

99-041

Commission understands the difficulties in implementing both the "fair and reasonable price" and "transparency" guidance. Nevertheless, current block trading provisions meet both such criteria, and the Commission believes it appropriate to retain them at this time. In this regard, the Commission notes that the reporting time provision is not the "specific timing requirement" referred to by FIA, but a provision for transparency of the block trade, directing that the trade be reported "within a reasonable period of time." (emphasis added). 65 FR at 39006. Without such transparency, the market's price discovery role would be harmed. The Commission may reconsider this guidance in the future if, in practice, these criteria prove to be unworkable.⁴⁶

NYBOT suggested that requiring all RFEs on which intermediaries trade to have relevant rules under Core Principle 10 (Financial Standards) would impose a new, onerous burden, and might result in conflicting rules being implemented at different RFEs. NYBOT states that segregation of customer and proprietary funds and custody and investment of customer funds are currently governed by Commission rules implemented under the auspices of a designated self-regulatory organization. CL 21-7 at 2. The adoption of Core Principle 10 is not intended to impose a "new, onerous burden" on exchanges, to change current systems in place for the oversight of intermediaries nor to discourage the voluntary harmonization of rules by the exchanges through the operation of organizations such as the Joint Audit Committee.

The Commission has modified Core Principle 15 in response to concerns that it inadvertently could impose a duty different in form or degree from the antitrust statutes and court decisions construing them. See, e.g., comment of the Board of Trade Clearing Corporation, CL 21-20 at 13. Final Core Principle 15 requires that RFEs operate in a manner consistent with the public interest to be protected by the antitrust laws. The Commission itself remains subject to the requirements of section 15

numerous small trades. By including "efficiency" in addition to open and competitive markets, the Commission is promoting a flexible standard that protects the price discovery process of the markets while permitting a variety of trading practices.

⁴⁶ AIMR recommended that the Commission reword Core Principle 8 as an RFE should not only provide for, but should also facilitate the appearance of, a competitive, open and efficient market (trading system). CL 21-64 at 4. The final version of Core Principle 8 does not include the additional language proposed by AIMR. The Commission believes that provision of an open and competitive market would also promote the appearance of such a market, without the need explicitly to so require.

of the Act, and will continue to take into consideration the public interest to be protected by the antitrust laws and to endeavor to take the least anticompetitive means of achieving the objectives of the Act in requiring or approving any bylaw, rule or regulation of any facility recognized under this framework.⁴⁷

3. New Products and Rules and Amendments Thereof

The Commission proposed that alteration by RFEs of the terms and conditions of futures contracts on the enumerated agricultural contracts be subject to prior review and approval by the Commission. The NYBOT, MGE, CBT, and CME opposed this provision, arguing that RFEs should be permitted to alter the terms or conditions of agricultural contract terms and conditions by self-certification, the same process permitted for contracts on all other commodities.⁴⁸ In contrast to the exchange commenters, a number of commenters representing agricultural interests specifically supported retention of the proposed 45-day prior approval requirement for changes to the terms and conditions of existing agricultural contracts.⁴⁹ Concern was also raised by the National Cotton Council and the agricultural producers groups regarding the certification process for new contracts. CL 21-54 at 1. They suggested that Commission prior approval under a 45-day review period be required for new agricultural contracts, as well as for alterations of existing contracts.⁵⁰ CL 21-60 at 2.

The Commission concurs with the agricultural producers groups that, as "agricultural futures markets serve as the price discovery mechanism for agricultural commodities, any changes to these markets can have a significant impact on farmers and ranchers." CL 21-60 at 2. In light of their reliance on the existing futures markets for price

⁴⁷ Section 15 of the Act is also reserved under rule 38.6(a). Section 15 of the Act requires the Commission to take into consideration the public interest to be protected by the antitrust laws and to endeavor to take the least anticompetitive means of achieving the objectives of the Act in issuing any order, adopting any regulation, or approving any rule.

⁴⁸ See CL 21-7 at 2, 4; CL 21-24 at 3-4; CL 21-36 at 11; CL 21-51 at 5.

⁴⁹ See CL 21-52 at 1-2 (National Cattlemen's Beef Association); CL 21-54 at 1 (The National Cotton Council of America, "National Cotton Council"); CL 21-60 at 1-2 (agricultural producers groups).

⁵⁰ The comment letter stated that the agricultural organizations were concerned that exchanges could use the ability to offer a new contract with one day's notice to avoid prior review and approval for amendments and changes to agricultural contracts. It could also cause market fragmentation, since new trading facilities might test new contracts on the market without a thorough prior business analysis.

discovery, the Commission concurs that agricultural producers, processors and merchants have an interest in commenting on significant alterations to the terms of contracts prior to their implementation. Accordingly, the Commission is adopting the prior approval provision for amendments to contract terms and conditions, as proposed. However, the Commission does not agree that the same opportunity for comment is necessary for new contracts, upon which producers have not previously relied. The success of a new contract will rest on its attractiveness to market participants and the marketplace will determine whether the terms and conditions of a new contract offer a reliable price discovery mechanism. Accordingly, the Commission has decided to permit an RFE to list new agricultural contracts by self-certification, as proposed.

Several commenters opposed Commission authority to stay the effectiveness of rules implemented by exchange certification during a Commission action to disapprove those rules. See, rule 1.41(c)(4) as amended.⁵¹ They argued that such stays could disrupt the marketplace.⁵² However, under the rule, the Commission would only be able to stay a proposed rule incident to disapproval proceedings and the stay determination would not be delegable to Commission staff. The Commission anticipates that it will stay implementation of an RFE rule only in limited and egregious situations, where, for example, one or more core principles

⁵¹ Amendments to Commission rule 1.41 were proposed as part of the new regulatory framework. These amendments, appearing in the final version in this Federal Register release, allow an RFE to make modifications to its rules (other than terms or conditions of contracts on the commodities enumerated in section 1a(3) of the Act) by certification to the Commission that the new or amended rule does not violate the Act or the Commission's regulations. Upon the adoption of the attached amendments to Commission rule 1.41, the Commission's earlier certification proposal, published as a proposed rule on November 26, 1999 (64 FR 55428), will be unnecessary. Therefore, the Commission is withdrawing proposed rule 1.41(z) at this time.

⁵² See, e.g., CL 21-24 at 4 (assertions by MGE that rules should not be stayed absent sufficient evidence that market participants will suffer material harm). See also CL 21-27 at 3 (conclusions by NYBOT that staying a rule pending a proceeding to disapprove or amend it could take months, and the uncertainty thus created would deter traders); CL 21-36 at 11-12 (statement by CBT that it could be detrimental for the Commission to retain authority to impose a stay during a proceeding to disapprove, alter, or amend an RFE rule as stays could disrupt the marketplace); CL 21-51 at 5 (observation by CME that the Commission should not retain authority to stay operation of an exchange rule as, in an emergency situation, the Commission could act under section 8a(9) of the Act, without advance notice or a hearing).