

American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

P. *Annual Reports.* CA-PEQ shall publish an annual report including a statement of its operating expenses and data on the distribution of proceeds, as reflected in the audited financial statement of the CA-PEQ TRQ System.

III. *Cooperation with the U.S.*

Government and with the Governments of El Salvador, Guatemala, Honduras, and Nicaragua. CA-PEQ will provide whatever information or consultations may be useful in order to ensure effective consultations between the government of the United States of America and the governments of El Salvador, Guatemala, and Nicaragua concerning the implementation and operation of the TRQ System. In particular, while maintaining the confidentiality of information submitted by bidders and Members, CA-PEQ will provide its annual report, regular reports following each tender held, reports on distributions of tender proceeds, and any other information that might be requested by the U.S. Government. Directly or through the U.S. Government, CA-PEQ will endeavor to accommodate any information request from the governments of El Salvador, Guatemala, Honduras, and Nicaragua, while protecting confidential information; and will consult with officials of those governments as appropriate.

IV. *Miscellaneous Implementing Provisions.* CA-PEQ and/or Members may (i) meet, discuss and provide for an administrative structure to implement the foregoing tariff-rate quota management system, assess its operations and discuss modifications as necessary to improve its workability; (ii) meet, exchange and discuss information regarding the structure and method for implementing the foregoing tariff-rate quota management system; (iii) meet, exchange and discuss the types of information needed regarding the bidding process and distribution of the bid proceeds, that are necessary for implementation of the system; (iv) meet, exchange and discuss information regarding U.S. and foreign government agreements, legislation and regulations affecting the tariff rate quota management system; and (v) otherwise meet, discuss and exchange information as necessary to implement the activities described above and take the necessary action to implement the foregoing tariff-rate quota management system.

Terms and Conditions of Certificate

1. Except as authorized in Paragraphs 2.H and 2.N of the Export Trade Activities and Methods of Operation, in engaging in Export Trade Activities and Methods of Operation, neither CA-PEQ, the Administrator, any Member, nor any neutral third party shall intentionally disclose, directly or indirectly, to any Member (including parent companies, subsidiaries, or other entities related to any Member) any information regarding any other Member's or bidder's costs, production, inventories, domestic prices, domestic sales, capacity to produce Products for domestic sale, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless such information is already generally available to the trade or public.

2. CA-PEQ and Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Definition

Neutral third party, as used in this Certificate of Review, means a party not otherwise associated with CA-PEQ or any Member and who is not engaged in the production, distribution, or sale of chicken.

Members (Within the Meaning of Section 325.2(1) of the Regulations)

Members (in addition to applicant): USA Poultry and Egg Export Council; Asociación Nacional de Avicultores de Guatemala; Asociación Nacional de Avicultores de El Salvador; and Asociación Nacional de Avicultores y Productores de Alimentos de Nicaragua.

Protection Provided by Certificate

This Certificate protects CA-PEQ; Members; and their directors, officers, and employees acting on their behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits CA-PEQ and Members from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to CA-PEQ by the Deputy Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or by the Attorney General concerning either (a) the viability or quality of the business plans of CA-PEQ or Members or (b) the legality of such business plans of CA-PEQ or Members under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

A copy of the certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4100, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: February 2, 2006.

Jeffrey C. Ansbacher,

Director, Export Trading Company Affairs.
[FR Doc. E6-1791 Filed 2-8-06; 8:45 am]

BILLING CODE 3510-DR-P

COMMODITY FUTURES TRADING COMMISSION

In the Matter of the New York Mercantile Exchange, Inc. Petition To Extend Interpretation Pursuant to Section 1a(12)(C) of the Commodity Exchange Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: On February 4, 2003, in response to a petition from the New York Mercantile Exchange, Inc. ("NYMEX" or "Exchange") the Commodity Futures Trading Commission ("Commission"), issued an order¹ pursuant to section 1a(12)(C) of the Commodity Exchange Act ("Act").

¹ 68 FR 5621 (February 4, 2003).

The order provided that, subject to certain conditions, Exchange floor brokers and floor traders (collectively referred to hereafter as “floor members”) who are registered with the Commission, when acting in a proprietary trading capacity, shall be deemed to be “eligible contract participants” as that term is defined in section 1a(12) of the Act. The order (hereafter the “original order” or the “ECP Order”) was effective for a two year period and would have expired on February 4, 2005.

On February 2, 2005, in response to a petition by the Exchange, the Commission determined to extend the original order for a further one-year period, to February 4, 2006 (hereafter, the “initial extension”). The initial extension contemplated that the Exchange might request a further modification or extension of the original order. On January 25, 2006, the Exchange petitioned the Commission to extend the original order for an additional six month period (hereafter, the “second extension”). Based on a review of all the relevant facts and circumstances, including its review of a report required as a condition of any further extension, detailing the experiences of the Exchange, its floor members and its clearing members under that order, the Commission has determined to grant the Exchange’s petition for a second extension of the original order.

Accordingly, subject to certain conditions as set forth in this order, NYMEX floor members, when acting for their own accounts, are permitted to continue to enter into certain specified over-the-counter (“OTC”) transactions in exempt commodities pursuant to section 2(h)(1) of the Act. In order to participate, the floor member must have its OTC trades guaranteed by, and cleared at NYMEX by, an Exchange clearing member that is registered with the Commission as a futures commission merchant (“FCM”) and that meets certain minimum working capital requirements. This order is effective for a six-month period commencing on the expiration date of the initial extension.

DATES: This order is effective on February 4, 2006.

FOR FURTHER INFORMATION CONTACT: Donald H. Heitman, Senior Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Telephone: 202-418-5041. E-mail: dheitman@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 1a(12) of the Act, as amended by the Commodity Futures Modernization Act of 2000 (“CFMA”), Public Law 106-554, which was signed into law on December 21, 2000, defines the term “eligible contract participant” (“ECP”) by listing those entities and individuals considered to be ECPs.² Under sections 2(d)(1), 2(g), and 2(h)(1) of the Act, OTC transactions³ entered into by ECPs in an “excluded commodity” or an “exempt commodity,” as those terms are defined by the Act,⁴ are exempt from all but certain requirements of the Act.⁵ Floor brokers and floor traders are explicitly included in the ECP definition only to

² Included generally in section 1a(12) as ECPs are: Financial institutions; insurance companies and investment companies subject to regulation; commodity pools and employee benefit plans subject to regulation and asset requirements; other entities subject to asset requirements or whose obligations are guaranteed by an ECP that meets a net worth requirement; governmental entities; brokers, dealers, and FCMs subject to regulation and organized as other than natural persons or proprietorships; brokers, dealers, and FCMs subject to regulation and organized as natural persons or proprietorships subject to total asset requirements or whose obligations are guaranteed by an ECP that meets a net worth requirement; floor brokers or floor traders subject to regulation in connection with transactions that take place on or through the facilities of a registered entity or an exempt board of trade; individuals subject to total asset requirements; an investment adviser or commodity trading advisor acting as an investment manager or fiduciary for another ECP; and any other person that the Commission deems eligible in light of the financial or other qualifications of the person.

³ For these purposes, OTC transactions are transactions that are not executed on a trading facility. As defined in section 1a(33)(A) of the Act, the term “trading facility” generally means “a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions by accepting bids and offers made by other participants that are open to multiple participants in the facility or system.”

⁴ Section 1a(14) defines the term “exempt commodity” to mean a commodity that is not an excluded commodity or an agricultural commodity. Section 1a(13) defines the term “excluded commodity” to mean, among other things, an interest rate, exchange rate, currency, credit risk or measure, debt instrument, measure of inflation, or other macroeconomic index or measure. Although the term “agricultural commodity” is not defined in the Act, section 1a(4) enumerates a non-exclusive list of several agricultural-based commodities and products. The broadest types of commodities that fall into the exempt category are energy and metals products.

⁵ OTC transactions in excluded commodities entered into by ECPs pursuant to section 2(d)(1) are generally not subject to any provision of the Act. OTC transactions in exempt or excluded commodities that are individually negotiated by ECPs pursuant to section 2(g) are also generally not subject to any provision of the Act. OTC transactions in exempt commodities entered into by ECPs pursuant to section 2(h)(1) are generally not subject to any provision of the Act other than anti-manipulation provisions and anti-fraud provisions in certain situations.

the extent that the floor broker or floor trader acts “in connection with any transaction that takes place on or through the facilities of a registered entity or an exempt board of trade, or any affiliate thereof, on which such person regularly trades.”⁶

The Act, however, gives the Commission discretion to expand the ECP category as it deems appropriate. Specifically, section 1a(12)(C) provides that the list of entities defined as ECPs shall include “any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person.”

II. The Original NYMEX Petition

A. Introduction

By letter dated May 23, 2002, NYMEX submitted a petition seeking a Commission interpretation pursuant to section 1a(12)(C) of the Act. Specifically, NYMEX, acting on behalf of Exchange floor members and member clearing firms, requested that the Commission make a determination pursuant to section 1a(12)(C) of the Act that floor members, when acting in a proprietary capacity, may enter into certain specified OTC transactions in exempt commodities pursuant to section 2(h)(1) of the Act if such floor members have obtained a financial guarantee for such transactions from an Exchange clearing member that is registered with the Commission as an FCM.⁷ NYMEX suggested that the permissible OTC transactions be limited to trading in a commodity that either (1) is listed only for clearing at the Exchange,⁸ or (2) is listed for trading and clearing at the Exchange and where Exchange rules provide for the exchange of futures for swaps (“EFS”) in that

⁶ Section 1a(12)(A)(x) of the Act.

⁷ To qualify for the section 2(h)(1) exemption, the transaction must: (1) Be in an exempt commodity, (2) be entered into by ECPs, and (3) not be entered into on a trading facility.

⁸ By letter dated May 24, 2002, NYMEX filed rule changes implementing an initiative to provide clearing services for specified energy contracts executed in the OTC markets. NYMEX certified that the rules comply with the Act and the Commission’s regulations. Under the provision, NYMEX initially listed 25 contracts that are entered into OTC and accepted for clearing by NYMEX, but are not listed for trading on the Exchange. In connection with the NYMEX initiative, on May 30, 2002, the Commission issued an order pursuant to section 4d of the Act. The order provides that, subject to certain terms and conditions, the NYMEX Clearinghouse and FCMs clearing through the NYMEX Clearinghouse may commingle customer funds used to margin, secure, or guarantee transactions in futures contracts executed in the OTC markets and cleared by the NYMEX Clearinghouse with other funds held in segregated accounts maintained in accordance with section 4d of the Act and Commission Regulations thereunder.

contract.⁹ By a petition dated February 6, 2004, NYMEX requested a technical amendment to the original order to apply it to a third category—contracts listed only for clearing at the Exchange and with respect to which the Exchange's rules provide for exchanges of options for options ("EOOs"). The Commission granted the Exchange's request by order dated February 10, 2004. NYMEX's initial petition further proposed that transactions subject to the requested interpretation would be subject to additional conditions and restrictions detailed in the petition and described below.¹⁰

B. Arguments in Support of the Original Petition

In its original petition, NYMEX offered supporting arguments based on both public interest considerations and a detailed analysis of the Act's ECP definition. Those arguments are fully described in the **Federal Register** notice implementing the original 2003 order.¹¹

C. Trading Restrictions and Exchange Oversight

In its original petition, NYMEX represented that it would have appropriate compliance systems in place to monitor OTC trading by Exchange floor members.¹² NYMEX also suggested that, consistent with the standards already applicable to floor members with respect to their trading on the Exchange, the Commission should provide that floor members' transactions in the permissible contracts that are not executed on a trading facility be executed only pursuant to the section 2(h)(1) exemption. As indicated

above, all section 2(h)(1) transactions would be subject to the Act's antimanipulation provisions and, in certain situations, its antifraud provisions.¹³ Finally, the Exchange represented that it would agree, as a condition for its members participating in the OTC markets, to limit OTC trading by floor members such that the counterparties to their trades must not be other floor members for contracts that are listed for trading on the Exchange. Thus, for example, floor members could not be counterparties in connection with an OTC natural gas swap to be exchanged for a futures position in the NYMEX Natural Gas Futures contract. NYMEX floor members could be counterparties in connection with a Chicago Basis swap that is subsequently cleared at NYMEX through EFS procedures because that contract is listed only for clearing at the Exchange.

D. The Commission's Conclusion Regarding the Original Petition

After consideration of the original NYMEX petition, the Commission determined that NYMEX floor members, subject to certain conditions and for a two-year period commencing on the date of publication of the order in the **Federal Register**, would be eligible to be ECPs as that term is defined in section 1a(12) of the Act.¹⁴ The floor members were required to meet the financial qualifications of an ECP by having a financial guarantee for the OTC transactions from a NYMEX clearing member that is registered as an FCM and that meets certain minimum working capital requirements.

The Commission noted that the execution and clearing of such transactions has financial implications for the clearing system.¹⁵ Thus, the Commission added certain safeguards to the original order to limit the possibility of a trader entering into OTC transactions that could create financial difficulty for the guarantor FCM, the clearing entity or other clearing firms. First, the guarantor FCM must clear, at NYMEX, every OTC transaction for which it provides such a guarantee. Second, in order to assure that the

guarantor FCM is adequately capitalized, the guarantor FCM must have and maintain at all times minimum working capital¹⁶ of at least \$20 million.¹⁷

The Commission determined to make the original order effective for a two-year period in order to provide the opportunity to evaluate the impact of the OTC trading on both the OTC market and on NYMEX. Thus, the Commission required that NYMEX submit a report reviewing its experiences and the experiences of its floor members and clearing members with respect to OTC trading, including: The levels of OTC trading and related clearing activity; the number of floor members and clearing members who participated in these activities; and an evaluation of whether the Commission should extend this Order and, if so, whether any modifications should be made thereto. This report was incorporated into the Exchange's January 19, 2005 petition seeking the initial extension of the relief granted in the original petition.

III. The Initial Extension

The Exchange's petition seeking the initial extension of the relief granted in the original order included the required report concerning the experiences of the Exchange, its floor members and clearing members under the original order. For details regarding that report and the Exchange's arguments in support of the initial extension, see the Commission Order granting the initial extension.¹⁸

IV. The Second Extension

A. The Exchange Report

The order granting the initial extension contemplated the possibility of a further extension. It provided, however, that "[i]n the event NYMEX requests a further * * * extension of the ECP Order, the request shall include a report to the Commission reviewing the experiences of the Exchange and its floor members and clearing members under the Order."¹⁹

The request for a second extension did include the required report. The

⁹ EFS transactions are permitted at the Exchange pursuant to NYMEX Rule 6.21A, "Exchange of Futures for, or in Connection with, Swap Transactions." The swap component of the transaction must involve the commodity underlying a related NYMEX futures contract, or a derivative, byproduct, or related product of such a commodity. In furtherance of its effort to permit OTC clearing at the Exchange, NYMEX amended the rule to include as eligible EFS transactions "any contract executed off the Exchange that the Exchange has designated as eligible for clearing at the Exchange." The Division notes that, subsequent to the Commission's ECP Order responding to the Exchange's original petition, NYMEX listed on its ClearPort(sm) Trading venue a significant number of futures contracts modeled after OTC energy swap agreements. While these futures contracts are competitively traded on the ClearPort(sm) Trading market, the vast majority of positions in these contracts are established via EFS transactions that are executed non-competitively away from the Exchange and then submitted to NYMEX via its ClearPort(sm) Clearing service.

¹⁰ NYMEX also suggested a further limitation on floor members' permissible transactions by not permitting any OTC transactions in electricity commodities.

¹¹ 68 FR 5621 (February 4, 2003).

¹² *Id.*

¹³ See *supra* note 5.

¹⁴ A NYMEX floor member who is determined to be an ECP based upon compliance with the provisions set forth in the Commission's original order is an ECP only for the purpose of entering into transactions executed pursuant to section 2(h)(1) of the Act and as described in the order.

¹⁵ The Commission noted that the guarantor FCM could restrict or otherwise condition the trading for which the guarantee is provided. The guarantor could, for instance, limit trading to certain commodities, place financial limits on overall or daily positions, or restrict trading by number or size of acceptable transactions.

¹⁶ For the purposes of an FCM clearing member, NYMEX Rule 9.21 defines "working capital" to mean "adjusted net capital" as defined by CFTC Regulation 1.17.

¹⁷ The original order provided a sliding scale for the two-year duration of the original order whereby a clearing member was required to have minimum working capital of \$5 million during the first 12 months, \$10 million during the thirteenth through eighteenth months, and \$20 million thereafter. The final \$20 million requirement is carried over into this order.

¹⁸ 70 FR 6630 at 6632 (February 8, 2005).

¹⁹ *Id.* at 6633.

Exchange based its report on calendar 2005 statistics, effectively covering 11 months of the one-year initial extension period. The Exchange reported that, during 2005, 15 floor members who did not qualify as an ECP on their own participated in EFS transactions through the Exchange program under the ECP Order, three more participants than in 2004. (By contrast, the Exchange's Compliance Department identified 10 floor members who engaged in EFS transactions on the basis of their outright qualification as ECPs.) Exchange data indicate that these 15 floor members participated in cleared transactions constituting a total of 1,028,362 contracts, or 2.9% of the total number of NYMEX Clearport transactions cleared during calendar 2005. In general, this EFS activity was largely concentrated in EFS transactions in the smaller cash settled natural gas or natural gas basis futures contracts that are listed in the NYMEX Clearport Clearing system.

The Exchange attributes this continued light participation by floor members in the ECP program to several possible factors. One factor might be noticeable price volatility in NYMEX's core floor-traded products, which has provided ample trading opportunities on the Exchange's trading floors and made it less necessary for professional futures traders to look to OTC markets for other trading opportunities. Another factor is that the Exchange permits EFS transactions in natural gas futures, but not in crude oil, unleaded gasoline or heating oil futures. Thus, the program would seem to be of interest primarily to only those floor members who already trade natural gas futures.

The Exchange also notes that many floor traders focus upon trading in the front month, or the first few listed months, of a contract (e.g., by putting on spreads between those months) whereas the OTC natural gas market seems to put greater emphasis upon trading in longer periods, such as calendar strips or quarterly or seasonal strip trading. One result of this different trading approach is that a floor member actively engaging in OTC natural gas trading would probably need to hire an additional clerk to provide active position management for that trader's OTC transactions. In addition, the Exchange points out that the \$20 million working capital requirement under the ECP Order has restricted the number of participating clearing members. Of the four clearing members who provide clearing services to the majority of NYMEX floor members, only two are eligible to participate in the ECP program under the \$20 million

limitation. The Exchange report concludes by noting that the volume of trading by floor members under the ECP program continues to be relatively modest. As noted above, the calendar 2005 volume represented by floor members participating in the program amounted to 1,028,362 contracts, whereas total volume for NYMEX Clearport cleared transactions was 35,229,7865 contracts.

B. The Extension Request

The Commission order granting the initial extension stated that the Commission would welcome petitions requesting similar relief from other designated contract markets. The Commission did, in fact, receive such a petition from the Chicago Mercantile Exchange ("CME"), on November 21, 2005. Whereas the NYMEX petition requested ECP relief on a temporary basis, the CME petition requests that ECP relief for floor members be granted on a permanent basis. NYMEX notes that "[t]he outcome of the CME petition and the possible granting of a permanent Order have a direct bearing on whether NYMEX will petition for an additional limited term extension or a permanent order." Therefore, NYMEX has requested this additional six-month extension to allow sufficient time for the Commission to act on the CME petition. If the Commission grants a permanent order to the CME, NYMEX is expected to request similar relief on the same terms as any CME order.

V. Conclusion

Accordingly, the Commission has determined, consistent with the NYMEX petition of January 25, 2006, that it is appropriate to issue an order pursuant to section 1a(12)(C) of the Act extending the relief granted in its original February 4, 2003 order whereby, subject to certain conditions and for a further six-month period commencing on February 4, 2006, NYMEX floor brokers and floor traders are included within the definition of ECPs who can enter into OTC transactions pursuant to section 2(h)(1) of the Act. Although this order applies only to NYMEX and NYMEX members, the Commission would continue to welcome, in response to a petition so requesting, providing substantially similar relief to other designated contract markets and members of designated contract markets.

VI. Cost Benefit Analysis

Section 15 of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a

new regulation or order under the Act. By its terms, section 15 does not require the Commission to quantify the costs and benefits of its action or to determine whether the benefits of the action outweigh its costs. Rather, section 15 simply requires the Commission to "consider the costs and benefits" of the subject rule or order.

Section 15(a) further specifies that the costs and benefits of the proposed rule or order 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 Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule or order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act. The Commission undertook a detailed costs-benefits analysis in considering the original order.²⁰ Actual experience under that order has been consistent with the Commission's analysis.

By further extending the essential provisions of the original 2003 order, this order is intended to reduce regulatory barriers by continuing to permit NYMEX members registered with the Commission as floor brokers or floor traders, when acting in a proprietary capacity, to enter into OTC transactions in exempt commodities pursuant to section 2(h)(1) of the Act if such floor members have obtained a financial guarantee for such transactions from an Exchange clearing member that is registered with the Commission as an FCM. The Commission has considered the costs and benefits of this order in light of the specific provisions of section 15(a) of the Act.

VII. Order

Upon due consideration, and pursuant to its authority under section 1a(12)(C) of the Act, the Commission hereby determines that a NYMEX member who is registered with the Commission as a floor broker or a floor trader, when acting in a proprietary trading capacity, shall continue to be deemed to be an eligible contract participant and may continue to enter into Exchange-specified OTC contracts, agreements or transactions in an exempt

²⁰ See 68 FR 5621 at 5624-25 (February 4, 2003).

commodity under the following conditions:

1. This Order is effective for six months, commencing on February 4, 2006.
2. The contracts, agreements or transactions must be executed pursuant to section 2(h)(1) of the Act.
3. The floor broker or floor trader must have obtained a financial guarantee for the contracts, agreements or transactions from a NYMEX clearing member that:
 - (a) Is registered with the Commission as an FCM; and,
 - (b) Clears the OTC contracts, agreements or transactions thus guaranteed.
4. Permissible contracts, agreements or transactions must be limited to trading in a commodity that either:
 - (a) Is listed only for clearing at NYMEX,
 - (b) Is listed for trading and clearing at NYMEX and NYMEX's rules provide for exchanges of futures for swaps in that contract, or
 - (c) Is listed only for clearing at NYMEX and NYMEX's rules provide for exchanges of options for options in that contract,
 and each OTC contract, agreement or transaction executed pursuant to the order must be cleared at NYMEX.
5. The floor broker or floor trader may not enter into OTC contracts, agreements or transactions with another floor broker or floor trader as the counterparty for contracts that are listed for trading on the Exchange.
6. NYMEX must have appropriate compliance systems in place to monitor the OTC contracts, agreements or transactions of its floor brokers and floor traders.
7. Clearing members that guarantee and clear OTC contracts, agreements or transactions pursuant to this order must have and maintain at all times minimum working capital of at least \$20 million. A clearing member must compute its working capital in accordance with exchange rules and generally accepted accounting principles consistently applied.
8. In the event NYMEX requests a further modification or extension of the ECP Order, the request shall include a report to the Commission reviewing the experiences of the Exchange and its floor members and clearing members under the Order. The report shall include information on the levels of OTC trading and related clearing activity, the number of floor members and clearing members participating in the activity, and the Exchange's reasons supporting the further modification or extension of the Order.

This order is based upon the representations made and supporting material provided to the Commission by NYMEX. Any material changes or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its finding that the provisions set forth herein are appropriate. Further, if experience demonstrates that the continued effectiveness of this order would be contrary to the public interest, the Commission may condition, modify, suspend, terminate or otherwise restrict the provisions of this order, as appropriate, on its own motion.

Issued in Washington, DC on February 3, 2006, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. E6-1777 Filed 2-8-06; 8:45 am]

BILLING CODE 6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Foreign Futures and Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is granting an exemption to firms designated by the Tokyo Commodity Exchange (TOCOM) from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Regulation 30.10, which permits persons to file a petition with the Commission for exemption from the application of certain of the Regulations set forth in Part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

DATES: *Effective Date:* February 9, 2006.

FOR FURTHER INFORMATION CONTACT:

Lawrence B. Patent, Esq., Deputy Director, Susan A. Elliott, Esq., Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418-5430.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Under CFTC Regulation 30.10 Exempting Firms Designated by the Tokyo Commodity Exchange (TOCOM) From the Application of Certain of the Foreign Futures and Option Regulations the Later of the Date of Publication of the Order Herein in the **Federal Register** or After Filing of Consents by Such Firms and TOCOM, as Appropriate, to the Terms and Conditions of the Order Herein.

Commission Regulations governing the offer and sale of commodity futures and option contracts traded on or subject to the regulations of a foreign board of trade to customers located in the U.S. are contained in part 30 of the Commission's regulations.¹ These regulations include requirements for intermediaries with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures that are generally comparable to those applicable to transactions on U.S. markets.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to customers located in the U.S., the Commission, among other things, considered the desirability of ameliorating the potential extraterritorial impact of such a program and avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission determined to permit persons located outside the U.S. and subject to a comparable regulatory structure in the jurisdiction in which they were located to seek an exemption from certain of the requirements under part 30 of the Commission's regulations based upon substituted compliance with the regulatory requirements of the foreign jurisdiction.

Appendix A to part 30, "Interpretative Statement With Respect to the Commission's Exemptive Authority Under 30.10 of Its Rules" (Appendix A), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Regulation 30.10.² These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons that solicit and

¹ Commission regulations referred to herein are found at 17 CFR Ch. I (2005).

² 52 FR 28990, 29001 (August 5, 1987).