

**COMMODITY FUTURES TRADING
COMMISSION****Sunshine Act; Notice of Meeting**

TIME AND DATE: 11 a.m., Friday, August 14, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:
Sauntia S. Warfield, 202-418-5084.

Sauntia S. Warfield,
Assistant Secretary of the Commission.
[FR Doc. E9-18347 Filed 7-28-09; 4:15 pm]
BILLING CODE 6351-01-P

**COMMODITY FUTURES TRADING
COMMISSION****Sunshine Act; Notice of Meeting**

TIME AND DATE: 11 a.m., Friday, August 28, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:
Sauntia S. Warfield, 202-418-5084.

Sauntia S. Warfield,
Assistant Secretary of the Commission.
[FR Doc. E9-18346 Filed 7-28-09; 4:15 pm]
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**COMMODITY FUTURES TRADING
COMMISSION****Sunshine Act; Notice of Meeting**

TIME AND DATE: 11 a.m., Friday, August 7, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:
Sauntia S. Warfield, 202-418-5084.

Sauntia S. Warfield,
Assistant Secretary of the Commission.
[FR Doc. E9-18340 Filed 7-28-09; 4:15 pm]
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**COMMODITY FUTURES TRADING
COMMISSION****Order Finding That the ICE Henry
Financial LD1 Fixed Price Contract
Traded on the
IntercontinentalExchange, Inc.,
Performs a Significant Price Discovery
Function**

AGENCY: Commodity Futures Trading Commission.

ACTION: Final order.

SUMMARY: On June 12, 2009, the Commodity Futures Trading Commission (“CFTC” or “Commission”) published for comment in the *Federal Register*¹ a notice of its intent to undertake a determination whether the Henry Financial LD1 Fixed Price contract, traded on the IntercontinentalExchange, Inc. (“ICE”), an exempt commercial market (“ECM”) under sections 2(h)(3)–(5) of the Commodity Exchange Act (“CEA” or the “Act”), performs a significant price discovery function pursuant to section 2(h)(7) of the CEA. The Commission undertook this review based upon an initial evaluation of information and data provided by ICE as well as a Commission report on ECMs. The Commission has reviewed public comments and the entire record in this matter and has determined to issue an order finding that the ICE Henry Financial LD1 Fixed Price contract performs a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder.

DATES: *Effective date:* [date of underlying order].

FOR FURTHER INFORMATION CONTACT:
Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418-5515. E-mail: gprice@cftc.gov; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418-5133. E-mail: snathan@cftc.gov.

SUPPLEMENTARY INFORMATION:**I. Introduction**

The CFTC Reauthorization Act of 2008 (“Reauthorization Act”)² significantly broadened the CFTC’s regulatory authority with respect to

ECMs by creating, in section 2(h)(7) of the CEA, a new regulatory category—ECMs on which significant price discovery contracts (“SPDCs”) are traded—and treating ECMs in that category as registered entities under the CEA. The legislation authorizes the CFTC to designate an agreement, contract or transaction as a SPDC if the Commission determines, under criteria established in section 2(h)(7), that it performs a significant price discovery function. When the Commission makes such a determination, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the Act and Commission regulations, and must comply with nine core principles established by new section 2(h)(7)(C).

On March 16, 2009, the CFTC promulgated final rules implementing the provisions of the Reauthorization Act.³ As relevant here, rule 36.3 imposes increased information reporting requirements on ECMs to assist the Commission in making prompt assessments whether particular ECM contracts may be SPDCs. In addition to filing quarterly reports of its contracts, an ECM must notify the Commission promptly concerning any contract traded in reliance on the exemption in section 2(h)(3) of the CEA that averaged five trades per day or more over the most recent calendar quarter, and for which the exchange sells its price information regarding the contract to market participants or industry publications, or whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement or other daily price of another contract.

Commission rule 36.3(c)(3) established the procedures by which the Commission makes and announces its determination whether a particular ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish notice in the *Federal Register* that it intends to undertake a determination whether the specified agreement, contract or transaction performs a significant price discovery function and to receive written views, data and arguments relevant to its determination from the ECM and other interested persons. The Commission will, within a reasonable period of time after the close of the comment period, consider all relevant information and

¹ 74 FR 28028 (June 12, 2009).

² Incorporated as Title XIII of the Food, Conservation and Energy Act of 2008, Public Law No. 110-246, 122 Stat. 1624 (June 18, 2008).

³ 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

issue an order announcing and explaining its determination. The issuance of an affirmative order triggers the effectiveness of the Commission's regulatory authorities with respect to an ECM with a SPDC; at that time, such an ECM becomes subject to all provisions of the CEA applicable to registered entities.⁴ The issuance of such an order also triggers the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4).⁵

II. Notice of Intent To Undertake SPDC Determination

On June 12, 2009, the Commission published in the **Federal Register** notice of its intent to undertake a determination whether the ICE Henry Financial LD1 Fixed Price contract performs a significant price discovery function, and requested comment from interested parties.⁶ Comments were received from the American Public Gas Association ("APGA"); the Steel Manufacturer's Association and East Texas Electric Cooperative (collectively, "SMA/ETEC"); and the CME Group.⁷ The comments are more extensively discussed below in the Findings and Conclusion Section.

III. Section 2(h)(7) of the CEA

The Commission is directed by section 2(h)(7) of the CEA to consider the following factors in determining whether a contract performs a significant price discovery function:

- *Price Linkage*—the extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject

to the rules of a designated contract market ("DCM") or derivatives transaction execution facility ("DTEF"), or a SPDC traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.

- *Arbitrage*—the extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a designated DCM or DTEF, or a SPDC traded on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.

- *Material price reference*—the extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility.

- *Material liquidity*—the extent to which the volume of agreements, contracts or transactions in a commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a DCM, DTEF or electronic trading facility operating in reliance on the exemption in section 2(h)(3).

Not all factors must be present to support a determination that a particular contract performs a significant price discovery function. Moreover, the statutory language neither prioritizes the factors nor specifies the degree to which a SPDC must conform to the various factors. In Guidance issued in connection with the Part 36 rules governing ECMs with SPDCs, the Commission observed that these factors do not lend themselves to a mechanical checklist or formulaic analysis. Accordingly, the Commission has indicated that in making its determinations it will consider the circumstances under which the presence of a particular factor, or combination of factors, would be sufficient to support a SPDC determination.⁸ For example, for contracts that are linked to other contracts or that may be arbitrated with other contracts, the Commission will consider whether the price of the potential SPDC moves in such harmony with the other contract that the two

markets essentially become interchangeable. This co-movement of prices would be an indication that activity in the contract had reached a level sufficient for the contract to perform a significant price discovery function.

IV. Findings and Conclusions

The ICE Henry Financial LD1 Fixed Price contract is cash settled based on the final settlement price of the New York Mercantile Exchange's ("NYMEX") physically-delivered Henry Hub-based Natural Gas futures contract for the corresponding contract month. The trading unit of the ICE Henry Financial LD1 Fixed Price contract is 2,500 mmBtu multiplied by the number of calendar days in the contract month. For example, if a contract month has 30 days, the trading unit is 75,000 mmBtu, which is referred to as 30 lots.

Based on data provided in connection with the quarterly notification required by Commission rule 36.3(c)(2), this contract realized more than an average of five trades per day during the first quarter of 2009. In addition, the average volume of natural gas traded each business day during that period was 449,010 contracts; the open interest in the contract as of March 31, 2009 was 2,932,798 contracts.

Based on these contract features and trading data, the ICE Henry Financial LD1 Fixed Price contract satisfies the material liquidity, price linkage and arbitrage criteria for a SPDC. The very high average daily trading volume indicates that the contract is relatively liquid. With regard to the price linkage and arbitrage tests, the ICE Henry Financial LD1 Fixed Price contract and NYMEX's physically-delivered Natural Gas futures contract have the same final settlement prices, and ICE uses NYMEX's forward settlement curve when conducting its mark-to-market accounting procedures to settle the contract on a daily basis.

In evaluating the ICE Henry Financial LD1 Fixed Price contract, the Commission also has the benefit of a recent study focused on price discovery contracts on ECMs. The Commission's October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* ("ECM Study") stated that traders and voice brokers view the instant ICE contract as economically equivalent to the NYMEX physically-delivered Natural Gas futures contract. The ICE and NYMEX contracts essentially comprise a single market for natural gas derivatives trading, and traders look to both the ICE and the NYMEX when determining where to

⁴ Public Law 110-246 at 13203; *Joint Explanatory Statement of the Committee of Conference*, H.R. Rep. No. 110-627, 110 Cong., 2d Sess. 978, 986 (Conference Committee Report). See also 73 FR 75888, 75894 (Dec. 12, 2008).

⁵ For an initial SPDC, ECMs have a grace period of 90 calendar days from the issuance of a SPDC determination order to submit a written demonstration of compliance with the applicable core principles. For subsequent SPDCs, ECMs have a grace period of 30 calendar days to demonstrate core principle compliance.

⁶ The Commission's Part 36 rules establish, among other things, procedures by which the Commission makes and announces its determination whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission publishes a notice in the **Federal Register** that it intends to undertake a determination whether a specified agreement, contract or transaction performs a significant price discovery function and to receive written data, views and arguments relevant to its determination from the ECM and other interested persons.

⁷ The comment letters are available on the Commission's Web site: <http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2009/09-007.html>.

⁸ 17 CFR 36, Appendix A.

execute a trade at the best price. The ECM Study also reported that the ICE natural gas contract acts as a price discovery market.

The statements provided by APGA and CME provide additional support for the Commission's findings. APGA, the national association for publicly-owned natural gas distribution systems, states that its members report that the prices on the ICE and NYMEX contracts have an ongoing, linked relationship that extends not only to the linked settlement price but to prices between the two contracts throughout the trading day. Its members report that the prices of both markets are substantially the same and move in tandem, and that counterparties use either market interchangeably as a basis for quoting prices. This linkage, in APGA's view, makes possible arbitrage trading between the two markets. With respect to material price reference, APGA observes that the ICE contract is routinely used as a means by which cash market prices are referenced.⁹ Finally, APGA states that whether or not its members trade the ICE contract, they are of the opinion that they would be able to execute substantial orders without having an impact on the market price through the transaction.

CME Group opines that the Henry Financial LD1 Fixed Price contract readily satisfies all four of section 2(h)(7)'s criteria as explained in the Appendix A Guidance. It notes that when trading in the Henry Financial LD1 Fixed Price contract is viewed in the context of the relevant competing contracts at NYMEX, including both financially-settled and physically-settled contracts, ICE's contract had a 40 percent market share of that trading activity—easily satisfying the standards for material liquidity. As to price linkage, CME Group observes that the ICE Henry Financial LD1 Fixed Price contract continues to have the same settlement price as the NYMEX natural gas contract; with regard to final settlement, the product specifications for the ICE contract explicitly provide for final settlement to be equal to the final settlement price of the NYMEX natural gas futures contract. Thus, in

CME's opinion there appears to be little chance that the ICE contract will deviate from the NYMEX settlement price for final settlement. With respect to arbitrage, CME Group offers anecdotal information indicating a strong and active arbitrage between the two contracts. Finally, CME Group observes that the ICE Henry Financial LD1 Fixed Price contract satisfies the statutory standard for material price reference, as ICE itself relies on the settlement prices generated by NYMEX for its own settlement prices in the contract, rather than on prices generated by its own system. Moreover, CME Group notes its understanding that ICE has for several years been selling its price information for this contract to interested persons.¹⁰

SMA/ETEC supports recognition of the Henry Financial LD1 Fixed Price contract as a SPDC; the bulk of its comment letter, however, focuses on issues beyond the narrow scope of the instant action, which is to determine whether the ICE contract performs a significant price discovery function. For instance, SMA/ETEC advocates subjecting all natural gas investment vehicles to aggregate position limits and discusses the Commission's proposed limited risk management exemption.

After considering the entire record in this matter, including the ECM Study and the comments received, the Commission has determined that the ICE Henry Financial LD1 Fixed Price contract performs a significant price discovery function under the material liquidity, price linkage and arbitrage criteria established in section 2(h)(7) of the CEA.

The issuance of this order triggers the immediate effectiveness of the Commission's authorities with respect to ICE as a registered entity in connection with its Henry Financial LD1 Fixed Price contract,¹¹ and triggers the obligations, requirements—both procedural and substantive—and timetables prescribed in Commission rule 36.3(c)(4) for ECMs.¹²

¹⁰ As noted above, the Commission has not reached a conclusion with respect to the material price reference factor.

¹¹ See 73 FR 75888, 75893 (Dec. 12, 2008).

¹² This Order determining that the ICE Henry Financial LD1 Fixed Price contract is a SPDC represents the first time the Commission has determined that one of ICE's contracts performs a significant price discovery function. Accordingly, ICE must, within 90 calendar days of the date of this Order, submit to the Commission a written demonstration of compliance with the section 2(h)(7) core principles.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")¹³ imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. Certain provisions of Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA. OMB previously has approved and assigned OMB control number 3038-0060 to this collection of information.

B. Cost-Benefit Analysis

Section 15(a) of the CEA¹⁴ requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits 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 and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act. The Commission has considered the costs and benefits of this Order in light of the specific provisions of section 15(a) of the Act and has concluded that this Order, which strengthens Federal oversight of the ECM and helps to prevent market manipulation, is necessary and appropriate to accomplish the purposes of section 2(h)(7) of the Act.

When a futures contract begins to serve a significant price discovery function, that contract, and the ECM on which it is traded, warrants increased oversight to deter and prevent price manipulation and other disruptions to

⁹ APGA members note that in general the written cash market contracts that they enter into reference the NYMEX price, as does the ICE Henry Financial LD1 Fixed Price contract itself. While the cash contracts commonly do not explicitly reference the ICE contract as the settlement price, APGA states that it is common market practice for dealers to provide cash market price quotes based upon the ICE Henry Financial LD1 Fixed Price contract. With respect to material price reference, while it appreciates the anecdotal information provided by both APGA and CME Group, the Commission has not reached a conclusion with respect to this factor.

¹³ 44 U.S.C. 3507(d).

¹⁴ 7 U.S.C. 19(a).

market integrity, both on the ECM itself and in any related futures contracts trading on designated contract markets (“DCMs”). An Order finding that a particular contract is a SPDC triggers this increased oversight and imposes obligations on the ECM calculated to accomplish this goal. The increased oversight engendered by the issuance of a SPDC Order increases transparency and helps to ensure fair competition among ECMs and DCMs trading similar products and competing for the same business. Moreover, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the CEA and Commission regulations. Additionally, the ECM must comply with nine core principles established by section 2(h)(7) of the Act—including the obligation to establish position limits and/or accountability standards for the SPDC. Amendments to section 4(i) of the CEA authorize the Commission to require large trader reports for SPDCs listed on ECMs. These increased ECM responsibilities, along with the CFTC’s increased regulatory authority, subject the ECM’s risk management practices to the Commission’s supervision and oversight and generally enhance the financial integrity of the markets.

V. Order

After considering the complete record in this matter and the comment letters received in response to its request for comments, the Commission has determined to issue the following:

Order

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the ICE Henry Financial LD1 Fixed Price contract satisfies the statutory material liquidity, price linkage and arbitrage criteria for a significant price discovery contract. Consistent with this determination, and effective immediately, IntercontinentalExchange, Inc., shall be and is considered a registered entity with respect to the Henry Financial LD1 Fixed Price contract and is subject to all the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by IntercontinentalExchange, Inc. commence with the issuance of this Order.

Issued in Washington, DC, on July 24, 2009, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9-18159 Filed 7-29-09; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0145]

Federal Acquisition Regulation; Submission for OMB Review; Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000-0145).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning use of data universal numbering system (DUNS) as primary contractor identification. The Data Universal Numbering System (DUNS) number is the nine-digit identification number assigned by Dun and Bradstreet Information Services to an establishment. A request for public comments was published in the **Federal Register** at 74 FR 18719 on April 24, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 31, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Contract Policy Division, GSA, (202) 501-3775 or via e-mail at Ernest.woodson@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Data Universal Numbering System (DUNS) number is the nine-digit identification number assigned by Dun and Bradstreet Information Services to an establishment. The Government uses the DUNS number to identify contractors in reporting to the Federal Procurement Data System (FPDS). The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data on all contracts in excess of the micro-purchase threshold to the Federal Procurement Data Center which collects, processes, and disseminates official statistical data on Federal contracting. Contracting officers insert the Federal Acquisition Regulation (FAR) provision at 52.204-6, Data Universal Numbering System (DUNS) Number, in solicitations they expect will result in contracts in excess of the micro-purchase threshold and do not contain FAR 52.204-7, Central Contractor Registration. This provision requires offerors to submit their DUNS number with their offer. If the offeror does not have a DUNS number, the provision provides instructions on obtaining one.

C. Annual Reporting Burden

Respondents: 35,694.

Responses per Respondent: 4.00.

Annual Responses: 142,776.

Hours per Response: .0200 (Averaged).

Total Burden Hours: 2,852.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, Room 4041, NW., Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control Number 9000-0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification, in all correspondence.