general marketplace will enable them to capture market share from U.S. contract markets. Please discuss whether there are any modifications that could be made to the Commission's Block Trading Advisory that would further address the Exchanges' concerns in this regard. Please also discuss the extent to which such change would be consistent with the Commission's responsibilities as described in question 8 above.

(10) In their petition, the Exchanges state that the Commission, in its review of U.S. contract markets' electronic trading systems, requires account identification information to be entered into trading terminals prior to the execution of customer orders. The Exchanges believe that U.S. contract markets may lose market share to competing foreign exchanges that are not subject to such a requirement. The Commission has allowed bunched orders for certain eligible customers to be placed on a contract market without specific customer account identification, either at the time of order placement or at the time of reporting order execution.[9] Please discuss whether there are modifications that could be made to the approach taken by the Commission in this regard that would be responsive to the Exchanges' concerns. Please also discuss the extent to which such changes would be consistent with the Commission's responsibilities as described in question 8 above.

(11) In their petition, the Exchanges state that U.S. contract markets may not launch new products on their electronic trading systems pending the Commission's review and approval of system performance, capacity and security tests. The Exchanges further state that their foreign competitors will not be subject to the same review and approval process. The Commission notes that its review of newly created electronic trading systems has been, and continues to be, based on principles developed by the international regulatory community—specifically the International Organization of Securities Commissions (''IOSCO'').[10] Should the Commission's review of electronic trading systems be based on standards

[7] *See, e.g.*, Coffee Sugar & Cocoa Exchange Registered Market Maker Program (approved by the Commission on April 30, 1991); Chicago Board of Trade Modified Market Maker Program for the Wilshire Small Cap Index Futures Contract (allowed into effect without prior Commission approval on June 18, 1993); Chicago Mercantile Exchange Principal Market Maker Program (approved by the Commission on April 20, 1995); New York Mercantile Exchange Specialist Market Maker Program (approved by the Commission on July 8, 1998).

[8] *See* FR 31195 (June 10, 1999); 64 FR 34851 (June 29, 1999) (corrections).

[9] *See* 63 FR 45699 (August 27, 1998).

[10] *See* IOSCO, Report of the Technical Committee, *Screen-Based Trading Systems for Derivative Products* (June 1990).

other than or different from those contained in the IOSCO principles?

IV. Conclusion

As noted above, the full text of the Exchanges' petition is reproduced below.

Issued in Washington, DC, on August 19, 1999 by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

Chicago Mercantile Exchange

June 25, 1999.

Ms. Jean A. Webb,

Office of the Secretariat, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581

Re: *Petition for Exemption Pursuant to Section 4(c).*

Dear Ms. Webb:

On behalf of the Chicago Board of Trade, Chicago Mercantile Exchange and New York Mercantile Exchange, I am submitting the enclosed petition to the Commission pursuant to Section 4(c) of the Commodity Exchange Act.

Very truly yours,

Carl A. Royal.

Enclosure.

Petition for Exemption Pursuant to Section 4(c) of the Commodity Exchange Act

June 25, 1999

Pursuant to Section 4(c) of the Commodity Exchange Act (''Act''), the Chicago Board of Trade (''CBOT''), Chicago Mercantile Exchange (''CME'') and New York Mercantile Exchange (''NYMEX''), designated contract markets with their principal places of business in the United States (the ''Exchanges''), respectfully petition the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') for exemptive relief. This petition seeks exemptions necessary to promote responsible innovation and fair competition. This request is made in response to the Commission Order dated June 2, 1999, instructing CFTC staff ''to begin immediately processing no-action requests from foreign boards of trade seeking to place trading terminals in the United States. . . .''

Granting this petition is essential to permit the Exchanges to avoid unfair competition in the United States from foreign exchanges that have been and will be permitted to establish trading facilities in this country pursuant to no-action letters issued by CFTC staff. Those foreign exchanges have not sought designation to operate as contract markets in the United States and therefore will not be required to comply with the Commodity Exchange Act.

The Exchanges requested that this petition be processed and approved in an expedited fashion to comply with the terms of the Commission's Order of June 2, 1999, and with Senator Richard Lugar's letter to the Commission dated May 6, 1999. It is essential that the relief afforded to U.S. exchanges be timed so that foreign exchanges are not afforded any unfair competitive advantage. Some of those foreign exchanges are subject to far less regulation than U.S. exchanges and employ trading rules and procedures that are prohibited by the Act. If foreign exchanges receive no-action relief before this petition is granted, the Exchanges will be placed at a severe competitive disadvantage.

I. Relief Sought

The Exchanges seek permission to respond, without delay, to any new contract, contract amendment, advantageous trading practice, or less costly regulatory device offered or likely to be offered by foreign exchanges on U.S. based trading terminals. This principle means that the Exchanges must to be able to list new contracts and amend existing contracts without being delayed by a lengthy CFTC approval process. The Exchanges must be free to offer any trading methodology, including prearranged trades, cross trades, block trades, etc., offered any trading methodology, including prearranged trades, cross trades, block trades, etc., offered by a foreign exchange, and such trades must be accompanied by the same reporting requirements that might make the foreign exchange a more attractive venue. The Exchanges must be free to offer the same order entry procedures employed by such foreign exchanges if those order entry and customer identification procedures make it more attractive to trade on the foreign exchange. The Exchanges must be free to operate and modify their trading systems with no more governmental interference than is imposed on the foreign exchanges.

In order to promote responsible innovation and fair competition, the Exchanges hereby respectfully requests that the Commission exercise its authority under Section 4(c) of the Act and grant certain exemptions from provisions of the Act except for Sections 4(a), 2(a)(1)(B), and the provisions that prohibit manipulation. The Exchanges request that the exemption be granted in the following form:

Pursuant to its powers under Section 4(c)(1) of the Commodity Exchange Act, the Commission hereby determines, consistent with the public interest and in order to promote responsible economic or financial innovation and fair competition, that notwithstanding any other provision of law, rule, regulation or order of the Commission:

Boards of trade that have been designated as contract markets:

1. Shall be exempted, to the extent of the Commission's power under Section 4(c)(1), from complying with the contract market designation process for new contract submissions under sections 5 and 6 of the Act as well as any related regulations or statutory provisions, including section 2(a)(8)(B)(ii) of the Act.

2. Shall be exempted, to the extent of the Commission's power under Section 4(c)(1), from the rule approval provisions of section 5a(a)(12) of the Act and related regulations, except the provisions relating to emergency rules, if the contract market provides notice of new rules or rule changes to the Commission 10 days in advance of the effective date. Rules submitted pursuant to this exemption shall not be stayed or delayed unless the Commission finds that the rule is likely to cause fraud, render trading readily susceptible to manipulation or threaten the financial integrity of the market. The Commission's power to alter or supplement any rule change implemented pursuant to this exemption shall not be diminished.

3. Shall be exempted, to the extent of the Commission's power under section 4(c)(1), to permit such contract market to respond to competition from any foreign exchange authorized to locate trading terminals in the U.S. Any designated contract market may implement trading rules and procedures comparable to those of the competing foreign exchange, provided that such rules and procedures shall apply only to contracts listed by the contract market that are subject to direct competition from contract listed by such foreign exchange. The contract market may adopt and implement such rules and procedures immediately upon its submission to the Commission of (i) the text of the rules and procedures being adopted and (ii) its certification that the foreign exchange employs comparable rules and procedures for trading a contract that competes directly with the contract listed by the contract market.

II. Statutory Background

On October 28, 1992, the Futures Trading Practices Act of 1992 (the ''1992 Act') was signed into law. The 1992 Act added new Section 4(c)(1) to the Act and authorized the Commission, by rule, regulation or order, to exempt any agreement, contract or transaction, or class thereof, from the exchange-trading requirements of Section 4(a) or any other requirement of the Act other than Section 2(a)(1)(B) of the Act. In granting exemptive authority to the CFTC under Section 4(c), the Conferees states: ''The Conferees intend that the Commission, in considering fair competition, will implement this provision in a fair and even-handed manner to products and systems sponsored by exchanges and non-exchanges alike.''[1]

III. Standards for Exemptive Relief

Section 4(c)(1) of the Act provides that the Commission may exempt any agreement, transaction or contract from any provisions of the Act (except Section 2(a)(1)(B)) if the Commission determines that the exemption would be consistent with the public interest. In this regard, the Conferees stated that the ''public interest'' under Section 4(c) includes the ''national public interests noted in the Act, the prevention of fraud and the preservation of the financial integrity of the markets, as well as the promotion of responsible economic or financial innovation and fair competition.'' The Conference Report noted that the reference to the purposes of the Act was intended ''to underscored [the] expectation that the Commission will assess the impact of a proposed exemption on the maintenance of the integrity and soundness of markets and market participants.''[2]

The Commission was granted authority to: ''exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection 9a) of this section [the

[1] House Conference Report No. 102–978 to H.R. 707. p. 78.

[2] *Id.*

exchange trading requirement] (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for states periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a) of this section, or from any other provision of this chapter (except section 2a of this title), if the Commission determines that the exemption would be consistent with the public interest.''

In plain language, the Commission was authorized to grant a designated contact market an exemption from any provision of the CEA, other than the exchange trading requirements and the Shad/Johnson Accord, if the Commission determined that the ''exemption would be consistent with the public interest.'' The exchange trading requirements set forth in Section 4(a) are:

1. such transaction is conducted on or subject to the rules of a board of trade which has been designated by the Commission as a ''contact market'' for such commodity;

2. such contract is executed or consummated by or through a member of such contract market; and

3. such contract is evidenced by a record which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: Provided, That each contract market member shall keep such record for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, which record shall at all times be open to the inspection of any representative of the Commissioner or the Department of Justice.

Finally, Section 15 of the Act provides, in pertinent part, that the CFTC must consider the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives, policies, and purposes of the Act in adopting any exemption under Section 4(c) of the Act. As set forth below, approval of the petition is in accordance with the standards enumerated in the Act, while denial of this petition would clearly violate the strictures of Section 15.

IV. The Petition Satisfies the Statutory Standards for Relief

The Commission has apparently decided to permit foreign futures exchanges to operate electronic trading systems in the U.S. without seeking designation as contract markets or an exemption from designation. In consequence, U.S. futures exchanges face a devastating, unfair challenge. U.S. exchanges will be required to compete in the U.S. under the burden of a heavy regulatory handicap that does not apply to foreign exchanges offering U.S. customers clone contracts on identical trading facilities.

The pending no-action letters are sought to immunize foreign exchanges from the same provisions of the Commodity Exchange Act that constrain U.S. exchanges' ability to respond to competition. For example, some foreign exchanges will be able to list new products and change contract terms and conditions without waiting for approval from any regulator. Foreign exchanges could clone and trade the most important contracts traded on U.S. exchanges and capture U.S. exchange business by using competitive devices that are not available to U.S. exchanges. For example, some foreign exchanges could pay for order flow, permit pre-arranged trades, facilitate block trades with delayed price reporting, dispense with strict audit trail rules, and allow large traders to escape reporting requirements.

Open systems allow customers to chose between comparable contracts listed by competing exchanges available for trading on the same terminal. Minor differences between the regulatory environments of the competing exchanges can have enormous impacts on order flow. While every exchange must accept the verdict that will be rendered in a fair competitive environment, no exchange should be forced to compete with severe constraints on its ability to offer equivalent trading practices.

Therefore, the Commission should not admit foreign exchanges without acting to permit U.S. based exchanges to compete on the same regulatory terms with the foreign exchanges. The Commission should immediately exercise its power under Section 4(c) of the Act to permit the U.S. futures exchanges to operate under the same standards and conditions that govern such foreign exchanges admitted into the U.S.

The following issues, which are illustrative of a far longer list, are among those that need to be addressed by exempting U.S. exchanges from the constraints of the Act in order to respond to foreign competition. Eventually, these issues should be resolved by statutory amendment.

1. Pre-approval of Contracts, Contract Amendments and Rules: The competitive impact of permitting foreign exchanges to clone and list U.S. exchange contract inventions while U.S. exchanges are trapped in a lengthy approval process is devastating. The same is true with respect to rules regarding new trading methods or even changes to existing contracts.

2. Payment for Order Flow: Even if a U.S. exchange has a tangibly better trading environment for customers, the lure of payment for order flow and the difficulty of demonstrating actual damages to customers is likely to decide a competitive battle. If U.S. exchanges cannot counter competitive attacks based on such payments, the focus of liquidity is likely to move. Once moved, it cannot easily be recaptured, especially if the foreign exchange has no constraint on its ability to respond.

3. Inducements to Make Markets or Trade: Customer business ordinarily follows liquidity. A short-term program to buy liquidity, if it cannot be matched by the U.S. exchange for regulatory reasons, can change the long-term location of markets without any benefit to customers.

4. Guaranteed Pricing or Execution: U.S. exchanges cannot permit the type of prearrangement involved in guaranteeing price or execution quantity. The philosophy of the Act is to discover accurate prices through open competition. Firms that profit more from arranging such trades than the commission that would be earned through bringing a customer to an open outcry market will divert business to the foreign exchange that permits such practices.

5. Large Trade Reporting, Position Limits: Position limits are controlled by Section 4a of the Act. The statutory limitations do not apply to foreign exchanges that trade contracts that directly impact interstate commerce. The Commission imposed large trader reporting requirements by regulation on contracts traded on designated exchanges. See parts 16, 17 18, 19 and 21. Such limits will not apply to U.S. customers trading on foreign exchange terminals in the U.S. even if the contracts are clones of U.S. exchange contracts. Position limits and reporting requirements have been seen to impact the choice of trading venue by sophisticated customers. Many large sophisticated traders can be expected to transfer their business to foreign exchanges to avoid limits and disclosure.

6. Price Reporting: Many significant customers would rather withhold information about their trades until they have been able to act in another market or execute additional transactions. The Commission has precluded U.S. markets from delaying price reports for such purposes. The Act does not require real time price reports. If a competing foreign exchange, operating on the same terminal as a U.S. exchange, offers to delay reporting of large block trades, it is predictable where such trades will be registered. In fact LIFFE permits block traders to delay price reports.

7. Account Identification: Neither the Act nor the Regulations specifically require that the account identifying number be entered into the trading terminal prior to execution of the customer order. However, the CFTC staff has imposed such a requirement as a condition of approval of U.S. exchange electronic trading systems. Orders are being entered on foreign exchange trading terminals in the U.S. without first entering an account identifier. If the same contract can be traded on two exchanges, and one slows order entry with technical requirements, it is clear which exchange will get the business.

8. System Performance, Capacity and Security: In addition to burdening U.S. exchanges by requiring that new contracts and trading rules be approved in advance, the Commission has precluded U.S. exchanges from launching new products on their electronic trading systems until it has reviewed and approved performance and capacity tests. Foreign competitors will not be equally constrained under the proposed no-action approach.

V. Conclusion

The exemptive relief requested by this petition should be granted immediately. If the Commission grants the pending no-action requests of foreign exchanges to install trading terminals in the U.S. before the Exchanges achieve regulatory parity, the Exchanges would be placed at a severe competitive disadvantage. Granting no-action relief to foreign exchanges while refusing to grant commensurate relief to the U.S.

Exchanges would violate both Section 4(c) and Section 15 of the Act.

[FR Doc. 99–22013 Filed 8–24–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Application of the New York Mercantile Exchange in Mid-Columbia Electricity Futures Contracts Submitted Under 45-Day Fast Track Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has applied for designation as a contract market in Mid-Columbia electricity futures contracts. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before September 9, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the NYMEX Mid-Columbia electricity futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Joseph Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, telephone (202) 418–5282. Facsimile number: (202) 418–5527. Electronic mail: jstorer@cftc.gov.

SUPPLEMENTARY INFORMATION: The proposed designation application was submitted pursuant to the Commission's Fast Track procedures for streamlining the review of futures contract rule amendments and new contract approvals (62 FR 10434). Under those procedures, the proposal, absent any contrary action by the Commission, may be deemed approved at the close of business on October 4, 1999, 45 days after receipt of the proposal. In view of the limited review period under the Fast Track procedures, the Commission has determined to publish for public comment notice of the availability of the terms and conditions for 15 days, rather than 30 days as provided for proposals submitted under the regular review procedures.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the internet on the CFTC website at www.cftc.gov under ''What's New & Pending''.

Other materials submitted by the NYMEX in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data views, or arguments on the proposals, or with respect to other materials submitted by the NYMEX should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on August 19, 1999.

John R. Mielke,

Acting Director.

[FR Doc. 99–22012 Filed 8–24–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB review; comment request

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: Application for the U.S. Army ROTC 2-Year and 3-Year Scholarship; ROTC Cadet Command Form 166–R; OMB Number 0702–0083.

Type of Request: Reinstatement.

Number of Respondents: 3,870.

Responses per Respondent: 1.

Annual Responses: 3,870.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 1,935.

Needs and Uses: The application is used in the selection process for 2-year and 3-year ROTC scholarships. The ROTC scholarship is an incentive to attract men and women to pursue educational degrees in the academic disciplines required by the Army. The applications are available to students of colleges and universities that host Army ROTC. Completed applications are submitted to Headquarters, Cadet Command for review, screening, and selection of scholarship recipients.

Affected Public: Individuals or Households.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building , Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 19, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21969 Filed 8–24–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.