markets it oversees remain open, fair and transparent.

I am confident that the new regulatory regime will foster the competitiveness of U.S. derivatives marketplaces, and that is good. I am less confident that the regulations implementing this new regime will foster open and competitive bids and offers for transactions in markets, which for customers and commercial participants is bad. Thus, I have repeatedly requested comment on those issues that would enable this agency to be confident that its regulatory framework retains tools necessary to detect and deter manipulation, detect and deter abusive trade practices, and vigorously enforce our fraud authority.[2] Where this Commission has a regulatory interest, it should be demanding the maximum transparency allowed by law.[3] Today's rules, I fear, leave enormous gaps in our regulatory oversight regime.

The longstanding tradition of public, open markets in the United States seems to have given way to the notion that private, closed markets are superior in every respect. Perhaps private, closed markets are more expedient for their participants. But it will be incumbent on industry participants to see to it that the public interest in open, fair and transparent markets is not compromised.

In the end, public confidence in our markets will depend upon how the industry adapts to and carries out its new responsibilities under the law and these regulations. I sincerely hope that the derivatives markets will find self-interest to be a powerful motivator and that market participants will reward those markets adhering to the highest standards of market integrity.

/S/

Commissioner Thomas J. Erickson

Date: 7/26/01

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[2] Throughout the process of developing and implementing a new regulatory framework for the oversight of derivatives markets, the Commission, in my estimation, has not adequately taken into account the public interest by failing to request comment on issues salient to our ability to carry out our primary regulatory obligations. I have taken exception with the Commission's process in this regard. The resulting public record, in this case, lacks serious consideration of the public interest and has resulted in rules that require little and expect even less.

[3] Certainly, for example, the Commission has the discretion to require large trader reporting in DTF markets. In fact, the U.S. Department of the Treasury requested as much in comments submitted to the Commission on April 9, 2001. Treasury recommended ''that there be large trader reporting requirements for any exempt security futures that trade on a DTF as well as on a regulated contract market.'' Even with such a direct request from a fellow regulator, the Commission has failed to exercise its discretion to insist upon greater transparency.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 40

Fees for Product Review and Approval

AGENCY: Commodity Futures Trading Commission.

ACTION: Establishment of a new schedule of fees.

SUMMARY: The Commission charges fees to designated contract markets and registered derivatives transaction execution facilities to recover the costs of its review of requests for product review and approval. The calculation of the fee amounts to be charged for the upcoming year is based on an average of actual program costs incurred in the most recent three full fiscal years, as explained below. The new fee schedule is set forth below.

EFFECTIVE DATE: August 10, 2001.

FOR FURTHER INFORMATION CONTACT: Richard A. Shilts, Acting Director, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5260.

SUPPLEMENTARY INFORMATION:

I. Summary of Fees

Fees charged for processing requests for product review and approval:

Single Applications:

- A single futures contract or an option on a physical—$6,000
- A single option on a previously-approved futures contract—$1,100
- A combined submission of a futures contract and an option on the same futures contract—$6,500.

Multiple Applications:

For multiple contract filings containing related contracts, the product review and approval fees are:

- A submission of multiple related futures contracts—$6,000 for the first contract, plus $600 for each additional contract;
- A submission of multiple related options on futures contracts—$1,100 for the first contract, plus $110 for each additional contract;
- A combined submission of multiple futures contracts and options on those futures contracts—$6,500 for the first combined futures and option contract, plus $650 for each additional futures and option contract.

II. Background Information

1. General

The Commission recalculates the fees charged each year with the intention of recovering the costs of operating certain programs.[1] All costs are accounted for by the Commission's Management Accounting Structure Codes (MASC) system operated according to a government-wide standard established by the Office of Management and Budget. The fees are set each year based on direct program costs, plus an overhead factor.

2. Overhead Rate

The fees charged by the Commission are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide direct program labor costs into the total amount of the Commission-wide overhead pool. For this purpose, direct program labor costs are the salary costs of personnel working in all Commission programs. Overhead costs consist generally of the following Commission-wide costs: indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 104 percent for fiscal year 1998, 105 percent for fiscal year 1999, and 105 percent for fiscal year 2000. These overhead rates are applied to the direct labor costs to calculate the costs of reviewing contract approval requests.

3. Processing Requests for Contract Approval

Calculations of the fees for processing requests for product review and approval have become more refined over the years as the types of contracts being reviewed have changed.

On August 23, 1983, the Commission established a fee for Contract Market Designation (48 FR 38214). Prior to its recent amendment, the Commodity Exchange Act (Act) provided for ''designation'' of each new contract as a ''contract market.'' The Commodity Futures Modernization Act (CFMA) amended the Act to limit the concept of ''contract market designation'' to approval of certain markets or trading facilities on which futures and options are traded, as opposed to approval of the product. The Commission has adopted rules, published elsewhere in this edition of the **Federal Register**, that implement the CFMA and the Commission's new regulatory framework. The implementing rules charge a fee for product review where

[1] *See* Section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a and 31 U.S.C. 9701. For a broader discussion of the history of Commission fees, *see* 52 FR 46070 (Dec. 4, 1987).

approval has been requested by a designated contract market or registered derivatives transaction execution facility (DTF). No fee is charged for the initial designation of a contract market or registration of a DTF.

The fee, as originally adopted in 1983, was based on a three-year moving average of the actual costs expended and the number of contracts reviewed by the Commission during that period. The formula for determining the fee was revised in 1985. At that time, most designation applications were for futures contracts and no separate fee was set for option contracts.

In 1992, the Commission reviewed its data on the actual costs for reviewing applications for both futures and option contracts and determined that the percentage of applications pertaining to options had increased and that the cost of reviewing a futures contract designation application was much higher than the cost of reviewing an application for an option contract. The Commission also determined that when applications for a futures contract and an option on that futures contract are submitted simultaneously, the cost is much lower than when the contracts are separately reviewed. To recognize this cost difference, three separate fees were established: one for futures; one for options; and one for combined futures and option contract applications (57 FR 1372, Jan. 14, 1992).

The Commission refined its fee structure further in fiscal year 1999 to recognize the unique processing cost characteristics of a class of contracts—cash-settled based on an index of non-tangible commodities. The Commission determined to charge a reduced fee for related simultaneously submitted contracts for which the terms and conditions of all contracts in the filing are identical, except in regard to a specified temporal or spatial pricing characteristic or the multiplier used to determine the size of each contract. Contracts on major currencies (defined as the Australian dollar, British pound, Euro (and its component currencies), Japanese yen, Canadian dollar, Swiss franc, New Zealand dollar, Swedish krona, and the Norwegian krone) (including contracts based on currency cross rates) are also eligible for the reduced multiple contract fees.

Contracts having differentiated spatial features include contracts which are identical in all respects, including the cash settlement mechanism, but which may be based on different geographical areas. These may include contracts on weather-related data or vacancy rates for rental properties, where each individual contract is based on the value—temperature, local vacancy rate, etc.—for a specific city. To be eligible for the multiple contract filing fee, each contract must be cash-settled based on the same underlying data source and derived under identical calculation procedures, such that the integrity of the cash settlement mechanism is not dependent on the individual spatial specifications.[2]

Contracts having differentiated temporal features include contracts that are the same in all respects except for the time to maturity of the individual underlying instruments. This may include cash-settled interest rate futures contracts within a specific segment of the yield curve, provided that for each contract the cash settlement mechanism and derivation procedure is identical, and the integrity of the cash settlement mechanism is not dependent on the individual temporal specifications. Examples include short-term interest rate contracts having monthly maturities ranging up to one year.[3]

The Commission determined that a 10 percent marginal fee for additional contracts in a filing is appropriate for simultaneously submitted contracts eligible for the multiple contract filing fee. Because the eligible related contracts are based on indices of non-tangible commodities not traded in the cash market, the Commission's review need not require a separate analysis of the different contracts in a filing related to the liquidity of the underlying cash markets or the reliability or transparency of prices for the individual commodities. Because each contract must use an identical cash settlement procedure and all other material terms and conditions must be identical (except for the differentiated spatial or temporal term or the contract multiplier), the analysis of the cash settlement procedure for one contract would apply in large part to each of the additional contracts. Finally, because all of the contracts in a related group are differentiated from each other only with respect to a spatial or temporal feature that has no bearing on the characteristics of the cash settlement mechanism, each contract would not require a separate analysis to ascertain its compliance with the requirements for designation. Hence, the Commission's analysis of the cash settlement procedure in general and its review of the other material terms and conditions would be applicable equally to all related contracts in the filing. Only a limited supplemental analysis is required for each additional contract in such a filing, resulting in a substantially reduced marginal cost for reviewing and processing the additional contracts.

Multiple contract filings of related futures and option contracts on major currencies are eligible for the multiple contract fees for the same reasons that reduced fees are appropriate for multiple related cash-settled contract filings. While currency contracts may not be cash settled, *per se,* issues related to physical delivery contracts do not arise for currencies, since like contracts providing for cash settlement, future delivery and payment involve simply the exchange of cash (one currency for another). Moreover, the Commission has found that major currencies (as defined here) have nearly inexhaustible deliverable supplies, exhibit extremely deep and liquid markets, are not subject to convertibility or delivery restrictions and are easily arbitraged between cash and futures markets and it has exempted contracts based on major currencies from speculative limits. Therefore, no separate analysis is required of the manipulation potential of each contract based on a major currency in a multiple contract filing. Moreover, delivery and payment procedures and all other terms and conditions are identical for currency contracts; the difference is limited to the actual currency transferred in the delivery and payment process. Since only an incremental analysis is needed for each additional contract in a multiple contract filing, lower fees are more in line with actual processing costs.

The Commission's experience in reviewing new contracts indicates that for simultaneous submission of multiple related major currency or cash-settled contracts, a fee for each additional contract equal to 10 percent of the single contract fee reflects the Commission's expected review costs for these reviews. The Commission's fee for simultaneous submission of such related contracts is equal to the prevailing single contract fee applicable to the first contract plus 10 percent for each additional contract in the filing. This marginal cost-based fee structure is an extension of the policy adopted by the Commission in 1992 when it established reduced fees

[2] Submissions containing a number of similar cash-settled contracts based on the government debt of different foreign countries would not be eligible for the reduced fee, since the manipulation potential of each contract would be related to the liquidity of the underlying instruments, and the individual trading practices and governmental oversight in each specific country require separate analysis.

[3] Cash-settled contracts covering various segments of the yield curve would not be eligible for the reduced fee, since the underlying instruments may be priced differently and have different trading characteristics, and the manipulation potential of each contract would be related to the liquidity of the underlying instruments and require separate analysis.

for option filings and for combined futures and option filings.

For multiple, simultaneously submitted, major currency or cash-settled contract filings to be eligible for the reduced fees, the contracts in the filing must meet the following criteria:

a. each contract must be based on a major currency or be cash-settled based on an index representing measurements of physical properties or financial characteristics which are not traded *per se* in the cash market, except in regard to the specified currency or the temporal or spatial pricing characteristics of the cash settlement price or the multiplier used to determine the size of each contract;

b. the currency delivery procedures or the cash settlement procedure must be the same for each contract in the filing;

c. all other terms and conditions of the contracts must be the same in all respects; and

d. the filing must contain a claim for the reduced fee and a representation that the terms a through c above have been met.

The Commission also notes that the fees for futures contract filings apply to filings for options on physical commodities, and that the reduced option fee applies only to applications for options on existing futures contracts. The requirements for approval of an option on a physical commodity are substantially similar to those of futures and so the same fee applies to both types of filings.[4]

Commission staff compiled the actual costs of processing a request for product review and contract approval for a futures contract for fiscal years 1998, 1999, and 2000, and found that the average cost over the three-year period was $6,000, including overhead. Review of actual costs of processing contract approval reviews for an option contract for fiscal years 1998, 1999, and 2000 reveal that the average cost over the period was $1,100 per contract, including overhead.

In accordance with its regulations recodified elsewhere in this edition of the **Federal Register** as 17 CFR Part 40 Appendix B, the Commission has determined that the fee for approval of a futures contract will be set at $6,000 and the fee for approval of an option contract will be set at $1,100. The fee for simultaneously submitted futures contracts and option contracts on those futures contracts and the fees for filings containing multiple cash-settled indices on non-tangible commodities have been set similarly and as indicated in the schedule set forth in the Summary of Fees above.

[4] The Commission's Guideline No. 1 details the information that must be included in a request for approval of a contract; all requirements for futures contracts (physical delivery or cash settlement) also apply to options on physicals applications (several additional requirements apply only to options). 63 FR 38537 (July 17, 1998).

III. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, et seq., requires agencies to consider the impact of rules on small business. The fees implemented in this release affect contract markets and registered DTFs. The Commission has previously determined that contract markets and registered DTFs are not ''small entities'' for purposes of the Regulatory Flexibility Act. Accordingly, the Acting Chairman, on behalf of the Commission, certifies pursuant to 5 U.S.C. 605(b), that the fees implemented here will not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC on July 30, 2001 by the Commission.

Jean A. Webb,

Secretary of the Commission.

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