

and has determined in its discretion to permit this exemption; or

(3) Following Commission approval of the contract market bylaw, rule, regulation, or resolution submitted pursuant to paragraph (c) of this section.

[51 FR 17473, May 13, 1986, as amended at 57 FR 20637, May 14, 1992; 59 FR 5316, Feb. 4, 1994]

### § 5.3 [Reserved]

#### APPENDIX A TO PART 5—GUIDELINE NO. 1; INTERPRETIVE STATEMENT REGARDING ECONOMIC AND PUBLIC INTEREST REQUIREMENTS FOR CONTRACT MARKET DESIGNATION

For purposes of a board of trade seeking designation as a contract market and thereafter for the purpose of demonstrating continued compliance with the requirements of sections 4c, 5 and 5a(a) of the Commodity Exchange Act, and regulations thereunder, the following shall be provided to the Commission. The board of trade shall furnish to the Commission at its Washington, DC headquarters three copies of the application including the proposed rules.

(a) *For Designation of Contract Markets for Futures—(1) Description of the Cash Market.* In support of the justification and demonstration to be furnished under paragraph (a)(2) of this Guideline, a board of trade shall submit with its application a description of the cash market for the commodity on which the contract is based: *Provided, however,* That no such description is required when the same, or a closely related commodity, is already designated as a contract and is not dormant within the meaning of § 5.2 of this part, and when the terms and conditions of the proposed contract are the same, or substantially the same, as those of the designated contract market. When a particular term(s) or condition(s) of the proposed contract differs from those of the designated contract market, but otherwise is substantially the same, the description of the cash market can be confined to those aspects relevant to the particular term(s) or condition(s). For purposes of this section, the term cash market includes all aspects of the spot and forward markets in which the commodity underlying the contract is merchandised and for which the contract serves a hedging or price basing function. As applicable to the justification of individual contract terms or the contract's hedging or price basing function, the cash market description shall include:

(i) Production of the underlying commodity, including as appropriate, geographical locations and seasonal patterns in the case of tangible commodities and sched-

uled issuances in the case of financial instruments;

(ii) Consumption of the underlying commodity, including, as appropriate, geographic locations and seasonal patterns of intermediate and ultimate consumption in the case of tangible commodities;

(iii) The nature and structure of the cash marketing channels, including the nature and number of marketing institutions, the nature of the forward contracting market, and the manner in which the price of the commodity is determined at various stages in its marketing;

(iv) The prevalent means of communications, methods of financing commodity ownership, and, in the case of tangible commodities, the manner in which tangible commodities are transported and stored; and

(v) Information provided by the board of trade pursuant to this paragraph shall include statistical data when applicable and when reasonably available. Such data shall cover a period of time sufficient to show accurately the historical patterns of production, consumption and marketing of the commodity which are relevant to the pricing or hedging use of the contract and/or the specification of its terms and conditions. In the absence of a justification of providing data from a shorter period, at least five (5) years of such data should be provided. If the board of trade through reasonable effort cannot obtain sufficient data, interviews with, or statements by, persons having knowledge of the cash market may be used to supplement or, if necessary, substitute for quantitative information.

(2) *Justification of Individual Contract Terms and Conditions.* A board of trade shall submit an analysis and justification of significant individual terms and conditions of the contract. Such analysis and justification for each term and condition should be supported in the manner provided by section (a)(1)(v) of the Guideline: *Provided, however,* That no such analysis or justification is required, when a contract on the same or a closely related commodity is already designated as a contract market and is not dormant within the meaning of § 5.2 of this part, and when the terms and conditions of the proposed contract are the same, or substantially the same, as those of the designated contract market. Instead, the individual term(s) or condition(s) of the proposed contract need only be referenced to the original, approved term(s) or condition(s). When, however, a particular term(s) or condition(s) of the proposed contract differs from that of the designated contract market, only the particular term(s) or condition(s) which differs must be analyzed or justified. When the proposed contract is substantially different from a designated contract market which is not dormant within the meaning of § 5.2 of this part, but an individual term(s) or condition(s) is