

which there exists a liquid cash market; *provided however*, that the terms and conditions of such transaction are in conformity with the underlying cash market (or, in the absence of conformity, are necessary or appropriate) and that trading is not readily susceptible to price manipulation, nor to causing or being used in the manipulation of the price of any underlying commodity;

(2) Is cleared through a clearing organization subject to Commission oversight;

(3) Except with respect to a broad-based index, does not involve any, or the price of any, wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, millfeed, butter, eggs, onions, solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, or frozen concentrated orange juice;

(4) Does not involve any commodity futures contract or commodity option contract in which there is any open interest and in which there has been any trading on any board of trade during the six consecutive complete calendar months preceding the date of application to trade as a section 4(c) contract market transaction, unless the transaction can reasonably be distinguished from any such futures contract or commodity option contract based on its hedging function and/or pricing basis; *provided however*, that (i) the five- and ten-year interest rate swaps futures contracts, the Rolling Spot Contracts in foreign currency, and the foreign currency forward futures contracts and options thereon, may be traded as section 4(c) contract market transactions, and (ii) a flexible commodity option may be listed as a section 4(c) contract market transaction prior to listing such option for trading otherwise; and

(5) Does not involve any contracts of sale (or options on such contracts) subject to the provisions of section 2(a)(1)(B) of the Act, including contracts for future delivery of a group or index of securities (or any interest therein or based upon the value thereof).

(b) The contract market on which the section 4(c) contract market transaction is traded need not satisfy the requirements of §1.61 of this chapter.

(c) The contract market on which the section 4(c) contract market transaction is traded or executed complies with the provisions of this part.

§36.3 Section 4(c) contract market trading rules.

A board of trade may submit for Commission review, pursuant to the expedited procedures set forth in this paragraph, trading rules for section 4(c) contract market transactions (“special execution procedures”) that need not meet the requirements of sections 4b(a)(iv), 4b(b) and 4c(a) of the Act and §§1.38(a), 1.39, 155.2, 155.3 and 155.4 of this chapter, provided that such section 4(c) contract market trading rules satisfy the terms and conditions of this section.

(a) Definition. “Special execution procedures” means contract market rules permitting noncompetitive bids, offers, negotiation, and/or execution of orders and transactions.

(b) Special execution procedures that permit a member to trade for his own account opposite the account of another member must provide for an audit trail that meets the requirements of §1.35(a), (e), (g) and (i) and §1.38(b) of this chapter.

(c) Special execution procedures that permit a futures commission merchant or floor broker to take the opposite side of a customer order for its own account or permit the execution of orders directly between customer accounts of different principals must provide for an audit trail that meets the requirements of paragraph (b) of this section and that also requires a written record of each customer order which must consist of customer account identification, terms of the order, including price-specific instruction from the customer, order number, and time of order receipt. No order shall be executed without price-specific instruction from the customer. Procedures submitted under this paragraph also must include a specific prohibition against disclosure of customer order information other than to facilitate execution

thereof and a requirement that members provide to their customers, in writing, prior to the initial execution for that customer of any transaction using these procedures, a description of the special execution procedures and, in particular, how they vary from on-floor competitive trading procedures.

(d) Section 4(c) contract market trading rules that provide that transactions may be executed using any combination of special execution procedures and competitive on-floor trading procedures must set forth the circumstances under which such transactions could occur competitively on-floor, provided that any transaction executed using special execution procedures be in compliance with paragraphs (b) and (c) of this section, and include a specific prohibition against frontrunning.

(e) Section 4(c) contract market trading rules also must provide for the following:

(1) Record maintenance and retention in accordance with §1.31 of this chapter;

(2) The immediate post-execution report of each purchase and each sale transaction and dissemination on the relevant market floor, trading screen, and/or vendor service through the board of trade's market quotation system of the price, quantity, and contract traded pursuant to this section. Transactions may be executed pursuant to this section only during hours in which such immediate post-execution dissemination is available;

(3) The report to clearing, and clearing, of each transaction concluded pursuant to this section as quickly as practicable, but in no event later than required for trades subject to §§1.38 and 1.39 of this chapter; and

(4) Compliance with §36.9 of this part, except that any trade executed using special execution procedures in compliance with this section need not be in compliance with section 4b(a)(iv) of the Act.

(f)(1) Transactions offered or entered into in compliance with special execution procedures submitted to the Commission and permitted to become effective pursuant to the terms of this part shall not be deemed to violate sections 4b(a) (iv), 4b(b), or 4c(a) of the Act or

§§1.38(a), 1.39, 155.2, 155.3 or 155.4 of this chapter.

(2) No person shall offer or enter into any section 4(c) contract market transaction, unless it meets all requirements of the applicable special execution procedures submitted to the Commission and permitted to become effective pursuant to the terms of this part.

(g) Submission Procedures

(1) A board of trade seeking review of a section 4(c) contract market trading rule shall furnish one copy of the information set forth in paragraphs (b), (c) or (d) and (e) of this section, as applicable, to the Commission at its Washington, D.C. headquarters. One copy shall also be transmitted by the board of trade to the regional office of the Commission having local jurisdiction over the board of trade. Each submission shall be labeled as being submitted pursuant to this section.

(2) Section 4(c) contract market trading rules submitted by the contract market pursuant to this section shall become effective ten days after receipt of the submission (or such earlier time as may be determined by the Commission or its delegee) unless, within the ten-day period, the Commission or its delegee notifies the board of trade in writing that the submission does not meet the conditions of this section. Upon such notification by the Commission or its delegee, the submission will be subject to the usual procedures for rule approval under section 5a(a)(12)(A) of the Act and §1.41(b) of this chapter.

(3) Notwithstanding the foregoing, if a contract market submits for review pursuant to this paragraph large order execution procedures that are substantially similar to procedures previously approved by the Commission pursuant to §1.39 of this chapter for non-section 4(c) contract market transactions, then such procedures shall be deemed effective upon Commission receipt thereof.

(4) Once trading in a section 4(c) contract market transaction has commenced, any modification to any approved section 4(c) contract market trading rule must be submitted to the Commission for review pursuant to the standards and procedures for section 4(c) contract market trading rules set forth in this section.

(5) Other section 4(c) contract market trading rules, which do not conform to the specific trading standards set forth herein and which do not satisfy the requirements of the Act and Commission Rules, may be submitted for Commission approval in accordance with section 5(a)(12)(A) of the Act and §1.41(b) of this chapter under the usual timeframes.

§36.4 Listing of section 4(c) contract market transactions.

(a) A board of trade which has been initially designated as a contract market and has otherwise met the requirements of sections 5 and 5a of the Act (other than section 5a(a)(12)(A)) seeking to permit trading in a section 4(c) contract market transaction shall furnish to the Commission at least ten days prior to its proposed effective date, the rules setting forth the terms and conditions of the proposed section 4(c) contract market transaction.

(b) The board of trade shall furnish one copy of the information set forth in paragraph (a) of this section to the Commission at its Washington, D.C. headquarters. One copy shall also be transmitted by the board of trade to the regional office of the Commission having local jurisdiction over the board of trade. Each submission shall be labeled as being submitted pursuant to this part.

(c) A board of trade which has been initially designated as a contract market and has otherwise met the requirements of sections 5 and 5a of the Act (other than section 5a(a)(12)(A)) and which meets the requirements of §36.2 shall be deemed to be designated as a contract market in section 4(c) contract market transactions, the rules submitted shall be deemed to be approved, and section 4(c) contract market transactions may be traded or executed thereon ten days after receipt of the submission pursuant to this section unless, within the ten-day period, the Commission or its delegee notifies the board of trade in writing that the proposed transactions do not meet the requirements of §36.2. Upon such notification by the Commission or its delegee, the submission will be subject to the usual procedures for rule ap-

proval under section 5a(a)(12)(A) of the Act and §1.41(b) of this chapter.

(d) Any modification to the rules setting forth the terms and conditions of a section 4(c) contract market transaction shall be submitted to the Commission pursuant to the procedure set forth in this section.

§36.5 Reporting requirements.

(a) The reporting requirements set forth in this section shall govern section 4(c) contract market transactions in lieu of the requirements of parts 16, 17, 18, and 19 of this chapter.

(b) The provisions of §15.05 and part 21 of this chapter shall apply to section 4(c) contract market transactions as though they were set forth herein and included specific references to eligible participants.

(c) *Reports by contract markets to the Commission.* Each contract market shall submit to the Commission in accordance with paragraph (d) of this section the following information with respect to section 4(c) contract market transactions by commodity or type of contract as specified by the Commission:

(1) For each commodity or type of contract,

(i) The total gross open contracts at the end of the day covered by the report,

(ii) Total transactions, by type of transaction, as specified by the Commission, which occurred during the day covered by the report, and

(iii) Prices, as specified by the Commission.

(2) For each clearing member by proprietary and customer account,

(i) The total of all long open contracts and the total of all short open contracts carried at the end of the day covered by the report, and

(ii) The quantity of contracts transacted during the day covered by the report, by type of transaction, as specified by the Commission.

(3) *Large trader reports.*

(i) *Reportable positions.* Reportable long and short positions of traders as defined by contract market rules and approved by the Commission, separately for each futures commission merchant or member of the contract market.