Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnussen-Stevens Act, provided the public has been notified of the Council’s intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 et seq.

Tracey L. Thompson, Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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COMMODITY FUTURES TRADING COMMISSION

Notice of Additional Conditions on the No-Action Relief When Foreign Boards of Trade That Have Received Staff No-Action Relief To Permit Direct Access to Their Automated Trading Systems From Locations in the United States List for Trading From the U.S. Linked Futures and Option Contracts and a Revision of Commission Policy Regarding the Listing of Certain New Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (Commission) is providing notice requiring foreign boards of trade that may receive Commission staff no-action relief permitting them to make their automated trading systems directly available to the U.S. to comply with additional conditions for the no-action relief to remain effective if they list for trading from the U.S. contracts that are linked to contracts traded on certain U.S.-based entities. Separately, the Commission is providing notice that it is revising its policy regarding the notification procedures applicable to listing an option on a futures contract that already is (or can be) listed for trading from the U.S.

DATES: Effective Date: The conditions and notification procedures are effective immediately.

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Senior Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Telephone: 202–418–5492. E-mail: dandresen@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1996, the Commission staff has issued no-action letters 2 to foreign boards of trade (FBOT) stating that, subject to compliance with certain conditions, the staff will not recommend that the Commission take enforcement action against the FBOT or its members if the FBOT permits its members or participants in the United States to have direct access 3 to its electronic trading system without seeking designation under the Commodity Exchange Act (CEA or Act) as a contract market (DCM) or registration as a derivatives transaction execution facility (DTEF). 4 On June 2, 1999, the Commission issued an order which, among other things, withdrew proposed rules that would have governed automated access to FBOTs from the U.S. and instructed the Commission staff to begin immediately processing no-action requests from FBOTs seeking to place trading terminals in the U.S., and to issue responses where appropriate, pursuant to the general guidelines included in the Eurex (DTB) no-action process, or other guidelines established by the Commission. 5 On October 22, 2006, the Commission issued a Statement of Policy that affirmed the use of the no-action process to permit FBOTs to provide direct access to their electronic trading systems to U.S. members or authorized participants. 6

Commission staff has issued 21 no-action letters since the DTB letter, all of which grant the no-action relief requested subject to a series of terms and conditions. The terms and conditions, among other things, assure the Division (1) That the FBOT continues to be a bona fide FBOT subject to effective regulation in its home country; (2) that direct access is restricted to authorized entities; (3) that the Division receives notice of any material changes in the information provided to it in support of the no-action request including, without limitation, any modification of the FBOT’s membership criteria, the location of its management, personnel or operations, the basic structure, nature, or operation of the trading system, or the regulatory or self-regulatory structure applicable to its members; and (4) that satisfactory information-sharing arrangements between the Commission, the FBOT, and the FBOT’s relevant regulatory authorities will remain in effect.

With respect to the listing of new contracts, initially FBOTs that received no-action relief that wished to list additional futures and option contracts for trading by direct access from the U.S. were required to request in writing and receive supplemental no-action relief from Commission staff prior to listing the new contracts. On June 30, 2000, the Commission issued a Statement of Policy that permitted FBOTs with no-action relief to list additional futures and option contracts for trading from the U.S. merely by filing with Commission staff no later

3 Access to Automated Boards of Trade, 64 FR 32829 (June 18, 1999).

6 Boards of Trade Located Outside of the United States and No-Action Relief from the Requirement to Become a Designated Contract Market or Derivatives Transaction Execution Facility, 71 FR 64443 (November 2, 2006).
than the business day preceding the initial listing of the contracts; (1) A copy of the initial terms and conditions of the additional contracts and (2) a certification that it is in compliance with the terms and conditions of its no-action letter and that the additional futures and option contracts would be traded in accordance with such terms and conditions. On April 14, 2006, in light of its experience since the issuance of the Statement of Policy and in recognition of the fact that the listing of new products may raise previously unidentified regulatory issues, the Commission issued a revision to the new contract listing policy (Notice of Revision). The Commission determined to establish a ten business day advance notification requirement in order to give Commission staff the opportunity to review the terms and conditions of proposed additional contracts to address any regulatory issues raised prior to the contract being made available for trading by direct access from the U.S.

II. Additional Conditions on the No-Action Relief

On January 17, 2006, ICE Futures Europe notified the Division pursuant to the Statement of Policy of its intent to list for direct access from the U.S. a West Texas Intermediate (WTI) Light Sweet Crude Oil Futures Contract that cash-settled on the price of a physically-settled Light Sweet Crude Oil Futures contract traded on the New York Mercantile Exchange (NYMEX), a U.S. DCM. On April 12, 2006, ICE Futures Europe notified the Division of its intent to list for direct access from the U.S. the ICE Futures New York Harbour Heating Oil Futures Contract and the ICE Futures New York Harbour Unleaded Gasoline Blendstock (RBOB) Futures Contract, each of which cash-settled on the price of physically-settled contracts traded on the NYMEX. On April 2, 2007, ICE Futures Europe notified the Division of its intent to launch the ICE Futures WTI Light Sweet Crude Oil Options Contract. On December 19, 2007 the Dubai Mercantile Exchange (DME) notified the Division pursuant to the Notice of Revision of its intent to list for trading for direct access from the U.S. on DME Direct the DME WTI Crude Oil Financial Futures Contract which cash-settled based on the NYMEX Light, Sweet Crude Oil futures settlement price on the penultimate trading day.

The listing for trading by direct access from the U.S. by ICE Futures Europe and DME of contracts which settle on the price of contracts traded on a CFTC-regulated exchange raises very serious concerns for the Commission. Such linkages can create virtually a single market for the subject contracts consisting of both the underlying contract at the CFTC-regulated exchange and the cash-settled “look-alike” contract traded on the FBOT. In the absence of proper preventive measures at the FBOT, the financial linkage could compromise the Commission’s ability to carry out its market surveillance responsibilities, as well as the integrity of prices established on CFTC-regulated exchanges.

In response to these concerns, the Division amended the no-action relief granted to ICE Futures Europe and DME, in letters dated June 17, 2008 and July 3, 2008 respectively, by adding certain conditions with respect to any ICE Futures Europe or DME contract which settles against any price, including the daily or final settlement price, of (1) a contract listed for trading on a DCM or DTFE, or (2) a contract listed for trading on an exempt commercial market (ECM) that has been determined to be a significant price discovery contract (collectively, linked contracts). The purpose of the conditions is to ensure that ICE Futures Europe and DME apply to any linked contract comparable principles or requirements regarding the daily publication of trading information and the imposition of position limits or accountability levels for speculators as apply to DCMs, DTFEs or ECMs for publication of the Commitments of Traders Reports.

Accordingly, the ICE Futures Europe and DME no-action letters were amended with respect to the linked contracts to include the following conditions, to be satisfied within 120 days of the date of the amended no-action letter:

1. ICE Futures Europe (DME) will impose on linked contracts, by rule or otherwise, position limits or position accountability levels (including related hedge exemption provisions) that are comparable to the existing position limits or position accountability levels (including related hedge exemption provisions) as adopted by: (i) The DCM, DTFE or ECM for the contract against which the linked contract settles or (ii) the DCM, DTFE or ECM for a contract further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

II. Additional Conditions on the No-Action Relief

On May 24, 2007, the Division granted the DME no-action relief to list for trading on an exempt commercial market (ECM) the ICE Futures Europe or DME contract which settles against any price, including the daily or final settlement price, of a contract listed for trading on a DCM or DTFE. On November 12, 2009 ICE Futures Europe or DME contract which follows any price, including the daily or final settlement price, of (1) a contract listed for trading on a DCM or DTFE, or (2) a contract listed for trading on an exempt commercial market (ECM) that has been determined to be a significant price discovery contract (collectively, linked contracts). The purpose of the conditions is to ensure that ICE Futures Europe and DME apply to any linked contract comparable principles or requirements regarding the daily publication of trading information and the imposition of position limits or accountability levels for speculators as apply to DCMs, DTFEs or ECMs for publication of the Commitments of Traders Reports.

Accordingly, the ICE Futures Europe and DME no-action letters were amended with respect to the linked contracts to include the following conditions, to be satisfied within 120 days of the date of the amended no-action letter:

1. ICE Futures Europe (DME) will impose on linked contracts, by rule or otherwise, position limits or position accountability levels (including related hedge exemption provisions) that are comparable to the existing position limits or position accountability levels (including related hedge exemption provisions) as adopted by: (i) The DCM, DTFE or ECM for the contract against which the linked contract settles or (ii) the DCM, DTFE or ECM for a contract further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

2. The no-action letters include a provision pursuant to which the Division may further condition the relief granted therein. See, e.g., CFTC Staff Letter No. 99–69 (November 12, 1999), issued to the International Petroleum Exchange, Inc., which states as follows: “As with all no-action letters, the Division retains the authority to
financially-settled equivalent of such contract;

(2) ICE Futures Europe (DME) will inform the Commission in a quarterly report of any trader that had positions in a linked contract above the applicable ICE Futures Europe (DME) position limit, whether a hedge exemption was granted, and if not, whether a disciplinary action was taken;

(3) ICE Futures Europe (DME) will publish daily trading information (e.g., settlement prices, volume, open interest, and opening and closing ranges) that is comparable to the daily trading information published by the DCM, DTFI or ECM for the contract against which the ICE Futures Europe (DME) contract settles; and

(4) ICE Futures Europe (DME) will provide to the CFTC (through the Financial Services Authority (FSA) in the case of ICE Futures Europe), a daily report of large trader positions in each linked contract for all contract months in a format and manner that (a) can be fully integrated into the CFTC’s market surveillance systems, including full identification of each position’s beneficial owner comparable to the reporting that is provided by the DCM, DTFI, or ECM; and (b) can, (subject to any Memorandum of Understanding between the CFTC and FSA in the case of ICE Futures Europe), be fully integrated into the CFTC’s Commitments of Traders Report, including appropriate categorization of traders and their positions.

The Commission is hereby providing notice that these conditions henceforth will be imposed on the no-action relief of any FBOT that lists for trading by direct access from the U.S. any futures or option contract which settles against any price, including the daily or final settlement price, of (1) a contract listed for trading on a DCM or DTFI, or (2) a contract listed for trading on an ECM that has been determined to be a significant price discovery contract.

III. Listing Option Contracts

Both the Statement of Policy and the Notice of Revision required separate notification for futures and option contracts in order to permit the contracts to be listed for direct access from the U.S. Thus, even if the futures contract is currently listed, the FBOT must separately notify the Division, pursuant to the ten business day advance notification requirement of the Notice of Revision, of its desire to list the option on that futures contract. In contrast, when the Commission’s Office of General Counsel (OGC) issues a no-action letter to allow the offer or sale of a FBOT-traded broad-based security index futures contract to persons located in the U.S., the option on that particular futures contract may also be offered or sold in the U.S. without any further regulatory action from OGC. This leads to an unusual situation when the FBOT, pursuant to Appendix D of Part 30, requests permission to list a futures contract for trading by direct access from the U.S. in the same no-action request letter in which the FBOT requests the OGC no-action position. When OGC issues the no-action letter, both the futures contract and the option on that contract may be offered or sold in the U.S. and, with the concurrence of the Division, the futures contract (but not the option on that futures contract) may be listed for direct access from the U.S. pursuant to the terms and conditions of the direct access no-action relief. The FBOT must then separately request permission from the Division to make the option contract available by direct access.

In order to eliminate this inconsistency and to streamline the procedures for listing option contracts for direct access from the U.S., the Commission is hereby providing notice that the provisions in the Notice of Revision, insofar as they apply to options on futures contracts that are, or could be, listed for direct access from the U.S. pursuant to the conditions of the FBOT’s no-action relief, are revised as follows:

(1) If the option is on a broad-based security index futures contract which may be offered or sold in the U.S. and listed for direct access from the U.S. pursuant to a no-action letter issued by OGC, the option contract may be listed for direct access without further action by either the requesting FBOT or the Division.

(2) If the option is on a futures contract that is neither a linked contract nor a broad-based security index futures contract which may be offered or sold in the U.S., the option contract may be listed for direct access merely by filing with Commission staff no later than the business day preceding the initial listing of the contract: (i) a copy of the initial terms and conditions of the additional contract and (ii) a certification that the FBOT is in compliance with the terms and conditions of its no-action letter and that the additional option contract would be traded in accordance with such terms and conditions.

(3) If the option is on a futures contract that is a linked contract, the option contract may be listed for direct access merely by filing with Commission staff no later than the business day preceding the initial listing of the contract: (i) a copy of the initial terms and conditions of the additional contract and (ii) a certification that the FBOT is in compliance with the terms and conditions of its no-action letter, including the conditions specifically applicable to linked contracts, and that the additional option contract would be traded in accordance with such terms and conditions.

Issued in Washington, DC on January 14, 2009, by the Commission.

David A. Stawick,
Secretary of the Commission.

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