



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of  
Market Oversight

### MEMORANDUM

**To:** The Commission

**From:** Division of Market Oversight

**Date:** June 2, 2004

**Subject:** Merger of CSCE and NYCE into NYBOT

**Recommendation:** That, in order to implement CSCE and NYCE's plan to merge into NYBOT, the Commission (1) transfer to NYBOT the existing contract market designation of CSCE and NYCE; (2) approve (i) the proposed NYBOT bylaws, (ii) certain proposed amendments to the rulebooks of NYCE and CSCE, (iii) the transfer to NYBOT of all contracts currently listed for trading on CSCE and NYCE, (iv) the transfer of all associated existing open interest, and (v) the transfer of all contract approvals; and (3) confirm the retention of the prior approval status of all CSCE and NYCE rules, including contracts

**Other Offices Consulted:** Division of Clearing and Intermediary Oversight  
Division of Enforcement  
Office of General Counsel

**Responsible Staff:** Riva Spear Adriance x5494

#### I. INTRODUCTION

By letters dated April 27 through May 27, 2004, the Coffee, Sugar & Cocoa Exchange, Inc. ("CSCE") and the New York Cotton Exchange ("NYCE") (as well as the Board of Trade of the City of New York, Inc. ("NYBOT")) (collectively the "Exchanges") submitted certain proposed bylaws and rule amendments to the Commodity Futures Trading Commission ("Commission") for approval, pursuant to Section 5c(c) of the Commodity Exchange Act ("Act") and Commission Regulation 40.5, to implement their plan of merger (collectively the

“CSCE-NYCE merger”). Currently, CSCE and NYCE are both wholly-owned subsidiaries of NYBOT.

The CSCE-NYCE merger is the completion of a plan of merger agreed to by CSCE and NYCE upon their preliminary merger agreement in 1998. Under the plan of merger agreement of 1998, the merger was to take place in a series of stages. The first stage resulted in each exchange becoming a wholly-owned subsidiary of NYBOT. Upon completion of the merger on or after June 10, 2004, CSCE and NYCE are to be merged with and into NYBOT; NYBOT will then be the sole surviving entity. At that time, the Exchanges intend that all contracts previously listed for trading on CSCE and NYCE will be moved to, and listed for trading on, NYBOT, and NYBOT then will be the designated contract market.<sup>1</sup>

As part of the CSCE-NYCE merger plan, CSCE, NYCE and NYBOT are requesting that the Commission transfer to NYBOT the existing CSCE and NYCE contract market designations and approve the associated transfer to NYBOT of: (1) all futures and options contracts currently listed for trading, whether by approval or certification,<sup>2</sup> on CSCE and NYCE; (2) all futures and options contract approvals; and (3) all associated existing open interest.<sup>3</sup> The Exchanges have also represented that NYBOT will assume responsibility for maintaining the certification conditions of all contracts currently listed for trading by CSCE or NYCE by certifying anew all such contracts after the completion of the merger.<sup>4</sup> NYBOT also will recertify all other rules and rule amendments that previously had been submitted to the Commission by CSCE and NYCE via self-certification.

In addition, the following materials were submitted to the Commission for its review and approval: (1) the proposed new bylaws;<sup>5</sup> and (2) certain amendments to the current CSCE and NYCE Rulebooks. The Exchanges are requesting Commission approval of the proposed new bylaws, proposed new Chapters 1 and 2, and proposed new rule 6.41. CSCE and NYCE have also self-certified the reorganized Rulebooks *in toto*, including the new and reorganized rules

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<sup>1</sup> NYBOT has never been designated a contract market; all contracts currently trading on the NYBOT family trade on either NYCE or CSCE, the designated contract markets. Therefore, as part of its request, the Exchanges are requesting that the contract market designations of CSCE and NYCE be transferred to NYBOT. Upon completion of the merger, the contract market designations of CSCE and NYCE will have been transferred to NYBOT, and CSCE and NYCE, and their contract market designations, will concurrently merge with each other into NYBOT. Consequently, CSCE and NYCE, and their separate contract market designations will no longer exist. As a result, NYBOT would only have one contract market designation. The New York Futures Exchange (“NYFE”) is a designated contract market that is also a subsidiary of NYBOT. NYFE is currently deemed to be a dormant contract market under Commission Regulation 40.1, as no trading has occurred on NYFE since prior to August 1, 2003, when all contracts then listed for trading on NYFE were transferred to NYCE. The current merger does not implicate NYFE, and after the merger NYFE would remain a designated contract market that is a subsidiary of NYBOT and is deemed to be dormant.

<sup>2</sup> Under Section 5c(c) of the Act, a DCM may choose whether to list a contract for trading by self-certification to the Commission or by requesting Commission approval.

<sup>3</sup> See Letters from Audrey R. Hirschfeld, Senior Vice President and General Counsel, CSCE, NYCE and NYBOT, to Jean A. Webb, Secretary to the Commission (April 26, 2004) (“CSCE, NYCE and NYBOT letters”).

<sup>4</sup> See CSCE, NYCE and NYBOT representations dated May 20, 2004.

<sup>5</sup> The proposed NYBOT bylaws are attached to this Memorandum at Appendix E.

(“proposed new Rulebooks”),<sup>6</sup> to be effective by the close of business on the day prior to the merger.

Although the merger of CSCE and NYCE technically will not occur until the merger date, these exchanges state that they have operated as one entity since NYBOT became their holding company parent in 1998.<sup>7</sup> The CSCE, NYCE and NYBOT letters state further that the NYBOT staff has served the Exchanges since that time, “ensuring that the exchanges fulfilled their self-regulatory responsibilities.”<sup>8</sup> According to the submission, neither the level of staffing devoted to the markets nor to the market surveillance, disciplinary, membership, arbitration and other self-regulatory programs that are currently in place will be changed. Finally, the New York Clearing Corporation (“NYCC”), the clearing organization for current CSCE and NYCE contracts, will be designated as the clearing organization for NYBOT<sup>9</sup>. The Exchanges maintain that due to this continuation of current clearing and regulatory services, the transition to NYBOT will be entirely transparent.<sup>10</sup>

## II. PROPOSED NEW RULES AND RULE AMENDMENTS

### A. Bylaws

According to CSCE and NYCE, their proposed bylaws were derived from the existing CSCE and NYCE bylaws without significant change, except with respect to provisions related to the nomination and composition of the Board, and amendments necessary to conform to the

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<sup>6</sup> The proposed new Rulebooks are attached to this Memorandum at Appendix F. The proposed new Rulebooks, as amended herein and adopted by CSCE, NYCE and NYBOT, would govern the trading activities on NYBOT after the merger. According to CSCE and NYCE, except for amendments to Chapters 1 and 2, other current NYCE and CSCE rules are not being substantively amended and would apply to NYBOT, although some have been moved or rewritten and reorganized in other, non-material ways. *See infra* Section II.B and C. *See also* CSCE, NYCE and NYBOT letters. As CSCE and NYCE, under their merger plan, are carrying out a merger into a new entity, the Division has asked for, and received, the representations of CSCE, NYCE and NYBOT that NYBOT, upon completion of the mergers, will meet the requirements for contract market designation.

<sup>7</sup> *See* CSCE, NYCE and NYBOT letters at 5, 6.

<sup>8</sup> *Id.*

<sup>9</sup> The Exchanges have notified Commission staff that a proposed resolution is on the agenda for adoption by the NYCC at its board meeting of June 7. The proposed resolution states that:

NOW THEREFORE, BE IT RESOLVED that from and after the commencement of trading in NYBOT Contracts on or subject to the rules of NYBOT: (a) all open positions in CSCE and NYCE Contracts shall remain open, (b) any NYBOT Contracts on any commodity entered into on or subject to the rules of NYBOT shall be offset against such open positions in CSCE or NYCE Contracts on such commodity in the same manner and to the same extent as if such positions had originally been established as NYBOT Contracts on or subject to the rules of NYBOT, (c) all margins held by the Corporation in connection with such positions shall continue to be held and disposed of in the same manner as if such positions had been established on or subject to the rules of NYBOT, and (d) all rights and obligations of Clearing Members with respect of such open positions shall continue in full force and effect; and BE IT FURTHER RESOLVED that the officers of the Corporation are authorized to execute and deliver such instruments and documents and to take such other action as they may deem necessary or appropriate in order to implement the language and purposes of the foregoing resolution.

<sup>10</sup> *Id.*

structure that will exist post-merger.<sup>11</sup> The Exchanges indicated that the current bylaws had previously been submitted to, and approved by, the Commission.<sup>12</sup>

With respect to the nomination process, one substantive difference pointed out by CSCE, NYCE and NYBOT in their letters is that the proposed bylaws change the nomination process for members of the board of governors. Under the proposed bylaws, the board members (“governors”) are not nominated as a “slate” of candidates by a nominating committee. Instead, the nomination of all governors (except the president and public governors, who are appointed) would be by a petition signed by 30 NYBOT members who are eligible to vote at board elections. Board candidates will still be elected by plurality of the votes cast. In the event of a tie for any position, the Board would fill the position with one of the tied candidates by majority vote of the Board.

Other changes are more structural and generally non-substantive. The current NYBOT bylaws have Class A and Class B members; the Class A members were originally CSCE members and the Class B members were originally NYCE members. Upon completion of the merger, NYBOT will not have any Class A and Class B members. The proposed bylaws, therefore, do not include any distinction between Class A members and Class B members and the members of the Board will not be identified as Class A or Class B governors. Rather than being elected by either class, the governors will be elected by the full membership of NYBOT.<sup>13</sup> Other changes are the result of relocation or renumbering of bylaws.<sup>14</sup> Finally, proposed Article 1 (current CSCE Article 1 and NYCE Article 2) would be expanded to account for the fact that NYBOT will be the exchange with respect to which memberships will be purchased, sold and leased. Likewise, proposed Article 5 has been expanded to provide for the various categories of committees that will be designated as NYBOT, rather than CSCE or NYCE, committees.

### *B. Proposed New Rules*

The Exchanges have requested Commission approval of Chapter 1 (Definitions) and Chapter 2 (Membership Rules) of their Rulebooks, and Rule 6.41 (Broker Association Rule), since these rules have been changed, as described below.

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<sup>11</sup> See CSCE, NYCE and NYBOT letters at 2.

<sup>12</sup> Due to the large number of rules and changes to the CSCE and NYCE bylaws and rules over the years, Commission staff are unable to verify the approval status of each and every bylaw or rule without extensive research. Furthermore, CSCE and NYCE are unable to verify the approval status of most of their current rules due to the loss of exchange records on September 11, 2001. The Exchanges are requesting that the Commission approve the proposed bylaws, Chapter 1, Chapter 2 and Rule 6.41. Regarding the rules other than Chapters 1, 2, and Rule 6.41, however, the Exchanges have requested, and the Division is recommending, that the Commission confirm the status of each rule of the proposed new Rulebooks, under the Act and the Commission’s regulations, is not affected by the consummation of the merger plan except as each rule is specifically amended herein. The Commission took a similar approach in confirmed the previous approval status of rules in its consideration of the merger submissions of both the Chicago Mercantile Exchange Inc. and the New York Mercantile Exchange, Inc. See staff Memorandum to the Commission recommending approval dated June 15, and July 26, 2000, respectively.

<sup>13</sup> See CSCE, NYCE and NYBOT letters at 3.

<sup>14</sup> For example, current NYCE Article 1 (covering the board and committees) has been reconstituted as proposed Articles 3 and 5, respectively, while current NYCE Article 2 (Members) has been renumbered as proposed Article 1. According to the Exchanges, the matters addressed in current NYCE Articles 5 (Inspection, Warehousing, etc – Cotton) and 6 (Cotton No. 2) are covered in the appropriate sections of the proposed rules based upon the subject matter of the bylaw.

- Chapter 1. The NYCE Rulebook did not have a definitions chapter. Proposed Chapter 1 (Definitions) is based upon the CSCE definitions chapter, which has been expanded to cover terms used throughout the proposed new Rulebooks, including the proposed bylaws.
- Chapter 2. The CSCE, NYCE and NYBOT letters state that proposed Chapter 2 is derived from the uniform membership rules that were adopted by CSCE and NYCE in 2000. According to the Exchanges, proposed Chapter 2 also incorporates certain changes to bring the proposed new Rulebooks into conformity with the structure that will exist post merger.<sup>15</sup> Proposed Rule 2.38, for example, set forth the three categories of trading permits that will exist post-merger (Option, Finex and Finex-Europe). In addition, a revised Rule 2.14 codifies a current requirement that in order to clear all NYBOT products, a clearing member must have four (4) equity memberships; if the firm intends to clear only CSCE or NYCE products, only two (2) equity memberships are required. Additionally, Chapter 2 continues to require that clearing members intending to clear Finex products hold two (2) Finex Trading Permits as well as the other required memberships.<sup>16</sup>
- Rule 6.41. Rule 6.41 represents an amalgam of provisions that are currently contained in the CSCE and NYCE broker association rules, although such rules do differ from each other in some respects. According to the Exchanges, however, all of the material terms of proposed Rule 6.41 are contained in either the CSCE or the NYCE broker association rule, except that an alternative definition of the phrase “regularly share a deck of orders” has been added for financial and index contracts.<sup>17</sup> The phrase “regularly share a deck of orders” has been defined as involving disclosing or giving access to two or more orders to another member during the trading day. For the financial and index contracts, on the other hand, the phrase has been defined as involving access or disclosure of five (5) or more orders. The current NYCE rule (Rule 6.38) applying to financial and index contracts is limited to two (2) such orders. The Exchanges consider this to be a minor and not a material change. The Exchanges state that this change was made for these contracts because of the small number of brokers who are normally present in the rings in which these products trade, and that leaving the rule at two (2) orders could result in everyone in the ring being associated with a substantial segment (if not all) of the ring, making it an inefficient place to get orders executed.<sup>18</sup>

### *C. Reorganization of the CSCE and NYCE Rulebooks*

According to the CSCE, NYCE and NYBOT letters, the proposed Rulebooks, except with respect to Chapter 1, Chapter 2 and Rule 6.41, as described above, have been reorganized

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<sup>15</sup> See CSCE, NYCE and NYBOT letters at 4.

<sup>16</sup> The Division notes that when the Exchanges adopted Chapter 2 rules regarding the leasing of exchange seats, currently covered in CSCE Rule 1.17 and NYCE Rule 6.23, rather than track the CSCE or the NYCE requirements concerning claims against lessees, the rule tracks New York Mercantile Exchange, Inc. Rule 2.70. DCIO has reviewed this rule change.

<sup>17</sup> See email from Audrey R. Hirschfeld, Senior Vice President and General Counsel, CSCE, NYCE and NYBOT, to Riva Adriance, Special Counsel, Division of Market Oversight, Commission (May 27, 2004).

<sup>18</sup> *Id.*

and “reflect a codification and renumbering of the current Rules of CSCE and NYCE without material change.”<sup>19</sup> The Exchanges have not requested approval of these non-material changes. Instead, the Exchanges have requested that the Commission confirm that the status of each rule of the proposed new Rulebooks, under the Act and the Commission’s regulations, *i.e.* whether approved or certified,<sup>20</sup> is not affected by the consummation of the merger plan except as each new rule or rule amendment is specifically approved by the Commission at this time.

- Chapter 3. Committee composition requirements and general authority are found in Chapter 3.<sup>21</sup> According to the Exchanges, the committee charter and composition requirements “parallel the standards in the CSCE and NYCE committee rules from which they are derived.”<sup>22</sup>
- Chapter 4. The Exchanges stated that the floor trading rules have not been altered. The rules were mostly consistent, although the trading rules of certain CSCE and NYCE products differed somewhat. According to the Exchanges, Chapter 4 of the proposed new Rulebooks retained the differences that existed by providing for product-specific trading rules.<sup>23</sup>
- Chapter 5. Chapter 5 contains integrated margin rules of both exchanges reflecting current practices on CSCE and NYCE, according to the Exchanges.<sup>24</sup>
- Chapter 6. This chapter integrates all rules based upon CFTC requirements applicable to members, the Exchange and its employees.<sup>25</sup> Chapter 6 is based on current NYCE Chapter 5, and covers emergency actions, conflicts of interest, position limits and reporting, exchange trading policy and other regulatory matters. The Exchanges

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<sup>19</sup> For example, 12 of the 22 chapters of the proposed new Rulebooks contain the contract terms for products in which CSCE and NYCE are currently authorized to list for trading, representing contracts that either have been self-certified to, or approved by, the Commission. According to the Exchanges, the contract terms in these chapters mirror the contract terms as they exist today, with minor conforming changes made to account for the use of defined terms and to eliminate clearly obsolete provisions. See CSCE, NYCE and NYBOT letters at 3, 5. In another rule reorganization, a statement regarding the continuation of a clearing member partnership in the event of a death or retirement of the individual that was general partner, (found in section (b) of current CSCE Rule 1.14) will be addressed in the NYCC application papers and other agreements that clearing members must execute. DCIO has reviewed this change.

<sup>20</sup> See *supra* note 13.

<sup>21</sup> NYBOT will have 36 committees post-merger.

<sup>22</sup> See CSCE, NYCE and NYBOT letters at 4.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> For example, according to the Exchanges, CSCE Rules 20.5 (Service on Exchange Board and Certain Committees), 20.07 and (Conflicts of Interest Involving Named Parties in Interest) and 20.07A (Conflicts of Interest Involving Emergency and Other Significant Actions) have been moved, intact, from the current rules to proposed Chapter 6. Similarly, NYCE Rules 9.00 (Prohibition From Service On Board And Certain Committees), 5.16 (Conflicts of Interest Involving Named Parties in Interest) and 5.16A (Conflicts of Interest Involving Emergency and Other Significant Actions) were moved to proposed Chapter 6. According to the Exchanges, Chapter 6 consolidates all exchange rules derived from specific CFTC regulations in one place. See CSCE, NYCE and NYBOT letters at 3.

indicated that some provisions were moved from current CSCE bylaws to proposed Chapter 6.<sup>26</sup>

- Chapter 7. The CSCE, NYCE and NYBOT letters state that proposed Chapter 7 consolidates the various warehouse and licensing rules applicable to coffee, cocoa, cotton and FCOJ into one chapter, including product-specific subchapters when needed.<sup>27</sup>
- Chapter 20. Chapter 20 continues the Exchanges' arbitration rules. The current CSCE and NYCE arbitration rules are generally identical and, according to the Exchanges, no material change have been made to them.<sup>28</sup>
- Chapter 21. In 1999, CSCE and NYCE harmonized their disciplinary process. Therefore, according to the Exchanges, the current CSCE and NYCE disciplinary rules are identical except that summary fines can be issued in connection with certain practices on NYCE that are not covered by the CSCE rules.<sup>29</sup> Under proposed Chapter 21, the list of trading practices subject to summary action includes a list of summary fines that are applicable only to products that are currently listed on NYCE.<sup>30</sup>
- Chapter 22. The CSCE, NYCE and NYBOT letters state that the current CSCE and NYCE resolutions were incorporated into appropriate subject matter chapters of the proposed new Rulebooks wherever possible. A number of CSCE resolutions were not so incorporated and are, instead, contained in proposed Chapter 22.<sup>31</sup>

#### *D. Transfer of CSCE and NYCE Contracts – Chapters 8-19*

The CSCE currently has 32 futures and associated options contracts authorized for trading, either by self-certification or Commission approval, and the NYCE currently has 110 contracts authorized for trading. The Exchanges have only requested that the Commission approve the transfer of 99 of these contracts to NYBOT, where they will be listed for trading.<sup>32</sup> Contract terms and conditions for each of these contracts currently listed on CSCE and NYCE are found in proposed Chapters 8-19. All other futures and option contracts authorized for trading by either CSCE or NYCE (those that are not currently listed for trading) will not be transferred to NYBOT.

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<sup>26</sup> See CSCE, NYCE and NYBOT letters at 5.

<sup>27</sup> *Id.*

<sup>28</sup> See CSCE, NYCE and NYBOT letters at 5.

<sup>29</sup> See CSCE, NYCE and NYBOT letters at 5.

<sup>30</sup> See Rule 21.25(b)(i)B.12.

<sup>31</sup> The CSCE, NYCE and NYBOT letters stated that the proposed new Rulebooks eliminated the CSCE Standing Resolution – 17 (Schedule of Contract Fees) and does not contain a schedule of contract fees as the Exchanges has not determined the fee structure that will become effective. See CSCE, NYCE and NYBOT letters at 5.

<sup>32</sup> The list of these contracts is found attached to the draft order in Appendix B. The list originally submitted by the Exchanges of contracts to be transferred to NYBOT was amended, as well as Rule 16.22 and 16.23, to correct errors that: (1) omitted the pricing basis for the option on the Euro-U.S. dollar futures contract, and (2) included rules establishing the pricing basis for the Pound sterling-euro futures and options contracts, as these contracts were never listed on the NYCE and NYBOT does not intend to list them as new contracts.

The amendments to the terms of these contracts and the related delivery facility licensing rules<sup>33</sup> were reviewed to determine whether any economically significant changes had been made. The rules were also reviewed to determine whether any changes to contracts on agricultural commodities enumerated in Section 1a(4) of the Act materially change the contracts' terms and conditions and therefore are not eligible to be submitted by the Exchange pursuant to self-certification procedures in the absence of a Commission materiality determination under Section 5c(c)(2)(B) of the Act.<sup>34</sup>

According to the Exchanges, while minor conforming changes have been made to account for the use of defined terms and to eliminate clearly obsolete provisions, these chapters mirror the contract terms as they exist today.<sup>35</sup>

Staff review of the changes indicates that none of the amendments are economically significant. In addition, the amendments to the cotton and frozen concentrated orange juice futures and option contracts meet the requirements of Regulation 40.4(b)(1) through (7) and thus are not material for purposes of Section 5c(c)(2)(B) of the Act. These latter amendments, therefore, are eligible for, and have been submitted pursuant to, self-certification procedures. In this regard, most of the amendments consisted of editorial changes to the contracts' rules, including renumbering, capitalization, punctuation, and spelling.

As stated by the Exchanges, some of the amendments to the affected contracts eliminate clearly obsolete language, such as rules specifically applicable to contract months that expired in the past and notes regarding when certain rules were amended in the past, some of which refer to changes more than 20 years old. The Exchange also made conforming amendments that make cross-references within the rules accurate and that correctly identify certain entities by name (the current name is substituted for the obsolete name). None of these amendments materially affect the terms and conditions of any of the affected contracts.

However, some of the amendments previously submitted pursuant to recent self-certification procedures and now submitted again in the context of the merger of the exchanges raise questions as to their compliance with Core Principle 3. These include:

- NYBOT Rule 11.00(d)(i), which formerly was CSCE Rule 11.00(d)(i). These amendments, to be effective for the March 2006 contract month and all subsequent contract months, specify that sugar having a polarization of 97 degrees is to be deliverable at a premium of 1.5% to the contract price (par price) while amendments to NYBOT Rule 11.00(b), which formerly was CSCE Rule 11.00(b), also to be

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<sup>33</sup> Application of licensing rules, such as requirements related to location, available transportation and capacities, helps to determine the effective terms and conditions of the associated contracts by affecting the ease with which deliveries can be made or taken and the level of deliverable supply.

<sup>34</sup> Under Section 5c(c)(2)(B) of the Act, amendments to contracts enumerated in Section 1(a)(4) that will be applied to open interest and that materially change the terms and conditions of such contracts (as determined by the Commission) must be submitted to the Commission for its prior approval. Commission Regulation 40.4 implements Section 5c(c)(2)(B). This regulation specifies seven categories of rule changes that are deemed to be non-material changes and set forth a procedure exchanges may follow to obtain the Commission's determination of the materiality of rule changes that do not fall within these seven categories. Of the contracts to be transferred to NYBOT, only the cotton No. 2 and frozen concentrated orange juice futures contracts are based on commodities enumerated in Section 1a(4) of the Act.

<sup>35</sup> See CSCE, NYCE and NYBOT letters at 5.



effective for the March 2006 contract month and all subsequent contract months, specify that the par specification is 97 degrees polarization. That is, the Exchange has in effect certified that the par commodity will be deliverable at a premium of 1.5% over par, an obvious contradiction.<sup>36</sup>

- Sugar Resolution No. 4, defining the term “port,” and pertinent to the sugar No. 11 (world) futures contract, adopted on April 14, specifies the location of Bangkok, Thailand using geographic coordinates that do not reflect correct terminology and that as a result identify the location of the city of Bangkok as being about sixty miles distant from its true location.<sup>37</sup>
- NYBOT Rule 14.05(a)(iv), formerly CSCE Rule 14.05(3)(d), of the Sugar 14 futures contract specify Galveston, Texas as a delivery point. However, there is no refiner located either in Galveston or at any point nearby with “a customary Refiner's Berth equipped with the necessary weighing and sampling facilities,” as required by the contract.<sup>38</sup>

Division staff are currently discussing these specified self-certified amendments with the Exchanges; however, this review will not be affected by action on the recommended approvals and order attached herein.<sup>39</sup>

### **III. TRANSFER OF DESIGNATIONS, CONTRACTS AND OPEN INTEREST**

As noted earlier, NYBOT has never been designated a contract market and, therefore, the Exchanges are requesting that the contract market designations of CSCE and NYCE be transferred to NYBOT.<sup>40</sup> As CSCE and NYCE will no longer exist as separate entities after completion of the merger, it is appropriate that the Commission consider the transfer of the CSCE and NYCE contract market designations to NYBOT.

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<sup>36</sup> Staff of the Exchange have been made aware of the fact that the amended contract specifies that sugar with the same 97 degrees polarization is both the par commodity and deliverable at a premium. In addition to this fact, other aspects of the quality differentials may violate Core Principle 3 and may not conform to cash market price differentials.

<sup>37</sup> New Resolution No. 4 specifies the Port of Bangkok as being located at 100 degrees 35 feet East longitude and 13 degrees 22 feet North latitude. This location is approximately 60 miles south and west of the actual location of the city of Bangkok. The correct geographic specification of the location of Bangkok, using the figures apparently intended, is 100 degrees 35 minutes (100°35') East longitude and 13 degrees 22 minutes (13°22') North latitude.

<sup>38</sup> Sugar previously delivered in the Port of Galveston was being delivered to the facilities of the Imperial Sugar Company. Imperial's refinery is no longer in operation. Imperial's operations at Sugarland are now restricted to storage and distribution of sugar refined elsewhere. No other refiner is known to be located in or near Galveston. The nearest known refineries are located in the New Orleans area, all of which take delivery of raw sugar through their own facilities located at the refineries.

<sup>39</sup> The Division has recommended that the Commission approve the Exchange's transfer of these self-certified contracts, approve the transfer of all associated open interest, and approve the transfer of all contract approvals. The Division is also recommending that the Commission confirm that the status of each rule of the proposed new Rulebooks, under the Act and the Commission's regulations, is not affected by the consummation of the merger plan except as each rule is specifically amended herein. Such approvals and the confirmation of previous approval status of rules would not, therefore, convert self-certified rules into approved rules.

<sup>40</sup> See *supra* note 1.

According to the Exchanges: (1) they have operated as one exchange since NYBOT became their holding company parent in 1998; (2) the NYBOT staff has served all the Exchanges since that time; (3) the level of staffing devoted to both the markets and the market surveillance, disciplinary, membership, arbitration and other self-regulatory programs will not be changed; and (4) the New York Clearing Corporation will be designated as the clearing organization for NYBOT. Upon completion of the merger, the contract market designations of CSCE and NYCE will have been transferred to NYBOT, and CSCE and NYCE, and their contract market designations, will concurrently merge into NYBOT and each other. Consequently, CSCE and NYCE, and their separate contract market designations will no longer exist. As a result, NYBOT would only have one contract market designation.

In view of the above, the Division believes that it is appropriate for the Commission to transfer to NYBOT the merged contract market designation of CSCE and NYCE. This transfer should have no effect on the operations of the combined entity and should be transparent to traders and the public.

The Exchanges are also requesting that the Commission approve the associated transfer to NYBOT of: (1) all futures and options contracts currently listed for trading on CSCE and NYCE; (2) all associated existing open interest; and (3) all rule and contract approvals. As stated above, the amendments that relate to merger do not appear to be either economically significant or material for purposes of Section 5c(c)(2)(B) of the Act. Furthermore, the Exchanges represent that none of the pending rule changes will affect the rights and obligations of any participant with open positions being transferred from CSCE and/or NYCE to NYBOT, and the rule changes do not modify the manner in which such changes are cleared except as mentioned above.<sup>41</sup> Therefore, the Division believes that it is appropriate for the Commission to approve the associated transfer to NYBOT of: (1) all contracts currently listed for trading on CSCE and NYCE; (2) all associated existing open interest; and (3) all rules and contract approvals.

#### **IV. CONCLUSION AND RECOMMENDATION**

Based on the foregoing, the Division believes the CSCE-NYCE merger plan, including its associated proposed new reorganized Rulebooks (proposed bylaws, rules and rule amendments), does not violate the Act or the Commission's regulations. Accordingly, the Division recommends that the Commission approve the proposed new Bylaws 101-110, 201-211, 301-314, 401-411, 501-509, 601-608 and Bylaw Resolutions 1 and 2; and proposed Chapters 1 and 2 and proposed Rule 6.41, all pursuant to Section 5c(c)(2) of the Act and Commission Regulation 40.5.

The Division also recommends that the Commission confirm to NYBOT that the approval or certification status of each rule of the proposed new Rulebook, under the Act and the Commission's regulations, is not affected by the consummation of the merger plan except as any rule is specifically approved at this time.

Furthermore, since CSCE and NYCE will merge into NYBOT, NYBOT will be the surviving entity and the designated contract market, without altering the self-regulatory rules or

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<sup>41</sup> See CSCE, NYCE and NYBOT representations dated May 20, 2004 at 2.

practices and without altering the terms and conditions of the contracts listed for trading on the current contract markets, CSCE and NYCE, the Division recommends that the Commission issue the attached order transferring to NYBOT the existing CSCE and NYCE contract market designations and approving the associated transfer to NYBOT of: (1) all contracts currently listed for trading on CSCE and NYCE, whether previously authorized by approval or certification; (2) all associated existing open interest; and (3) all rule and contract approvals. The transfer of these contracts and all related open interest, and the granting of contract market designation to NYBOT should take effect at precisely the same time as the merger itself.

Finally, the Division recommends that the Commission remind NYBOT that, as it acknowledged in its representations to the Commission, it will be subject to all provisions of the Act and the Commission's regulations applicable to designated contract markets, including the responsibility to be in compliance with the contract market designation criteria and core principles.

- Appendix A -- Proposed Approval Letter
- Appendix B -- Proposed Order
- Appendix C -- April 26, 2004 CSCE, NYCE and NYBOT Submission Letters
- Appendix D -- May 20, 2004 CSCE, NYCE and NYBOT Representation Letters
- Appendix E -- NYBOT emails of May 21, and May 27, 2004
- Appendix F -- Proposed new Bylaws
- Appendix G -- Proposed new Rulebooks

Attachments