



Division of
Market Oversight

U.S. COMMODITY FUTURES TRADING COMMISSION

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DESIGNATION MEMORANDUM

TO: The Commission

FROM: Division of Market Oversight

DATE: August 15, 2008

SUBJECT: Application of NYSE Liffe for Designation as a Contract Market pursuant to Sections 5 and 6(a) of the Commodity Exchange Act and Part 38 of Commission's regulations.

RECOMMENDATION: Staff recommends that the Commission: (1) designate NYSE Liffe LLC, as a contract market; (2) simultaneously approve the transfer to NYSE Liffe of (a) all metals contracts currently listed for trading on the CBOT system; and (b) all associated existing open interest; (3) approve the following NYSE Liffe Rules: 101-153, 201-204, 301-310, 401-426, 501-521, 601-616, 701-721, 801-804, 901, 1001-1002, 1101-1105, 1201-1214, 1301-1305, 1401-1414, 1501-1514, 1601-1605, and 1701-1714; NYSE Liffe Error Trade Policy; Pre-Execution Discussions Policy, the NYSE Liffe Limited Liability Company Agreement, and the NYSE Liffe Regulatory Oversight Committee Charter; and (4) issue the attached Order of Designation and Letter.

RESPONSIBLE STAFF: Jane Croessmann x 5433

CONCURRING DIVISIONS: Division of Enforcement
Office of the General Counsel
Division of Clearing and Intermediary Oversight

I. Background and Summary

By submissions dated June 2, 2008¹ through August 15, 2008, NYSE Euronext submitted an application for contract market designation on behalf of NYSE Liffe, LLC (“NYSE Liffe” or “Exchange”), pursuant to the provisions of Section 5(b) of the Commodity Exchange Act (“Act”) and Part 38 of the Commodity Futures Trading Commission’s (“Commission’s”) regulations. The NYSE Liffe application further included a request for expedited (90-day) review pursuant to Commission Regulation § 38.3(a)2. Based upon the date of receipt, the 90-day review period ends on September 2, 2008. Notably, NYSE Liffe requested an even earlier designation to accommodate their business plans. Commission staff have devoted their best efforts to accommodate this request.

NYSE Liffe is an indirect, wholly owned subsidiary of NYSE Euronext, the holding company created by the combination of NYSE Group, Inc. (New York) and Euronext N.V. (Paris). NYSE Euronext is a publicly traded company (symbol: NYX) and it operates the world’s largest exchange group. Included within the NYSE Euronext umbrella are cash equities exchanges and derivatives exchanges in five countries.²

NYSE Liffe initially intends to list for trading the precious metals contracts currently traded on the Chicago Board of Trade (“CBOT”), including the full size gold and silver futures contracts, options on gold and silver contracts as well as mini-size gold and silver contracts. In that regard, NYSE Euronext signed an agreement to acquire the CBOT precious metals contracts from the Chicago Mercantile Exchange, Inc. (“CME”) and the CBOT on March 14, 2008.³ These contracts currently are listed for trading on the CBOT. CBOT remains responsible for the regulatory oversight of all trading in the contracts until NYSE Liffe has been designated as a contract market and the transfer of these contracts has been approved and all associated open interest to NYSE Liffe has been approved, and the transfer is completed. Pursuant to the purchase agreement, NYSE Liffe will assume regulatory responsibility for the precious metals contracts no later than 30 days after receipt of contract market designation.⁴

Notably, upon designation, the metals contracts will trade on NYSE Liffe much as they do on CBOT today and, in large part, by the same membership currently trading these metals contracts on CBOT. Specifically, NYSE Liffe will operate and run the same electronic trading

¹ The June 2nd initial application submission has an effective date of June 3, 2008, as it was received by the Secretariat’s office after business hours for June 2, 2008. Commission Regulation § 40.1 defines business day as the intraday period of time between 8:15 a.m. and 4:45 p.m. The June 2nd application was received at 6:52 p.m.

² The NYSE Group includes the New York Stock Exchange and Archipelago, while Euronext N.V. includes the Lisbon Exchange, LIFFE (London International Financial Futures and Options Exchange), Paris Bourse, Brussels Exchange and Amsterdam Exchange. A complete organizational chart of the NYSE Euronext subsidiaries and affiliates is available upon request.

³ See Business Unit Sale Agreement as of March 14, 2008, Between Chicago Mercantile Exchange, Inc., Board of Trade of the City of Chicago, Inc., and NYSE Euronext.

⁴ Pursuant to the Business Unit Sale Agreement, the acquisition is subject to Commission approval of NYSE Liffe’s application for contract market designation currently before the Commission.

system that CBOT is currently utilizing: the NYSE Euronext LIFFE CONNECT platform (“Liffe Connect”). The CME will continue to provide clearing, settlement and information services for the NYSE Liffe platform until the spring of 2009, when NYSE Euronext is able to assume such services itself or transition such services to alternate providers. NYSE Euronext Technology (“NET”), formerly known as Atos-Euronext Market Solutions Limited (“AEMS”)⁵ will continue to provide certain services to NYSE Liffe in connection with operation of the Liffe Connect platform.

The only material difference relates to the provision of regulatory services. In this regard, Liffe Market Services, a division of Liffe Administration and Management⁶ will provide for real-time surveillance and the National Futures Association (“NFA”) for T+1 trade practice and market surveillance.

An interdivisional Commission team was assembled to review the NYSE Liffe application for contract market designation.⁷ As noted in Sections II-III of this memorandum, the conclusion of the interdivisional team is that the NYSE Liffe application has provided a showing that it complies with the Act’s Section 5(b) Designation Criteria, Section 5(d) Core Principles, Section 5c(b) Delegation of Functions Under Core Principles, Section 6(a) Application For Designation – Hearing, and Part 38 of the Commission’s regulations.

Accordingly, the Division recommends that the Commission issue the attached order designating NYSE Liffe as a contract market, simultaneously approve the following NYSE Liffe Rules: 101-153, 201-204, 301-310, 401-426, 501-521, 601-616, 701-721, 801-804, 901, 1001-1002, 1101-1105, 1201-1214, 1301-1305, 1401-1414, 1501-1514, 1601-1605, and 1701-1714; NYSE Liffe, Error Trade Policy; Pre-Execution Discussions Policy, the NYSE Liffe Limited Liability Company Agreement, and the NYSE Liffe Regulatory Oversight Committee Charter. The Division further recommends that the Commission approve the transfer of and issue the attached order transferring to NYSE Liffe: 1) all metals contracts currently listed for trading on the CBOT system whether previously authorized by approval or certification; and (2) all associated existing opening interest.

⁵ During the time AEMS licensed its software to CBOT and provided certain system services to CBOT in connection with the e-CBOT Platform, NYSE Euronext owned 50% of AEMS. In conjunction with the NYSE Liffe acquisition of the CBOT precious metals contracts, NYSE Euronext acquired 100% of AEMS on August 5, 2008. AEMS was renamed NYSE Euronext Technology (“NET”) also on August 5, 2008, in conjunction with the acquisition.

⁶ Liffe Administration and Management is an indirect, wholly-owned subsidiary of NYSE Euronext.

⁷ The NYSE Liffe review team members include: Phyllis Cela, Chief Counsel – Division of Enforcement (“Enforcement”); Gloria Clement, Assistant General Counsel – Office of the General Counsel (“OGC”), Eileen Donovan, Special Counsel – Division of Clearing and Intermediary Oversight (“DCIO”); John Forkkio, Industry Economist, Division of Market Oversight (“DMO” or “Division”); Chul Park, Industry Economist – DMO; Athanasia Papadopoulou, Industry Economist - DMO; Dhaval Patel, Attorney – OGC; David Steinberg, Attorney Advisor – DMO; and Harvey Theberge, Information Technology Contractor - DMO. An experienced technical contractor was retained by the Division to conduct the technical aspects of the NYSE Liffe review.

Current Commission policy is to release portions of applications for contract market designation on the CFTC website for public comment pursuant to Commission Regulation §40.8.⁸ Those portions of the NYSE Liffe application have been posted on the Commission website since June 6, 2008. No comments have been received regarding the NYSE Liffe application.

II. Analysis of NYSE Liffe’s Contract Market Application, Outsourcing Agreements with CME, CBOT and NFA and Proposed Rules, all for Compliance with the Act’s Designation Criteria for Designation as a Contract Market

CONTRACT MARKET CRITERIA FOR DESIGNATION	NYSE Liffe PROPOSAL	STAFF ANALYSIS
Sec. 5(a) Applications – “A board of trade applying to the Commission for designation as a contract market shall submit an application to the Commission that includes any relevant materials and records the Commission may require consistent with this Act.”		Acceptable. <i>See Attachments.</i>
Sec. 5(b) CRITERIA FOR DESIGNATION		
Designation Criterion 1 In General – “To be designated as a contract market, the board of trade shall demonstrate to the Commission that the board of trade meets the criteria specified in this subsection.”		Acceptable. <i>See below.</i>
Designation Criterion 2 Prevention of Market Manipulation – “The board of trade shall have the capacity to prevent market manipulation through market surveillance, compliance, and enforcement practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.”	NYSE Liffe Appendix 1 (Regulatory Chart Demonstrating Compliance with Designation Criteria and Core Principles) at 1-2; NYSE Liffe Appendix 4 (Rulebook): Rule 603 (Market Manipulation or Demoralization) and Chapter 7 (Discipline and Enforcement); NYSE Liffe Appendix 5 (Regulatory Services Agreement	Acceptable. The market compliance and surveillance responsibilities of NYSE Liffe are divided into two components. The first component is the real-time (or front-line) surveillance performed by the Liffe Market Services, a Division of Liffe Administration and Management (“LMS”) officials in London. The front-line surveillance staff is

⁸ See 69 FR 44981. The Commission releases those portions of the designation application that have been determined not to cause competitive harm to the applicant or regulatory concerns for the Commission.

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	<p>between NYSE Liffe and NFA); NYSE Liffe Appendix 6 (Managed Services Agreement - LIFFE Administration and Management); NYSE Liffe Appendix 12 (NYSE Liffe Market Services – Operational Procedures); NYSE Liffe Appendix 13 (NFA Compliance Manual for NYSE Liffe); and NFA demonstration of trade practice and market surveillance on July 8, 2008.</p>	<p>responsible for real-time market surveillance of trading to detect and prevent any suspicious or noncompetitive transactions. Front-line market surveillance staff will use a dedicated monitoring and control terminal to monitor trading on Liffe Connect.</p> <p>The second component is the next-day trade practice and market surveillance duties which will be performed by the National Futures Association (“NFA”). NFA will use its automated system called Trade Analysis and Profiling System (“TAPS”) to conduct post-trade analysis. The next-day surveillance by NFA is responsible for conducting analysis of both market data and large trader data to identify any potential trade violation or anomaly. TAPS alerts surveillance staff of any unusual price movement or trading activity. After collecting data on market prices, volume, open interest, large trader position data, basis, and spread relationships, NFA will employ TAPS to aid in flagging any atypical or unusual observation. In addition, after receiving large trader data from NYSE Liffe, NFA will compile the data so that all positions held by related traders are appropriately aggregated. After aggregation, TAPS will again be used to conduct analysis of large trader activities to find any position limit violations and concentration of positions.</p> <p>LMS and NFA will work continuously and closely together to share information and monitor all trading to detect any abusive or suspicious activity so that there will be a two-way flow of information between the front-line and next-day market surveillance programs. The Compliance Department of</p>

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		<p>NFA will periodically and regularly consult with NYSE Liffe’s Chief Regulatory Officer (“CRO”) on any new, potential, or ongoing inquiry or investigation.</p> <p>Based on its review of the joint responsibilities of LMS and NFA (including Chicago demos), Commission staff has determined that NYSE Liffe adequately demonstrates compliance with Designation Criterion 2.</p>
<p>Designation Criterion 3 <i>Fair and Equitable Trading</i> – “The board of trade shall establish and enforce trading rules to ensure fair and equitable trading through the facilities of the contract market, and [sic] the capacity to detect, investigate, and discipline any person that violates the rules. The rules may authorize – (A) transfer trades or office trades; (B) an exchange of futures – (i) futures in connection with a cash commodity transaction; (ii) futures for cash commodities; or (iii) futures for swaps; or (C) a futures commission merchant, acting as principle or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded or cleared in accordance with the rules of the contract market or a derivatives clearing organization”</p>	<p>NYSE Liffe Appendix 1 (Chart Demonstrating Compliance with Designation Criteria and Core Principles) at 2; NYSE Liffe Appendix 4 (Rulebook): Chapter 3 (Membership and Right to Access Platform), Chapter 4 (Trading Procedures and Standards), Chapter 5 (Obligations of Members), Chapter 6 (Business Conduct Rules), and Chapter 7 (Discipline and Enforcement); NYSE Liffe Appendix 5 (Regulatory Services Agreement between NYSE Liffe and NFA); NYSE Liffe Appendix 9 (Error Trade Policy); NYSE Liffe Appendix 10 (Pre-Execution Discussions Procedures); NYSE Liffe Appendix 13 (NFA Compliance Manual for NYSE Liffe); and NYSE Liffe Appendix 15 (NYSE Liffe Interface Sublicense and Connection Agreement).</p>	<p>Acceptable.</p> <p>NYSE Liffe has established and will enforce trading rules to ensure fair and equitable trading. All NYSE Liffe members and registered users (collectively “Participants”) will have equal access to the NYSE Liffe Trading Platform, including information regarding prices, bids and offers. Orders will be executed impartially by the NYSE Liffe Trading Platform (Liffe Connect) utilizing a trade-matching algorithm, based on a pro rata algorithm, in accordance with the principles set forth in Chapter 4 of the NYSE Liffe Rulebook and procedures included in the NYSE Liffe Error Trade Policy and Permissible Pre-Execution Discussions. Rule 602 prohibits fictitious transactions (i.e., wash trades). Under Rule 614, pre-arranged trades that are not expressly permitted (i.e., EFPS and Block Trades – Rules 422 and 423 respectively) will be prohibited.</p> <p>As its designated Compliance Service Provider, the NFA will perform trade practice and market surveillance as well as investigative and enforcement functions. The NFA will maintain procedures to detect and investigate abuses such as trading ahead, wash trading, money</p>

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		<p>passing, accommodation trades, market manipulation, fraud and other types of abuses. NFA currently provides similar regulatory services for the Chicago Climate Futures Exchange, HedgeStreet and USFE. Discipline will be carried out according to NYSE Liffe Rules.</p> <p>Based on its review of the NYSE Liffe rules, its trading system and NFA procedures, Commission staff has determined that NYSE Liffe adequately demonstrates compliance with Designation Criterion 3.</p>
<p>Designation Criterion 4 Trade Execution Facility – “The board of trade shall (A) establish and enforce rules defining, or specifications detailing, the manner of operation of the trade execution facility maintained by the board of trade, including rules or specifications describing the operation of any electronic matching platform; and (B) demonstrate that the trade execution facility operates in accordance with the rules or specifications.”</p>	<p>NYSE Liffe Appendix 1 (Chart Demonstrating Compliance with Designation Criteria and Core Principles) at 2; NYSE Liffe Appendix 4 (Rulebook): Chapter 3 (Memberships and Right to Access Platform), Chapter 4 (Trading Procedures and Standards and Chapter 6 (Business Conduct); NYSE Liffe Appendix 8 (LIFFE CONNECT V9.0 Information Pack, including e-cbot Electronic Trading Platform description); NYSE Liffe Appendix 14 (Information Cross Reference Map Road Map); NYSE Liffe Appendix 15 (NYSE Liffe Interface Sublicense and Connection Agreement); and Trading Demonstration and on-site visit including data center tour provided in Chicago on July 8-10.</p>	<p>Acceptable.</p> <p>NYSE Liffe will use the same core technology (the Liffe Connect platform) that is currently used to operate the e-CBOT trading system. This platform has successfully provided the electronic trading environment for the CBOT since 2003 and for various other exchanges since 1998 (Euronext Amsterdam, Brussels, Paris, and Lisbon and the Tokyo International Financial Futures Exchange). The Liffe Connect system was previously reviewed by the Commission at the time of the Nasdaq LIFFE designation on August 22, 2001. The Liffe Connect platform has a solid history of meeting the technical requirements for designation and operation as an exchange.</p> <p>NYSE Liffe has provided extensive documentation regarding the development, operation, and maintenance of their electronic trading system. That documentation includes system architecture diagrams and descriptions, security features and procedures, change management policies and procedures, testing procedures,</p>

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		<p>capacity planning practices, disaster recovery plans, and help desk procedures. NYSE Liffe also provided several recent favorable audit reports performed by independent auditors.</p> <p>The only significant technical changes from past implementations are related to several new interfaces that have been designed and are currently being tested. Those interfaces provide a replacement data feed to the CME for clearing, a new data feed to the NFA for T+1 market supervision and trade practice investigations, and several new data feeds for administrative and control functions. The results of those components' integration tests have been provided to the Commission for assurance that those technical changes would not have a negative effect on the overall operation of the system.</p> <p>The Commission conducted an on-site review of the NYSE Liffe data center on July 9, 2008 as part of the designation review for NYSE Liffe. That on-site review supported a finding that the system and its supporting infrastructure, the testing of the system, the staff and operational control facilities supporting the operation, and the physical security and environmental controls provided by the NYSE Liffe facilities, are acceptable.</p> <p>NYSE Liffe Rule 407 (Matching of Orders) describes the NYSE Liffe pro rata trading algorithm. NYSE Liffe will utilize a Priority Pro Rata algorithm for futures trading and a Preference Priority Pro Rata algorithm for options trading. The Priority Pro Rata (for futures) allows one order on each side of the market to be flagged for priority. An order</p>

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		<p>will be flagged for priority if it creates a price improvement in a market as it enters the order book. Volume is assigned to the flagged priority order first, while remaining volume is then assigned pro rata.</p> <p>The Preference Priority Pro Rata algorithm for options allows for a preference for designated market makers. While market makers will operate in both the futures and the options markets, market makers will only receive a preference in the options contracts. Designated market makers with resting orders in the options markets can qualify for 8% of incoming orders after the priority order, but prior to volume assigned pro rata as noted above. The interdivisional team saw first hand a demonstration of the same pro rata trading algorithm in Chicago on July 8, 2008, as it is utilized by CBOT today, as part of its review of the NYSE Liffe application.</p> <p>Based on its review of the NYSE Liffe technical and operational information, staff has determined that NYSE Liffe’s proposed electronic trading system provides a showing that it complies with Designation Criterion 4, including the IOSCO principles for screen-based trading as noted in the Commission’s guidance on compliance with Designation Criterion 4.</p>
<p>Designation Criterion 5 <i>Financial Integrity of Transactions</i> – “The board of trade shall establish and enforce rules and procedures for ensuring the financial integrity of transactions entered into by or through the facilities of the contract market, including the clearance and settlement of the transactions with</p>	<p>NYSE Liffe Appendix 4 (Rulebook): Rules 304 (Eligibility), 420 (Position Limits), 504 (Minimum Financial and Related Reporting Requirements for Registrants), 505 (Minimum Financial and Related Reporting Requirements for Non-Registrants), 507 (Treatment of Customer Funds</p>	<p>Acceptable.</p> <p>NYSE Liffe contracts initially will be cleared by CME, just as CME currently clears the CBOT metals contracts. NYSE Liffe’s rules require all members to be clearing members, or to have in place a financial guarantee by a clearing</p>

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<p>a derivatives clearing organization.”</p>	<p>and Securities), 508 (Additional Minimum Financial Requirements), 516 (Customer Margin), 521 (Allowable Margin Deposits), 715 (Sanctions), and 719 (Summary Suspensions and Other Summary Actions); NYSE Liffe Appendix 7 (Transition Services Agreement between CME, CBOT and NYSE Euronext, including Exhibit C – Clearing Services and Requirements); and NYSE Liffe Appendix 5 (Regulatory Services Agreement between NYSE Liffe and NFA).</p>	<p>member, and to adhere to all applicable rules of the clearing service provider. Therefore, there are no issues related to compliance with Designation Criterion 5 at this time. However, NYSE Liffe’s agreement with CME specifies that CME will not provide clearing services beyond March 2009, and NYSE Liffe reportedly is in talks with other registered DCOs about providing clearing services once the arrangement with CME ends. Staff recommends that NYSE Liffe be reminded that the clearing services provider must be a DCO authorized to provide clearing services for NYSE Liffe and with the capacity to do so. Staff further recommends that NYSE Liffe be advised to notify the Commission no less than 60 days prior to the proposed change in its clearing services provider if the clearing services provider will be an existing DCO and that the Commission has 180 days to review an application for registration as a new DCO.</p> <p>NYSE Liffe has adopted several rules to ensure financial integrity of the trades. Every NYSE Liffe member registered with the Commission as an FCM or IB must comply with Commission regulations relating to minimum financial and related reporting and recordkeeping requirements and the treatment of customer funds. The rules also allow NYSE Liffe to impose additional minimum financial requirements.</p> <p>NYSE Liffe members registered with the Commission must file with NFA a copy of any financial statement that must be filed with the Commission. Members who are not registered with the Commission must submit annual audited financial</p>

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		<p>statements to NFA as well. According to the RSA between NYSE Liffe and NFA, NFA will analyze the financial statements to ensure that the minimum financial requirements are met. If NFA receives notices that a member has fallen below the requirements, NFA will conduct an investigation. NYSE Liffe’s rules provide for a number of sanctions that the exchange may impose on a member who is found to have fallen below the minimum financial requirements or violated any other rule of the exchange. Based on its review, Commission staff has determined that NYSE Liffe adequately demonstrates compliance with Designation Criterion 5 at this time.</p>
<p>Designation Criterion 6 <i>Disciplinary Procedures</i> – “The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.”</p>	<p>NYSE Liffe Appendix 1 (Chart Demonstrating Compliance with Designation Criteria and Core Principles) at 3-4; NYSE Liffe Appendix 4 (Rulebook): Chapter 3 (Membership and Right to Access Platform), Chapter 5 (Obligations of Members), Chapter 6 (Business Conduct), Chapter 7 (Discipline and Enforcement) and Chapter 9 (Reconsideration of Denial of Trading Privileges); NYSE Liffe Appendix 5 (Regulatory Services Agreement between NYSE Liffe and NFA); and NYSE Liffe Appendix 13 (NFA Compliance Manual for NYSE Liffe).</p>	<p>Acceptable.</p> <p>NYSE Liffe disciplinary procedures are consistent with Commission regulations and interpretive guidance regarding core principles.</p> <p>All market participants at the Exchange, including Members, Registered Users, and other Persons within the Exchange’s jurisdiction are subject to disciplinary action for violating the Exchange rules, Commission Regulations, or provisions of the Act. The Exchange’s Review Panel is responsible for promptly reviewing each completed investigation report to determine whether a reasonable basis exists to believe that a violation within the Exchange’s jurisdiction has occurred or is about to occur. The Disciplinary Panel conducts hearings in connection with any disciplinary proceeding, makes findings, and imposes sanctions. If charges are brought, and a rule violation is found by the Disciplinary Panel, the respondent</p>

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		<p>may appeal to the Appeals Panel within 20 days. The Review Panel and Appeals Panel are appointed by NYSE Liffe's Board of Directors to one year terms. Each panel consists of three individuals. For the Review Panel, two individuals must be Members of the Exchange. All three individuals must be Members of the Exchange for the Appeals Panel. The Disciplinary Panel is also appointed by the Board of Directors and consists of five Members.</p> <p>If the Review Panel authorizes disciplinary proceedings, then the Exchange's Market Regulation Department will prepare and serve a notice of charges. The notice will state the acts that the respondent is alleged to have engaged in, the Exchange rule alleged to have been violated, the proposed sanctions, and advise the respondent of its right to a hearing. A respondent's failure to timely answer a notice of charges will be deemed an admission. In addition, any allegation that a respondent fails to expressly deny will be deemed admitted.</p> <p>If a disciplinary hearing is held, the Market Regulation Department may delegate its prosecutorial function to NFA. During the course of a hearing, the Market Regulation Department and all respondents may present evidence and facts, call and examine witnesses, and cross-examine witnesses called by other parties. Respondents are permitted the assistance of counsel.</p> <p>The Exchange may impose one or more of the following sanctions or remedies: 1) censure; 2) limitation on the Member's right to access the NYSE Liffe Trading Platform, association with a Member or other activities, functions or operations; 3)</p>

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		<p>suspension of the Member’s right to access the NYSE Liffe Trading Platform or association with a Member for a period not to exceed 12 months; 4) fine (up to \$500,000 for each rule violation); 5) restitution or disgorgement; 6) expulsion or termination of a Member, Registered User or other Person within the Exchange’s jurisdiction; or 7) any other sanction or remedy deemed appropriate.</p> <p>Finally, a respondent may propose an offer of settlement to disciplinary proceedings. Settlement offers should contain proposed findings and sanctions, and be signed by the respondent and submitted to the Market Regulation Department. Settlement offers that are accepted become final after 20 days, and a respondent’s submission of the offer is deemed to constitute a waiver of the right to appeal.</p> <p>Based on its review, Commission staff has determined that NYSE Liffe disciplinary procedures adequately demonstrate compliance with Designation Criterion 6.</p>
<p>Designation Criterion 7 Public Access – “The board of trade shall provide the public with access to the rules, regulations, and contract specifications of the board of trade.”</p>	<p>NYSE Liffe Appendix 1 (Chart Demonstrating Compliance with Designation Criteria and Core Principles) at 4.</p>	<p>Acceptable.</p> <p>The Applicant states that the Rulebook, all amendments, notices and policies, as well as the specifications for all contracts traded on NYSE Liffe, will be publicly available on NYSE Liffe’s website. In addition, NYSE Liffe will notify members of any new or modified Rules of NYSE Liffe and any other relevant information.</p> <p>Based on its review, Commission staff has determined that NYSE Liffe adequately demonstrates compliance with Designation Criterion 7.</p>

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<p>Designation Criterion 8 <i>Ability to Obtain Information</i> – “The board of trade shall establish and enforce rules that will allow the board of trade to obtain any necessary information to perform any of the functions described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.”</p>	<p>NYSE Liffe Appendix 1 (Chart Demonstrating Compliance with Designation Criteria and Core Principles) at 4; NYSE Liffe Appendix 4 (Rulebook): Rules 201 (Certain Powers of the Board), 501 (Books and Records), 502 (Inspection and Delivery), 503 (Member Information) and 702 (Inquiries and Investigation); and NYSE Liffe Appendix 5 (Regulatory Services Agreement between NYSE Liffe and NFA).</p>	<p>Acceptable.</p> <p>Members will be required to make their books and records available for inspection by, and deliver copies thereof as requested by, NYSE Liffe and NFA upon request. In addition, each Member must report promptly to NYSE Liffe whenever the Member is subject to certain civil, criminal, governmental or self-regulatory actions. The Market Regulation Department would have the authority to inspect and request books and records and to request testimony regarding any possible violation of the Rules of the Exchange.</p> <p>NYSE Liffe represents that it intends to become a party to the International Information Sharing Memorandum of Understanding and Agreement of March 15, 1996 (Boca Declaration). Further, Rule 201(c) provides that NYSE Liffe may become a party to other relevant information-sharing agreements to assure that it has access to surveillance, investigative, and enforcement data and other information relevant to its self-regulatory programs.</p> <p>NYSE Liffe and its market surveillance provider, Liffe Market Services, a division of LIFFE Administration and Management, further represent that they will provide direct access to the Commission, to records, staff and offices (whether in the US or London) that the Commission may determine is necessary.</p> <p>NYSE Liffe and its technology services provider, NYSE Euronext Technology (“NET”), formerly known as Atos-Euronext Market Solutions, (“AEMS”), further</p>

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		<p>represent that they will provide direct access to the Commission, to records, staff and offices (whether in the US or London) that the Commission may determine is necessary.</p> <p>The direct access representations to records, staff and offices provided by NYSE Liffe, Liffe Market Services and NET to the Commission, have been confirmed by letters and emails dated August 14 and 15, 2008, between the Office of International Affairs and the Financial Services Authority.</p> <p>Based on its review, Commission staff has determined that NYSE Liffe adequately demonstrates compliance with Designation Criterion 8.</p>

III. Analysis of NYSE Liffe’s Contract Market Application, Outsourcing Agreements with CME, CBOT and NFA and Proposed Rules, all for Compliance with the Act’s Core Principles for Designation as a Contract Market.

CONTRACT MARKET CORE PRINCIPLES	NYSE Liffe PROPOSAL	STAFF ANALYSIS
<p>Sec. 5c(b) Common Provisions Applicable to Registered Entities (1) In General – “A contract market or derivatives transaction execution facility may comply with any applicable core principle through delegation of any relevant function to a registered futures association or another registered entity.” (2) Responsibility – “A contract market or derivatives transaction execution facility that delegates a function under paragraph (1) shall remain responsible for carrying out the function.”</p>		<p>Acceptable.</p> <p>Staff notes that NYSE Liffe has submitted and staff has reviewed service agreements between NYSE Liffe and other parties, such as the NFA, as part of the designation-review process. The Division is not recommending approval of these agreements. Rather, the staff has considered these agreements to ensure that NYSE Liffe is satisfying its obligations to meet <i>certain</i> core principles, such as maintaining an appropriate dispute-resolution process. To eliminate any misunderstanding, the Division recommends that the Commission specifically remind NYSE Liffe that the Commission’s designation is not an approval of any third-party service agreements.</p> <p>Although NYSE Liffe has contracted out for certain regulatory services, NYSE Liffe would remain responsible for compliance with those designation criteria and core principles for which relevant functions would be contracted out.</p>
<p>SEC. 5c(c) NEW CONTRACTS, NEW RULES, AND RULE AMENDMENTS – (1) In General – Subject to paragraph (2), a registered entity may elect to list for trading or accept for clearing any new contract or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in case of a contract</p>		<p>Acceptable.</p> <p>NYSE Liffe has requested that the Commission approve its proposed rules (including the proposed Rulebook and Policies and Procedures), in connection with its designation as a contract market. The Divisions recommend such approval pursuant to Section 5c(c)(2)(A) of the Act, since the Policies and Procedures and Rulebook do not violate any</p>

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<p>for sale of a government security for future delivery (or an option on such a contract) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this Act (including regulations under this Act).</p> <p>(2) Prior Approval – (A) In General – A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.</p>		<p>provision of the Act or the Commission's regulations.</p>
<p>Core Principle 1 In General – “To maintain the designation of a board of trade as a contract market, the board of trade shall comply with the core principles specified in this subsection. The board of trade shall have reasonable discretion in establishing the manner in which it complies with the core principles.”</p>		<p>Acceptable.</p> <p>See below</p>
<p>Core Principle 2 Compliance with Rules – “The board of trade shall monitor and enforce compliance with the rules of the contract market, including the terms and conditions of any contracts to be traded and any limitations on access to the contract market.”</p>	<p>NYSE Liffe Appendix 4 (Rulebook), Rules 201 (Certain Powers of the Board), and 204 (Conflicts of Interest), Chapter 7 (Discipline and Enforcement); NYSE Liffe Appendix 12 (NYSE Liffe Market Services Operations Procedures); and NYSE Liffe Appendix 13 (NFA Compliance Manual for NYSE Liffe).</p>	<p>Acceptable.</p> <p>As noted previously, NFA will conduct trade practice surveillance for NYSE Liffe. In that regard NFA will utilize an automated system to perform trade practice for NYSE Liffe on a T+1 basis. NFA will review NYSE Liffe’s trades on a daily basis to determine whether suspicious activity relating to the Exchange’s trading standard exists. The particular trades reviewed will include trades executed on the exchange’s matching system, all trades cleared by the clearinghouse, any changes to orders, any changes to matched/cleared trades and all quote requests. Also, if applicable, exchange-for physicals, exchange-for-swaps, exchange-for-futures,</p>

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		<p>transfers, block and error trades will be reviewed.</p> <p>NFA’s TAPS system (also in use for market surveillance as described above) is the principal trade practice surveillance tool. TAPS provides exception reports designed to detect various types of potential trading abuses and other anomalous trading activity for further investigation. The TAPS system is able to detect potential trade practice violations including trading ahead, cross trades, wash trading, money passing, prearranged trading, marking the close, and to generate reports that identify patterns and uncover new relationships. NFA also used TAPS to conduct customized queries of the audit trail data.</p> <p>Pursuant to the Regulatory Services Agreement (“RSA”), NFA’s Compliance Department will be primarily responsible for performing most of the investigative work relating to trade practice and market surveillance inquiries and investigations. If a potential trade practice or market surveillance violation is discovered, NFA will notify NYSE Liffe’s CRO concerning the potential violation. The RSA provides that NFA has the authority to make preliminary factual inquiries of NYSE Liffe’s traders to evaluate the likelihood that a rule violation has occurred. If NFA’s Compliance Department determines that a matter should advance beyond the inquiry stage to a formal investigation, NFA will explain the results of its inquiry to NYSE Liffe’s CRO and provide a recommendation. The CRO will then decide whether NFA should continue its investigation. Staff notes that the CRO is responsible for reviewing investigations initiated by NFA’s Compliance Department while the</p>

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		<p>Exchange’s Review Panel is responsible for reviewing investigations initiated by the Exchange’s Market Regulation Department. At the conclusion of the NFA investigation, NFA will provide the CRO with a written report summarizing its findings and recommending a course of action. The CRO has the authority to determine whether NFA’s report should be forwarded to the Exchange’s Disciplinary Panel for review. In the event the CRO determines not to follow NFA’s recommendation, the CRO will notify NFA’s Compliance Department in writing of this decision and provide an explanation as to why the CRO disagrees with NFA’s recommendation. In addition to communicating as necessary, NFA will consult with the CRO on a monthly basis to discuss the status of all inquiries and investigations.</p> <p>Further, NFA staff will monitor market events for potential rule violations and accept market information from market participants regarding questionable market activity. In addition to the automated TAPS exception reports, these procedures will augment the trade practice surveillance program and help NFA staff focus on areas of concern.</p> <p>Based on its review, Commission staff has determined that NYSE Liffe Compliance procedures and resources adequately demonstrates compliance with Core Principle 2.</p>
<p>Core Principle 3 <i>Contracts Not Readily Subject to Manipulation</i> – “The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.”</p>	<p>NYSE Liffe Appendix 1 (Chart Demonstrating Compliance with Designation Criteria and Core Principles) at 5. NYSE Liffe Appendix 4 (Rulebook) Chapter 12 (100 Oz. Gold Futures), Chapter 13 (100 Oz. Gold Futures</p>	<p>Acceptable.</p> <p>The contracts that NYSE Liffe will trade are contracts that are already being traded on the CBOT, an established DCM. and NYSE Liffe plans to maintain the same contract</p>

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	<p>Options), Chapter 14 (Mini-Sized Gold Futures), Chapter 15 (5,000 Oz. Silver Futures), Chapter 16 (5,000 Oz. Silver Futures Options), and Chapter 17 (Mini-Sized Silver Futures).</p>	<p>terms and conditions under CBOT rules.</p> <p>NYSE Liffe will continue to trade the metals contracts, including full-size (100 oz) Gold and (5,000 oz) Silver futures contracts, associated options contracts as well as mini-size (33.2 oz) Gold and mini-size (1,000 oz) Silver contracts, which are currently traded on CBOT.</p> <p>NYSE Liffe anticipates that new contracts will be listed by self-certification under Commission Regulation § 40.2.</p> <p>Based on its review, Commission staff has determined that the NYSE Liffe metals adequately demonstrate compliance with Core Principle 3.</p>
<p>Core Principle 4 <i>Monitoring of Trading</i> – “The board of trade shall monitor trading to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process.”</p>	<p>NYSE Liffe Appendix 1 (Chart Demonstrating Compliance with Designation Criteria and Core Principles) at 5; NYSE Liffe Rule 603 (Market Manipulation or Demoralization); NYSE Liffe Appendix 5 (Regulatory Services Agreement between NYSE Liffe and NFA); NYSE Liffe Appendix 6 Managed Services Agreement (Liffe Administration and Management); NYSE Liffe Appendix 12 (Liffe Market Services – Operations Procedures); NYSE Liffe Appendix 13 (NFA Compliance Manual for CCFE); NYSE Liffe Appendix 16 (Description of Market Surveillance Interaction dated July 24, 2008 by Declan Ward, NYSE Liffe Operations Director); and NYSE Liffe/NFA demonstration of trade practice and market surveillance on 07/08/08.</p>	<p>Acceptable.</p> <p>NYSE Liffe has rules in place to prevent manipulation and has contracted with NFA to monitor market prices, liquidity measures, and the degree of concentration of large trader positions. NFA will use TAPS to alert staff of any anomaly and the level of surveillance is stepped up as the contract approaches expiration. In particular, large trader open positions will be analyzed, and if concerns exist, traders may be contacted by NFA to gather additional information about the nature and intent of the positions. NFA will be in close consultation with NYSE Liffe should NFA decide to make an inquiry with any clearing firm or large trader.</p> <p>In addition to collecting and analyzing market data and large trader data, LMS and NFA will coordinate with each other to monitor and ensure that deliverable supplies are adequate going into the delivery period. To do so there will</p>

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		<p>be dedicated staff to gather deliverable supply data and to review it with the large trader positions that could be involved in the delivery process. This is a critical element of the surveillance of physically settled futures contracts to protect against the possibility of congestion, corners, squeezes, or any potential manipulation of the price of the futures contract as well as the underlying commodity. To that end, LMS and NFA will examine both existing and potential supply, as well as the pricing of deliverable supplies relative to the futures price as contract expiration approaches. Therefore, in addition to the duties and responsibilities of both LMS and NFA as described above, LMS will oversee and monitor the delivery process to ensure that the contract price would not be distorted due to any concentration of positions relative to the available deliverable stock. Additionally, LMS staff will contact traders as needed to verify whether or not traders are able to make or take delivery of the underlying commodity.</p> <p>Based on the coordinated market surveillance efforts of LMS and NFA, Commission staff has determined that NYSE Liffe appears to demonstrate compliance with Core Principle 4.</p>
<p>Core Principle 5 Position Limitations or Accountability – “To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt position limitations or position accountability for speculators, where necessary and appropriate.”</p>	<p>NYSE Liffe Appendix 1 (Chart Demonstrating Compliance with Designation Criteria and Core Principles) at 5-6; CCFE Appendix 4 (Rulebook) Rule: 420 (Position Limits); NYSE Liffe Appendix 5 (Regulatory Services Agreement between NYSE Liffe and NFA); and NYSE Liffe Appendix 13 (NFA Compliance Manual for NYSE Liffe).</p>	<p>Acceptable.</p> <p>As noted above, NYSE Liffe intends to trade all the precious metal futures contracts with contract specifications that are identical to the current CBOT specifications, which includes retaining the current position limits.</p> <p>Specifically, the CBOT Gold futures and options contracts specify a 3,000-contract futures equivalent spot-month limit and a 6,000-</p>

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		<p>contract futures equivalent any month and all-months combined limit for each contract. The Mini Gold futures contract specifies a 4,000-contract limit each for the spot-month and any month, and a 6,000-contract limit net long or short for all-months-combined. The CBOT Silver futures and options contracts specify a 1,500-futures equivalent spot-month and a 6,000-futures equivalent any month and all-month combined speculative position limits for both contracts. The Mini Silver futures contract specifies a 1,500 –contract limit each for the spot-month and any month, and a 3,000-contract limit net long or short for all-months-combined.</p> <p>Based on its review Commission staff has determined that NYSE Liffe position limits adequately demonstrate compliance with Designation Criterion 5.</p>
<p>Core Principle 6 <i>Emergency Authority</i> – “The board of trade shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to – (A) liquidate or transfer open positions in any contract; (B) suspend or curtail trading in any contract; and (C) require market participants in any contract to meet special margin requirements.”</p>	<p>NYSE Liffe Appendix 1 (Chart Demonstrating Compliance with Designation Criteria and Core Principles) at 6; NYSE Liffe Appendix 4 (Rulebook) Rules 124 (Definition of Emergency), 204 (Conflicts of Interest), and 425 (Emergencies).</p>	<p>Acceptable.</p> <p>NYSE Liffe rules provide details regarding who can take emergency action and the procedures for such actions. For example, NYSE Liffe Rule 425 allows the President or any designated individual who determines that an Emergency exists to place into immediate effect a temporary emergency action or rule that may remain in effect for up to 30 business days. If the emergency situation is not resolved during this time, the Board may extend the effective period as necessary. Additionally, once implemented, any emergency action or rule may be revoked, suspended, or modified by the Board at any time. Moreover, under NYSE Liffe Rule 425(d), the Exchange will notify the Commission of any action taken or proposed to be taken pursuant to the Emergency procedures and</p>

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		<p>Commission Regulation § 40.6. The Exchange will also record its decision-making process in writing with respect to, and the reasons for, any actions that it takes.</p> <p>In an emergency the exchange has the ability to take a variety of actions to maintain fair and orderly trading in the markets including: limiting trading to liquidation only; changing the delivery month or extending or shortening the term of any contract; imposing or modifying position or price limits with respect to any contract; extending, limiting, or changing the hours of trading; suspending or curtailing trading in any or all contracts or modifying circuit breakers; requiring clearing members, members, customers, or non-customers to meet special margin requirements; and a number of other actions.</p> <p>See the staff’s Core Principle 15 analysis for a description of how NYSE Liffe intends to minimize conflicts in connection with emergencies.</p> <p>Based on its review, Commission staff has determined that NYSE Liffe emergency procedures adequately demonstrate compliance with Core Principle 6.</p>
<p>Core Principle 7 <i>Availability of General Information</i> – “The board of trade shall make available to market authorities, market participants, and the public information concerning – (A) the terms and conditions of the contracts of the contract market; and (B) the mechanisms for executing transactions on or through the facilities of the contract market.”</p>	<p>NYSE Liffe Appendix 1 (Chart Demonstrating Compliance with Designation Criteria and Core Principles) at 6; NYSE Liffe Appendix 4 (Rulebook) Rule 310 (Notices), Chapter 4 (Trading Procedures and Standards), and Chapter 5 (Obligations of Members).</p>	<p>Acceptable.</p> <p>NYSE Liffe states that the Rulebook, all amendments and notices and policies, as well as the specifications for all contracts traded on NYSE Liffe, will be publicly available on NYSE Liffe’s website. Information concerning lists of approved depositories, locations where deliverable precious metals are stored, and reports on the quantity of deliverable precious metals will be made available on NYSE Liffe’s</p>

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		<p>website. In addition, NYSE Liffe will notify members of any new or modified rules of NYSE Liffe and any other relevant information.</p> <p>Based on its review, Commission staff has determined that NYSE Liffe adequately demonstrates compliance with Core Principle 7.</p>
<p>Core Principle 8 <i>Daily Publication of Trading Information</i> – “The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.”</p>	<p>NYSE Liffe Appendix 1 (Chart Demonstrating Compliance with Designation Criteria and Core Principles) at 6;</p>	<p>Acceptable.</p> <p>NYSE Liffe states that it will publish information regarding settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on a timely basis on its website and through one or more market data vendors.</p> <p>Based on its review, Commission staff has determined that NYSE Liffe adequately demonstrates compliance with Core Principle 7.</p>
<p>Core Principle 9 <i>Execution of Transactions</i> – “The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions.”</p>	<p>NYSE Liffe Appendix 1 (Chart Demonstrating Compliance with Designation Criteria and Core Principles) at 6; NYSE Liffe Appendix 4 (Rulebook) Chapter 3 (Memberships and Right to Access Platform), Chapter 4 (Trading Procedures and Standards) and Chapter 6 (Business Conduct): NYSE Liffe Appendix 8 (LIFFE CONNECT ®V9.0 Information Pack, including e-cbot Electronic Trading Platform description); NYSE Liffe Appendix 14 (Information Cross Reference Map Road Map); and NYSE Liffe Appendix 15 (NYSE Liffe Interface Sublicense and Connection Agreement) Trading Demonstration and on-site visit including data center tour provided in Chicago on July 8-10. NYSE Liffe Appendix 19 (Detailed description of NYSE Liffe technical review).</p>	<p>Acceptable.</p> <p>NYSE Liffe has provided sufficient documentation and a demonstration of the system in operation to enable Commission staff to conclude that the NYSE Liffe electronic trading system would provide for open, competitive and efficient trading.</p> <p>Orders will be entered into the Liffe Connect Trading Platform in accordance with the procedures set forth in rules 405 and 406 and executed impartially in accordance with the procedures (trade-matching algorithm based on pro rata priority) referred to in Rule 407.</p> <p>Although the NYSE Liffe rules currently provide for block transactions, NYSE Liffe will not initiate block trading until sometime after designation. NYSE Liffe will notify the Commission with details of its block trading procedures</p>

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		<p>(block size, participant requirements, reporting requirements, etc.) prior to allowing block trading on NYSE Liffe.</p> <p>NYSE Liffe submitted numerous technical documents that enabled the Commission to perform a comprehensive assessment of the Liffe Connect system with regard to its compliance with the technical requirements of Core Principle 9. NYSE Liffe further submitted reports from several independent audits of the overall IT program and specific components of the Liffe Connect system that in total provide an independent technical assessment of the system's compliance with the technical requirements of Core Principle 9. NYSE Liffe also submitted reports from penetration and vulnerability tests conducted by independent contractors.</p> <p>As mentioned earlier, the proposed system, in a similar implementation, is currently in use by a number of other exchanges, so it is of proven production quality. For changes required to support new interfaces or functionality, sufficient tests are being run to validate success in implementation. Projected system capacity and performance goals have been accommodated in the sizing of the system. Because of the extensible system architecture, adding additional capacity would be relatively easy.</p> <p>The applicant's testing methodology shows a high level of maturity as evidenced by their use of best practices such as requirements documentation, written test plans, automated testing, automated support for configuration management and issue tracking, and multiple stages of quality assurance reviews.</p>

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		<p>To better understand NYSE Liffe’s processes and controls, Commission staff conducted an onsite visit to the primary NYSE Liffe facilities in Chicago, Illinois on July 9-10, 2008. During that time senior management and technical staff from NYSE Liffe and its technical services provider, Atos-Euronext Market Solutions Limited (“AEMS”), were made available for two days of presentations and discussions about the system.</p> <p>Finally, staff visited the NYSE Liffe production environment hosted at a Chicago data center. The tour of the primary data center housing the trading platform enabled Commission staff to verify that the system is housed in a secure facility that provides an extremely high degree of reliance on continued operation under all but the most severe adverse conditions.</p> <p>As described above, the staff’s review consisted of a comprehensive analysis of the NYSE Liffe system documentation, extensive interviews of NYSE Liffe and AEMS personnel and a tour of the primary data center. Based on the totality of information received through document review and those discussions and tours, Commission staff believes that the NYSE Liffe system and algorithm utilized by NYSE Liffe for electronic trading appears to comply with Core Principle 9 requirements including complying with the IOSCO Principles for Screen-Based Trading adopted by the Commission as appropriate guidelines for electronic trading systems and industry best practices.</p> <p>Based on its review of the NYSE Liffe technical and operational information, Commission staff has</p>

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		<p>determined that NYSE Liffe’s proposed electronic trading system provides a showing of compliance with Core Principle 9, including the IOSCO principles for screen-based trading as noted in the Commission’s guidance on compliance with Core Principle 9.</p>
<p>Core Principle 10 Trade Information – “The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information for purposes of assisting in the prevention of customer and market abuses and providing evidence of any violations of the rules of the contract market.”</p>	<p>NYSE Liffe Appendix 1 (Chart Demonstrating Compliance with Designation Criteria and Core Principles) at 6; NYSE Liffe Appendix 4 (Rulebook): Rule 403 (ITMs User IDs), 404 (Opening), 405 (Orders), and 406 (Order Entry); NYSE Liffe Appendix 8 (LIFFE CONNECT ®V9.0 Information Pack, including e-cbot Electronic Trading Platform description); NYSE Liffe Appendix 5 (Regulatory Services Agreement between NYSE Liffe and NFA); and NYSE Liffe Appendix 13 (NFA Compliance Manual for CCFE).</p>	<p>Acceptable.</p> <p>The NYSE Liffe audit trail includes a complete electronic record of all entries into its matching engine and the details of every trade, allowing for the reconstruction of trade efficiently and effectively. In addition, any changes to orders are automatically timed and identified.</p> <p>Each order entered into the NYSE Liffe Trading System identifies both the member involved and the individual authorized trader making the entry. The Exchange assigns to each member a unique identification code known as a Member ID. Exchange rules require each member to assign a separate identification code, known as a User ID, to each authorized trader employed by the member or any of its affiliates. To log into and use the Trading System, a trader must enter both the appropriate Member ID and their own User ID.</p> <p>The Trading System will not accept orders which do not include all of the order terms required under Exchange rules. The required information, in addition to the Member ID and User ID required for login, includes the following: the price, the quantity, product, expiration month, a customer type indicator, order type, buy or sell, an account number or identifier; and for options, put or call and strike price. The Trading System automatically records the time and information of every order</p>

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		<p>entered into the system, and maintains a record of this information for all orders submitted. This electronically-recorded data gives the Exchange a complete audit trail that includes all the details of every trade.</p> <p>The time of each trade recorded by the Trading System is unalterable by either users or NYSE Liffe. Although the member who entered an order which is resting in the system can cancel it or change it or can change those of its terms which are not matching criteria, the Trading System records the cancellation or change without deleting the original order, and also records the Member ID and User ID of the system user making the cancellation or change.</p> <p>Based on the above, Commission staff has determined that the audit trail captured by the NYSE Liffe system appears to demonstrate compliance with Core Principle 10.</p>
<p>Core Principle 11 <i>Financial Integrity of Contracts</i> – “The board of trade shall establish and enforce rules providing for the financial integrity of any contracts traded on the contract market (including the clearance and settlement of the transactions with a derivatives clearing organization), and rules to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.”</p>	<p><i>See generally</i> Designation Criteria #5, above.</p>	<p>Acceptable.</p> <p><i>See generally</i> Designation Criteria #5, above.</p> <p>Based on its review, Commission staff has determined that NYSE Liffe adequately demonstrates compliance with Core Principle 11 at this time.</p>
<p>Core Principle 12 <i>Protection of Market Participants</i> – “The board of trade shall establish and enforce rules to protect market participants from abusive practices committed by any party acting as an agent for the participants.”</p>	<p>NYSE Liffe Appendix 1 (Chart Demonstrating Compliance with Designation Criteria and Core Principles) at 7; NYSE Liffe Appendix 4 (Rulebook) Rules 103 (Applicable Law) and 308 (Application of Rules and Jurisdiction), Chapter 4 (Trading Procedures and Standards), Chapter</p>	<p>Acceptable.</p> <p>NYSE Liffe members are bound by the rules of the Exchange. The NYSE Liffe rules prohibit trading ahead of or against Customer Orders; address potential abuses related to withholding, withdrawing or disclosing Orders and contain broad</p>

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	<p>5 (Obligations of Members) and Chapter 6 Business Conduct; NYSE Liffe Appendix 5 (NFA Regulatory Agreement between NYSE Liffe and NFA including Schedule A); NYSE Liffe Appendix 12 (NYSE Liffe Market Services Operational Procedures); and NYSE Liffe Appendix 13 (NFA Compliance Manual for NYSE Liffe).</p>	<p>prohibitions against fraudulent acts and market manipulation. Separately, the Rulebook prohibits any fraudulent or misleading communications relating to the purchase or sale of any contract and establishes a due diligence standard with respect to handling and execution of Customer Orders.</p> <p>NYSE Liffe contracted with the NFA to assist in carrying out self-regulatory responsibilities with respect to trade practice surveillance.</p> <p>The NFA will use an automated system to provide such surveillance. The NFA will monitor for, among other things, trading ahead of customers (direct and indirect), front running, direct and indirect crossing, taking the other side (direct and indirect), prearranged trading, wash trading, money passing (direct and indirect), counterparty trade percentages, marking the close, error account and transfer trade activity, and off-exchange transactions.</p> <p>The NFA will also review trader profiles to detect aberrations from a trader’s normal pattern of trading.</p> <p>Based on its review, Commission staff has determined that NYSE Liffe adequately demonstrates compliance with Core Principle 12.</p>
<p>Core Principle 13 <i>Dispute Resolution</i> – “The board of trade shall establish and enforce rules regarding [sic] and provide facilities for alternative dispute resolution as appropriate for market participants and any market intermediaries.”</p>	<p>CFE Appendix 1 (Chart Demonstrating Compliance with Core Principles and Designation Criteria for Contract Markets) at 6; NYSE Liffe Appendix 4 (Rulebook): Chapter 8 (Arbitration), and NFA Code of Arbitration and NFA Member Arbitration Rules (incorporated by reference).</p>	<p>Acceptable.</p> <p>Chapter 8 of the NYSE Liffe Rulebook provides for the resolution of disputes involving members, or members and their customers, through arbitration conducted by the NFA. Arbitrations that involve members only will be conducted pursuant to the NFA’s Member Arbitration Rules. Arbitrations that involve customers will be conducted</p>

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		<p>pursuant to NFA’s Code of Arbitration. Additionally, in accordance with NYSE Liffe Rule 801(b) and Commission Regulation § 166.5, the customer dispute resolution process is voluntary as the customer must agree to arbitration. However, members must agree to arbitrate all controversies arising in connection with their Exchange business or among themselves. In the event that the claim involves persons that are located outside of the United States, the Exchange may designate another arbitration forum.</p> <p>NFA rules provide parties with all the rights included in the guidance to this core principle, including the right to have claims decided by an objective and impartial decision-maker, the right to be represented by counsel, notice and an opportunity to be heard, the option to settle the claims, and notice of fees and costs.</p> <p>As for the rule enforcement requirement of Core Principle 13, NYSE Liffe Rule 719 allows the exchange to suspend a member, registered user, or other person subject to the Exchange’s jurisdiction that fails to satisfy an arbitration award.</p> <p>Based on the above, Commission staff has determined that the NYSE Liffe alternative dispute resolution procedures adequately demonstrate compliance with Core Principle 13.</p>

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<p>Core Principle 14 Governance Fitness Standards – “The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other persons with direct access to the facility (including any parties affiliated with any of the persons described in this paragraph).”</p>	<p>NYSE Liffe Appendix 1 (Chart Demonstrating Compliance with Designation Criteria and Core Principles) at 8; and NYSE Liffe Appendix 4 (Rulebook) Rule 202 (Eligibility).</p>	<p>Acceptable.</p> <p>NYSE Liffe Rule 202 sets forth eligibility criteria for persons serving as members of the Board, Review Panel, Disciplinary Panel, Appeals Panel, or any other disciplinary committee, arbitration panel, or oversight panel of the Exchange. These criteria incorporate the standards set forth in Commission Regulation 1.63(b). On July 25, 2008, NYSE Liffe also provided a certificate of fitness for each of its Board of Directors verifying that they met the minimum fitness standards of Core Principle 14.</p> <p>In addition, both NFA and NYSE policies, procedures and rules provide fitness standards for individuals and members. NFA’s Compliance Manual for NYSE Liffe provides that individuals will be subject to a variety of fitness requirements depending on circumstances such as: BASIC and CRD searches, credit checks, a foreign regulatory check, and a criminal record check.</p> <p>NYSE Liffe Rule 304 provides the eligibility criteria for members. Members must be of good financial standing and meet financial and related reporting requirements. In addition, a member must be a Commission registrant, a person in a jurisdiction outside the United States that performs similar or equivalent functions, or any other person that meets such standards as the Exchange prescribes. All members that are not clearing members must be guaranteed by a clearing member.</p> <p>The Exchange may deny or may condition the application of any person to be a member, or may prevent a person from becoming associated with a member when</p>

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		<p>appropriate.</p> <p>Core Principle 14’s application guidance requires “natural persons who directly or indirectly have greater than a ten percent ownership interest in a designated contract market” to “meet the fitness standards applicable to members with voting rights.” NYSE Liffe has confirmed that no natural person has a direct or indirect ownership interest in NYSE Liffe equal to or greater than 10 percent.</p> <p>NYSE Liffe also represented, in its August 6th, 2008 email to the Commission, that it is not currently subject to any legal proceedings and further, that its parent, NYSE Euronext, does not appear to be subject to any lawsuits that would materially impact the rights or obligations of market participants on NYSE Liffe.</p> <p>Based on the above, Commission staff has determined that the NYSE Liffe governance fitness standards adequately demonstrate compliance with Core Principle 14.</p>
<p>Core Principle 15 <i>Conflicts of Interest</i> – “The board of trade shall establish and enforce rules to minimize conflicts of interest in the decision-making process of the contract market and establish a process for resolving such conflicts of interest.”</p>	<p>NYSE Liffe Appendix 1 (Chart Demonstrating Compliance with Designation Criteria and Core Principles) at 8; NYSE Liffe Appendix 4 (Rulebook) Rules 201 (Certain Powers of the Board), 203 (Confidentiality), 204 (Conflicts of Interest), and 425 (Emergencies); and NYSE Liffe Appendix 2 and 2A NYSE Liffe LLC Agreement and Certificate of Formation).</p>	<p>Acceptable.</p> <p>According to the LLC Agreement, at least 35 percent of the Board members are required to be “public directors.” This percent tracks the acceptable practices adopted by the Commission in 2007 for Core Principle 15. This provides assurances that these public directors have no material relationship with the Exchange that would reasonably affect the independent judgment of the board member’s decision making.</p> <p>In addition, NYSE Liffe intends to establish a Regulatory Oversight Committee (“ROC”) that will</p>

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		<p>provide independent oversight for core regulatory functions. For example, the ROC will assist the Board in reducing potential conflicts of interests between NYSE Liffe meeting its self-regulatory obligations and ensuring fairness and impartiality to all members. To encourage its independence, the ROC will be comprised of three or more “public directors” as defined in the LLC Agreement. The adoption of a ROC also tracks the acceptable practices adopted by the Commission in 2007 for Core Principle 15.</p> <p>NYSE Liffe has represented its intention that all exchange disciplinary panels will include at least one public participant, which also tracks the acceptable practices adopted by the Commission in 2007 for Core Principle 15.</p> <p>NYSE Liffe Rule 204, which essentially follows the substance of Commission regulation 1.69, deals with how NYSE Liffe will minimize conflicts faced by the Board and various committees in decision-making processes. This addresses Core Principle 15 guidance that the market should include methods to ascertain the presence of conflicts of interest and to make decisions in the event of such a conflict.</p> <p>Core Principle 15 guidance also points out that the market should include methods to make decisions in the event of a conflict. NYSE Liffe Rule 204 also excludes persons from deliberations or voting in any matters, such as disciplinary actions and appeals, involving a named party in interest. Specifically, no member of the Board, any Review Panel, any disciplinary panel, any appeals panel or any other disciplinary committee or oversight panel as defined by</p>

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		<p>CFTC regulation 1.69 can participate in a decision-making process involving a <i>named party in interest</i>, who is a target of a disciplinary or review action, where the member is, or is closely connected to, the named party in interest.</p> <p>Furthermore, if there some confusion or it is not self-evident that a member is conflicted, NYSE Liffe rules require members to disclose relationships and financial interests to NYSE Liffe’s Chief Regulatory Officer (CRO). NYSE Rule 204(a)(ii) and b(ii) provides the CRO with appropriate guidance in assessing potential conflicts. Finally, NYSE Liffe Rule 204(c) requires that conflict determinations are documented in the minutes for the meeting to which the conflicts determinations apply.</p> <p>Regarding confidentiality, NYSE Liffe Rules 203 (a) and (b) provide appropriate limitations on the use or disclosure of material non-public information gained through the performance of official duties by two different NYSE Liffe groups: (a) board and committee members; and (b) officers, employees, or agents of the Exchange. In addition, NYSE Liffe Rule 203(c) explains that the terms “employee,” “material information,” “non-public information,” and “commodity interest” have the same meanings as those terms have in Commission Regulation § 1.59.</p> <p>This addresses Core Principle 15 guidance that the contract market should provide for appropriate limitations on the use or disclosure of material non-public information gained through the performance of official duties by board members, committee members and contract market employees or gained through</p>

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		<p>an ownership interest in the contract market.</p> <p>Based on the above, Commission staff has determined that the NYSE Liffe conflicts procedures appear to demonstrate compliance with Core Principle 15.</p>
<p>Core Principle 16 <i>Composition of Boards of Mutually Owned Contract Markets</i> – “In the case of a mutually owned contract market, the board of trade shall ensure that the composition of the governing board reflects market participants.”</p>	<p>NYSE Liffe Appendix 1 (Chart Demonstrating Compliance with Designation Criteria and Core Principles) at 8; NYSE Liffe Appendix 2 and 2A (NYSE Liffe LLC Agreements and Certificate of Formation); and NYSE Liffe Appendix 4 (Rulebook) Rule 201 (Certain Powers of the Board), and Rule 301 (Limited Liability Company Member).</p>	<p>Not Applicable.</p> <p>As represented by NYSE Liffe, it is a limited liability company, formed under the laws of Delaware. NYSE Liffe, will exist as an indirect, wholly-owned subsidiary of NYSE Euronext, the holding company created by the combination of NYSE Group, Inc., and Euronext N.V. Given that NYSE Liffe will not require members to make a direct investment in the Exchange, NYSE Liffe is not considered a mutually-owned entity subject to Core Principle 16 and, therefore, Core Principle 16 compliance is not applicable to NYSE Liffe.</p> <p>Based on the above, Commission staff has determined that Core Principle 16 is inapplicable to NYSE Liffe.</p>
<p>Core Principle 17 <i>Recordkeeping</i> – “The board of trade shall maintain records of all activities related to the business of the contract market in a form and manner acceptable to the Commission for a period of 5 years.”</p>	<p>NYSE Liffe Appendix 1 (Chart Demonstrating Compliance with Designation Criteria and Core Principles) at 8; NYSE Liffe Appendix 4 (Rulebook), Rules 501 (Books and Records), and 502 (Inspection and Delivery); NYSE Liffe Appendix 8 (LIFFE CONNECT ®V9.0 Information Pack, including e-cbot Electronic Trading Platform description); NYSE Liffe Appendix 14 (Information Cross Reference Map Road Map).</p>	<p>Acceptable.</p> <p>Trade data is stored on-line for five days, on-line archived for 40 days and can be secured to offline storage (which will be readily accessible) for at least seven years. Exchange rules require original order records be retained for five years. In addition, the Exchange provided back up, recovery and continuity policies and procedures which provide for multiple back up and off-site storage capabilities.</p> <p>NYSE Liffe and its market</p>

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		<p>surveillance provider, Liffe Market Services, represent that they will provide direct access to the Commission, to records, staff and offices (whether in the US or London) that the Commission may determine is necessary.</p> <p>NYSE Liffe and its technology services provider, NYSE Euronext Technology (“NET”), formerly known as Atos-Euronext Market Solutions, (“AEMS”) further represent that they will provide direct access to the Commission, to records, staff and offices (whether in the US or London) that the Commission may determine is necessary.</p> <p>The direct access representations to records, staff and offices provided by NYSE Liffe, Liffe Market Services and NET to the Commission, have been confirmed by letters and emails dated August 14 and 15, 2008, between the Office of International Affairs and the Financial Services Authority.</p> <p>Based on the above, Commission staff has determined that NYSE Liffe’s recordkeeping procedures adequately demonstrate compliance with Core Principle 17.</p>
<p>Core Principle 18 <i>Antitrust Considerations</i> – “Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall endeavor to avoid – (A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or (B) imposing any material anticompetitive burden on trading on the contract market.”</p>	<p>NYSE Liffe Appendix 1 (Chart Demonstrating Compliance with Designation Criteria and Core Principles) at 8; and NYSE Liffe Appendix 4 (Rulebook), Rules 304 (Eligibility for Trading Privileges) and 405 (Matching of Orders).</p>	<p>Acceptable.</p> <p>NYSE Liffe represents that its Rulebook and business plan have been designed to avoid unreasonable restraints of trade or the imposition of any material anticompetitive burden on trading. For example, access to NYSE Liffe will be available to a broad range and potentially unlimited number of participants, on a fair, equitable and timely basis. Additionally, NYSE Liffe will operate through</p>

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		<p>predetermined electronic algorithms, without discrimination among different users or user groups. In addition, trade information will be disseminated to market participants and the public on a continuous basis.</p> <p>Based on NYSE Liffe's representations and its operational documents and rules, it does not appear that it has adopted any rules or taken any actions that result in unreasonable restraints on trade or pose anticompetitive concerns that would suggest that NYSE Liffe is not in compliance with Core Principle 18.</p> <p>Staff notes that NYSE Liffe has submitted and staff has reviewed service agreements between NYSE Liffe and other parties, but consistent with the explanation under Section 5c(b) of this chart, staff has not reviewed or recommended for approval these third-party agreements independently for compliance with Core Principle 18. Staff recommends that the letter to NYSE Liffe note that the Commission is not approving third party agreements in conjunction with this designation.</p> <p>In short, the staff's review of all of the documents submitted by NYSE Liffe did not reveal any concerns regarding the exchange's compliance with Core Principle 18 or with the Commission's obligations under section 15(b) of the Act. Indeed, it is possible that the approval of NYSE Liffe's DCM application, and NYSE Liffe's ultimate presence as a new exchange might create a more competitive environment in the exchange-traded, precious metals market and potentially other markets.</p> <p>Based on the above, Commission staff has determined that the NYSE</p>

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		Liffe adequately demonstrates compliance with Core Principle 18.

IV. Noteworthy Comments

In connection with its application, NYSE Liffe requested to be designated as a contract market on an expedited basis. As previously noted, NYSE Liffe purchased the metals contracts currently trading on CBOT. NYSE Liffe acknowledged that in order to maintain the existing trading base and open interest in these contracts currently traded at CBOT, that it was critical to their business plan to be designated in a timely manner in order to transition the trading to the NYSE Liffe contract market from CBOT.

Also as previously noted, Commission staff has done its best to work with NYSE Liffe in order to accomplish a timely designation. In that regard, NYSE Liffe acknowledged that there are certain technical aspects to its electronic trading model that will not be ready or available on day one upon designation. Commission staff recognizes that while these are critical items necessary to the long-term operation of a designated contract market, with timely resolution and proper monitoring, such items do not need to be in place on day one. Instead, these items can be resolved shortly after designation. Those three items, the FIXML standard, view only screens and large trader reporting, are described in greater detail below.

A. FIXML Standard

The Commission is transitioning to a new data standard for purposes of collecting trade data from the exchanges. Adopting the standard (FIXML) would require changes to both the content and format of transmission. The FIXML transition is ongoing and the Commission is not prepared to receive trade data in FIXML from the Exchange at the time of this designation.

Accordingly, staff requested, and NYSE Liffe has provided, a representation that the Exchange will provide the Commission with trade data on a T+1 basis in a form, content, and manner acceptable to the Commission. Additionally, NYSE Liffe included a reference in this representation acknowledging the Commission's transition to the FIXML data standard. The Exchange agreed to commit to the use of the FIXML standard within 60 days of the Commission staff's formal written request for such data. The Commission may extend the 60 day deadline upon a reasonable showing of need by NYSE Liffe.

Staff is satisfied with the representation concerning the FIXML standard and will work closely with NYSE Liffe to assist the Exchange in transitioning to the new standard.

B. View Only Screens

NFA currently provides regulatory services for the Chicago Climate Exchange, Hedgestreet and USFE. It has also previously provided regulatory services to Merchants' Exchange, ONXBOT, BrokerTec and Island. In all instances, NFA has had access to the exchanges' market supervision (aka "view only") screens to assist it in its T+1 market and trade practice surveillance. Market supervision screens provide view only, real time access to live trading data as it is occurring on the NYSE Liffe system. NYSE Liffe did not initially believe that it was necessary for NFA to have access to the NYSE Liffe market supervision screens as Liffe Market Services was going to provide real-time surveillance for the NYSE Liffe market.

While NFA indicated that they could conduct their T+1 surveillance without access to the market supervision screens, it is staff's conclusion, based on experience and after multiple reviews of the NFA surveillance procedures, that NFA can perform a *better* job with access to the view only screens. Commission staff felt that it was critical for NFA to have access to this information in order to facilitate NFA staff with its trade practice and market surveillance analyses. Further, Commission staff did not want to set a precedent such that other exchanges applying for contract market designation utilizing NFA as its regulatory services provider would not provide access to the market supervision screens. Accordingly, following conversations with Commission staff, NYSE Liffe represented that it will install view only screens at NFA, and that these screens will be installed as soon as reasonably practicable, but in no event later than the end of September 2008.

Staff is satisfied that the representation concerning access to view only screens at NFA and will monitor NYSE Liffe and NFA to assure that NFA has access to the view only screens by the end of September 2008.

C. Large Trader Reporting

Large trader reporting is a critical element of an exchange's (and the Commission's) market surveillance program. Market surveillance staff uses large trader data to monitor large trader activity, assess market power, and enforce position limits in futures markets. It is the responsibility of the exchange to gather and collect large trader data from reporting firms on a daily basis. In order to carry out that responsibility, an exchange must have in place the ability and proper technology to receive that data. Large Trader data is compiled by the FCMs and transmitted directly to the exchanges (and the Commission).

Staff has been notified by NYSE Liffe that currently NYSE Liffe does not have the necessary software modifications installed in order to receive large trader data directly from the reporting firms. As a result, for an interim period, NYSE Liffe will be indirectly receiving large trader data from the CBOT until NYSE Liffe is able to take over that responsibility. Based on phone conversations with NYSE Liffe and a memo dated July 24, NYSE Liffe expects to have the software modifications completed so as to receive large trader data directly from the reporting firms by the end of October 2008.⁹

Although NYSE Liffe will not be receiving the large trader data directly, NYSE Liffe has made arrangements with the CBOT to receive the data. During the interim period, NYSE Liffe will receive the large trader data from the CBOT, which NYSE Liffe will then forward to NFA so that NFA may conduct its next-day surveillance responsibilities. NYSE Liffe will make efforts to contact all reporting firms to continue to report large trader information to CBOT. Since the short delay will still enable NFA to receive and use large trader data during this interim period within an acceptable timeline, staff is satisfied that NYSE Liffe will fulfill its market surveillance responsibilities even during the interim period. After the interim period, NYSE Liffe will be directly receiving and handling all the large trade data from the reporting firms and

⁹ This arrangement does not affect the Commission's surveillance program, including its ability to collect large trader data from the firms.

will continue to forward that data to NFA. The Commission will be notified in advance when the actual interim period will be over.

Staff is satisfied that NYSE Liffe will fulfill its market surveillance responsibilities of monitoring traders' activities and enforcing position limits both during and after the interim period.

Attachments

- A NYSE Liffe Order of Designation
- B NYSE Liffe Letter
- C NYSE Liffe Application for Designation**
 - Appx. 1 Regulatory Chart
 - Appx. 2 Limited Liability Company Agreement
 - Appx. 2a Limited Liability Charter of Formation
 - Appx. 3 Regulatory Oversight Committee Charter
 - Appx. 4 NYSE Liffe, LLC Rulebook
 - Appx. 5 Regulatory Services Agreement (between NYSE Liffe and NFA)
 - Appx. 6 Managed Services Agreement (between NYSE Liffe and LMS)
 - Appx. 7 Transition Services Agreement (between NYSE Liffe and CME)
 - Appx. 8 LIFFE Connect® v 9.0 Information Pack
 - Appx. 9 Error Trade Policy Procedures
 - Appx. 10 Pre-Execution Discussion Procedures
 - Appx. 11 Fast Track Membership Application
 - Appx. 12 NYSE Liffe Market Services – Operational Procedures
 - Appx. 13 NFA Compliance Manual
 - Appx. 14 Technical Information Cross Reference “Roadmap”
 - Appx. 15 NYSE Liffe Interface Sublicense and Connection Agreement
 - Appx. 16 Surveillance Memo by Declan Ward dated July 24, 2008
 - Appx. 17 Managed Services Agreement (between CBOT and AEMS)
 - Appx. 18 Description of Pro Rata Algorithm and Market making program
 - Appx. 19 Detailed description of NYSE Liffe technical review

** Due to the volume of material submitted with the NYSE Liffe application, the application materials are available upon request.